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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

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A N A C T

RELATING TO PROPERTY -- MORTGAGE FORECLOSURE AND SALE

Introduced By: Representatives Dawson, Shanley, O'Brien, and Casey

Date Introduced: March 05, 2024

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 34-27-4 of the General Laws in Chapter 34-27 entitled "Mortgage  
2 Foreclosure and Sale" is hereby amended to read as follows:

3 **34-27-4. Publication of notice under power of sale and rights of active military**  
4 **servicemembers.**

5 (a) Whenever any real estate shall be sold under any power of sale mortgage executed  
6 subsequent to May 4, 1911, and the mortgage shall provide for the giving of notice of the sale by  
7 publication in some public newspaper at least once a week for three (3) successive weeks before  
8 the sale, the first publication of the notice shall be at least twenty-one (21) days before the day of  
9 sale, including the day of the first publication in the computation, and the third publication of the  
10 notice shall be no fewer than seven (7) days before the original date of sale listed in the  
11 advertisement, including the day of the third publication in the computation, and no more than  
12 fourteen (14) days before the original date of sale listed in the advertisement. The sale may take  
13 place no more than fourteen (14) days from the date on which the third successive notice is  
14 published, excluding the day of the third publication in the computation. Provided, however, that  
15 if the sale is adjourned as provided in § 34-11-22, and the adjourned sale is held during the same  
16 calendar week as the originally scheduled day of sale, no additional advertising is required.  
17 Otherwise, publication of the notice of the adjourned sale, together with a notice of the adjournment  
18 or adjournments, shall be continued at least once each week commencing with the calendar week  
19 following the originally scheduled day of sale; the sale, as so adjourned, shall take place during the

1 same calendar week in which the last notice of the adjourned sale is published, at least one day  
2 after the date on which the last notice is published.

3 (b) Provided, however, that no notice shall be valid or effective unless the mortgagor has  
4 been ~~mailed~~ sent written notice of the time and place of the sale by ~~certified mail return receipt~~  
5 ~~requested-at~~ way of United States Postal Service First Class Mail and/or an overnight delivery  
6 service the address of the real estate and, if different, at the mortgagor's address listed with the tax  
7 assessor's office of the city or town where the real estate is located or any other address mortgagor  
8 designates by written notice to mortgagee at his, her, or its last known address, at least twenty (20)  
9 days for mortgagors other than individual consumer mortgagors, and at least thirty (30) days for  
10 individual consumer mortgagors, days prior to the first publication, including the day of mailing in  
11 the computation. The mortgagee shall include in the foreclosure deed an affidavit of compliance  
12 with this provision.

13 (c) Provided further, that the notice ~~mailed~~ sent to the mortgagor in accordance with  
14 subsection (b) above shall also contain a copy of subsection (d) below (printed in not less than 12  
15 point type) headed by the following notice (printed in not less than 14 point type): "A  
16 servicemember on active duty or deployment or who has recently ceased such duty or deployment  
17 has certain rights under subsection 34-27-4(d) of the Rhode Island general laws set out below. To  
18 protect your rights if you are such a servicemember, you should give written notice to the servicer  
19 of the obligation or the attorney conducting the foreclosure, prior to the sale, that you are a  
20 servicemember on active duty or deployment or who has recently ceased such duty or deployment.  
21 This notice may be given on your behalf by your authorized representative. If you have any  
22 questions about this notice, you should consult with an attorney." The mortgagee shall include in  
23 the foreclosure deed an affidavit of compliance with this provision.

24 (d) Foreclosure sales affecting servicemembers.

25 (1) The following definitions shall apply to this subsection and to subsection (c):

26 (i) "Servicemember" means a member of the army, navy, air force, marine corps, or coast  
27 guard and members of the national guard or reserves called to active duty.

28 (ii) "Active duty" has the same meaning as the term is defined in 10 U.S.C. §§ 12301 —  
29 12304. In the case of a member of the national guard, or reserves "active duty" means and includes  
30 service under a call to active service authorized by the president or the secretary of defense for a  
31 period of time of more than thirty (30) consecutive days under 32 U.S.C. § 502(f), for the purposes  
32 of responding to a national emergency declared by the president and supported by federal funds.

33 (2) This subsection applies only to an obligation on real and related personal property  
34 owned by a service member that:

1 (i) Originated before the period of the servicemember's military service or in the case of a  
2 member of the national guard or reserves originated before being called into active duty and for  
3 which the servicemember is still obligated; and

4 (ii) Is secured by a mortgage or other security in the nature of a mortgage.

5 (3) Stay of right to foreclose by mortgagee. Upon receipt of written notice from the  
6 mortgagor or mortgagor's authorized representative that the mortgagor is participating in active  
7 duty or deployment or that the notice as provided in subsection (c) was received within nine (9)  
8 months of completion of active duty or deployment, the mortgagee shall be barred from proceeding  
9 with the execution of sale of the property as defined in the notice until such nine (9) month period  
10 has lapsed or until the mortgagee obtains court approval in accordance with subdivision (d)(5)  
11 below.

12 (4) Stay of proceedings and adjustment of obligation. In the event a mortgagee proceeds  
13 with foreclosure of the property during, or within nine (9) months after a servicemember's period  
14 of active duty or deployment notwithstanding receipt of notice contemplated by subdivision (d)(3)  
15 above, the servicemember or his or her authorized representative may file a petition against the  
16 mortgagee seeking a stay of such foreclosure, after a hearing on such petition, and on its own  
17 motion, the court may:

18 (i) Stay the proceedings for a period of time as justice and equity require; or

19 (ii) Adjust the obligation as permitted by federal law to preserve the interests of all parties.

20 (5) Sale or foreclosure. A sale, foreclosure or seizure of property for a breach of an  
21 obligation of a servicemember who is entitled to the benefits under subsection (d) and who provided  
22 the mortgagee with written notice permitted under subdivision (d)(3) shall not be valid if made  
23 during, or within nine (9) months after, the period of the servicemember's military service except:

24 (i) Upon a court order granted before such sale, foreclosure or seizure after hearing on a  
25 petition filed by the mortgagee against such servicemember; or

26 (ii) If made pursuant to an agreement of all parties.

27 (6) Penalties. A mortgagee who knowingly makes or causes to be made a sale, foreclosure  
28 or seizure of property that is prohibited by subsection (d)(3) shall be fined the sum of one thousand  
29 dollars (\$1,000), or imprisoned for not more than one year, or both. The remedies and rights  
30 provided hereunder are in addition to and do not preclude any remedy for wrongful conversion  
31 otherwise available under law to the person claiming relief under this section, including  
32 consequential and punitive damages.

33 (7) Any petition hereunder shall be commenced by action filed in the superior court for the  
34 county in which the property subject to the mortgage or other security in the nature of a mortgage

1 is situated. Any hearing on such petition shall be conducted on an expedited basis following such  
2 notice and/or discovery as the court deems proper.

3 SECTION 2. 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 -- MORTGAGE FORECLOSURE AND SALE

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- 1           This act would allow for sending of the notice under power of sale and rights of active
- 2 military servicemembers by United States Postal Service First Class Mail and/or an overnight
- 3 delivery service, instead of by United States Postal Service certified mail return receipt requested.
- 4           This act would take effect upon passage.

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