SENATE DOCKET, NO. 1777 FILED ON: 1/16/2015

SENATE . . . . . No. 805

The Commonwealth of Massachusetts

PRESENTED BY:

Eileen M. Donoghue

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act ensuring reliable land title to bolster local home ownership and business creation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Eileen M. Donoghue	*First Middlesex*
James B. Eldridge	*Middlesex and Worcester*
Benjamin Swan	*11th Hampden*
Michelle M. DuBois	*10th Plymouth*
Elizabeth A. Malia	*11th Suffolk*
Sarah K. Peake	*4th Barnstable*

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By Ms. Donoghue, a petition (accompanied by bill, Senate, No. 805) of Eileen M. Donoghue, James B. Eldridge, Benjamin Swan, Michelle M. DuBois and other members of the General Court for legislation to ensure reliable land title to bolster local home ownership and business creation. The Judiciary.

The Commonwealth of Massachusetts

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

An Act ensuring reliable land title to bolster local home ownership and business creation.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to ensure reliable land title to bolster local home ownership and business creation, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. (a) This act may be cited as the "Reliable Land Title Act".

(b) Where not explicitly specified, this act shall be construed liberally to apply to both registered and recorded land.

SECTION 2. For the purposes of this act, the following terms shall have the following meanings:-

"Authorized person", a person authorized to act on behalf of another person by a written document signed by the person on whose behalf the person authorized thereby is acting.

8 “Deed indexing standards”, instructions to registers of deeds for indexing documents to
9 be recorded and entered in the official record, issued by the Massachusetts registers and assistant
10 registers of deeds association, and as revised from time to time.

11 “Discharge”, a duly executed and acknowledged deed of release of a mortgage or other
12 written instrument that, by its terms, discharges or releases a mortgage or the lien thereof, or
13 acknowledges payment or satisfaction of a mortgage or the debt or obligation secured by a
14 mortgage or the conditions therein contained.

15 “Lender”, a person providing funds to a mortgagor in consideration of the mortgagor’s
16 grant to the lender of a mortgage of real property.

17 “Mortgagee”, person who has invested funds or other real consideration to hold legal title
18 to real property upon which a mortgage is recorded.

19 “Mortgage servicer”, a person to whom, the mortgagee causes the mortgagor to be
20 directed to remit scheduled periodic payments and payoff monies on a mortgage loan; who
21 allocates the payments to principal, interest, municipal real estate taxes and other appropriate
22 assessments and charges, all pursuant to the terms of the loan; and who is required pursuant to
23 section 54D of chapter 184, to provide a payoff statement with respect to the mortgage loan.

24 “Mortgage statement”, a periodic statement that a mortgage servicer sends to a
25 mortgagor, indicating the amount of the mortgage payment then due, the loan balance, and
26 related information.

27 “Mortgagor”, a grantor of a mortgage; the grantor’s heirs, successors or assigns.

28 “Mortgage Note”, promissory note, signed by the mortgagor, promising to pay the lender,
29 or its successors or assigns, the amount of the note plus specified interest and charges.

30 “Mortgage owner”, the mortgagee as shown in the mortgage deed, or its successor(s) or
31 assign(s).

32 “Person entitled to enforce the note”, (i) the holder of the note; (ii) a nonholder in
33 possession who has the rights of the holder; or (iii) a person not in possession who is entitled to
34 enforce the note pursuant.

35 “Payoff statement”, a statement in writing, including a written print-out by facsimile or
36 other electronic transmission, issued at the request of the mortgagor or the mortgagor’s heir(s),
37 successor(s), assign(s), or authorized person, issued on behalf by a mortgagee, mortgage servicer
38 or person entitled to enforce a mortgage note, indicating the amount of the unpaid balance of the
39 mortgage loan, including principal, interest and other charges assessed pursuant to the mortgage
40 loan, which may include the interest on a per diem basis with respect to the unpaid principal
41 balance of the mortgage.

42 “Recordation”, “recording” or “ recorded”, a recording with the registry of deeds in
43 accordance with section 54 of chapter 183 or registration with the registry district of the land
44 court in accordance with chapter 185.

45 SECTION 3. Chapter 12 of General Laws is hereby amended after section 33 by adding
46 the following new section:-

47 Section 34. (a) At the end of each session of the general court, and whenever otherwise
48 appropriate, the attorney general shall notify the registers of deeds of statutes and decisions of
49 courts that may affect their responsibilities or operations.

50 (b) Registers of deeds may refer questions to the attorney general for legal opinions. The
51 attorney general shall publish any such opinions.

