

**CITY OF LAWRENCE
APPROVED ORDINANCE
DOC. 33/2013**

Be it ordained by the City Council of the City of Lawrence further amends the Revised Ordinances of the City of Lawrence by **DELETING Chapter 8.30 of the Municipal Code (Mediation of Foreclosures of Owner-Occupied Residential Properties)**, and hereby adopts the following new **Chapter 8.30 of the Municipal Code (Mediation of Foreclosures of Owner-Occupied Residential Properties)**, to be in proper order:

FORECLOSURE MEDIATION ORDINANCE

Chapter 8.30. Mediation of Foreclosures of Owner-Occupied Residential Properties

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Section 8.30.010. Purpose

Unsecured and unmaintained vacant properties and foreclosing properties present a danger to the safety and welfare of public safety officers, the public, occupants, abutters and neighborhoods and, as such, constitute a public nuisance. This article is enacted to promote the health, safety and welfare of the public, to protect and preserve the quiet enjoyment of occupants, abutters and neighborhoods, and to minimize hazards to public safety personnel inspecting or entering such properties.

Section 8.30.020. Definitions

For the purposes of this article, the following words shall, unless the context clearly requires otherwise, have the following meanings:

CERTIFICATE OF MEDIATION COMPLETION

A certificate issued by the Mediation Program Manager upon Good Faith Effort in mediation if a mutually-agreeable commercially reasonable alternative to foreclosure cannot be reached. To be valid, the Certificate shall be signed by authorized representatives of both the Mediation Program Manager and the City.

COMMERCIALY REASONABLE ALTERNATIVE

An alternative based on a comparison of the net present value of receiving payments pursuant to a modified mortgage loan, or the likely financial recovery from other foreclosure alternatives, to the anticipated net recovery following foreclosure incorporating an assessment of the borrower's current circumstances, including, without limitation, the borrower's current income, debts, and obligations.

CREDITOR

A person or entity that holds or controls, partially, wholly, indirectly, directly, or in a nominee capacity, a mortgage loan securing a residential property, including, without limitation, a mortgagee, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder, mortgage electronic registration system or mortgage servicer, including the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. "Creditor" shall also include any servant, employee or agent of a creditor.

ENTITY

A business organization, or any other kind of organization, including without limitation, a corporation, partnership, trust, limited liability company, limited liability partnership, joint venture, sole proprietorship, or any other category of organization, and any employee, agent, servant or other representative of such entity.

EViction

Any action, without limitation, by a Foreclosure Sale Purchaser of Residential Property which is intended to compel an occupant to vacate or to be constructively evicted from such Residential Property

GOOD FAITH EFFORT

An effort by each party upon being present to provide required documentation and actively taking part in the Loan/Mortgage Mediation Conference as required and defined by this article with decision-making authority to negotiate and agree upon a commercially reasonable alternative to foreclosure as described in MGL c. 244, § 35A(c).

FORECLOSURE SALE PURCHASER

A Foreclosing Owner as defined below, or a person or entity who purchases Residential Property from a Foreclosing Owner and not intending to reside or have a family member reside in such Residential Property as the primary residence.

FORECLOSING OWNER

An entity that both:

- A. Held or owned a Mortgage Loan in the property at any point prior to the foreclosure of the property, or is the subsidiary, parent, or agent of, or otherwise is related to any entity which held or owned the mortgage in the property at any time prior to the foreclosure of the property; and
- B. Holds title to this property that it acquired at a foreclosure sale or by any other method of foreclosure and holds a security interest in three or more Mortgage Loans.

For purposes of this definition, the phrase ‘holds title’ shall include an entity which holds title in any capacity, directly or indirectly, without limitation, whether in its own name, as trustee, or as beneficiary.

HOMEOWNER

An individual mortgagor, his or her assignee, successor, or a trust or trustee who owns and resides in residential real property located in the City, and for whom such residential real property is his/her principal residence.

