

2021 -- S 0424

=====
LC001316
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO PROPERTY -- MORTGAGE FORECLOSURE AND SALE

Introduced By: Senators Quezada, Mack, and Bell

Date Introduced: February 25, 2021

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 34-27-3.2 of the General Laws in Chapter 34-27 entitled "Mortgage
2 Foreclosure and Sale" is hereby amended to read as follows:

3 **34-27-3.2. Mediation conference.**

4 (a) Statement of policy. It is hereby declared that residential mortgage foreclosure actions,
5 caused in part by unemployment and underemployment, have negatively impacted a substantial
6 number of homeowners throughout the state, creating a situation that endangers the economic
7 stability of many of the citizens of this state as the increasing numbers of foreclosures lead to
8 increases in unoccupied and unattended buildings and the unwanted displacement of homeowners
9 and tenants who desire to live and work within the state.

10 (b) Purpose. The statutory framework for foreclosure proceedings is prescribed under the
11 provisions of chapter 27 of this title. As the need for a mortgage mediation process has evolved, it
12 is important for the state to develop a standardized, statewide process for foreclosure mediation
13 rather than a process based on local ordinances that may vary from municipality to municipality.
14 By providing a uniform standard for an early HUD-approved, independent counseling process in
15 owner-occupied principal residence mortgage foreclosure cases, the chances of achieving a positive
16 outcome for homeowners and lenders will be enhanced.

17 (c) Definitions. The following definitions apply in the interpretations of the provisions of
18 this section unless the context requires another meaning:

19 (1) "Default" means the failure of the mortgagor to make a timely payment of an amount

1 due under the terms of the mortgage contract, which failure has not been subsequently cured.

2 (2) "Department" means the department of business regulation.

3 (3) "Good faith" means that the mortgagor and mortgagee deal honestly and fairly with the
4 mediation coordinator with an intent to determine whether an alternative to foreclosure is
5 economically feasible for the mortgagor and mortgagee, as evidenced by some or all of the
6 following factors:

7 (i) Mortgagee provided notice as required by this section;

8 (ii) Mortgagee designated an agent to participate in the mediation conference on its behalf
9 and with the authority to agree to a work-out agreement on its behalf;

10 (iii) Mortgagee made reasonable efforts to respond in a timely manner to requests for
11 information from the mediation coordinator, mortgagor, or counselor assisting the mortgagor;

12 (iv) Mortgagee declined to accept the mortgagor's work-out proposal, if any, and the
13 mortgagee provided a detailed statement, in writing, of its reasons for rejecting the proposal;

14 (v) Where a mortgagee declined to accept the mortgagor's work-out proposal, the
15 mortgagee offered, in writing, to enter into an alternative work-out/disposition resolution proposal
16 that would result in net financial benefit to the mortgagor as compared to the terms of the mortgage.

17 (4) "HUD" means the United States Department of Housing and Urban Development and
18 any successor to such department.

19 (5) "Mediation conference" means a conference involving the mortgagee and mortgagor,
20 coordinated and facilitated by a mediation coordinator whose purpose is to determine whether an
21 alternative to foreclosure is economically feasible to both the mortgagee and the mortgagor, and if
22 it is determined that an alternative to foreclosure is economically feasible, to facilitate a loan
23 workout or other solution in an effort to avoid foreclosure.

24 (6) "Mediation coordinator" means a person employed by a Rhode Island-based, HUD-
25 approved counseling agency designated to serve as the unbiased, impartial, and independent
26 coordinator and facilitator of the mediation conference, with no authority to impose a solution or
27 otherwise act as a consumer advocate, provided that such person possesses the experience and
28 qualifications established by the department.

29 (7) "Mortgage" means an individual consumer first-lien mortgage on any owner-occupied,
30 one (1)- to four (4)- unit residential property that serves as the mortgagor's primary residence.

31 (8) "Mortgagee" means the holder of a mortgage, or its agent or employee, including a
32 mortgage servicer acting on behalf of a mortgagee.

33 (9) "Mortgagor" means the person who has signed a mortgage in order to secure a debt or
34 other duty, or the heir or devisee of such person provided that:

1 (i) The heir or devisee occupies the property as his or her primary residence; and

2 (ii) The heir or devisee has record title to the property, or a representative of the estate of
3 the mortgagor has been appointed with authority to participate in a mediation conference.

