

**DISTRICT OF COLUMBIA  
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**

**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Commissioner of the Department of Insurance, Securities and Banking (“Department”), pursuant to the authority set forth in Mayor’s Order 2011-51, dated March 2, 2011, and section 539b(i) of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1189; codified in scattered sections in the D.C. Official Code), as amended by the Saving D.C. Homes from Foreclosure Amendment Act of 2010, effective March 12, 2011 (D.C. Law 18-314; D.C. Official Code §§ 42-815, *et seq.* (2011 Supp.)), and further amended by the Saving D.C. Homes from Foreclosure Emergency Amendment Act of 2011, effective August 9, 2011 (D.C. Act #19-147; 58 DCR 6828 (August 12, 2011)) (Act) or any succeeding similar legislation, hereby gives notice of his intent to adopt on an emergency basis the following amendment to add a new chapter 27 entitled, “Foreclosure Mediation”, to subtitle C of title 26 of the District of Columbia Municipal Regulations. These rules are necessary to implement section 539b (i) of the Act by establishing a foreclosure mediation program (Program) in the Department which will assist homeowners and provide, where appropriate, an alternative to foreclosure. A copy of the Act can be obtained on the Council of the District of Columbia’s website, <http://www.dccouncil.washington.dc.us>.

These rules incorporate comments to the Proposed Rulemaking which was published in the *D.C. Register* on April 8, 2011, at 58 DCR 2958 and comments to the Emergency and Proposed Rulemaking which was published in the *D.C. Register* on May 20, 2011, at 58 DCR 4430, which included issues surrounding mediating in good faith and lender compliance with the terms of the Act. The legal issues involving void real estate transactions were addressed with the passage of the Saving D.C. Homes from Foreclosure Emergency Amendment Act of 2011. Comments were received from stakeholders regarding those amendments at a meeting held August 17, 2011. This notice of emergency and proposed rulemaking duly considered all of those comments.

The prior emergency rulemaking was necessary for the immediate implementation of the Program to provide important safeguards to protect residents of the District of Columbia who have a mortgage default and face the danger of losing their homes to foreclosure. Additionally, the immediate commencement of the Program did enable residential mortgage lenders to reduce expeditiously the backlog of mortgage defaults that had accumulated since enactment of provisions of the Act. This emergency and proposed rulemaking, therefore, is necessary to continue the implementation of the program for the immediate preservation of the public safety and welfare.

The Commissioner also gives notice of the intent to take final rulemaking action to adopt these rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

This emergency rulemaking was adopted on September 12, 2011, by the Commissioner to supercede the previous emergency and proposed rulemaking and became effective on that date. This emergency rulemaking will remain in effect for up to one hundred twenty (120) days after

the date of adoption, expiring on January 9, 2012, unless earlier superseded by a notice of final rulemaking.

**A new chapter 27 is added to subtitle C of title 26 of the D.C. Municipal Regulations to read as follows:**

## **CHAPTER 27**

### **FORECLOSURE MEDIATION**

#### **2700 SCOPE**

- 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 defined in the Saving D.C. Homes from Foreclosure Amendment Act of 2010, effective March 12, 2011 (D.C. Law 18-314; D.C. Official Code §§ 42-815 (2011 Supp)) (Act).
- 2700.2 The Act requires the completion of forms or other documents for certain activities covered by the Act. Those requirements shall be satisfied solely through the use of forms prescribed or authorized by this chapter and found on the Department of Insurance, Securities and Banking's (Department) website at <http://disb.dc.gov>
- 2700.3 These regulations set forth the procedures for filing an Affidavit of Non-Residential Mortgage Foreclosure in order to issue and record a Notice of Foreclosure for the foreclosure of a mortgage other than a residential mortgage for which a Final Mediation Certificate is not required to be recorded.
- 2700.4 These regulations shall not apply to a foreclosure by a condominium association against an owner, or housing cooperative association against a member, when the foreclosure is brought for a reason other than a default on a residential mortgage.

#### **2701 NOTICE OF DEFAULT ON RESIDENTIAL MORTGAGE**

- 2701.1 The requirement in the Act that a Notice of Default on Residential Mortgage (Form FM-1) be provided by a lender to each borrower as a condition of issuance of a Notice of Intention to Foreclose a Residential Mortgage shall be satisfied by:
- (a) Mailing a completed copy of a Notice of Default on Residential Mortgage (Form FM-1) to the last known address and the property subject to the residential mortgage to each borrower for the real property for which the Notice of Default on Residential Mortgage (Form FM-1) is being issued; and

- (b) Recording with the District of Columbia Office of the Recorder of Deeds the documents required in subsection 2701.4.

2701.2 A Notice of Default on Residential Mortgage (Form FM-1) may contain:

- (a) The Lender's letterhead, including name and contact information;
- (b) The date;
- (c) The borrower's name and mailing address; and
- (d) Method of delivery.

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 (Form FM-1) is mailed to each borrower, as required by the Act and this chapter, and the lender receives and records 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 (Form FM-5), a **Final** Mediation Certificate provided pursuant to the Act and this chapter.

