

Advisory on Potential Impacts of Chapter 141 of the Acts of 2015 –
An Act Clearing Title to Foreclosed Properties

On November 25, 2015, the Governor signed into law Chapter 141 of the Acts of 2015, *An Act Clearing Title to Foreclosed Properties*. The Office of the Attorney General has prepared this advisory – in collaboration with the Division of Banks – pursuant to Section 4 of that law, to provide notification to homeowners about the law’s potential impacts. While this advisory summarizes the new law for members of the public, it is not intended as legal advice; therefore, any party that believes it may be affected should contact an attorney. For the complete text of the law, please visit www.malegislature.gov/Laws/SessionLaws/Acts/2015/Chapter141.

1. What does this law do?

This law may affect homeowners whose homes were foreclosed upon and subsequently sold to a new purchaser. Under this law the new purchaser will receive “clear title” to the foreclosed property, even if the underlying foreclosure contained certain defects. The new law only remedies title defects resulting from defective foreclosures; it will not remedy title defects created by other circumstances. After the new purchaser receives clear title to the property the former homeowner will be unable to bring an action in court to invalidate the foreclosure. However, the former homeowner may be able to bring an action seeking monetary or other appropriate relief for a defective foreclosure.

2. When does this law take effect?

While the law formally took effect on December 31, 2015, title will clear in favor of the new purchaser only on the *later* of the following dates:

- December 31, 2016, *or*
- Three years from the date that the foreclosure affidavit was recorded with the Registry of Deeds.

3. Are there any exceptions to this law?

Yes. Title will *not* clear in favor of the new purchaser under the following circumstances:

- The new purchaser was the foreclosing bank or servicer; a subsidiary, affiliate or agent of the foreclosing bank or servicer; or the mortgage note holder or an investor or guarantor of the mortgage note (including Fannie Mae, Freddie Mac, and the Federal Housing Administration); or
- The former homeowner has (a) affirmatively brought an action in court challenging the validity of the foreclosure *before* the deadline provided in Question 2 (above), and (b) that challenge has been recorded in the appropriate Registry of Deeds or the Land Court Registry; or
- For former homeowners that *continue to live in the foreclosed property*, the former homeowner has (a) challenged the validity of the foreclosure as a defendant in court (typically an eviction proceeding), *irrespective* of when that challenge was raised, and (b) that challenge has been recorded in the appropriate Registry of Deeds or the Land Court Registry within 60 days of the challenge.