

## Chapter 258 of the Acts of 2010

### AN ACT RELATIVE TO MORTGAGE FORECLOSURES.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to protect forthwith the citizens and neighborhoods of the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

**SECTION 1.** The second paragraph of subsection (e) of Clause Third of section 5 of chapter 59 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following sentence:- In any city or town that accepts this paragraph, any real estate owned by, or held in trust for, a charitable organization for the purpose of creating community housing, as defined in section 2 of chapter 44B, that was purchased from an entity that acquired the property pursuant to section 14 of chapter 244 shall be exempt until such real estate is leased, rented or otherwise disposed of, but not for more than 7 years after such purchase.

**SECTION 2.** Chapter 167E of the General Laws is hereby amended by inserting after section 7 the following section:-

Section 7A. (a) As used in this section the following word shall, unless the context clearly requires otherwise, have the following meaning:-

“Mortgagor”, an applicant for a reverse mortgage who: (1) has a gross income of less than 50 percent of the area median income, as periodically determined by the United States Department of Housing and Urban Development; and (2) possesses assets, excluding a primary residence, valued at less than \$120,000.

(b) No mortgagee shall make a reverse mortgage loan pursuant to section 7 to a mortgagor unless: (i) the mortgagor affirmatively opts in writing for the reverse mortgage; and (ii) at or before the closing of any reverse mortgage loan the mortgagee has received written certification from a counselor with a third-party organization that the mortgagor has received counseling in person relative to the appropriateness of the loan transaction from the third party organization and has completed an approved counseling program offered by the third party organization; provided, however, that the third party organization shall have been approved by the executive office of elder affairs for purposes of such counseling.

(c) A reverse mortgage executed with a borrower that has not received counseling by a third party approved by the executive office of elder affairs shall render the terms of the reverse mortgage unenforceable. The commissioner shall adopt regulations to administer and implement this section.

**SECTION 3.** Chapter 171 of the General Laws is hereby amended by inserting after section 65C the following section:-

Section 65C½. (a) As used in this section the following word shall, unless the context clearly requires otherwise, have the following meaning:

“Mortgagor”, an applicant for a reverse mortgage who: (1) has a gross income of less than 50 per cent of the area median income, as periodically determined by the United States Department of Housing and Urban Development; and (2) possesses assets, excluding a primary residence, valued at less than \$120,000.

(b) No mortgagee shall make a reverse mortgage loan pursuant to section 65C to a mortgagor unless: (i) the mortgagor affirmatively opts in writing for the reverse mortgage; and (ii) at or before the closing of any reverse mortgage loan the mortgagee has received written certification from a counselor with a third-party organization that the mortgagor has received counseling in person relative to the appropriateness of the loan transaction from the third party organization and has completed an approved counseling program offered by the third party organization; provided, however, that the third party organization shall have been approved by the executive office of elder affairs for purposes of such counseling.

(c) A reverse mortgage executed with a borrower that has not received counseling by a third party approved by the executive office of elder affairs shall render the terms of the reverse mortgage unenforceable. The commissioner shall adopt regulations to administer and implement this section.

**SECTION 4.** Chapter 183 of the General Laws is hereby amended by striking out section 67, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

Section 67. No mortgagee shall make a reverse mortgage loan on residential property except in accordance with sections 7 and 7A of chapter 167E. For the purposes of this section, the term “residential property” shall mean a 1 to 4 family dwelling owned and occupied in whole or in part by the mortgagor and located in the commonwealth.

**SECTION 5.** Section 13A of chapter 186 of the General Laws, as so appearing, is hereby amended by inserting after the word “law”, in line 6, the following words:- and the foreclosing entity shall assume the lease and rental subsidy contract with the rental subsidy administrator.

**SECTION 6.** The General Laws are hereby amended by inserting after chapter 186 the following chapter:-

CHAPTER 186A.  
TENANT PROTECTIONS IN FORECLOSED PROPERTIES.

Section 1. (a) As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Bona fide lease or bona fide tenancy”, a lease or tenancy shall not be considered bona fide unless: (1) the mortgagor, or the child, spouse or parent of the mortgagor under the contract, is not the tenant; and (2) the lease or tenancy was the result of an arms-length transaction.

