

→§ 42-807. Limitations upon right of redemption in §§ 42-805 and 42-806.

Sections 42-805 and 42-806 or anything therein contained, shall not extend to any case where the person or persons, against whom the redemption is or shall be prayed, shall (by writing under his, her, or their hands, or the hand of his, her, or their attorney, agent, or solicitor, to be delivered before the money shall be brought into such court at law, to the attorney or solicitor for the other side) insist, either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums, than what appear on the face of the mortgage, or shall be admitted on the other side; nor to any case where the right of redemption to the mortgaged lands and premises in question in any cause or suit shall be controverted or questioned by or between different defendants in the same cause or suit; nor shall be any prejudice to any subsequent mortgagee or mortgagees, or subsequent encumbrancer.

→§ 42-810. Mortgagee may redeem prior mortgage; prior mortgage may not bar.

If it so happen there be more than 1 mortgage at the same time made, by any person or persons to any person or persons, of the same lands and tenements, the several late or under mortgagees, his, her, or their heirs, executors, administrators, or assigns, shall have power to redeem any former mortgage or mortgages, upon payment of the principal debt, interest, and costs of suit, to the prior mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns; anything therein contained to the contrary thereof in anywise notwithstanding.

→§ 42-812. Equity practice followed where answer sets up defense against foreclosure.

If matter of defense against the foreclosure of said mortgage or the enforcement of said deed of trust be set up in answer to said rule, the further proceedings shall be according to the practice in equity after answer filed.

→§ 42-815. Application to court to fix terms and determine notice of sale; notice under power of sale provision.

(a) If the length of notice and terms of sale are not prescribed by the mortgage or deed of trust, or be not left therein to the judgment or discretion of the mortgagee or trustee, any person interested in such sale may apply to the court, before such sale is advertised, to fix the terms of sale and determine what notice of sale shall be given.

(b) No foreclosure sale under a power of sale provision contained in any deed of trust, mortgage or other security instrument, may take place unless the holder of the note secured by such deed of trust, mortgage, or security instrument, or its agent, gives written notice, by certified mail return receipt requested, of said sale to the owner of the real property encumbered by said deed of trust,

mortgage or security instrument at his last known address, with a copy of said notice being sent to the Mayor of the District of Columbia, or his designated agent, at least 30 days in advance of the date of said sale. Said notice shall be in such format and contain such information as the Council of the District of Columbia shall by regulation prescribe. The 30-day period shall commence to run on the date of receipt of such notice by the Mayor. The Mayor or his agent shall give written acknowledgment to the holder of said note, or its agent, on the day that he receives such notice, that such notice has been received, indicating therein the date of receipt of such notice. The notice required by this subsection in regard to said mortgages and deeds of trust shall be in addition to the notice described by subsection (a) of this section.

➡§ 42-816. Sale of property--Deficiency judgments; limitations thereon; relief in suit to enforce vendor's lien.

In all cases of application to said court to foreclose any mortgage or deed of trust, the equity court shall have authority, instead of decreeing that the mortgagor be foreclosed and barred from redeeming the mortgaged property, to order and decree that said property be sold and the proceeds be brought into court to be applied to the payment of the debt secured by said mortgage; and if, upon a sale of the whole mortgaged property, the net proceeds shall be insufficient to pay the mortgage debt, the court may enter a decree in personam against the mortgagor or other party to the suit who is liable for the payment of the mortgage debt for the residue of said debt remaining unsatisfied after applying to said debt the proceeds of such sale; provided, that the complainant would be entitled to maintain an action at law or suit in equity for said residue; which decree shall have the same effect and be enforced by execution in the same manner as a judgment at law. And in suits to enforce a vendor's lien on real estate for unpaid purchase money similar relief may be given by a decree of sale and a decree in personam for the unsatisfied residue of the purchase money due.

➡§ 42-817. Sale of property--Amount creditor to pay if purchaser.

If a creditor, for the payment of whose debt property shall be sold under a deed of trust, shall become the purchaser at such sale, he shall be entitled to credit the amount of the purchase money against the debt, and shall be only required to pay to the trustee the excess of the purchase money over his debt, together with such additional amount as may be necessary to defray the expenses of the sale.

