

DEPARTMENT OF INSURANCE, SECURITIES AND BANKING

NOTICE OF FINAL RULEMAKING

The Acting Commissioner of the Department of Insurance, Securities and Banking (“Department”), pursuant to the authority set forth in Section 539b of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1189; D.C. Official Code § 42-815.02(j) (2012 Repl.)), and Mayor’s Order 2011-51, dated March 2, 2011, hereby amends Chapter 27 (Foreclosure Mediation), Subtitle C (Banking and Financial Institutions) of Title 26 (Insurance, Securities and Banking) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking is necessary to implement the amendments to Section 539b of the Act made by the Saving D.C. Homes from Foreclosure Clarification and Title Insurance Clarification Amendment Act of 2013, effective November 5, 2013 (D.C. Law 20-40; D.C. Official Code § 42-815.02) (the “2013 Law”). The rules clarify the operation of the foreclosure mediation program (“Program”) in the Department. The Program assists homeowners and provides, where appropriate, an alternative to foreclosure. A copy of the 2013 Law can be obtained on the Council of the District of Columbia’s website, <http://www.dccouncil.washington.dc.us>.

These rules were originally published on March 14, 2014 in the *D.C. Register* as a Notice of Emergency and Proposed Rulemaking, at 61 DCR 2286. The comment period ended on April 14, 2014. A number of public comments were received and due consideration was given to the public comments that were received. No changes, however, were made and this final rulemaking is identical to the Emergency and Proposed Rulemaking. This rule was adopted as final on June 27, 2014 and will take effect immediately upon publication of this notice in the *D.C. Register*.

Chapter 27 (Foreclosure Mediation), Subtitle C (Banking and Financial Institutions) of Title 26 (Insurance, Securities and Banking) of the District of Columbia Municipal Regulations, is amended as follows:

Section 2700 is amended as follows:

Subsection 2700.1 is amended to read as follows:

2700.1 Unless specified otherwise, these regulations shall apply to the foreclosure mediation rights and procedures established for the exercise of power of sale of a residential mortgage as authorized in Section 539b of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (referred to in this chapter as the “Act”) (31 Stat. 1189; D.C. Official Code § 42-815.02)

Subsection 2700.3 is amended to read as follows:

2700.3 These regulations also set forth the procedures for filing an Affidavit of Non-Residential Mortgage Foreclosure in order to issue and record a Notice of Foreclosure for a non-residential mortgage, which does not require the recordation of a Final Mediation Certificate.

Section 2701 is amended as follows:

Subsection 2701.3 is amended to read as follows:

2701.3 A Notice of Intention to Foreclose a Residential Mortgage shall be null and void with respect to a foreclosure of a residential mortgage unless a Notice of Default on Residential Mortgage is mailed to each borrower, as Section 539(c) of the Act (D.C. Official Code § 42-815(c)) and this chapter require, and the lender receives a Final Mediation Certificate provided pursuant to Section 539b of the Act (D.C. Official Code § 45-815.02) and this chapter, and records the Final Mediation Certificate at the District of Columbia Office of the Recorder of Deeds, prior to or contemporaneously with recording the Notice of Intention to Foreclose a Residential Mortgage.

Subsection 2701.4 is amended to read as follows:

2701.4 The following documents shall be recorded with the District of Columbia Office of the Recorder of Deeds within ten (10) business days of the date of mailing of the Notice of Default on Residential Mortgage, unless the Mediation Administrator concludes that there was good cause for failing to record these documents within the required time period:

- (a) The Notice of Default on Residential Mortgage, and any supplement to the Notice of Default on Residential Mortgage; and
- (b) The Mediation Election Form (Form FM-2).

