

CHAPTER 2010-2

**No. 18 AN ORDINANCE AMENDING CHAPTER 13, ENTITLED
"HOUSING," ARTICLE X ENTITLED
RESPONSIBILITIES OF OWNERS, OPERATORS AND
OCCUPANTS," SECTIONS 13-213 THROUGH 13-217**

Approved January 26, 2010

Be it ordained by the City of Providence:

SECTION 1. Chapter 13 of the Code of Ordinances of the City of Providence is hereby amended in part to read as follows:

Sec. 13-213. Definitions.

The *City* shall mean the City of Providence.

Residential premises/property shall mean real property that is owner-occupied as an owner's principal residence, located within the City and County of Providence, that is either a single-family dwelling or a structure containing not more than four residential units, and shall also include a residential condominium unit or a residential co-op unit occupied by an owner as an owner's principal residence. Property deemed abandoned or under order for demolition as a result of fire or other calamity by the City's Department of Inspection and Standards is not considered owner-occupied for the purpose of this ordinance.

Loan/mortgage conciliation conference coordinator shall mean an individual employed by a HUD-approved independent counseling agency to facilitate the discussion between the homeowner/mortgagor and the lender/mortgagee.

Loan/mortgage conciliation conference shall mean the formal discussion and negotiation taking place at the call of the loan/mortgage conciliation conference coordinator between the homeowner/mortgagor and the lender/mortgagee.

Homeowner shall mean an individual who owns and resides in residential real property located in the City and County of Providence, and for whom such residential real property is a principal residence.

Lender shall mean an entity which has advanced funds secured by a mortgage on residential premises, and recorded in the Land Evidence Records of the City.

The *Parties* shall mean the homeowner/mortgagor and the lender/mortgagee.

Rules and regulations shall mean any rules adopted by the City necessary for the proper enforcement of this Ordinance to interpret and secure its intent.

Sec. 13-214. Statement of Policy.

It is hereby declared that residential mortgage foreclosure actions, caused in part by so called sub-prime mortgage lending and predatory lending practices as well as rising interest rates, unemployment and underemployment, have negatively impacted a substantial number of homeowners in the City, creating a foreclosure crisis which endangers the economic stability of the City and the health and safety of its citizens, as the increasing numbers of foreclosures lead to increases in unoccupied and unattended buildings in the City and give impetus to the continuation, extension and aggravation of urban blight and decay. More importantly, foreclosures cause the unnecessary and unwanted displacement of a considerable number of homeowners and tenants who desire to live and work in the City.

Sec. 13-215. Purpose.

The City's purpose in Sections 13-213 through 13-217, inclusive, is to protect the public health, safety and welfare by providing early, HUD-approved independent counseling agency-supervised intervention in residential owner-occupied mortgage foreclosure cases which will assure timely determination of eligibility under various federal, state and local programs established to facilitate loan work-out and other solutions to permit residential homeowners, where possible, to retain their properties and permit lenders to move forward to auction/sale of the properties and recordation of a foreclosure deed upon conclusion of the process.

Sec. 13-216. Filing/ Recording of Foreclosure Deed.

Except as may be provided in this ordinance, ~~ff~~From and after the effective date of this Ordinance, no deed offered by a lender/mortgagee to be filed with the Recorder of Deeds as a result of a mortgage foreclosure action shall be accepted and/or recorded in the Land Evidence Records of the City until and unless the following events have occurred:

(a) The lender/mortgagee shall provide written notice to the City of its intent to foreclose on the subject residential property at the same time it issues notice to the homeowner/mortgagor of the foreclosure action. Such notice must include plat and lot information.

(b) Said notice shall be filed by the lender/mortgagee with the Recorder of Deeds.

(c) Following the filing of such notice, the Parties shall participate in a mandatory loan/mortgage conciliation conference at a location mutually convenient to the parties.

Telephone participation by the lender/mortgagee is acceptable.

(d) Said conciliation conference shall be scheduled at a time and place to be determined by the conciliation conference coordinator, but not later than ~~twenty-one (21)~~ thirty (30) days following the mailing of the notice of intent to foreclose. The Parties will be noticed by certified and first class mail.

(e) Prior to the scheduled conciliation conference, the homeowner/mortgagor will be assigned a loan counselor to be provided by a HUD-approved independent counseling agency.

(f) The homeowner/mortgagor shall cooperate in all respects with the housing counseling agency, providing all necessary financial and employment information. The homeowner/mortgagor shall complete any and all loan resolution proposals and applications as appropriate.

(g) The conciliation conference will require the exchange of information provided as required by subsection (f) to the representative of the lender/ mortgagee.

(h) If after two attempts by the conciliation conference coordinator to contact the homeowner/mortgagor, the homeowner/mortgagor fails to respond to the conference coordinator's request to appear for the conciliation conference, or the homeowner/mortgagor fails to cooperate in any respect with the requirements outlined in this Ordinance, the requirements of the Ordinance will be deemed to be satisfied upon verification by the HUD-approved independent counseling agency that the required notice was sent; and if so, a certificate will be issued immediately by the HUD-approved independent counseling agency authorizing the lender/mortgagee to proceed with the foreclosure action including recording the foreclosure deed.