2701.4 The following documents shall be recorded within **ten (10)** business days of the date of mailing of the Notice of Default on Residential Mortgage (Form FM-1) with the District of Columbia Office of the Recorder of Deeds, unless good cause is shown to the Mediation Administrator, pursuant to subsection 2701.1(b):

- (a) The Notice of Default on Residential Mortgage (Form FM-1), excluding all Attachments pursuant to subsection 2703.3 except the Mediation Election Form (Form FM-2), and any supplement to the Notice of Default on Residential Mortgage (Form FM-1); and
- (b) The Mediation Election Form (Form FM-2).

## **2702 COMPLETION OF NOTICE OF DEFAULT ON RESIDENTIAL MORTGAGE INSTRUCTIONS**

2702.1 The Notice of Default on Residential Mortgage (Form FM-1) shall contain all required information as specified in the applicable form in order to satisfy the requirements of section 539b of the Act.

2702.2 The lender or an agent of the lender shall be responsible for the completion of the Notice of Default on Residential Mortgage (Form FM-1).

2702.3 A Notice of Default on Residential Mortgage (Form FM-1), including all information required by subsection 2703.3, shall be completed for each borrower

for the property for which the Notice of Default on Residential Mortgage (Form FM-1) will be issued.

- 2702.4 Except as provided by subsection 2702.5, a Notice of Default on Residential Mortgage (Form FM-1) that is not in the form prescribed by subsection 2701.1 shall be void and shall not be in compliance with section 539b of the Act.
- 2702.5 A lender may include a supplement to a Notice of Default on Residential Mortgage (Form FM-1) that provides additional information or contractual disclosures required by a mortgage to the borrower provided the supplement is a separate attachment at the end of the Notice of Default on Residential Mortgage (Form FM-1) and is entitled “Supplement” and provides the reason the information is being provided.
- 2702.6 In the event there is more than one (1) borrower, a Notice of Default on Residential Mortgage (Form FM-1) shall include all borrowers for the property subject to the residential mortgage.
- 2702.7 If the Notice of Default mailed by the lender provides the borrower with a mediation election period of more than thirty (30) days, any applicable time period set forth in the Act or in this chapter shall be tolled for the additional days granted by the lender.

### **2703 MAILING OF NOTICE OF DEFAULT ON RESIDENTIAL MORTGAGE**

- 2703.1 A lender issuing a Notice of Default on Residential Mortgage (Form FM-1) shall mail to the property subject to the residential mortgage and the last known address of the borrower, by certified first-class mail, postage prepaid, return receipt requested, and by first-class mail, a copy of the Notice of Default on Residential Mortgage (Form FM-1), including all information required by subsection 2703.3, upon each borrower for which the Notice of Default on Residential Mortgage is mailed.
- 2703.2 In the event there is more than one (1) borrower, a copy of the Notice of Default on Residential Mortgage (Form FM-1) shall be mailed to all borrowers on the same day.
- 2703.3 Each copy of the Notice of Default on Residential Mortgage (Form FM-1) mailed to a borrower shall be accompanied by the following:
- (a) Borrower Assistance and Resource Information Form (Form FM -1BA), with all information to be provided by the lender as required by Form FM-1BA, which is prescribed by the Commissioner and available on the Commissioner’s website at <http://disb.dc.gov>;

- (b) Contact information which the borrower may use to reach the lender or an agent of the lender with authority to explain the mediation process;
- (c) A description of all loss mitigation programs available from the lender and applicable to the residential mortgage for which the Notice of Default on Residential Mortgage is being issued. For each loss mitigation program, the lender shall provide a description of the eligibility requirement(s) and documentation necessary for the loss mitigation programs applicable to the residential mortgage subject to the Notice of Default on Residential Mortgage;
- (d) Loss Mitigation Application (Form FM -1LM) with all information required by Form FM-1LM);
- (e) Instructions for completing and mailing the Loss Mitigation Application (Form FM-1LM);
- (f) A Mediation Election Form (Form FM-2);
- (g) An envelope for the borrower to return a copy of the Mediation Election Form (Form FM-2) and the Loss Mitigation Application (Form FM -1LM) to the lender. The envelope shall be preaddressed to the lender's office that will review the Loss Mitigation Application (Form FM -1LM) and prepare the loss mitigation analysis required by subsection 2713.2; and
- (h) An envelope for the borrower to return the Mediation Election Form (Form FM-2) and a copy of the Loss Mitigation Application (Form FM -1LM) 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, D.C. 20002.

2703.4 The original Notice of Default on Residential Mortgage (Form FM-1), including each attachment required by subsection 2703.3, mailed to a borrower(s) pursuant to subsection 2703.1, shall be sent by the lender to the Mediation Administrator by regular first class mail within two (2) business days of the date of mailing of the Notice of Default on Residential Mortgage (Form FM-1), and by electronic mail to DISB.mediation@dc.gov.

2703.5 A Notice of Default on Residential Mortgage (Form FM-1) submitted to the Mediation Administrator pursuant to subsection 2703.4 shall be accompanied by a fee in the amount of six hundred dollars (\$600) in the form of a money order or

check payable to the “District of Columbia Treasurer.” No other form of payment will be accepted.

