

Government of the District of Columbia
Department of Insurance, Securities and Banking



Gennet Purcell
Commissioner

Bulletin
10-BB-01-11/10

TO: All Residential Mortgage Lenders and Residential Mortgage Borrowers

FROM: Gennet Purcell, Commissioner

RE: Regulatory Guidance Related to the Implementation of the Saving D.C. Homes from Foreclosure Emergency Amendment Act of 2010

DATE: November 24, 2010

Introduction

On November 9, 2010, the Council of the District of Columbia passed Bill 18-1067, the Saving D.C. Homes from Foreclosure Emergency Amendment Act of 2010 (“Act”). The Act became effective on November 17, 2010, upon the signature of the Mayor of the District of Columbia. The Act did not include a transition period, and therefore, all the provisions of the Act became effective immediately on November 17, 2010. A residential mortgage borrower facing the foreclosure of his or her residential mortgage, or a lender planning to initiate a foreclosure of a residential mortgage, should review the Act to determine each of their rights and responsibilities under the Act. In addition, the borrower or lender should review this Bulletin for guidance regarding the implementation of the Act, including the timing of the promulgation of implementing rules.

The purpose of the Act is to require a residential mortgage lender to provide a residential mortgage borrower with a Notice of Default on a Residential Mortgage and to provide the residential mortgage borrower with the right to elect to engage in mediation prior to the initiation of a foreclosure of a residential mortgage. The Act also establishes a new Foreclosure Mediation Program (“Program”) in the District of Columbia. The Department of Insurance, Securities and Banking (“Department”) is expected to be charged with the responsibility of administering the Act and the Program.

Summary of the Act

Section 2(a) of the Act requires the holder of a note secured by a residential mortgage, or its agent to comply with the following two requirements as a condition of the issuance of a Notice of Intention to Foreclose a Residential Mortgage Sale ("Notice of Foreclosure") to initiate a foreclosure sale under a power of sale provision contained in a residential mortgage:

1. Provide a Notice of Default on a Residential Mortgage ("Notice of Default"), in a form prescribed by the Mayor, to the borrower(s) and any other person who holds record title of the real property encumbered by the residential mortgage at his or her last known address, and a copy of the Notice of Default to the Mayor; and
2. Obtain a mediation certificate pursuant to the Program.

Section 2(c) of the Act establishes the Program, which provides for mediation between a borrower and a lender prior to the initiation of a foreclosure of a residential mortgage. The Act defines a residential mortgage as a loan secured by a deed of trust or mortgage, used to acquire or refinance real property which is improved by 4 or fewer single family dwellings, including condominium or cooperative units, at least one of which is the principal place of abode of the debtor or his immediate family. Pursuant to the Program, a residential mortgage borrower and, if different from the residential mortgage borrower, the person who holds record title to the real property subject to a residential mortgage for which a Notice of Default is received has the right to request and participate in a mediation. Mediation is defined as a meeting between a lender or trustee and a borrower, with the help of a neutral third-party mediator to attempt to reach agreement on a loss mitigation program for the borrower, including the renegotiation of the terms of a borrower's residential mortgage, loan modification, refinancing, short sale, deed in lieu of foreclosure, and any other options that may be available in lieu of foreclosure.

If a residential mortgage borrower opts out of the mediation after the receipt of a Notice of Default, a Mediation Certificate is provided to the lender and the lender may initiate a Notice of Foreclosure. If a residential mortgage borrower, within 30 days after the receipt of a Notice of Default, elects to participate in mediation, the residential mortgage lender is required to participate in good faith in the mediation with the borrower. A lender may be subject to penalties under the Act for failing to mediate in good faith, which will be defined in the rules. The mediation is completed:

1. Upon a settlement between the parties; or
2. If mediation is terminated by the mediator after determining that the parties, while acting in good faith, were not able to agree to a loan modification or to any other options in lieu of foreclosure.

