

SENATE . . . . . No. 126.

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[To accompany the petition of Henry C. Attwill for legislation to provide for notice of foreclosure sales of real estate to holders of junior encumbrances. Probate and Chancery.]

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Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and One.

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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, and shall be  
35 entitled for recording such notice and making  
36 such reference to a fee not exceeding fifty 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 incorpor-  
20 ated 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 one.

