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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO PROPERTY - FORMS AND EFFECT OF CONVEYANCES

Introduced By: Senators Conley, Archambault, Calkin, Lombardi, and Jabour

Date Introduced: March 29, 2017

Referred To: Senate Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 34-11-1.3, 34-11-22 and 34-11-24 of the General Laws in Chapter  
2 34-11 entitled "Form and Effect of Conveyances" are hereby amended to read as follows:

3 **34-11-1.3. Name and address of mortgagor and mortgagee -- Recording.**

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

11 (b) The term "mortgagee" for the purposes of this section shall mean the payee or lender  
12 identified in the promissory note or other negotiable instrument as defined in chapter 3 of title 6A  
13 which is secured by the mortgage deed, and shall not mean a third party purporting to act as an  
14 agent or nominee. A mortgage naming a third party as the mortgagee who is not the named payee  
15 or lender on the underlying promissory note or other negotiable instrument as defined in chapter 3  
16 of title 6A secured by the mortgage shall be invalid for recording, and shall not be enforceable as  
17 a mortgage lien except as provided in §34-11-45. A mortgage deed that identifies the mortgagee  
18 and also lists the name and address of the mortgagee's servicer for the purposes of facilitating the  
19 eventual discharge of the mortgage and for the purpose of any notice that may be sent to the

1 [mortgagee shall be considered compliant with the mortgagee's address requirements herein.](#)

2 **34-11-22. Statutory power of sale in mortgage.**

3 The following power shall be known as the "statutory power of sale" and may be  
4 incorporated in any mortgage by reference; [provided that a mortgage that does not comply with](#)  
5 [the mortgagee requirements set forth in §§34-11-1.3 and 34-11-24 shall not be entitled to invoke](#)  
6 [the statutory power of sale:](#)

7 (Power)

8 But if default shall be made in the performance or observance of any of the foregoing or  
9 other conditions, or if breach shall be made of the covenant for insurance contained in this deed,  
10 then it shall be lawful for the mortgagee or his, her or its executors, administrators, successors or  
11 assigns to sell, together or in parcels, all and singular the premises hereby granted or intended to  
12 be granted, or any part or parts thereof, and the benefit and equity of redemption of the mortgagor  
13 and his, her or its heirs, executors, administrators, successors and assigns therein, at public  
14 auction upon the premises, or at such other place, if any, as may be designated for that purpose in  
15 this deed, or in the published notice of sale first by mailing written notice of the time and place of  
16 sale by certified mail, return receipt requested, to the mortgagor, at his or her or its last known  
17 address, at least twenty (20) days for mortgagors other than individual consumer mortgagors, and  
18 at least thirty (30) days for individual consumer mortgagors, prior to first publishing the notice,  
19 including the day of the mailing in the computation; second, by publishing the same at least once  
20 each week for three (3) successive weeks in a public newspaper published daily in the city in  
21 which the mortgaged premises are situated; and if there be no public newspaper published daily  
22 in the city in which the mortgaged premises are situated, or if the mortgaged premises are not  
23 situated in a city, then (1) if the mortgaged premises are situated in the city of Central Falls, in a  
24 public newspaper published daily in the city of Pawtucket; (2) if the mortgaged premises are  
25 situated in the town of North Providence, in a public newspaper published daily in either the city  
26 of Providence or the city of Pawtucket; (3) if the mortgaged premises are situated in any of the  
27 towns of Cumberland, Lincoln, Smithfield or North Smithfield, in a public newspaper published  
28 daily in either the city of Pawtucket or Woonsocket; (4) if the mortgaged premises are situated in  
29 the county of Providence elsewhere than in the above-named cities and towns, in a public  
30 newspaper published daily in the city of Providence; (5) if the mortgaged premises are situated in  
31 the county of Newport, in a public newspaper published daily in the city of Newport; but if there  
32 be no such public newspaper so published, then in some public newspaper published anywhere in  
33 the county of Newport; (6) if the mortgaged premises are situated in any of the counties of  
34 Bristol, Kent or Washington, in a public newspaper published daily in the city or town in which

1 the mortgaged premises are situated; but if there be no public newspaper so published, in some  
2 public newspaper published or previously published in the county and presently distributed daily  
3 in the county in which the mortgaged premises are situated or in a public newspaper published  
4 daily in the city of Providence; provided however if the mortgaged premises are situated in the  
5 town of New Shoreham then in addition to publication in a public newspaper published daily as  
6 required above, it shall also be published in a public newspaper published in the town of New  
7 Shoreham, and, in the event there is no public newspaper published in the town of New  
8 Shoreham, then in a public newspaper distributed in the town of New Shoreham; with power to  
9 adjourn such sale from time to time, provided that publishing of the notice shall be continued,  
10 together with a notice of the adjournment or adjournments, at least once each week in that  
11 newspaper; and in his, her or its or their own name or names, or as the attorney or attorneys of the  
12 mortgagor, for that purpose by these presents duly authorized and appointed with full power of  
13 substitution and revocation to make, execute and deliver to the purchaser or purchasers at that  
14 sale a good and sufficient deed or deeds of the mortgaged premises in fee simple, and to receive  
15 the proceeds of such sale or sales, and from such proceeds to retain all sums hereby secured  
16 whether then due or to fall due thereafter, or the part thereof then remaining unpaid, and also the  
17 interest then due on the proceeds, together with all expenses incident to the sale or sales, or for  
18 making deeds hereunder, and for fees of counsel and attorneys, and all costs or expenses incurred  
19 in the exercise of such powers, and all taxes, assessments, and premiums for insurance, if any,  
20 either theretofore paid by the mortgagee or his or her executors, administrators or assigns, or then  
21 remaining unpaid, upon the mortgaged premises, rendering and paying the surplus of the  
22 proceeds of sale, if any there be, over and above the amounts so to be retained as aforesaid,  
23 together with a true and particular account of the sale or sales, expenses and charges, to the  
24 mortgagor, or his, her or its heirs, executors, administrators, successors or assigns; which sale or  
25 sales made as aforesaid shall forever be a perpetual bar against the mortgagor and his, her or its  
26 heirs, executors, administrators, successors and assigns, and all persons claiming the premises, so  
27 sold, by, through or under him or her, them or any of them.

