

Lynn, Massachusetts Passes Foreclosure Protection Ordinance

July 19, 2013

The city of Lynn, Massachusetts recently passed a strict [foreclosure protection ordinance](#) establishing a Bill of Rights for Homeowners in the City of Lynn (the Bill of Rights). The Bill of Rights requires all mortgagees who initiate foreclosure proceedings to participate in a foreclosure mediation program. Lynn Bill of Rights, § 3:00. A mortgagee is required to make available any financial statement or other information which would reasonably facilitate the mediation. Lynn Bill of Rights, § 6:00. All information disclosed in the mediation will remain confidential except for financial information otherwise permitted by law to be disclosed. Lynn Bill of Rights, § 6:00.

Mortgagees are also required to provide a copy of all required notices sent to a mortgagor to the City Solicitor of Lynn within ten (10) days of providing such notices to the mortgagor. Lynn Bill of Rights, § 7:00. The receipt of these notices or of a request for mediation from a mortgagor initiates the mediation process, which must commence within forty five (45) days after the mortgagor receiving notice of the right to cure, as required to initiate foreclosure proceedings under state law. Lynn Bill of Rights, § 7:00. The mediation program does not constitute an extension of the foreclosure process or an extension of the right to cure period provided under state law, unless such periods are extended by mutual agreement. Lynn Bill of Rights, § 7:00.

The mediation program begins with a mandatory conference at a location convenient to all parties. Lynn Bill of Rights, § 8:00(A). The participating representatives must have authority to enter into any agreements renegotiating the mortgage subject to the foreclosure. Lynn Bill of Rights, § 8:00(A). The mortgagor and mortgagee must cooperate in all respects with the program manager of the mediation, which includes an obligation that the mortgagee or servicer's representative bring to the mediation and make available the mortgage documents and a detailed accounting of the outstanding balance, costs, and fees. Lynn Bill of Rights, § 8:00(D). The mediation requirements are also considered satisfied and a certificate of mediation completion will be issued if the mediation program manager attempts to contact the mortgagor twice by mail and the mortgagor fails to respond. Lynn Bill of Rights, § 8:00(E). A certificate of mediation completion will be issued if it is determined, after a good faith effort, that the parties cannot come to a mutually agreeable and commercially reasonable alternative to foreclosure. Lynn Bill of Rights, § 8:00(E).

The Bill of Rights provides for the assessment of an as yet undetermined mediation fee to the mortgagee or its mortgage servicer, which must be sufficient to pay for all costs incurred by the City of Lynn in connection with the mediation program. Lynn Bill of Rights, § 9:00. The cost of the mediation program may not be borne by either the City of Lynn or the mortgagors. Lynn Bill of Rights, § 9:00. A seller of a residential property at a foreclosure sale must file a certificate of mediation completion with the Southern Essex Registry of Deeds either prior to or simultaneous with state law recording requirements relating to foreclosure. Lynn Bill of Rights, §

10:00. The failure to include the mediation certificate as an attachment to the required certificate for a foreclosure by entry will result such foreclosure being ineffectual. Lynn Bill of Rights, § 11:00. A foreclosure by entry is an alternate method of foreclosure where a mortgagee takes peaceful possession of the mortgaged property. Mass. Gen. Laws ch. 244 § 1. Under a foreclosure by entry, a borrower has a right to redeem the property until the mortgagee records a certificate of such entry and maintains such possession peaceably for three years after the date the certificate is recorded. Mass. Gen. Laws ch. 244 §§ 1, 2. The Bill of Rights now requires that the certificate include the required mediation certificate as an attachment, effectively granting borrowers a right to redeem the property until the mediation certificate is attached to the foreclosure by entry certificate. It is unclear whether this requirement would require the expiration of a new three year period after the foreclosure by entry certificate is filed along with a copy of the mediation certificate. In addition, it is questionable whether the city of Lynn has the authority to modify state foreclosure law in this manner.

The failure of a mortgagee or a mortgage servicer to comply with the requirements outlined in the Bill of Rights results in a fine of \$300 payable to the City of Lynn for each violation. Lynn Bill of Rights, § 12:00(A). Each calendar day of noncompliance is considered a separate violation subject to a separate \$300 fine. Lynn Bill of Rights, § 12:00(B).

In addition to the mediation requirements, certain obligations relating to securing and maintaining residential property in Lynn are imposed on a mortgagee or servicer that: (a) has care or control of the property; (b) has filed a complaint with the Land Court or Superior Court pursuant to the Massachusetts Soldiers' and Sailors' Civil Relief Act, including its successors or assigns; (c) is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or (d) is a mortgagee who has made entry on any such property, pursuant to the terms of the mortgage, in order to make repairs upon mortgagor's failure to do so. Lynn Bill of Rights, § 13:00. These requirements include compliance with various local codes and ordinances relating to residential property in Lynn. Lynn Bill of Rights, § 13:00. In addition, a cash bond must be provided in the amount of not less than \$10,000 to secure the continued maintenance of the property, of which an as yet unspecified portion will be retained by the City of Lynn. Lynn Bill of Rights, § 13:00(4). A certificate of compliance will be issued upon compliance with these requirements. Lynn Bill of Rights, § 13:00. A violation of these requirements carries a penalty of \$300 per violation, with each day of continuing violation constituting a separate violation. Lynn Bill of Rights, § 13:00(K).

In addition to the above requirements, a foreclosure sale purchaser, which includes a foreclosing mortgagee, is prohibited from evicting an occupant of the property without just cause unless a binding purchase and sale agreement has been executed for a bona fide third party to purchase the residential property. Lynn Bill of Rights, § 14:00. This requirement limits a mortgagee from evicting a mortgagor after the mortgagee purchases the property at a foreclosure sale except in certain enumerated circumstances. Specifically, a mortgagee is deemed to have just cause in the following circumstances: (a) the occupant has failed to timely pay the last established rent prior to the foreclosure sale; and if no rent has been established, reasonable use and occupancy charges as established by fair market rent as established by the Department of Housing and Urban Development, provided that the foreclosure sale purchaser notified the occupant in writing of the amount of rent or use and occupancy that was to be paid and to whom it was to be paid; (b) the occupant has violated an obligation or covenant of the occupancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation within a reasonable time after having received written notice thereof from

the foreclosure sale purchaser; (c) the occupant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the property, or is creating a substantial interference with the quiet enjoyment of other occupants; (d) the occupant is convicted of using or permitting the unit to be used for any illegal purpose; (e) the occupant has refused to provide reasonable access to the property to the foreclosure sale purchaser for the purpose of making necessary repairs or improvement required by the laws of the United States, Massachusetts or any subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of showing the rental housing unit to a prospective purchaser. Lynn Bill of Rights, § 2:00. A violation of this requirement or an attempt to do so carries a penalty of \$300, with each eviction constituting a separate offense. Lynn Bill of Rights, § 14:00.

If you have any questions about the Bill of Rights, please contact one of the authors.

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