



ML Strategies Alert

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Massachusetts Legislature Passes Compromise Foreclosure Prevention Legislation

BY [GEORGE K. ATANASOV](#) AND [JULIE COX](#)

Yesterday, after several weeks of negotiations, the Massachusetts Legislature's six-member conference committee on foreclosure prevention legislation filed [House Bill Number 4323](#), "An Act Preventing Unlawful and Unnecessary Foreclosures." The House of Representatives then unanimously passed the measure, and the Senate today accepted it 35-0. The act would take effect immediately upon signature by Governor Deval Patrick; however, the provisions that govern the foreclosure process specifically will apply to any person receiving notice of a right to cure after November 1, 2012. Legislative leaders say that with this legislation Massachusetts has taken an important step to reforming the foreclosure market by simplifying, restructuring and regulating the existing market. See prior MLS Alerts on Foreclosure Legislation [here](#).

The compromise report develops a foreclosure process that offers more protections to the borrower. This policy goal is achieved through numerous legal requirements that must be met before a creditor can initiate foreclosure proceedings on a mortgagee's property. One of the most significant requirements is that a lender must demonstrate a "good faith effort" or show that the creditor has "taken reasonable steps" to avoid foreclosure. This provision could be altered through a future regulatory process, but at a minimum the bill states that the lender can demonstrate this by:

- Assessing the borrower's ability to make an "affordable monthly payment";
- Identifying potential modified mortgages that accommodate the borrower's ability to pay; and
- Analyzing the cost-benefit of a modified mortgage loan versus foreclosure.

There are two other key provisions to the legislation. First, the bill requires that at any time when the estimated net value of a modified loan exceeds that of a foreclosure for the creditor, the lender must agree to modify the loan if the borrower so desires. If the foreclosure is ultimately pursued, the bill mandates that the creditor demonstrate compliance with the new requirements, in the form of an affidavit, with notice to the borrower and the Commonwealth. Second, the bill enables the Division of Banks to adopt, amend, or repeal regulations to aid in the administration and enforcement of the bill once it becomes law. Creditors must also report bi-annually to the Division of Banks about the results of any mortgage proceeding for which a loan modification occurred.

The conference committee's report reflects a compromise that resolved several key differences between the original House and Senate versions. First, the final version does not include a section in the Senate version that would have mandated a mediation process for foreclosure proceedings. The conference committee opted instead for the creation of a 13-member task force to be led by the Attorney General. The task force will be charged with studying and investigating the impact and efficacy of mandatory mediation, a process that has been adopted in 28 states. The task force will also study the feasibility of allowing a foreclosed homeowner to continue to occupy the property, in whole or in part, until a binding purchase and sale agreement has been executed with a purchaser who intends to occupy the property as a primary residence. The final bill also includes an exemption for certain non-profits that work with homeowners to help them remain in their homes.

It is also worth noting that the bill addresses two recent decisions of the Massachusetts Supreme Judicial Court by requiring that lenders produce proper documentation showing that they are the legal holders of the mortgage before foreclosing. ML Strategies will be monitoring the regulatory process prescribed by this legislation.

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