

SENATE No. 1981

The Commonwealth of Massachusetts

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

SENATE, Tuesday, July 28, 2015

The committee on Ways and Means, to whom was referred the Senate Bill clearing titles to foreclosed properties (Senate, No. 882),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 1981).

For the committee,
Karen E. Spilka

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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 2014
2 Official Edition, is hereby amended by striking out, in line 1, the word “The” and inserting in
3 place thereof the following words:-

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

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

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

13 (b) The.

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

16 (c) If the affidavit is executed in the statutory form as prescribed in section 14, it shall,
17 after 3 years from the date of its recording, be conclusive evidence in favor of an arm's length
18 third party purchaser for value at or subsequent to the foreclosure sale that the power of sale
19 under the foreclosed mortgage was duly executed and that the sale complied with this chapter
20 and section 21 of chapter 183.

21 (d) Subsection (c) shall not apply if: (i) a legal action to challenge the validity of the
22 foreclosure sale has commenced or the challenge has been asserted as a defense or a
23 counterclaim in a legal action by any party entitled to notice of sale under section 14 in a court of
24 competent jurisdiction and a true and correct copy of the complaint or other pleading asserting
25 such challenge is duly recorded in the registry of deeds for the county or district in which the
26 subject real property lies before the deadline or in the land court registry district before the
27 deadline; or (ii) a challenge to the validity of the foreclosure sale is asserted as a defense or
28 counterclaim in a legal action in a court of competent jurisdiction by any party entitled to notice
29 of sale under section 14 who continues to occupy the mortgaged premises as such party's
30 principal place of residence, regardless of whether such challenge is asserted prior to the
31 deadline, provided that a true and correct copy of any pleading asserting such challenge in the
32 legal action is duly recorded in the registry of deeds for the county or district in which the subject
33 property lies or is duly filed in the land court registry district within the later of (A) 60 days from
34 the date of the challenge or (B) the deadline. After the entry of a final judgment in a legal
35 challenge under clause (i) or (ii) and the final resolution of any appeal of that judgment, the
36 affidavit shall immediately become conclusive evidence of the validity of the sale if the final

37 judgment concludes that the power of sale was duly exercised. If the final judgment concludes
38 that the power of sale was not duly exercised, the foreclosure sale and affidavit shall be void. If
39 the final judgment does not determine the validity of the foreclosure sale and the deadline for the
40 affidavit to become conclusive has not expired, any party entitled to notice of sale under section
41 14 may file or assert another legal challenge to the validity of the foreclosure sale under clause
42 (i) or (ii).

43 (e) The recording of an affidavit and the expiration of the deadline shall not relieve an
44 affiant or any other person on whose behalf an affidavit was executed and recorded from any
45 liability for failure to comply with this section, section 14 or any other requirement of law with
46 respect to the foreclosure. A material misrepresentation contained in an affidavit shall constitute
47 a violation of section 2 of chapter 93A; provided, however, that a misrepresentation by the
48 foreclosing entity as to whether the foreclosing entity held the mortgage at the time of notice of
49 sale and subsequent foreclosure sale shall not constitute a violation of said section 2 of said
50 chapter 93A if the misrepresentation was contained in an affidavit filed or recorded on or before
51 January 7, 2011.

52 (f) An arm's length third party purchaser for value relying on an affidavit shall not be
53 liable for a foreclosure if the power of sale was not duly exercised. Absent a challenge as set
54 forth in clauses (i) and (ii) of subsection (c), title to the real property acquired by the arm's
55 length third party purchaser shall not be set aside.

56 SECTION 3. Notwithstanding section 15 of chapter 244 of the General Laws, if an
57 affidavit filed pursuant to said section 15 of said chapter 244 was filed before the effective date
58 of this act, then "deadline" in said section 15 of said chapter 244 shall mean 3 years from the

59 date of the recording of the affidavit or 1 year from the effective date of this act, whichever is
60 later.

61 SECTION 4. Except as otherwise provided, this act shall apply to affidavits recorded
62 before, on or after the effective date of this act.