

**THE CITY OF WARWICK
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

RESOLUTION OF THE CITY COUNCIL

NO..... DATE.....

APPROVED.....MAYOR

**RESOLUTION TO THE GENERAL ASSEMBLY SUPPORTING REMOVAL OF THE
SUNSET PROVISION IN THE RESIDENTIAL MORTGAGE FORECLOSURE
MEDIATION PROGRAM**

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Resolved that,

WHEREAS, the health, safety and welfare of the citizens of the City of Warwick are matters of paramount importance to the City Council; and

WHEREAS, in 2013 the Rhode Island General Assembly enacted, and the Governor signed into law, residential foreclosure mediation legislation which provided new protections to help struggling owner-occupants of 1- 4 unit residential properties avoid foreclosure and remain in their homes (the "Foreclosure Mediation Act"); and

WHEREAS, prior to the passage of the Foreclosure Mediation Act, Rhode Island had one of the least restrictive foreclosure processes in the nation, and lenders could proceed to foreclosure, without any court involvement, simply by providing certain notices to the homeowner of their intention to initiate foreclosure; and

WHEREAS, due to the weaknesses in the state foreclosure statute, several municipalities adopted ordinances that provided protections to owner-occupants before foreclosure could occur; and

WHEREAS, in light of the success of these municipal ordinances, the Foreclosure Mediation Act was enacted in 2013, which was based on the municipal ordinances; and

WHEREAS, the Foreclosure Mediation Act required lenders to advise owner-occupant mortgagors of the availability of a "mortgage mediation process" before the lender could proceed to a non-judicial foreclosure, and

WHEREAS, the intent of the Foreclosure Mediation Act was to establish a formal process through which lenders and owner-occupant borrowers would participate in good faith to determine whether a viable and mutually agreeable alternative to foreclosure existed; and

31 WHEREAS, in order to establish a uniform, statewide mediation process, the
32 Foreclosure Mediation Act pre-empted municipal ordinances dealing with this topic; and
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34 WHEREAS, the Foreclosure Mediation Act is scheduled to expire on July 1, 2018,
35 which would eliminate the foreclosure mediation process that facilitates a conversation between
36 lenders and owner-occupant homeowners to explore alternatives to foreclosure; and
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38 WHEREAS, residential mortgage foreclosures, caused in part by an underperforming
39 economy, unemployment and underemployment, and properties with negative equity, have
40 negatively impacted a substantial number of residential properties in this community and that
41 endangers the economic stability of the community and its residents; and
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43 WHEREAS, while foreclosure rates have improved since the depths of the economic
44 crisis, the percentage of Rhode Islanders facing foreclosure today is still four times higher than
45 pre-crisis rates; and
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47 WHEREAS: the Rhode Island General Assembly has and will be considering legislation
48 to eliminate the expiration of the Foreclosure Mediation Act.
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50 NOW THEREFORE BE IT RESOLVED, that the Warwick City Council places itself on
51 record as supporting legislation to eliminate the expiration of the Foreclosure Mediation Act and
52 urges the members of the General Assembly to support this legislation when it is brought to a
53 vote.
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55 The City Clerk is hereby directed to forward a copy of this Resolution to the
56 Representatives and Senators representing the City of Warwick, to the Honorable Speaker of
57 the House, Nicholas A. Mattiello, the Honorable President of the Senate, Dominick J. Ruggerio,
58 and Her Excellency, Governor Gina Raimondo, and to each municipality in Rhode Island
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60 This Resolution shall take effect upon passage.
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66 SPONSORED BY: COUNCIL PRESIDENT SOLOMON
67 At the request of MAYOR AVEDISIAN
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69 COMMITTEE: HEALTH, EDUCATION AND WELFARE

ARTICLE IV. - RESIDENTIAL OWNER-OCCUPIED MORTGAGE FORECLOSURE INTERVENTION

Sec. 13-19. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Good Faith means that the mediation coordinator determines that the mortgagor and mortgagee deal honestly and fairly with each other and the mediation coordinator in an effort determine whether an alternative to foreclosure is economically feasible for the mortgagor and mortgagee, as evidenced by some or all of the following factors:

