

Providence, Rhode Island Institutes New Foreclosure and Eviction Ordinances

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On July 27, 2009 Providence Mayor David Cicilline approved two ordinances that require foreclosure conciliation and post-foreclosure tenant eviction protections. The ordinances, designed to protect the citizens and neighborhoods of Providence, will be added to Chapter 13 of the Code of Providence Ordinances, adding Sections 13-213 through 13-217 and 13-218 through 13-220 “Responsibilities of Owners, Operators and Occupants”. The post-foreclosure eviction ordinance became effective immediately upon passage, and the foreclosure conciliation ordinance is effective within 30 days of passage or on August 25, 2009.

Sections 13-213 through 13-217 (the “Foreclosure Conciliation Ordinance”) provide for required pre-foreclosure “conciliation conferences”. The intent is to permit residential homeowners, where possible, to retain their homes and permit lenders to complete the foreclosure process when homeowners are unable to retain them. Sections 13-213 through 13-217 require the mortgagee to provide written notice to the City of its intent to foreclose on any owner-occupied 1- to 4-family residential property located in the City of Providence (including condominiums or co-ops). The notice of intent shall be filed by recording the notice with the Recorder of Deeds in the City’s Land Evidence records at the same time that the notice of foreclosure is sent to the mortgagor.

Following the filing of the notice of intent, the mortgagor and mortgagee shall participate in a loan/mortgage conciliation conference to accomplish formal discussion and mediation regarding the mortgage. The mortgagee is permitted to participate in the conciliation conference by phone, and a “loan/mortgage conciliation conference coordinator” will schedule the conference no later than 21 days following issuance of the notice of intent; the coordinator will notify the parties. The “loan/mortgage conciliation coordinator” is an individual employed by a HUD-approved independent counseling agency whose purpose is to facilitate discussions between the mortgagor and the mortgagee. The conciliation conference requirements must be completed within 60 days of the initial notice of intent. Thus, while Section 13-216(d) of the Conciliation Ordinance appears to limit the time period for the conciliation conference to “no later than 21 days following the mailing of the notice of intent to foreclose”, Section 13-216(k)

allows for a 60-day period for conclusion of the process.

Prior to the conciliation conference, the mortgagor must provide certain financial and employment information to the counseling agency. The mortgagor is also required to complete a proposal and applications required by the counseling agency. That information will be delivered to the mortgagee at the conciliation conference. It will be up to the conciliation coordinator to determine whether or not the parties can come to an agreement; a “good faith effort” to reach an agreement is required. The conciliation coordinator must provide the mortgagee with a housing agency certification report indicating the conciliation conference is complete, and the mortgagee shall record it with the Recorder of Deeds. Mortgagees have the right to demand that the counseling agency makes its report to the Recorder of Deeds immediately after the conciliation conference. In the event the mortgagor fails to respond to or otherwise cooperate with the conciliation coordinator’s attempts to schedule the conference, after two attempts, the conciliation requirements will be deemed met.

Limited exemptions for certain in-state mortgagees to the Sections 13-213 through 13-217 conciliation conference requirements exist. Where a mortgagee is headquartered in Rhode Island and the mortgagee services its own mortgages, the mortgagee is in compliance with the conciliation conference requirements provided the mortgagee provides homeowners with an FHA forbearance relief program or similar program. The foreclosure deed must contain a certification that the exception has been satisfied.

It is not clear from the Conciliation Ordinance as to the source of funding for the conciliation conferences or what agency of the City will be responsible for managing the new requirements, if any. Participation of the Recorder of Deeds is also at issue as requirements that affect Rhode Island Land Evidence Record recorders are the responsibility of the Rhode Island General Assembly. While the Conciliation Ordinance is not effective for 30 days after passage (August 25, 2009), there is no carve-out for foreclosure sales that are already in process where foreclosure sales are already scheduled or where foreclosure deeds may not be recorded prior to the effective date. Mortgagees and servicers may be faced with having to cancel and restart the foreclosure process in some situations.

Sections 13-218 through 13-220 provide protection for “bona fide tenants” (not mortgagors) in foreclosed properties (the “Tenant Ordinance”). A “bona fide tenant” is defined as a person who has entered into a written or oral rental agreement with a homeowner or landlord (mortgagor) no less than 30 days prior to a foreclosure sale for residential property located in Providence, Rhode Island. Bona fide tenants do NOT include the mortgagor or any member of his immediate family. The protections for bona fide tenants exist whether or not the property is owner occupied.

In order to evict bona fide tenants from foreclosed properties, the “successor in interest to

a mortgagor” (the foreclosure purchaser) must give notice in both English and Spanish to each bona fide tenant including the name and address of the successor in interest and the managing agent to whom ongoing rental payments should be made. The notice may be made prior to or after the foreclosure, and the bona fide tenant then assumes a month-to-month tenancy unless the tenant enters into a written rental agreement with the mortgagor.

The notice to tenants must advise that the property is in foreclosure and that the foreclosure may affect the tenants’ right to occupancy. The date, time and place of the foreclosure must be provided, as well as the addresses and phone numbers of Rhode Island Legal Services and HUD-approved counseling agencies. The Eviction Ordinance requires “posting, in the same manner required for posting the notice of sale on the property to be sold” of the notice which must be sent to tenants. Mortgagees and servicers will be puzzled in attempting to comply with the posting requirement since the language of the Eviction Ordinance implies that a posting requirement exists for Rhode Island foreclosures; Rhode Island foreclosure proceedings do not contain such a posting requirement.

One of the most onerous of requirements for mortgagees and servicers is the requirement that the successor in interest to the mortgagor provide “essential services” to bona fide tenants, where the foreclosed mortgagor had previously provided essential services. “Essential services” include, without limitation, heat, running water, hot water, electric, sewer or gas. Failure to send the required notice to tenants does not affect the legality of the foreclosure sale, but the eviction proceeding against bona fide tenants cannot be commenced until such notice is given.

Penalties for failure to comply with the Eviction Ordinance are not less than \$1,000 per offense. In addition to the increased costs and delays in the eviction process that the Eviction Ordinance will certainly cause, mortgagees and servicers who wish to prepare pre-foreclosure notices to tenants so that they may commence eviction proceedings expeditiously in the event they take title to the property at the foreclosure, are faced with the task of determining the identities of tenants in properties in foreclosure at a time when they do not have title or access to the properties. The Eviction Ordinance does not specify whether or not it affects eviction actions that are already in process. Therefore, post-foreclosure property owners may be required to dismiss evictions in process so that the required tenant notices may be given and essential services provided.

ANTICIPATED FEES FOR COMPLIANCE

We anticipate that additional fee authorization of \$300 will be required in order to comply with the foreclosure provisions of the Foreclosure Conciliation Ordinance. This would not include participation in the conciliation conference on behalf of a lender, which would require hourly billing in the event the lender chooses not to participate directly.

We anticipate that additional fee authorization of \$400 will be required in order to comply with the Eviction Ordinance.

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