



ML Strategies Alert

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Massachusetts House of Representatives Advances Foreclosure Legislation

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The Massachusetts House of Representatives yesterday unanimously passed [House Bill 4087](#), “An Act to Prevent Unlawful and Unnecessary Foreclosures.”

The bill is designed to get “borrowers and lenders to the table,” according to State Representative Michael Costello, the Co-Chair of the Committee on Financial Services. The bill would mandate that banks and other lenders account for numerous factors before they can enter foreclosure proceedings on residential homeowners. Among those factors is the “borrower’s ability to pay,” a provision that will likely be addressed in future drafts of the legislation, or through regulations developed by the Massachusetts Division of Banks.

Under the bill, if a modified loan is worth more than the amount the bank expects to recover through foreclosure, the lender must offer a modified loan to the borrower. The bill mandates that borrowers receive a timely notice that they are in default. They must respond within 30 days with their intent to pursue a modified loan. The lender must then provide an assessment within 30 days, which includes:

- a written statement of the borrower’s current circumstances, including, without limitation, the borrower’s income, debts and obligations as determined by the lender;
- the lender’s net present value analysis of the modified mortgage loan;
- the lender’s anticipated net recovery that would result from foreclosure;
- a statement of the interests of the lender, including, without limitation, investors;
- a modified mortgage loan offer that achieves the borrower’s affordable monthly payment, which may include one or more of the following: reduction in principal, reduction in interest rate or an increase in amortization period;

If a modified mortgage loan is offered, the offer shall also include the lender’s contact information. If a lender finds that a loan modification is not possible, they must file an affidavit.

Representative Michael Costello (D-Newburyport), co-chair of the Financial Services Committee, estimated that over 100,000 borrowers would be eligible for loan modifications and asserted, “We can keep people in their homes without sacrificing the banks’ bottom lines.” He credited Attorney General Martha Coakley with leading the fight to stop unnecessary foreclosures. Attorney General Coakley proposed the measure, which is designed to block foreclosures by requiring banks and other lenders to assess a borrower’s ability to pay and the value of a loan modification compared to the cost of foreclosure before entering into foreclosure proceedings. “By passing this bill, the House has made an important commitment toward helping struggling homeowners in Massachusetts and moving our economy forward,” said Rep. Costello.

The House bill builds on “An Act Relative to Mortgage Foreclosures,” signed into law by Governor Deval Patrick in August 2010, which made sweeping changes to Massachusetts foreclosure law. The Act extended the 90-day

right-to-cure on foreclosures to 150 days, created new requirements for lenders offering reverse mortgages, established mortgage fraud as a crime, and provided additional protections for tenants living in foreclosed properties.

The bill now moves to the Senate, where it is expected that it will be finalized by the completion of the formal legislative session on July 31, 2012. ML Strategies will keep you updated on its progress.

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