4 (d) The mortgagee shall, prior to initiation of foreclosure of real estate pursuant to § 34-
5 27-4(b), provide to the mortgagor written notice at the address of the real estate and, if different, at
6 the address designated by the mortgagor by written notice to the mortgagee as the mortgagor's
7 address for receipt of notices, that the mortgagee may not foreclose on the mortgaged property
8 without first participating in a mediation conference. Notice addressed and delivered as provided
9 in this section shall be effective with respect to the mortgagor and any heir or devisee of the
10 mortgagor.

11 (1) If the mortgagee fails to mail the notice required by this subsection to the mortgagor
12 within one hundred twenty (120) days after the date of default, it shall pay a penalty at the rate of
13 one thousand (\$1,000) per month for each month or part thereof, with the first month commencing
14 on the one hundred twenty-first (121st) day after the date of default and a new month commencing
15 on the same day (or if there is no such day, then on the last day) of each succeeding calendar month
16 until the mortgagee sends the mortgagor written notice as required by this section.

17 Notwithstanding the foregoing, any penalties assessed under this subsection for any failure
18 of any mortgagee to provide notice as provided herein during the period from September 13, 2013,
19 through the effective date of this section shall not exceed the total amount of one hundred twenty-
20 five thousand dollars (\$125,000) for such mortgagee.

21 (2) Penalties accruing pursuant to subsection (d)(1) shall be paid to the mediation
22 coordinator prior to the completion of the mediation process. All penalties accrued under this
23 section shall be transferred to the state within one month of receipt by the mediation coordinator
24 and deposited to the restricted-receipt account within the general fund established by § 42-128-2(3)
25 and used for the purposes set forth therein.

26 (3) Issuance by the mediation coordinator of a certificate authorizing the mortgagee to
27 proceed to foreclosure, or otherwise certifying the mortgagee's good-faith effort to comply with the
28 provisions of this section, shall constitute conclusive evidence that, to the extent that any penalty
29 may have accrued pursuant to subsection (d)(1), the penalty has been paid in full by the mortgagee.

30 (4) Notwithstanding any other provisions of this subsection, a mortgagee shall not accrue
31 any penalty if the notice required by this subsection is mailed to the borrower:

32 (i) Within sixty (60) days after the date upon which the loan is released from the protection
33 of the automatic stay in a bankruptcy proceeding, or any similar injunctive order issued by a state
34 or federal court, or within sixty (60) days after a loan is no longer afforded protection under the

1 Servicemembers Civil Relief Act (50 U.S.C. § 3901 et seq.) or the provisions of § 34-27-4(d), or
2 within one hundred twenty (120) days of the date on which the mortgagor initially failed to comply
3 with the terms of an eligible workout agreement, as hereinafter defined; and

4 (ii) The mortgagee otherwise complies with the requirements of subsection (d); provided,
5 however, that if the mortgagee fails to mail the notice required by subsection (d) to the mortgagor
6 within the time frame set forth in subsection (d)(4)(i), the mortgagee shall pay a penalty at the rate
7 of one thousand dollars (\$1,000) per month for each month, or part thereof, with the first month
8 commencing on the thirty-first (31st) day after the date upon which the loan is released from the
9 protection of the automatic stay in a bankruptcy proceeding or any similar injunctive order issued
10 by a state or federal court and a new month commencing on the same day (or if there is no such
11 day, then on the last day) of each succeeding calendar month until the mortgagee sends the
12 mortgagor written notice as required by this section. Notwithstanding the foregoing, any penalties
13 assessed under this subsection for any failure of any mortgagee to provide notice as provided herein
14 during the period from September 13, 2013, through the effective date of this section shall not
15 exceed the total amount of one hundred twenty-five thousand dollars (\$125,000) for such
16 mortgagee.

17 (5) Notwithstanding any other provisions of this section, a mortgagee may initiate a judicial
18 foreclosure in accordance with § 34-27-1.

