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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO PROPERTY - FORMS AND EFFECT OF CONVEYANCES

Introduced By: Representatives Kennedy, San Bento, Melo, Valencia, and Naughton

Date Introduced: February 14, 2013

Referred To: House Corporations

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 34-11 of the General Laws entitled "Form and Effect of
2 Conveyances" is hereby amended by adding thereto the following section:

3 **34-11-43. Legislative findings.** -- The public recording of all transfers of mortgages on
4 residential property is a matter of state concern. Since 1997, a majority of participants in the
5 mortgage banking industry have been using a private registry for tracking and transferring
6 mortgages. This practice has privatized the land recording process and undermines the accuracy
7 of public land records. As a result, borrowers often do not know which entity owns their loans,
8 and courts are faced with questions regarding which entity has standing to bring a foreclosure
9 action. This uncertainty unnecessarily burdened the state's judicial resources as record numbers
10 of foreclosure actions were filed during the recent financial crisis. This act requires that all
11 transfers of the debt secured by a mortgage on residential property be accompanied by a recorded
12 assignment of the mortgage lien, and provides that the failure to record such assignments within a
13 certain time will render the mortgage lien void.

14 **34-11-44. Declaration of policy.** -- It is declared that it is the policy of this state to
15 provide an accurate public record of all ownership interests in mortgages on residential property.

16 **34-11-45. Assignment of mortgages and mortgage assignments previously recorded**
17 **in name of nominee.** -- (a) Any mortgage or mortgage assignment that therein identifies as the
18 mortgagee an entity that is not the payee, holder or beneficial owner of the note secured by the
19 mortgage at the time of the recording, or that identifies an entity as the mortgagee in a nominee or

1 agency capacity for the original lender, owner or holder of the note, shall not be valid or
2 enforceable if recorded after the enactment of this section. The invalidity of the mortgage shall
3 not invalidate the underlying indebtedness intended to be secured by the mortgage.

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

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

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

17 (3) All assignments described as required herein shall be recorded pursuant to section 34-
18 11-24 of the general laws, with all applicable recording fees for each assignment paid in full.

19 SECTION 2. Sections 34-11-1.3, 34-11-22 and 34-11-24 of the General Laws in Chapter
20 34-11 entitled "Form and Effect of Conveyances" are hereby amended to read as follows:

21 **34-11-1.3. Name and address of mortgagor and mortgagee -- Recording. -- (a)** Every
22 mortgage deed presented for record shall contain or have endorsed upon it the name and address
23 of the mortgagor and mortgagee and the address shall be recorded as part of the mortgage deed.
24 Failure to comply with this section shall not affect the validity of any mortgage deed, but the city
25 or town clerk may charge an additional two dollars (\$2.00) for a recording fee if the name and
26 address does not appear on the instrument. The purpose of including the mortgagee's address is to
27 facilitate in the eventual discharge thereof, and also for purpose of any notice that may be sent to
28 the mortgagor and mortgagee.

29 (b) The term "mortgagee," for the purposes of this section, shall mean the payee or lender
30 identified in the promissory note or other negotiable instrument as defined in chapter 6A-3 of the
31 general laws, which is secured by the mortgage deed, and shall not mean a third party purporting
32 to act as an agent or nominee. A mortgage naming a third party as the mortgagee who is not the
33 named payee or lender on the underlying promissory note or other negotiable instrument, as
34 defined in chapter 6A-3 of the general laws, secured by the mortgage shall be invalid for

1 [recording, and shall not be enforceable as a mortgage lien except as provided in section 34-11-45.](#)
2 [A mortgage deed that identifies the mortgagee and also lists the name and address of the](#)
3 [mortgagee's servicer for the purposes of facilitating the eventual discharge of the mortgage and](#)
4 [for the purpose of any notice that may be sent to the mortgagee shall be considered compliant](#)
5 [with the mortgagee's address requirements herein.](#)

