

# Real Estate Finance: Rhode Island

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A Q&A guide to real estate finance law for borrowers and lenders in Rhode Island. This Q&A addresses state laws relating to security instruments, usury laws, limitations on personal liability, recording requirements and taxes, priority issues, mechanics' liens, landlord liens, title insurance matters, and foreclosure procedures primarily impacting lending transactions in a commercial context. Federal, local or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see *Real Estate Finance: State Q&A Tool* ([www.practicallaw.com/5-517-4021](http://www.practicallaw.com/5-517-4021))).

## INSTRUMENT AND EXECUTION

**1. Does a mortgage or a deed of trust secure a lien on real property? If it is a deed of trust, who is typically designated as the trustee?**

In Rhode Island, a mortgage secures a lien on real property.

**2. Describe any laws that would limit a borrower's or guarantor's personal liability for debt secured by real property.**

There are no Rhode Island laws that would limit a borrower's or guarantor's personal liability for debt secured by real property.

**3. Are there restrictions on interest rates charged for loans secured by real property?**

In Rhode Island, the maximum interest rate chargeable per year is the greater of:

- 21%.
- 9% plus the domestic prime rate as published in the Money Rates section of the Wall Street Journal.

(*R.I. Gen. Laws § 6-26-2.*)

There are, however, exceptions to the maximum interest rates. For example, there is no limit to the rate that may be legally charged to a commercial entity if the following conditions are met:

- The loan amount exceeds \$1,000,000.
- Repayment of the loan is not secured by a mortgage against the principal residence of any borrower.
- The commercial entity has first obtained a pro forma methods analysis performed by a state-licensed certified public accountant indicating that the loan is capable of being repaid.

(*R.I. Gen. Laws § 6-26-2(e).*)

**4. Are there any requirements for the execution of a mortgage or deed of trust? In particular, please consider if:**

- Witnesses are required.
- Specified officers of a corporation (or members of a limited liability company) must execute the security instrument.
- The signatory's name and title must be specified on the signature page.
- A corporate seal is required.
- Signed resolutions must be presented with the security instrument for purposes of recording.
- There are any other important requirements in your state?



**WITNESSES**

In Rhode Island, there is no requirement for witnesses to a mortgage. The mortgagor's signature, however, must be notarized.

**SPECIFIED OFFICERS**

Rhode Island law does not specify that any particular officer execute a mortgage.

**SIGNATORY'S NAME AND TITLE**

The signatory's name and title should be reflected in the signature and notary blocks of the mortgage to avoid any ambiguity as to the capacity of the person signing.

**CORPORATE SEAL**

Rhode Island law does not require that a corporate seal be affixed to the mortgage.

**SIGNED RESOLUTIONS**

Signed resolutions are not required for recording.

**OTHER REQUIREMENTS**

There are no other legal requirements for executing a mortgage.

**5. Provide the statutory form of acknowledgment for:**

- An individual.
- A corporation.
- A limited liability company.
- A limited partnership.
- A trustee.

The Rhode Island General Laws do not prescribe a specific notary clause form of acknowledgement for real estate finance transactions (*R.I. Gen. Laws § 34-12-1*). Some forms that are used in Rhode Island follow:

**INDIVIDUAL**

STATE OF [STATE]

COUNTY OF [COUNTY]

In [CITY], in said County, on this [DATE] day of [MONTH], [YEAR], before me personally appeared [SIGNATORY NAME], [personally known to the notary/[SIGNATORY NAME] proved to the notary through satisfactory evidence of identification which was [TYPE OF IDENTIFICATION], to be the person whose name is signed on the preceding or attached document], and acknowledged said instrument by [him/her] so executed to be [his/her] free act and deed.

\_\_\_\_\_  
Notary Public

NAME: [NOTARY NAME]

My Commission Expires: [DATE]

**CORPORATION**

STATE OF [STATE]

COUNTY OF [COUNTY]

In [CITY], in said County, on this [DATE] day of [MONTH], [YEAR], before me personally appeared [SIGNATORY NAME], in [his/her] capacity as [SIGNATORY TITLE/POSITION] of [CORPORATION NAME] [to me known and known by me to be the person executing the foregoing instrument/who provided to me through satisfactory evidence of identification which was [TYPE OF IDENTIFICATION], and [he/she] acknowledged said instrument by [him/her] so executed to be [his/her] free act and deed in such capacity and the free act and deed of said [CORPORATION NAME].

