

Condominium Owner Bill of Rights and Responsibilities Amendment Act of 2016

AN ACT

D.C. ACT 21-657

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 9, 2017

To amend the Condominium Act of 1976 to establish a Condominium Association Advisory Council, to improve notice requirements before foreclosure sales, to establish a Condominium Association Bill of Rights and Responsibilities, and to require that the Condominium Association Bill of Rights and Responsibilities be furnished to purchasers of condominiums.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Condominium Owner Bill of Rights and Responsibilities Amendment Act of 2016".

Sec. 2. The Condominium Act of 1976, effective March 29, 1977 (D.C. Law 1-89; D.C. Official Code § 42-1901.01 *et seq.*), is amended as follows:

(a) Section 102 (D.C. Official Code § 42-1901.02) is amended as follows:

(1) A new paragraph (20A) is added to read as follows:

"(20A) "Mortgage Electronic Registration System" or "MERS" shall mean the process created by the mortgage banking industry that tracks mortgage ownership and servicing, is used by the real estate finance industry for residential and commercial mortgage loan trading, and that simplifies the mortgage process by using electronic commerce."

(2) A new paragraph (21A) is added to read as follows:

"(21A) "Notice of Foreclosure Sale of Condominium Unit for Assessments Due" or "NFSCUAD" shall mean a notice sent to a condominium unit owner in default in the payment of condominium assessments, fees, charges, or other penalties owed by a unit owner that includes such information as the past due amount of assessments and other charges being foreclosed upon and the time, place, and date of the scheduled sale, sent pursuant to section 313(c)."

(b) A new section 308a is added to read as follows:

"Sec. 308a. Condominium Association Advisory Council.

"(a) There is established a Condominium Association Advisory Council ("CAAC").

"(b) The purpose of the CAAC shall be to serve as an advisory body to the Mayor, the Council, and District agencies on matters relating to condominiums located in the District.

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“(c) The CAAC shall be composed of 14 members appointed as follows:

“(1) One community representative from each of the 8 District wards, appointed by the Councilmember representing each respective ward;

“(2) One community representative appointed by the chairperson of the Committee of the Council that oversees the Department of Housing and Community Development;

“(3) One community representative appointed by the Mayor;

“(4) The Director of the Department of Housing and Community Development, or his or her designee;

“(5) A representative from the community association management industry with at least 7 years of experience in the profession, appointed by the Mayor;

“(6) A representative from the mortgage industry with at least 5 years of experience in the profession, appointed by the Mayor; and

“(7) A representative from the legal community who is an attorney licensed to practice in the District and has at least 5 years of experience representing community associations, appointed by the Mayor.

“(d) (1) Each community representative shall be a resident of the District who has been a member in good standing of a unit owners’ association for at least one year, with a priority for community representatives with experience on a condominium board.

“(2) A chairperson shall be elected from among the 10 community representatives, and shall serve for a term of 2 years.

“(3)(A) Each community representative member shall be appointed for a term of 3 years.

“(B) Initial appointments shall be staggered with 3 members appointed for a one-year term, 4 members appointed for a 2-year term, and 3 members appointed for a 3-year term.

“(C) The initial appointment terms shall be determined by lot at the first meeting of the CAAC.

“(4) The 3 non-community members appointed by the Mayor shall each be appointed for a term of 3 years.

“(e) Meetings of the CAAC shall be open to the public and shall take place at a public location at least 4 times a year. The CAAC shall provide a public listing of members by ward, meeting notices, and meeting minutes on a CAAC website.”.

(c) A new section 312a is added to read as follows:

“Sec. 312a. Notice of intention to take legal action to collect past due amounts.

“The unit owners’ association shall, when advising the unit owner of its intention to take legal action to collect any past due amount owed by a unit owner, provide a notice to the unit owner to include:

“(1) A statement of the account showing the total amount that is past due,

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including a breakdown of the categories of amounts claimed to be due and the dates those amounts accrued;

“(2) Contact information for the individual or office the unit owner must contact to settle the past due amount; and

“(3) An enclosure providing information on the availability of resources that a unit owner may utilize, which shall be in substantively the following form in at least 18-point font:

““FAILURE TO PAY PAST DUE AMOUNTS MAY RESULT IN LEGAL ACTION, INCLUDING FORECLOSURE.

