

§ 45-94. Remedies.

In addition to any equitable remedies and any other remedies at law, any borrower injured by any violation of this Article may bring an action for recovery of actual damages, including reasonable attorneys' fees. The Commissioner of Banks, the Attorney General, or any party to a home loan may enforce the provisions of this section. With the exception of an action by the Commissioner of Banks or the Attorney General, at least 30 days before a borrower or a borrower's representative institutes a civil action for damages against a servicer for a violation of this Article, the borrower or a borrower's representative shall notify the servicer in writing of any claimed errors or disputes regarding the borrower's home loan that forms the basis of the civil action. The notice must be sent to the address as designated on any of the servicer's bills, statements, invoices, or other written communication, and must enable the servicer to identify the name and loan account of the borrower. For purposes of this section, notice shall not include a complaint or summons. Nothing in this section shall limit the rights of a borrower to enjoin a civil action, or make a counterclaim, cross-claim, or plead a defense in a civil action. A servicer will not be in violation of this Article if the servicer shows by a preponderance of evidence that:

- (1) The violation was not intentional or the result of bad faith; and
- (2) Within 30 days after discovering or being notified of an error, and prior to the institution of any legal action by the borrower against the servicer under this section, the servicer corrected the error and compensated the borrower for any fees or charges incurred by the borrower as a result of the violation.
(2007-351, s. 5; 2008-228, s. 20; 2013-412, s. 8.)