LOAN/MORTGAGE MEDIATION CONFERENCE

The formal discussion and negotiation undertaken by the parties in a Good Faith Effort to negotiate and agree upon a Commercially Reasonable Alternative to avoid foreclosure and held at a location mutually convenient to the parties. Both the homeowner/mortgagor and lender/mortgagee must be physically present for the mediation conference unless telephone participation is mutually agreed upon.

MEDIATION PROGRAM MANAGER

A neutral organization experienced in the mediation of the residential foreclosure process, familiar with all programs available to help homeowners avoid foreclosure, and knowledgeable of the mortgage foreclosure laws of the commonwealth. The Mediation Program Manager shall sign a user agreement with the City authorizing the receipt and use of personal and financial information for the purposes of the Mediation Program only. Such Mediation Program Manager shall ensure the security and confidentiality of any and all information received or exchanged under the program consistent with applicable federal, state, and City laws. Access to such program information shall be limited to those officers and employees of the organization who require the information to properly perform services under the City's Mediation Program, and

that the organization and its officers and employees may not access, modify, use or disseminate such information for inconsistent or unauthorized purposes.

MEDIATION PROGRAM or PROGRAM

The foreclosure Mediation Program established in the City of Lawrence pursuant to this article and described in 8.30.050.

MEDIATOR

An individual:

- A. Whose training complies with the qualifications standards for neutrals specified in the guidelines for training mediators adopted by the Supreme Judicial Court of Massachusetts pursuant to Rule 8 of the Uniform Rules for Dispute Resolution; and
- B. Who has completed training on foreclosure mediation; and
- C. Who has a working knowledge of all federal, state, and City programs available to help homeowners retain their homes.

MORTGAGEE

An entity to whom property is mortgaged, the mortgage creditor or lender, including, but not limited to, service companies, agents, lenders in a mortgage agreement, and any successor in interest and/or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

MORTGAGE DOCUMENTS

The promissory note, including any allonges, additional pages, and other evidence of all endorsements; mortgage; loan agreement; assignments (recorded and unrecorded); powers of attorney granted by the Mortgagee or Homeowner to entities or persons acting on its behalf; and any other documents evidencing or securing a Mortgage Loan.

MORTGAGE LOAN

A loan to a natural person made primarily for personal, family or household purposes secured wholly or partially by a mortgage on residential property.

MORTGAGE SERVICER

An entity which administers or at any point administered the mortgage; provided, however, that such administration shall include, but not be limited to, calculating principal and interest, collecting payments from the mortgagor, acting as escrow agent or foreclosing in the event of a default.

MORTGAGOR

A natural person or residential trust who received a Mortgage Loan that is secured wholly or partially by a residential property in the City, and for whom such residential property is his/her principal residence.

OCCUPANT

Any person or group of persons, including the Mortgagor, who occupied Residential Property prior to a foreclosure sale.

PARTIES

The homeowner/Mortgagor and the Creditor/Mortgagee or their assigns or successors.

PROPERTY

See "residential property" as defined in this section.

RESIDENTIAL PROPERTY

Real property that is owner-occupied as an owner's principal residence, located within the City, that is either a single-family dwelling or a structure containing not more than four residential units, and shall also include a residential condominium unit or a residential co-op unit occupied by an owner as an owner's principal residence.

Section 8.30.030. Mediation certificate required.

Notwithstanding any general or special law to the contrary, all mortgage foreclosures in the City of Lawrence pertaining to Residential Property which is owner-occupied as the owner's principal residence shall be required to go through a City-approved Mediation Program as set out in this article, and obtain a certificate verifying the mortgagee's good faith participation in foreclosure mediation.

Section 8.30.040. Establishment of mediation program.