19 (e) A form of written notice meeting the requirements of this section shall be promulgated
20 by the department for use by mortgagees at least thirty (30) days prior to the effective date of this
21 section. The written notice required by this section shall be in English, Portuguese, and Spanish
22 and may be combined with any other notice required under this chapter or pursuant to state or
23 federal law.

24 (f) The mediation conference shall take place in person, or over the phone, at a time and
25 place deemed mutually convenient for the parties by an individual employed by a HUD-approved,
26 independent counseling agency selected by the mortgagee to serve as a mediation coordinator, but
27 not later than sixty (60) days following the mailing of the notice. The mortgagor shall cooperate in
28 all respects with the mediation coordinator including, but not limited to, providing all necessary
29 financial and employment information and completing any and all loan resolution proposals and
30 applications deemed appropriate by the mediation coordinator. A mediation conference between
31 the mortgagor and mortgagee conducted by a mediation coordinator shall be provided at no cost to
32 the mortgagor. The HUD-approved counseling agency shall be compensated by the mortgagee for
33 mediation conferences that take place at a rate not to exceed five hundred dollars (\$500) per
34 mediation. The HUD-approved agency shall be entitled to a filing fee not to exceed one hundred

1 dollars (\$100) per mediation engagement, provided that fifty dollars (\$50.00) of the filing fee shall
2 be forwarded to Rhode Island Legal Services.

3 (g) If, after two (2) attempts by the mediation coordinator to contact the mortgagor, the
4 mortgagor fails to respond to the mediation coordinator's request to appear at a mediation
5 conference, or the mortgagor fails to cooperate in any respect with the requirements of this section,
6 the requirements of the section shall be deemed satisfied upon verification by the mediation
7 coordinator that the required notice was sent and any penalties accrued pursuant to subsection (d)(1)
8 and any payments owed pursuant to subsection (f) have been paid. Upon verification, a certificate
9 will be issued immediately by the mediation coordinator authorizing the mortgagee to proceed with
10 the foreclosure action, including recording the deed. Such certificate shall be valid until the earlier
11 of:

- 12 (1) The curing of the default condition; or
- 13 (2) The foreclosure of the mortgagor's right of redemption.

14 The certificate shall be recorded along with the foreclosure deed. A form of certificate
15 meeting the requirements of this section shall be promulgated by the department for use by
16 mortgagees at least thirty (30) days prior to the effective date of this section.

17 (h) If the mediation coordinator determines that after a good-faith effort made by the
18 mortgagee at the mediation conference, the parties cannot come to an agreement to renegotiate the
19 terms of the loan in an effort to avoid foreclosure, such good-faith effort by the mortgagee shall be
20 deemed to satisfy the requirements of this section. A certificate certifying such good-faith effort
21 will be promptly issued by the mediation coordinator authorizing the mortgagee to proceed with
22 the foreclosure action and recording of the foreclosure deed; provided, however, that the mediation
23 coordinator shall not be required to issue such a certificate until any penalties accrued pursuant to
24 subsections (d)(1) and (d)(4)(ii), and any payments owed pursuant to subsection (f), have been paid.
25 Such certification shall be valid until the earlier of:

- 26 (1) The curing of the default condition; or
- 27 (2) The foreclosure of the mortgagor's equity of redemption.

28 The certificate shall be recorded along with the foreclosure deed. A form of certificate
29 meeting the requirements of this section shall be promulgated by the department for use by
30 mortgagees at least thirty (30) days prior to the effective date of this section.

31 (i) If the mortgagee and mortgagor are able to reach agreement to renegotiate the terms of
32 the loan to avoid foreclosure, the agreement shall be reduced to writing and executed by the
33 mortgagor and mortgagee. If the mortgagee and mortgagor reach agreement after the notice of
34 mediation conference is sent to the mortgagor, but without the assistance of the mediation

1 coordinator, the mortgagee shall provide a copy of the written agreement to the mediation
2 coordinator. Upon receipt of a written agreement between the mortgagee and mortgagor, the
3 mediation coordinator shall issue a certificate of eligible workout agreement if the workout
4 agreement would result in a net financial benefit to the mortgagor as compared to the terms of the
5 mortgage ("Certificate of Eligible Workout Agreement"). For purposes of this subsection, evidence
6 of an agreement shall include, but not be limited to, evidence of agreement by both mortgagee and
7 mortgagor to the terms of a short sale or a deed in lieu of foreclosure, regardless of whether said
8 short sale or deed in lieu of foreclosure is subsequently completed.

