

Councilmember Sharon Ambrose

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To create new mortgage foreclosure procedures in the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Mortgage Foreclosure Procedures Reform Act of 2002".

TITLE I. DEFINITIONS.

Sec. 101. Definitions.

For the purposes of this act, the term:

(1) "Auditor" means the Auditor-Master to whom the referral is made pursuant to section 605(b) to fix the amount of proceeds due upon the sale of property pursuant to a foreclosure.

(2) "Court" means Superior Court of the District of Columbia.

(3) "Debt" means a monetary obligation secured by a lien.

(4) "Debtor" means the record owner of the property at the time the lien was created and the purchaser under a land installment contract.

(5) "Lien" means a statutory lien or a lien upon property created or authorized to be created by a lien instrument.

(6) "Lien instrument" means a mortgage, a deed of trust, a land installment contract, a deed or other instrument reserving a vendor's lien, an instrument creating or authorizing the

creation of a lien in favor of a homeowners' association, a condominium council of unit owners, a property owners' association or a community association, a cooperative housing association, a security agreement, and any other instrument creating or authorizing the creation of a lien upon the property.

(7)(A) "Newspaper of general circulation" means a newspaper satisfying the following criteria:

(I) Has a bona fide list of paying subscribers;

(ii) Has been published and circulated at least once a week for 24 consecutive weeks without interruption and for the dissemination of news of a general or legal character;

(iii) Has a general circulation in the District of Columbia;

(iv) Is printed in the English language; and

(v) Has a second-class mailing permit issued by the United States Postal Service.

(B) A newspaper that circulates to a substantial number of subscribers in the District of Columbia and customarily contains legal notices with respect to property in the District of Columbia shall fail to satisfy subparagraph (A) of this paragraph because:

(I) Its readership is not uniform throughout the District of Columbia; or

(ii) Its content is not directed at all segments of the population.

(8) "Power of sale" means a provision in a lien instrument authorizing a person to sell the property upon a specified default.

(9) "Property" means real and tangible property of any kind situated within the District of Columbia.

(10) "Record owner of property" includes the record holder of the rights of a purchaser under a land installment contract.

(11) "Sale" means foreclosure sale.

(12) "Secured party" means a mortgagee, the holder of a note secured by a deed of trust, a vendor holding a vendor's lien, a condominium council of unit owners, a homeowners' association, a property owners' or community association, a cooperative housing association, and any other party secured by a lien. The term "secured party" includes any assignee or successor in interest of a secured party.

(13) "Statutory lien" means a lien on property created by a statute providing for foreclosure in the manner specified for the foreclosure of mortgages.

TITLE II. POWER OF SALE FORECLOSURES.

Sec. 201. Authority.

A mortgage or deed of trust may authorize any natural person named in the instrument, including in the case of a mortgage the secured party, to sell the property up on default [in a condition on which the mortgage or deed of trust provides that a sale may be made] or a default in the payment of the debt secured by a statutory lien. A sale made pursuant to this section, after final ratification by the Court and grant of the property to the purchaser on payment of the purchase money, shall: (1) Have the same effect as if the sale and grant were made under decree between the proper parties in relation to the mortgage or deed of trust and in the usual course of the Court;

(2) Operate to pass all the title which the borrower had in the property at the time of the recording of the mortgage or deed of trust. Sec. 202. Parties.

(a) When the lien instrument contains a power of sale or when a statute provides that a lien may be foreclosed as if it contained a power of sale, an action to foreclose the lien may be filed by any natural person authorized to exercise the power of sale; provided, that an action to

foreclose a deed of trust shall be filed by any trustee appointed in the deed or any successor trustee.

(b) A power of sale shall not be exercised unless the power given or consented to by the holders of at least 25% of the entire debt due under the lien instrument.

(c) The first party filing an action to foreclose a lien instrument containing a power of sale shall have the exclusive right to foreclose the lien. The secured party may waive this subsection at the time when the first lien is created.

Sec. 203. Conditions precedent.

(a) An action to foreclose a lien may be filed after:

(1) The documents creating or giving notice of the existence of the lien has been filed for record; and

(2) There has been a default in a condition upon which the lien instrument provides that a sale may be made or there is a default in the payment of the debt secured by a statutory lien.