“Entity”, a business organization, or any other kind of organization including, without limitation, a corporation, partnership, trust, limited liability corporation, limited liability partnership, joint venture, sole proprietorship or any other category of organization and any employee, agent, servant or other representative of such entity.

“Eviction”, an action, without limitation, by a foreclosing owner of a housing accommodation which is intended to actually or constructively evict a tenant or otherwise compel a tenant to vacate such housing accommodation.

“Foreclosing owner”, an entity that holds title in any capacity, directly or indirectly, without limitation, whether in its own name, as trustee or as beneficiary, to a housing accommodation that has been foreclosed upon and either: (1) held or owned a mortgage or other security interest in the housing accommodation at any point prior to the foreclosure of the housing accommodation or is the subsidiary, parent, trustee, or agent thereof; or (2) is an institutional mortgagee that acquires or holds title to the housing accommodation within 3 years of the filing of a foreclosure deed on the housing accommodation; or (3) is the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

“Foreclosure”, a legal proceeding to terminate a mortgagor's interest in property, instituted by the mortgagee, and regulated under chapter 244.

“Housing accommodation”, a building or structure, or part thereof or land appurtenant thereto, and any other real or personal property used, rented or offered for rent for living or dwelling purposes, together with all services connected with the use or occupancy of such property.

“Institutional mortgagee”, an entity or an entity which is the subsidiary, parent, trustee or agent thereof or otherwise related to such entity, that holds or owns mortgages or other security interests in 3 or more housing accommodations or that acts as a mortgage servicer of 3 or more mortgages of housing accommodations.

“Just cause”, 1 of the following: (1) the tenant has failed to pay the rent in effect prior to the foreclosure or failed to pay use and occupancy charges, as long as the foreclosing owner notified the tenant in writing of the amount of rent or the amount of use and occupancy that was to be paid and to whom it was to be paid; (2) the tenant has materially violated an obligation or covenant of the tenancy or occupancy, other than the obligation to surrender possession upon proper notice, and has failed to cure such violation within 30 days after having received written notice thereof from the foreclosing owner; (3) the tenant is committing a nuisance in the unit, is permitting a nuisance to exist in the unit, is causing substantial damage to the unit or is creating a substantial interference with the quiet enjoyment of other occupants; (4) the tenant is using or permitting the unit to be used for any illegal purpose; (5) the tenant who had a written bona fide lease or other rental agreement which terminated, on or after August 10, 2010, has refused, after written request or demand by the foreclosing owner, to execute a written extension or renewal thereof for a further term of like duration and in such terms that are not inconsistent with this chapter; (6) the tenant has refused the foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or improvement required by the laws of the United States, the commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of showing the unit to a prospective purchaser or mortgagee provided. Nothing in the section shall limit the rights of a third-party owner to evict a tenant at the expiration of an existing lease.

“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 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.

“Tenant”, a person or group of persons who at the time of foreclosure is entitled to occupy a housing accommodation pursuant to a bona fide lease or tenancy or a tenancy at will. A person who moves

into the housing accommodation owned by the foreclosing owner, subsequent to the foreclosure sale, without the express written permission of the foreclosing owner shall not be considered a tenant under this chapter.

“Unit” or “residential unit”, the room or group of rooms within a housing accommodation which is used or intended for use as a residence by 1 household.

Section 2. Notwithstanding any general or special law to the contrary, a foreclosing owner shall not evict a tenant except for just cause or unless a binding purchase and sale agreement has been executed for a bona fide third party to purchase the housing accommodation from a foreclosing owner.

Section 3. Within 30 days of the foreclosure, the foreclosing owner shall post in a prominent location in the building in which the rental housing unit is located a written notice stating the names, addresses, telephone numbers and telephone contact information of the foreclosing owner, the building manager or other representative of the foreclosing owner responsible for the management of such building and stating the address to which rent and use and occupancy charges shall be sent. This requirement shall be satisfied if the foreclosing owner or someone acting on his behalf has: (i) posted in a prominent location in the building; (ii) mailed by first class mail to each unit; (iii) and slid under the door of each unit in the building a document stating the names, addresses, and telephone contact information of the foreclosing owner, the building manager or other representative of the foreclosing owner responsible for the management of such building and stating the address to which rent and use and occupancy charges shall be sent.

