



Department of Business Regulation
Banking Division
1511 Pontiac Avenue, Bldg. 69-2
Cranston, Rhode Island 02920

Banking Bulletin Number 2020-5

Mediation Compliance during the COVID-19 emergency

Rhode Island Governors have issued a series of Executive Orders declaring a state of emergency in Rhode Island due to the COVID-19 virus. The emergency has created widespread interruptions in the economy and loss of income for many Rhode Island residents and businesses. This bulletin is being provided to clarify elements of the foreclosure mediation process in light of the COVID-19 emergency.

In response to the emergency the federal CARES Act has expanded the availability of forbearance options and other relief for affected homeowners with federally-backed mortgages. The Rhode Island Banking Division strongly encourages mortgagees to enter into forbearance options in any commercially reasonable situation whether or not the terms of the CARES Act apply. This request requires that we clarify the requirement of the foreclosure mediation statute to these forbearances.

The Rhode Island foreclosure mediation conference statute provides at [R.I. Gen. Laws § 34-27-3.2\(d\)\(1\)](#) that

If the mortgagee fails to mail the notice required by this subsection to the mortgagor within one hundred twenty (120) days after the date of default, it shall pay a penalty at the rate of one thousand (\$1,000) per month for each month or part thereof....until the mortgagee sends the mortgagor written notice as required by this section.

During the pendency of the emergency, as indicated by the Governor's Executive Orders, the phrase "after the date of default" in the above referenced section is interpreted to mean within one hundred twenty (120) days of the later of the following events, as applicable: (i) the date on which a forbearance agreement terminates; or (ii) if foreclosure of the subject mortgage is stayed due to an applicable foreclosure moratorium, then the date on which the applicable foreclosure moratorium concludes. This means that mortgagees will be able to honor the spirit of the CARES Act by affording relief to mortgagors who have requested assistance and/or observe any applicable foreclosure moratorium without being in violation of R.I. Gen. Laws § 34-27-3.2(d)(1). This interpretation applies to (1) all mortgages that are not in default at the time of the forbearance agreement was reached and (2) all mortgages in which the forbearance agreement was reached on or before the one hundred twentieth (120th) day following the date of default under the mortgage.

No penalty will accrue to a mortgagee if the notice required by this section is mailed to the mortgagor within one hundred twenty (120) days of the later of the following events, as applicable: (i) the date on which a forbearance agreement terminates; or (ii) if foreclosure of the

subject mortgage is stayed due to an applicable foreclosure moratorium, then the date on which the applicable foreclosure moratorium concludes. The mortgagee shall provide the mediation coordinator with an Affidavit of Foreclosure Moratorium (attached to this bulletin). The mediation coordinator may request documentation to evidence the terms of the forbearance agreement or the applicability of the moratorium to the covered mortgage loan. The Division of Banking will not arbitrate disputes between a mortgagee and the mediation coordinator.

If you have any questions regarding this bulletin or any other matters, please send an email to dbr.bankinquiry@dbr.ri.gov.

Elizabeth Kelleher Dwyer
Superintendent of Banking

Original issue date: April 15, 2020

Amended: May 4, 2021

Amended: August 20, 2021

**AFFIDAVIT
PURSUANT TO BANKING BULLETIN 2020-05**

I, _____, of _____, hereby affirm
under oath that:

1. I have personal knowledge of the matters referred to herein.
2. _____ is the Mortgagee, as defined in R.I. Gen. Laws §34-27-3.2(c)(8), for the mortgage recorded in the Land Evidence Records for the City/Town of _____ in Book _____, Page _____, and covering property located at _____ (the "Mortgage").
3. _____ is the Mortgagor, as defined in R.I. Gen. Laws §34-27-3.2.
4. Pursuant to Rhode Island Department of Business Regulation Banking Bulletin 2020-5, as amended, the Mortgagee hereby states as follows:

The Mortgage was subject to a forbearance agreement from _____ to _____.

The Mortgage was affected by a foreclosure moratorium which began on _____ and ended on _____.

Sworn and subscribed before me this _____ day of _____, 202__.

Notary Public
Printed Name: _____
My Commission Expires: _____