

Frequently Asked Questions on Chapter 258 of the Acts of 2010, An Act Relative to Mortgage Foreclosures

By the [Division of Banks](#)

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Background

On Saturday, August 7, 2010, Governor Patrick signed into Law *An Act Relative To Mortgage Foreclosures* (the "Act") as Chapter 258 of the Acts of 2010. The Act has fourteen SECTIONS which address six separate and distinct purposes relating to foreclosures and mortgages. SECTION 7 of the Act completely rewrites the 90-Day Notice of Right To Cure A Default law that was passed in 2007. It does so by striking out the existing provisions of section 35A of Chapter 244 of the General Laws and inserting a new section 35A ("Section 35A"). The Act and particularly SECTION 7 should be read in their entirety.

These questions have been raised to the Division on the changes in timing and provisions of the Right To Cure Notice.

General

Q. When does SECTION 7 of Chapter 258 become effective?

A. The bill had an Emergency Preamble so but for provisions covered by SECTIONS 13 and 14 of the bill, the remaining provisions, including SECTION 7, went into effect on Saturday, August 7, 2010.

Q. To which transactions does the 150-Day Notice of Right To Cure apply?

A. It is the position of the Division of Banks that the provisions of Section 35A of chapter 244 of the General Laws as amended by SECTION 7 of Chapter 258 must be read as a coherent whole. Accordingly, the 150 days referenced in the disclosures under subsection (h) are the same 150 days referred to in the 150-day Notice required in subsection (g) which are the same 150-day Notice of Right To Cure set out in subsection (b) of Section 35A. Therefore, a mortgagor of residential property's 150-day Notice of Right To Cure a default begins after the service of the Notice required by subsection (g). **For those reasons, the 150-day Notice of Right To Cure only applies to mortgagors served a Notice after Saturday, August 7, 2010.** This analysis is supported by the fact that neither Chapter 258 nor Section 35A contain any language which would make the provisions retroactive. Clearly, the Legislature knows how to and has done so to make provisions of other acts retroactive, equally as well as it has done the opposite, adding provisos to delay the effective dates of one or more provisions of a new law. Similarly, absent such specific language in Chapter 258 or Section 35A, it would be inconsistent to determine that the 150-day Right To Cure Notice applied to transactions at any point in an ongoing process in which a 90-day Right To Cure Notice was given under the law as passed in Chapter 206 of the Acts of 2007. That statute clearly provides that a Right To Cure Notice shall be granted once during any 5-year period. If a Right To Cure Notice was sent to a mortgagor prior to the signing of Chapter 258, then the Right To Cure Notice requirement has been met. The limitation on the Notice of Right To Cure has been changed from 5 years to 3 years in subsection (b).

Q. Are there any additions to the disclosures in the Right To Cure Notice?

A. Yes. Substantive additions have been made to the Right To Cure Notice itself. Four new disclosures must be contained in the Notice and are set out in clauses (7), (8), (9) and (10) of subsection (h) of Section 35A, as follows:

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

Additionally, the Notice must now include a declaration on the first page stating "This is an important notice concerning your right to live in your home. Have it translated at once." The declaration must be in the language the creditor has regularly used in its communication with the borrower.

Q. Are there any other changes to the disclosures in the Right To Cure Notice set out in Chapter 206 of the Acts of 2007?

A. Yes. The contacts for assistance to the mortgagor in clause (6) have been changed to the Homeownership Preservation Foundation or other foreclosure counseling agency.

Additionally, clause (2) has been rewritten to reflect the 150-day Right To Cure Notice as well as to recognize a lesser time frame may be applicable if specified conditions are met.

Q. Will the Division of Banks issue emergency regulations relative to the changes to the Right To Cure Notice in conjunction with the immediate effective date of that SECTION?

A. No. Although reference is made in Section 35A to the Division adopting regulations, the authority is limited to subsection (h). In the amended Section 35A, subsection (h) consists only of the 10 specifically listed disclosures and the declaration described above. Each of the provisions in subsection (h) stands on its own and appears to be clear and concise. Moreover, 4 of the 10 clauses are identical to those passed in 2007 while 2 others have only wording changes. No regulations were required by the 2007 Act. The history of the current legislation reflects that the reference to regulations was added when provisions were in subsection (h) which were not included in the bill which is now Chapter 258.

Q. Will the filing of the Right To Cure Notice requirements with the Division of Banks change under Chapter 258?

A. No. All of the filing requirements and procedures remain the same. The language of subsection (k) of Section 35A is identical to the filing provisions set out in Chapter 206 of the Acts of 2007.

Note: Additional FAQs will be added if necessary.

Note: FAQs on Chapter 206 of the Acts of 2007 relative to the Right To Cure Notice will be changed or deleted as necessary to reflect passage of Chapter 258