

HOUSE No. 1524**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:
<i>Frank A. Moran</i>	<i>17th Essex</i>	<i>1/15/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/24/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/28/2019</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>1/30/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/31/2019</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>1/31/2019</i>
<i>Gerard J. Cassidy</i>	<i>9th Plymouth</i>	<i>2/1/2019</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/1/2019</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/1/2019</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/1/2019</i>
<i>Peter Capano</i>	<i>11th Essex</i>	<i>2/1/2019</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>2/1/2019</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/1/2019</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>2/1/2019</i>

HOUSE No. 1524

By Mr. Moran of Lawrence, a petition (accompanied by bill, House, No. 1524) of Frank A. Moran and others relative to titles for real estate. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3500 OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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 like that of the first true Massachusetts recording act, is “For avoiding all fraudulent conveyances, and that every man may know what estate or other interest other men may have in any houses, lands, or other hereditaments they are to deal in...” 1 Mass. Colonial Records 306 (1640); including to facilitate the accurate determination of title to real estate in the commonwealth; to enable every homeowner with a mortgage on real property to know at all times who holds the mortgage and who owns the mortgage note; to enable municipalities to know who is liable for real estate taxes and other charges pertaining to properties; to provide certain foreclosure-related criminal provisions, and to re-establish the settled meanings of certain terms defined herein; therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience., 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:

- 1 SECTION 1. (a) This Act may be cited as the “real estate title protection act.”
- 2 (b) Where not explicitly specified, this Act shall be construed to apply to both registered
- 3 and recorded land.

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

6 SECTION 2. For the purposes of this Act, the following terms shall have the following
7 meanings:

8 “Affidavit”, a document made on personal knowledge or that meets the requirements of
9 the business records exception to the rule against hearsay, Rule 803(6), Federal and
10 Massachusetts Rules of Evidence, “Records of a Regularly Conducted Activity.” It shall set forth
11 such facts as would be admissible in evidence, and shall show affirmatively that the affiant is
12 competent to testify to the matters stated therein. If it relies on the business records exception,
13 the affidavit shall have attached to it sworn or certified copies of all documents or relevant
14 excerpts thereof to which the affidavit refers. Each such excerpt must be in the form of a true and
15 accurate photocopy of the entirety of the page or pages from which such an excerpt is taken, and
16 must include complete and accurate photocopies of the document’s title page and table of
17 contents, if applicable. Each complete page from which any such excerpt or part thereof is taken
18 shall bear already-existing indicia evidencing that said page is from the document whose title
19 page and table of contents, if applicable, are appended, or else shall bear already-existing indicia
20 evidencing the source of each such page.

21 “Assignment of mortgage”, an instrument by which a mortgagee or holder of a mortgage
22 of real property conveys such a mortgage to an assignee pursuant to the Statute of Frauds,
23 section 1 of chapter 259 of the General Laws; section 6 of chapter 183; and other provisions of
24 the General Laws applicable to a transfer of interest in real property.

25 “Authorized person”, a person authorized to act on behalf of another person as of the date
26 of execution of an instrument that can affect title to real property, signed by the person on whose
27 behalf the person authorized thereby is acting.

28 “Deed indexing standards”, standards for indexing documents to be recorded in the
29 registries of deeds, as issued by the Massachusetts Registers and Assistant Registers of Deeds
30 Association and revised from time to time.

31 “Discharge”, a duly executed and acknowledged deed of release of a mortgage of real
32 property or other instrument that, by its terms, discharges or releases such a mortgage, or
33 acknowledges payment or satisfaction of the debt or obligation secured by such a mortgage or
34 the conditions contained therein; or the discharge of such a mortgage by operation of law
35 pursuant to the General Laws.

36 “Mortgage”, a conveyance, to a lender, of legal title to real property, in consideration of a
37 loan whose repayment is secured by the terms and conditions of a security instrument.

38 “Mortgagee” or “mortgage holder”, a person who has invested funds or other
39 consideration to hold legal title to real property upon which a mortgage is granted, and who is
40 named as such in the mortgage or any assignment thereof.

