

**Government of the District of Columbia
Office of the Chief Financial Officer**



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Vincent C. Gray
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer

DATE: April 30, 2009

SUBJECT: Fiscal Impact Statement – “Release of the Deed of Trust Emergency Amendment Act of 2009”

REFERENCE: Draft legislation – No bill number available

Conclusion

Funds are sufficient in the FY 2009 budget and proposed FY 2010 through FY 2013 budget and financial plan to implement the proposed legislation. The proposed legislation would amend the D.C. Official Code to clarify the procedures relating to the release of a deed of trust. The proposed legislation, if enacted, could prevent the District from revenue losses resulting from a statutory cut-off of its property liens.

Background

The proposed legislation would amend, on an emergency basis, D.C. Official Code §42-818.02, which establishes the procedures for the release of a deed of trust.¹ A deed of trust is a legal document conveying property to a trustee in order to secure the payment of a loan such as a mortgage or promissory note. The deed of trust provides the trustee the right to foreclose on a property if the borrower is in default.

The District is the trustee for a number of deeds that encumber various real estate properties. The District makes residential loans as part of three housing programs administered by the Department of Housing and Community Development (DHCD) – the Home Purchase Assistance Program (HPAP), the Development Finance Division (DFD), and the Tenant Purchase Program. Under the HPAP, the District provides second mortgages to individuals as part of its affordable

¹ These procedures were established under section 545b(b)1 of the Omnibus Regulatory Reform Act of 1998, effective April 29, 1998 (D.C. Law 12-86; D.C. Official Code §42-818.02).

housing initiative. Through DFD, the District provides loans to builders of affordable residential properties to subsidize private sector loans the builder has secured for residential development. Finally, the Tenant Purchase Program provides loans to tenants seeking to purchase properties sold by landlords.

Under current law, if the trustee does not release the lien on the property within a period of 12 years after the maturity date of the loan secured by the deed of trust, and notice of foreclosure against the property has not been filed,² then the loan shall be deemed to have been paid and satisfied.³ This means that if a property reaches the 12-year deadline, the property would convey to the borrower regardless of whether or not the loan has been paid and satisfied. The purpose of establishing a statutory cut-off of property liens is to provide incentives to private sector lenders to take steps to obtain payment or foreclose against real property based on their deed of trust.

Historically, DHCD has adopted a non-foreclosure policy, because these government programs are designed to assist lower-income residents. Therefore, the District has no means for preventing the release of its property liens secured by deeds of trust once the 12-year period has elapsed. DHCD does not know how many properties are near the applicable 12-year deadline; however, the agency is conducting research to determine the number of such properties. In order to clarify the intent of the current law and to protect the District from losses that could result due to the 12-year statutory cutoff, the proposed legislation seeks to amend DC Code §42-818.02 to:

- Clarify that a creditor, such as the District of Columbia, is not barred from all forms of recovery against a property owner after the 12-year period. For example, a creditor could file a lawsuit against a property owner, despite the lapse of a 12-year period, to recover unpaid financial obligations established in a deed of trust.⁴
- Make a debt secured by a promissory note or deed held by the District Government another exception that would prevent a deed of trust from being automatically deemed satisfied after 12 years.⁵
- Make the above-mentioned amendments retroactive to April 29, 1998, the effective date of the Omnibus Regulatory Reform Act of 1998.

Financial Plan Impact

Funds are sufficient in the FY 2009 budget and proposed FY 2010 through FY 2013 budget and financial plan to implement the proposed legislation. The proposed amendment would not require additional resources or staff to implement. Rather, the proposed legislation, if enacted, could prevent the District from revenue losses, resulting from a statutory cut-off of its property liens.

² D.C. Law 12-86 requires a notice of foreclosure with respect to a deed of trust to be recorded within 60 days before the expiration of the 12-year time period.

³ In addition to the 12-year period, Section 545(b)(1) states that if there is no determinable maturity date recorded in the deed of trust, then a deed of trust will be deemed satisfied if 35 years have elapsed and the lien has not been released by the trustee and a notice of foreclosure has not been filed against the property.

⁴ The proposed legislation would amend section 545b(b)(1)(2) of the D.C. Law 12-86.

⁵ Current law prevents a deed from being automatically deemed satisfied if a notice of foreclosure prior to the 12-year expiration date or other applicable date referred to in section 545b(b)(1).