

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Sonia Chang-Díaz**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act protecting homeowners facing foreclosure.

PETITION OF:

NAME:

Sonia Chang-Díaz

DISTRICT/ADDRESS:

Second Suffolk



10 meaning of this chapter, unless one or more residential units at the property securing the loan is  
11 occupied by the residential mortgage debtor as of two weeks prior to the date of the notice sent  
12 pursuant to section two.

13 "Residential mortgage lender", any person or other entity who lends money or extends or grants  
14 credit and obtains a residential mortgage to assure payment of the debt. The term shall also  
15 include the holder at any time of a residential mortgage obligation.

16 "Residential mortgage debtor", a borrower who is obligated to a residential mortgage lender to  
17 repay in whole or in part a residential mortgage, and a successor owner of record.

18 Section 2. A residential mortgage lender or its agent shall give the residential mortgage debtor  
19 notice of its intention to begin foreclosure proceedings. Failure to provide such notice shall allow  
20 for a cause of action to restrain a pending foreclosure and for damages and equitable relief, if  
21 applicable, following foreclosure.

22 Such notice shall be in writing, sent to the residential mortgage debtor by registered or certified  
23 mail and by regular first class mail to his last known address and, if different, to the residence  
24 which is the subject of the residential mortgage.

25 Such notice shall clearly and conspicuously state in plain and simple English:

26 (1) Facts sufficient to identify the mortgage and the parties thereto, including but not limited to,  
27 the name of the present holder of the mortgage, the original mortgagee, the lender which intends  
28 to foreclose, any servicer or agent acting on his behalf, and the name, address, and working

29 telephone number of the entity responsible for responding to inquiries by the residential  
30 mortgage debtor;

31 (2) The nature of the default claimed;

32 (3) The right of the residential mortgage debtor to cure the default as provided in section three,  
33 and what performance, including what sum of money, if any, must be tendered to cure the  
34 default; provided, however, that in making such statement the lender may advise the debtor that  
35 the amounts stated are based on the information contained in the lender's records on the date of  
36 the notice, the amounts stated do not reflect items not posted, and adjustments, disbursements, or  
37 transactions not reflected in the lender's records at the time of the notice or occurring subsequent  
38 to the date of the notice;

39 (4) That the residential mortgage debtor may contact the entity identified in clause (1) for current  
40 information concerning what performance must be tendered to cure the default in accordance  
41 with the relevant provisions of this chapter;

42 (5) That the residential mortgage debtor may cure the default within sixty days of the date of the  
43 notice, pursuant to the provisions of section four, without incurring any obligation for the  
44 residential mortgage lender's attorney's fees or costs;

45 (6) That if the default is not cured within sixty days, the residential mortgage debtor may become  
46 obligated for the residential mortgage lender's reasonable attorney's fees and costs;

47 (7) The means by which the residential mortgage lender intends to foreclose, if the default is not  
48 cured, together with a reasonable estimate of the date on which such foreclosure might occur;

49 (8) That the residential mortgage debtor may be evicted from the property following the  
50 foreclosure sale;

51 (9) That the residential mortgage debtor has the following rights:

52 (a) to bring an action in court to seek to prevent or delay the foreclosure sale;

53 (b) to sell the property prior to the foreclosure sale and to use the proceeds to pay off the loan;

54 (c) to redeem the property by paying the total amount due, prior to the foreclosure sale;

55 (d) to approach the residential mortgage lender prior to the foreclosure sale to seek a negotiated  
56 agreement to repay the mortgage on terms that are different from or alternative to the original  
57 terms of the mortgage including, but not limited to, copies of the mortgage, note, disclosure  
58 statement, and payment records;

59 (10) That the residential mortgage debtor may have the following additional rights, depending on  
60 the terms of the residential mortgage:

61 (a) to transfer the property to a third party subject to the security interest held by the residential  
62 mortgage lender and the transferee's right, if any, to cure the default;

63 (b) to refinance the obligation by obtaining a loan which would fully repay the residential  
64 mortgage debtor; and

65 (c) to voluntarily grant a deed to the residential mortgage lender in lieu of foreclosure.

66 The residential mortgage lender shall respond in writing to any request for documents made  
67 pursuant to this section within ten business days.

68 The commissioner of banking shall promulgate a form notice which meets the requirements of  
69 this section. Use of such a form notice, if it does not contain materially inaccurate information,  
70 shall constitute compliance with this section.

71 The notice shall contain the following declaration on the first page in Spanish, in any other  
72 language which the lender knows is the debtor's primary language, and any other language  
73 deemed appropriate by the commissioner of banking: "This is an important notice concerning  
74 your right to live in your home. Have it translated at once."

75 Section 3. Notwithstanding the provisions of any other law to the contrary, at any time up to one  
76 business day prior to the scheduled or actual time of bidding at a sale to foreclose a residential  
77 mortgage, the residential mortgage debtor or anyone acting on his behalf may cure the default,  
78 prevent foreclosure, and avoid acceleration by paying the mortgage lender all sums which would  
79 then be due under the residential mortgage if no acceleration had occurred; curing any default of  
80 any other covenant or agreement of which the residential mortgage debtor had notice pursuant to  
81 section two; paying all expenses incurred in enforcing the residential mortgage as provided in  
82 section four: and performing any non-monetary obligations required under the residential  
83 mortgage. Payment shall not be refused if it is in the form of a cashier's check, certified check,  
84 treasurer's check, money order, or cash.