41 “Mortgagee of Record”, a “mortgagee” or “mortgage holder” so identified in an
42 instrument that thereafter was recorded.

43 “Mortgage servicer” or “servicer”, the person responsible for servicing the mortgage
44 loan.

“Mortgage servicing” or “servicing”, the receiving of any scheduled periodic payments from a mortgagor pursuant to the terms of any mortgage loan, the making of the payments of principal and interest and such other payments with respect to the amounts received from the mortgagor as may be required pursuant to the terms of such loan, and the provision of a written payoff statement with respect to the mortgage loan pursuant to section 54D of chapter 184.

“Mortgage statement”, a periodic statement that a mortgagee of residential real property or its authorized mortgage servicer sends to a mortgagor, stating the amount of the mortgage payment then due; the loan balance; the names and contact information, including an address and toll-free telephone number, for the current (i) mortgagee, with the date as of which it became the mortgagee; (ii) note owner, with the date as of which it became the note owner, and (iii) mortgage servicer, if any, with the date as of which it became the servicer.

“Mortgagor”, a grantor of a mortgage.

“Mortgage Note”, a promissory note, signed by the mortgagor, promising to pay the lender, or any successor who is entitled to enforce the mortgage note, and specifying the requirements for the repayment of the debt including the amount, interest and charges.

“Note Owner”, the lender or a transferee of the note, who is entitled to receive payments under and to enforce the note.

“Register”, the register of deeds for the county or district within which the subject land lies.

“Residential real property”, a 1 to 6 family residential property located in the commonwealth.

66 SECTION 3. Attorney General to notify registers of deeds of legal developments

67 Chapter 12 of General Laws is hereby amended by adding the following section:-

68 Section 34. At the end of each session of the general court, and whenever otherwise
69 appropriate, the Attorney General shall promptly notify the registers of statutes, regulations, and
70 decisions of courts that may affect their responsibilities or operations.

71 SECTION 4. Recordation of assignments of mortgage, affidavits of sale, foreclosure
72 deeds

73 Section 12A of chapter 36 of General Laws is hereby amended by adding the following
74 ten subsections:-

75 (a) A register shall not record any instrument, executed after the effective date of this act,
76 unless its heading (i) is in 12 point (pica) or larger bolded font, (ii) indicates the type of
77 instrument, and (iii) briefly indicates the instrument's purpose or contents.

78 (b) A register shall not record any assignment of mortgage that is presented later than
79 thirty (30) days after its date of execution, unless the said assignment of mortgage is recorded
80 with an affidavit showing good cause for filing late, or with a certified copy of an order of a
81 court finding that recordation after this thirty (30) day limit is warranted in the interests of
82 justice.

83 (c) A register shall not record an assignment of mortgage executed before the effective
84 date of this Act, but not recorded as of that date, unless presented to the appropriate registry of
85 deeds within ninety (90) days of this Act's effective date, except that the Federal National
86 Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National

Mortgage Association, the U.S. Department of Housing and Human Development, and the U.S. Department of Agriculture may present such assignments of mortgage for recording up to one hundred eighty (180) days from the effective date of this Act.

(d) Where an assignment of a mortgage is to a securitized trust or other investment vehicle, a certified copy of that trust or other investment vehicle's founding instrument must be:

- (i) recorded with the assignment of mortgage, or
- (ii) identified on the assignment by book and page or document number in the subject registry, or
- (iii) identified on the assignment as being available in a particular location elsewhere in the public record.

(e) A register shall not record a discharge of a mortgage of real property unless it is:

- (i) issued by the mortgagee and identifies the present note owner, and
- (ii) recorded, with a certified copy of the original wet-ink mortgage note in its present condition, demonstrating that all allonges are affixed, and marked "paid in full," with the date of satisfaction of the mortgage loan.

(f) A register shall record an affidavit of sale pursuant to section 14 of chapter 244, only if it is recorded with (i) a certified copy of the notice to mortgagor of right to cure default of mortgage pursuant to section 35A of chapter 244, and (ii) a certified copy of the original wet-ink mortgage note in its present condition, demonstrating that all allonges are affixed.

