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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO PROPERTY -- MORTGAGE FORECLOSURE AND SALE

Introduced By: Senator Michael J. McCaffrey

Date Introduced: June 05, 2014

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

10 (b) Purpose. - The statutory framework for foreclosure proceedings is prescribed under
11 the provisions of Chapter 34-27 of the general laws. As the need for a mortgage mediation
12 process has evolved, it is important for the state to develop a standardized, statewide process for
13 foreclosure mediation rather than a process based on local ordinances that may vary from
14 municipality to municipality. By providing a uniform standard for an early HUD-approved
15 independent counseling process in owner-occupied principal residence mortgage foreclosure
16 cases, the chances of achieving a positive outcome for homeowners and lenders will be enhanced.

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

19 (1) "Mediation conference" means a conference involving the mortgagee and mortgagor,

1 coordinated and facilitated by a mediation coordinator whose purpose is to determine whether an
2 alternative to foreclosure is economically feasible to both the mortgagee and the mortgagor, and
3 if it is determined that an alternative to foreclosure is economically feasible, to facilitate a loan
4 work-out or other solution in an effort to avoid foreclosure.

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

10 (3) "Default" means the failure of the mortgagor to comply with any of the terms of the
11 mortgage.

12 ~~(3)~~(4) "Department" means the department of business regulation.

13 ~~(4)~~(5) "Good Faith" means that the mortgagor and mortgagee deal honestly and fairly
14 with the mediation coordinator with an intent to determine whether an alternative to foreclosure is
15 economically feasible for the mortgagor and mortgagee, as evidenced by some or all of the
16 following factors:

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

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

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

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

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

28 ~~(5)~~(6) "HUD" means the United States Department of Housing and Urban Development
29 and any successor to such department.

30 ~~(6)~~(7) "Mortgage" means an individual consumer first lien mortgage on any owner-
31 occupied, one to four (4) unit residential property which serves as the ~~owner's~~ mortgagor's
32 primary residence.

33 ~~(7)~~(8) "Mortgagee" means the holder of a mortgage or its agents or employees, including
34 a mortgage servicer acting on behalf of a mortgagee.

1 ~~(8)~~(9) "Mortgagor" means ~~the owner of the property subject to a mortgage~~ an individual
2 consumer who mortgages the property.

3 (d) No mortgagee may initiate any foreclosure of real estate pursuant to subsection 34-
4 27-4(b) unless the requirements of this section have been met.

5 (e) ~~When a mortgage is not more than one hundred twenty (120) days delinquent~~ Not
6 less than one hundred twenty (120) days prior to initiating any foreclosure of real estate pursuant
7 to § 34-27-4(b), the mortgagee or its mortgage servicer or other agent or representative of the
8 mortgagee shall provide to the mortgagor written notice, by ~~certified and~~ first class mail at the
9 address of the real estate and, if different, at the address designated by the mortgagor by written
10 notice to the mortgagee as the mortgagor's address for receipt of notices, that the mortgagee may
11 not foreclose on the mortgaged property without first participating in a mediation conference.

12 (f) A form of written notice meeting the requirements of this section shall be
13 promulgated by the department for use by mortgagees at least thirty (30) days prior to the
14 effective date of this section. The written notice required by this section shall be in English,
15 Portuguese and Spanish, ~~reference the property's plat and lot information,~~ and may be combined
16 with any other notice required under this chapter or pursuant to state or federal law.

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

28 (h) If, after two (2) attempts by the mediation coordinator to contact the mortgagor, the
29 mortgagor fails to respond to the mediation coordinator's request to appear at a mediation
30 conference, or the mortgagor fails to cooperate in any respect with the requirements of this
31 section, the requirements of the section shall be deemed satisfied upon verification by the
32 mediation coordinator that the required notice was sent. Upon verification, a certificate will be
33 issued immediately by the mediation coordinator authorizing the mortgagee to proceed with the
34 foreclosure action, including recording the deed. Such certificate shall be valid until the earlier of

1 the curing of the default condition or the foreclosure of the mortgagor's right of redemption and
2 shall be recorded along with the foreclosure deed, and shall constitute conclusive evidence of all
3 of the facts set forth in the certificate. A form of certificate meeting the requirements of this
4 section shall be promulgated by the department for use by mortgagees at least thirty (30) days
5 prior to the effective date of this section.

6 (i) If the mediation coordinator determines that after a good faith effort made by the
7 mortgagee at the mediation conference, the parties cannot come to an agreement to renegotiate
8 the terms of the loan in an effort to avoid foreclosure, such good faith effort by the mortgagee
9 shall be deemed to satisfy the requirements of this section. A certificate certifying such good faith
10 effort will be promptly issued by the mediation coordinator authorizing the mortgagee to proceed
11 with the foreclosure action and recording of the foreclosure deed. Such certification shall be valid
12 until the earlier of the curing of the default condition or the foreclosure of the mortgagor's right of
13 redemption and shall be recorded along with the foreclosure deed, and shall constitute conclusive
14 evidence of all of the facts set forth in the certificate. A form of certificate meeting the
15 requirements of this section shall be promulgated by the department for use by mortgagees at
16 least thirty (30) days prior to the effective date of this section.

17 (j) If the mortgagee and mortgagor are able to reach agreement to renegotiate the terms
18 of the loan to avoid foreclosure, the agreement shall be reduced to writing and executed by the
19 mortgagor and mortgagee. If the mortgagee and mortgagor reach agreement after the notice of
20 mediation conference is sent to the mortgagor, but without the assistance of the mediation
21 coordinator, the mortgagee shall provide a copy of the written agreement to the mediation
22 coordinator. Upon receipt of written agreement between the mortgagee and mortgagor, the
23 mediation coordinator shall issue a certificate of eligible workout agreement. For purposes of this
24 subsection, evidence of an agreement shall include, but not be limited to, evidence of agreement
25 by both mortgagee and mortgagor to the terms of a short sale or a deed in lieu of foreclosure,
26 regardless of whether said short sale or deed in lieu of foreclosure is subsequently completed.

