

DEPARTMENT OF BUSINESS REGULATION
Division of Banking
1511 Pontiac Avenue, Bldgs 68 and 69
Cranston, Rhode Island 02920

Concise Summary of Proposed Non-technical Amendments
to
Banking Regulation 5-Mortgage Foreclosure Disclosure

In accordance with the Administrative Procedures Act, Section 42-35-3(a)(1) of the General Laws of Rhode Island, following is a concise summary of proposed non-technical amendments to Banking Regulation 5:

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 Mortgagors 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 Mortgagor 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): 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.

NOVEMBER 14, 2013 AMENDMENTS

20. The reference to Appendix to D1 as “Affidavit of Compliance “ was amended from the prior “Exemption” to conform to the statutory reference in R.I. Gen. Laws § 34-27-3.2(m).
21. The “Certificate of Eligible Workout Agreement” was added as Appendix E in order to provide confirmation and documentation of an eligible Workout Agreement.
22. A definition of “Default” was added in Subsection 3C.
23. A definition of “Delinquency” was added in Subsection 3D.
24. A definition of “Headquartered in Rhode Island” was added in Subsection 3F.
25. A mortgage-holder’s agents and employees were added to the definition of “Mortgagee” in Subsection 3J.
26. Subsection 4B(i) was further clarified to provide that the Mediation Coordinator could start the Mediation process by contacting the Mortgagor and to provide that the Mortgagee could contact the Mediation Coordinator to obtain information regarding the Mediation Coordinators procedures for Mediation.
27. Subsection 4B(iv) was added to describe the procedure for reducing the Workout Agreement to writing and the issuance of the Certificate of Eligible Workout Agreement. The subsection also provides that if the Mortgagor defaults on the Workout Agreement, as defined in the regulation, within twelve (12) months of the Workout Agreement, the Mortgagee may proceed to foreclosure without participating in another mediation process.
28. Subsection 4B(v) was added to provide that if a Mortgagee fails to send the Notice of Mediation Conference to the Mortgagor before the Mortgagor is more than one hundred twenty (120) days delinquent, the Mortgagee may still proceed to foreclosure under the Rhode Island judicial foreclosure process as set forth R.I. Gen. Laws § 34-27-1 *et seq.*
29. Subsection 4B(vi) was added to provide that commercial loans which include guarantees secured by a Mortgage of the guarantor (and are involved in a workout) or Mortgagors, who file bankruptcy and meet certain conditions, may file the resulting Workout Agreement and is not required to comply with R.I. Gen. Laws § 34-27-3.2. If

no Workout Agreement results from the negotiations in these circumstances and the Mortgagor is more than one hundred twenty days delinquent, the Mortgagee may still proceed to foreclosure under the judicial foreclosure process set forth in R.I. Gen. Laws § 34-27-1 *et seq.*, if necessary.

30. Subsection 4C(i) was amended to clarify that Appendix D2 evidences compliance with R.I. Gen. Laws § 34-27-3.2 (rather than exemption from compliance) and to confirm that for those properties (secured by Mortgages) located in Providence, East Providence, Cranston, Warwick, or Warren, the Mortgagee should proceed under the foreclosure conciliation process defined in those communities' local ordinances if the Mortgagor was one hundred twenty (120) days delinquent on or before September 12, 2013.

31. Subsection 4C(iii) was added in order to allow a process for those seeking confirmation of "Locally-Based Mortgagee" status to request confirmation from the Department of Business Regulation.

32. Appendix B was amended to include the name of the Mortgagor and the Book/Page number of the Recorded Mortgage.

33. Paragraph 3 of Appendix D1 the "and" was stricken and replaced with an "or" to conform to statutory requirements.