



Bankers Advisory

COMPLIANCE MONITOR

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Rhode Island Foreclosure and Financial Institution Amendments

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Mortgage Foreclosure Mediation

The Rhode Island Legislature recently passed House Bill 8293 amending R.G.L. Chapter 34-27 Mortgage and Foreclosure Sale; specifically amending section 34-27-3.2 relating to mediation conference and repealing section 24-27-3.1 relating to foreclosure counseling. The amendments are effective October 6, 2014 and set to expire July 1, 2018.

The definitions section has been amended to clarify existing terms and to include a definition of default to assist in determination of mediation applicability. Under the amendment, default is now defined as: "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".

The definitions for mortgage, mortgagee and mortgagor have also been revised for clarification. The term mortgage is amended to include a first lien designation, in addition to the previous requirements of owner-occupied, one to four unit residential property which serves as the mortgagor's primary residence. The definition of mortgagee has been expanded to include agents or employees of the mortgage holder including mortgage servicers. The definition of mortgagor has been revised to include reference to heirs and devisees subject to certain occupancy and title requirements.

Written notice to the borrower concerning mediation conference participation is required as before, however the amendments now include monthly penalties to the mortgagee for failure to provide the notice within 120 days of default. The amendments do include provisions outlining the procedures for notice where a mortgagee is unable to send within the 120 period due to a bankruptcy automatic stay, or other injunctive order issued by state or federal court.

Additional amendments include:

- Clarification of the validity of the certificate issued by the mediation coordinator where the mortgagor fails to respond or agreement is unable to be reached. The certificate is recorded along with the foreclosure deed and will be valid until the earlier of the cure of the default or the foreclosure of the mortgagor's right of redemption.
- The requirement that where the mortgagor and mortgagee come to an agreement after the notice of mediation has been provided, but before the meeting with the mediation coordinator, the agreement must be provided to the mediation coordinator to issue a certificate of eligible workout agreement.
- Clarification that this section does not apply to reverse mortgages.
- Procedure for where the mortgagor claims the foreclosure was invalid due to the mortgagee's non-compliance with the mediation written notice requirement.

Third Party Loan Servicer Licensing

The Rhode Island Legislature has passed House Bill 7997, amending R.G.L. Chapter 19-14 Licensed Activities concerning financial institutions. These amendments are effective July 1, 2015.

Amendments to section 19-14.1 include the addition of definitions for "Servicing" and "Third-party loan servicer". Servicing is largely defined as in the context of receiving, or in the case of a HELOC or reverse mortgage, making, payments to the borrower. A third party loan servicer now defined as is "a person who, directly or indirectly, engages in the business of servicing a loan made to a resident of Rhode Island, or a loan secured by residential real estate located in Rhode Island, for a personal, family, or household purpose, owed or due or asserted to be owed or due another."

A person in the business of servicing a loan as a third-party loan servicer must be licensed or registered accordingly. The amendments also include the designation of an annual fee, minimum capital and bond requirements for third-party loan servicers.

An additional chapter, section 19-14.11, has been added specifically governing third-party servicer licensing requirements. This new section includes exemptions from the licensing required under Chapter 19-14. Exemptions include, in part, debt management companies licensed in RI when engaged in activities pursuant to its debt management license, attorneys licensed in RI when collecting a debt on behalf of a client and bona fide nonprofit organizations.

The newly added chapter requires segregated accounts be maintained for all amounts paid by borrowers to third-party loan servicer licensees. The licensee may withdraw funds to transmit payment of principal and interest directly to the owner of the loan, withdraw funds for commissions for services actually performed and may return funds to the borrower if not prohibited.

Additionally the new section includes record keeping and record availability requirements and prohibited acts and practices. In part, prohibited acts and practices include:

- Use of any unfair or unconscionable means in servicing a loan.
- Knowingly misapply or recklessly apply loan payments to the outstanding balance of a loan.
- Charge excessive or unreasonable fees to provide loan payoff information.
- Failure to respond to consumer complaints in a timely manner.

Financial Institution General Amendments

The Rhode Island Legislature has passed House Bill 7648 amending various financial institution banking laws for the purpose of clarification and alleviation of regulatory burdens.

Effective immediately are the amendments to the following sections:

Chapter 19-1-1 "Definitions and Establishment of Financial Institutions"

The amendments for this section include clarifying revisions to the definition of "superintendent" and the addition of a definition of "writing".

Chapter 19-3-13 "Powers and Operations"

The amendments for this section include revisions concerning the use of electronic devices and machines to remove the section requiring the approval of the director or designee for the establishment and use of such electronic devices.

Chapter 19-14 "Licensed Activities"

The Licensed Activities section also includes the addition of the definition of "Writing" and clarifying additions and revisions concerning:

- The bond of the applicant,
- Issuance or denial of license provisions,
- Contents of license,
- Attorney for service of process,
- Place of business-branch offices-name changes,
- Revocation by default, and
- Examinations and investigations.

Chapter 19-14.8 "Uniform Debt-Management Services Act"

The amendments concerning the Uniform Debt-Management Services Act consist of small changes to the application and renewal of registration sections to clarify the required deductible of being not more than \$10,000.

Chapter 19-14.9-12 "Rhode Island Fair Debt Collection Practices Act"

The amendments to this section concern registration requirements and are effective January 1, 2015. The registration fee has been revised to \$100.00 and the registration period will now be for a period of one year.

View the Bills in their entirety: <http://status.rilin.state.ri.us/>

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