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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO PROPERTY - MORTGAGE FORECLOSURES

Introduced By: Representatives Pollard, Edwards, DaSilva, Carnevale, and Shallcross Smith

Date Introduced: February 25, 2009

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 34 of the General Laws entitled "PROPERTY" is hereby amended by
2 adding thereto the following chapter:

3 CHAPTER 27.3

4 SAVE RHODE ISLAND HOMES ACT OF 2009

5 **34-27.3-1. Short title.** – This chapter shall be known and may be cited as the "Save
6 Rhode Island Homes Act of 2009."

7 **34-27.3-2. Legislative findings.** – (a) Many thousands of Rhode Island homeowners are
8 at risk of losing their homes as a result of mortgage foreclosures in the immediate future;

9 (b) Foreclosure of a family's home often represents the loss of the family's most valuable
10 financial asset, and foreclosures undermine the health and economic vitality of neighborhoods;

11 (c) Foreclosures result in the loss of millions of dollars in assets, not only those of the
12 homeowners who are the victims of foreclosure, but also in terms of the property values of homes
13 located in the vicinity of foreclosed properties, as well as millions in additional costs to state and
14 local governments for the loss of property tax revenue;

15 (d) A recent report issued by the United States Government Accountability Office (GAO)
16 found that defaults and foreclosures on mortgages have a significant negative economic impact
17 on homeowners, lenders, and neighborhoods;

18 (e) According to a report issued in April 2008 by the State Foreclosure Prevention
19 Working Group, which is composed of banking regulators and attorneys general of eleven (11)

1 states, the collective efforts of mortgage lenders and government officials to address rising
2 foreclosures has not resulted in meaningful improvement in foreclosure prevention, and new
3 approaches, such as targeted efforts to slow down the foreclosure process, are needed to prevent
4 millions of unnecessary foreclosures nationwide.

5 (f) Foreclosures are largely the result of subprime lending practices, which have placed
6 many homeowners in loans that they cannot realistically afford, by using mortgage loan features
7 such as low introductory rates which reset to higher, variable rates thereby increasing the risk of
8 default for many homeowners in the state who, at an increasing rate, cannot sell their home or
9 refinance their mortgage;

10 (g) Industry analysts estimate that, nationwide, about 1.5 million mortgages were due to
11 reset in 2008, and that as many as three million subprime mortgages could end up in foreclosure
12 over the next several years; and

13 (h) There is a compelling need for the state of Rhode Island to address the ongoing
14 economic crisis in the subprime mortgage market and to provide the means by which
15 homeowners can obtain a period of extension to adjust their finances in order to increase their
16 ability to retain their homes, encourage mortgage lenders to modify mortgage loan terms and
17 resolve foreclosure disputes, and protect local governments and neighborhoods from the negative
18 social, economic, and fiscal consequences of foreclosure and abandonment.

19 **34-27.3-3. Definitions.** – As used in this chapter:

20 (1) "Creditor" means a state chartered bank, savings bank, savings and loan association or
21 credit union, or person or entity required to be licensed under the provisions of the laws in the
22 state of Rhode Island and any creditor named in the debt obligation including, but not limited to,
23 servicers; except excluding any debt obligation titled "home equity loan."

24 (2) "Eligible borrower" means a borrower who is obligated to repay a loan secured by an
25 introductory rate mortgage and who receives a notice of intention to foreclose that mortgage
26 pursuant to the section 34-27.3-4, except that an "eligible borrower" shall not include a borrower
27 who has previously exercised the right to obtain a three (3) year period of extension pursuant to
28 section 34-27.3-5.

29 (3) "Fully indexed rate" means the sum of the current value of the index used for the
30 adjustable rate mortgage and the margin disclosed in the loan agreement.

31 (4) "Introductory rate mortgage" means a consumer credit transaction in which the loan is
32 secured by a mortgage on real estate in this state upon which there is located a one to four (4)
33 family dwelling which is occupied by the borrower as the borrower's principal residence and
34 which provides for an introductory rate that is set below the fully indexed rate at the time the loan

1 originated and may adjust at the reset date regardless of whether the variable rate index has
2 increased.

3 **34-27.3-4. Notices.** – (a) Prior to the date on which the interest rate in effect during the
4 introductory period of an introductory rate mortgage resets to a variable interest rate under the
5 terms of the mortgage, a creditor shall provide a series of written notices, separate and distinct
6 from all other correspondence, to an eligible borrower. The creditor shall provide these notices at
7 sixty (60) day and thirty (30) day intervals prior to the date the introductory interest rate resets.