- (i) *Mortgagee provided notice as required by this article;*
- (ii) *Mortgagee designated an agent to participate in the mediation conference on its behalf, and with the authority to agree to a work-out agreement on its behalf;*
- (iii) *Mortgagee made reasonable efforts to respond in a timely manner to requests for information from the mediation coordinator, mortgagor, or counselor assisting the mortgagor;*
- (iv) *Mortgagee declines to offer the mortgagor an eligible work-out proposal, and the mortgagee provided a detailed statement, in writing, of its reasons for rejecting the proposal;*
- (v) *Whether the mortgagee offers the mortgagor a work-out proposal that the mediation coordinator determines would result in net financial benefit to the mortgagor as compared to the terms of the mortgage, and /or is affordable to the mortgagor.*

HUD means the United States Department of Housing and Urban Development.

Mortgagor means an individual who owns and resides in residential property located in the City and County of Providence which is subject to a mortgage securing funds advanced by a Mortgagee.

Mortgagee means the holder of a mortgage recorded in the land evidence records of the city, including a mortgage servicer acting on behalf of a mortgagee.

Mediation coordinator means an individual employed by a Rhode Island based, HUD-approved independent counseling agency certified by the city to serve as the unbiased, impartial and independent coordinator of the mediation conference, with no authority to impose a solution or otherwise act as a consumer advocate.

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.

Residential property means real property located within the City and County of Providence that is (i) a single-family dwelling, (ii) a structure containing not more than four (4) residential units, (iii) a residential condominium unit, or (iv) a residential co-op-unit, and which is occupied as a mortgagor's principal residence. Property deemed abandoned or under order for demolition by the

city's department of inspection and standards as a result of fire or other calamity is not considered owner-occupied for the purpose of this article.

Rules and regulations means any rules adopted by the city necessary for the proper enforcement of this article to interpret and secure its intent.

The city means the City of Providence.

The parties means the mortgagor and the mortgagee.

Sec. 13-20. - Statement of policy.

It is hereby declared that residential mortgage foreclosures, caused in part by an underperforming economy, unemployment and underemployment, rising interest rates, and properties with negative equity, have negatively impacted a substantial number of mortgagors in the city, creating a foreclosure crisis which endangers the economic stability of the city and the health and safety of its citizens. The prevalence of foreclosures leads to increases in unoccupied and unattended buildings in the city and give impetus to the continuation, extension and aggravation of urban blight and decay. More importantly, foreclosures cause the unnecessary and unwanted displacement of a considerable number of homeowners and tenants who desire to live and work in the city.

Sec. 13-21. - Purpose.

The city's purpose in sections 13-19 through 13-23, inclusive, is to protect the public health, safety and welfare by providing early, HUD-approved independent counseling agency-supervised intervention in residential owner-occupied mortgage foreclosure cases which will assure timely determination of eligibility under various federal, state and local programs established to facilitate loan workout and other solutions to permit residential homeowners, where possible, to retain their properties and permit lenders to move forward to auction/sale of the properties and recordation of a foreclosure deed upon conclusion of the process.

Sec. 13-22. – Notice of Intent to Foreclose/Mediation Conference.

Except as may be provided in this article, from and after the effective date of this article, a mortgagee initiating a non-judicial foreclosure must undertake each of the following actions:

- (1) The mortgagee shall provide written notice to the mortgagor at the address of the residential property and, if different, at the address designated by the mortgagor by written notice to the mortgagee as the mortgagor's address for receipt of notices, of its intent to foreclose on the subject residential property, and to participate in good faith in a mediation conference. The mortgagee shall deliver a copy of the notice to the mediation coordinator at the same time it issues notice to the mortgagor. The notice shall be provided to the mortgagor at any time following the mortgagor's default under the mortgage, but no later than the time set forth in R.I.G.L. §34-27-4(b).
- (2) A form of written notice meeting the requirements of this article shall be developed by the city at least thirty (30) days prior to the effective date of this article, and shall be in English, Portuguese and Spanish.

