

**825-RICR-40-00-2**

## **TITLE 825 - HOUSING AND MORTGAGE FINANCE CORPORATION**

### **CHAPTER 40 – RULES RELATIVE TO OTHER PROGRAMS**

#### **SUBCHAPTER 00 - N/A**

#### **PART 2 – Sale of Foreclosed Properties and Disbursement of Surplus Funds Pursuant to Madeline Walker Act**

### **2.1 General Provisions**

#### **2.1.1 Purpose**

A. The purpose of this Sale of Foreclosed Properties and Disbursement of Surplus Funds Pursuant to Madeline Walker Act is to establish a program by which RIHousing will sell Foreclosed Properties and by which a Homeowner can claim surplus funds, if available, when Rhode Island Housing Mortgage and Finance Corporation ("RIHousing") purchases the homeowner's property at tax sale pursuant to the Madeline Walker Act (R.I. Gen. Laws 44-9-8.3), obtains judgment foreclosing all rights of redemption and sells the property after foreclosure.

#### **2.1.2 Authority**

A. This Sale of Foreclosed Properties and Disbursement of Surplus Funds Pursuant to Madeline Walker Act is issued as an RIHousing regulation pursuant to the authority conferred by R.I. Gen. Laws §§ 42-55-5(5) and 44-9-8.3(a).

#### **2.1.3 Incorporated Materials**

A. These regulations hereby adopt and incorporate the Real Estate Settlement Procedures Act (Regulation X), 12 C.F.R. Part 1024.31 (2023) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.

#### **2.1.4 Applicability**

A. The Sale of Foreclosed Properties and Disbursement of Surplus Funds Pursuant to Madeline Walker Act applies to all properties acquired by RIHousing through tax lien foreclosure once RIHousing obtains judgment foreclosing all rights of redemption pursuant to R.I. Gen. Laws Chapter 44 after the enactment of this regulation.

#### **2.1.5 Definitions**

- A. "Foreclosed Property" means Property in which the RIHousing has acquired title pursuant to the foreclosure of the Homeowner's right of redemption in the tax lien purchased by RIHousing. "REO Sale" means a post-auction closing and transfer of the Foreclosed Property's title from RIHousing to the winning bidder at auction.
- B. "Homeowner" means the individual or individuals who are owners of record of the Property, according to the real property records, at the time RIHousing purchases a tax lien on the Property.
- C. "Madeline Walker Program" shall mean the program maintained by RIHousing in which RIHousing purchases tax liens on qualified Properties in order to extend the right of redemption for Homeowners pursuant to R.I. Gen. Laws § 44-9-8.3.
- D. "Property" means the property subject to the tax lien purchased by RIHousing pursuant to the Madeline Walker Act.
- E. "Sale Price" means the amount of the winning bid for the Foreclosed Property at public auction.
- F. "Successor" means any successor in interest, as defined by the Real Estate Settlement Procedures Act (Regulation X), 12 C.F.R. Part 1024.31, incorporated above at § 2.1.3 of this Part, to the Homeowner's Property prior to the foreclosure of the Homeowner's right of redemption.
- G. "Surplus Funds" means any additional funds the Homeowner is entitled to recover from the REO Sale after RIHousing deducts from the Sale Price the amount of the tax lien(s) and statutory interest plus the costs and fees associated with the Property that are expended by RIHousing after RIHousing purchases a tax lien, as outlined in § 2.3.1 of this Part.

## **2.2 Sale of Foreclosed Property Process**

### **2.2.1 Public Auction**

- A. RIHousing will sell all Foreclosed Properties to the highest bidder at a commercially reasonable public auction to be held at the Foreclosed Property.
- B. RIHousing will serve a notice of the time, date and location of the public auction by certified or registered mail to the Homeowner's last known address no less than thirty (30) days prior to the date of the public auction. RIHousing will publish a notice of the time, date, and location of the public auction in a newspaper of general circulation in the vicinity of the Property for three (3) consecutive weeks beginning no less than twenty-one (21) days prior to the date of the public auction. On the date of the public auction, the public auction can be postponed by public proclamation by the auctioneer for up to six (6) months from the original date of the public auction without requiring additional publication.

C. The minimum starting bid at the public auction will be equal to the amount of tax lien(s) and statutory interest plus the costs and fees associated with the Property that are expended by RIHousing after RIHousing purchases a tax lien.

### **2.2.2 RIHousing Not Prohibited from Bidding**

A. RIHousing is not prohibited from bidding on the Foreclosed Property at the public auction. In the event RIHousing tenders the winning bid, RIHousing's bid will be subject to the calculation of Surplus Funds as directed in § 2.3.1 of this Part, below.

