

HOUSE No. 4085

The Commonwealth of Massachusetts



EXECUTIVE DEPARTMENT
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DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

June 11, 2007.

To the Honorable Senate and House of Representatives:

I am filing for your consideration the attached legislative proposal, entitled, "An Act Implementing the Division of Banks Mortgage Summit Recommendations."

Massachusetts, like other states across the country, faces an escalating and complex crisis of home foreclosure. This legislation draws upon the recommendations of the Mortgage Summit Group, a partnership of 50 participants with a wide range of expertise— from non-profit agencies, government agencies and the mortgage lending industry. An outgrowth of that broad partnership, this comprehensive legislation will fight the surge in home foreclosures and curb predatory lending. The bill criminalizes mortgage fraud in the Commonwealth; creates a centralized statewide foreclosure database of foreclosure activity to monitor and analyze foreclosures and foreclosure patterns at the Division of Banks; and mandates that mortgage holders file a 90-day notice of intent to foreclose with the homeowner and the Division of Banks. Finally, this bill requires mortgagees to receive consumer counseling prior to obtaining non-conforming variable rate mortgage loans.

These reform measures will go a long way toward empowering the people of the Massachusetts to meet their mortgage obligations. Accordingly, I urge your early and favorable consideration of this bill, which protects Massachusetts families from predatory lending and the increasing risk of losing their homes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deval Patrick", written over a white background.

DEVAL L. PATRICK,
Governor.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT IMPLEMENTING THE DIVISION OF BANKS MORTGAGE SUMMIT
RECOMMENDATIONS.

*Be it enacted by the Senate and House of Representatives in General
Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 10 of the General Laws is hereby amended
2 by inserting after section 35CC the following section:—
3 Section 35DD. (a) There shall be established on the books of the
4 commonwealth a separate fund to be known as the Division of
5 Banks Trust Fund, to be expended, without prior appropriation, by
6 the division of banks. The fund shall consist of 100 per cent of the
7 fee revenue collected under subsection (b). Funds from the account
8 shall be expended solely in connection with establishing, adminis-
9 tering, operating and updating a mortgage foreclosure database in
10 the commonwealth and providing reports from information in that
11 database. No expenditure shall be made from the fund which shall
12 cause the fund to be in deficit at the close of any fiscal year.
13 Moneys deposited in the fund that are unexpended at the end of the
14 fiscal year and that exceed 20 per cent of the fund's expenditures for
15 the previous fiscal year shall revert to the General Fund.
16 (b) Notwithstanding any general or special law to the contrary, the
17 secretary of administration and finance shall adopt regulations to
18 establish a fee for the filing of a Notice of Intent To Foreclose and
19 Right To Cure with the division under section 14A of chapter 244.

1 SECTION 2. Chapter 183 of the General Laws is hereby amended
2 by inserting after section 6C the following section:—
3 Section 6D. Every mortgage and assignment of mortgage secured
4 by residential property, as defined in section 1 of chapter 255E, pre-
5 sented for record, in which a mortgage broker, as defined in section
6 1 of chapter 255E, is involved shall contain or have endorsed upon it
7 the name, post office address and license number of the mortgage

8 broker and, if applicable, the mortgage loan originator responsible
9 for placing the mortgage loan with the mortgagee. This endorse-
10 ment (or notation that no mortgage broker or mortgage loan origi-
11 nator was involved in the mortgage) shall be recorded as part of the
12 mortgage or assignment of mortgage. Failure to comply with this
13 paragraph shall not affect the validity of any mortgage or assignment
14 of mortgage or the recording of any mortgage or assignment of
15 mortgage. No register of deeds shall accept a mortgage or assign-
16 ment of a mortgage for recording unless it is in compliance with the
17 requirements of this section.

18 For the purposes of this section, “mortgage loan originator” shall
19 mean a natural person: (a) who is employed by or associated with a
20 mortgage lender or mortgage broker and (b) who negotiates, solicits,
21 arranges, provides or accepts residential mortgage loan applications,
22 or assists consumers in completing those applications.

1 SECTION 3. Section 27 of chapter 183, as appearing in the 2004
2 Official Edition, is hereby amended by adding the following para-
3 graph:—

4 The holder of a mortgage of real estate, or the holder’s representa-
5 tives, shall provide to the mortgagor or the mortgagor’s heirs, suc-
6 cessors or assigns a written notice containing an itemized accounting
7 of the disposition of the proceeds arising from a sale under the
8 power of sale, including but not limited to the sale price, legal fees,
9 auctioneer fees, publication costs, and other fees, and any surplus
10 due to the mortgagor or the amount of any deficiency, within 30
11 days after the date of the sale.