8 (b) Each notice required pursuant to subsection (a) of this section shall include, in plain
9 language and in at least fourteen (14) point bold type:

10 (1) The current interest rate under the terms of the introductory rate mortgage;

11 (2) The date on which the interest rate resets from a fixed interest rate applicable during
12 the introductory period to a variable interest rate;

13 (3) An explanation of how the reset interest rate and monthly payment would be
14 determined;

15 (4) The best estimate by the creditor of the amount of the monthly payment that will
16 apply after the date of the reset, and the assumptions upon which the estimate is based;

17 (5) A list of alternatives an eligible borrower may pursue before the date of the reset,
18 including any refinancing of the loan offered by the creditor or any renegotiation of loan terms
19 offered by the creditor;

20 (6) An explanation of the borrower's right to obtain a period of extension prior to the
21 initial interest rate reset of an introductory rate mortgage pursuant to this act and an explanation
22 of the procedure that a borrower must follow to obtain a period of extension; and

23 (7) A certification of extension form not to exceed two (2) pages that can be completed
24 by a borrower in order to obtain a period of extension authorized pursuant to section 34-27.3-5.

25 **34-27.3-5. Extension.** – (a) Notwithstanding any law or regulation to the contrary, prior
26 to the initial interest rate reset of an introductory rate mortgage, a creditor shall provide an
27 eligible borrower a period of extension for three (3) years as provided in this section, during
28 which the interest rate on the introductory rate mortgage shall not increase above the original
29 introductory rate, provided the eligible borrower completes and returns a certification of
30 extension to the creditor in accordance with the provisions of this section.

31 (b) In order to obtain the period of extension, the eligible borrower shall provide to the
32 creditor, prior to the date that the interest rate resets under the terms of the introductory rate
33 mortgage, a completed certification of extension form signed by the eligible borrower which
34 contains:

1 (1) The name of the eligible borrower;
2 (2) The address of the property; and
3 (3) An affirmative statement that the eligible borrower:
4 (i) Does not have sufficient monthly income, after deductions for necessary living
5 expenses, to pay the monthly payments that will apply after the date that the interest rate resets;
6 (ii) Requests the period of extension;
7 (iii) Agrees to continue, during the period of extension, monthly payments, which shall
8 include principal and interest calculated at the introductory rate on the date that the introductory
9 rate mortgage was originated, as well as amounts for applicable taxes required, insurance, and
10 any other amounts being paid under the terms of the mortgage prior to the interest rate reset;
11 (iv) Agrees to pay the creditor, at the time of the borrower's transfer of the title to the
12 property, any interest deferred on account of the period of extension;
13 (v) Agrees to accept the creditor's placement of a subordinate lien on the property to
14 secure the repayment of the interest deferred on account of the period of extension; and
15 (vi) Agrees to sign a loan modification agreement, not to exceed two (2) pages that
16 contains the terms and conditions of the period of extension.
17 (c) The creditor, upon receiving the completed certification of extension, shall grant the
18 eligible borrower the three (3) year period of extension, which shall commence on the date that
19 the introductory rate is due to reset under the terms of the introductory rate mortgage.
20 (d) Within a reasonable amount of time after the receipt of a completed certification of
21 extension from an eligible borrower, a creditor shall provide to the eligible borrower a written
22 acknowledgment that the certification of extension has been received. The acknowledgment shall
23 contain the following:
24 (1) The monthly payment amount that is due from the eligible borrower during the period
25 of extension, which shall include principal and interest, calculated at the introductory rate on the
26 date the introductory rate mortgage was originated, as well as amounts for applicable taxes
27 required, insurance, and any other amounts being paid under the terms of the mortgage prior to
28 the interest rate reset;
29 (2) A schedule of payments, indicating the date that the first monthly payment is due and
30 the dates that each subsequent monthly payment is due during the period of extension;
31 (3) The address to which the borrower shall send the monthly payment; and
32 (4) A statement of any proposed subordinate lien, which shall include:
33 (i) A notice to the borrower if the creditor intends to place a subordinate lien on the
34 property that is the security for the introductory rate, to secure the borrower's repayment of the

1 amount of interest deferred by the period of extension.

