SUPREME JUDICIAL COURT

THE COMMONWEALTH OF MASSACHUSETTS
DOCKET NO. SJC-12859

BANK OF NEW YORK MELLON AS TRUSTEE ON BEHALF OF THE REGISTERED HOLDERS OF ALTERNATIVE LOAN TRUST 2006- J7, MORTGAGE PASS- THROUGH CERTIFICATES, SERIES 2006-J7,
PLAINTIFFS-APPELLANT,

v.

ALTON KING, JR. AND TERRI A. MAYES-KING,
DEFENDANTS-APPELLEES.

SUA SPONTE TRANSFER FROM APPEALS COURT

AMICUS BRIEF

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NAACP

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Massachusetts Rules of Civil Procedure 17 (c) (1) the National Association for the Advancement of Colored People is a tax-exempt non-profit organization. It does not have any corporate parent. It does not have any stock, and therefore no publicly owned company owns 10% or more of the stock of the *amicus*.

STATEMENT OF ISSUES PRESENTED

A. The first issue before every court as this court has repeatedly held: Does the plaintiff in front of the Court have standing? Is this a legal controversy in which it has an interest?

B. During this unprecedented foreclosure crisis, is there evidence of a disparate impact from mortgage lending practices between White Male Citizens and especially borrowers of color?

C. The second preliminary question always for this Court is: Is a Constitutional Right implicated or burdened, and has the Legislature already provided a statutory remedy which is a "plain, adequate, and complete remedy at law"?

D. In the context of this Court's commitment to "ensure" the "same" "justice" to Blacks, this Court recognized that "economic … inequalities aris[e] from race"[3]; therefore, are the equal protections provided by the Indigent Court Cost Law also foundational to equal justice as to Alton King and those similarly situated?

E. What is the White Male Citizen standard of enjoyment (especially as in the mind of the Framers of the Massachusetts Equal Rights Act in 1989), which is to be provided to all Massachusetts inhabitants[4] equally?

F. What has been the history of, the source for repetitive practices of predatory lending (and related housing segregation), especially as to African American men in the United States?

G. Are the present predatory lending practices an extension of and even repeats of the history of racially discriminatory, predatory lending?

H. Since the 13th and 14th Amendments, Congress tried (as have a number of state governments like Massachusetts) to end the "last vestiges of slavery" –

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[3] Letter from the Seven Justices of the Supreme Judicial Court, June 17, 202, ¶¶3 & 4

[4] "Inhabitants" as the subject of "PART THE FIRST; A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts"

recognized as discrimination in housing and homeownership. How has that evolved? And how has enforcement against disparate predatory lending failed to ensure that promise of civil rights and equal protection? And is the King experience part of that continuing yet unsuccessful struggle?

I. How typical of reverse redlining practices, as of the securitization era, was King's loan package illegally and prohibitedly originated as predatory?

J. Once the Court Invoked Equity, Did It Not have to Accede to and at most Supplement a Plain, Adequate and Complete Remedy at Law?

K. Recognizing that the presumptive "lender treatment" is not what whole sectors of our society has 'enjoyed', does a court have an obligation to review the mortgage lending facts and enforce the White Male Citizen standard at the level of Strict Judicial Scrutiny?

STATEMENT OF INTEREST OF AMICUS CURIAE

The New England Area Conference (NEAC) is an Area Conference of the National Association For The Advancement Of Colored People (NAACP). The NAACP is the oldest, largest and arguably the most highly regarded civil rights advocacy organization in the country. NEAC is the coordinating and governing entity of the NAACP for Branches, College Chapters and Youth Councils in the states of Rhode Island, Massachusetts, New Hampshire, Maine and Vermont. NEAC is responsible for addressing state legislative and policy issues in these states including over a decade addressing predatory lending.

The NAACP has brought about litigation challenging policies and practices, private and coordinated acts that deny equal housing opportunities and all other rights to African Americans. The NAACP has viewed the justice system as a main avenue to bring about the U.S. Constitutional guarantees of justice and equality, and accordingly has filed many civil rights based complaints in litigation throughout the United States. These include milestone cases: *Buchanan v. Warley*, 245 U.S. 60, 82 (1917); *Harmon v. Tyler*, 273 U.S. 668 (1927) (per curiam); *Shelley v. Kraemer*, 334 U.S. 1, 20 (1948) combined with *McGee v. Sipes*, 334 U.S. 1 (1948)(argued by Thurgood Marshall, striking down racially restrictive

covenants);. See, also, NAACP v Harris, 567 F. Supp. 637 (D. Mass. 1983), *affirmed,* NAACP v H.U.D., 817 F. 2d 149 (1st Cir. 1987)(per Breyer, J.); NAACP v American Family Insurance Co., 978 F. 2d 287 (1992)(home insurance redlining); *Kennedy Park Homes Association v City of Lackawanna*, 436 F. 2d 108 (2nd Cir. 1970); *Central Alabama Fair Housing Center v. Lowder Realty*, 226 F. 3d 629 (11th Cir. 2000). NEAC has also joined in a number of amicus briefs in Massachusetts, most recently in *El Koussa v Attorney General and Secretary of the Commonwealth,* SJC-13237 (June 14, 2022.)

While reverse redlining (providing of adverse lending on a discriminatory basis), has been the experience of borrowers of color for well over 150 years, the primary discrimination in residential lending became reverse redlining rather than outright denial by the mid 1990s.

Context

In 1780, with the belated inclusion of the demanded bill of rights (Part, the First), the "Inhabitants" of the Commonwealth finally voted in the Massachusetts Constitution. It opened providing "all men" their three "unalienable" rights – breaking the right to property equally into its acquisition, possession and protection.

This nascent Supreme Judicial Court ("SJC") provided the final interpretation 3 years later that those rights belonged *equally* to all men, even those of "African" descent "(without regard to color, complexion, or …features)" as to liberty but also life and property.

While that 1783 *Commonwealth v. Jennison* holding was not published, it was this SJC's enforcement, "to have it [equal rights] guarded by the laws", that resulted in no Massachusetts residents being reported as slaves in the 1790 national census.[5]

Also in 1783, the same Jennison was leading lobbying of the state Legislature to codify that slaves were still the property of him and the slave-holding lobby even given the Constitution; the young state Legislature had decisively halted that effort by 1785.

In 1974, the Massachusetts House and Senate sitting as the state's Constitutional Convention annulled Article I of the Constitution amplifying it with:

> "All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of

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[5] Wikipedia "history of Slavery in Massachusetts": "As a result of this, Massachusetts is the only state to have zero slaves enumerated on the 1790 federal census. (By 1790, Vermont had also officially ended slavery, but a small number of slaves are recorded on the Census result. Historians have argued whether this was a misunderstand-ing or something more.)"

> acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin."

This SJC has held that incorporating protected classes – including women – in Article I of the Massachusetts Constitution signals a stronger commitment to equal protection than the federal commitment.

While proposed but denied for inclusion in the federal constitution, Massachusetts was also one of only five states that explicitly memorialized in its constitution the right to enforcement of law through the courts. In Article XI, *the young Constitutional Democracy also recognized that rights cannot be guaranteed without access to Courts regardless of financial ability.*

The principles expressed in *Universal Adjustment Corporation vs. Midland Bank, Limited, of London*, 281 Mass. 303, 321-323 (1933) were well-recognized by then: equal Constitutional rights means not just protection via removal of discrimination but removal of disparate privilege *and the courts are obligated to so provide:*

> "Equal protection of the laws in its constitutional sense implies that all litigants similarly situated **may appeal to the courts both for relief and for defence under like conditions and with like protection and without discrimination** …." p.321
>
> "Thus the guaranty was intended to secure equality of protection not only for all but against

all similarly situated. **Indeed, protection is not protection unless it does so.**" [bold added]

Also, as explicitly recognized in Massachusetts jurisprudence, the equal right to "sue" is necessary for enforcement of any and all equal protection. See *Thurdin v. SEI Boston, LLC*, 452 Mass. 436 (2008):

> "because MERA [Massachusetts Equal Rights Act]is a civil rights statute, we are required to construe its terms broadly." P.453
> "According to Black's Law Dictionary 569 (8th ed. 2004), **"enforce" means to "give force or effect to.**" Accord Webster's Third New International Dictionary 751 (1993) ("enforce" means "to give force to ... to put in force ... cause to take effect ... give effect to"). Thus **the common meaning of "enforce a contract" would cover discriminatory treatment during the course** of employment." P.453
> "Indeed, in MERA, the phrase "to make and enforce contracts" is set apart from the other enumerated rights by commas, and a list of property rights comes before the statute enumerates the rights to "sue, be parties, [and] give evidence," suggesting that **"enforce" cannot just mean the right to legal process. Such an interpretation would seem to render the enumerated right to "sue" superfluous.** *Commonwealth v. WoodsHole, Martha's Vineyard & Nantucket S.S. Auth.*, 352 Mass. 617, 618, 227 N.E.2d 357 (1967), quoting *Bolster v. Commissioner of Corps. & Taxation*, 319 Mass. 81, 84–85, 64 N.E.2d 645 (1946) ("None of the words of a statute is to be regarded as superfluous")." P.454 [bold added]

While the Constitutional guarantee for the legally indigent's equal court access was not a statutory mandate until 1974, as part of the enactment of uniform Rules of Procedure, the Indigent Court Cost's Law ("ICCL") provided a mandatory "shall" and the detailed

and "exclusive procedure". That 7-part procedure further encoded that a financial discriminatory barrier could not be replaced by a discriminatory procedural barrier. Thus, the ICCL removed previous indigency statutes' imposition of a discrete threshold test of "non-frivolousness" to obtain a cost-waiver; its standard is that a remedy for the unaffordable Court-ordered cost be felt necessary by the indigent to be able to litigate "as effective[ly]… as someone financially able to pay."[6]

Also, two weeks before this subject King decision, this SJC expostulated that "economic … inequality" is part and parcel of our society's "racism" needing "systemic change" including in the Commonwealth's courts. See below historical underpinnings of the accuracy of that pronounced connection rooted in biased mortgaging.

This SJC also reaffirmed its own role, as part of the legal community, to ensure equal access to justice for indigent litigants of color: "we must also look at what we are doing, or failing to do, to provide legal assistance to those who cannot afford it;"

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[6] This comported with long standing jurisprudence of this court: "that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others; …no greater burdens should be laid upon one than are laid upon others…." *Opinion Of The Justices To The House Of Representatives*, 207 Mass. 601 (1911)

A key and enduring – thus far – social mechanism of imposing and recreating that economic inequality has been not just the denial of the best and well-established means of wealth stabilization, accrual and inheritance – that is homeownership (denied through what is known as "redlining") but use of the most effective means of wealth-stripping repeatedly perpetrated against men of color (known as "reverse redlining").

This, at least, 160-year-old intentional history of adverse lending to men of color has been obscured by the official story – that experienced by White Male Citizens in their relationships with local lenders; that experience which White Male Citizens have enjoyed is the legal standard to measure the provision of equal rights codified in MERA (MGL Ch. 93, §102 and its companion §103). The long, established practices of wealth and land-stripping, part of the "last vestiges of slavery" expressed in housing segregation and discrimination, has generally only been apparent to our whole society in periods when people of color organized to make it so.

Our government at its best has attempted repeatedly to outlaw, and then enforce prohibitions against, these racially discriminatory practices especially since passage of the 14th amendment. The 1974 Massachusetts

Constitutional revision to its article I, the series of legislative acts including the MERA (which is explicitly an "effects"/impact standard)[7] and regulatory provisions more than provide this Court the tools to ensure equal justice and equal protection in mortgage lending.

As this state's own John Quincy Adams argued in his last US Supreme Court appearance in *United States v. Schooner Amistad*, 40 U.S. (15 Pet.) 518 (1841), where the presumptive "sympathy" is with the wrong party, the top courts must act upon justice:

> "And consequently it now appears that everything which has flowed from this mistaken or misapplied sympathy, was wrong …, they were bound in duty to extend their sympathy to them all; and if they intervened at all between them, the duty incumbent upon this intervention was not of favor, but of impartiality--not of sympathy, but of JUSTICE, dispensing to every individual his own right."[8]

RELEVANT CASE HISTORY

On April 10th, 2019, SJC held that all litigants in

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[7] "Subsection (c) establishes a test for discrimination based on the "totality of the circumstances," an "effects test." The language can be traced to the 1982 amendments to the Voting Rights Act of 1965 (infra)." Stephen P. Johnson, 1989 Massachusetts Equal Rights Law: A Short History, The, 34 Boston BAR J. 17 (1990), p.18.

[8] Adams also argued: "It is but too true that the same spirit of sympathy and antipathy has nearly pervaded the whole nation, and it is against them that I am in duty bound to call upon this Court to restrain itself in the sacred name of JUSTICE…. I am simply pursuing the chain of evidence in this case, to show the effects of … sympathy with one of the parties in this conflict of justice, and Antipathy to the other. Sympathy with the white, antipathy to the black…"

Massachusetts courts are covered by the Indigent Court Costs Law ("ICCL"), as the codification of Constitutional protection provided in Art. 11. *Adjartey v. Central Housing Court*, 481 Mass. 830 (2019) quoted extensively from *Com. v. Lockley*, 381 Mass. 156 (1980).

Lockley held that the ICCL provides the "exclusive procedure" for appeals which was affirmed in the 1980 further legislative amendment of the ICCL.[9] Such "extra fees" as "appeal bonds" "shall" be removed as a barrier to "as effective a prosecution, defense or appeal". It held that "reasonable" judges will order "waiver, substitution, or government payment".

On 12/17/19, in 6 cases on the Appeals Court docket[10], single justices had held that given the plain language distinctions between the legislative wording of MGL Ch. 239 §5 and §6 that a waiver of a bond ordered under §6 did not implicate a substitution of a monthly

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[9] "The reach of § 27D also was broadened by the 1980 amendments. Specifically, its applicability to "any case where the court denies a request for a waiver... pursuant to [§ 27C]" was expanded to include denials of such **requests made pursuant to** § 27C "or **any other provision of law.**" *Com. v. De'Amicis*, 450 Mass. 271, n. 10 (2007)

[10] *Scaduto v. Malonson* (2019-J-0386); 21st *Century Mortgage Corp. v. Lapham* (2019-J-0394); *Bank of New York Mellon vs. Dundon*, No. 2019-J-257 (July 17, 2019); *FNMA v. Branch* 2018-J-0542; Santander Bank, N. A. v. Adjartey 2019-J-0448; Bank of New York Mellon v. King 2019-J-0560

use and occupancy payment if the appeal bond is waived unlike the §5 procedure.

Each of these cases came up from an eviction ("Summary Process") case where the Defendant had made the traditional challenge to the Plaintiff's claim to title after a purported foreclosure by sale: each Defendant had provided evidence demonstrating the purported foreclosure was void by operation of law.

This Court chose *sua sponte* to grab Alton King's out of these cases off the Appeals Court docket. Every other case involved a modest home and the race/ethnicity of the homeowner was typical of the area where they had purchased. King's was one of three with an attorney. His was one of three of people of color, one of three cases with male defendants.

On June 17, 2020, this SJC held, sub silencio, that neither it nor any other Massachusetts court must apply the equal protection statute, the ICCL, to the Adjartey-recognized extra fee of appeal bonds and any associated (or substitute) extra fees identified as use and occupancy. Breaking with legislation and case law from 1879 forward, the SJC collapsed the historic distinctions between the unique conditions of landlord-tenant lawsuit appeals and requirements for all other types of appeals.

In the subject decision, only purported "postforeclosure" eviction defendants (apparently homeowners) – King and those similarly situated – will be singularly denied the protection that this Court held blanketed all litigants 15 months earlier. Just the "class" here exemplified by King, a senior African-American man with disabilities, representing several protected classes.

Ignoring the "plain, adequate and complete remedy at law",[11] and not reviewing the facts that Plaintiff's standing is void, and positing a new legal standard for likelihood of success in a court case (that one will never be sued again related to the present case) and

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[11] Cf: *Attorney General v. Dime Savings Bank, FSB*, 413 Mass. 284 (1992), note 10: "At common law, a bill in equity brought by an owner out of possession to recover possession of his estate would have been dismissed **because** summary process **offers "a plain, adequate, and complete remedy at law.**" *Weiss v. Levy*, 166 Mass. 290 , 293 (1896). See *Glickman v. Kastel*, 323 Mass. 148, 150 (1948) ("There is not, and has never been, any equity in the bill" requesting an injunction to recover possession of land), and cases cited. Accord Root v. Woolworth, 150 U.S. 401, 410 (1893) ("It is undoubtedly true that **a court of equity will not ordinarily entertain a bill** solely for the purpose of establishing the title of a party to real estate, or for the recovery of possession thereof, **as these objects can generally be accomplished by an action** of ejectment **at law**," citing *Hipp v. Babin*, 60 U.S. (19 How.) 271 [1856]); *Rocky Mountain Fuel Co. v. New Standard Coal Mining Co.*, 89 F.2d 147 (10th Cir. Levenberg, 98 Conn. 217 (1922); *Slaughter v. Land*, 190 Ga. 491 (1940); *Kertesz v. Falgiano*, 140 W. Va. 469 (1954). "[P]laintiffs in such cases [were required to] resort to the ordinary remedies for the recovery of the possession of land." *Glickman v. Kastel*, supra at 150." [bold supplied]

naming as a given a public policy position opposite to existing public policy, the Court described King as fitting the free-loader "bought too much house" stereotype, and replaced the existing equal protection "remedy at law" with the already statutorily and jurisprudentially distinguished statute, MGL Ch. 239 §5, and a complicated equity test.

ARGUMENT

A. The first issue before every court as this court has repeatedly held: Does the plaintiff in front of the Court have standing? Is this a legal controversy in which it has an interest?[12]

> "**a lack of subject matter jurisdiction cannot be waived** and **must be considered** by the court at any time -- **even on appeal**, and even sua sponte. See Cohen v. Cohen, 470 Mass. 708, 713 (2015); Abate v. Fremont Inv. & Loan, 470 Mass. 821, 828 (2015). See also Chestnut-Adams Ltd. Partnership v. Bricklayers & Masons Trust Funds of Boston, 415 Mass. 87, 90 (1993); Worcester Heritage Soc., Inc. v. Trussell, 31 Mass. App. Ct. 343, 347 n.3 (1991) ("Although neither party raises any question concerning the jurisdiction of the Housing Court, we have considered the question, as we must")." *FNMA v. Gordon*, 91 Mass. App. Ct. 527, 531 (2017)[bold added]

Statute and this Court have repeatedly held that a Plaintiff must have standing or a court lacks subject matter jurisdiction. It has specifically held so for summary process cases and housing courts.[13] Plaintiffs in

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[12] For courts of more limited jurisdiction, controversy within its subject matter or geographical jurisdiction.

[13] See *Rental Property Management Services v. Hatcher*, 479 Mass. 542 (2018), p.544: "Regardless of the

Summary Process[14] must have settled title[15] or an otherwise settled right to reversion of possession[16] to have standing to bring commence an eviction case; without that, the Housing court lacks subject matter jurisdiction. This Court further held that such must be established in each Summary Process case.[17]

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underlying merits of the eviction, **a summary process complaint brought by a plaintiff without standing is a ground-less claim**, and we have long recognized the harms often associated with having to defend against groundless claims, including the time and expense of defending a suit, emotional distress, and harm to reputation. See *Millennium Equity Holdings, LLC v. Mahlowitz*, 456 Mass. 627, 645, 925 N.E.2d 513 (2010) … *Malone v. Belcher*, 216 Mass. 209, 212, 103 N.E. 637 (1913)…. Such harms can be especially serious where the unjustified litigation is a summary process action, where the consequences of an adverse judgment — eviction and the loss of one's home — are especially distressing, and where the mere record of an eviction proceeding can serve as a long-term barrier to … future housing, regardless of the legal outcome. See Desmond & Bell, Housing, Poverty, and the Law, 11 Ann. Rev. L. & Soc. Sci. 15, 19, (2015)."

See also *Cambridge St. Realty LLC v. Stewart, 481 Mass. 121 (2018)*

[14] For simplicity, NAACP refers to the Massachusetts eviction statutory process, MGL Ch. 239, in its functional terminology as Summary Process in this brief.

[15] *Adjartey*; *Warren v. James*, 130 Mass. 540, 542 (1881); Ch. 89 of 1825; Ch. 104 of 1836; Ch. 85 of 1836; Ch. 155 of 1882; Ch. 161 of 1902; *Hatcher*; *Cambridge St. Realty*; *Bank of Am., N.A. v. Rosa*, 466 Mass. 613 (2013)

[16] "Where plaintiff is neither the owner nor the lessor of the property, plaintiff has no standing to bring a summary process action;" *Hatcher* at 546

[17] *Cambridge St. Realty,* 128-129:"Even where the general subject matter is covered by the statute, however, the party bringing suit must have standing for the court to have subject matter jurisdiction. See *HSBC Bank USA, N.A. v. Matt*, 464 Mass. 193, 199 (2013) ("standing is a

Here, Plaintiff's title claim depended upon a valid not void foreclosure. Necessary elements a Plaintiff needs to meet its jurisdictional burden[18] broadly include: a) the Mortgage's lawfulness and validity; b) the terms of the Mortgage; c) the parties to the Mortgage; d) whether origination was part of a pattern of discriminatory lending attempts; e) whether Plaintiff or predecessors may be considered to be a "mortgagee" under the mortgage; f) whether the Plaintiff may be considered to be a "lender" and/or a successor of the lender/ Noteowner (See *Eaton v. Fed. Nat. Mortgage Ass'n, 462 Mass. 569*, Note 2 (2012)); g) who holds the physical, "wet ink" Note and its chain of custody; h)

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question of subject matter jurisdiction"). The standing requirement exists because "[c]ourts are not established to enable parties to litigate matters in which they have no interest affecting their liberty, rights or property," but rather only those matters in which they have a "definite interest" such that their "rights will be significantly affected by a resolution of the contested point" (citations omitted). Id. at 199, 200."

[18] While Massachusetts jurisprudence defines a *prima facie* showing as "it obtained a deed to the property at issue and that the deed and affidavit of sale, showing compliance with statutory foreclosure requirements, were recorded", once factually challenged, standing must always be determined on primary evidence proved up by the Plaintiff. ("If the jurisdictional facts required for standing are factually challenged by an adverse party or by the court, the petitioner bears the burden to prove those facts by a preponderance of the evidence." *Abate v. Fremont Inv. & Loan,* 470 Mass. 821, 830 (2015)) In fact, even the standard first quoted here from Bailey appears to require proof of the actual acquisition of the title in addition to production of the recorded documents.

the chain of title and ownership of the Note and Mortgage; i) whether the Plaintiff has strictly complied with the terms of the Mortgage (or, if Plaintiff claims to be the 'person selling' and the purchaser at foreclosure, at standard of utmost diligence).[19]

Equal protection statutes at both federal[20] and state level[21] are implicated throughout mortgage

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[19] As cited in *Ibanez* Court at *Note 16*, a "mortgagee's duty becomes more exacting when it becomes the buyer of the property, …[and] will be held to the strictest good faith and utmost diligence…." *Williams v. Resolution*, 417 Mass. 377, 383 (1994);

[20] **§1981. Equal rights under the law**

(a) Statement of equal rights: All persons …shall have the same right in every State … to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined: For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment: The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law. R.S. §1977 derived from act May 31, 1870, ch. 114, §16, 16 Stat. 144.

§1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State ..., as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real … property. (R.S. §1978.)

EDITORIAL NOTES CODIFICATION: R.S. §1978 derived from act Apr. 9, 1866, Ch. 31, §1, 14 Stat. 27.

[21] The 1989 MERA at MGL Ch. 93, §102 and §103:

histories (in each element defined above) as statutory expressions in accord with their respective federal[22] and state[23] constitutions. Therefore, equal protection is implicated in this first and prerequisite matter before this Court which must therefore be resolved before any other issue before this Court is reached for its honorable consideration.

As mortgage loans (mortgage and Note together) in Massachusetts are contracts and consumer products and

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Section 102. "(a) All persons within the commonwealth, regardless of sex, race, color, creed or national origin, shall have, except as is otherwise provided or permitted by law, the same rights enjoyed by white male citizens, to make and enforce contracts, to inherit, purchase, to lease, sell, hold and convey real and personal property, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of … property, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other….
(c) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that any individual is denied any of the rights protected by subsection (a)."
Section 103. "(a) Any person within the commonwealth, regardless of handicap or age as defined in chapter one hundred and fifty-one B, shall, with reasonable accommodation, have the same rights as other persons to make and enforce contracts, inherit, purchase, lease, sell, hold and convey real and personal property, [SAME LANGUAGE AS 102] sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property, including, but not limited to, the rights secured under Article CXIV of the Amendments to the Constitution."
Section 103(c) is verbatim to Section 102(c)

[22] Fourteenth and fifth amendment protections

[23] Article I of the Massachusetts bill of Rights/Part, the first as annulled and amended by Amendment Article CVI:

the mortgages themselves are conveyances of title[24] and impact acquiring, holding and possessing the home property, the mortgagor/debtor is to experience equal treatment; this includes an attempted but potentially violative origination and violations over the life of such contractual relationships. Therefore, Constitutional review at applicable standards of review is the first matter before this Court in this case.

King[25] and those similarly situated are guaranteed such protection in treatment by private persons (42 U.S. c. §1981(c)) and during consideration by this Court and all Massachusetts Courts, (Art. I, MA Constitution).

The established standard of review is strict judicial scrutiny by this Court[26] of the actions of private and government actors, including those of the Massachusetts courts inclusive of this Honorable Court.

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[24] MGL Ch. 183 §18/See Abstract Club Amicus, *Faneuil Investors Group, Ltd. Partnership v. Selectmen of Dennis*, 458 Mass. 1, 6 (2010)

[25] King is a member of protected classes as to race and color, and, for the applicability of MGL Ch. 93 §103, King was 63 years old at attempted origination of this loan package and became disabled.

[26] See *Desrosiers v. The Governor*, 486 Mass. 369 , 388 (2020): "When analyzing due process challenges under art. 10, we "adhere[] to the same standards followed in Federal due process analysis." *Gillespie v. Northampton*, 460 Mass. 148, 153 n.12 (2011), quoting *Goodridge v. Department of Pub. Health*, 440 Mass. 309, 353 (2003) (Spina, J., dissenting). **When a fundamental right is burdened, we apply strict scrutiny…**" [bold added]

The Standard for equality to be applied, while at the federal level is that of "white citizens, is codified in this state's Constitution by 1974 amendment and the intentional incorporated into *MERA* as "**the same rights enjoyed by white male citizens**" and for those protected as to age and/or disability, with "reasonable accommodation", as to the same as "other persons".

As discussed and evidenced at length in the King reconsideration #3 (pp. 40-47) and supported here, government policy as to 'reasonable accommodation' as to housing and home ownership has been to adopt as a 'public good' subsidizing housing (including mortgage costs) up to and including covering all such costs at public expense.[27]

While *MERA* has provided the Massachusetts legal standard as unquestionably that of "impact" or, the statutory term, "effects test", federal law retains that as well. See Pfaff v. U.S. Dep't of Hous. & Urban Dev., 88 F.3d 739, 745-746 (9th Cir. 1996):

> "[W]e find no support for the proposition that a finding of intent is required to establish a prima facie case of disparate impact under the FHA.");

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[27] Even MGL Ch. 239 §§9 & 10 provided for a special reasonable accommodation of up to 12 months to move and statute does not require an imposition of monthly payment during that period. Applicability of §§9 & 10 in purported post-foreclosure eviction cases is discussed in *Adjartey* at 836, 860

> Mountain Side Mobile Estate P'ship, 56 F.3d 1243, 1250 (10th Cir. 1995) ("HUD argues that the disparate impact theory applies to FHA claims The FHA prohibits discrimination in housing on the basis of familial status. Discrimination may occur either by disparate treatment or disparate impact." (citation omitted)); Pfaff, 88 F.3d at 745-46…; *United States v. City of Black Jack*, 508 F.2d 1179, 1184-85 (8th Cir. 1974) ("Effect, and not motivation, is the touchstone, in part because clever men may easily conceal their motivations, but more importantly, because 'we now firmly recognize that the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of a willful scheme."' (quoting *Hobson v. Hansen*, 269 F. Supp. 401, 497 (D.D.C. 1967)).

B. During this unprecedented foreclosure crisis, is there evidence of a disparate impact from mortgage lending practices between White Male Citizens and especially borrowers of color?

Present day impacts of centuries of race-based denial of equal "enjoyment" of real property rights in Massachusetts and across the United States paint a stark, extreme reality necessitating action under the constitutional equal protection commitment and for a Court of Equity under the Equity Maxims of 'Complete Justice'[28] and 'Equality is Equity'[29].

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[28] See "The equitable remedy sought is fundamentally different than any potential remedy at law and is the only remedy capable of providing complete justice in the situation. Here, the availability of a remedy at law becomes immaterial, because it is inadequate and inappropriate to resolve the issue fairly to all parties." Bank of America, N.A. v. Diamond Financial, LLC, 88 Mass. App. Ct. 564 (2015)

[29] See "[T]he law requires equality, which is equity; and one of them shall not be obliged to bear the burden, in

The percentage of land owned by Blacks and other people of color in the United States is lower now than 100 years ago[30]. In the 50 years since FHA loans came into existence, US home ownership has not increased at all for people of color[31].

In closing the racial inequity gaps (the economic cost of Black inequity in the U.S.) Citi[32] summarized the research that as of 2020:

> "The current 30 basis point gap between black and white home ownership is greater now than before 1968, when housing discrimination was legal."[33]

In terms of public policy changes, The Brandeis/Demos Study[34] showed that closing the home

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case of the rest. It is founded, not on contract, but on the principle that equality of burden as to common right is equity, and the obligation to contribute arises from the nature of the relation between the parties." Putnam v. Misochi, 189 Mass. 421, 422 (1905)

[30] Agyeman, J. and Kofi B. Black People Own Less of the U.S. than 100 Years Ago. A 'Black Commons' Could Help Reverse the Trend. Portside. (*July 14, 2020*).

[31] Agyeman, *above*: "In 2017, the racial homeownership gap was at its highest level for 50 years, with 79.1% of white Americans owning a home compared to 41.8% of black Americans."

[32] C. Connley (2020). "The Great Divide: Why the homeownership gap between White and Black Americans is larger today than it was over 50 years ago," https://www.cnbc.com/2020/09/23/citi-creates-1-billion-initiative-to-close-the-racial-wealth-gap.html

[33] Young, C. (2019). These Five Facts Reveal the Current Crisis in Black Homeownership, The Urban Institute, Last Accessed July 26, 2021.

[34] Traub, Ruetschlin, Sullivan, Meschede, Dietrich, Shapiro (2016) ***The Racial Wealth Gap: Why Policy Matters,*** *Public policies can either fuel or ease racial*

ownership gap (both in terms of mortgage origination and mortgage characteristics) would have by far the largest impact on closing the racial wealth gap.[35]

Further, this Court and Massachusetts have a special and heightened obligation to address this unconstitutional disparate impact as a state with consistently one of the largest racial homeownership gaps,[36] thus, part of ground zero for the expression of structural racism via housing discrimination.

Finally, the historic massive home ownership and, therefore, wealth divide between white households and households of color has been deeply exacerbated by the predatory lending practices and the concomitant, not only foreclosures, but massive ongoing wealth stripping

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disparities in wealth. This report marks the first-ever systematic analysis of the impact of different policies on the racial wealth gap. See also Shapiro, Meschede, Osoro (2013). *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide.* Brandeis University: Institute on Assets and Social Policy (IASP): Research and Policy Brief. https://heller.brandeis.edu/iere/pdfs/racial-wealth-equity/racial-wealth-gap/roots-widening-racial-wealth-gap.pdf

[35] Eliminating the racial disparities in homeownership rates would shrink the Black/White wealth gap by 31% and the Latino/White wealth gap by 28%. Equalizing the return on investment in homeownership would shrink the Black/White wealth gap by 16% and the White/Latino wealth gap by 41%.

[36] Fair housing Center of Greater Boston, 2013

of households that are still paying on inflated over-priced predatory loans.

The impact of these practices was most disturbingly and starkly captured in the Pew Charitable Trust Study:[37] during the height of the slightly earlier peak of the historic foreclosure rates in communities of color (2005 and 2009) the median household wealth for U.S. Blacks lost 53%; the median wealth of Latino households lost 66%; for Asian households ascribable to predatory loans and foreclosures, the median wealth lost 34%. Median white household wealth also was impacted by 16%, although the peak of the percentages of foreclosures of white households, we believe, occurred somewhat later.

Without including the impact of reverse redlining, the denial of lending to permit the purchasing or refinancing of homes is measured in the Citi Study[38] as "If the black home ownership rate were returned to the 2000 level, there would be an estimated 770,000 additional black home owners." This "equates to $154,000,000,000 in additional home sales"; "closing the

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[37] Kochhar R, Fry R, Taylor P. Twenty-to-One: Wealth Gaps Rise to Record Highs between Whites, Blacks and Hispanics. Washington, D.C: Pew Research Center; 2011. Jul 26.

[38] https://www.cnbc.com/2020/09/23/citi-creates-1-billion-initiative-to-close-the-racial-wealth-gap.html p.18; p. 7 and 57

black family housing gap 20 years ago might have generated $218 billion in additional U.S. consumption."