- 2703.6 Any Notice of Default on Residential Mortgage (Form FM-1) that is submitted to the Mediation Administrator that is not in compliance with section 2703 may be cancelled, unless the Mediation Administrator determines that the noncompliance was harmless error. The Mediation Administrator shall notify each borrower that was mailed the Notice of Default on Residential Mortgage (Form FM-1) of the cancellation.
- 2703.7 Any costs incurred by the lender in connection with a Notice of Default on Residential Mortgage (Form FM-1) that is cancelled pursuant to subsection 2703.6 shall not be assessed to a borrower.
- 2703.8 A Notice of Default on Residential Mortgage (Form FM-1) submitted to the Mediation Administrator shall be accompanied with a completed Lender Foreclosure Mediation Agent Contact Form (Form FM-1AC) which requires the lender to provide the name and contact information for the individual or business group responsible for coordinating the default and foreclosure process.
- 2703.9 The Lender Foreclosure Mediation Agent Contact Form (Form FM-1AC) required by subsection 2703.8 shall be in the form 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-1AC.
- 2703.10 A Notice of Default on Residential Mortgage (FM-1) submitted to the Mediation Administrator shall be accompanied with the following:
- (a) A recorded copy of the mortgage or deed of trust;
  - (b) A true copy of the note secured by the mortgage showing a proper chain of endorsements, or an Affidavit of Acknowledgement of Note Ownership or similar document signed by the foreclosing lender or its agent stating that the foreclosing lender is the holder of the note;
  - (c) A true copy of every recorded assignment of the mortgage vesting of record the beneficial interest of the foreclosing lender;
  - (d) The name of the holder of the note;
  - (e) The location of the note; and
  - (f) A true copy of all pooling and servicing or other similar agreements regarding the residential mortgage pertaining to the loss mitigation programs and analysis.

2703.11 A lender shall provide a written explanation to the Mediation Administrator for the reason(s) that a document or information required in subsection 2703.10 is not applicable to the residential mortgage.

2703.12 A lender shall retain all evidence of mailing of a Notice of Default on Residential Mortgage (Form FM-1) to each borrower for a period of two (2) years.

2703.13 The date of the Affidavit of Mailing of Notice of Default included with the Notice of Default on Residential Mortgage (Form FM-1) shall be the same as the date of mailing.

**2704 [RESERVED]**

**2705 BORROWER ASSISTANCE AND RESOURCE INFORMATION FORM**

2705.1 The Borrower Assistance and Resource Information Form (Form FM-1BA) required by subsection 2703.3(a) shall be in the form as 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-1BA.

**2706 MEDIATION ELECTION FORM**

2706.1 The Mediation Election Form (Form FM-2) required by subsection 2703.3(f) shall be in the form as prescribed by the Commissioner and available on the Commissioner's website at <http://disb.dc.gov>.

2706.2 Each Mediation Election Form (Form FM-2) mailed to a borrower shall include all information required in the Mediation Election Form (Form FM-2).

**2707 LOSS MITIGATION APPLICATION**

2707.1 The Loss Mitigation Application (Form FM-1LM) required by subsection 2703.3(d) shall be in the form as prescribed by the Commissioner and available on the Commissioner's website at <http://disb.dc.gov>.

2701.2 Each Loss Mitigation Application (Form FM-1LM) mailed to a borrower shall include all information required in the Loss Mitigation Application (Form FM-1LM).

**2708 ELECTION TO PARTICIPATE IN MEDIATION**

2708.1 A borrower to whom a Notice of Default on Residential Mortgage (Form FM-1) is mailed pursuant to section 2703 shall be eligible for mediation prior to the issuance of a Notice of Intention to Foreclose a Residential Mortgage (Form FM-5) by making an election pursuant to subsection 2708.2 within thirty (30) days of

the date of mailing of the Notice of Default on Residential Mortgage (Form FM-1).

2708.2 To elect to participate in mediation pursuant to this chapter, a borrower shall, within thirty (30) days of the date of mailing of the Notice of Default on Residential Mortgage (Form FM-1):

- (a) Complete and mail, using the preaddressed envelope, to the lender the following:
  - (1) The Loss Mitigation Application Form (FM –1LM) included with the Notice of Default on Residential Mortgage (Form FM –1) received from the lender; and
  - (2) A copy of the Mediation Election Form (Form FM -2) to be sent to the Mediation Administrator pursuant to paragraph (b) of this subsection; and
- (b) Complete and mail, using the preaddressed envelope, to the Mediation Administrator the following:
  - (1) The Mediation Election Form (Form FM -2) which was included with the Notice of Default on Residential Mortgage (Form FM-1) received from the lender;
  - (2) A copy of the Loss Mitigation Application Form (Form FM -1LM) submitted to the lender pursuant to paragraph (a) of this subsection; and
  - (3) The mediation fee in the amount of fifty dollars (\$50).

2708.3 The fee required pursuant to subsection 2708.2(b)(3) shall be in the form of a check or money order payable to the "District of Columbia Treasurer". No other form of payment will be accepted.

