

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Banking
1511 Pontiac Avenue, Bldg. 69-2
Cranston, Rhode Island 02920

Public Notice of Proposed Rulemaking

Pursuant to the provisions of 34-27-3.2, 42-14-17, and 42-35-3 of the General Laws of Rhode Island, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Department of Business Regulation hereby gives notice of its intent to amend Banking Regulation 5 entitled *Mortgage Foreclosure Disclosure*. These amendments have been adopted via emergency regulation on August 9, 2013 pursuant to R.I. Gen. Laws § 42-35-3(b).

The purpose of this amendment is to implement the requirements of R.I. Gen. Laws § 34-27-3.2 which requires the Department to promulgate a notice and certificates related to foreclosure mediation.

The proposed regulation and concise summary of non-technical differences between existing and proposed new regulation are available for public inspection at www.dbr.ri.gov, in person at Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or by email to Neena.Savage@dbr.ri.gov or by calling Neena Sinha Savage at (401) 462-9540.

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by September 16, 2013 to Neena Sinha Savage, Department of Business Regulation, 1511 Pontiac Avenue, Cranston, RI 02920, (401) 462-9540, Neena.Savage@dbr.ri.gov. A public hearing to consider the proposed amendment shall be held on **Monday, September 16, 2013 at 9:30 a.m.** at 1511 Pontiac Avenue, Cranston, Rhode Island 02920 at which time and place all persons interested therein will be heard.

All are welcome at the Rhode Island Department of Business Regulation ("DBR"). If any reasonable accommodation is needed to ensure equal access, service or participation, please contact DBR at 401-462-9551, RI Relay at 7-1-1, or email DBR.directorofficeinquiry@dbr.ri.gov at least three (3) business days prior to the hearing.

Paul McGreevy
Director, Department of Business Regulation

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION

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1511 Pontiac Avenue, Bldg. 68
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BANKING REGULATION 5

MORTGAGE FORECLOSURE DISCLOSURE

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Section 1 ***Authority***

This Regulation is promulgated pursuant to R.I. Gen. Laws §§ ~~34~~27-3.1, 34-27-3.2, 42-14-17 and 42-35-3.

Section 2 ***Purpose and Applicability***

The purpose of this Regulation is to promulgate the form of written notice pursuant to R.I. Gen. Laws §§ 34-27-3.1 and 34-27-3.2. The notices implemented by this Regulation informs Individual Consumer Mortgagors of their default, of the Mortgagee's right to foreclose, ~~and~~ the availability of counseling for Mortgagors through HUD-approved counseling agencies in Rhode Island, and the availability of a mediation conference with a mediation coordinator designated by a HUD-approved counseling agency as part of an effort to avoid foreclosure. This Regulation also clarifies the Mortgagee's duties and consequences of its failure to comply with R.I. Gen. Laws §§ 34-27-3.1 and 34-27-3.2 and this Regulation.

R.I. Gen. Laws §§ 34-27-3.1 and 34-27-3.2 and this Regulation applies 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 Consumer Mortgagor as defined herein.

Section 3 **Definitions**

- A.** “Certificate Authorizing Foreclosure” means the form attached in Appendix C herein.
- B.** A.——“Days” means calendar days.
- C.** “Department” means the Rhode Island Department of Business Regulation.
- DB.** “Disclosure” means Form 34-27-3.1 attached hereto in Appendix A (in English and Spanish) or a form substantially similar to Appendix A.
- EC.** “HUD” means the United States Department of Housing and Urban Development and any successor to such department.
- FD.** “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.
- G.** “Mediation Coordinator” means a person designated by a Rhode Island based HUD approved counseling agency 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 Section 5 herein. For purposes of the emergency implementation of this Regulation and until such time that a hearing is held to further establish qualification and experience requirements of Mediation Coordinators and until this Regulation is further amended or clarified, 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.
- HE.** “Mortgage” means a lien on the property that secures the promise to repay a loan or a security agreement between the lender and the buyer in which the property is collateral for the loan.
- IF.** “Mortgagee” means one to whom the property is mortgaged (e.g. the lender, mortgage-creditor, or mortgage-holder).
- JG.** “Mortgagor” means an individual consumer who mortgages the property (e.g. mortgage-debtor or borrower) and/or owner, as applicable.
- I——K.** “Notice of Mediation Conference” means Form 34-27-3.2 attached hereto in Appendix B (in English, Portuguese, and Spanish) or a form substantially similar to Appendix B sent to the Mortgagor and owner of the property at issue in the foreclosure proceedings when a Mortgage is not more than ninety (90) days delinquent.

LH. “Residential Real Estate” is defined as 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.

