

2014 -- H 7449 SUBSTITUTE A

=====
LC004056/SUB A
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO PROPERTY - LANDLORD AND TENANT ACT

Introduced By: Representatives Edwards, Williams, O'Grady, Slater, and Almeida

Date Introduced: February 12, 2014

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 34-18-20 and 34-18-23 of the General Laws in Chapter 34-18
2 entitled "Residential Landlord and Tenant Act" are hereby amended to read as follows:

3 **34-18-20. Disclosure.** -- (a) A landlord or any person authorized to enter into a rental
4 agreement on his or her behalf shall disclose to the tenant in writing, at or before the
5 commencement of the tenancy, the name, address and number of:

6 (1) The person authorized to manage the premises; and

7 (2) An owner of the premises or a person authorized to act for and on behalf of the
8 owner for the purpose of service of process and receiving and receipting for notices and demands.

9 (b) The information required to be furnished by this section shall be kept current. This
10 section extends to and is enforceable against any successor landlord, owner, or manager.

11 (c) A person who fails to comply with subsection (a) of this section becomes an agent of
12 each person who is a landlord for:

13 (1) Service of process and receiving and receipting for notices and demands; and

14 (2) Performing the obligations of the landlord under this chapter and under the rental
15 agreement and expending or making available for the purpose of all rent collected from the
16 premises.

17 (d) A landlord who becomes delinquent on a mortgage securing real estate upon which
18 the dwelling unit is located for a period of one hundred twenty (120) days shall notify the tenant
19 that the property may be subject to foreclosure; and until the foreclosure occurs the tenant must

1 [continue to pay rent to the landlord as provided under the rental agreement.](#)

2 **34-18-23. Limitation of liability upon sale or change of management.** -- (a) (1) A
3 landlord who conveys premises that include a dwelling unit subject to a rental agreement in a
4 good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this
5 chapter as to events occurring after written notice to the tenant of the conveyance. In no event
6 may the relief from liability predate the conveyance itself.

7 (2) Written notice, for purposes of this section, must include the name(s), address, and
8 telephone number of the person or persons purchasing the property and assuming liability. To be
9 effective, the written notice must also certify compliance with ~~section~~ [§45-24.3-17](#) ~~which~~ [that](#)
10 prohibits sale or lease of property until any outstanding housing code violations have been
11 corrected or the seller or lessor has provided to the buyer or lessee, as well as to the enforcing
12 officer, all notices regarding violations; as required by the statute.

13 (b) A manager of premises that include a dwelling unit is relieved of liability under the
14 rental agreement and this chapter as to events occurring after written notice to the tenant of the
15 termination of his or her management. The written notice must include the name(s), address, and
16 telephone number of the person or persons assuming management and/or the person or persons
17 within the state exercising ownership or responsibility over the property.

18 (c) Nothing in this section shall be construed to affect the tenant's rights and duties under
19 an existing rental agreement, and the purchaser of property [or any immediate successor in interest](#)
20 [to a mortgagor, other than a third-party, bona fide purchaser, of a premises containing four \(4\) or](#)
21 [fewer dwelling units](#) takes title subject to the same rights and responsibilities toward the tenant
22 ~~which~~ [that](#) the seller [or mortgagor](#) had.

23 SECTION 2. Chapter 34-18 of the General Laws entitled "Residential Landlord and
24 Tenant Act" is hereby amended by adding thereto the following sections:

25 **34-18-38.1. Definitions for purpose of the eviction of tenants in residential foreclosed**
26 **properties.** -- [As used in § 34-18-38.2, the following words shall, unless the context clearly](#)
27 [requires otherwise, have the following meanings:](#)

28 [\(1\) "Bona fide lease" or "bona fide tenancy" means a lease or tenancy shall not be](#)
29 [considered bona fide unless:](#)

30 [\(i\) The mortgagor, or the child, spouse, or parent of the mortgagor under the contract, is](#)
31 [not the tenant; and](#)

32 [\(ii\) The lease or tenancy was the result of an arms-length transaction; and](#)

33 [\(iii\) The lease or tenancy requires the receipt of rent that is not substantially less than fair](#)
34 [market rent for the property, or the dwelling unit's rent is reduced or subsidized due to a federal,](#)

1 state or local subsidy.

2 (2) "Entity" means a business organization, or any other kind of organization including,
3 without limitation, a corporation, partnership, trust, limited liability corporation, limited liability
4 partnership, joint venture, sole proprietorship, or any other category of organization, and any
5 employee, agent, servant, or other representative of such entity.

6 (3) "Eviction" means an action, without limitation, by a foreclosing owner of a housing
7 accommodation that is intended to actually or constructively evict a tenant or otherwise compel a
8 tenant to vacate such housing accommodation.