- (3) Following the filing of such notice, the mediation conference shall take place in person, or over the phone, at a time and place deemed mutually convenient for the parties by an individual employed by a HUD- approved, independent counseling agency selected by the mortgagee to serve as a mediation coordinator. The mediation conference must be scheduled within sixty (60) days following receipt by the mediation coordinator of a completed notice of mediation, single point of contact information for the mortgagee, and payment by the mortgagee of applicable fees associated with the mediation conference.
- (4) The mediation conference shall be provided at no cost to the mortgagor. The HUD- approved counseling agency shall be compensated by the mortgagee at a rate not to exceed five hundred dollars (\$500) per engagement.
- (5) If after two (2) attempts by the mediation coordinator to contact the mortgagor, the mortgagor fails to respond to the mediation coordinator's request to appear for the mediation conference, or the mortgagor fails to cooperate in any respect with the requirements outlined in this article, the requirements of the section will be deemed to be satisfied upon verification by the HUD-approved independent counseling agency that the required notice was sent; and if so, a certificate will be issued immediately by the HUD-approved independent counseling agency certifying compliance with this article.
- (6) Prior to the scheduled mediation conference, the homeowner/mortgagor will be assigned a loan counselor to be provided by a HUD-approved independent counseling agency. The mortgagor shall cooperate in all respects with the mediation coordinator and the counseling agency including, but not limited to, providing all necessary financial and employment information and completing all loan resolution proposals and applications deemed appropriate by the mediation coordinator and the counseling agency.
- (7) The mediation coordinator will provide the information required by subsection (6) to the representative of the mortgagee.
- (8) If the mediation coordinator determines that, after a good faith effort made by the mortgagee at the mediation conference, the parties cannot come to an agreement to re-negotiate the terms of the loan in an effort to avoid foreclosure, such good faith effort by the mortgagee shall be deemed to satisfy the requirements of this article. A certificate certifying such good faith effort will be promptly issued by the HUD-approved independent counseling agency certifying compliance with this article. The certificate will be the form of a document to be filed along with all other relevant documents regarding the foreclosure with the recorder of deeds.
- (9) Cases involving premises which are not owner-occupied or which are not residential are not subject to this article.
- (10) Notwithstanding the foregoing, any mortgagee based within the State of Rhode Island and which services its own mortgages shall be deemed to be in compliance with the requirements of this section provided that:
 - a. The mortgagee is headquartered in Rhode Island or maintains a physical office in Rhode Island from which office it carries out full-service mortgage operations regarding mortgages on residential property located in the city, including the acceptance and processing of mortgage payments and the provision of local customer service;
 - b. The mortgagee offers mortgagors a forbearance relief program that is consistent with the forbearance relief requirements applicable to FHA-insured mortgages, as set forth in chapter 8 of HUD Handbook 4330.1 Rev. 5, Administration of Insured Home Mortgages, as the same may be amended from time to time;
 - c. The mortgagee has Rhode Island-based staff with the authority to approve loan restructuring and other loss mitigation efforts; and

- d. The deed offered by a mortgagee to be filed with the recorder of deeds as a result of a mortgage foreclosure action contains a certification that the provisions of this subsection have been satisfied.

Sec. 13-23. – Penalties and Effective Date.

- (1) Where the mortgagee presents a foreclosure deed for recording in the land evidence records of the city, and recorder of deeds determines that the mortgagee has failed in any material respect to comply with the requirements and provisions of this article, the recorder of deeds shall assess a penalty of five hundred dollars (\$500.00) in addition to any other penalties and fees that may be assessed prior to recording the foreclosure deed. The rights of the homeowner to any redress afforded under the law are not abridged by this article.
- (2) This ordinance shall have no effect unless and until the provisions of R.I.G.L. §34-27-3.2 are repealed or expire.