The City of Lawrence is hereby empowered to establish a Mediation Program relative to mortgage foreclosures in accordance with this article and promulgate regulations as necessary and appropriate to implementing such a Mediation Program involving Mortgagees, Creditors, servicers, Mortgagors, homeowners, utilizing City-approved Mediation Program Managers and Mediators to mediate between the Mortgagee, or its assigns, and a Mortgagor/homeowner who owns Residential Property in the City which is occupied by the Mortgagor as his or her principal residence. Such mediation shall be facilitated by a City-approved Mediation Program Manager according to procedures established by this article. Said Mediation Program may only relate to the mediation of mortgage foreclosures of Residential Property in the City of Lawrence that is the Mortgagor's principal residence.

Section 8.30.050. Scope of mediation program.

A. The City shall establish a Mediation Program to provide mediation for all foreclosures of mortgages on owner-occupied residential property with no more than four units that is the primary residence of the owner-occupant. The program shall address all issues reasonably related to foreclosure, including but not limited to reinstatement of the mortgage, modification of the loan and restructuring of the mortgage debt, including the reduction and forgiveness of mortgage debt and all Commercially Reasonable Alternatives to foreclosure. The parties are required to make a Good Faith Effort in Mediation as defined in this article. Mediations conducted pursuant to the program shall use the calculations, assumptions and forms that are established by:

- (1) The Federal Deposit Insurance Corporation and published in the Federal Deposit Insurance Corporations Loan Modification Program Guide available on the Federal Deposit Insurance Corporation's publicly accessible website;
- (2) The Home Affordable Modification Program;
- (3) 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 National Credit Union Administration, the Division of Banks or any other instrumentality of the commonwealth;
- (4) The Federal Housing Agency; or
- (5) Similar federal programs.

B. The City shall provide for a means of evaluating and selecting qualified Mediation Program Managers. The City shall also provide for a means of assessing and evaluating annually the City's Mediation Program, including reports and data related to:

- (1) The number of Mortgagors who are notified of mediation;
- (2) The number of Mortgagors who attend mediation and who receive counseling or assistance;
- (3) The number of Certificates of Mediation Completion issued under the program; and
- (4) The results of the mediation process, including the number of loans restructured, number of principal write-downs, interest rate reductions and, to the extent such information is available, the number of Mortgagors who default on mortgages within a year after restructuring.

C. The City may terminate a Mediation Program Manager's participation in the Mediation Program for good cause, as determined by the appropriate City official. In such case, the Mediation Program Manager shall deliver to the City all records and information in its possession for appropriate preservation and storage.

Section 8.30.060. Confidentiality in mediation.

Except for financial information otherwise permitted by law to be disclosed, any financial statement or information provided to the City or its approved independent counseling agencies or provided to the mortgagee or mortgagor during the course of mediation in accordance with this article is confidential and shall not be available for public inspection. Any financial statement or information to reasonably facilitate the mediation shall be made available as necessary to the Mediator and to the attorneys or representatives, if any, of the parties to the mediation. Any financial statement or information designated as confidential under this section shall be kept separate and apart from other papers and matters not the subject of the mediation. No mortgagee shall be required to disclose information in violation of MGL c. 93H, and 201 CMR 17.

Section 8.30.070. Notice.

For the purpose of the Mediation Program established by the City, a Mortgagee shall send a copy of all notices given to a Mortgagor pursuant to MGL c. 244 § 35A(g), (h) that relate to residential properties in the City of Lawrence to the City of Lawrence c/o Housing Manager, Community Development Department, 225 Essex Street, 3rd Floor, Lawrence, MA 01840. The receipt of said notice by the City, or of a request for mediation from the Mortgagor made within fifteen (15) days of receipt of a Mortgagor's notice pursuant to MGL c. 244 §35A(g), (h), shall constitute the beginning of the mediation process as set forth in this article, and at that time the City shall notify the Creditor/Mortgagee and the Mortgagor of their rights and responsibilities under this article regarding mediation. It is the intent and purpose of this article that mediation commence within 45 days of the Mortgagor receiving notice of his or her right to cure as provided in MGL c. 244,§ 35A(g) and (h). The City shall refer the matter for mediation to an approved Mediation Program Manager, which shall have the responsibility of assigning a Mediator and scheduling the parties to immediately commence mediation pursuant to this article. The parties shall participate in good faith in such mediation consistent with the Creditor's and Mortgagor's rights and obligations set forth in MGL c. 244, § 35A, and the mediation shall proceed with the parties' Good Faith Effort to negotiate and agree upon a Commercially Reasonable Alternative to foreclosure. The mediation shall continue without delay until completion, but shall in no way constitute an extension of the foreclosure process, nor an extension of the right to cure period. Notwithstanding the limitation in the previous sentence, the mediation may be extended by mutual agreement for good cause.

