

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

At-Large Councilmember Vincent B. Orange, Sr. introduced the following bill, which was referred to the Committee on _____.

To amend an Act To establish a code of law for the District of Columbia to allow a lender to bring a summary action to foreclose mortgages on vacant and abandoned residential property, to establish what constitutes vacant and abandoned property, to require a lender to prove the court by clear and convincing evidence that the property is vacant and abandoned, to establish additional service and notice requirements to a mortgagor or occupant at the property, and to allow for the sale of a property 60 days after a foreclosure judgment and a determination that the property is vacant and abandoned.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Summary Action Foreclosure Amendment Act of 2013".

Sec. 2. An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1271; D.C. Code § 42-815 *et seq.*), is amended by adding a new section 539e to read as follows:

"Sec. 539e. Mortgage foreclosure of vacant and abandoned residential property.

"(a) Definitions.

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

"(2) "Residential mortgage" shall have the same meaning as in section 539a(a).

"(3)(A) "Vacant and abandoned property" means a property with a residential mortgage that is not occupied by a mortgagor or tenant as evidenced by a lease agreement entered into prior to the service of a notice of intention to commence foreclosure and if at least 2 of the following conditions exist:

- 1 "(i) Overgrown or neglected vegetation;
- 2 "(ii) The accumulation of newspapers, circulars, flyers or mail on
3 the property;
- 4 "(iii) Disconnected gas, electric, or water utility services to the
5 property;
- 6 "(iv) The accumulation of hazardous, noxious, or unhealthy
7 substances or materials on the property;
- 8 "(v) The accumulation of junk, litter, trash, or debris on the
9 property;
- 10 "(vi) The absence of window treatments such as blinds, curtains, or
11 shutters;
- 12 "(vii) The absence of furnishings and personal items;
- 13 "(viii) Statements of neighbors, delivery persons, or District
14 government employees indicating that the residence is vacant and abandoned;
- 15 "(ix) Windows or entrances to the property that are boarded up or
16 closed off or multiple window panes that are damaged, broken, and unrepaired;
- 17 "(x) Doors to the property that are smashed through, broken off,
18 unhinged, or continuously unlocked;
- 19 "(xi) A risk to the health, safety, or welfare of the public, or any
20 adjoining or adjacent property owners, exists due to act of vandalism, loitering, criminal conduct,
21 or the physical destruction or deterioration of the property;

1 "(xii) An uncorrected violation of a building or housing code
2 during the preceding year, or an order by the Department of Consumer and Regulatory Affairs
3 declaring the property to be unfit for occupancy and to remain vacant and unoccupied;

4 "(xiii) The mortgagee or other authorized party has secured or
5 winterized the property due to the property being deemed vacant and unprotected or in danger of
6 freezing;

7 "(xiv) A written statement issued by any mortgagor expressing the
8 clear intent of all mortgagors to abandon the property; or

9 "(xv) Any other reasonable indicia of abandonment.

10 "(B) "Vacant and abandoned" shall not include:

11 "(i) An unoccupied property which is undergoing construction,
12 renovation, or rehabilitation that is proceeding diligently to completion, and the building is in
13 compliance with all applicable ordinances, codes, regulations, and statutes;

14 "(ii) A property that is occupied on a seasonal basis, but otherwise
15 secured; or

16 "(iii) A property that is secure, but is the subject of a probate
17 action, action to quiet title, or other ownership dispute.

18 "(b) Remedy available to lender seeking foreclosure.

19 "A summary action to foreclose a residential mortgage that is vacant and abandoned may
20 be brought by a lender in court. In addition, a lender may, at any time after filing a foreclosure
21 action, file with the court an application to proceed in a summary manner because the residential
22 mortgage that is the subject of the foreclosure action is a vacant and abandoned property;

1 provided, however, that this section shall not apply to a foreclosure of a timeshare interest
2 secured by a mortgage.

3 "(c) Notice requirements.

4 "(1) In addition to the service of process required by court rules governing
5 service, a lender shall establish, for the foreclosure of a residential mortgage under this section,
6 that a process server has made two unsuccessful attempts to serve the mortgagor or occupant at
7 the property, which attempts must be at least 72 hours apart, and during different times of the
8 day, either before noon, between noon and 6 P.M., or between 6 P.M. and 10 P.M.

9 "(2) In addition to any notices required to be served by law or the court rules
10 governing service, a lender shall, with any order to show cause served as original service of
11 process or a motion to proceed summarily, serve a notice that the lender is seeking, on the return
12 date of the order to show cause, or on the date fixed by the court, to proceed summarily for entry
13 of a foreclosure of the residential mortgage because the property is vacant and abandoned.

14 "(e) Judgment for final mortgage foreclosure.

15 "(1) The court may enter a final residential mortgage foreclosure judgment under
16 this section upon a finding:

17 "(A) By clear and convincing evidence, that the property is vacant and
18 abandoned as defined under subsection (a) of this section; and

19 "(B) That a review of the pleadings and documents filed with the court, as
20 required by the court rules, supports the entry of a final residential mortgage foreclosure
21 judgment.

22 "(2) A final residential mortgage foreclosure judgment under this section shall not
23 be entered if the court finds that:

1 "(A) The property is not vacant or abandoned; or
2 "(B) The mortgagor or any other defendant has filed an answer,
3 appearance, or other written objection that is not withdrawn and the defenses or objection
4 asserted provide cause to preclude the entry of a final residential mortgage foreclosure judgment.

5 "(f) Effect of non-action.

6 If a final residential mortgage foreclosure judgment under this section is not entered on
7 the original or adjourned return date of an order to show cause or the date fixed by the court to
8 proceed summarily, the court may direct that the foreclosure action continue on the normal track
9 for residential mortgage foreclosure actions for properties that are not vacant and abandoned.

10 "(g) Rules governing foreclosure actions under this act.

11 All actions brought to foreclose on a residential mortgage pursuant to this section shall
12 proceed in accordance with the court rules.

13 "(h) Effect on previously enacted laws.

14 Nothing in this section is intended to supersede or limit other procedures to resolve
15 residential mortgage foreclosure actions, including, but not limited to, foreclosure mediation.

16 "(i) Persons not affected by this section.

17 Nothing in this section shall be construed to affect the rights of a tenant to possession of a
18 leasehold interest under any applicable law.

19 "(j) Disposal of property following determination that property is vacant and abandoned.

20 If the court makes a finding in the foreclosure judgment that the property is vacant and
21 abandoned, the property shall be sold within 60 days of the court's ruling.

22 Sec. 3. Fiscal Impact.

23 The Council adopts the fiscal impact statement in the committee report as the

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

3 Sec. 4. Effective date.

4 This act shall take effect following approval by the Mayor (or in the event of veto by the
5 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
6 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
7 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
8 Columbia Register.

9

10

11

12