

2015 -- S 0581

=====
LC001375
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

—————
A N A C T

RELATING TO PROPERTY -- MORTGAGE FORECLOSURE AND SALE

Introduced By: Senators McCaffrey, and Lombardi

Date Introduced: March 03, 2015

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 that 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 27 of title 34. As the need for a mortgage mediation process has
12 evolved, it is important for the state to develop a standardized, statewide process for foreclosure
13 mediation rather than a process based on local ordinances that may vary from municipality to
14 municipality. By providing a uniform standard for an early HUD-approved, independent
15 counseling process in owner-occupied principal residence mortgage foreclosure cases, the
16 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) "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
4 the 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
9 behalf, 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 declines 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 declines to accept the mortgagor's work-out proposal, the
15 mortgagee offered, in writing, to enter into an alternative work-out/disposition resolution
16 proposal that would result in net financial benefit to the mortgagor as compared to the terms of
17 the mortgage.

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

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

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

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

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

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

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

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

6 (10) "Qualified non-mediated agreement" means a loan modification or other agreement
7 entered into between the mortgagor and mortgagee, prior to the initiation of mediation, that is
8 designed to reinstate the loan either through payments from the borrower or by way of a
9 modification of the note. Provided that, with respect to the agreement the mortgagee acted in
10 accordance with the guidelines of the Federal Consumer Protection Bureau's "Mortgage Servicing
11 Rules".

12 (d) The mortgagee shall, prior to initiation of foreclosure of real estate pursuant to § 34-
13 27-4(b), provide to the mortgagor written notice at the address of the real estate and, if different,
14 at the address designated by the mortgagor by written notice to the mortgagee as the mortgagor's
15 address for receipt of notices, that the mortgagee may not foreclose on the mortgaged property
16 without first participating in a mediation conference. Notice addressed and delivered as provided
17 in this section shall be effective with respect to the mortgagor and any heir or devisee of the
18 mortgagor.

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

26 Notwithstanding the foregoing, any penalties assessed under this subsection for any
27 failure of any mortgagee to provide notice as provided herein during the period from September
28 13, 2013, through the effective date of this section shall not exceed the total amount of one
29 hundred twenty-five thousand dollars (\$125,000) for such mortgagee.

30 (2) Penalties accruing pursuant to subsection (d)(1) shall be paid to the mediation
31 coordinator prior to the completion of the mediation process. All penalties accrued under this
32 section shall be transferred to the state within one month of receipt by the mediation coordinator
33 and deposited to the restricted receipt account within the general fund established by § 42-128-
34 2(3) and used for the purposes set forth therein.

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

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

8 (i) Within sixty (60) days 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, or within sixty (60) days after a loan is no longer afforded protection
11 under the Servicemember's Civil Relief Act (50 U.S.C. App. §§ 501-597b), or the provisions of §
12 34-27-4(d), or in the case of a default in a qualified non-mediated agreement, one hundred twenty
13 (120) days after the date of default of the modification agreement or within one hundred twenty
14 (120) days of the date on which the mortgagor initially failed to comply with the terms of an
15 eligible workout agreement, as hereinafter defined; and

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

29 (5) Notwithstanding any other provisions of this section, a mortgagee may initiate a
30 judicial foreclosure in accordance with § 34-27-1 without first participating in a mediation
31 conference, and shall incur no penalty under this section.

32 (e) A form of written notice meeting the requirements of this section shall be
33 promulgated by the department for use by mortgagees at least thirty (30) days prior to the
34 effective date of this section. The written notice required by this section shall be in English,

1 Portuguese, and Spanish, and may be combined with any other notice required under this chapter
2 or pursuant to state or federal law.

3 (f) The mediation conference shall take place in person, or over the phone, at a time and
4 place deemed mutually convenient for the parties by an individual employed by a HUD-
5 approved, independent counseling agency selected by the mortgagee to serve as a mediation
6 coordinator, but not later than sixty (60) days following the mailing of the notice. The mortgagor
7 shall cooperate in all respects with the mediation coordinator including, but not limited to,
8 providing all necessary financial and employment information and completing any and all loan
9 resolution proposals and applications deemed appropriate by the mediation coordinator. A
10 mediation conference between the mortgagor and mortgagee conducted by a mediation
11 coordinator shall be provided at no cost to the mortgagor. The HUD-approved counseling agency
12 shall be compensated by the mortgagee at a rate not to exceed five hundred dollars (\$500) per
13 engagement.

