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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

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A N A C T

RELATING TO PROPERTY -- MORTGAGE FORECLOSURE AND SALE

Introduced By: Senators Pichardo, Miller, Metts, Goodwin, and Jabour

Date Introduced: January 14, 2009

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 WHEREAS, in recognition of the existing national economic crisis, it is the policy of this
2 state to protect the public health, safety and welfare (i) by encouraging early, government-
3 approved independent counseling agency assistance in foreclosure cases to facilitate loan work-
4 outs and other solutions to permit individual consumer mortgagors, where possible, to retain their
5 homes and (ii) by providing additional notices and rights to tenants who may be affected by
6 foreclosures.

7 SECTION 1. Section 34-27-4 of the General Laws in Chapter 34-27 entitled "Mortgage
8 Foreclosure and Sale" is hereby amended to read as follows:

9 **34-27-4. Publication of notice under power of sale.** -- (a) Whenever any real estate
10 shall be sold under any power of sale mortgage executed subsequent to May 4, 1911, and the
11 mortgage shall provide for the giving of notice of the sale by publication in some public
12 newspaper at least once a week for three (3) successive weeks before the sale, the first publication
13 of the notice shall be at least twenty-one (21) days before the day of sale, including the day of the
14 first publication in the computation, and the third publication of the notice shall be no fewer than
15 seven (7) days before the original date of sale listed in the advertisement and no more than
16 fourteen (14) days before the original date of sale listed in the advertisement. The sale may take
17 place no more than fourteen (14) days from the date on which the third successive notice is
18 published, including the day of the third publication in the computation. Provided, however, that
19 if the sale is adjourned as provided in Rhode Island general laws section 34-11-22, and the

1 adjourned sale is held during the same calendar week as the originally scheduled day of sale, no
2 additional advertising is required. Otherwise, publication of the notice of the adjourned sale,
3 together with a notice of the adjournment or adjournments, shall be continued at least once each
4 week commencing with the calendar week following the originally scheduled day of sale; the
5 sale, as so adjourned, shall take place during the same calendar week in which the last notice of
6 the adjourned sale is published, at least one day after the date on which the last notice is
7 published.

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

17 (c) Provided that the same is then available, the mortgagee shall provide to each bona fide
18 tenant, as defined in section 34-27-7, a written notice: (1) stating that the real estate is scheduled
19 to be sold at foreclosure; (2) stating the date, time and place initially scheduled for the sale; (3)
20 informing of the availability and advisability of counseling and information services; (4)
21 providing the address and telephone number of Rhode Island Legal Services; and (5) providing
22 the toll-free telephone number and website address maintained by Rhode Island Legal Services
23 provided, however, that if Rhode Island Legal Services is not available, the notice shall provide
24 the toll-free telephone number and website address maintained by HUD to provide information
25 regarding no-cost HUD-approved counseling agencies in Rhode Island, provided the same is then
26 available. The written notice shall be in English and Spanish and mailed by first class mail at
27 least one (1) business day prior to the first publication of the notice required in subsection (a)
28 above. A form of written notice meeting the requirements of this subsection and providing space
29 for loan specific information shall be promulgated by the department of business regulation for
30 use by mortgagees at least thirty (30) days prior to the effective date of this subsection (c). The
31 notice may be addressed to "Occupant" and mailed to each dwelling unit of the real estate
32 identified in the application for the loan secured by the mortgage being foreclosed. Failure of the
33 mortgagee to provide notice as provided herein shall not affect the validity of the foreclosure;
34 however, no successor in interest to the mortgagor shall be permitted to initiate an action for

1 possession of the premises against such bona fide tenant unless the period for notice to quit
2 required by section 34-27-7 is increased by twenty-one (21) days.

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

5 **34-27-7. Obligation of successor in interest. – The following provisions shall apply**
6 where a bona fide tenant of the foreclosed mortgagor occupies any dwelling unit of a foreclosed
7 mortgaged estate having four (4) or fewer residential units:

8 (a) Where the foreclosed mortgagor had provided water and sewer service and common
9 area utility services to a bona fide tenant, any successor in interest to the foreclosed mortgagor
10 shall continue to provide such services so long as any dwelling unit that is included in a
11 mortgaged estate having four (4) or fewer residential units is occupied by a bona fide tenant.