85 Cure of a default pursuant to this section shall restore the residential mortgage debtor to the same  
86 position as if the default had not occurred.

87 Section 4. If a residential mortgage contract provides for the payment of attorney's fees and costs  
88 in the event of a default, such fees and costs shall be reasonable and shall not be charged as a  
89 percentage of the amounts due under the mortgage. No residential mortgage lender may charge  
90 attorney's fees or costs for legal expenses incurred prior to the expiration of the sixty day period  
91 provided in section two, if the residential mortgage debtor cures the default within such sixty day  
92 period.

93 Section 5. Within ten days following the foreclosure sale, the residential mortgage lender shall  
94 provide to the residential mortgage debtor a notice, which clearly and conspicuously states the  
95 highest bid price and the identity of the highest bidder.

96 Within ten days of the filing or recording of the foreclosure deed, the residential mortgage lender  
97 shall provide to the residential mortgage debtor a notice, which clearly and conspicuously states:

98 (1) The date, time, and nature of the foreclosure sale and the name of the purchaser;

99 (2) The amount of money, if any, received by the residential mortgage lender following the  
100 foreclosure;

101 (3) The distribution of the proceeds of sale with an accounting of any costs or fees associated  
102 with the sale, together with a statement of the residential mortgage debtor's right to claim against  
103 or dispute the proposed distribution;

104 (4) The right of the debtor to obtain copies of documents related to the sale or disposition,  
105 including, but not limited to copies of the record of sale or disposition, title records, and an

106 accounting of the residential mortgage lender's claim, together with a description of how those  
107 records may be obtained; and

108 (5) The name, address, and telephone number of the entity to which inquiries, requests for record  
109 or disputes concerning disposition of the proceeds of sale may be addressed.

110 Each notice shall be in writing, sent to the residential mortgage debtor by registered or certified  
111 mail and by regular first class mail to his last known address and, if different, to the residence  
112 which is the subject of the residential mortgage.

113 The commissioner of banking shall promulgate a form notice which meets the requirements of  
114 this section. Use of such a form notice, if it does not contain materially inaccurate information,  
115 shall constitute compliance with this section.

116 The notice shall contain the following declaration on the first page in Spanish, in any other  
117 language which the lender knows is the debtor's primary language, and any other language  
118 deemed appropriate by the commissioner of banking: "This is an important notice concerning  
119 your right to live in your home. Have it translated at once."

120 Section 6. No foreclosure subject to the provisions of this chapter shall take place within one  
121 hundred and eighty days of the sending of the notice required by section two, absent a court  
122 order. The superior court shall have jurisdiction to issue any such order following reasonable  
123 notice to the residential mortgage debtor and opportunity to be heard. Such order shall issue upon  
124 a showing of clear and convincing evidence by the residential mortgage lender that justice  
125 requires it and after notice to the residential mortgage debtor and a full evidentiary hearing.



126 Section 7. In addition to any other remedies provided in this chapter, failure of a residential  
127 mortgage lender to comply with any provision of this chapter shall allow for a cause of action for  
128 total damages under section nine of chapter ninety-three A of not less than five hundred dollars.

129 Section 8. The amount of judgment for a deficiency brought under the provisions of section  
130 seventeen A of chapter two hundred and forty-four on a residential mortgage shall be the debt  
131 plus any liens senior to the foreclosing mortgagee's interest less the higher of either the sale price  
132 at the foreclosure or the fair market value of the property at the time of the foreclosure. The price  
133 obtained at the foreclosure sale may be admitted as evidence of the fair market value; provided,  
134 however, that such sale price shall not be conclusive evidence of the fair market value; and  
135 provided further that the court shall make an independent determination of fair market value  
136 based on all the evidence.

137 Section 9. Upon foreclosure of a residential mortgage, which is sold or otherwise acquired by the  
138 residential mortgage lender, its agents, assigns, or any entity other than a bona fide third party  
139 purchaser for value, the entity or person acquiring the mortgage shall be required to account to  
140 the residential mortgage debtor for any proceeds of a resale which takes place within the  
141 eighteen months following the original sale or disposition.

142 Any entity or person with an obligation under this section:

143 (1) may retain all sums advanced to acquire the property from the proceeds of the resale, plus  
144 any sums reasonably expended to maintain, repair, or improve the property, plus twenty-five  
145 percent of the balance of the proceeds. Any surplus proceeds must be returned to the residential  
146 mortgage debtor;

147 (2) must make reasonable efforts to locate any person entitled to a refund under this section,  
148 including, but not limited to mailing to that person's last known address and a check of telephone  
149 listing in the community where the debtor last lived;

150 (3) shall provide notice to the commissioner of banking of any refunds under this section which  
151 remain unpaid for more than ninety days.

152 The commissioner of banking shall maintain any records of unpaid refunds under this section by  
153 the name of the person or persons entitled to the refund for at least two years following notice of  
154 the unpaid refund. The commissioner of banking shall publish, at least two times yearly, the  
155 names of those persons entitled to refunds.

156 Section 10. The provisions of this chapter shall not be waived, and any agreement to waive them  
157 or covenant not to rely upon them shall be void.