



# Mortgage Servicer Duty of Good Faith

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1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
  - A. “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.
  - B. “Mortgage loan,” a loan to a natural person made primarily for personal, family or household purposes secured wholly or partially by a mortgage on residential property and includes a mortgage deed even if the debt secured by the mortgage deed has been discharged in bankruptcy.
  - C. “Mortgage servicer” means a person responsible for servicing a mortgage loan, including a person that holds or owns an obligation or originates a mortgage loan if the person also services the obligation.
  - D. “Obligor” means a person that:
    - (1) Owes payment or performance of a mortgage loan;
    - (2) Has provided property other than the mortgaged property to secure payment of the obligation;
    - (3) Has granted a mortgage interest with respect to the mortgaged property; or
    - (4) Is otherwise accountable in whole or in part for payment of the mortgage loan.
  - E. “Residential property,” real property located in the commonwealth, on which there is a dwelling house with accommodations for 4 or fewer separate households.
  - F. “Servicing” means any one or more of the following:
    - (1) Receiving a periodic payment from an obligor under the terms of a mortgage loan, including an amount received for an escrow account;
    - (2) Making or advancing payments to the owner of a mortgage loan on account of an amount due from the obligor under a mortgage servicing loan document or a servicing contract;
    - (3) Making a payment to the obligor under a home equity conversion mortgage or reverse mortgage;
    - (4) Evaluating the obligor for loss mitigation or communicating with the obligor with respect to loss mitigation;
    - (5) Collecting funds from a homeowner for deposit into an escrow account and making payments out of an escrow account; and
    - (6) Taking any other action with respect to a mortgage loan that affects the obligor’s payment or performance of the mortgage loan or that relates to the enforcement of the rights of the loan owner arising under the mortgage loan.

- 2. Duty of good faith.** A mortgage servicer shall act in good faith toward an obligor in the servicing of an obligation secured by a mortgage loan and in any foreclosure action relating to such an obligation.
- 3. Effect of violation related to foreclosure.** If in connection with any activity in furtherance of exercise of a power of sale, a judicial foreclosure, or recovery of possession, a mortgage servicer controlling or managing the activity on its own behalf or on behalf of the owner of the obligation subject to the action is shown to have committed a violation of its duty of good faith under subsection 2, a court shall stay the foreclosure and related activities on appropriate terms and conditions or impose other appropriate sanctions until the violation is cured. In any action for recovery of possession of the mortgaged property following the exercise of a power of sale the court shall declare the foreclosure sale void upon finding a violation of the duty of good faith in relation to the foreclosure.
- 4. Remedies for violation.** The following are remedies for a violation of the duty of good faith under subsection 2.
  - A.** A homeowner or obligor injured by a violation of the duty of good faith may bring an action against the mortgage servicer for all actual damages sustained by the homeowner or obligor.
  - B.** In addition to the damages recoverable under this subsection, the court may award a homeowner or obligor statutory damages not exceeding \$50,000 for a pattern or practice of the mortgage servicer's violating the duty of good faith. In determining whether to award statutory damages and the amount of statutory damages, the court shall consider all relevant factors, including:
    - (1)** The frequency and persistence of violations by the mortgage servicer;
    - (2)** The nature of the violations;
    - (3)** The extent to which the violations were intentional; and
    - (4)** The extent to which the actions that constitute violations are prohibited by state or federal laws, rules or regulations, and the extent to which such actions constitute violations by the mortgage servicer of any consent judgments to which it is a party.
  - C.** If the court determines that there has been a violation of the duty of good faith:
    - (1)** The mortgage servicer may not charge the loan owner for, or add to the amount of the obligation, any attorney's fees or costs incurred as a result of the violation or any other attorney's fees or costs incurred before the mortgage servicer cures the violation; and
    - (2)** The court shall order the mortgage servicer to pay to the obligor the obligor's costs incurred in the action and reasonable attorney's fees as determined by the court.

- 5. Non-Waiver.** The rights, remedies, and procedures provided to borrowers by this Section are in addition to and independent of any other rights, remedies, or procedures under any other law. This Section shall not be construed to alter, limit, or negate any other rights, remedies, or procedures provided to borrowers by law.
- 6. Violation of Chapter 93A.** [Massachusetts example, insert reference to state UDAP law] Violations of the duty of good faith as defined section 2 shall constitute unfair or deceptive acts or practices for the purposes of Section 2 of chapter 93A of the General Laws and shall be enforceable by the attorney general as well as by aggrieved obligors in the same manner and to the same extent as other violations of chapter 93A. All the remedies of chapter 93A shall be available for violations of the servicer's duty of good faith.