2708.4 Where there is more than one (1) borrower subject to the residential mortgage for which the Notice of Default on Residential Mortgage (Form FM-1) is issued, and at least one (1) of the borrowers makes an election pursuant to subsection 2708.2 within thirty (30) days of the date of mailing of the Notice of Default on Residential Mortgage (Form FM-1), the Mediation Administrator shall schedule a mediation which shall include each borrower subject to the residential mortgage for which the Notice of Default on Residential Mortgage (Form FM-1) is mailed who makes a timely election pursuant to subsection 2708.2.

2708.5 A borrower that does not make a timely election pursuant to subsection 2708.2 after receiving a Notice of Default on Residential Mortgage (Form FM-1) forfeits

his or her right to mediate the default for which the Notice of Default on Residential Mortgage (Form FM-1) is issued as provided by the Act or this chapter unless good cause is shown to the Mediation Administrator.

2708.6 A borrower that does not make a timely election pursuant to subsection 2708.2 after receiving a Notice of Default on Residential Mortgage (Form FM-1) may participate in mediation pursuant to subsection 2712.5(f) or subsection 2712.6.

## **2709 RECEIPT OF MEDIATION ELECTION FORM AND LOSS MITIGATION APPLICATION ON BEHALF OF LENDER**

2709.1 The Mediation Administrator is authorized to receive on behalf of the lender which issues a Notice of Default on Residential Mortgage (Form FM-1), the Mediation Election Form (Form FM-2) and Loss Mitigation Application (Form FM-1LM) submitted to the Mediation Administrator by a borrower who makes an election pursuant to subsection 2708.2 after receipt of a Notice of Default on Residential Mortgage.

2709.2 A copy of a Loss Mitigation Application (Form FM-1LM) delivered to the Mediation Administrator in compliance with subsection 2708.2(b) shall constitute service upon the lender of the Loss Mitigation Application (Form FM-1LM) as required by section 539b(d)(1) of the Act.

2709.3 A copy of a Mediation Election Form (Form FM-2) delivered to the Mediation Administrator in compliance with subsection 2708.2(b) shall constitute service upon the lender of the Mediation Election Form (Form FM-2) as required by section 539b(c) of the Act.

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

## **2710 MEDIATION SCHEDULING**

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 (Form FM-1).

- 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 (Form FM-1) 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 two (2) business days, notice to each mediation party if the Mediation Administrator or Mediator determines that the rescheduling of the mediation is in the public interest. The Mediation Administrator or Mediator shall consult with the mediation parties with respect to the new time for the rescheduled mediation.
- 2710.4 A mediation party who fails to attend, or send an authorized agent to a scheduled mediation without good cause shown shall be deemed to have not acted in good faith with respect to the mediation.
- 2710.5 A mediation party, upon good cause shown to the Mediation Administrator, or Mediator acting with the consent of the Mediation Administrator, may request the rescheduling of a mediation that has been scheduled by the Mediation Administrator or Mediator.
- 2710.6 The Mediation Administrator or Mediator shall approve or disapprove a request to reschedule a mediation pursuant to subsection 2710.5 within one (1) business day of the request of the mediation party and shall inform the mediation parties of the determination and, if the request is approved, the Mediation Administrator or Mediator shall inform the mediation parties of the new time for the rescheduled mediation within two (2) business days of the approval of the request 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.
- 2710.7 The borrower(s) and the lenders shall have the right to request at least one (1) rescheduling of a mediation that has been scheduled by the Mediation Administrator or Mediator pursuant to subsection 2710.5.
- 2710.8 A lender who fails to mediate in good faith with respect to mediation as determined in section 2713 shall be subject to a fine pursuant to section 2724 and the Mediation Administrator shall not issue a Preliminary Mediation Certificate until the lender is subsequently determined to have participated in the mediation in good faith.
- 2710.9 ~~The Mediation Administrator may terminate mediation and cancel a Notice of Default on Residential Mortgage (Form FM-1) filed by a lender who fails to participate in the mediation in good faith with respect to mediation for a period in excess of thirty (30) days.~~

- 2710.10 ~~The Mediation Administrator shall issue to the mediation parties a notice of any termination or cancellation of a Notice of Default on Residential Mortgage (Form FM-1) pursuant to subsection 2710.9 within ten (10) days of the termination or cancellation of a Notice of Default on Residential Mortgage (Form FM-1).~~
- 2710.11 Any applicable time period set forth in the Act or in this chapter shall toll during the period in which a lender fails to act in good faith with respect to mediation.
- 2710.12 Each mediation party shall bring all documentation and information required by section 2714 to all scheduled mediation sessions.
- 2710.13 A mediation party that fails, without good cause shown to the Mediator, to bring any required documentation or information required by section 2714 shall be deemed to have not acted in good faith with respect to the mediation.
- 2710.14 Upon a showing of good cause by a mediation party or when in the public interest, a Mediator may reschedule a mediation within five (5) days to enable a mediation party to produce required documentation or information to the other mediation party or the Mediator.
- 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 section 539b(e)(5) of the Act 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.
- 2710.16 A borrower who fails to bring all documentation and information to mediation pursuant to subsection 2710.12 shall not be entitled to continue to participate in the mediation.
- 2710.17 A mediation session may be scheduled by telephone, mail, email, or facsimile.
- 2710.18 A mediation scheduled by telephone shall be supplemented by notice of the mediation by mail, email, or facsimile, provided by a mediation party.
- 2710.19 Notice of a scheduled mediation shall be provided to all borrowers to whom the Notice of Default on Residential Mortgage (Form FM-1) was mailed.
- 2710.20 A mediation scheduled with a Mediator by the Mediation Administrator pursuant to subsection 2717.3(a) shall be completed within fifteen (15) days of the referral.
- 2710.21 A mediation shall not exceed two (2) sessions, each a maximum of three (3) hours in duration, which may be scheduled concurrently.