2 (e) A creditor who grants a period of extension to an eligible borrower shall have the
3 right to record a subordinate lien on the eligible borrower's property to secure the borrower's
4 repayment of the amount of interest deferred by the period of extension. The subordinate lien
5 shall be effective from the date of recording in the public records in the town or city where the
6 property is located. Notwithstanding any law to the contrary, the subordinate lien shall have the
7 same priority as the lien of the introductory rate mortgage. Upon payment by the eligible
8 borrower of the total amount of interest deferred pursuant to the period of extension, the creditor
9 shall record the discharge of the subordinate lien, or otherwise cause the subordinate lien to be
10 discharged of record.

11 (f) An eligible borrower who has been granted a period of extension shall forfeit all rights
12 concerning deferment of interest payments provided by this act if the eligible borrower fails to
13 make payments under the schedule of payments set forth in the creditor's acknowledgment of the
14 period of extension or fails to comply with the terms of any mortgage loan modification
15 agreement entered into between the creditor and the eligible foreclosed borrower relating to the
16 period of extension, such that the modification agreement becomes ninety (90) days delinquent.

17 **34-27.3-6. Notice of intent to foreclose.** – (a) A creditor that issues an eligible defaulting
18 borrower a notice of intention to foreclose upon an introductory rate mortgage, as defined in this
19 chapter, shall send to the eligible defaulting borrower a written notice in plain language which
20 shall contain the following information:

21 (1) Alternatives to foreclosure that the eligible borrower may pursue, including any
22 refinancing of the loan offered by the creditor and any renegotiation of loan terms offered by the
23 creditor.

24 (2) An explanation of the eligible borrower's right to obtain a period of extension for
25 three (3) years pursuant to this chapter and an explanation of the procedure that an eligible
26 borrower must follow to obtain a period of extension.

27 (3) A statement that the notice should be read carefully and that the eligible borrower
28 may wish to consult with an attorney to understand the rights that may be available under this
29 chapter.

30 (4) A certification of extension form that can be completed by an eligible borrower in
31 order to obtain the period of extension authorized pursuant to section 34-27.3-7 of this chapter.

32 (b) The notice required of this section shall be sent no later than ten (10) days prior to the
33 notice of proposed foreclosure pursuant to subsection 34-27-4(b) by first class mail.

34 **34-27.3-7. Extension process.** – (a) Notwithstanding any law to the contrary, a creditor

1 shall provide an eligible borrower a period of extension of three (3) years as provided in this
2 section, during which time foreclosure proceedings shall be suspended and the eligible borrower
3 shall continue to pay monthly payments, which shall include principal and interest, calculated at
4 the introductory rate on the date that the introductory rate mortgage was originated, as well as
5 amounts for applicable taxes required, insurance and any other amounts being paid under the
6 terms of the mortgage prior to the interest rate reset, provided the eligible borrower completes and
7 returns a certification of extension to the creditor in accordance with the provisions of this
8 section.

9 (b) In order to obtain the period of extension, the eligible borrower shall provide to the
10 creditor, no later than forty-five (45) days from the date that the creditor sends the notice required
11 pursuant to section 34-27.3-6, a completed certification of extension form provided by the
12 creditor and signed by the eligible borrower, which contains:

13 (1) The name of the eligible borrower;

14 (2) The address of the property; and

15 (3) An affirmative statement that the eligible borrower:

16 (i) Requests the period of extension;

17 (ii) Agrees to continue, during the period of extension, monthly payments which shall
18 include principal and interest, calculated at the introductory rate on the date that the introductory
19 rate mortgage was originated, as well as amounts for applicable taxes required, insurance, and
20 any other amounts being paid under the terms of the mortgage prior to the interest rate reset;

21 (A) Agrees to pay the creditor, at the time of transfer of title to the property;

22 (I) Any reasonable fees and costs incurred by the creditor in connection with the
23 foreclosure proceeding; and

24 (II) Any arrearages owed to the creditor for monthly principal and interest payments,
25 homeowners insurance payments, property tax payments, and any other payments that the eligible
26 borrower was required to pay, but failed to pay, under the terms of the introductory rate
27 mortgage;

28 (B) Agrees to accept the creditor's placement of a subordinate lien on the property to
29 secure the repayment of amounts owed pursuant to subparagraph (C) of this paragraph; and

30 (C) Agrees to sign a loan modification agreement no longer than two (2) pages in length
31 that contains the terms of the period of extension.

32 (c) The creditor, upon receiving the completed certification of extension within the time
33 period specified in subsection (b) of this section, shall:

34 (1) Grant the eligible borrower the three (3) year period of extension, which shall

1 commence no later than thirty (30) days from the date that the creditor receives the eligible
2 borrower's completed certification of extension; and

3 (2) Suspend all foreclosure proceedings.

