

RESOLUTION OF THE CITY COUNCIL

No. 232

Approved April 13, 2011

RESOLVED, That the Members of the Providence City Council
hereby Endorse and Urge Passage by the General Assembly of House Bill 2011-H
5942 and Senate Bill 2011-S 313, Entitled: An Act Relating to Property –
Mortgage Foreclosure and Sale. (Foreclosures)

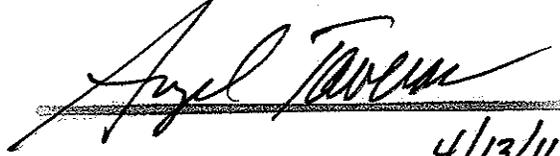
IN CITY COUNCIL

APR - 7 2011
READ AND PASSED


PRES.

CLERK

APPROVED


MAYOR 4/13/11

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

AN ACT

RELATING TO PROPERTY - MORTGAGE FORECLOSURE AND SALE

Introduced By: Representatives Williams, Hull, Medina, Blazejewski, and Slater

Date Introduced: March 17, 2011

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 34-27-3.1 of the General Laws in Chapter 34-27 entitled "Mortgage
2 Foreclosure and Sale" is hereby amended as follows:

3 ~~34-27-3.1. Foreclosure counseling. -- (a) No less than forty-five (45) days prior to~~
4 ~~initiating any foreclosure of real estate pursuant to subsection 34-27-4(b),~~ After an individual
5 consumer mortgagor's delinquency in the mortgage commences the mortgagee shall within forty-
6 five (45) days of the delinquency, provide to the clerk or recorder of deeds of the city or town in
7 which the property is located and to the ~~an~~ individual consumer mortgagor written notice, by
8 certified and first-class mail, of default and the mortgagee's right to foreclose by first class mail
9 at the address of the real estate and, if different, at the address designated by the mortgagor by
10 written notice to the mortgagee as the mortgagor's address for receipt of notices.

11 (b) The written notice required by this section shall be in English and Spanish and,
12 provided the same is then available, shall advise the mortgagor of the availability of counseling
13 through HUD-approved mortgage counseling agencies and, the toll-free telephone number and
14 website address maintained to provide information regarding no-cost HUD-approved mortgage
15 counseling agencies in Rhode Island. The written notice shall reference the property's plat and lot
16 information. The written notice may also contain any other information required under federal
17 law. A form of written notice meeting the requirements of this section shall be promulgated by
18 the department of business regulation for use by mortgagees at least thirty (30) days prior to the
19 effective date of this section. Counseling shall be provided at no cost to the mortgagee.

1 (c) Failure of the mortgagee to provide notice to the mortgagor as provided herein shall
2 render the foreclosure void, without limitation of the right of the mortgagee thereafter to
3 reexercise its power of sale or other means of foreclosure upon compliance with this section. The
4 mortgagee shall include in the foreclosure deed an affidavit of compliance with this section.

5 (d) Counseling between the mortgagor and mortgagee is mandatory and shall be provided
6 at no cost to the mortgagee. Counseling shall be scheduled at a time and place deemed mutually
7 convenient for the parties by an individual employed by a HUD-approved independent counseling
8 agency; but not later than thirty (30) days following the mailing of the notice. The mortgagor
9 shall cooperate in all respects with the counseling agency, providing all necessary financial and
10 employment information. The mortgagor shall complete any and all loan resolution proposals and
11 applications deemed appropriate by the counseling agency.

12 (e) If after two (2) attempts by the counseling agency to contact the mortgagor, the
13 mortgagor fails to respond to the counseling agency's request to appear at a counseling
14 conference, or the mortgagor fails to cooperate in any respect with the requirements of this
15 section, the requirements of the section shall be deemed satisfied upon verification by the
16 counseling agency that the required notice was sent; and if so, a certificate will be issued
17 immediately by the counseling agency authorizing the mortgagee to proceed with the foreclosure
18 action to including recording the deed.

