

SENATE No. 2057

Senate, November 18, 2015 -- Text of the further Senate amendment (Senator Brownsberger) to the Senate Bill further regulating the clearing of title to certain foreclosed properties (Senate, No. 2015)

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

1 SECTION 1. The first paragraph of section 3 of chapter 185C of the General Laws, as
2 appearing in the 2014 Official Edition, is hereby amended by adding the following sentence:-
3 The divisions of the housing court department, subject to the provisions of section 14 of chapter
4 244, shall also have jurisdiction of defenses or counterclaims by any party entitled to notice of
5 sale under said section or by any party entitled to said notice of sale and who continues to occupy
6 the mortgaged premises.

7 SECTION 2. Chapter 244 of the General Laws, is hereby amended by striking section 15,
8 as appearing in the 2014 Official Edition, and inserting in place thereof the following section:-

9 Section 15. (a) For the purposes of this section, the following terms shall, unless the
10 context clearly requires otherwise, have the following meanings:-

11 “Arm’s length third party purchaser for value”, an arm’s length purchaser who pays
12 valuable consideration, including a purchaser’s heirs, successors and assigns but not including
13 the foreclosing party or mortgage note holder or a parent, subsidiary, affiliate or agent of the
14 foreclosing party or mortgage note holder or an investor or guarantor of the underlying mortgage

15 note including, but not limited to, the Federal National Mortgage Association, the Federal Home
16 Loan Mortgage Corporation and the Federal Housing Administration.

17 “Deadline”, 3 years from the date of the recording of the affidavit.

18 (b) The person selling, or the attorney duly authorized by a writing or the legal guardian
19 or conservator of such person, shall, after the sale, cause a copy of the notice and his or her
20 affidavit, fully and particularly stating his or her acts, or the acts of his or her principal or wards,
21 to be recorded in the registry of deeds for the county or district where the land lies, with a note of
22 reference thereto on the margin of the record of the mortgage deed, if it is recorded in the same
23 registry. If the affidavit shows that the requirements of the power of sale and of the statute have
24 in all respects been complied with, the affidavit or a certified copy of the record thereof, shall be
25 admitted as evidence that the power of sale was duly executed.

26 (c) An affidavit executed in accordance with this section shall, after 3 years from the date
27 of its recording, be conclusive evidence in favor of an arm’s length third party purchaser for
28 value at or subsequent to the foreclosure sale that the power of sale under the foreclosed
29 mortgage was duly executed and that the sale complied with this chapter and section 21 of
30 chapter 183. An arm’s length third party purchaser for value relying on such affidavit shall not
31 be liable for a foreclosure if the power of sale was not duly exercised. Absent a challenge as set
32 forth in clause (i) or (ii) of subsection (d), title to the real property acquired by the arm’s length
33 third party purchaser shall not be set aside.

34 (d) Subsection (c) shall not apply if: (i) a legal action to challenge the validity of the
35 foreclosure sale has been commenced in a court of competent jurisdiction by any party entitled to
36 notice of sale under section 14 or the challenge has been asserted as a defense or a counterclaim

37 in a legal action in a court of competent jurisdiction, including the housing court department
38 pursuant to section 3 of chapter 185C for such defense or counterclaim, by any party entitled to
39 notice of sale under section 14 and a true and correct copy of the complaint or other pleading
40 asserting such challenge is duly recorded in the registry of deeds for the county or district in
41 which the subject real property lies before the deadline or in the land court registry district before
42 the deadline; or (ii) a challenge to the validity of the foreclosure sale is asserted as a defense or
43 counterclaim in a legal action in a court of competent jurisdiction, including the housing court
44 department pursuant to section 3 of chapter 185C, by any party entitled to notice of sale under
45 section 14 who continues to occupy the mortgaged premises as such party's principal place of
46 residence, regardless of whether such challenge is asserted prior to the deadline, and a true and
47 correct copy of any pleading asserting such challenge in the legal action is duly recorded in the
48 registry of deeds for the county or district in which the subject property lies or is duly filed in the
49 land court registry district within 60 days from the date of the challenge or before the deadline,
50 whichever is later.

51 An attested true and correct copy of the complaint or pleading described in this
52 subsection shall be accepted for recording in the registry of deeds or, in the case of registered
53 land, in the land court registry district.

54 After the entry of a final judgment in a legal challenge under clause (i) or (ii) and the
55 final resolution of any appeal of that judgment, the affidavit shall immediately become
56 conclusive evidence of the validity of the sale if the final judgment concludes that the power of
57 sale was duly exercised. If the final judgment concludes that the power of sale was not duly
58 exercised, the foreclosure sale and affidavit shall be void. If the final judgment does not
59 determine the validity of the foreclosure sale and the deadline for the affidavit to become

60 conclusive has not expired, any party entitled to notice of sale under section 14 may file or assert
61 another legal challenge to the validity of the foreclosure sale under clause (i) or (ii).

62 (e) The recording of an affidavit and the expiration of the deadline shall not relieve an
63 affiant or any other person on whose behalf an affidavit was executed and recorded from any
64 liability for failure to comply with this section, section 14 or any other requirement of law with
65 respect to the foreclosure.

66 (f) A material misrepresentation contained in the affidavit shall constitute a violation of
67 section 2 of chapter 93A.

68 SECTION 3. For purposes of any affidavit filed pursuant to section 15 of chapter 244 of
69 the General Laws before the effective date of this act, the term “deadline” in said section shall
70 mean 3 years from the date of the recording of the affidavit or 1 year from the effective date of
71 this act, whichever is later.

72 SECTION 4. The attorney general, in collaboration with the commissioner of banks, shall
73 work with stakeholders participating in the foreclosure industry and stakeholders participating in
74 foreclosure prevention, reduction or education programs to provide notification of the effects of
75 this act to homeowners facing foreclosure and homeowners who were foreclosed upon. For the
76 purposes of this section “stakeholders” shall include, but not be limited to, participants in the
77 attorney general’s HomeCorps program, grant recipients receiving funding to complement the
78 goals of the HomeCorps program, entities providing information to the division of banks to
79 maintain the foreclosure database, consumer assistance providers at the division of banks’
80 foreclosure hotline, foreclosure assistance providers referred by the division of banks and
81 participants in the Pro Bono Foreclosure Assistance Hotline. Notification efforts shall include,

82 and may be limited to, providing notice of the effects of this act on a website operated or
83 maintained by the attorney general and the division of banks.

84 The attorney general shall report to the clerks of the house of representatives and the
85 senate not later than December 1, 2016 detailing notification efforts and the implementation of
86 this section.

87 SECTION 5. Except as otherwise provided, this act shall apply to affidavits recorded
88 pursuant to section 15 of chapter 244 of the General Laws before, on, or after the effective date
89 of this act.

90 SECTION 6. This act shall take effect on December 31, 2015.