

**2013 -- S 0412 SUBSTITUTE A**

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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 - RESIDENTIAL LANDLORD AND TENANT ACT

Introduced By: Senators Metts, Pichardo, Crowley, and Jabour

Date Introduced: February 26, 2013

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 34-18-23 of the General Laws in Chapter 34-18 entitled  
2 "Residential Landlord and Tenant Act" is hereby amended to read as follows:

3           **34-18-23. Limitation of liability upon sale or change of management. --** (a) (1) A  
4 landlord who conveys premises that include a dwelling unit subject to a rental agreement in a  
5 good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this  
6 chapter as to events occurring after written notice to the tenant of the conveyance. In no event  
7 may the relief from liability predate the conveyance itself.

8           (2) Written notice, for purposes of this section, must include the name(s), address, and  
9 telephone number of the person or persons purchasing the property and assuming liability. To be  
10 effective, the written notice must also certify compliance with section 45-24.3-17 which prohibits  
11 sale or lease of property until any outstanding housing code violations have been corrected or the  
12 seller or lessor has provided to the buyer or lessee, as well as to the enforcing officer, all notices  
13 regarding violations, as required by the statute.

14           (b) A manager of premises that include a dwelling unit is relieved of liability under the  
15 rental agreement and this chapter as to events occurring after written notice to the tenant of the  
16 termination of his or her management. The written notice must include the name(s), address, and  
17 telephone number of the person or persons assuming management and/or the person or persons  
18 within the state exercising ownership or responsibility over the property.

19           (c) Nothing in this section shall be construed to affect the tenant's rights and duties under

1 an existing rental agreement, and the purchaser of property or any immediate successor in interest  
2 to a mortgagor, other than a third-party bona fide purchaser, of a premises containing four (4) or  
3 fewer dwelling units takes title subject to the same rights and responsibilities toward the tenant  
4 which the seller or mortgagor had.

5 SECTION 2. Chapter 34-18 of the General Laws entitled "Residential Landlord and  
6 Tenant Act" is hereby amended by adding thereto the following section:

7 **34-18-38.1. Eviction of tenants in foreclosed properties only for just cause.** – (a) As  
8 used in this section, the following words shall, unless the context clearly requires otherwise, have  
9 the following meanings:

10 (1) "Bona fide lease" or "bona fide tenancy" means a lease or tenancy shall not be  
11 considered bona fide unless:

12 (i) The mortgagor, or the child, spouse or parent of the mortgagor under the contract, is  
13 not the tenant;

14 (ii) The lease or tenancy was the result of an arms-length transaction; and

15 (iii) The lease or tenancy requires the receipt of rent that is not substantially less than fair  
16 market rent for the property, or the dwelling unit's rent is reduced or subsidized due to a federal,  
17 state or local subsidy.

18 (2) "Entity" means a business organization, or any other kind of organization including,  
19 without limitation, a corporation, partnership, trust, limited liability corporation, limited liability  
20 partnership, joint venture, sole proprietorship or any other category of organization and any  
21 employee, agent, servant or other representative of such entity.

22 (3) "Eviction" means an action, without limitation, by a foreclosing owner of a housing  
23 accommodation which is intended to actually or constructively evict a tenant or otherwise compel  
24 a tenant to vacate such housing accommodation.

25 (4) "Foreclosing owner" means an entity that holds title in any capacity, directly or  
26 indirectly, without limitation, whether in its own name, as trustee or as beneficiary, to a housing  
27 accommodation that has been foreclosed upon and either:

28 (i) Held or owned a mortgage or other security interest in the housing accommodation at  
29 any point prior to the foreclosure of the housing accommodation or is the subsidiary, parent,  
30 trustee, or agent thereof; or

31 (ii) Is an institutional mortgagee that acquires or holds title to the housing  
32 accommodation within three (3) years of the filing of a foreclosure deed on the housing  
33 accommodation; or

34 (iii) Is the Federal National Mortgage Association or the Federal Home Loan Mortgage

1 Corporation.

2 (5) "Foreclosure" means an action to terminate a mortgagor's interest in property by sale  
3 of property pursuant to a power of sale in a mortgage, as described in section 34-11-22 or  
4 conveyance of the property by the mortgagor in lieu of foreclosure or an action filed in court  
5 pursuant to section 34-27-1.

