

## 209 CMR 56:00 RIGHT TO CURE A MORTGAGE DEFAULT – November 29, 2011

### Section

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### **56.01: Authority, Purpose and Scope**

- (1) Authority: 209 CMR 56.00 is issued pursuant to M.G.L. c. 244, § 35A.
- (2) Purpose and Scope: The purpose of 209 CMR 56.00 is to provide a standardized process for the Right to Cure notification for lenders and/or servicers to inform borrowers of a mortgage default, and when disclosing repayment options in order to prevent a foreclosure. Additionally, 209 CMR 56.00 includes the form to be used by the mortgagee or mortgage servicer when a Right to Cure notice is delivered to a borrower.

### **56.02: Definitions**

For purposes of 209 CMR 56.00, the following definitions apply:

Borrower: a mortgagor of a mortgage loan.

Borrower's Representative: an employee or contractor of a nonprofit organization certified by Housing and Urban Development, an employee or contractor of a foreclosure education center pursuant to ~~s~~Section 16 of Chapter 206 of the Acts of 2007 or an employee or contractor of a counseling agency receiving a Collaborative Seal of Approval from the Massachusetts Homeownership Collaborative administered by the Citizens' Housing and Planning Association.

Creditor: a person or entity that holds or controls, partially, wholly, indirectly, directly, or in a nominee capacity, a mortgage loan securing a residential property, including, without limitation, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder, Mortgage Electronic Registration System or mortgage servicer, including the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. "Creditor" shall also include any servant, employee or agent of a creditor.

Good Faith Effort to Negotiate a Commercially Reasonable Alternative to Foreclosure: the creditor must consider : (i) an assessment of the borrower's current circumstances including, without limitation, the borrower's current income, debts and obligations; (ii) the net present value of receiving payments pursuant to a modified mortgage loan as compared to the anticipated net recovery following foreclosure; and (iii) the interests of the creditor; provided however, that a creditor shall not be prohibited from considering other factors.

Modified Mortgage Loan: a mortgage modified from its original terms including, but not limited to, a loan modified pursuant to one of the following: (i) the Home Affordable Modification Program; (ii) the Federal Deposit Insurance Corporation's Loan Modification Program; (iii) for any modification program that a lender uses which is based on accepted principles and the safety and soundness of the institution and recognized by the National Credit Union Administration, the Division of Banks or any other instrumentality of the Commonwealth; (iv) the Federal Housing Agency; or (v) a similar federal refinance plan.

Mortgagee: an entity to whom property is mortgaged, the mortgage creditor or lender including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent, servant or employee of the mortgagee or any successor in interest or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

Mortgage Loan: a loan to a natural person made primarily for personal, family or household purposes secured wholly or partially by a mortgage on residential property.

Mortgage Servicer: an entity which administers or at any point administered the mortgage; provided, however that such administration shall include, but not be limited to, calculating principal and interest, collecting payments from the mortgagor, acting as escrow agent or foreclosing in the event of a default.

Residential Property: real property located in the Commonwealth having thereon a dwelling house with accommodations for four or less separate households and occupied, or to be occupied, in whole or in part by the obligor on the mortgage debt; provided, however, that residential property shall be limited to the principal residence of a person; provided further, that residential property shall not include an investment property or residence other than a primary residence; and provided further, that residential property shall not include residential property taken in whole or in part as collateral for a commercial loan.

### **56.03: Right to Cure Notice: Content Requirements**

(1) 150 Day Right to Cure Notice. A mortgagee must send a 150 Day Right to Cure Notice that strictly conforms to the “(150 Day) Right to Cure Your Mortgage Default” form, under 209 CMR 56.04, unless it has met the requirements for a ~~R~~ight to ~~e~~Cure ~~N~~otice lasting less than 150 days, described under 209 CMR 56.03(2).

(2) 90 Day Right to Cure Notice. In accordance with M.G.L.c. 244 § 35A (b), a mortgagee may send a 90 Day Right to Cure Notice that strictly conforms to the “(90 Day) Right to Cure Your Mortgage Default” form, provided under 56.04, if it meets the following requirements:

- (a) demonstrates a good faith effort to resolve the mortgage default by certifying:
  - (i) it has engaged in a good faith effort to negotiate a commercially reasonable alternative to foreclosure;
  - (ii) it has been involved in at least one meeting, either in person or by telephone, between a creditor’s representative and the borrower, the borrower’s attorney or the borrower’s representative and the creditor has provided the borrower by first class and certified mail with documentation of a good faith effort 10 days prior to said meeting; and
  - (iii) after such meeting, described under (ii), the creditor must be able to evidence that the borrower and the creditor were not successful in resolving their dispute;

Or:

(b) demonstrates the borrower’s failure to respond within 30 days to any mailed communications offering to negotiate a commercially reasonable alternative to foreclosure, as set forth under 209 CMR 56.03(a). Such failure to respond by the borrower shall result in the borrower forfeiting his right to a 150 day right to cure period and shall be subject to a right to cure period lasting 90 days.

(c) A mortgagee must demonstrate compliance with 209 CMR 56.03 (a) or (b), when opting to send a right to cure notice lasting less than 150 days, by including a copy of the compliance affidavit, required under M.G.L. c. 244 § 35A (f), with said notice to borrower.

(3) Borrower eligibility. The right to cure a default shall be granted to a borrower once during any three (3) year period, regardless of mortgage holder.

(4) Delivery. The mortgagee or mortgage servicer should deliver the Right to Cure Notice to the mortgagor by:

- (a) hand-delivery; or
- (b) by first-class and certified mail or similar service provided by a private carrier to the mortgagor at the address last known to the mortgagee or anyone holding thereunder.