Section 2703 is amended as follows:

Paragraph 2703.3(d) is amended to read as follows:

2703.3(d) A complete Loss Mitigation Application;

Paragraph 2703.3(e) is amended to read as follows:

2703.3(e) Instructions for completing and mailing the Loss Mitigation Application;

Paragraph 2703.3(g) is amended to read as follows:

2703.3(g) An envelope for the borrower to return to the lender a copy of the Mediation Election Form (Form FM-2) and the Loss Mitigation Application. The envelope shall be preaddressed to the lender's office that will review the Loss Mitigation Application and prepare the loss mitigation analysis required by Subsection 2713.2; and,

Paragraph 2703.3(h) is amended to read as follows:

- 2703.3(h) An envelope for the borrower to return the Mediation Election Form (Form FM-2) and a copy of the Loss Mitigation Application to the Mediation Administrator. The envelope shall be preaddressed as follows:

Mediation Administrator
Department of Insurance, Securities and Banking
810 First Street, NE
Suite 701
Washington, DC 20002

Subsection 2703.4 is amended to read as follows:

- 2703.4 Within two (2) business days of the mailing date of the Notice of Default on Residential Mortgage, the lender shall send to the Mediation Administrator by electronic mail to DISB.mediation@dc.gov a copy of the Notice of Default on Residential Mortgage that was sent to the borrower(s) pursuant to Subsection 2703.1, including all attachments required by Subsection 2703.3.

Subsection 2703.5 is amended to read as follows:

- 2703.5 The lender shall send to the Mediation Administrator by regular first class mail a copy of the Notice of Default on Residential Mortgage that has been submitted to the Mediation Administrator pursuant to Subsection 2703.4, accompanied by a six-hundred dollars (\$600) money order, check or cashier's check payable to the "District of Columbia Treasurer." No other form of payment will be accepted.

Subsection 2703.10 is amended to read as follows:

- 2703.10 The following shall accompany the Notice of Default on Residential Mortgage that is submitted to the Mediation Administrator and shall be available to the borrower(s) upon request:

Paragraph 2703.10(f) is amended to read as follows:

- 2703.10(f) A true copy of all pooling and servicing or other similar agreements affecting the residential mortgage that pertain to the loss mitigation programs offered and loss mitigation analysis.

Subsection 2703.13 is amended to read as follows:

- 2703.13 The Affidavit of Mailing of Notice of Default, which is included with the Notice of Default on Residential Mortgage, shall have the same mailing date as the

Notice of Default on Residential Mortgage unless the Mediation Administrator determines that good cause is shown for the different mailing dates.

Section 2707 is amended as follows:

Subsection 2707.1 is amended to read as follows:

2707.1 Each Loss Mitigation Application that is mailed to a borrower(s) shall include all information required in the Loss Mitigation Application.

Subsection 2707.2 is repealed.

Section 2708 is amended as follows:

Paragraph 2708.2(a)(1) is amended to read as follows:

2708.2(a)(1) The Loss Mitigation Application included with the Notice of Default on Residential Mortgage received from the lender; and

Paragraph 2708.2(b)(2) is amended to read as follows:

2708.2(b)(2) A copy of the Loss Mitigation Application submitted to the lender pursuant to paragraph (a) of this subsection; and

Section 2709 is amended as follows:

Subsection 2709.1 is repealed.

Subsection 2709.2 is repealed.

Subsection 2709.4 is amended to read as follows:

2709.4 The Mediation Administrator may send to the lender's office that will review the Loss Mitigation Application and prepare the loss mitigation analysis, a copy of the Mediation Election Form (Form FM-2) and Loss Mitigation Application that were received from a borrower pursuant to Subsection 2708.2(b). The Mediation Administrator may send the information required by this subsection by electronic mail to the address listed on Lender Foreclosure Mediation Agent Contact Form (Form FM-1AC) filed pursuant to Subsection 2703.8.