6 (6) "Housing accommodation" means a building or structure containing four (4) or fewer  
7 dwelling units, or part thereof of land appurtenant thereto, and any other real or personal property  
8 used, rented or offered for rent for living or dwelling purposes, together with all services  
9 connected with the use or occupancy of such property.

10 (7) "HUD" means the United States Department of Housing and Urban Development and  
11 any successor to such department.

12 (8) "Institutional mortgagee" means an entity or an entity which is the subsidiary, parent  
13 or trustee to such entity, that holds or owns mortgages or other security interests in three (3) or  
14 more housing accommodations or that acts as a mortgage servicer of three (3) or more mortgages  
15 of housing accommodations.

16 (9) "Just cause" means one of the following:

17 (i) The tenant has failed to pay rent in effect prior to the foreclosure, as long as the  
18 foreclosing owner notified the tenant in writing of the amount of rent that was to be paid and to  
19 whom it was to be paid;

20 (ii) The tenant has materially violated either an express or legally required obligation or  
21 covenant of the tenancy or occupancy, other than the obligation to surrender possession upon  
22 proper notice, and has failed to cure such violation within thirty (30) days after having received  
23 written notice thereof from the foreclosing owner;

24 (iii) The tenant is committing a nuisance in the unit; is permitting a nuisance to exist in  
25 the unit; is causing substantial damage to the unit or is creating a substantial interference with the  
26 quiet enjoyment of other occupants;

27 (iv) The tenant is using or permitting the unit to be used for any illegal purpose;

28 (v) The tenant who had a written bona fide lease or other rental agreement which  
29 terminated, on or after July 1, 2013, has refused, after written request or demand by the  
30 foreclosing owner, to execute a written extension or renewal thereof for a further term of like  
31 duration and in such terms that are not inconsistent with this chapter;

32 (iv) The tenant has refused the foreclosing owner reasonable access to the unit for the  
33 purpose of making necessary repairs or improvement required by the laws of the United States,  
34 the state of Rhode Island or any subdivision thereof, or for the purpose of inspection as permitted

1 or required by agreement or by law or for the purpose of showing the unit to a prospective  
2 purchaser or mortgagee;

3 (vii) The foreclosing owner:

4 (A) Seeks to permanently board up or demolish the premises because the premises has  
5 been cited by a state or local minimum housing code enforcement agency for substantial  
6 violations affecting the health and safety of tenants and it is economically unfeasible for the  
7 foreclosing owner to eliminate the violations; or

8 (B) Seeks to comply with a state or local minimum housing code enforcement agency  
9 that has cited the premises for substantial violations affecting the health and safety of tenants and  
10 it is unfeasible to so comply without removing the tenant; or

11 (C) Seeks to correct an illegal occupancy because the premises has been cited by a state  
12 or local minimum housing code enforcement agency or zoning official and it is unfeasible to  
13 correct such illegal occupancy without removing the tenant; and provided further that nothing in  
14 this section shall limit the rights of a third-party owner to evict a tenant at the expiration of an  
15 existing lease.

16 (10) "Mortgagee" means an entity to whom property is mortgaged, the mortgage creditor  
17 or lender including, but not limited to, mortgage services, lenders in a mortgage agreement and  
18 any agent, servant or employee of the mortgagee or any successor in interest or assignee of the  
19 mortgagee's rights, interests or obligations under the mortgage agreement.

20 (11) "Mortgage servicer" means an entity which administers or at any point administered  
21 the mortgage; provided, however, that such administration shall include, but not be limited to,  
22 calculating principle and interest, collecting payments from the mortgager, acting as escrow agent  
23 or foreclosing in the event of a default.