Section 4 Requirements

A. In addition to any other notice or disclosure required under federal or state law, the Mortgagee shall provide the Disclosure to Mortgagor consistent with the requirements of R.I. Gen. Laws § 34-27-3.1 as follows:

- (i) The Disclosure must be provided to all Individual Consumer Mortgagor no less than forty-five (45) days prior to initiating any foreclosure of Residential Real Estate by first class mail 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.
- (ii) The Disclosure must therefore be provided to Individual Consumer Mortgagors at least seventy-five (75) days prior to the publication of the first (1st) notice of the sale by publication in a public newspaper as required by R.I. Gen. Laws § 34-27-4(a), including the date of mailing in the computation.

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

- (i) The Notice of Mediation Conference must be provided to all Mortgagors and Owners (if other than Mortgagor) of the Residential Real Estate when a Mortgage is not more than ninety (90) days delinquent by certified and first class mail 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.
- (ii) 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 period of time not to exceed 14 days.
- (iii) If the Mortgagee declines to accept the Mortgagor’s work-out proposal, if any, the Mortgagee must provide a detailed statement documenting the reasons for rejecting the proposal within 14 days.

B-C. Any Mortgagee subject to regulation and supervision by the Division must maintain a duplicate of the completed Disclosure and Notice of Mediation Conference including

information regarding delivery in Individual Consumer Mortgagor's file consistent with the Division's record-keeping requirements.

~~C.D.~~ If the Mortgagee decides to send a "substantially similar" document there shall be no changes to the wording, font or information required by Appendix A, and Appendix B, in any way. "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.

~~D.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.

~~E.F.~~ The contact provided by the Mortgagee must be able to provide a hard copy of HUD Approved Counseling Agencies in Rhode Island as indicated on Appendix A. When contacted by a consumer a list of such agencies shall be sent within five (5) business days of the request by regular mail to the address given by the consumer as part of the request.

G. All Mortgagees will be required to comply with R.I. Gen. Laws § 34-27-3.1 and this Regulation by March 6, 2010.

H. All Mortgagees will be required to comply with R.I. Gen. Laws § 34-27-3.2 by September 14, 2013.

Section 5 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 provide a list of approved Mediation Coordinators on its website by September 13, 2013.

Section 6 Certificate Authorizing Foreclosure

A. The Certificate Authorizing Foreclosure 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(h) have been met and the Notice of Mediation Conference was properly served upon the Mortgagor and Owner of the Residential Real Estate.

B. All written correspondence and documents related to the Mediation Conference process received by or submitted to the Mortgage Coordinator shall be provided to the Mortgagee and maintained by the Mortgagee consistent with the Department's record-keeping requirements.

Section 7 **Enforcement**

Any Mortgagee regulated and supervised by the Division who fails to comply with this Regulation may be subject to administrative action pursuant to Titles 19 and 42 of the Rhode Island General Laws and/or any relevant regulation promulgated pursuant thereto.

Section 86 **Severability**

If any section, term, or provision of this Regulation 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.

Section 97 **Effective Date**

This Regulation shall be effective as indicated below. All references to mediation expire on July 1, 2018 pursuant to Section 2 of Senate Bill 0416 and House Bill 2013-5335 Substitute B (as subsequently reflected in the Rhode Island Public Laws) unless otherwise authorized by statutory amendment.

EFFECTIVE DATE: January 29, 2010

AMENDED: August 26, 2010

AMENDED: October 20, 2011

AMENDED: August 9, 2013, EFFECTIVE AUGUST 9, 2013

APPENDIX A

 **FORM 34-27-3.1**

NOTICE OF DEFAULT AND MORTGAGEE'S RIGHT TO FORECLOSE AND NOTICE OF AVAILABILITY OF MORTGAGE COUNSELING SERVICES
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This Notice is provided to you to inform you of the protections provided by R.I. Gen. Laws § 34-27-3.1 of The Rhode Island Mortgage Foreclosure and Sale Act.

NOTICE OF DEFAULT AND MORTGAGEE'S RIGHT TO FORECLOSE

Re: _____ (Insert mortgage loan number)

The mortgagee named below ("Mortgagee") hereby notifies you that you are in default on your mortgage. If you fail to remedy this default, Mortgagee has the right to foreclose on the real estate securing the mortgage loan referenced in this Notice.

NOTICE OF AVAILABILITY OF MORTGAGE COUNSELING SERVICES

Housing counseling services are available to you at no cost. Counseling services that can help you understand your options and provide resources and referrals that may assist you in preventing foreclosure are available from mortgage counseling agencies approved by the United States Department of Housing and Urban Development (HUD). You can locate a HUD-approved mortgage counseling agency by calling HUD's toll-free telephone number, 1-800-569-4287, or by accessing HUD's Internet homepage at www.hud.gov. The TDD number is 1-800-877-8339. Foreclosure prevention counseling services are available free of charge through HUD's Housing Counseling Program.

