HOUSE DOCKET, NO. 1450 FILED ON: 1/15/2025

# HOUSE . . . . . No. 1983

## The Commonwealth of Massachusetts

PRESENTED BY:

***Amy Mah Sangiolo***

*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 relative to unlawful practices in the servicing and foreclosure of a subordinate mortgage.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|---|---|---|
| *Amy Mah Sangiolo* | *11th Middlesex* | *1/15/2025* |
| *Michelle M. DuBois* | *10th Plymouth* | *4/16/2025* |
| *Patrick Joseph Kearney* | *4th Plymouth* | *1/28/2025* |
| *David Henry Argosky LeBoeuf* | *17th Worcester* | *2/10/2025* |

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# HOUSE . . . . . No. 1983

By Representative Sangiolo of Newton, a petition (accompanied by bill, House, No. 1983) of Amy Mah Sangiolo, Patrick Joseph Kearney and David Henry Argosky LeBoeuf relative to the servicing and foreclosure of subordinate mortgages. The Judiciary.

## The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Fourth General Court**
**(2025-2026)**

An Act relative to unlawful practices in the servicing and foreclosure of a subordinate mortgage.

*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. Chapter 244 of the General Laws is hereby amended by adding after section 35C the following section:-

Section 35D: Servicing and foreclosure of a subordinate mortgage

Section 35D. (a) As used in this chapter, unless the context requires otherwise, the following words shall have the following meanings:

"Subordinate mortgage," a security instrument in residential real property voluntarily granted in connection with an extension of closed or open-ended credit that was, at the time it was recorded, subordinate to another security interest encumbering the same real property even if the primary lien has been satisfied. The term includes security instruments that function in the form of a mortgage.

11 “Creditor,” a person or entity that holds or controls, partially, wholly, indirectly, directly
12 or in a nominee capacity, a subordinate mortgage loan securing an owner-occupied residential
13 property, including, but not limited to, an originator, holder, investor, assignee, successor, trust,
14 trustee, nominee holder, Mortgage Electronic Registration System or mortgage servicer,
15 including the Federal National Mortgage Association or the Federal Home Loan Mortgage
16 Corporation; provided, that "creditor" shall also include any servant, employee or agent of a
17 creditor; and provided, further, that the bodies politic and corporate and public instrumentalities
18 of the commonwealth established in chapter 708 of the acts of 1966 and in section 35 of chapter
19 405 of the acts of 1985 shall not be a creditor.

20 (b) The following constitute unlawful practices in connection with the servicing and
21 foreclosure of a subordinate mortgage: (i) the failure to provide the borrower with any written
22 communications regarding the loan for a period of twelve or more cumulative months; (ii) the
23 failure to provide periodic statements for each billing cycle when required by federal or state
24 law; (iii) the failure to provide a transfer of loan servicing notice to the borrower when required
25 to do so by the Real Estate Settlement Procedures Act, 12 USC §2605 and12 CFR §1024.33; (iv)
26 the failure to provide an early intervention notice or other pre-foreclosure notice as required by
27 the Real Estate Settlement Procedures Act or state law including sections 34A and 35B of this
28 chapter; (v) the failure to provide a transfer of loan ownership notice to the borrower when
29 required to do so by federal or state law; (vi) the demand for payment of all or a portion of a
30 subordinate mortgage loan when the statute of limitations for enforcement of the claim has
31 expired; and (vii) any other circumstances that a court determines indicate an intent to abandon
32 the debt.

33 (c) Contemporaneously with service of the notice of right to cure pursuant to M.G.L. c.
34 244, § 35A the creditor shall also serve the borrower with a notice signed under the pains and
35 penalties of perjury that includes the following: (i) a list of the conduct that constitutes unlawful
36 practices in connection with the servicing and foreclosure of a subordinate mortgage as
37 enumerated in section (b), above; (ii) a verification that the creditor has reviewed the loan
38 account history and determined that neither the creditor nor its predecessors committed any of
39 the practices enumerated in section (b), or if the creditor or its predecessors engaged in such
40 practices, a description of those practices and the dates they occurred; (iii) notification to the
41 borrower that if the borrower believes the creditor or its predecessors engaged in any of the
42 practices enumerated in section (b), the borrower may, prior to a foreclosure sale, petition the
43 court for relief. As part of the court's determination, the court may bar enforcement of any part
44 of or the entirety of the debt through foreclosure.

45 (c) Upon the petition of the borrower, the court shall stay the exercise of a power of sale
46 or any proceeding for recovery of possession of the property until a final determination on the
47 petition has been made.

48 (d) If the court determines that the creditor or its predecessors engaged in any of the
49 unlawful practices enumerated in section (b), the court may order the creditor to: (i) waive
50 interest, fees, and charges added to the loan; (ii) cease all foreclosure activity and begin the
51 foreclosure process anew with a Notice of Right to Cure itemizing the amounts owed after
52 waiver of interest, fees, and charges; (iii) cease all collection activity on the loan; (iv) terminate
53 all transfers or sales of the loan; (v) record a release of all liens securing the loan; (vi) request
54 that the tradelines for the loan be deleted from the borrower's credit reporting file with any credit

55 reporting agency to which the loan owner, its agents, or their predecessors previously reported
56 the debt; (vii)any other order the court deems just and proper.

57 (e) A creditor, shall not cause publication of notice of a foreclosure sale upon a
58 subordinate mortgage loan unless at least 30 days prior to such notice, it has recorded an
59 affidavit signed under the pains and penalties of perjury in the appropriate local land records
60 certifying that the creditor served the borrower with the notice described in section (3), attaching
61 a copy of the notice together with a verification and certifying that the content of the notice is
62 true and accurate. The creditor shall deliver a copy of each notice to the division of banks.

63 (f) If a foreclosure sale has already occurred on a subordinate mortgage, the court may set
64 aside the foreclosure sale upon a finding that the creditor engaged in unlawful practices as
65 enumerated in section (b), failed to comply with provisions of this section, or claimed erroneous
66 amounts due in the pre-sale section 35A notice or in a certification of compliance recorded
67 pursuant to this section. The borrower may bring a claim under this provision as a counterclaim
68 in post-foreclosure eviction proceedings brought by the foreclosing entity.

69 (g) If the court determines that a creditor or its predecessors engaged in any of the
70 unlawful practices enumerated in section (b), including attempting to collect or collecting on an
71 erroneous amount owed on a subordinate mortgage loan from a person or attempting to foreclose
72 or foreclosing on any portion of such a loan, such creditor is liable to such person in an amount
73 equal to the sum of: (i) any actual damage sustained by such person as a result of such conduct;
74 (ii)punitive damages as the court may allow in the case of a willful failure to comply with any
75 requirement imposed under this section; and (iii) in the case of any successful action to enforce

76 the foregoing liability, the costs of the action, together with a reasonable attorney's fee as
77 determined by the court.

78 (h) A violation of any provision of this section is a per se violation of the Massachusetts
79 chapter 93A and has created a rebuttable presumption that damages have been incurred, and
80 grounds for license revocation.

81 (i) The Attorney General shall promulgate regulations necessary to carry out this section
82 and be entitled to enforce these regulations, including by recommending to the Division of Banks
83 that any licensure granted to the creditor be revoked and conducting investigations into
84 compliance with these regulations.

85 (j) All notices required under the section shall be provided in English and Spanish and
86 clear and conspicuous language at the top of the notice stating that the contents are important and
87 should be translated immediately into the top 7 languages of the Commonwealth.