19 (f) If it is determined after a good faith effort made by the mortgagee at the conciliation
20 conference with the mortgagor, that the parties cannot come to an agreement to renegotiate the
21 terms of the loan in an effort to avoid foreclosure, such good faith effort on behalf of the
22 mortgagee shall be deemed to satisfy the requirements of this section. A certificate certifying
23 such good faith effort will be issued immediately by the counseling agency authorizing the
24 mortgagee to proceed with the foreclosure action including recording the deed. Such a
25 certification will be the form of a document to be filed along with all other relevant documents
26 with the city or town's recorder of deeds.

27 (g) Upon the demand of the mortgagee at any time following completion of the
28 conciliation conference, if the mortgagee is not invoking subsection (e), the counseling agency
29 will immediately certify that the provisions of this section have been met.

30 (h) The parties shall complete the process required by this section within a period of sixty
31 (60) days from the initial notice provided in subsection (a).

32 (i) Cases involving premises which are not owner-occupied or which are not residential
33 are not subject to the mandatory counseling conference and may proceed directly to foreclosure
34 and recordation of the deed concerning such property with the city or town clerk.

1 (j) Notwithstanding the foregoing, any mortgagee which is headquartered within the state
2 and which services its own mortgages shall be deemed to be in compliance with the requirements
3 of this section if:

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

8 (2) The deed offered by a mortgagee to be filed with the city or town recorder of deeds as
9 a result of a mortgage foreclosure action contained a certification that the provisions of this sub-
10 section have been satisfied.

11 ~~(d)~~(k) As used herein and in this chapter, the term "HUD" means the United States
12 Department of Housing and Urban Development and any successor to such department.

13 (l) No deed offered by a mortgagee to be filed with the city or town recorder of deeds as a
14 result of a mortgage foreclosure action shall be accepted and/or recorded in the land evidence
15 records of the city or town until and unless there is compliance with this section. In the event that
16 a foreclosure has taken place without affording the homeowner of the relief by this section, the
17 city or town's recorder of deeds shall assess a penalty of two thousand dollars (\$2,000) in addition
18 to any other penalties and fees that may be assessed prior to recording the foreclosure deed. The
19 rights of the mortgagor to any redress afforded under the law are not abridged by this section.

20 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

1 This act would require any mortgagee who is commencing foreclosure proceedings on
2 owner-occupied residential property, to advise the mortgagor of the availability of counseling
3 through HUD-approved mortgage counseling agencies. Failure upon the part of the mortgagee to
4 provide said notice to the mortgagor of this requirement would render the foreclosure void.
5 Counseling between the parties under this section would be mandatory, and at no cost to the
6 mortgagee. Furthermore, the mortgagee must include in the foreclosure deed an affidavit of
7 compliance with the provisions of this act.

8 This act would take effect upon passage.

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LC01689
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2011 -- S 0313

LC01027**STATE OF RHODE ISLAND**

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

**AN ACT
RELATING TO PROPERTY - MORTGAGE FORECLOSURE AND SALE****Introduced By:** Senators Metts, Pichardo, Jabour, P Fogarty, and Goodwin**Date Introduced:** February 16, 2011**Referred To:** Senate Judiciary

It is enacted by the General Assembly as follows:

- 1-1 SECTION 1. Section 34-27-4 of the General Laws in Chapter 34-27 entitled "Mortgage
1-2 Foreclosure and Sale" is hereby amended to read as follows:
- 1-3 **34-27-4. Publication of notice under power of sale.** -- (a) Whenever any real estate
1-4 shall be sold under any power of sale mortgage executed subsequent to May 4, 1911, and the
1-5 mortgage shall provide for the giving of notice of the sale by publication in some public
1-6 newspaper at least once a week for three (3) successive weeks before the sale, the first publication
1-7 of the notice shall be at least twenty-one (21) days before the day of sale, including the day of the
1-8 first publication in the computation, and the third publication of the notice shall be no fewer than
1-9 seven (7) days before the original date of sale listed in the advertisement, including the day of the
1-10 third publication in the computation, and no more than fourteen (14) days before the original date
1-11 of sale listed in the advertisement. The sale may take place no more than fourteen (14) days from
1-12 the date on which the third successive notice is published, excluding the day of the third
1-13 publication in the computation. Provided, however, that if the sale is adjourned as provided in
1-14 Rhode Island general laws section 34-11-22, and the adjourned sale is held during the same
1-15 calendar week as the originally scheduled day of sale, no additional advertising is required.
1-16 Otherwise, publication of the notice of the adjourned sale, together with a notice of the
1-17 adjournment or adjournments, shall be continued at least once each week commencing with the

1-18 calendar week following the originally scheduled day of sale; the sale, as so adjourned, shall take
 1-19 place during the same calendar week in which the last notice of the adjourned sale is published, at
 2-1 least one day after the date on which the last notice is published.

