HOUSE DOCKET, NO. 3360 FILED ON: 1/20/2017

HOUSE . . . . . No. 3500

The Commonwealth of Massachusetts

PRESENTED BY:

Frank A. Moran

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act protecting titles to real estate in Massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Frank A. Moran	*17th Essex*	*1/20/2017*
Robert M. Koczera	*11th Bristol*	*1/20/2017*
Bud Williams	*11th Hampden*	*1/20/2017*
Denise Provost	*27th Middlesex*	*1/20/2017*
Mike Connolly	*26th Middlesex*	*1/20/2017*
Chris Walsh	*6th Middlesex*	*1/20/2017*
Kay Khan	*11th Middlesex*	*1/20/2017*
Solomon Goldstein-Rose	*3rd Hampshire*	*1/20/2017*
Juana B. Matias	*16th Essex*	*1/20/2017*
James B. Eldridge	*Middlesex and Worcester*	*1/20/2017*
Angelo J. Puppolo, Jr.	*12th Hampden*	*3/28/2017*

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HOUSE . . . . . No. 3500

By Mr. Moran of Lawrence, a petition (accompanied by bill, House, No. 3500) of Frank A. Moran and others relative to titles for real estate. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act protecting titles to real estate in Massachusetts.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect titles to real estate, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. (a) This Act may be cited as the "real estate title protection act."

(b) Where not explicitly specified, this Act shall be construed to apply to both registered and recorded land.

(c) Where the language of this Act conflicts with any other section of the General Laws or the deed indexing standards, this Act shall supersede that other section or those standards.

SECTION 2. For the purposes of this act, the following terms shall have the following meanings:-

"Affidavit", a document made on personal knowledge or that meets the requirements of the business exception to the rule against hearsay, Rule 803(6), Federal Rules of Civil Procedure,

"Records of a Regularly Conducted Activity." It shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. If signed under the business exception, the affidavit shall have attached to it sworn or certified copies of all documents or parts thereof to which the affidavit refers.

"Authorized person", a person authorized to act on behalf of another person by a written document signed by the person on whose behalf the person authorized thereby is acting.

"Deed indexing standards", instructions to Registers of Deeds for indexing documents to be recorded and entered in the official record, issued by the Massachusetts Registers and Assistant Registers of Deeds Association, as revised from time to time.

"Discharge", a duly executed and acknowledged deed of release of a mortgage or other written instrument that, by its terms, discharges or releases a mortgage or the lien thereof, or acknowledges payment or satisfaction of a mortgage or the debt or obligation secured by a mortgage or the conditions therein contained.

"Mortgagee" or "mortgage owner", a person who has invested funds or other real consideration to hold legal title to real property upon which a mortgage is granted, and who is shown as such in the mortgage deed or assignment of mortgage.

"Mortgage servicer", a person to whom the mortgagee causes the mortgagor to be directed to remit scheduled periodic payments and payoff amounts on a mortgage loan; who allocates the payments to principal, interest, municipal real estate taxes and other appropriate assessments and charges, all pursuant to the terms of the loan; and who is required, pursuant to section 54D of chapter 184 of the General Laws, to provide a written payoff statement with respect to the mortgage loan.

"Mortgage statement", a periodic statement that a mortgagee or its authorized mortgage servicer sends to a mortgagor, indicating the amount of the mortgage payment then due, the loan balance, and related information.

"Mortgagor", a grantor of a mortgage.

"Mortgage Note", promissory note, signed by the mortgagor, promising to pay the lender, or its successors or assigns, the amount of the note plus specified interest and charges.

"Note Holder" of a mortgage note, the lender or a transferee of the Note who is also entitled to receive payments under the note.

SECTION 3. Chapter 12 of General Laws is hereby amended by adding the following section:-

Section 34. At the end of each session of the general court, and whenever otherwise appropriate, the attorney general shall notify the registers of deeds of statutes, regulations, and decisions of courts that may affect their responsibilities or operations.