Section 2710 is amended as follows:

Subsections 2710.1 through 2710.3 are amended to read as follows:

- 2710.1 Upon the timely delivery of the Mediation Election Form (Form FM-2) by the borrower(s), the Mediation Administrator shall schedule mediation between the borrower(s) and the lender to commence no later than ninety (90) days after the date of mailing of the Notice of Default on Residential Mortgage.
- 2710.2 Mediation shall be completed within one hundred eighty (180) days of the date of mailing of the Notice of Default on Residential Mortgage unless extended pursuant to Subsection 2710.15.
- 2710.3 The Mediation Administrator, or the Mediator with the consent of the Mediation Administrator, may reschedule a scheduled mediation upon no less than two (2) business days' notice to each mediation party if the Mediation Administrator or Mediator determines that it is in the public's interest to reschedule the mediation. The Mediation Administrator or Mediator shall consult with the mediation parties with respect to the new time for the rescheduled mediation.

Subsection 2710.8 is amended to read as follows:

- 2710.8 A lender who fails to mediate in good faith with respect to mediation as provided in Section 2713 shall be subject to a penalty as provided in D.C. Official Code § 42-815.02 (e)(2).

Subsection 2710.9 is amended to read as follows:

- 2710.9 The Mediation Administrator may terminate the mediation if the Mediation Administrator determines that the lender has failed to participate in the mediation in good faith for more than thirty (30) consecutive days.

Subsection 2710.10 is repealed.

Subsection 2710.15 is amended to read as follows:

- 2710.15 The mediation parties may agree to extend mediation for an additional thirty (30) days beyond the one hundred eighty (180) day period provided by D.C. Official Code § 42-815.02(e)(5) by mutual consent by executing a Mediation Extension Form (Form FM-3EX), as prescribed by the Commissioner and available on the Commissioner's website at <http://disb.dc.gov>, and shall include all information specified in Form FM-3EX.

Subsection 2710.16 is amended to read as follows:

2710.16 A borrower who fails to bring all applicable documentation and information to mediation pursuant to Subsection 2710.12 shall not be entitled to continue to participate in the mediation unless the Mediation Administrator determines that good cause has been shown for such failure.

Subsection 2710.21 is amended to read as follows:

2710.21 A mediation shall not exceed two (2) sessions, each lasting a maximum of three (3) hours, which may be scheduled consecutively.

Section 2711 is amended as follows:

Subsection 2711.3 is amended to read as follows:

2711.3 Upon the cancellation of mediation by a borrower who has elected to mediate pursuant to Section 2708, within ten (10) days of receiving the Cancellation of Mediation Form (Form FM-X1) the Mediation Administrator shall cancel the mediation and issue to the lender a Final Mediation Certificate.

Section 2712 is amended as follows:

Subsection 2712.8 is amended to read as follows:

2712.8 At any time during the mediation process, the Mediator may refer a borrower to a housing counseling agency or legal service provider for mortgage assistance, provided that the mediation shall resume not later than fifteen (15) days after the referral.

Section 2713 is amended as follows:

Subsection 2713.2 is amended to read as follows:

2713.2 A good faith effort to mediate requires the lender to conduct the following loss mitigation analysis:

- (a) Evaluate the eligibility of the borrower(s) for alternatives to foreclosure including, but not limited to, reinstatement, loan modification, forbearance, short sale, and a deed in lieu of foreclosure;
- (b) In considering a loan modification, evaluate the eligibility of the borrower(s) for each loan modification program applicable to the

residential mortgage in default and include an analysis pursuant to the Home Affordable Modification Program and the Federal Deposit Insurance Corporation's Loan Modification Program;