24 (12) "Tenant" means a person or group of persons, who at the time of foreclosure, is  
25 entitled to occupy a housing accommodation pursuant to a bona fide lease or tenancy. A person  
26 who moves into the housing accommodation owned by the foreclosing owner, subsequent to the  
27 foreclosure sale, without the express written permission of the foreclosing owner shall not be  
28 considered a tenant under this section.

29 (13) "Unit" or "residential unit" means the room or group of rooms within a housing  
30 accommodation which is used or intended for use as a residence by one household.

31 (b) Notwithstanding any provision of the general or public laws to the contrary, a  
32 foreclosing owner shall not evict a tenant except for just cause, or unless a binding purchase and  
33 sale agreement has been executed for a bona fide third party to purchase the housing  
34 accommodation from a foreclosing owner, and the foreclosing owner has disclosed to the third-

1 party purchaser that said purchaser may be responsible for evicting the current occupants of the  
2 housing accommodation after the sale occurs; or with respect to a housing accommodation in a  
3 housing accommodation insured by the Federal Housing Administration, unless HUD denies a  
4 request by any tenant for an occupied conveyance or if a tenant does not submit to HUD a request  
5 for continued occupancy before the deadline set forth in a notice to occupants of pending  
6 acquisition delivered to the tenant by the foreclosing owner.

7 (c) Within thirty (30) days of the foreclosure, the foreclosing owner shall post in a  
8 prominent location in the building in which the rental housing unit is located, a written notice  
9 stating:

10 (1) The names, addresses, telephone numbers and telephone contact information of the  
11 foreclosing owner, the building manager or other representative of the foreclosing owner  
12 responsible for the management of such building;

13 (2) The address to which rent charges shall be sent;

14 (3) That in order to remain on the premises as a tenant of the foreclosing owner, the  
15 household must submit within thirty (30) days a completed form to be provided with said written  
16 notice to the same address where rent charges shall be sent, said form to be substantially similar  
17 to the request for continued occupancy form used by HUD and shall contain an authorization to  
18 conduct a credit check of the person or persons submitting the form. This requirement shall be  
19 satisfied if the foreclosing owner or someone acting on his behalf has:

20 (i) Posted in a prominent location in the building;

21 (ii) Mailed by first class mail to each unit; and

22 (iii) Slid under the door of each unit in the building a document stating the names,  
23 addresses, and telephone contact information of the foreclosing owner, the building manager or  
24 other representative of the foreclosing owner responsible for the management of such building  
25 and stating the address to which rent and use and occupancy charges shall be sent.

26 (d) A foreclosing owner shall not evict a tenant except for actions that constitute just  
27 cause:

28 (1) A foreclosing owner shall not evict a tenant for the following actions that constitute  
29 just cause until thirty (30) days after the notice required by subsection (c) of this section is posted  
30 and delivered:

31 (i) The tenant has failed to pay the rent in effect prior to the foreclosure, as long as the  
32 foreclosing owner notified the tenant in writing of the amount of rent that was to be paid and to  
33 whom it was to be paid;

34 (ii) The tenant has materially violated an obligation or covenant of the tenancy or

1 occupancy, other than the obligation to surrender possession upon proper notice:

2 (iii) The tenant who had a written bona fide lease or other rental agreement which  
3 terminated, on or after July 1, 2013, has refused, after written request or demand by the  
4 foreclosing owner, to execute a written extension or renewal thereof for a further term of like  
5 duration and in such terms that are not inconsistent with this section; and

6 (iv) The foreclosing owner:

7 (A) Seeks to permanently board up or demolish the premises because the premises has  
8 been cited by a state or local minimum housing code enforcement agency for substantial  
9 violations affecting the health and safety of tenants and it is economically unfeasible for the  
10 foreclosing owner to eliminate the violations; or

11 (B) Seeks to comply with a state or local minimum housing code enforcement agency  
12 that has cited the premises for substantial violations affecting the health and safety of tenants and  
13 it is unfeasible to so comply without removing the tenant; or

14 (C) Seeks to correct an illegal occupancy because the premises has been cited by a state  
15 or local minimum housing code enforcement agency or zoning officials and it is unfeasible to  
16 correct such illegal occupancy without removing the tenant.