(b)(1) An action to foreclose a lien shall be filed with the court only after the secured party:

(A) Serves on the debtor and the current record owner of the property, either by delivery to the person to be served or by certified mail to the last known address of the person to be served, a written notice stating: (i) the amount of payment in default and the nature of any claimed default in any other condition or requirement of the contract; and (ii) that foreclosure proceedings will be instituted on or after a designated day, not less than 30 days after service of the notice, unless the debtor or the current record owner cures the default before the designated date; and

(B) Files proof with the court by affidavit that the required notice has been given.

(2) Subparagraphs (1) and (2) of this subsection shall not apply:

(A) To any lien instrument which is due in full by its terms without an acceleration due to a default by the debtor;

(B) On the occurrence of a 4th monetary default in any consecutive 12-month period, is a notice pursuant to paragraph (1) of this subsection has been sent on each of the 3 prior occasions; or

(C) To any person who is not personally obligated to pay the indebtedness secured by the lien instrument unless the person's release from the personal obligation was obtained by a bankruptcy discharge.

Sec. 204. Exclusive right to foreclose.

The first party filing an action to foreclose a lien instrument containing a power of sale shall have the exclusive right to foreclose the lien. The secured party may waive this subsection at the time when the first lien is created.

Sec. 205. Jurisdiction.

The jurisdiction of the Court over property subject to a lien shall attach upon the commencement of an action filed pursuant to section 206.

Sec. 206. Commencement of action and process.

(a) An action to foreclose a lien pursuant to a power of sale shall be commenced by filing a complaint in the Court. The complaint shall be accompanied by:

(1) The original or a certified copy of the lien instrument or, in an action to foreclose a statutory lien, an original or a certified copy of a notice of the existence of the lien,

(2) A statement of the debt remaining due and payable supported by an affidavit of the plaintiff or the secured party or the agent or attorney of the plaintiff or the secured party,

(3) In the case of a deed of trust, a copy of the debt instrument certified by the attorney or the trustee conducting the sale, or in the absence of a copy of the debt instrument, an affidavit regarding its absence; and

(4) If any defendant is a natural person, an affidavit that either the person is not in the military service of the United States, as provided in section 511 of the Soldiers' and Sailors' Civil Relief Act of 1940, approved October 17, 1940 (54 Stat. 1180; [50 U.S.C. App. § 520](#)) or that the action is authorized by such Act.

(b) In an action to foreclose a lien pursuant to a power of sale, the issuance of process, or a hearing, or order for sale shall not be required prior to sale.

TITLE III. JUDICIAL FORECLOSURES.

Sec. 301. Lien instruments or statutory liens that do not contain a power of sale or assent to decree.

(a) When a complaint to foreclose a lien instrument or statutory lien not containing a power of sale is filed, process shall issue and be served.

(b) The action shall proceed as in any other civil action.

Sec. 302. Order of court directing sale.

(a) The Court shall determine whether a default has occurred. If the court determines that a default has occurred, it shall:

(1) Fix the amount of the debt, interest, and costs then due; and

(2) Provide a reasonable time within which payment may be made; provided, that the Court may order that if payment is not made within the time fixed in the order, so much of the property secured by the lien as may be necessary to satisfy the amount due shall be sold.

(b) If, after a hearing, the Court is satisfied that the interests of justice require an immediate sale of the property that is subject to the lien and that a sale would be ordered as a result of the final hearing of the action, the Court may order a sale of the property before judgment and shall appoint a person to make the sale. The Court shall order the proceeds of any sale before judgment to be deposited or invested pending distribution pursuant to judgment.

TITLE IV. PROCEDURE PRIOR TO SALE.

Sec. 401. Bond.

(a) Before making a sale of property to foreclose a lien, the person authorized to make the sale shall file a bond in favor of the District of Columbia conditioned upon compliance with any Court order that may be entered in relation to the sale of the property or distribution of the proceeds of the sale.

(b) Unless the Court orders otherwise, the amount of the bond shall be equal to the greater of \$5,000 or the amount of the deposit to be paid by bidders, other than the secured party, at the sale pursuant to the terms and conditions of sale advertised by the person authorized to make the sale.