A foreclosing owner shall not evict a tenant for actions that constitute just cause unless the foreclosing owner has delivered to each tenant at the time of delivery of written notice pursuant to this section, a written disclosure of the tenant’s right to a court hearing prior to eviction.

Section 4. (a) A foreclosing owner shall not evict a tenant for the following actions that constitute just cause until 30 days after the notice required by section 3 is posted and delivered: (i) the tenant has failed to pay the rent in effect prior to the foreclosure or failed to pay use and occupancy charges, as long as the foreclosing owner notified the tenant in writing of the amount of rent or the amount of use and occupancy that was to be paid and to whom it was to be paid; (ii) the tenant has materially violated an obligation or covenant of the tenancy or occupancy, other than the obligation to surrender possession upon proper notice, and has failed to cure such violation within 30 days after having received written notice thereof from the foreclosing owner; and (iii) the tenant who had a written bona fide lease or other rental agreement which terminated, on or after August 10, 2010, has refused, after written request or demand by the foreclosing owner, to execute a written extension or renewal thereof for a further term of like duration and in such terms that are not inconsistent with this chapter.

(b) A foreclosing owner shall not evict a tenant for the following actions that constitute just cause until the notice required by section 3 is posted and delivered: (i) the tenant is committing a nuisance in the unit, is permitting a nuisance to exist in the unit, is causing substantial damage to the unit or is creating a substantial interference with the quiet enjoyment of other occupants; (ii) the tenant is using or permitting the unit to be used for any illegal purpose; and (iii) the tenant has refused the foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or improvement required by the laws of the United States, the commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of showing the unit to a prospective purchaser or mortgagee provided.

Section 5. If a foreclosing owner disagrees with the amount of rent or use and occupancy rates that a tenant-at-will or lessee pays to the foreclosing owner, the foreclosing owner may bring a claim in district or superior court or the housing court to claim that the rent is unreasonable and set a new use

and occupancy rate. A bona fide lease between the foreclosed-upon owner and the lessee or proof of rental payment to the foreclosed-upon owner shall be presumed reasonable.

Section 6. A foreclosing owner that evicts a tenant in violation of this chapter or any ordinance or by-law adopted pursuant to this chapter, shall be punished by a fine of not less than \$5,000. Each such illegal eviction shall constitute a separate offense.

The district and superior courts and the housing court shall have jurisdiction over an action arising from a violation of this chapter or of any ordinance or by-law adopted pursuant to this chapter, and shall have jurisdiction in equity to restrain any such violation. It shall be a defense to an eviction proceeding that the foreclosing owner attempted to evict a tenant in violation of this chapter or any ordinance or by-law adopted pursuant to this chapter.

**SECTION 7.** Chapter 244 of the General Laws is hereby amended by striking out section 35A, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

Section 35A. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Borrower”, a mortgagor of a mortgage loan.

“Borrower’s representative”, an employee or contractor of a non-profit organization certified by Housing and Urban Development, an employee or contractor of a foreclosure education center pursuant to 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.

“Creditor’s representative”, a person who has the authority to negotiate the terms of and modify a mortgage loan.

“Modified mortgage loan”, a mortgage modified from its original terms including, but not limited to, a loan modified pursuant to 1 of the following: (i) the Home Affordable Modification Program; (ii) the Federal Deposit Insurance Corporation’s Loan Modification Program; (iii) 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.

“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.

“Net present value”, the present net value of a residential property based on a calculation using 1 of the following: (i) the federal Home Affordable Modification Program Base Net Present Value Model, (ii) the Federal Deposit Insurance Corporation’s Loan Modification Program; or (iii) for the

Massachusetts Housing Finance Agency's loan program used solely by the agency to compare the expected economic outcome of a loan with or without a loan modification.

"Residential property", real property located in the commonwealth having thereon a dwelling house with accommodations for 4 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.