- i. If the lender is a Community Bank, it must evaluate all eligible loan modification programs and include an analysis pursuant to the Home Affordable Modification Program, the Federal Deposit Insurance Corporation's Loan Modification Program, or any loan modification program that is based on accepted principles and the safety and soundness of the institution and approved by the Commissioner.
 - ii. If the lender is a Credit Union, it must evaluate all eligible loan modification programs and include an analysis pursuant to the Home Affordable Modification Program, the Federal Deposit Insurance Corporation's Loan Modification Program, or any modification program that is based on accepted principles and the safety and soundness of the institution and is recognized by the National Credit Union Administration;
- (c) Offer the borrower(s) a loan modification at the best terms available for a loan modification if the net present value of receiving payments pursuant to a modified mortgage loan is greater than the anticipated net recovery following foreclosure based on a calculation using the Federal Home Affordable Modification Base Net Present Value Model or the Federal Deposit Insurance Corporation's Loan Modification Program;
- i. If the lender is a Community Bank, offer the borrower(s) a loan modification at the best terms available if the net present value of receiving payments pursuant to a modified mortgage loan is greater than the anticipated net recovery following foreclosure based on any net present value model that a Community Bank uses that is based on accepted principles and the safety and soundness of the institution and approved by the Commissioner;
 - ii. If the lender is a Credit Union, offer the borrower(s) a loan modification at the best terms available if the net present value of receiving payments pursuant to a modified mortgage loan is greater than the anticipated net recovery following foreclosure based on any net present value model that a Credit Union uses that is based on accepted principles and the safety and soundness of the institution and is recognized by the National Credit Union Administration.
- (d) If the loan has been sold to a third party investor and the loan servicing agreement permits, offer the borrower(s) a loan modification at the best

terms available for a loan modification if the net present value of receiving payments pursuant to a modified mortgage loan is greater than the anticipated net recovery following foreclosure based on a calculation using the Federal Home Affordable Modification Base Net Present Value Model or the Federal Deposit Insurance Corporation's Loan Modification Program.

Subsection 2713.3 is amended to read as follows:

2713.3 In the event a lender rejects a settlement involving an alternative to foreclosure that has a lower cost than foreclosure, the lender shall provide a written explanation for rejecting the settlement. The explanation shall include an analysis and supporting documentation and, where applicable, the inputs and outputs of the approved net present value model identified pursuant to Subsection 2713.2(c).

Subsection 2713.5 is amended to read as follows:

2713.5 A preliminary determination that a mediation party has failed to mediate in good faith shall be made by the Mediation Administrator in accordance with this chapter.

Section 2714 is amended as follows:

Subsection 2714.1 is amended to read as follows:

2714.1 The lender shall, at least five (5) business days prior to the first mediation session scheduled by the Mediation Administrator or Mediator, provide an electronic copy at DISB.mediation@dc.gov to the Mediation Administrator, and to each borrower the following, if applicable to the residential mortgage and mediation:

- (a) An itemization of the amounts needed to cure and payoff the mortgage;
- (b) Payment history records with respect to the mortgage, including all fees and costs;
- (c) The result of the lender's loss mitigation analysis;
- (d) A copy of the documentation and consideration of the options available in Subsection 2713.2, including the data used in and the outcome of any calculation required; and

Subsection 2714.3 is amended to read as follows:

2714.3 Prior to mediation a borrower shall submit with and attach to the Loss Mitigation Application documents that demonstrate the residential mortgage borrower's

household income, including, when applicable, the residential mortgage borrower's most recent tax return, W-2, last two (2) pay stubs, benefit statements, bank statements, and alimony or child support documents. If the requested document(s) is not applicable to the borrower, the borrower must provide a letter explaining why the document is inapplicable.

Subsection 2714.4 is amended to read as follows:

2714.4 The borrower(s) shall bring to the scheduled mediation the hard copies of all applicable documents required in Subsection 2714.3 and any other information that the Mediation Administrator or Mediator requests.

Subsection 2714.6 is amended to read as follows:

2714.6 In the event a party to the mediation does not cooperate with the Mediator as required by this section, the Mediation Administrator:

- (a) May determine that the party is not participating in mediation in good faith and issue a Preliminary Determination of Bad Faith;
- (b) Reschedule the mediation to enable the party to obtain information required by this section; or
- (c) Issue a Preliminary Mediation Certificate.

Section 2716 is amended as follows:

Subsection 2716.2 is amended to read as follows:

2716.2 Any settlement agreement reached as a result of mediation shall be reduced to writing and executed by the mediation parties within ten (10) business days of the date of the mediation parties' agreement.