(c) Prior to the receipt of any proceeds of sale greater than the amount of the deposit, the person authorized to make the sale shall increase the amount of the bond filed to equal the amount of the sales price. If a creditor (whether or not the creditor is the person foreclosing upon the lien) whose lien is secured by property sold under a mortgage, shall become the purchaser at the sale, the creditor shall be entitled to credit the amount of the purchase money against the debt secured by the lien, and shall be only required to pay to the trustee the excess of the purchase money over his debt, together with such additional amount as may be necessary to defray the expenses of the sale.

(d) On application by a person having an interest in the property or by the person authorized to make the sale, the Court may increase or decrease the amount of the bond.

Sec. 402. Publication of notice.

(a) After commencement of an action to foreclose a lien and before making a sale of the property, the person authorized to make the sale shall publish notice of the time, place, and terms of the sale in a newspaper of general circulation in the District of Columbia.

(b) The notice shall be given at least once a week for 3 successive weeks, the first publication to be not less than 15 days prior to sale and the last publication to be not more than one week prior to sale.

(c) The person authorized to make the sale may make such additional or supplemental advertisement as is appropriate or as the Court may authorize.

(d) Compliance with this section may be evidenced by the filing of a publisher's certification in the proceeding.

Sec. 403. Delivery of notice.

(a) Before making a sale of the property, the person authorized to make the sale shall send notice of the time, place, and terms of sale by certified mail and by first class mail to the last known address of:

- (1) The debtor;
- (2) The record owner of the property; and
- (3) The holder of any subordinate interest in the property subject to the lien.

(b) The notice shall contain the following language:

Your are entitled, at any time up to one business day prior to the commencement of bidding at the trustee sale or other judicial sale on a residential mortgage obligation, but not more than 2 times in any consecutive 12-month period, to cure your default and prevent sale or other disposition of the real estate, by tendering the amount owed.

You are entitled to have a copy of the report of sale sent to you following the sale if you request it in writing. Your written request must be sent by certified mail, return receipt requested and postage prepaid, and must be sent no later than 10 days following the scheduled sale date to (insert the name and address of the person authorized to make the sale to whom the request should be made).

(c) The notice of the sale shall be sent not more than 40 days and not less than 20 days before the date of the sale to all persons whose identity and address are actually known to the person authorized to make the sale or are reasonably ascertainable from a document recorded, indexed, and available for public inspection at the Office of the Recorder of Deeds 60 days before the date of the sale.

(d) If the person authorized to make the sale receives actual notice at any time before the sale is held that there is a person holding an interest in the property and if the interest holder's identity and address are reasonably ascertainable, the person authorized to make the sale shall give notice of the time, place, and terms of sale to the interest holder as promptly as reasonably practicable in any manner, including by telephone or electronic transmission, that is reasonably calculated to apprise the interest holder of the sale.

(e) The person authorized to make the sale shall file in the proceedings an affidavit stating that:

(1) The person has complied with the provisions of sections 402 and 403;

or

(2) The identity or address of the debtor, record owner, or holder of a subordinate interest is not reasonably ascertainable. If the affidavit states that an identity or address is not reasonably ascertainable; provided, that the affidavit shall state in detail the reasonable, good faith efforts that were made to ascertain the identity or address.

Title V. SALE PROCEDURES.

Sec. 501. Place of sale.

A foreclosure sale auction may be held at the property which is the subject of the foreclosure sale, in the auction gallery of a licensed District of Columbia auctioneer, or at any generally accessible commercial location, including an auditorium or a hotel meeting room.

Sec. 502. Person authorized to sell under power of sale.

A sale of property pursuant to a power of sale shall be made by a person who is either the secured party, if the secured party is granted that authority by the lien instrument, or any other person designated by name in the lien instrument to exercise the power of sale; provided, that a sale of property subject to a deed of trust shall be made by the trustee appointed in the deed or a successor trustee. The secured party may tender a written bid to the person making the sale and the person making the sale shall have discretion to accept or reject bids tendered by persons not physically present at the time and place of the sale.

Sec. 503. Terms of payment under power of sale.

