

SENATE No. 1612

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act protecting homeowners facing foreclosure..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws, as appearing in the 2000 Official Edition, are hereby
2 amended by inserting after Chapter 244 the following chapter: -

3 CHAPTER 244A.

4 PROCEDURAL PROTECTIONS FOR HOMEOWNERS FACING FORECLOSURE

5 Section 1. As used in this chapter the following words shall have the following meanings:

6 "Residential mortgage", an obligation to pay a sum of money, evidenced by a security
7 document and secured by a lien on real property located within the commonwealth, containing
8 four or fewer residential units and shall include such an obligation on a residential condominium
9 unit. No mortgage shall be a residential mortgage within the

10 meaning of this chapter, unless one or more residential units at the property securing the
11 loan is occupied by the residential mortgage debtor as of two weeks prior to the date of the notice
12 sent pursuant to section two.

13 "Residential mortgage lender", any person or other entity who lends money or extends or
14 grants credit and obtains a residential mortgage to assure payment of the debt. The term shall
15 also include the holder at any time of a residential mortgage obligation.

16 "Residential mortgage debtor", a borrower who is obligated to a residential mortgage
17 lender to repay in whole or in part a residential mortgage, and a successor owner of record.

18 Section 2. A residential mortgage lender or its agent shall give the residential mortgage
19 debtor notice of its intention to begin foreclosure proceedings. Failure to provide such notice
20 shall allow for a cause of action to restrain a pending foreclosure and for damages and equitable
21 relief, if applicable, following foreclosure.

22 Such notice shall be in writing, sent to the residential mortgage debtor by registered or
23 certified mail and by regular first class mail to his last known address and, if different, to the
24 residence which is the subject of the residential mortgage.

25 Such notice shall clearly and conspicuously state in plain and simple English:

26 (1) Facts sufficient to identify the mortgage and the parties thereto, including but not
27 limited to, the name of the present holder of the mortgage, the original mortgagee, the lender
28 which intends to foreclose, any servicer or agent acting on his behalf, and the name, address, and
29 working telephone number of the entity responsible for responding to inquiries by the residential
30 mortgage debtor;

31 (2) The nature of the default claimed;

32 (3) The right of the residential mortgage debtor to cure the default as provided in section
33 three, and what performance, including what sum of money, if any, must be tendered to cure the

34 default; provided, however, that in making such statement the lender may advise the debtor that
35 the amounts stated are based on the information contained in the lender's records on the date of
36 the notice, the amounts stated do not reflect items not posted, and adjustments, disbursements, or
37 transactions not reflected in the lender's records at the time of the notice or occurring subsequent
38 to the date of the notice;

39 (4) That the residential mortgage debtor may contact the entity identified in clause (1) for
40 current information concerning what performance must be tendered to cure the default in
41 accordance with the relevant provisions of this chapter;

42 (5) That the residential mortgage debtor may cure the default within sixty days of the date
43 of the notice, pursuant to the provisions of section four, without incurring any obligation for the
44 residential mortgage lender's attorney's fees or costs;

45 (6) That if the default is not cured within sixty days, the residential mortgage debtor may
46 become obligated for the residential mortgage lender's reasonable attorney's fees and costs;

47 (7) The means by which the residential mortgage lender intends to foreclose, if the
48 default is not cured, together with a reasonable estimate of the date on which such foreclosure
49 might occur;

50 (8) That the residential mortgage debtor may be evicted from the property following the
51 foreclosure sale;

52 (9) That the residential mortgage debtor has the following rights:

53 (a) to bring an action in court to seek to prevent or delay the foreclosure sale;

54 (b) to sell the property prior to the foreclosure sale and to use the proceeds to pay off the
55 loan;

56 (c) to redeem the property by paying the total amount due, prior to the foreclosure sale;

57 (d) to approach the residential mortgage lender prior to the foreclosure sale to seek a
58 negotiated agreement to repay the mortgage on terms that are different from or alternative to the
59 original terms of the mortgage including, but not limited to, copies of the mortgage, note,
60 disclosure statement, and payment records;

61 (10) That the residential mortgage debtor may have the following additional rights,
62 depending on the terms of the residential mortgage:

63 (a) to transfer the property to a third party subject to the security interest held by the
64 residential mortgage lender and the transferee's right, if any, to cure the default;

65 (b) to refinance the obligation by obtaining a loan which would fully repay the residential
66 mortgage debtor; and

67 (c) to voluntarily grant a deed to the residential mortgage lender in lieu of foreclosure.

68 The residential mortgage lender shall respond in writing to any request for documents
69 made pursuant to this section within ten business days.

70 The commissioner of banking shall promulgate a form notice which meets the
71 requirements of this section. Use of such a form notice, if it does not contain materially
72 inaccurate information, shall constitute compliance with this section.

73 The notice shall contain the following declaration on the first page in Spanish, in any
74 other language which the lender knows is the debtor's primary language, and any other language
75 deemed appropriate by the commissioner of banking: "This is an important notice concerning
76 your right to live in your home. Have it translated at once."

