

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

Be it ordained by the City Council of the City of Lawrence that the Revised Ordinances of the City of Lawrence are hereby further amended by **ADDING** the following new Chapter 8.30 to the Municipal Code (Mediation of Foreclosures of Owner-Occupied Residential Properties) to be placed in proper numerical order:

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

- 8.30.010. Purpose.
- 8.30.020. Definitions.
- 8.30.030. Mediation certificate required.
- 8.30.040. Establishment of mediation program.
- 8.30.050. Scope of mediation program.
- 8.30.060. Confidentiality in mediation.
- 8.30.070. Notice.
- 8.30.080. Administration of mediation program.
- 8.30.090. Mediation registration fee.
- 8.30.100. Violations and penalties.

**Section 8.30.010**

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:

**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.

**GOOD FAITH EFFORT**

An effort by each party upon being present or taking part in the mediation conference as required and defined by this article in an effort to negotiate and agree upon a commercially reasonable alternative to foreclosure as described in MGL c. 244, § 35A(c).

**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 not-for-profit organization with offices located in the City of Lawrence and 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 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**

The holder of a mortgage loan that is secured wholly or partially by a mortgage on residential property.

## **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.

## **PARTIES**

The homeowner/mortgagor and the creditor/mortgagee or their assigns or successors.

## **PROPERTY**

See "residential property" as defined in this section.

#### **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, 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 real 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 real 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 of foreclosure where applicable, 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. 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 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, the City shall obtain a copy of all notices filed pursuant to MGL c. 244 § 35A(g), (h), within 10 days of receipt by the Commissioner of the Division of Banks pursuant to MGL c. 244, § 35A(k), that relate to residential properties in the City of Lawrence. The receipt of said notice 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 as defined in MGL c. 244, § 35A(c). 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. The parties will be noticed under the mediation program by certified and first class mail.
- 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 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, note, all assignments, 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, 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; and if so, a certificate shall be issued immediately by the mediation program manager certifying that the creditor/mortgagee has satisfied the mediation requirements of this article.
- 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 certifying such good faith effort pursuant to this article shall be issued immediately 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 enact and from time to time revise by ordinance 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.

#### **Section 8.30.110. Violations and penalties.**

- A. 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.
- B. 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.
- C. Said fine or fines under this section shall be recovered by indictment or complaint pursuant to MGL c. 40, § 21.

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

Attest: William J. Maloney, City Clerk

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**ORD#: 2013-23        -APPROVED: 4-16-13 -EFFECTIVE DATE: 5-17-13**

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