

HOUSE No. 3500

The Commonwealth of Massachusetts

PRESENTED BY:

Frank A. Moran

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 protecting titles to real estate in Massachusetts.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|-------------------------------|--------------------------------|------------------|
| <i>Frank A. Moran</i> | <i>17th Essex</i> | <i>1/20/2017</i> |
| <i>Robert M. Koczera</i> | <i>11th Bristol</i> | |
| <i>Bud Williams</i> | <i>11th Hampden</i> | |
| <i>Denise Provost</i> | <i>27th Middlesex</i> | |
| <i>Mike Connolly</i> | <i>26th Middlesex</i> | |
| <i>Chris Walsh</i> | <i>6th Middlesex</i> | |
| <i>Kay Khan</i> | <i>11th Middlesex</i> | |
| <i>Solomon Goldstein-Rose</i> | <i>3rd Hampshire</i> | |
| <i>Juana B. Matias</i> | <i>16th Essex</i> | |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | |
| <i>Angelo J. Puppolo, Jr.</i> | <i>12th Hampden</i> | <i>3/28/2017</i> |

HOUSE No. 3500

By Mr. Moran of Lawrence, a petition (accompanied by bill, House, No. 3500) of Frank A. Moran and others relative to titles for real estate. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act protecting titles to real estate in Massachusetts.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect titles to real estate, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

1 SECTION 1. (a) This Act may be cited as the “real estate title protection act.”

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

4 (c) Where the language of this Act conflicts with any other section of the General Laws
5 or the deed indexing standards, this Act shall supersede that other section or those standards.

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

8 “Affidavit”, a document made on personal knowledge or that meets the requirements of
9 the business exception to the rule against hearsay, Rule 803(6), Federal Rules of Civil Procedure,

10 “Records of a Regularly Conducted Activity.” It shall set forth such facts as would be admissible
11 in evidence, and shall show affirmatively that the affiant is competent to testify to the matters
12 stated therein. If signed under the business exception, the affidavit shall have attached to it sworn
13 or certified copies of all documents or parts thereof to which the affidavit refers.

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

16 “Deed indexing standards”, instructions to Registers of Deeds for indexing documents to
17 be recorded and entered in the official record, issued by the Massachusetts Registers and
18 Assistant Registers of Deeds Association, as revised from time to time.

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

23 “Mortgagee” or “mortgage owner”, a person who has invested funds or other real
24 consideration to hold legal title to real property upon which a mortgage is granted, and who is
25 shown as such in the mortgage deed or assignment of mortgage.

26 “Mortgage servicer”, a person to whom the mortgagee causes the mortgagor to be
27 directed to remit scheduled periodic payments and payoff amounts on a mortgage loan; who
28 allocates the payments to principal, interest, municipal real estate taxes and other appropriate
29 assessments and charges, all pursuant to the terms of the loan; and who is required, pursuant to
30 section 54D of chapter 184 of the General Laws, to provide a written payoff statement with
31 respect to the mortgage loan.

32 “Mortgage statement”, a periodic statement that a mortgagee or its authorized mortgage
33 servicer sends to a mortgagor, indicating the amount of the mortgage payment then due, the loan
34 balance, and related information.

35 “Mortgagor”, a grantor of a mortgage.

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

38 “Note Holder” of a mortgage note, the lender or a transferee of the Note who is also
39 entitled to receive payments under the note.

40 SECTION 3. Chapter 12 of General Laws is hereby amended by adding the following
41 section:-

42 Section 34. At the end of each session of the general court, and whenever otherwise
43 appropriate, the attorney general shall notify the registers of deeds of statutes, regulations, and
44 decisions of courts that may affect their responsibilities or operations.

45 SECTION 4. Section 12A of chapter 36 of General Laws is hereby amended by adding
46 by adding the following 7 paragraphs:-

47 A register of deeds shall refuse to record any document that does not bear a heading, in
48 12 point (pica) or larger bolded font, which indicates the type of document and briefly indicates
49 the document's purpose or contents.

50 A register of deeds shall refuse to record any assignment of mortgage that is presented
51 later than 30 days after its date of execution, unless the assignment of said mortgage is
52 accompanied by and recorded with an affidavit on personal knowledge showing good cause for

53 filing late, or a certified copy of an order of a court finding that recordation after this 30 day limit
54 is warranted in the interests of justice. A register of deeds shall not record any assignment of
55 mortgage executed before the effective date of this act, but presented or transmitted with proof of
56 transmittal for recording more than 90 days thereafter.

57 All assignments of mortgage executed before the effective date of this act, but not
58 recorded as of that date, shall be presented or transmitted with proof of transmittal for recording
59 to the appropriate registry of deeds within 90 days of the effective date of this act. A register of
60 deeds shall not record any assignment of mortgage executed before the effective date of this act,
61 but presented or transmitted for recording more than 90 days thereafter.

