

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

1 SECTION 1. Chapter 244 of the General Laws is hereby amended by striking out
2 section 14, as appearing in the 2010 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 14. The mortgagee or person having estate in the land mortgaged, a person
5 authorized by the power of sale, the attorney duly authorized by a writing under seal or the legal
6 guardian or conservator of such mortgagee or person acting in the name of such mortgagee or
7 person, may, upon breach of condition and without action, perform all acts authorized or
8 required by the power of sale; provided however, that no sale under such power shall be effectual
9 to foreclose a mortgage, unless, previous to such sale, notice of the sale has been published once
10 in each of 3 successive weeks, the first publication of which shall be not less than 21 days before
11 the day of sale, in a newspaper published in the city or town where the land lies or in a
12 newspaper with general circulation in the city or town where the land lies and notice of the sale
13 has been sent by registered mail to the owner or owners of record of the equity of redemption as
14 of 30 days prior to the date of sale, said notice to be mailed by registered mail at least 14 days
15 prior to the date of sale to said owner or owners to the address set forth in section 61 of chapter
16 185, if the land is then registered or, in the case of unregistered land, to the last address of the
17 owner or owners of the equity of redemption appearing on the records of the holder of the

18 mortgage, if any, or if none, to the address of the owner or owners as given on the deed or on the
19 petition for probate by which the owner or owner's acquired title, if any, or if in either case no
20 owner appears, then mailed by registered mail to the address to which the tax collector last sent
21 the tax bill for the mortgaged premises to be sold, or if no tax bill has been sent for the last
22 preceding 3 years, then mailed by registered mail to the address of any of the parcels of property
23 in the name of said owner of record which are to be sold under the power of sale and unless a
24 copy of said notice of sale has been sent by registered mail to all persons of record as of 30 days
25 prior to the date of sale holding an interest in the property junior to the mortgage being
26 foreclosed, said notice to be mailed at least 14 days prior to the date of sale to each such person
27 at the address of such person set forth in any document evidencing the interest or to the last
28 address of such person known to the mortgagee. Any person of record as of 30 days prior to the
29 date of sale holding an interest in the property junior to the mortgage being foreclosed may
30 waive at any time, whether prior or subsequent to the date of sale, the right to receive notice by
31 mail to such person under this section and such waiver shall constitute compliance with such
32 notice requirement for all purposes. If no newspaper is published in such city or town, or if there
33 is no newspaper with general circulation in the city or town where the land lies, notice may be
34 published in a newspaper published in the county where the land lies, and this provision shall be
35 implied in every power of sale mortgage in which it is not expressly set forth. A newspaper
36 which by its title page purports to be printed or published in such city, town or county, and
37 having a circulation in that city, town or county, shall be sufficient for the purposes of this
38 section.

39 The following form of foreclosure notice may be used and may be altered as
40 circumstances require; but nothing in this section shall be construed to prevent the use of other
41 forms.

42 (Form.)

43 MORTGAGEE’S SALE OF REAL ESTATE.

44 By virtue and in execution of the Power of Sale contained in a certain mortgage given
45 by..... to..... dated..... and recorded with

46

47 Deeds, Book....., page....., of which mortgage the undersigned is the present
48 holder,.....

49 (If by assignment, or in any fiduciary capacity, give reference to the assignment or
50 assignments recorded withDeeds, Book....., page....., of which mortgage the
51 undersigned is the present holder,.....)

52 for breach of the conditions of said mortgage and for the purpose of foreclosing the same
53 will be sold at Public Auction at.....o’clock,..... M. on the..... day of..... A.D.
54 (insert year),..... (place)..... all and singular the premises described in said mortgage,

55 (In case of partial releases, state exceptions.)

56 To wit: “(Description as in the mortgage, including all references to title, restrictions,
57 encumbrances, etc., as made in the mortgage.)”

58 Terms of sale: (State here the amount, if any, to be paid in cash by the purchaser at the
59 time and place of the sale, and the time or times for payment of the balance or the whole as the
60 case may be.)

