



Foreclosure Process in Massachusetts

The foreclosure process is governed by state law as well as the terms of your mortgage. In Massachusetts the mortgage holder does not have to get court permission to foreclose, but rather can foreclose based on the "power of sale" clause in the mortgage so long as they follow the procedures required by state law. (See Mass General Laws chapter 244).

What to Expect

1) Default & Right to Cure Notice

- Homeowner falls behind in mortgage payments (in default).
- Homeowner may receive collection calls/letters from lender.
- Lender (Bank or Holder of the Mortgage) sends **right to cure notice** giving homeowner 150 days to pay all money owed (arrearages). This cure period may be shortened to 90 days if the lender complies with certain mediation requirements. During this period the lender cannot charge extra fees and penalties. See MGL ch 244 sec 35A for requirements of the cure notice.

2) Acceleration Notice

- If debt is not paid in full (cured), the lender will send an **acceleration notice**, meaning that the entire loan is due.

3) Servicemembers Civil Relief Act Complaint

- Lender files a complaint under the Servicemembers Civil Relief Act in Land Court or Superior Court stating lender intends to foreclose.
- Homeowner/Borrower is served a copy of the complaint and has 20 days to file an answer
 - The ONLY defense to the complaint is that the homeowner/borrower is in the military service.
 - This court notice is very confusing for people because it is sent to everyone, but is only intended for people who are active duty (or recently discharged) military and certain dependants. For everyone else it is just a formality and does not require a response.

4) Publication of Sale

- Lender must publish notice of sale in the newspaper, including
 - Identification of mortgage
 - Date, place, time of sale
 - Description of property

- Notice must be published once a week for 3 consecutive weeks before the sale, beginning at least 21 days before the sale.

5) Notice of Foreclosure Sale

- Lender must send **notice of foreclosure sale** to homeowner via certified or registered mail at least 14 days before the foreclosure sale.

6) Foreclosure Sale & Record of Sale

- Auction takes place at the date, time and place specified in the notice of foreclosure sale, although sale date is sometimes postponed by 'proclamation'.
- Sale must be conducted by a licensed auctioneer and must take place on or near the property.
- High bidder wins – this is often the bank.
- Parties execute a **foreclosure deed**; deed should be recorded at Registry of Deeds – this can take several months. (check registry online at www.masslandrecords.org).

7) After Foreclosure

- Any excess proceeds from foreclosure sale must be paid to the homeowner.
- If foreclosure sale did not pay off entire mortgage, lender may pursue homeowner/borrower by filing a collection action for the **deficiency**. There is a two year statute of limitations for filing a mortgage deficiency claim.
- New owner (often the foreclosing bank), has the right to evict the homeowner, but still must go through the proper **court process to evict**. This process *may* take several additional months.
 - **HOMEOWNER IS NOT REQUIRED TO MOVE ON THE SALE DATE.** Homeowner can often negotiate with the new owner/purchaser for time and relocation costs, although they have no legal right to demand it.
 - Homeowner always has the right to ask the eviction judge for more time.
 - Homeowner *may be able to challenge the eviction* if the foreclosure was not conducted properly or the foreclosing entity did not have the right to foreclose, e.g. if they did not own the mortgage because of a faulty assignment. Note that this area of the law is changing. Check the website at www.masslegalhelp.org for more information and *pro se* resources that you can use in court.

Where to get help if you are facing foreclosure:

1- HOPE Hotline 1-888-995-4673 for mortgage counselor to help negotiate with the bank, OR call your local HUD certified mortgage counseling agency

2- Mass Division of Banks Hotline 1-800-495-2265: if a foreclosure auction is scheduled within the next seven days, Division of Banks may be able to convince the bank to postpone sale while you attempt to work out a resolution

3- For low income: Pro Bono Foreclosure Assistance Hotline (LARC) 1-800-342-5297 ; and www.masslegalservices.org

4-Mass Bar Lawyer Referral Service www.massbar.org ; 866-627-7577 ask for foreclosure defense