

HOUSE No. 1040

By Mr. Murphy of Weymouth, petition of James M. Murphy relative to making technical corrections in the law relative to discharge of certain mortgages. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT MAKING TECHNICAL CORRECTIONS IN THE LAW RELATIVE TO DISCHARGE OF CERTAIN MORTGAGES.

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 54 of chapter 183 of the General Laws, as
2 appearing in section 1 of chapter 63 of the acts of 2006, is hereby
3 amended by striking out the definition of “mortgagee” and inserting
4 in place thereof the following clause:—

5 “Mortgagee”, the holder of record of a mortgage, or any successor
6 in interest to the record holder, including as identified pursuant to
7 subsection (i) of section 55 or by reference to other documents of
8 record or to a database maintained by a governmental or quasi-gov-
9 ernmental agency or entity; but, if the mortgage was properly
10 assigned of record, mortgagee shall mean the last person to whom
11 the mortgage was so assigned, or any such successor in interest
12 thereto as so identified.

1 SECTION 2. Said Chapter 183 is hereby further amended by
2 striking out Section 54B, as appearing in section 2 of said chapter
3 63, and inserting in place thereof the following section:

4 Section 54B. A deed of release or discharge of a mortgage, or a
5 release, partial release or assignment of a mortgage, or an instrument
6 of subordination, non-disturbance, recognition, or attornment by the
7 holder of a mortgage, or any instrument necessary for the purpose of
8 foreclosing a mortgage, or a power of attorney for the purpose of
9 foreclosing or servicing a mortgage and executing any instrument
10 necessary for such purpose, executed before a notary public, justice
11 of the peace or other officer entitled by law to acknowledge instru-

12 ments, whether executed within or without the commonwealth, by a
13 person purporting to hold the position of president, vice president,
14 treasurer, clerk, secretary, cashier, loan representative, principal,
15 investment, mortgage or other officer, agent, asset manager, or other
16 similar office or position, including assistant to any such office or
17 position, of the entity holding such mortgage or acting under such
18 power of attorney, on behalf of such entity acting in its own capacity
19 or as a general partner or co-venturer of the entity holding record
20 title to such mortgage, shall be binding upon such entity and shall be
21 entitled to be recorded or filed, and no vote of the entity affirming
22 such authority shall be required to permit recording or filing.

1 SECTION 3. Section 54C of said chapter 183, as appearing in
2 section 3 of said chapter 63, is hereby amended by striking out, in
3 line 57, the words “and cannot be located.”

1 SECTION 4. Section 55 of said chapter 183, as appearing in
2 section 4 of said chapter 63, is hereby amended by striking out, in
3 line 25, the word “MORTGAGEE” and inserting in place thereof the
4 word “MORTGAGE” and by striking out, in line 47, the word
5 “shall” and inserting in place thereof the word “to.”

1 SECTION 5. Subsection (g) of said section 55, as so appearing,
2 is hereby amended by striking out paragraph (7) and inserting in
3 place thereof the following paragraph (7):

4 (7) The affidavit shall also include the names and last known
5 addresses of the mortgagor and the record mortgagee, mortgage ser-
6 vicer or note holder, the date of the mortgage and the mortgage
7 recording reference, as well as that of any recorded assignment of
8 the mortgage. Further, if the mortgagee to whom notice is required
9 to be sent pursuant to paragraphs (1) through (3) of this subsection is
10 a successor as defined in section 54, the affidavit shall also name the
11 original mortgagee, if no longer the record mortgagee, as well as
12 such successor mortgagee, and include the last known address for
13 such successor mortgagee and a brief description of how the suc-
14 cessor mortgagee’s identity and last known address were deter-
15 mined, such as by reference to other documents of record, including
16 a recorded document containing the recitals set forth in subsection
17 (i) or by reference to a database maintained by a governmental or

18 quasi-governmental agency or entity. Failure of the affiant to include
19 such information in an affidavit, or to certify a copy of any notice
20 required to be attached thereto as a true copy, shall not affect the
21 validity of the affidavit or its effect as a discharge.

1 SECTION 6. Section 15 of chapter 240 of the General Laws, as
2 appearing in section 5 of said chapter 63, is hereby amended by
3 striking out subsection (b) and inserting in place thereof the
4 following subsection:

5 (b) If the record title of land or of easements or rights in land is
6 encumbered by an undischarged mortgage or a mortgage not prop-
7 erly or legally discharged of record, and the mortgagor or the mort-
8 gator's heirs, successors or assigns do not have actual or direct
9 evidence of full payment or satisfaction of the mortgage but the
10 mortgagor, or the mortgagor's heirs, successors or assigns have been
11 in uninterrupted possession of the land or exercising the rights in
12 easements or other rights in the land, either: (1) in the case of a suc-
13 cessor or assign who is a bona fide purchaser for value or who is an
14 heir, successor or assign of the bona fide purchaser for value, for any
15 period of one year after the expiration of the time limited in the
16 mortgage for the full performance of the condition thereof, or for
17 any period of 20 years after the recording of a deed from the mort-
18 gator or his heirs or devisees to the bona fide purchaser, which deed
19 did not evidence that title was taken subject to the mortgage or that
20 the purchaser assumed or agreed to pay the mortgage; or (2) in the
21 case of the mortgagor, or the mortgagor's heirs, devisees or succes-
22 sors by operation of law, for any period of one year after the expira-
23 tion of the time limited in the mortgage for the full performance of
24 the condition thereof, or for any period of 20 years after the date of a
25 mortgage not given to secure the payment of money or a debt but to
26 secure the mortgagee against a contingent liability which has so
27 ceased to exist that no person will be prejudiced by the discharge
28 thereof, the mortgagor, or the mortgagor's heirs, successors or
29 assigns, or any person exercising the rights in easements or any
30 person named in section 11, may file a petition in the land court or,
31 except in the case of registered land, in the superior court for the
32 county in which the land is located; and if, after such notice by pub-
33 lication or otherwise as the court orders, no evidence is offered of a
34 payment on account of the debt secured by the mortgage within the

35 relevant period of uninterrupted possession or of any other act
36 within the time in recognition of its existence as a valid mortgage, or
37 if the court finds that the contingent liability has ceased to exist and
38 that the mortgage ought to be discharged, it may enter a decree dis-
39 charging the mortgage, which decree, when duly recorded in the reg-
40 istry of deeds for the county or district where the land lies or, in the
41 case of registered land, when duly noted on the memorandum of
42 encumbrances of the relevant certificate of title, shall operate as a
43 discharge of said mortgage and no action to enforce a title under the
44 mortgage shall thereafter be maintained. Two or more persons
45 owning in severalty different portions or different interests, such as
46 are described in section 11, in the land subject to the mortgage may
47 join in 1 petition, and 2 or more defects arising under different mort-
48 gages affecting 1 parcel of land may be set forth in the same petition.
49 If the petition is contested, the court shall make an appropriate order
50 for separate issues.

1 SECTION 7. Said chapter 63 is hereby amended by striking out
2 section 8 and inserting in place thereof the following section:

1 SECTION 8. Sections 1 to 7, inclusive, shall apply to all mort-
2 gages and other documents or instruments, whether recorded before,
3 on or after the effective date hereof, except that, the term of a mort-
4 gage which as a result of section 6 would expire within 1 year after
5 the effective date of this act shall be extended for a period of 1 year
6 from the effective date of this act.