

HOUSE No. 1807

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 title to real estate in Massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Frank A. Moran</i>	<i>17th Essex</i>	<i>2/19/2021</i>

HOUSE No. 1807

By Mr. Moran of Lawrence, a petition (accompanied by bill, House, No. 1807) of Frank A. Moran relative to protecting titles to real estate. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act protecting title to real estate in Massachusetts.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to Whereas deferred operation of this act would tend to defeat its purposes, which include reversing the impacts of structural racism in mortgage lending, the illegal taking of title to mortgaged real property, and myriad associated damages; ending the lengthy delay of justice that thus far has meant justice denied; like that of the first true Massachusetts recording act, “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); facilitating the accurate and cost-effective determination of title to real estate in the commonwealth; enabling every homeowner with a mortgage on real property to know at all times who holds the mortgage and who owns the mortgage note; supporting robust real estate markets; promoting new business formation, as certainty of title facilitates home mortgage loans to start businesses; promoting municipal finance by ensuring that municipalities know who is liable for real estate taxes and other charges pertaining to real properties; deterring illegal home foreclosures by means of certain foreclosure-related criminal provisions; and re-establishing the heretofore 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) Unless the contrary is explicitly specified, this Act shall be construed to apply to both
3 registered and recorded land.

4 (c) Where a provision of this Act conflicts with any other provision of the general laws or
5 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. Third party loan servicers and their agents must
13 execute on personal knowledge. If it relies on the business records exception, the affidavit shall
14 have attached to it sworn or certified copies of all documents in their current state, or relevant
15 excerpts thereof, to which the affidavit refers. Each such excerpt must be in the form of a true
16 and accurate photocopy of the entirety of the page or pages from which such an excerpt is taken,
17 and must include complete and accurate photocopies of the document’s title page and table of
18 contents, if applicable

19 “Assignment of mortgage”, an instrument by which a mortgagee or holder of a mortgage
20 of real property conveys that mortgage to an assignee pursuant to the statute of frauds, section 1
21 of chapter 259 of the general laws; section 6 of chapter 183; and other provisions of the general
22 laws applicable to a transfer of interest in real property.

23 “Authorized person”, a person with documented prior authorization from their principal
24 or a court as of the date of that person’s negotiation or execution of an instrument that can affect
25 title to real property.

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

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

34 “Mortgage”, a conveyance, to a lender, of legal title to real property, in consideration of a
35 loan whose repayment is secured by the terms and conditions of a mortgage note.

36 ”Mortgagee” or “mortgage holder”, a person who has invested funds or other
37 consideration for the grant of a mortgage, and who is named as such in the mortgage or any
38 assignment thereof.

39 “Mortgagee of Record”, a “mortgagee” or “mortgage holder” so identified in the
40 instrument that was subsequently recorded.

41 “Mortgage servicer” or “servicer”, the person legally authorized by the mortgagee and in
42 compliance with all applicable law for servicing the mortgage loan.

43 “Mortgage servicing” or “servicing” includes but is not limited to the sending of
44 mortgage statements, the receiving of the mortgagor’s scheduled periodic payments, the making
45 of the payments of principal and interest and such other payments as may be required pursuant to
46 the terms of such loan, and the providing of a written payoff statement with respect to the
47 mortgage loan in compliance with applicable statute.

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

54 “Mortgagor”, a grantor of a mortgage.

55 “Mortgage Note”, a promissory note, bearing the original signature(s) of the
56 mortgagor(s), promising to pay the lender, or any successor who is entitled to enforce the
57 mortgage note, and specifying the requirements for the repayment of the debt including the
58 amount, interest, and charges.

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

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

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

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

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

67 Section 34. At the end of each session of the general court, and whenever otherwise
68 appropriate, the Attorney General shall promptly notify the registers of changes in statutes and
69 regulations, and of decisions of the supreme judicial court, which affect their responsibilities or
70 operations.

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

73 Section 12A of chapter 36 of the General Laws is hereby amended by adding the
74 following 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
85 within ninety (90) days of this Act's effective date, except that the Federal National Mortgage
86 Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage
87 Association, the U.S. Department of Housing and Human Development, and the U.S.
88 Department of Agriculture may present such assignments of mortgage for recording up to one
89 hundred eighty (180) days from the effective date of this Act.

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

93 (i) recorded with the assignment of mortgage, or

94 (ii) identified on the assignment by book and page or document number in the subject
95 registry, or

96 (iii) identified on the assignment as being available in a particular location elsewhere
97 in the public record.

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

99 (i) issued by the mortgagee;

100 (ii) identifies the present note owner, and

101 (iii) is recorded with a certified copy of the original wet-ink mortgage note in its
102 present condition, demonstrating that all allonges were affixed when created; the date of
103 satisfaction of the mortgage loan and marked "paid in full".

