

Chapter 141
of the Acts of 2015

THE COMMONWEALTH OF MASSACHUSETTS

In the One Hundred and Eighty-Ninth General Court

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:

SECTION 1. The first paragraph of section 3 of chapter 185C of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by adding the following sentence:- The divisions of the housing court department, subject to section 14 of chapter 244, shall also have jurisdiction of defenses or counterclaims by any party entitled to notice of sale under said section 14 of said chapter 244 or by any party entitled to notice of sale and who continues to occupy the mortgaged premises.

SECTION 2. Chapter 244 of the General Laws is hereby amended by striking out section 15, as so appearing, and inserting in place thereof the following section:-

Section 15. (a) For the purposes of this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Arm's length third party purchaser for value", an arm's length purchaser who pays valuable consideration, including a purchaser's heirs, successors and assigns, but not including the foreclosing party or mortgage note holder or a parent, subsidiary, affiliate or agent of the foreclosing party or mortgage note holder or an investor or guarantor of the underlying mortgage note including, but not limited to, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Federal Housing Administration.

"Deadline", 3 years from the date of the recording of the affidavit.

(b) The person selling or the attorney duly authorized by a writing or the legal guardian or conservator of the person selling shall, after the sale, cause a copy of the notice and an affidavit fully and particularly stating the person's acts or the acts of the person's principal or ward which shall be recorded in the registry of deeds for the county or district in which the land lies, with a note of reference thereto on the margin of the record of the mortgage deed if it is recorded in the same registry. If the affidavit shows that the requirements of the power of sale and the law have been complied with in all respects, the affidavit or a certified copy of the record thereof, shall be admitted as evidence that the power of sale was duly executed.

(c) If an affidavit is executed in accordance with this section, it shall, after 3 years from the date of its recording, be conclusive evidence in favor of an arm's length third party purchaser for value at or subsequent to

the foreclosure sale that the power of sale under the foreclosed mortgage was duly executed and that the sale complied with this chapter and section 21 of said chapter 183. An arm's length third party purchaser for value relying on an affidavit shall not be liable for a foreclosure if the power of sale was not duly exercised. Absent a challenge as set forth in clause (i) or (ii) of subsection (d), title to the real property acquired by an arm's length third party purchaser for value shall not be set aside.

(d) Subsection (c) shall not apply if: (i) an action to challenge the validity of the foreclosure sale has been commenced in a court of competent jurisdiction by a party entitled to notice of sale under section 14 or a challenge has been asserted as a defense or a counterclaim in a legal action in a court of competent jurisdiction, including the housing court department pursuant to section 3 of chapter 185C, by a party entitled to notice of sale under said section 14 and a true and correct copy of the complaint or pleading asserting a challenge has been duly recorded before the deadline in the registry of deeds for the county or district in which the subject real property lies or in the land court registry district before the deadline; or (ii) a challenge to the validity of the foreclosure sale is asserted as a defense or counterclaim in a legal action in a court of competent jurisdiction, including the housing court department pursuant to said section 3 of said chapter 185C, by a party entitled to notice of sale under said section 14 who continues to occupy the mortgaged premises as that party's principal place of residence, regardless of whether the challenge was asserted prior to the deadline, and a true and correct copy of any pleading asserting the challenge in the legal action was duly recorded in the registry of deeds for the county or district in which the subject property lies or is duly filed in the land court registry district within 60 days from the date of the challenge or before the deadline, whichever is later.

An attested true and correct copy of the complaint or pleading described in this subsection shall be accepted for recording in the registry of deeds or, in the case of registered land, in the land court registry district.

After the entry of a final judgment in a legal challenge under clause (i) or (ii) and the final resolution of any appeal of that judgment, the affidavit shall immediately become conclusive evidence of the validity of the sale if the final judgment concludes that the power of sale was duly exercised. If the final judgment concludes that the power of sale was not duly exercised, the foreclosure sale and affidavit shall be void. If the final judgment does not determine the validity of the foreclosure sale and the deadline for the affidavit to become conclusive has not expired, any party entitled to notice of sale under section 14 may file or assert another legal challenge to the validity of the foreclosure sale under said clause (i) or (ii).

(e) The recording of an affidavit and the expiration of the deadline shall not relieve an affiant or any other person on whose behalf an affidavit

was executed and recorded from liability for failure to comply with this section, section 14 or any other requirements of law with respect to the foreclosure.

(f) A material misrepresentation contained in an affidavit shall constitute a violation of section 2 of chapter 93A.

SECTION 3. For purposes of an affidavit filed pursuant to section 15 of chapter 244 of the General Laws before the effective date of this act, the term "deadline" in said section shall mean 3 years from the date of the recording of the affidavit or 1 year from the effective date of this act, whichever is later.

SECTION 4. The attorney general, in collaboration with the commissioner of banks, shall work with stakeholders participating in the foreclosure industry and stakeholders participating in foreclosure prevention, reduction or education programs to provide notification of the effects of this act to homeowners facing foreclosure and homeowners who were foreclosed upon. For the purposes of this section "stakeholders" shall include, but not be limited to, participants in the attorney general's HomeCorps program, grant recipients receiving funding to complement the goals of the HomeCorps program, entities providing information to the division of banks to maintain the foreclosure database, consumer assistance providers at the division of banks' foreclosure hotline, foreclosure assistance providers referred by the division of banks and participants in the Pro Bono Foreclosure Assistance Hotline. Notification efforts shall include, and may be limited to, providing notice of the effects of this act on a website operated or maintained by the attorney general and the division of banks.

The attorney general shall report to the clerks of the house of representatives and the senate not later than December 1, 2016 detailing notification efforts and the implementation of this section.

SECTION 5. Except as otherwise provided, this act shall apply to affidavits recorded pursuant to section 15 of chapter 244 of the General Laws before, on or after the effective date of this act.

SECTION 6. This act shall take effect on December 31, 2015.

House of Representatives, November 19, 2015.

Passed to be enacted,

Paul J. Donato, Acting Speaker.

In Senate, November 19, 2015.

Passed to be enacted,

William W. Brown, Acting President.

November 25, 2015.

Approved,

Charles D. Baker
Governor.