[HUD Approved Housing Counseling Agencies in Rhode Island](http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?&webListAction=search&searchstate=RI) may be found at this link <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?&webListAction=search&searchstate=RI>. If you do not have internet access, call the toll-free number above and request a printed list.

Mortgagee: _____
(Type or print name of Mortgagee)

Mortgagee Address: _____
Street: _____

City, State, Zip Code: _____

Mortgagee Authorized Representative: _____ Date mailed: _____
(Type or print) (dd/mm/yyyy)

Contact Information for Mortgagee Authorized Representative:

Telephone: _____
(Provide toll free number if available)

Email: _____



FORMULARIO 34-27-3.1

AVISO DE MORA Y DERECHO DEL ACREEDOR HIPOTECARIO A EJECUTAR LA HIPOTECA Y NOTIFICACIÓN DE DISPONIBILIDAD DE SERVICIOS DE ORIENTACIÓN HIPOTECARIA

Se le proporciona esta notificación para informarle acerca del amparo que ofrecen las Leyes Generales de Rhode Island § 34-27-3.1 de *The Rhode Island Mortgage Foreclosure and Sale Act* (Ley sobre Ejecución de Hipotecas y Remates de Rhode Island).

AVISO DE MORA Y DERECHO DEL ACREEDOR HIPOTECARIO A EJECUTAR LA HIPOTECA

Asunto: _____ (inserte el número del préstamo hipotecario)

Por medio del presente el acreedor hipotecario indicado abajo ("Acreedor hipotecario") le notifica que su hipoteca esta morosa. Si no puede solventar la situación, el Acreedor hipotecario tiene el derecho de ejecutar la hipoteca del inmueble que avala el préstamo hipotecario al cual se alude en el presente aviso.

NOTIFICACIÓN DE DISPONIBILIDAD DE SERVICIOS DE ORIENTACIÓN IPOTECARIA Se

encuentran a disposición servicios de orientación sobre vivienda sin costo adicional. Los servicios de orientación pueden ayudarle a comprender las opciones de las que dispone, así como también ofrecerle recursos y referencias que podrían contribuir a evitar la ejecución de la hipoteca. Dichos servicios los ofrecen agencias de orientación hipotecaria aprobadas por el *United States Department of Housing and Urban Development* (Departamento de Vivienda y Desarrollo Urbano de EE.UU., HUD, por sus siglas en inglés). Puede localizar agencias de orientación hipotecaria aprobadas por HUD llamando al número gratuito de dicho departamento al 1-800-569-4287, o ingresando a la página en Internet de HUD www.hud.gov El número del dispositivo de comunicación para sordos (TDD, por sus siglas en inglés) es 1-800-877-8339.. Los servicios de orientación para prevenir la ejecución de hipotecas se ofrecen sin costo alguno mediante el Programa de Orientación para la Vivienda de HUD.

[Agencias de asesoría aprobadas por el Departamento de Vivienda y Desarrollo Urbano](#) en Rhode Island pueden ser encontradas en este lugar <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?&webListAction=search&searchstate=RI>. Si usted no tiene acceso a internet, llame a la línea de teléfono gratuita que aparece arriba para solicitar una lista impresa.

Acreedor hipotecario: _____

(Escriba a máquina o en letra de molde el nombre del Acreedor hipotecario)

Dirección del Acreedor hipotecario:

Calle: _____

Ciudad, estado, código postal: _____

Representante autorizado del Acreedor hipotecario: _____

(Escriba a máquina o en letra de mode)

Fecha de envío por correo: _____
(dd/mm/aaaa)

Información de contacto del representante autorizado del Acreedor hipotecario:

Teléfono: _____
(Proporcione un número gratuito si to time)

Correo electrónico: _____

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APPENDIX B

 FORM 34-27-3.2

**NOTICE OF MEDIATION CONFERENCE PURSUANT TO
R.I. GEN. LAWS § 34-27-3.2**

This Notice is provided to you to inform you of the protections provided by R.I. Gen. Laws § 34-27-3.2 of The Rhode Island Mortgage Foreclosure and Sale Act.

TO ASSIST YOU IN AVOIDING FORECLOSURE, YOU HAVE THE RIGHT TO A FREE, IN-PERSON OR TELEPHONE MEDIATION CONFERENCE WITH AN INDEPENDENT MEDIATION COORDINATOR. THE MORTGAGEE MAY NOT FORECLOSE UNLESS IT PROVIDES YOU THE OPPORTUNITY TO PARTICIPATE IN THE MEDIATION CONFERENCE, WHICH MUST TAKE PLACE SIXTY (60) DAYS OF THE MAILING DATE OF THIS NOTICE. YOU WILL BE CONTACTED BY A FORECLOSURE MEDIATION COORDINATOR TO SCHEDULE THAT MEDIATION CONFERENCE.