While in the Massachusetts foreclosure crisis of the last 17 years, Boston was relatively spared, impact on its wealth disparities is painfully instructive. A 2015 Federal Reserve Bank of Boston study found the median wealth for White families in Greater Boston was $250,000. Median Black family wealth is $8; meaning half of Black families had accumulated negative family wealth over generations. *The Color of Wealth* 20 (2015) study:

> "Possessing less than 5 percent of the wealth of [Greater Boston] white households, nonwhites are less likely to have financial resources to draw upon in times of financial stress. In addition, they have fewer resources to invest in their own future and those of their own children. Racial differences in asset ownership, particularly home ownership, contribute to vast disparities in net worth.

Recent studies also document the still ongoing damage of both government racially biased lending policies and private exclusionary organizing.

Today, "It's been over 80 years since the lines were drawn … and over 50 years since the use of redlining was legally banned, but the impact of redlining is still felt … we analyzed the demographics of 138 metropolitan areas … we found that nearly all formerly redlined zones in the country are still disproportionately Black, Latino or Asian compared with their surrounding

metropolitan area, while two-thirds of greenlined zones — neighborhoods that HOLC deemed "best" for mortgage lending — are still overwhelmingly white."[39]

C. The second preliminary question always for this Court is: Is a Constitutional Right implicated or burdened, and has the Legislature already provided a statutory remedy which is a "plain, adequate, and complete remedy at law"?

If the answer to the above is yes, this Court need not invoke its equitable powers and must avoid substituting itself for the state Legislative body. See *Tamber v. Desrochers*, 45 Mass. App. Ct. 234 (1998) ("It is not for courts, … to nullify acts of the Legislature.")

Equal access to the courts for the indigent is a Constitutional Right. This is long recognized in this state's as well as federal jurisprudence, even before its codification as a statutorily mandated procedure in the ICCL in 1974 and as amended in 1980[40]. See *Paro v. Longwood Hospital*, 373 Mass. 645, 654 (1977):

> "The plaintiffs next contend that their rights under art. 11 of the Massachusetts Declaration of Rights "to obtain right and justice freely, and without being obliged to purchase it," …. **The object of this provision is to guarantee the availability of equal justice**, "that all litigants similarly situated may appeal to the courts both for relief and for defense under like conditions

[39] Best, Ryan and Mejía, Elena, *The Lasting Legacy Of Redlining; We looked at 138 formerly redlined cities and found most were still segregated — just like they were designed to be.* Housing Divide, Feb. 9, 2022

[40] Also: Edwards, Petitioner, 464 Mass. 454, 461 (2013)

> and with like protection and without discrimination." *Old Colony R. R. v. Assessors of Boston*, 309 Mass. 439, 450, 35 N.E.2d 246, 253 **(1941)**, quoting from *Arizona Commercial Mining Co. v. Iron Cap Copper Co.*, 236 Mass. 185, 194, 128 N.E. 4 (1920). *Universal Adjustment Corp. v. Midland Bank Ltd.*, 281 Mass. 303, 320, 184 N.E. 152 **(1933)**. In the context of this case there is **no substantial difference between the claimed right under art. 11 and the corresponding rights under the equal protection clause of the Fourteenth Amendment** to the United States Constitution." [bolded added]

The ICCL is the legislative "plain, adequate, and complete remedy" to ensure equal access to Massachusetts courts. This Court has held the *ICCL* to be the "exclusive remedy" when it was amended to include Appeal Bonds in 1980. "See *Commonwealth v. Lockley*, 381 Mass. 156, 159 (1980) (§ 27D **provides exclusive procedure** for appealing from denial of request for waiver, substitution, or payment of fees and costs)" *Commonwealth v. De'Amicis*, 450 Mass. 271, 278 (2007) [bold added]

Lockley, p.59, itself points to the completeness of the procedure in its detailed nature: "Section 27D of c. 261, as appearing in St. 1978, … provides **a detailed** and professedly exclusive procedure". [Bold added.]

ICCL's appeal bond inclusion and this Court's final interpretation of that amendment occurred after provisions to appeal bonds unique to Landlord-Tenant cases were added to the landlord-tenant appeal statute, MGL

Ch. 239 §5, in 1975; MGL Ch. 239 §6 was enacted in 1879 only for post-foreclosure cases[41] and remains a distinct appeal bond procedure in non-landlord-tenant lawsuits[42].

Further, this Court has explicitly held that provisions for landlord-tenant appeals have always been distinguished from all other appeal provisions.[43] See *Hampshire Village Associates v. District Court of Hampshire*, 381 Mass. 148, 154 (1980):

> "The plaintiff landlord sees unconstitutional discrimination in requiring landlords to give the treble bond on appeal from small claims judgments in the security deposit cases, **while making no such demand on appellants in other types of small claims cases outside the landlord-tenant field.** But, beyond the connection, already mentioned, between the authorized recovery and the bond on appeal, **justification can be found in the proposition that**

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[41] Ch. 237 of 1879: "Section 1. When a mortgage of real estate is foreclosed by a sale under a power contained therein, or other- wise, and the person having a valid title to such estate is kept out of possession by any person without right, he may recover such possession in the manner provided in chapter one hundred and thirty-seven of the General Statutes for the recovery of lands unlawfully held by tenants; but the condition of the recognizance required in case of appeal or removal on the part of the defendant shall be, to enter the action, and to pay to the plaintiff a reason- able sum as rent of the premises, from the day the mortgage is foreclosed until such possession is obtained, together with all costs, if the final judgment is for the plaintiff.

[42] See foreclosure appeal procedures (§6) exempted from tenant appeal procedures (§5): MGL Ch. 239 §5(c): "(c) Except as provided in section 6"; and §5(e): "The court shall require any person for whom the bond or security provided for in subsection (c) has been waived…

[43] See wording of statute since Summary Process was first enacted in 1825 and statutory history provided by AMICUS XXX, pp. XXX

> **"(t)here are unique factual and legal characteristics of the landlord-tenant relationship that justify special statutory treatment inapplicable to other litigants."** Lindsey v. Normet, supra, 405 U.S. at 72, 92 S.Ct. at 873."

D. In the context of this Court's commitment to "ensure" the "same" "justice" to Blacks, this Court recognized that "economic … inequalities aris[e] from race"[44]; therefore, are the equal protections provided by the Indigent Court Cost Law also foundational to equal justice as to Alton King and those similarly situated?

In the context of our courts' commitment to "ensure" the "same" "justice", this Court recognized that "economic … inequalities aris[e] from race"[45] and so the equal protections provided by the ICCL also further implicate equal justice as to King and those similarly situated as to protected classes.

> "…as economist Andrew Brimmer explained:
> [t]o a considerable extent [lack of wealth] can be traced to a long history of deprivation in this country. This means that blacks have had much less opportunity than whites to earn, save or inherit wealth. …
> a major example of this historical deprivation is discrimination in the credit markets which acted to limit African Americans access to homeownership and increased the cost of achieving home ownership." *The Shadow of Credit: The Historical Origins of Racial*

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[44] Letter from the Seven Justices of the Supreme Judicial Court, June 17, 2022, ¶¶3 & 4

[45] "As judges, we must look afresh at what we are doing, or failing to do, to root out any conscious and unconscious bias in our courtrooms; to ensure that the justice provided to African-Americans is the same that is provided to white Americans; to create in our courtrooms, our corner of the world, a place where all are truly equal. As lawyers, we must also look…to diminish the economic and environmental inequalities arising from race…." Letter from the Seven Justices of the Supreme Judicial Court, June 17, 2020, ¶¶3 & 4

Predatory Lending and its Impact Upon African American Wealth Accumulation, see below.

Given that "doomed to foreclose" mortgage packages are just the most recent expression of 160 years of predatory lending to African Americans; and that they are serving their traditional wealth stripping function, leaving King and those similarly situated in the expected position of having had their wealth stripped, a denial of the protection of the courts through denial of the necessitated protection through the ICCL, would destine King and those similarly situated to another generation of failure to enforce against violations of equal protection in housing.

E. What is the White Male Citizen standard of enjoyment (especially as in the mind of the Framers of the Massachusetts Equal Rights Act in 1989), which is to be provided to all Massachusetts inhabitants equally?

For the standard of review to assess equal treatment, then, as to contracts (in this case contracts with institutions that lend mortgages) and real property statute provides the answer. 42 U.S.C. §§ 1981&1982, "Equal rights under the law" provides the standard: "as is enjoyed by white citizens." MERA provided that standard additionally to action in Massachusetts courts. See "short history", above, (internal p.18):

> "the "white male citizens" language in Subsection (a). This particular language was employed for two purposes: to emphasize the historical origins of Section 1981, and, by implication, ensure that the parentage of the Equal Rights Law is not forgotten;

and **to identify a standard against which the deprivations of discrimination victims can be measured. Its use was deliberate, intended not to offend but to remind.**" [bold added]

What, then, have White citizens received – and been in a position to expect to receive – in relation to mortgage contracts? How these contracts are to be enforced includes "the right" to "be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of …property". For 350 years, conveyancing has been controlled by the strictures of the statute of frauds[46] and its elements upheld again in the Ibanez decision because without them

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[46] These same requirements appear already established in England a 1000 years ago the source of MA property law; See Barrell, H. F. *An Outline of Anglo-Saxon Law* at 67 - 68. School of Political Science, Colombia College (1885): "An outline of a written conveyance, as used by the Anglo-Saxons, … generally extremely simple in their construction. (f) 1. The conveyor's name and title was briefly stated, … 2. Then followed a recital of the conveyor's title and sometimes a short homily on the brevity and uncertainty of life,…. 3. The conveying words were usually simple terms of no fixed form of expression. 4. The name of the conveyee, sometimes with a personal description, as son of so and so. 5. The consideration was always expressed, generally of a purely religious character, but examples of all kinds of considerations are to be found. 6. Then followed a detailed description of the premises, or of the right or privilege granted by the conveyance generally, naming landmarks, etc. 7. A description of the tenure, if for life or lives, or in perpetuity. 8. The services from which the land was freed, and those remaining upon it were enumerated. 9. Solemn exhortation on all not to disturb the terms of the grant,…. 10. Finally the date of signature of conveyor and witnesses. The date was

fraud is well known to run rampant.

For at least 80 years, the White experience was that the male head of household went to the local lender, signed a mortgage and note (by the 1890s, these were negotiable notes covered by the set of rules that eventually became codified as the Uniform Commercial Code).[47] The local lender was someone that the family knew. The mortgage commitment, which went from 5 to 15 and then became standardly 30 years, was going to be held by both parties with both parties having skin in the game. The local lender needed the mortgage to succeed to get their money back. Since their entire economic market was local and, if a significant number of their mortgages failed, it meant that they had dirtied their own nest.

The relationship was personal enough so that lenders often made choices, for instance, about when to declare a borrower in default, based on knowing the individual household's financial situation, etc. *This was the long settled experience in the minds of the Framers in 1989 when MERA was enacted.*

The opportunity to buy and own land is recognized

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sometimes placed at the beginning. All legal papers of the Anglo-Saxons were simply signed, as the wax seal was unknown, it coming in use with the Norman conquest."

[47] *Murphy v. Barnard*, 162 Mass. 72 (1894)

as the cornerstone of wealth-building and entry into the middle-class. (Cf. Brimmer above.) It is also long associated with the ability and actual equal participation in civic life. Until 2006, expansion of property ownership had been an ever-increasing trend in the US.[48]

But ownership of one's home – especially as a means of securing and accruing wealth and entry into the middle class has required a mortgage – as generally understood (based on the long experience of the White male borrower – presumed to be the norm for all) as the paying of money over time to build equity.

What characteristics has a mortgage contract had to have that White male-headed families have been able to meaningfully "purchase" a home, "hold" onto that home while "convey[ing their legal title] to real…. property" to the lender/mortgagee? Given that Massachusetts is a title theory state?

Because of widespread segregation in Massachusetts, the rights enjoyed by White Male Citizens ("WMC") as to mortgaging would also have included avoiding the impact of less proficient sanitation, lowered standards for repair and other unequal denial of service provision to homeowners of color and for entire neighborhoods with

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[48] Even De Tocqueville commented on its uniquely democratizing influence on every aspect of US life.

higher percentages of homeowners and tenants of color. They would have benefitted from avoiding the unrealistic and overpricing of mortgages, which, for decades, have been targeted at homeowners of color and heavily correlated as the best predictor of foreclosures and also undermining those homeowners' ability to repair the property. Thus, the 1989 WMC enjoyed having realistic property values that provided realistic mortgages, not based in purposefully inflated "comps" overvaluing the average property of the average WMC homeowner-mortgagor and "dooming" their loans to foreclose as well. Well documented spill-over effects of the concomitant, many times higher likelihood of neighbors being foreclosed, WMC avoided losses in value as nearby property-owners.

History of Research: Loan Characteristics Most Necessary to Incur Default

Providing White, primarily male borrowers loans that were not doomed to foreclose, Fannie, Freddie and the national banks commissioned extensive research on what predicts the likelihood of default and foreclosure.

The overpricing of a mortgage in relationship to the actual real value of the property is historically and repeatedly documented as the single most important criterion for the likelihood of a mortgage being unaffordable and ending in default and foreclosure.

Based upon real market value, loan-to-value ("LtV") is the most critical (or one of them) to the successful satisfaction of the mortgage and note and retained right of redemption by the white [male] citizen.

This has been affirmed by its centrality in this largest foreclosure crisis in U.S. history, and not only in the anecdotal data. In this period, the greatest predictor of the likelihood of foreclosure in this period is the mortgage origination year in the rise and crash of the historic inflationary housing bubble; the years at the apex created pretense for the most overpriced mortgages and continue to be the cohort of mortgage loans by far the most foreclosed.

The seminal literature review on default and/or foreclosure causes is titled "Residential Mortgage Default"[49] (Quercia and Stegman funded by Fannie Mae) in 1992. Surveying research back to the 1960s, it showed that even then the "risk of default increases with a higher loan to value ratio (Young, 1962)".

LtV ratios were either the single most important factor or one of the most important factors in likelihood of default. Von Furstenberg (1969, 1970a, 1970b)

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[49] R. Quercia, M. Stegman (1992). "Residential Mortgage Default: A Review of the Literature, "*Journal of Housing Research* 3 (2): 341-379.

found that home equity at origination was most important predictor of default risk; when LtV ratios were raised from 90% to 97%, new home defaults increased seven-fold.

"Price Waterhouse's study of contingency claims" found that "there was a pronounced increase in claims when loan to value ratio was above 90%, and even a further escalation when it exceeded 95%." See also Fannie Mae and Freddie Mac research supplied in the FHFA v Nomura case: the judge found that when a LtV ratio increased from 80% to approaching 100%, the likelihood of foreclosure was 4 to 5 times higher[50].

"Herzog and Earley (1970) found the presence of secondary or junior financing the most important factor in explaining mortgage default and delinquency. Consistent with prior work, the authors found loan to value ratio and loan purpose to have significant effect on default and delinquency." That study actually managed to capture the presence of a secondary loan; where an additional loan was given at the same time, it increased the loan (package) to value ratio and captured that increase as the greatest predictor of default.

The practice during the height of the subprime lending was to provide loans as a package of two loans,

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[50] *Federal Housing Finance Agency v. Nomura Holding America, No.1:2011cv06201 Document 1287 (S.D.N.Y. 2015)*

one at 80% and one at 20% of the over-inflated value of the home. Thus, lenders avoided detection of the true cost of the loan package under such oversight statutes as the Home Mortgage Disclosure Act ("HMDA"). Further, in the securitization industry, the 80% first mortgage loans were valued as AAA rated investments and the 20% second mortgage loans were rated far below that.

Based on the 20% loss in the values in the Great Depression, rating agencies assumed that the first 80% mortgage was not over the value of the home and would not be even if price values were to drop as historic economic models would predict. However, in the 2008 housing market crash, the overinflated values crashed more than 20%, including in Massachusetts. In King's case (and so many like his) the loan package at origination was far over the home's value and would forever be beyond his reach to refinance, sell, or be approved for a modification.

Protections 'enjoyed by white, male, citizens' as to constitutional Homeownership rights; statutory recognition of special targeting of traditional property rights for fraud

Even "White Citizens" (especially those with economic status) have long experienced potential fraud in the transfer of interests in land. The Anglo-Saxon requirements for land transfer have been extensive for

centuries; codification of those exactitudes to fend off fraud have been repeated and unyielding. Ownership of land rendered the owner a 'freeman', allowed participation in government and numerous other critical rights.

Equal enforcement to that enjoyed by WMCs is also needed for King and those similarly situated against the long recognized high incidence of fraud as to property.

Massachusetts mortgage law incorporates and derives from the Common Law of England (hence being a title theory state)[51]. IAs early as 1640, the necessity of transparent land records to deter fraud was enacted.[52] Parliament enacted a controlling Statute of Frauds while Massachusetts was a colony in 1677. In 1692 Colonial

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[51] "In Massachusetts, the common law doctrine of mortgages prevails. A mortgage is a conveyance of an estate by way of a pledge or security for the payment of a debt or the performance of an obligation to become void upon payment of the debt or performance of the obligation. The conveyance passes the legal title to the mortgagee, subject to being defeated on a condition subsequent" the Abstract Club Amicus brief, Faneuil Investors Group, Ltd. Partnership v. Selectmen of Dennis, 458 Mass. 1, 6 (2010)

[52] "For avoiding all fraudulent conveyances, and that every man may know what estate or interest other men may have in any houses, lands, or other hereditaments they are to deal in, it is therefore ordered, that after the end of this month no mortgage, bargain, sale, or grant hereafter to be made of any houses, lands, rents, or other hereditaments, shall be of force against any other person except the grantor and his heirs, unless the same be shall be recorded . . ." 1 Mass. Colonial Records 306 (1640), (spelling modernized), quoted in Nexon, Philip J., The Beginnings of Property Law in Massachusetts, 2010 ed. at Sec. 1.4.1.

laws included it.[53] A sub-element of the Statute of Frauds codified separately (now at MGL Ch. 203 §1) prohibits Plaintiff as such a claimant Trust from acquiring an interest in Land without an executed founding document as is the case here.

The primacy of the right to have one's [real] property protected is one unalienable right embedded in Massachusetts Constitution Article I[54]. The purpose of a mortgage to prioritize and preserve the right of redemption was reflected even once the private power of sale was allowed to be written into mortgages[55].

The likelihood of fraud and the complexity of mortgage transactions made it the primary area of law for Massachusetts courts to be given equity powers.[56]

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[53] Ch. 15 of the Acts of 1692: AN ACT FOR PREVENTION OF FRAUDS AND PERJURIES. The specific subsection as to Trusts having to have an executed founding document by its "creat[ors]" to own an interest in "Land" – which the public record demonstrates Plaintiff here lacks, was also enacted that year and remains unaltered for 330 years at MGL Chapter 203 §1. Chapter 203 §2 which was enacted over 200 years ago, requires recordation of that executed document in the applicable Registry of Deeds for any interest in Land to be recordable – also, lacking in the public records in this case.

[54] In fact, property is the most expansively defined of the inalienable rights: acquiring, possessing, and protecting.

[55] As cited in *Eaton*, see "The Law of Mortgages, of Real and Personal Property" by Hilliard. 1 F. Hilliard, Mortgages (2d ed. 1856)

[56] See Statutes: 1815 c. 137, 1798 c. 77, 1785 c. 22 and in 1735, 1698 in Johnson, Phyllis. *No Adequate Remedy at*

Equity serves the function of preserving the rights of those less privileged against those wealthier and more powerful[57] and needed to expose fraud and malfeasance.[58]

The centrality of the unalienable nature of property, especially the right of redemption, has, thus, required legal attention to the likely contradictory interests in a mortgage, that of the mortgagor to the property itself, and that of the mortgagee to simply its monetary investment. The likely "mischief" this arrangement engendered once the legal force of the private power of sale was conceded by this Court has been proscribed by numerous laws[59] and then regulations.

The allowance of a private power of sale into the mortgage contract challenged the likelihood of the success of entire legal structure as to mortgages sufficiently that the 1800's courts expressed grave concern. It took years before the early U.S. courts came to not consistently overturn the power of sale clauses

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Law: Equity in Massachusetts 1692-1877. Student Legal History Papers, Yale Law, p. 6 & Note 22 (2008)

[57] "to bring relief home to the doors of the oppressed and the injured." *Report of the Committee Appointed by the House of Representative of the Commonwealth of Massachusetts to Take into Consideration the Judiciary System*, p.2 (1808)

[58] "Their peculiar province is to supply the defects of law in cases of *frauds*,…" 1808 report, p.2, above

[59] Such laws were first enacted in the years immediately after the legal allowance of the private power of sale in mortgages Ch. 233 §§66-72 of the Acts of 1851.

in private contracts (in the 1840s). Massachusetts Constitution Article XV promises jury trial in property controversies; herewith, a court proceeding was not even any longer guaranteed. At that time, specific judicial commitment was made to "jealously watch" the mortgagor's right of redemption given private power of sale.

In response, the 1851 legislature passed an entire legal schema to provide a number of avenues to protect mortgagors faced with a potential foreclosure.[60] These laws provide specific judicial tools by requiring several steps of a potential foreclosing entity so that courts could *effectively* jealously watch the right of redemption given that private power of sale.[61]

In accord with the better known history of the 'rights enjoyed by white male citizens', this Court's own *Abate* decision presumed that mortgagor-mortgagee relationships are symbiotic and not adverse until a mortgage contract is foreclosed rather than satisfied.

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[60] The foreclosure-by-sale statutes were long settled even in 1936, Ames Family School Ass'n v. Baker, 273 Mass. 119, 122 (1930): "Mortgages with a power of sale have been repeatedly recognized and regulated by our statutes as shown by G. L. c. 183, §§ 21, …; Ch. 244, §§ 11 to 17, inclusive."

[61] See "[A]s a manifest infringement upon the privilege, so carefully guarded, of redeeming estates that a power of sale may be exercised by the mortgagee, where it is *free from doubt.[1](b)* It will be jealously watched, and declared void for the slightest unfairness or excess" 1 F. Hilliard, above.

This legal stance[62] reflects the presumed commitment from both sides to a legal relationship over the life of the typical White male citizen's loan, where the shared purpose of successful completion of the payment contract is expressed in the mutuality of the state laws.

In stark contrast, legislators legislating to protect against both redlining *and reverse redlining* based primarily in the Black experience in 1981, wrote into Massachusetts laws that a mortgage (or modification) provided against the interests of the borrower individually or based on geography was "adverse" from the attempted origination and mandatorily disallowed under our laws. (See below MGL Ch.. 183 §64)

F. What has been the history of, the source for repetitive practices of predatory lending (and related housing segregation), especially as to African American men in the United States?

The history for people of color and women of all races comes with a markedly different history of mortgaging and no history of a presumption of the right to own a home, nor of the rights historically that came with being "landed" in Anglo-Saxon law (right to vote, participate in government, etc.). In respect to predatory loans, our courts have displayed no consistent enforcement of the "sacred" jury right in property

[62] See *Abate vs. Fremont Investment* 470 Mass. 821 (2015)

controversies (Art. XV) nor their powers to protect against the illegal-taking of these land titles. In the case of fraud or illegal taking of land titles of people of color (and women heads of household) the history is exactly what seminal cases of equal protection have tried to identify and call upon all courts to wake up to. (See *Shelley* and protection actions below.)

In contrast, the African-American experience[63] started by having to first reverse being held as property yourself and getting full personhood recognition under the Constitution. While Massachusetts Colony was the first to enact a law making slavery legal, it was also the first state to end legal slavery.

The 14th Amendment to the U.S. Constitution not only promised equal protection (like the laws that followed), it highlighted the necessity of equal protection of ownership and separately equal possession of one's home.

> "It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential pre-condition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee." *Shelley v. Kraemer*, 334 U.S. 1, 10 (1948).

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[63] Women had this struggle also but women of any race do not factor into the mortgage discrimination history until they could obtain mortgages on their own credit in 1980s.

Charles Nier III provides a unique and extensive review tracing the history of adverse credit lending to Africa Americas back to emancipation.[64] As he points out at the commencement of the article [bold added]:

> **"Home ownership is without question the single most important means of accumulating assets' and thus increasing wealth.''**[65]
>
> "As demonstrated by numerous scholars, such **a durable homeownership gap between African Americans and whites,** in large measure, is **attributable to the nation's history of racial discrimination in the housing markets** as exemplified by such practices as discriminatory zoning ordinances, racial steering, blockbusting, racially restrictive covenants, and physical violence. …
>
> since the Emancipation, …" (Nier III, 133) "**one of the primary explanations for the large racial disparities in terms of wealth is a direct consequence of discrimination in credit markets which acted to limit African American access to home ownership and increase the cost of achieving home ownership.**" (Nier III, 134)

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[64] Charles Nier III, *The Shadow of Credit: The Historical Origins of Racial Predatory Lending and Its Impact upon African American Wealth Accumulation,* U. Pa. Rev. L & Social Change 131, 193 (2008) ("Nier III")

[65] *Nier III,* 133: See generally, Dalton Conley, *Being Black, Living in the Red: Race, Wealth, and Social Policy in America* (1999) at 55-132 (providing a detailed analysis of the impact of wealth accumulation upon a number of socioeconomic issues).

An abbreviated review of Nier's detailed and meticulously documented history is instructive [bold added]:

> "While the post-bellum period witnessed a gradual increase in the number of national, state-chartered, and private banks, such banks were unable to meet the credit needs of the predominantly small-scale agricultural economy of the South, particularly millions of ex-slaves without any assets. … **Hence the roots of predatory lending are embedded in the soil of the economic and financial institutions that emerged in the post-bellum era.**" (Nier III, 152)
>
> "As the South struggled to rebuild from the ashes of the Civil War, the merchant rapidly became "the most important economic power in the Southern countryside."[66] "The merchant was able to utilize his control over credit in a predatory manner through several avenues. First, the merchant maintained a two-tiered pricing system with one price for goods purchased with cash and a second price for goods purchased with credit."[67] "(the price differential ranged from a minimum of 33.6 percent to maximum of 89.6 percent).[68]"
>
> "Ransom and Sutch demonstrated that the total interest rates charged by merchants in Georgia

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[66] *Nier III,* 152: Harold D. Woodman, *King Cotton & his Retainers: Financing and Marketing the Cotton Crop of the South*, 1800-1925 296 (1968)

[67] *Nier III*, 154: Thomas D. *Clark, The Furnishing and Supply System in Southern Agriculture Since 1865, 12 J.S. Hist.* 28 (1946)

[68] *Nier III,* 154: Jacqueline Bull, *The General Merchant in the Economic History of the New South*, 18 J.S. Hist. 37, 49 (1952) (Citation Omitted)

between 1881 and 1889 ranged from a low of 44.2 percent to a high of 74.6 percent,[69] …In contrast, the short-term interest rates in New York City … ranged from four to six percent, and never above eight percent.[70]"

"**Since creditors were nearly all white, subjective determinations of creditworthiness were undoubtedly tainted with racism.**" (Nier III, 155) "See Georgian R.P. Brooks, who stated, '**The mass of the race are wholly unfit for independence. . . .** [Planters] know that **skill. industry, knowledge, and frugality** are essential to successful farming, and they know that **negroes in general lack these qualities.**'"[71] "**In fact, many whites were convinced that African Americans could only be made to work if they remained in debt.**"[72]

"As Ransom and Sutch explained: '**Racism in the capital markets meant that black farmers had less capital, smaller farms, and fewer acres of untilled land than whites.** This meant that the typical black farmer was **more dependent upon purchased supplies** than his white counterpart and was thereby **more susceptible to exploitation by the merchant's credit monopoly.**[73]'"

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[69] *Nier III*, 155: Roger L. Ransom & Richard Sutch, *One Kind of Freedom: The Economic Consequences of Emancipation* (1977),_129
[70] *Nier III*, 155: Ransom & Sutch,, 129
[71] *Nier III*, 155: Gavin Wright, *Old South, New South: Revolutions In The Southern Economy Since The Civil War*, 100-101 (1986).
[72] *Nier III*, 155: Hortense Powdermaker, *After Freedom: Deep South 88 (1939)*
[73] *Nier III*, 159: Ransom & Sutch at 185

According to the 1890 census, twenty-nine percent of homes in the United States had a mortgage with an average debt of $1,139.[74] "Most persons utilized one of three outlets to finance the purchase: a private individual with money to lend, a savings bank, or a building and loan association.[75]" "One study of twenty-two cities during the time period from 1911 to 1929 concluded that the average down payment ranged from one half to two-thirds of the total purchase price.[76]"

"By 1893, there were nearly six thousand building and loan associations throughout the United States holding five hundred million dollars in mortgages.[77]"

"loans provided by building and loan associations …provided for fully amortized repayment; in other words, at the conclusion of the loan term, the borrower … owned the home free and clear of any debt." (Nier III, 173)

"[A]ccording to the [US] census, the overall rate of homeownership in the [US] was 46.5 percent. …white homeownership rate in 1900 was 49.2 percent … the African American rate of 22.1 percent for an overall gap of 27.1 percent.[78]"

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[74] *Nier III*, 172: Lendol Calder, *Financing the American Dream: A Cultural History of Consumer Credit, 68* (1999)
[75] *Nier III* 172-173: Lendol Calder, *Financing the American Dream: A Cultural History of Consumer Credit,* 68 (1999)
[76] *Nier III* 172-173: George Masnick, "*Homeownership Trends and Racial Inequality in the United States in the 20th Century*" 3 (Feb. 2001),
[77] *Nier III* 173: Calder at 67
[78] *Nier III* 174: Thomas Maloney, *African Americans in the Twentieth Century* tbl.1,

"From 1910 to 1920, 300,000 African Americans migrated North; from 1920 to 1930, 1.3 million; from 1930 to 1940, 1.5 million; and from 1940 to 1950, 2.5 million.[79]"

"A 1913 study of a group of thirty-five African Americans migrants in Harlem concluded that of the twenty-one born on farms, only three had parents who had achieved landownership.[80] "

"by 1933, one half of all home mortgages in the United States were technically in default with foreclosures reaching the rate of over 1,000 per day.[81]" "1933, President Franklin Roosevelt…: 'This policy is that the broad interests of the Nation require that special safeguards should be thrown around home ownership as a guaranty of social and economic stability, and that to protect home owners from inequitable enforced liquidation, … is a proper concern of the Government.'"[82]

"In 1933, the Home Owners' Loan Corporation ("HOLC") under the governance of the Federal Home Loan Bank Board ("FHLBB") was established.[83]"

"homeowners were eligible to refinance their

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http://eh.net/encyclopedia/article/maloney.african.american

[79] *Nier III*, 169: Lerone Bennett, Jr., *Before the Mayflower: A History of Black America* (5th ed. 1982) at 169

[80] *Nier III*, 169-170: Gilbert Osofsky, *Harlem: The Making of a Ghetto, (2d ed. 1996), 29.*

[81] *Nier III* 175: Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United 193 (1985)* (citing Stephan Thernstrom , *Poverty and Progress: Social Mobility in a Nineteenth Century City, 117 (1964)*

[82] *Nier III* 175: Amy Hillier, *Who Received Loans? Home Owners' Loan Corporation Lending and Discrimination in Philadelphia in the 1930s,* at 5. J. Plan. Hist. 1, 4 (Feb. 2003).

[83] *Nier III* 175: Hillier at 5

mortgages with new fifteen-year, fully amortized mortgages at interest rates of five percent.[84]" "… with roughly forty percent of all qualified mortgage properties seeking assistance.[85]"

"In the process of rating neighborhoods, the HOLC incorporated the "notions of ethnic and racial worth".[86] "…socioeconomic characteristics of a neighborhood were much more important in determining the value of a dwelling than structural characteristics[87] … None of the socioeconomic criteria were more important than race, … Frederick Babcock explained:

> 'such declines can be partially avoided by segregation and this device has always been in

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[84] *Nier III*, 176: Hillier *at 5*. "The HOLC loans were restricted to mortgages in default…"; C. Lowell Harriss, *History and Policies of the Home Owners' Loan Corporation* (1951) *at 1*. "An HOLC loan could not exceed eighty percent of the HOLC appraisal…."

[85] *Nier III*, 176: Harriss at 1.

[86] *Nier III*, 177: Jackson, at 199 (noting that the HOLC applied these notions "on all unprecedented scale"). "A widely reproduced list ranked ethnic groups in order of most desirable to those which had the most adverse effect on property values. Homer Hoyt, *One Hundred Years of Land Values in Chicago*: *The Relationship of the Growth of Chicago to the Rise in its Land Values*, 1 830-1933 314-16 (1933). The list was later reproduced in *McMichael's Appraising Manual*, the "bible" of appraising. "The list ranks the ethnic groups as follows: (1) English, Germans, Scotch, Irish, Scandinavians (2) North Italians (3) Bohemians or Czechs (4) Poles (5) Lithuanians (6) Greeks (7) Russians, Jews (lower class) (8) South Italians (9) Negroes (10) Mexicans." Stanley McMichael, *Stanley McMichaels's Appraising Manual: A Real Estate Appraising Handbook for Use in Field Work and Advanced Study Courses*, 160 (4th ed. 1951)

[87] *Nier III*, 178: Jackson at 198.

common usage in the South where white and negro populations have been separated.[88]'"

"In particular, when the HOLC obtained a property through foreclosure, … sales policy was to 'respect segregation and encourage it.'"[89]

"…the FHLBB encouraged private financial institutions to prepare maps and provided directions[90]" "Consequently, private banks adopted the HOLC's racially discriminatory policies, thereby institutionalizing and disseminating the practice of racial redlining. The greatest effect of the HOLC rating system was … on the underwriting practices of the Federal Housing Administration… and the Veterans Administration (VA)."[91]

"…the [Federal Housing Administration] program guaranteed over ninety percent of the value of collateral for loans made by private banks which decreased the size of the down payment to ten percent. …extended the repayment period to twenty-five or thirty years, … low monthly payments; … the loan be fully amortized …the national rate of mortgage foreclosure fell from 250,000 non-farm units in 1932 to 18,000 in 1951."[92] "From its

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[88] *Nier III*, 178: Calvin Bradford, *Financing Home Ownership. The Federal Role in Neighborhood Decline*, 14 URB. AF. Q. 313, 321 (1979) (citing Frederick Babcock, *The Valuation of Real Estate*, 91 (1932))

[89] *Nier III*, 179-180: Hillier at 19 (citing Charles Abrams, *Forbidden Neighbors: A Study of Prejudice in Housing* 237 (Ralph Adams Brown ed., Kennikat Press 1971) (1955)

[90] *Nier III*, 180: Hillier at 404.