61 Other terms to be announced at the sale.

62 (Signed) _____

63 Present holder of said mortgage. ____

64 A notice of sale in the above form, published under the power in the mortgage and this
65 chapter, together with such other or further notice, if any, as is required by the mortgage, shall be
66 a sufficient notice of the sale and the premises shall be deemed to have been sold and the deed
67 thereunder shall convey the premises, subject to and with the benefit of all restrictions,
68 easements, improvements, outstanding tax titles, municipal or other public taxes, assessments,
69 liens or claims in the nature of liens, and existing encumbrances of record created prior to the
70 mortgage, whether or not reference to such restrictions, easements, improvements, liens or
71 encumbrances is made in the deed; provided however, that no purchaser at the sale shall be
72 bound to complete the purchase if there are encumbrances, other than those named in the
73 mortgage and included in the notice of sale, which are not stated at the sale and included in the
74 auctioneer's contract with the purchaser.

75 For purposes of this section and section 21 of chapter 183, in the event a mortgagee holds
76 a mortgage under an assignment no notice under this section shall be valid unless (i) at the time
77 such notice is mailed, an assignment, or a chain of assignments, evidencing the assignment of the
78 mortgage to the foreclosing mortgagee has been duly recorded in the registry of deeds for the
79 county or district where the land lies and (ii) the recording information for all recorded

80 assignments is referenced in the notice of sale required in this section. The notice shall not be
81 defective if any holder within the chain of assignments either changed its name or merged into
82 another entity during the time it was the mortgage holder; provided, that recited within the body
83 of the notice is the fact of any merger, consolidation, amendment, conversion or acquisition of
84 assets causing the change in name or identity, the recital of which shall be conclusive in favor of
85 any bona fide purchaser, mortgagee, lienholder or encumbrancer of value relying in good faith
86 on such recital.

87 SECTION 2. Said chapter 244 is hereby further amended by inserting after section 35A
88 the following 2 sections:-

89 Section 35B. (a) As used in this section, the following words shall, unless the context
90 clearly requires otherwise, have the following meanings:-

91 “Affordable monthly payment”, a borrower’s ability to make monthly payments on a
92 mortgage loan, taking into account the borrower’s current circumstances, including verifiable
93 income, debts, assets and obligations.

94 “Borrower”, a mortgagor of a mortgage loan.

95 “Certain mortgage loan,” a loan to a natural person made primarily for personal, family
96 or household purposes secured wholly or partially by a mortgage on an owner-occupied
97 residential property with 1 or more of the following loan features: (i) an introductory interest
98 rate granted for a period of 3 years or less and such introductory rate is at least 2 per cent lower
99 than the fully indexed rate, (ii) interest-only payments for any period of time, except in the case
100 where the mortgage loan is an open-end home equity line of credit or is a construction loan, (iii)
101 a payment option feature, where any 1 of the payment options is less than principal and interest

102 fully amortized over the life of the loan, (iv) the loan did not require full documentation of
103 income or assets, (v) prepayment penalties that exceed section 56 of chapter 183 or applicable
104 federal law, (vi) the loan was underwritten with a loan-to-value ratio at or above 90 per cent and
105 the ratio of the borrower's debt, including all housing-related and recurring monthly debt, to the
106 borrower's income exceeded 38 per cent or (vii) the loan was underwritten as a component of a
107 loan transaction, in which the combined loan-to-value ratio exceeded 95 per cent; provided,
108 however that a loan shall be a certain mortgage loan if, after the performance of reasonable due
109 diligence, a creditor is unable to determine whether the loan has 1 or more of the loan features in
110 clause (i) through (vii), inclusive.

111 "Creditor", a person or entity that holds or controls, partially, wholly, indirectly, directly
112 or in a nominee capacity, a mortgage loan securing an owner-occupied residential property,
113 including, but not limited to, an originator, holder, investor, assignee, successor, trust, trustee,
114 nominee holder, mortgage electronic registration system or mortgage servicer, including the
115 Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation;
116 provided, that "creditor" shall also include any servant, employee or agent of a creditor.

117 "Creditor's representative", a person who has the authority to negotiate and approve the
118 terms of and modify a mortgage loan, under a servicing agreement.

