

West's General Laws of Rhode Island Annotated Currentness
Title 5. Businesses and Professions
→ Chapter 79. Mortgage Foreclosure Consultant Regulation

§ 5-79-1. Definitions

As used in this chapter:

(a) "Foreclosure consultant" means any person who, directly or indirectly, makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

- (1) Stop or postpone the foreclosure sale;
- (2) Obtain any forbearance from any beneficiary or mortgagee;
- (3) Assist the owner to exercise the right of redemption provided in § 34-23-2;
- (4) Obtain any extension of the period within which the owner may reinstate the owner's obligation;
- (5) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;
- (6) Assist the owner in foreclosure or loan default to obtain a loan or advance of funds;
- (7) Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale; or
- (8) Save the owner's residence from foreclosure.

(b) A foreclosure consultant does not include any of the following:

- (1) A person licensed to practice law in this state when the person renders service in the course of his or her practice as an attorney-at-law;
- (2) A person licensed as a credit counselor under chapter 19-14.7, when the person is acting as a credit counselor in accordance with the chapter;
- (3) A person licensed as a real estate broker or salesperson under chapter 5- 20.5 when the person engages in acts whose performance requires licensure under that chapter;

- (4) A person licensed as an accountant under chapter 5-3.1 when the person is acting in any capacity for which the person is licensed under those provisions;
 - (5) A person or the person's authorized agent acting under the express authority or written approval of the department of housing and urban development or other department or agency of the United States or this state to provide services;
 - (6) A person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with this obligation or lien of the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance;
 - (7) Any person or entity doing business under any law of this state, or of the United States relating [to] banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or entities while engaged in the business of these persons or entities;
 - (8) A person licensed as a residential mortgage originator or servicer pursuant to chapter 19-14, when acting under the authority of that license or a foreclosure purchaser as defined in § 5-79-10;
 - (9) A nonprofit agency or organization that offers counseling or advice to an owner of a home in foreclosure or loan default if they do not contract for services with for-profit lenders or foreclosure purchasers; and
 - (10) A judgment creditor of the owner, to the extent that the judgment creditor's claim accrued prior to the personal service of the foreclosure notice required by § 34-27-4, but excluding a person who purchased the claim after such personal service.
- (c) "Foreclosure reconveyance" means a transaction involving:
- (1) The transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and
 - (2) The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess the real property following the completion of the foreclosure proceeding, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

(d) "Person" means any individual, partnership, corporation, limited liability company, association, or other group, however organized.

(e) "Service" means and includes, but is not limited to, any of the following activities:

(1) Debt, budget or financial counseling of any type;

(2) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure;

(3) Contacting creditors on behalf of an owner of a residence in foreclosure;

(4) Arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure the owner's default and reinstate his or her obligation pursuant to § 34-23-3;

(5) Arranging or attempting to arrange for any delay or postponements of the time of sale of the residence in foreclosure;

(6) Advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court; or

(7) Giving any advise, explanation, or instruction to an owner of a residence in foreclosure, which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien of the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure, pursuant to a power of sale contained in any mortgage;

(f) "Residence in foreclosure" means residential real property consisting of one to four (4) family dwelling units, one of which the owner occupies as his or her principal place of residence, and against which there is an outstanding notice of pendency of foreclosure, pursuant to § 34-27-4, or against which a summons and complaint has been served under § 34-27-1.

(g) "Owner" means the record owner of the residential real property in foreclosure at the time the notice of pendency was recorded, or the summons and complaint served.

(h) "Contract" means any agreement, or any term in any agreement, between a foreclosure consultant and an owner for the rendition of any services as defined in paragraph (e).

§ 5-79-2. Rescission of foreclosure consultant contract

(a) In addition to any other right under law to rescind a contract, an owner has the right to cancel such a contract until midnight of the third (3rd) business day after the day on which the owner signs a contract that complies with § 5-79-3.

(b) Cancellation occurs when the owner gives written notice of cancellation to the foreclosure consultant at the address specified in the contract.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(d) Notice of cancellation given by the owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

§ 5-79-3. Contract

(a) Every contract must be in writing and must fully disclose the exact nature of the foreclosure consultant's services and the total amount and terms of compensation.

(b) The following notice, printed in at least fourteen (14) point boldface type and completed with the name of the foreclosure consultant, must be printed immediately above the statement required by paragraph (c):

"NOTICE REQUIRED BY RHODE ISLAND LAW

(Name or anyone working for him or her CANNOT):

(1) Take any money from you or ask you for money until(Name) has completely finished doing everything he or she said he or she would do; and

(2) Ask you to sign or have you sign any lien, mortgage or deed."

