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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO PROPERTY - FORM AND EFFECT OF CONVEYANCES

Introduced By: Senators Felag, Pichardo, and Tassoni

Date Introduced: March 10, 2011

Referred To: Senate Special Legislation

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 34-11 of the General Laws entitled "Form and Effect of
2 Conveyances" is hereby amended by adding thereto the following section:

3 **34-11-22.1. Power of sale barred during periods of military deployment.** – (a) Power
4 of sale barred. A mortgagee or trustee shall not exercise a power of sale contained in a mortgage
5 or deed of trust, or provide by statute, during a mortgagor's, trustor's, or debtor's period of
6 military deployment. The clerk of court shall not conduct a hearing unless the mortgagee or
7 trustee seeking to exercise a power of sale under a mortgage or deed of trust files with the clerk a
8 certification that the hearing will take place at a time that is not during or within nine (9) months
9 after a period of military deployment for the mortgagor, trustor, or debtor. This subsection applies
10 only to mortgages and deeds of trust that originated before the mortgagor's or trustor's period of
11 military deployment.

12 (b) Waiver. This section shall not apply if the mortgagor, trustor, or debtor waives his or
13 her rights under this section pursuant to a written agreement of the parties executed during or
14 after the mortgagor's, trustor's, or debtor's period of military deployment, as an instrument
15 separate from the obligation or liability to which the waiver applies. Any waiver in writing of a
16 right or protection provided by this section must be in at least twelve point (12pt) type and shall
17 specify the legal instrument creating the obligation or liability to which the waiver applies.

18 (c) Definitions. The following definitions apply in this section:

19 (1) "Military deployment" means, in the case of a member of the army, navy, air force,

1 marine corps, or coast guard.

2 (2) "Active duty" has the same meaning as the term is defined in 10 U.S.C. sections
3 12301 through 12304. In the case of a member of the national guard, "active duty" means and
4 includes service under a call to active service authorized by the president or the secretary of
5 defense for a period of time of more than thirty (30) consecutive days under 32 U.S.C. section
6 502(f), for the purposes of responding to a national emergency declared by the president and
7 supported by federal funds.

8 (3) "Period of military deployment" means the period beginning on the date on which a
9 service member's orders begin and end on the date on which the service member is released from
10 military deployment orders.

11 (4) "Service member" means a member of the army, navy, air force, marine corps, or
12 coast guard.

13 (d) Notice shall be in writing and shall state in a manner reasonably calculated to make
14 the party entitled to notice aware of the following:

15 (1) That if a debtor is currently on military deployment, the foreclosure may be
16 prohibited. The hearing provided by this section shall be held before the clerk of court in the
17 county where the land, or any portion thereof, is situated. In the event that the property to be sold
18 consists of separate tracts situated in different counties or a single tract in more than one county,
19 only one hearing shall be necessary. However, prior to that hearing, the mortgagee or trustee shall
20 file the notice of hearing in any other county where any portion of the property to be sold is
21 located. Upon such hearing, the clerk shall consider the evidence of the parties and may consider,
22 in addition to other forms of evidence required or permitted by law, affidavits and certified copies
23 of documents. If the clerk finds the existence of:

24 (i) Valid debt of which party seeking to foreclose is the holder;

25 (ii) Default;

26 (iii) Right to foreclose under the instrument;

27 (iv) Notice to those entitled to such under subsection (b);

28 (v) That the underlying mortgage debt is not a sub-prime loan, or if the loan is a sub-
29 prime loan, was provided in all material respects, and that periods of time established by this
30 chapter have elapsed;

31 (vi) That the sale is not barred, then the clerk shall authorize the mortgagee or trustee to
32 proceed under the instrument, and the mortgagee or trustee can give notice of and conduct a sale
33 pursuant to the provisions of this chapter; and

34 (vii) A certified copy of any authorization or order by the clerk shall be filed in any other

1 county where any portion of the property to be sold is located before the mortgagee or trustee
2 may proceed to advertise and sell any property located in that county.

3 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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- 1 This act would prohibit the foreclosure on property owned by persons in the military who
- 2 are on active duty under military deployment unless waived in writing by the debtor.
- 3 This act would take effect upon passage.

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