FORECLOSURE IN MASSACHUSETTS

The Power-of-Sale Process, Statutory Requirements, and Key Practice Considerations

M.G.L. c. 244 • Non-Judicial Foreclosure Under a Power of Sale

Prepared for Client & Internal Reference Use

Massachusetts Is a Non-Judicial Foreclosure State

Most residential and commercial mortgages contain a statutory power of sale, letting the mortgagee foreclose by advertisement and public auction — without first obtaining a court judgment.

c. 244

Governing statute for foreclosure by power of sale

§ 35A

90-day right-to-cure notice for certain mortgage loans

14 days

Minimum notice to lienholders before a foreclosure sale under § 14

These figures set the floor — the mortgage itself may impose longer or additional notice obligations that control if more protective than the statute.

KEY THEMES

Strict compliance

Every statutory and mortgage-power condition must be satisfied precisely.

Notice is central

Cure notices, sale notices, and publication drive most litigated defects.

Title consequences

A defective foreclosure can cloud or void the resulting title.

Evolving case law

SJC decisions continue to shape lender and servicer obligations.

ROUTES TO FORECLOSURE

Two Statutory Paths

Foreclosure by Power of Sale

c. 244, §§ 11–17C — the dominant method

- Requires an express power of sale in the mortgage
- Foreclosure by advertisement and public auction
- No pre-sale court judgment required
- Post-sale Land Court "servicemember" case still needed

Judicial / Entry-Based Foreclosure

c. 244, §§ 1–9 — used far less often

- Foreclosure by court action, or entry plus continued possession
- Open, peaceable, and unopposed entry for three years bars the mortgagor
- Useful where a power of sale is absent or defective
- Slower; typically paired with a power-of-sale strategy

A CLOSER LOOK

Judicial Foreclosure, In Context

Roughly half the states require a court judgment to foreclose. Massachusetts does not — but its own judicial and entry-based alternatives to the power of sale remain on the books.

THE NATIONAL PICTURE

Judicial-Foreclosure States

CT	DE	FL	IL	IN	KY	NJ	NM
NY	ND	OH	OK	PA	SC	VT	WI

Non-Judicial (Power-of-Sale) States

MA	CA	TX	GA	AZ	MI	WA	NC
VA	TN	MO	MN	CO	AL	MD	RI

IRS Tax Liens Follow a Different Rule

A nonjudicial sale can still discharge an IRS lien if the foreclosing party gives the IRS 25 days' written notice under 26 U.S.C. § 7425(c)(1) — the IRS then keeps a 120-day right of redemption under § 7425(d).

Selected examples, not exhaustive — several states permit both routes depending on the mortgage.

MASSACHUSETTS' OWN ALTERNATIVES

Foreclosure by Action

c. 244, §§ 1–10

A complaint filed in Land Court or Superior Court names the mortgagor and all junior lienholders; judgment forecloses the equity of redemption. Rarely used today — slower and costlier than a power of sale.

Foreclosure by Entry

c. 244, §§ 1–2

The mortgagee makes open, peaceable, and unopposed entry (or records a certificate of entry); three years of continued, uncontested possession bars the mortgagor's redemption rights.

Where It's Used Today

—

Mainly as a backstop alongside a power-of-sale foreclosure, or where the mortgage lacks an enforceable power of sale in the first place.

AN EMERGING RISK

Federal Junior Liens & SBA

A 2023 federal appellate decision confirms that a Massachusetts power-of-sale foreclosure cannot extinguish a junior lien held by the United States — including SBA — without a judicial sale.

THE CASE

Show Me State Premium Homes, LLC v. McDonnell, 74 F.4th 911 (8th Cir. 2023). A non-judicial tax sale did not qualify as a “judicial sale” under 28 U.S.C. § 2410(c), so HUD's junior deeds of trust survived the sale. The same rule reaches any federal agency's junior lien — IRS tax liens are the one statutory exception.

WHERE SBA SHOWS UP

504/CDC loans, where SBA holds a second-position mortgage behind the bank's first • 7(a) loans, where SBA takes an assignment by subrogation after paying a guaranty claim • Any workout where SBA or a CDC holds a junior lien as added collateral.

PROTECTING THE FILE

1

Search Title Early

Confirm whether an SBA or other federal junior lien sits behind the senior mortgage before choosing a foreclosure route.

2

Seek a § 2410(e) Release

Federal agencies can consent administratively to release or subordinate a junior lien — often faster than litigation.

3

If Unresolved, Foreclose Judicially

Extinguishing SBA's interest requires a judicial sale naming the United States under § 2410, not a c. 244 power of sale.

4

Mind the Redemption Tail

Even after a judicial sale, the government keeps a one-year right to redeem under § 2410(c).

BEFORE THE SALE

Pre-Foreclosure Notice Requirements

A lender ordinarily cannot accelerate or foreclose a residential mortgage until statutory cure and default notices have been given and expired.

1 **§ 35A Right-to-Cure Notice**

90-day notice of the right to cure a default before acceleration, for mortgages on owner-occupied 1–4 family homes.

