

A RESOLUTION

Proposed
Resolution
20-201

See
Emergency
D.C. Act 20-71
20 DCStat 1419

To declare the existence of an emergency with respect to the need to amend the Saving D.C. Homes from Foreclosure Amendment Act of 2010 to provide a borrower the same rights for a defective notice of default on residential mortgage as the law provides for a defective notice of Intention to foreclose on a residential mortgage; to provide that a foreclosure sale of a property secured by a residential mortgage shall be void if a lender files a notice of intention to foreclose on a residential mortgage without a mediation certificate; to provide for a new definition of residential mortgage; to provide for several technical changes to the text; and to amend the Foreclosure Mediation Fund to allow mortgage-related or foreclosure-related settlement funds to be transferred into the fund and allow those funds to be used for specified mortgage-related or foreclosure-related matters.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Saving D.C. Homes from Foreclosure Enhanced Emergency Declaration Resolution of 2013”.

Saving D.C.
Homes from
Foreclosure
Enhanced
Emergency
Declaration
Resolution of
2013

Sec. 2. (a) This emergency legislation is necessary to provide borrowers the same rights for the defective notice of default on residential mortgage as the law provides for a defective notice of intention to foreclose on a residential mortgage. It also provides that a foreclosure sale of a property secured by a residential mortgage shall be void if a lender files a notice of intention to foreclose on a residential mortgage without a mediation certificate, and it provides for a new definition of residential mortgage.

(b) This emergency legislation clarifies the rights and obligations of the borrower and lender under Subchapter Two of Chapter Sixteen of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1271; D.C. Official Code § 42-801 *et seq.*).

(c) The current law is extremely broad and makes the subsequent sale of property that is the subject of a foreclosure action void for any deficiency in the law. The emergency legislation narrows the applicability of the current law to attempts to foreclose without a mediation certificate.

(d) The emergency legislation also protects the homeowner in the event of notice of defects, but does not expand the risk beyond what title insurers already assume for a defective notice of intention to foreclose on a residential mortgage.

(e) In addition, the emergency legislation provides clarification regarding what constitutes a residential mortgage.

(f) Current law 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. This definition does not provide lenders and the title insurance industry with a sufficient framework which would allow them to determine when a residential property is actually owner-occupied.

(g) The emergency legislation also amends the Foreclosure Mediation Fund (“Fund”) to allow for mortgage-related or foreclosure-related settlement funds to be transferred into the Fund and allows those funds to be used for the specified mortgage-related or foreclosure-related matters.

(h) Recently, Citibank, N.A., Wells Fargo Bank, N.A., Ally Financial Inc. successor of GMAC Mortgage, LLC, Bank of America Corporation and the J.P. Morgan Chase & Co. entered into consent judgments.

(i) Pursuant to the terms of the consent judgments, the District of Columbia’s share of those proceeds shall be used to fund one or more of the following purposes:

- (1) Mortgage-related or foreclosure-related counseling;
- (2) Mortgage-related or foreclosure-related legal assistance or advocacy;
- (3) Mortgage-related or foreclosure-related mediation;
- (4) Outreach or assistance to help current and former homeowners secure the benefits for which they are eligible under mortgage-related or foreclosure-related settlements or judgments; and

- (5) Enforcement work in the area of financial fraud or consumer protection.

(j) Due to the ambiguity in the current law and the need to expand the use of the Fund by enabling it to accept settlement funds which are subject-matter appropriate, the Council has determined that the emergency legislation is necessary.

(k) This emergency legislation would clarify that all properties that are residential (4 units or less) would be subject to mediation.

(l) This emergency legislation will result in all residential properties threatened with foreclosure be subject to mediation and obtain a mediation certificate before a foreclosure can proceed legally.

(l) This emergency legislation will provide for greater use of the Foreclosure Mediation Fund.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Saving D.C. Homes from Foreclosure Enhanced Emergency Amendment Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.