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**Orlans PC *Client Alert*****Attorney - Client Privileged Communication****Rhode Island Supreme Court Holds Paragraph 22 Notices Must Strictly Comply**

The Rhode Island Supreme Court in *Woel v. Christiana Trust*, No.2018-347- Appeal. (PM16-921), <http://go.pardot.com/e/312251/urt-SupremeOpinions-18-347-pdf/c6vgb/992372529?h=O5iD0JdnDqA9SXBNU726f6f6oW0GwxBmMMmONpESi90>, in a case of first impression, has aligned with prior rulings in the Federal Court in Rhode Island holding that notices of mortgage default must strictly comply with paragraph 22 of the mortgage. (See *Martins v. Fed. Hous. Fin. Agency*, No. CV 15-235-M-LDA). In *Woel*, the Court stated that because the notice informed the borrower of the "...right to cure after acceleration" rather than mirroring the actual language of paragraph 22, to wit, the "...right to reinstate after acceleration" it was deficient, rendering the foreclosure void. The Court stated that strict compliance with the contractual language of Paragraph 22 is a condition precedent to a valid foreclosure of the mortgage.

The Court refused to accept the theory advanced by the servicer that the language contained in the Freddie Mac/Fannie Mae mortgage and in the subject notice were interchangeable. In the Court's opinion the right to cure is only one aspect of the broader right to reinstate which is outlined in detail in paragraph 19 of the mortgage and contains multiple conditions. For example, the "right to reinstate" includes all fees, attorney costs, and other charges associated with the borrower's default, whereas the "right to cure" only refers to the past due mortgage payments. In the opinion of the Court, the notice was both misleading and inaccurate; the fact that this borrower was not actually prejudiced was of no consequence in the eyes of the Court in the application of strict compliance. The Court rounded out its discussion by announcing that the holding is to be applied prospectively to cases currently pending in the Superior Court where this issue has been or **may be raised**, regardless of the date of the notice.

We do not necessarily expect this decision to have a significant impact. In response to the *Martins* decision in 2016, we worked with our clients to ensure their notices strictly comply with paragraph 22 of the applicable form of mortgage. As part of our initial quality review,

paragraph 22 demands are examined for strict compliance with the language of the contract.

If you have questions, please contact Rebecca Washington, Lead FC Attorney - Rhode Island at [rwashington@orlans.com](mailto:rwashington@orlans.com).

If you have specific legal questions about your files, please feel free to contact our attorneys referenced below.

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