[91] *Nier III*, 180: Jackson at 203

[92] *Nier III*, 181: Jackson at 204-205. In 1933, there were 93,000 housing starts. … Following the establishment of the FHA, housing starts and sales dramatically increased

inception [Federal Housing Administration] set itself up as the protector of the all-white neighborhood. It sent agents into the field to keep Negroes and other minorities…from buying houses in white neighborhoods."[93] "…a prerequisite to any loan guarantee in order to ensure that the value of the property would exceed the outstanding mortgage debt."[94]

"…appraisers were warned of the dangers of infiltration of 'inharmonious racial groups or nationality groups.'"[95] "To prevent such infiltration, the *Underwriting Manual* recommended 'subdivision regulations and suitable restrictive covenants'"[96] "The [Federal Housing Administration] did not officially change this policy until …, two years after racial covenants were declared unenforceable and contrary to public policy by the United States Supreme Court."[97]

"As Kenneth Jackson summarized:

> 'Washington actions were later picked up by private citizens, so that banks and savings-and-loan institutions institutionalized the

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as follows: 1937- 332,000; 1938- 399,000; 1939- 458,000; 1940 - 530,000; 1941 - 619,000".

[93] *Nier III*, 181*:* Abrams at 229

[94] *Nier III*, 182: Jackson at 207.

[95] *Nier III*, 182-183: S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass,* 54 (1993).

[96] *Nier III*, 183: *Jackson at 208. "Such covenants, which were legal provisions written into property deeds, were a common method of prohibiting black occupancy.... By the 1940's, it was estimated that 80% of the residential land in Chicago was subject to restrictive covenants." U.S. President's Comm. On Civil Rights, to Secure These Rights, 68 (1947)]*

[97] *Nier III*, 183: Jackson *at 208. See, Shelley v. Kraemer, 334 U.S. 1 (1948)*

practice of denying mortgages 'solely because of the geographical location of the property.'"[98]

"With African Americans unable to obtain the same type of financing available to whites from traditional financial institutions, they were forced to rely on less favorable, often predatory, forms …the installment or land contract …not gain title to the property until the last installment payment was made. …prevent the buyer from gaining any equity in the property over the course of the agreement term. … the seller could take back the property without foreclosure proceedings, and the buyer would lose not only the property but all payments previously made on the contract."[99]

"Third, usury laws and mortgage interest rate ceilings did not apply …a seller could charge any interest rate that the buyer was willing to pay. Fourth, the buyer could be kept ignorant of the actual value of the property since appraisals were not necessary .... In Chicago…the study found …the African American consumer's price paid in the contract ranged anywhere from thirty-five percent to one hundred fifteen percent, with an average of seventy-three percent, greater than the original price paid by the investor…. One real estate speculator … made more than 150 percent on his original investment in less than a year by evicting anyone who missed a payment… [M]ost sellers were able to recoup their entire cash equity in the

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[98] *Nier III*, 184: Jackson *at 217*.
[99] *Nier III*, 185: Bradford at 318-19.

property within two years with the remaining payments sheer profit".[100]

"Court ruling in Jones v. [Alfred H.] Mayer [Co., 392 U.S. 409 (1968)], the [Clark] court explained that Section 1982 was a broad tool designed to eliminate discrimination in the "ownership of property" and to ensure "that a dollar in the hands of a black man will purchase the same thing as a dollar in the hands of a white man.[101] …that the **defendants insisted that its African American buyers finance the home purchases through land installment contracts despite the fact that they may have been able to qualify for traditional mortgages**…. such a practice allowed the defendants to **mask the fair market value of the property in relation to the sales price.**[102] …None of the contracts specified the term over which payments were to be made. The average contract term was 28 years; some terms ranged upwards to 40 or more years.[103]"

"The [Clark] court also recognized that such predatory practices **forced African Americans to devote more of their incomes to housing** to the detriment of other basic necessities, including: education, medical care, food, clothing, home

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[100] *Nier III*, 187: Arnold Hirsch, *Making the Ghetto: Race and Housing in Chicago, 1940-1960*, 32 (1998)
[101] *Nier III*, 188: *Clark v. Universal Builders Inc.*, 501 F.2d 330, 334-36 (7th Cir. 1974). See *Jones v. Mayer Co.*, 392 U.S. 409 (1968) (holding that Section 1982 prohibited racial discrimination in the sale or rental of property not only to public actors but also to private actors)
[102] *Nier III*, 189-190: *Clark, 501 F.2d at 336 n.14.*
[103] *Nier III*, 189-190: *Clark, 501 F.2d at 336 n.12.*

improvements and recreation.[104] In turn, the impact of the duel housing market was to **relegate "blacks to a continuing position of social inequality and inferiority while those who exploit the dual housing market enjoy the benefits of enormous wealth exacted from black citizens**[105]… At the end of the Great Depression, twenty-three percent of dwellings occupied by African Americans were owner occupied whereas forty-six percent of such dwellings were owner occupied by whites."[106]

"By 1960, the white rate had increased dramatically to sixty-four percent fueled in large measure by the FHA and VA.…the black rate increased to thirty-eight percent" [107] "…the racial homeownership gap actually increased to twenty-six percent." (Nier III, 191)

"By 1998, the number of subprime refinancing loans had dramatically increased to fifty-one percent of the total loans in African American neighborhoods compared to only nine percent in white neighborhoods[108] … in 2005, fifty-two percent of the

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[104] *Nier III*, 190: *Clark, 501 F.2d. at 331 n.5.*
[105] *Nier III*, 190-191: *Clark, 501 F.2d at 331 n.5.*
[106] *Nier III*, 191: *Clark, 501 F.2d at 342.*
[107] *Nier III*, 191: Lizabeth Cohen, *A Consumer's Republic: The Politics of Mass Consumption in Postwar America*, 222 (2003).
[108] *Nier III*, 192: U.S. Dep't of the Treasury and the U.S. Dep't of Housing and Urban Dev.., *Curbing Predatory Home Mortgage Lending, 3 (2000).* "The U.S. Department of Housing and Urban Development adopted the census tract classifications utilized in the Woodstock Institute report, *Two Steps Back: The Dual Mortgage Market, Predatory Lending, and the Undoing of Community Development (Nov. 1999).* In particular, a white neighborhood consisted of census tracts where the minority population is less than fifteen percent and an

total mortgage loans to African Americans were subprime loans, in contrast to nineteen percent for whites."[109]

This Court then is left with this legacy in violation of both state and U.S. Constitutions' most profound commitments to property, contract and protection of those rights through right to access to the courts and all the due process commitments contained in the latter. As Nier closes:

"Indeed, as economist Andrew Brimmer explained:

> '[t]o a considerable extent [lack of wealth] can be traced to a long history of deprivation in this country. This means that blacks have had much less opportunity than whites to earn, save or inherit wealth. Because of this historical legacy, black families have had few opportunities to accumulate wealth and to pass it on to their descendants."[110]

"As this article has argued, a major example of this historical deprivation is discrimination in the credit markets which acted to limit African Americans access to homeownership and increased the

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African American neighborhood consisted of census tracts where African Americans constitute at least seventy-five percent of the population. Further, the racial composition of the neighborhoods is based on 1990 census data."

[109] *Nier III*, 192: *Ellen Schloemer et al., Losing Ground: Foreclosures in the Subprime Market and their Cost to Homeowners, 23 (Dec. 2006), http://www.responsiblelending.org/pdfs/ forclosure-paper-report-2-17.pdf.*

[110] *Nier III*, 193: Conley *at 13 (citing Andrew Brimmer, Income, Wealth, and Investment Behavior in the Black Community, in A.E.A. Papers and Proceedings 78,* 151-55 *(1988)).] (P.193)*

cost of achieving home ownership" (Nier III, 193)

Before African-Americans and their allies won the legislative outlawing of redlining, the overwhelming experience of those who ever were able to get a mortgage was what has become dubbed reverse redlining; what mortgages African-Americans could obtain were disproportionally higher percentage of the real value than that of White Male Citizens and were positioned to be foreclosed. Where the White right to redeem was held as sacred, the right to redeem by African-Americans was, at best, precarious. Stated another way, lending to those of European descent was expected to fall under the full panoply of the protections of the Constitution and our laws; the borrowing by African-Americans was not.

Not only is the enduring nature of the gap between White and Black home ownership remarkable and instructive, so too is the consistent impact of the mutually reinforcing nature of adverse lending and wealth extraction and the intergenerational denial of accumulation of wealth and of the stability and other socioeconomic impacts of home ownership. Equally, striking is the consistency of the elements of such adverse lending practices and the repetitive racial mischaracterization of African Americans, based on the

systemic denial of equal credit and the predictable systemic economic ceiling these practices installed.

While Nier documents the history of structural denial of land and imposition of vastly more adverse credit lending, the first school of economics and associated network of statistical economists to try to formalize a science of mortgage lending interlaced their eugenicist assumptions onto this historic reality. Creating statistically based economic structures for home ownership and mortgage lending took a few decades. That eugenicist hierarchy thus codified the racially discriminatory lending practices already pervasive in the areas with large numbers of African Americans and enforced a hierarchical scheme among U.S. borrowers infiltrated into government, professional associations and private practices from the late 19-teens forward. Such discriminatory practices also spread, for the same reasons, along the eugenicist hierarchy of presumptions as to different ethnic groups, immigrants and Native Americans as the homeowner and mortgaging structures grew and became systematized.[111]

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[111] Cited at P.2 Ladale C. Winling, Todd M. Michney "The roots of redlining: Academic, Governmental, and Professional Networks in the making of the New Deal Lending Regime" ; See especially Ta-Nehisi Coates, "The Case for Reparations," Atlantic, 313 (June 2014) ("*Roots*

Richard T. Ely, as a master networker and institution builder, was pivotal for decades in this development.[112] While focusing a new generation of mortgage lending on statistical analysis, his presumption caused by the history recited above, was that somehow this real property ownership situation was a character flaw of Blacks; in his eugenicist hierarchy of human race and ethnicity he characterized the economic character of "negroes" as:

> "their shiftlessness, their ignorance, **their dependence upon credit advances in the farming districts**, and their alarming concentration in a few occupations, some of which particularly as they practice them are neither educational, uplifting,

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of Redlining"); Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America (New York, 2017); "Undesign the Redline," n.d., Designing the WE, http://www.designingthewe.com/undesign-the-redline; "Redlining Richmond," n.d., Digital Scholarship Lab, https://dsl.richmond.edu/holc/; "Mapping Decline: St. Louis and the American City," n.d., http://mappingdecline.lib.uiowa.edu/; Jack Dougherty et al., "On the Line: How Schooling, Housing, and Civil Rights Shaped Hartford and Its Suburbs" (book-in-progress, 2020), https://ontheline.trincoll.edu/; and "Mapping Inequality: Redlining in New Deal America," n.d., Digital Scholarship Lab, http://dsl.richmond.edu/panorama/redlining/. Kenneth T. Jackson, "Race, Ethnicity, and Real Estate Appraisal: The Home Owners Loan Corporation and the Federal Housing Administration," Journal of Urban History, 6 (Aug. 1980), 419–52. On activists and their academic allies, see Rebecca K. Marchiel, After Redlining: The Urban Reinvestment Movement in the Era of Financial Deregulation (Chicago, 2020). Kenneth T. Jackson, Crabgrass Frontier: The Suburbanization of the United States (New York, 1985), 190–218.

[112] Cited at pp.2-3 *Roots of Redlining*

> nor developmental…. This condition of affairs is due in some degree to the economic inertia and shiftlessness of the negroes themselves, but it is also due in part to the race prejudice of their white brethren, which, unfortunately, shows no abatement with the passage of time." *Outlines of Economics*,[113] p.62
>
> "…if the lower strata are somewhat deficient in economic qualities. The negroes of our South furnish an illustration. In some cases, ownership of land by negroes leads to idleness, and in other places to, wasteful culture."
>
> "Kindly and wise direction of the lower strata by those whose economic, intellectual, and social development has reached a higher plane is something that cannot be dispensed with if this world is to be a decent place to live in," Ely opined. "For negroes and any other similar group, we should always keep open a broad way to success and encourage landownership just as fast as individual fitness for landownership is shown."[114]

Ely hooked up with and built collegial relationships with the other key influencers of his time who shared the entirety of his ideology,[115] such as Spurgeon Bell and Henry Hoagland of Ohio State University's Bureau of Business Research.[116] They, in turn, mentored H.

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[113] Richard T. Ely, *Outlines of Economics* (New York, 1908), 61–62. In his hierarchy among US residents, he also stated of the more recent waves of immigrants: "South European immigrants: "it is charged that the new immigrants are more illiterate, more given to crime, of poorer physique, and possessed of less property than the earlier immigrants." p.63

[114] Richard T. Ely and Charles J. Galpin, "Tenancy in an Ideal System of Landownership," *American Economic Review*, 9 (March 1919), 182, 183.

[115] "Much as we may deplore race discrimination it is an inescapable fact that a few colored families moving into a good residence neighborhood will immediately cut land values in half." Richard Ely et al., *Urban Land Economics* (Ann Arbor, 1922), 2, 113, 118.

[116] Cited at p.9, *Roots of Redlining*

Morton Bodfish whom Ely recruited to his core institution, the Institute for Research in Land Economics, first at Wisconsin State and then in 1925 at Northwestern. 1929 Bodfish became executive vice-president of the U.S. Building and Loan League ("USBLL") which grew into the National Association of Small Lenders.

At the same time that university economics departments and their associated institutions developed the real estate and mortgage lending field, their students and proteges populated the key new local and then national networks of real estate professionals (National Associate of Real Estate Boards ("NAREB")[117], founded in 1908), and appraiser associations (American Institute of Real Estate Appraisers ("AIREA"), 1932, and the Society of Residential Appraisers ("SRA"), 1935.)

Ely's proteges included the first director of Education and Research at NAREB.[118] Co-author with Ely of

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[117] In 1924, the NAREB's code of ethics included the requirement for all who became members to commit to Article 34, "A realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood."
"A model real estate licensing act, adopted by 32 states, authorized state real estate commissions to revoke licenses of agents who violated the NAREB code of ethics (Plotkin, 2001)" *How Academia Laid the Groundwork for Redlining* | History News Network, p.2

[118] Cited at p.8 *Roots of Redlining*

what became the dominant real estate text book in the U.S. (which, again, included differentiating races and nationalities as to treatment in the real estate industry). Along with the development of professional associations whose membership requirements explicitly required discrimination on the basis of race and nationality, Ely and his network and his similarly biased colleagues had taught such luminaries as the future President, Woodrow Wilson and Hoover.[119]

When, for instance, in 1917 the U.S. Supreme Court outlawed use of government policies, such as zoning, private means were sought to enforce segregation and discrimination in housing. When *Corrigan v. Buckley,* 271 U. S. 323 (1926), allowed restrictive deed covenants as to race, Ely's protegees jumped[120] and, as NAREB leaders, drafted a model racial covenant in 1927, in conjunction with the U.S. Department of Commerce (see sidebar on page 10). It included the language: "The restriction that no part of said premises shall in any manner be used or occupied directly or indirectly by any Negro or Negroes… the restriction that no part of said premises shall be sold, given, conveyed or leased to any Negro or Negroes…." Restrictions based on the NAREB model were

[119] Cited at p.3-4 *Roots of Redlining*
[120] Cited at p.14 *Roots of Redlining*

inserted into deeds across the country. NAREB also encouraged local real estate boards to partner with homeowner associations to spread the model covenant.[121]

When the world markets crashed and the Great Depression commenced and the federal government began to step into the areas of home ownership and mortgage lending, Ely, his colleagues, and especially, his proteges (and also some of the proteges of his slightly less influential colleagues) populated the 1931 President Hoover sponsored National Conference on Home Building and Home Ownership, the lead up meetings to that conference and the national lobbying efforts for congressional acts.[122] For instance, the 1932 Federal Home Loan Bank Act, which created a national set of Reserve Branches that provided Thrifts the depository funds to maintain liquidity for residential home financing; the 1933 Home Owners Loan Act, which appropriated $2 billion to bail out lenders; the 1934 National Housing Act, which founded the Federal Housing Administration; as well as the Veteran's Administration.[123]

Ely and his colleagues, themselves and/or their

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[121] Roithmayr, Daria. Reproducing Racism: How Everyday Choices Lock In White Advantage. New York: New York University Press, 2014.
[122] Cited at p.19 *Roots of Redlining*
[123] Cited at p.21 *Roots of Redlining*

proteges staffed the top positions of the federal institutions established by those acts, including the Federal Housing Administration, the Federal Home Loan Bank Board and its subsidiary, the Home Owners Loan Corporation. This last drew on and incorporated the extensive networks of the above professional associations and the USBLL to create the famous City Surveys by HOLC. These are the color-coded investment risk maps informed through designated local real estate and appraiser networks, all already informed by the "professional systematizing" of their fields and inculcated with racially discriminatory ideology.

These famous maps, of course, that had designated the neighborhoods of major communities across the US by "desirability" are the source of the famous term "red lining" of neighborhoods that were disproportionately Black areas in almost the entirety of HLOCs nationwide.[124]

Interestingly, even where the local realtors, appraisers, and local Thrift experts insisted that Black neighborhoods were some of the best, most reliable borrower communities for mortgages, HLOC's unbending racist presumptions overrode all but two or three communities nationally; only these avoided such

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[124] Cited at pp.26, 34-35 *Roots of Redlining*

neighborhoods being identified as the least desirable lending neighborhoods colored red.[125]

This history makes stark the complete devotion to racially hierarchical presumptions in home ownership and lending, even where local evidence and local leadership insisted the opposite was true.[126]

While not allowed under public policy to be shared with private lenders, the maps, themselves, had been built by private lender networks and their realtor and appraiser professionals, the federal agencies found ways to allow the information in the mapping process to leak and for private lending institutions to be able to essentially recreate the maps in their entirety for their local metropolitan communities.[127]

As Ely and his cohort moved beyond the age of being the central influencers, the entire U.S. field of real estate appraisal and mortgage lending and the private professional networks that supported it were well established. As the then head of AIREA summarized the presumptions in appraisal and real estate, government,

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[125] Cited at p.28-29, *Roots of Redlining*
[126] *Roots of Redlining,* Note 52: "For similar discrepancies, see Amy E. Hillier, "Residential Security Maps and Neighborhood Appraisals: The Home Owners' Loan Corporation and the Case of Philadelphia," *Social Science History*, 29 (Summer 2005), 216–21; and Howell, *Making the Mission*, 157–66."
[127] Cited at p.30-31, *Roots of Redlining*

and private lending at a conference at which almost all of this cast of characters attended in 1937:

> "We find out as we observe phenomena of real estate value that the encroachment of color on districts affects value of property," Atkinson told the audience. "Sometimes it makes a lot of difference as to whether a community is predominantly Scotch, Polish, Swede, Greek, German, Negro, Jewish, English, or mixed."[128]

While the above scholars focused on the history of discriminatory lending practices, their intersection with the presumptions and enforcement of segregation is clear. Jeannine Bell's 2008 study[129] shows that the violence elements that also enforced segregation were part and parcel of the presumptions held by most White power holders and decision-makers. As Bell reports:

> "Extralegal violence long has played a significant role in restricting the housing choices of racial and ethnic minorities in the United States….resistance to minority integration in the period prior to the FHA was fought on two fronts—on the legal front[130] (Bell)., 538)… On the extralegal

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[128] Cited at p.34-35, *Roots of Redlining*

[129] Bell, Jeannine, The Fair Housing Act and Extralegal Terror (July 23, 2008). Indiana Law Review, Vol. 41, No. 3, 2008, Indiana Legal Studies Research Paper No. 114, Available at SSRN: https://ssrn.com/abstract=1171542

[130] *Bell* N.7 "See, e.g., Buchanan v. Warley, 245 U.S. 60, 70-71 (1917) (challenging an ordinance prohibiting Blacks from occupying particular blocks if the greater number of houses in the block were occupied by whites); *Tyler v. Harmon*, 104 So. 200, 200-01 (La. 1925), aff'd, 107 So. 704 (La. 1926),rev'd, 273 U.S. 668 (1927) (involving an ordinance that required written consent from majority of

front, whites engaged in a campaign of pressure focused on the individual minorities moving in…., white residents faced the integration of African Americans, which began in earnest in the 1920s, "as if defending against a foreign enemy, using any means at their disposal to deter the migration."[131] Scholars estimated the number of housing related crimes—such as bombings, arson, cross-burnings, and vandalism, "undoubtedly number[ed] in the thousands."[132] As blacks moved out of Chicago's BlackBelt between 1917 and 1921, there were fifty-eight housing-related fire bombings.[133]"

"The passage of the Fair Housing Act [FHA] in 1968 was the culmination of a massive coordinated legal strategy stretching back to the early 1900s orchestrated by the NAACP to eradicate restrictions on housing for African Americans." "the FHA… outlawed discrimination on the basis of race, national origin, color, and religion in the sale, rental, and occupancy of housing.[134]" "These include rulings which prohibited districts from restricting

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majority race inhabitants before member of minority race could establish a home)."

[131] *Bell,_* 539: Stephen Grant Meyer, As Long As They Don't Move Next Door: Segregation And Racial Conflict In American Neighborhoods 6 (2000).

[132] *Bell,_* 539: Leonard S. Rubinowitz & Imani Perry, *Crimes Without Punishment: White Neighbors' Resistance to Black Entry*, 92 J. Crim. L. & Criminology 335, 345 (2002) (reviewing Meyer, *supra*) (documenting individual acts of move-in violence between 1910 and 1959).

[133] *Bell,_* 540: Kevin Boyle, Arc of Justice 34-43 (2004)

[134] *Bell,_* 538: Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (codified as amended at 42 U.S.C. §§ 3601-3619).

the number of Blacks living in a particular area;[135] rulings which struck down ordinances requiring written consent before minorities could move to an area;[136] and rulings which held unenforceable restrictive covenants mandating that property not be sold to individuals of particular races.[137]"

"Southern Poverty Law Center ("SPL"), focusing on the period between 1985 and 1986, identified move-in-violence — violence directed at minority families moving to white neighborhoods — as the most common form of violent racism in the country.[138] The incidents documented in the report involved cross burnings, arson, fire bombings, the yelling of slurs, vandalism, and threatening calls and letters, all focused on driving minorities out of all white or predominantly white neighborhoods." (Bell,_ 543) "One study of all hate crimes identified by the Boston police over a three-year period in the 1980s identified "[m]oving into a neighborhood" as the third most likely cause of hate crime.[139]"

"After the passage of the Fair Housing Act in 1968, many of the mechanisms that had been used to maintain housing segregation became legally prohibited. …(Bell, 544) "Another important break

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[135] *Bell*,_ 541: *Buchanan v. Warley*, 245 U.S. 60, 82 (1917).
[136] *Bell*, 541: *Harmon v. Tyler*, 273 U.S. 668 (1927) (per curiam).
[137] *Bell*, 541: *Shelley v. Kraemer*, 334 U.S. 1, 20 (1948).
[138] *Bell*,_ 543: Klan Watch Project, S. Poverty Law Ctr., *"Move-In" Violence: White Resistance To Neighborhood Integration In The 1980's*, at 13 (1987).
[139] *Bell*, 544: Jack Levin & Jack Mcdevitt, *Hate Crimes: The Rising Tide of Bigotry and Bloodshed* 246 (1993).

with the past is that in the post-1968 period, though mobs could and occasionally did gather to protest minority entry to all white or nearly all white residential areas, most of the resistance to integration was individual and nearly invisible—crimes committed in the middle of the night with no witnesses.[140]"

In the FHA, "The chapter focused particularly on violence is the 62 "Prevention of Intimidation" subchapter, which contains § 3631… one of 64 several remedies targeted at crimes like those described in the previous section…:

> "Whoever, whether or not acting color a law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with— (a) any person because of his race, color, religion, . . . or national origin and because he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling."

"The maximum penalty is life imprisonment…. Including obtaining damages or injunctions for violations of § 3617" which "prohibits interference, intimidation, or coercion in the exercise of one's federal housing rights."" (Bell, 545) "Section 3631 of the FHA has been used to punish racially-motivated fire bombings and arsons" (Bell,_ 546, n.73: cases in 2007, 1986, 1977, 2006,

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[140] *Bell*,_ 545: See, e.g., Laura J. Lederer, *The Case of the Cross Burning: An Interview with Russ and Laura Jones*, in *The Price We Pay: The Case Against Racist Speech, Hate, And Pornography* 27-29 (Laura Lederer & Richard Delgado eds., 1995) (describing cross burning directed at Black family who moved to white neighbor occurring in the middle of the night without witnesses).

1983), "cross burnings" (Bell, 546, n.74: cases in 2004, 2003, 2001, 2000, 1995, 1994, 1994, 1993), "assaults" (Bell,_ 547, n.75: cases in 2005, 1992, 1986, 1980), "and threats" (Bell, 547, n.76: 2001, 2005).

"Remedies protecting housing rights are a crucial part of civil rights law. In fact, housing related violence is the most common form of racial violence prosecuted by the Justice Department"[141]

(Bell,_ n.91) "Segregation among African Americans, the most segregated racial group in the country, has declined but still remains high, with residential segregation among African Americans in many major cities identified as severe."[142]

Where the eugenicist rooted policy-makers inculcated racism in government policy and through private organizing means (such as discriminatory restrictive deed covenants), the organized and unorganized social elements focused on keeping those African Americans with enough financial resources from moving into higher

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[141] *Bell*, 548, *Hate Crimes Law* 191 (Thomson/West Editorial Staff eds., 2007)

[142] *Bell*, 549: Michael Selmi, Race in the City: The Triumph of Diversity and the Loss of Integration, 22 J.L. & POL'Y 49, 58 (2006) (asserting that as of the 2000 Census segregation levels for Blacks and Hispanics measured against whites were consistently moderate to severe in America's ten largest cities); see also john a. powell, Reflections on the Past, Looking to the Future: The Fair Housing Act at 40, 41 IND.L.REV. 605, 609-09 (2008); Margery Austin Turner, Limits on Housing and Neighborhood Choice: Discrimination and Segregation in U.S. Housing Markets, 41 IND. L. REV. 797, 799-800 (2008).

income (overwhelmingly exclusively white) neighborhoods.

Together, these have been the means of keeping such African Americans "in their place," stripping them of their financial resources through discriminatory lending and discouraging homeownership both through denial of services and standard government amenities and by outright threat. This has included enough cross burning, physical harm, and even deaths to make what might be seen by a naïve White person as a simple racist comment to a new neighbor as inspiring of fears of murder.

Bell's article ends with a knowing admonishment:

> "The Ohio judge's decision did not demonstrate adequate appreciation for the context and the effect of move-in violence. Though many incidents of move-in violence are physically violent, frequently acts of neighborhood terrorism begin with incidents of harassment that have a low offense level but are terrifying, nevertheless—vandalism or the use of slurs and epithets." (Bell, 551)

G. Are the present predatory lending practices an extension of and even repeats of the history of racially discriminatory, predatory lending?

As summarized in Changing Patterns[143], study in 2013 recapping the history, James Campen states:

> "In the early 1990s, mortgages, themselves, were a relatively standard product, which potential home

[143] J. Campen (2013). "Changing Patterns XXI: Mortgage Lending to Traditionally Underserved Borrowers & Neighborhoods in Boston, Greater Boston and Massachusetts," A report prepared for Massachusetts Community & Banking Council.

buyers either got or didn't get. With the growth of subprime lending, however, a very different concern became increasingly important, the proliferation of higher cost mortgage loans to the same borrowers and in the same neighborhoods that had traditionally been underserved. In short, concern shifted to include not only *fair access to credit*, but also *access to fair credit*. Expressed differently, the problem of *redlining* became overshadowed by concern with *reverse redlining*, whereby areas that previously had difficulty getting any mortgage loans at all became specifically targeted for higher cost mortgage loans."

As found in Goldstein's 2004 study[144] which uniquely captured the transition in lending in Philadelphia's low and moderate income predominantly people of color neighborhoods:

"…This absence of mainstream mortgage money left a void filled by … consumer discount and finance companies that make loans in small amounts … but with very high interest rates.

…With changes in the legal environment and the concomitant evolution of the lending industry, the consumer discount and finance companies were largely replaced by the bigger subprime lenders that were willing to make loans in the areas of more modest means. But, those loans were in amounts far in excess of what people needed…or wanted. People were talked into paying off items that simply made no financial sense.

…the market penetration of the subprime mortgage products … occurs not only because of a contemporary lack of prime credit but because of the legacy

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[144] I. Goldstein (2014). *Bringing Subprime Mortgages to Market and the Effects on Lower-Income Borrowers*. Cambridge, MA: Joint Center for Housing Studies of Harvard University.

of constrained access to credit for minority and lower income populations. Subprime lenders tend to actively target their borrowers and aggressively sell credit. …subprime loans make up a vastly disproportionate share of all foreclosures…. …these subprime loans are more frequently made in amounts that likely exceeding a reasonable estimate of the home value.

Bankers and those who sell credit information report that some brokers will seek out people with a history of borrowing from finance companies — which is more frequent among lower income individuals — and solicit them for subprime debt consolidation/refinance loans….

Borrowers with subprime loans are also more likely than borrowers with prime loans to have loan provisions that penalize refinancing, to end up in foreclosure and to be brought to foreclosure faster."

As the Social Structure of Mortgage Discrimination by Steil, Albright, Rugh, and Massey in 2018[145] stated:

> "In this context, predominantly black and Latino communities shifted from being… exclusion to targets for financial exploitation by intermediaries seeking to expand the pool of loans available for securitization" (Squires, 2005).

"Of home purchase loans made in 2006, roughly one out of every two loans made to African-Americans (50%) and

[145] J. Steil, L. Albright, J. Rugh, S. Massey (2018). "The Social Structure of Mortgage Discrimination," Published in final edited form as: Hous Stud. 2018 ; 33(5): 759–776. doi:10.1080/02673037.2017.1390076

Latino (46%) borrowers were high cost, compared to fewer than one out of five loans made to white borrowers (18%) (Been, Ellen, and Madar 2019). Similarly, for refinance loans in 2006, 52% of black refinance borrowers and 39% of Latino refinance borrowers received high cost loans compared to only 26% of white borrowers (Been, Ellen, and Madar 2009). "

"And to the extent that lower-income individuals deal with institutions that deliver product through wholesale channels (i.e., brokers), as those brokers report typically dealing with as few as 3-5 lenders, the lower-income individual is not seeing the benefit of the totality of the market." Goldstein. "The systemic channeling of otherwise qualified minority borrowers into subprime mortgages carrying high costs and risks was one form of reverse redlining (Squires 2005).[146]"

A typical example of the loss over a 30-year investment of a high APR loan versus a low APR loan showed an increased cost to the borrower of over $9,000 in 30 years. However, anecdotal research in markets in Massachusetts where property values could easily have been overinflated by 50% or more demonstrates that in

[146] See also from Goldstein (2004): Carr and Kolluri (2001) report survey results that indicate anywhere from 35% and 50% of individuals with subprime loans could have qualified for prime loans

the giving of a predatory loan package, the differential over the life of a loan could be $100,000 or into the hundreds of thousands of dollars.

The Massachusetts Commissioner of Banks referenced the regulatory definition, a prohibited and illegal practice, that is, predatory as:

> *"Engage in a pattern of practice of extending such credit to a consumer based on the Consumer's collateral if, considering the consumer's current and expected income, current obligations, and employment status, the consumer will be unable to make the scheduled payments to repay the obligation."*

Focusing on making money with high upfront costs and then further through taking the collateral based upon its value was exactly the purpose and function of lending on which the finance companies lent in predominantly people of color neighborhoods and to people of color, themselves. Finance companies' models, their strategies and lending purpose was then picked up by predatory lenders. See Goldstein above.

As to the subprime lending boom, "From 1996 to 2006, the size of the subprime mortgage market grew from 97 billion to 640 billion. At the peak of the subprime market in 2006, 27% of all loan originations were subprime, including 49% and 39% of loans made to

African-Americans and Latinos, respectively[147]." Lost Ground, 2011 Center for Responsible Lending Study.

The definition of subprime in that study wrongly excludes Alt-A mortgages. Therefore, the percentage of the subprime market was actually higher and reached sufficient saturation to drive all of the lending standards down to rates about which the bank regulators were sending out warning signals. By 2004, the FBI was reporting more referrals of bank fraud than they had seen during the Savings and Loan crisis[148].