28 **34-11-24. Effect of assignment of mortgage.**

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

31 **34-13-1. Instruments eligible for recording.**

32 Any of the following instruments shall be recorded or filed by the town clerk or recorder  
33 of deeds, in the manner prescribed by law, on request of any person and on payment of the lawful  
34 fees therefor:

- 1 (1) Letters of attorney.
- 2 (2) All contracts for sale of land.
- 3 (3) Bonds for title or covenants or powers concerning lands, tenements and  
4 hereditaments.
- 5 (4) All notices to be filed under the provisions of § 9-4-9.
- 6 (5) All notices and process to be filed under other statutory provisions, and all decrees in  
7 equity and judgments at law affecting the title to land.
- 8 (6) All instruments evidencing or relating to a security interest in personal property or  
9 fixtures that may be filed pursuant to chapter 9 of title 6A.
- 10 (7) All instruments required by statute to be recorded, including deeds, mortgages and  
11 transfers and discharges thereof, leases or memoranda thereof, and transfers and cancellations  
12 thereof, and the covenants, conditions, agreements and powers therein contained; provided that  
13 no mortgage or transfer thereof shall be recorded if the mortgage or transfer thereof does not  
14 comply with the requirements set forth in §§34-11-1.3 and 34-11-24.
- 15 (8) Instruments of defeasance.
- 16 (9) Instruments (excepting wills) creating trusts.
- 17 (10) All instruments and notices, affecting, or purporting to affect, the title to land or any  
18 interest therein or giving or terminating the right to sever any building or part thereof or fixture,  
19 when signed and acknowledged as required for deeds.
- 20 (11) All affidavits as to family facts, including dates of birth, marriage, and death, which  
21 relate or purport to relate to title to land.
- 22 (12) All affidavits as to bounds and monuments of land.
- 23 (13) All certificates of the secretary of state as to change of corporate name.
- 24 (14) All original linen and/or original mylar maps, plats, surveys, and drawings, whether  
25 or not attached to, or a part of, another recordable instrument, Provided, however, That those  
26 requiring the approval of any council, commission, officer, or other body by law shall not be  
27 recorded without such approval.
- 28 All survey plans received for recording shall be drawn on archival mylar or linen, those  
29 of which shall not exceed a size of 24" x 36" and shall be recorded as originally drafted. Said  
30 plans shall contain as a minimum all items set forth in the "Procedural and Technical Standards  
31 for the practice of Land Surveying in the State of Rhode Island and Providence Plantations" as  
32 adopted by the Rhode Island Board of Registration of Professional Land Surveyors effective  
33 April 1, 1994 and any amendments or modifications thereof. Further, all plans must be able to be  
34 reproduced so that the contents of said plans are legible.

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

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

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

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

11 **34-26-8. Release of mortgage -- Affidavit.**

12 (a) For purposes of this section:

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

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

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

19 (4) "Mortgagee" means the grantee of a mortgage [that meets the requirements of §§34-](#)  
20 [11-1.3 and 34-11-24](#); provided, if the mortgage has been assigned of record. "Mortgagee" means  
21 the last person to whom the mortgage has been assigned of record; provided further, if the  
22 mortgage has been serviced by a mortgage servicer, "Mortgagee" means the mortgage servicer;

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

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

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

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

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

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

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

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

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

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

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

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

28 (e) The affiant shall attach to the affidavit:

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

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

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

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

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

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

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

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

17 **34-11-45. Assignment of mortgages and mortgage assignments previously recorded**  
18 **in name of nominee.**

19 (a) Any mortgage or mortgage assignment that therein identifies as the mortgagee an  
20 entity that is not the payee, holder or beneficial owner of the note secured by the mortgage at the  
21 time of the recording, or that identifies an entity as the mortgagee in a nominee or agency  
22 capacity for the original lender, owner or holder of the note, shall not be valid or enforceable if  
23 recorded after the effective date of this act. The invalidity of the mortgage shall not invalidate the  
24 underlying indebtedness intended to be secured by the mortgage.

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

30 (1) The mortgage interest is assigned from the entity identified as a nominee or agent to  
31 the current holder of the note secured by the mortgage within ninety (90) days of the effective  
32 date of this act;

33 (2) If any transfers of the note secured by the mortgage took place since the original  
34 recording of the mortgage were not accompanied by a recorded assignment of the mortgage

1 interest, then all such transfers shall be documented with a corresponding instrument assigning  
2 the mortgage from the transferor of the note to the transferee of the note, and indicating the date  
3 of the transfer; and

4 (3) All assignments described as required herein shall be recorded pursuant to §34-11-24,  
5 with all applicable recording fees for each assignment paid in full.

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
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.

6           This act would take effect upon passage.

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