

**State of Rhode Island and Providence Plantations  
DEPARTMENT OF BUSINESS REGULATION**

*Division of Banking*  
1511 Pontiac Avenue  
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**STATEMENT OF NEED FOR THIRD EMERGENCY AMENDMENT OF  
BANKING REGULATION 5-MORTGAGE FORECLOSURE DISCLOSURE**

R.I. Gen. Laws § 34-27-3.2 was enacted on July 15, 2013 (and effective on September 13, 2013) and required that the Department of Business Regulation (“Department”) promulgate a specific notice and certificates related to foreclosure mediation at least 30 days prior to the effective date of the statute which is August 14, 2013. An Emergency Regulation was filed and in effect on August 14, 2013; however, on August 21, 2013 it was necessary to file a second amendment to the Emergency Regulation in order to: provide the Portuguese and Spanish translations of required Appendix B (Notice of Mediation Conference) and to add Affidavits related to certain applicable exemptions to facilitate the confirmation of compliance by Mortgagees with R.I. Gen. Laws § 34-27-3.2 and to facilitate the filing and recording of deeds.

After reviewing comments received and requests for clarification, it is necessary to file this third emergency amendment to Banking Regulation 5. This emergency amendment does not change the effective date or term of the initial Emergency Regulation. That is, the initial Emergency regulation is effective for 120 days from August 14, 2013 and renewable once for a period not to exceed 90 days as allowed under R.I. Gen. Laws § 42-35-3(b). Due to the time constraints posed by the enactment and requirements of the statute and in order to ensure the stability and continuity of related real estate transactions (including but not limited to providing affected parties with notice and certification allowing foreclosures to proceed consistent with statutory requirements, and the effect on title to real estate resulting in title insurance issues), the Department is required to amend its Banking Regulation 5 in order to comply with statutory requirement via the emergency promulgation process. While the amendments to Banking Regulation 5 are being implemented on an emergency basis and effective immediately, the Department will be issuing a Public Notice of Proposed Rulemaking for a hearing date to be set in the near future. Therefore, the hearing dates previously noted for September 16, 2013 and then September 23, 2013 will not be held on those dates; but will be rescheduled and noticed via the filing of a public notice. The regulatory promulgation process will provide an opportunity for hearing and subsequent amendments based on comments if necessary and appropriate as determined by the Department.

Banking Regulation 5 is hereby amended as follows:

**AUGUST 14, 2013 AMENDMENTS:**

1. Current Sections 5 (Enforcement), 6 (Severability), and 7 (Effective Date) have been renumbered as new Sections 7 (Enforcement), 8 (Severability), and 9 (Effective Date).

2. References to R.I. Gen. Laws § 34-27-3.2 have been added to reflect statutory authority for relevant provisions in Sections 1, Section 2, Section 3 (in the definition of “Mediation Coordinator,” Section 4(B), Section 4(H), and in Appendix B Form 34-27-3.2, and Appendix C.
3. Current Section 3 has been amended to include new definitions for “Certificate Authorizing Foreclosure,” “Days,” “Mediation Coordinator,” “Notice of Mediation Conference.”
4. Current Section 4 has been modified to include requirements for the Notice of Mediation Conference mandated by R.I. Gen. Laws § 34-27-3.2(f) and states that all Mortgagees will be required to comply with R.I. Gen. Laws § 34-27-3.2 by September 13, 2013. Appendix B, Form 34-27-3.2 is the Notice of Mediation Conference.
5. A new Section 5 entitled “Qualifications of Mediation Coordinator” has been added and sets forth experience requirements for Mediation Coordinators pursuant to R.I. Gen. Laws § 34-27-3.2(c)(2).
6. A new Section 5 entitled “Certificate Authorizing Foreclosure” has been added and sets forth requirements mandated by R.I. Gen. Laws § 34-27-3.2(h) and (i).
7. Section 9, entitled “Effective Date” has been clarified to reflect that mediation conference requirements in R.I. Gen. Laws § 34-27-3.2 expire on July 1, 2018.