A sale of property under a power of sale shall be made upon the terms as to payment provided in the lien instrument. If no terms as to payment are provided in the lien instrument or the sale is made pursuant to a statutory lien, the sale shall be made upon terms that are reasonable under the circumstances and are within the discretion of the person authorized to make the sale. Any party to the action may apply to the Court to fix terms of payment or any other terms of sale.

Sec. 504. Postponement.

If notice of sale was given by mail and by publication pursuant to sections 402 and 403, the person authorized to make the sale may, in his or her own discretion, or at the direction of the secured party, postpone a sale from its originally scheduled date for a period not to exceed 30 days without providing additional notice to anyone; provided, that an announcement shall be made at the time, date and place of the originally scheduled sale, as to the time, date and place of the new sale, notwithstanding anything to the contrary stated in sections 402 and 403. TITLE. VI. PROCEDURE FOLLOWING SALE.

Sec. 601. Report of sale.

(a) Not more than 30 days after a sale, the person authorized to make the sale shall file with the Court a complete report of the sale, including an affidavit certifying the fairness of the sale and the truth of the report.

(b) Copies of these documents shall be mailed by first class mail postage prepaid to any:

- (1) Maker of a lien instrument;
- (2) Owner of the property subject to a lien instrument; or
- (3) Holder of a subordinate interest in the real property subject to the lien

instrument who:

(A) Has requested receipt of a copy through a written request sent by certified mail, return receipt requested and postage prepaid; and

(B) Sent the request no later than 10 days following the scheduled sale date to the person authorized to make the sale.

(c) The person authorized to make the sale shall file a statement with the Court certifying compliance with subsection (b) of this section.

Sec. 602. Affidavit of purchaser.

(a) Before a sale is ratified, unless otherwise ordered by the court for good cause, the purchaser shall file with the Court an affidavit stating:

(1) Whether the purchaser is acting as an agent and, if so, the name of the principal;

(2) Whether others are interested as principals and, if so, the names of the other principals; and

(3) That the purchaser has not directly or indirectly discouraged anyone from bidding for the property.

Sec. 603. Sale of interest in real property; notice.

(a) Upon the filing of a report of sale of property pursuant to section 601, the person authorized to make the sale shall issue a notice, within 5 days of the filing,

containing a brief description sufficient to identify the property and stating that the sale will be ratified unless cause to the contrary is shown within 30 days after the date of the notice.

(b) A copy of the notice shall be published at least once a week in each of 3 successive weeks before the expiration of the 30-day period in one or more newspapers of general circulation.

Sec. 604. Exceptions to sale.

(a) Any party in interest, including the purchaser and the holder of a subordinate interest in the property subject to the lien, may file an exception to the sale within 30 days after the date of a notice set forth by the alleged irregularity with particularity.

(b) Any matter not specifically set forth in the exceptions is waived unless the Court finds that justice requires otherwise.

(c) The Court shall determine whether to hold a hearing on the exceptions, but it may not set aside a sale without a hearing. The Court shall hold a hearing if a hearing is requested and the exception or any response clearly show a need to take evidence. The Clerk of the Court shall send notice of the hearing to the parties to the action and to the person filing the an exception.

Sec. 605. Ratification required.

(a)(1) The sale shall be ratified by the Court. The Court shall ratify the sale if:

(A) The time for filing an exception pursuant to section 604 has expired and exceptions to the report either were not filed or were filed but overruled; and

(B) The Court is satisfied that the sale was fairly and properly made; provided, that the Court is not satisfied that the sale was fairly and properly made, it may enter any order that it deems appropriate.

(2) In determining whether a sale was fairly and properly made, the person filing an exception to the sale shall have the burden of proof to show that it is more likely than not that a higher sales price could have been obtained at the time and place of the sale but

for the alleged failure of the person making the sale to comply with the norms of conduct of persons conducting public judicial sales of real property.

(b) Upon ratification of a sale, the Court shall refer the matter to an auditor to certify the amount to be paid by the purchaser.

(c) The ratification of a power of sale foreclosure under this section shall be a final order concluding all rights of the parties and of those holding by through or under them and of those who would be bound by any final order in any other *in rem* proceeding in the Court. Superior Court Rules 59 and 60 apply to it and it is appealable to the District of Columbia Court of Appeals. It shall not be subject to collateral attack in any other proceeding or manner, including a plea in title raised in a landlord-tenant proceeding.

