

PROTECTIONS FROM PREDATORY LENDING AND MORTGAGE FORECLOSURE IMPROVEMENTS ACT OF 2000

The law of the District of Columbia regarding foreclosure proceedings and certain lending practices has been altered dramatically for the first time in almost 100 years!

With some exceptions, the effective date of the Act is April 3, 2001. Regulations are currently being drawn that may modify or clarify portions of the Act and will establish later dates for the applications of certain sections. The regulations are to be promulgated within 90 days of the enactment of the Act, namely July 3, 2001, and will likely be finalized by September 1, 2001. We at Jackson & Campbell will be monitoring these developments closely.

Here are some of the highlights of this legislation as it is currently drafted. As regulations are proposed, finalized and implemented, this material will be updated.

HIGHLIGHTS OF THE LEGISLATION

UNLAWFUL PREDATORY LENDING PRACTICES

- **The Act lists 15 practices or criteria which indicate predatory lending and provides for expedited judicial review to determine whether predatory lending has occurred.**
- **A lender may not, among other things: make a loan where the borrower lacks a sufficient ability to repay based upon certain criteria; improperly use or hide credit scores; encourage a borrower to default on a loan; charge improper fees, prepayment premiums or interest rate increases upon default; or require a borrower to submit to arbitration or to waive other judicial rights.**
- **Penalties for predatory lending include reasonable attorneys' fees, actual and punitive damages and required contributions to a foreclosure prevention fund.**
- **A lender who fails to comply while acting in good faith may avoid a violation by taking certain immediate steps to rectify its noncompliance.**
- **A settlement attorney or title company agent may also violate the Act for charging fees for services which not actually performed or fees which are otherwise unconscionable.**

NOTICE REQUIREMENTS REGARDING DEFAULT AND FORECLOSURE ON CERTAIN OBLIGATIONS

- **Two written notices of default, one by regular mail and the other by certified mail with return receipt requested, must be sent to all parties liable on the debt.**
- **The default notices must include, among other things, the time period for curing the default (which in most instances can be no less than 30 days), and advisement that the recipient has the right to bring court action to contest the notice of default.**
- **Two written notices of acceleration, one by regular mail and the other by certified mail with return receipt requested, must be sent to all parties liable on the debt.**
- **For most residential loans, two written notices of foreclosure, one by regular mail and the other by certified mail with return receipt requested, must be sent to all parties liable on the debt, at least 45 days before scheduled foreclosure sale.**
- **The written foreclosure notice has 16 requirements, including notice of the debtor's right to bring court action to contest the foreclosure proceeding.**
- **The written foreclosure notice must also attach certain documents, including copy of the promissory note or lien instrument and title search report.**
- **The foreclosure notice must be filed among the land records of the District of Columbia at least 45 days before the foreclosure sale.**
- **In most instances, the foreclosure notice must be personally served on the owner of the residential property at least 40 days before the foreclosure sale.**
- **In most instances, the borrower or owner of residential property may reinstate the residential loan anytime before the commencement of the foreclosure sale bidding. Reinstatement may occur a maximum of 3 times in a 12-month period.**
- **Under certain circumstances, a subordinate interest holder may reinstate a defaulted residential loan before the commencement of the foreclosure sale bidding. This reinstatement may occur once in a 12-month period.**
- **A debtor or subordinate interest holder may redeem a defaulted loan before the foreclosure sale auction by paying the entire amount to the lender or trustee.**

CONDUCT OF THE FORECLOSURE SALE

- **The Act imposes certain guidelines and requirements on the procedures to be followed in advertising and conducting the foreclosure sale. Some of these procedures vary depending upon the value of the property as of the time the sale is advertised and on the type of loan being foreclosed upon.**
- **Under certain circumstances, the foreclosure sale can be postponed or delayed. However, the procedures vary depending upon at what stage of the proceedings the postponement occurs, and depending upon which party requests the postponement or delay.**
- **The foreclosure sale may be delayed for up to 7.5 hours without the need for additional formal notice, provided that the sale goes forward before 5:30 p.m. on the scheduled date of the sale, and a brief announcement is made at the time the sale was to begin.**
- **The Act provides a mechanism for coordinating the order of sale of several properties encumbered under the same instrument. Generally speaking, the several properties shall be sold in the order that protects the junior lienholders in order of seniority, to the extent possible.**
- **The foreclosure sale can be cancelled at any time prior to completion, and the costs incurred in the process will be borne by the noteholder unless otherwise agreed.**
- **After completion of the sale, the foreclosure may still be cancelled under specified circumstances. Generally speaking, in order to cancel the sale after it has been completed, there must be some material mistake or failure to comply with a legal requirement of the foreclosure sale process or the transaction itself. Cancellation under these circumstances requires certain notices to be given to interested parties. Again, absent agreement to the contrary, all costs incurred in the process shall be borne by the noteholder.**
- **After the foreclosure sale has been conducted, a “Memorandum of Foreclosure Sale” must be completed and signed by certain parties to the foreclosure sale auction. A copy of the foreclosure sale advertisement must be attached to the Memorandum. The Memorandum must include at least the following information:**
 - certain information identifying the accepted bidder;**
 - certain contact information for the accepted bidder;**
 - trustee’s name;**
 - auctioneer’s name and D.C. license number;**
 - accepted bid price and amount of deposit paid;**

**-date, time, and place of foreclosure sale auction; and
-such other information as the auctioneer deems pertinent.**

- **Subordinate lienholders must file claims for payment from surplus proceeds with the trustee or assignee for foreclosure within 45 days from the date of the foreclosure sale.**
- **After the sale has been completed, the trustee shall collect certain information and documentation, and forward the same to the auditor for review. Once the auditor approves the sale, it is conclusive and complete, and the successful bidder becomes the owner of the property and the trustee is to execute such conveyances and disbursements as are necessary to finalize the transaction.**
- **The Act specifies 16 categories of information and documentation which the trustee is to deliver to the auditor for review. Such information and documentation shall be delivered to the auditor within 90 days of the foreclosure sale. If the trustee fails (without reasonable cause) to do so, the sale becomes voidable by the auditor.**
- **The auditor must issue certain reports on the foreclosure process and proposed distributions of sale proceeds. Interested parties are allowed to file objections to certain of the auditor's reports, and the Act provides a mechanism for the resolution of objections.**