

2013 -- H 5335 SUBSTITUTE A AS AMENDED

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LC00956/SUB 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 -- MORTGAGE AND FORECLOSURE SALE

Introduced By: Representatives Gallison, Marshall, O'Brien, Edwards, and Silva

Date Introduced: February 07, 2013

Referred To: House Judiciary

(Attorney General)

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. Conciliation conference. -- (a) Definitions. The following definitions apply to**
4 **the provisions of this section, unless the context requires another meaning:**

5 (1) "Conciliation conference" means a conference involving the mortgagee and
6 mortgagor, coordinated and facilitated by an conciliation coordinator, to facilitate a loan workout
7 or other solution in an effort to avoid foreclosure and permit the mortgagor, where possible, to
8 remain in the property.

9 (2) "Conciliation coordinator" means a person designated by a Rhode Island based HUD-
10 approved counseling agency to serve as the independent coordinator and facilitator of the
11 conciliation conference, provided that such person possesses the experience and qualifications
12 established by the department.

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

14 (4) "Good faith" means that the mortgagee deals honestly and fairly with the mortgagor
15 and the conciliation coordinator with an honest intent to act towards achieving the goal of
16 avoiding foreclosure, as evidenced by some or all of the following factors:

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

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

1 (iii) Mortgagee made reasonable efforts to respond in a timely manner to a request for
2 information from the conciliation coordinator, mortgagor, or counselor assisting the mortgagor;

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

5 (vi) Where a mortgagee declines to accept the mortgagor's work-out proposal, the
6 mortgagee offered, in writing, to enter into an alternative work-out proposal that would result in
7 net financial benefit to the mortgagor as compared to the terms of the mortgage; or

8 (vii) Any other factor determined by the conciliation coordinator to establish good faith.

9 (5) "HUD" means the United States department of housing and urban development and
10 any successor to such department.

11 (6) "Mortgage" means an individual consumer mortgage on any owner-occupied, one to
12 four (4) unit residential property.

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

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

15 (b) No mortgagee may initiate any foreclosure of real estate pursuant to subsection 34-
16 27-4(b) unless the requirements of this section have been met.

17 (c) When a mortgage is not more than one hundred twenty (120) days delinquent, the
18 mortgagee shall provide to the mortgagor written notice, by certified and first class mail at the
19 address of the real estate and, if different, at the address designated by the mortgagor by written
20 notice to the mortgagee as the mortgagor's address for receipt of notices, that the mortgagee may
21 not foreclose on the mortgaged property without first participating in good faith in a conciliation
22 conference. The notice shall be provided to the clerk or recorder of deeds for the city or town in
23 which the property is located.

24 (d) A form of written notice meeting the requirements of this section shall be
25 promulgated by the department for use by mortgagees at least thirty (30) days prior to the
26 effective date of this section. The written notice required by this section shall be in English,
27 Portuguese and Spanish, reference the property's plat and lot information, and may be combined
28 with any other notice required under this chapter or pursuant to state or federal law. The written
29 notice shall provide the mortgagor the opportunity to receive an additional written notice in
30 another language if necessary.

31 (e) The conciliation conference shall take place in person, or by telephone, at a time and
32 place deemed mutually convenient for the parties by an individual employed by a HUD-approved
33 independent counseling agency selected by the mortgagee to serve as a conciliation coordinator,
34 but not later than sixty (60) days following the mailing of the notice. The mortgagor shall

1 cooperate in all respects with the conciliation coordinator including, but not limited to, providing
2 all necessary financial and employment information and completing any and all loan resolution
3 proposals and applications deemed appropriate by the conciliation coordinator. A conciliation
4 conference between the mortgagor and mortgagee conducted by a conciliation coordinator shall
5 be provided at no cost to the mortgagor. The HUD-approved counseling agency shall be
6 compensated by the mortgagee.

