It is enacted by the General Assembly as follows:

SECTION 1. Sections 34-11-1.3, 34-11-22 and 34-11-24 of the General Laws in Chapter 34-11 entitled "Form and Effect of Conveyances" are hereby amended to read as follows:

34-11-1.3. Name and address of mortgagor and mortgagee -- Recording. -- (a) Every mortgage deed presented for record shall contain or have endorsed upon it the name and address of the mortgagor and mortgagee and the address shall be recorded as part of the mortgage deed. Failure to comply with this section shall not affect the validity of any mortgage deed, but the city or town clerk may charge an additional two dollars ($2.00) for a recording fee if the name and address does not appear on the instrument. The purpose of including the mortgagee's address is to facilitate in the eventual discharge thereof, and also for purpose of any notice that may be sent to the mortgagor and mortgagee.

(b) The term “mortgagee” for the purposes of this section shall mean the payee or lender identified in the promissory note or other negotiable instrument as defined in chapter 6A-3 of the general laws which is secured by the mortgage deed, and shall not mean a third party purporting to act as an agent or nominee. A mortgage naming a third party as the mortgagee who is not the named payee or lender on the underlying promissory note or other negotiable instrument as defined in chapter 6A-3 of the general laws secured by the mortgage shall be invalid for recording, and shall not be enforceable as a mortgage lien except as provided in section 34-11-43.
for the purpose of any notice that may be sent to the mortgagee shall be considered compliant
with the mortgagee’s address requirements herein.

34-11-22. Statutory power of sale in mortgage. -- The following power shall be known
as the “statutory power of sale” and may be incorporated in any mortgage by reference provided
that a mortgage that does not comply with the mortgagee requirements set forth in sections 34-11-
1.3 and 34-11-24 shall not be entitled to invoke the statutory power of sale:

(Power)

But if default shall be made in the performance or observance of any of the foregoing or
other conditions, or if breach shall be made of the covenant for insurance contained in this deed,
then it shall be lawful for the mortgagee or his, her or its executors, administrators, successors or
assigns to sell, together or in parcels, all and singular the premises hereby granted or intended to
be granted, or any part or parts thereof, and the benefit and equity of redemption of the mortgagor
and his, her or its heirs, executors, administrators, successors and assigns therein, at public
auction upon the premises, or at such other place, if any, as may be designated for that purpose in
this deed, or in the published notice of sale first by mailing written notice of the time and place of
sale by certified mail, return receipt requested, to the mortgagor, at his or her or its last known
address, at least twenty (20) days for mortgagors other than individual consumer mortgagors, and
at least thirty (30) days for individual consumer mortgagors, prior to first publishing the notice,
including the day of the mailing in the computation; second, by publishing the same at least once
each week for three (3) successive weeks in a public newspaper published daily in the city in
which the mortgaged premises are situated; and if there be no public newspaper published daily
in the city in which the mortgaged premises are situated, or if the mortgaged premises are not
situated in a city, then (1) if the mortgaged premises are situated in the city of Central Falls, in a
public newspaper published daily in the city of Pawtucket; (2) if the mortgaged premises are
situated in the town of North Providence, in a public newspaper published daily in either the city
of Providence or the city of Pawtucket; (3) if the mortgaged premises are situated in any of the
towns of Cumberland, Lincoln, Smithfield or North Smithfield, in a public newspaper published
daily in either the city of Pawtucket or Woonsocket; (4) if the mortgaged premises are situated in
the county of Providence elsewhere than in the above-named cities and towns, in a public
newspaper published daily in the city of Providence; (5) if the mortgaged premises are situated in
the county of Newport, in a public newspaper published daily in the city of Newport; but if there
be no such public newspaper so published, then in some public newspaper published anywhere in
the county of Newport; (6) if the mortgaged premises are situated in any of the counties of
Bristol, Kent or Washington, in a public newspaper published daily in the city or town in which
the mortgaged premises are situated; but if there be no public newspaper so published, in some
public newspaper published daily in the county in which the mortgaged premises are situated or
in a public newspaper published daily in the city of Providence; provided however if the
mortgaged premises are situated in the town of New Shoreham then in addition to publication in a
public newspaper published daily as required above, it shall also be published in a public
newspaper published in the town of New Shoreham, and, in the event there is no public
newspaper published in the town of New Shoreham, then in a public newspaper distributed in the
town of New Shoreham; with power to adjourn such sale from time to time, provided that
publishing of the notice shall be continued, together with a notice of the adjournment or
adjournments, at least once each week in that newspaper; and in his, her or its or their own name
or names, or as the attorney or attorneys of the mortgagor, for that purpose by these presents duly
authorized and appointed with full power of substitution and revocation to make, execute and
deliver to the purchaser or purchasers at that sale a good and sufficient deed or deeds of the
mortgaged premises in fee simple, and to receive the proceeds of such sale or sales, and from
such proceeds to retain all sums hereby secured whether then due or to fall due thereafter, or the
part thereof then remaining unpaid, and also the interest then due on the proceeds, together with
all expenses incident to the sale or sales, or for making deeds hereunder, and for fees of counsel
and attorneys, and all costs or expenses incurred in the exercise of such powers, and all taxes,
assessments, and premiums for insurance, if any, either theretofore paid by the mortgagee or his
or her executors, administrators or assigns, or then remaining unpaid, upon the mortgaged
premises, rendering and paying the surplus of the proceeds of sale, if any there be, over and above
the amounts so to be retained as aforesaid, together with a true and particular account of the sale
or sales, expenses and charges, to the mortgagor, or his, her or its heirs, executors, administrators,
successors or assigns; which sale or sales made as aforesaid shall forever be a perpetual bar
against the mortgagor and his, her or its heirs, executors, administrators, successors and assigns,
and all persons claiming the premises, so sold, by, through or under him or her, them or any of
them.