Sec. 606. Resale.

(a) If the purchaser defaults, the Court, on application and after notice to the purchaser, may order a resale at the risk and expense of the purchaser or may take any other appropriate action, including authorizing the person making the sale to pursue any remedy generally available to the seller of real estate upon the default of the purchaser under the law of the District of Columbia.

(b) If a sale is set aside by the Court, the Court may order that the property be resold by the person who made the previous sale or by a special trustee appointed by the Court.

Sec. 607. Conveyance to purchaser.

(a) After a sale has been ratified by the Court and the purchase money paid, the person making the sale shall convey the property to the purchaser or the purchaser's assignee. If conveyance is to the purchaser's assignee, the purchaser shall join in the deed, unless a substitution of purchaser has been authorized as provided in section 606.

(b) If the person exercising the power of sale and purchaser at a sale made pursuant to a power of sale are the same person, in the order of ratification, the Court shall appoint a trustee to convey the property to the purchaser on the payment of the

purchase money. The trustee need not furnish bond unless the Court so provides in its order.

(c) At any time after sale and before conveyance, the Court, upon ex parte application and consent of the purchaser, substituted purchaser, and person making the sale, may authorize the conveyance to be made to a substituted purchaser. Sec. 608. Proceeds of sale.

(a) At any time after a sale of property pursuant to Title V, and before the final statement by the auditor under section 605(b), any person claiming an interest in the property or in the proceeds of the sale of the property may file with the Court an application for the payment of the claim from the surplus proceeds of the sale. The Court shall order distribution of the surplus pro rata among the claimants proving their claims.

(b) The Court may, instead of ordering that the debtor be barred from redeeming the mortgaged property, order that the proceeds of the sale be applied to the payment of the debt; provided, that if, upon a sale of the property, the net proceeds shall be insufficient to pay, the court may enter a judgment against the debtor or other party to the suit who is personally liable for the payment of the debt.

Sec. 609. Release and assignment, stay, and insolvency.

(a) A person entitled to release or assign a claim under a lien may file in the action to foreclose the lien a written release or assignment of the claim and of any order for the sale of the property. The release or assignment shall be signed and acknowledged before a person authorized to take acknowledgments of deeds. The release or assignment shall be effective upon its entry upon the docket.

(b)(1) The debtor, any party to the lien instrument, or any person who claims under the debtor a right to or interest in the property that is subordinate to the lien being foreclosed, may file a motion for an injunction to stay any sale or any proceedings after a sale but prior to ratification. The motion shall not be granted unless the motion is supported by an affidavit as to all facts asserted and contains:

(A) Whether the moving party admits any amount of the debt to be due and payable as of the date the motion is filed;

(B) If an amount is admitted, a statement that the moving party has paid the amount into the Court with the filing of the motion; and

(C) A detailed statement of facts, showing that:

(I) The debt and all interest due thereon have been fully paid prior to or at the time of the filing of the motion;

(ii) There is no default; or

(iii) Fraud was used by the secured party, or with the secured party's knowledge, in obtaining the lien.

(2) If the Court finds that an injunction to stay an action to foreclose a lien was obtained through misrepresentation, it shall order the person who obtained the injunction to pay to the secured party interest on the amount of the debt at the rate otherwise payable in connection with the debt, plus 5%, from the time of the grant of the injunction until its dissolution. This remedy shall be in addition to any other remedy that may be available.

(c) When property of an insolvent is subject to a lien, the filing of or pendency of insolvency proceedings by or against the insolvent under the laws of the District of Columbia shall not stay a sale of property pursuant to a foreclosure action filed prior to the insolvency proceeding. Sec. 610. Audit procedure in power of sale foreclosures.

(a) The referral to the auditor shall require the person authorized to make the sale under a power of sale foreclosure to submit a proposed account and supporting vouchers within 60 days of the date of sale, subject to the authority of the auditor to grant extensions for reasonable cause.

(b) Subject to the provisions of the order of referral, an auditor may regulate all proceedings in the hearing, including the power to:

(1) Direct the issuance of a subpoena to compel the attendance of witnesses and the production of documents or other tangible things;.