2710.22 A mediation that is rescheduled, during the time of a scheduled mediation session, pursuant to subsections 2710.14 and 2712.8 shall constitute one (1) of the two (2) mediation sessions pursuant to subsection 2710.21.

## **2711 CANCELLATION OF MEDIATION**

2711.1 A mediation party may cancel mediation at any time after a borrower elects to participate in mediation pursuant to section 2708 by submitting a Cancellation of Mediation Form (Form FM-X1) prescribed by the Commissioner and available on the Commissioner's website at <http://disb.dc.gov>.

2711.2 In the event a mediation involves more than one (1) borrower, all borrowers who timely elected to mediate pursuant to section 2708, must submit a Cancellation of Mediation Form (Form FM-X1) in order for a borrower to cancel the mediation.

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

2711.4 Upon the cancellation of mediation by a lender, the Mediation Administrator shall cancel the Notice of Default on Residential Mortgage (Form FM-1) issued by a lender and cancel the mediation.

2711.5 Upon the cancellation of mediation by a lender pursuant to subsection 2711.4, a borrower who timely elected to mediate pursuant to section 2708 shall not be required to pay the mediation fee required by subsection 2708.2(b)(3) in order to elect mediation in connection with a subsequent Notice of Default on Residential Mortgage (Form FM-1) issued on the same default for which the borrower paid the mediation fee required by subsection 2708.2(b)(3) to mediate a default.

2711.6 The Mediation Administrator shall send all mediation parties a copy of a Cancellation of Mediation Form (Form FM-X1) submitted by a mediation party along with notice that the mediation has been cancelled.

## **2712 ATTENDANCE AT MEDIATION**

2712.1 Except as provided in subsection 2712.2, each mediation party shall attend each scheduled mediation or other meeting required by the Mediator.

2712.2 A mediation party shall not be required to attend mediation or other meeting required by the Mediator if:

- (a) The mediation party sends a representative on behalf of the mediation party;
- (b) The representative meets the requirements of subsection 2712.3; and
- (c) The mediation party, along with the representative, executes a Declaration of Representation and Authority (Form FM-AG) pursuant to subsection 2712.4.

2712.3 A representative of a mediation party shall:

- (a) Have authority to:
  - (1) Address loss mitigation programs that may be available to the borrower;
  - (2) Renegotiate the terms of the residential mortgage, including a loan modification; and
  - (3) Negotiate any other options that may be available in lieu of foreclosure; or
- (b) Have access at all times during the mediation to a person with the authority listed in paragraph (a) of this subsection.

2712.4 If a mediation party sends a representative to the mediation, the mediation party and the mediation party's representative shall execute and provide to the other mediation party or mediation party representative and the mediator a Declaration of Representation and Authority (Form FM-AG) attesting that the mediation party representative has the authority or access to the person with the authority required in subsection 2712.3 using the Declaration of Representation and Authority (Form FM-AG) prescribed by the Commissioner and available on the Commissioner's website at <http://disb.dc.gov>.

2712.5 The following persons may participate in any mediation under this chapter:

- (a) A borrower who received the Notice of Default on Residential Mortgage (Form FM-1) and made a timely election pursuant to section 2708;
- (b) The lender;
- (c) The lender's servicing agent;
- (d) The representative(s) for the lender;
- (e) The representative(s) for the borrower;

- (f) A borrower who received the Notice of Default on Residential Mortgage (Form FM-1) but did not make a timely election pursuant to subsection 2708.2 who is requested to participate by a borrower who is a mediation party; and
- (g) If a borrower is deceased, a person who can produce a death certificate with respect to the deceased borrower and who has an ownership interest in the real property subject to which the residential mortgage for the Notice of Default on Residential Mortgage (Form FM-1) was issued.

2712.6 The Mediator may include in mediation or other meeting required by the Mediator any person the mediator determines would assist in the mediation unless there is a written objection by a mediation party or mediation party representative, as long as the objection is consistent with the mediation party's or the representative of the mediation party's obligation to participate in the mediation in good faith.

2712.7 The Mediator shall not include in mediation or other meeting required by the Mediator pursuant to subsection 2712.6 a person that is not directly related to the mediation or the mortgage subject to the Notice of Default on Residential Mortgage (Form FM-1).

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

2712.9 Any applicable time period set forth in the Act or in this chapter shall toll during the period of the referral in subsection 2712.8.

