

What does the *Eaton* decision mean for Massachusetts homeowners facing foreclosure?

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On 22 June 2012 the Massachusetts Supreme Judicial Court issued its long-awaited decision in *Eaton v. Federal National Mortgage Association*. The issue was whether a mortgagee (bank/mortgage lender) was required to own/hold both the mortgage and note in order to foreclose, or if it was proper to foreclose with owning/holding the mortgage.

You see, when someone buys a house and gets a “mortgage” what legally happens is that they sign a: 1) promissory note; and 2) a mortgage that grants a security interest in the property to collect the promissory note. These are two separate documents. Until *Eaton*, the entity foreclosing only had to own/hold the mortgage in Massachusetts. This was the practice in Massachusetts and was contrary to the law in many other, if not all, other States that required the entity foreclosing to own/hold both the note and the mortgage. *Eaton* provided an interpretation of existing statutes that was contrary to what had been established practice in Massachusetts. *Eaton* is big news.

To establish what *Eaton* means to the consumer facing foreclosure some of the details of the decision must be discussed. Although *Eaton* changed the law, it is prospective only. This means that it only applies to future cases (with the exception of Ms. Eaton herself). Specifically, it only applies to foreclosures that the required notice of foreclosure had not been sent by the date of the opinion (6/22/2012). So, if that notice has been sent by this date, the foreclosure process follows the “old law” so to speak. Also, keep in mind that a bank/mortgage lender may have owned/held both the note and the mortgage anyways, so following the new interpretation/law will not be a problem. What it will affect are entities that only hold the mortgage, have not sent the required notice of foreclosure by 6/22/2012, and plan on foreclosing. Those entities will have to make a change, which will likely postpone any foreclosure sale until the same entity obtains both the note and the mortgage, at least, or something more.

The foreclosure process has a number of steps, is different in Massachusetts than other states, and the law has been dramatically changing since the onset of the Great Recession. So, if you have questions about a foreclosure you are facing, we encourage you to consult a qualified (foreclosure defense) attorney without delay to discuss your particular issue(s).

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