

THE MASSACHUSETTS SUPREME JUDICIAL COURT CONSIDERS THE EFFECT OF A STATE-MANDATED DEFAULT NOTICE ON THE VALIDITY OF NON-JUDICIAL FORECLOSURES

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U.S. Financial Institutions and Services Litigation Alert

By: Andrew C. Glass, Gregory N. Blase, Jeremy M. McLaughlin, Hollee M. Boudreau

The Massachusetts Supreme Judicial Court ("SJC") heard [argument](#) on February 13, 2020, on whether compliance with a state-mandated default notice could, nevertheless, void foreclosure sales in Massachusetts. Specifically, the SJC examined whether the provision of the state-mandated notice has the potential to deceive a borrower where it describes a period for reinstating a loan that varies (to the benefit of the borrower) from the period contained in the mortgage.

K&L Gates LLP prepared an [amicus brief](#) on behalf of the American Bankers Association, the Mortgage Bankers Association, and other national and state financial services trade organizations. *Amici* explained that the provisions of the mortgage itself resolve any tension (if such tension exists) between the state-mandated notice period and the period contained in the mortgage. Thus, the provision of the state-mandated notice did *not* have the potential to deceive a borrower. *Amici* further explained that deference to plaintiffs' erroneous interpretation would confuse and harm consumers and threaten to cloud title in a vast number of foreclosed-on Massachusetts properties, including those purchased by third-party homebuyers. Thus, *amici* urged the SJC to hold that the subject notice was not inaccurate in a manner that could render a subsequent foreclosure sale void under Massachusetts law.

The SJC is expected to issue its decision this spring.

KEY CONTACTS



ANDREW C. GLASS
PARTNER

BOSTON
+1.617.261.3107
ANDREW.GLASS@KLGATES.COM



GREGORY N. BLASE
PARTNER

BOSTON, NEW YORK
+1.617.951.9059
GREGORY.BLASE@KLGATES.COM



JEREMY M. MCLAUGHLIN
PARTNER

SAN FRANCISCO
+1.415.882.8230
JEREMY.MCLAUGHLIN@KLGATES.COM

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