The purposive targeting for predatory loans to the first generation of people of color and women after legal removal of barriers to homeownership – has more than reversed any wealth gains that, historically, US homeownership has facilitated.[149] After success with discriminatorily targeted populations, the entire market became driven by subprime lending built on the illegal practices of the finance companies, the entire market for lending shifted to ignoring loan to value ratios and

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[147] D. Bocian, W. Li, C. Reid, R. Quercia (2011). *Lost Ground 2011: Disparities in Mortgage Lending and Foreclosures.* Chapel Hill, NC: Center for Community Capital, University of North Carolina. Center for Responsible Lending. (Page 8)

[148] Josh Meyer, "FBI expects number of big financial bailout fraud cases to rise," The Los Angeles Times, 11 Feb. 2009.

[149] See Citi study above.

setting people up for mortgages "doomed to foreclose".

The peak of the housing bubble in Massachusetts was 6th highest in the country[150]. Foreclosures continued at historic rates and after to COVID-generated pause are on track to return to those levels.

The entire Massachusetts schema of alienation of land, mortgage laws and regulations, and legal precedent have built up in the service of recognizing the centrality of protecting title to real property, especially someone's home and farm,[151] of mortgage lending to build equity for the full life of the loan and ensuring the sacred right to redeem. To use mortgage lending for the opposite purpose, necessarily included violating law, regulation and legal precedent throughout the complex structure of Massachusetts mortgage law.

H. Since the 13th and 14th Amendments, Congress tried (as have a number of state governments like Massachusetts) to end the "last vestiges of slavery" – recognized as discrimination in housing and homeownership. How has that evolved? And how has enforcement against disparate predatory lending failed

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[150] Once the market crashed, Corelogics statistics for the 1st quarter of 2012 placed Massachusetts as the 4th hardest hit state for homeowners who owe more on their homes than the property is worth.

[151] "Where, as here, mortgage loans are pooled together in a trust and converted into mortgage-backed securities, the underlying promissory notes serve as financial instruments generating a potential income stream for investors, but the mortgages securing these notes are still legal title to someone's home or farm and must be treated as such." *c*, 458 Mass. 637, 646 (2011)

to ensure that promise of civil rights and equal protection? And is the King experience part of that continuing yet unsuccessful struggle?

Government attempts to end the well documented 160 years of what is now called redlining and predatory lending, of denying "equal enjoyment as to that of White Male Citizens" have, as predicted, fallen far short given lack of the foreseen need of 'aggressive enforcement.'[152] King, 63 at origination of this loan, African American and one of the tiny percentage of people of color in his community was many-fold the purpose of such attempts.

- See below 1916 Mass. SJC first decision enforcing "White Citizen standard.
- In 1948 *Shelley v. Kraemer,* 334 U.S. 1, was decided recognizing the key role and obligations of courts as state actors, bold added:

> "Nor is the Amendment ineffective **simply because the particular pattern of discrimination, which the State has enforced, was defined initially by the terms of a private agreement.**" [at 20.]
>
> "…these are cases in which the States have made available to such individuals **the full coercive power of government to deny** to petitioners, on the grounds of race or color, **the enjoyment of property rights** in premises …. **The difference between judicial enforcement and nonenforcement** … is the difference to petitioners between being denied rights of property available to other members of the community and being accorded full enjoyment of those rights on an equal footing." *[at* 19.
>
> **"We have noted that freedom from discrimination by the States in the enjoyment of property rights was**

[152] Harshbarger Report/1997 Letter below

among the basic objectives sought to be effectuated by the framers of the Fourteenth Amendment. That such discrimination has occurred in these cases is clear. **Because of the race or color of these petitioners** they have **been denied rights of ownership or occupancy enjoyed as a matter of course by other citizens of different race or color….Nor may the discriminations imposed by the state courts in these cases be justified** as proper exertions of state police power. Cf. *Buchanan v. Warley*, supra." [at 20–21]. [Internal citations omitted; Emphasis added.]

"The action of state courts in ….depriving parties of other substantive rights **without providing** adequate notice and **opportunity to defend**, has, of course, long been regarded as **a denial of the due process of law guaranteed by the Fourteenth Amendment.**" [at 16].

"in *Virginia v. Rives,* 100 U. S. 313, 100 U. S. 318 (1880), this Court stated:
"It is doubtless true that a State may act through different agencies, either by its legislative, its executive, or its judicial authorities, and the prohibitions of the amendment extend to all action of the State denying equal protection of the laws, whether it be action by one of these agencies or by another." [at 14]:
"In *Twining v. New Jersey,* 211 U. S. 78, 211 U. S. 90-91 (1908), the Court said: "The judicial act of the highest court of the State, in authoritatively construing and enforcing its laws, is the act of the State."" [at 15].

"The Constitution **confers upon no individual the right to demand action by the State which results in the denial of equal protection of the laws to other individuals**… *Cf. Marsh v. Alabama,* 326 U. S. 501 (1946)." [at 22].

(Only justified under traditional tenant-landlord law), the demand here for "rent" payments (to cover upkeep and taxes which are usually ownership obligations) when a homeowner-defendant files for appeal has

functioned exactly as such a demand when Massachusetts courts have not enforced the constitutionally guaranteed remedy to remove a barrier to as an effective an appeal as someone who can afford it. MGL Ch. 261 §27C(3).

Given the clear history provided here and this Court's own acknowledgement of economic inequality caused by a history of racism, the denial of the remedy to ensure such "as effective" appeal is implicated here.

- In 1968, "The Fair Housing Act, 42 U.S.C. 3601 et seq., [was passed to] prohibit[] discrimination …by banks or other lending institutions… whose discriminatory practices make housing unavailable to persons because of: race or color, religion, sex, national origin, familial status, or disability….where there is evidence of a pattern or practice of discrimination or where a denial of rights to a group of persons raises an issue of general public importance. Where force or threat of force is used to deny or interfere with fair housing rights."

- In 1968, Jones v. Alfred H. Mayer Co., 392 U.S. 409 was handed down: "The constitutional question in this case, therefore, comes to this: does the authority of Congress to enforce the Thirteenth Amendment "by appropriate legislation" include the power to eliminate all racial barriers to the acquisition of real and personal property? We think the answer to that question is plainly yes. [at 439]… the badges and incidents of slavery -- its "burdens and disabilities" -- **included restraints upon "those fundamental rights which are the essence of civil freedom, namely, the same right . . . to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens.**" Civil Rights Cases, 109 U. S. 3, 109 U. S. 22. [at 441]… when racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery. [at 442-3]… the Thirteenth Amendment… would be left with "a mere paper guarantee" …**if Congress were powerless to assure**

that a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man. At the very least, the freedom that Congress is empowered to secure under the Thirteenth Amendment **includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live.** If Congress cannot say that being a free man means at least this much, then the Thirteenth Amendment made a promise the Nation cannot keep. [at 443]"

- The 1974 Amendment Article CVI to Massachusetts Constitution, replaced Article 1:
  - Making explicit that the rights to property (including separately "acquiring, possessing and protecting") are to be equal rights: "Equality under the law shall not be denied or abridged because of sex, **race, color**, creed or national origin." [bolded King's "protected classes"]
  - the Commonwealth was not only the first to explicitly change its language from "All men are created…" to "All persons are created equal." It explicitly reaffirmed that first holding of this Court in 1783 that discrimination as to property on the basis of race was unconstitutional.

- In 1974, decision in *Clark v. Universal Builders Inc.*, 501 F.2d 330, 334-36 (7th Cir.) See above.
- In 1974, Equal Credit Opportunity Act passed
- In 1975, Home Mortgage Disclosure Act was passed to "monitor the geographic targets of mortgage lenders, … to identify predatory or discriminatory lending practices…..…support government … by … a means for analyzing the allocation of resources."

When two loans are provided as a package as I King's case, HMDA reporting does not capture the simultaneity and therefore, like this Court, misses the predatory and discriminatory impact and enforcement implication.

- 1981, after the decades of struggle in the Civil Rights Movement, the state Legislature passed the anti-redlining and anti-reverse-redlining statute, MGL Ch. 183 §64.[153] This was purposefully placed by the Legislature in the alienation of land chapter.
- 12/10/1981 The CXIV Amendment to the Massachusetts Constitution requiring equality for those with disabilities.[154]
- 08/03/1989 the Massachusetts Equal Rights Act[155] was signed into law less than 8 months after filing; it was voted and enacted verbatim.[156]

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[153] This is a mandate "shall" statute: "**No mortgagee shall discriminate**, on a basis that is arbitrary or unsupported by a reasonable analysis of the lending risks associated with a residential mortgage transaction, **in the granting**, withholding, extending, **modifying** or renewing, or **in the fixing of the rates, terms, conditions or provisions** of any residential mortgage loan … on residential real property located in the commonwealth of four or fewer separate households occupied or to be occupied in whole or in part by the applicant…, **on the basis such property is located in a specific neighborhood** or geographical area; …. **Nor shall** any mortgagee use lending or underwriting standards, policies, systems or practices, that discriminate in practice or that discriminate in effect, **on a basis that is** arbitrary or **unsupported by a reasonable analysis of the lending risks** associated with a residential mortgage transaction." [bold added]

[154] See *Adjartey*: "Article 114 of the Amendments to the Massachusetts Constitution provides that "[n]o otherwise qualified handicapped [Note 24] individual shall, solely by reason of his [or her] handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the commonwealth.""

[155] See *Adjartey*: "Relatedly, the Massachusetts Equal Rights Act (MERA) provides that "[a]ny person within the commonwealth, regardless of handicap . . . shall, with reasonable accommodation, have the same rights as other persons to . . . sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings

- It intentionally included a focus on the prohibited redlining practices of: "brokers, rentals, sales, mortgages, redlining"
- "No statute of limitations was included in the law." A lender and its successors should not be able to evade, as they have thus far in King's case, legal enforcement of his rights – even after a purported foreclosure sale.
- MGL Ch. 93 §102&103 only require "an "effects test"
- MERA actions "were neither dependent on exhaustion of administrative remedies nor limited by the remedial scheme of other state (e.g., MGL c. 151B) or federal laws (e.g., Title VII of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968)"
- The language as to "white male citizens" was intentionally incorporated "to identify a standard against which the deprivations of discrimination victims can be measured"

- 1992, then Massachusetts Attorney General Scott Harshbarger – after extensive fact-fining, interviews and research, promulgated "unprecedented and creative regulations to curb future abuses"[157] at 940 CMR 8[158] of

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for the security of persons and property, including, but not limited to, the rights secured under [art. 114] of the Amendments to the Constitution." G. L. c. 93, § 103 (a)."

[156] See addended, The 1989 Massachusetts 'Equal Rights Law': A Short History" by Stephen P. Johnson for this and following fact basis.

[157] P.2 coverletter, *A Special Report on the Attorney General's Response to the Home Improvement and Mortgage Scams in Massachusetts: Enforcement, Legislation, and Regulation* (1992) (*"Special Report"*)

the mortgage lending practices then being regularly practiced by brokers originators and lenders on borrowers of color and seniors,[159] (the Alton Kings of that time.) The practices were specified and prohibited. Further, the Massachusetts courts and government in general were forewarned that "aggressive vigilance"[160] would be necessary or these practices will continue:

"The irresponsible lenders who preyed on these vulnerable consumers were interested primarily in the equity that these homeowners had built up in their homes, rather than whether consumers could repay the loans with their monthly income. …Those hardest hit … were the elderly, those already in financial distress, those unsophisticated in financial transactions, communities of color and others, who while income poor or on fixed incomes, had built up significant equity in their homes."

- "The[161] 1994 Home Ownership and Equity Protection Act ("HOEPA") amended the Truth in Lending Act[2] ("TILA") with regard to … homeownership lending…to address … negative amortization, balloon payments, disclosures, and reverse redlining." "Federal Reserve Bank of Boston released findings that racial discrimination

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[158] Harshbarger also worked with the Massachusetts Legislature and got corresponding enforcement power enacted at MGL Ch. 255E.

[159] p.1 coverletter, *Special Report*: "Investigations by my office showed that vulnerable homeowners -- many of them elderly, minority and inner city residents -- were targeted by certain brokers, lenders…to take swift action on a variety of fronts to end this insidious form of urban economic violence, in this case blatant victimization of vulnerable homeowners."

[160] p.14, *Special Report*

[161] This section from: Karstens, Kate, (2020) "A Primer on the 1994 Home Ownership and Equity Protection Act", https://predatorylending.duke.edu/policy/legislative-memos/a-primer-on-the-1994-home-ownership-and-equity-protection-act/

had become widespread in mortgage lending, especially that provided by non-bank lenders.[162]" "… to include borrowers who could have normally qualified for prime loans, but because of their residential location or racial or socioeconomic demographic, financial institutions only offered them loans with high interest rates and extra fees.… extensive evidence that consumers frequently did not understand loan terms and provisions, and faced pressure from sales personnel to sign quickly.[12]

"…lenders had to consider the customer's ability to pay, including "current and expected income, current obligations, and employment." "The emergence of a robust secondary mortgage market had allowed financial institutions to make a loan, siphon off fees, and then sell that loan to another financial enterprise. Original creditors no longer bore any risk, incentivizing them to solicit customers and extend mortgages, even if they were not financially viable. " …lenders make these disclosures at least three business days ahead of finalizing the mortgage and terms" "The prohibition of negative amortization specifically addressed a primary goal of facilitating the accumulation of home equity among these groups."

If the above requirement had been in force, the King *negative amortization* loan package (and the failure to disclose it) could never have existed, but, as the Financial Crisis Inquiry Commission, *The Financial*

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[162] Carr, J.H. and Megbolugbe, I.F. (1993), "The Federal Reserve Bank of Boston Study on Mortgage Lending Revisited," Journal of Housing Research 4(2), pp. 277-313.

Crisis Inquiry Report, 78 found: "Creditors continued to side-step HOEPA's provisions through "forged signatures, falsification of incomes and appraisals, illegitimate fees, and bait-and-switch tactics," "with many minority and elderly individuals remaining unaware of the illegality of these practices."

- 1997, in its Industry Letter, the MA Division of Banks warned the originating industry it would be "aggressively prosecuted" for: "Predatory lending is a prohibited illegal act and practice and will not be tolerated by the Division." And specifically pointed to the anti-redlining act, MGL Ch. 183 §64 and the regulatory chapter promulgated to address it, the above 940 CMR 8.00.[163] See applicability below. The Division of Banks warned that use of agents in the context of the new subprime lending model with roles of originators, brokers, the DOB-regulated entities were still legal responsibility.
- 2004 Passage of Predatory Home Lending Practices Act, MGL Ch. 183C; §4 required reliance on affordable loans not the value of the collateral; §17 specified the coverage of and prohibition of mortgages split to avoid detection.
- In 2008, Com. Of Massachusetts v. Fremont Investment & Loan et al, 07-4373-BLS1 decision – widely publicized,

[163] Loans, like King's, violating the following were also prohibited: "Real Estate Settlement Procedures Act (RESPA)"; Equal Credit Opportunity Act (ECOA), the Fair Housing Act (FHA), MGL. c. 151B and c. 183, § 64; 940 CMR 3.00; 209 CMR 32.32(5)(a); 940 CMR 8.00; 209 CMR 18.00 and 940 CMR 7.00; "G.L. c. 255, s. 12G"

he pointed to regulatory guidance as to "doomed to foreclose" overpriced mortgages.[164]

- King had such a package priced beyond home value as established by his town, an uninterested party.

- In *Adjartey,* This Court gave such hope in its citing the recognition of the invisibility with which disability challenges are treated and the incredible damage to hope and spirit, as well as to our laws and equal justice:

"These laws exist to address the "'pervasive unequal treatment' of individuals with disabilities," who "have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society." McDonough at 528, quoting Tennessee v. Lane, 541 U.S. 509, 516, 524 (2004)." *Adjartey* at 847.

Therefore, the regulatory authority and Stare

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[164] ""On October 8, 1999, in its Interagency Guidance on High LTV Residential Real Estate Lending, issued by the United States Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve Board, the FDIC, and the Office of Thrift Supervision, lending institutions were warned:
'Recent studies indicate that the frequency of default and the severity of losses on high LTV (loan-to-value) loans far surpass those associated with traditional mortgages and home equity loans. The higher frequency of default may indicate weaknesses in credit risk selection and/or credit underwriting practices, while the increased severity of loss results from deficient collateral protection. In addition, the performance of high LTV borrowers has not been tested during an economic downturn when defaults and losses may increase.'"

Gants continued "it was reasonable to expect that the frequency of default and the severity of losses would be even greater as the LTV approached 100 percent."

See also, Comptroller of the Currency Advisory Letter (AL 2003-2), issued by the Deputy Comptroller for Compliance, dated February 21, 2003.

Decisis is that such a mortgage "loan" as King's is prohibited and therefore never came into legal existence.[165] Thus, King could not be in default of a prohibited and apparently void contractual package. See also Kneeland v. Emerton, 280 Mass. 371 (1932) as well as the above history and numerous laws.

I. How typical of reverse redlining practices, as of the securitization era, was King's loan package illegally and prohibitedly originated as predatory?

Was the 'full package' loan to value ratio both doomed to go into default and set to trap him in being unable to sell out from under it? Was that obscured by the originator's intent not for him to be able to pay it, but for them to make the most fast money by selling it on the secondary mortgage market? (That also demonstrated that it had no expectation that its contractual investment was going to be paid back by the mortgagor, but instead was focused on getting paid at a handsome profit by a purchaser on the secondary market.)

Including specifics identified above which previous government actions should have protected King from, the following is a list that King experienced – exactly the

[165] Cf. MGL Ch. 183C §17 for Legislature's awareness and prohibition of splitting mortgages so as to avoid legal prohibitions in origination: "Section 17. (a) This chapter shall apply to any lender who attempts to avoid its application by dividing any loan transaction into separate parts for the purpose of evading this chapter."

continuation of those practices including by parties that were sued and settled at the beginning of the 1990's by Attorney General Harshbarger. These industry players cannot claim anything but willful ignorance of the fact that these practices are illegal in Massachusetts and that practicing of them against Alton King could expect aggressive enforcement by this court and other courts; they went forward with reckless disregard. The following, based on facts in the case record, demonstrate direct violations of the equal protections codified to protect King:

940 CMR 8.00 is explicit: "940 CMR 8.00 defines unfair or deceptive acts or practices." 940 CMR 8.02.

Further, 940 CMR 8.00 is not intended to be an exhaustive list of unfair or deceptive practices by mortgage brokers or mortgage lenders (See 8.02 SCOPE.) And each opens defining acts that are "unfair and deceptive."

Example 1: 940 CMR 8.03 defines "Advertisement" to include "any oral, written, graphic, or pictorial statement made by a mortgage broker or lender in any manner in the course of the solicitation of business". And "Bait Advertising" includes: "an offer to procure, arrange, or otherwise assist a borrower in obtaining a

mortgage on terms which the broker or lender cannot, does not intend, or want to provide, ... Its purpose is to switch borrowers ... to buying a different mortgage loan product, usually at a higher rate or on a basis more advantageous to the broker or lender."

Therefore, where a broker or lender represents or states something false, misleading, tending to mislead or without her sufficient knowledge in 'advertising', she violated 940 CMR 8.04(1) or, if more generally, she violated 8.06(1). As 'advertising' includes oral representations to induce the borrower to purchase the consumer product, herein the mortgage loan, King was "victimized" by the following acts which violated both the above subsections include misrepresenting:

- the affordability of loan package,
- real value of home as opposed to appraisal provided,
- the debt to income ratio/ the Uniform Mortgage Loan Application misrepresented borrower's income
- material characteristics not disclosed – King's is the most oppressive type of negatively amortizing loan,
- the mismatch between the borrower's purpose of the loan and the brokers/originator's money making, and
- promises of future refinance including of combining the two loans into one
- that Mortgage Electronic Registration System (MERS) was an actual mortgagee, that is, it made a contractual or financial commitment in the mortgage to King – in other words, that they were a real party in interest.
- that these loans were being reviewed to meet established underwriting practices or

• that any party saw themselves as making an obligation to the borrower as the Massachusetts standard fiduciary obligation to King (rather than their secondary market buyer)

These acts each also violate 940 CMR 8.04(4) the broker or lender engaged in 'bait advertising', misrepresented (directly or by lack of disclosure). They violated where a broker or lender concealed or failed to disclose a fact influential to borrower entering into a contract, she/he violated 940 CMR 8.05(2).

Further, each of the above is a violation where a broker or lender negotiates rates or terms significantly outside industry standards or are unconscionable, 940 CMR 8.06(6).

Example 2: Also applicable pursuant to 940 CMR 8, therefore, where a broker or lender 'advertises' finance terms in violation of Truth-in-Lending, Massachusetts "Fair Debt Collection Act" or the federal Fair Debt Collection Practices Act, she/he violated 940 CMR 8.04(5).

Finance terms which violated Truth-in-Lending, M.G.L. c. 140D, § 1, et seq. Consumer Credit Cost Disclosure, and 15 U.S.C. § 1601, et seq. Fair Debt Collection Practices Act included: loan to value ratio, the debt to income ratio/ the Uniform Mortgage Loan Application misrepresented borrower's income, fees,

interest, negative amortization (for those below age eligibility for a reverse mortgage).

All of these rates and terms were unconscionable and prohibited. Again, these violations included: the affordability of loan, value of home, the debt to income ratio, fees, interest, negative amortization

Example 3: Also pursuant to 940 CMR 8, where a broker or lender denied borrower "time and reasonable opportunity to review" every document signed, she/he violated 940 CMR 8.06(11).

King's mortgages origination fit that pattern: documents only provided for the first time at closing.

Example 4: Further, where a broker or lender implemented a mortgage loan unless at the time their information was that the borrower will be able to repay it, she/he violated 940 CMR 8.06(15). Given the combined loan package and the loan-to-value and debt-to-income was misrepresented *by the broker*, clearly, the broker altered these to meet lending criteria and knew this was to procure a loan outside of acceptable underwriting criteria.

Example 5: Here, where a broker processed a loan not in the borrower's interest, she/he violated 940 CMR 8.06(17); such as here, both loans were by legal

definition prohibited transactions. Thus, these acts, as any practice proibited in 940 CMR 8.00, are unfair and/or deceptive under Massachusetts law, as described at MGL c. 93A, § 2.

These bait advertising prohibitions presciently clarified that the practices engaged in to use the Mortgage Electronic Registration System (MERS) (the shell company established by Fannie, Freddie and the major national banks), were going to be prohibited.

However, origination violations are not overseen by anybody. Enforcement has scopelocked on a fully informed consumer (rather than fiduciary obligations, for instance.) Evidence shows numerous regulations requiring disclosures have been routinely denied or untrue. King's experience is typical.

J. Once the Court Invoked Equity, Did It Not have to Accede to and at most Supplement a Plain, Adequate and Complete Remedy at Law?

In ordering a balancing test as to "extra fees" for appeal even if prohibitive for appellant, this Court shifted to equity powers; all balancing tests are case-by-case and inherently under the principles of equity.

Further as one of the unique powers and purposes of equity is to ferret out the real parties' relationship to a mortgage interest and unearth through oath and

discovery the true facts of a situation, the Court's necessity to review this case *de novo* required review of the actual facts herein. Equity required the court to review the complete situation from the commencement of any legal relationship as "equity seeks complete justice" and requires "clean hands," among other maxims.

Therein, the Court would easily identify numerous statutory, regulatory, and case law violations above, and the applicable underlying anti-reverse-redlining statutes including MGL Ch. 183 §64 and 93 §§102 & 103.

Having arrived at the anti-reverse-redlining statute, and the requirement under equity of reaching for equality, the Court, once again, is sent back to exercising its authority to protect King's property interests to the full extent to which a "white citizen" in the past could expect this court's protection.

Having turned to Equity, its first functional principle was immediately invoked: "equity follows the law". That is, this Court's inquiries stop given "a plain, adequate, and complete remedy at law".

The applicable statute, the ICCL, means a new balancing test can never be reached. As this Court's top priority as an equal protection and due process obligation, it enforces" the "statutorily mandated

procedure"[166], which is the "courts shall" law, known as the ICCL, Ch. 261 §§27A-G.

Further, the principle of "equity is equality" returns this Court to the applicable standard of review as to what a "white citizen" "enjoyed" in 1989. The Court would apply all of its powers to protect King's property interests in the tradition in which statute and jurisprudence in the past was applied to protect the ownership or title and possession of a contribution to economic inequality. This Court has already committed to removing such barriers fostered by racial discrimination. The ICCL is its already enacted means.

With an overpriced loan both unaffordable but driving one to spend beyond one's means to save one's home, and at the same time being thus trapped for years (unable to sell out from under the unaffordable loan package), these predatory loans accomplish the wealth stripping that has been the experience of African-

[166] For a state actor, such as this Court, the U.S. Supreme Court has already determined that to deny a statutorily mandated procedure is a due process violation. Both as to the Fifth Amendment and the Fourteenth Amendment protections of the U.S. Constitution, this Court has recognized the incorporation of equal protection jurisprudence of the U.S. Supreme Court. For instance, in its 1911 decision in the opinion of the justices to the House of Representatives and as recently as December 10, 2020 in the *Desrosiers v. The Governor* decision of this most Honorable Highest Court of the Commonwealth.

American men for 160 years (and also others trapped by these practices.) As the Late Chief Justice Gants penned in the Fremont Superior court case, these mortgages are, thus, "doomed to foreclose."

Under Massachusetts' non judicial foreclosure scheme with the right to enjoin an auction through a court case both under the private contract and Massachusetts' jurisprudence being overwhelmingly wrongly dismissed by courts (expecting a claim where homeowners enter as defendants), the primary battle occurs post purported auction in eviction cases.

Even with statutory language almost since Chapter 239's inception, drawing a bright line distinction between standard tenant landlord/settled title cases and post-purported-foreclosure cases and the long standing above referenced case law that standard landlord tenant appeals fall under their own scheme, the intentionally wealth-stripped defendants must now depend on this Court to enforce their Constitutional equal protections as both indigent litigants and as to the race bias implicated roots of that status.

To reach equal protection, this Court must reverse the rampant refusal by the lower courts to enforce Massachusetts jurisprudence, especially where people of

color are concerned. To be considered for equal protection, King and those similarly situated must not be barred from appeal. See Reade v. Sec of State, 472 Mass. 573 (2105):

> ""The General Court hereby finds and declares that many litigants in both civil and criminal cases are unable to secure due process of law and equal protection of the laws in the courts of Massachusetts by reason of being too poor to afford the fees and costs … incident to such litigation." At 759.

K. Recognizing that the presumptive "lender treatment" is not what whole sectors of our society has 'enjoyed', does a court have an obligation to review the mortgage lending facts and enforce the White Male Citizen standard at the level of Strict Judicial Scrutiny?

The Court must ask itself whether its first *stare decisis* in 1783 as to those of African descent who are inhabitants of Massachusetts is to be made meaningful.

Given the above, King was, in the tradition of 160 years of lending, induced into being "hopelessly over his head." Statistical and historical studies show King is merely an exemplar of the situation in which especially borrowers of color have been and are still being intentionally put. It is long past time for aggressive prosecution, enforcement and meeting the promised 1989 standard of what "white male citizens enjoy[ed]".

In this case, the Court's well-trod standards of review were *de novo* (as both a Summary Judgment decision and a documentary evidentiary basis.) The Court has always required all courts to review the standing of the

Plaintiff. The Court must reverse itself based on *de novo* review and deny those who use the powers of the courts for fraud, injustice, and racial discrimination (especially in housing). For King and all of the people of this Commonwealth, as similarly situated, it is time to fulfill the constitutional promises to be equally protected by the courts in our "houses and farms" and in the stability and wealth building of our homes.

The courts have been negligent in not enforcing the anti-reverse redlining statute. Therewith, all of these racially biased lending practices are available for adjudication at least 20 years after origination as the statute is an alienation of land statute. Chapters 183 §64 and 93 §§102 & 103 come with no statute of limitations. Void *Ultra vires* contracts, of which all of these must be, if they violate Ch. 183 §64, cannot be enforced by the courts, because they are void.

In the *Fremont* decision, this Court recognized that predatory lending contracts are void unless they were modified; those modifications would have to remedy the void characteristics of the loan, the most central being principal down to the real origination property value.

Otherwise, as Shelley forewarned, the coercive powers of the courts are abused to enforce discrimin-

atory private contracts and for the courts themselves. This Court must recognize that these cases demand strict judicial scrutiny by the Massachusetts courts.

If there were ever a demand in the configuration of the facts in any set of cases for the use of equity powers to flush out "cunning and fraudulent" behavior that allows the courts to be used to "protect the injustice" by a class of plaintiffs, this demands it.

CONCLUSION

68 years ago the top court of our nation, in *Brown v. Board of Education*, upheld for us all the NAACP's position for those recently embarked on life's journey:

> "These infant appellants are asserting the most important secular claims that can be put forward by children, their claim to the full measure of their chance to learn and grow, and the inseparably connected but even more important claim to be treated as entire citizens of the society into which they have been born."

Here, this decision in *Bank of New York Mellon as Trustee v. Alton King*, if not reversed, proposes to deprive those, perhaps those closer to departure from this life, from the same equal status in the eyes of our Constitution "to be treated as entire citizens of the society" in which they have lived their lives and devoted their life's labor.

Black Lives Matter has made the point that until Black lives are of equal value to White lives, justice does not exist. Similarly, "a dollar in the hands of a black man will purchase the same thing as a dollar in the hands of a white man". Equal existence, in the eyes of our laws, is a package deal.

Both the state or Federal Constitutions promise three equally footed unalienable rights: life, liberty, and property. It is not a smorgasbord of rights, but to make our society whole, all must enjoy these rights as have White Male Citizens.

As this Court held in 1911 of its earliest equal protection holdings explicitly as to "enjoyment" equal among all races, *Opinion Of The Justices To The House Of Representatives*, 207 Mass. 601 (1911):

> ""No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." This language has received judicial interpretation by the Supreme Court of the United States, whose decisions upon questions arising under the federal Constitution are binding upon us. …in Powell v. Pennsylvania, 127 U.S. 678, 684, "…his enjoyment upon terms of equality with all others in similar circumstances of …acquiring, holding, and selling property, is an essential part of his rights of liberty and property, as guaranteed by the Fourteenth Amendment. The court assents to this general proposition as embodying a sound principle of constitutional law." In *Yick Wo v. Hopkins*, 118

> U.S. 356, 369, …the unanimous opinion of the court …to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws. …' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment…; …all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others; …no greater burdens should be laid upon one than are laid upon others…."

For all the above reasons, this Court must break and break with 160 years of tradition, and mend the promise broken too often already – that our Courts will provide equal access to secure equal rights and protections equally for all – no matter color, complexion or features,

Respectfully submitted,

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ADDENDUM

ADDENDUM TABLE OF CONTENTS

940 CMR 8.00: Section

MORTGAGE BROKERS AND MORTGAGE LENDERS

940 CMR: OFFICE OF THE ATTORNEY GENERAL

8.01: Purpose

940 CMR 8.00 relates to mortgage lenders and mortgage brokers pursuant to the Attorney General's authority in M.G.L. c. 93A, § 2(c). 940 CMR 8.00 is designed to protect Massachusetts consumers seeking residential mortgage loans and to ensure that the mortgage industry is operating fairly and honestly by means of legitimate and responsible business acts and practices that are neither unfair nor deceptive.

940 CMR 8.00 addresses problems experienced by consumers when they seek or obtain mortgage loans for the purchase or initial construction of residential homes, or when consumers refinance an existing loan.

8.02: Scope

940 CMR 8.00 defines unfair or deceptive acts or practices. They are not intended to be all inclusive as to the types of activities prohibited by M.G.L. c. 93A, § 2(a). Acts or practices not specifically prohibited by 940 CMR 8.00 are not necessarily consistent with M.G.L. c. 93A or otherwise deemed legitimate by the absence of regulation here.

940 CMR 8.00 shall cover any mortgage lender or broker advertising or doing business within Massachusetts, regardless of whether or not the lender or broker maintains an office in Massachusetts.

940 CMR 8.00 applies to all residential mortgage loan transactions in the Commonwealth of Massachusetts, as more particularly defined in 940 CMR 8.00, except that it does not apply to either:

(a) reverse mortgages governed by M.G.L. c. 167E, § 7; or
(b) open-end home equity lines of credit. 940 CMR 8.00 also excludes reduced interest rate mortgages originated under the auspices of affordable housing programs which are administered by state, quasi- public, or local government entities.

8.03: Definitions

Advertisement (including the terms "advertise" and "advertising") shall be defined in a manner which is consistent with the definition in 940 CMR 6.00: Retail Advertising, and means any oral, written, graphic, or pictorial statement made by a mortgage broker or lender in any manner in the course of the solicitation of business. Advertisement includes any representation made in a newspaper, magazine, or other publication or on the internet, radio or television or contained in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, catalog, or letter. Advertisement includes any representation disseminated or accessible within Massachusetts if the advertisement is directed to consumers in Massachusetts.

Bait Advertising means an offer to procure, arrange, or otherwise assist a borrower in obtaining a mortgage on terms which the broker or lender cannot, does not intend, or want to provide, or which the broker or lender knows

cannot be reasonably provided. Its purpose is to switch borrowers from buying the advertised mortgage loan product to buying a different mortgage loan product, usually at a higher rate or on a basis more advantageous to the broker or lender.

Borrower means any natural person seeking, using, or paying for directly or indirectly, the services of a mortgage lender or broker in connection with a mortgage loan.

Broker Fee means any money, compensation, commission, fee, charge or other valuable consideration directly or indirectly imposed by a mortgage broker for the brokers services in negotiating, placing, finding, or otherwise assisting a borrower in obtaining a mortgage loan. The term broker fee does not include a fee charged by the lender (such as a commitment fee or a lock-in fee), wages or commissions paid to an employee of the mortgage broker or mortgage lender by his or her employer, nor does such term include bona fide and reasonable payments to be remitted to third party service providers, such as appraisal fees or fees for credit reports or payments or remittances to the mortgage lender.

