



**preventing unlawful and unnecessary foreclosures.**

[Sponsors] move to amend the bill by:-

SECTION 1. Chapter 244 of the General Laws is hereby amended by striking out section 14, as appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

Section 14. The mortgagee or person having estate in the land mortgaged, a person authorized by the power of sale, the attorney duly authorized by a writing under seal or the legal guardian or conservator of such mortgagee or person acting in the name of such mortgagee or person, may, upon breach of condition and without action, perform all acts authorized or required by the power of sale; provided however, that no sale under such power shall be effectual to foreclose a mortgage, unless, previous to such sale, notice of the sale has been published once in each of 3 successive weeks, the first publication of which shall be not less than 21 days before the day of sale, in a newspaper published in the city or town where the land lies or in a newspaper with general circulation in the city or town where the land lies and notice of the sale has been sent by registered mail to the owner or owners of record of the equity of redemption as of 30 days prior to the date of sale, said notice to be mailed by registered mail at least 14 days prior to the date of sale to said owner or owners to the address set forth in section 61 of chapter 185, if the land is then registered or, in the case of unregistered land, to the last address of the owner or owners of the equity of redemption appearing on the records of the holder of the mortgage, if any, or if none, to the address of the owner or owners as given on the deed or on the petition for probate by which the owner or owner's acquired title, if any, or if in either case no owner appears, then mailed by registered mail to the address to which the tax collector last sent the tax bill for the mortgaged premises to be sold, or if no tax bill has been sent for the last preceding 3 years, then mailed by registered mail to the address of any of the parcels of property in the name of said owner of record which are to be sold under the power of sale and unless a copy of said notice of sale has been sent by registered mail to all persons of record as of 30 days prior to the date of sale holding an interest in the property junior to the mortgage being foreclosed, said notice to be mailed at least 14 days prior to the date of sale to each such person at the address of such person set forth in any document evidencing the interest or to the last address of such person known to the mortgagee. Any person of record as of 30 days prior to the date of sale holding an interest in the property junior to the mortgage being foreclosed may waive at any time, whether prior or subsequent to the date of sale, the right to receive notice by mail to such person under this section and such waiver shall constitute compliance with such notice requirement for all purposes. If no newspaper is published in such city or town, or if there is no newspaper with general circulation in the city or town where the land lies, notice may be published in a newspaper published in the county where the land lies, and this provision shall be implied in every power of sale mortgage in which it is not expressly set forth. A newspaper which by its title page purports to be printed or published in such city, town or county, and

having a circulation in that city, town or county, shall be sufficient for the purposes of this section.

The following form of foreclosure notice may be used and may be altered as circumstances require; but nothing in this section shall be construed to prevent the use of other forms.

(Form.)

MORTGAGEE'S SALE OF REAL ESTATE.

By virtue and in execution of the Power of Sale contained in a certain mortgage given by..... to..... dated..... and recorded with

.....

Deeds, Book....., page....., of which mortgage the undersigned is the present holder,.....

(If by assignment, or in any fiduciary capacity, give reference to the assignment or assignments recorded with .....Deeds, Book....., page....., of which mortgage the undersigned is the present holder,.....)

for breach of the conditions of said mortgage and for the purpose of foreclosing the same will be sold at Public Auction at.....o'clock,..... M. on the..... day of..... A.D. (insert year),..... (place)..... all and singular the premises described in said mortgage,

(In case of partial releases, state exceptions.)

To wit: "(Description as in the mortgage, including all references to title, restrictions, encumbrances, etc., as made in the mortgage.)"

Terms of sale: (State here the amount, if any, to be paid in cash by the purchaser at the time and place of the sale, and the time or times for payment of the balance or the whole as the case may be.)

Other terms to be announced at the sale.

(Signed)

\_\_\_\_\_  
Present holder of said mortgage.

A notice of sale in the above form, published under the power in the mortgage and this chapter, together with such other or further notice, if any, as is required by the mortgage, shall be a sufficient notice of the sale and the premises shall be deemed to have been sold and the deed thereunder shall convey the premises, subject to and with the benefit of all restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the nature of liens, and existing encumbrances of record created prior to the mortgage, whether or not reference to such restrictions, easements, improvements, liens or encumbrances is made in the deed; provided however, that no purchaser at the sale shall be bound to complete the purchase if there are encumbrances, other than those named in the mortgage and included in the notice of sale, which are not stated at the sale and included in the auctioneer's contract with the purchaser.