## **2713 OBLIGATION TO MEDIATE IN GOOD FAITH**

2713.1 Each mediation party or authorized representative of a mediation party shall make a good faith effort to mediate all issues.

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

- (a) Evaluate the borrower(s)'s eligibility for alternatives to foreclosure, including, but not limited to, reinstatement, loan modification, forbearance, short sale, deed in lieu of foreclosure, and, in considering a loan modification, evaluate the borrower(s)'s eligibility for each loan modification program available from the lender and, if the loan has been sold to a third party investor and the loan servicing agreement permits, ~~under the Federal Deposit Insurance Corporation's Loan Modification Program, using the calculations, assumptions, and forms established by the Federal Deposit Insurance Corporation Loan Modification Program and~~

~~published in the Federal Deposit Insurance Corporation Loan Modification Program Guide, as set out on the Federal Deposit Insurance Corporation's publicly accessible website;~~

- (b) ~~The lender shall evaluate all loan modification programs eligible and include an analysis pursuant to~~ of the following: (i) the Home Affordable Modification Program; (ii) the Federal Deposit Insurance Corporation's Loan Modification Program; (iii) ~~any modification program that a lender uses which is based on accepted principles and the safety and soundness of the institution and recognized by the Nation Credit Union Administration;~~ (iv) the Federal Housing; or (v) ~~a similar federal refinance plan.~~
- (c) Offer the borrower a loan modification at the best terms available for a loan modification if the borrower(s) is eligible for the loan modification program pursuant to paragraph (b) of this subsection; and
- (d) If the lender does not reach a settlement with the borrower(s) during mediation, the lender shall demonstrate, by providing an analysis of its position, that the net present value of receiving payments pursuant to a modified mortgage loan is less than the anticipated net recovery following foreclosure based on a calculation using 1 of the following : (i) the federal Home Affordable Modification Base Net Present Value Model, or (ii) the Federal Deposit Insurance Corporation's Loan Modification Program.

2713.3 In the event a lender rejects a proposed settlement involving an alternative to foreclosure other than a loan modification that has a lower cost than foreclosure, the lender shall provide a written explanation for the rejection of the proposal, which shall include an analysis of the proposal.

2713.4 A mediation party fails to mediate in good faith if the party:

- (a) Fails to provide information required in section 2714;
- (b) Fails to attend a mediation or other meeting scheduled by the Mediator as required by section 2712;
- (c) Fails to make a good faith effort to mediate all issues as required by subsections 2713.1 through 2713.3; or
- (d) Fails to provide a written explanation as required by subsection 2713.3.

2713.5 The 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.

## **2714 INFORMATION REQUIRED FOR MEDIATION**

2714.1 The lender or its representative 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 results of the lender's loss mitigation analysis;
- (d) A copy of its documentation of its consideration of the options available in section 2713.2, including the data used in and the outcome of any calculation's required ~~by the Federal Deposit Insurance Corporation Loan Modification Program or other loss mitigation standards~~;
- (e) Any document to substantiate any claim by the lender that the borrower is not eligible for a loss mitigation option available from the lender or to be presented during mediation.

2714.2 The lender shall bring to a scheduled mediation the documents required in subsection 2714.1 and any other information requested by the Mediation Administrator or Mediator.

2714.3 A borrower shall submit with and attach to the Loss Mitigation Application (FM-1LM) the residential mortgage borrower's most recent tax return, W-2, last two (2) pay stubs, and any other documentation of the borrower's household income including, but not limited to, benefit statements, bank statements, alimony or child support documents prior to mediation.

2714.4 The borrower shall bring to a scheduled mediation the documents required in subsection 2714.3 and any other information requested by the Mediation Administrator or Mediator.

2714.5 A mediation party shall cooperate with the Mediator to produce the information required by this section in a timely manner so as to permit the mediation process to function effectively.

- 2714.6 In the event that a mediation party does not cooperate with the Mediator as required by this section, the Mediation Administrator:
- (a) May determine that the mediation party is not participating in mediation in good faith and issue a **Preliminary Determination of bad faith**;
  - (b) Reschedule the mediation to enable the mediation party to obtain information required by this section;
  - (c) ~~Cancel the Notice of Default on Residential Mortgage (Form FM-1) filed by a lender; and/or~~
  - (d) Issue a **Preliminary Mediation Certificate**.

2714.7 A lender or borrower shall provide a written explanation to the Mediation Administrator for the reason(s) that a document or information required in subsections 2714.1 and 2714.3 is not applicable to the residential mortgage and mediation.

## **2715 CONFIDENTIAL INFORMATION**

2715.1 Except for the documents required to be recorded in subsection 2701.4, any other publicly available information, and financial information included on a Notice of Intention to Foreclose a Residential Mortgage (Form FM-5), any financial statement or information provided to the Mediation Administrator, Mediator, or mediation parties during the course of mediation in accordance with this chapter shall be confidential and shall not be available for public inspection.

2715.2 Any financial statement or information obtained during mediation and designated as confidential pursuant to this section shall not be used for purposes other than mediation except if the information can be obtained from sources outside of the mediation.

