

City of Providence
Foreclosure Conciliation Requirement
Duties of Participants
Applying the Ordinance
Model Certifications

Ordinance Implementation Requirements

- It is the responsibility of the lender/mortgagee to provide Notice of Intent to Foreclose simultaneously to the homeowner/mortgagor and to the City of Providence Recorder of Deeds. Such notice must include plat and lot of the subject property.
- It is the responsibility of the lender/mortgagee to engage a Conciliation Conference Coordinator at a HUD-Approved Housing Counseling Agency located in Rhode Island.
- Counseling and Conciliation Coordinator services must be provided by a HUD-Approved Housing Counseling Agency based in Rhode Island.
- A list of participating Rhode Island-based HUD-Approved Housing Counseling Agencies will be made available to lenders/mortgagees and mortgagors.
- Any fee charged by HUD-Approved Housing Counseling Agencies may not be passed on to the mortgagor.
- The Conciliation Conference Coordinator will schedule a Conciliation Conference no later than 21 days following the mailing of the Notice to Foreclose.
- It is the responsibility of the lender/ mortgagee to file proof of compliance with the Ordinance, in the form of an approved certification (see below) or other proof deemed acceptable to the Recorder of Deeds, with the foreclosure deed.
- The Conciliation Conference Coordinator must make a determination regarding Good Faith no later than 60 days following the mailing of the Notice to Foreclose.

Recorder of Deeds

John A. Murphy, Recorder of Deeds, should be contacted by Housing Counseling Agencies and lenders/mortgagees with questions about ordinance implementation.

Conciliation Coordinator and the HUD-Approved Counselor

The Conciliation Coordinator is an impartial function, with the responsibility to bring the parties together to explore foreclosure work-out or modification. On the other hand, *the HUD-Approved Counselor* is an advocate for the homeowner, working with him/her to explore options for keeping the home with the lender. These two positions may be located in the same agency, but will be staffed by different people

and different responsibilities. It is reasonable to expect that a fee may be charged by either or both of these persons for their services. Such fees should be borne by the lender.

Conciliation Coordinator

Conciliation Coordination services must be provided by a Rhode Island-based HUD-Approved Counseling Agency. A list of such agencies will be kept by the Recorder of Deeds and provided to mortgagors and mortgagees upon request.

The expertise level of this position should be at least equal to a housing counselor. The Conciliation Coordinator should have an extensive lending and/or mortgage servicing background. The Conciliation Coordinator shall make the final decision as to whether or not a “good faith effort” has not been made by the lender. Housing Counseling Agencies should adopt standard guidelines for the determination of Good Faith. For guidance in the development of such standards, the City refers Housing Counseling Agencies to the suggested Good Faith Certificate in this document.

Participating agency:

Rhode Island Housing: ConciliationCoordinator@rhodeislandhousing.org

401 450-1331

401 450-1141 (fax)

HUD-Approved Counselor

Counseling services must be provided by a Rhode Island-based HUD-Approved Counseling Agency. The Recorder of Deeds will maintain a list of participating agencies.

Participating agency:

Rhode Island Housing: ConciliationCoordinator@rhodeislandhousing.org

401 450-1331

401 450-1141 (fax)

Proof of Compliance

The City of Providence Recorder of Deeds has issued standard certifications that will be accepted as proof of compliance with the Ordinance. *Any foreclosure deed presented for recording must be categorized by one of the following classifications.*

1. Affidavits of Exemption for the following reasons:
 - Properties are not owner occupied or are non-residential.
 - The lender/mortgagee is headquartered within the state of Rhode Island, services its own mortgages, and provides homeowners with a forbearance relief program consistent with the loss mitigation requirements of the FHA .

Language attesting to exemption for the above reasons may be included with the Foreclosure Deed and will be accepted by the Recorder of Deeds in lieu of a Certificate of Compliance.

2. Based upon documentation to be provided by the Lender/Mortgagee to the Conciliation Coordinator, a Certificate of Compliance will be issued by the Conciliation Coordinator attesting that either:
 - The homeowner did not respond to or cooperate with the Conciliation Coordinator’s request to appear for the conciliation conference or meet the requirements of the ordinance, or

- The lender/servicer made a good faith effort to reach an agreement with the homeowner to re-negotiate the terms of the loan (Sections 13-216 (h) and (i))

Forms Available for Compliance

Documents have been prepared for your use for submission as proof of compliance with the Ordinance:

Affidavit of Exemption (commercial or not owner occupied), Affidavit of Exemption (RI bank with program), Certificate of Compliance (Good Faith Effort).