2 **Notice of Default**

Identifies the default, amount due, and consequences of failure to cure, per the mortgage's own default-notice clause.

3 **Loss-Mitigation / Counseling Referral**

Many notices must reference certified housing-counseling agencies and, where applicable, modification review.

4 **Expiration of Cure Period**

Only after the cure period lapses without payment may the lender proceed toward acceleration and sale.

TIMING SNAPSHOT

90

days minimum cure period under § 35A before acceleration on covered loans

21

days minimum notice of sale, published once a week for three successive weeks

A MASSACHUSETTS-SPECIFIC STEP

The Servicemembers Land Court Filing

Massachusetts uniquely requires a judicial determination, before or as part of the foreclosure, that the mortgagor is not entitled to protection under the Servicemembers Civil Relief Act.

Who Files

The foreclosing mortgagee, in the Massachusetts Land Court, naming the owner(s) as defendants.

What It Establishes

That owner is on active military duty entitled to SCRA protection from foreclosure.

When It's Used

Historically a pre-sale prerequisite; commonly resolved through the land court.

Why It Matters

A foreclosure completed without addressing SCRA status is a cloud on title.

CONDUCTING THE SALE

Notice, Publication & Auction

1

Notice to Mortgagor

Written notice of the sale date, time, and place, sent as the mortgage and § 14 require.

2

Publication

Notice published once a week for three successive weeks in a newspaper of general circulation where the property sits.

3

Notice to Municipality & Occupants

Notice to the city or town, and, for certain properties, to tenants and occupants.

4

Public Auction

Sale conducted at the time and place advertised; mortgagee may bid; high bidder signs a memorandum of sale.

5

Deed & Affidavit

Foreclosure deed and § 15 affidavit of sale executed and recorded, reciting compliance with the power of sale.

All five steps must strictly track the power of sale and c. 244.

AFTER THE SALE

Possession, Redemption & Surplus Funds

1. **Summary Process (Eviction)**

   If the former owner or occupants remain, the purchaser brings a summary process action in Housing or District Court to obtain possession.

2. **Statutory Redemption**

   The mortgagor's equity of redemption is cut off by a valid sale; there is no post-sale statutory redemption period in Massachusetts as there is in some states.

3. **Surplus Proceeds**

   Sale proceeds pay the debt, costs, and expenses first; any surplus is held for the mortgagor and junior lienholders in order of priority.

4. **Deficiency Claims**

   A mortgagee may pursue the borrower for a deficiency, subject to any anti-deficiency provisions and the accounting required by c. 244, § 17B.

PRACTICE NOTE

No statutory redemption period means clean title can pass quickly — but it also raises the stakes of any procedural defect, since there is no post-sale cure window for the mortgagee.

Title examiners routinely require the full foreclosure package — notices, affidavit, deed — before insuring over a foreclosure sale.

GOVERNING CASE LAW

Decisions Every Practitioner Should Know

U.S. Bank v. Ibanez — 2011

The foreclosing party must hold the mortgage — by assignment or otherwise — at the time it forecloses; a post-sale assignment cannot cure the defect.

Eaton v. Federal National Mortgage Assn. — 2012

A party foreclosing under a power of sale must hold both the mortgage and the underlying note, or act as an authorized agent of the note holder.

Pinti v. Emigrant Mortgage Co. — 2018

Strict compliance with the mortgage's own default-notice paragraph is required; substantial compliance is not enough, though applied prospectively.

U.S. Bank v. Schumacher — 2012

A foreclosing party must strictly comply with the notice-of-sale terms of the power of sale itself, not just the statute.

PRACTICAL GUIDANCE

Practice Pointers for a Defensible Foreclosure File

1

Confirm the chain

Verify the mortgage assignment chain and note-holder status before the first notice goes out.

2

Calendar every deadline

Track § 35A cure periods, publication windows, and sale-notice timing against the actual mortgage language, not just the statute.

3

Match notices to the mortgage

Cross-check every notice against the mortgage's own default and sale-notice provisions — Pinti makes the contract terms, not just c. 244, the standard.

4

Resolve SCRA early

File and resolve the Land Court servicemember determination before scheduling the sale.

5

Document the sale itself

Preserve auction records and bidder information in case of later challenge.

6

Plan for surplus & deficiency

Prepare the post-sale accounting under § 17B before pursuing any deficiency claim.

MASSACHUSETTS AGENCY

Commercial Mortgage Foreclosure Review
Title Insurance Perspective

August 26, 2026

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The Mortgage

Enforceability

Confirm the Mortgage is enforceable

- Granting language and execution by proper parties
- Authority for all signatories
- Proper acknowledgments
- Legal description
- Statutory power of sale
- Unexpired / not obsolete by statute

Reviewing the acknowledgment

- Is the acknowledgment block complete?
- Does it state the person personally appeared?
- Does it state what evidence of identification was provided?
- Does it state the signatory executed the document voluntarily for its stated purpose, or as their free act and deed?

No RON in Massachusetts

The acknowledgment must state that the person personally appeared — a remote online notarization will not satisfy this requirement.