34-11-24. Effect of assignment of mortgage. -- An assignment of mortgage
substantially following the form entitled "Assignment of Mortgage" shall, when duly executed,
have the force and effect of granting, bargaining, transferring and making over to the assignee, his
or her heirs, executors, administrators, and assigns, the mortgage deed with the note and debt
thereby secured, and all the right, title and interest of the mortgagee by virtue thereof in and to the
estate described therein, to have and to hold the mortgage deed with the privileges and
appurtenances thereof to the assignee, his or her heirs, executors, administrators and assigns in as
ample manner as the assignor then holds the same, thereby substituting and appointing the  
assignee and his or her heirs, executors, administrators and assigns as the attorney or attorneys  
irrevocable of the mortgagor under and with all the powers in the mortgage deed granted and  
contained. Any transfer of the ownership of the beneficial interest in, or the right to enforce, a  
promissory note or other negotiable instrument as defined in chapter 6A-3 of the general laws  
secured by a mortgage must be accompanied by an assignment of the mortgage that is presented  
for recording with the applicable recording fee within thirty (30) days of the transfer, and the  
assignment of the mortgage must identify the party to whom the note or other negotiable  
instrument securing the mortgage has been assigned. The failure to present the mortgage  
assignment for recording within the time limits stated herein shall render the mortgage void, but  
shall not nullify the underlying indebtedness.  

SECTION 2. Section 34-13-1 of the General Laws in Chapter 34-13 entitled "Recording  
Of Instruments" is hereby amended to read as follows:  

34-13-1. Instruments eligible for recording. -- Any of the following instruments shall  
be recorded or filed by the town clerk or recorder of deeds, in the manner prescribed by law, on  
request of any person and on payment of the lawful fees therefor:  

(1) Letters of attorney.  
(2) All contracts for sale of land.  
(3) Bonds for title or covenants or powers concerning lands, tenements and  
hereditaments.  
(4) All notices to be filed under the provisions of section 9-4-9.  
(5) All notices and process to be filed under other statutory provisions, and all decrees in  
equity and judgments at law affecting the title to land.  
(6) All instruments evidencing or relating to a security interest in personal property or  
fixtures that may be filed pursuant to chapter 9 of title 6A.  
(7) All instruments required by statute to be recorded, including deeds, mortgages and  
transfers and discharges thereof, leases or memoranda thereof, and transfers and cancellations  
thereof, and the covenants, conditions, agreements and powers therein contained provided that no  
mortgage or transfer thereof shall be recorded if the mortgage or transfer thereof does not comply  
with the requirements set forth in sections 34-11-1.3 and 34-11-24.  
(8) Instruments of defeasance.  
(9) Instruments (excepting wills) creating trusts.  
(10) All instruments and notices, affecting, or purporting to affect, the title to land or any  
interest therein or giving or terminating the right to sever any building or part thereof or fixture,
when signed and acknowledged as required for deeds.

