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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 -- MORTGAGE AND FORECLOSURE SALE

Introduced By: Senators Nesselbush, Crowley, Cool Rumsey, Goldin, and Conley

Date Introduced: February 26, 2013

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 34-27 of the General Laws entitled "Mortgage Foreclosure and
2 Sale" is hereby amended by adding thereto the following section:

3 **34-27-3.2. Mediation conference. -- (a) Statement of policy. It is hereby declared that**
4 residential mortgage foreclosure actions, caused in part by unemployment and underemployment,
5 have negatively impacted a substantial number of homeowners throughout the state, creating a
6 situation which endangers the economic stability of many of the citizens of this state, as the
7 increasing numbers of foreclosures lead to increases in unoccupied and unattended buildings and
8 the unwanted displacement of homeowners and tenants who desire to live and work within the
9 state.

10 (b) Purpose. The statutory framework for foreclosure proceedings is prescribed under the
11 provisions of Chapter 34-27 of the general laws. As the need for a mortgage mediation process
12 has evolved, it is important for the state to develop a standardized, statewide process for
13 foreclosure mediation rather than a process based on local ordinances that may vary from
14 municipality to municipality. By providing a uniform standard for an early HUD-approved
15 independent counseling process in owner-occupied principal residence mortgage foreclosure
16 cases, the chances of achieving a positive outcome for homeowners and lenders will be enhanced.

17 (c) Definitions. The following definitions apply in the interpretations of the provisions of
18 this section unless the context requires another meaning:

1 (1) "Mediation conference" means a conference involving the mortgagee and mortgagor,
2 coordinated and facilitated by a mediation coordinator whose purpose is to determine whether an
3 alternative to foreclosure is economically feasible to both the mortgagee and the mortgagor, and
4 if it is determined that an alternative to foreclosure is economically feasible, to facilitate a loan
5 work-out or other solution in an effort to avoid foreclosure.

6 (2) "Mediation coordinator" means a person designated by a Rhode Island based HUD
7 approved counseling agency to serve as the unbiased, impartial and independent coordinator and
8 facilitator of the mediation conference, with no authority to impose a solution or otherwise act as
9 a consumer advocate, provided that such person possesses the experience and qualifications
10 established by the department.

11 (3) "Department" means the department of business regulation.

12 (4) "Good Faith" means that the mortgagor and mortgagee deal honestly and fairly with
13 the mediation coordinator with an intent to determine whether an alternative to foreclosure is
14 economically feasible for the mortgagor and mortgagee, as evidenced by some or all of the
15 following factors:

16 (i) Mortgagee provided notice as required by this section;

17 (ii) Mortgagee designated an agent to participate in the mediation conference on its
18 behalf, and with the authority to agree to a work-out agreement on its behalf;

19 (iii) Mortgagee made reasonable efforts to respond in a timely manner to requests for
20 information from the mediation coordinator, mortgagor, or counselor assisting the mortgagor;

21 (iv) Mortgagee declines to accept the mortgagor's work-out proposal, if any, and the
22 mortgagee provided a detailed statement, in writing, of its reasons for rejecting the proposal;

23 (v) Where a mortgagee declines to accept the mortgagor's work-out proposal, the
24 mortgagee offered, in writing, to enter into an alternative work-out/disposition resolution
25 proposal that would result in net financial benefit to the mortgagor as compared to the terms of
26 the mortgage.

27 (5) "HUD" means the United States Department of Housing and Urban Development and
28 any successor to such department.

29 (6) "Mortgage" means an individual consumer mortgage on any owner-occupied, one to
30 four (4) unit residential property which serves as the owner's primary residence.

31 (7) "Mortgagee" means the holder of a mortgage.

32 (8) "Mortgagor" means the owner of the property subject to a mortgage.

33 (d) No mortgagee may initiate any foreclosure of real estate pursuant to subsection 34-
34 27-4(b) unless the requirements of this section have been met.

1 (e) When a mortgage is not more than one hundred twenty (120) days delinquent, the
2 mortgagee or its mortgage servicer or other agent or representative of the mortgagee shall provide
3 to the mortgagor written notice, by certified and first class mail at the address of the real estate
4 and, if different, at the address designated by the mortgagor by written notice to the mortgagee as
5 the mortgagor's address for receipt of notices, that the mortgagee may not foreclose on the
6 mortgaged property without first participating in a mediation conference.

7 (f) A form of written notice meeting the requirements of this section shall be promulgated
8 by the department for use by mortgagees at least thirty (30) days prior to the effective date of this
9 section. The written notice required by this section shall be in English, Portuguese and Spanish,
10 reference the property's plat and lot information, and may be combined with any other notice
11 required under this chapter or pursuant to state or federal law.

