

By Mr. Finneran of Boston, petition of Thomas M. Finneran and Thomas G. Palumbo relative to mortgage discharges. Banks and Banking.

*The Commonwealth of Massachusetts*

In the Year One Thousand Nine Hundred and Eighty-Eight.

AN ACT RELATIVE TO MORTGAGE DISCHARGES.

*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 55 of Chapter 183 of the General Laws, as appearing  
2 in the 1984 Official Edition, is hereby amended by adding at the  
3 end thereof the following: —

4 Notwithstanding the foregoing, if such mortgagee fails to make  
5 such discharge or to execute and acknowledge a deed of release  
6 of the mortgage within thirty days from receipt of payment of the  
7 mortgage in accordance with the payoff statement furnished to  
8 the mortgagor by the said mortgagee, an attorney-at-law licensed  
9 to practice in the commonwealth may, on behalf of the mortgagor,  
10 his executor, administrator, successor, assignee, transferee or his  
11 transferee's mortgagee, execute and cause to be recorded in the  
12 registry of deeds in which the mortgage is recorded, an affidavit  
13 which states that:

14 (1) the affiant is an attorney-at-law in good standing and  
15 licensed to practice in the commonwealth;

16 (2) the affidavit is made on behalf of and at the request of the  
17 mortgagor, his executor, administrator, successor, assignee,  
18 transferee or his transferee's mortgagee;

19 (3) the mortgagee has provided a payoff statement with respect  
20 to the loan secured by the mortgage;

21 (4) the affiant has ascertained that the mortgagee has received  
22 payment of the loan secured by the mortgage in accordance with  
23 the payoff statement, as evidenced by a bank check, certified check

24 or attorney's clients' funds account which has been negotiated by  
25 the mortgagee or by other documentary evidence of such receipt  
26 of payment by the mortgagee;

27 (5) more than thirty days have elapsed since payment was  
28 received by the mortgagee;

29 (6) the affiant has given the mortgagee at least fifteen days notice  
30 in writing of intention to execute and cause to be recorded an  
31 affidavit in accordance with this section, together with a copy of  
32 the proposed affidavit; and that the mortgagee has not delivered  
33 a discharge or deed of release in response to such notification and  
34 that the mortgagor has complied with any request made by the  
35 mortgagee for additional payment at least fifteen days prior to  
36 the date of the affidavit.

37 The affidavit shall include the names and addresses of both the  
38 mortgagor and the mortgagee, the date of the mortgage and the  
39 title reference. Similar information shall be included with respect  
40 to any recorded assignment of the mortgage.

41 The affiant shall attach to the affidavit (a) photostatic copies  
42 of the documentary evidence that payment has been received by  
43 the mortgagee, including the mortgagee's endorsement of any  
44 bank check, certified check or attorney's clients' funds account,  
45 and (b) a photostatic copy of the payoff statement, if made in  
46 writing, and shall certify on each that it is a true copy of the  
47 original document.

48 The affidavit, when recorded, shall constitute a discharge of the  
49 mortgage and a release of the lien created by the mortgage on the  
50 mortgage premises.

51 Any person who causes an affidavit to be recorded in  
52 accordance with this section, knowing the information and  
53 statements contained therein to be false, shall be punished by a  
54 fine of not more than five thousand dollars.

55 For the purposes of this section, the term "payoff statement"  
56 shall mean a statement, written or oral, of the amount of the  
57 unpaid balance on a mortgage including principal, interest and  
58 other charges properly assessed pursuant to the loan documen-  
59 tation of such mortgage and a statement of the interest on a per  
60 diem basis with respect to the unpaid principal balance of the  
61 mortgage.