For purposes of this section and section 21 of chapter 183, in the event a mortgagee holds a mortgage under an assignment no notice under this section shall be valid unless (i) at the time such notice is mailed, an assignment, or a chain of assignments, evidencing the assignment of the mortgage to the foreclosing mortgagee has been duly recorded in the registry of deeds for the county or district where the land lies and (ii) the recording information for all recorded assignments is referenced in the notice of sale required in this section. The notice shall not be defective if any holder within the chain of assignments either changed its name or merged into another entity during the time it was the mortgage holder; provided, that recited within the body

of the notice is the fact of any merger, consolidation, amendment, conversion or acquisition of assets causing the change in name or identity, the recital of which shall be conclusive in favor of any bona fide purchaser, mortgagee, lienholder or encumbrancer of value relying in good faith on such recital.

SECTION 2. Said chapter 244 is hereby further amended by inserting after section 35A the following 2 sections:-

Section 35B. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Affordable monthly payment”, a borrower’s ability to make monthly payments on a mortgage loan, taking into account the borrower’s current circumstances, including verifiable income, debts, assets and obligations.

“Borrower”, a mortgagor of a mortgage loan.

“Certain mortgage loan,” a loan to a natural person made primarily for personal, family or household purposes secured wholly or partially by a mortgage on an owner-occupied residential property with 1 or more of the following loan features: (i) an introductory interest rate granted for a period of 3 years or less and such introductory rate is at least 2 per cent lower than the fully indexed rate, (ii) interest-only payments for any period of time, except in the case where the mortgage loan is an open-end home equity line of credit or is a construction loan, (iii) a payment option feature, where any 1 of the payment options is less than principal and interest fully amortized over the life of the loan, (iv) the loan did not require full documentation of income or assets, (v) prepayment penalties that exceed section 56 of chapter 183 or applicable federal law, (vi) the loan was underwritten with a loan-to-value ratio at or above 90 per cent and the ratio of the borrower’s debt, including all housing-related and recurring monthly debt, to the borrower’s income exceeded 38 per cent or (vii) the loan was underwritten as a component of a loan transaction, in which the combined loan-to-value ratio exceeded 95 per cent; provided, however that a loan shall be a certain mortgage loan if, after the performance of reasonable due diligence, a creditor is unable to determine whether the loan has 1 or more of the loan features in clause (i) through (vii), inclusive.

“Creditor”, a person or entity that holds or controls, partially, wholly, indirectly, directly or in a nominee capacity, a mortgage loan securing an owner-occupied residential property, including, but not limited to, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder, mortgage electronic registration system or mortgage servicer, including the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; provided, that “creditor” shall also include any servant, employee or agent of a creditor.

“Creditor’s representative”, a person who has the authority to negotiate and approve the terms of and modify a mortgage loan, under a servicing agreement.

“Modified mortgage loan”, a mortgage modified from its original terms including, but not limited to, a loan modified under 1 of the following: (i) the Home Affordable Modification Program (ii) the Federal Deposit Insurance Corporation’s Loan Modification Program, (iii) any modification program that a lender uses which is based on accepted principles and the safety and soundness of the institution and authorized by the National Credit Union Administration, the division of banks or any other instrumentality of the commonwealth, (iv) the Federal Housing Administration or (v) a similar federal loan modification plan.

“Mortgage loan”, a loan to a natural person made primarily for personal, family or household purposes secured wholly or partially by a mortgage on residential property.

“Net present value”, the present net value of a residential property based on a calculation using 1 of the following: (i) the federal home affordable modification program base net present value model, (ii) the Federal Deposit Insurance Corporation’s loan modification program, (iii) the Massachusetts Housing Finance Agency’s loan program used solely by the agency to compare the expected economic outcome of a loan with or without a modified mortgage loan or (iv) any model approved by the division of banks to consider the total present value of a series of future cash flows relative to a mortgage loan.

“Residential property”, real property located in the commonwealth, on which there is a dwelling house with accommodations for 4 or fewer separate households and occupied, or to be occupied, in whole or in part by the obligor on the mortgage debt; provided, however, that residential property shall be limited to the principal residence of a person; provided, further, that residential property shall not include an investment property or residence other than a primary residence; provided, further, that residential property shall not include residential property taken in whole or in part as collateral for a commercial loan; and provided, further, that residential property shall not include a property subject to condemnation, receivership or proceedings in United States bankruptcy court.