119 "Modified mortgage loan", a mortgage modified from its original terms including, but not
120 limited to, a loan modified under 1 of the following: (i) the Home Affordable Modification
121 Program (ii) the Federal Deposit Insurance Corporation's Loan Modification Program, (iii) any
122 modification program that a lender uses which is based on accepted principles and the safety and
123 soundness of the institution and authorized by the National Credit Union Administration, the

124 division of banks or any other instrumentality of the commonwealth, (iv) the Federal Housing
125 Administration or (v) a similar federal loan modification plan.

126 “Mortgage loan”, a loan to a natural person made primarily for personal, family or
127 household purposes secured wholly or partially by a mortgage on residential property.

128 “Net present value”, the present net value of a residential property based on a calculation
129 using 1 of the following: (i) the federal home affordable modification program base net present
130 value model, (ii) the Federal Deposit Insurance Corporation’s loan modification program, (iii)
131 the Massachusetts Housing Finance Agency’s loan program used solely by the agency to
132 compare the expected economic outcome of a loan with or without a modified mortgage loan or
133 (iv) any model approved by the division of banks to consider the total present value of a series of
134 future cash flows relative to a mortgage loan.

135 “Residential property”, real property located in the commonwealth, on which there is a
136 dwelling house with accommodations for 4 or fewer separate households and occupied, or to be
137 occupied, in whole or in part by the obligor on the mortgage debt; provided, however, that
138 residential property shall be limited to the principal residence of a person; provided, further, that
139 residential property shall not include an investment property or residence other than a primary
140 residence; provided, further, that residential property shall not include residential property taken
141 in whole or in part as collateral for a commercial loan; and provided, further, that residential
142 property shall not include a property subject to condemnation, receivership or proceedings in
143 United States bankruptcy court.

144 (b) A creditor shall not publish notice of a foreclosure sale, as required by section 14,
145 upon certain mortgage loans unless it has first taken reasonable steps and made a good faith

146 effort to avoid foreclosure. A creditor shall have taken reasonable steps and made a good faith
147 effort to avoid foreclosure if the creditor has considered: (i) an assessment of the borrower's
148 ability to make an affordable monthly payment, (ii) the net present value of receiving payments
149 under a modified mortgage loan as compared to the anticipated net recovery following
150 foreclosure and (iii) the interests of the creditor, including, but not limited to, investors.

151 (1) Except as otherwise specified in a contract, a servicer of pooled residential mortgages
152 may determine whether the net present value of the payments on the modified mortgage loan is
153 likely to be greater than the anticipated net recovery that would result from foreclosure to all
154 investors and holders of beneficial interests in such investment, but not to any individual or
155 groups of investors or beneficial interest holders. The servicer shall act in the best interests of all
156 such investors or holders of beneficial interests if the servicer agrees to or implements a modified
157 mortgage loan or takes reasonable loss mitigation actions that comply with this section. Any
158 modified mortgage loan offered to the borrower shall comply with current federal and state law,
159 including, but not limited to, all rules and regulations pertaining to mortgage loans and the
160 borrower shall be able to reasonably afford to repay the modified mortgage loan according to its
161 scheduled payments.

162 (2) A creditor shall be presumed to have acted in good faith and to have complied with
163 this subsection, if, prior to publishing a notice of a foreclosure sale, as required by section 14, the
164 creditor:

165 (i) determines a borrower's current ability to make an affordable
166 monthly payment;

167 (ii) identifies a modified mortgage loan that achieves the borrower's affordable
168 monthly payment, which may include 1 or more of the following: reduction in principal,
169 reduction in interest rate or an increase in amortization period; provided however, that the
170 amortization period shall not be more than a 15-year increase; provided, however, no modified
171 mortgage loan shall have an amortization period that exceeds 45 years;

172 (iii) conducts a compliant analysis comparing the net present value of the
173 modified mortgage loan and the creditor's anticipated net recovery that would result from
174 foreclosure; provided, that the analysis shall be compliant if the analysis is in accordance with
175 the formula presented in at least 1 of the following: (A) the home affordable modification
176 program, (B) the Federal Deposit Insurance Corporation's loan modification program, (C) any
177 modification program that a lender uses which is based on accepted principles and the safety and
178 soundness of the institution and authorized by the National Credit Union Administration, the
179 division of banks or any other instrumentality of the commonwealth, (D) the Federal Housing
180 Administration or (E) a similar federal loan modification plan; and

