

Rhode Island Supreme Court Demands Strict Compliance with Fannie Mae/Freddie Mac “Paragraph 22” in Foreclosures

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In a case of first impression, the Rhode Island Supreme Court concluded in *Woel v. Christiana Trust* that mortgage default notices sent to borrowers must strictly comply with the notice requirements included in a mortgage. The Court held that a lender’s notice of default does not strictly comply with the terms of the standard Fannie Mae/Freddie Mac mortgage Paragraph 22, if the notice fails to inform the borrower of the right to reinstate after acceleration.



Paragraph 22 of the *Woel* mortgage required a notice of default to inform the borrower of the following: (1) the default; (2) the action required to cure the default; (3) the date when the default must be cured; (4) that failure to timely cure the default may result in acceleration of the loan and sale of the property; (5) the right to reinstate after acceleration; and (6) the right to bring a court action to assert the non-existence of a default or any other defense to acceleration and sale.

Woel challenged the validity of foreclosure by arguing the lender’s notice of default failed to advise the borrower’s “right to reinstate after acceleration.” Instead, the notice stated: “You have the right to cure after acceleration....” The lender argued that the only provision the “right to reinstate” applied to in this case was the right to cure (i.e. if the borrower paid the amounts due in the default notice, then the mortgage would have been reinstated). Because the borrower was informed of the right to cure, the lender argued that there was strict compliance with Paragraph 22.

The Court disagreed with the lender concluding that the “right to cure” is not synonymous with the “right to reinstate”. It noted that Paragraph 19 of the Woel mortgage clarifies that the “right to cure” is only one element of the “right to reinstate.” Therefore, informing a borrower only of the “right to cure” does not adequately inform the borrower of the “right to reinstate,” as required under Paragraph 22. Moreover, the Court emphasized that notice requirements contained in contracts require strict compliance as a condition precedent, and that prejudice to the borrower is not a consideration in strict compliance cases. By failing to fully inform the borrower of the right to reinstate after acceleration in compliance with Paragraph 22 of the mortgage, the notice of default did not strictly comply and the foreclosure therefore was void.

As a final measure, the Court expressly elected to apply this decision prospectively, including to cases currently pending in the Superior Court in which this specific issue has been, or may be, raised. The prospective nature is not based on when the default notice was sent and therefore, borrowers can raise a strict compliance defense even if the default notice was sent prior to the Supreme Court’s decision.

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