

2014 -- H 8293 SUBSTITUTE A

LC005852/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO PROPERTY -- MORTGAGE FORECLOSURE AND SALE

Introduced By: Representative Cale P.Keable

Date Introduced: June 05, 2014

Referred To: House Judiciary

(by request)

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~~ 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 34-27 of title 34 of the general laws~~. As the need for a mortgage
12 mediation process has evolved, it is important for the state to develop a standardized, statewide
13 process for foreclosure mediation rather than a process based on local ordinances that may vary
14 from 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 (1) "Default" means the failure of the mortgagor to make a timely payment of an amount
11 due under the terms of the mortgage contract, which failure has not been subsequently cured.

12 ~~(3)~~(2) "Department" means the department of business regulation.

13 ~~(4)~~(3) "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)~~(4) "HUD" means the United States Department of Housing and Urban Development
29 and any successor to such department.

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

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

6 ~~(6)~~(7) "Mortgage" means an individual consumer first-lien mortgage on any owner-
7 occupied, one (1)-to-four (4) unit residential property ~~which~~ that serves as the ~~owner's~~
8 mortgagor's primary residence.

9 ~~(7)~~(8) "Mortgagee" means the holder of a mortgage, or its agent or employee, including a
10 mortgage servicer acting on behalf of a mortgagee.

11 ~~(8)~~(9) "Mortgagor" means ~~the owner of the property subject to a mortgage~~ the person
12 who has signed a mortgage in order to secure a debt or other duty, or the heir or devisee of such
13 person provided that:

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

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

17 ~~(d) No mortgagee may initiate any shall foreclosure of real estate pursuant to subsection~~
18 ~~34-27-4(b) unless the requirements of this section have been met.~~

19 ~~(e) When a mortgage is not more than one hundred twenty (120) days delinquent, the~~
20 ~~mortgagee or its mortgage servicer or other agent or representative of the mortgagee shall~~ The
21 mortgagee shall, prior to initiation of foreclosure of real estate pursuant to § 34-27-4(b), provide
22 to the mortgagor written notice, ~~by certified and first class mail~~ at the address of the real estate
23 and, if different, at the address designated by the mortgagor by written notice to the mortgagee as
24 the mortgagor's address for receipt of notices, that the mortgagee may not foreclose on the
25 mortgaged property without first participating in a mediation conference. Notice addressed and
26 delivered as provided in this section shall be effective with respect to the mortgagor and any heir
27 or devisee of the mortgagor.

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

1 Notwithstanding the foregoing, any penalties assessed under this subsection for any
2 failure of any mortgagee to provide notice as provided herein during the period from September
3 13, 2013, through the effective date of this section shall not exceed the total amount of one
4 hundred twenty-five thousand dollars (\$125,000) for such mortgagee.

5 (2) Penalties accruing pursuant to subsection (d)(1) shall be paid to the mediation
6 coordinator prior to the completion of the mediation process. All penalties accrued under this
7 section shall be transferred to the state within one month of receipt by the mediation coordinator
8 and deposited to the restricted receipt account within the general fund established by § 42-128-
9 2(3) and used for the purposes set forth therein.

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

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

17 (i) Within sixty (60) days after the date upon which the loan is released from the
18 protection of the automatic stay in a bankruptcy proceeding, or any similar injunctive order issued
19 by a state or federal court, or within one hundred twenty (120) days of the date on which the
20 mortgagor initially failed to comply with the terms of an eligible workout agreement, as
21 hereinafter defined; and

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

1 [\(5\) Notwithstanding any other provisions of this section, a mortgagee may initiate a](#)
2 [judicial foreclosure in accordance with § 34-27-1.](#)

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

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

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

28 [\(1\) The curing of the default condition; or](#)

29 [\(2\) The foreclosure of the mortgagor's right of redemption.](#)

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

33 ~~(h)~~(h) If the mediation coordinator determines that after a good faith effort made by the
34 mortgagee at the mediation conference, the parties cannot come to an agreement to renegotiate

1 the terms of the loan in an effort to avoid foreclosure, such good faith effort by the mortgagee
2 shall be deemed to satisfy the requirements of this section. A certificate certifying such good faith
3 effort will be promptly issued by the mediation coordinator authorizing the mortgagee to proceed
4 with the foreclosure action and recording of the foreclosure deed; provided, however, that the
5 mediation coordinator shall not be required to issue such a certificate until any penalties accrued
6 pursuant to subsections (d)(1) and (d)(4)(ii) and any payments owed pursuant to subsection (f)
7 have been paid. Such certification shall be valid until the earlier of:

8 (1) The curing of the default condition; or
9 (2) The foreclosure of the mortgagor's equity of redemption. The certificate shall be
10 recorded along with the foreclosure deed. A form of certificate meeting the requirements of this
11 section shall be promulgated by the department for use by mortgagees at least thirty (30) days
12 prior to the effective date of this section.

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

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

1 dwelling of the ~~owner~~ mortgagor and not to mortgages secured by 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_s or offices_s exclusively in Rhode Island
6 from which office_s or offices_s 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 rights of the
20 mortgagor to any redress afforded under the law are not abridged by this section.

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

25 (o) The provisions of this section shall not apply if the mortgage is a reverse mortgage as
26 described in chapter 25.1 of title 34.

27 (p) Limitations on actions. Any person who claims that a foreclosure is not valid due to
28 the mortgagee's failure to comply with the terms of this section shall have one year from the date
29 that the first notice of foreclosure was published to file a complaint in the superior court for the
30 county in which the property is located and shall also file in the records of land evidence in the
31 city or town where the land subject to the mortgage is located a notice of lis pendens, the
32 complaint to be filed on the same day as the notice of lis pendens or within seven (7) days
33 thereafter. Failure to file a complaint, record the notice of lis pendens and serve the mortgagee
34 within the one year period shall preclude said mortgagor, or any other person claiming an interest

1 through a mortgagor, from subsequently challenging the validity of the foreclosure. Issuance by
2 the mediation coordinator of a certificate authorizing the mortgagee to proceed to foreclosure or
3 otherwise certifying the mortgagee's good faith effort to comply with the provisions of this
4 section shall constitute a rebuttable presumption that the notice requirements of subsection (d)
5 have been met in all respects.

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

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

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

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

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

29 SECTION 3. This act shall take effect ninety (90) days following passage and it shall
30 expire on July 1, 2018.

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LC005852/SUB A
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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 require a mortgagee to participate in good faith in a mediation conference
2 prior to initiating foreclosure proceedings. This act would apply only to individual consumer
3 mortgages on any owner-occupied, one to four (4) unit residential property which is the primary
4 residence of the mortgagor.

5 This act would take effect ninety (90) days following passage and it would expire on July
6 1, 2018.

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