181 (iv) either (A) in all circumstances where the net present value of the modified
182 mortgage loan exceeds the anticipated net recovery at foreclosure, agrees to modify the loan in a
183 manner that provides for the affordable monthly payment; or (B) in circumstances where the net
184 present value of the modified mortgage loan is less than the anticipated net recovery of the
185 foreclosure, or does not meet the borrower's affordable monthly payment, notifies the borrower
186 that no modified mortgage loan will be offered and provides a written summary of the creditor's
187 net present value analysis and the borrower's current ability to make monthly payments, after
188 which the creditor may proceed with the foreclosure process in conformity with this chapter.

189 (c) Under this section, for certain mortgage loans, the creditor shall send notice,
190 concurrently with the notice required by subsection (g) of section 35A, of the borrower's rights
191 to pursue a modified mortgage loan. Said notice shall be considered delivered to the mortgagor
192 when sent by first class mail and certified mail or similar service by a private carrier to the
193 mortgagor at the mortgagor's address last known to the mortgagee or anyone holding thereunder.
194 A copy of said notice shall be filed with the attorney general. The time frame for determining
195 whether a modified mortgage loan is offered shall occur within 150 days. Not more than 30 days
196 following delivery of the notice as provided for in this subsection, a borrower who holds a
197 certain mortgage loan shall notify a creditor of (i) the borrower's intent to pursue a modified
198 mortgage loan which shall include a statement of the borrower's income and a complete list of
199 total debts and obligations, as requested by the creditor, at the time of receipt of the notice, (ii)
200 the borrower's intent to pursue an alternative to foreclosure, including a short sale or deed-in-lieu
201 of foreclosure, (iii) the borrower's intent not to pursue a modified mortgage loan and pursue the
202 right to cure period described in section 35A or (iv) the borrower's intent to waive the right to
203 cure period and proceed to foreclosure. A borrower who holds a certain mortgage loan and fails
204 to respond to the creditor within 30 days of delivery of the notice provided for in this subsection
205 shall be considered to have forfeited the right to cure period and shall be subject to a right to cure
206 period of 90 days. A borrower shall be presumed to have notified the creditor if the borrower
207 provides proof of delivery through the United States Postal Service or similar carrier. Not more
208 than 30 days following receipt of the borrower's notification that the borrower intends to pursue
209 a modified mortgage loan, a creditor shall provide the borrower with its assessment, in writing,
210 under subsection (b). The assessment shall include, but not be limited to: (i) a written statement
211 of the borrower's income, debts and obligations as determined by the creditor, (ii) the creditor's

212 net present value analysis of the mortgage loan, (iii) the creditor's anticipated net recovery at
213 foreclosure, (iv) a statement of the interests of the creditor and (v) a modified mortgage loan
214 offer under the requirements of this section or notice that no modified mortgage loan will be
215 offered. If a creditor offers a modified mortgage loan, the offer shall include the first and last
216 names and contact phone numbers of the creditor's representative. The assessment shall be
217 provided by first class and certified mail. A creditor shall be presumed to have provided the
218 assessment to the borrower if the creditor provides proof of delivery through the United States
219 Postal Service or similar carrier. A borrower who receives a modified mortgage loan offer from
220 a creditor shall respond within 30 days of receipt of the assessment and offer of a modified
221 mortgage loan. The borrower may: (i) accept the offer of a loan modification as provided by the
222 creditor, (ii) make a reasonable counteroffer or (iii) state that the borrower wishes to waive the
223 borrower's rights as provided by this section and proceed to foreclosure. The borrower's
224 response shall be in writing and, if a counteroffer is proposed, shall include substantiating
225 documentation in support of the counteroffer. The response shall be provided by first class and
226 certified mail. A borrower shall be presumed to have responded if the borrower provides proof
227 of delivery through the United States Postal Service or similar carrier. A borrower who fails to
228 respond to the creditor within 30 days of receipt of a modified mortgage loan offer shall be
229 considered to have forfeited the 150 day right to cure period and shall be subject to a right to
230 cure period of 90 days. Where a counteroffer is proposed, the creditor shall accept, reject or
231 propose a counteroffer to the borrower within 30 days of receipt. Under this section, additional
232 offers by both parties shall be considered during the right to cure period; provided, however, that
233 a borrower may at any time state, in writing, that the borrower wishes to waive the borrower's
234 rights as provided by this section and proceed to foreclosure. Nothing in this section shall be