““YOU MAY BE ELIGIBLE FOR FREE OR REDUCED-COST ASSISTANCE.

““The D.C. Department of Housing and Community Development maintains a list of Community-Based Non-Profit Organizations that provide housing counseling services. Information on providers can be found on [Department of Housing and Community Development website for community-based non-profit organizations] or by calling [Department of Housing and Community Development’s designated phone number].

““The U.S. Department of Housing and Urban Development (“HUD”) sponsors housing counseling agencies that can provide advice on buying a home, renting, defaults, foreclosures, and credit issues. You can get a list of HUD-approved housing counselors at [Department of Housing and Urban Development’s website] or by calling [Department of Housing and Urban Development’s phone number].””.

(d) Section 313(c)(4) (D.C. Official Code 42-1903.13(c)(4)) is amended to read as follows:

“(4) (A) A foreclosure sale shall not be held until at least 31 days after a Notice of Foreclosure Sale of Condominium Unit for Assessments Due is recorded in the land records and sent by a delivery service providing delivery tracking confirmation and by first-class mail to a unit owner at the mailing address of the unit, any last known mailing address, and at any other address designated by the unit owner to the executive board for purposes of notice.

“(B) The Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall:

“(i) State the past due amount being foreclosed upon and that must be paid in order to stop the foreclosure;

“(ii) Expressly state that the foreclosure sale is for either:

“(I) The 6-month priority lien as set forth in subsection (a)(2) of this section and not subject to the first deed of trust; or

“(II) More than the 6-month priority lien set forth in subsection (a)(2) of this section and subject to the first deed of trust; and

(iii) Notify the unit owner that if the past due amount being foreclosed upon is not paid within 31 days after the date the NFSCUAD is mailed, the executive board shall sell the unit at a public sale at the time, place, and date stated in the NFSCUAD.

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“(C) Substantial compliance with the requirements of subparagraph (B) of this paragraph shall be sufficient until new forms are made available by the Recorder of Deeds.

“(D) The Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall be accompanied by an enclosure providing the following information:

“(i) A statement of the past due amount being foreclosed upon and that must be paid in order to stop the foreclosure sale;

“(ii) A breakdown of the amount being foreclosed on, including amounts past due for assessments, accrued interest, late charges, all other categories of amounts past due, and the dates those amounts accrued;

“(iii) A statement that the amount being foreclosed upon may not be the total amount owed to the unit owners’ association and instructions on how the unit owner can request a full account statement;

“(iv) Information on the availability of resources that a unit owner may utilize, which shall be in substantively the following form in at least 18-point font:

““FAILURE TO PAY AMOUNTS INDICATED IN THE ENCLOSED NOTICE OF FORECLOSURE SALE OF CONDOMINIUM UNIT FOR ASSESSMENTS DUE MAY RESULT IN SALE OF YOUR UNIT.

““YOU MAY BE ELIGIBLE FOR FREE OR REDUCED-COST ASSISTANCE.

““The D.C. Department of Housing and Community Development maintains a list of Community-Based Non-Profit Organizations that provide housing counseling services. Information on providers can be found on [Department of Housing and Community Development website for community-based non-profit organizations] or by calling [Department of Housing and Community Development’s designated phone number].

““The U.S. Department of Housing and Urban Development (“HUD”) sponsors housing counseling agencies that can provide advice on buying a home, renting, defaults, foreclosures, and credit issues. You can get a list of HUD-approved housing counselors at [Department of Housing and Urban Development’s website] or by calling [Department of Housing and Urban Development’s phone number].””; and

“(v) Any other information the Mayor may prescribe by rule.

“(E)(i) At least 31 days in advance of the sale, a copy of the Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall be sent by a delivery service providing delivery tracking confirmation and by first class mail to:

“(I) The Mayor or the Mayor’s designated agent;

“(II) Any and all junior lien holders of record; and

“(III) Any holder of a first deed of trust or first mortgage of record, their successors and assigns, including assignees, trustees, substitute trustees, and MERS.

“(ii) The unit owners’ association shall be in compliance with this requirement if it sends notice as provided herein to the lienholders as their names and addresses appear in land records.”.

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(e) Section 410 (D.C. Official Code 42-1904.10) is amended to read as follows:

“Sec. 410. Copies of documents to be furnished to purchaser by declarant; Department of Housing and Community Development website publication.