104 (f) A register shall record an affidavit of sale pursuant to section 14 of chapter 244, only
105 if it is recorded with

106 (i) a certified copy of the notice to the mortgagor of right to cure a default of mortgage
107 pursuant to section 35A of chapter 244, and

108 (ii) a certified copy of the original wet-ink mortgage note in its present condition,
109 demonstrating that all allonges are affixed.

110 (g) A register shall not record a foreclosure deed if it is presented more than sixty (60)
111 days after the date of foreclosure, unless it is recorded with an affidavit showing good cause for
112 filing late, or by a certified copy of an order of a court finding that recordation after this sixty
113 (60) day limit is warranted in the interests of justice.

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

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

122 SECTION 5: Conformance of Notary provisions with Alienation of Land provisions:

123 Section 8 of Chapter 222 of the General Laws, as appearing in the 2016 Official Edition,
124 is hereby amended by striking out of subsection (b) the sentence "Failure to comply with this

125 section shall not affect the validity of any instrument or the record thereof” and replacing it with
126 “Failure to comply with this section shall not affect the validity of any instrument”.

127 Section 20 of Chapter 222 of the General Laws, is hereby amended by striking out
128 subsection (b) in its entirety and replacing it with

129 “(b) Except as may be required by the Office of the Secretary of the Commonwealth for
130 the issuance of an apostille, or as may be required by a register of deeds for the purpose of
131 recordation or registration, and provided the form of acknowledgement, jurat, signature
132 witnessing, or copy certification otherwise is substantially similar in legal meaning and effect to
133 the texts of the several such forms set forth in this chapter or in the appendix to Chapter 183:

134 (i) failure of a document to contain the forms of acknowledgment, jurat, signature
135 witnessing or copy certification set forth in section 15 or otherwise to comply with the
136 requirements set forth in sections 8 to 23, inclusive, shall not have any effect on the validity of
137 the underlying document;

138 (ii) failure of a document to contain the forms of acknowledgement, jurat, signature
139 witnessing or copy certification set forth in said section 15 shall not be the basis of a refusal to
140 accept the document for filing, or acceptance by a third party; and

141 (iii) failure of a document executed in a representative capacity to contain an
142 acknowledgement that the instrument was also the voluntary or free act and deed of the principal
143 or guarantor shall not affect the validity of the underlying document.”

144 SECTION 6. Homeowners’ mortgage statements

145 Section 183 of the General Laws, as appearing in the 2014 Official Edition, is hereby
146 amended by inserting after section 54D the following section:-

147 Section 54E. (a) Each mortgage statement concerning a mortgage of residential real
148 property shall provide the names and contact information, including an address and toll-free
149 telephone number, for the current

150 (i) mortgagee, with the date as of which it became the mortgagee;

151 (ii) note owner, with the date as of which it became the note owner, and

152 (iii) mortgage servicer, if any, with the date as of which it became the servicer.

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

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

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

162 (e) The amount of \$2,500 for each violation of subsection (d) shall annually, on January
163 1, be adjusted in accordance with the consumer price index as defined in section one of the
164 Internal Revenue Code.

165 SECTION 7. Payoff of mortgage loan: return of cancelled mortgage note to mortgagor

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

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

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

176 (n) The amount of \$2,500 for each violation of subsection (m) shall annually, on January
177 1, be adjusted in accordance with the consumer price index as defined in section one of the
178 Internal Revenue Code.

179 SECTION 8. Repeal of foreclosure by entry and possession.

180 Section 70 of chapter 185 of the general laws, as appearing in the 2014 Official Edition,
181 is hereby amended by striking out the words "; but in case of foreclosure by entry and
182 possession, the certificate of entry required by section 2 of chapter 244 shall be filed and
183 registered by an assistant recorder in lieu of recording." and by striking out the words "After
184 possession has been obtained by the mortgagee or his assigns, by entry or by action, and has
185 continued for the time required by law to complete the foreclosure, he or his assigns may request

186 the land court for the entry of a new certificate, and the court, after notice to all parties in
187 interest, shall have jurisdiction to hear the case, and may order the entry of a new certificate on
188 such terms as equity and justice may require.”

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

191 “Section 1. A mortgagee may, after breach of condition of a mortgage of land, recover
192 possession of the land mortgaged by an open and peaceable entry thereon, if not opposed by the
193 mortgagor or other person claiming it, or by action under this chapter; and possession so
194 obtained, if continued peaceably for three years from the date of recording of the memorandum
195 or certificate as provided in section two, shall forever foreclose the right of redemption.”

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

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

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

201 Section 2. Possession obtained by means of any entry under previous section 1 of Chapter
202 244, or under section 70 of chapter 185, as to which a memorandum or certificate was recorded
203 fewer than three years before the effective date of this act, shall never foreclose the right of
204 redemption.