SECTION 4. Section 12A of chapter 36 of General Laws is hereby amended by adding by adding the following 7 paragraphs:-

A register of deeds shall refuse to record any document that does not bear a heading, in 12 point (pica) or larger bolded font, which indicates the type of document and briefly indicates the document's purpose or contents.

A register of deeds shall refuse to record any assignment of mortgage that is presented later than 30 days after its date of execution, unless the assignment of said mortgage is accompanied by and recorded with an affidavit on personal knowledge showing good cause for

filing late, or a certified copy of an order of a court finding that recordation after this 30 day limit is warranted in the interests of justice. A register of deeds shall not record any assignment of mortgage executed before the effective date of this act, but presented or transmitted with proof of transmittal for recording more than 90 days thereafter.

All assignments of mortgage executed before the effective date of this act, but not recorded as of that date, shall be presented or transmitted with proof of transmittal for recording to the appropriate registry of deeds within 90 days of the effective date of this act. A register of deeds shall not record any assignment of mortgage executed before the effective date of this act, but presented or transmitted for recording more than 90 days thereafter.

The division of banks shall promptly inform all persons licensed in the commonwealth to lend funds upon mortgages of the provisions of subsections (c) and (d).

A register of deeds shall record or register a discharge of a mortgage of real property submitted by a mortgage servicer only if it is: (1) accompanied by a notarized copy of the mortgage note in its present condition with all affixed allonges, either in hard copy or transmitted electronically, and marked “paid in full on” the applicable date; and (2) is in the name of both the mortgagee and the note holder or the note holder’s agent.

A register of deeds shall not record a notice of sale pursuant to section 14 of chapter 244, unless the mortgagee shall cause to be recorded in the registry for the district (1) the notice to mortgagor of right to cure default of mortgage pursuant to section 35a of chapter 244, or a certified copy thereof, and (2) a certified copy of the mortgage note in its present condition and with all affixed allonges.

A register of deeds shall not record a foreclosure deed if it is presented or transmitted for recording more than 60 days after the foreclosure, unless it is accompanied by and recorded with an affidavit on personal knowledge showing good cause for filing late, or by a certified copy of an order of a court finding that recordation after this 60 day limit is warranted in the interests of justice.

All foreclosure deeds relative to foreclosures occurring before the effective date of this act, but not recorded as of that date, shall be presented for recording to the appropriate registry of deeds within 90 days of this act's effective date. A register of deeds shall not record any foreclosure deed relative to a foreclosure occurring before the effective date of this act, but presented for recording more than 90 days thereafter. The division of banks shall promptly inform all persons licensed in the commonwealth to lend funds upon mortgages of this provision.

SECTION 5. Chapter 183 of General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after section 54D the following section:-

Section 54E. (a) Each mortgage statement shall provide the names and contact information, including an address and toll-free telephone number, for (1) the current mortgage owner, with the date as of which it became the owner; (2) the note holder or his or her authorized agent; and (3) the mortgage servicer, if any, with the date as of which it became the servicer.

(b) If the mortgage loan has been pooled into a mortgage-backed security trust or has been securitized otherwise, each mortgage statement shall include the full name and any other information that identifies the trust or any other entity into which the mortgage loan was conveyed, together with the date of conveyance.

(c) Each mortgage statement shall identify the mortgage servicer, if any, as “the company that you pay,” or shall use other language sufficient to indicate the function(s) that a mortgage servicer performs.

(d) All information on each mortgage statement shall be accurate and current as of the date on which the statement is transmitted.

(e) Failure to comply with this section shall be an unfair or deceptive practice under section 2 of chapter 93A, and shall render a mortgagee or mortgage servicer liable to the mortgagor in the amount of $2,500 for each such violation, plus damages and reasonable attorney’s fees under subsection (4) of section 9 of said chapter 93A.

(f) The amount of $2,500 for each violation of subsection (e) shall annually, on January 1, be adjusted in accordance with the consumer price index as defined in section 1 of the Internal Revenue Code.