2-2 (b) Provided, however, that no notice shall be valid or effective unless the mortgagor has
 2-3 been mailed written notice of the time and place of sale by certified mail return receipt requested
 2-4 at the address of the real estate and, if different, at the mortgagor's address listed with the tax
 2-5 assessor's office of the city or town where the real estate is located or any other address
 2-6 mortgagor designates by written notice to mortgagee at his, her, or its last known address, at least
 2-7 twenty (20) days for mortgagors other than individual consumer mortgagors, and at least thirty
 2-8 (30) days for individual consumer mortgagors, days prior to the first publication, including the
 2-9 day of mailing in the computation. The mortgagee shall include in the foreclosure deed an
 2-10 affidavit of compliance with this provision.

2-11 (c) The mortgagee shall provide to each bona fide tenant, as defined in section 34-27-6, at
 2-12 the same time notice is provided to the mortgagor, a written notice:

2-13 (1) Stating that the real estate is scheduled to be sold at foreclosure;

2-14 (2) Stating the date, time and place of the sale;

2-15 (3) Informing the tenant of the availability and advisability of counseling and information
 2-16 services;

2-17 (4) Providing the address and telephone number of Rhode Island Legal Services; and

2-18 (5) Providing the name, address and telephone number of HUD approved counseling
 2-19 agencies in Rhode Island. Failure of the mortgagee to provide notice as provided herein shall not
 2-20 affect the validity of the foreclosure; however, no successor in interest to the mortgagor shall be
 2-21 permitted to initiate an action for possession of the premises against such bona fide tenant until
 2-22 notice as required herein, in addition to the notice required by section 34-27-6 of the general laws,
 2-23 is provided.

2-24 SECTION 2. Chapter 34-27 of the General Laws entitled "Mortgage Foreclosure and
 2-25 Sale" is hereby amended by adding thereto the following section:

2-26 **34-27-7. Obligation of successor in interest.** -- (a) Where any dwelling unit of a
 2-27 foreclosed mortgaged estate is occupied by a bona fide tenant of the foreclosed mortgagor, and
 2-28 where the foreclosed mortgagor had provided essential services including, without limitation,
 2-29 heat, running water, hot water, electric, or gas to such tenant, any successor in interest to the
 2-30 foreclosed mortgagor shall continue to provide the same essential services under the same terms

2-32 and conditions to the tenant. The provision of such essential services shall not, without more,
 2-33 constitute a landlord and tenant relationship within the meaning of chapter 18 of title 34 of the
 2-34 general laws.

3-1 (b) A successor in interest to a mortgagor may recover possession of any dwelling unit of
 3-2 a foreclosed mortgaged estate occupied by a bona fide tenant of the mortgagor upon delivery of
 3-3 written notice to quit to the tenant given at least sixty (60) days prior to the day named therein.

3-4 (c) For purposes of this chapter, a "bona fide tenant" means a person who has entered
 3-5 into a written or oral rental agreement with the mortgagor with respect to a dwelling unit of the
 3-6 mortgaged estate no less than thirty (30) days prior to the foreclosure of the mortgagor's interest.
 3-7 Neither the mortgagor, nor any member of his or her immediate family, is a "bona fide tenant".

SECTION 3. 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**

4-1 This act would require a mortgagee to notify tenants of the date, time and place of a
 4-2 foreclosure sale along with contact information for Rhode Island Legal Services and HUD
 4-3 approved counseling agencies in Rhode Island. It would also require that any successor in interest
 4-4 to a foreclosed mortgagor continue to provide essential services such as heat, running water, hot
 4-5 water, electric or gas if the foreclosed mortgagor had provided said services prior to foreclosure.
 4-6 This act would require a successor in interest to a foreclosed mortgagor to give tenants
 4-7 written notice to quit at least sixty (60) days in advance.

4-8 This act would take effect upon passage.

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 LC01027
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