(b) A mortgagor of residential property shall have a 150-day right to cure a default of a required payment as provided in the residential mortgage or note secured by the residential property by full payment of all amounts that are due without acceleration of the maturity of the unpaid balance of the mortgage; provided, however, that if a creditor certifies that: (i) it has engaged in a good faith effort to negotiate a commercially reasonable alternative to foreclosure as described in subsection (c); (ii) its good faith effort has involved at least 1 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 (iii) after such meeting the borrower and the creditor were not successful in resolving their dispute, then the creditor may begin foreclosure proceedings after a right to cure period lasting 90 days. A borrower who fails to respond within 30 days to any mailed communications offering to negotiate a commercially reasonable alternative to foreclosure sent via certified and first class mail or similar service by a private carrier from the lender shall be deemed to have forfeited the right to a 150-day right to cure period and shall be subject to a right to cure period lasting 90 days. The right to cure a default of a required payment shall be granted once during any 3 year period, regardless of mortgage holder.

(c) For purposes of this section, a determination that a creditor has made a good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure shall mean that the creditor has considered: (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 nothing in this subsection shall be construed as prohibiting a creditor from considering other factors; provided, further, that the creditor shall provide by first class and certified mail or similar service by a private carrier to a borrower documentation of good faith effort 10 days prior to meeting, telephone conversation or a meeting pursuant to subsection (b).

(d) A borrower who receives a loan modification offer from the creditor resulting from the lender's good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure shall respond within 30 days of receipt of first class or certified mail. A borrower shall be presumed to have responded if the borrower provides: (i) confirmation of a facsimile transmission to the creditor; (ii) proof of delivery through the United States Postal Service or similar carrier; or (iii) record of telephone call to the creditor captured on a telephone bill or pin register. A borrower who fails to respond to the creditor's offer within 30 days of receipt of a loan modification offer shall be deemed to have forfeited the 150-day right to cure period and shall be subject to a right to cure period lasting 90 days.

(e) Nothing in this section shall prevent a creditor from offering or accepting alternatives to foreclosure, such as a short sale or deed-in-lieu of foreclosure, if the borrower requests such

alternatives, rejects a loan modification offered pursuant to this subsection or does not qualify for a loan modification pursuant to this subsection.

(f) A creditor that chooses to begin foreclosure proceedings after a right to cure period lasting less than 150 days that engaged in a good faith effort to negotiate and agree upon a commercially reasonable alternative but was not successful in resolving the dispute shall certify compliance with this section in an affidavit. The affidavit shall include the time and place of the meeting, parties participating, relief offered to the borrower, a summary of the creditor's net present value analysis and applicable inputs of the analysis and certification that any modification or option offered complies with current federal law or policy. A creditor shall provide a copy of the affidavit to the homeowner and file a copy of the affidavit with the land court in advance of the foreclosure.

(g) The mortgagee, or anyone holding thereunder, shall not accelerate maturity of the unpaid balance of such mortgage obligation or otherwise enforce the mortgage because of a default consisting of the mortgagor's failure to make any such payment in subsection (b) by any method authorized by this chapter or any other law until at least 150 days after the date a written notice is given by the mortgagee to the mortgagor; provided, however, that a creditor meeting the requirements of subsection (b) that chooses to begin foreclosure proceedings after a right to cure period lasting less than 150 days may accelerate maturity of the unpaid balance of such mortgage obligation or otherwise enforce the mortgage because of a default consisting of the mortgagor's failure to make any such payment in subsection (b) by any method authorized by this chapter or any other law not less than 91 days after the date a written notice is given by the creditor to the mortgagor.

Said notice shall be deemed to be delivered to the mortgagor: (i) when delivered by hand to the mortgagor; or (ii) when sent by first class mail and certified mail or similar service by a private carrier to the mortgagor at the mortgagor's address last known to the mortgagee or anyone holding thereunder.

(h) The notice required in subsection (g) shall inform the mortgagor of the following:-

(1) the nature of the default claimed on such mortgage of residential real property and of the mortgagor's right to cure the default by paying the sum of money required to cure the default;

(2) the date by which the mortgagor shall cure the default to avoid acceleration, a foreclosure or other action to seize the home, which date shall not be less than 150 days after service of the notice and the name, address and local or toll free telephone number of a person to whom the payment or tender shall be made unless a creditor chooses to begin foreclosure proceedings after a right to cure period lasting less than 150 days that engaged in a good faith effort to negotiate and agree upon a commercially reasonable alternative but was not successful in resolving the dispute, in which case a foreclosure or other action to seize the home may take place on an earlier date to be specified;