These templates can be found at the end of this section.

Applying the Ordinance

The following narrative provides an explanation of the process the City will follow for ordinance implementation, expectations of lenders/mortgagees, and recommended procedures for participating HUD-Approved Housing Counseling Agencies.

1. The Notice of Intent to Foreclose will be forwarded by the lender/mortgagee to the mortgagor, City of Providence Recorder of Deeds, and the Conciliation Coordinator at the participating Rhode Island HUD-Approved Counseling Agency of their choice.
2. Included with the Notice of Intent to Foreclose, the lender/mortgagee will provide the mortgagor a list of participating Rhode Island HUD-approved counseling agencies and notifies the mortgagor in writing of the Conciliation Coordinator that will be contacting the mortgagor to schedule a conference.
3. The Conciliation Coordinator will ensure that the mortgagor is referred to a HUD-Approved Counselor who is assigned to that mortgagor's case. When Conciliation Coordination and Counseling services are provided by the same HUD-Approved Counseling Agency, the Agency should take appropriate measures to ensure independent decision-making by the Coordinator and Counselor, given their different roles.
4. The HUD-Approved Counselor will request from the mortgagor financial information necessary to develop a Pre-Conciliation Action Plan. The Counselor will meet with the mortgagor and develop a written Action Plan prior to the conciliation conference.

Failure to provide information to the Counselor, failure to meet and/or confer with the Counselor, and/or failure to work in good faith on the development of a Pre-Conciliation Action Plan will constitute grounds for the Conciliation Coordinator to certify the Good Faith Effort of a lender/mortgagee in the absence of an Action Plan.

5. The Conciliation Coordinator will schedule a Conciliation Conference between the mortgagor, HUD-Approved Counselor and lender/mortgagee no later than 21 days after the Notice of Intent is filed. The housing counselor should, at a minimum, offer the mortgagor the opportunity to conduct the Conciliation Conference in person rather than via telephone. The Conciliation Coordinator will act as a liaison and review information presented by both parties.

In the event of the failure of the lender/mortgagee to respond to two attempts by the Conciliation Coordinator to schedule a Conciliation Conference, or in any other way to fail to cooperate with the Conciliation process, the requirements imposed on the lender/mortgagee will be deemed satisfied and a Good Faith Effort certification will be issued by the Coordinator to the lender/mortgagee.

6. In the event a lender/mortgagee rejects a proposed Action Plan and the Conciliation Conference does not result in a mutually acceptable Action Plan, the Conciliation Coordinator can require lenders/mortgagees to provide a written explanation for the denial and, if feasible, an alternative approach.
7. If a resolution is not reached, the lender/mortgagee may request a "Good Faith Effort" certification at any time after the conclusion of the Conciliation process. That request should be

made in writing to the Conciliation Coordinator and should include a description of how the servicer met the “Good Faith Effort” requirement.

The Conciliation Coordinator will review that documentation and the Action Plan provided by the housing counselor and determine if a “Good Faith Effort” to reach an agreement was made by the lender/mortgagee.

The complete conciliation process, including the determination of good faith, must be completed within 60 days of the Notice of Intent filing.

8. If the Conciliation Coordinator determines a Good Faith Effort was exhibited, they will issue that certification to the lender/mortgagee who shall be responsible for filing that certification with the foreclosure deed. Certification must be filed by the lender/mortgagee no later than 60 days from the Notice of Intent filing.
9. The Recorder of Deeds will record a Foreclosure Deed upon receipt of a Deed and supporting documents meeting compliance requirements as delineated above (see, Proof of Compliance).