(g) A register shall not record a foreclosure deed if it is presented more than sixty (60) days after the date of foreclosure, unless it is 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 sixty (60) day limit is warranted in the interests of justice.

(h) A register shall not record any foreclosure deed relative to a foreclosure occurring before the effective date of this Act, unless it is presented for recording to the appropriate registry of deeds within ninety (90) days of this Act's effective date.

(i) The Division of Banks shall promptly inform all persons licensed in the commonwealth to lend funds upon mortgages, as well as the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the U.S. Department of Housing and Human Development, and the U.S. Department of Agriculture, of the provisions of this Act.

SECTION 5. Homeowners' mortgage statements

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 concerning a mortgage of residential real property shall provide the names and contact information, including an address and toll-free telephone number, for the current (i) mortgagee, with the date as of which it became the mortgagee; (ii) note owner, with the date as of which it became the note owner, and (iii) mortgage servicer, if any, with the date as of which it became the servicer.

(b) Each such 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.

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

(d) Failure to comply with this section shall be an unfair or deceptive practice under section two 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 four of section nine of said chapter 93A.

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

SECTION 6. Payoff of mortgage loan: return cancelled note to mortgagor

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

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

(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 one of the Internal Revenue Code.

SECTION 7. Repeal of foreclosure by entry and possession.

Section 70 of chapter 185 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out the words “; but in case of foreclosure by entry and possession, the certificate of entry required by section 2 of chapter 244 shall be filed and registered by an assistant recorder in lieu of recording.” and by striking out 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.”

The provisions of Section 1 of chapter 244 of the General Laws, as so appearing, are hereby declared in effect until the date of the enactment of this Act.

“Section 1. A mortgagee may, after breach of condition of a mortgage of land, recover possession of the land mortgaged by an open and peaceable entry thereon, if not opposed by the mortgagor or other person claiming it, or by action under this chapter; 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.

169 After the date of the enactment of this Act, the following shall be in effect:

170 “Section 1. A mortgagee may, after breach of condition of a mortgage of land, recover
171 possession of the land mortgaged by action under this chapter.”

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

174 Section 2. Possession obtained by means of any entry under previous section 1 of Chapter
175 244, or under section 70 of chapter 185, as to which a memorandum or certificate was recorded
176 fewer than three years before the effective date of this act, shall never foreclose the right of
177 redemption.

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

181 Sections 9 and 10 of chapter 244 are hereby repealed.

182 SECTION 8. Notice to municipality by mortgagee taking possession, conveying title

183 Section 15A of said Chapter 244 is hereby amended by making existing text into
184 subsection 15A(a) and adding the following four paragraphs:-

185 (b) The assessor or collector of taxes shall accept such a notice only if accompanied by (i)
186 a certification, on personal knowledge and under the pains and penalties of perjury, that the
187 mortgagee has caused to be made all other notifications required by this section and (ii) a fine of
188 \$100 per day for each day beyond the day by which the mortgagee was required to have made
189 such notice to the municipality.

(c) 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.

(d) 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 thirty (30) days after the effective date of this act.

(e) The Commissioner of the Department of Revenue of the commonwealth shall promptly notify all municipalities in the commonwealth of the provisions of Section 12.

SECTION 9. Repeal legislative determination of weight of evidence

Section 35B (f) and section 35C (b) of said chapter 244, as so appearing, are hereby amended by striking out the word “conclusive” where it appears in the second paragraph of section 35B (f), between “this section shall be” and “evidence in favor of”, and in the second paragraph of Section 35C(b), where it appears between “this subsection shall be” and “evidence in favor of....”

SECTION 10. Creditor actions; mortgagee’s affidavit; assignments of mortgage; service members’ civil relief act proceedings

Said section 35C of said chapter 244, as so appearing, is hereby further amended in subsection (a), by striking out the words “Mortgage Electronic Registration System or”; and in subsection (b), by striking out the words “Prior to publishing a notice of a foreclosure sale, as required by section 14” and replacing them with “Prior to instituting a proceeding in land court

or superior court pursuant to the service members' civil relief act and again prior to publishing a notice of foreclosure sale as required by section 14 ,”

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

(i) 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 identify the document by book and page or document number as recorded in the registry of deeds for the county or district in which the land lies.