### **2.2.3 Sale Price as Prima Facie Evidence of Fair Market Value**

A. The winning bid at public auction will be prima facie evidence of the fair market value of the Property for the purpose of calculating Surplus Funds as directed in § 2.3.1 of this Part, below.

B. In the event that no parties bid on the Foreclosed Property at the public auction, title to the Property will revert to RIHousing and it will be prima facie evidence that the fair market value of the Property is equal to or less than amount of the tax lien(s) and statutory interest plus the costs and fees associated with the Property that are expended by RIHousing after RIHousing purchases a tax lien.

## **2.3 Escrow**

### **2.3.1 Calculation of Surplus Funds**

A. Surplus Funds will be calculated based on the following formula:

1. Surplus Funds = (Sale Price at public auction) - (Amount Paid by RIHousing for original and intervening Tax Liens) - (Outstanding Statutory Interest on original and intervening Tax Liens) - (Amount of Taxes Advanced by RIHousing) - (All costs and fees paid by RIHousing associated with maintaining the Property) - (All costs and fees associated with foreclosure) - (All costs and fees associated with the public auction and sale) - (All costs and fees associated with the distribution of Surplus Funds)

### **2.3.2 Escrow of Surplus Funds Process**

A. RIHousing will place all Surplus Funds in an interest-bearing escrow account until either the Surplus Funds are

1. claimed by the Homeowner or their Successor;
2. deposited with the Superior Court; or
3. are forfeited to RIHousing.

### **2.3.3 Interest**

A. All interest earned on Surplus Funds in escrow will be the property of RIHousing.

## **2.4 Claims Process**

### **2.4.1 Notice to Homeowner**

A. In the event Surplus Funds exist, within 5 business days after the date of the REO Sale, RIHousing will mail a notice to Homeowner, and Homeowner's Successors, if known, at Homeowner's and/or Successor's last known address. Said notice will advise the Homeowner and/or Homeowner's Successors of:

1. the closing date of the REO Sale;
2. the address of the Property,
3. that there may be Surplus Funds resulting from the REO Sale;
4. instructions for accessing forms and submitting a claim for Surplus Funds;
5. RIHousing's contact information for questions regarding the Surplus Funds; and
6. that failure to claim the Surplus Funds within 90 days after the date of REO Sale may result in the forfeiture of the Surplus Funds to RIHousing.

B. Within 10 business days after the date of the REO Sale, RIHousing will cause a notice to be published in a newspaper of general circulation in the vicinity of the property advising Homeowner and Homeowner's successors that that they may be able to claim Surplus Funds from RIHousing. Said notice will state,

1. the date of the REO Sale;
2. the address of the Property,
3. that there may be Surplus Funds resulting from the REO Sale;
4. instructions for accessing forms and submitting a claim for Surplus Funds;
5. RIHousing's contact information for questions regarding the Surplus Funds; and
6. that failure to claim the surplus funds within 90 days after the date of the REO Sale may result in the forfeiture of the Surplus Funds to RIHousing.

### **2.4.2 Homeowner Claim Process**

- A. If Homeowner or their Successor submits a completed, notarized application with all relevant supporting documentation within 90 days after the date of REO Sale, RIHousing will disburse the Surplus Funds to the Homeowner or their Successor upon RIHousing's successful confirmation of the Homeowner's or Successor's identity and interest in the property. The claim period for the Surplus Funds will not be deemed to have expired if the Homeowner or Successor submits a completed application with all relevant supporting documentation to RIHousing within 90 days after the date of the REO Sale, notwithstanding the actual date that the Surplus Funds are disbursed. RIHousing will provide an accounting of the Surplus Funds to the confirmed Homeowner or their Successor upon written request.
- B. In the event more than one claimant completes an application to receive the Surplus Funds, RIHousing will request that claimants submit a written agreement as to the division of the Surplus Funds. The written agreement must be submitted within 10 business days of RIHousing's request. If the claimants do not agree in writing within 10 business days of RIHousing's written request to a division of the Surplus Funds, the Surplus Funds will be deposited into the registry of the Superior Court of Rhode Island in the jurisdiction where the property is located so that the claimants may litigate their respective rights to the Surplus Funds.

#### **2.4.3 Forfeiture of Surplus Funds to RIHousing**

- A. In the event the Surplus Funds are not claimed within 90 days after the date of REO Sale, the Surplus Funds are deemed forfeited and will be retained by RIHousing to fund the Madeline Walker Program or other foreclosure prevention initiative administered by RIHousing.