Section 2717 is amended as follows:

Subsection 2717.1 is amended to read as follows:

2717.1 Within ten (10) days after the completion of mediation, the Mediator shall file a Mediation Report with the Mediation Administrator and deliver a copy to the mediation parties.

Subsection 2717.3 is amended to read as follows:

- 2717.3 Unless a settlement agreement is executed between the mediation parties, within ten (10) business days after receiving the Mediation Report and after reviewing and considering a Mediation Report the Mediation Administrator shall:
- (a) Schedule the matter with another Mediator for one (1) additional mediation session if there is a reasonable likelihood the mediation parties will be able to reach a settlement agreement, or issue a Preliminary Mediation Certificate if the lender participated in the mediation in good faith;
 - (b) Assess any applicable penalty against the lender pursuant to the Act or this chapter, and issue a Preliminary Determination of Bad Faith if the lender did not participate in the mediation in good faith; or
 - (c) Cancel the mediation and issue a Preliminary Mediation Certificate if the borrower(s) did not participate in the mediation in good faith.

Section 2718 is amended to read as follows:

2718 PRELIMINARY MEDIATION CERTIFICATE

- 2718.1 Once the mediation has concluded, upon determining that the lender acted in good faith the Mediation Administrator shall issue and send to all parties a Preliminary Mediation Certificate.
- 2718.2 The borrower(s) may appeal a Preliminary Mediation Certificate in the District of Columbia Superior Court in accordance with the appeal process.
- 2718.3 If the borrower(s) does not appeal within thirty (30) days and the lender documents this fact, the lender may request a Final Mediation Certificate.

Section 2719 is amended to read as follows:

2719 FINAL MEDIATION CERTIFICATE

- 2719.1 The lender may request on Form FM-R1 a Final Mediation Certificate and must affirm that the borrower(s) has not filed a timely appeal.
- 2719.2 The lender may not request a Final Mediation Certificate until thirty (30) days after the Mediation Administrator issues the Preliminary Mediation Certificate.
- 2719.3 A Final Mediation Certificate issued pursuant to Section 539b of the Act (D.C. Official Code § 45-815.02) shall expire one (1) year from the date of issuance unless extended for an additional year pursuant to Subsection 2719.8.

- 2719.4 A foreclosure sale of a property secured by a residential mortgage shall be void if a lender files a Notice of Intention to Foreclosure on a Residential Mortgage without a recorded Final Mediation Certificate.
- 2719.5 A borrower shall have the same rights to assert claims for defects in the documents recorded pursuant to Subsection 2701.4 as the law provides for a defective Notice of Foreclosure Sale of Real Property or Condominium Unit (Form ROD-14) and Notice of Intention to Foreclose on a Residential Mortgage.
- 2719.6 Except as provided in Subsections 2719.4 and 2719.5, a recorded Final Mediation Certificate shall serve as conclusive evidence that all other provisions provided by the Act and this chapter have been complied with, and the same can be relied upon by any *bona fide* purchaser or *bona fide* purchaser's lender, including its successors or assigns.
- 2719.7 A borrower shall not be barred from asserting a claim for fraud or monetary damages against the borrower's lender.
- 2719.8 A lender may request an extension of a Final Mediation Certificate that has not expired by filing with the Mediation Administrator a request for an extension of a Final Mediation Certificate, and sending the borrower(s) a copy of the request for an extension of a Final Mediation Certificate.
- 2719.9 A request for an extension of a Final Mediation Certificate filed pursuant to Subsection 2719.8 shall set forth each basis for which the lender seeks an extension and include all relevant facts and documentation, if applicable.
- 2719.10 The Mediation Administrator may contact the lender or borrower(s) for information regarding a request for an extension of a Final Mediation Certificate filed pursuant to this section.

Section 2720 is amended to read as follows:

2720 APPEAL PROCESS; JUDICIAL REVIEW

- 2720.1 Within thirty (30) days of issuance of the Preliminary Mediation Certificate a borrower may file in the District of Columbia Superior Court an appeal of the Preliminary Mediation Certificate as provided for in D.C. Official Code § 42-815.02(e)(3)(B).
- 2720.2 Within thirty (30) days of issuance of the Preliminary Determination of Bad Faith a lender may file in the District of Columbia Superior Court an appeal of the Mediation Administrator's Preliminary Determination of Bad Faith as provided for in D.C. Official Code § 42-815.02(e)(3)(C).

