

SENATE No. 2015

Text of the Senate Bill further regulating the clearing of title to certain foreclosed properties
(Senate, No. 2015) (being the text of Senate, No. 1981, printed as amended)

The Commonwealth of Massachusetts

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

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”, 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.

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 consistent with form 12 of the
17 appendix to chapter 183, it shall, after 3 years from the date of its recording, be conclusive
18 evidence in favor of an arm's length third party purchaser for value at or subsequent to the
19 foreclosure sale that the power of sale under the foreclosed mortgage was duly executed and that
20 the sale complied with this chapter 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, including the housing court department, and a true and correct copy of
25 the complaint or other pleading asserting such challenge is duly recorded in the registry of deeds
26 for the county or district in which the subject real property lies before the deadline or in the land
27 court registry district before the deadline; or (ii) a challenge to the validity of the foreclosure sale
28 is asserted as a defense or counterclaim in a legal action in a court of competent jurisdiction,
29 including the housing court department, by any party entitled to notice of sale under section 14
30 who continues to occupy the mortgaged premises as such party's principal place of residence,
31 regardless of whether such challenge is asserted prior to the deadline, provided that a true and
32 correct copy of any pleading asserting such challenge in the legal action is duly recorded in the
33 registry of deeds for the county or district in which the subject property lies or is duly filed in the
34 land court registry district within 60 days from the date of the challenge or before the deadline,

35 whichever is later. An attested true and correct copy of the complaint or pleading described in
36 this subsection shall be accepted for recording in the registry of deeds or, in the case of registered
37 land, in the land court registry district. After the entry of a final judgment in a legal challenge
38 under clause (i) or (ii) and the final resolution of any appeal of that judgment, the affidavit shall
39 immediately become conclusive evidence of the validity of the sale if the final judgment
40 concludes that the power of sale was duly exercised. If the final judgment concludes that the
41 power of sale was not duly exercised, the foreclosure sale and affidavit shall be void. If the final
42 judgment does not determine the validity of the foreclosure sale and the deadline for the affidavit
43 to become conclusive has not expired, any party entitled to notice of sale under section 14 may
44 file or assert another legal challenge to the validity of the foreclosure sale under clause (i) or (ii).

45 (e) The recording of an affidavit and the expiration of the deadline shall not relieve an
46 affiant or any other person on whose behalf an affidavit was executed and recorded from any
47 liability for failure to comply with this section, section 14 or any other requirement of law with
48 respect to the foreclosure. A material misrepresentation contained in an affidavit filed or
49 recorded after January 7, 2011 shall constitute a violation of section 2 of chapter 93A. The court
50 may award actual damages and punitive damages for all claims arising out of a failure to comply
51 with this section and sections 14, 35A and 35B or any other requirement of law with respect to
52 the foreclosure. The court may consider the value of a mortgage and any down payment and
53 equity associated with the underlying foreclosed property when assessing damages.

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

58 SECTION 3. Notwithstanding section 15 of chapter 244 of the General Laws, if an
59 affidavit filed pursuant to said section 15 of said chapter 244 was filed before the effective date
60 of this act, then “deadline” in said section 15 of said chapter 244 shall mean 3 years from the
61 date of the recording of the affidavit or 1 year from the effective date of this act, whichever is
62 later.

63 SECTION 4. The attorney general, in collaboration with the commissioner of banks, shall
64 work with stakeholders participating in the foreclosure industry and stakeholders participating in
65 foreclosure prevention, reduction or education programs to provide notification of the effects of
66 this act to homeowners facing foreclosure and homeowners who were foreclosed upon. For the
67 purposes of this section “stakeholders” shall include, but not be limited to, participants in the
68 attorney general’s HomeCorps program, grant recipients receiving funding to complement the
69 goals of the HomeCorps program, entities providing information to the division of banks to
70 maintain the foreclosure database, consumer assistance providers at the division of banks’
71 foreclosure hotline, foreclosure assistance providers referred by the division of banks and
72 participants in the Pro Bono Foreclosure Assistance Hotline. Notification efforts shall include,
73 and may be limited to, providing notice of the effects of this act on a website operated or
74 maintained by the attorney general and the division of banks.

75 The attorney general shall report to the clerks of the senate and house of representatives
76 not later than December 1, 2016 detailing notification efforts and the implementation of this
77 section.

78 SECTION 5. Except as otherwise provided, this act shall apply to affidavits recorded
79 before, on or after the effective date of this act.