Clear and Conspicuous (including the terms "clearly and conspicuously") shall be defined in a manner which is consistent with the definition in 940 CMR 6.00: Retail Advertising. 940 CMR 6.01: Clear and Conspicuous provides that clear and conspicuous (including the terms "clearly and conspicuously") shall mean that:

the material representation being disclosed is of such size, color, contrast, or audibility and is so presented as to be readily noticed and understood by a reasonable person to whom it is being disclosed.

Further, without limiting the requirements of the preceding sentence, 940 CMR 6.01: Clear and Conspicuous (e) states that a representation in an advertisement is not clear and conspicuous unless:

1. for a printed, written, typed or graphic advertisement, such material representation appears in type which is at least one-third the size of the largest type of information which it modifies and is a minimum of eight point type;
2. for the video portion of a television advertisement, such material representation:

a. is displayed in type not less than 14 scan lines in height;
b. contains letters of a color or shade that noticeably contrast with the background, and the background does not consist of colors and/or images which obscure or detract attention from the representation or are disparaging to its meaning or importance; and
c. appears on the screen for a duration equal to at least one second for every three words of the material representation but not less than a total of five seconds.

3. for a radio advertisement or the audio portion of a television advertisement, such material representation complies with the requirements of 940 CMR 6.01: Clear and Conspicuous(c).

Commissioner means the Commissioner of Banks.

Commitment for Mortgage Loans (or the word "commitment") means an oral or written agreement to loan or to advance funds for a mortgage loan. A commitment can specify a loan amount, repayment terms, interest rate or conditions necessary to close the loan.

Contractor or Home Improvement Contractor means any person who owns or operates a residential contracting business or who undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid for, by him or herself or through others, residential contracting work as defined in M.G.L. c. 142A.

Mortgage Broker or Broker means any person, who for compensation or gain, or in the expectation of compensation or gain, directly or indirectly negotiates, places, assists in placement, finds, or offers to negotiate, place, assist in placement or find mortgage loans on residential property for others, or as otherwise defined by M.G.L. c. 255E, § 2 or by the Commissioner. Notwithstanding anything to the contrary in 940 CMR 8.00, the following persons shall not be deemed to be a mortgage broker:

(a) any person who is exempt from the licensing requirements of M.G.L. c. 255E, § 2, provided, however, that individuals who work for or on behalf of brokers that are licensed pursuant to M.G.L. c. 255E, § 2, shall not be

exempt from 940 CMR 8.00; and
(b) any financial institution which is regulated by a federal and/or state bank regulatory agency and which, directly or indirectly, negotiates, places, assists in placement, finds, or offers to negotiate, place, assist in placement or find mortgage loans on residential property for a direct or indirect affiliate or subsidiary of such financial institution.

Mortgage Lender or Lender means any person engaged in the business of making mortgage loans or issuing commitments for mortgage loans, including, but not limited to, mortgage lenders licensed or regulated by M.G.L. c. 255E, § 2 or by the Commissioner, and shall include all individuals who work on behalf of such lenders.

Mortgage Loan or Loan means a loan to a natural person primarily for personal, family or household use secured wholly or partially by a mortgage on residential property, or as otherwise defined by M.G.L. c. 255E or by the Commissioner, and shall include loans to refinance a mortgage. "Mortgage loan" or "loan" shall not include either:

(a) reverse mortgages governed by M.G.L. c. 167E, § 7; or (b) open-end home equity lines of credit.

Person means a natural person or organization including a corporation, partnership, association, cooperative or trust or any other legal entity.

No Income Loan Product means a mortgage loan where:

(a) in making its decision whether to underwrite the loan or extend credit, the mortgage lender does not account for or consider, in any manner whatsoever, the prospective borrower's income or employment status; and
(b) that fact is set forth in the lender's written underwriting or loan origination policies governing its No Income Loan Product.

Point means an origination fee, finder's fee, or other fee, premium, service charge, or any other charge calculated as a percentage of the principal amount of the loan or a percentage of the amount financed, however such point may be called, which is charged by a mortgage lender at or before the time the mortgage loan is made as additional compensation for the mortgage loan, or as otherwise defined by M.G.L. c. 183, § 63 or by the Commissioner. A point does not include:

(a) *bona fide* and reasonable fees for actual services performed including, but not limited to, attorney's fees, appraisal fees, credit reporting fees, private mortgage insurance premiums, and title insurance premiums or mortgage broker fees; or
(b) a charge which is credited to closing costs or other costs relating to such loan.

Residential Property means real property located in Massachusetts having thereon a dwelling house with accommodations for four or fewer separate households and occupied, or to be occupied, in whole or in part by the obligor of the mortgage debt, or as otherwise defined in M.G.L. c. 255E.

8.04: Advertising Practices

(1) It is an unfair or deceptive act or practice for a mortgage broker or lender to make any representation or statement of fact in an advertisement if the representation or statement is false or misleading or has the tendency or capacity to be misleading, or if the mortgage broker or lender does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based.

(2) It is an unfair or deceptive act or practice for a mortgage broker or lender to advertise without clearly and conspicuously disclosing its business name, and if required to be licensed pursuant to M.G.L. c. 255E, the words broker" or "lender", as applicable, and the license number.

(3) It is an unfair or deceptive act or practice for a mortgage broker to represent in any advertisement that the mortgage broker will fund a mortgage loan.

(4) It is an unfair or deceptive act or practice for a mortgage broker or lender to engage in bait advertising or to misrepresent (directly or by failure to adequately disclose) the terms, conditions or charges incident to the mortgage loan being advertised in any advertisement. Violations of 940 CMR 8.04(4) shall include, but shall not be limited to:

(a) the advertisement of "immediate approval" of a loan application or "immediate closing" of a loan or words of similar import, such as "instant closing";
(b) the advertisement of a "no point" mortgage loan when points are required or accepted by the lender as a condition for commitment or closing;

(c) the advertisement of an incorrect specific number of points required for commitment or closing; (d) the advertisement through terms such as "bad credit no problem" or words of similar import or that an applicant will have unqualified access to credit without clearly and conspicuously disclosing the material limitations on the availability of credit that may exist, such as:

1. requirements for the availability of credit (such as income);
2. that a higher rate or more points may be required for a consumer with bad credit; and 3. that restrictions as to the maximum principal amount of the loan offered may apply.

(e) the use of "avoid foreclosure" or words of similar import in an advertisement unless the advertisement also clearly and conspicuously discloses, that:

1. the borrower must refinance the mortgage in default and/or take a new mortgage loan; 2. the borrower may be required to pay interest rates significantly higher than what other borrowers not facing foreclosures might pay; and
3. the warning that "you may lose your home if you cannot make all the payments or if you miss any of the payments on this loan."

(5) It is an unfair or deceptive act or practice for a mortgage broker or lender who advertises any finance terms to fail to comply with the applicable state and federal advertising Truth-in-lending laws, M.G.L. c. 140D, § 1, et seq. Consumer Credit Cost Disclosure, and 15 U.S.C. § 1601, et seq. Fair Debt Collection Practices Act.

8.05: Mortgage Disclosures

(1) It is an unfair or deceptive act or practice for a mortgage broker or mortgage lender to fail to make any disclosure, or fail to provide any document, to a consumer required by and at the time specified by any applicable state or federal law, regulation or directive.

(2) It is an unfair or deceptive act or practice for a mortgage broker or lender to conceal or to fail to disclose to a borrower any fact relating to the loan transaction, disclosure of which may have influenced the borrower not to enter into the transaction with the broker or lender.

(3) It is an unfair and deceptive act or practice for the mortgage broker or lender to fail to take reasonable steps to communicate the material facts of the transactions in a language that is understood by the borrower. Reasonable steps which shall comply with 940 CMR .8.00 may include but shall not be limited to:

(a) using adult interpreters; and
(b) providing the borrower with a translated copy of the disclosure forms required by any applicable state or federal law, regulation or directive, in a language understood by the borrower.

(4) It is an unfair or deceptive act or practice for a mortgage lender to fail to give to the borrower legible copies of the mortgage deed, promissory note, and the settlement statement when completed or at the time of closing.

8.06: Prohibited Practices

(1) It is an unfair or deceptive act or practice for a mortgage broker or lender to make any representation or statement of fact if the representation or statement is false or misleading or has the tendency or capacity to be

misleading, or if the mortgage broker or lender does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based. Such claims or representations include, but are not limited to the availability, terms, conditions, or charges, incident to the mortgage transaction and the possibility of refinancing. In addition, other such claims and representations by the broker may include the amount of the brokerage fee, the services which will be provided or performed for the brokerage fee, the borrower's right to cancel any agreement with the mortgage broker, the borrower's right to a refund of the brokerage fee, and the identity of the mortgage lender that will provide the mortgage loan or commitment.

(2) It is an unfair or deceptive act or practice for a broker or lender to charge an application and/or broker fee which significantly deviates from industry-wide standards or is otherwise unconscionable.

(3) It is an unfair or deceptive act or practice for a mortgage broker or lender to accept any broker fee, application fee or other fee, prior to the borrowers receipt of any disclosure forms mandated by 940 CMR 8.05(1). Where the applicable state or federal law specifies that the disclosure form must be provided to a consumer prior to the consummation of the mortgage loan. Notwithstanding the foregoing, an appraisal fee may be accepted if the lender or brokers provides oral or written notice, prior to the receipt of such fee, as to whether the fee is refundable.

(4) It is an unfair or deceptive act or practice for a mortgage broker or lender to engage the services of (another) mortgage broker that will charge the borrower an additional fee without obtaining in advance the written permission of the borrower to charge that fee, the amount of which shall be specified in writing.

(5) It is an unfair or deceptive act or practice for a mortgage broker or lender to directly or indirectly, regardless of the receipt or the expectation of receipt of compensation from the contractor, to:

(a) provide loan application documents to home improvement contractors for use by such contractor in connection with the financing by mortgage loans of home improvement contracts;
(b) use a home improvement contractor as an agent for its business; or
(c) accept mortgage applications from contractors.

940 CMR 8.06(5) shall not prohibit contractors from referring consumers to mortgage brokers or lenders, or lenders from purchasing executed home improvement contracts.

(6) It is an unfair or deceptive act or practice for a mortgage broker or lender to procure or negotiate for a borrower a mortgage loan with rates or other terms which significantly deviate from industry-wide standards or which are otherwise unconscionable. To determine whether the Annual Percentage Rate (APR), for example, is unconscionable, factors to consider include whether the APR at the time the loan was made is more than, the greater of:

(a) ten percent above the highest domestic "Prime Rate" listed in the Money Rates section of The Wall Street Journal; or
(b) 20% percent; and
whether the APR is consistent with comparable rates for borrowers in similar financial circumstances.

(7) It is an unfair or deceptive act or practice for a mortgage lender to act also as a mortgage broker directly or indirectly in the same mortgage loan transaction, or to violate 209 CMR 42.04(4) or 42.07(4).

(8) It is an unfair or deceptive act or practice for a lender to fail to disburse funds in accordance with any commitment or agreement with the borrower.

(9) It is an unfair or deceptive act or practice for a mortgage broker or lender to conduct business with a person which should be licensed under M.G.L. c. 255E, and which it knows or should know is an unlicensed mortgage broker or lender.

(10) It is an unfair or deceptive act or practice for any mortgage lender to charge a prepayment fee which:

(a) violates M.G.L. c. 183, § 56;
(b) significantly deviates from industry-wide standards; or (c) is otherwise unconscionable.

(11) It is an unfair or deceptive act or practice for a mortgage broker or lender to fail to give to the borrower or his or her attorney the time and reasonable opportunity to review every document signed by the borrower and every document which is required pursuant to 940 CMR 8.00, prior to the disbursement of the mortgage funds.

(12) It is an unfair or deceptive act or practice for a mortgage broker or lender to accept any fees which were not disclosed in accordance with 940 CMR 8.00 or applicable law.

(13) It is an unfair or deceptive act or practice for a mortgage broker or lender to accept any attorneys fees in excess of the fees that have been or will be remitted to its attorneys.

(14) It is an unfair or deceptive act or practice for a mortgage broker or lender to refuse to permit the borrower to be represented by the attorney of his or her choice. Nothing contained herein shall limit the lenders right to choose its own attorney, which may be paid for by the borrower.

(15) It is an unfair or deceptive act or practice for a mortgage broker to arrange or mortgage lender to make a mortgage loan unless the mortgage broker or lender, based on information known at the time the loan is made, reasonably believes at the time the loan is expected to be made that the borrower will be able to repay the loan based upon a consideration of the borrower's income, assets, obligations, employment status, credit history, and financial resources, not limited to the borrower's equity in the dwelling which secures repayment of the loan (subject, however, to the treatment of No Income Loan Products in 940 CMR 8.06(16)). The determination under 940 CMR 8.06(15) of a borrower's ability to repay a loan shall take into account, without limitation:

(a) the borrower's ability to repay at the fully indexed rate, assuming a fully amortizing repayment schedule, and the resulting scheduled payments that may be charged under the loan accounting for interest rates, financial terms or scheduled payments that may adjust upward; and
(b) the property taxes that are required on the subject property at the time the loan is expected to be made and the reasonably anticipated insurance costs if the loan requires that insurance be maintained on the property, regardless whether the broker or lender will collect an escrow for such taxes or insurance in connection with loan payments.

For purposes of 940 CMR 8.06(15)(a), the "fully indexed rate," with respect to loan rates that may adjust upward, shall mean the index rate prevailing at the date of loan origination plus the margin to be added to it after the expiration of an introductory interest rate. For purposes of illustration, assume that a loan with an initial fixed rate of 7% will reset to the six-month London Interbank Offered Rate (LIBOR) plus a margin of 6%. If the six-month LIBOR rate equals 5.5% at the date of origination, the determination of ability to pay under 940 CMR 8.06(15)(a) shall take into account the borrowers ability to repay at 11.5% (5.5% plus 6%), regardless of any interest rate caps that limit how quickly the fully indexed rate may be reached.

(16) It is an unfair or deceptive act or practice for a mortgage broker or lender to process or make a mortgage loan without documentation to verify the borrower's income (a so-called "no documentation," "no doc," "stated income" or "limited documentation" loan) unless the broker or lender, as applicable, first provides a written document to the borrower, which must be signed by the borrower in advance of the closing, and which:

(a) identifies the borrower's income and the source of the income; and
(b) provides detailed information, if true, that by applying for a mortgage loan on a no- or limited documentation basis, the consumer will pay a higher interest rate or increased charges, or have less favorable terms for the mortgage loan (including information concerning the precise increase in interest rate, charges, or the nature of the less favorable terms).

Provided, however, that if a mortgage broker or lender arranges or makes a mortgage loan using a No Income Loan Product, which loans shall remain subject to 940 CMR 8.06(15), the requirement in 940 CMR 8.06(16)(a) shall not apply. It is an unfair or deceptive act or practice for a mortgage lender or broker to process or make a mortgage loan on a no- or limited documentation basis if the stated income provided by the borrower with respect to the no- or limited documentation loan contradicts information previously obtained by the broker or lender with respect to that borrower in connection with the same proposed loan, absent a documented change in

circumstances or other documented explanation for the discrepancy between the prior information and latter income representation. Notwithstanding the foregoing, it shall be an unfair or deceptive act or practice for a mortgage lender to underwrite or close a loan without first verifying the employment or income of the borrower when the amount of the income stated is not reasonable for the actual employment status or experience of the borrower known to the lender, or when the borrower's stated employment or stated income is not reasonable in light of the borrower's circumstances known to the lender.

(17) It is an unfair or deceptive act or practice for a mortgage broker to process, make or arrange a loan that is not in the borrower's interest. Where the financial interest of a mortgage broker conflicts with the interests of the borrower (for example, where the broker's compensation will increase directly or indirectly if the borrower obtains a loan with higher interest rates, increased charges or less favorable terms than those for which a borrower would otherwise qualify), the broker shall disclose the conflict and shall not proceed to process, make or arrange the loan so long as such a conflict exists. It is an unfair or deceptive act or practice for a mortgage broker to disclaim the duty established by 940 CMR 8.06(17) in a written contract or to assert in oral representations that a broker does not have such a duty in communications with the borrower.

(18) It is an unfair or deceptive act or practice for a mortgage lender:

(a) to use a pricing model for its mortgage loans which treats borrowers with similar credit criteria and bona fide qualification criteria differently; or .
(b) to make a mortgage loan when any or all of the cost features of the mortgage loan are based on criteria other than the borrower's credit and other bona fide qualification criteria.

For purposes of 940 CMR 8.06(18), "bona fide qualification criteria" shall mean those account in determining whether to extend a mortgage loan, including by way of example, income, assets, credit history, credit score, income-to-debt ratios or loan-to-value ratios. For purposes of 940 CMR 8.06(18)(b), the term "cost features" shall include, but not be limited to, the interest rate; the index; margin; and other adjustment features if the interest rate is adjustable; points; and prepayment penalties.

If any provision of 940 CMR 8.00 or the application of such provision to any person or circumstances is held to be invalid, the validity of the remainder of 940 CMR 8.00 and the applicability of such provision to other persons or circumstances shall not be affected.

REGULATORY AUTHORITY

940 CMR 8.00: M.G.L. c. 93A, § 2(c).

4/4/08 940 CMR – 78

Massachusetts Constitution

https://malegislature.gov/Laws/Constitution **PART THE FIRST**
A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

Article CVI.

Article I of Part the First of the Constitution is hereby annulled and the following is adopted:-

All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.

Article XI. Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

Article XV. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practiced, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it. [See Amendments, Art. XLVIII, The Initiative, II, sec. 2].

Article CXIV.

No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the commonwealth.

CHAP. LXXXVIII.

An Act continuing the Massachusetts Charitable Mechanic Association.

BE *it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same*, That the Massachusetts Charitable Mechanic Association, incorporated by an act, entitled "an act to incorporate Jonathan Hunnewell, and others," shall and may remain a Corporation during the pleasure of the Legislature, from and after the time limited for the continuation of said Corporation, by an act passed on the twenty-sixth day of February, one thousand eight hundred and fourteen, with the same powers and privileges it now enjoys, excepting that its personal and real estate may amount to one hundred thousand dollars, and that it may establish schools and libraries for the use of apprentices, and the improvement of the arts.

Act extended.

[Approved by the Governor, February 15, 1826.]

CHAP. LXXXIX.

An Act providing further remedies for Landlords and Tenants.

Sec. 1. BE *it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same*, That where the tenant and occupant of any house or tenement, shall hold such house or tenement without right, and after notice in writing to quit the same; whoever has the right of possession thereof, may summon

such tenant or occupant to answer to his complaint before the Justices' Court of the County of Suffolk, if such house or tenement be within the County of Suffolk, and before any Justice of the Peace for any other county wherein such house or tenement may be; the form of which summons shall be as follows: the same being suitably altered, when it is returnable before the Justices' Court of the County of Suffolk.

Form of summons.

S——ss. To the Sheriff of the said county, or either of his Deputies, or the Constables of the town of ——, within the said county, or to any or either of them, Greeting:

In the name of the Commonwealth of Massachusetts, you are required to summon A——B——, of C——, aforesaid, (addition) (if he may be found in your precinct) to appear before me, D—— E——, esquire, one of the Justices of the Peace for the county aforesaid, at my dwelling-house in——, in said county, on——the——day of——, at——of the clock in the——noon; then and there to answer to the complaint of F——G——, of——, in——, (addition) wherein said F—— G——complains, that said A——B——, on the day of the date hereof, is in possession of [the premises demanded] without law, and against the right of the said F—— G——, as shall then and there appear. Hereof fail not: and make due return of this writ, and of your doings therein, unto myself, at or before the said time or day of trial. Dated at—— aforesaid, the——day of——, in the year of our Lord ——: Which summons shall be served at least seven days before the return day thereof, by the officer to whom it is directed, by reading the same, in the hearing and presence of the tenant or occupant therein named, or by leaving a true copy thereof, upon the demanded premises. If the complainant shall duly enter such writ, and the defendant neglect to appear and answer thereto, or if the defendant shall duly appear and answer, and after issue joined, it shall be considered by the

Summons to be served.

Court, trying the same, that the complainant hath sustained his complaint, then judgment shall be rendered, that the complainant have possession of the demanded premises, and for his costs; and thereupon the complainant shall have the writ of facias habere possessionem, provided in the twenty eighth chapter of the Statute of this Commonwealth, Anno Domini seventeen hundred and eighty-four; the same being so far altered as the case may require. And if, after issue joined, it shall be considered by the said Court that the complainant hath failed to sustain his complaint, then the defendant shall have judgment that the complaint be dismissed, and for his costs; and shall have execution accordingly.

May appeal.

Damages may be awarded.

SEC. 2. *Be it further enacted*, That any party aggrieved by the judgment of any Court, in any action brought upon this statute, where both parties have appeared and pleaded, may appeal therefrom to the next Court of Common Pleas, to be held within the same county; and the complainant shall, before his appeal is allowed, recognize, with sufficient surety or sureties, in such reasonable sum as the Court shall order, to pay all intervening damages and costs, and to prosecute his appeal with effect; and the defendant shall, before his appeal is allowed, recognize, with sufficient surety or sureties, in such reasonable sum as the Court shall order, to pay all rent due and in arrears, and all intervening rent, damages and costs; and each party appealing shall be held to produce a copy of the whole case, at the Court appealed to; and both parties shall be allowed to offer any evidence at the trial at the Common Pleas, in the same manner as if the cause had been originally commenced there. And the Court of Common Pleas shall, whenever any appellant thereto shall fail to prosecute his appeal, or if he shall neglect to produce a copy of the case, affirm the former judgment upon the appellee's complaint, and award such additional damages and costs as have arisen in consequence

of the said appeal; and execution shall issue accordingly.

Sec. 3. *Be it further enacted*, That when in any action brought upon this statute, the defendant shall plead the general issue, he shall not be allowed to offer any evidence that may bring the title to the freehold of the demanded premises in question. And when the defendant, in any such action, shall plead the title of himself, or any other person, to the freehold of such demanded premises in justification, the Court shall thereon order the defendant to recognize to the adverse party in a reasonable sum, with sufficient surety or sureties, to enter the said action at the next Court of Common Pleas, to be holden within the same county, and to prosecute the same with effect, and to pay all rent due and in arrears, and all intervening rent, damages and costs; and if the defendant shall refuse so to recognize, the Justice shall render judgment against him in the same manner as if he had refused to make answer to the suit: And either party in such case, shall be allowed to appeal from the judgment of the Court of Common Pleas, in the same manner as if the suit had been originally commenced there: *Provided*, that when the defendant so pleads and recognizes, and the Justice, or Justices of the Court of Common Pleas, or of the Supreme Judicial Court, holding the Court to which the case is removed or appealed, shall, either upon default of the defendant to enter his case therein, or upon trial of the same, certify, that in his or their opinion, such plea was frivolous, and pleaded for the purpose of delay, then the complainant shall have judgment for treble damages and costs.

Defendant to recognize.

Proviso.

Sec. 4. *Be it further enacted*, That from and after the first day of July next, all leases at will and tenancies at sufferance, of any lands or tenements within this Commonwealth, may be terminated by either party, after giving to the other party three months notice; and where the rent for

such lands and tenements is due and payable more frequently than quarterly, the notice shall be sufficient if it be equal to the interval between the times of payments thereof: *Provided nevertheless*, that in all cases of neglect, or refusal, to pay the rent due and in arrear, fourteen days notice to the tenant or occupant shall be sufficient: *And provided further*, that nothing in this act contained, shall prevent landlords from pursuing their rights and remedies, by the common and statute law as now existing in this Commonwealth.

Proviso.

SEC. 5. *Be it further enacted*, That where the lessors or grantors of any estate of freehold or term of years, or their executors, administrators, or assigns, shall be entitled to recover any annual rent, against the lessees or grantees of any such freehold or term of years, their executors, administrators, heirs, grantees, or assigns, by virtue of any reservation, in any deed or lease, or other contract (whether such deed, or lease, or contract, contain a clause of distress or re-entry for nonpayment of such rent or not) may have and maintain an action of indebitatus assumpsit therefor, upon an account annexed, in which shall be summarily set forth the date of the deed, lease or other contract, and the premises out of which, or for which, and also at what time, such rent became due and payable. And such action may in all cases be brought and tried in the same Court, in which any other action of assumpsit might be brought for the like sum. And the defendant in any such action may give in evidence, under the general issue, any payment or other matter of defence, showing that the sum demanded, or any part thereof, is not due; and may also set off against the said rent, any demand which he may have against the plaintiff, in the same manner as in any other action of assumpsit.

May maintain action.

[Approved by the Governor, February 15, 1826.]

partition, as before provided, and also on every person so interested, on whom notice was served, as before provided, by delivering to him a copy thereof, or by leaving it at the place of his abode, at a time when he was within the state.

Same subject.

SECT. 69. Such partition shall not be conclusive upon any persons, other than those mentioned in the preceding section; but all such other persons may pursue their legal remedies for recovering the premises, or as much thereof as may belong to them, and also for obtaining partition thereof, in like manner as if the proceedings in the probate court had not been had.

Case of improvements after a first partition.

SECT. 70. If, after a partition by the probate court, any improvements shall be made on any part of the premises, which shall afterwards, upon a new partition, in the same or any other court, be assigned to any other person, the party, from whom such part is taken, shall be entitled to compensation for the improvements thereon, to be estimated and awarded by the commissioners, who shall make the second partition, and to be paid by the party, to whom that part of the premises shall be thereby assigned, and the court may issue an execution therefor in the common form.

Same subject.

SECT. 71. Every person, holding any lands under a partition, made by any of the courts mentioned in this chapter, shall be considered as holding them under an apparently good title, so that in case of an eviction, he shall be entitled to compensation for any improvements made thereon, in the manner prescribed in the one hundred and first chapter.

Jurisdiction of the respective courts. 16 Mass. 167.

SECT. 72. When proceedings for obtaining partition shall have been lawfully commenced, in either of the courts mentioned in this chapter, that court shall retain jurisdiction of the case, saving the right of appeal, in all cases, where an appeal is allowed by law.

Petition for partition to be indorsed. 1833, 50, § 2.

SECT. 73. Every petition for partition, filed originally either in the supreme judicial court, or court of common pleas, shall be indorsed in the same manner as is prescribed with respect to original writs, and all the regulations, concerning the indorsement of original writs, contained in the ninetieth chapter, shall apply in like manner to the indorsement of such petitions for partition.

CHAPTER 104.

OF FORCIBLE ENTRY AND DETAINER.

Forcible entry forbidden. 1784, 8, § 1.

SECTION 1. No person shall make any entry into lands or tenements, except in cases where his entry is allowed by law; and in such cases, he shall not enter with force, but in a peaceable manner.

The person ousted or unlawfully held out may be restored. 3 Pick. 31. 10 Mass. 403. 1825, 89, § 1.

SECT. 2. When any forcible entry shall be made, or when an entry shall be made in a peaceable manner, and the possession shall be unlawfully held by force, and also when the lessee of any lands or tenements, or any person holding under such lessee, shall hold possession of the demised premises, without right, after the determination of the lease, either by its own limitation, or by a notice to quit, as provided in the sixtieth chapter, the person, entitled to the premises, may be restored to the possession thereof, in the manner hereinafter provided.

Suit to be commenced within three years. 1784, 8, § 3.

SECT. 3. No restitution shall be made, under the provisions of this chapter, of any lands or tenements, of which the party complained of, or his ancestors, or those under whom he holds the premises, have been in the quiet possession, for three years next before the filing of the complaint, unless his estate therein is ended.

Form of writ and declaration. 1825, 89, § 1.

SECT. 4. The person, entitled to the possession of the premises, may take, from any justice of the peace, a writ in the form used for an original summons in common civil actions before justices of the peace, in which the defendant shall be summoned to answer to the complaint of the plaintiff, for that the defendant is in possession of the lands or tenements in question, describing them, which he holds unlawfully, and against the right of the plaintiff, as it is said; and no other declaration shall be required.

Proceedings in the suit. 1825, 89, § 1.

SECT. 5. The writ shall be served seven days at least before the return day, and the suit shall be conducted like other civil actions before justices of the peace.

Judgment, when for the plaintiff. 1825, 89, § 1.

SECT. 6. If the defendant shall be defaulted, or if on a trial it shall be proved to the satisfaction of the justice, that the plaintiff is entitled to the possession of the premises, he shall have judgment for the possession thereof, and for his costs, and execution shall issue accordingly.

When for the defendant. 1825, 89, § 1.

SECT. 7. If the plaintiff shall become nonsuit, or shall fail to prove his right to the possession, the defendant shall have judgment, and execution for his costs.

Appeal allowed, as in other civil actions. 1825, 89, § 2.

SECT. 8. Either party may appeal from the judgment of the justice, and the suit shall be thereupon conducted in the same manner, as is prescribed in cases of appeals from justices of the peace, in other civil actions.

Proceedings, when title to the freehold is in question. 1825, 89, § 3.

SECT. 9. If it shall appear by the pleadings or otherwise, in any such suit, that the title to the freehold is brought in question, the case shall, at the request of either party, be transferred to the court of common pleas, and be conducted in all respects thereafter, in the same manner as is prescribed in the eighty fifth chapter, when the title to real estate is concerned or brought in question, in any other civil action pending before a justice of the peace.

Defendant to recognize to pay rent, &c. 1825, 89, § 2.

SECT. 10. If the plaintiff shall claim any rent, as due on any lease, whether in writing or otherwise, and if the defendant shall appeal, or if the case shall be transferred to the court of common pleas, at his request, he shall recognize to the plaintiff, with sufficient surety or sureties, not only to enter the action, but also to pay all rent then

due, and all intervening rent, damages, and costs; and in case of final judgment for the plaintiff, all such rent, damages and costs may be recovered, upon a writ of scire facias upon the recognizance, or in an action of debt thereon.

Liability of defendant for frivolous plea, &c. 1825, 89, § 3.

SECT. 11. If the case shall be transferred to the court of common pleas, at the request of the defendant, upon any plea or suggestion by him, that shall bring in question the title to the freehold, and if it shall appear to the court of common pleas, or to the supreme judicial court, in case the action should be there determined, that the defendant originally entered on the premises, under a lease from the plaintiff, or from any person, under whom the plaintiff claims, or that he held them under any such lease, and that his said plea or suggestion was frivolous and intended for delay, the court shall cause a certificate thereof to be entered on the record, and the defendant shall thereupon be liable to pay double the yearly value of the demised premises, from the time of the notice to quit the same, which may be recovered of the defendant and his sureties in the recognizance, upon a scire facias or an action of debt thereon.

The premises or further damages may be afterwards recovered.

SECT. 12. The judgment in such action shall not be a bar to any action, thereafter to be brought by either party, to recover the premises in question, or to recover damages for any trespass thereon; but the sum, if any, recovered for rent, according to the provisions of the two preceding sections, shall be allowed and deducted in any assessment of damages, upon such a subsequent action by the original plaintiff.

The suit may be brought before any police or justices' court. 1825, 89, § 1.

SECT. 13. If any suit, under the provisions of this chapter, shall be commenced in any place, within or for which a police court or justices' court may be established, with jurisdiction of common civil actions, which are triable before a justice of the peace, the suit may be commenced in such police court or justices' court, and shall be prosecuted in like manner as if it had been commenced before a justice of the peace, as herein before provided.

CHAPTER 105.

OF WASTE, AND TRESPASS ON REAL ESTATE.

To take effect May 1, 1879.

Section 3. This act shall take effect on the first day of May in the year eighteen hundred and seventy-nine.

Approved April 16, 1879.

Chap. 236 An Act in relation to office hours of state departments.

Be it enacted, &c., as follows:

Office hours of state departments.

Section 1. The offices of all the departments of the state government shall be open to the public, for the transaction of business, daily, except on Sundays and legal holidays, from nine o'clock in the forenoon until five o'clock in the afternoon; and except on Saturdays when they may be closed at two o'clock in the afternoon.

Repeal of 1866, 67.

Section 2. Chapter sixty-seven of the acts of the year eighteen hundred and sixty-six is hereby repealed.

To take effect May 1, 1879.

Section 3. This act shall take effect on the first day of May in the year eighteen hundred and seventy-nine.

Approved April 16, 1879.

Chap. 237 An Act to provide for the recovery of lands unlawfully held after the foreclosure of mortgages.

Be it enacted, &c., as follows:

Recovery of land unlawfully held after foreclosure of mortgage.

Section 1. When a mortgage of real estate is foreclosed by a sale under a power contained therein, or otherwise, and the person having a valid title to such estate is kept out of possession by any person without right, he may recover such possession in the manner provided in chapter one hundred and thirty-seven of the General Statutes for the recovery of lands unlawfully held by tenants; but the condition of the recognizance required in case of appeal or removal on the part of the defendant shall be, to enter the action, and to pay to the plaintiff a reasonable sum as rent of the premises, from the day the mortgage is foreclosed until such possession is obtained, together with all costs, if the final judgment is for the plaintiff.

Condition of recognizance.

Section 2. This act shall take effect upon its passage.

Approved April 18, 1879.

Chap. 238 An Act to establish the salaries of the district attorneys and the assistant district attorneys, and the clerk of the district attorney for the Suffolk district.

Be it enacted, &c., as follows:

Salaries of district attorneys.

