

## 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



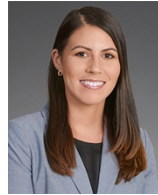
**ANDREW C. GLASS**  
PARTNER  
BOSTON  
+1.617.261.3107  
ANDREW.GLASS@KLGATES.COM



**GREGORY N. BLASE**  
PARTNER  
BOSTON  
+1.617.951.9059  
GREGORY.BLASE@KLGATES.COM



**JEREMY M. MCLAUGHLIN**  
PARTNER  
SAN FRANCISCO  
+1.415.882.8230  
JEREMY.MCLAUGHLIN@KLGATES.COM



**HOLLEE M. BOUDREAU**  
ASSOCIATE  
BOSTON  
+1.617.951.9087  
HOLLEE.BOUDREAU@KLGATES.COM

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