9 (4) "Foreclosing owner" means an entity that holds title in any capacity, directly or
10 indirectly, without limitation, whether in its own name, as trustee or as beneficiary, to a housing
11 accommodation that has been foreclosed upon and either:

12 (i) Held or owned a mortgage or other security interest in the housing accommodation at
13 any point prior to the foreclosure of the housing accommodation or is the subsidiary, parent,
14 trustee, or agent thereof; or

15 (ii) Is an institutional mortgagee that acquires or holds title to the housing
16 accommodation within three (3) years of the filing of a foreclosure deed on the housing
17 accommodation; or

18 (iii) Is the federal national mortgage association or the federal home loan mortgage
19 corporation.

20 (5) "Foreclosure" means an action to terminate a mortgagor's interest in property by sale
21 of property pursuant to a power of sale in a mortgage, as described in § 34-11-22, or conveyance
22 of the property by the mortgagor in lieu of foreclosure, or an action filed in court pursuant to §
23 34-27-1.

24 (6) "Housing accommodation" means a building or structure containing four (4) or fewer
25 dwelling units, or part thereof of land appurtenant thereto, and any other real or personal property
26 used, rented, or offered for rent for living or dwelling purposes, together with all services
27 connected with the use or occupancy of such property.

28 (7) "HUD" means the United States Department of Housing and Urban Development and
29 any successor to such department.

30 (8) "Institutional mortgagee" means an entity, or an entity that is the subsidiary, parent,
31 trustee to such entity, that holds or owns mortgages or other security interests in three (3) or more
32 housing accommodations or that acts as a mortgage servicer of three (3) or more mortgages of
33 housing accommodations.

34 (9) "Just cause" means one of the following:

1 (i) The tenant has failed to pay rent in effect prior to the foreclosure, as long as the
2 foreclosing owner notified the tenant in writing of the amount of rent that was to be paid and to
3 whom it was to be paid;

4 (ii) The tenant has materially violated either an express or legally required obligation or
5 covenant of the tenancy or occupancy, other than the obligation to surrender possession upon
6 proper notice, and has failed to cure such violation within thirty (30) days after having received
7 written notice thereof from the foreclosing owner;

8 (iii) The tenant is committing a nuisance in the unit; is permitting a nuisance to exist in
9 the unit; is causing substantial damage to the unit, or is creating a substantial interference with the
10 quiet enjoyment of other occupants;

11 (iv) The tenant is using, or permitting the unit to be used, for any illegal purpose;

12 (v) The tenant, who had a written bona fide lease or other rental agreement that
13 terminated, on or after July 1, 2014, has refused, after written request or demand by the
14 foreclosing owner, to execute a written extension or renewal thereof for a further term of like
15 duration and in such terms that are not inconsistent with this chapter;

16 (vi) The tenant has refused the foreclosing owner reasonable access to the unit for the
17 purpose of making necessary repairs or improvement required by the laws of the United States,
18 the state of Rhode Island or any subdivision thereof, or for the purpose of inspection as permitted
19 or required by agreement or by law, or for the purpose of showing the unit to a prospective
20 purchaser or mortgagee;

21 (vii) The foreclosing owner: (A) Seeks to permanently board up or demolish the premises
22 because the premises has been cited by a state or local minimum housing code enforcement
23 agency for substantial violations affecting the health and safety of tenants and it is economically
24 not feasible for the foreclosing owner to eliminate the violations; or (B) Seeks to comply with a
25 state or local minimum housing code enforcement agency that has cited the premises for
26 substantial violations affecting the health and safety of tenants and it is not feasible to so comply
27 without removing the tenant; or (C) Seeks to correct an illegal occupancy because the premises
28 has been cited by a state or local minimum housing code enforcement agency or zoning official
29 and it is not feasible to correct such illegal occupancy without removing the tenant; and provided
30 further that nothing in this section shall limit the rights of a third-party owner to evict a tenant at
31 the expiration of an existing lease.

32 (10) "Mortgagee" means an entity to whom property is mortgaged, the mortgage creditor
33 or lender including, but not limited to, mortgage services, lenders in a mortgage agreement and
34 any agent, servant, or employee of the mortgagee, or any successor in interest or assignee of the

1 mortgagee's rights, interests, or obligations under the mortgage agreement.

2 (11) "Mortgage servicer" means an entity that administers or at any point administered,
3 the mortgage; provided, however, that such administration shall include, but not be limited to,
4 calculating principal and interest, collecting payments from the mortgager, acting as escrow
5 agent, or foreclosing in the event of a default.

6 (12) "Tenant" means a person or group of persons, who at the time of foreclosure, is
7 entitled to occupy a housing accommodation pursuant to a bona fide lease or tenancy. A person
8 who moves into the housing accommodation owned by the foreclosing owner, subsequent to the
9 foreclosure sale, without the express written permission of the foreclosing owner, shall not be
10 considered a tenant under this section.