(2) Administer oaths to witnesses;.

(3) Rule upon the admissibility of evidence;.

(4) Examine witnesses;.

(5) Convene, continue, and adjourn hearings, as required;.

(6) Recommend contempt proceedings or other sanctions to the Court;

and.

(7) Make findings of fact and conclusions of law.

(c) If a hearing is ordered, the auditor shall fix the time and place for the hearing and shall send written notice to all parties and to all persons who have filed a claim in the proceedings at the address stated in the claim.

(d) A party or claimant may procure by subpoena the attendance of witnesses and the production of documents or other tangible things at the hearing.

(e) All proceedings before an auditor shall be recorded either stenographically or by an electronic recording device, unless the making of a record is waived in writing by all parties and claimants. A waiver of the making of a record shall constitute a waiver of the right to file an exception that would require review of the record for its determination.

(f)(1) Within any time prescribed by the order of referral, the auditor shall file an account or report and at the same time send a copy to each party. The original exhibits shall also be filed. On the date of filing, the auditor shall send to each party and claimant a notice stating that:

(A) The account or report was filed on that date;

(B) Any exceptions shall be filed within 10 days of that date; and

(C) If timely exceptions are not filed, the account or report shall be

ratified.

(2) The notice to a claimant shall also specify the amount allowed to that claimant in the account or report.

(g) The auditor shall certify to the Court that the requirements of this section have been met.

(h) An order ratifying the report or account shall not be entered until after the expiration of the time for filing exceptions. If an exception is not timely filed, the Court may enter an order ratifying the report or account.

(I)(1) Within 10 days after the filing of the auditor's account or report, a party or claimant may file an exception with the Court. Within that period or within 3 days after service of the first exception, whichever is later, any other party or claimant may file exceptions.

(2) An exception shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exception shall be waived unless the Court finds that justice requires otherwise.

(3) A party or claimant who has filed an exception shall cause to be prepared and transmitted to the Court a transcript of so much of the testimony as is necessary to rule on the exception. The transcript shall be filed within 30 days after the filing of exception or within such longer time, not exceeding 90 days from the date of the filing of the exception, as the auditor may allow. The Court may further extend the time for the filing of the transcript for good cause shown. Instead of a transcript, the parties and claimants whose interest could be affected by the exception may enter into a stipulation of the facts or the Court, by order, may accept an electronic recording of the proceedings as the transcript.

(4) The Court may dismiss the exceptions of a party or person who has not complied with subsection (3) of this section.

(5) The Court may enter a decision on an exception without a hearing unless a hearing is requested upon the filing of the exception or by an opposing party or

claimant within 5 days after service of the exceptions. The decision on the exception shall be based upon the evidence presented to the auditor unless:

(A) The party or claimant filing the exception states, with particularity, the additional evidence to be offered and the reasons why the evidence was not offered before the auditor; and

(B) The Court determines that the additional evidence should be considered; provided, that if additional evidence is to be considered, the Court may remand the matter to the auditor to hear the additional evidence and to make appropriate findings or conclusions.

(j) Payment of the compensation, fees, and costs of an auditor may be ordered by the Court. The costs of any transcript may be included in the costs of the action and assessed among the parties as the Court may direct.

TITLE VII. APPLICATION.

Sec. 701. Application.

(a) This act shall apply to foreclosure of liens upon property that are created or authorized to be created by a lien instrument or are created by a statute providing for foreclosure in the manner specified for foreclosure of mortgages. The procedures for foreclosures shall not preclude other remedies, including self-help, that may otherwise be available; provided, that the procedures shall be in this act the sole remedy for the vendor for repossession of property sold under a land installment contract.

(b) This act shall be interpreted and applied to the fullest extent practical in a manner consistent with applicable federal laws and regulations. Nothing in this act is intended to preempt federal law or regulation.

TITLE VIII. CONFORMING AMENDMENTS.

Sec. 801. Section 11-921(a) of the District of Columbia Official Code is amended by adding a new paragraph (7) to read as follows:

"(7) Beginning on the effective date of the Mortgage Foreclosure Procedure Reform Act of 2002, the Court shall have jurisdiction over all real property foreclosures, including power of sale foreclosures that are brought in the District of Columbia."