(3) that, if the mortgagor does not cure the default by the date specified, the mortgagee, or anyone holding thereunder, may take steps to terminate the mortgagor's ownership in the property by a foreclosure proceeding or other action to seize the home;

(4) the name and address of the mortgagee, or anyone holding thereunder, and the telephone number of a representative of the mortgagee whom the mortgagor may contact if the mortgagor disagrees with the mortgagee's assertion that a default has occurred or the correctness of the mortgagee's calculation of the amount required to cure the default;

(5) the name of any current and former mortgage broker or mortgage loan originator for such mortgage or note securing the residential property;

(6) that the mortgagor may be eligible for assistance from the Homeownership Preservation Foundation or other foreclosure counseling agency, and the local or toll free telephone numbers the mortgagor may call to request this assistance;

(7) that the mortgagor may sell the property prior to the foreclosure sale and use the proceeds to pay off the mortgage;

(8) that the mortgagor may redeem the property by paying the total amount due, prior to the foreclosure sale;

(9) that the mortgagor may be evicted from the home after a foreclosure sale; and

(10) the mortgagor may have the following additional rights, depending on the terms of the residential mortgage: (i) to refinance the obligation by obtaining a loan which would fully repay the residential mortgage debtor; and (ii) to voluntarily grant a deed to the residential mortgage lender in lieu of foreclosure.

The notice shall also include a declaration, in the language the creditor has regularly used in its communication with the borrower, appearing on the first page of the notice stating: "This is an important notice concerning your right to live in your home. Have it translated at once."

The division of banks shall adopt regulations in accordance with this subsection.

(i) To cure a default prior to acceleration under this section, a mortgagor shall not be required to pay any charge, fee or penalty attributable to the exercise of the right to cure a default. The mortgagor shall pay late fees as allowed pursuant to section 59 of chapter 183 and per-diem interest to cure such default. The mortgagor shall not be liable for any attorneys' fees relating to the mortgagor's default that are incurred by the mortgagee or anyone holding thereunder prior to or during the period set forth in the notice required by this section. The mortgagee, or anyone holding thereunder, may also provide for reinstatement of the note after the 150-day notice to cure has ended.

(j) A copy of the notice required by this section and an affidavit demonstrating compliance with this section shall be filed by the mortgagee, or anyone holding thereunder, in any action or proceeding to foreclose on such residential real property.

(k) A copy of the notice required by this section shall also be filed by the mortgagee, or anyone holding thereunder, with the commissioner of the division of banks. Additionally, if the residential property securing the mortgage loan is sold at a foreclosure sale, the mortgagee, or anyone holding thereunder, shall notify the commissioner of the division of banks, in writing, of the date of the foreclosure sale and the purchase price obtained at the sale.

**SECTION 8.** Said chapter 244 is hereby further amended by striking out section 35A, as appearing in section 7, and inserting in place thereof the following section:-

Section 35A. (a) Any mortgagor of residential real property located in the commonwealth, shall have a 90-day right to cure a default of a required payment as provided in such residential mortgage or note secured by such residential real property by full payment of all amounts that are due without acceleration of the maturity of the unpaid balance of such mortgage. The right to cure a default of a required payment shall be granted once during any 5-year period, regardless of the mortgage holder. For the purposes of this section, "residential property", shall mean real property located in the commonwealth having thereon a dwelling house with accommodations for 4 or less separate households and occupied, or to be occupied, in whole or in part by the mortgagor; 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.

(b) The mortgagee, or anyone holding thereunder, shall not accelerate maturity of the unpaid balance of such mortgage obligation or otherwise enforce the mortgage because of a default consisting of the mortgagor's failure to make any such payment in subsection (a) by any method authorized by this chapter or any other law until at least 90 days after the date a written notice is given by the mortgagee to the mortgagor.

Said notice shall be deemed to be delivered to the mortgagor: (i) when delivered by hand to the mortgagor; or (ii) when sent by first class mail and certified mail or similar service by a private carrier to the mortgagor at the mortgagor's address last known to the mortgagee or anyone holding thereunder.