11 (13) "Unit" or "residential unit" means the room, or group of rooms, within a housing
12 accommodation that is used, or intended for use, as a residence by one household.

13 **34-18-38.2. Just cause needed for eviction of foreclosed residential property tenants.**

14 -- (a) Notwithstanding any provision of the general or public laws to the contrary, a foreclosing
15 owner shall not evict a tenant except for just cause, or unless a binding purchase and sale
16 agreement has been executed for a bona fide third party to purchase the housing accommodation
17 from a foreclosing owner, and the foreclosing owner has disclosed to the third-party purchaser
18 that said purchaser may be responsible for evicting the current occupants of the housing
19 accommodation after the sale occurs; or with respect to a housing accommodation in a housing
20 accommodation insured by the Federal Housing Administration, unless HUD denies a request by
21 any tenant for an occupied conveyance or if a tenant does not submit to HUD a request for
22 continued occupancy before the deadline set forth in a notice to occupants of pending acquisition
23 delivered to the tenant by the foreclosing owner.

24 (b) Within thirty (30) days of the foreclosure, the foreclosing owner shall post in a
25 prominent location in the building in which the rental housing unit is located, a written notice
26 stating:

27 (1) The names, addresses, telephone numbers, and telephone contact information of the
28 foreclosing owner, the building manager, or other representative of the foreclosing owner
29 responsible for the management of such building;

30 (2) The address to which rent charges shall be sent;

31 (3) That in order to remain on the premises as a tenant of the foreclosing owner, the
32 household must submit, within thirty (30) days, a completed form to be provided with said
33 written notice to the same address where rent charges shall be sent, said form to be substantially
34 similar to the request for continued occupancy form used by HUD and shall contain an

1 authorization to conduct a credit check of the person or persons submitting the form. This
2 requirement shall be satisfied if the foreclosing owner or someone acting on his/her behalf has:

3 (i) Posted the notice in a prominent location in the building;

4 (ii) Mailed the notice by first class mail to each unit; and

5 (iii) Slid the notice under the door of each unit in the building a document stating the
6 names, addresses, and telephone contact information of the foreclosing owner, the building
7 manager or other representative of the foreclosing owner responsible for the management of such
8 building, and stating the address to which rent and use and occupancy charges shall be sent.

9 (c) A foreclosing owner shall not evict a tenant except for actions that constitute just
10 cause, and:

11 (1) A foreclosing owner shall not evict a tenant for the following actions that constitute
12 just cause until thirty (30) days after the notice required by subsection (b) of this section is posted,
13 mailed, and delivered:

14 (i) The tenant has failed to pay the rent in effect prior to the foreclosure as long as the
15 foreclosing owner notified the tenant in writing of the amount of rent that was to be paid and to
16 whom it was to be paid;

17 (ii) The tenant has materially violated an obligation or covenant of the tenancy or
18 occupancy, other than the obligation to surrender possession upon proper notice;

19 (iii) The tenant, who had a written bona fide lease or other rental agreement that
20 terminated, on or after July 1, 2014, has refused, after written request or demand by the
21 foreclosing owner, to execute a written extension or renewal thereof for a further term of like
22 duration and in such terms that are not inconsistent with this section; and

23 (iv) The foreclosing owner: (A) Seeks to permanently board up or demolish the premises
24 because the premises has been cited by a state or local minimum housing code enforcement
25 agency for substantial violations affecting the health and safety of tenants and it is not
26 economically feasible for the foreclosing owner to eliminate the violations; or (B) Seeks to
27 comply with a state or local minimum housing code enforcement agency that has cited the
28 premises for substantial violations affecting the health and safety of tenants and it is not feasible
29 to so comply without removing the tenant; or (C) Seeks to correct an illegal occupancy because
30 the premises has been cited by a state or local minimum housing code enforcement agency or
31 zoning officials and it is not feasible to correct such illegal occupancy without evicting the tenant.

32 (2) A foreclosing owner shall not evict a tenant for the following actions that constitute
33 just cause until the notice required by subsection (b) is posted and delivered:

34 (i) The tenant is committing a nuisance in the unit; is permitting a nuisance to exist in the

1 unit; is causing substantial damage to the unit, or is creating a substantial interference with the
2 quiet enjoyment of other occupants;

3 (ii) The tenant is using or permitting the unit to be used for any illegal purpose; and

4 (iii) The tenant has refused the foreclosing owner reasonable access to the unit for the
5 purpose of making necessary repairs or improvements required by the laws of the United States,
6 the state of Rhode Island or any subdivision thereof, or for the purpose of showing the unit to a
7 prospective purchaser or mortgagee.

