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Attention Mortgage Loan Servicers: Highest Court in Massachusetts Attempts to Clarify When Default Notices Must Strictly Comply with Paragraph 22 of the Standard Mortgage

2 min read

May 15, 2017

The Massachusetts Supreme Judicial Court (SJC) provided further guidance - up to a point - on mortgagees' strict compliance with the notice of default provisions within paragraph 22 of the standard mortgage (or the equivalent) and when that standard takes effect. Mortgage holders have litigated this issue for years in Massachusetts, and the SJC first addressed compliance with paragraph 22 in a July 17, 2015 decision *Pinti v. Emigrant Mtge. Co.*, 472 Mass. 226 (2015). In *Pinti*, the SJC ruled that "strict compliance" with paragraph 22 was required to effectuate a valid foreclosure pursuant to the statutory power of sale. Understanding that this decision would invalidate hundreds and potentially thousands of foreclosures in Massachusetts, the SJC held that its newly minted strict compliance standard would apply prospectively from its July 17, 2015 decision. However, the SJC neglected to address whether the strict compliance standard would apply to cases already filed in the trial and appellate courts. This caused conflicting decisions by the Massachusetts courts and required the SJC to review its *Pinti* decision in short term after several appeals were filed.

In *Federal National Mortgage Association v. Marroquin*, the SJC attempted to clarify when the strict compliance standard was to apply, holding "that the *Pinti* decision applies in any case where the issue was timely and fairly asserted in the trial court or on appeal before July 17, 2015." *Marroquin* threatens to void dozens of foreclosures that were challenged in the trial and appellate courts as of July 17, 2015 on the basis that the notices of default did not strictly comply with paragraph 22. The decision will likely result in significant litigation over whether a challenge to the paragraph 22 notice was "timely and fairly" asserted before July 17, 2015. The SJC did attempt to address this issue and, in doing so, made it a fairly easy burden for borrowers to sustain. The SJC found that a check the box form answer utilized by many borrowers in response to an eviction action is timely and fair if the borrower checks the defense that the foreclosing entity "does not have proper title to the property and therefore does not have standing to bring this action and/or cannot prove a superior right to possession of the premises."

Even though this generic defense does not mention the notice of default or paragraph 22 of the mortgage, the SJC held that simply checking this defense on the form answer before July 17, 2015 is sufficient for the strict compliance standard for the notice of default to apply.

Servicers take note: *Marroquin* spells trouble because borrowers have routinely employed the check box answer form when responding to eviction actions, especially before July 17, 2015.

Read the decision (PDF)

Topics

Loan Servicing, Mortgage Loans, Massachusetts Supreme Judicial Court, Foreclosure, Mortgage