

Massachusetts Alliance Against Predatory Lending

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AN ACT TO PROTECT TITLE TO REAL ESTATE: FACT SHEET

House Bill 1807: Main Sponsor: Frank A. Moran

What Does This Bill Do?

This bill protects marketable real estate title in the Commonwealth for all who own or buy homes, farms, or business properties, including those who currently have mortgage loans. Marketable title is the industry standard. It facilitates bank lending for purchase money mortgage loans, to refinance, or to start businesses, thus fostering economic development. By requiring complete, reliable public land records in our Registries of Deeds, the bill supports the real estate and title insurance sectors. It also helps to deter illegal "foreclosures" that affect borrowers of color and women disproportionately; make families homeless; and even cause victims' deaths.

Why Do We Need This Legislation?

Massachusetts's home mortgage foreclosures are still at a historic rate; most all are non-judicial. Yet homeowners can now find it impossible to verify whether a foreclosing party owns their mortgage and mortgage Note, and thus has authority to foreclose. For instance, assignments of mortgage currently need not be recorded when executed. This can conceal termination of chain of title; incentivize assignments falsified later; and shield lenders from consumer protection liability. Fannie Mae and Freddie Mac have bought and own 50 - 60% of U.S. mortgage loans, i.e., mortgage and Note; yet their private contracts demand no recordation of the binding assignments.

Documents used to foreclose can also contain civil and/or criminal violations, e.g., perjured statements or forgeries. For instance, a questioned document examiner determined that 78 of 80 supposedly original, wet-ink mortgage Notes inspected in the last four years were forged or counterfeit. "Foreclosing" by using a forged or counterfeit Note is like "cashing" a forged or counterfeit bank check. Yet such false documents facilitate illegal "foreclosures" that force thousands of Massachusetts families from their homes each year.

How Will the Bill Work?

It requires assignments of mortgage to be recorded within 30 days, and foreclosure deeds to be recorded within 60 days. It requires each monthly home mortgage statement to show the current mortgage holder, mortgage Note owner, and the mortgage servicer. Upon payoff, the Note owner must return the original Note to the homeowner, the way banks used to return hard-copy cancelled checks, marked "Paid in Full."

To show that a party intending to foreclose owns the Note, the bill requires this party to record in the appropriate Registry a certified copy of the original, wet-ink signed Note, with all allonges (showing transfers of ownership) before publishing the Notice of Foreclosure by Sale. It also abolishes the archaic, non-judicial procedure of foreclosure by "entry and possession." This requires no notice to the homeowner. It is redundant, frequently surreptitious, and is arguably unfair.

The bill clarifies and modernizes existing criminal provisions, including that knowingly 'uttering', that is, using a false or fraudulent document, applies to real estate title instruments recorded in a Registry or filed with a court.

The bill helps to prevent "zombie" properties, where a municipality cannot tell who is liable for real estate taxes, water, sewer, etc., by establishing a \$100 per day fine for late notification, under chapter 244, section 15A, that a foreclosing party has taken possession. The municipality splits the fine 50/50 with the General Fund or County.

Will This Bill Increase Revenue or Cost the Commonwealth?

There is no cost to the Commonwealth. Recordation of all assignments of mortgage (\$105. each) and the new municipal fines will increase Counties' and General Fund revenue substantially. The Commonwealth guarantees title to registered land: the bill will also help to obviate potential liability of the Commonwealth for defective titles.

Other Bills Filed Include: *An Act for a Foreclosure Review Session of Superior Court; An Act to Establish the Resolution Trust Fund.*

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