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

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

209 SECTION 9. Notice to municipality by mortgagee taking possession, conveying title

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

212 (b) The assessor or collector of taxes shall accept such a notice only if accompanied by (i)
213 a certification, on personal knowledge and under the pains and penalties of perjury, that the
214 mortgagee has caused to be made all other notifications required by this section and

215 (ii) a fine of \$100 per day for each day beyond the day by which the mortgagee was
216 required to have made such notice to the municipality.

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

221 (d) The amount of \$100 per day for each day beyond the day by which the mortgagee
222 was required to have made such notice to the municipality shall annually, on January 1, be
223 adjusted in accordance with the consumer price index as defined in section 1 of the Internal
224 Revenue Code.

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

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

230 SECTION 10. Repeal legislative determination of weight of evidence

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

236 SECTION 11. Creditor actions; mortgagee’s affidavit; assignments of mortgage; service
237 members’ civil relief act proceedings

238 Said section 35C of said chapter 244, as so appearing, is hereby further amended in
239 subsection (a), by striking out the words “Mortgage Electronic Registration System or”; and in
240 subsection (b), by striking out the words “Prior to publishing a notice of a foreclosure sale, as
241 required by section 14” and replacing them with “Prior to instituting a proceeding in land court
242 or superior court pursuant to the service members’ civil relief act and again prior to publishing a
243 notice of foreclosure sale as required by section 14 ,”

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

246 (i) For each certified copy of a document appended to the affidavit required in subsection
247 (b), the affidavit shall provide the name and contact information of the document custodian of
248 the original document, or shall identify the document by book and page or document number as
249 recorded in the registry of deeds for the county or district in which the land lies.

250 (j) Land court and superior court shall proceed with a service members' civil relief case
251 only

252 (1) upon the filing of a mortgagee's affidavit as required in subsection (b); (2) if all
253 assignments of mortgage cited in and appended to that affidavit, whether original or certified
254 copies, have been duly recorded in the registry of deeds for the county or district within which
255 the land lies; and (3), where the note owner is different from the mortgagee, the mortgagee has
256 filed a certified copy of the agency agreement or other instrument authorizing the mortgagee to
257 institute that proceeding.

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

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

265 SECTION 121. False material statements or omissions during or in connection with
266 mortgage loan process; penalties; statute of limitations; Attorney General reports

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

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

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

281 (c) Whoever executes or causes to be executed, or whoever files or causes to be filed with
282 any court, or presents or causes to be presented to a registry of deeds for recording or
283 registration, whether in hard copy or by means of electronic transmission, or otherwise utters any
284 instrument that affects title to real property, whether residential or commercial, knowing that it is
285 fraudulent or false in any material respect including by omission, by a false or fraudulent
286 declaration, by a false or fraudulent signature, or by a false or fraudulent notarization, shall be
287 punished by imprisonment in the state prison for not more than 5 years or by imprisonment in the
288 house of correction for not more than 2 and one-half years or by a fine of not more than \$50,000

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

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

300 (e) The provisions of subsections (c) and (d) of said section 35A of said chapter 266, as
301 so appearing, shall be reproduced in 12-point (pica) bolded font, with a heading, "Criminal
302 Liability for False or Fraudulent Documents," in least 16-point bolded font, and shall be
303 displayed prominently in the public area of each registry of deeds. These provisions shall also be
304 reproduced legibly, with a legible heading in bolded font, on the website of each registry of
305 deeds, and, as a condition of doing business in the commonwealth, on the website of any firm
306 that offers e-recording services in the commonwealth.

307 (f) The Secretary of the Commonwealth shall promptly notify all firms that offer e-
308 recording services in the commonwealth of the provisions of subsections (a), (b), (c), (d) and (e).

309 (g) The Attorney General shall make available to all registers, to land court, superior
310 court, members of the Massachusetts bar, and on the Attorney General's website, referral forms

311 for reporting violations of section 35A of chapter 244, of section 30 of chapter 260 of the general
312 laws, and of any other violations of the general laws that concern title to real property, together
313 with instructions for completing and submitting such forms to the Attorney General's office.

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

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

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

327 SECTION 11: Section 30 of chapter 266, subsection (5) is amended by striking out "sixty
328 years of age or older, or of a person with a disability as defined in section 13K of chapter 265,"

329 SECTION 12: Section 14 of Chapter 186 is amended by striking out: "shall be punished
330 by a fine of not less than twenty-five dollars nor more than three hundred dollars," and replacing
331 it with: " shall be punished by a fine of not less than the equivalent of three month's rent or,
332 where no rental agreement existed, three times the applicable monthly fair market rent,"