

SENATE No. 1953

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act clearing titles to foreclosed properties.

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. Section 15 of chapter 244 of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended by adding the following:

3 Such affidavit, if executed in the statutory form, shall, after three years from the date of
4 its recording, be conclusive evidence in favor of an arm’s length third party purchaser for value,
5 at or subsequent to the foreclosure sale, that the power of sale under the foreclosed mortgage and
6 the provisions of this chapter and section 21 of chapter 183 were duly exercised, unless (i) a legal
7 action to challenge the validity of the foreclosure sale is commenced, or such challenge is
8 asserted as a defense and/or a counterclaim in a legal action, by any party entitled to notice of
9 sale under section 14 of this chapter in a court of competent jurisdiction, and (ii) a true and
10 correct copy of the complaint or other pleading asserting such challenge in said legal action is
11 duly recorded in the registry of deeds for the county or district where the subject real property
12 lies or duly filed in the land court registry district prior to either the expiration of said three-year
13 period or one year after the effective date of this section, whichever is later.

14 Following entry of final judgment in any such legal challenge, and the final resolution of
15 any appeal thereof, the affidavit shall immediately become conclusive evidence of the validity of
16 the sale, where said final judgment concludes that the power of sale was duly exercised. Where
17 said final judgment concludes that the power of sale was not duly exercised, the foreclosure sale
18 and affidavit are void. Where said final judgment does not determine the validity of the
19 foreclosure sale and the applicable period for the affidavit to become conclusive has not expired,
20 any party entitled to notice of sale under section 14 of this chapter may file or assert another
21 legal challenge to the validity of the foreclosure sale pursuant to subparts (i) and (ii) above.

22 The recording of such affidavit and either the expiration of said three-year period or one
23 year after the effective date of this section, whichever is later, shall not relieve the affiant or

24 other person on whose behalf the affidavit was executed and recorded from any liability for
25 failure to comply with this section, section 14 of this chapter or any other requirement of law
26 with respect to said foreclosure. With respect to any such affidavit recorded or filed on or after
27 January 7, 2011, any material misrepresentation contained therein shall constitute a violation
28 pursuant to section 2 of chapter 93A.

29 The arm's length third party purchaser for value relying on such affidavit shall not be
30 liable for any foreclosure where the power of sale was not duly exercised, and, absent a
31 challenge as set forth in subparts (i) and (ii), above, title to the real property thereby acquired
32 shall not be set aside on account of such failure. For purposes of this section, (i) the term "arm's
33 length third party purchaser for value" shall include such purchaser's heirs, successors and
34 assigns, but shall not include the foreclosing party or a parent, subsidiary, affiliate, or agent of
35 such foreclosing party, nor shall it include any investor or guarantor of the underlying mortgage
36 note, including without limitation the Federal National Mortgage Association, the Federal Home
37 Loan Mortgage Corporation and the Federal Housing Administration; and (ii) the term
38 "foreclosing party" shall mean the person or entity then holding the mortgage and also either
39 holding the mortgage note or authorized to act on behalf of the mortgage note holder.

40 The provisions of this section shall apply to such affidavits recorded before, on, or after
41 the effective date of this section.

42 SECTION 2. This act shall take effect 90 days from the date of enactment.