➡§ 42-818. Commission to mortgagee or trustee; rates; when advertised sale not held.

(a) Among the lawful expenses of a sale under a mortgage or deed of trust is to be allowed a commission on the proceeds of sale to the mortgagee or trustee. Where the mortgage or deed of

trust does not fix the rate of commission the mortgagee or trustee shall be allowed a commission of 5% on the first \$500 and 3% on the balance of the purchase money actually paid by the purchaser at any sale, and 1 /2% on the amount of the purchase money not paid into the hands of the mortgagee or trustee, but credited on the debt, when the creditor becomes a purchaser.

(b) When the property is lawfully advertised for sale under a mortgage or deed of trust, and the sale is prevented by payment of the debt or is suspended or postponed by arrangement between the parties interested, the trustee shall be entitled to a commission of 1% on the amount of the debt secured in addition to the expenses incurred by him, and he shall be entitled to such allowance as often as such advertisement shall be made necessary by the default of the debtor; provided, that if a sale shall actually take place under any such advertisement, he shall not be entitled to more than 1 such allowance in addition to his commission on the proceeds of an actual sale.

➔§ 42-818.02. Procedures for release of deed of trust.

(a) For purposes of this section, the term:

(1) "Ancillary security instrument" means an assignment of leases with respect to the real property described in a deed of trust, an assignment of rents from or arising out of the real property described in a deed of trust, a financing statement filed in the financing statement records in the Office of the Recorder of Deeds of the District of Columbia with respect to fixtures on real property described in a deed of trust, and any other document or instrument that assigns, or creates a lien on, an interest in the real property described in a deed of trust as security for a promissory note.

(2) "Deed of trust" means a mortgage or a deed of trust encumbering real property located in the District of Columbia as the same may be modified, amended, supplemented, or restated.

(3) "Land records" means the land records in the Office of the Recorder of Deeds of the District of Columbia.

(4) "Promissory note" means a promissory note or other written evidence of indebtedness or obligation secured by a deed of trust.

(b)(1) Except as otherwise provided in paragraph (2) of this subsection, if (i) a deed of trust is not released as a lien on the real property described therein within a period of 12 years after the maturity date of the obligation secured by the deed of trust, or (ii) no determinable maturity date is recited in the deed of trust and 35 years have elapsed since the date of recordation of the deed of trust among the land records (or, if the deed of trust has been modified or extended, the last recorded modification or extension), then the promissory note secured by the deed of trust shall be deemed conclusively to have been paid and satisfied. The deed of trust shall, without any action on the part of the owner or other person having an interest in the real property described in

the deed of trust, be deemed to have been automatically released as of the last day of the period referred to in clause (i) or (ii) of this paragraph, as the case may be, and the deed of trust shall no longer constitute a lien on, or be enforceable against, the real property described therein.

(2) Paragraph (1) of this subsection shall not apply if:

(A) A Notice of Foreclosure with respect to a deed of trust has been recorded among the land records within 60 days before the expiration of the applicable time period referred to in (i) or (ii) of paragraph (1) of this subsection, or (ii) as of the last day of the applicable time period referred to in clause (i) or (ii) of paragraph (1) of this subsection, a proceeding to enforce the lien of a deed of trust is pending in a court of competent jurisdiction.

(c) A deed of trust may be validly released as a lien on real property in the District of Columbia by any one of the following means:

(1)(A) A deed of trust securing a lost, misplaced or destroyed promissory note which has been fully paid and satisfied may be released as a lien on the real property described therein by recording an affidavit among the Land Records. The affidavit, which shall be executed by the holder of the lost, misplaced or destroyed promissory note, or by the trustee or trustees named in the original deed of trust or subsequently appointed by a recorded instrument of substitution, shall state that (i) the promissory note has been fully paid and satisfied, (ii) the original promissory note has been lost, misplaced, or destroyed and, if the affiant is the holder of the promissory note, neither the promissory note nor any interest therein has been transferred, assigned, or negotiated to any other person, (iii) the affiant has been unable to locate the promissory note despite a diligent search, and (iv) the affiant release the deed of trust identified by recording reference, as a lien on the real property described in the deed of trust.

