

HOUSE No. 343.

HOUSE OF REPRESENTATIVES, Jan. 27, 1902.

[Introduced on leave by Mr. Mills of Fall River. Probate and Chancery.]

Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Two.

AN ACT

Relative to the Foreclosure of Mortgages of Real Estate.

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. The holder of record of any duly
2 recorded or registered mortgage of any real
3 estate subject to any prior mortgage, or the
4 holder of record of any duly recorded lien upon or
5 of any interest in such real estate, or the owner
6 of the whole equity or of any undivided interest
7 in the equity in such real estate, or any creditor
8 having an attachment of any real estate so subject
9 to any prior mortgage, may execute and cause to

10 be recorded, or file for registration, if such prior
11 mortgage is registered under the provisions of
12 the land registration act, in the registry of deeds
13 where such prior mortgage is so recorded or reg-
14 istered, a notice in writing referring to his mort-
15 gage, lien, interest or attachment, and describing
16 such prior mortgage by the names of the parties
17 thereto and the book and page of the record
18 thereof, or, if it be a registered mortgage, by giving
19 the names of the parties thereto and the number of
20 the certificate of title on which such prior mort-
21 gage is noted, requiring any person thereafter
22 exercising any power of sale under such prior
23 mortgage to notify, in the manner hereinafter pro-
24 vided, the person executing such notice at the
25 post-office address therein specified of the inten-
26 tion to exercise such power of sale. Upon the
27 filing for record or registration of any such no-
28 tice the register of deeds shall note in the margin
29 of the record of such prior mortgage therein de-
30 scribed, or upon the original mortgage if it be
31 registered or certified copy thereof filed in place
32 of such original mortgage, a reference to the
33 place of the record of such notice, or to the doc-
34 ument number thereof, if registered, together with
35 a minute of the date of his making such notation,
36 and shall be entitled for recording such notice and
37 making such reference to a fee not exceeding fifty
38 cents.

1 SECTION 2. Any person exercising a power
2 of sale under any mortgage, shall, at least four-

3 teen days before such sale, send by registered
4 mail, postage prepaid, a written or printed notifi-
5 cation stating the time and place of the proposed
6 foreclosure sale to the person at the post-office
7 address specified in every notice provided for in
8 section one, which shall be duly recorded and
9 duly noted in the margin of the record, or upon
10 the original mortgage or certified copy aforesaid,
11 if registered, as provided in section one, prior to
12 the date of the first advertisement of such fore-
13 closure sale, but not to any person who executed
14 such a notice as holder of a mortgage, lien,
15 interest or attachment which appears of record
16 at the time of such first advertisement to have
17 been discharged. The person so exercising
18 the power of sale shall cause a copy of such
19 notice and an affidavit, which may be incorpo-
20 rated in the affidavit provided for in section
21 eighteen of chapter one hundred and eighty-one
22 of the Public Statutes, and setting forth his acts
23 in relation thereto fully and particularly, to be
24 recorded or registered with the deed under the
25 power of sale, and the affidavit, or a duly certified
26 office copy of the record or registry thereof, shall
27 be admitted as evidence of such acts and of the
28 sending of the notification as required by this
29 section, and that the power of sale was duly ex-
30 ecuted, and in case of the foreclosure of a mort-
31 gage on registered land such evidence shall
32 become conclusive after a new certificate has
33 been entered pursuant to section sixty-three of
34 chapter five hundred and sixty-two of the acts of

35 the year eighteen hundred and ninety-eight. In
36 case any foreclosure sale is adjourned, no new
37 notifications need be sent of such adjourned sale.

1 SECTION 3. The supreme judicial court, or the
2 superior court, sitting in equity, except as herein-
3 after provided, upon petition filed within one year
4 from the date of such foreclosure sale by any
5 person entitled to be notified as provided for in
6 the preceding sections, to whom such notification
7 shall not be sent as therein provided, may cause
8 such foreclosure sale to be reopened and permit
9 redemption or other appropriate relief on such
10 terms as may be just under the circumstances,
11 and may enter such orders and decrees as may be
12 necessary in the premises. But no redemption
13 or other relief shall be decreed on such petition
14 against any purchaser in good faith and for a
15 valuable consideration when it appears from the
16 duly recorded or registered affidavit provided for
17 in section two, that such notice has been sent
18 and in case the mortgagee is the purchaser, any
19 subsequent purchaser for value and in good faith
20 from such mortgagee shall be a purchaser in
21 good faith and for a valuable consideration within
22 the meaning of this act. But nothing in this act
23 shall be construed to allow the entry of any de-
24 cree or order by the court on any such petition
25 after the entry of a new certificate of title under
26 the provisions of the land registration act, unless
27 such certificate is expressly made subject to such
28 right of petition.

1 SECTION 4. When land is registered under
2 the provisions of the land registration act, and a
3 foreclosure has taken place under a power of sale
4 without a previous decree of court, and it does
5 not appear from the affidavit provided for in sec-
6 tion two of this act that notices have been sent as
7 required by this act, every certificate of title
8 issued for land foreclosed shall, for the period of
9 one year from the date of such foreclosure sale,
10 be made subject in express terms to the right of
11 petition provided by section three of this act.

1 SECTION 5. No mortgage not containing a
2 power of sale shall be affected by the provisions
3 of this act, and no failure to comply with the pro-
4 visions of this act shall affect the validity of any
5 foreclosure sale in any manner whatever, except
6 as provided in the preceding sections, and this
7 act shall not apply to any foreclosure sale, the
8 first advertisement of which shall be published
9 prior to the first day of July, in the year nineteen
10 hundred and two.