(c) The notice required in subsection (b) shall inform the mortgagor of the following:-

(1) the nature of the default claimed on such mortgage of residential real property and of the mortgagor's right to cure the default by paying the sum of money required to cure the default;

(2) the date by which the mortgagor shall cure the default to avoid acceleration, a foreclosure or other action to seize the home, which date shall not be less than 90 days after service of the notice and the name, address and local or toll free telephone number of a person to whom the payment or tender shall be made;

(3) that, if the mortgagor does not cure the default by the date specified, the mortgagee, or anyone holding thereunder, may take steps to terminate the mortgagor's ownership in the property by a foreclosure proceeding or other action to seize the home;

(4) the name and address of the mortgagee, or anyone holding thereunder, and the telephone number of a representative of the mortgagee whom the mortgagor may contact if the mortgagor disagrees with the mortgagee's assertion that a default has occurred or the correctness of the mortgagee's calculation of the amount required to cure the default;

(5) the name of any current and former mortgage broker or mortgage loan originator for such mortgage or note securing the residential property;

(6) that the mortgagor may be eligible for assistance from the Massachusetts Housing Finance Agency and the division of banks and the local or toll free telephone numbers the mortgagor may call to request this assistance;

(7) that the mortgagor may sell the property prior to the foreclosure sale and use the proceeds to pay off the mortgage;

(8) that the mortgagor may redeem the property by paying the total amount due, prior to the foreclosure sale;

(9) that the mortgagor may be evicted from the home after a foreclosure sale; and

(10) the mortgagor may have the following additional rights, depending on the terms of the residential mortgage: (i) to refinance the obligation by obtaining a loan which would fully repay the

residential mortgage debtor; and (ii) to voluntarily grant a deed to the residential mortgage lender in lieu of foreclosure.

The notice shall also include a declaration, appearing on the first page of the notice stating: “This is an important notice concerning your right to live in your home. Have it translated at once.”

The division of banks shall adopt regulations in accordance with this subsection.

(d) To cure a default prior to acceleration under this section, a mortgagor shall not be required to pay any charge, fee, or penalty attributable to the exercise of the right to cure a default. The mortgagor shall pay late fees as allowed pursuant to section 59 of chapter 183 and per-diem interest to cure such default. The mortgagor shall not be liable for any attorneys' fees relating to the mortgagor's default that are incurred by the mortgagee or anyone holding thereunder prior to or during the period set forth in the notice required by this section. The mortgagee, or anyone holding thereunder, may also provide for reinstatement of the note after the 90 day notice to cure has ended.

(e) A copy of the notice required by this section and an affidavit demonstrating compliance with this section shall be filed by the mortgagee, or anyone holding thereunder, in any action or proceeding to foreclose on such residential real property.

(f) A copy of the notice required by this section shall also be filed by the mortgagee, or anyone holding thereunder, with the commissioner of the division of banks. Additionally, if the residential property securing the mortgage loan is sold at a foreclosure sale, the mortgagee, or anyone holding thereunder, shall notify the commissioner of the division of banks, in writing, of the date of the foreclosure sale and the purchase price obtained at the sale.

**SECTION 9.** Section 33 of chapter 266 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out clause (2) and inserting in place thereof the following clause:- (2) whoever, with intent to defraud, by a false statement in writing respecting the financial condition, or means or ability to pay, of himself or of any other person, obtains for himself or for any other person credit from any bank or trust company or any banking institution or any mortgage lender, as defined in section 1 of chapter 255E, or any retail seller of goods or services accustomed to give credit in any form whatsoever shall be guilty of larceny.

**SECTION 10.** Said chapter 266 is hereby further amended by striking out section 34, as so appearing, and inserting in place thereof the following section:-

Section 34. Whoever, with intent to defraud and by a false pretence, induces another to part with property of any kind or with any of the benefits described in sections 33 and 33A shall be guilty of larceny.

**SECTION 11.** Said chapter 266 is hereby further amended by inserting after section 35 the following section:-

Section 35A. (a) As used in this section, the following words shall have the following meanings, unless the context clearly otherwise requires:-

“Funds”, shall include, but not be limited to, a commission, fee, yield spread premium or compensation in any form.

“Material omission”, the omission or concealment of a material fact necessary to prevent a statement from being misleading, in the light of the circumstances under which the statement is made.

