

Rhode Island Extends 45-day, Pre-Foreclosure Disclosure Requirements to Certain Commercial Mortgages

October 2011

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The Rhode Island Department of Business Regulation, Division of Banking (the “DBR”), has amended Banking Regulation 5 that promulgates the requirements and form of the pre-foreclosure notice to individual consumer mortgagors of residential real estate. This amendment does NOT make any changes to required Form 34-27-3.1 (the pre-foreclosure notice), but it does add new definitions including “Individual Consumer Mortgagor” and “Residential Real Estate”. The amended Regulation is effective on October 10, 2011, and its purpose is to clarify that the 45-day, pre-foreclosure notice is not required for commercial, investment, non-owner occupied mortgaged property. There are some commercial loans, however, that will be subject to Banking Regulation 5.

“Individual Consumer Mortgagor” is a natural person owing mortgage debt securing “Residential Real Estate”, and the mortgage debt may be used for business or personal purposes.

“Residential Real Estate” includes property with one to four dwelling units where one of the units at least is occupied by the mortgagor. Under the amended regulation, commercial loans in default secured by the residence of the mortgagor would entitle the mortgagor to a 45-day, pre-foreclosure notice, provided the residence is a one- to four-family property. The amendment resolves a question that has been coming up frequently in loan closings on foreclosed properties where title insurers request proof that the pre-foreclosure notice was sent. In promulgating the amendment to Banking Regulation 5, the DBR clarifies that certain commercial loan mortgagors are entitled to the notice. Whether or not the property is owner-occupied is key to the determination of whether or not the notice is required.

[Click here for a copy of amended Banking Regulation 5](#)