(11) All affidavits as to family facts, including dates of birth, marriage, and death, which
relate or purport to relate to title to land.

(12) All affidavits as to bounds and monuments of land.

(13) All certificates of the secretary of state as to change of corporate name.

(14) All original linen and/or original mylar maps, plats, surveys, and drawings, whether
or not attached to, or a part of, another recordable instrument, Provided, however, That those
requiring the approval of any council; commission, officer, or other body by law shall not be
recorded without such approval.

All survey plans received for recording shall be drawn on archival mylar or linen, those
of which shall not exceed a size of 24" x 36" and shall be recorded as originally drafted. Said
plans shall contain as a minimum all items set forth in the "Procedural and Technical Standards
for the practice of Land Surveying in the State of Rhode Island and Providence Plantations” as
adopted by the Rhode Island Board of Registration of Professional Land Surveyors effective
April 1, 1994 and any amendments or modifications thereof. Further, all plans must be able to be
reproduced so that the contents of said plans are legible.

Indexes of survey plans shall be maintained indicating (a) the title of the plan; and (b) the
street(s) or road(s) on which the subject property abuts. Such plans shall include a separate
listing, in or attached to the legend on the plan, of all streets and roads on which the subject
property abuts.

(15) All declarations of restrictions and covenants in connection with a plat of record or
to be recorded or with a tract or parcel of land which is to be subdivided.

(16) Statements of covenants, conditions, and powers of sale which are intended to be
incorporated in mortgages by reference.

SECTION 3. Section 34-26-8 of the General Laws in Chapter 34-26 entitled
"Redemption, Release, and Transfer of Mortgages" is hereby amended to read as follows:

34-26-8. Release of mortgage -- Affidavit. -- (a) For purposes of this section:

(1) "Mortgage" means a mortgage upon any interest in real property located in the State
of Rhode Island.

(2) "Person" means an individual, corporation, business trust, estate, trust, partnership,
association, joint venture, government, governmental subdivision or agency, or other legal or
commercial entity;

(3) "Mortgagor" means the grantor of a mortgage;

(4) "Mortgagee" means the grantee of a mortgage that meets the requirements of sections
34-11-1.3 and 34-11-24: provided, if the mortgage has been assigned of record. "Mortgagee" means the last person to whom the mortgage has been assigned of record; provided further, if the mortgage has been serviced by a mortgage servicer, "Mortgagee" means the mortgage servicer; 

(5) "Mortgage servicer" means the last person to whom the mortgagor has been instructed by the mortgagee to send payment of the mortgage. The person who has transmitted a payoff statement shall be deemed to be the mortgage servicer with respect to the mortgage described in that payoff statement;

(6) "Attorney-at-law" means any person admitted to practice law in this state and in good standing;

(7) "Title insurance company" means any corporation or other business entity authorized and licensed to transact the business of insuring titles to interests in real property in this state; and

(8) "Payoff statement" means a written statement of the amount of the unpaid balance on a mortgage, including principal, interest and other charges properly assessed pursuant to the loan documentation of such mortgage and of the interest on a per diem basis with respect to the unpaid principal balance of the mortgage.

(b) If a mortgagee fails to execute and deliver a release of mortgage to the mortgagor or to the mortgagor's designated agent within thirty (30) days from receipt of payment of the mortgage by the mortgagee in accordance with the payoff statement furnished by the mortgagee, any attorney-at-law or duly authorized officer of a title insurance company may, on behalf of the mortgagor or any transferee of the mortgagor who has acquired title to the premises described in the mortgage, execute and cause to be recorded in the land records of each city or town where the mortgage was recorded, an affidavit which complies with the requirements of this section.

(c) An affidavit pursuant to this section shall state that:

(1) The affiant is an attorney-at-law or the authorized officer of a title insurance company, and that the affidavit is made in behalf of and at the request of the mortgagor;

(2) The mortgagee has provided a payoff statement with respect to the loan secured by the mortgage;

(3) The affiant has ascertained that the mortgagee has received payment of the loan secured by the mortgage in accordance with the payoff statement, as evidence by a bank check, certified check or attorney's clients' funds account which has been negotiated by the mortgagee or by other documentary evidence of such receipt of payment by the mortgagee;

(4) More than sixty (60) days have elapsed since payment was received by the mortgagee; and

(5) The affiant has given the mortgagee at least thirty (30) days' notice in writing by
certified mail, return receipt request and signed for and completed, of intention to execute and
case to be recorded an affidavit in accordance with this section with a copy of the proposed
affidavit attached to such written notice, and that the mortgagee has not responded in writing to
such notification, or that any request for additional payment made by the mortgagee has been
complied with at least fifteen (15) days prior to the date of the affidavit.