2720.3 A copy of the filing of the appeal must be sent to the Mediation Administrator no later than thirty (30) days after issuance of the Preliminary Mediation Certificate or the Preliminary Determination of Bad Faith.

Section 2721 is amended to read as follows:

2721 APPLICATION FOR ORDER TO PERFORM DUE TO BREACH

2721.1 A borrower that alleges that a lender has breached a settlement agreement entered into pursuant to this chapter may request that the Mediation Administrator issue an Order to Perform by filing an Application for Order to Perform Due to Breach (Form FM-10B) prescribed by the Commissioner and available on the Commissioner's website at <http://disb.dc.gov>.

2721.2 An Application for Order to Perform Due to Breach (Form FM-10B) shall be filed with the Mediation Administrator.

2721.3 The borrower shall mail to the lender an Application for Order to Perform Due to Breach (Form FM-10B).

2721.4 A lender who receives an Application for Order to Perform Due to Breach (Form FM-10B) alleging that the lender is in breach of a settlement agreement may challenge the allegation of the borrower that the lender breached the settlement agreement by filing an objection to the Application for Order to Perform Due to Breach (Form FM-10B) with the Mediation Administrator within ten (10) days of the date of mailing of the Application for Order to Perform Due to Breach (Form-10B) pursuant to this section.

2721.5 An objection filed pursuant to Subsection 2721.4 shall set forth each basis for which the lender disputes the allegations that it has breached the settlement agreement, including all relevant facts.

2721.6 The Mediation Administrator may contact the lender or borrower(s) for information regarding an Application for Order to Perform Due to Breach (Form FM-10B) filed pursuant to this section.

Section 2722 is amended to read as follows:

2722 APPLICATION FOR FINAL MEDIATION CERTIFICATE DUE TO BREACH

2722.1 A lender that alleges that the borrower(s) has breached a settlement agreement executed between the lender and the borrower(s) may apply for a Final Mediation

Certificate by filing an Application for Final Mediation Certificate Due to Breach (Form FM-10L) prescribed by the Commissioner and available on the Commissioner's website at <http://disb.dc.gov>.

- 2722.2 An Application for Final Mediation Certificate Due to Breach (Form FM-10L) shall be filed with the Mediation Administrator.
- 2722.3 The lender shall mail to the borrower(s) an Application for Final Mediation Certificate Due to Breach (Form FM-10L).
- 2722.4 A borrower who receives an Application for Final Mediation Certificate Due to Breach (Form FM-10L) alleging that the borrower(s) breached the settlement agreement may challenge the lender's allegation that the borrower(s) breached the settlement agreement by filing with the Mediation Administrator an objection to the Application for Final Mediation Certificate Due to Breach (Form FM-10L) within ten (10) days of the date of mailing of the Application for Final Mediation Certificate Due to Breach (Form FM-10L) pursuant to this section.
- 2722.5 An objection filed pursuant to Subsection 2722.4 shall set forth each basis for which the borrower(s) disputes the allegations that it has breached the settlement agreement, including all relevant facts.
- 2722.6 The Mediation Administrator may contact the borrower(s) or lender for information regarding an Application for Final Mediation Certificate Due to Breach (Form FM-10L) filed pursuant to this section.

Section 2723 is amended to read as follows:

2723 NOTICE OF INTENTION TO FORECLOSE A RESIDENTIAL MORTGAGE FORM

- 2723.1 The authorized Notice of Intention to Foreclose a Residential Mortgage shall be used to comply with the requirements in Section 539(c) of the Act for a foreclosure sale pursuant to a residential mortgage. Issuance of the Notice of Intention to Foreclose a Residential Mortgage shall comply with Section 2728.