SECTION 6. Section 55 of chapter 183 of General Laws is hereby amended by adding at the end thereof the following 3 subsections:-

(l) When the mortgage loan has been paid in full, the note holder shall within 20 days of such payment cause to be sent to the mortgagor the original note in its present condition, with all affixed allonges, and marked “Paid in Full” on the applicable date.

(m) Failure to comply with this section shall be an unfair or deceptive practice under section 2 of chapter 93A, and shall render a mortgagee or mortgage servicer liable to the mortgagor in the amount of $2,500 for each such violation, plus damages and reasonable attorney’s fees under subsection (4) of section 9 of said chapter 93A.

(n) The amount of $2,500 for each violation of subsection (m) shall annually, on January 1, be adjusted in accordance with the consumer price index as defined in section 1 of the Internal Revenue Code.

SECTION 7. Section 70 of chapter 185 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended in line 2, by striking out the words "; but in case of foreclosure by entry and possession, the certificate of entry required by section two of chapter two hundred and forty-four shall be filed and registered by an assistant recorder in lieu of recording."

SECTION 8. Said section 70 of said chapter 185, as so appearing, is hereby further amended by striking out, in line 4, the words "After possession has been obtained by the mortgagee or his assigns, by entry or by action, and has continued for the time required by law to complete the foreclosure, he or his assigns may request the land court for the entry of a new certificate, and the court, after notice to all parties in interest, shall have jurisdiction to hear the case, and may order the entry of a new certificate on such terms as equity and justice may require."

SECTION 9. Section 1 of chapter 244 of the General Laws, as so appearing, is hereby amended by striking out, in line 2, the words "by an open and peaceable entry thereon, if not opposed by the mortgagor or other person claiming it, or".

SECTION 10. Said section 1 of said chapter 244, as so appearing, is hereby amended, in line 4, by striking out the words "; and possession so obtained, if continued peaceably for three years from the date of recording of the memorandum or certificate as provided in section two, shall forever foreclose the right of redemption".

SECTION 11. Said chapter 244 of General Laws is hereby further amended by striking out section 2 and inserting in place thereof the following section:-

Section 2. Any foreclosure by entry under previous section 2, or under section 70 of chapter 185, as to which a memorandum or certificate was recorded fewer 3 years before the effective date of this act, shall be void.

SECTION 12. Section 8 of said chapter 244, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The action may be brought by an assignee of the mortgagee.

SECTION 13. Sections 9 and 10 of chapter 244 are hereby repealed.

SECTION 14. Section 15A of said Chapter 244 is hereby amended by adding the following 4 paragraphs:-

The office of the assessor or collector of taxes shall accept such a notice only if accompanied by (1) a certification, on personal knowledge and under the pains and penalties of perjury, that the mortgagee has caused all other notifications required by this section to be made, and (2) a fine of $100 per day for each day beyond the day by which the mortgagee was required to have made such notice to the municipality.

The assessor or collector of taxes shall retain one-half of each such fine for the municipality. He or she shall promptly forward one-half of each such fine as revenue to the treasurer of the county, if the municipality is located in a county, or if not, to the treasurer of the commonwealth, as revenue for deposit in the general fund.

If a mortgagee has taken possession of a property on or before the effective date of this act, but has not made the notifications required by section 15A of chapter 244, this fine shall become applicable as of 30 days after the effective date of this act.

The division of banks shall promptly inform all persons licensed in the commonwealth to lend funds upon mortgages of this provision.

SECTION 15. Section 35C of said chapter 244, as so appearing, is hereby amended by striking out, in line 37 and 38, the word “conclusive”.

SECTION 16. Said section 35C of said chapter 244, as so appearing, is hereby further amended by striking out, in lines 30 to 31, inclusive, the words “publishing a notice of a foreclosure sale, as required by section 14,” and inserting in place thereof the following words:- , instituting a foreclosure proceeding in land court or superior court pursuant to the service members’ civil relief act.

SECTION 17. Said section 35C of said chapter 244, as so appearing, is hereby further amended by adding the following 5 subsections:-

(i) The affidavit required in subsection (b) shall list and append the documents, or certified copies of the documents, on which the affiant relies except that the certified copy recorded in the registry of deeds may omit copies of documents that are recorded there.