(d) Such affidavit shall state the names of the mortgagor and the mortgagee, the date of
the mortgage, and the volume and page of the land records where the mortgage is recorded. The
affidavit shall give similar information with respect to any recorded assignment of the mortgage.

(e) The affiant shall attach to the affidavit:

(i) Photostatic copies of the documentary evidence that payment has been received by
the mortgagee, including mortgagee's endorsement of any bank check, certified check or
attorney's clients' funds account,

(ii) A photostatic copy of the written payoff statement and shall certify on each that it is
a true copy of the original document, and

(iii) Evidence of mailing and receipt notice to mortgagee.

(f) Such affidavit, when recorded, shall be a release of the lien of such mortgage of the
property described therein.

(g) The city or town clerk shall index the affidavit in the name of the mortgagor as
grantor.

(h) Any person who causes an affidavit to be recorded in the land records of any city or
town in accordance with this section knowing the information and statements therein contained to
be false may be fined not more than a dollar amount that is double the face amount of the
mortgage falsely discharged and shall make restitution to the affected mortgagee to the extent
such mortgagee suffers direct financial loss due to said mortgage being falsely discharged.

(i) The provisions of this section shall not be applicable to mortgages securing lines of
credit nor to any mortgage held by a financial institution incorporated under the laws of the state
of Rhode Island or to any mortgage held by any financial institution organized under federal laws
and maintaining a principal place of business within the state of Rhode Island or to any mortgage
held by the Rhode Island Housing and Mortgage Finance Corporation.

SECTION 4. Chapter 34-11 of the General Laws entitled "Form and Effect of
Conveyances" is hereby amended by adding thereto the following section:

34-11-43. Assignment of mortgages and mortgage assignments previously recorded
in name of nominee. -- (a) Any mortgage or mortgage assignment that therein identifies as the
mortgagee an entity that is not the payee, holder or beneficial owner of the note secured by the
mortgage at the time of the recording, or that identifies an entity as the mortgagee in a nominee or
agency capacity for the original lender, owner or holder of the note, shall not be valid or
enforceable if recorded after the enactment of this section. The invalidity of the mortgage shall
not invalidate the underlying indebtedness intended to be secured by the mortgage.

(b) Notwithstanding the provisions in paragraph (a) of this section, any mortgage or
mortgage assignment recorded prior to the enactment of this section which identified as the
mortgagee an entity acting as the nominee or agent of the note holder or originating lender of a
mortgage loan shall be deemed void, except that such mortgage shall be deemed valid and
enforceable upon the following conditions:

   (1) The mortgage interest is assigned from the entity identified as a nominee or agent to
the current holder of the note secured by the mortgage within ninety (90) days of the enactment of
this section;

   (2) If any transfers of the note secured by the mortgage took place since the original
recording of the mortgage were not accompanied by a recorded assignment of the mortgage
interest, then all such transfers shall be documented with a corresponding instrument assigning
the mortgage from the transferor of the note to the transferee of the note, and indicating the date
of the transfer; and

   (3) All assignments described as required herein shall be recorded pursuant to section 34-
11-24 of the general laws, with all applicable recording fees for each assignment paid in full.

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

BY THE LEGISLATIVE COUNCIL

OF

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RELATING TO PROPERTY - FORMS AND EFFECT OF CONVEYANCES

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1 This act would provide that all transfers of a mortgage interest on residential property be
2 recorded so as to provide a clean chain of title for consumers to track the owner of their mortgage
3 loans, and will render moot the question of standing of a nominee in foreclosure actions by
4 discontinuing the practice of recording mortgages in the name of a party other than the holder of
5 the note secured by the mortgage. This act would also require mortgage assignments be recorded
6 within a certain time or render the mortgage void, but not nullify the underlying indebtedness.
7 This act would take effect upon passage.

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