9 (j) Notwithstanding any other provisions of this section, where a mortgagor and mortgagee
10 have entered into a written agreement and the mediation coordinator has issued a certificate of
11 eligible workout agreement as provided in subsection (i), if the mortgagor fails to fulfill his or her
12 obligations under the eligible workout agreement, the provisions of this section shall not apply to
13 any foreclosure initiated under this chapter within twelve (12) months following the date of the
14 eligible workout agreement. In such case, the mortgagee shall include in the foreclosure deed an
15 affidavit establishing its right to proceed under this section.

16 (k) This section shall apply only to foreclosure of mortgages on owner-occupied,
17 residential real property with no more than four (4) dwelling units that is the primary dwelling of
18 the mortgagor and not to mortgages secured by other real property.

19 (l) Notwithstanding any other provisions of this section, any locally based mortgagees shall
20 be deemed to be in compliance with the requirements of this section if:

21 (1) The mortgagee is headquartered in Rhode Island; or

22 (2) The mortgagee maintains a physical office, or offices, exclusively in Rhode Island from
23 which office, or offices, it carries out full-service mortgage operations, including the acceptance
24 and processing of mortgage payments and the provision of local customer service and loss
25 mitigation and where Rhode Island staff have the authority to approve loan restructuring and other
26 loss mitigation strategies; and

27 (3) The deed offered by a mortgagee to be filed with the city or town recorder of deeds as
28 a result of a mortgage foreclosure action under power of sale contained a certification that the
29 provisions of this section have been satisfied.

30 (m) No deed offered by a mortgagee as a result of a mortgage foreclosure action under
31 power of sale shall be submitted to a city or town recorder of deeds for recording in the land
32 evidence records of the city or town until and unless the requirements of this section are met. Failure
33 of the mortgagee to comply with the requirements of this section shall render the foreclosure
34 voidable, without limitation of the right of the mortgagee thereafter to re-exercise its power of sale

1 or other means of foreclosure upon compliance with this section. The rights of the mortgagor to
2 any redress afforded under the law are not abridged by this section.

3 (n) Any existing municipal ordinance or future ordinance that requires a conciliation or
4 mediation process as a precondition to the recordation of a foreclosure deed shall comply with the
5 provisions set forth herein and any provisions of said ordinances that do not comply with the
6 provisions set forth herein shall be determined to be unenforceable.

7 (o) The provisions of this section shall not apply if:

8 (1) The mortgage is a reverse mortgage as described in chapter 25.1 of this title; or

9 (2) The date of default under the mortgage is on or before May 16, 2013.

10 (p) Limitations on actions. Any person who claims that a foreclosure is not valid due to the
11 mortgagee's failure to comply with the terms of this section shall have one year from the date that
12 the first notice of foreclosure was published to file a complaint in the superior court for the county
13 in which the property is located and shall also file in the records of land evidence in the city or town
14 where the land subject to the mortgage is located a notice of lis pendens, the complaint to be filed
15 on the same day as the notice of lis pendens or within seven (7) days thereafter. Failure to file a
16 complaint, record the notice of lis pendens, and serve the mortgagee within the one-year period
17 shall preclude said mortgagor, or any other person claiming an interest through a mortgagor, from
18 subsequently challenging the validity of the foreclosure. Issuance by the mediation coordinator of
19 a certificate authorizing the mortgagee to proceed to foreclosure, or otherwise certifying the
20 mortgagee's good-faith effort to comply with the provisions of this section, shall constitute a
21 rebuttable presumption that the notice requirements of subsection (d) have been met in all respects.

22 SECTION 2. This act shall take effect upon passage.

=====
LC001316
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PROPERTY -- MORTGAGE FORECLOSURE AND SALE

1 This act would provide that fifty dollars (\$50.00) of the filing fee paid to the HUD-
2 approved agency for the mediation conference involving the mortgagee and mortgagor, shall be
3 paid to the Rhode Island Legal Services.

4 This act would take effect upon passage.

=====
LC001316
=====