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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO PROPERTY - FORM AND EFFECT OF CONVEYANCES

Introduced By: Senators Felag, Walaska, Pichardo, Lynch, and Tassoni

Date Introduced: February 16, 2012

Referred To: Senate Special Legislation and Veterans Affairs

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 34-27-4 of the General Laws in Chapter 34-27 entitled "Mortgage  
2 Foreclosure and Sale" is hereby amended to read as follows:  
3           **34-27-4. ~~Publication of notice under power of sale~~ Publication of notice under power**  
4 **of sale and rights of active military servicemembers.** -- (a) Whenever any real estate shall be  
5 sold under any power of sale mortgage executed subsequent to May 4, 1911, and the mortgage  
6 shall provide for the giving of notice of the sale by publication in some public newspaper at least  
7 once a week for three (3) successive weeks before the sale, the first publication of the notice shall  
8 be at least twenty-one (21) days before the day of sale, including the day of the first publication in  
9 the computation, and the third publication of the notice shall be no fewer than seven (7) days  
10 before the original date of sale listed in the advertisement, including the day of the third  
11 publication in the computation, and no more than fourteen (14) days before the original date of  
12 sale listed in the advertisement. The sale may take place no more than fourteen (14) days from the  
13 date on which the third successive notice is published, excluding the day of the third publication  
14 in the computation. Provided, however, that if the sale is adjourned as provided in Rhode Island  
15 general laws section 34-11-22, and the adjourned sale is held during the same calendar week as  
16 the originally scheduled day of sale, no additional advertising is required. Otherwise, publication  
17 of the notice of the adjourned sale, together with a notice of the adjournment or adjournments,  
18 shall be continued at least once each week commencing with the calendar week following the  
19 originally scheduled day of sale; the sale, as so adjourned, shall take place during the same

1 calendar week in which the last notice of the adjourned sale is published, at least one day after the  
2 date on which the last notice is published.

3 (b) Provided, however, that no notice shall be valid or effective unless the mortgagor has  
4 been mailed written notice of the time and place of sale by certified mail return receipt requested  
5 at the address of the real estate and, if different, at the mortgagor's address listed with the tax  
6 assessor's office of the city or town where the real estate is located or any other address  
7 mortgagor designates by written notice to mortgagee at his, her, or its last known address, at least  
8 twenty (20) days for mortgagors other than individual consumer mortgagors, and at least thirty  
9 (30) days for individual consumer mortgagors, days prior to the first publication, including the  
10 day of mailing in the computation. The mortgagee shall include in the foreclosure deed an  
11 affidavit of compliance with this provision.

12 (c) Provided further, that the notice mailed to the mortgagor in accordance with  
13 subsection (b) above shall also contain a copy of subsection (d) below (printed in not less than 12  
14 point type) headed by the following notice (printed in not less than 14 point type): "A  
15 servicemember on active duty or deployment or who has recently ceased such duty or deployment  
16 has certain rights under subsection 34-27-4(d) of the Rhode Island general laws set out below. To  
17 protect your rights if you are such a servicemember, you should give written notice to the servicer  
18 of the obligation or the attorney conducting the foreclosure, prior to the sale, that you are a  
19 servicemember on active duty or deployment or who has recently ceased such duty or  
20 deployment. This notice may be given on your behalf by your authorized representative. If you  
21 have any questions about this notice, you should consult with an attorney." The mortgagee shall  
22 include in the foreclosure deed an affidavit of compliance with this provision.

23 (d) Foreclosure sales affecting servicemembers.-

24 (1) The following definitions shall apply to this subsection and to subsection (c):

25 (i) "Servicemember" means a member of the army, navy, air force, marine corps, or coast  
26 guard and members of the national guard or reserves called to active duty.

27 (ii) "Active duty" has the same meaning as the term is defined in 10 U.S.C. sections  
28 12301 through 12304. In the case of a member of the national guard, or reserves "active duty"  
29 means and includes service under a call to active service authorized by the president or the  
30 secretary of defense for a period of time of more than thirty (30) consecutive days under 32  
31 U.S.C. section 502(f), for the purposes of responding to a national emergency declared by the  
32 president and supported by federal funds.

33 (2) This subsection applies only to an obligation on real and related personal property  
34 owned by a service member that:

1           (i) Originated before the period of the servicemember's military service or in the case of a  
2 member of the national guard or reserves originated before being called into active duty and for  
3 which the servicemember is still obligated; and

4           (ii) Is secured by a mortgage or other security in the nature of a mortgage.

5           (3) Stay of right to foreclose by mortgagee. – Upon receipt of written notice from the  
6 mortgagor or mortgagor's authorized representative that the mortgagor is participating in active  
7 duty or deployment or that the notice as provided in subsection (c) was received within nine (9)  
8 months of completion of active duty or deployment, the mortgagee shall be barred from  
9 proceeding with the execution of sale of the property as defined in the notice until such nine (9)  
10 month period has lapsed or until the mortgagee obtains court approval in accordance with  
11 subdivision (d)(5) below.

12           (4) Stay of proceedings and adjustment of obligation. – In the event a mortgagee  
13 proceeds with foreclosure of the property during, or within nine (9) months after a  
14 servicemember's period of active duty or deployment notwithstanding receipt of notice  
15 contemplated by subdivision (d)(3) above, the servicemember or his or her authorized  
16 representative may file a petition against the mortgagee seeking a stay of such foreclosure, after a  
17 hearing on such petition, and on its own motion, the court may:

18           (i) Stay the proceedings for a period of time as justice and equity require; or

19           (ii) Adjust the obligation to preserve the interests of all parties when the servicemember's  
20 ability to comply with his or her obligation is materially affected by his or her military service.

21           (5) Sale or foreclosure.- A sale, foreclosure or seizure of property for a breach of an  
22 obligation of a servicemember who is entitled to the benefits under subsection (d) and who  
23 provided the mortgagee with written notice permitted under subdivision (d)(3) shall not be valid  
24 if made during, or within nine (9) months after, the period of the servicemember's military service  
25 except:

26           (i) Upon a court order granted before such sale, foreclosure or seizure after hearing on a  
27 petition filed by the mortgagee against such servicemember; or

28           (ii) If made pursuant to an agreement of all parties.

29           (6) Penalties.- A mortgagee who knowingly makes or causes to be made a sale,  
30 foreclosure or seizure of property that is prohibited by subsection (d)(3) shall be fined the sum of  
31 one thousand dollars (\$1,000), or imprisoned for not more than one year, or both. The remedies  
32 and rights provided hereunder are in addition to and do not preclude any remedy for wrongful  
33 conversion otherwise available under law to the person claiming relief under this section,  
34 including consequential and punitive damages.

1           (7) Any petition hereunder shall be commenced by action filed in the superior court for  
2 the county in which the property subject to the mortgage or other security in the nature of a  
3 mortgage is situated. Any hearing on such petition shall be conducted on an expedited basis  
4 following such notice and/or discovery as the court deems proper.

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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RELATING TO PROPERTY - FORM AND EFFECT OF CONVEYANCES

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- 1           This act would stay or prohibit the foreclosure on property owned by persons in the
- 2   military under certain circumstances.
- 3           This act would take effect upon passage.

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