(j) Land court and superior court shall proceed with a service members' civil relief case only (1) upon the filing of a mortgagee's affidavit as required in subsection (b); (2) 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 county or district within which the land lies; and (3), where the note owner is different from the mortgagee, the mortgagee has filed a certified copy of the agency agreement or other instrument authorizing the mortgagee to institute that proceeding.

(k) 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.

(l) 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 11. False material statements or omissions during or in connection with mortgage loan process; penalties; statute of limitations; Attorney General reports

Section 35A of chapter 266 of General Laws is hereby amended, in subsection (a) by deleting “4” in the definition of “Residential mortgage loan” and substituting “6”; and, in both its title and in subsection (b), by deleting the word “lending” wherever it appears and substituting the word “loan”; and is further amended in subsection (b), after “both such fine and imprisonment”, by inserting the following new paragraph:-

Where a document including such a material statement that is false or such a material omission is used in connection with a foreclosure or attempted foreclosure, or a larceny or attempted larceny of real property whether such document is filed in a court, recorded in a registry of deeds, or otherwise uttered, punishment may include restitution to the victim(s), including the preparation and recordation at no expense to the victim(s) of whatever instrument(s) might be necessary to clarify the title of the victim(s) to that property; a prohibition from doing business in the commonwealth for any term of years or permanently; or both.

Said section 35A of said chapter 266, as so appearing, is hereby further amended by inserting, after subsection (b), the following seven new subsections:

(c) Whoever 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, or otherwise utters any instrument that affects 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, shall be punished by

imprisonment in the state prison for not more than 5 years or by imprisonment in the house of correction for not more than 2 and one-half years or by a fine of not more than \$50,000 in the case of a natural person or not more than \$250,000 in the case of any other person, or by both fine and imprisonment. Where such a document is used in connection with a foreclosure or attempted foreclosure, or a larceny or attempted larceny of real property, punishment may include restitution to the victim(s), including the preparation and recordation at no expense to the victim(s) of whatever instrument(s) might be necessary to clarify the title of the victim(s) to that property; a prohibition from doing business in the commonwealth for any term of years or permanently; or both.

(d) The statute of limitations for a violation of subsection (c) of this section shall be ten (10) years from the date of execution of the document in question, the date of its presentation to a registry of deeds for recording, its date of recordation, or the date on which it was filed with or proffered in evidence in any court or otherwise uttered, whichever comes last.

(e) The provisions of subsections (c) and (d) of said section 35A of said chapter 266, as so appearing, shall be reproduced in 12-point (pica) bolded font, with a heading, "Criminal Liability for False or Fraudulent Documents," in least 16-point 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 Secretary of the Commonwealth shall promptly notify all firms that offer e-recording services in the commonwealth of the provisions of subsections (a), (b), (c), (d) and (e).

(g) The Attorney General shall make available to all registers, to land court, superior court, members of the Massachusetts bar, and on the Attorney General's website, referral forms for reporting violations of section 35A , of section 30 of chapter 260 of the General Laws, and of any other violations of the General Laws that concern title to real property, together with instructions for completing and submitting such forms to the Attorney General's office.

(h) The Attorney General may refer such cases for investigation and prosecution to the district attorney for the county or district in which a case arises.

(i) The Attorney General shall report to the legislature annually, within thirty (30) days of the end of each fiscal year, on (1) the number of referrals received during the preceding fiscal year for violations identified in (g) and the violations alleged; (2) the number and types of cases in which civil enforcement actions or criminal charges have been brought, whether by the Attorney General's office or by a district attorney; and (3) the status and disposition of each such case, including sentences of restitution to victim(s) of foreclosure and attempted foreclosure and larceny and attempted larceny of real property and of prohibition from doing business in the commonwealth.

(j) The maximum 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 one of the Internal Revenue Code.