**Certificate of Compliance With Foreclosure Conciliation Process
Pursuant to Section 13-216 of the Providence Code of Ordinances**

I, _____ [name] _____ the _____ [title] _____, of _____ [name of HUD-Approved Counseling Agency] _____ (the “Agency”), certify as follows:

1. [Name of institution] _____ (“Mortgagor”) is the holder of the mortgage given by [name(s) of homeowner] _____ (the “Homeowner”) recorded in the Providence Land Evidence Records in Book ____ at Page ____, *et seq.*, (the “Mortgage”).
2. The Agency has served as the loan/mortgage conciliation conference coordinator as defined in Section 13-213 of the Providence Code of Ordinances regarding the Mortgagor’s intention to foreclose on the Mortgage.
3. For the reasons set forth below, Mortgagor is authorized to proceed with the foreclosure action, including recording of the foreclosure deed [check one box below]:
 - ☐ After two attempts by the Agency to contact the Homeowner, the Homeowner failed to respond to the request of the Agency to appear for the conciliation conference or otherwise participate in the conciliation process.
 - ☐ The Homeowner failed to comply with the requirements of Section 216(f) of the Providence Code of Ordinances
 - ☐ The Mortgagor and Homeowner have been unable to reach agreement to renegotiate the loan in order to avoid foreclosure through the conciliation process, despite the Mortgagor’s good faith efforts as noted on Attachment A.
4. I am authorized by the Agency to issue this Certificate.

Name: _____

Title: _____

Date: _____

Attachment A

Good Faith Determination

The Mortgagor, or its authorized representative, has made a good faith effort to reach agreement with the Homeowner to renegotiate the terms of the Mortgage in an effort to avoid foreclosure.

Mortgagor's good faith is evidenced by the following factors [check all that apply]:

- ☐ Mortgagor provided notice of its intent to foreclose to the Homeowner as required by Section 216(a) of the Providence Code of Ordinances.
- ☐ Mortgagor designated staff authorized to participate in the conciliation process on its behalf, and with authority to agree to a work-out proposal on behalf of Mortgagor.
- ☐ Mortgagor made reasonable efforts to respond in a timely manner to requests for information from the Homeowner or counselor assisting the Homeowner.
- ☐ Mortgagor analyzed and responded to the work-out proposal submitted by the Homeowner and/or the counselor assisting the Homeowner within fourteen days of submission of the work-out proposal.
- ☐ If Mortgagor declines to accept the Homeowner's work-out proposal, Mortgagor provided a written, detail statement of its reasons for rejecting the proposal.
- ☐ If Mortgagor declines to accept the Homeowner's work-out proposal, Mortgagor offered, in writing, to enter into an alternative work-out proposal that would result in a material net financial benefit to the Homeowner as compared to the terms of the Mortgage.
- ☐ Other fact demonstrating Mortgagor's good faith [specify]:

**Affidavit of Compliance (bank program) With Sec. 13-216
of the Providence Code of Ordinances**

I, _____ [name] _____ the _____ [title] _____, of
[name of institution] _____ (“Mortgagee”), make oath and say that:

1. I have personal knowledge of the matters referred to herein.
2. Mortgagee is the holder of the mortgage recorded in the Providence Land Evidence Records in Book __ at Page ___, et seq. (the “Mortgage”).
3. The Mortgagee is headquartered in Rhode Island, services the above referenced mortgage, and offers a forbearance relief program consistent with the forbearance relief requirements applicable to FHA-Insured Mortgages, as set forth in Chapter 8 of HUD Handbook 4330.1 Rev. 5, Administration of Insured Home Mortgages, as the same may be amended from time to time.
4. For the reasons set forth above, and pursuant to Sec. 13-216 of the Providence Code of Ordinances, foreclosure of the Mortgage is not subject to the mandatory loan/mortgage conciliation conference process set forth in Sections 213 through 217 of the Providence Code of Ordinances.

Name: _____

Title: _____

Sworn to and subscribed before me this __ day of _____, 2009.

Notary Public

Printed Name: _____

My Commission Expires: _____

**Affidavit of Compliance (non-residential) With Sec. 13-216
of the Providence Code of Ordinances**

I, _____ [name] _____ the _____ [title] _____, of
[name of institution] _____ (“Mortgagee”), make oath and say that:

1. I have personal knowledge of the matters referred to herein.
2. Mortgagee is the holder of the mortgage recorded in the Providence Land Evidence
Records in Book __ at Page __, et seq. (the “Mortgage”).
3. The property secured by the Mortgage (i) does not constitute residential property, or (ii)
is not owner-occupied.
4. For the reasons set forth above, and pursuant to Sec. 13-216 of the Providence Code of
Ordinances, foreclosure of the Mortgage is not subject to the mandatory loan/mortgage
conciliation conference process set forth in Sections 213 through 217 of the Providence
Code of Ordinances.

Name: _____

Title: _____

Sworn to and subscribed before me this __ day of _____, 2009.

Notary Public

Printed Name: _____

My Commission Expires: _____