52 SECTION 4. Section 12A of chapter 36 of General Laws is hereby amended by adding
53 the following new subsections:

54 (b) A register of deeds shall refuse to record any document that does not bear a heading,
55 in 12 point (pica) or larger bolded font, which indicates the type of document and briefly
56 indicates the document's purpose or contents. A register of deeds shall rely on the heading and on
57 the applicable deed indexing standards to index each document and enter it into the official
58 record.

59 (c) A register of deeds shall refuse to record a mortgage of real property which does not
60 identify and index by the names of the owner of the property, who grants the mortgage, and the
61 lender.

62 (d) (1) A register of deeds shall refuse to record any assignment of mortgage that is
63 presented later than 30 days after its date of execution, unless the assignment of said mortgage is
64 accompanied by and recorded with an affidavit on personal knowledge showing good cause for
65 filing late, or an order of a court finding that recordation after this 30 day limit is warranted in
66 the interests of justice.

67 (2) All assignments of mortgage executed before the effective date of this section, but not
68 recorded as of that date, shall be presented for recording to the appropriate registry of deeds
69 within 90 days of the effective date of this section. A register of deeds shall not record any
70 assignment of mortgage executed before the effective date of this act, but presented for recording
71 more than 90 days thereafter. The division of banks promptly shall inform all persons licensed in
72 the commonwealth to lend funds upon mortgages of this provision.

73 (e) A register of deeds shall refuse a discharge of a mortgage of real property submitted
74 by a mortgage servicer if it is not: (1) accompanied by the mortgage note in its present condition
75 with all allonges, either in hard copy or transmitted electronically, or a certified copy thereof, and
76 marked "Paid in Full on" the applicable date; and (2) in the name of either the mortgagee as
77 named on the mortgage, or else is the most recent assignee of that mortgage as shown by the
78 assignments of mortgage of record in the registry, and is either the party to whom the mortgage
79 note is payable, or the most recent endorsee of that note as shown on the most recent allonge.

80 (f) A register of deeds shall neither record nor publish a notice of sale pursuant to section
81 14 of chapter 244, unless the mortgagee shall cause to be recorded in the registry for the district
82 in which the land lies (1) the notice to mortgagor of right to cure default of mortgage pursuant to
83 Section 35A of chapter 244, or a certified copy thereof, and (2) the mortgage note in its present
84 condition and with all allonges.

85 (g) (1) A register of deeds shall not record a foreclosure deed if it is presented for
86 recording more than 60 days after the foreclosure, unless accompanied by and recorded with an
87 affidavit on personal knowledge showing good cause for filing late, or an order of a court finding
88 that such recording is warranted in the interests of justice.

89 (2) All foreclosure deeds relative to foreclosures occurring before the effective date of
90 this section, but not recorded as of that date, shall be presented for recording to the appropriate
91 registry of deeds within 90 days of this section's effective date. A register of deeds shall not
92 record any foreclosure deed relative to a foreclosure occurring before the effective date of this
93 act, but presented for recording more than 90 days thereafter. The division of banks promptly
94 shall inform all persons licensed in the commonwealth to lend funds upon mortgages of this
95 provision.

96 SECTION 5. Chapter 183 of General Laws is hereby amended by inserting after section
97 54D the following new section:-

98 Section 54E. (a) Each mortgage statement shall provide the names and contact
99 information, including an address and toll-free telephone number, for (1) the current mortgage
100 owner, with the date as of which it became the owner; (2) the person to whom the mortgage note
101 is payable or the authorized agent of the person entitled to enforce the note; and (3) the mortgage
102 servicer, with the date as of which it became the servicer.

103 (b) If the mortgage loan has been pooled into a mortgage-backed security trust or
104 otherwise securitized, each mortgage statement shall include the full name and any other
105 information that identifies the trust or any other entity into which the mortgage loan was
106 conveyed.

107 (c) Each mortgage statement shall identify the mortgage servicer as "the company that
108 you pay," or shall use other language sufficient to indicate the function(s) that a mortgage
109 servicer performs.

110 (d) All information on each mortgage statement shall be accurate and current as of the
111 date on which the statement is transmitted.

112 (e) Failure to comply with this section shall be an unfair or deceptive practice under
113 section 2 of chapter 93A, and shall render a mortgage servicer to be liable to the mortgagor in the
114 amount of $2,500 for each such violation, plus damages and reasonable attorney's fees under
115 subsection (4) of section 9 of said chapter 93A.

116 (f) The amount of $2,500 for each violation of subsection (e) annually on January 1 shall
117 be adjusted by the Consumer Price Index as defined in section 1of the Internal Revenue Code.