12 (g) The mediation conference shall take place in person, or over the phone, at a time and
13 place deemed mutually convenient for the parties by an individual employed by a HUD-approved
14 independent counseling agency selected by the mortgagee to serve as a mediation coordinator, but
15 not later than sixty (60) days following the mailing of the notice. The mortgagor shall cooperate
16 in all respects with the mediation coordinator including, but not limited to, providing all
17 necessary financial and employment information and completing any and all loan resolution
18 proposals and applications deemed appropriate by the mediation coordinator. A mediation
19 conference between the mortgagor and mortgagee conducted by a mediation coordinator shall be
20 provided at no cost to the mortgagor. The HUD-approved counseling agency shall be
21 compensated by the mortgagee at a rate not to exceed five hundred dollars five hundred dollars
22 (\$500) per engagement.

23 (h) If, after two (2) attempts by the mediation coordinator to contact the mortgagor, the
24 mortgagor fails to respond to the mediation coordinator's request to appear at a mediation
25 conference, or the mortgagor fails to cooperate in any respect with the requirements of this
26 section, the requirements of the section shall be deemed satisfied upon verification by the
27 mediation coordinator that the required notice was sent. Upon verification, a certificate will be
28 issued immediately by the mediation coordinator authorizing the mortgagee to proceed with the
29 foreclosure action, including recording the deed. Such certificate shall be recorded along with the
30 foreclosure deed. A form of certificate meeting the requirements of this section shall be
31 promulgated by the department for use by mortgagees at least thirty (30) days prior to the
32 effective date of this section.

33 (i) If the mediation coordinator determines that after a good faith effort made by the
34 mortgagee at the mediation conference, the parties cannot come to an agreement to renegotiate

1 the terms of the loan in an effort to avoid foreclosure, such good faith effort by the mortgagee
2 shall be deemed to satisfy the requirements of this section. A certificate certifying such good faith
3 effort will be promptly issued by the mediation coordinator authorizing the mortgagee to proceed
4 with the foreclosure action and recording of the foreclosure deed. Such certification shall be
5 recorded along with the foreclosure deed. A form of certificate meeting the requirements of this
6 section shall be promulgated by the department for use by mortgagees at least thirty (30) days
7 prior to the effective date of this section.

8 (j) If the mortgagee and mortgagor are able to reach agreement to renegotiate the terms of
9 the loan to avoid foreclosure, the agreement shall be reduced to writing and executed by the
10 mortgagor and mortgagee.

11 (k) Notwithstanding any other provisions of this section, where a mortgagor and
12 mortgagee have entered into a written agreement and the mortgagor fails to fulfill his or her
13 obligations under the written agreement, the provisions of this section shall not apply to any
14 foreclosure initiated under this chapter within twelve (12) months following the execution of the
15 written agreement. In such case, the mortgagee shall include in the foreclosure deed an affidavit
16 establishing its right to proceed under this section.

17 (l) This section shall apply only to foreclosure of mortgages on owner-occupied,
18 residential real property with no more than four (4) dwelling units which is the primary dwelling
19 of the owner and not to mortgages secured by other real property.

20 (m) Notwithstanding any other provisions of this section, any locally-based mortgagees
21 shall be deemed to be in compliance with the requirements of this section if:

22 (1) The mortgagee is headquartered in Rhode Island; or

23 (2) The mortgagee maintains a physical office or offices exclusively in Rhode Island
24 from which office or offices it carries out full-service mortgage operations, including the
25 acceptance and processing of mortgage payments and the provision of local customer service and
26 loss mitigation and where Rhode Island staff have the authority to approve loan restructuring and
27 other loss mitigation strategies; and

28 (3) The deed offered by a mortgagee to be filed with the city or town recorder of deeds as
29 a result of a mortgage foreclosure action contained a certification that the provisions of this
30 section have been satisfied.

31 (n) No deed offered by a mortgagee as a result of a mortgage foreclosure action shall be
32 submitted to a city or town recorder of deeds for recording in the land evidence records of the city
33 or town until and unless the requirements of this section are met. The mortgagee shall include in
34 the foreclosure deed an affidavit of compliance with this section. Failure of the mortgagee to

1 comply with the requirements of this section shall render the foreclosure void, without limitation
2 of the right of the mortgagee thereafter to re-exercise its power of sale or other means of
3 foreclosure upon compliance with this section. The rights of the mortgagor to any redress
4 afforded under the law are not abridged by this section.

5 (o) Any existing municipal ordinance or future ordinance which requires a conciliation or
6 mediation process as a precondition to the recordation of a foreclosure deed shall comply with the
7 provisions set forth herein and any provisions of said ordinances which do not comply with the
8 provisions set forth herein shall be determined to be unenforceable.

9 SECTION 2. This act shall take effect sixty (60) days following passage, and it shall
10 expire on July 1, 2018.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO PROPERTY -- MORTGAGE AND FORECLOSURE SALE

1 This act would require a mortgagee to participate in good faith in a mediation conference
2 prior to initiating foreclosure proceedings. This act would apply only to individual consumer
3 mortgages on any owner-occupied, one to four (4) unit residential property which is primary
4 residence of the owner.

5 This act would take effect sixty (60) days following passage, and would expire on July 1,
6 2018.

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