1 SECTION 4. Chapter 183 is hereby further amended by adding
2 the following section:—

3 Section 69. No mortgagee who makes a loan to be secured by a
4 mortgage on owner-occupied, 1 to 4 family real estate in the com-
5 monwealth shall make the loan at a variable or adjustable rate of
6 interest unless: (i) the loan meets all of the standard underwriting
7 criteria for a conventional mortgage loan as established by the Fed-
8 eral National Mortgage Association or the Federal Home Loan
9 Mortgage Corporation and is rated “A” paper under those criteria;
10 or (ii) the mortgagor affirmatively opts in writing for the variable or
11 adjustable rate loan and receives certification from a counselor with

12 a third-party nonprofit organization approved by the United States
13 Department of Housing and Urban Development, a housing
14 financing agency of the commonwealth, or the regulatory agency
15 which has jurisdiction over the creditor, that the mortgagor has
16 received counseling on the advisability of the loan transaction.
17 Counseling shall be allowed in whole or in part by telephonic
18 means. The commissioner shall maintain a list of approved coun-
19 seling programs. At or before closing such a loan, the mortgagee
20 shall obtain evidence that the mortgagor has completed an approved
21 counseling program. If a mortgage loan is made by a mortgagee in
22 violation of this section, the variable or adjustable rate terms of the
23 loan shall not be enforceable and the mortgagee shall only be enti-
24 tled to collect an interest rate equal to the lesser of the original
25 interest rate, including any discounted rate, or the current adjusted
26 interest rate throughout the remaining term of the loan. The com-
27 missioner may issue directives or guidelines or adopt regulations in
28 order to administer and carry out this section and to further define
29 the terms used in this section.

1 SECTION 5. Chapter 244 of the General Laws is hereby amended
2 by inserting after section 14 the following 4 sections:—

3 Section 14A. (a) After a breach of condition of a mortgage loan
4 secured by residential property in the commonwealth, a mortgagee
5 or holder of the mortgage shall not proceed against the mortgaged
6 premises under a power of sale unless the mortgagee or holder of the
7 mortgage gives the mortgagor the notice described in this section.

8 (b) The notice shall be in writing and shall be mailed, postage
9 prepaid, by certified mail with return receipt requested, to the mort-
10 gator at his last address then known to the mortgagee, at least 90
11 days before exercising any rights under a power of sale.

12 (c) The notice shall conspicuously state the rights of the mort-
13 gator upon default in substantially the following form:

14 The heading shall read: "Notice of Intent To Foreclose and Right
15 To Cure." The body of the notice shall read: "You are now in default
16 on a mortgage loan transaction dated _____. This mortgage loan is
17 secured by property located at _____. This loan was originated by
18 (name of mortgagee), assigned to _____ (if applicable) and is being
19 serviced by _____ (if applicable). The mortgage broker/mortgage
20 originator for this mortgage loan transaction was _____. You may

21 cure your default by paying all sums due on the mortgage loan on or
22 before (a date which is at least 90 days after the notice has been
23 mailed). If you pay this amount within the time allowed, you are no
24 longer in default and may continue on with the transaction as though
25 the default had not occurred. You may contact the mortgagee or the
26 mortgagee's agent at (telephone number of mortgagee or mort-
27 gagee's agent) in order to obtain the amount due to cure the default
28 on your mortgage loan.

29 If you do not cure your default by the date stated above, (name of
30 mortgagee) may begin foreclosure proceedings against you, and you
31 could lose your home.”

32 (d) A copy of the notice described in this section shall be filed
33 with the commissioner of banks and shall include the rate of interest
34 on the loan and whether it was a variable or fixed rate of interest.
35 The filing fee for the notice shall be determined annually by the Sec-
36 retary of administration under section 3B of chapter 7.

37 (e) No attorney's fees or other fees or charges other than per diem
38 interest may be charged to the mortgagor during the mortgagor's 90-
39 day right to cure.