118 SECTION 6. Section 55 of chapter 183 of General Laws is hereby amended by adding at
119 the end thereof the following:-

120 (l) A mortgage servicer shall transmit to the appropriate registry of deeds, for recording
121 with a discharge of mortgage, the mortgage note, in its present condition with all allonges. If the
122 mortgage servicer transmits the note in hard copy, it shall, within 10 days of receiving the
123 mortgage note from the registry thereafter, cause the note to be transmitted to the mortgagor, in
124 its present condition with all allonges, and marked "Paid in Full on" the applicable date. If the
125 mortgage servicer has caused a discharge of mortgage to be recorded electronically, it shall cause
126 the mortgage note, in its present condition and with all allonges, and marked "Paid in Full on"
127 the applicable date, to be transmitted to the mortgagor within 10 days of the electronic recording.

128 (m) Failure to comply with this section shall be an unfair or deceptive practice under
129 section 2 of chapter 93A, and shall render a mortgage servicer to be liable to the mortgagor in the
130 amount of $2,500 for each such violation, plus damages and reasonable attorney's fees under
131 subsection (4) of section 9 of said chapter 93A.

132 (n) The amount of $2,500 for each violation of subsection (m) annually on January 1
133 shall be adjusted by the Consumer Price Index as defined in section 1of the Internal Revenue
134 Code.

135 (o) Upon discharge of a mortgage of real property, if the mortgage servicer does not
136 cause the mortgage note to be recorded, the mortgage servicer shall within 10 days cause the
137 note to be returned to the mortgagor, in its present condition and with all allonges, and marked
138 "Paid in Full on" the applicable date.

139 (p) Failure to comply with this section shall be an unfair or deceptive practice under
140 section 2 of chapter 93A, and shall render a mortgage servicer to be liable to the mortgagor in the
141 amount of $2,500 for each such violation, plus damages and reasonable attorney's fees under
142 subsection (4) of section 9 of said chapter 93A.

143 (q) The amount of $2,500 for each violation of subsection (p) annually on January 1 shall
144 be adjusted by the Consumer Price Index as defined in section 1of the Internal Revenue Code.

145 SECTION 7. Section 70 of chapter 185 is hereby amended in line 2, by striking the words
146 "; but in case of foreclosure by entry and possession, the certificate of entry required by section
147 two of chapter two hundred and forty-four shall be filed and registered by an assistant recorder in
148 lieu of recording"; and in line 6, by striking the words ", by entry or by action, and has
149 continued.

150 SECTION 8. Section 1 of chapter 244, is hereby amended in line 4 by striking "; and
151 possession so obtained, if continued peaceably for three years from the date of recording of the
152 memorandum or certificate as provided in section two, shall forever foreclose the right of
153 redemption".

154 SECTION 9. Section 2 of chapter 244 of General Laws is hereby repealed.

155 SECTION 10. Said chapter 244 is hereby further amended by inserting the following new
156 section:

157 Section 2A. Any foreclosure by entry under section 2, or under section 70 of chapter 185,
158 as to which a memorandum or certificate was recorded fewer 3 years before the effective date of
159 this section shall be void.

160 SECTION 11. Section 8 of said chapter 244 is hereby amended by striking, in line 1, the
161 words "The entry may be made or"; and by inserting, between the words "action" and "brought,"
162 the words "may be".

163 SECTION 12. Sections 9 and 10 of chapter 244 are hereby repealed.

164 SECTION 13. Section 15A of said Chapter 244 is hereby amended at the beginning of
165 line 1 by inserting the following: "(a)"; and by inserting the following new subsections:-

166 (b) The office of the assessor or collector of taxes shall accept such a notice only if
167 accompanied by (1) a certification, on personal knowledge and under the pains and penalties of
168 perjury, that the mortgagee has caused all other notifications required by this section to be made,
169 and (2) if accompanied by a fine of $100 per day for each day beyond the day by which the
170 mortgagee was required to have made such notice to the municipality.

171 (c) The assessor or collector of taxes shall retain one-half of each such fine for the
172 municipality. He or she shall promptly forward one-half of each such fine as revenue to the
173 treasurer of the county, if the municipality is located in a county, or to the treasurer of the
174 commonwealth, as revenue for deposit in the general fund.

175 (d) If a mortgagee has taken possession of a property as of the effective date of this act,
176 but has not made the notifications required by section 15A of chapter 244, this fine shall become
177 applicable as of 30 days after the effective date of this subsection.

178 (e) The division of banks promptly shall inform of this provision all persons licensed in
179 the commonwealth to lend funds upon mortgages.

180 SECTION 14. Section 35C of chapter 244 of General Laws is hereby amended, in line
181 36, by striking the word "conclusive".

182 SECTION 15. Said chapter 244 of General Laws is hereby amended by inserting after
183 section 35C the following new section:-

184 Section 35D. (a) Before instituting a proceeding in land court pursuant to the service
185 members' civil relief act, a mortgagee shall execute and shall cause to be filed with land court an
186 affidavit, entitled "mortgagee's affidavit of jurisdiction and authority to foreclose," with the title
187 as a heading in bolded font, upon personal knowledge and under the pains and penalties for
188 perjury under section 1 of chapter 268, averring that the party intending to foreclose is the
189 mortgagee within the meaning of sections 34, 35A, 35B, and 35C of this chapter, that is, is both
190 the owner of the mortgage and the person entitled to enforce the mortgage note.