(b) A creditor shall not publish notice of a foreclosure sale, as required by section 14, upon certain mortgage loans unless it has first taken reasonable steps and made a good faith effort to avoid foreclosure. A creditor shall have taken reasonable steps and made a good faith effort to avoid foreclosure if the creditor has considered: (i) an assessment of the borrower’s ability to make an affordable monthly payment, (ii) the net present value of receiving payments under a modified mortgage loan as compared to the anticipated net recovery following foreclosure and (iii) the interests of the creditor, including, but not limited to, investors.

(1) Except as otherwise specified in a contract, a servicer of pooled residential mortgages may determine whether the net present value of the payments on the modified mortgage loan is likely to be greater than the anticipated net recovery that would result from foreclosure to all investors and holders of beneficial interests in such investment, but not to any individual or groups of investors or beneficial interest holders. The servicer shall act in the best interests of all such investors or holders of beneficial interests if the servicer agrees to or implements a modified mortgage loan or takes reasonable loss mitigation actions that comply with this section. Any modified mortgage loan offered to the borrower shall comply with current federal and state law, including, but not limited to, all rules and regulations pertaining to mortgage loans and the borrower shall be able to reasonably afford to repay the modified mortgage loan according to its scheduled payments.

(2) A creditor shall be presumed to have acted in good faith and to have complied with this subsection, if, prior to publishing a notice of a foreclosure sale, as required by section 14, the creditor:

(i) determines a borrower’s current ability to make an affordable monthly payment;

(ii) identifies a modified mortgage loan that achieves the borrower’s affordable monthly payment, which may include 1 or more of the following: reduction in principal, reduction in interest rate or an increase in amortization period; provided however, that the amortization period shall not be more than a 15-year increase; provided, however, no modified mortgage loan shall have an amortization period that exceeds 45 years;

(iii) conducts a compliant analysis comparing the net present value of the modified mortgage loan and the creditor’s anticipated net recovery that would result from

foreclosure; provided, that the analysis shall be compliant if the analysis is in accordance with the formula presented in at least 1 of the following: (A) the home affordable modification program, (B) the Federal Deposit Insurance Corporation's loan modification program, (C) any modification program that a lender uses which is based on accepted principles and the safety and soundness of the institution and authorized by the National Credit Union Administration, the division of banks or any other instrumentality of the commonwealth, (D) the Federal Housing Administration or (E) a similar federal loan modification plan; and

(iv) either (A) in all circumstances where the net present value of the modified mortgage loan exceeds the anticipated net recovery at foreclosure, agrees to modify the loan in a manner that provides for the affordable monthly payment; or (B) in circumstances where the net present value of the modified mortgage loan is less than the anticipated net recovery of the foreclosure, or does not meet the borrower's affordable monthly payment, notifies the borrower that no modified mortgage loan will be offered and provides a written summary of the creditor's net present value analysis and the borrower's current ability to make monthly payments, after which the creditor may proceed with the foreclosure process in conformity with this chapter.

(c) Under this section, for certain mortgage loans, the creditor shall send notice, concurrently with the notice required by subsection (g) of section 35A, of the borrower's rights to pursue a modified mortgage loan. Said notice shall be considered delivered to the mortgagor when sent by first class mail and certified mail or similar service by a private carrier to the mortgagor at the mortgagor's address last known to the mortgagee or anyone holding thereunder. A copy of said notice shall be filed with the attorney general. The time frame for determining whether a modified mortgage loan is offered shall occur within 150 days. Not more than 30 days following delivery of the notice as provided for in this subsection, a borrower who holds a certain mortgage loan shall notify a creditor of (i) the borrower's intent to pursue a modified mortgage loan which shall include a statement of the borrower's income and a complete list of total debts and obligations, as requested by the creditor, at the time of receipt of the notice, (ii) the borrower's intent to pursue an alternative to foreclosure, including a short sale or deed-in-lieu of foreclosure, (iii) the borrower's intent not to pursue a modified mortgage loan and pursue the right to cure period described in section 35A or (iv) the borrower's intent to waive the right to cure period and proceed to foreclosure. A borrower who holds a certain mortgage loan and fails to respond to the creditor within 30 days of delivery of the notice provided for in this subsection shall be considered to have forfeited the right to cure period and shall be subject to a right to cure period of 90 days. A borrower shall be presumed to have notified the creditor if the borrower provides proof of delivery through the United States Postal Service or similar carrier. Not more than 30 days following receipt of the borrower's notification that the borrower intends to pursue a modified mortgage loan, a creditor shall provide the borrower with its assessment, in writing, under subsection (b). The assessment shall include, but not be limited to: (i) a written statement of the borrower's income, debts and obligations as determined by the creditor, (ii) the creditor's net present value analysis of the mortgage loan, (iii) the creditor's anticipated net recovery at foreclosure, (iv) a statement of the interests of the creditor and (v) a modified mortgage loan offer under the requirements of this section or notice that no modified mortgage loan will be offered. If a creditor offers a modified mortgage loan, the offer shall include the first and last names and contact phone numbers of the creditor's representative. The assessment shall be provided by first class and certified mail. A creditor shall be presumed to have provided the assessment to the borrower if the creditor provides proof of delivery through the United States Postal Service or similar carrier. A borrower who receives a modified mortgage loan offer from