2715.3 Information discussed in or obtained during a mediation session shall not be used in any legal proceeding except for actions to enforce the Act or this chapter, or if the information can be obtained from sources outside of the mediation.

2715.4 A Mediator cannot be sued or subpoenaed in any legal proceeding.

## **2716 SETTLEMENTS**

2716.1 Any settlement agreement reached as a result of mediation shall be a permanent resolution of the default of the residential mortgage.

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) days of the date of agreement by the mediation parties.

**2717 MEDIATION REPORT**

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.

2717.2 The Mediation Report required by this section shall contain all of the following items:

- (a) The date(s) on which the mediation was held, including the starting and finishing dates and times;
- (b) The names and addresses of all persons attending, including their role in the mediation and, specifically, identifying the representative of each party who had decision-making authority, if applicable;
- (c) A summary of any substitute arrangement made regarding attendance at the mediation;
- (d) All calculations and other foreclosure avoidance tool calculations performed prior to or during the mediation and all information required in section 2714;
- (e) The results of the mediation, stating whether full or partial settlement was reached and appending any agreement of the parties;
- (f) A statement as to whether a mediation party or a representative of a mediation party failed to:
  - (1) Attend the mediation;
  - (2) Make a good faith effort to mediate; or
  - (3) Supply documentation, information, or data as required by section 2714; and
- (g) If a settlement is not reached, a summary of the discussions of the mediation parties during the mediation.

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

## **2718 PRELIMINARY MEDIATION CERTIFICATE**

- 2718.1 A Preliminary Mediation Certificate shall be issued and sent to all parties by the mediation administrator once the mediation has commenced upon determination the lender acted in good faith.
- 2718.2 A Preliminary Mediation Certificate may be appealed by the borrower in the DC Superior Court with accordance to the appeal process.
- 2718.3 If no appeal is made by the borrower and documented by the lender the lender may request a Final Mediation Certificate

## **2719 FINAL MEDIATION CERTIFICATE**

- 2719.1 A Final Mediation Certificate may be requested by the lender on FM-R1 along with affirmation no appeal has been filed by the borrower and sent to the mediation administrator.
- 2719.2 The request for a Final Mediation Certificate cannot be made before 45 days of issuance of the Preliminary Mediation Certificate.

- 2719.3 A **Final** Mediation Certificate issued pursuant to the Act shall expire one (1) year from the date of issuance unless extended for an additional six (6) months pursuant to subsection 2719.7.
- 2719.3 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 (Form FM-5) without a **Final recorded** Mediation Certificate.
- 2719.4 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 (Form FM-5).
- 2719.5 Except as provided for in subsections **2719.3 and 2719.4**, a **Final recorded** Mediation Certificate shall serve as conclusive evidence that all other provisions provided by the Act and this chapter have been complied with and can be relied upon by a bona fide purchaser and a bona fide purchaser's lender, their successors or assigns.
- 2719.6 A borrower shall not be barred from asserting a claim for fraud or monetary damages against the borrower's lender.
- 2719.7 A lender may request an extension of a **Final** Mediation Certificate that has not expired by filing a request for an extension of a **Final** Mediation Certificate with the Mediation Administrator, and sending a copy of the request for an extension of a **Final** Mediation Certificate to the borrower(s).
- 2719.8 A request for an extension of a **Final** Mediation Certificate filed pursuant to subsection **2719.7** shall set forth each basis for which the lender seeks an extension and include all relevant facts and documentation, if applicable.
- 2719.9 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.

## **2720 APPEAL PROCESS/ JUDICIAL REVIEW**

- 2720.1 **A borrower may file an appeal of the Preliminary Mediation Certificate with the DC Superior Court within 30 days of issuance of the Preliminary Mediation Certificate**

2720.2 A lender may file an appeal of the mediation administrators Preliminary Determination of bad faith in the DC Superior court within 30 days of issuance of the Preliminary Determination.

2720.3 A copy of the appeal filling must be sent to the mediation administrator no later than 30 days of issuance of the Preliminary Mediation Certificate or the Preliminary Determination.

## **2721 APPLICATION FOR ORDER TO PERFORM DUE TO BREACH**

2721.1 A borrower that alleges that the lender has breached a settlement agreement executed between the lender and the borrower may request the Mediation Administrator to 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 An Application for Order to Perform Due to Breach (Form FM-10B) shall be mailed to the lender by the borrower.

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 2719.4 shall set forth each basis for which the lender should not be found to have breached the settlement agreement and include 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.

## **2722 APPLICATION FOR MEDIATION CERTIFICATE DUE TO BREACH**

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

Certificate by filing an Application for 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 An Application for **Final** Mediation Certificate Due to Breach (Form FM-10L) shall be mailed to the borrower(s) by the lender.

2722.4 A borrower who receives an Application for **Final** Mediation Certificate Due to Breach (Form FM-10L) alleging that the borrower(s) is in breach of a settlement agreement may challenge the allegation of the lender that the borrower(s) breached the settlement agreement by filing an objection to the Application for **Final** Mediation Certificate Due to Breach (Form FM-10L) with the Mediation Administrator within **ten (10)** days of the date of mailing of the Application for Mediation Certificate Due to Breach (Form FM-10L) pursuant to this section.