191 (b) The affidavit required in (a) shall both list and append the documents, or certified
192 copies of the documents, on which the mortgagee relies to establish its jurisdiction and authority
193 to foreclose.

194 (c) For each certified copy of a document appended to the affidavit required in (a), the
195 affidavit shall provide the name and contact information of the document custodian of the

196 original document, or state that the document is of record in the registry of deeds for the district
197 in which the land lies.

198 (d) Land court shall proceed with a servicemembers' civil relief case (1) only upon the
199 filing of a "mortgagee's affidavit of jurisdiction and authority to foreclose" that complies with
200 (a), and (2) only if all assignments of mortgage cited in and appended to that affidavit, whether
201 original or certified copies, have been duly recorded in the registry of deeds for the district in
202 which the land lies.

203 (e) Failure to comply with this section shall be an unfair or deceptive practice under
204 section 2 of chapter 93A, and shall render a mortgage servicer to be liable to the mortgagor in the
205 amount of $2,500 for each such violation, plus damages and reasonable attorney's fees under
206 subsection (4) of section 9 of said chapter 93A.

207 (f) The amount of $2,500 for each violation of subsection (e) annually on January 1 shall
208 be adjusted by the Consumer Price Index as defined in section 1of the Internal Revenue Code.

209 SECTION 16. Section 35A of Chapter 266 of General Laws is hereby amended, in line
210 1, by inserting after the word "residential", the words "or commercial";

211 and in line 20, by inserting the following new definition:-

212 "Pattern of submitting fraudulent or false documents affecting or concerning title to real
213 property," violation of subsection (b) in connection with three (3) or more properties, some or all
214 of which may be commercial;

215 and in line 50 by inserting at the end thereof the following:-

216 ; (5) executes or causes to be executed, or files or causes to be filed with any court, or
217 presents or causes to be presented to a registry of deeds for recording or registration, whether in
218 hard copy or by means of electronic transmission, any document that affects or concerns title to
219 real property, whether residential or commercial, knowing that it is fraudulent or false in any
220 material respect, including by omission, by a false or fraudulent signature, or by a false or
221 fraudulent notarization.

222 (c) Any person who engages in a pattern of violation of clause (5) shall be punished by
223 imprisonment in the state prison for not more than 15 years or by a fine of not more than
224 $50,000, in the case of a natural person, or not more than $500,000 in the case of any other
225 person, or by both such fine and imprisonment. The statute of limitations for a violation shall be
226 10 years from the date of execution of the document in question, the date its presentation to a
227 registry of deeds for recording, its date of recordation, or the date on which it was filed with any
228 court, whichever comes last.

229 (d) Any person who engages in a pattern of residential mortgage fraud, or engages in a
230 pattern of violation of clause (5) of subsection (b) of this section shall, in addition to any other
231 punishment, be barred from doing any business in the commonwealth for a term of 3 years.

232 (e) The provisions of clauses (4) and (5) of subsection (b) shall be reproduced in 12-point
233 (pica) bolded font, with a heading, “Criminal Liability for False or Fraudulent Documents,” in
234 least 16-point (Columbian) bolded font, and shall be displayed prominently in the public area of
235 each registry of deeds. These provisions shall also be reproduced legibly, with a legible heading
236 in bolded font, on the website of each registry of deeds, and, as a condition of doing business in

237 the commonwealth, on the website of any firm that offers e-recording services in the
238 commonwealth.

239 (f) The attorney general shall make available to all registers of deeds, to land court, to
240 members of the Massachusetts bar, and on the attorney general's website, criminal referral forms
241 for violations of section 35A, together with instructions for completing and submitting such
242 forms to the attorney general's office.

243 The attorney general may refer such cases for investigation and prosecution to the district
244 attorney for the district in which a case arises.

245 The attorney general shall report to the legislature annually on (1) the number of criminal
246 referrals received during the preceding fiscal year; the violations alleged; (2) the number and
247 types of cases in which charges have been brought, whether by the attorney general's office or
248 by a district attorney; and (3) the status and dispositions of those cases, including cases of any
249 persons barred pursuant to the provisions of subsection (d).

250 (g) The amounts of all fines for violations of section 35A annually on January 1 shall be
251 adjusted by the Consumer Price Index as defined in section 1of the Internal Revenue Code.;

252 and in line 51, by striking "(c)" and inserting in place thereof the following: (h).

253 SECTION 17. This act shall take effect upon passage.