a creditor shall respond within 30 days of receipt of the assessment and offer of a modified mortgage loan. The borrower may: (i) accept the offer of a loan modification as provided by the creditor, (ii) make a reasonable counteroffer or (iii) state that the borrower wishes to waive the borrower's rights as provided by this section and proceed to foreclosure. The borrower's response shall be in writing and, if a counteroffer is proposed, shall include substantiating documentation in support of the counteroffer. The response shall be provided by first class and certified mail. A borrower shall be presumed to have responded if the borrower provides proof of delivery through the United States Postal Service or similar carrier. A borrower who fails to respond to the creditor within 30 days of receipt of a modified mortgage loan offer shall be considered to have forfeited the 150 day right to cure period and shall be subject to a right to cure period of 90 days. Where a counteroffer is proposed, the creditor shall accept, reject or propose a counteroffer to the borrower within 30 days of receipt. Under this section, additional offers by both parties shall be considered during the right to cure period; provided, however, that a borrower may at any time state, in writing, that the borrower wishes to waive the borrower's rights as provided by this section and proceed to foreclosure. Nothing in this section shall be construed as preventing a creditor and a borrower from negotiating the terms of a modified mortgage loan by telephone or in person following the initial offer of a modified mortgage loan by a creditor; provided, however, that all offers, whether by a creditor or a borrower, shall be in writing and signed by the offeror. The right to a modified mortgage loan, as described in this section, shall be granted once during any 3-year period, regardless of the mortgage holder.

(d) The notice required in subsection (c) shall, at a minimum, include the appropriate contact information for modification assistance within the office of the attorney general; provided, that, the notice shall be similar in substance and form to the notice promulgated by the division of banks under section 35A.

(e) Nothing in this section shall prevent a creditor from offering or accepting an alternative to foreclosure, such as a short sale or deed-in-lieu of foreclosure, if the borrower requests such alternative, rejects a modified mortgage loan offer or does not qualify for a modified mortgage loan under this section.

(f) Prior to publishing a notice of a foreclosure sale, as required by section 14, the creditor, or if the creditor is not a natural person, an officer or duly authorized agent of the creditor, shall certify compliance with this section in an affidavit based upon a review of the creditor's business records. The creditor, or an officer or duly authorized agent of the creditor, shall record this affidavit with the registry of deeds for the county or district where the land lies.

The affidavit certifying compliance with this section shall be conclusive evidence in favor of an arm's-length third party purchaser for value, at or subsequent to the resulting foreclosure sale, that the foreclosing party identified or referred to as the holder of the foreclosed mortgage in the affidavit has fully complied with this section and is entitled to proceed with foreclosure of the subject mortgage under the power of sale contained in the mortgage and any 1 or more of the foreclosure procedures authorized in this chapter. The filing of such affidavit shall not relieve the affiant, or other person on whose behalf the affidavit is executed, from liability for failure to comply with this section, including by reason of any statement in the affidavit. For purposes of this subsection, the term "arm's-length, third party purchaser for value" shall include such purchaser's heirs, successors and assigns.

(g) Within 30 days of the end of each calendar quarter of the completion of the loan modification process under this section, a creditor shall report the final outcome of each loan

modification on all mortgage loans for which the creditor sent to a borrower a notice of the right to pursue a modified mortgage loan to the division of banks.

(h) The division of banks shall adopt, amend or repeal regulations to aid in the administration and enforcement of this section, including the minimum requirements which constitute a good faith effort by the borrower to respond to the notice required under subsection (c); provided, that, such regulations may include requirements for reasonable steps and good faith efforts of the creditor to avoid foreclosure and safe harbors for compliance in addition to those under this section. The division of banks shall make any available net present value models accessible to all creditors.