Section 8.30.080. Administration of mediation program.

The Mediation Program established by this article shall include, and be limited to, the following steps:

A. The parties shall participate in a mandatory Loan/mortgage Mediation Conference at a location mutually convenient to the parties. All parties and/or their respective representatives present at said Mediation Conference must have authority to enter into any agreements renegotiating the mortgage that is the subject of the foreclosure, or to otherwise resolve the pending foreclosure. Telephone participation by the Creditor/Mortgagee shall not be permitted unless mutually agreed to by all parties.

B. Said Mediation Conference shall be scheduled at a time and place to be determined by the Mediation Program Manager, but not later than 45 days following the Mortgagor's receipt of his or her notice of right to cure under c. 244 § 35A(g), (h). The parties will be noticed under the Mediation Program by certified and first class mail at the parties' last known address(es), if any, or if none, then to the address to which the tax collector last sent the tax bill for the Property. The notice shall contain the following declaration on the first page in English, Spanish, Vietnamese, Cambodian, Haitian Creole, and in any other language which the Mortgagee or its mortgage servicer knows is the Mortgagor's primary language, and any other language deemed appropriate by the mediation program manager: "The City of Lawrence has a mediation program that may help you negotiate more affordable mortgage payments and avoid foreclosure, however

there is no express or implied guarantee foreclosure will be avoided. Have this notice translated at once and contact us for help.” If a mortgagor does not respond to the initial notice, the Mediation Program Manager shall, to the extent possible, utilize additional outreach methods to supplement mailed notices.

C. Prior to the scheduled Mediation Conference, the Mortgagor shall be assigned a City-approved loan counselor. If the Mortgagor is already working with a City-approved loan counselor, no assignment is necessary. However, such loan counselor must agree to work with the Mortgagor during the mediation process in accordance with the provisions of this article.

D. The Mortgagor and Mortgagee or its Mortgage Servicer shall cooperate in all respects with the Mediation Program Manager, providing all necessary financial and employment information. The Mortgagor shall complete any and all loan resolution proposals and applications as appropriate. The Mortgagor must provide evidence of current income. The Mortgagee's representative shall bring and make available the Mortgage Documents, as well as a detailed accounting of the outstanding balance, costs and fees.

E. If, after two attempts by the Mediation Program Manager to contact the Mortgagor by mail, the Mortgagor fails to respond to the Mediation Program Manager's request to appear for the Mediation Conference, or the Mortgagor fails to cooperate in any respect with the requirements outlined in this article, the requirements of this article will be deemed to be satisfied upon verification by the City-approved Mediation Program Manager that the required notice was sent. If these conditions are met, a Certificate of Mediation Completion shall be issued promptly, signed by authorized representatives of both the Mediation Program Manager and the City, and distributed to the Mortgagee or Mortgage Servicer by the City directly.

F. If it is determined, after a Good Faith Effort made by the Creditor/Mortgagee at the Mediation Conference with the Mortgagor, that the parties cannot come to an agreement to renegotiate the terms of the loan in an effort to avoid foreclosure, such Good Faith Effort on behalf of the Creditor/Mortgagee shall be deemed to satisfy the requirements of this article. A Certificate of Mediation Compliance certifying such good faith effort pursuant to this article, signed by both the Mediation Program Manager and the City shall be issued promptly and without delay by the Mediation Program Manager authorizing the Creditor/Mortgagee to proceed with its rights under Chapter 244 of the General Laws.