77 Section 3. Notwithstanding the provisions of any other law to the contrary, at any time up
78 to one business day prior to the scheduled or actual time of bidding at a sale to foreclose a
79 residential mortgage, the residential mortgage debtor or anyone acting on his behalf may cure the
80 default, prevent foreclosure, and avoid acceleration by paying the mortgage lender all sums
81 which would then be due under the residential mortgage if no acceleration had occurred; curing
82 any default of any other covenant or agreement of which the residential mortgage debtor had
83 notice pursuant to section two; paying all expenses incurred in enforcing the residential mortgage
84 as provided in section four: and performing any non-monetary obligations required under the
85 residential mortgage. Payment shall not be refused if it is in the form of a cashier's check,
86 certified check, treasurer's check, money order, or cash.

87 Cure of a default pursuant to this section shall restore the residential mortgage debtor to
88 the same position as if the default had not occurred.

89 Section 4. If a residential mortgage contract provides for the payment of attorney's fees
90 and costs in the event of a default, such fees and costs shall be reasonable and shall not be
91 charged as a percentage of the amounts due under the mortgage. No residential mortgage lender
92 may charge attorney's fees or costs for legal expenses incurred prior to the expiration of the sixty
93 day period provided in section two, if the residential mortgage debtor cures the default within
94 such sixty day period.

95 Section 5. Within ten days following the foreclosure sale, the residential mortgage lender
96 shall provide to the residential mortgage debtor a notice, which clearly and conspicuously states
97 the
98 highest bid price and the identity of the highest bidder.

99 Within ten days of the filing or recording of the foreclosure deed, the residential
100 mortgage lender shall provide to the residential mortgage debtor a notice, which clearly and
101 conspicuously states:

102 (1) The date, time, and nature of the foreclosure sale and the name of the purchaser;

103 (2) The amount of money, if any, received by the residential mortgage lender following
104 the foreclosure;

105 (3) The distribution of the proceeds of sale with an accounting of any costs or fees
106 associated with the sale, together with a statement of the residential mortgage debtor's right to
107 claim against or dispute the proposed distribution;

108 (4) The right of the debtor to obtain copies of documents related to the sale or disposition,
109 including, but not limited to copies of the record of sale or disposition, title records, and an
110 accounting of the residential mortgage lender's claim, together with a description of how those
111 records may be obtained; and

112 (5) The name, address, and telephone number of the entity to which inquiries, requests
113 for record or disputes concerning disposition of the proceeds of sale may be addressed.

114 Each notice shall be in writing, sent to the residential mortgage debtor by registered or
115 certified mail and by regular first class mail to his last known address and, if different, to the
116 residence which is the subject of the residential mortgage.

117 The commissioner of banking shall promulgate a form notice which meets the
118 requirements of this section. Use of such a form notice, if it does not contain materially
119 inaccurate information, shall constitute compliance with this section.

120 The notice shall contain the following declaration on the first page in Spanish, in any
121 other language which the lender knows is the debtor's primary language, and any other language
122 deemed appropriate by the commissioner of banking: "This is an important notice concerning
123 your right to live in your home. Have it translated at once."

124 Section 6. No foreclosure subject to the provisions of this chapter shall take place within
125 one hundred and eighty days of the sending of the notice required by section two, absent a court
126 order. The superior court shall have jurisdiction to issue any such order following reasonable
127 notice to the residential mortgage debtor and opportunity to be heard. Such order shall issue upon
128 a showing of clear and convincing evidence by the residential mortgage lender that justice
129 requires it and after notice to the residential mortgage debtor and a full evidentiary hearing.

130 Section 7. In addition to any other remedies provided in this chapter, failure of a
131 residential mortgage lender to comply with any provision of this chapter shall allow for a cause
132 of action for total damages under section nine of chapter ninety-three A of not less than five
133 hundred dollars.

134 Section 8. The amount of judgment for a deficiency brought under the provisions of
135 section seventeen A of chapter two hundred and forty-four on a residential mortgage shall be the

136 debt plus any liens senior to the foreclosing mortgagee's interest less the higher of either the sale
137 price at the foreclosure or the fair market value of the property at the time of the foreclosure. The
138 price obtained at the foreclosure sale may be admitted as evidence of the fair market value;
139 provided, however, that such sale price shall not be conclusive evidence of the fair market value;
140 and provided further that the court shall make an independent determination of fair market value
141 based on all the evidence.

142 Section 9. Upon foreclosure of a residential mortgage, which is sold or otherwise
143 acquired by the residential mortgage lender, its agents, assigns, or any entity other than a bona
144 fide third party purchaser for value, the entity or person acquiring the mortgage shall be required
145 to account to the residential mortgage debtor for any proceeds of a resale which takes place
146 within the eighteen months following the original sale or disposition.

147 Any entity or person with an obligation under this section:

148 (1) may retain all sums advanced to acquire the property from the proceeds of the resale,
149 plus any sums reasonably expended to maintain, repair, or improve the property, plus twenty-five
150 percent of the balance of the proceeds. Any surplus proceeds must be returned to the residential
151 mortgage debtor;

152 (2) must make reasonable efforts to locate any person entitled to a refund under this
153 section, including, but not limited to mailing to that person's last known address and a check of
154 telephone listing in the community where the debtor last lived;

155 (3) shall provide notice to the commissioner of banking of any refunds under this section
156 which remain unpaid for more than ninety days.

157 The commissioner of banking shall maintain any records of unpaid refunds under this
158 section by the name of the person or persons entitled to the refund for at least two years
159 following notice of the unpaid refund. The commissioner of banking shall publish, at least two
160 times yearly, the names of those persons entitled to refunds.

161 Section 10. The provisions of this chapter shall not be waived, and any agreement to
162 waive them or covenant not to rely upon them shall be void.