Section 35C. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Borrower”, a mortgagor of a mortgage loan.

"Creditor", a person or entity that holds or controls, partially, wholly, indirectly, directly or in a nominee capacity, a mortgage loan securing a residential property, including, but not limited to, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder, mortgage electronic registration system or mortgage servicer, including the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. The term creditor shall also include any servant, employee or agent of a creditor.

“Mortgage loan”, a loan to a natural person made primarily for personal, family or household purposes secured wholly or partially by a mortgage on residential property.

“Residential property”, real property located in the commonwealth on which there is a dwelling house with accommodations for 4 or fewer separate households and occupied, or to be occupied, in whole or in part by the obligor on the mortgage debt; provided, however, that residential property shall be limited to the principal residence of a person; provided, further, that residential property shall not include an investment property or residence other than a primary residence; and provided, further, that residential property shall not include residential property taken in whole or in part as collateral for a commercial loan.

(b) A creditor shall not publish notice of foreclosure, under section 14, when the creditor knows or should know that such creditor is not the present holder of the mortgage loan, including, but not limited to, if the creditor is not the original mortgagee and commences foreclosure without possessing a valid written, signed and dated assignment evidencing the assignment of the mortgage.

(c) A creditor violates this chapter if the creditor imposes upon a third party the cost of correcting, curing or confirming documentation relating to the sale, transfer or assignment of a mortgage loan, including, but not limited to, costs related to curative actions taken because a foreclosure was commenced without the creditor’s possession of a valid, written, signed and dated assignment evidencing the assignment of the mortgage, in violation of section 14. A third party may recover all of the third party’s costs including reasonable attorneys’ fees for having to correct, cure or confirm documentation.

(d) A creditor violates this chapter if the creditor makes statements to a state or federal court related to foreclosure or compliance with this chapter, orally or in writing, that it knows or should know are false, including, but not limited to, statements about the offering of a loan modification, the borrower’s history of payments, the validity of the assignment of the mortgage loan, that the creditor is the record holder of the mortgage loan or the creditor’s compliance with any other requirements of this chapter.

(e) A creditor violates this chapter if the creditor imposes a fee upon a borrower for goods not rendered or services not performed in connection with a foreclosure.

(f) No person shall give and no person shall accept any portion, split or percentage of any charge made or received for the rendering of a service in connection with a transaction involving a foreclosure upon a mortgage loan other than for services actually performed.

(g) The division of banks may adopt, amend or repeal rules and regulations for the administration and enforcement of this section.

(h) In all circumstances in which an offer to purchase either a mortgage loan or residential property is made by an entity with a tax-exempt filing status under section 501 (c)(3) of the Internal Revenue Code, or an entity controlled by an entity with such tax exempt filing status, no creditor shall require as a condition of sale or transfer to any such entity any affidavit, statement, agreement or addendum limiting ownership or occupancy of the residential property by the borrower and, if obtained, such affidavit, statement, agreement or addendum shall not provide a basis to avoid a sale or transfer nor shall it be enforceable against such acquiring entity or any real estate broker, borrower or settlement agent named in such affidavit, statement or addendum.

SECTION 3. The division of banks shall, in consultation with the attorney general, annually track the final outcome of the loan modification process on all certain mortgage loans for which the creditor sent to a borrower a notice of the right to pursue a modified mortgage loan under section 35B of chapter 244 of the General Laws and provide a report of said results to the joint committee on financial services within 90 days of the end of each calendar year.

SECTION 4. The division of banks shall adopt, amend or repeal regulations to aid in the administration and enforcement of section 35B of chapter 244 of the General Laws, including the minimum requirements which constitute a good faith effort by the borrower to respond to the notice required under subsection (c) of said section 35B of said chapter 244; provided, that, such regulations may include requirements for reasonable steps and good faith efforts of the creditor to avoid foreclosure and safe harbors for compliance in addition to those under said section 35B of said chapter 244.

SECTION 5. Notwithstanding the effective date of section 2, the provisions of section 2 shall apply to any person receiving notice under section 35A of chapter 244 of the General Laws after the effective date of this act.

SECTION 6. Section 3 is hereby repealed.

SECTION 7. Sections 1, 2 and 3 shall take effect 90 days after the effective date of this act.

SECTION 8. Section 6 shall take effect on December 31, 2017.