7 (f) If, after two (2) attempts by the conciliation coordinator to contact the mortgagor, the
8 mortgagor fails to respond to the conciliation coordinator's request to appear at a conciliation
9 conference, or the mortgagor fails to cooperate in any respect with the requirements of this
10 section, the requirements of the section shall be deemed satisfied upon verification by the
11 conciliation coordinator that the required notice was sent. Upon verification, a certificate will be
12 issued immediately by the conciliation coordinator authorizing the mortgagee to proceed with the
13 foreclosure action, including recording the deed. Any certificate issued pursuant to this subsection
14 shall be valid for one hundred twenty (120) days. Such certificate shall be recorded along with the
15 foreclosure deed. A form of certificate meeting the requirements of this section shall be
16 promulgated by the department for use by mortgagees at least thirty (30) days prior to the
17 effective date of this section.

18 (g) If the conciliation coordinator determines that after a good faith effort made by the
19 mortgagee at the conciliation conference, the parties cannot come to an agreement to renegotiate
20 the terms of the loan in an effort to avoid foreclosure: such good faith effort by the mortgagee
21 shall be deemed to satisfy the requirements of this section. A certificate certifying such good faith
22 effort will be promptly issued by the conciliation coordinator authorizing the mortgagee to
23 proceed with the foreclosure action and recording of the foreclosure deed. Any certificate issued
24 pursuant to this subsection shall be valid for one hundred twenty (120) days. Such certification
25 shall be recorded along with the foreclosure deed. A form of certificate meeting the requirements
26 of this section shall be promulgated by the department for use by mortgagees at least thirty (30)
27 days prior to the effective date of this section.

28 (h) If the mortgagee and mortgagor are able to reach agreement to renegotiate the terms
29 of the loan to avoid foreclosure, the agreement shall be reduced to writing, executed by the
30 mortgagor and mortgagee, and notice of the agreement shall be provided to the clerk or recorder
31 of deeds for the city or town in which the property is located by the mortgagee.

32 (i) Notwithstanding any other provisions of this section, where a mortgagor and
33 mortgagee have entered into a written agreement and the mortgagor fails to fulfill his or her
34 obligations under the written agreement, the provisions of this section shall not apply to any

1 foreclosure initiated under this chapter within nine (9) months following the execution of the
2 written agreement. In such case, the mortgagee shall include in the foreclosure deed an affidavit
3 establishing its right to proceed under the subsection.

4 (j) Foreclosures involving real property which is not owner-occupied or is not a one to
5 four (4) unit residential property are not subject to this section.

6 (k) Notwithstanding any other provisions of this section, any mortgagee which is
7 headquartered within the state and which services its own mortgages shall be deemed to be in
8 compliance with the requirements of this section if:

9 (1) The mortgagee provides mortgagors a forbearance relief program that is consistent
10 with the forbearance relief requirements applicable to FHA-insured mortgages, as set forth in
11 Chapter 8 of HUD Handbook 4330.1 Rev. 5, administration of insured home mortgages, as the
12 same may be amended from time to time; and

13 (2) The deed offered by a mortgagee to be filed with the city or town recorder of deeds as
14 a result of a mortgage foreclosure action contained a certification that the provisions of this
15 subsection have been satisfied.

16 (l) No deed offered by a mortgagee as a result of a mortgage foreclosure action shall be
17 submitted to a city or town recorder of deeds for recording in the land evidence records of the city
18 or town until and unless the requirements of this section are met. The mortgagee shall include in
19 the foreclosure deed an affidavit of compliance with this section. Failure of the mortgagee to
20 comply with the requirements of this section shall render the foreclosure void, without limitation
21 of the right of the mortgagee thereafter to re-exercise its power of sale or other means of
22 foreclosure upon compliance with this section. The rights of the mortgagor to any redress
23 afforded under the law are not abridged by this section.

24 (m) Any existing municipal ordinance or future ordinance which requires a conciliation
25 process as a precondition to the recordation of a foreclosure deed shall comply with the
26 provisions set forth herein and any provisions of said ordinances which do not comply with the
27 provisions set forth herein shall be deemed unenforceable.

28 SECTION 2. This act shall take effect sixty (60) days following passage.

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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 conciliation
2 conference prior to initiating foreclosure proceedings. This act would apply only to individual
3 consumer mortgages on any owner-occupied, one to four (4) unit residential property.

4 This act would take effect sixty (60) days following passage.

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