#### AUGUST 21, 2013 AMENDMENTS

8. The Spanish and Portuguese translations of Appendix B have been included.
9. A new Section, 4C has been added to explain exemptions and facilitate filing and recording of deeds via the use of Affidavits under R.I. Gen. Laws § 34-27-3.2(m) and for those Mortgageors that are 120 days or more delinquent as of September 12, 2013.
10. The filing of this amendment to the Emergency Regulation does not change the effective date or term of the initial Emergency Regulation. That is, the initial Emergency regulation is effective for 120 days from August 14, 2013 and renewable once for a period not to exceed 90 days as allowed under R.I. Gen. Laws § 42-35-3(b).

#### SEPTEMBER 12, 2013 AMENDMENTS:

11. Section 3(G): “precessing” changed to “processing” to correct typographical error.
12. Section 3(I): “Notice of Mediation Conference” required to be sent when Mortgageor is “not more than one-hundred twenty days delinquent” changed from prior “ninety day” requirement.

13. Section 3(I): the definition of “Mortgage” was clarified due to comments regarding scope of real estate covered and applicability to borrowers and/or owners. The definition includes the regulatory definition of “Residential Real Estate” in order to reference the real estate covered by the statute and the regulatory definition of “Mortgagor” to include applicability to owners (as stated in the statutory definition R.I. Gen. Laws § 34-27-3.2 (c)(8)) and to provide for instances in which the owner may not necessarily be the borrower. Therefore, the definition is now:  
  
“Mortgage” means a lien on Residential Real Estate that secures the Mortgagor’s promise to repay a loan or a security agreement.
14. Section 3(M): (New): the definition of “Reasonable Time” added to mean “14 calendar days unless extended for good cause by the Mediation Coordinator.”
15. Section 4(B)(i): Notice of Mediation Conference must be provided when a Mortgage is not more than one hundred twenty (120) days delinquent (amended from the prior 90 day requirement).
16. Appendices A, B date formatting changed from dd/mm/yyyy to mm/dd/yyyy to address issues raised by interested parties for issues related to computer formatting.
17. Appendix B “WITHIN” added to paragraph in bold font to clarify that the Mediation Conference must take place within 60 days of the mailing date of the Notice of Mediation Conference.
18. Appendix B: copy requirement added via “cc: Mediation Coordinator” added at bottom of Notice of Mediation Conference.
19. Appendix B: Portuguese Translation (amended on September 6, 2013) added to body of regulation.

Pursuant to R.I. Gen. Laws § 42-35-3(b), an agency may, if it finds adoption of a rule upon less than thirty (30) days’ notice is necessary because of imminent peril to the public health, safety, or welfare, adopt an emergency rule without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable. The rule so adopted may be effective for a period not exceeding one hundred and twenty (120) days. *Id.* Furthermore, R. I. Gen. Laws § 42-35-4(b)(2) provides that, subject to constitutional or statutory provisions, an emergency rule may become effective immediately upon filing with the Secretary of State if the agency finds that such an effective date is necessary because of imminent peril to the public health, safety, or welfare.

The Department of Business Regulation has determined that conditions exist that necessitate the amendment and adoption of this Regulation on an emergency basis, to be effective upon filing with the Secretary of State. The Department finds that there is imminent peril to the public health, safety, or welfare in that the provisions set forth in the regulation are necessary for the Department to comply with R.I. Gen. Laws § 34-27-3.2. Therefore, this

Emergency Regulation is required, *inter alia*, in order to: (i) ensure timely and thorough compliance with the requirements of R.I. Gen. Laws § 34-27-3.2; (ii) protect the public interest with respect to providing verification of foreclosure mediation in affected real estate transactions; and (iii) protect the viability and integrity of the real estate marketplace and all related entities and individuals.