Section 2724 is amended to read as follows:

2724 MEDIATION ADMINISTRATOR

- 2724.1 The Commissioner shall designate an individual to serve as the Mediation Administrator.

2724.2 The Mediation Administrator may extend deadlines upon determining that there is good cause to do so.

Section 2725 is amended to read as follows:

**2725 QUALIFICATION, APPOINTMENT, TRAINING, AND
COMPENSATION OF MEDIATORS/ MEDIATION SERVICES**

2725.1 The following persons shall be qualified to act as a Mediator under this chapter:

- (a) An Administrative Law Judge or attorney employed by the Office of Administrative Hearings, authorized by the Commissioner to provide mediation services under the Act and this chapter, and who has completed a foreclosure mediation training program approved by the Commissioner; or
- (b) An individual who is licensed to practice law in the District of Columbia, who is employed or contracted by a firm authorized by the Commissioner, and who has completed a foreclosure mediation training program approved by the Commissioner.

2725.2 The Commissioner may appoint an individual qualified under Subsection 2725.1(a) pursuant to an executed Memorandum of Understanding between the Department and the Office of Administrative Hearings.

2725.3 The Commissioner may appoint an individual qualified under Subsection 2725.1(b) pursuant to a valid contract between the Department and the Mediator or the Mediator's employer.

2725.4 The Commissioner shall designate approved foreclosure mediation training programs required pursuant to Subsection 2725.1 and shall provide a description of the program, including the requirements for the program and the requirements for obtaining a certification under the program.

Section 2726 is amended to read as follows:

2726 VIOLATIONS

2726.1 A lender that initiates a foreclosure through the power of sale provision of a residential mortgage in violation of the Act or this chapter shall be deemed to have failed to participate in the mediation in good faith.

- 2726.2 Any cost incurred by a lender in a foreclosure through the power of sale provision of a residential mortgage in violation of the Act or this chapter shall not be assessed to the borrower(s).
- 2726.3 A lender that fails to attend mediation shall be subject to a penalty assessed by the Commissioner in the amount of five hundred dollars (\$500) for each mediation session that the lender fails to attend.
- 2726.4 A lender that fails to send, at least five (5) business days prior to the first mediation session, an electronic version of the documents required in Subsection 2714.1, and bring to a mediation any document that the Act, this chapter, the Mediation Administrator, or Mediator requires, shall be subject to a penalty assessed by the Commissioner in the amount of five hundred dollars (\$500) unless the Mediation Administrator determines that good cause is shown.
- 2726.5 A lender that fails to mediate in good faith shall be subject to a penalty in the amount of five hundred dollars (\$500) assessed by the Commissioner.
- 2726.6 A lender that breaches a settlement agreement pursuant to Section 539b (e)(4)(a)(i) of the Act shall be subject to a penalty assessed by the Commissioner in the amount of one thousand dollars (\$1,000), and shall be required to perform the terms of the settlement agreement.

Section 2727 is amended to read as follows:

2727 FORECLOSURE OF A SECURITY INTEREST OTHER THAN A RESIDENTIAL MORTGAGE

- 2727.1 A lender or trustee that initiates a foreclosure pursuant to a security interest other than a residential mortgage shall file and record with the District of Columbia Office of the Recorder of Deeds an Affidavit of Non-Residential Mortgage Foreclosure (Form FM-6) prior to, or contemporaneously with, a Notice of Foreclosure pursuant to Section 539 of the Act (D.C. Official Code § 42-815).
- 2727.2 The Affidavit of Non-Residential Mortgage Foreclosure (Form FM-6) shall be in the form prescribed by the Commissioner and available on the Commissioner's website at <http://disb.dc.gov>, and shall include all information required in Form FM-6.