Power of Sale

M.G.L. c.183 §21 — three ways to incorporate the statutory power of sale

Method one

Incorporate the exact language defining the statutory power of sale in §21 into the text of the mortgage

Method two

Refer to the definition set forth in §21 by using the term "statutory power of sale"

Method three

Include language in the mortgage defining a power substantially similar to the statutory power of sale

James B. Nutter & Company v. Murphy, 478 Mass. 664 (2018)

Sets out the three methods by which a mortgage may incorporate the statutory power of sale.

Notice of Sale

MGL c.244 §14

Notice

- By the Mortgagee or authorized party (authorized in writing — check your POA)
- Contains recording information of the mortgage and all assignments
- States the breach of condition
- Contains auction details and terms of sale
- Includes the legal description (matches mortgage)
- If multiple lots, states which lot the auction takes place on

Publication

- 3 consecutive weeks
- First publication at least 21 days prior to the auction date
- Newspaper of general circulation in the town or city where the land lies

Registered Mail Green Cards

- Owners of the equity of redemption — the mortgagor and record title holders — 14 days prior to sale
- Junior lien holders of record as of 30 days prior to the sale — 14 days prior to sale
- Municipality, where there is a recorded lien pursuant to c.61, 61A and 61B — 90 days prior
- IRS, if a lienholder of record as of 25 days prior to the sale

Remember

- All assignments must be dated, executed, acknowledged and recorded before the first notice, and the recording information for every assignment must be referenced in the notice of sale.
- A junior interest is extinguished only where it has been properly noticed — otherwise its lien survives the sale.

Foreclosure Deed & Affidavit of Sale

M.G.L. c.244 § 14 & 15

Review the details

- Does the deed run from the foreclosing lender to the high bidder named in the affidavit? If not, is there an assignment of bid?
- Is the consideration in the deed the same as the bid noted in the affidavit?
- Does the legal description match the published notice? If not, why not?

Execution and timing

- The affidavit must be under oath with a jurat
- The deed must be properly acknowledged and include an acknowledgment
- Three years from recording the affidavit: conclusive evidence in favor of an arms-length purchaser for value that the power of sale was complied with under c.244

Who may execute the foreclosure deed

Who may sign

- A person purporting to be an authorized signatory for the entity holding the mortgage
- A person acting under a power of attorney on behalf of the entity holding the mortgage

What M.G.L. c.183 §54B provides

- No vote of the foreclosing entity affirming the authority is required
- This does not negate the need to record the POA itself — but no vote authorizing the POA is needed

One caution on the chain of authority

Where another entity executes the foreclosure deed on behalf of the foreclosing mortgagee, evidence of authority for the ultimate signature is still required — §54B applies only to the mortgagee entity, not to each entity in the chain.

POAs

Authority to execute

- An officer or authorized signatory of the foreclosing entity, or
- An attorney-in-fact acting under a power of attorney from the foreclosing mortgagee

What the POA must show

- Grant of the power being exercised — specific to the property in question, or broad enough to include it with no limiting language
- Properly executed, acknowledged and recorded
- In full force and effect — not amended, revoked or terminated

Effective February 2, 2026

- The Land Court will no longer approve, and Registry Districts may no longer accept for registration, a POA or LPOA whose powers are conditioned on an off-record document such as a servicing agreement.
- The POA must identify the powers granted and give the agent express, unconditional power to sign what is being registered

Certificate of Entry

M.G.L. c.244 §§ 1 & 2

What the certificate must show

- A certificate made by two disinterested witnesses
- Under oath
- Stating that entry was made by the foreclosing lender, or their agent under a power of attorney
- Including a jurat

Three years from recording the entry

- If entry is continued peaceably for three years from the date of recording, the certificate operates to forever foreclose the right of redemption

Post-Foreclosure Affidavits

Pinti — notices after 17 July 2015

- From the foreclosing lender or authorized party
- Basis for the affiant's knowledge
- Strict compliance with the conditions precedent in the mortgage
- Jurat

Eaton — notice of sale after 22 June 2012

- From the foreclosing lender or authorized party
- Basis for the affiant's knowledge
- Foreclosing mortgagee to be holder of the note prior to the first c.244 §14 notice, up to and including the date of sale
- If §35B does not apply, it can be stated here
- Jurat

Common to both

Each affidavit must run from the foreclosing lender or its authorized party and be sworn under a jurat.

PACER

Bankruptcy Filing = Automatic Stay

Check PACER

- Has the foreclosed-upon borrower filed bankruptcy up to and including the date the affidavit of sale was recorded?
- A bankruptcy filing triggers the automatic stay

In re Neiva — 2024, US Bankruptcy Court, District of MA

- Pursuant to 11 USC 522 and 544, a bankruptcy trustee or debtor may avoid a pre-petition foreclosure sale where no documents evidencing the sale have been recorded

In re Neiva

The foreclosure sale was held void and the real property was returned to the estate of the mortgagor.

QUESTIONS & DISCUSSION

Thank You

Hackett Feinberg P.C. • Real Estate, Commercial Lending & Litigation