235 construed as preventing a creditor and a borrower from negotiating the terms of a modified
236 mortgage loan by telephone or in person following the initial offer of a modified mortgage loan
237 by a creditor; provided, however, that all offers, whether by a creditor or a borrower, shall be in
238 writing and signed by the offeror. The right to a modified mortgage loan, as described in this
239 section, shall be granted once during any 3-year period, regardless of the mortgage holder.

240 (d) The notice required in subsection (c) shall, at a minimum, include the appropriate
241 contact information for modification assistance within the office of the attorney general;
242 provided, that, the notice shall be similar in substance and form to the notice promulgated by the
243 division of banks under section 35A.

244 (e) Nothing in this section shall prevent a creditor from offering or accepting an
245 alternative to foreclosure, such as a short sale or deed-in-lieu of foreclosure, if the borrower
246 requests such alternative, rejects a modified mortgage loan offer or does not qualify for a
247 modified mortgage loan under this section.

248 (f) Prior to publishing a notice of a foreclosure sale, as required by section 14, the
249 creditor, or if the creditor is not a natural person, an officer or duly authorized agent of the
250 creditor, shall certify compliance with this section in an affidavit based upon a review of the
251 creditor's business records. The creditor, or an officer or duly authorized agent of the creditor,
252 shall record this affidavit with the registry of deeds for the county or district where the land lies.

253 The affidavit certifying compliance with this section shall be conclusive evidence in
254 favor of an arm's-length third party purchaser for value, at or subsequent to the resulting
255 foreclosure sale, that the foreclosing party identified or referred to as the holder of the foreclosed
256 mortgage in the affidavit has fully complied with this section and is entitled to proceed with

257 foreclosure of the subject mortgage under the power of sale contained in the mortgage and any 1
258 or more of the foreclosure procedures authorized in this chapter. The filing of such affidavit
259 shall not relieve the affiant, or other person on whose behalf the affidavit is executed, from
260 liability for failure to comply with this section, including by reason of any statement in the
261 affidavit. For purposes of this subsection, the term “arm’s-length, third party purchaser for
262 value” shall include such purchaser’s heirs, successors and assigns.

263 (g) Within 30 days of the end of each calendar quarter of the completion of the loan
264 modification process under this section, a creditor shall report the final outcome of each loan
265 modification on all mortgage loans for which the creditor sent to a borrower a notice of the right
266 to pursue a modified mortgage loan to the division of banks.

267 (h) The division of banks shall adopt, amend or repeal regulations to aid in the
268 administration and enforcement of this section, including the minimum requirements which
269 constitute a good faith effort by the borrower to respond to the notice required under subsection
270 (c); provided, that, such regulations may include requirements for reasonable steps and good
271 faith efforts of the creditor to avoid foreclosure and safe harbors for compliance in addition to
272 those under this section. The division of banks shall make any available net present value
273 models accessible to all creditors.

274 Section 35C. (a) As used in this section, the following words shall, unless the context
275 clearly requires otherwise, have the following meanings:-

276 “Borrower”, a mortgagor of a mortgage loan.

277 "Creditor", a person or entity that holds or controls, partially, wholly, indirectly, directly
278 or in a nominee capacity, a mortgage loan securing a residential property, including, but not

279 limited to, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder,
280 mortgage electronic registration system or mortgage servicer, including the Federal National
281 Mortgage Association or the Federal Home Loan Mortgage Corporation. The term creditor shall
282 also include any servant, employee or agent of a creditor.

283 “Mortgage loan”, a loan to a natural person made primarily for personal, family or
284 household purposes secured wholly or partially by a mortgage on residential property.

