

SENATE No. 882

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

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 clearing titles to foreclosed properties.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>John V. Fernandes</i>	<i>10th Worcester</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>

SENATE No. 882

By Mr. Moore, a petition (accompanied by bill, Senate, No. 882) of Michael O. Moore, John V. Fernandes, Ryan C. Fattman and Chris Walsh for legislation to titles on foreclosed properties. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1987 OF 2013-2014.]

The Commonwealth of Massachusetts

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

An Act clearing titles to foreclosed properties.

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. Section 15 of chapter 244 of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended by striking out, in line 1, the words “The person” and
3 inserting in place thereof the following words:-

4 For the purposes of this section the following words shall have the following meanings
5 unless the context clearly requires otherwise:

6 “Arm’s length third party purchaser for value”, shall include a purchaser’s heirs,
7 successors and assigns, but shall not include the foreclosing party or mortgage note holder, or a
8 parent, subsidiary, affiliate or agent of the foreclosing party or mortgage note holder, nor shall it
9 include any investor or guarantor of the underlying mortgage note, including without limitation

10 the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and
11 the Federal Housing Administration.

12 “Deadline”, 3 years from the date of the recording of the affidavit.

13 SECTION 2. Said section 15 of said chapter 244 of the General Laws, as so appearing, is
14 hereby further amended by adding the following 4 paragraphs:-

15 The affidavit, if executed in the statutory form, shall, after 3 years from the date of its
16 recording, be conclusive evidence: in favor of an arm’s length third party purchaser for value at
17 or subsequent to the foreclosure sale; that the power of sale under the foreclosed mortgage was
18 duly executed; and that the provisions of this chapter and section 21 of chapter 183 were duly
19 exercised.

20 The prior paragraph shall not apply when: (i) a legal action to challenge the validity of
21 the foreclosure sale is commenced or the challenge is asserted as a defense or a counterclaim in a
22 legal action by any party entitled to notice of sale under section 14 in a court of competent
23 jurisdiction; and a true and correct copy of the complaint or other pleading asserting such
24 challenge in the legal action is duly recorded in the registry of deeds for the county or district
25 where the subject real property lies or is duly filed in the land court registry district prior to the
26 deadline; or (ii) a challenge to the validity of the foreclosure sale is asserted as a defense or
27 counterclaim in a legal action in a court of competent jurisdiction by any party entitled to notice
28 of sale under section 14 who continues to occupy the mortgaged premises as such party’s
29 principal place of residence and, within 60 days thereof of prior to the deadline, whichever is
30 later, a true and correct copy of any pleading asserting such challenge in the legal action is duly
31 recorded in the registry of deeds for the county or district where the subject property lies or is

32 duly filed in the land court registry district, regardless of whether such challenge is asserted prior
33 to the deadline; however, that following the entry of a final judgment in such a legal challenge
34 and the final resolution of any appeal of that judgment, the affidavit shall immediately become
35 conclusive evidence of the validity of the sale, if the final judgment concludes that the power of
36 sale was duly exercised. If the final judgment concludes that the power of sale was not duly
37 exercised, the foreclosure sale and affidavit shall be void. If the final judgment does not
38 determine the validity of the foreclosure sale and the deadline for the affidavit to become
39 conclusive has not expired, any party entitled to notice of sale under section 14 may file or assert
40 another legal challenge to the validity of the foreclosure sale under clauses (i) and (ii) above.

41 The recording of the affidavit and the expiration of the deadline shall not relieve the
42 affiant or any other person on whose behalf the affidavit was executed and recorded from any
43 liability for failure to comply with this section, section 14 or any other requirement of law with
44 respect to the foreclosure. Any material misrepresentation contained in an affidavit filed or
45 recorded after January 7, 2011 shall constitute a violation of section 2 of chapter 93A.

46 The arm's length third party purchaser for value relying on the affidavit shall not be
47 liable for any foreclosure if the power of sale was not duly exercised and absent a challenge as
48 set forth in clauses (i) and (ii) above title to the real property acquired shall not be set aside on
49 account of such failure.

50 SECTION 3. This act shall apply to affidavits recorded before, on or after the effective
51 date of this act.

52 SECTION 4. Notwithstanding section 15 of chapter 244 of the General Laws, if an
53 affidavit, filed pursuant to said section 15 of said chapter 244, was filed prior to the effective

54 date of this act, then the term “deadline” in said section 15 of said chapter 244 shall mean 3 years
55 from the date of the recording of the affidavit or 1 year from the effective date of this act,
56 whichever is later.