(B) The affidavit shall fully identify the real property encumbered by, the parties to, the date of, and the recording reference for, the deed of trust being released. The recordation of the affidavit shall be effective to release the deed of trust as a lien on the real property described therein with the same effect as a release recorded pursuant to paragraph (3) of this subsection.

(2)(A) A deed of trust may be released as a lien on the real property described therein by recording the original promissory note, marked "paid" or "canceled" on its face by the holder, among the land records with an attached affidavit executed by the holder, or by an officer of the title insurance company or validly licensed title insurance agent which disbursed funds in payment of the promissory note, stating that the promissory note has been fully paid or satisfied and releasing the deed of trust as a lien on the real property described in the deed of trust.

(B) The affidavit shall fully identify the real property encumbered by, the parties to, the date of, and the recording reference for, the deed of trust being released. The recordation of the original promissory note with the required affidavit attached shall be effective to release the deed of trust as a lien on the real property with the same effect as a release recorded pursuant to paragraph (3) of this subsection.

(3) A deed of trust may be released as a lien on the real property described therein by recording a certificate of satisfaction executed by the beneficiary, mortgagee, assignee, or trustee fully identifying the real property encumbered by, the parties to, the date of, and the recording reference for, the deed of trust being released, and stating that the deed of trust is released as a lien on the real property described therein, or, if the deed of trust is being released as a lien on less than all of the real property described therein, describing the part of the real property then being released.

(d) A certificate of satisfaction shall comply with the requirements of subsection (c)(3) of this section, shall be acknowledged in the manner required for the acknowledgement of a deed, and shall be in the following form:

CERTIFICATION OF SATISFACTION

KNOW ALL BY THESE PRESENTS:

That (name, title), representing (beneficiary), does hereby certify and acknowledge, under penalties of perjury, that the promissory note or other evidence of indebtedness secured by that certain mortgage/deed of trust made by _____ to _____, mortgage/trustee(s), dated _____ and recorded _____ as Instrument No. ____ among the Land Records of the District of Columbia, which encumbers the real property described in Exhibit A attached hereto, has been fully paid and satisfied and that _____ was, at the time of satisfaction, the holder of the promissory note or other evidence of indebtedness and that the lien of the said mortgage/deed of trust is hereby released.

The property encumbered by said mortgage/deed of trust is described as follows:

WITNESS the hand and seal of the party making this certification this ____ day of _____, ____.

(ACKNOWLEDGMENT)

(e)(1) If a promissory note is paid or satisfied in full, the holder shall, within 30 days after receipt of such payment or within 30 days after such satisfaction, execute, acknowledge, and deliver, or cause to be executed, acknowledged and delivered, to the person making such payment or

causing such promissory note to be satisfied, one or more of the documents, instruments and affidavits, in one of the forms permitted by subsection (c) of this section, sufficient to release the deed of trust securing such promissory note as a lien against the real property described in the deed of trust.

(2) If a promissory note is paid or satisfied in part, and if by the terms of the promissory note, the deed of trust securing the promissory note or a separate agreement between the parties, the person making such partial payment or causing such partial satisfaction to be made is entitled to a release of a part of the real property encumbered by the lien of the deed of trust, the holder of the promissory note shall comply with the provisions of subsection (c)(3) of this section in the same manner as if the promissory note were paid or satisfied in full, except that the release shall apply only to the part of the real property encumbered by the lien of the deed of trust which the holder is obligated, by the terms of the promissory note, the deed of trust or the separate agreement, to release on account of such partial payment or satisfaction.

(3) If a holder of a promissory note secured by a deed of trust fails to execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, the documents, instruments, or affidavits required to release the deed of trust, in whole or in part, within the time, and in the manner, required by paragraph (1) or (2) of this subsection, and if the holder's failure continues for more than 30 days after the holder receives a written request therefor from the person entitled to the release or such person's agent, then holder shall pay to the person entitled to the release a penalty in the amount of \$50 per day, shall be liable to such person for all actual and consequential damages caused by the holder's failure timely to deliver or record the full or partial release, and shall pay or reimburse such person for all costs and expenses, including reasonable attorneys fees and disbursements, relating to or arising out of the enforcement of such person's rights under this section. The penalty of \$50 per day shall be payable for the period beginning on and including the 31st day after the holder receives a written request for the release to, but not including, the day on which the holder delivers the executed and acknowledged documents, instruments or affidavits required to release the deed of trust.

