

# Residential Foreclosures in Massachusetts

## A Brief Overview of the Foreclosure Process

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## Some Players

- **Mortgage originator:** The lender on the note & mortgage is the originator. If the originator never sells the loan it is still the holder.
- **Mortgage holder:** Often times the originator sells the loan on the secondary market. The holder is the one who has the right to foreclose.
- **Mortgage servicer:** The servicer collects payments and communicates with the borrower on behalf of the holder. Servicers pay and taxes and insurance, and also negotiates any modification or workouts.
- **Foreclosing attorney:** Attorney hired by holder or servicer to accelerate the debt and conduct the foreclosure. Foreclosure attorneys' fees are often passed on to the borrower.

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## Laws and Authorities

- In Massachusetts, foreclosures are governed by **Massachusetts General Laws ch. 244**
- Foreclosures are also governed by the terms of the mortgage contract
- Foreclosures are also governed by other investor guidelines, such as Fannie Mae, Freddie Mac, VA, etc.

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## General Process

- Foreclosure can be done by **entry** or by **sale**
- Lenders use a “belt & suspenders” approach: they start both sale and entry process, then if the sale doesn’t work use entry
  - entry is not completed until 3 years later
- Most residential foreclosures in Massachusetts are conducted by sale

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## Foreclosure by Sale

How does it work?

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## Default & Right to Cure Notice

- Homeowner falls behind in mortgage payments (“default”)
  - Homeowner may get telephone calls and/or letters from the lender, asking for the money that is owed
- Lender sends a **right to cure notice** giving the homeowner 150 days\* to pay all money owed.
  - During that period the lender cannot accrue any fees or penalties except late fees
  - During this time, lender must also work with the homeowner to try to work out the problem
  - A homeowner only gets the right to cure once every three years

\*A new law extends the cure period from 90 to 150 days for notices sent after August 7, 2010. However, if the lender makes a ‘good faith’ effort to negotiate an alternative to foreclosure, the cure period is 90 days.

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## Acceleration

- If the debt is not cured, the lender will accelerate the note and send an **acceleration notice**, meaning that the entire loan is due
  - This is required by the mortgage or note, not by the foreclosure laws
  - Usually sent in the form of a letter

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## Deficiency Notice

- If the lender wants to try to collect a deficiency after the sale, it must send written notice at least 21 days before the sale
  - Notice must be sent by registered or certified mail at least 21 days before the foreclosure sale
  - This notice may be sent at the same time as the notice of sale

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## Servicemembers Civil Relief Act

- Lender must file a complaint under the Servicemembers Civil Relief Act in Land Court or Superior Court
  - Complaint states that lender intends to foreclose
- Borrower must be served a copy of the complaint and has 20 days to answer
- The **ONLY** defense to the complaint is that the borrower is in the military service

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## Publication

- Lender must publish notice of sale in the newspaper, including:
  - identification of mortgage
  - date, place, time of sale
  - description of property
- Notice must be published once a week for 3 consecutive weeks before the sale, beginning at least 21 days before sale

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## Notice of Foreclosure Sale

- Lender must send Notice of Foreclosure Sale via certified or registered mail at least 14 days before the foreclosure sale
- Notice must contain the name of the party that holds the mortgage and is conducting the sale

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## Foreclosure Sale and Recordation

- Actual sale must take place at the date, time and place specified in notice
- Sale must be conducted by a licensed auctioneer
- High bidder wins
- Parties execute a Foreclosure Deed
  - deed should be recorded at Registry of Deeds

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## After the foreclosure

- Any excess proceeds from foreclosure sale must be paid to the homeowner
- The lender must send the homeowner an "accounting" that shows how the foreclosure proceeds were spent
- If foreclosure sale did not pay off lender, lender may pursue borrower for a 'deficiency judgment' (if they sent the notice before the sale)
- New owner has the right to evict the homeowner, but must go through court process

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## Questions?



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