17 (2) A foreclosing owner shall not evict a tenant for the following actions that constitute  
18 just cause until the notice required by subsection (c) is posted and delivered:

19 (i) The tenant is committing a nuisance in the unit; is permitting a nuisance to exist in the  
20 unit; is causing substantial damage to the unit or is creating a substantial interference with the  
21 quiet enjoyment of other occupants;

22 (ii) The tenant is using or permitting the unit to be used for any illegal purpose; and

23 (iii) The tenant has refused the foreclosing owner reasonable access to the unit for the  
24 purpose of making necessary repairs or improvements required by the laws of the United States,  
25 the state of Rhode Island or any subdivision thereof, or for the purpose of showing the unit to a  
26 prospective purchaser or mortgagee.

27 (e) The following procedures shall be followed for the eviction of a tenant pursuant to  
28 subsection (d) of this section:

29 (1) For evictions brought pursuant to paragraph (d)(1)(i), the foreclosing owner shall  
30 follow section 34-18-35;

31 (2) For evictions brought pursuant to paragraph (d)(1)(ii) or subdivision (d)(2), the  
32 foreclosing owner shall follow section 34-18-36;

33 (3) For evictions brought pursuant to paragraphs (d)(1)(iii) or (d)(1)(iv) or for evictions  
34 brought where a binding purchase and sale agreement has been executed for a bona fide third

1 party to purchase the housing accommodation from a foreclosing owner or for evictions brought  
2 with respect to housing accommodations located on premises insured by the Federal Housing  
3 Administration as provided in subsection (b), or for eviction brought against a tenant who fails to  
4 return the form requesting continued occupancy pursuant to subsection (c), the foreclosing owner  
5 shall follow the procedures for terminating a month to month tenancy set forth in section 34-18-  
6 37; provided, that any obligations of the foreclosing owner arising under the Federal Protecting  
7 Tenants at Foreclosure Act of 2009, as such is amended and extended from time to time, shall  
8 first have been satisfied; and provided, further, that in any eviction brought against a tenant  
9 pursuant to said subsection (c), the tenant may raise an affirmative defense that the form was not  
10 posted or served upon the tenant as required by said subsection (c).

11 (f) A foreclosing owner may evict any person other than a tenant by following the  
12 procedures for terminating a month to month tenancy set forth in section 34-18-37.

13 (g) If a foreclosing owner disagrees with the amount of rent paid by the tenant to the  
14 foreclosing owner, the foreclosing owner may bring a claim in district court to claim that the  
15 rental charge is unreasonable and set a new rental rate. A bona fide lease between the foreclosed  
16 upon owner and the lessee or proof of rental payment to the foreclosed upon owner shall be  
17 presumed to be a reasonable rental rate.

18 (h) Nothing herein shall be deemed to limit the right of any tenant to knowingly waive  
19 the provisions of this section for consideration acceptable to such tenant.

20 SECTION 3. Section 34-18-20 of the General Laws in Chapter 34-18 entitled  
21 "Residential Landlord and Tenant Act" is hereby amended to read as follows:

22 **34-18-20. Disclosure.** -- (a) A landlord or any person authorized to enter into a rental  
23 agreement on his or her behalf shall disclose to the tenant in writing, at or before the  
24 commencement of the tenancy, the name, address and number of:

- 25 (1) The person authorized to manage the premises; and  
26 (2) An owner of the premises or a person authorized to act for and on behalf of the  
27 owner for the purpose of service of process and receiving and receipting for notices and demands.

28 (b) The information required to be furnished by this section shall be kept current. This  
29 section extends to and is enforceable against any successor landlord, owner, or manager.