\_\_\_\_\_  
Notary Public

My commission expires: [DATE]

**LIMITED LIABILITY COMPANY**

STATE OF [STATE]

COUNTY OF [COUNTY]

In [CITY], in said County, on this [DATE] day of [MONTH], [YEAR], before me personally appeared [SIGNATORY NAME], in [his/her] capacity as [SIGNATORY TITLE/POSITION] of [CORPORATION NAME] [to me known and known by me to be the person executing the foregoing instrument/who provided to me through satisfactory evidence of identification which was [TYPE OF IDENTIFICATION], and [he/she] acknowledged said instrument by [him/her] so executed to be [his/her] free act and deed in such capacity and the free act and deed of said [CORPORATION NAME].

\_\_\_\_\_  
Notary Public

My commission expires: [DATE]

**LIMITED PARTNERSHIP**

STATE OF [STATE]

COUNTY OF [COUNTY]

In [CITY], in said County, on this [DATE] day of [MONTH], [YEAR], before me personally appeared [SIGNATORY NAME], in [his/her] capacity as [SIGNATORY TITLE/POSITION] of [NAME OF LIMITED PARTNERSHIP] [to me known and known by me to be the person executing the foregoing instrument/who provided to me through satisfactory evidence of identification which was [TYPE OF IDENTIFICATION], and [he/she] acknowledged said instrument by [him/her] so executed to be [his/her] free act and deed in such capacity and the free act and deed of said [NAME OF LIMITED PARTNERSHIP].

\_\_\_\_\_  
Notary Public

My commission expires: [DATE]

**TRUSTEE**

STATE OF [STATE]

COUNTY OF [COUNTY]

In [CITY], in said County, on this [DATE] day of [MONTH], [YEAR], [before me personally appeared [SIGNATORY NAME], as Trustee of the [NAME OF TRUST] Trust, personally known to the notary/[SIGNATORY NAME] proved to the notary through satisfactory evidence of identification which was [TYPE OF IDENTIFICATION]], to be the person whose name is signed on the preceding or attached document, and acknowledged said instrument by [him/her] so executed to be [his/her] free act and deed in such capacity and the free act and deed of the Trust.

\_\_\_\_\_  
Notary Public

My commission expires: [DATE]

**PRIORITY****6. Describe the relevant statutes granting priority to mechanics' liens.**

Rhode Island law grants lien rights to:

- Contractors.
- Material suppliers.
- Architects.
- Others engaged in residential and commercial real estate projects.

*(R.I. Gen. Laws §§ 34-28-1 to 34-28-37.)*

To perfect a mechanic's lien in Rhode Island, the lienor must complete the following requirements:

- Send the property owner or tenant a Notice of Possible Mechanic's Lien within 10 business days of commencing work or delivering the materials. This requirement applies only to lienors that contract directly with the property owner or tenant but does not include material suppliers.
- Send the property owner or tenant a Notice of Intention within 200 days of performing the work or delivering the materials. This requirement applies to all lienors.
- Record a copy of the Notice of Intention in the land evidence records in the city or town where the property is located.
- Within 40 days of recording the Notice of Intention, record a Notice of Lis Pendens in the land evidence records.

*(R.I. Gen. Laws §§ 34-28-4.1, 34-28-4 and 34-28-10.)*

To enforce the lien, the lienor must file a complaint in the superior court for the county in which the lien property is located. The complaint must be filed within 40 days of the date of the recording of the Notice of Intention, and within seven days after the recording of the Notice of Lis Pendens. Failure to file the complaint within these time frames voids any lien claim. *(R.I. Gen. Laws § 34-28-10.)*

**7. Are there liens which can supersede the priority of a lender's recorded lien?**

In Rhode Island, the following liens can supersede the priority of a lender's recorded lien:

- Property tax liens.
- Sewer district liens.
- Certain other taxing district liens.

*(R.I. Gen. Laws § 44-9-1.)***8. How do lenders maintain the priority of their real property liens over superseding liens, such as real property tax liens and mechanics' liens? In particular, please consider:**

- Permanent loans.
- Construction loans with future advances.
- Credit facilities with future advances under revolving lines of credit.

**PERMANENT LOANS**

The priority of the liens (see *Question 7*) is generally established by operation of law, without regard to specific additional efforts to maintain priority. Some lenders, however, escrow taxes as part of the required monthly payment and pay the taxes directly. Other lenders retain a tax service to monitor payments to ensure they are being made and many lenders rely on financial reporting requirements to monitor tax payments.

Lenders should obtain a "date down" endorsement every time a future advance is made under a construction loan or a credit facility with future advances.

**CONSTRUCTION LOANS**See *Permanent Loans*.**CREDIT FACILITIES**See *Permanent Loans*.**9. What are a landlord's legal rights to a tenant's personal property located in the leased premises? Are these rights governed by statute, common law or contract?**

Rhode Island does not have a statute granting a landlord a lien on its tenant's personal property. A landlord's legal rights to a tenant's personal property are governed by contract.

