

CHAPTER 2018-38

No. 383 **AN ORDINANCE AMENDING CHAPTER 13, ARTICLE IV OF THE CODE OF ORDINANCES OF THE CITY OF PROVIDENCE, ENTITLED: "RESIDENTIAL OWNER-OCCUPIED MORTGAGE FORECLOSURE INTERVENTION"**

Approved July 10, 2018

Be it ordained by the City of Providence:

SECTION 1. Chapter 13, Article IV is hereby amended as follows:

Sec. 13-19. - Definitions.

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Good Faith means that the mediation coordinator determines that the mortgagor and mortgagee deal honestly and fairly with each other and the mediation coordinator in an effort determine whether an alternative to foreclosure is economically feasible for the mortgagor and mortgagee, as evidenced by some or all of the following factors:

- (i) Mortgagee provided notice as required by this article;
- (ii) Mortgagee designated an agent to participate in the mediation conference on its behalf, and with the authority to agree to a work-out agreement on its behalf;
- (iii) Mortgagee made reasonable efforts to respond in a timely manner to requests for information from the mediation coordinator, mortgagor, or counselor assisting the mortgagor;
- (iv) Mortgagee declines to offer the mortgagor an eligible work-out proposal, and the mortgagee provided a detailed statement, in writing, of its reasons for rejecting the proposal;
- (v) Whether the mortgagee offers the mortgagor a work-out proposal that the mediation coordinator determines would result in net financial benefit to the mortgagor as compared to the terms of the mortgage, and /or is affordable to the mortgagor.

HUD means the United States Department of Housing and Urban Development.

Mortgagor means an individual who owns and resides in residential real property located in the City and County of Providence which is subject to a mortgage securing funds advanced by a Mortgagee.

Mortgagee means the holder of a mortgage recorded in the land evidence records of the city, including a mortgage servicer acting on behalf of a mortgagee.

Mediation coordinator means an individual employed by a Rhode Island based, HUD-approved independent counseling agency certified by the city to serve as the unbiased, impartial and independent coordinator of the mediation conference, with no authority to impose a solution or otherwise act as a consumer advocate.

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

Residential property means real property, located within the City and County of Providence, that is (i) a single-family dwelling, (ii) a structure containing not more than four (4) residential units, (iii) a residential condominium unit, or (iv) a residential co-op unit, and which is occupied as a mortgagor'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 article.

Rules and regulations means any rules adopted by the city necessary for the proper enforcement of this article to interpret and secure its intent.

The city means the City of Providence.

The parties means the homeowner/mortgagor and the lender/mortgagee.

(Ord. 2013, ch. 2013-5, 3-18-13) Sec. 13-20. - Statement of policy.

It is hereby declared that residential mortgage foreclosure actions, caused in part by an underperforming economy, rising interest rates, unemployment, and underemployment, have negatively impacted a substantial number of mortgagors in the city, creating a foreclosure crisis which endangers the economic stability of the city and the health and safety of its citizens. The prevalence 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.

(Ord. 2013, ch. 2013-5, 3-18-13) Sec. 13-21. - Purpose.

The city's purpose in sections 13-19 through 13-23, 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 workout 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.

(Ord. 2013, ch. 2013-5, 3-18-13) Sec. 13-22. - Notice of Intent to Foreclose/Mediation Conference.

Except as may be provided in this article, from and after the effective date of this article, a mortgagee initiating a non-judicial foreclosure must undertake each of the following actions:

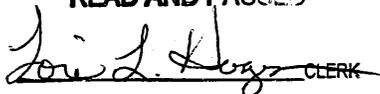
- (1) The mortgagee shall provide written notice to the mortgagor at the address of the residential property and, if different, at the address designated by the mortgagor by written notice to the mortgagee as the mortgagor's address for receipt of notices, of its intent to foreclose on the subject residential property, and to participate in good faith in a mediation conference. The mortgagee shall deliver a copy of the notice to the recorder of deeds and the mediation coordinator at the same time it issues notice to the mortgagor. The notice to the recorder of deeds must include plat and lot information of the residential property.
- (2) A form of written notice meeting the requirements of this article shall be developed by the city at least thirty (30) days prior to the effective date of this article, and shall be in English, Portuguese, and Spanish.