6 **34-11-22. Statutory power of sale in mortgage. --** The following power shall be known
7 as the "statutory power of sale" and may be incorporated in any mortgage by reference; [provided,](#)
8 [that a mortgage that does not comply with the mortgagee requirements set forth in sections 34-11-](#)
9 [1.3 and 34-11-24 shall not be entitled to invoke the statutory power of sale:](#)

10 (Power)

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

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

31 **34-11-24. Effect of assignment of mortgage.** -- An assignment of mortgage
32 substantially following the form entitled "Assignment of Mortgage" shall, when duly executed,
33 have the force and effect of granting, bargaining, transferring and making over to the assignee, his
34 or her heirs, executors, administrators, and assigns, the mortgage deed with the note and debt

1 thereby secured, and all the right, title and interest of the mortgagee by virtue thereof in and to the
2 estate described therein, to have and to hold the mortgage deed with the privileges and
3 appurtenances thereof to the assignee, his or her heirs, executors, administrators and assigns in as
4 ample manner as the assignor then holds the same, thereby substituting and appointing the
5 assignee and his or her heirs, executors, administrators and assigns as the attorney or attorneys
6 irrevocable of the mortgagor under and with all the powers in the mortgage deed granted and
7 contained. Any transfer of the ownership of the beneficial interest in, or the right to enforce, a
8 promissory note or other negotiable instrument as defined in chapter 6A-3 of the general laws
9 secured by a mortgage must be accompanied by an assignment of the mortgage that is presented
10 for recording with the applicable recording fee within thirty (30) days of the transfer, and the
11 assignment of the mortgage must identify the party to whom the note or other negotiable
12 instrument securing the mortgage has been assigned. The failure to present the mortgage
13 assignment for recording within the time limits stated herein shall render the mortgage void, but
14 shall not nullify the underlying indebtedness.

15 SECTION 3. Section 34-13-1 of the General Laws in Chapter 34-13 entitled "Recording
16 Of Instruments" is hereby amended to read as follows:

17 **34-13-1. Instruments eligible for recording. --** Any of the following instruments shall
18 be recorded or filed by the town clerk or recorder of deeds, in the manner prescribed by law, on
19 request of any person and on payment of the lawful fees therefor:

- 20 (1) Letters of attorney.
- 21 (2) All contracts for sale of land.
- 22 (3) Bonds for title or covenants or powers concerning lands, tenements and
23 hereditaments.
- 24 (4) All notices to be filed under the provisions of section 9-4-9.
- 25 (5) All notices and process to be filed under other statutory provisions, and all decrees in
26 equity and judgments at law affecting the title to land.
- 27 (6) All instruments evidencing or relating to a security interest in personal property or
28 fixtures that may be filed pursuant to chapter 9 of title 6A.
- 29 (7) All instruments required by statute to be recorded, including deeds, mortgages and
30 transfers and discharges thereof, leases or memoranda thereof, and transfers and cancellations
31 thereof, and the covenants, conditions, agreements and powers therein contained provided that no
32 mortgage or transfer thereof shall be recorded if the mortgage or transfer thereof does not comply
33 with the requirements set forth in sections 34-11-1.3 and 34-11-24.
- 34 (8) Instruments of defeasance.

1 (9) Instruments (excepting wills) creating trusts.

2 (10) All instruments and notices, affecting, or purporting to affect, the title to land or any
3 interest therein or giving or terminating the right to sever any building or part thereof or fixture,
4 when signed and acknowledged as required for deeds.

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

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

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

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

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

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

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

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

28 SECTION 4. Section 34-26-8 of the General Laws in Chapter 34-26 entitled
29 "Redemption, Release, and Transfer of Mortgages" is hereby amended to read as follows:

30 **34-26-8. Release of mortgage -- Affidavit.** -- (a) For purposes of this section:

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

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

1 commercial entity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 SECTION 5. This act shall take effect on July 1, 2013.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO PROPERTY - FORMS AND EFFECT OF CONVEYANCES

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 on July 1, 2013.

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