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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

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A N A C T

RELATING TO PROPERTY - MORTGAGE FORECLOSURE AND SALE

Introduced By: Senators Pichardo, and Goodwin

Date Introduced: February 11, 2010

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           **34-27-3.1. 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           ~~(k)~~(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 of 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  
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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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