40 Section 14B. If after receiving a Notice of Intent To Foreclose and
41 Right To Cure from the mortgagee under section 14A, the mortgagor
42 fails to cure a default on a mortgage loan secured by residential
43 property, as defined in section 1 of chapter 255E, within the time
44 permitted by the Notice (which shall be at least 90 days after the
45 Notice has been mailed), the mortgagee may do all acts authorized
46 or required under the power of sale. If the residential property
47 securing the mortgage loan is sold at a foreclosure sale, the mort-
48 gagee shall notify the commissioner of banks, in writing, of the date
49 of the foreclosure sale and the purchase price obtained at the sale,
50 and shall include a copy of the notice required under section 14A.

51 Section 14C. (a) For the purposes of this section, the following
52 terms shall have the following meanings:

53 “Default”, a condition in which a homeowner is 1 or more months
54 in arrears on the mortgage payments.

55 “Foreclosure”, a condition in which a homeowner has received a
56 notice issued by a court under chapter 57 of the acts of 1943 or has
57 received a notice under section 14A of this chapter.

58 “Purchaser”, any person who acquires title to residential property.

59 “Transfer of title”, the transfer of a mortgagor’s interest to a pur-
60 chaser by purchase agreement, option to purchase, lease, or any
61 other means, or by the creation of a mortgage or other lien or encum-
62 brance that allows the purchaser to obtain legal or equitable title to
63 all or part of the property.

64 (b) The transfer of title to residential property, as defined in
65 section 1 of chapter 255E, by a mortgagor who is in default or fore-
66 closure during the time of default or foreclosure, made in contempla-
67 tion of a subsequent conveyance of an interest back to the mortgagor
68 by the purchaser, that allows the homeowner to regain possession of
69 the residential property is prohibited unless the purchaser is a
70 spouse, parent, grandparent, child, grandchild, sibling, aunt, or uncle
71 of the mortgagor.

72 Section 14D. The commissioner of banks shall maintain a foreclo-
73 sure database that shall include, but not be limited to, foreclosure
74 activity by mortgage lenders, mortgage holders and mortgage ser-
75 vicers, as well as the mortgage brokers and loan originators who
76 placed these mortgage loans in the commonwealth, including infor-
77 mation relative to the original mortgagee, and any subsequent
78 assignee. Based on the information received, the commissioner shall
79 produce a report at least annually to track developments and trends
80 of mortgage foreclosure on residential property in the common-
81 wealth, including but not limited to an analysis of the pre-foreclo-
82 sure notices submitted to the commissioner compared to the final
83 foreclosure notices, and any trends or patterns relative to the geo-
84 graphic location of the residential properties, and interest rates. The
85 report shall be available to the public upon request, and the commis-
86 sioner shall make it available in any other manner that he may
87 choose.

1 SECTION 6. Section 2 of chapter 255E of the General Laws, as
2 so appearing, is hereby amended by striking out, in lines 34-39, the
3 words “or to any nonprofit agency or corporation incorporated under
4 the laws of the commonwealth for the purpose of assisting low to
5 moderate income households in the purchase or rehabilitation of
6 family residences of four units or less and which holds tax-exempt
7 status granted under the provisions of Section 501(c)(3) or 501(c)(4)
8 of the Internal Revenue Code,”.

1 SECTION 7. Chapter 266 of the General Laws is hereby amended
2 by inserting after section 35 the following section:—

3 Section 35A. (a) For the purposes of this section, the following
4 terms shall have the following meanings:—

5 “Material omission”, the omission or concealment of a material
6 fact necessary in order to make the statement made, in the light of
7 the circumstances under which it is made, not misleading.

8 “Mortgage lending process”, the process through which a person
9 seeks or obtains a residential mortgage loan, including, but not lim-
10 ited to, solicitation, application or origination, negotiation of terms,
11 third-party provider services, underwriting, signing and closing, and
12 funding of the loan. Documents involved in the mortgage lending
13 process include, but are not limited to, uniform residential loan
14 applications or other loan applications; appraisal reports; HUD-1 set-
15 tlement statements; supporting personal documentation for loan
16 applications such as W-2 forms, verifications of income and employ-
17 ment, bank statements, tax returns, and payroll stubs; and any
18 required disclosures.

19 “Pattern of residential mortgage fraud”, 1 or more material mis-
20 statements, material misrepresentations, or material omissions made
21 during the mortgage lending process in connection with 3 or more
22 residential properties within a 5 year period, which have the same or
23 similar intents, results, participants, victims, or methods of commis-
24 sion or otherwise are interrelated by distinguishing characteristics.

25 “Person”, a natural person, corporation, company, limited liability
26 company, partnership, trustee, association, or any other entity.

