

230-RICR-40-10-4

TITLE 230 – DEPARTMENT OF BUSINESS REGULATION

CHAPTER 40 – BANKING

SUBCHAPTER 10 – LENDING

PART 4 – Mortgage Foreclosure Disclosure

4.1 Authority

This Part is promulgated pursuant to R.I. Gen. Laws §§ 34-27-3.2, 34-27-7, 42-14-17 and 42-35-3.

4.2 Purpose and Applicability

- A. The purpose of this Part is to identify the form of written notices required pursuant to R.I. Gen. Laws §§ 34-27-3.2 and 34-27-7. This Part also clarifies the Mortgagee’s duties and consequences of its failure to comply with R.I. Gen. Laws § 34-27-3.2 and this Part. Readers are cautioned to consult the statutes for additional obligations not repeated in this Part.
- B. R.I. Gen. Laws § 34-27-3.2 and this Part apply to all entities and individuals subject to regulation and supervision by the Rhode Island Division of Banking (“Division”) as well as to any Mortgagee holding a loan owned or payable by an Individual Mortgagor unless otherwise exempted as described in § 4.5(B) of this Part.

4.3 Notice of Pending Foreclosure

The form for Notice of Pending Foreclosure to be provided pursuant to R.I. Gen. Laws § 34-27-7 is provided in a bulletin issued by the Department for that purpose.

4.4 Definitions

- A. As used in §§ 4.5 through 4.7 of this Part the following terms have the following meanings:
 - 1. “Certificate authorizing foreclosure” means the form provided in a bulletin issued by the Department for that purpose, providing that the Mortgagee has complied with the mediation requirement of R.I. Gen. Laws § 34-27-3.2.

2. "Days" means calendar days.
3. "Default" means the failure of the mortgagor to make a timely payment of an amount due under the terms of the mortgage contract, which failure has not been subsequently cured.
4. "Delinquency" means delinquency as defined in terms of the underlying note.
5. "Department" means the Rhode Island Department of Business Regulation, Division of Banking.
6. "Eligible workout agreement" means an agreement between a Mortgagor and Mortgagee (including but not limited to a temporary or permanent loan modification, a short sale, or a deed-in-lieu of foreclosure) which would result in a net financial benefit to the Mortgagor as compared to the terms of the original Mortgage, or is otherwise in the best interests of the Mortgagor.
7. "Headquartered in Rhode Island" means an entity whose national or international corporate office or main administrative office or center of operations is located in Rhode Island (whether or not such functions are in located in one location or in separate locations within Rhode Island) and is the office from which decision-making functions are performed and orders issued (including decisions and orders regarding mortgage servicing and foreclosure).
8. "HUD" means the United States Department of Housing and Urban Development and any successor to such department.
9. "Individual consumer mortgagor" means a natural person who is a Mortgagor owing or indebted pursuant to a loan secured by Residential Real Estate as defined herein. R.I. Gen. Laws § 34-27-3.1 applies to all Individual Consumer Mortgagors regardless of whether loan proceeds are used for business or personal purposes.
10. "Locally-based mortgagee" means a Rhode Island-based Mortgagee with Headquarters in Rhode Island or with a physical office or offices exclusively in Rhode Island from which it carries out full-service mortgage operations including acceptance and processing of mortgage payments and the provision of local customer service and loss mitigation and where Rhode Island staff have the authority to approve loan restructuring and other loss mitigation strategies.

11. "Mediation conference" means a conference involving the mortgagee and mortgagor, coordinated and facilitated by a mediation coordinator whose purpose is to determine whether an alternative to foreclosure is economically feasible to both the mortgagee and the mortgagor, and if it is determined that an alternative to foreclosure is economically feasible, to facilitate a loan workout or other solution in an effort to avoid foreclosure.
12. "Mediation coordinator" means a person employed by a Rhode Island based HUD approved counseling agency designated to serve as the unbiased, impartial, and independent coordinator and facilitator of the mediation conference, with no authority to impose a solution or otherwise act as a consumer advocate, provided that such person possesses the experience and qualifications established in § 4.6 of this Part. R.I. Housing shall be deemed qualified to perform Mediation Coordination functions in the State of Rhode Island for purposes of compliance with R.I. Gen. Laws § 34-27-3.2.
13. "Mortgage" means an individual consumer first-lien mortgage (that was originated as first-lien) on any owner occupied, one to four (4) unit residential property which serves as the mortgagor's primary residence.
14. "Mortgagee" means is the holder of a mortgage (e.g. the lender, mortgage-creditor, or mortgage-holder) or its agent or employee including a mortgage servicer acting on behalf of a mortgagee.
15. "Mortgagor" means the person that has signed a mortgage in order to secure a debt or other duty, or the heir or devisee of such person provided that:
 - a. The heir or devisee occupies the property as his or her primary residence; and
 - b. The heir or devisee has record title to the property or a representative of the estate of the mortgagor has been appointed by a body having jurisdiction over the estate with authority to participate in a mediation conference.
16. "Notice of mediation conference" means Form 34-27-3.2 provided in a bulletin issued by the Department for that purpose. (in English, Portuguese, and Spanish) or a form substantially similar to Form 34-27-3.2 sent to the Mortgagor of the property at issue in the foreclosure proceeding when a Mortgage is not more than one-hundred twenty (120) days delinquent or, if applicable, within sixty (60) days after the date upon which the loan is released from the protection of the automatic stay in a