“Mortgage lending process”, the process through which a person seeks or obtains a residential mortgage loan including, but not limited to, solicitation, application, origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan; provided, however, that documents involved in the mortgage lending process shall include, but not be limited to, uniform residential loan applications or other loan applications, appraisal reports, HUD-1 settlement statements, supporting personal documentation for loan applications such as W-2 forms, verification of income and employment, bank statements, tax returns and payroll stubs and any required disclosures.

“Pattern of residential mortgage fraud”, violation of subsection (b) in connection with 3 or more residential properties.

“Person”, a natural person, corporation, company, limited liability company, partnership, real estate trust, association or any other entity.

“Residential mortgage loan”, a loan or agreement to extend credit made to a person, which loan is secured by a mortgage, security interest, deed to secure debt, deed of trust, or other document representing a security interest or lien upon any interest in a 1 to 4 family residential property located in the commonwealth, including the renewal or refinancing of any such loan.

(b) Whoever intentionally: (1) makes or causes to be made any material statement that is false or any statement that contains a material omission, knowing the same to be false or to contain a material omission, during or in connection with the mortgage lending process, with the intent that such statement be relied upon by a mortgage lender, borrower or any other party to the mortgage lending process; (2) uses, or facilitates the use of, any material statement that is false or any statement that contains a material omission, knowing the same to be false or to contain a material omission, during or in connection with the mortgage lending process, with the intent that such statement be relied upon by a mortgage lender, borrower or any other party to the mortgage lending process; (3) receives any proceeds or any other funds in connection with a residential mortgage closing, knowing such proceeds or funds were obtained in violation of clause (1) or (2); or (4) files or causes to be filed with a registrar of deeds any document that contains a material statement that is false or a material omission, knowing such document to contain a material statement that is false or a material omission, shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment in the house of correction for not more than 2 and one-half years or by a fine of not more than \$10,000 in the case of a natural person or not more than \$100,000 in the case of any other person, or by both such fine and imprisonment.

Any person who engages in a pattern of residential mortgage fraud shall be punished by imprisonment in the state prison for not more than 15 years or by a fine of not more than \$50,000, in the case of a natural person, or not more than \$500,000 in the case of any other person, or by both such fine and imprisonment.

(c) If a defendant is convicted of a violation of this section as a result of conduct or an omission by an employee or agent of the defendant the court may consider the following mitigating factors with respect to sentencing:

(1) that the defendant had instituted and maintained at the time of the violation, and continues to have, a written policy including:

- (i) a prohibition against conduct that violates this section by employees and agents of the defendant;
- (ii) penalties or discipline for violation of the policy;

- (iii) a process for educating employees and agents concerning the policy and consequences of a violation thereof; and
- (iv) with respect to a defendant authorized to conduct criminal history checks for the employee's or agent's position, a requirement for a criminal history check before employing an employee or engaging an agent and a requirement that the defendant will not employ or engage an individual who has been convicted of a crime involving fraud;

(2) a demonstration that the defendant enforces the policy described in clause (1); and

(3) prior to the violation of this section the defendant provided a copy of the policy described in clause (1), including a description of the consequences for violating the policy, to the employee or agent who committed the violation.

**SECTION 12.** Chapter 277 of the General Laws is hereby amended by inserting after section 62B the following section:-

Section 62C. A violation of section 35A of chapter 266 may be prosecuted and punished in:

- (1) the county in which the residential property for which a mortgage loan is being sought is located;
- (2) the county in which any act was performed in furtherance of the violation;
- (3) the county in which any person alleged to have violated this section had control or possession of any proceeds of, or other funds received as a result of the violation;
- (4) the county in which a closing on the mortgage loan occurred; or
- (5) the county in which a document containing a deliberate misstatement, misrepresentation or omission is filed with a registrar of deeds.

**SECTION 13.** Section 4 shall take effect on November 1, 2010. Sections 2 and 3 shall take effect on November 1, 2010; provided, however, that the in-person counseling requirement in subsection (b) of section 7A of chapter 167E of the General Laws and in subsection (b) of section 65C½ of chapter 171 of the General Laws, as appearing in section 3, shall take effect on August 1, 2012.

**SECTION 14.** Section 8 shall take effect on January 1, 2016.

*Approved, August 7, 2010.*

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