(i) If, it is determined after a good faith effort made by the lender/mortgagee at the conciliation conference with the homeowner/mortgagor, that the Parties cannot come to an agreement to re-negotiate the terms of the loan in an effort to avoid foreclosure, such good faith effort on behalf of the lender/mortgagee shall be deemed to satisfy the requirements of this Ordinance. A certificate certifying such good faith effort will be issued immediately by the HUD - approved independent counseling agency authorizing the lender/mortgagee to proceed with the foreclosure action to including recording the deed. Such a certification will be the form of a document to be filed along with all other relevant documents with the recorder of deeds.

(j) Upon the demand of the lender/mortgagee at any time following completion of the conciliation conference, if the lender/mortgagee is not invoking subsection (h), the HUD-approved independent counseling agency will immediately certify that the provisions of this Ordinance have been met.

(k) The Parties shall complete the process required by this Ordinance within a period of sixty (60) days from the initial notice provided in (a).

(l) Cases involving premises which are not owner-occupied or which are not residential are not subject to the mandatory loan/mortgage conciliation conference and may proceed directly to foreclosure and recordation of the deed concerning such property -presuming compliance with Sections 13-218 through 13-220.

(m) Notwithstanding the foregoing, any lender/mortgagee which is headquartered within the State of Rhode Island and which services its own mortgages shall be deemed to be in compliance with the requirements of this section if:

(1) the lender/mortgagee provides homeowners a forbearance relief program that is consistent with the forbearance relief requirements applicable to FHA-Insured Mortgages, as set forth in Chapter 8 of HUD Handbook 4330.1 Rev. 5, Administration of Insured Home Mortgages, as the same may be amended from time to time; and

(2) the deed offered by a lender/mortgagee to be filed with the Recorder of Deeds as a result of a mortgage foreclosure action contains a certification that the provisions of this sub-section have been satisfied.

Sec. 13-217. Penalties.

No deed offered by a lender/mortgagor to be filed with the Recorder of Deeds shall be accepted and/or recorded in the Land Evidence Records of the City if it is determined that the lender/mortgagor has failed in any respect with the requirements and provisions of this Ordinance. In the event that a foreclosure has taken place without affording the homeowner of the relief afforded by this Ordinance, the Recorder of Deeds shall assess a penalty of two thousand dollars (\$2,000.00) in addition to any other penalties and fees that may be assessed prior to recording the foreclosure deed. The rights of the homeowner to any redress afforded under the law are not

abridged by this section.

SECTION 2.

This Ordinance shall take effect upon its passage.

IN CITY COUNCIL
JAN 7 2010

FIRST READING
READ AND PASSED

Am M. Stettin CLERK

IN CITY
COUNCIL

JAN 21 2010
FINAL READING
READ AND PASSED

Am M. Stettin PRESIDENT
Am M. Stettin CLERK

APPROVED

MAYOR

1/26/10



Recorder of Deeds

David N. Cicilline, Mayor | John A. Murphy, Acting Recorder of Deeds

November 4, 2009

Memorandum for Councilmen Jackson and Aponte

Subject: Proposed Amendments to City Ordinance 13-213 through 13-217 (Foreclosures)

Since the implementation of the subject ordinance, it has become apparent that a few amendments are in order. This memo outlines them for you and I am attaching a copy of the ordinance with the suggested language.

The first clarifies the definition of "homeowner occupied" to exclude those properties which the homeowner has abandoned. When faced with a property that is either derelict or already boarded, the forbearance process that the ordinance envisions would help the homeowner will not work, either because the homeowner has already given up or because the economic value of the property cannot be saved through loan modification.

The current definition seems to allow for this, and some of the attorneys involved in foreclosure work have pointed this out (in other words, when the "occupied" portion of the "homeowner" definition is not in place) but the added language promotes an orderly process of ascertaining the property's condition through a certification by the Department of Inspection and Standards.

The second lengthens the time for the Conciliation Coordinator to contact the homeowner from 21 to 30 days. This change was requested by the Conciliation Coordinator at RIH, mostly because contact information supplied by the lender is usually limited to name/address (because some foreclosure specialists feel that federal lending laws require this) and so it was felt that a little more time here would be helpful. Please note that the timeframe for the process is unchanged at 60 days total.

The final change addresses what would happen if a lender simply ignored (or was ignorant of) the ordinance, and thus is a remedy for non-compliance. Once a foreclosure and subsequent sale takes place it cannot be undone. Should the Recorder refuse to record the foreclosure deed, it would create a gap in the chain of title, which will affect the value of the property and create a problem for the purchaser (whom we hope will revive the property.) The penalty of \$2,000 is calculated to be a large chunk of the (average) \$3,000 in attorney's fees for handling a foreclosure. It is simultaneously a remedy for the chain of title problem and high enough that no attorney will want to simply ignore the ordinance a second time.

There have been two instances in the past month where a remedy such as this would have been used; additionally the existence of a remedy in the ordinance would be an important defense in a lawsuit.

PROVIDENCE THE CREATIVE CAPITAL

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Matt Stark or I will be happy to answer any questions you may have about these amendments, I would like to put these in before the Ordinance Committee as soon as possible. So, if you like these proposals (or have changes) please let me know at your earliest convenience.

Finally, I am happy to inform you that, of the 9 homeowners who were interested in taking part in the process, 8 successfully had a modification and were able to stay in their homes.

I can be reached at extension 209 or jamurphy@providenceri.com.

copy to: Matt Stark

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