

Massachusetts' new foreclosure law: how much does it change the landscape of foreclosure law in Massachusetts.

3 October 2012

On 3 August 2012 the Governor signed the law and the substantive portions take effect on 1 November 2012. It has four main, significant changes to Massachusetts foreclosure law, a very brief description of the changes are:

- 1) If a mortgage is assigned, the chain of mortgage assignments must be recorded with the registry of deeds prior to issuance of the foreclosure notice;
- 2) For certain loans, banks must determine whether they would fare better in a loan modification that the homeowner can afford verses after a foreclosure, and if it fares better in offering a loan modification, it must offer one;
- 3) An affidavit must be filed prior to the publication of a foreclosure notice swearing to the compliance with the new section, etc.; and
- 4) Third party purchasers can rely on the foreclosing parties' affidavit and are protected from title claims.

The most discussed and publicized in the mainstream is number 2 above. It is typically described "on the street" as the bank being required to offer a loan modification, or that the bank must offer a loan modification if it will be better off doing so than foreclosing. With these layman, cursory descriptions the details of the law are swept over, most importantly, that this new requirement applies only to certain loans. Specifically, it is the definition in the law for "certain mortgage loan" that is not described. A mortgage loan is deemed a "certain mortgage loan" by the new law if one or more of 7 different "features" as described in the law apply to the loan. The law also provides that if the bank cannot determine whether the loan has any of the features or not, then the loan is deemed a "certain mortgage loan."

As they say "the devil is in the details" and that is here --- whether this new provision of the new law applies to your loan. If you are interested in learning how the new law applies to your situation, we encourage you to *be sure* what the new law can do for you, which may mean not simply relying on what you hear on the street. In the event you desire to discuss this issue or the new law with this office, feel free to give us a call.

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