62 The division of banks shall promptly inform all persons licensed in the commonwealth to
63 lend funds upon mortgages of the provisions of subsections (c) and (d).

64 A register of deeds shall record or register a discharge of a mortgage of real property
65 submitted by a mortgage servicer only if it is: (1) accompanied by a notarized copy of the
66 mortgage note in its present condition with all affixed allonges, either in hard copy or transmitted
67 electronically, and marked "paid in full on" the applicable date; and (2) is in the name of both the
68 mortgagee and the note holder or the note holder's agent.

69 A register of deeds shall not record a notice of sale pursuant to section 14 of chapter 244,
70 unless the mortgagee shall cause to be recorded in the registry for the district (1) the notice to
71 mortgagor of right to cure default of mortgage pursuant to section 35a of chapter 244, or a
72 certified copy thereof, and (2) a certified copy of the mortgage note in its present condition and
73 with all affixed allonges.

74 A register of deeds shall not record a foreclosure deed if it is presented or transmitted for
75 recording more than 60 days after the foreclosure, unless it is accompanied by and recorded with
76 an affidavit on personal knowledge showing good cause for filing late, or by a certified copy of
77 an order of a court finding that recordation after this 60 day limit is warranted in the interests of
78 justice.

79 All foreclosure deeds relative to foreclosures occurring before the effective date of this
80 act, but not recorded as of that date, shall be presented for recording to the appropriate registry of
81 deeds within 90 days of this act's effective date. A register of deeds shall not record any
82 foreclosure deed relative to a foreclosure occurring before the effective date of this act, but
83 presented for recording more than 90 days thereafter. The division of banks shall promptly
84 inform all persons licensed in the commonwealth to lend funds upon mortgages of this provision.

85 SECTION 5. Chapter 183 of General Laws, as appearing in the 2014 Official Edition, is
86 hereby amended by inserting after section 54D the following section:-

87 Section 54E. (a) Each mortgage statement shall provide the names and contact
88 information, including an address and toll-free telephone number, for (1) the current mortgage
89 owner, with the date as of which it became the owner; (2) the note holder or his or her authorized
90 agent; and (3) the mortgage servicer, if any, with the date as of which it became the servicer.

91 (b) If the mortgage loan has been pooled into a mortgage-backed security trust or has
92 been securitized otherwise, each mortgage statement shall include the full name and any other
93 information that identifies the trust or any other entity into which the mortgage loan was
94 conveyed, together with the date of conveyance.

95 (c) Each mortgage statement shall identify the mortgage servicer, if any, as “the company
96 that you pay,” or shall use other language sufficient to indicate the function(s) that a mortgage
97 servicer performs.

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

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

104 (f) The amount of \$2,500 for each violation of subsection (e) shall annually, on January
105 1, be adjusted in accordance with the consumer price index as defined in section 1 of the Internal
106 Revenue Code.

107 SECTION 6. Section 55 of chapter 183 of General Laws is hereby amended by adding at
108 the end thereof the following 3 subsections:-

109 (l) When the mortgage loan has been paid in full, the note holder shall within 20 days of
110 such payment cause to be sent to the mortgagor the original note in its present condition, with all
111 affixed allonges, and marked “Paid in Full” on the applicable date.

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

116 (n) The amount of \$2,500 for each violation of subsection (m) shall annually, on January
117 1, be adjusted in accordance with the consumer price index as defined in section 1 of the Internal
118 Revenue Code.

119 SECTION 7. Section 70 of chapter 185 of the General Laws, as appearing in the 2014
120 Official Edition, is hereby amended in line 2, by striking out the words “; but in case of
121 foreclosure by entry and possession, the certificate of entry required by section two of chapter
122 two hundred and forty-four shall be filed and registered by an assistant recorder in lieu of
123 recording.”

124 SECTION 8. Said section 70 of said chapter 185, as so appearing, is hereby further
125 amended by striking out, in line 4, the words “After possession has been obtained by the
126 mortgagee or his assigns, by entry or by action, and has continued for the time required by law to
127 complete the foreclosure, he or his assigns may request the land court for the entry of a new
128 certificate, and the court, after notice to all parties in interest, shall have jurisdiction to hear the
129 case, and may order the entry of a new certificate on such terms as equity and justice may
130 require.”

131 SECTION 9. Section 1 of chapter 244 of the General Laws, as so appearing, is hereby
132 amended by striking out, in line 2, the words “by an open and peaceable entry thereon, if not
133 opposed by the mortgagor or other person claiming it, or”.

134 SECTION 10. Said section 1 of said chapter 244, as so appearing, is hereby amended, in
135 line 4, by striking out the words “; and possession so obtained, if continued peaceably for three
136 years from the date of recording of the memorandum or certificate as provided in section two,
137 shall forever foreclose the right of redemption”.