- (3) Following the filing of such notice, the mediation conference shall take place in person, or over the phone, at a time and place deemed mutually convenient for the parties by an individual employed by a HUD-approved, independent counseling agency selected by the mortgagee to serve as a mediation coordinator. The mediation conference must be scheduled within sixty (60) days following receipt by the mediation coordinator of a completed notice of mediation, single point of contact information for the mortgagee, and payment by the mortgagee of applicable fees associated the mediation conference.
- (4) The mediation conference shall be provided at no cost to the mortgagor. The HUD-approved counseling agency shall be compensated by the mortgagee at a rate not to exceed five hundred dollars (\$500) per engagement.
- (5) If after two (2) attempts by the mediation coordinator to contact the mortgagor, the mortgagor fails to respond to the mediation coordinator's request to appear for the mediation conference, or the mortgagor fails to cooperate in any respect with the requirements outlined in this article, the requirements of the section 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 certifying compliance with this article.
- (6) Prior to the scheduled mediation conference, the homeowner/mortgagor will be assigned a loan counselor to be provided by a HUD-approved independent counseling agency. The mortgagor shall cooperate in all respects with the mediation coordinator and the counseling agency including, but not limited to, providing all necessary financial and employment information and completing all loan resolution proposals and applications deemed appropriate by the mediation coordinator and the counseling agency.
- (7) The mediation coordinator will provide information required by subsection (6) to the representative of the mortgagee.
- (8) If the mediation coordinator determines that, after a good faith effort made by the mortgagee at the mediation conference, 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 by the mortgagee shall be deemed to satisfy the requirements of this article. A certificate certifying such good faith effort will be promptly issued by the HUD-approved independent counseling agency certifying compliance with this article. The certificate will be the form of a document to be filed along with all other relevant documents regarding the foreclosure with the recorder of deeds.
- (9) Cases involving premises which are not owner-occupied or which are not residential are not subject to this article.
- (10) Notwithstanding the foregoing, any mortgagee based 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 provided that:
 - a. The mortgagee is headquartered in Rhode Island or maintains a physical office in Rhode Island from which office it carries out full-service mortgage operations regarding mortgages on residential property located in the city, including the acceptance and processing of mortgage payments and the provision of local customer service;
 - b. The mortgagee offers mortgagors 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
 - c. The mortgagee has Rhode Island-based staff with the authority to approve loan restructuring and other loss mitigation efforts; and
 - d. The deed offered by a 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 subsection have been satisfied.

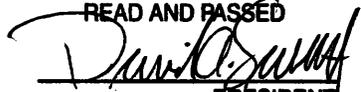
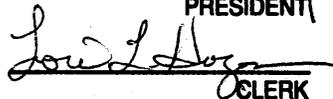
- (1) Where the mortgagee presents a foreclosure deed for recording in the land evidence records of the city, and recorder of deeds determines that the mortgagee has failed in any material respect to comply with the requirements and provisions of this article, the recorder of deeds shall assess a penalty of five hundred dollars (\$500.00) 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 article.
- (2) This ordinance shall have no effect unless and until the provisions of Rhode Island General Laws Section 34-27-3.2 are repealed or expire.

SECTION 2. This act shall take effect upon passage.

IN CITY COUNCIL
JUN 21 2018
FIRST READING
READ AND PASSED


CLERK

IN CITY
COUNCIL
JUL 05 2018
FINAL READING
READ AND PASSED


PRESIDENT

CLERK

I HEREBY APPROVE.



Mayor
Date: 7/10/18