27 “Residential mortgage loan”, a loan to a natural person made pri-
28 marily for personal, family or household purposes secured wholly or
29 partially by a mortgage on real property located in the common-
30 wealth containing a dwelling house with accommodations for 4 or
31 fewer separate households and occupied, or to be occupied, in whole
32 or in part by the obligor on the mortgage debt.

33 (b) A person commits the offense of residential mortgage fraud
34 when, with the intent to defraud, the person knowingly:

35 (1) makes or causes to be made any deliberate material misstate-
36 ment, material misrepresentation, or material omission during or in
37 connection with the mortgage lending process with the intention that
38 it be relied on by a mortgage lender, mortgagor, or any other party to
39 the mortgage lending process;

40 (2) uses or facilitates the use of any deliberate material misstate-
41 ment, material misrepresentation, or material omission during the
42 mortgage lending process with the intention that it be relied on by a
43 mortgage lender, mortgagor, or any other party to the mortgage
44 lending process;

45 (3) receives any proceeds or any other funds in connection with a
46 residential mortgage closing that the person knew resulted from a
47 violation of paragraph (1) or (2) of this subsection;

48 (4) coerces or induces a real estate appraiser to inflate the value of
49 real property used as collateral for a residential mortgage loan;

50 (5) represents or implies that a real estate appraiser will not be
51 selected to conduct an appraisal of the real property or selected for
52 future appraisal work unless the appraiser agrees in advance to a
53 value, range of values or minimum value for the real property;

54 (6) represents or implies that a real estate appraiser will not be
55 paid for an appraisal unless the appraiser agrees in advance to a
56 value, range of values or a minimum value for the real estate;

57 (7) conspires to violate any of the provisions of paragraphs (1)
58 through (6) of this subsection; or

59 (8) files or causes to be filed with the official registrar of deeds of
60 any county of the commonwealth any document that the person
61 knows to contain a deliberate material misstatement, material mis-
62 representation, or material omission.

63 (c) For the purpose of venue under this section, any act of resi-
64 dential mortgage fraud under this section shall be considered to have
65 been committed:

66 (1) in the county in which the residential property for which a
67 mortgage loan is being sought is located;

68 (2) in any county in which any act was performed in furtherance
69 of the violation;

70 (3) in any county in which any person alleged to have violated
71 this section had control or possession of any proceeds of the viola-
72 tion;

73 (4) if a closing occurred, in any county in which the closing
74 occurred; or

75 (5) in any county in which a document containing a deliberate
76 material misstatement, material misrepresentation, or material omis-
77 sion is filed with the official register of deeds.

78 (d) District attorneys and the attorney general shall have the
79 authority to conduct the criminal investigation and prosecution of all
80 cases of residential mortgage fraud under this section.

81 (e)(1) Any person committing the offense of residential mortgage
82 fraud under this section shall be guilty of a felony and, upon convic-
83 tion, shall be punished by imprisonment in state prison for up to 5
84 years or in a house of correction for up to 2 ½ years, by a fine not to
85 exceed \$10,000 for a natural person or \$100,000 for any other
86 person, or by both such fine and imprisonment.

87 (2) If an act of residential mortgage fraud under this section
88 involves engaging or participating in a pattern of residential mort-
89 gage fraud or a conspiracy or endeavor to engage or participate in a
90 pattern of residential mortgage fraud, the violation shall be punish-
91 able by imprisonment in state prison for up to 15 years, by a fine not
92 to exceed \$50,000 for a natural person or \$500,000 for any other
93 person, or by both such fine and imprisonment.

94 (3) Each residential property transaction that effects a residential
95 mortgage fraud under this section shall constitute a separate offense
96 and shall not merge with any other crimes set forth in this section.

97 (f) All real and personal property used or intended for use in the
98 course of, derived from, or realized through, an act of residential
99 mortgage fraud under this section shall be subject to forfeiture to the
100 commonwealth. Forfeiture shall be had by the procedure set forth in
101 section 47 of chapter 94C. District attorneys and the attorney general
102 may commence forfeiture proceedings under this section.

1 SECTION 8. Notwithstanding section 35DD of chapter 10 of the
2 General Laws, as inserted by section 1 of this act, for fiscal years
3 2008, 2009 and 2010, moneys deposited in the Division of Banks
4 Trust Fund that are unexpended at the end of the fiscal year shall
5 remain in the fund.

1 SECTION 9. This act shall take effect upon its passage.