12 (b) Where the foreclosed mortgagor had provided heat, hot water, electric, or gas service
13 to a bona fide tenant, any successor in interest to the foreclosed mortgagor shall continue to
14 provide such services under the same terms and conditions to the tenant. The successor in
15 interest may collect standard utility fees from the tenant for the services provided hereunder
16 according to a schedule established and maintained in accordance with guidelines established by
17 HUD to reflect the reasonable costs thereof. The obligation of the tenant to pay the standard
18 utility fees shall commence on the first day of the month following delivery by the successor in
19 interest of a notice to the tenant specifying the date of the foreclosure, the name and address of
20 the agent authorized to act on behalf of the successor in interest, the services to be provided, and
21 the amount of the standard utility fee for such services. This subsection (b) is repealed and the
22 requirements established by this section shall terminate as of the date on which the Protecting
23 Tenants at Foreclosure Act of 2009 (Title VII of Public Law 111-22) is repealed.

24 (c) Provision of such services, and acceptance of the standard utility fee shall not, without
25 more, establish a landlord and tenant relationship within the meaning of chapter 34-18 of the
26 general laws.

27 (d) A successor in interest to a mortgagor may recover possession of any dwelling unit of
28 a foreclosed mortgaged estate occupied by a bona fide tenant of the mortgagor as provided in
29 chapter 34-18.1 of the general laws, and reasonable use and occupancy, upon delivery of written
30 notice to quit to the tenant given at least thirty (30) days prior to the day named therein or such
31 longer period as may be required under federal law; provided, however, that where the tenant
32 fails to pay the standard utility fee, if any, the successor in interest may recover possession as
33 provided in section 34-18.1-9 upon delivery of written notice to quit given at least fifteen (15)
34 days prior to the day named therein or such longer period as may be required under federal law.

1 (e) For purposes of this chapter, a “bona fide tenant” means a person who has entered
2 into a written or oral rental agreement with the mortgagor with respect to a dwelling unit that is
3 included in a mortgaged estate having four (4) or fewer residential units as of any relevant time
4 but in no event later than the date of first publication of notice of foreclosure under subsection 34-
5 27-4(a). A rental agreement shall be considered bona fide only if:

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

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

9 (3) The lease or tenancy requires the receipt of rent that is not substantially less than fair
10 market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or
11 local subsidy.

12 (f) Nothing herein shall be deemed to limit the right of any tenant to waive the
13 provisions of this section for consideration acceptable to such tenant.

14 **34-27-8. Reporting.** -- (a) The Housing Resources Commission, shall explore the
15 selection and use of an existing uniform foreclosure reporting mechanism in every city and town
16 and any possible expansion that may be made to such mechanisms. The purposes of using a
17 uniform foreclosure reporting mechanism would be to capture the actual numbers of foreclosures
18 in every municipality, to inform other state agencies and the public about the locations of
19 foreclosures, to track trends or problems that are or may occur due to foreclosures, and to
20 identify, as to each mortgagee that acquires foreclosed property in any city or town in Rhode
21 Island, either directly or through an affiliate, the name, street address, telephone number, and
22 electronic address, if any, of a contact person who is authorized to act on behalf of such
23 mortgagee (or affiliate) with respect to properties acquired through foreclosure in such city or
24 town.

25 (b) The Housing Resources Commission, shall provide a written report to the governor
26 and the general assembly on January 15, 2010 that provides: (1) recommendations for the
27 selection and use of a uniform foreclosure reporting mechanism in every city and town, and (2) a
28 summary of the implementation of this act.

29 (c) If a uniform foreclosure reporting mechanism in every city and town is adopted, the
30 department of business regulation shall access the information collected in this system on a
31 quarterly basis to track trends and possible problems due to foreclosures in the state.

32 **34-27-9. Preemption.** -- No ordinance or regulation, adopted by any town or city, shall
33 impose or at any time be construed to continue to impose, any requirements or obligations on
34 mortgagees with respect to foreclosure of real estate that are inconsistent with, or more

1 burdensome on mortgagees than, the provisions of this chapter.

2 SECTION 3. This act shall take effect sixty (60) days after passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
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 also require a successor in interest to a foreclosed mortgagor to give
7 tenants written notice to quit at least sixty (60) days in advance.

8 This act would take effect sixty (60) days after passage.

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