8 (d) The following procedures shall be followed for the eviction of a tenant pursuant to
9 subsection (c) of this section:

10 (1) For evictions brought pursuant to subsection (c)(1)(i), the foreclosing owner shall
11 follow § 34-18-35;

12 (2) For evictions brought pursuant to subsection (c)(1)(ii), or subsection (c)(2)the
13 foreclosing owner shall follow § 34-18-36;

14 (3) For evictions brought pursuant to subsection (c)(1)(iii) or (c)(1)(iv); or for evictions
15 brought where a binding purchase-and-sale agreement has been executed for a bona fide third
16 party to purchase the housing accommodation from a foreclosing owner; or for evictions brought
17 with respect to housing accommodations located in a premises insured by the federal housing
18 administration as provided in subsection (a); or for an eviction brought against a tenant who fails
19 to return the form requesting continued occupancy pursuant to subsection (b); the foreclosing
20 owner shall follow the procedures for terminating a month to month tenancy set forth in § 34-18-
21 37, provided that any obligations of the foreclosing owner arising under the federal Protecting
22 Tenants at Foreclosure Act of 2009, as such act is amended and extended from time to time, shall
23 first have been satisfied; and provided, further, that in any eviction brought against a tenant
24 pursuant to subsection (c) the tenant may raise an affirmative defense that the form was not
25 posted or served upon the tenant as required by subsection (b).

26 (e) A foreclosing owner may evict any person other than a tenant by following the
27 procedures for terminating a month to month tenancy set forth in § 34-18-37.

28 (f) If a foreclosing owner disagrees with the amount of rent paid by the tenant to the
29 foreclosing owner, the foreclosing owner may bring a claim in district court to claim that the
30 rental charge is unreasonable and set a new rental rate. A bona fide lease or bona fide tenancy
31 between the foreclosed-upon owner and the lessee, or proof of rental payment to the foreclosed-
32 upon owner, shall be presumed to be a reasonable rental rate.

33 (g) Nothing herein shall be deemed to limit the right of any tenant to knowingly waive
34 the provisions of this section for consideration acceptable to such tenant.

1 (h) Notwithstanding any other provisions of this section, a foreclosing owner shall be
2 exempt from the requirement of this section if:

3 (1) The foreclosing owner is headquartered in Rhode Island and maintains a physical
4 office or offices in Rhode Island from which office or offices it carries out full-service mortgage
5 operations, including the acceptance and processing of mortgage payments and the provision of
6 local customer service and loss mitigation, and where Rhode Island staff have the authority to
7 approve loan restructuring and other loss mitigation strategies; or

8 (2) The foreclosing owner conducted fewer than fifteen (15) foreclosures in Rhode Island
9 during the prior calendar year, excluding any conveyances of property by a deed in lieu of
10 foreclosure.

11 SECTION 3. Chapter 34-27 of the General Laws entitled "Mortgage Foreclosure and
12 Sale" is hereby amended by adding thereto the following section:

13 **34-27-7. Notice of tenants of foreclosure sale. --** (a) The mortgagee shall provide to
14 each bona fide tenant a written notice: (1) Stating that the real estate is scheduled to be sold at
15 foreclosure; (2) Stating the date, time, and place initially scheduled for the sale; (3) Informing of
16 the availability and advisability of counseling and information services; (4) Providing the address
17 and telephone number of the Rhode Island housing help center and the United Way 2-1-1 center;
18 (5) Reminding the recipient to continue paying rent to the landlord until the foreclosure sale
19 occurs; and (6) Stating that this notice is not an eviction notice. The notice shall be mailed by first
20 class mail at least one business day prior to the first publication of the notice required by § 34-27-
21 7. A form of written notice meeting the requirements of this section shall be promulgated by the
22 department of business regulation for use by mortgagees no later than sixty (60) days after the
23 effective date of this section. The notice may be addressed to "Occupant" and mailed to each
24 dwelling unit of the real estate identified in the application for the loan secured by the mortgage
25 being foreclosed. Failure of the mortgagee to provide notice as provided herein shall not affect
26 the validity of the foreclosure.

27 (b) For purposes of this section, a lease or tenancy shall be considered bona fide only if:

28 (1) The mortgagor, or the child, spouse, or parent of the mortgagor, under the contract is
29 not the tenant;

30 (2) The lease or tenancy was the result of an arms-length transaction; and

31 (3) The lease or tenancy requires the receipt of rent that is not substantially less than fair
32 market rent for the property or the unit's rent is reduced or subsidized due to a federal, state, or
33 local subsidy.

1 SECTION 4. This act shall take effect upon passage.

=====
LC004056/SUB A
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO PROPERTY - LANDLORD AND TENANT ACT

- 1 This act would create a new process for the eviction of residential tenants in mortgage
- 2 foreclosed property which requires the existence of just cause.
- 3 This act would take effect upon passage.

=====
LC004056/SUB A
=====