Section 8.30.090. Mediation registration fee.

The City of Lawrence is hereby authorized to approve and from time to time revise a reasonable and appropriate mediation registration fee to be charged to the parties for the services attendant to administering the Mediation Program established under this article. A Mortgagor's portion of the fee shall not exceed 15% of the total cost of the mediation. A Mortgagor's inability to pay for mediation shall not be a bar to participation in the mediation program. The administrative fees and mediation fees will be paid directly to the Mediation Program Manager.

Section 8.30.100. Violations and penalties.

A Mortgagee's failure to comply with any section of this article shall result in a fine of \$300 owed to the City of Lawrence, for each instance of a violation, to be charged to the Mortgagee in accordance with MGL c. 40, § 21.

A. Every calendar day of noncompliance with the sections of this article shall constitute a separate violation subject to the penalties described under this section, up until the end of the right-to-cure period.

B. Said fine or fines under this section shall be recovered by indictment or complaint pursuant to M.G.L. c. 40, § 21.

C. No fines pursuant to this article shall be charged to the borrower either directly or indirectly.

Section 8.30.110. Preventing Unnecessary Vacancies of Certain Foreclosed Residential Properties.

A. Post-Foreclosure Occupant Eviction. A Foreclosure Sale Purchaser shall not evict an Occupant except for just cause, unless a binding purchase and sale agreement has been executed for a bona fide third party to purchase the Residential Property from said Foreclosure Sale Purchaser.

B. Penalties. Any Foreclosure Sale Purchaser who evicts or attempts to evict an Occupant in violation of this article shall be punished by a fine of not less than three hundred dollars (\$300). Each eviction or attempted eviction done in violation of this article constitutes a separate offense.

C. Jurisdiction. The Lawrence District Court, Essex Superior Court and the Northeast Housing Court shall have jurisdiction over an action arising from this article and shall have jurisdiction in equity to restrain any such violation. No Occupant shall be evicted in violation of any provision of this article. It shall be a defense to eviction that the Foreclosure Sale Purchaser attempted to evict an occupant in violation of any provision of this article.

D. Conflict of Law. Any provision of federal law relating to rental units owned, operated or subsidized by the federal government which are inconsistent with or contrary to the provisions of this article shall supersede the provisions of this article. Where not inconsistent, the provisions of federal law shall apply in conjunction with the provisions of this article.

E. Exemption. This section shall not apply if the Foreclosure Sale Purchaser is a lender of Mortgage Loans headquartered in the Commonwealth, is not a subsidiary of an entity headquartered outside the Commonwealth, and has recorded five (5) or fewer Foreclosure Deeds for residential properties in the City in the prior calendar year.

Section 8.30.120. Indemnification.

The City of Lawrence shall indemnify, hold harmless and defend (including payment of reasonable attorney fees and costs) the Mediation Program Manager and its mediators, officers,

administrators, agents and employees, from any and all claims against the Mediation Program Manager and its Mediators, officers, administrators, agents and employees arising out of their service as Mediation Program Manager pursuant to the terms of this article, including, but not limited to, any challenges that may be made as to the legality of or implementation of this article. Excluded however are any claims against the Mediation Program Manager and its mediators, officers, administrators, agents and employees for their sole negligence, willful or wrongful act or omission, or an act or omission constituting gross negligence.

Section 8.30.130. Severability.

In the event any part of this article shall be held invalid, such invalidity shall not invalidate the whole article, but the remaining provisions of this article shall not be affected thereby.

Attest: William J. Maloney, City Clerk

ORD# 2014-29 -APPROVED: 9-16-14 EFFECTIVE DATE: 9-16-14