Section 2728 is amended to read as follows:

2728 NOTICE OF INTENTION TO FORECLOSE A RESIDENTIAL MORTGAGE

2728.1 The holder of a note secured by a deed of trust, mortgage, or security instrument (hereinafter “holder”), or the agent of any such holder, shall at least thirty (30) days in advance of any sale of the real property encumbered by the deed of trust, mortgage, or security instrument under a power of sale provision contained therein, send to the borrower(s) of the real property encumbered by the deed of trust, mortgage, or security instrument, by first-class certified mail, postage prepaid, return receipt requested, and by first-class mail, a Notice of Intention to Foreclose a Residential Mortgage to his or her last known address.

2728.2 The lender shall provide the following information concerning the sale on the Notice of Intention to Foreclose a Residential Mortgage:

- (a) The name and address of the borrower(s) of the property, and his or her telephone number, if known;
- (b) The identification of the property by address;
- (c) The lot and square number or the parcel number of the property;
- (d) The date on which the security instrument was recorded in the District of Columbia Recorder of Deeds, and the security instrument number;
- (e) The name, address, and telephone number of the maker of the note secured by the security instrument;
- (f) A description of the property;
- (g) The name, address, and telephone number of the holder of the note;
- (h) The name, address, and telephone number of the person to call if the borrower(s) wishes to stop foreclosure;
- (i) The current balance owed on the note, the minimum amount required to cure the default obligation, and the total amount of fees and costs required to cure the default obligation as of the date of the Notice of Intention to Foreclose on a Residential Mortgage, and an estimate of other fees or costs reasonably expected to be incurred through the fifth (5th) business day prior to the date of sale to be paid in order to cure the default;
- (j) The time, date and location of the sale of the real property; and
- (k) Provision for a notarized certification by the note holder, his or her agent, or the preparer that the original Notice of Intention to Foreclose a Residential Mortgage has been sent to the borrower(s) by first-class certified mail, return receipt requested, and by first-class mail, and that the note holder understands that no foreclosure sale may take place until at

least thirty (30) days after a copy of the notice has been recorded in the District of Columbia Recorder of Deeds.

- 2728.3 Any Notice of Intention to Foreclose a Residential Mortgage filed pursuant to the Act or this chapter shall be subject to the provisions set forth in 9 DCMR §§ 3100.3 – 3100.10 for a Notice of Foreclosure Sale of Real Property or Condominium Unit.
- 2728.4 A Final Mediation Certificate shall be recorded in the District of Columbia Recorder of Deeds prior to or contemporaneously with recording the Notice of Intention to Foreclose a Residential Mortgage.

Section 2729 is amended to read as follows:

2729 TRUSTEE LIABILITY

- 2729.1 The liability under the Act for a trustee who is defined as a lender shall be limited to Section 539b of the Act (D.C. Official Code § 42-815.02(e)(2)(A)(iii)) for the trustee's exercise of a power of sale or the issuance of a Notice of Intention to Foreclose a Residential Mortgage or Notice of Foreclosure Sale of Real Property or Condominium Unit in violation of the Act or this chapter.

Section 2799 is amended as follows:

Subsection 2799.1 is amended by adding the following definitions:

Community Bank – A depository institution with aggregate assets of less than one billion dollars.

Loss Mitigation Application – Form FM-1LM, which is available on the Commissioner's website at <http://disb.dc.gov>, or a functionally equivalent loss mitigation application form that has been approved by the Commissioner.

Notice of Default on Residential Mortgage – Form FM-1, which is available on the Commissioner's website at <http://disb.dc.gov>.

Notice of Intention to Foreclose a Residential Mortgage – Form FM-5, which is available on the Commissioner's website at <http://disb.dc.gov>.

Subsection 2799.1 is amended by amending the following definitions:

Mediation services – Include, but are not limited to, the selection and employment of a mediator, foreclosure mediation training, supplies and material relating to the foreclosure mediation program.

Residential mortgage – A loan secured by a deed of trust or mortgage used to acquire or refinance real property which is improved by four (4) or fewer units, including condominium or cooperative units but shall not include debts incurred and currently obligating a business entity exclusively, as defined by D.C. Official Code § 29-101.02(7). This term includes a security interest established in connection with the financing of a housing cooperative unit.