In the event that mediation is terminated by the mediator, the mediator is required to prepare and submit to the Mediation Administrator a report and recommendation that the matter be terminated. After reviewing and considering the mediator's report and recommendation, the Mediation Administrator may:

1. Issue a Mediation Certificate to the lender; or

2. Refer the matter to another mediator, if the Mediation Administrator determines that the mediation was not conducted consistent with the Act and the rules.

If the Mediation Administrator issues a Mediation Certificate to the lender, the lender may schedule the foreclosure sale and initiate a Notice of Foreclosure to foreclose the residential mortgage in accordance with the governing District of Columbia laws, rules and regulations. If the Mediation Administrator refers the matter to another mediator, the lender is required to continue to mediate until the subsequent mediation is completed.

Questions and Answers Regarding Implementation of the Act

Does the Act apply to a mortgage loan that was scheduled for a foreclosure sale pursuant to a Notice of Foreclosure Sale of Real Property or Condominium Unit that was issued prior to the effective date of the Act?

No, the Act does not apply to a mortgage loan scheduled for a foreclosure sale pursuant to a Notice of Foreclosure Sale of Real Property or Condominium Unit that was issued prior to November 17, 2010, the effective date of the Act. The Act only applies to a Notice of Intention to Foreclose a Residential Mortgage Sale issued after the effective date of the Act. Additionally, that notice must be preceded by a Notice of Default on a Residential Mortgage and must be accompanied by a Mediation Certificate prior to being recorded by the Recorder of Deeds and becoming effective.

Does the Act apply to all mortgage loans foreclosed in the District of Columbia?

No, the Act does not apply to all mortgage loans foreclosed in the District of Columbia. The Act applies only to a residential mortgage loan which is defined as a loan secured by a deed of trust or mortgage, used to acquire or refinance real property which is improved by 4 or fewer single family dwellings, at least one of which is the principal place of abode of the debtor or his immediate family. Mortgage loans for condominiums and cooperatives also are subject to the Act. However, the Act does not apply to foreclosures of mortgages involving commercial or investment real property.

When can a lender file a Notice of Default?

A lender may file a Notice of Default on a Residential Mortgage once rules to implement the Act are promulgated, including the development of the standard Notice of Default on a Residential Mortgage form that will be mandated for use under the Act and there is a default with the mortgage.

When will rules be promulgated to implement the Act?

The Department expects that rules to implement the Act will be promulgated and effective in mid-January 2011.

Can a residential mortgage lender initiate a Notice of Foreclosure on a residential mortgage prior to the promulgation of rules to implement the Act?

No, a residential mortgage lender cannot initiate a Notice of Foreclosure on a residential mortgage prior to the promulgation of implementing rules. A residential mortgage lender must

wait until rules are promulgated, and then issue a Notice of Default and receive a Mediation Certificate, prior to initiating a Notice of Foreclosure.

What is the effect of a foreclosure sale on a residential mortgage that does not comply with the Act?

The foreclosure sale will be void. Additionally, a lender could be subject to a penalty of \$500 for failure to participate in mediation in good faith.

When may a residential mortgage borrower elect to participate in mediation?

A residential mortgage borrower may elect to participate in mediation within 30 days after receiving a Notice of Default on a Residential Mortgage.

What should a borrower do if he or she receives a Notice of Foreclosure Sale of Real Property or Condominium Unit after November 17, 2010, and before receiving a Notice of Default on a Residential Mortgage?

It would be a violation of the Act if the borrower receives a Notice of Foreclosure Sale of Real Property or Condominium Unit after November 17, 2010, and prior to receiving a Notice of Default on a Residential Mortgage. The borrower should contact the Department immediately at 202-727-8000 and report that he or she has received the Notice of Foreclosure Sale of Real Property or Condominium Unit in violation of the Act.

How will mediators for the program be selected?

The Department expects to issue a Request for Proposals/Qualifications by the end of December 2010, and to proceed with the selection of mediators by mid-January 2011.

For questions regarding this Bulletin, please contact Christopher Weaver, Deputy Commissioner at 202-442-7774.