(j) For each certified copy of a document appended to the affidavit required in subsection (b) the affidavit shall provide the name and contact information of the document custodian of the original document, or shall state that the document is of record in the registry of deeds for the district in which the land lies.

(k) Land court and superior court shall proceed with a service members' civil relief case (1) only upon the filing of a mortgagee's affidavit required in subsection (b) and (2) only if all assignments of mortgage cited in and appended to that affidavit, whether original or certified copies, have been duly recorded in the registry of deeds for the district in which the land lies.

(l) Failure to comply with this section shall be an unfair or deceptive practice under section 2 of chapter 93A, and shall render a mortgagee or mortgage servicer liable to the mortgagor in the amount of $2,500 for each such violation, plus damages and reasonable attorney's fees under subsection (4) of section 9 of said chapter 93A.

(m) The amount of $2,500 for each violation of subsection (e) shall annually, on January 1, be adjusted in accordance with the consumer price index as defined in section 1 of the Internal Revenue Code.

SECTION 18. Section 35A of chapter 266 of General Laws is hereby amended in subsection (a) by inserting, after the definition of "Pattern of residential mortgage fraud", the following definition:-

"Pattern of submitting fraudulent or false documents affecting or concerning title to real property," violation of subsection (b) in connection with 3 or more properties."

SECTION 19. Said section 35A of said chapter 266, as so appearing, is hereby further amended by inserting after the word "omission", in line 48 the following words:- ; or (5) executes or causes to be executed, or files or causes to be filed with any court, or presents or causes to be presented to a registry of deeds for recording or registration, whether in hard copy or by means of electronic transmission, any document that affects or concerns title to real property, whether residential or commercial, knowing that it is fraudulent or false in any material respect,

including by omission, by a false or fraudulent declaration, by a false or fraudulent signature, or by a false or fraudulent notarization.

SECTION 20. Subsection (b) of said section 35A of said chapter 266 is hereby amended by adding the following paragraph:-

Any person who engages in a pattern of violation of clause (5) of subsection (b) of this section shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than $50,000, in the case of a natural person, or not more than $500,000 in the case of any other person, or by both such fine and imprisonment. The statute of limitations for a violation shall be 10 years from the date of execution of the document in question, the date its presentation to a registry of deeds for recording, its date of recordation, or the date on which it was filed with any court, whichever comes last.

SECTION 21. Said section 35A of said chapter 266 is hereby further amended by adding the following 4 subsections:-

(d) Any person who engages in a pattern of residential mortgage fraud, or engages in a pattern of violation of clause (5) of subsection (b) of this section shall, in addition to any other punishment, be barred from doing any business in the commonwealth for a term of 3 years.

(e) The provisions of clauses (4) and (5) of subsection (b) shall be reproduced in 12-point (pica) bolded font, with a heading, “Criminal Liability for False or Fraudulent Documents,” in least 16-point (Columbian) bolded font, and shall be displayed prominently in the public area of each registry of deeds. These provisions shall also be reproduced legibly, with a legible heading in bolded font, on the website of each registry of deeds, and, as a condition of doing business in

the commonwealth, on the website of any firm that offers e-recording services in the commonwealth.

(f) The attorney general shall make available to all registers of deeds, to land court, to members of the Massachusetts bar, and on the attorney general's website, criminal referral forms for violations of section 35A, together with instructions for completing and submitting such forms to the attorney general's office.

The attorney general may refer such cases for investigation and prosecution to the district attorney for the district in which a case arises.

The attorney general shall report to the legislature annually on (1) the number of criminal referrals received during the preceding fiscal year, and the violations alleged; (2) the number and types of cases in which charges have been brought, whether by the attorney general's office or by a district attorney; and (3) the status and dispositions of those cases, including cases of any persons barred pursuant to the provisions of subsection (d).

(g) The amounts of all fines for violations of section 35A shall be adjusted annually on January 1 in accordance with the consumer price index as defined in section 1 of the Internal Revenue Code.