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## Point of View

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### **CHAPTER 206 OF THE ACTS OF 2007, ENTITLED "AN ACT PROTECTING AND PRESERVING HOME OWNERSHIP" by Gregory M. Schmidt, Esq.**

People throughout the United States are being affected by the mortgage credit crisis and as a result foreclosures are rising at an alarming rate. In an effort to combat this crisis in Massachusetts, Governor Deval Patrick signed into law Chapter 206 of the Acts of 2007, entitled "An Act Protecting and Preserving Home Ownership" ("Chapter 206") on November 29, 2007. Chapter 206 made a number of noteworthy revisions to the foreclosure process in Massachusetts in an attempt to give the consumer extra protection.

#### **90 Day Cure Period:**

The most significant provision of Chapter 206, which shall take effect May 1, 2008, mandates that all mortgages encumbering owner-occupied, residential real estate in the Commonwealth be subject to a mandatory ninety (90) day cure period for a payment default. This new provision enacted by Chapter 206 will be added to Chapter 244 of the Massachusetts General Laws and can be found in the newly formed Section 35A. This statute requires mortgagees to give the defaulting mortgagor a ninety day window to bring the payments current before the mortgagee will be able to initiate foreclosure proceedings against the property subject to the delinquent mortgage. Chapter 206 states that this 90 day right to cure "shall be granted once during any 5 year period, regardless of the mortgage holder", to a defaulting mortgagor.

Due to the fact that Chapter 206 was recently signed into law and to the fact that many of the provisions do not take effect until May 1, 2008, many aspects, including the 90-day right to cure provision, are clouded in ambiguity. On the one hand, Chapter 206 says that a mortgagor shall be granted this 90 day right to cure only once in any five year period, but Chapter 206 also states that the new statutorily required foreclosure notice, as described below, must give a date "which is not less than 90 days" in which the mortgagor can cure the default. The conflict between these two provisions will be settled as all of the provisions of Chapter 206 take effect, but until that time that there is a definite answer, lenders should err on the side of caution and give all defaulting mortgagors a ninety day right period in which to cure a default before commencing acceleration of the mortgage loan and/or foreclosure proceedings.

#### **Statutory Foreclosure Notice:**

As mentioned above, the new statutory form of foreclosure notice for payment defaults on owner-occupied, one-to-four family residential real estate shall take effect May 1, 2008. This foreclosure notice must now contain certain information, and a copy of this notice must be filed with the foreclosure complaint filed with the court. The information that must be included in the foreclosure notice is as follows:

1. description of the default;
2. the specified amount of money which mortgagor can cure the default by paying;
3. the date by which the mortgagor has the ability to cure the default, which cannot be less than 90 days from the date of the notice;
4. a name, address and local or toll free number of a person to whom the payment to cure the default shall be made;
5. language stating the consequences if the mortgagor does not bring the mortgage payments current - i.e. the mortgagee or anyone holding the mortgage note shall be able to take steps to terminate the mortgagor's ownership in the property by exercising their foreclosure remedy;
6. contact information for a representative of the mortgagee that can be contacted if the mortgagor disputes the fact that a default has occurred or the amount of such default; and
7. language stating that the mortgagor may be eligible for assistance from the Massachusetts Housing Finance Agency and/or the Division of Banks and the local or toll free numbers that the agencies can be reached at.

Chapter 206 also mandates that the foreclosure notice be filed with the Division of Banks ("Division"). An additional notice must be filed with the division if and when a foreclosure sale takes place stating the date of foreclosure sale and the price obtained at the sale.

#### **Redefined Rights of Tenant:**

The provisions of Chapter 206 have redefined the rights of tenants of residential real property with written leases upon the foreclosure of the real property. Prior to the passage of Chapter 206, a tenant residing in a property that had been sold at a foreclosure sale became a tenant at sufferance and was immediately subject to eviction proceedings from the successor mortgagor/landlord. Beginning on May 1, 2008, however, those tenants will now become tenants at will and as such will be afforded rights under the Massachusetts General Statutes that they were not afforded prior to the passage of Chapter 206. The most important right now being afforded to them is the right under M.G.L. c. 186, § 13 to a 30 day written notice to quit prior to the successor mortgagor/landlord initiating eviction proceedings.

#### **Limitation of Fees:**

Another provision of Chapter 206 that is directly beneficial to the defaulting consumer is the prohibition of a mortgagee from charging any fees or penalties, which "are attributable to the exercise of a right to cure" and accrue during the 90 day cure period. This limitation does not prohibit per diem interest and/or late charges permitted by M.G.L. c. 183, § 59 that are in connection with foreclosure proceedings on owner-occupied one-to-four family residential real estate. The mortgagor, however, must still account for due real estate taxes, condominium fees (if applicable) and forced insurance paid by the mortgagor.

#### **Written Accounting:**

Upon the sale of foreclosed property, the mortgagee must now provide the mortgagor with a written itemized accounting of the sale proceeds including the sale price, legal fees, auctioneer fees and publication costs, within sixty days of receipt of proceeds from the foreclosure sale. Should the foreclosure sale, however, be subject to further legal proceedings, the accounting need not be given until such proceedings have concluded.



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Greg joined the firm in 2005 after graduating from Suffolk University Law School, where he spent a summer studying comparative commercial law in Lund, Sweden. His practice includes general bank, commercial and real estate law. He is a volunteer in the firm's tutoring program at Boland Elementary School as well as for the Jimmy Fund. Greg and his wife reside in South Hadley.

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