285 “Residential property”, real property located in the commonwealth on which there is a
286 dwelling house with accommodations for 4 or fewer separate households and occupied, or to be
287 occupied, in whole or in part by the obligor on the mortgage debt; provided, however, that
288 residential property shall be limited to the principal residence of a person; provided, further, that
289 residential property shall not include an investment property or residence other than a primary
290 residence; and provided, further, that residential property shall not include residential property
291 taken in whole or in part as collateral for a commercial loan.

292 (b) A creditor shall not publish notice of foreclosure, under section 14, when the creditor
293 knows or should know that such creditor is not the present holder of the mortgage loan,
294 including, but not limited to, if the creditor is not the original mortgagee and commences
295 foreclosure without possessing a valid written, signed and dated assignment evidencing the
296 assignment of the mortgage.

297 (c) A creditor violates this chapter if the creditor imposes upon a third party the cost of
298 correcting, curing or confirming documentation relating to the sale, transfer or assignment of a
299 mortgage loan, including, but not limited to, costs related to curative actions taken because a
300 foreclosure was commenced without the creditor’s possession of a valid, written, signed and

301 dated assignment evidencing the assignment of the mortgage, in violation of section 14. A third
302 party may recover all of the third party's costs including reasonable attorneys' fees for having to
303 correct, cure or confirm documentation.

304 (d) A creditor violates this chapter if the creditor makes statements to a state or federal
305 court related to foreclosure or compliance with this chapter, orally or in writing, that it knows or
306 should know are false, including, but not limited to, statements about the offering of a loan
307 modification, the borrower's history of payments, the validity of the assignment of the mortgage
308 loan, that the creditor is the record holder of the mortgage loan or the creditor's compliance with
309 any other requirements of this chapter.

310 (e) A creditor violates this chapter if the creditor imposes a fee upon a borrower for goods
311 not rendered or services not performed in connection with a foreclosure.

312 (f) No person shall give and no person shall accept any portion, split or percentage of any
313 charge made or received for the rendering of a service in connection with a transaction involving
314 a foreclosure upon a mortgage loan other than for services actually performed.

315 (g) The division of banks may adopt, amend or repeal rules and regulations for the
316 administration and enforcement of this section.

317 (h) In all circumstances in which an offer to purchase either a mortgage loan or
318 residential property is made by an entity with a tax-exempt filing status under section 501 (c)(3)
319 of the Internal Revenue Code, or an entity controlled by an entity with such tax exempt filing
320 status, no creditor shall require as a condition of sale or transfer to any such entity any affidavit,
321 statement, agreement or addendum limiting ownership or occupancy of the residential property
322 by the borrower and, if obtained, such affidavit, statement, agreement or addendum shall not

323 provide a basis to avoid a sale or transfer nor shall it be enforceable against such acquiring entity
324 or any real estate broker, borrower or settlement agent named in such affidavit, statement or
325 addendum.

326 SECTION 3. The division of banks shall, in consultation with the attorney general,
327 annually track the final outcome of the loan modification process on all certain mortgage loans
328 for which the creditor sent to a borrower a notice of the right to pursue a modified mortgage loan
329 under section 35B of chapter 244 of the General Laws and provide a report of said results to the
330 joint committee on financial services within 90 days of the end of each calendar year.

331 SECTION 4. The division of banks shall adopt, amend or repeal regulations to aid in the
332 administration and enforcement of section 35B of chapter 244 of the General Laws, including the
333 minimum requirements which constitute a good faith effort by the borrower to respond to the
334 notice required under subsection (c) of said section 35B of said chapter 244; provided, that, such
335 regulations may include requirements for reasonable steps and good faith efforts of the creditor
336 to avoid foreclosure and safe harbors for compliance in addition to those under said section 35B
337 of said chapter 244.

338 SECTION 5. Notwithstanding the effective date of section 2, the provisions of section 2
339 shall apply to any person receiving notice under section 35A of chapter 244 of the General Laws
340 after the effective date of this act.

341 SECTION 6. Section 3 is hereby repealed.

342 SECTION 7. Sections 1, 2 and 3 shall take effect 90 days after the effective date of this
343 act.

SECTION 8. Section 6 shall take effect on December 31, 2017.