

SENATE, No. 2179

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 amended
2 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
9 condominium 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
12 the notice 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
15 shall 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
18 record.

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

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

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

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

32 (2) The nature of the default claimed;

33 (3) The right of the residential mortgage debtor to cure the default as provided in section
34 three, and what performance, including what sum of money, if any, must be tendered to
35 cure the default; provided, however, that in making such statement the lender may advise
36 the debtor that the amounts stated are based on the information contained in the lender's
37 records on the date of the notice, the amounts stated do not reflect items not posted, and
38 adjustments, disbursements, or transactions not reflected in the lender's records at the
39 time of the notice or occurring subsequent to the date of the notice;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 105 (1) The date, time, and nature of the foreclosure sale and the name of the purchaser;
- 106 (2) The amount of money, if any, received by the residential mortgage lender following
107 the foreclosure;
- 108 (3) The distribution of the proceeds of sale with an accounting of any costs or fees
109 associated with the sale, together with a statement of the residential mortgage debtor's
110 right to claim against or dispute the proposed distribution;
- 111 (4) The right of the debtor to obtain copies of documents related to the sale or disposition,
112 including, but not limited to copies of the record of sale or disposition, title records, and
113 an accounting of the residential mortgage lender's claim, together with a description of
114 how those records may be obtained; and
- 115 (5) The name, address, and telephone number of the entity to which inquiries, requests
116 for record or disputes concerning disposition of the proceeds of sale may be addressed.

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

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

123 The notice shall contain the following declaration on the first page in Spanish, in any
124 other language which the lender knows is the debtor's primary language, and any other

125 language deemed appropriate by the commissioner of banking: "This is an important
126 notice concerning your right to live in your home. Have it translated at once."

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

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

138 Section 8. The amount of judgment for a deficiency brought under the provisions of
139 section seventeen A of chapter two hundred and forty-four on a residential mortgage shall
140 be the debt plus any liens senior to the foreclosing mortgagee's interest less the higher of
141 either the sale price at the foreclosure or the fair market value of the property at the time
142 of the foreclosure. The price obtained at the foreclosure sale may be admitted as evidence
143 of the fair market value; provided, however, that such sale price shall not be conclusive
144 evidence of the fair market value; and provided further that the court shall make an
145 independent determination of fair market value based on all the evidence.

146 Section 9. Upon foreclosure of a residential mortgage, which is sold or otherwise
147 acquired by the residential mortgage lender, its agents, assigns, or any entity other than a

148 bona fide third party purchaser for value, the entity or person acquiring the mortgage
149 shall be required to account to the residential mortgage debtor for any proceeds of a
150 resale which takes place within the eighteen months following the original sale or
151 disposition.

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

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

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

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

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

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