Section 1. The salaries of the district attorneys for the northern, eastern, south-eastern, southern, middle, and western districts shall be sixteen hundred dollars each a year; for the north-western district, twelve hundred dol-

South Boston. 1881, 261.

Of the South Boston district, the justice, eighteen hundred dollars; the clerk, twelve hundred dollars; the constables, one thousand dollars each:

Roxbury. 1879, 265, § 3. 1881, 249, 261.

Of the Roxbury district, the justice, two thousand dollars; the clerk, twelve hundred dollars; the assistant clerk, eight hundred dollars; the constables, one thousand dollars each:

Brighton. 1879, 265, § 5. 1881, 261.

Of the Brighton district, the justice, twelve hundred dollars; the constable, eight hundred dollars:

West Roxbury. 1881, 261.

Of the West Roxbury district, the justice, twelve hundred dollars; the constable, eight hundred dollars:

Dorchester. 1881, 261.

Of the Dorchester district, the justice, twelve hundred dollars; the constable, eight hundred dollars.

The justices, clerks, and other officers whose yearly salaries are stated in this section, shall receive compensation at the same rate for any part of a year.

Justices, clerks, etc., to receive no additional compensation. G. S. 116, § 34. 1877, 210, §§ 2, 7.

SECT. 65. No justice, or special justice when acting in the place of a justice, or clerk or assistant clerk, of a police, district, or municipal court shall receive any compensation, besides his regular salary or allowance, for making or issuing, in any capacity, complaints, warrants, subpœnas, or other criminal processes, which he is by law authorized to issue; or for any service performed by him in the discharge of his official duties in said court.

No fee for admitting to bail. 1879, 264.

SECT. 66. No clerk, assistant clerk, or constable of a police, district, or municipal court shall receive, in addition to his salary, any fee or compensation for inquiring into the case of and admitting to bail, in court, a prisoner held under arrest or committed for a bailable offence, whether on a warrant or without one, or for furnishing or making out any papers relating to the taking of bail in such case. Constables attending the sessions of the courts shall prepare the necessary bail papers during such session, without extra compensation.

Officers to receive no pay except their fees for attending police or district courts.

SECT. 67. No deputy-sheriff, constable, or other officer shall receive compensation for services in attending the sessions of a police or district court, except such as he may be entitled to receive by law for the service of process. 1876, 196, § 3.

CHAPTER 155.

OF JUSTICES OF THE PEACE AND TRIAL JUSTICES.

JUSTICES OF THE PEACE.

SECTION 1. Justices of the peace may, as conservators of the peace, upon view of an affray, riot, assault, or battery within their respective counties, without a warrant in writing, command the assistance of every sheriff, deputy-sheriff, and constable, and of all other persons present, for suppressing the same, and for arresting all who are concerned therein as provided in chapters two hundred and eleven and two hundred and twelve. Persons so arrested shall be brought before some police, district, or municipal court, or trial justice for examination.

General powers G. S. 120, § 32. 11 Gray, 194.

SECT. 2. They may administer oaths or affirmations in all cases in which an oath is required, unless a different provision is expressly made by law. G. S. 120, § 49.

Justices of the peace may administer oaths, etc.

SECT. 3. They may grant summonses for witnesses in all criminal cases pending before any court whatever, when requested by the attorney-general or other person acting in the case in behalf of the state, and also when requested by the party prosecuted; but in the latter case it shall be expressed in the summons that it is granted at the request of the party prosecuted, and the witness shall not be required to attend unless upon payment or tender of his legal fees.

may grant summons in criminal cases. G. S. 120, § 48.

SECT. 4. The governor, with the advice and consent of the council, may from time to time, upon the petition of the selectmen of a town included within the judicial district of a district or police court, and in which neither a justice nor the clerk of such court resides, designate and commission some justice of the peace residing in said town, who may issue warrants in criminal cases returnable to said court, and take bail therein.

may be designated to issue warrants and take bail. 1879, 254, § 1.

SECT. 5. Justices of the peace shall have jurisdiction and the right to act in all the counties, except as provided in the preceding section,

to act in all the counties, etc. 1863, 157, § 1.

§ 870, 120. 1880, 132.

and hereafter all appointments of justices of the peace shall be made and their commissions issued for the commonwealth.

Justices of the peace not to try civil or criminal cases nor issue warrants, unless commissioned as trial justices or clerks, etc. G. S. 129, § 36. 1877, 211, § 1. 126 Mass. 235.

SECT. 6. No justice of the peace, not designated and commissioned as a trial justice, shall have or exercise power, authority, or jurisdiction to try cases, civil or criminal, or receive complaints, or issue warrants except as provided in section four, and except that a justice of the peace who is also a clerk or assistant clerk of a police, district, or municipal court, may receive complaints and issue warrants, returnable before some trial justice, or police, district, or municipal court, having jurisdiction of the examination of the person charged with the offence.

TRIAL JUSTICES.

Justices commissioned as trial justices. G. S. 129, § 33. 105 Mass. 234.

SECT. 7. The governor with the advice and consent of the council shall from time to time designate and commission in the several counties a suitable number of justices of the peace as trial justices, and may at any time revoke such designation.

Trial justices may finish business after revocation of commission, etc.

SECT. 8. A trial justice after such revocation may finish any business commenced by or pending before him, and may certify copies of his records or other papers. 1860, 187, § 1.

shall hold office for three years only, etc. 1860, 187, § 2.

SECT. 9. Every trial justice shall hold his office for the term of three years from the time of his designation, unless during that period he ceases to hold a commission as justice of the peace, or unless such designation and commission is sooner revoked. 1877, 211, § 7.

number of. G. S. 120, § 34. 1869, 254.

SECT. 10. Such trial justices shall be distributed as the convenience of the several counties requires, and the number in commission shall not exceed, in Barnstable, nine; Berkshire, twelve; Bristol, thirteen; Dukes County, two; Essex, nineteen; Franklin, ten; Hampden, ten; Hampshire, ten; Middlesex, thirty; Nantucket, two; Norfolk, seventeen; Plymouth, fifteen; Suffolk, one; Worcester, twenty-six.

Trial justice's authority to cease if he changes his domicil, etc. G. S. 120, § 35. 1877, 211, § 2. 120 Mass. 242.

SECT. 11. If a trial justice changes his domicil to a place within the district and jurisdiction of a police, district, or municipal court, his authority to try civil or criminal cases, receive complaints, and issue warrants, shall thereupon cease, and another trial justice may be designated and appointed in his place.

JURISDICTION AND PROCEEDINGS IN CIVIL MATTERS.

Exclusive original jurisdiction. G. S. 120, § 1. 1877, 211, § 3.

SECT. 12. Trial justices may severally hold courts within the counties for which they are appointed, and shall have original jurisdiction, exclusive of the superior court, of all actions of replevin for beasts distrained or impounded in order to recover a penalty or forfeiture supposed to have been incurred by their going at large, or to obtain satisfaction for damages alleged to have been done by them; summary processes to recover land under chapter one hundred and seventy-five; and of all actions of contract, tort, or replevin, where the debt or damages demanded or value of the property alleged to be detained does not exceed one hundred dollars.

Original and concurrent jurisdiction with superior court. 1877, 211, § 3. 8 Allen, 337.

SECT. 13. They shall have original and concurrent jurisdiction with the superior court of actions of contract, tort, or replevin, where the debt or damages demanded or value of property alleged to be detained is more than one hundred and does not exceed three hundred dollars.

Trial justices may issue scire facias against executors, etc. G. S. 120, § 3.

SECT. 14. They may issue writs of scire facias against executors and administrators, upon a suggestion of waste after judgment against them, and also against the bail taken in a civil action before themselves, and proceed therein to judgment and execution in the same manner as the superior court might do in like cases.

Within what time to be served. G. S. 120, § 4.

SECT. 15. Such writs shall be served not less than seven nor more than sixty days before the time when they are returnable, and may run into any county in which the defendant may be found.

Limit of jurisdiction in such case. G. S. 120, § 5.

SECT. 16. It shall be no bar to such suit that the debt and costs on the original judgment together exceed three hundred dollars; but judgment and execution may be awarded by the trial justice for the whole sum due to the plaintiff, with the costs of the new suit.

Writs, forms of, where to run. G. S. 120, § 6. 2 Allen, 532. 7 Allen, 152.

SECT. 17. The original writ in all civil actions commenced before a trial justice shall be a summons or a capias and attachment, and shall be signed by the justice. The forms of such writs shall be regulated as provided in chapter one hundred and sixty-one; but no writ issued by a trial justice shall run into any other county than that in which it is returnable, except as provided in the following section and chapters one hundred and seventy-five and one hundred and eighty-three.

may run into any county for attachment. G. S. 120, § 7. 2 Allen, 531. 7 Allen, 151.

SECT. 18. Writs issued by trial justices may be directed to the proper officers in any county for the purpose of causing an attachment of property therein; but no more than one dollar and fifty cents shall be chargeable to or taxed against the defendant for the service of such writ.

service of, on absent defendants. G. S. 120, § 8. 4 Allen, 94.

SECT. 19. When an attachment is made upon a writ returnable before a trial justice, and the defendant is out of the state, so that no service can be made on him, and he has no agent or attorney residing within the state, the justice may order the action to be continued until notice thereof is given to the defendant in such manner as the justice shall order. Upon proof of such notice having been given, if the defendant fails to appear on the return day of such notice, judgment may be entered and execution issued for the plaintiff, upon his giving bond to the defendant with sufficient surety for double the sum for which execution is to be issued, to repay the amount recovered, if, within one year from the rendition of the judgment, it is reversed.

When, etc., causes may be heard. G. S. 120, § 9. 4 Cush. 455.

SECT. 20. Actions before trial justices may be heard and determined at their dwelling-houses or any other convenient and suitable places; and writs and processes may be made returnable accordingly, but not earlier than nine o'clock in the forenoon nor later than five o'clock in the afternoon.

On failure of justice to attend, other justice may attend, etc. G. S. 120, § 10. 1878, 49. 1880, 132.

SECT. 21. If a trial justice fails to attend at the time and place to which a civil process is returnable or continued before him, any other trial justice for the same county or a justice of the peace may attend, and continue the process not exceeding thirty days, without costs, and saving the rights of all parties; and he shall make a certificate thereof, which shall be filed with the papers in the case and entered upon the record by the justice before whom the process was returnable.

Judgment for plaintiff on default, etc. G. S. 120, § 11. 2 Gray, 410.

SECT. 22. If a person duly served with process fails to appear and answer thereto, his default shall be recorded and the charge against him in the declaration taken to be true. Upon such default, or when the plaintiff maintains his action upon a trial, the trial justice shall award and enter judgment for such sum, not exceeding the amount of his jurisdiction in the case, as he upon inquiry finds the plaintiff is entitled to recover, with costs.

for defendant. G. S. 120, § 12. 110 Mass. 56. 123 Mass. 318.

SECT. 23. If the plaintiff fails to enter and prosecute his action, or if upon a trial he does not maintain the same, the defendant shall recover judgment for his costs, to be taxed by the trial justice.

Removal of cases concerning real estate. G. S. 120, § 13. 1863, 125, § 2. 4 Pick. 169.

SECT. 24. When it appears by the pleadings or otherwise, in an action pending before a trial justice, that the title to real estate is concerned or brought in question, the fact, if it does not appear by the pleadings, shall be stated on the record, and the case shall at the

19 Pick. 419.
8 Met. 167.
10 Met. 250.
115 Mass. 558.
123 Mass. 86.
128 Mass. 192.

request of either party be removed to the superior court, to be there tried and determined in like manner as if it had been originally commenced, or, if it is a writ of scire facias, in like manner as if the original judgment had been obtained in that court.

Party removing must recognize.
G. S. 120, § 14.
19 Pick. 419.

SECT. 25. The party requiring the case to be removed shall, except as provided in section thirty-three, recognize to the other party in a reasonable sum with sufficient surety or sureties, with condition to enter the action at the superior court next to be held in the county; and if he fails so to recognize, the trial justice shall hear and determine the case as if there had been no request to remove it.

Proceedings on removal of case.
G. S. 120, § 15.
19 Pick. 419.

SECT. 26. The party recognizing shall produce at the court a copy of the record and all papers required to be produced by an appellant, and if he fails so to do, or so to enter the action, he shall upon the complaint of the adverse party be there defaulted or nonsuited, as the case may be, and such judgment shall be thereupon rendered as law and justice may require.

Pleadings.
G. S. 120, § 16.
9 Gray, 361.
6 Allen, 25.
98 Mass. 528.

SECT. 27. In civil actions the trial may be had, at the election of the defendant, upon pleadings in writing as heretofore used, or the defendant without filing a written plea may orally deny the plaintiff's right to maintain his action; in which latter case an entry shall be made on the record that the defendant appears and denies the plaintiff's right to maintain his action, and puts himself on trial, or in words to that effect. Upon the issue so joined a trial may be had, and any matter may be given in evidence by either party which would have been admissible if the defence had been made under any plea in bar.

Appeal allowed to the superior court.
G. S. 120, § 25.
1876, 196, §§ 1, 2.
11 Met. 436.
11 Cush. 80.
1 Gray, 601, 602.
2 Gray, 555.
9 Gray, 49.

SECT. 28. A party aggrieved by the judgment of a trial justice in a civil action may within twenty-four hours after the entry of the judgment appeal therefrom to the superior court then next to be held in the county; in which case no execution shall issue on the judgment appealed from, and the case shall be entered, tried, and determined, in the court appealed to, in like manner as if it had been originally commenced there. 11 Gray, 383. 12 Gray, 430. 13 Allen, 78. 125 Mass. 49.

Appellant to recognize.
1877, 236, § 1.
5 Allen, 388.
7 Allen, 198.

SECT. 29. No appeal from a judgment of a trial justice, in any civil action or proceeding, except actions under chapter one hundred and seventy-five, shall be allowed, except as provided in the four following sections, unless the appellant within twenty-four hours after the entry of judgment recognizes to the adverse party with sufficient surety or sureties, to be approved by the adverse party or by the justice, in a reasonable sum to be fixed by the justice, or approved by the adverse party, with condition to enter and prosecute his appeal with effect, and to satisfy, within thirty days of the entry thereof, any judgment which may be entered against him in the superior court upon said appeal for costs: *provided*, that the justice may for cause shown extend the time for recognizing. In determining the sufficiency of the sureties upon such recognizance, the justice may examine upon oath the persons offered as sureties and all other witnesses produced by either party.

may make money deposit.
1880, 20, § 1.

SECT. 30. In lieu of entering into a recognizance as provided in the preceding section, the appellant, or any person in his behalf, may, with the like effect, deposit with the trial justice rendering the judgment a reasonable sum to be fixed by the justice, as security for the prosecution of the appeal and the payment of the costs. A certificate of such deposit shall be issued to the depositor by the justice receiving the same.

Money to be sent up with papers.
1880, 20, § 2.

SECT. 31. The trial justice shall transmit any sum so received by him with the papers to the clerk of the superior court to which the appeal is taken, who shall thereupon deliver or forward his certificate therefor to such justice.

Failure of justice to attend, in civil process.
1848, 193.
G. S. 120, § 10.
1878, 49.
1880, 132.
P. S. 155, § 21.

SECTION 18. If a trial justice fails to attend at the time and place to which a civil process is returnable or continued before him, any other trial justice for the same county or a justice of the peace may attend and continue the process for not more than thirty days, without costs, and saving the rights of all parties; and he shall make a certificate thereof, which shall be filed with the papers in the case and entered upon the record by the justice before whom the process was returnable.

Removal of cases concerning land.
1698, 7, § 4.
1783, 42, § 2.
1825, 89, § 3.
R. S. 85, § 3; 104, § 9.
G. S. 120, § 13.
1863, 125, § 2.
P. S. 155, § 24.
1885, 384, § 5.
19 Pick. 419.
8 Met. 166.
10 Met. 248.
115 Mass. 558.

SECTION 19. If, in an action pending before a trial justice, it appears by the pleadings or otherwise that the title to land is drawn in question, the fact, unless it appears by the pleadings, shall be stated on the record, and the case shall, at the request of either party, be removed to and entered in the superior court for the same county at the return day next after the removal is requested, and shall be there tried and determined as if it had been originally commenced, or, if it is a writ of scire facias, as if the original judgment had been obtained, in that court. 123 Mass. 85. 128 Mass. 192. 151 Mass. 543.

Plaintiff removing to recognize.
1698, 7, § 4.
1783, 42, § 2.
R. S. 85, § 4.
G. S. 120, § 14.
P. S. 155, § 25.
1885, 384, § 5.

SECTION 20. The party who requires the case to be so removed shall, except as provided in section one hundred and one of chapter one hundred and seventy-three, recognize to the other party in a reasonable sum with sufficient surety or sureties, with condition to enter the action at the superior court for the same county at the return day next after the removal is requested; and if he fails so to recognize, the trial justice shall hear and determine the case as if no removal had been requested.

Proceedings on removal.
1698, 7, § 4.
1783, 42, § 2.
R. S. 85, § 5.
G. S. 120, § 15.
P. S. 155, § 26.

SECTION 21. The recognizor shall produce at the superior court a copy of the record and all papers required to be produced by an appellant, and if he fails so to do, or so to enter the action, he shall, upon complaint of the adverse party, be there defaulted or nonsuited, as the case may be, and such judgment shall be thereupon rendered as law and justice may require.

Death of justice before entry.
1862, 141, § 1.
P. S. 155, § 37.

SECTION 22. If a trial justice before whom a civil action has been commenced dies after the service of the writ either by attachment of property or by personal service on the defendant and before the entry thereof, the plaintiff may enter the action before any other trial justice for the same county, who may proceed in the case as if the writ had been originally issued with his signature, except as provided in section twenty-four.

— after entry and before judgment.
1862, 141, § 2.
P. S. 155, § 38.

SECTION 23. If a trial justice before whom a civil action has been entered and is pending dies before the final judgment in the case has been rendered by him, any other trial justice for the same county may, upon the application of any one of the parties to the action, cause the papers in the case to be brought and entered before him, and he may thereupon proceed in the action in the same manner as if it had been originally entered before him, except as provided in the following section.

Notice to the parties, etc.
1862, 141, § 3.
P. S. 155, § 39.

SECTION 24. If an action is entered as provided in section twenty-two or if the papers in a case are brought and entered as

Attorney general to be served with copy of information.

any such information, it shall be a part of such order, that a copy of such information be served on the attorney general within such time as the court shall direct, and it shall be lawful for the attorney general, when he shall have good reason to believe there has been a usurpation of a franchise or privilege not conferred by law, to intervene and demand a judgment of fine and forfeiture; and in such case he shall have the control of all future proceedings, and the court shall enter such judgment as may be required by the principles of the common law; but the complainant in such case shall no longer be responsible for costs.

Proceedings when he shall intervene.

His duty to proceed ex officio, not affected.

Sect. 64. Nothing herein contained shall be deemed to affect the duty of the attorney general hereafter to proceed *ex officio*, in all cases in which he may now so proceed by law, nor to deprive any individual of the right to file an information respecting the election or admission of an officer or member of a corporation.

How far foregoing provisions deemed applicable to real and mixed actions.

Sect. 65. None of the foregoing provisions, except those contained in sections nine, ten, eleven, thirteen, sixteen, seventeen, eighteen, thirty-one, thirty-two, thirty-three, thirty-eight, thirty-nine, forty, forty-two, forty-three, forty-four, forty-five and forty-six, shall be deemed applicable to real or mixed actions, unless specially named.

Upon an adverse claim of title, when and how party in possession of real estate may proceed.

Sect. 66. Any person in possession of real property, claiming an estate of freehold, or an unexpired term of not less than ten years, may file a petition in the supreme judicial court, setting forth his estate, whether of inheritance, for life or years, and describing the premises, and averring that he is credibly informed and believes, that the respondent makes some claim adverse to the estate of the petitioner, and praying that he may be summoned to show cause, why he should not bring an action to try the alleged title, if any. And thereupon the court shall order notice to be given to the respondent, and upon return of such order of notice duly executed, if the respondent so summoned shall make default, or, having appeared, shall disobey the lawful order of the court to bring an action and try the title, the court shall enter a decree, that he be forever debarred and estopped from having or claiming any right or title, adverse to the petitioner, to the premises described.

Proceedings upon appearance of respondent.

Sect. 67. If the respondent shall appear and disclaim all right and title adverse to the petitioner, he shall recover his costs. If he shall claim title, he shall by answer show cause why he should not be required to bring an action and try such title, and the court shall make such decree respecting the bringing and prosecuting of such action as may seem equitable and just.

Proceedings to foreclose a mortgage by real action.

Sect. 68. When a real action shall be brought to foreclose a mortgage, and the demandant shall, at the time of entering his action, file his mortgage deed, and the note, bond or other contract, if any, secured thereby, together with his affidavit setting forth his title, the breach of condition, and the amount due, if liquidated, the clerk shall enter a default and a conditional judgment thereon, and issue execution according to law, unless the tenant, within fifteen days after the return day of the writ, shall file his counter affidavit, denying the demandant's title, or the breach of condition alleged, or the amount due, in which case the action shall be placed on the calendar for trial. If the denial of the tenant extends only to part of the sum alleged to be due, the demandant, if he so elect, and his title is admitted, may take judgment for the amount not denied. If the tenant in the action shall not be seized in fee simple in possession of the whole equity of redemption of the land demanded, no decree for a sale shall be made until all parties interested in such equity of redemption, and whose estate or interest therein would be affected by such sale, including any married woman having a right or possibility of dower, shall have been summoned to appear, and shall have had due opportunity to be heard, according to the order of the court.

Proceedings when a power of sale is contained in a mortgage.

Sect. 69. In all cases in which a power of sale is contained in a mortgage of real property, when a conditional judgment has been entered, the demandant may, if he so elect, instead of a writ of possession, have a decree entered, that the property be sold pursuant to the power of sale in the deed of mortgage; and thereupon the demandant shall give such notices, and do all such acts as are authorized and required by such power. And if the deed of mortgage containing such power of sale was executed by a man having at the time no lawful wife, or if, being married, the wife of the mortgagor joined in such deed in token of her release of dower, such sale shall be effectual to bar all claim and possibility of dower in the land so mortgaged.

Effect of sale upon dower.

Report of sale to be made and filed; proceedings thereon.

Sect. 70. The party so selling shall, within ten days after such sale, make a report thereof and of his doings to the court, under his oath, and file the same in the clerk's office, and the same may be confirmed and allowed, or set aside and a resale ordered, as to the court shall seem lawful. Any person interested may intervene or be summoned and heard on such proceedings, and the order of the court confirming the sale, shall be conclusive evidence as against all persons that the power of sale was duly executed.

When writ of injunction may issue to stay waste.

Sect. 71. When any real action shall be brought to foreclose a mortgage, the court, or any justice thereof, may, on the application of the demandant, either in term time or vacation, and in any county, issue a writ of injunction to stay any waste committed or threatened by the defendant, or any one claiming under him, or acting by his permission, on the land mortgaged.

Proceedings, when demandant in any real or mixed action shall die before judgment.

Sect. 72. In all real and mixed actions, if the demandant shall die before final judgment, his devisee of the land demanded, or right of action, if any, at the same term when the death is suggested, or within such further time as the court shall allow, may appear and prosecute the suit in the same manner as if it had been originally commenced by him. And if the first estate in possession under the devise shall not be a fee simple, the devisee of the first freehold estate in possession, shall have the right to appear and prosecute as aforesaid, and the judgment, if in his favor, shall be conformed to his title.

Trustee, when to appear and answer; what the answer shall disclose.

Sect. 73. Any person summoned as a trustee shall appear and file his answer within fifteen days after the return day of the writ, otherwise he shall be defaulted and adjudged a trustee. Such answer shall disclose, as plainly, fully and particularly as is in his power, what goods, effects or credits of the principal, if any, were in his hands or possession at the time of the service of the writ upon him, and shall be sworn to by the trustee.

Trustee may be examined upon written interrogatories.

Sect. 74. The plaintiff may, from time to time, examine the supposed trustee upon written interrogatories, to be filed in the clerk's office; and the answer thereto shall be sworn to and filed in the clerk's office within ten days after notice to the supposed trustee, or his attorney, of the filing of the interrogatories, unless the court, or some justice thereof, shall grant further time therefor. And if such answers are not so filed, the clerk shall, upon proof of such notice, enter a default, and a decree that the person so in default is adjudged a trustee.

Effect of neglect to answer.

Costs, when trustee is defaulted.

Sect. 75. If any trustee shall be so defaulted, and a *scire facias* shall be sued and prosecuted against him, it shall be in the power of the court to make such order concerning the costs, as they may now do, when the supposed trustee is defaulted, according to the fifty-ninth section of the one hundred and ninth chapter of the Revised Statutes.

When entry may be made into lands and tenements and how.

Sect. 76. No person shall make any entry into any lands or tenements, except in cases where his entry is allowed by law; and, in such cases, he shall not enter with force, but in a peaceable manner.

Sect. 77. When any forcible entry shall be made, or

Chapter 93, Section 102: Equal rights; violations; civil actions; costs

Section 102. (a) All persons within the commonwealth, regardless of sex, race, color, creed or national origin, shall have, except as is otherwise provided or permitted by law, the same rights enjoyed by white male citizens, to make and enforce contracts, to inherit, purchase, to lease, sell, hold and convey real and personal property, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) A person whose rights under the provisions of subsection (a) have been violated may commence a civil action for injunctive and other appropriate equitable relief, including the award of compensatory and exemplary damages. Said civil action shall be instituted either in the superior court for the county in which the conduct complained of occurred, or in the superior court for the county in which the person whose conduct complained of resides or has his principal place of business.

(c) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that any individual is denied any of the rights protected by subsection (a).

(d) An aggrieved person who prevails in an action authorized by subsection (b), in addition to other damages, shall be entitled to an award of the costs of the litigation and reasonable attorneys' fees in an amount to be fixed by the court.

Chapter 93, Section 103: Equal rights; age and handicap; violations; remedies

Section 103. (a) Any person within the commonwealth, regardless of handicap or age as defined in chapter one hundred and fifty-one B, shall, with reasonable accommodation, have the same rights as other persons to make and enforce contracts, inherit, purchase, lease, sell, hold and convey real and personal property, sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property, including, but not limited to, the rights secured under Article CXIV of the Amendments to the Constitution.

(b) Any person whose rights under the provisions of subsection (a) have been violated may commence a civil action for injunctive and other appropriate equitable relief, including, but not limited to, the award of compensatory and exemplary damages. Said civil action shall be instituted either in the superior court for the county in which the conduct complained of occurred, or in the superior court for the county in which the person whose conduct complained of resides or has his principal place of business.

(c) A violation of subsection (a) shall be established if, based upon the totality of circumstances, it is shown that any individual is denied any of the rights protected by subsection (a).

(d) An aggrieved person who prevails in an action authorized by subsection (b), in addition to other damages, shall be entitled to an award of the costs of the litigation and reasonable attorneys' fees in an amount to be determined by the court.

Chapter 93A, Section 1: Definitions

Section 1. The following words, as used in this chapter unless the text otherwise requires or a different meaning is specifically required, shall mean—

(a) "Person" shall include, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(b) "Trade" and "commerce" shall include the advertising, the offering for sale, rent or lease, the sale, rent, lease or distribution of any services and any property, tangible or intangible, real, personal or mixed, any security as defined in subparagraph (k) of section four hundred and one of chapter one hundred and ten A and any contract of sale of a commodity for future delivery, and any other article, commodity, or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this commonwealth.

(c) "Documentary material" shall include the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(d) "Examination of documentary material", the inspection, study, or copying of any such material, and the taking of testimony under oath or acknowledgment in respect of any such documentary material.

Chapter 93A, Section 2: Unfair practices; legislative intent; rules and regulations

Section 2. (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(b) It is the intent of the legislature that in construing paragraph (a) of this section in actions brought under sections four, nine and eleven, the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

(c) The attorney general may make rules and regulations interpreting the provisions of subsection 2(a) of this chapter. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the Federal Trade Commission and the Federal Courts interpreting the provisions of 15 U.S.C. 45(a)(1) (The Federal Trade Commission Act), as from time to time amended.

Chapter 140D. Section 1: Definitions

Section 1. For the purpose of this chapter, the following words shall, unless the context indicates otherwise, have the following meanings:

"Accepted credit card", any credit card which the cardholder has requested and received or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor, or services on credit.

"Adequate notice", a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. Such notice may be given to a cardholder by printing the notice on any credit card, or on each periodic statement of account, issued to the cardholder, or by any other means reasonably assuring the receipt thereof by the cardholder.

"Advertisement", a commercial message in any medium that promotes, directly or indirectly, a credit transaction.

"Agricultural products", products relating to agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

"Agricultural purpose", a purpose relating to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures those agricultural products, including but not limited to the acquisition of farmland, real property with a farm residence, and personal property and services used primarily in farming.

"Bureau", the federal Bureau of Consumer Financial Protection.

"Cardholder", any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

"Card issuer", any person who issues a credit card, or the agent of such person with respect to such card.

"Commissioner", the commissioner of banks.

"Consumer", used as an adjective, with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or

services which are the subject of the transactions are primarily for personal, family, or household purposes.

"Credit", the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

"Credit card", any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

"Creditor", a person who both (1) regularly extends, whether in connection with loans, sales or property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the preceding sentence, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge is a creditor. For the purposes of the requirements imposed under this chapter, the term "creditor" shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the commissioner shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans.

"Credit sale", any sale in which the seller is a creditor. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

"Discount", a reduction made from the regular price. The term "discount" shall not mean a surcharge.

"Dwelling", a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.

"Material disclosure", the disclosure, as required by this chapter, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments, and the due dates or periods of payments scheduled to repay the indebtedness.

"Open-end-credit plan", a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan which is an open-end-credit plan within the meaning of the preceding sentence is an open-end-credit plan even if credit information is verified from time to time.

"Organization", a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

"Person", a natural person or an organization.

"Regular price", the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end-credit plan or credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted, one of which is charged when payment is made by use of an open-end-credit plan or credit card and the other when payment is made by use of cash, check, or similar means. For purposes of this definition, payment by check, draft or other negotiable instrument which may result in the debiting of an open-end-credit plan or a credit card holder's open end account shall not be considered payment by use of the plan or the account.

"Residential mortgage transaction", a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of such dwelling.

"Surcharge", any means of increasing the regular price to a cardholder which is not imposed upon customers paying by cash, check or similar means.

"Unauthorized use", a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

Any reference to any requirement imposed under this chapter or any provision thereof includes reference to the regulations of the commissioner of banks under this chapter or the provision thereof in question.

The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this chapter does not in itself constitute a violation of this chapter.

Chapter 151B, Section 1: Definitions

Section 1. As used in this chapter

1. The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and the commonwealth and all political subdivisions, boards, and commissions thereof.

2. The term "employment agency" includes any person undertaking to procure employees or opportunities to work.

3. The term "labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

4. The term "unlawful practice" includes only those unlawful practices specified in section four.

5. The term "employer" does not include a club exclusively social, or a fraternal association or corporation, if such club, association or corporation is not organized for private profit, nor does it include any employer with fewer than six persons in his employ, but shall include an employer of domestic workers including those covered under section 190 of chapter 149, the commonwealth and all political subdivisions, boards, departments and commissions thereof. Notwithstanding the provisions of any general or special law nothing herein shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, and which limits membership, enrollment, admission, or participation to members of that religion, from giving preference in hiring or employment to members of the same religion or from taking any action with respect to matters of employment, discipline, faith, internal organization, or ecclesiastical rule, custom, or law which are calculated by such organization to promote the religious principles for which it is established or maintained.

6. The term "employee" does not include any individual employed by his parents, spouse or child.

7. The term "commission", unless a different meaning clearly appears from the context, means the Massachusetts commission against discrimination, established by section fifty-six of chapter six.

8. The term "age" unless a different meaning clearly appears from the context, includes any duration of time since an individual's birth of greater than forty years.

9. The term "housing or housing accommodations" includes any building, structure or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings.

10. The term "publicly assisted housing accommodations" includes all housing accommodations in

(a) housing constructed after July first, nineteen hundred and fifty, and

(1) which is exempt in whole or in part from taxes levied by the commonwealth or any of its political subdivisions;

(2) which is constructed on land sold below cost by the commonwealth or any of its political subdivisions or any agency thereof, pursuant to the federal housing act of nineteen hundred and forty-nine;

(3) which is constructed in whole or in part on property acquired or assembled by the commonwealth or any of its political subdivisions or any agency thereof through the power of condemnation or otherwise for the purpose of such construction; or

(4) for the acquisition, construction, repair or maintenance of which the commonwealth or any of its political subdivisions or any agency thereof supplies funds or other financial assistance;

(b) housing which is located in a multiple dwelling, the acquisition, construction, rehabilitation, repair or maintenance of which is, after October first, nineteen hundred and fifty-seven, financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof; provided, that such a housing accommodation shall be deemed to be publicly assisted only during the life of such loan and such guaranty or insurance; and

(c) housing which is offered for sale, lease or rental by a person who owns or otherwise controls the sale of the same, and which is part of a parcel of ten or more housing accommodations located on land that is contiguous, exclusive of public streets, if (1) the acquisition, construction, rehabilitation, repair or maintenance of such housing accommodations is after October first, nineteen hundred and fifty-seven, financed in whole or in part by a loan whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof; provided, that such a housing accommodation shall be deemed to be publicly assisted only during the life of such loan and guaranty or insurance; or (2) a commitment issued by a government agency after October first, nineteen hundred and

fifty-seven, is outstanding that acquisition of such housing accommodations may be financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof.

