LEGISLATIVE SUMMARY: AN ACT TO REQUIRE COMMERCIALLY REASONABLE EFFORTS TO AVOID FORECLOSURE

Sponsors:
Attorney General Martha Coakley, Representative Steven Walsh, Senator Susan Tucker

An Act to Require Commercially Reasonable Efforts to Avoid Foreclosure is a bill aimed at putting forth the best interests of creditors, investors, borrowers and taxpayers. The legislation requires that creditors undertake commercially reasonable steps to avoid foreclosure, thereby ensuring that creditors maximize the value of their loans and at the same time, protect homeowners by avoiding unnecessary foreclosures.

This legislation applies to mortgage loans securing homes that are owner-occupied, not investor properties or second homes. In addition to applying only to loans on principal residences, it also only applies to loans with certain risky features, such as interest-only loans, payment option adjustable rate mortgage (ARM) loans, loans with short term introductory interest rates, or high Loan-to-Value or Debt-to-Income loans.

The bill requires that a creditor holding a qualified mortgage loan, secured by an owner-occupied residence, must, prior to foreclosure, take the following commercially reasonable steps to avoid foreclosure:

(1) Analyze the borrower's monthly payment;
(2) Analyze, according to a "net present value test", whether offering the borrower a loan modification at the affordable monthly mortgage payment is more valuable to the creditor than the losses it will incur upon foreclosure; and
(3) Take into account the interests of the creditor, investors and taxpayers, in the event the creditor has received federal or state money.

Creditors will be deemed to be in compliance with this legislation if they offer an affordable loan modification whenever it is shown that under the net present value test, a loan modification is more profitable than foreclosure.

In those instances where a loan modification is more profitable to the creditor, the creditor must identify what an affordable monthly payment would include, and in an effort to achieve it: reduce the interest rate, reduce the principal amount owed, or increase in amortization period within the limits proscribed in the legislation.

A violation of this legislation will constitute a violation of G. L. c. 93A, § 2(a).