

Cranston, Rhode Island Foreclosure and Eviction/Tenant Ordinances Effective December 23, 2009

December 2009

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New ordinances affecting foreclosures and evictions in Cranston, Rhode Island become effective December 23, 2009. The Cranston City Council approved the ordinances on October 26, 2009, followed by Mayor Allan W. Fung's veto on November 5, 2009, and the Council's override of the veto on November 23, 2009. The two ordinances require foreclosure conciliation and provide pre- and post-foreclosure tenant eviction protections. The ordinances are almost identical to the foreclosure and tenant eviction ordinances effective in Providence, Rhode Island since August 23, 2009. The ordinances will be added as amendments to Title 8 of the Code of the City of Cranston, adding new Section 8.49.010 entitled "Foreclosure Requirements for Owner Occupied Residential Properties" (the "Foreclosure Ordinance") and new Section 8.50.010 entitled "Foreclosure Requirements for Rental Properties" (the "Tenant Ordinance"). Both the Foreclosure Ordinance and the Tenant Ordinance are effective 30 days following the final adoption or on December 23, 2009.

Section 8.49.010 (D) provides for mandatory 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. The mortgagee must provide written notice to the City of its intent to foreclose on any owner-occupied 1- to 4-family residential property located in Cranston (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. At the time of this writing the procedures for Cranston have not yet been established. If Cranston's procedures are similar to those followed for Providence, the Conciliation Coordinator will establish a procedure whereby notices of intent to foreclose are sent directly to the Coordinator so that the process of contacting the borrower and mortgagee or servicer can commence expeditiously.

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, and 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 45 days of the initial notice of intent. (Note that the Providence foreclosure ordinance provides that the conciliation conference must be completed within 60 days of the notice of intent).

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, and a “good faith effort” to reach an agreement is required. In the event that an agreement cannot be reached, 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 issue the appropriate certification 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 from the conciliation conference requirement for certain in-state mortgagees are found in Section 8.49.010 (D)(m). 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. It is expected that Cranston, like Providence, will release a form of affidavit of exemption or the foreclosure deed may contain a certification that the exception criteria has been satisfied.

Cranston has not announced the Conciliation Coordinator for its program. Rhode Island Housing and Mortgage Finance Corporation (“RIHousing”) is the Conciliation Coordinator for the Providence ordinances, and it is possible that RIHousing will take on the same duties for Cranston. We are waiting for procedural information and sample forms from Cranston to be posted on their website (www.cranstonri.com).

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. We also note that while the Foreclosure Ordinance becomes effective on December 23, 2009, there is no carve-out for foreclosure sales that are already scheduled

or where foreclosure deeds evidencing earlier foreclosure sales have not been recorded prior to the effective date. In fact, the written announcement released by Cranston provides that “All foreclosure recordings received as of that date must comply with the above Ordinances”. Thus, mortgagees and servicers are faced with having to cancel and restart the foreclosure process for Cranston foreclosures that are not finalized by December 23, 2009.

Section 8.50.010, the Tenant Ordinance, provides protection for tenants (not mortgagors) in foreclosed properties. Protections are for “bona fide tenants” which 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 Cranston, 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.

It appears that the Tenant Ordinance requires multiple notices be given to tenants. 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 is deemed to be in a month-to-month tenancy unless the tenant enters into a written rental agreement with the mortgagor.

The ordinance also states that lenders/mortgagees are to provide a notice to tenants to advise them 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 Tenant 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. While mortgagees and servicers may be puzzled by attempting to comply with the posting requirement since the language of the Tenant Ordinance implies that a posting requirement exists for Rhode Island foreclosures (and Rhode Island foreclosure proceedings do not contain such a posting requirement), prudent practice is to send the notices to the tenants at the same time the foreclosure notices are sent.

One of the most onerous 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 can not be

commenced until such notice is given.

Penalties for failure to comply with the Tenant Ordinance are not less than \$1,000 per offense. In addition to the increased costs and delays in the eviction process that the Tenant Ordinance will certainly cause, mortgagees and servicers who wish to give 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. As is the case with the Foreclosure Ordinance, the Tenant Ordinance specifies it takes place “30 days following its final adoption” or on December 23, 2009. Unresolved issues also include whether or not evictions that are pending or evictions that will be commenced in Cranston properties that were foreclosed prior to the enactment of the ordinances can require the notices required by the Tenant Ordinance. It is also unclear if post-foreclosure property owners will be required to dismiss evictions already in process because tenant notices were not mailed prior to the enactment of the Tenant Ordinance.

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