(4) For purposes of this subsection, (i) a payment in the form of an electronic transfer of immediately available funds to an account in a commercial bank, a savings bank, a savings and loan association, a credit union or a similar financial institution shall be deemed to be made when the financial institution confirms receipt of the funds to the owners of the account, (ii) a payment in the form of a check issued or certified by a national or state bank shall be deemed to be made upon receipt of the check, and (iii) payment in the form of a check that is not issued or certified by a national or state bank shall be deemed to be made on the first day on which the holder receives the proceeds of collection of such check in immediately available funds.

(f) If a deed of trust is released, or deemed released, as a lien on all of the real property described therein, the release of the deed of trust shall be deemed automatically to release any ancillary security instrument that secures the same promissory note secured by the deed of trust. This provision shall not apply if the document recorded among the land records expressly states that the release of the deed of trust shall not release the ancillary security instrument.

FORM OF RELEASE AFFIDAVIT FOR LOST, MISPLACED, OR DESTROYED
PROMISSORY NOTE
PER § 45-721(C)(1):

KNOW ALL MEN BY THESE PRESENTS:

THAT I, the undersigned, hereby certify under penalties of perjury that:

1. I was the last known holder of a certain promissory note (or the trustees named in the original deed of trust or substitute trustees appointed by an instrument of substitution recorded in the land records);

2. Despite diligent search, I have been unable to locate the original promissory note which has been lost, misplaced or destroyed, (if the holder add: and neither the promissory note nor any interest therein has been transferred, assigned or negotiated to any other person);

3. The promissory note has been fully paid and satisfied; and

4. The deed of trust dated (date) securing said promissory note granted by (grantor) in favor of (trustee(s)) securing (grantee) and recorded in the land records on (date) in Liber ____, at Folio ____, as instrument no. ____ and constituting a lien upon that piece or parcel of land located in the District of Columbia and known as:

LOT ____ in SQUARE ____, (additional legal description, ex. subdivision) as per plat recorded in Liber ____ at Folio ____ among the land records is hereby RELEASED.

WITNESS the hand and seal of the undersigned [noteholder/trustee/substitute trustee] this ____ day of _____, ____.

STATE/DISTRICT of _____)

) ss:

COUNTY of _____)

I, the undersigned, a Notary Public in and for the aforesaid do hereby certify that _____, party to and who is personally well known to me as the person who executed the foregoing Release Affidavit dated the ___ day of _____, ___, personally appeared before me in said jurisdiction and acknowledged the same to be his/her/its act and deed.

Given under my hand and seal, this ___ day of _____, and:

My commission expires:

Notary Public

FORM OF RELEASE AFFIDAVIT

TO ACCOMPANY PROMISSORY NOTE § 45-721(2):

KNOW ALL MEN BY THESE PRESENTS:

THAT I, the undersigned, hereby certify under penalties of perjury that:

1. I am [the last known holder of the attached promissory note marked ["Paid" or "canceled"] or [an officer of the undersigned title insurance company] or [a validly licensed title insurance agent] which disbursed funds in payment of the promissory note;

2. the attached promissory note has been fully paid, canceled or satisfied; and

3. the deed of trust dated (date) securing said promissory note granted by (grantor) in favor of (trustees) securing (grantee) and recorded in the Land Records on (date) in Liber ___, at Folio ___, as instrument no. ___ and constituting a lien upon that piece or parcel of land located in the

District of Columbia and known as:

LOT ___ in SQUARE ___, (additional legal description, ex. subdivision) as per plat recorded in Liber ... at Folio ... among the Land Records is hereby RELEASED.

WITNESS the hand and seal of the undersigned [noteholder/trustee/substitute trustee] this ___ day of _____, ____.

STATE/DISTRICT of _____)

) ss.

COUNTY of _____)

I, the undersigned, a Notary Public in and for the aforesaid do hereby certify that _____ party to and who is personally well known to me as the person who executed the foregoing Release Affidavit dated the ___ day of _____, ___, personally appeared before me in said jurisdiction and acknowledged the same to be his/her/its act and deed.

Given under my hand and seal, this ___ day of _____, and:

My commission expires:

Notary Public.