(c) The contract must be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract, must be dated and signed by the owner, and must contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least ten (10) point boldface type, as follows:

"You, the owner, may cancel this transaction at any time prior to midnight of the third (3rd) business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(d) The contract must contain on the first (1st) page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) The name and address of the foreclosure consultant to which the notice of cancellation is to be mailed; and

(2) The date the owner signed the contract.

(e) The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation," which must be attached to the contract, must be easily detachable, and must contain in at least ten (10) point type the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....(Enter date of transaction)

You may cancel this transaction, without any penalty or obligation, until midnight of the third (3rd) business day from the above date.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice to(Name of foreclosure consultant) at(Address of foreclosure consultant's place of business) NOT LATER THAN MIDNIGHT OF(Date)

I hereby cancel this transaction(Date)

.....(Owner's signature)"

(f) The foreclosure consultant shall provide the owner with a copy of the contract and the attached notice of cancellation immediately upon execution of the contract.

(g) The three (3) business days during which the owner may cancel the contract shall not begin to run until the foreclosure consultant has complied with this section.

§ 5-79-4. Violations

(a) [FN1] It is a violation for a foreclosure consultant to:

(1) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented he or she would perform;

(2) Claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason which exceeds eight percent (8%) per annum of the amount of any loan which the foreclosure consultant may make to the owner;

(3) Take any wage assignment, any lien on any type of real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable;

(4) Receive any consideration from any third-party in connection with services rendered to an owner unless the consideration is first fully disclosed to the owner;

- (5) Acquire any interest, directly, or indirectly, or by means of a subsidiary or affiliate in a residence in foreclosure from an owner with whom the foreclosure consultant has contracted;
- (6) Take any power of attorney from an owner for any purpose, except to inspect documents as provided by law; or
- (7) Induce or attempt to induce any owner to enter a contract which does not comply in all respects with § 5-79-3.

[FN1] So in original. No corresponding subsection (b) in law.

§ 5-79-5. Waiver not allowed

Any waiver by an owner of the provisions of § § 5-79-1 - 5-79-9 is void and unenforceable as contrary to public policy. Any attempt by a foreclosure consultant to induce an owner to waive the owner's rights is a violation of § § 5-79-1 - 5-79-9.

§ 5-79-6. Remedies

(a) Any violation of § § 5-79-1 - 5-79-9 is considered to be a violation of § 6-13.1-2, and all remedies of § 6-13.1-5.2 are available for such an action. A private cause of action under § 6-13.1-5.2 by a foreclosed homeowner is in the public interest. An owner may bring an action against a foreclosure consultant for any violation of § § 5-79-1 - 5-79-9. Any judgment against the mortgage foreclosure consultant actual damages, reasonable attorney fees and costs, and appropriate equitable relief.

(b) The court may award punitive damages up to one and one half (1 1/2) times the compensation charged by the foreclosure consultant if the court finds that the foreclosure consultant violated the provisions of subsections 5-79-4(1), (2) or (4), and the foreclosure consultant's conduct was in bad faith.

(c) The rights and remedies provided in paragraph (a) are cumulative to, and not a limitation of, any other rights and remedies provided by law.

(d) Any action brought pursuant to this section must be commenced within four (4) years from the date of the alleged violation.

(e) Notwithstanding any other provision of this section, no action may be brought on the basis of a violation of § § 5-79-1 - 5-79-9, except by an owner against whom the violation was committed or by the department of attorney general.

§ 5-79-7. Penalty

Any person who commits any violation described in § 5-79-4 may, upon conviction, be fined

not more than ten thousand dollars (\$10,000) or imprisoned for not more than one year, or both. Prosecution or conviction for any violation described in § 5-79-4 will not bar prosecution or conviction for any other offenses. These penalties are cumulative to any other remedies or penalties provided by law.

§ 5-79-8. Provisions severable

If any provision of sections 5-79-1 through 5-79-9 or the application of any of these provisions to any person or circumstance is held to be unconstitutional and void, the remainder of § § 5-79-1 - 5-79-9 remains valid.

§ 5-79-9. Liability

Any provision in a contract that attempts or purports to require arbitration of any dispute arising under § § 5-79-1 - 5-79-9 is void at the option of the owner.

Current with all 2006 legislation
END OF DOCUMENT