

HOUSE No. 3805

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, October 13, 2015.

The committee on Ways and Means to whom was referred the Senate Bill further regulating the clearing of title to certain foreclosed properties (Senate, No. 2015), reports recommending that the same ought to pass with amendments striking out all after the enacting clause and inserting in place thereof the text of House document numbered 3805; and by striking out the title and inserting in place thereof the following title: "An Act clearing titles to foreclosed properties".

For the committee,

BRIAN S. DEMPSEY.

HOUSE No. 3805

Text of an amendment recommended by the committee on Ways and Means to the Senate Bill further regulating the clearing of title to certain foreclosed properties (Senate, No. 2015).
October 13, 2015.

The Commonwealth of Massachusetts

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

By striking out all after the enacting clause and inserting in place thereof the following:

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’, a purchaser’s heirs, successors and assigns
7 but not including the foreclosing party or mortgage note holder or a parent, subsidiary, affiliate
8 or agent of the foreclosing party or mortgage note holder or an investor or guarantor of the
9 underlying mortgage note including, but not limited to, the Federal National Mortgage
10 Association, the Federal Home Loan Mortgage Corporation and the Federal Housing
11 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 3 subsections:-

16 (c) If an affidavit is executed in accordance with section 14 of this chapter, it shall, after 3
17 years from the date of its recording, be conclusive evidence in favor of an arm's length third
18 party purchaser for value at or subsequent to the foreclosure sale that the power of sale under the
19 foreclosed mortgage was duly executed and that the sale complied with this chapter and section
20 21 of chapter 183. An arm's length third party purchaser for value relying on any such affidavit
21 shall not be liable for a foreclosure if the power of sale was not duly exercised. Absent a
22 challenge as set forth in clauses (i) and (ii) of subsection (d), title to the real property acquired by
23 the arm's length third party purchaser shall not be set aside.

24 (d) Subsection (c) shall not apply if any party entitled to notice of sale under section 14 of
25 this chapter (i) asserts a challenge to the validity of the foreclosure sale described by the affidavit
26 as a claim or defense in any legal action pending in a court of competent jurisdiction during the
27 deadline, and a true and correct copy of the pleading asserting such a claim or defense is duly
28 recorded in the registry of deeds for the county or district in which the subject real property lies
29 or in the land court having jurisdiction over such district; or (ii) asserts a challenge to the validity
30 of the foreclosure sale described by the affidavit as a claim or defense in any legal action
31 pending in a court of competent jurisdiction at any time, provided that the party continues to
32 occupy the mortgaged property as such party's principal place of residence, provided further,
33 that a true and correct copy of the pleading asserting such a claim or defense is duly recorded in
34 the registry of deeds for the county or district in which the subject real property lies or in the land

35 court having jurisdiction over such district within the later of (A) 60 days from the date of the
36 challenge or (B) the deadline. After the entry of a final judgment in a legal challenge under
37 clause (i) or (ii) and the final resolution of any appeal of that judgment, the affidavit shall
38 immediately become conclusive evidence of the validity of the sale if the final judgment
39 concludes that the power of sale was duly exercised. If the final judgment concludes that the
40 power of sale was not duly exercised, the foreclosure sale and affidavit shall be void. If the final
41 judgment does not determine the validity of the foreclosure sale and the deadline for the affidavit
42 to become conclusive has not expired, any party entitled to notice of sale under section 14 may
43 file or assert another legal challenge to the validity of the foreclosure sale under clause (i) or (ii).

44 (e) The recording of an affidavit and the expiration of the deadline shall not relieve an
45 affiant or any other person on whose behalf an affidavit was executed and recorded from any
46 liability for failure to comply with this section, section 14 or any other requirement of law with
47 respect to the foreclosure. A material misrepresentation contained in any such affidavit shall
48 constitute a violation of section 2 of chapter 93A.

49 SECTION 3. Notwithstanding section 15 of chapter 244 of the General Laws, if an
50 affidavit filed pursuant to said section 15 of said chapter 244 was filed before the effective date
51 of this act, then ‘deadline’ in said section 15 of said chapter 244 shall mean 3 years from the date
52 of the recording of the affidavit or 1 year from the effective date of this act, whichever is later.”;
53 and by striking out the title and inserting in place thereof the following title: “An Act clearing
54 titles to foreclosed properties”.