11. The term "multiple dwelling" means a dwelling which is usually occupied for permanent residence purposes and which is either rented, leased, let or hired out, to be occupied as the residence or home of three or more families living independently of each other. A "multiple dwelling" shall not be deemed to include a hospital, convent, monastery, asylum or public institution, or a fireproof building used wholly for commercial purposes except for not more than one janitor's apartment and not more than one penthouse occupied by not more than two families. The term "family", as used herein, means (a) a person occupying a dwelling and maintaining a household either alone or with not more than four boarders, roomers or lodgers; or (b) two or more persons occupying a dwelling, either living together and maintaining a common household, or living together and maintaining a common household with not more than four boarders, roomers or lodgers. A "boarder", "roomer" or "lodger" residing with a family means a person living within the household who pays a consideration for such residence and does not occupy such space within the household as an incident of employment therein.

12. The term "contiguously located housing" means (1) housing which is offered for sale, lease or rental by a person who owns or at any time has owned, or who otherwise controls or at any time has controlled, the sale of ten or more housing accommodations located on land that is contiguous (exclusive of public streets), and which housing is located on such land, or (2) housing which is offered for sale, lease or rental and which at any time was one of ten or more lots of a tract whose plan has been submitted to a planning board as required by THE SUBDIVISION CONTROL LAW, as appearing in sections eighty-one K to eighty-one GG, inclusive, of chapter forty-one.

13. The term "other covered housing accommodations" includes all housing accommodations not specifically covered under subsections 10, 11 and 12 which are directly or through an agent made generally available to the public for sale or lease or rental, by advertising in a newspaper or otherwise, by posting of a sign or signs or a notice or notices on the premises or elsewhere, by listing with a broker, or by any other means of public offering.

14. The term "commercial space" means any space in a building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property; and any space which is used or occupied, or is intended, arranged or designed to be used or occupied as a separate

business or professional unit or office in any building, structure or portion thereof.

15. The term "housing development" means multi-apartment units operated as contiguously located housing accommodations.

16. The term "qualified handicapped person" means a handicapped person who is capable of performing the essential functions of a particular job, or who would be capable of performing the essential functions of a particular job with reasonable accommodation to his handicap.

17. The term "handicap" means (a) a physical or mental impairment which substantially limits one or more major life activities of a person; (b) a record of having such impairment; or (c) being regarded as having such impairment, but such term shall not include current, illegal use of a controlled substance as defined in section one of chapter ninety-four C.

18. The term "sexual harassment" shall mean sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment. Discrimination on the basis of sex shall include, but not be limited to, sexual harassment.

19. The term "handicapped person" means any person who has a handicap.

20. The term "major life activities" means functions, including, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

21. The term "accessible" means that housing is functional for and can be safely and independently used by a physically or mentally handicapped person and complies with rules or regulations established by the commission.

22. The term "genetic information", shall mean any written, recorded individually identifiable result of a genetic test as defined by this section or explanation of such a result or family history pertaining to the presence, absence, variation, alteration, or modification of a human gene or genes. For the purposes of this chapter, the term genetic information shall not include information pertaining to the abuse of drugs or alcohol which is derived from tests given for the exclusive purpose of determining the abuse of drugs or alcohol.

23. The term "genetic test", shall mean any tests of human DNA, RNA, mitochondrial DNA, chromosomes or proteins for the purpose of identifying

genes or genetic abnormalities, or the presence or absence of inherited or acquired characteristics in genetic material. For the purposes of this chapter, the term genetic test shall not include tests given for the exclusive purpose of determining the abuse of drugs or alcohol.

Section 4: Unlawful practices

Section 4. It shall be an unlawful practice:

1. For an employer, by himself or his agent, because of the race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, genetic information, pregnancy or a condition related to said pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child, ancestry or status as a veteran of any individual to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification.

1A. It shall be unlawful discriminatory practice for an employer to impose upon an individual as a condition of obtaining or retaining employment any terms or conditions, compliance with which would require such individual to violate, or forego the practice of, his creed or religion as required by that creed or religion including but not limited to the observance of any particular day or days or any portion thereof as a sabbath or holy day and the employer shall make reasonable accommodation to the religious needs of such individual. No individual who has given notice as hereinafter provided shall be required to remain at his place of employment during any day or days or portion thereof that, as a requirement of his religion, he observes as his sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his place of employment and his home, provided, however, that any employee intending to be absent from work when so required by his or her creed or religion shall notify his or her employer not less than ten days in advance of each absence, and that any such absence from work shall, wherever practicable in the judgment of the employer, be made up by an equivalent amount of time at some other mutually convenient time. Nothing under this subsection shall be deemed to require an employer to compensate an employee for such absence. "Reasonable Accommodation", as used in this subsection shall mean such accommodation to an employee's or prospective employee's religious observance or practice as shall not cause undue hardship in the conduct of the employer's business. The employee shall have the burden of proof as to the required practice of his creed or religion. As used in this subsection, the

words "creed or religion" mean any sincerely held religious beliefs, without regard to whether such beliefs are approved, espoused, prescribed or required by an established church or other religious institution or organization.

Undue hardship, as used herein, shall include the inability of an employer to provide services which are required by and in compliance with all federal and state laws, including regulations or tariffs promulgated or required by any regulatory agency having jurisdiction over such services or where the health or safety of the public would be unduly compromised by the absence of such employee or employees, or where the employee's presence is indispensable to the orderly transaction of business and his or her work cannot be performed by another employee of substantially similar qualifications during the period of absence, or where the employee's presence is needed to alleviate an emergency situation. The employer shall have the burden of proof to show undue hardship.

1B. For an employer in the private sector, by himself or his agent, because of the age of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual, or to discriminate against such individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification.

1C. For the commonwealth or any of its political subdivisions, by itself or its agent, because of the age of any individual, to refuse to hire or employ or to bar or discharge from employment such individual in compensation or in terms, conditions or privileges of employment unless pursuant to any other general or special law.

1D. For an employer, an employment agency, the commonwealth or any of its political subdivisions, by itself or its agents, to deny initial employment, reemployment, retention in employment, promotion or any benefit of employment to a person who is a member of, applies to perform, or has an obligation to perform, service in a uniformed military service of the United States, including the National Guard, on the basis of that membership, application or obligation.

1E. (a) For an employer to deny a reasonable accommodation for an employee's pregnancy or any condition related to the employee's pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child if the employee requests such an accommodation; provided, however, that an employer may deny such an accommodation if the employer can demonstrate that the accommodation would impose an undue hardship on the employer's program, enterprise or business. It shall also be an unlawful practice under this subsection to:

(i) take adverse action against an employee who requests or uses a reasonable accommodation in terms, conditions or privileges of employment including, but not limited to, failing to reinstate the employee to the original employment status or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other applicable service credits when the need for a reasonable accommodation ceases;

(ii) deny an employment opportunity to an employee if the denial is based on the need of the employer to make a reasonable accommodation to the known conditions related to the employee's pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child;

(iii) require an employee affected by pregnancy, or require said employee affected by a condition related to the pregnancy, including, but not limited to, lactation or the need to express breast milk for a nursing child, to accept an accommodation that the employee chooses not to accept, if that accommodation is unnecessary to enable the employee to perform the essential functions of the job;

(iv) require an employee to take a leave if another reasonable accommodation may be provided for the known conditions related to the employee's pregnancy, including, but not limited to, lactation or the need to express breast milk for a nursing child, without undue hardship on the employer's program, enterprise or business;

(v) refuse to hire a person who is pregnant because of the pregnancy or because of a condition related to the person's pregnancy, including, but not limited to, lactation or the need to express breast milk for a nursing child; provided, however, that the person is capable of performing the essential functions of the position with a reasonable accommodation and that reasonable accommodation would not impose an undue hardship, demonstrated by the employer, on the employer's program, enterprise or business.

(b) As used in this subsection, the following words shall have the following meanings unless the context clearly requires otherwise:

"Reasonable accommodation", may include, but shall not be limited to: (i) more frequent or longer paid or unpaid breaks; (ii) time off to attend to a pregnancy complication or recover from childbirth with or without pay; (iii) acquisition or modification of equipment or seating; (iv) temporary transfer to a less strenuous or hazardous position; (v) job restructuring; (vi) light duty; (vii) private non-bathroom space for expressing breast milk; (viii) assistance with manual labor; or (ix) a modified work schedule; provided, however, that an employer shall not be required to discharge or transfer an employee with more seniority or promote an employee who is not able to perform the essential functions of the job with or without a reasonable accommodation.

"Undue hardship", an action requiring significant difficulty or expense; provided, however, that the employer shall have the burden of proving undue hardship; provided further, that in making a determination of undue hardship, the following factors shall be considered: (i) the nature and cost of the needed accommodation; (ii) the overall financial resources of the employer; (iii) the overall size of the business of the employer with respect to the number of employees and the number, type and location of its facilities; and (iv) the effect on expenses and resources or any other impact of the accommodation on the employer's program, enterprise or business.

(c) Upon request for an accommodation from the employee or prospective employee capable of performing the essential functions of the position involved, the employee or prospective employee and the employer shall engage in a timely, good faith and interactive process to determine an effective, reasonable accommodation to enable the employee or prospective employee to perform the essential functions of the employee's job or the position to which the prospective employee has applied. An employer may require that documentation about the need for a reasonable accommodation come from an appropriate health care or rehabilitation professional; provided, however, that an employer shall not require documentation from an appropriate health care or rehabilitation professional for the following accommodations: (i) more frequent restroom, food or water breaks; (ii) seating; (iii) limits on lifting more than 20 pounds; and (iv) private non-bathroom space for expressing breast milk. An "appropriate health care or rehabilitation professional" shall include, but shall not be limited to, a medical doctor, including a psychiatrist, a psychologist, a nurse practitioner, a physician assistant, a psychiatric clinical nurse specialist, a physical therapist, an occupational therapist, a speech therapist, a vocational rehabilitation specialist, a midwife, a lactation consultant or another licensed mental health professional authorized to perform specified mental health services. An employer may require documentation for an extension of the accommodation beyond the originally agreed to accommodation.

(d) Written notice of the right to be free from discrimination in relation to pregnancy or a condition related to the employee's pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child, including the right to reasonable accommodations for conditions related to pregnancy pursuant to this subsection, shall be distributed by an employer to its employees. The notice shall be provided in a handbook, pamphlet or other means of notice to all employees including, but not limited to: (i) new employees at or prior to the commencement of employment; and (ii) an employee who notifies the employer of a pregnancy or an employee who notifies the employer of a condition related to the employee's pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child not more than 10 days after such notification.

(e) Subject to appropriation, the commission shall develop courses of instruction and conduct public education efforts as necessary to inform employers, employees and employment agencies about the rights and responsibilities established under this subsection not more than 180 days after the appropriation.

(f) This subsection shall not be construed to preempt, limit, diminish or otherwise affect any other law relating to sex discrimination or pregnancy or in any way diminish the coverage for pregnancy or a condition related to pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child under section 105D of chapter 149.

2. For a labor organization, because of the race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information, ancestry or status as a veteran of any individual, or because of the handicap of any person alleging to be a qualified handicapped person, to exclude from full membership rights or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer unless based upon a bona fide occupational qualification.

3. For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry or record in connection with employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to the race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information, pregnancy or a condition related to said pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child, ancestry or status as a veteran, or the handicap of a qualified handicapped person or any intent to make any such limitation, specification or discrimination, or to discriminate in any way on the ground of race, color, religious creed, national origin, sex, gender identity, sexual orientation, age, genetic information, pregnancy or a condition related to said pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child, ancestry, status as a veteran or the handicap of a qualified handicapped person, unless based upon a bona fide occupational qualification.

3A. For any person engaged in the insurance or bonding business, or his agent, to make any inquiry or record of any person seeking a bond or surety bond conditioned upon faithful performance of his duties or to use any form of application in connection with the furnishing of such bond, which seeks information relative to the race, color, religious creed, national origin, sex,

gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, genetic information, or ancestry of the person to be bonded.

3B. For any person whose business includes granting mortgage loans or engaging in residential real estate-related transactions to discriminate against any person in the granting of any mortgage loan or in making available such a transaction, or in the terms or conditions of such a loan or transaction, because of race, color, religion, sex, gender identity, sexual orientation which shall not include persons whose sexual orientation involves minor children as the sex object, children, national origin, genetic information, ancestry, age or handicap. Such transactions shall include, but not be limited to:

(1) the making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or

(2) the selling, brokering, or appraising of residential real estate.

In the case of age, the following shall not be an unlawful practice:

(1) an inquiry of age for the purpose of determining a pertinent element of credit worthiness;

(2) the use of an empirically derived credit system which considers age; provided, however, that such system is based on demonstrably and statistically sound data; and provided, further, that such system does not assign a negative factor or score to any applicant who has reached age sixty-two;

(3) the offering of credit life insurance or credit disability insurance, in conjunction with any mortgage loan, to a limited age group;

(4) the failure or refusal to grant any mortgage loan to a person who has not attained the age of majority;

(5) the failure or refusal to grant any mortgage loan the duration of which exceeds the life expectancy of the applicant as determined by the most recent Individual Annuity Mortality Table.

Nothing in this subsection prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than those hereinabove proscribed.

3C. For any person to deny another person access to, or membership or participation in, a multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or

conditions of such access, membership, or participation, on account of race, color, religion, sex, gender identity, sexual orientation which shall not include persons whose sexual orientation involves minor children as the sex object, children, national origin, genetic information, ancestry, age, or handicap.

4. For any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified or assisted in any proceeding under section five.

4A. For any person to coerce, intimidate, threaten, or interfere with another person in the exercise or enjoyment of any right granted or protected by this chapter, or to coerce, intimidate, threaten or interfere with such other person for having aided or encouraged any other person in the exercise or enjoyment of any such right granted or protected by this chapter.

5. For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter or to attempt to do so.

6. For the owner, lessee, sublessee, licensed real estate broker, assignee or managing agent of publicly assisted or multiple dwelling or contiguously located housing accommodations or other person having the right of ownership or possession or right to rent or lease, or sell or negotiate for the sale of such accommodations, or any agent or employee of such a person, or any organization of unit owners in a condominium or housing cooperative: (a) to refuse to rent or lease or sell or negotiate for sale or otherwise to deny to or withhold from any person or group of persons such accommodations because of the race, religious creed, color, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information, ancestry, or marital status of such person or persons or because such person is a veteran or member of the armed forces, or because such person is blind, or hearing impaired or has any other handicap; (b) to discriminate against any person because of his race, religious creed, color, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, ancestry, or marital status or because such person is a veteran or member of the armed forces, or because such person is blind, or hearing impaired or has any other handicap in the terms, conditions or privileges of such accommodations or the acquisitions thereof, or in the furnishings of facilities and services in connection therewith, or because such a person possesses a trained dog guide as a consequence of blindness, or hearing impairment; (c) to cause to be made any written or oral inquiry or record concerning the race, religious creed, color, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual

orientation involves minor children as the sex object, age, genetic information, ancestry or marital status of the person seeking to rent or lease or buy any such accommodation, or concerning the fact that such person is a veteran or a member of the armed forces or because such person is blind or hearing impaired or has any other handicap. The word "age" as used in this subsection shall not apply to persons who are minors nor to residency in state-aided or federally-aided housing developments for the elderly nor to residency in housing developments assisted under the federal low income housing tax credit and intended for use as housing for persons 55 years of age or over or 62 years of age or over, nor to residency in communities consisting of either a structure or structures constructed expressly for use as housing for persons 55 years of age or over or 62 years of age or over if the housing owner or manager register biennially with the department of housing and community development. For the purpose of this subsection, housing intended for occupancy by persons fifty-five or over and sixty-two or over shall comply with the provisions set forth in 42 USC 3601 et seq.

For purposes of this subsection, discrimination on the basis of handicap includes, but is not limited to, in connection with the design and construction of: (1) all units of a dwelling which has three or more units and an elevator which are constructed for first occupancy after March thirteenth, nineteen hundred and ninety-one; and (2) all ground floor units of other dwellings consisting of three or more units which are constructed for first occupancy after March thirteenth, nineteen hundred and ninety-one, a failure to design and construct such dwellings in such a manner that (i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons; (ii) all the doors are designed to allow passage into and within all premises within such dwellings and are sufficiently wide to allow passage by handicapped persons in wheelchairs; and (iii) all premises within such dwellings contain the following features of adaptive design; (a) an accessible route into and through the dwelling; (b) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (c) reinforcements in bathroom walls to allow later installation of grab bars; and (d) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

7. For the owner, lessee, sublessee, real estate broker, assignee or managing agent of other covered housing accommodations or of land intended for the erection of any housing accommodation included under subsection 10, 11, 12, or 13 of section one, or other person having the right of ownership or possession or right to rent or lease or sell, or negotiate for the sale or lease of such land or accommodations, or any agent or employee of such a person or any organization of unit owners in a condominium or housing cooperative: (a) to refuse to rent or lease or sell or negotiate for sale or lease or otherwise to deny or withhold from any person or group of

persons such accommodations or land because of race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information, ancestry, or marital status, veteran status or membership in the armed forces, blindness, hearing impairment, or because such person possesses a trained dog guide as a consequence of blindness or hearing impairment or other handicap of such person or persons; (b) to discriminate against any person because of his race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information, ancestry, or marital status, veteran status or membership in the armed services, blindness, or hearing impairment or other handicap, or because such person possesses a trained dog guide as a consequence of blindness or hearing impairment in the terms, conditions or privileges of such accommodations or land or the acquisition thereof, or in the furnishing of facilities and services in the connection therewith or (c) to cause to be made any written or oral inquiry or record concerning the race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information, ancestry, marital status, veteran status or membership in the armed services, blindness, hearing impairment or other handicap or because such person possesses a trained dog guide as a consequence of blindness or hearing impairment, of the person seeking to rent or lease or buy any such accommodation or land; provided, however, that this subsection shall not apply to the leasing of a single apartment or flat in a two family dwelling, the other occupancy unit of which is occupied by the owner as his residence. The word "age" as used in this subsection shall not apply to persons who are minors nor to residency in state-aided or federally-aided housing developments for the elderly nor to residency in housing developments assisted under the federal low income housing tax credit and intended for use as housing for persons 55 years of age or over or 62 years of age or over, nor to residency in communities consisting of either a structure or structures constructed expressly for use as housing for persons 55 years of age or over or 62 years of age or over if the housing owner or manager register biennially with the department of housing and community development. For the purpose of this subsection, housing intended for occupancy by persons fifty-five or over and sixty-two or over shall comply with the provisions set forth in 42 USC 3601 et seq.

7A. For purposes of subsections 6 and 7 discrimination on the basis of handicap shall include but not be limited to:

(1) a refusal to permit or to make, at the expense of the handicapped person, reasonable modification of existing premises occupied or to be occupied by such person if such modification is necessary to afford such person full

enjoyment of such premises; provided, however, that, in the case of publicly assisted housing, multiple dwelling housing consisting of ten or more units, or contiguously located housing consisting of ten or more units, reasonable modification shall be at the expense of the owner or other person having the right of ownership; provided, further, that, in the case of public ownership of such housing units the cost of such reasonable modification shall be subject to appropriation; and provided, further, that, in the case of a rental, the landlord may, where the modification to be paid for by the handicapped person will materially alter the marketability of the housing, condition permission for a modification on the tenant agreeing to restore or pay for the cost of restoring, the interior of the premises to the condition that existed prior to such modification, reasonable wear and tear excepted;

(2) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; and

(3) discrimination against or a refusal to rent to a person because of such person's need for reasonable modification or accommodation.

Reasonable modification shall include, but not be limited to, making the housing accessible to mobility-impaired, hearing-impaired and sight-impaired persons including installing raised numbers which may be read by a sight-impaired person, installing a door bell which flashes a light for a hearing-impaired person, lowering a cabinet, ramping a front entrance of five or fewer vertical steps, widening a doorway, and installing a grab bar; provided, however, that for purposes of this subsection, the owner or other person having the right of ownership shall not be required to pay for ramping a front entrance of more than five steps or for installing a wheelchair lift.

Notwithstanding any other provisions of this subsection, an accommodation or modification which is paid for by the owner or other person having the right of ownership is not considered to be reasonable if it would impose an undue hardship upon the owner or other person having the right of ownership and shall therefore not be required. Factors to be considered shall include, but not be limited to, the nature and cost of the accommodation or modification needed, the extent to which the accommodation or modification would materially alter the marketability of the housing, the overall size of the housing business of the owner or other person having the right of ownership, including but not limited to, the number and type of housing units, size of budget and available assets, and the ability of the owner or other person having the right of ownership to recover the cost of the accommodation or modification through a federal tax deduction. Ten percent shall be the maximum number of units for which an owner or other person having the right of ownership shall be required to pay for a modification in order to make

units fully accessible to persons using a wheelchair pursuant to the requirements of this subsection.

In the event a wheelchair accessible unit becomes or will become vacant, the owner or other person having the right of ownership shall give timely notice to a person who has, within the previous twelve months, notified the owner or person having the right of ownership that such person is in need of a unit which is wheelchair accessible, and the owner or other person having the right of ownership shall give at least fifteen days notice of the vacancy to the Massachusetts rehabilitation commission, which shall maintain a central registry of accessible apartment housing under the provisions of section seventy-nine of chapter six. During such fifteen day notice period, the owner or other person having the right of ownership may lease or agree to lease the unit only if it is to be occupied by a person who is in need of wheelchair accessibility.

Notwithstanding any general or special law, by-law or ordinance to the contrary, there shall not be established or imposed a rent or other charge for such handicap-accessible housing which is higher than the rent or other charge for comparable nonaccessible housing of the owner or other person having the right of ownership.

7B. For any person to make print, or publish, or cause to be made, printed, or published any notice, statement or advertisement, with respect to the sale or rental of multiple dwelling, contiguously located, publicly assisted or other covered housing accommodations that indicates any preference, limitation, or discrimination based on race, color, religion, sex, gender identity, sexual orientation which shall not include persons whose sexual orientation involves minor children as the sex object, national origin, genetic information, ancestry, children, marital status, public assistance recipiency, or handicap or an intention to make any such preference, limitation or discrimination except where otherwise legally permitted.

8. For the owner, lessee, sublessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent or lease, commercial space: (1) To refuse to sell, rent, lease or otherwise deny to or withhold from any person or group of persons such commercial space because of race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information, ancestry handicap or marital status of such person or persons. (2) To discriminate against any person because of his race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information, ancestry, handicap or marital status in the terms, conditions or privileges of the sale, rental or lease of any such commercial

space or in the furnishing of facilities or services in connection therewith. (3) To cause to be made any written or oral inquiry or record concerning the race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information, ancestry, handicap or marital status of a person seeking to rent or lease or buy any such commercial space. The word "age" as used in this subsection shall not apply to persons who are minors, nor to residency in state-aided or federally-aided housing developments for the elderly nor to residency in self-contained retirement communities constructed expressly for use by the elderly and which are at least twenty acres in size and have a minimum age requirement for residency of at least fifty-five years.

9. For an employer, himself or through his agent, in connection with an application for employment, or the terms, conditions, or privileges of employment, or the transfer, promotion, bonding, or discharge of any person, or in any other matter relating to the employment of any person, to request any information, to make or keep a record of such information, to use any form of application or application blank which requests such information, or to exclude, limit or otherwise discriminate against any person by reason of his or her failure to furnish such information through a written application or oral inquiry or otherwise regarding: (i) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted, or (ii) a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or (iii) any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, occurred 3 or more years prior to the date of such application for employment or such request for information, unless such person has been convicted of any offense within 3 years immediately preceding the date of such application for employment or such request for information, or (iv) a criminal record, or anything related to a criminal record, that has been sealed or expunged pursuant to chapter 276.

No person shall be held under any provision of any law to be guilty of perjury or of otherwise giving a false statement by reason of his failure to recite or acknowledge such information as he has a right to withhold by this subsection.

Nothing contained herein shall be construed to affect the application of section thirty-four of chapter ninety-four C, or of chapter two hundred and seventy-six relative to the sealing of records.

9 1/2. For an employer to request on its initial written application form criminal offender record information; provided, however, that except as otherwise prohibited by subsection 9, an employer may inquire about any

criminal convictions on an applicant's application form if: (i) the applicant is applying for a position for which any federal or state law or regulation creates mandatory or presumptive disqualification based on a conviction for 1 or more types of criminal offenses; or (ii) the employer or an affiliate of such employer is subject to an obligation imposed by any federal or state law or regulation not to employ persons, in either 1 or more positions, who have been convicted of 1 or more types of criminal offenses.

9A. For an employer himself or through his agent to refuse, unless based upon a bonafide occupational qualification, to hire or employ or to bar or discharge from employment any person by reason of his or her failure to furnish information regarding his or her admission, on one or more occasions, voluntarily or involuntarily, to any public or private facility for the care and treatment of mentally ill persons, provided that such person has been discharged from such facility or facilities and can prove by a psychiatrist's certificate that he is mentally competent to perform the job or the job for which he is applying. No application for employment shall contain any questions or requests for information regarding the admission of an applicant, on one or more occasions, voluntarily or involuntarily, to any public or private facility for the care and treatment of mentally ill persons, provided that such applicant has been discharged from such public or private facility or facilities and is no longer under treatment directly related to such admission.

10. For any person furnishing credit, services or rental accommodations to discriminate against any individual who is a recipient of federal, state, or local public assistance, including medical assistance, or who is a tenant receiving federal, state, or local housing subsidies, including rental assistance or rental supplements, because the individual is such a recipient, or because of any requirement of such public assistance, rental assistance, or housing subsidy program.

11. For the owner, sublessees, real estate broker, assignee or managing agent of publicly assisted or multiple dwelling or contiguously located housing accommodations or other covered housing accommodations, or other person having the right of ownership or possession or right to rent or lease or sell such accommodations, or any agent or employee of such person or organization of unit owners in a condominium or housing cooperative, to refuse to rent or lease or sell or otherwise to deny to or withhold from any person such accommodations because such person has a child or children who shall occupy the premises with such person or to discriminate against any person in the terms, conditions, or privileges of such accommodations or the acquisition thereof, or in the furnishing of facilities and services in connection therewith, because such person has a child or children who occupy or shall occupy the premises with such person; provided, however, that nothing herein shall limit the applicability of any local, state, or federal restrictions regarding the maximum number of persons

permitted to occupy a dwelling. When the commission or a court finds that discrimination in violation of this paragraph has occurred with respect to a residential premises containing dangerous levels of lead in paint, plaster, soil, or other accessible material, notification of such finding shall be sent to the director of the childhood lead poisoning prevention program.

This subsection shall not apply to:

(1) Dwellings containing three apartments or less, one of which apartments is occupied by an elderly or infirm person for whom the presence of children would constitute a hardship. For purposes of this subsection, an "elderly person" shall mean a person sixty-five years of age or over, and an "infirm person" shall mean a person who is disabled or suffering from a chronic illness.

(2) The temporary leasing or temporary subleasing of a single family dwelling, a single apartment, or a single unit of a condominium or housing cooperative, by the owner of such dwelling, apartment, or unit, or in the case of a subleasing, by the sublessor thereof, who ordinarily occupies the dwelling, apartment, or unit as his or her principal place of residence. For purposes of this subsection, the term "temporary leasing" shall mean leasing during a period of the owner's or sublessor's absence not to exceed one year.

(3) The leasing of a single dwelling unit in a two family dwelling, the other occupancy unit of which is occupied by the owner as his residence.

11A. For an employer, or an employer's agent, to refuse to restore certain employees to employment following an absence by reason of a parental leave taken pursuant to section 105D of chapter 149 or to otherwise fail to comply with that section, or for the commonwealth and any of its boards, departments and commissions to deny vacation credit to an employee for the fiscal year during which the employee is absent due to a parental leave taken pursuant to said section 105D of said chapter 149, or to impose any other penalty as a result of a parental leave of absence.

12. For any retail store which provides credit or charge account privileges to refuse to extend such privileges to a customer solely because said customer had attained age sixty-two or over.

13. For any person to directly or indirectly induce, attempt to induce, prevent, or attempt to prevent the sale, purchase, or rental of any dwelling or dwellings by:

(a) implicit or explicit representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular age, race, color, religion, sex, gender identity, national or ethnic origin, or economic level or a handicapped person, or a person having a child, or implicit or explicit

representations regarding the effects or consequences of any such entry or prospective entry;

(b) unrequested contact or communication with any person or persons, initiated by any means, for the purpose of so inducing or attempting to induce the sale, purchase, or rental of any dwelling or dwellings when he knew or, in the exercise of reasonable care, should have known that such unrequested solicitation would reasonably be associated by the persons solicited with the entry into the neighborhood of a person or persons of a particular age, race, color, religion, sex, gender identity, national or ethnic origin, or economic level or a handicapped person, or a person having a child;

(c) implicit or explicit false representations regarding the availability of suitable housing within a particular neighborhood or area, or failure to disclose or offer to show all properties listed or held for sale or rent within a requested price or rental range, regardless of location; or

(d) false representations regarding the listing, prospective listing, sale, or prospective sale of any dwelling.

14. For any person furnishing credit or services to deny or terminate such credit or services or to adversely affect an individual's credit standing because of such individual's sex, gender identity, marital status, age or sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object; provided that in the case of age the following shall not be unlawful practices:

(1) an inquiry of age for the purpose of determining a pertinent element of creditworthiness;

(2) the use of empirically derived credit systems which consider age, provided such systems are based on demonstrably and statistically sound data and provided further that such systems do not assign a negative factor or score to any applicant who has reached age sixty-two;

(3) the offering of credit life insurance or credit disability insurance, in conjunction with any credit or services, to a limited age group;

(4) the denial of any credit or services to a person who has not attained the age of majority;

(5) the denial of any credit or services the duration of which exceeds the life expectancy of the applicant as determined by the most recent Individual Annuity Mortality Table; or

(6) the offering of more favorable credit terms to students, to persons aged eighteen to twenty-one, or to persons who have reached the age of sixty-two.

Any person who violates the provisions of this subsection shall be liable in an action of contract for actual damages; provided, however, that, if there are no

actual damages, the court may assess special damages to the aggrieved party not to exceed one thousand dollars; and provided further, that any person who has been found to violate a provision of this subsection by a court of competent jurisdiction shall be assessed the cost of reasonable legal fees actually incurred.

15. For any person responsible for recording the name of or establishing the personal identification of an individual for any purpose, including that of extending credit, to require such individual to use, because of such individual's sex or marital status, any surname other than the one by which such individual is generally known.

16. For any employer, personally or through an agent, to dismiss from employment or refuse to hire, rehire or advance in employment or otherwise discriminate against, because of his handicap, any person alleging to be a qualified handicapped person, capable of performing the essential functions of the position involved with reasonable accommodation, unless the employer can demonstrate that the accommodation required to be made to the physical or mental limitations of the person would impose an undue hardship to the employer's business. For purposes of this subsection, the word employer shall include an agency which employs individuals directly for the purpose of furnishing part-time or temporary help to others.

In determining whether an accommodation would impose an undue hardship on the conduct of the employer's business, factors to be considered include:—

(1) the overall size of the employer's business with respect to the number of employees, number and type of facilities, and size of budget or available assets;

(2) the type of the employer's operation, including the composition and structure of the employer's workforce; and

(3) the nature and cost of the accommodation needed.

Physical or mental job qualification requirement with respect to hiring, promotion, demotion or dismissal from employment or any other change in employment status or responsibilities shall be functionally related to the specific job or jobs for which the individual is being considered and shall be consistent with the safe and lawful performance of the job.

An employer may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped individual or as to the nature or severity of the handicap, except that an employer may condition an offer of employment on the results of a medical examination conducted solely for the purpose of determining whether the employee, with reasonable accommodation, is capable of performing the essential functions of the job,

and an employer may invite applicants to voluntarily disclose their handicap for purposes of assisting the employer in its affirmative action efforts.

16A. For an employer, personally or through its agents, to sexually harass any employee.

17. Notwithstanding any provision of this chapter, it shall not be an unlawful employment practice for any person, employer, labor organization or employment agency to:

(a) observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this section, except that no such employee benefit plan shall excuse the failure to hire any person, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any person because of age except as permitted by paragraph (b).

(b) require the compulsory retirement of any person who has attained the age of sixty-five and who, for the two year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such person entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings or deferred compensation plan, or any combination of such plans, of the employer, which equals, in the aggregate, at least forty-four thousand dollars.

(c) require the retirement of any employee who has attained seventy years of age and who is serving under a contract of unlimited tenure or similar arrangement providing for unlimited tenure at an independent institution of higher education, or to limit the employment in a faculty capacity of such an employee, or another person who has attained seventy years of age who was formerly employed under a contract of unlimited tenure or similar arrangement, to such terms and to such a period as would serve the present and future needs of the institution, as determined by it; provided, however, that in making such a determination, no institution shall use as a qualification for employment or reemployment, the fact that the individual is under any particular age.

18. For the owner, lessee, sublessee, licensed real estate broker, assignee, or managing agent of publicly assisted or multiple dwelling or contiguously located housing accommodations or other covered housing accommodations, or other person having the right of ownership or possession, or right to rent or lease, or sell or negotiate for the sale of such accommodations, or any agent or employee of such person or any organization of unit owners in a condominium or housing cooperative to sexually harass any tenant, prospective tenant, purchaser or prospective purchaser of property.

Notwithstanding the foregoing provisions of this section, it shall not be an unlawful employment practice for any person, employer, labor organization or employment agency to inquire of an applicant for employment or membership as to whether or not he or she is a veteran or a citizen.