“(a) Unless previously furnished, an exact copy of the recorded declaration, bylaws, and Condominium Association Bill of Rights and Responsibilities shall be furnished to each purchaser by the declarant within 10 days of recordation thereof as provided for in sections 201 and 205.

“(b) The Condominium Association Bill of Rights and Responsibilities shall read as follows:

““Condominium Association Bill of Rights and Responsibilities

““Every unit owner who is a member in a unit owners’ association has certain rights and responsibilities under the D.C. Condominium Act, with some of those rights and responsibilities restated here:

““1. The right to attend and participate in meetings of the unit owners’ association held in accordance with the provisions of the unit owners’ association’s condominium instruments at least once each year, according to and subject to the provisions of D.C. Official Code § 42-1903.03(a).

““2. The right to observe all meetings of the unit owners’ association, committees of the unit owners’ association, and the executive board, except for those meetings held lawfully in executive session, and to examine and copy minutes recorded at meetings, according to and subject to the provisions of D.C. Official Code § 42-1903.03(b).

““3. The right to an opportunity to comment on any matter relating to the unit owners’ association during each regularly scheduled meeting, according to and subject to the provisions of D.C. Official Code § 42-1903.03(c).

““4. The right to have meetings of the unit owners’ association and executive board only be conducted with a quorum present as provided in the governing documents of the association.

““5. The right to cast a vote on any matter requiring a vote by the unit owners’ association membership in proportion to the unit owner’s voting interest, according to and subject to the provisions of D.C. Official Code § 42-1903.05.

““6. The right to an executive board that in the performance of its duties, is obligated to exercise the care required of a fiduciary consistent with business judgment standard, subject to the provisions of D.C. Official Code § 42-1903.08(d) and § 42-1903.09(b).

““7. The right to cure any default in payment of an assessment at any time prior to the foreclosure sale by tendering payment in full of past due amounts owed, according to and subject to the provisions of D.C. Official Code § 42-1903.13(c).

““8. The right to request a statement that sets forth the amount of unpaid assessments currently levied against the unit owner, according to and subject to the provisions of D.C. Official Code § 42-1903.13(h).

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““9. The right of access to all books and records kept by or on behalf of the unit owners’ association, subject to the provisions and limitations of D.C. Official Code § 42-1903.14 and the unit owners’ associations’ condominium instruments.””.

“(c) A copy of a Condominium Association Bill of Rights and Responsibilities shall be made available on the Department of Housing and Community Development website, in at least 12 point type.”.

Sec. 3. Rules.

Within 180 days after the effective date of this act, the Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this act.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. 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 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED

February 9, 2017



COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

Docket No. **B21-443**

[] ITEM ON CONSENT CALENDAR

[X] ACTION & DATE

ADOPTED FIRST READING, 12/06/2016

[X] VOICE VOTE

RECORDED VOTE ON REQUEST

APPROVED

ABSENT

[] ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson	X				Evans	X				Silverman	X			
Alexander	X				Grosso	X				Todd	X			
Allen	X				May	X				White	X			
Bonds	X				McDuffie	X								
Cheh	X				Nadeau	X								
X - Indicate Vote				AB - Absent				NV - Present, Not Voting						

CERTIFICATION RECORD

Secretary to the Council

1-18-17

Date

[] ITEM ON CONSENT CALENDAR

[X] ACTION & DATE

ADOPTED FINAL READING, 12/20/2016

[X] VOICE VOTE

RECORDED VOTE ON REQUEST

APPROVED

ABSENT

[] ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson	X				Evans	X				Silverman				X
Alexander	X				Grosso				X	Todd				X
Allen	X				May	X				White	X			
Bonds	X				McDuffie	X								
Cheh	X				Nadeau	X								
X - Indicate Vote				AB - Absent				NV - Present, Not Voting						

CERTIFICATION RECORD

Secretary to the Council

1-18-17

Date

[] ITEM ON CONSENT CALENDAR

[] ACTION & DATE

[] VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT

[] ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson					Evans					Silverman				
Alexander					Grosso					Todd				
Allen					May					White				
Bonds					McDuffie									
Cheh					Nadeau									
X - Indicate Vote				AB - Absent				NV - Present, Not Voting						

CERTIFICATION RECORD

Secretary to the Council

Date