2722.5 An objection filed pursuant to subsection 2720.4 shall set forth each basis for which the borrower(s) should not be found to have breached the settlement agreement and include 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.

## **2723 NOTICE OF INTENTION TO FORECLOSE A RESIDENTIAL MORTGAGE FORM**

2723.1 The authorized Notice of Intention to Foreclose a Residential Mortgage (Form FM-5) 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 (Form FM-5) shall comply with section 2727.

## **2724 MEDIATION ADMINISTRATOR**

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

## **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; and
- (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 effective 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 requirement for the program and the requirement for obtaining a certification under the program.

2725.5 The Commissioner shall compensate a qualified facilitator that provides mediation services.

2725.6 Compensation for Mediators appointed pursuant to subsection 2725.2 shall be provided by the Office of Administrative Hearings.

2725.7 Compensation for Mediators appointed pursuant to subsection 2725.3 shall be provided pursuant to the contract.

## **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 required by the Act, this chapter, the Mediation Administrator, or mediator shall be subject to a penalty assessed by the Commissioner in the amount of five hundred dollars (\$500) per day until the lender provides the required document to the Mediation Administrator unless good cause is shown.

2726.5 A lender that fails to mediate in good faith shall be subject to a penalty assessed by the Commissioner in the amount of five hundred dollars (\$500).

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.

**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(c) of the Act.

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.

**2728 [RESERVED]**

**2729 NOTICE OF INTENTION TO FORECLOSE A RESIDENTIAL MORTGAGE**

2729.1 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 (Form FM-5) at his or her last known address.

2729.2

The lender shall provide the following information concerning the sale on the Notice of Intention to Foreclose a Residential Mortgage (Form FM-5):

- (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 wishes to stop foreclosure;
- (i) The current balance owed on the note, minimum amount required to cure the default obligation, 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 (Form FM-5), and an estimate of other fees or costs reasonably expected to be incurred through the fifth (5<sup>th</sup>) 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 (Form FM-5) has been sent to the borrower 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.

2729.3

Any Notice of Intention to Foreclose a Residential Mortgage (Form FM-5) 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 Intention to Foreclose a Residential Mortgage (Form FM-5).

2729.4 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 (Form FM-5).

**2730 SPECIAL RULES FOR DEFAULT BY BORROWER OF A COOPERATIVE UNIT**

27301 The Mediation Administrator is authorized to waive any requirements, other than the requirement to mediate in good faith, set forth in this chapter where default or foreclosure of a loan to the borrower of a cooperative unit makes such requirements inapplicable due to the fact ownership in a housing cooperative association is not real property.

2730.2 In the event that the Mediation Administrator makes a waiver pursuant to subsection 2730.1, the Mediation Administrator is authorized to impose substitute requirements to achieve the purposes of the Act and this chapter.

**2731 TRUSTEE LIABILITY**

2731.1 The liability under the Act for a trustee who is defined as a lender shall be limited to section 539b(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.

**2799 DEFINITIONS**

2799.1 When used in this chapter, the words and phrases shall have the meanings ascribed:

**Act** – Saving D.C. Homes from Foreclosure Amendment Act of 2010, effective March 12, 2011 (D.C. Law 18-314; D.C. Official Code §§ 42-815, *et seq.* (2011 Supp.)).

**Borrower**- a residential mortgage borrower and, if different from the residential mortgage borrower, the person who holds record title.

**Commissioner** - Commissioner of the Department of Insurance, Securities and Banking.

**Condominium** - a single dwelling unit in a horizontal property regime.

**Cooperative unit** – a single dwelling unit in residential real property owned by a housing cooperative association and occupied by a member of the association which, by reason of ownership of a stock or membership certificate, a proprietary lease or other evidence of membership in the housing cooperative association.

**Date of mailing** - The date when a document is delivered to the United States Postal Service for mailing.

**Days** – Calendar days unless otherwise provided.

**Department** - Department of Insurance, Securities and Banking.

**District** - District of Columbia.

**Federal Deposit Insurance Corporation Loan Modification Program** – The IndyMac Loan Modification Program established by the Federal Deposit Insurance Corporation.

**Lender** - a residential mortgage lender or trustee.

**Mediation party** - A borrower or a lender with respect to a residential mortgage that is subject to mediation pursuant to the Act.

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

**Mediator**– An individual, law firm, or other organization consisting of a group of attorneys which provides mediator services pursuant to this chapter.

**Mortgage** - a lien instrument, including a mortgage or deed of trust, with at least two (2) parties, in which the borrower grants a lien on residential real property to the lender as security for the repayment of a note or loan.

**Qualified facilitator** - a person or company that provides and/or delivers mediation services in order to meet the objectives and requirements of the Act.

**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 solely, as a business entity, 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.

~~Persons desiring to comment on these proposed rules should submit comments in writing to Thomas M. Glassie, General Counsel, Department of Insurance, Securities and Banking, 810 First Street, NE, Suite 701, Washington, D.C. 20002, or Thomas.Glassie@dc.gov. Comments must be received not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Copies of the proposed rules may be obtained from the Department at the address above.~~