bankruptcy proceeding, or any similar injunctive order issued by a state or federal court or if applicable, within sixty (60) days after the date upon which the loan is released from protections of the Servicemembers Civil Relief Act, 50 U.S.C. § 501 *et seq.*, or R.I. Gen. Laws § 34-27-4(d).

17. “Reasonable time” means 14 calendar days unless extended for good cause by the Mediation Coordinator
18. “Residential real estate” means real property located in Rhode Island having between one (1) and four (4) dwelling units of which at least one is occupied by the Mortgagor. An individual owner-occupied residential condominium unit is included within this definition.

4.5 Requirements

A. In addition to any other notice or disclosure required under federal or state law, the Mortgagee shall provide the Notice of Mediation Conference to the Mortgagor of the Residential Real Estate at issue consistent with the requirements of R.I. Gen. Laws § 34-27-3.2 as follows:

1. The written Notice of Mediation Conference must be provided to all Mortgagors of the Residential Real Estate prior to initiation of foreclosure of real estate pursuant to R.I. Gen. Laws § 34-27-4(b) at the address of the Residential Real Estate and, if different, at the address designated by the Individual Consumer Mortgagor by written notice to the Mortgagee as the consumer Mortgagor’s address for receipt of notices. Notice addressed and delivered as provided in this section shall be effective with respect to the Mortgagor and any heir or devisee of the Mortgagor. A copy of the Notice of Mediation Conference shall also be sent by mail to the Mediation Coordinator, along with contact information for a single mortgagee point of contact to handle all communications with the mediation coordinator so that the Mediation Coordinator may commence the Mediation process by contacting the Mortgagor. The sixty (60) day timeline for scheduling the Mediation Conference shall begin when a Notice of Mediation Conference, single point of contact information for the Mortgagee, and payment for initiating the mediation process has been received by the Medication Coordinator. The Mortgagee may contact the Mediation Coordinator to obtain information on the Mediation Coordinator’s procedures for Mediation.
2. If the Mortgagors and/or Owners reside at the same address they may be sent the Notice of Mediation Conference as one notice to listing all Mortgagors and/or Owners. If the Mortgagors and/or Owners reside at different addresses, then separate Notices of Mediation Conference

(listing each Mortgagor and/or Owner separately) shall be mailed to each Mortgagor and/or Owner at their respective address. Any issues regarding mailing, addresses, and difficulty in reaching all interested parties shall be communicated to the Mediation Coordinator by the Mortgagee.

3. The Mortgagee must designate an agent to participate in the Mediation Conference and respond to all requests from the Mediation Coordinator, Mortgagor, or counselor assisting the Mortgagor within a Reasonable Time not to exceed 14 days.
4. If the Mortgagee declines to accept the Mortgagor's Workout Agreement, if any, the Mortgagee must provide a detailed statement documenting the reasons for rejecting the proposal within 14 days.
5. Pursuant to R.I. Gen. Laws § 34-27-3.2(i), if the Mortgagee and Mortgagor reach agreement after the Notice of Mediation Conference is sent to the Mortgagor, but without the assistance of the Mediation Coordinator, the Mortgagee shall provide a copy of the written agreement to the Mediation Coordinator. Upon receipt of a written agreement between the Mortgagee and Mortgagor and payment of all fees and penalties required under R.I. Gen. Laws §§ 34-27-3.2 (d)(1) and (f), the Mediation Coordinator shall issue a certificate of eligible workout agreement, if the workout agreement would result in a net financial benefit to the Mortgagor as compared to the terms of the original Mortgage ("Certificate of Eligible Workout Agreement") in the format provided in a bulletin issued by the Department for that purpose.. For purposes of this subsection, evidence of an agreement shall include, but not be limited to, evidence of agreement by both mortgagee and mortgagor to the terms of a short sale or a deed in lieu of foreclosure, regardless of whether said short sale or deed in lieu of foreclosure is subsequently completed. Where the Mediation Coordinator has issued a Certificate of Eligible Workout Agreement if the Mortgagor fails to fulfill his or her obligations under the Eligible Workout Agreement, the provisions of R.I. Gen. Laws § 34-27-3.2 shall not apply to any foreclosure initiated under this chapter within twelve (12) months following the date of the Eligible Workout Agreement.
6. Notwithstanding the provisions of R.I. Gen. Laws § 34-27-3.2 and this Part, a Mortgagee may initiate a judicial foreclosure in accordance with R.I. Gen. Laws Chapter 34-27.