27 ~~(k) Notwithstanding any other provisions of this section, where a mortgagor and~~
28 ~~mortgagee have entered into a written agreement and the mortgagor fails to fulfill his or her~~
29 ~~obligations under the written agreement, the provisions of this section shall not apply to any~~
30 ~~foreclosure initiated under this chapter within twelve (12) months following the execution of the~~
31 ~~written agreement. In such case, the mortgagee shall include in the foreclosure deed an affidavit~~
32 ~~establishing its right to proceed under this section.~~

33 ~~(k)~~ This section shall apply only to foreclosure of mortgages on owner-occupied,
34 residential real property with no more than four (4) dwelling units which is the primary dwelling

1 of the owner and not to mortgages ~~secured by~~ securing other real property.

2 ~~(m)~~(l) Notwithstanding any other provisions of this section, any locally-based
3 mortgagees shall be deemed to be in compliance with the requirements of this section if:

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

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

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

13 ~~(m)~~(m) No deed offered by a mortgagee as a result of a mortgage foreclosure action
14 under power of sale shall be submitted to a city or town recorder of deeds for recording in the
15 land evidence records of the city or town until and unless the requirements of this section are met.
16 The mortgagee shall include in the foreclosure deed an affidavit of compliance with this section.
17 Failure of the mortgagee to comply with the requirements of this section shall render the
18 foreclosure void, without limitation of the right of the mortgagee thereafter to re-exercise its
19 power of sale or other means of foreclosure upon compliance with this section. ~~The~~ Except as
20 expressly provided herein, the rights of the mortgagor to any redress afforded under the law are
21 not abridged by this section.

22 ~~(n)~~(n) Any existing municipal ordinance or future ordinance which requires a
23 conciliation or mediation process as a precondition to the recordation of a foreclosure deed shall
24 comply with the provisions set forth herein and any provisions of said ordinances which do not
25 comply with the provisions set forth herein shall be determined to be unenforceable.

26 (o) Exclusions. The provisions of this section shall not apply in the following
27 circumstances:

28 (1) The mortgage is a reverse mortgage as described in chapter 25.1 of title 34; or

29 (2) The default is for a reason other than a mortgagor's failure to make a timely payment
30 of an amount due under the terms of the note and/or mortgage contract.

31 (p) Limitations on actions. Only a person entitled to receive notice under § 34-27-3.2(e)
32 shall be entitled to raise the issue that the foreclosure of a mortgage is void due to the mortgagee's
33 failure to comply with the terms of this section. Such person shall be forever barred from raising
34 this issue to challenge the validity of the foreclosure and/or the validity of the title conveyed to

1 the foreclosure sale purchaser unless such person files an action in the superior court in the
2 county in which the residential property is located and a notice of lis pendens in the land evidence
3 records where such property is located prior to the date and time of recording of the mortgagee's
4 foreclosure deed.

5 SECTION 2. Section 34-27-3.1 of the General Laws in Chapter 34-27 entitled "Mortgage
6 Foreclosure and Sale" is hereby repealed.

7 ~~**34-27-3.1. Foreclosure counseling.** (a) No less than forty five (45) days prior to~~
8 ~~initiating any foreclosure of real estate pursuant to subsection 34-27-4(b), the mortgagee shall~~
9 ~~provide to an individual consumer mortgagor written notice of default and the mortgagee's right~~
10 ~~to foreclose by first class mail at the address of the real estate and, if different, at the address~~
11 ~~designated by the mortgagor by written notice to the mortgagee as the mortgagor's address for~~
12 ~~receipt of notices.~~

13 ~~(b) The written notice required by this section shall be in English and Spanish and,~~
14 ~~provided the same is then available, shall advise the mortgagor of the availability of counseling~~
15 ~~through HUD approved mortgage counseling agencies and, the toll free telephone number and~~
16 ~~website address maintained to provide information regarding no cost HUD approved mortgage~~
17 ~~counseling agencies in Rhode Island. The written notice may also contain any other information~~
18 ~~required under federal law. A form of written notice meeting the requirements of this section shall~~
19 ~~be promulgated by the department of business regulation for use by mortgagees at least thirty (30)~~
20 ~~days prior to the effective date of this section. Counseling shall be provided at no cost to the~~
21 ~~mortgagee.~~

22 ~~(c) Failure of the mortgagee to provide notice to the mortgagor as provided herein shall~~
23 ~~render the foreclosure void, without limitation of the right of the mortgagee thereafter to~~
24 ~~reexercise its power of sale or other means of foreclosure upon compliance with this section. The~~
25 ~~mortgagee shall include in the foreclosure deed an affidavit of compliance with this section.~~

26 ~~(d) As used herein and in this chapter, the term "HUD" means the United States~~
27 ~~Department of Housing and Urban Development and any successor to such department.~~

28 SECTION 3. Section 1 of this act shall take effect upon passage and shall apply to all
29 mortgages with a default date on or after May 16, 2013. The remainder of this act shall take effect
30 upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO PROPERTY -- MORTGAGE FORECLOSURE AND SALE

1 This act would amend the law requiring a mortgagee to participate in good faith in a
2 mediation conference prior to initiating foreclosure proceedings and would also repeal the law
3 requiring mortgagees to send a notice advising mortgagors of the right to counseling.

4 Section 1 of this act would take effect upon passage and would apply to all mortgages
5 with a default date on or after May 16, 2013. The remainder of this act would take effect upon
6 passage.

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