(5) Authorization to Send the Right to Cure Notice. A mortgagee may not send the Right to Cure Notice under 209 CMR 56.03 (1) or (2), unless it ~~has in its possession proof that it is~~ the holder of the mortgage or is authorized by the holder of the mortgage to ~~foreclose/collect on the default~~.

~~(6) Authorization to Foreclose. The borrower may request from a foreclosing mortgagee all documentation evidencing the legal authority of the mortgagee to foreclose.~~

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~~(7)(6) Authorization to Accelerate, Foreclose or Seize the Home through Foreclosure. The mortgagee or anyone holding thereunder, may take steps to terminate the mortgagor's ownership in the property by acceleration of the mortgage, a foreclosure proceeding or other action to seize the home, if the mortgagor does not cure the default by the date specified on the Right to Cure Notice. Furthermore, in accordance with M.G.L. c. 244 § 35A, subsection (j), the mortgagee, or anyone holding thereunder, shall file a copy of the Right to Cure notice and an affidavit demonstrating compliance with M.G.L. c. 244 s.35A, in any action or proceeding to foreclose on such residential property.~~

~~(7) Enforcement of the Mandatory "Right to Cure Your Mortgage Default" Notice. The (150/90) Day "Right to Cure Your Mortgage Default" notice set forth in 209 CMR 56.04 may be used on a voluntary basis until [XX/XX/XXXX]. The notice will become mandatory on [XX/XX/XXXX], and must strictly conform with 209 CMR 56.04.~~

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**56.04: In accordance with 209 CMR 56.03, the (150 / 90 Day) "Right to Cure Your Mortgage Default" ~~form~~ notice must strictly conform to the following:**

- ❖ ***This is an important notice concerning your right to live in your home. Have it translated at once.***
- ❖ ***Esta carta explica sus derechos legales para permanecer en su propiedad de vivienda. Por favor traduzca esta notificacion inmediatamente.***
- ❖ ***Esta é uma observação importante a respeito de sua direita viver em seu repouso. Tem traduzida imediatamente.***
- ❖ ***Este é um aviso importante em relação ao seu direito de morar na sua residência. Por favor, tem traduzido imediatamente.***
- ❖ ***C'est une notification importante concernant votre droit de vivre chez vous. Faites-la traduire immédiatement.***
- ❖ ***这是一则关于您居住权的重要通知，请儘快安排翻译。***

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[150 / 90 Day] Right to Cure Your Mortgage Default

(Date)

[POSTAL DELIVERY METHOD]

[Recipient Name]

[Title]

[Company Name]

[Street Address]

[City, ST ZIP Code]

RE: ~~Your mortgage loan~~ [PROPERTY ADDRESS]; ~~loan~~ [ACCOUNT NO.] with [LENDER OR MORTGAGEE SERVICER]; [MORTGAGE BROKER/LOAN ORIGINATOR: if applicable]

To NAME OF BORROWER/S:

We are contacting you because you did not make your monthly loan payment[s] due on [MORTGAGE PAYMENT DUE DATE/S] to [LENDER OR MORTGAGEE SERVICER]. You must pay the past due balance of [PAYABLE AMOUNT] on or before [150 / 90 DAY EXPIRATION DATE], which is [NUMBER OF CURING DAYS] days from the date of this letter. This amount equals your past due mortgage payment[s], ~~accumulated interest, plus applicable unpaid escrow contributions due on [SPECIFY DELINQUENCY DATES], and subsequent payments, plus late charges as well as fees.~~ as specified below:

- [UNPAID MORTGAGE PAYMENTS AND DELINQUENCY DATES]
- [INTEREST ACCRUED/PER DIEM INTEREST]
- [APPLICABLE UNPAID ESCROW CONTRIBUTIONS]
- [OTHER LATE CHARGES OR FEES]

Make your payment directly to:

[INCLUDE THE NAME OF PAYMENT CONTACT, DEPARTMENT AND ADDRESS at the LENDER/MORTGAGEE SERVICER'S LOCATION].

Please consider the following:

- if you pay your past due balance by [150 / 90 DAY: EXPIRATION DATE], your account will be considered up-to-date and you can continue to make your regular monthly payments;
- you should contact the Homeownership Preservation Foundation (888-995-HOPE) to speak with counselors who can provide assistance and may be able to help you work with your lender to avoid foreclosure. [There may be other homeownership assistance available through your lender or servicer.](#)
- you may also contact the Division of Banks (617-956-1500) or visit [www.mass.gov/foreclosures](http://www.mass.gov/foreclosures) to find a foreclosure prevention program near you;
- after [150 / 90 DAY: EXPIRATION DATE], you can still avoid foreclosure by paying the total past due balance before a foreclosure sale takes place. There may also be other ways to avoid foreclosure, such as selling your property, refinancing your loan, or voluntarily transferring ownership of the property to [LENDER OR MORTGAGEE SERVICER].

**If you do not pay the total past due balance [PAST DUE BALANCE AMOUNT] by [150 / 90 DAY: EXPIRATION DATE], you may be evicted from your home after a foreclosure sale. If [LENDER/MORTGAGEE SERVICER] forecloses on this property, it means ~~they~~ the lender/mortgage servicer or a new buyer will take over the ownership of your home.**

~~[LENDER OR MORTGAGE SERVICER] has the legal authority to foreclose on your property and will provide you with proof of authority to foreclose upon your request.~~

If you have questions, or disagree with the calculation of your past due balance, please contact [NAME OF CONTACT AT THE LENDER/MORTGAGEE SERVICER] and [INCLUDE NAME, LOCAL OR TOLL FREE TELEPHONE NUMBER, and EXTENSION NUMBER].

Sincerely,

**[Your Name]**

REGULATORY AUTHORITY  
M.G.L. c. 244, § 35A.

