

HOUSE No. 3809

Text of an amendment recommended by the committee on Ways and Means to the Senate Bill further regulating the clearing of title to certain foreclosed properties (Senate, No. 2015), as changed by the committee on Bills in the Third Reading, and as amended by the House. October 14, 2015.

The Commonwealth of Massachusetts

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

By striking out all after the enacting clause and inserting in place thereof the following:

1 ‘SECTION 1. Chapter 244 of the General Laws, is hereby amended by striking out
2 section 15, as appearing in the 2014 Official Edition and inserting in place thereof the following
3 section:-

4 Section 15. (a) For the purposes of this section, the following words shall, unless the
5 context clearly requires otherwise, have the following meanings:-

6 ”Arm’s” length third party purchaser for value”, an arm’s length purchaser who pays
7 valuable consideration, including a purchaser’s heirs, successors and assigns but not including
8 the foreclosing party or mortgage note holder or a parent, subsidiary, affiliate or agent of the
9 foreclosing party or mortgage note holder or an investor or guarantor of the underlying mortgage
10 note including, but not limited to, the Federal National Mortgage Association, the Federal Home
11 Loan Mortgage Corporation and the Federal Housing Administration.

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

13 (b) The person selling, or the attorney duly authorized by a writing or the legal guardian
14 or conservator of such person, shall, after the sale, cause a copy of the notice of his or her
15 affidavit, fully and particularly stating his or her acts, or the acts of his or her principal or wards,
16 to be recorded in the registry of deeds for the county or district where the land lies, with a note of
17 reference thereto on the margin of the record of the mortgage deed, if it is recorded in the same
18 registry. If the affidavit shows that the requirements of the power of sale and of the statute have
19 in all respects been complied with, the affidavit or a certified copy of the record thereof, shall be
20 admitted as evidence that the power of sale was duly executed.

21 (c) An affidavit executed in accordance with this section shall, after 3 years from the date
22 of its recording, be conclusive evidence in favor of an arm's length third party purchaser for
23 value at or subsequent to the foreclosure sale that the power of sale under the foreclosed
24 mortgage was duly executed and that the sale complied with this chapter and section 21 of
25 chapter 183. An arm's length third party purchaser for value relying on any such affidavit shall
26 not be liable for a foreclosure if the power of sale was not duly exercised. Absent a challenge as
27 set forth in clauses (i) and (ii) of subsection (d), title to the real property acquired by the arm's
28 length third party purchaser shall not be set aside.

29 (d) Subsection (c) shall not apply if any party entitled to notice of sale under section 14
30 asserts a challenge to the validity of the foreclosure sale described by the affidavit as a claim or
31 defense in any legal action pending in a court of competent jurisdiction: (i) during the deadline,
32 and a true and correct copy of the pleading asserting such a claim or defense is duly recorded in
33 the registry of deeds for the county or district in which the subject real property lies or in the land
34 court having jurisdiction over such district; or (ii) at any time, provided that the party continues
35 to occupy the mortgaged property as such party's principal place of residence, provided further,

36 that a true and correct copy of the pleading asserting such a claim or defense is duly recorded in
37 the registry of deeds for the county or district in which the subject real property lies or in the land
38 court having jurisdiction over such district within the later of (1) 60 days from the date of the
39 challenge or (2) the deadline. After the entry of a final judgment in a legal challenge under
40 clause (i) or (ii) and the final resolution of any appeal of that judgment, the affidavit shall
41 immediately become conclusive evidence of the validity of the sale if the final judgment
42 concludes that the power of sale was duly exercised. If the final judgment concludes that the
43 power of sale was not duly exercised, the foreclosure sale and affidavit shall be void. If the final
44 judgment does not determine the validity of the foreclosure sale and the deadline for the affidavit
45 to become conclusive has not expired, any party entitled to notice of sale under section 14 may
46 file or assert another legal challenge to the validity of the foreclosure sale under clause (i) or (ii).

47 (e) The recording of an affidavit and the expiration of the deadline shall not relieve an
48 affiant or any other person on whose behalf an affidavit was executed and recorded from any
49 liability for failure to comply with this section, section 14 or any other requirement of law with
50 respect to the foreclosure. A material misrepresentation contained in any such affidavit shall
51 constitute a violation of section 2 of chapter 93A.

52 SECTION 2. Notwithstanding section 15 of chapter 244 of the General Laws, for
53 purposes of any affidavit filed pursuant to said section 15 of said chapter 244 before the effective
54 date of this act, 'deadline' in said section 15 of said chapter 244 shall mean 3 years from the date
55 of the recording of the affidavit or 1 year from the effective date of this act, whichever is later.

56 SECTION 3. The attorney general, in collaboration with the commissioner of banks, shall
57 work with stakeholders participating in the foreclosure industry and stakeholders participating in

58 foreclosure prevention, reduction or education programs to provide notification of the effects of
59 this act to homeowners facing foreclosure and homeowners who were foreclosed upon. For the
60 purposes of this section “stakeholders” shall include, but not be limited to, participants in the
61 attorney general’s HomeCorps program, grant recipients receiving funding to complement the
62 goals of the HomeCorps program, entities providing information to the division of banks to
63 maintain the foreclosure database, consumer assistance providers at the division of banks’
64 foreclosure hotline, foreclosure assistance providers referred by the division of banks and
65 participants in the Pro Bono Foreclosure Assistance Hotline. Notification efforts shall include,
66 and may be limited to, providing notice of the effects of this act on a website operated or
67 maintained by the attorney general and the division of banks.

68 The attorney general shall report to the clerks of the senate and house of representatives not later
69 than December 1, 2016 detailing notification efforts and the implementation of this section.’; and
70 by striking out the title and inserting in place thereof the following title: “An Act clearing titles
71 to foreclosed properties.”.