

**Foreclosure Prevention Legislation
Comparison of House and Senate Bills
H. 4306 and S. 2299**

**Prepared by CHAPA
October 26, 2007**

A. Funding

House Bill:

SECTION 1 (see also sections 12 and 13). Appropriates \$3 million to fund staff at the Division of Banks (DOB) to implement and enforce mortgage loan originator licensure. \$2 million provided for a community foreclosure and mortgage counseling pilot program through DOB to fund at least 10 foreclosure education counseling centers in impacted communities.

Senate Bill:

SECTION 13 Appropriates \$2.5 million to fund staff at the Division of Banks (DOB) to implement and enforce mortgage loan originator licensure. \$500,000 provided for community foreclosure and mortgage counseling.

B. Mortgage Information

House Bill:

SECTION 2. Requires every mortgage and assignment of a mortgage secured by 1-4 family, owner-occupied real estate in the Commonwealth to have endorsed on it the name, post office address and license number of the mortgage broker and, if applicable, the mortgage loan originator responsible for placing such mortgage loan with a mortgage lender. But, failure to include this information does not affect the validity of the mortgage.

Senate Bill:

SECTION 2A. If a beneficial or fiduciary interest in a mortgage is transferred, the entity acquiring shall file notice of the transfer with the registry of deeds or provide notice to the mortgagor in writing. Failure precludes foreclosure.

C. Transfer of Interest in Mortgage Information

House Bill:

Not included

Senate Bill:

SECTION 3. Add Section 27 to CH. 183 to provide that holder of mortgage that exercises power of sale provides accounting of disposition.

D. Mandatory Loan Counseling

House Bill

SECTION 5. Requires first-time homeowners purchasing a variable rate sub-prime loan to receive in-person counseling. DOB provides a list of non-profit counseling agencies approved by HUD approved counselors, housing finance agency, the Massachusetts Homeownership Collaborative, DOB or another Massachusetts regulatory agency with jurisdiction over the creditor. Violations of this section are enforced by prohibiting the variable rate from being charged to the borrower. Uses CH. 184 as mechanism.

Senate Bill

SECTION 4 & 5. Requires first-time homeowners purchasing a variable rate sub-prime loan to receive in-person counseling. DOB provides a list of non-profit counseling agencies approved by HUD, housing finance agency, DOB or another Massachusetts regulatory agency with jurisdiction over creditor. Violations of this section are enforced by prohibiting the variable rate from being charged to the borrower. Uses CH. 183 as mechanism.

E. Tenant Protection

House Bill:

SECTIONS 6 and 7. Clarifies tenancies-at-will survive foreclosure. Provides tenant's under a lease (regardless of when entered into) protection as a legal tenant-at-will upon foreclosure. Protects low income tenant's subsidized by state or federal programs by retaining agreement.\

Senate Bill:

SECTION 14A. A tenancy cannot be terminated by foreclosure.

F. Right-to-Cure and Cooling Off Period

House Bill:

SECTION 8. Provides a 90 day right-to-cure to borrowers of owner occupied family homes who have a monetary default of a mortgage payment. Specifies the content of the notice. Stops certain fees from accumulating during the cure period. Lenders are not precluded from reinstating the mortgage at a later date. DOB receives copies of notices to cure and foreclosure sale details from the lender. Limits right-to-cure to 10 times in life of a mortgage.

Senate Bill:

SECTION 7. Specifics content of the notice in a form. Stops fees from accumulating during 90-day cooling off period. DOB receives copies of notices to cure and foreclosure sale details from the lender. Allows DOB to set right-to-cure fees.

SECTION 8. Establishes that the right-to-cure exists and may be utilized once during any five year period unless loan is accelerated. If accelerated then no limitation on right-to-cure.

G. Mortgage Company Regulation

House Bill:

SECTION 10. Amends current non-bank mortgage lender statute to add duties and reporting requirements by non-bank lenders doing more than 50 loans. As part of inspections and examinations DOB will rate lenders on lending performance to low or moderate income home borrowers and to affordable housing. DOB then evaluates the lender's performance and provides a written evaluation and descriptive rating. A poor record of performance may result in non-renewal of license.