4 A creditor shall grant relief pursuant to subdivisions (1) and (2) of this subsection, upon
5 receipt of a completed certificate of extension from an eligible borrower after the time period
6 specified in subsection (b) of this section.

7 (d) Within a reasonable period of time after the receipt of a completed certification of
8 extension from an eligible borrower within the time period specified in subsection (b) of this
9 section, a creditor shall provide to the eligible borrower a written acknowledgment that the
10 certification of extension has been received. The acknowledgment shall contain the following:

11 (1) A statement that any foreclosure proceedings will be suspended during the period of
12 extension;

13 (2) The monthly payment amount that is due from the eligible borrower during the period
14 of extension, which shall include principal and interest, calculated at the introductory rate, and
15 any other amounts being paid under the terms of the mortgage prior to the interest rate reset;

16 (3) A schedule of payments, indicating the date that the first monthly payment is due and
17 the dates that each subsequent monthly payment is due during the period of extension;

18 (4) The address to which the borrower must send the monthly payment; and

19 (5) A statement of proposed subordinate lien, which shall include:

20 (i) A notice to the eligible borrower that the creditor may place a subordinate lien on the
21 property that is the security for the introductory rate mortgage, to secure the eligible borrower's
22 repayment of the amounts provided for in subdivisions (1) of subsection (e) of this section, for
23 which repayment is secured by the subordinate lien.

24 (e)(1) A creditor that grants a period of extension to an eligible borrower shall have the
25 right to record a subordinate lien on the eligible borrower's property to secure the borrower's
26 repayment of:

27 (i) The amount of interest deferred by the period of extension;

28 (ii) Any fees and costs already incurred in connection with the foreclosure proceeding
29 before the receipt by creditor of borrower's completed extension certification; and

30 (iii) Any arrearages owed to the creditor for monthly payments of principal and interest,
31 homeowner insurance payments, property tax payments, or any other payments that the eligible
32 borrower was required to pay, but failed to pay, under the terms of the original introductory rate
33 mortgage.

34 (2) The subordinate lien shall be effective from the date of recording in the public records

1 in the municipality where the property is located. Notwithstanding any other law to the contrary,
2 the subordinate lien shall have the same priority as the lien of the introductory rate mortgage.
3 Upon payment by the borrower of the total amount of interest deferred and any other amounts
4 representing the arrearages for which the subordinate lien secures repayment pursuant to this act,
5 the creditor shall record a discharge of the subordinate lien.

6 (f) An eligible borrower who has been granted a period of extension shall forfeit all rights
7 concerning deferment of interest payments, suspension of foreclosure, and deferment of payment
8 of amounts secured by a subordinate lien, provided by the provisions of this act if the eligible
9 borrower fails to make payments under the schedule of payments as set forth in the creditor's
10 acknowledgment of the period of extension or fails to comply with the terms of any mortgage
11 loan modification agreement entered into between the creditor and the eligible borrower relating
12 to the period of extension, such that the modification agreement becomes ninety (90) days
13 delinquent.

14 **34-27.3-8. Damages.** – Any creditor who violates any provision of this chapter shall pay
15 damages of no less than ten thousand dollars (\$10,000) to the affected borrower, plus a
16 reasonable attorneys' fees and costs. A civil action against the violating creditor may be taken by
17 the affected borrower or by the attorney general's office.

18 **34-27.3-9. Rules and regulations.** – The state department of business regulation shall
19 enforce the provisions of this chapter and in consultation with the attorney general shall adopt
20 regulations pursuant to the Administrative Procedures Act.

21 **34-27.3-10. Construction.** – This chapter shall be liberally construed to effect its
22 purpose.

23 **34-27.3-11. Severability.** – If any provision of this chapter or the application thereof to
24 any person or circumstance is held invalid, such invalidity shall not affect other provisions or
25 applications of the chapter, which can be given effect without the invalid provision or application,
26 and to this end the provisions of this chapter are declared to be severable.

27 SECTION 2. This act shall take effect upon passage and remain in effect until January 1,
28 2015.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROPERTY - MORTGAGE FORECLOSURES

1 This act would require creditors to provide a three (3) year period extension to borrowers
2 who are obligated to repay introductory rate mortgage loans on residential properties under
3 certain circumstances.

4 This act would take effect upon passage and remain in effect until January 1, 2015.

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