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

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

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

28 (h) If the mediation coordinator determines that after a good-faith effort made by the
29 mortgagee and mortgagor at the mediation conference, the parties cannot come to an agreement
30 to renegotiate the terms of the loan in an effort to avoid foreclosure, such good faith effort by the
31 mortgagee shall be deemed to satisfy the requirements of this section. A certificate certifying
32 such good faith effort will be promptly issued by the mediation coordinator authorizing the
33 mortgagee to proceed with the foreclosure action and recording of the foreclosure deed; provided,
34 however, that the mediation coordinator shall not be required to issue such a certificate until any

1 penalties accrued pursuant to subsections (d)(1) and (d)(4)(ii) and any payments owed pursuant to
2 subsection (f) have been paid. Such certification shall be valid until the earlier of:

3 (1) The curing of the default condition; or

4 (2) The foreclosure of the mortgagor's equity of redemption. The certificate shall be
5 recorded along with the foreclosure deed. A form of certificate meeting the requirements of this
6 section shall be promulgated by the department for use by mortgagees at least thirty (30) days
7 prior to the effective date of this section.

8 (i) If the mortgagee and mortgagor are able to reach agreement to renegotiate the terms
9 of the loan to avoid foreclosure, the agreement shall be reduced to writing and executed by the
10 mortgagor and mortgagee. If the mortgagee and mortgagor reach agreement after the notice of
11 mediation conference is sent to the mortgagor, but without the assistance of the mediation
12 coordinator, the mortgagee shall provide a copy of the written agreement to the mediation
13 coordinator. Upon receipt of a written agreement between the mortgagee and mortgagor, the
14 mediation coordinator shall issue a certificate of eligible workout agreement if the workout
15 agreement would result in a net financial benefit to the mortgagor as compared to the terms fully
16 complying with all terms, including curing all delinquent amounts of the mortgage ("Certificate
17 of Eligible Workout Agreement"). For purposes of this subsection, evidence of an agreement
18 shall include, but not be limited to, evidence of agreement by both mortgagee and mortgagor to
19 the terms of a short sale or a deed in lieu of foreclosure, regardless of whether said short sale or
20 deed in lieu of foreclosure is subsequently completed.

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

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

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

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

34 (2) The mortgagee maintains a physical office, or offices, exclusively in Rhode Island

1 from which office, or offices, it carries out full-service mortgage operations, including the
2 acceptance and processing of mortgage payments and the provision of local customer service and
3 loss mitigation and where Rhode Island staff have the authority to approve loan restructuring and
4 other loss mitigation strategies; and

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

8 (m) No deed offered by a mortgagee as a result of a mortgage foreclosure action under
9 power of sale shall be submitted to a city or town recorder of deeds for recording in the land
10 evidence records of the city or town until and unless the requirements of this section are met.
11 Failure of the mortgagee to comply with the requirements of this section shall render the
12 foreclosure void, without limitation of the right of the mortgagee thereafter to re-exercise its
13 power of sale or other means of foreclosure upon compliance with this section. The rights of the
14 mortgagor to any redress afforded under the law are not abridged by this section.

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

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

20 (1) ~~the~~ The mortgage is a reverse mortgage as described in chapter 25.1 of title 34-; or (2)
21 The date of default under the mortgage is on or before May 16, 2013.

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

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

=====
LC001375
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PROPERTY -- MORTGAGE FORECLOSURE AND SALE

1 This act would provide for additional protection when a mortgage is subject to either the
2 federal or state Servicemember's Civil Relief Act, and reinstates the language and legislative
3 intent set forth in the original legislation that the mediation law was intended to be prospective,
4 and allows for the mortgagee and mortgagor to enter into a modification agreement under the
5 guidelines of the federal consumer financial protection bureau.

6 This act would take effect upon passage.

=====
LC001375
=====