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The Honorable  
Massachusetts House of Representatives  
The State House, Room Boston, MA 02133  
Email:

Dear Representative:

I have been a Professional Real Property Title Examiner in Massachusetts since 1986 and own Real Estate Title Research Services. I do land title research and deed studies for litigation and for commercial and residential transactions in Western and Central Massachusetts for local law firms, real estate developers and State agencies. I specialize in extensive in-depth searches on properties with complex title issues for conservation restrictions and acquisitions by Municipalities, State and Federal Agencies, and local land trusts.

The responsibility of a title examiner is to report their findings as to the status of title, for a specified real property to an attorney conducting a real estate transaction for a buyer, based on the documents concerning this property that are of the public record in the Registry of Deeds for the district or county in which the land lies. Record title as defined under G.L.c. 93, § 70 “shall mean the records of the registry of deeds or registry district in which the mortgaged premises lie and relevant records of registries of probate”.

Through decades of experience searching Registry of Deeds records, I realized that the burden of proof of notice imposed on Massachusetts servicemembers by the federal Servicemembers Civil Relief Act could be satisfied by amending the Massachusetts Homestead Protection Act (G.L.c. 188) to include notice of military status. After learning how many deployed servicemembers had been illegally foreclosed on I initiated and successfully lobbied for an amendment to the Commonwealth of Massachusetts Homestead Act, co-authored with Representative Ellen Story, to simplify and ensure the process of giving notice under the federal Service Members Civil Relief Act. This passed under the Valor Act of 2012. I initiated this legislation after realizing that a majority of lenders are big banks from out of state, and that there was no mechanism in place to ensure that a bank receives or accepts notice from a deployed soldier. The new G.L.c. 188, §5(e) expands the Homestead Protection Act to place the mortgage lender on notice through Registry of Deeds records.

On September 13, 2015, I was asked to review S. 2015, “An Act clearing title to foreclosed properties,” and reached the following conclusion: this bill will put a “burden of proof” or responsibility on attorneys representing buyers, or title examiners, for establishing if the third

party purchaser qualifies under the standard setforth under this bill as an “arm’s length third party purchaser for value”.

In all the years that I have been examining titles in Massachusetts a title examiner or closing attorney has never been responsible for qualifying a purchaser as arm’s length. The information necessary to ascertain if a purchaser is a subsidiary, affiliate, or agent of the foreclosing party or mortgage note holder or an investor or guarantor of the underlying mortgage note including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Housing Administration, is not available from the records at the Registry of Deeds. Title Examiners would need access to a corporation’s private records, including financial, for determining relationships between the foreclosing party and the third party purchaser. Examining corporate records is outside the normal scope of a title examination.

In order to do a diligent search to ascertain if a corporation, LLC or individual that purchased at foreclosure was independent of the foreclosing party, corporate records would need to be provided by the foreclosing party for title examiners or closing attorneys to audit and verify that there are no existing relationships through subsidiaries, affiliates, agents, officers or investors. Examining a corporation’s records and qualifying buyers are not part of the normal course of business for closing attorneys and/or title examiners. Auditing corporate records would be cumbersome, costly and impede the transfer of real property and could expose private and confidential corporate information.

Out of state banks hire Massachusetts law firms as agents to conduct foreclosures. To be absolutely certain that a third party purchaser is in fact an “arm’s length third party purchaser for value”, I would need to know the names of everyone employed by and associated with the agent conducting a foreclosure and of the purchaser. The private records of every agent hired by a bank would be subject to examination. If I was hired as a title examiner by the law firm conducting the foreclosure, I, too, could be considered as an affiliate of the foreclosing party, and my name and business records would need to be disclosed to determine if I had any relationship, business or personal, with the third party purchaser. How do we decide who is a subsidiary, affiliate, or agent of the foreclosing party or mortgage note holder or an investor without breaching every privacy law there is and impeding the conveyance of real estate? Please vote no on S2015.

If you have any questions, I can be reached at 413-687-9493. Thank you for your time and review of this important issue.

Sincerely,

*Bonnie L. MacCracken*

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