

1ST CIRCUIT REJECTS DISMISSAL OF A MASSACHUSETTS FORECLOSURE NOTICE ACTION

On February 8, the U.S. Court of Appeals for the 1st Circuit [reversed](#) the district court's dismissal of a Massachusetts homeowners' action alleging that the mortgage holder failed to comply with the notice requirement in their mortgage before foreclosing on their property. The district court dismissed the action after concluding that the mortgage holder's notice satisfied the notice requirements by including the default amount, a cure date, and the fact that failure to cure could result in acceleration. The homeowners appealed, arguing that the mortgage holder failed to strictly comply with the provision's requirements because the notice provided did not include the conditions and time limitations associated with reinstatement after acceleration that were required by a separate provision in the mortgage.

On appeal, the 1st Circuit reviewed the notice under Massachusetts law, which requires mortgage holders to strictly comply with two types of mortgage terms: (i) ones "directly concerned with the foreclosure sale. . ." and (ii) ones "prescribing actions the mortgagee must take in connection with the foreclosure sale—whether before or after the sale takes place." In overturning the District Court's dismissal, the 1st Circuit noted that, because the notice did not contain the additional conditions and time limitations associated with reinstatement from the separate provision, dismissal was inappropriate.