

SENATE No. 1987

The Commonwealth of Massachusetts

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In the Year Two Thousand Fourteen
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SENATE, January 23, 2014

The committee on Ways and Means, to whom was referred the Senate Bill clearing titles to foreclosed properties (Senate, No. 1953); reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 1987).

For the committee,
Stephen M. Brewer

SENATE No. 1987

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In the Year Two Thousand Fourteen

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 2012
2 Official Edition, is hereby amended by striking out, in line 1, the words “The person” and
3 inserting in place thereof the following words:-

4 For the purposes of this section the following words shall have the following meanings
5 unless the context clearly requires otherwise:

6 “Arm’s length third party purchaser for value”, shall include a purchaser’s heirs,
7 successors and assigns, but shall not include the foreclosing party or mortgage note holder, or a
8 parent, subsidiary, affiliate or agent of the foreclosing party or mortgage note holder, nor shall it
9 include any investor or guarantor of the underlying mortgage note, including without limitation
10 the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and
11 the Federal Housing Administration.

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

13 The person

14 SECTION 2. Said section 15 of said chapter 244 of the General Laws, as so appearing, is
15 hereby further amended by adding the following 4 paragraphs:-

16 The affidavit, if executed in the statutory form, shall, after 3 years from the date of its
17 recording, be conclusive evidence: in favor of an arm's length third party purchaser for value at
18 or subsequent to the foreclosure sale; that the power of sale under the foreclosed mortgage was
19 duly executed; and that the provisions of this chapter and section 21 of chapter 183 were duly
20 exercised.

21 The prior paragraph shall not apply when: (i) a legal action to challenge the validity of
22 the foreclosure sale is commenced or the challenge is asserted as a defense or a counterclaim in a
23 legal action by any party entitled to notice of sale under section 14 in a court of competent
24 jurisdiction; and (ii) a true and correct copy of the complaint or other pleading asserting such
25 challenge in the legal action is duly recorded in the registry of deeds for the county or district
26 where the subject real property lies or is duly filed in the land court registry district prior to the
27 deadline. However, following the entry of a final judgment in such a legal challenge and the final
28 resolution of any appeal of that judgment, the affidavit shall immediately become conclusive
29 evidence of the validity of the sale, if the final judgment concludes that the power of sale was
30 duly exercised. If the final judgment concludes that the power of sale was not duly exercised, the
31 foreclosure sale and affidavit shall be void. If the final judgment does not determine the validity
32 of the foreclosure sale and the deadline for the affidavit to become conclusive has not expired,
33 any party entitled to notice of sale under section 14 may file or assert another legal challenge to
34 the validity of the foreclosure sale under clauses (i) and (ii) above.

35 The recording of the affidavit and the expiration of the deadline shall not relieve the
36 affiant or any other person on whose behalf the affidavit was executed and recorded from any
37 liability for failure to comply with this section, section 14 or any other requirement of law with
38 respect to the foreclosure. Any material misrepresentation contained in an affidavit filed or
39 recorded after January 7, 2011 shall constitute a violation of section 2 of chapter 93A.

40 The arm's length third party purchaser for value relying on the affidavit shall not be
41 liable for any foreclosure if the power of sale was not duly exercised and absent a challenge as
42 set forth in clauses (i) and (ii) above title to the real property acquired shall not be set aside on
43 account of such failure.

44 SECTION 3. This act shall apply to affidavits recorded before, on or after the effective
45 date of this act.

46 SECTION 4. Notwithstanding section 15 of chapter 244 of the General Laws, if an
47 affidavit, filed pursuant to said section 15 of said chapter 244, was filed prior to the effective
48 date of this act, then the term "deadline" in said section 15 of said chapter 244 shall mean 3 years
49 from the date of the recording of the affidavit or 1 year from the effective date of this act,
50 whichever is later.