Re: _____ (Insert mortgage loan number)

INSERT ADDRESS OF RESIDENTIAL REAL ESTATE AND INCLUDE PLAT/LOT NUMBER:

The mortgagee named below (“Mortgagee”) hereby notifies you that you are in default on your mortgage. If you fail to remedy this default, Mortgagee has the right to foreclose on the real estate securing the mortgage loan referenced in this Notice.

Mortgagee: _____

(Type or print name of Mortgagee)

Mortgage Address: _____
Street: _____

City, State, Zip Code: _____

Mortgagee Authorized Representative: _____ Date mailed: _____

(Type or print) (dd/mm/yyyy)

Contact Information for Mortgagee Authorized Representative:

Telephone: _____

(Provide toll free number if available)

Email: _____

APPENDIX B

 FORM 34-27-3.2

(PORTUGUESE TRANSLATION)

The Portuguese translation of the Notice of Mediation Conference (Appendix B) is not included in the initial filing of this emergency regulatory amendment but will be posted on the Department's website as soon as practicable but no later than September 13, 2013.

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APPENDIX B



FORM 34-27-3.2

(SPANISH TRANSLATION)

[The Spanish translation of the Notice of Mediation Conference (Appendix B) is not included in the initial filing of this emergency regulatory amendment but will be posted on the Department's website as soon as practicable but no later than September 13, 2013.]

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APPENDIX C

**CERTIFICATE AUTHORIZING FORECLOSURE
PURSUANT TO R.I. GEN. LAWS § 34-27-3.2**

I, (INSERT NAME OF MEDIATION COORDINATOR), of (INSERT NAME OF AGENCY),
certify as follows:

1. (INSERT NAME OF MORTGAGEE) is the holder of the mortgage given by INSERT NAME OF MORTGAGOR, recorded in the CITY/TOWN of INSERT Land Evidence Records in Book INSERT, Page INSERT, and identified by PLOT/LOT numbers as INSERT and located at INSERT ADDRESS (the "Mortgage").
2. (INSERT NAME OF OWNER(IF DIFFERENT FROM MORTGAGEE) is the owner of the property , recorded in the CITY/TOWN of INSERT Land Evidence Records in Book INSERT, Page INSERT, and identified by PLOT/LOT numbers as INSERT and located at INSERT ADDRESS.
3. INSERT NAME OF MORTGAGOR AND OWNER were properly served with the Notice of Mediation Conference pursuant to R.I. Gen. Laws § 34-27-3.2.
4. (INSERT NAME OF AGENCY) served as the Mediation Coordinator defined in R.I. Gen. Laws § 34-27-3.2 and Department of Business Regulation 5 regarding the Mortgagee's potential foreclosure proceedings.
5. For the reasons set forth below, the Mortgagee is authorized to proceed with the foreclosure action, including recording of the foreclosure deed [check one box below]:
 - After two attempts by the Agency to contact the Mortgagor and Owner, the Mortgagor failed to respond to the request of the Agency to appear for the Mediation Conference or otherwise participate in the Mediation Conference.
 - The Mortgagor and Owner failed to comply with the requirements of R.I. Gen. Laws § 34-27-3.2.
 - The parties been unable to reach an agreement to renegotiate the loan in order to avoid a foreclosure through the Mediation Conference, despite the Mortgagee's good faith efforts as noted on Attachment 1.
6. I am authorized by the Agency to issue this Certificate.

Name
Title
Date



ATTACHMENT 1

Good Faith Determination

The Mortgagee, or its authorized representative, has made a good faith effort to reach agreement with the Mortgagor to renegotiate the terms of the Mortgage in an effort to avoid foreclosure. The Mortgagee's good faith is evidenced by the following factors [check all applicable boxes]:

- Mortgagee provided the Notice of Mediation Conference to the Mortgagor and Owner as required by R.I. Gen. Laws § 34-27-3.2.
- Mortgagee designated an agent authorized to participate in the Mediation Conference on its behalf, and with authority to agree to a work-out agreement on behalf of Mortgagee.
- Mortgagee made reasonable efforts to respond in a timely manner to requests for information from the Mediation Coordinator, Mortgagor, or counselor assisting the Mortgagor.
- Mortgagee analyzed and responded to the work-out proposal submitted by the Mortgagor and/or Mediation Coordinator within fourteen days of the work-out proposal.
- If the Mortgagee declines to accept the Mortgagor's work-out proposal, the Mortgagee provided written, detailed statement of its reasons for rejecting the proposal within fourteen (14) days.
- If the Mortgagee declines to accept the Mortgagor's work-out proposal, the Mortgagee offered, in writing within fourteen (14) days, to enter into an alternative work-out/disposition resolution proposal that would result in a material net financial benefit to the Mortgagor as compared to the terms of the Mortgage.
- Other facts demonstrating Mortgagee's good-faith [please specify]:

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DEPARTMENT OF BUSINESS REGULATION
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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:

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.