138 SECTION 11. Said chapter 244 of General Laws is hereby further amended by striking
139 out section 2 and inserting in place thereof the following section:-

140 Section 2. Any foreclosure by entry under previous section 2, or under section 70 of
141 chapter 185, as to which a memorandum or certificate was recorded fewer 3 years before the
142 effective date of this act, shall be void.

143 SECTION 12. Section 8 of said chapter 244, as so appearing, is hereby amended by
144 striking out the first sentence and inserting in place thereof the following sentence:- The action
145 may be brought by an assignee of the mortgagee.

146 SECTION 13. Sections 9 and 10 of chapter 244 are hereby repealed.

147 SECTION 14. Section 15A of said Chapter 244 is hereby amended by adding the
148 following 4 paragraphs:-

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

154 The assessor or collector of taxes shall retain one-half of each such fine for the
155 municipality. He or she shall promptly forward one-half of each such fine as revenue to the
156 treasurer of the county, if the municipality is located in a county, or if not, to the treasurer of the
157 commonwealth, as revenue for deposit in the general fund.

158 If a mortgagee has taken possession of a property on or before the effective date of this
159 act, but has not made the notifications required by section 15A of chapter 244, this fine shall
160 become applicable as of 30 days after the effective date of this act.

161 The division of banks shall promptly inform all persons licensed in the commonwealth to
162 lend funds upon mortgages of this provision.

163 SECTION 15. Section 35C of said chapter 244, as so appearing, is hereby amended by
164 striking out, in line 37 and 38, the word “conclusive”.

165 SECTION 16. Said section 35C of said chapter 244, as so appearing, is hereby further
166 amended by striking out, in lines 30 to 31, inclusive, the words “publishing a notice of a
167 foreclosure sale, as required by section 14,” and inserting in place thereof the following words:- ,
168 instituting a foreclosure proceeding in land court or superior court pursuant to the service
169 members’ civil relief act.

170 SECTION 17. Said section 35C of said chapter 244, as so appearing, is hereby further
171 amended by adding the following 5 subsections:-

172 (i) The affidavit required in subsection (b) shall list and append the documents, or
173 certified copies of the documents, on which the affiant relies except that the certified copy
174 recorded in the registry of deeds may omit copies of documents that are recorded there.

175 (j) For each certified copy of a document appended to the affidavit required in subsection
176 (b) the affidavit shall provide the name and contact information of the document custodian of the
177 original document, or shall state that the document is of record in the registry of deeds for the
178 district in which the land lies.

179 (k) Land court and superior court shall proceed with a service members' civil relief case
180 (1) only upon the filing of a mortgagee's affidavit required in subsection (b) and (2) only if all
181 assignments of mortgage cited in and appended to that affidavit, whether original or certified
182 copies, have been duly recorded in the registry of deeds for the district in which the land lies.

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

187 (m) The amount of \$2,500 for each violation of subsection (e) shall annually, on January
188 1, be adjusted in accordance with the consumer price index as defined in section 1 of the Internal
189 Revenue Code.

190 SECTION 18. Section 35A of chapter 266 of General Laws is hereby amended in
191 subsection (a) by inserting, after the definition of "Pattern of residential mortgage fraud", the
192 following definition:-

193 "Pattern of submitting fraudulent or false documents affecting or concerning title to real
194 property," violation of subsection (b) in connection with 3 or more properties."

195 SECTION 19. Said section 35A of said chapter 266, as so appearing, is hereby further
196 amended by inserting after the word "omission", in line 48 the following words:- ; or (5)
197 executes or causes to be executed, or files or causes to be filed with any court, or presents or
198 causes to be presented to a registry of deeds for recording or registration, whether in hard copy or
199 by means of electronic transmission, any document that affects or concerns title to real property,
200 whether residential or commercial, knowing that it is fraudulent or false in any material respect,

201 including by omission, by a false or fraudulent declaration, by a false or fraudulent signature, or
202 by a false or fraudulent notarization.

203 SECTION 20. Subsection (b) of said section 35A of said chapter 266 is hereby amended
204 by adding the following paragraph:-

205 Any person who engages in a pattern of violation of clause (5) of subsection (b) of this
206 section shall be punished by imprisonment in the state prison for not more than 5 years or by a
207 fine of not more than \$50,000, in the case of a natural person, or not more than \$500,000 in the
208 case of any other person, or by both such fine and imprisonment. The statute of limitations for a
209 violation shall be 10 years from the date of execution of the document in question, the date its
210 presentation to a registry of deeds for recording, its date of recordation, or the date on which it
211 was filed with any court, whichever comes last.

212 SECTION 21. Said section 35A of said chapter 266 is hereby further amended by adding
213 the following 4 subsections:-

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

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

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

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

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

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

235 (g) The amounts of all fines for violations of section 35A shall be adjusted annually on
236 January 1 in accordance with the consumer price index as defined in section 1 of the Internal
237 Revenue Code.