B. Exemptions

1. The following Mortgages are exempt from the provision of this Part. For such Mortgages, Mortgagees may submit the form provided in a bulletin issued by the Department for that purpose as evidence of compliance with R.I. Gen. Laws § 34-27-3.2.
 - a. Mortgages on which the date of default under the mortgage is on or before May 16, 2013.
 - b. Mortgages made and serviced by any entity qualifying as a Locally-based Mortgagee. Any Mortgagee seeking clarification regarding its status as a “Locally-Based Mortgagee” for purposes of meeting the requirements of this Part may contact the Department of Business Regulation with a detailed written description of its operations specifically with regard to: the location of its Headquarters, the location and description of its mortgage operations including the acceptance and processing of mortgage payments and local customer service and loss mitigation, and the identification of Rhode Island staff with the authority to approve loan restructuring and other loss mitigation strategies.
 - c. Reverse mortgages.
- C. Any Mortgagee subject to Part and supervision by the Division must maintain a duplicate of the Notice of Mediation Conference including information regarding delivery in Individual Consumer Mortgagor’s file consistent with the Division’s record-keeping requirements.
- D. If the Mortgagee decides to send a “substantially similar” document there shall be no changes to the wording, font or information required by the forms for “Notice of Pending Foreclosure” and “Notice of Medication Conference” provided in a bulletin issued by the Department for that purpose. “Substantially similar” only allows the Mortgagee to put the notice on its own letterhead or insert a logo and to add information required by federal laws such as the Fair Credit Reporting Act on the same form as the Disclosure.
- E. Mortgagees may provide contact information for a dedicated customer service group as authorized representative so long as the consumer can obtain the required information from the contact information given.
- F. All Mortgagees are required to comply with R.I. Gen. Laws § 34-27-3.2 no later than September 14, 2013.

4.6 Qualifications of Mediation Coordinator

- A. The Mediation Coordinator shall have a minimum of three (3) years of experience in residential mortgage lending and loss mitigation guidelines with a working knowledge of prime and sub-prime loan products, modifications, forbearance agreements, bankruptcy laws, tax sales, excellent written and verbal communication skills, strong analytical, problem-solving and organizational skills, and experience with tracking systems.
- B. The Mediation Coordinator will also have the knowledge, ability, and contacts to access local and national offices of lenders and foreclosure attorneys.
- C. The Department will maintain a list of approved Mediation Coordinators on its website.

4.7 Certificate Authorizing Foreclosure

- A. The Certificate of Compliance with Mediation Requirement shall be issued by the Mediation Coordinator and/or its designee upon confirmation that all criteria in R.I. Gen. Laws §§ 34-27-3.2(g) and (h) have been met, the Notice of Mediation Conference was properly served upon the Mortgagor of the Residential Real Estate and all fees and penalties required under R.I. Gen. Laws §§ 34-27-3.2(d) (1) and (f) have been paid.
- B. All written correspondence and documents related to the Mediation Conference process received by or submitted to the Mediation Coordinator shall be provided to the Mortgagee and maintained by the Mortgagee consistent with the Department's record-keeping requirements.

4.8 Enforcement

Any Mortgagee regulated and supervised by the Division who fails to comply with this Part may be subject to administrative action pursuant to R.I. Gen. Laws Title 19 and/or any relevant regulation promulgated pursuant thereto.

4.9 Severability

If any section, term, or provision of this Part should be adjudged invalid for any reason, that judgment should not effect, impair, or invalidate any remaining section, term, or provision, which shall remain in full force and effect.

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**TITLE 230 - DEPARTMENT OF BUSINESS REGULATION
(INCLUDES THE OFFICE OF THE HEALTH INSURANCE
COMMISSIONER)**

CHAPTER 40 - BANKING

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PART 4 - MORTGAGE FORECLOSURE DISCLOSURE

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