Sec. 802. Section 11-1724 of the D.C. Official Code is amended by striking the phrase ", and (2) perform such other functions as may be assigned by the Superior Court." and inserting the phrase ", (2) execute orders of referral by the Superior Court for the mandatory audit of power of sale foreclosures of real property occurring in the District of Columbia, and (3) perform such other functions as may be assigned by the Superior Court." in its place.

Sec. 803. Real Property Interests Reporting Improvement Amendment Act of 1997, effective October 23, 1997 (D.C. Law 12-34; D.C. Official Code § 42-405) is amended as follows:

(1) Section 95 is amended to read as follows:

"(a) In all cases of application to said court to foreclose any mortgage or deed of trust, the equity court shall have authority, instead of decreeing that the mortgagor be foreclosed and barred from redeeming the mortgaged property, to order and decree that said property be sold and the proceeds be brought into court to be applied to the payment of the debt secured by said mortgage; and if, upon a sale of the whole mortgaged property, the net proceeds shall be insufficient to pay the mortgage debt, the court may enter a decree in personam against the mortgagor or other party to the suit who is liable for the payment of the mortgage debt for the residue of said debt remaining unsatisfied after applying to said debt the proceeds of such sale; provided, that the complainant would be entitled to maintain an action at law or suit in equity for said residue; which decree shall have the same effect and be enforced by execution in the same manner as a judgment at law;

"(b) In suits to enforce a vendor's lien on real estate for unpaid purchase money similar relief may be given by a decree of sale and a decree in personam for the unsatisfied residue of the purchase money due; and

"(c) At any time within three years after the final ratification of the auditor's report in a foreclosure action filed pursuant to the Mortgage Foreclosure Procedures Reform Act of 2002, a secured party or any party in interest entitled under the covenants of the lien instrument to maintain an action for a deficiency judgment may file a motion for a deficiency judgment if the net proceeds (after deducting the costs and expenses allowed by the court) of sale of the entire property subject to the lien are insufficient to satisfy the debt and accrued interest. Service shall be made in accordance with the rule of the Superior Court and shall be such service as will support *in personam* jurisdiction. Thereafter, the court may enter a judgment in personam for the amount of the deficiency against the party to the action who is liable for payment."

(2) Section 499d is repealed.

(3) Section 538 is amended as follows:

(A) Subsection (b) is amended by striking the sentence, "No written instrument entered into pursuant to this subsection shall be effective as to any person not having actual notice thereof until a notice of the appointment of the new trustee signed, sealed, and acknowledged by the parties agreeing to the appointment of the new trustee shall be recorded among land records in the Office of the Recorder of Deeds."

(B) New subsections (c) and (d) are added to read as follows:

"(c) If a deed of trust containing a power of sale as originally recorded does not name one or more trustees or names a person other than a natural person as trustee, the deed of trust and the power of sale shall not be defective. If the deed of trust authorizes the secured party to appoint a successor trustee, the secured party may exercise such authority and, when so exercised, the successor named shall succeed to the same

rights, powers, and duties of a trustee as if a natural person had originally be designated as trustee in the lien instrument.

"(d) No written instrument executed pursuant to subsections (b) and (c) of this section shall be effective as to any person not having actual notice thereof until a notice of the appointment of the new trustee signed, sealed, and acknowledged by the appropriate parties appointing of the new trustee or trustees shall be recorded among land records in the Office of the Recorder of Deeds."

(4) Section 539 is repealed.

(5) Section 539a is amended is amended to read as follows: "(b) Notwithstanding the provisions of any other law, after the commencement of a foreclosure action filed pursuant to Mortgage Foreclosure Procedure Reform Act of 2002, at any time up to one business day prior to the commencement of bidding at the trustee sale or other judicial sale on a residential mortgage obligation, the residential mortgage debtor or anyone on his behalf, not more than 2 times in any consecutive 12-month period, may cure his default and prevent sale or other disposition of the real estate, by tendering the amount or performance specified in subsection (c) of this section."

TITLE IX. FISCAL IMPACT STATEMENT.

Sec. 901. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

TITLE X. EFFECTIVE DATE.

Sec. 1001. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.