30 (c) A person who fails to comply with subsection (a) of this section becomes an agent of  
31 each person who is a landlord for:

- 32 (1) Service of process and receiving and receipting for notices and demands; and  
33 (2) Performing the obligations of the landlord under this chapter and under the rental  
34 agreement and expending or making available for the purpose of all rent collected from the

1 premises.

2 (d) A landlord who becomes delinquent on a mortgage securing real estate upon which  
3 the dwelling unit is located for a period of one hundred twenty (120) days shall notify the tenant  
4 of the fact that the property may be subject to foreclosure; and until the foreclosure occurs the  
5 tenant must continue to pay rent to the landlord as provided under the rental agreement.

6 SECTION 4. Chapter 34-27 of the General Laws entitled "Mortgage Foreclosure and  
7 Sale" is hereby amended by adding thereto the following sections:

8 **34-27-7. Notice to tenants of foreclosure sale.** – (a) The mortgagee shall provide to each  
9 bona fide tenant a written notice:

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

11 (2) Stating the date, time and place initially scheduled for the sale;

12 (3) Informing of the availability and advisability of counseling and information services;

13 (4) Providing the address and telephone number of the Rhode Island Housing Help  
14 Center and the United Way 2-1-1 Center;

15 (5) Reminding the recipient to continue paying rent to the landlord until the foreclosure  
16 sale occurs; and

17 (6) Stating that this notice is not an eviction notice.

18 (b) The notice shall be mailed by first class mail at least one business day prior to the first  
19 publication of the notice required by subsection (a) of section 34-27-4. A form of written notice  
20 meeting the requirements of this section shall be promulgated by the department of business  
21 regulation for use by mortgagees no later than sixty (60) days after the effective date of this  
22 section. The notice may be addressed to "Occupant" and mailed to each dwelling unit of the real  
23 estate identified in the application for the loan secured by the mortgage being foreclosed. Failure  
24 of the mortgagee to provide notice as provided herein shall not affect the validity of the  
25 foreclosure.

26 (c) For purposes of this section, a lease or tenancy shall be considered bona fide only if:

27 (1) The mortgagor or the child, spouse, or parent of the mortgagor under the contract is  
28 not the tenant;

29 (2) The lease or tenancy was the result of an arms-length transaction; and

30 (3) The lease or tenancy requires the receipt of rent that is not substantially less than fair  
31 market rent for the property or the unit's rent is reduced or subsidized due to a federal, state, or  
32 local subsidy.

33 **34-27-8. Certificate of foreclosing owner exemption status.** – (a) For purposes of this  
34 section, the director of business regulation shall exempt any foreclosing owner from this chapter



1 if:

2 (1) The foreclosing owner has completed foreclosures on less than ten percent (10%) of  
3 the total number of one to four (4) family dwelling unit mortgages owned by the foreclosing  
4 owner in Rhode Island in the preceding calendar year;

5 (2) The foreclosing owner has filed the required certificate of exemption in affidavit  
6 form, in a manner prescribed by the department, within ninety (90) days of enactment of this act,  
7 and annually thereafter, on or before January 15<sup>th</sup> of each calendar year.

8 **34-27-9. Suspension, revocation, and nonrenewal of exemption certificate.** – Upon  
9 determination by the department of business regulation, that a foreclosing owner has violated any  
10 provisions of this chapter, the director may, following a hearing, issue a final order suspending,  
11 revoking or refusing to renew any certificate of exemption, pursuant to this chapter. Hearings  
12 conducted pursuant to this chapter shall be in accordance with the "Administrative Procedures  
13 Act" chapter 42-35.

14 SECTION 5. This act shall take effect upon passage.

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LC01129/SUB A/3  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO PROPERTY - RESIDENTIAL LANDLORD AND TENANT ACT

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1           This act would provide a tenant of a foreclosed property greater protection against  
2   eviction.

3           This act would take effect upon passage.

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