

## **RHODE ISLAND SUPREME COURT REQUIRES STRICT COMPLIANCE WITH PARAGRAPH 22 AS CONDITION TO VALID FORECLOSURE**

The Rhode Island Supreme Court, in a matter of first impression, recently issued a decision in which it held that the notice of default must strictly comply with the requirements set forth in paragraph 22 of the mortgage. The Court vacated a foreclosure because the notice of default advised of “the right to cure the default after acceleration” and not “the right to reinstate after acceleration.” Notably, the decision is prospective and applies to any pending cases in the Rhode Island Superior Court where the specific issue has been or may be raised.

In *Woel*, the mortgagor argued that the foreclosure sale was void because the notice of default failed to inform him of his *right to reinstate* after acceleration as required by paragraph 22. While paragraph 22 provides that the default notice shall inform the mortgagor “of the right to reinstate after acceleration,” the notice received provided, “[y]ou have the *right to cure* the default after acceleration.” (emphasis added). Looking to the language in paragraphs 19 and 22 of the mortgage, the court stated that notifying the mortgagor of the right to cure the default after acceleration is not the same as informing him of the right to reinstate after acceleration because curing the default is only one of four conditions needed to reinstate the mortgage as set forth in paragraph 19. As such, the court found that the notice at issue was “misleading, inaccurate, and at best, incomplete” where one could read it to mean that if the mortgagor cured the default after acceleration, the mortgage would be reinstated. The Court took further issue with the notice by stating that if the mortgagor cured the default after acceleration by paying the pre-acceleration amount owed, the mortgage would not have been reinstated.

Defendants argued that the language was not deficient where curing the default was in fact the only condition that the mortgagor in this particular case needed to meet in order to reinstate the mortgage after acceleration. Ultimately, the Court noted that this fact was inconsequential, and in essence held that the mortgagor need not show he or she was prejudiced by the notice. Further supporting the contention that the court will heavily scrutinize the language over the facts of a particular case, it stated, “[w]e look to the content of the default notice itself, not the particular facts related to the mortgagor.”

### **Practical Implications**

In light of this decision, it is important that servicers take appropriate measures to ensure all Rhode Island notices are in compliance. While current notices may state

that the mortgagor has “the right to cure the default after acceleration,” the notice must also indicate that the mortgagor has “the right to reinstate after acceleration.”

This ruling is binding on any cases currently filed in the Rhode Island Superior Court and all future cases. As such, we recommend a review of all notices in any pending foreclosures in order to ensure strict compliance with the terms of the mortgage. Going forward, all default notices should contain the language indicated above as well as all other information required by the mortgage. We advise using the exact language from the mortgage as a best practice. The failure to do so runs the risk that the court will find the foreclosure sale to be void as was the case in *Woel*.