

2010 -- H 7191

LC00375

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO PROPERTY -- MORTGAGE FORECLOSURE AND SALE

Introduced By: Representatives Almeida, Carnevale, Diaz, Williams, and Slater

Date Introduced: January 21, 2010

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.** -- (a) Whenever any real estate
4 shall be sold under any power of sale mortgage executed subsequent to May 4, 1911, and the
5 mortgage shall provide for the giving of notice of the sale by publication in some public
6 newspaper at least once a week for three (3) successive weeks before the sale, the first publication
7 of the notice shall be at least twenty-one (21) days before the day of sale, including the day of the
8 first publication in the computation.

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

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

- 1 (1) Stating that the real estate is scheduled to be sold at foreclosure;
- 2 (2) Stating the date, time and place of the sale;
- 3 (3) Informing the tenant of the availability and advisability of counseling and information
- 4 services;
- 5 (4) Providing the address and telephone number of Rhode Island Legal Services; and
- 6 (5) Providing the name, address and telephone number of HUD approved counseling
- 7 agencies in Rhode Island. Failure of the mortgagee to provide notice as provided herein shall not
- 8 affect the validity of the foreclosure; however, no successor in interest to the mortgagor shall be
- 9 permitted to initiate an action for possession of the premises against such bona fide tenant until
- 10 notice as required herein, in addition to the notice required by section 34-27-6 of the general laws,
- 11 is provided.

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

14 **34-27-9. Obligation of successor in interest.** – (a) Where any dwelling unit of a

15 foreclosed mortgaged estate is occupied by a bona fide tenant of the foreclosed mortgagor, and

16 where the foreclosed mortgagor had provided essential services including, without limitation,

17 heat, running water, hot water, electric, or gas to such tenant, any successor in interest to the

18 foreclosed mortgagor shall continue to provide the same essential services under the same terms

19 and conditions to the tenant. The provision of such essential services shall not, without more,

20 constitute a landlord and tenant relationship within the meaning of chapter 18 of title 34 of the

21 general laws.

22 (b) A successor in interest to a mortgagor may recover possession of any dwelling unit of

23 a foreclosed mortgaged estate occupied by a bona fide tenant of the mortgagor upon delivery of

24 written notice to quit to the tenant given at least sixty (60) days prior to the day named therein.

25 (c) For purposes of this chapter, a “bona fide tenant” means a person who has entered

26 into a written or oral rental agreement with the mortgagor with respect to a dwelling unit of the

27 mortgaged estate no less than thirty (30) days prior to the foreclosure of the mortgagor’s interest.

28 Neither the mortgagor, nor any member of his or her immediate family, is a “bona fide tenant”.

29 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO PROPERTY -- MORTGAGE FORECLOSURE AND SALE

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

8 This act would take effect upon passage.

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