

The New Massachusetts Foreclosure Law

An Act Preventing Unlawful and Unnecessary Foreclosures

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Amends M.G.L. c.244

Foreclosure and Redemption of Mortgages

- On Aug. 3, 2012 Gov. Patrick signed Ch. 194 of the Acts of 2012
- Sec. 1 adds some requirements re: foreclosure notices in Sec. 14 – assignments must be recorded before notice of sale is sent, recording must be referenced in the notice.
- **Adds Sec. 35B – Requires that borrowers with “CERTAIN MORTGAGES” be considered for loan modifications.**



Definition of “Certain Mortgage Loan”

- Introductory rate for 3 years or less that is 2% lower than the fully indexed rate
- Interest only payments
- Payment option feature
- Loan that did not require full documentation
- Prepayment penalties exceeding a certain amount
- Loan to value ratio of 90% along with a debt to income ratio of 38% or more
- Combined loan to value ratio exceeding 95%

Important Feature of New Law

- If a creditor is unable to determine whether the loan has one or more of the features set forth then it must be considered a “certain mortgage loan” and be subject to the loan modification requirements of the new law.
- While the law primarily covers those loans with predatory features this provision may make more loans eligible for modification.



New Law Requires Good Faith Effort To Negotiate a Commercially Reasonable Alternative to Foreclosure

- Requires that creditors send a Right to Request a Modified Mortgage Loan along with their Notice of the Right to Cure a Mortgage Default under Sec. 35A.
- For “certain mortgage loans” creditor cannot publish a foreclosure sale notice unless it has taken reasonable steps to avoid foreclosure.
- Issue: Are DOB regulations/guidance in compliance with statute?

What Are Reasonable Steps to Avoid Foreclosure

Reasonable steps include:

- An assessment of borrower's ability to make an affordable monthly payment
- A Net Present Value (NPV) analysis to compare what the creditor gets if loan modified with what it gets if it forecloses.
- If the NPV shows creditor will get more with a modification—must offer modification

Modification Process

- Borrower has 30 days to respond to the Right to Request a Mortgage Modification Notice – must provide list of income & debts – problem – no form
- Failure to respond within 30 days shortens right to cure period from 150 days to 90
- Creditor must respond with a written assessment within 30 days of receipt of borrowers request for a loan mod



Other Provisions

- Borrowers may make counteroffer – have substantiating documentation – creditor to respond within 30 days
- DOB regulations at 209 CMR 56.00 lay out what is required of borrowers and creditors to show good faith compliance with statute
- Entire loan modification process should take not more than 150 days
- Right to modify only once every 3 years
- Creditor must file Affidavit of Compliance with Registry of Deeds prior to publishing Notice of a Foreclosure Sale
- Does not apply to MHFA and MHA loans



Safe Harbor For Compliance

- DOB proposed regulations state that if borrowers received a permanent loan modification or a determination that they were not eligible for a modification within 3 years they are not eligible for a loan modification under Sec. 35 B
- This is very concerning



Revisions To Sec. 35A

Amends Sec. 14 regarding foreclosure notices

- Notice of sale is invalid unless at the time the Notice is mailed an assignment or chain of assignments has been recorded
- The recording information for the assignment must be referenced in the Notice



New Sec. 35C

- Requires creditor to show that it has the right to foreclose
- Filing of affidavit of compliance can be relied on by third-party arms-length purchaser
- If property being bought by a non-profit entity creditors cannot limit ownership or occupancy by the borrower



Task Force

- To study prevention of unnecessary vacancies following foreclosure
- To conduct a comprehensive review of existing mediation programs
- Report to legislature by 12/31/13