Senate Bill:

SECTION 9. Amends current non-bank mortgage lender statute to add affirmative obligation, duties and reporting requirements by non-bank lenders doing more than 50 loans. As part of inspections and examinations DOB will rate lenders on lending performance to low or moderate income home borrowers and to affordable housing. DOB then evaluates the lender's performance and provides a written evaluation and descriptive rating. A poor record of performance may result in non-renewal of license.

H. Criminal Penalties
<i>House Bill:</i> SECTION 11. Upgrades crime for mortgage brokers/lenders operating without a license to a felony or misdemeanor. Currently only a misdemeanor.
<i>Senate Bill:</i> SECTION 10, 10A, 10B, 11. Upgrades crime for mortgage brokers/lenders operating without a license to a felony. Establishes that deliberately misleading or omitting certain information in making a loan is fraud, punishable by up to 15 years of jail time and \$500,000 depending on the level of fraud.
I. Advertising of Loan Products
<i>House Bill:</i> Not included.
<i>Section Bill:</i> SECTION 6. Provides that advertising of mortgage loan products needs to include consumer warning and sufficient information or the advertising is deemed an unfair and deceptive act pursuant to CH. 93A and is a criminal offense.
J. Licenses of Loan Originators
<i>House Bill:</i> SECTION 12. Any entity or person originating a mortgage loan in the commonwealth must be licensed (excludes certain banks or other exempt entities). Sets forth licensing procedures similar to CH. 255E for mortgage brokers/lenders. Must take a course but does not need to take an exam. Employing entity must comply with DOB data reporting requirements of loan data and defaults. Fee \$500.
<i>Senate Bill:</i> SECTION 10. Any entity or person originating a mortgage loan in the commonwealth must be licensed. Sets forth licensing procedures similar to CH. 255E for mortgage brokers/lenders. Must take a course and pass an exam. Employing entity must comply with DOB data reporting requirements of loan data and defaults. Fee determined by Secretary of A&F.
K. Non-profit Exemption Removal
<i>House Bill:</i> SECTION 9. Removes the non-profit exemption from current licensure law for mortgage brokers/lenders. Holds non-profits to same experience and education requirements as for-profits.
<i>Senate Bill:</i> Not included.
L. Counseling Pilot Program
<i>House Bill:</i> SECTION 13. Foreclosure and mortgage counseling pilot program. Provides state funds for foreclosure counseling in communities with low or moderate income census tracts or communities with high rates of foreclosure. Helps formulate best practice standards for mortgage lending.

<p><i>Senate Bill:</i> Not included.</p>
<p>M. Foreclosure Database</p>
<p><i>House Bill:</i> SECTION 14. Creates a foreclosure database maintained by DOB.</p>
<p><i>Senate Bill:</i> SECTION 14B. Creates a foreclosure database maintained by DOB.</p>
<p>N. Effective Date of Legislative Provisions</p>
<p><i>House Bill:</i> SECTIONS 15 and 17. Effective date of mortgage counseling and mortgage originator licensure delayed for 2 months and 7 months respectively. All other provisions of the act take effect immediately under an emergency preamble. SECTION 16. 90 day notice to cure takes effect immediately and applies to all mortgages, but it does not affect loans that lenders have accelerated as of the effective date.</p>
<p><i>Senate Bill:</i> SECTION 15. Sections 1 to 9, inclusive, and sections 11 and 14 shall take effect on January 1, 2008. Section 10 shall take effect seven months after the effective date of this act</p>
<p>O. Employer Assisted Housing</p>
<p><i>House Bill:</i> Not included</p>
<p><i>Senate Bill:</i> SECTION 2. Directs DHCD to establish an employer assisted housing program, and authorizes leveraging private money to encourage employers to help employees purchase and rent housing. Employers with programs would be eligible to have DHCD contribute to business' employer assisted housing fund, subject to appropriation.</p>
<p>P. Lender Fee</p>
<p><i>House Bill:</i> SECTIONS 3 and 4. Encourages lenders to revise adjustable or variable rate home loans to fixed terms. Increases current lender fee from ½% to 1% of outstanding loan balance.</p>
<p><i>Senate Bill:</i> Not included.</p>