Lenders do, however, routinely require lien waivers from landlords. Lien waivers often provide the lender with rights to access the leased premises to exercise its rights to the collateral and usually include the right to sell the collateral from the premises via auction or private sale.

## MORTGAGE RECORDING TAXES

### 10. Is there a mortgage recording tax (or similar tax)? If so:

- What is the rate and how is the tax calculated?
- Can a loan or refinance be structured to reduce the tax?
- Is the tax payable on making a loan secured by real property or perfecting a lien on real property?
- Is there any type of real property or transaction that is exempt from a mortgage recording tax (or similar tax)?
- Are there any other state or local taxes or fees imposed on the grant, perfection or enforcement of a security interest in real property? Are there any exceptions?

### RATE AND CALCULATION

There is no mortgage recording tax in Rhode Island.

### STRUCTURE

Since there is no mortgage recording tax, this is not applicable.

### PAYMENT

Since there is no mortgage recording tax, this is not applicable.

### EXEMPTION

Since there is no mortgage recording tax, this is not applicable.

### OTHER TAXES OR FEES

There are no additional mortgage taxes.

There are filing fees whenever any document is recorded in the land evidence records of a municipality. The fees are set out in *Section 34-13-7 of the Rhode Island General Laws*.

## TITLE INSURANCE

### 11. Are title insurance premiums or service charges for lenders' title insurance policies regulated? Are the costs of title insurance negotiable within a specified range of rates? Are there any discounts available for reissued policies?

Title insurance charges are based on rates the insurers file with the Rhode Island Department of Business Regulation, Division of Insurance Regulation. There is little or no negotiation to the title insurance rates filed. Some discounts may be offered by title companies if there is a recent policy the company, or its underwriter, has written on the property.

### 12. Provide a list and brief description of the title insurance endorsements available to lenders?

Each underwriter has a list of endorsements it offers. The most common endorsements in Rhode Island are:

- ALTA 2 (Truth In Lending).
- ALTA 3 (Zoning (Unimproved Land/Completed Structure)).
- ALTA 6 (Variable Rate).
- ALTA 8 (Environmental Protection Lien).

- ALTA 9 (Restrictions, Encroachments, Minerals (Owner's, Lender's, Unimproved Land, Improved Land)).
- ALTA 11 (Mortgage Modification).
- ALTA 12 (Aggregation).
- ALTA 13 (Leasehold).
- ALTA 14 (Future Advance).
- ALTA 17 (Access).
- ALTA 18 (Tax Parcel).
- ALTA 19 (Contiguity).
- ALTA 25 (Survey).
- ALTA 26 (Subdivision).

### 13. How is gap coverage (the time between closing the loan and actually recording the lien) typically handled by the title insurance companies?

In Rhode Island, the title company typically assumes the gap coverage risk and requires the borrower to provide it with an affidavit and indemnity against intervening liens.

Gap coverage, however, is relatively rare in Rhode Island. The typical practice is for the title company to record the documents only after reviewing the title to ensure that there are no intervening liens, and the lender often does not fund until the mortgage has been recorded.

## FORECLOSURE

### 14. Describe the foreclosure process available and the typical timing for the process. Are there any significant costs of or impediments to foreclosing a lien on real property?

Mortgages are typically foreclosed in Rhode Island by the mortgage holder in a non-judicial mortgagee's sale under a statutory Power of Sale, after meeting all of the statutory notice and publication requirements, including:

- At least 20 days (30 days for residential mortgages) notice of the date of the sale must be provided by certified mail, return receipt requested, to the borrower and other parties in interest of:
  - the sale date and time;
  - the terms of the sale; and
  - a description of the property to be sold.
- A notice of foreclosure sale must be published:
  - at least once a week for three successive weeks before the sale;
  - for the first publication, at least 21 days before the day of sale (including the day of the first publication in the computation); and
  - for the third publication, no fewer than seven days before the original date of sale listed in the advertisement (including the day of the third publication in the computation) and no more than 14 days before the original date of sale listed in the advertisement.

(*R.I. Gen. Laws* § 34-27-4.)

The sale may take place no more than 14 days from the date on which the third successive notice is published, excluding the day of the third publication in the computation (*R.I. Gen. Laws § 34-27-4(a)*). The foreclosure process in Rhode Island takes approximately 60 to 90 days.

**15. Describe any significant costs of or impediments to foreclosing a lien on real property.**

There are no significant costs or impediments to foreclosing a lien on real property in Rhode Island, aside from the cost of publishing the notice of sale and the fees of the auctioneer.

## FOREIGN ENTITIES

**16. Are there any permissions, approvals or licenses specifically required for foreign banks (or other foreign lenders) to make loans secured by real property?**

There are no permissions, approvals or licenses specifically required for foreign banks to make loans secured by real property, provided there is no other established business presence in Rhode Island.

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