Notwithstanding the provisions of any general or special law nothing herein shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting admission to or giving preference to persons of the same religion or denomination or from taking any action with respect to matters of employment, discipline, faith, internal organization, or ecclesiastical rule, custom, or law which are calculated by such organization to promote the religious principles for which it is established or maintained.

Notwithstanding the foregoing provisions of this section, (a) every employer, every employment agency, including the division of employment and training, and every labor organization shall make and keep such records relating to race, color or national origin as the commission may prescribe from time to time by rule or regulation, after public hearing, as reasonably necessary for the purpose of showing compliance with the requirements of this chapter, and (b) every employer and labor organization may keep and maintain such records and make such reports as may from time to time be necessary to comply, or show compliance with, any executive order issued by the President of the United States or any rules or regulations issued thereunder prescribing fair employment practices for contractors and subcontractors under contract with the United States, or, if not subject to such order, in the manner prescribed therein and subject to the jurisdiction of the commission. Such requirements as the commission may, by rule or regulation, prescribe for the making and keeping of records under clause (a) shall impose no greater burden or requirement on the employer, employment agency or labor organization subject thereto, than the comparable requirements which could be prescribed by Federal rule or regulation so long as no such requirements have in fact been prescribed, or which have in fact been prescribed for an employer, employment agency or labor organization under the authority of the Civil Rights Act of 1964, from time to time amended. This paragraph shall apply only to employers who on each working day in each of twenty or more calendar weeks in the annual period ending with each date set forth below, employed more employees than the number set forth beside such date, and to labor organizations which have more members on each such working day during such period.

Nothing contained in this chapter or in any rule or regulation issued by the commission shall be interpreted as requiring any employer, employment agency or labor organization to grant preferential treatment to any individual or to any group because of the race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information or ancestry of such individual or group because of imbalance which may exist between the total number or percentage of persons employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization or admitted to or employed in, any apprenticeship or other training program, and the total number or percentage of persons of such race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information or ancestry in the commonwealth or in any community, section or other area therein, or in the available work force in the commonwealth or in any of its political subdivisions.

19. (a) It shall be unlawful discrimination for any employer, employment agency, labor organization, or licensing agency to

(1) refuse to hire or employ, represent, grant membership to, or license a person on the basis of that person's genetic information;

(2) collect, solicit or require disclosure of genetic information from any person as a condition of employment, or membership, or of obtaining a license;

(3) solicit submission to, require, or administer a genetic test to any person as a condition of employment, membership, or obtaining a license;

(4) offer a person an inducement to undergo a genetic test or otherwise disclose genetic information;

(5) question a person about their genetic information or genetic information concerning their family members, or inquire about previous genetic testing;

(6) use the results of a genetic test or other genetic information to affect the terms, conditions, compensation or privileges of a person's employment, representation, membership, or the ability to obtain a license;

(7) terminate or refuse to renew a person's employment, representation, membership, or license on the basis of a genetic test or other genetic information; or

(8) otherwise seek, receive, or maintain genetic information for non-medical purposes.

[There is no paragraph (b).]

Chapter 183, Section 18: Mortgage deeds

Section 18. A deed in substance following the form entitled "Mortgage Deed" shall when duly executed have the force and effect of a mortgage deed to the use of the mortgagee and his heirs and assigns with mortgage covenants and upon the statutory condition and with the statutory power of sale, as defined in the three following sections, to secure the payment of the money or the performance of any obligation therein specified. The parties may insert in such mortgage any other lawful agreement or condition.

CHAPTER 183 ALIENATION OF LAND

Section 21 "Statutory power of sale" in mortgage

Section 21. The following "power" shall be known as the "Statutory Power of Sale", and may be incorporated in any mortgage by reference:

(POWER.)

But upon any default in the performance or observance of the foregoing or other condition, the mortgagee or his executors, administrators, successors or assigns may sell the mortgaged premises or such portion thereof as may remain subject to the mortgage in case of any partial release thereof, either as a whole or in parcels, together with all improvements that may be thereon, by public auction on or near the premises then subject to the mortgage, or, if more than one parcel is then subject thereto, on or near one of said parcels, or at such place as may be designated for that purpose in the mortgage, first complying with the terms of the mortgage and with the statutes relating to the foreclosure of mortgages by the exercise of a power of sale, and may convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee simple; and such sale shall forever bar the mortgagor and all persons claiming under him from all right and interest in the mortgaged premises, whether at law or in equity.

Section 64 Discrimination in residential mortgage loans on basis of location of property

Section 64. No mortgagee shall discriminate, on a basis that is arbitrary or unsupported by a reasonable analysis of the lending risks associated with a residential mortgage transaction, in the granting, withholding, extending, modifying or renewing, or in the fixing of the rates, terms, conditions or provisions of any residential mortgage loan or in any written application therefor on residential real property located in the commonwealth of four or fewer separate households occupied or to be occupied in whole or in part by the applicant, that is within the reasonable service area of such mortgagee, on the basis such property is located in a specific neighborhood or geographical area;; provided, however, that it shall not be a violation of this section if the residential mortgage loan is made pursuant to a specific public or private program, the purpose of which is to increase the availability of mortgage loans within a specific neighborhood or geographical area. Nor shall any mortgagee use lending or underwriting standards, policies, systems or practices, that discriminate in practice or that discriminate in effect, on a basis that is arbitrary or unsupported by a reasonable analysis of the lending risks associated with a residential mortgage transaction. The preceding sentence shall not preclude a mortgagee from:

(a) requiring reasonable and uniformly applied application fees,

(b) utilizing income standards which are reasonable in relation to the amount of the loan requested and which shall be disclosed to each prospective applicant, or

(c) uniformly refusing to accept applications because of a lack of lendable funds.

Nor shall any mortgagee make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage in an arbitrary manner or in a manner that is unsupported by a reasonable analysis of the lending risks associated with a residential mortgage transaction, a reasonable person from making or pursuing an application.

The mortgagee shall inform each applicant in writing of the specific reasons for any adverse action on the application for such mortgage loan or for an extension, modification, or renewal of such loan. If the reason for any adverse action taken by a mortgagee is based in whole or in part on the location or condition of the collateral property, the mortgagee shall inform the applicant in writing of the estimated market value of the subject property on which it relied and the lending standards which it used in taking such adverse action. A mortgagee shall not be liable to any

seller or agent of the seller of such property on account of the disclosure of the market value of such property estimated according to a reasonable appraisal rendered to the lender as part of the application process.

For the purposes of this section, adverse action shall mean refusal either to grant financing at the terms and for the amount requested or to make a counter offer acceptable to the applicant.

Nothing contained in this section shall preclude a mortgagee from considering sound underwriting practices and the credit-worthiness of the applicant in the contemplation of any such loan. Such practices shall include the following:

(a) the willingness and the financial ability of the borrower to repay the loan;;

(b) the market value of any real estate proposed as security for any loan;;

(c) diversification of the mortgagee's investment portfolio;; and

(d) the exercise of judgement and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their affairs.

Any person claiming to have been aggrieved as a result of a violation of this section may bring a civil action in the district court, or housing court where applicable, of the county in which the particular mortgagee involved is located;; provided, however, that a person must first exhaust his administrative remedies through the appropriate mortgage review board established pursuant to section fourteen A of chapter one hundred and sixty-seven.

Upon a finding that a mortgagee has committed a violation of this section, the court may award actual damages or punitive damages in the amount of five thousand dollars, whichever is greater, but in no event less than two thousand five hundred dollars, and may, in its discretion, award court costs and attorney's fees.

If the court finds as a fact that any person claiming to have been aggrieved by this section has intentionally misrepresented a material fact in the mortgage application or if the court finds as a fact that the suit is frivolous, the court may award actual damages or punitive damages in the amount of five hundred dollars, whichever is greater, to the mortgagee, and may in its discretion award court costs and attorney's fees.

Chapter 183C, Section 17: **Application of chapter; violations**

Section 17. (a) This chapter shall apply to any lender who attempts to avoid its application by dividing any loan transaction into separate parts for the purpose of evading this chapter.

(b) A lender making a high-cost home mortgage loan who, when acting in good faith, fails to comply with this chapter, shall not be considered to have violated this chapter if the lender establishes that either: (1) Within 30 days of the loan closing and prior to the institution of any action under this chapter, the lender notifies the borrower of the compliance failure and makes appropriate restitution and whatever adjustments are necessary are made to the loan, at the choice of the borrower, to either: (i) make the high-cost home mortgage loan satisfy the requirements of this chapter or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home mortgage loan; or, (2) the compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance procedures reasonably adapted to avoid the errors, and within 60 days after the discovery of the compliance failure and before the institution of any action under this chapter or the receipt of written notice of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made and whatever adjustments are necessary are made to the loan, at the choice of the borrower, to either (i) make the high-cost home mortgage loan satisfy the requirements of this chapter or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home mortgage loan. Examples of a bona fide error may include clerical errors, errors in calculation, computer malfunction and programming, and printing errors. An error in legal judgment with respect to a person's obligation under this chapter shall not be considered a bona fide error.

Chapter 203, Section 1: Trusts in realty; necessity of writing

Section 1. No trust concerning land, except such as may arise or result by implication of law, shall be created or declared unless by a written instrument signed by the party creating or declaring the trust or by his attorney.

Chapter 203, Section 2: Record of trust; notice

Section 2. If a trust concerning land is created or declared by such instrument, the recording of the instrument, or of a certificate conforming to the requirements of section 35 of chapter 184, in the registry of deeds or the registration office of the land court, in either case for the county or district where the land lies, shall be equivalent to actual notice to every person claiming under a conveyance, attachment or execution thereafter made or levied.

Chapter 239 Section 5

SUMMARY PROCESS FOR POSSESSION OF LAND

APPEAL; BOND; ACTIONS THEREON; WAIVER; APPEAL OF WAIVER OR PERIODIC PAYMENTS; NOTICE OF DECISION

Section 5. (a) If either party appeals from a judgment of the superior court, a housing court, or a district court in an action under this chapter, including a judgment on a counterclaim, that party shall file a notice of appeal with the court within 10 days after the entry of the judgment. An execution upon a judgment rendered pursuant to section 3 shall not issue until the expiration of 10 days after the entry of the judgment.

(b) In an appeal of a judgment of a district court, other than an appeal governed by subsection (c), the appellant shall, before any appeal under this section is allowed, file in the district court a bond payable to the appellee in the penal sum of $100, with surety or sureties as approved by the court, or secured by cash or its equivalent deposited with the clerk, conditioned to satisfy any judgment for costs which may be entered against the appellant in the appellate division within 30 days after the entry thereof.

(c) Except as provided in section 6, the defendant shall, before any appeal under this section is allowed from a judgment of the superior court, a housing court, or a district court, rendered for the plaintiff for the possession of the land or tenements demanded in a case in which the plaintiff continues at the time of establishment of bond to seek to recover possession, give bond in a sum as the court orders, payable to the plaintiff, with sufficient surety or sureties approved by the court, or secured by cash or its equivalent deposited with the clerk, in a reasonable amount to be fixed by the court. In an appeal from a judgment of a district court the bond shall be conditioned to enter the action in the appellate division at the return day next after the appeal is taken. In an appeal from a judgment of the superior court or a housing court the bond filed shall be conditioned to enter the action in the appeals court. Appeals from judgments of the superior court or a housing court shall otherwise be governed by the Massachusetts Rules of Appellate Procedure. The bond shall also be conditioned to pay to the plaintiff, if final judgment is in plaintiff's favor, all rent accrued at the date of the bond, all intervening rent, and all damage and

loss which the plaintiff may sustain by the withholding of possession of the land or tenements demanded and by any injury done thereto during the withholding, with all costs, until delivery of possession thereof to the plaintiff.

(d) In appeals from a judgment of the superior court, a housing court or a district court the deposit shall not be transmitted to the appeals court or the appellate division unless specifically requested by said appeals court or appellate division. The superior court, a housing court or a district court may give directions as to the manner of keeping the deposit. Upon final judgment for the plaintiff, all money then due to him may be recovered in an action on the bond provided for in the third paragraph of this section.

(e) A party may make a motion to waive the appeal bond provided for in this section if the party is indigent as provided in section 27A of chapter 261. The motion shall, together with a notice of appeal and any supporting affidavits, be filed within the time limits set forth in this section. The court shall waive the requirement of the bond or security if it is satisfied that the person requesting the waiver has any defense which is not frivolous and is indigent as provided in said section 27A of said chapter 261. The court shall require any person for whom the bond or security provided for in subsection (c) has been waived to pay in installments as the same becomes due, pending appeal, all or any portion of any rent which shall become due after the date of the waiver. A court shall not require the person to make any other payments or deposits. The court shall forthwith make a decision on the motion. If the motion is made, no execution shall issue until the expiration of 6 days from the court's decision on the motion or until the expiration of the time specified in this section for the taking of appeals, whichever is later.

(f) Any party aggrieved by the denial of a motion to waive the bond or who wishes to contest the amount of periodic payments required by the court may seek review of the decision as hereinafter provided. If the motion was made in the superior court or a housing court, the request for review shall be to the single justice of the appeals court at the next sitting thereof. If the motion was made in any district or municipal court, the request for review shall be to the appellate division then sitting pursuant to section 108 of chapter 231. The court receiving the request shall review the findings, the amount of bond or deposit, if any, and the

amount of periodic payment required, if any, as if it were initially deciding the matter, and the court may withdraw or amend any finding or reduce or rescind any amount of bond, deposit or periodic payment when in its judgment the facts so warrant.

(g) Any party to the action may file a request for the review with the clerk of the court originally hearing the request to waive bond within the time period provided in this section for filing notice of appeal, or within 6 days after receiving notice of the decision of the court on the motion to waive bond, whichever is the later. The court shall then forward the motion, the court's findings and any other documents relevant to the appeal to the clerk of the court reviewing the decision

which, upon receipt thereof, shall schedule a speedy hearing thereon and send notice thereof to the parties. Any request for review filed pursuant to this section shall be heard upon statements of counsel, memoranda and affidavits submitted by the parties. Further testimony shall be taken if the reviewing court shall find that the taking of further testimony would aid the disposition of the review.

(h) Upon the rendering of a decision on review, the reviewing court shall give notice of the decision to the parties and the defendant shall comply with the requirements of the decision within 5 days after receiving notice thereof. If the defendant fails to file with the clerk of the court rendering the judgment, the amount of bond, deposit or periodic payment required by the decision of the reviewing court within 5 days from receipt of notice of the decision, the appeal from the judgment shall be dismissed. Where a defendant seeks review pursuant to this section, no execution shall issue until the expiration of 5 days from the date defendant has received notice of the decision of the reviewing court.

Chapter 239 Section 6

SUMMARY PROCESS FOR POSSESSION OF LAND

CONDITION OF BOND IN ACTION FOR POSSESSION AFTER FORECLOSURE OF MORTGAGE; AFTER PURCHASE

Section 6. If the action is for the possession of land after foreclosure of a mortgage thereon, the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final judgment is in his favor, of all costs and of a reasonable amount as rent of the land from the day when the mortgage was foreclosed until possession of the land is obtained by the plaintiff. If the action is for possession of land after purchase, the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final judgment is in his favor, of all costs and of a reasonable amount as rent of the land from the day that the purchaser obtained title to the premises until the delivery of possession thereof to him, together with all damage and loss which he may sustain by withholding of possession of the land or tenement demanded, and by any injury done thereto during such withholding with all costs. Upon final judgment for the plaintiff, all money then due to him may be recovered in an action on the bond.

Chapter 239 Section 9: Stay of proceedings

Section 9. In an action of summary process to recover possession of premises occupied for dwelling purposes, other than a room in a hotel, or a dwelling unit in a lodging house or rooming house wherein the occupant has maintained such occupancy for less than three consecutive months, where a tenancy has been terminated without fault of the tenant, either by operation of law or by act of the landlord, except by a notice to quit for nonpayment of rent as provided in section twelve of chapter one hundred and eighty-six, a stay or stays of judgment and execution may be granted, as hereinafter provided, for a period not exceeding six months or for periods not exceeding six months in the aggregate, or, for a period not exceeding twelve months or for periods not exceeding twelve months in the aggregate in the case of premises occupied by a handicapped person or an individual sixty years of age or older, as the court may deem just and reasonable, upon application of the tenant or the surviving spouse, parent or child of a deceased tenant if such spouse, parent or child occupied said premises for dwelling purposes at the time when said tenancy was terminated and such occupancy was not in violation of the terms of the tenancy; provided, however, that a stay or stays of judgment and execution in the case of premises occupied by an employee of a farmer conditioned upon his employment by such farmer and which employment has been legally terminated shall not be granted for a period exceeding two months or for periods exceeding two months in the aggregate. For the purpose of this section, the words "handicapped person" shall mean a person who:

(a) has a physical or mental impairment which substantially limits such person's ability to care for himself, perform manual tasks, walk, see, hear, speak, breathe, learn or work; or

(b) has a physical or mental impairment which significantly limits the housing appropriate for such person or which significantly limits such person's ability to seek new housing; or

(c) would be eligible for housing for handicapped persons under the provisions of chapter one hundred and twenty-one B.

Chapter 239, Section 10: Stay of proceedings; hearings

Section 10. Upon application for such a stay of proceedings, the court shall hear the parties, and if upon the hearing it appears that the premises of which possession is sought to be recovered are used for dwelling purposes; that the applicant cannot secure suitable premises for himself and his family elsewhere within the city or town in a neighborhood similar to that in which the premises occupied by him are situated; that he has used due and reasonable effort to secure such other premises; that his application is made in good faith and that he will abide by and comply with such terms and provisions as the court may prescribe; or that by reason of other facts such action will be warranted, the court may grant a stay as provided in the preceding section, on condition that the terms upon which such stay is granted be complied with.

In any action to recover possession of premises occupied for dwelling purposes brought pursuant to this chapter in which a stay or stays of execution have been granted, by the court or by agreement of the parties, or in any such action where there is an agreement for judgment that grants the tenant a right to reinstate the tenancy, no execution shall issue prior to the expiration of the period of such stay or stays or such reinstatement period unless the plaintiff shall first bring a motion for the issuance of the execution and the court after a hearing shall determine that the tenant or occupant is in substantial violation of a material term or condition of the stay or a material term of the agreement for judgment.

Chapter 244, Section 11: Mortgages containing power of sale; court order for sale

Section 11. If a conditional judgment has been entered upon a mortgage containing a power of sale, the court shall, instead of issuing a writ of possession, at the request of the plaintiff order the property to be sold pursuant to such power. The plaintiff shall thereupon execute the power and do all things required by it or by the court.

Chapter 244, Section 12: Procedure after sale

Section 12. The person selling shall, within ten days after the sale, file in the clerk's office a report on oath of the sale and of his doings, and the court may confirm the sale or set it aside and order a re-sale. Any person interested may appear or be summoned, and the order of the court confirming the sale shall be conclusive evidence against all persons that the power of sale was duly executed.

Chapter 244, Section 13: Necessary parties

Section 13. Unless the defendant is seized in fee simple in possession of the whole equity of redemption of the land demanded, an order for a sale shall not be made until all parties interested in the equity of redemption and whose estate or interest therein would be affected by such sale have been summoned to appear.

Chapter 244 Section 14: Foreclosure under power of sale; procedure; notice; form

Section 14. The mortgagee or person having estate in the land mortgaged, or a person authorized by the power of sale, or the attorney duly authorized by a writing under seal or the legal guardian or conservator of such mortgagee or person acting in the name of such mortgagee or person, may, upon breach of condition and without action, perform all acts authorized or required by the power of sale; provided, however, that no sale under such power shall be effectual to foreclose a mortgage, unless, previous to such sale, notice of the sale has been published once in each of 3 successive weeks, the first publication of which shall be not less than 21 days before the day of sale, in a newspaper published in the city or town where the land lies or in a newspaper with general circulation in the city or town where the land lies and notice of the sale has been sent by registered mail to the owner or

owners of record of the equity of redemption as of 30 days prior to the date of sale, said notice to be mailed by registered mail at least 14 days prior to the date of sale to said owner or owners to the address set forth in section 61 of chapter 185, if the land is then registered or, in the case of unregistered land, to the last address of the owner or owners of the equity of redemption appearing on the records of the holder of the mortgage, if any, or if none, to the address of the owner or owners as given on the deed or on the petition for probate by which the owner or owners acquired title, if any, or if in either case no owner appears, then mailed by registered mail to the address to which the tax collector last sent the tax bill for the mortgaged premises to be sold, or if no tax bill has been sent for the last preceding 3 years, then mailed by registered mail to the address of any of the parcels of property in the name of said owner of record which are to be sold under the power of sale and unless a copy of said notice of sale has been sent by registered mail to all persons of record as of 30 days prior to the date of sale holding an interest in the property junior to the mortgage being foreclosed, said notice to be mailed at least 14 days prior to the date of sale to each such person at the address of such person set forth in any document evidencing the interest or to the last address of such person known to the mortgagee. Any person of record as of 30 days prior to the date of sale holding an interest in the property junior to the mortgage being foreclosed may waive at any time, whether prior or subsequent to the date of sale, the right to receive notice by mail to such person under this section and such waiver shall constitute compliance with such notice requirement for all purposes. If no newspaper is published in such city or town, or if there is no newspaper with general circulation in the city or town where the land lies, notice may be published in a newspaper published in the county where the land lies, and this provision shall be implied in every power of sale mortgage in which it is not expressly set forth. A newspaper which by its title page purports to be printed or published in such city, town or county, and having a circulation in that city, town or county, shall be sufficient for the purposes of this section.

The following form of foreclosure notice may be used and may be altered as circumstances require; but nothing in this section shall be construed to prevent the use of other forms.

(Form.)

MORTGAGEE'S SALE OF REAL ESTATE.

By virtue and in execution of the Power of Sale contained in a certain mortgage given by . . . . . .<Vy> to . . . . . .<Vy> dated . . . . . .<Vy> and recorded with

. . . . .

Deeds, Book . . . . . .<Vy>, page . . . . . .<Vy>, of which mortgage the undersigned is the present holder, ...<Vy>.

(If by assignment, or in any fiduciary capacity, give reference to the assignment or assignments recorded with . . . .Deeds, Book . . . . . .<Vy>, page . . . . . .<Vy>, of which mortgage the undersigned is the present holder, ...<Vy>)

for breach of the conditions of said mortgage and for the purpose of foreclosing the same will be sold at Public Auction at . . . . . .<Vy>o'clock, ...<Vy> M. on the . . . . . .<Vy> day of . . . . . .<Vy> A.D. (insert year), ...<Vy> (place) . . . . . .<Vy> all and singular the premises described in said mortgage,

(In case of partial releases, state exceptions.)

To wit: "(Description as in the mortgage, including all references to title, restrictions, encumbrances, etc., as made in the mortgage.)"

Terms of sale: (State here the amount, if any, to be paid in cash by the purchaser at the time and place of the sale, and the time or times for payment of the balance or the whole as the case may be.)

Other terms to be announced at the sale.

(Signed) ___

Present holder of said mortgage.___

A notice of sale in the above form, published in accordance with the power in the mortgage and with this chapter, together with such other or further notice, if any, as is required by the mortgage, shall be a sufficient notice of the sale; and the premises shall be deemed to have been sold and the deed thereunder shall convey the premises, subject to and with the benefit of all restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the nature of liens, and existing encumbrances of record created prior to the mortgage, whether or not reference to such restrictions, easements, improvements, liens or encumbrances is made in the deed; provided, however, that no purchaser at the sale shall be bound to complete the purchase if there are encumbrances, other than those named in the mortgage and included in the notice of sale, which are not stated at the sale and included in the auctioneer's contract with the purchaser.

For purposes of this section and section 21 of chapter 183, in the event a mortgagee holds a mortgage pursuant to an assignment, no notice under this section shall be valid unless (i) at the time such notice is mailed, an assignment, or a chain of assignments, evidencing the assignment of the mortgage to the foreclosing mortgagee has been duly recorded in the registry

of deeds for the county or district where the land lies and (ii) the recording information for all recorded assignments is referenced in the notice of sale required in this section. The notice shall not be defective if any holder within the chain of assignments either changed its name or merged into another entity during the time it was the mortgage holder; provided, that recited within the body of the notice is the fact of any merger, consolidation, amendment, conversion or acquisition of assets causing the change in name or identity, the recital of which shall be conclusive in favor of any bona fide purchaser, mortgagee, lienholder or encumbrancer of value relying in good faith on such recital.

Chapter 244, Section 15: Copy of notice; affidavit; recording; evidence; effect of legal challenges

Section 15. (a) For the purposes of this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Arm's length third party purchaser for value", an arm's length purchaser who pays valuable consideration, including a purchaser's heirs, successors and assigns, but not including the foreclosing party or mortgage note holder or a parent, subsidiary, affiliate or agent of the foreclosing party or mortgage note holder or an investor or guarantor of the underlying mortgage note including, but not limited to, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Federal Housing Administration.

"Deadline", 3 years from the date of the recording of the affidavit.

(b) The person selling or the attorney duly authorized by a writing or the legal guardian or conservator of the person selling shall, after the sale, cause a copy of the notice and an affidavit fully and particularly stating the person's acts or the acts of the person's principal or ward which shall be recorded in the registry of deeds for the county or district in which the land lies, with a note of reference thereto on the margin of the record of the mortgage deed if it is recorded in the same registry. If the affidavit shows that the requirements of the power of sale and the law have been complied with in all respects, the affidavit or a certified copy of the record thereof, shall be admitted as evidence that the power of sale was duly executed.

(c) If an affidavit is executed in accordance with this section, it shall, after 3 years from the date of its recording, be conclusive evidence in favor of an arm's length third party purchaser for value at or subsequent to the foreclosure sale that the power of sale under the foreclosed mortgage was duly executed and that the sale complied with this chapter and section 21 of said chapter 183. An arm's length third party purchaser for value relying on an affidavit shall not be liable for a foreclosure if the power of sale was not

duly exercised. Absent a challenge as set forth in clause (i) or (ii) of subsection (d), title to the real property acquired by an arm's length third party purchaser for value shall not be set aside.

(d) Subsection (c) shall not apply if: (i) an action to challenge the validity of the foreclosure sale has been commenced in a court of competent jurisdiction by a party entitled to notice of sale under section 14 or a challenge has been asserted as a defense or a counterclaim in a legal action in a court of competent jurisdiction, including the housing court department pursuant to section 3 of chapter 185C, by a party entitled to notice of sale under said section 14 and a true and correct copy of the complaint or pleading asserting a challenge has been duly recorded before the deadline in the registry of deeds for the county or district in which the subject real property lies or in the land court registry district before the deadline; or (ii) a challenge to the validity of the foreclosure sale is asserted as a defense or counterclaim in a legal action in a court of competent jurisdiction, including the housing court department pursuant to said section 3 of said chapter 185C, by a party entitled to notice of sale under said section 14 who continues to occupy the mortgaged premises as that party's principal place of residence, regardless of whether the challenge was asserted prior to the deadline, and a true and correct copy of any pleading asserting the challenge in the legal action was duly recorded in the registry of deeds for the county or district in which the subject property lies or is duly filed in the land court registry district within 60 days from the date of the challenge or before the deadline, whichever is later.

An attested true and correct copy of the complaint or pleading described in this subsection shall be accepted for recording in the registry of deeds or, in the case of registered land, in the land court registry district.

After the entry of a final judgment in a legal challenge under clause (i) or (ii) and the final resolution of any appeal of that judgment, the affidavit shall immediately become conclusive evidence of the validity of the sale if the final judgment concludes that the power of sale was duly exercised. If the final judgment concludes that the power of sale was not duly exercised, the foreclosure sale and affidavit shall be void. If the final judgment does not determine the validity of the foreclosure sale and the deadline for the affidavit to become conclusive has not expired, any party entitled to notice of sale under section 14 may file or assert another legal challenge to the validity of the foreclosure sale under said clause (i) or (ii).

(e) The recording of an affidavit and the expiration of the deadline shall not relieve an affiant or any other person on whose behalf an affidavit was executed and recorded from liability for failure to comply with this section, section 14 or any other requirements of law with respect to the foreclosure.

(f) A material misrepresentation contained in an affidavit shall constitute a violation of section 2 of chapter 93A.

Section 16: Repealed, 1971, 423, Sec. 22

Section 17: Conveyance by mortgagor; effect

Section 17. A sale or transfer by the mortgagor shall not impair or annul any right or power of attorney given in the mortgage to the mortgagee to sell or transfer the land as attorney or agent of the mortgagor.

Chapter 244, Section 17A: Limitation of actions

Section 17A. Actions on mortgage notes, whether witnessed or not, or on other obligations to pay a debt secured by mortgage of real estate, to recover judgments for deficiencies after foreclosure by sale under a power contained in the mortgage, and actions on such notes or other obligations which are subject to a prior mortgage, to recover the amount due thereon after the foreclosure by sale of such prior mortgage under power contained therein, shall, except as hereinafter provided, be commenced within two years after the date of the foreclosure sale or, if the principal of the note or other obligation does not become payable until after the foreclosure sale, then within two years after the time when the cause of action for the principal accrues.

Such actions in cases where the foreclosure sale shall have occurred or the cause of action shall have accrued prior to January first, nineteen hundred and forty-six shall be commenced within two years after said date. Nothing in this section shall extend any other period of limitation.

Chapter 261, Section 27A: Definitions applicable to Secs. 27A to 27G

Section 27A. As used in sections twenty-seven A to twenty-seven G, inclusive, the following words shall have the following meanings:

"Indigent", (a) a person who receives public assistance under aid to families with dependent children, program of emergency aid for elderly and disabled residents or veterans' benefits programs or who receives assistance under Title XVI of the Social Security Act or the medicaid program, 42 U.S.C.A. 1396, et seq.; (b) a person whose income, after taxes, is 125 per cent or less of the current poverty threshold established annually by the Community Services Administration pursuant to section 625 of the Economic Opportunity Act, as amended; or (c) a person who is unable to pay the fees and costs of the proceeding in which he is involved or is unable to do so without depriving himself or his dependents of the necessities of life, including food, shelter and clothing, but an inmate shall not be adjudged indigent pursuant to section 27C unless the inmate has complied with the procedures set forth in section 29 and the court finds that the inmate is incapable of making payments under the plans set forth in said section 29.

"Fees and costs", fees and costs shall not include attorneys' fees.

"Normal fees and costs", the fees and costs a party normally is required to pay in order to prosecute or defend the particular type of proceeding in which he is involved shall include, but not be limited to, the following: in all civil cases, filing or entry fees, including the surcharges required by section four C of chapter two hundred and sixty-two; fees and related costs for service of process, including publications of a citation when publication is ordered; fees and costs for the issuance or service of a subpoena and witness fees for trial or deposition; jury trial fees; removal fees; costs assessed in a bill of costs; in equity, fees for the issuance of an injunction, restraining order, writ or other process; in the probate and family court department, fees for an amendment of record.

"Extra fees and costs", the fees and costs, in addition to those a party is normally required to pay in order to prosecute or defend his case, which result when a party employs or responds to a procedure not necessarily required in the particular type of proceeding in which he is involved. They shall include, but not necessarily be limited to, the cost of transcribing a deposition, expert assistance and appeal bonds and appeal bond premiums.

"Clerk", the clerk or an assistant clerk or the register or an assistant register.

"Inmate", a person committed to, held by or in the custody of the department of correction or a state, county or federal correctional facility or the treatment center under chapter 123A.

Section 27B: Affidavit of indigency; waiver, substitution or state payment of fees or costs; supplementary affidavits

Section 27B. Upon or after commencing or answering to any civil, criminal or juvenile proceeding or appeal in any court, including but not limited to civil actions, proceedings for divorce or separate support, summary and supplementary processes, and proceedings upon petitions to vacate, for review or, upon appeal in a criminal case, any

party may file with the clerk an affidavit of indigency and request for waiver, substitution or payment by the commonwealth of fees and costs upon a form prescribed by the chief justice of the supreme judicial court and in accordance with the standards set forth in sections twenty-seven C to twenty-seven F, inclusive, and sworn to under oath by the affiant.

An indigent party may subsequently file one or more supplementary affidavits requesting the waiver, substitution or payment by the commonwealth of fees and costs not previously granted at any time while the case is still pending in the original court or elsewhere.

Section 27C: Granting requests for waiver, substitution or state payment

Section 27C. (1) If the affidavit is filed with the complaint or other paper initiating the proceeding, the clerk shall receive the complaint or other paper for filing and proceed as if all regular filing fees had been paid. Such filing shall be conditional until either (a) the affidavit is granted or (b) if the affidavit is denied, the payment of necessary and regular filing fees is made within five days of the denial of the affidavit, or such further time as the court may allow, or within five days of the denial of any appeal relating to the affidavit, whichever is later.

(2) If the affidavit appears regular and complete on its face and indicates that the affiant is indigent, as defined in section twenty-seven A, and requests a waiver, substitution or payment by the commonwealth, of normal fees and costs, the clerk shall grant such request forthwith without hearing and without the necessity of appearance of any party or counsel.

(3) If the affidavit does not appear to satisfy the condition of paragraph (2), the clerk or register shall forthwith bring the affidavit to the attention of the justice or judge, as the case may be. The justice or judge may grant such request forthwith or may have the clerk or register notify the affiant that a hearing will be held on the affidavit within five days. If it appears at the hearing that there is a serious question as to the affiant's indigency, as defined in section twenty-seven A, then before making a finding of indigency, the court shall consider the following facts with respect to the applicant as of the time of hearing, in the immediate past and with respect to the immediate future; his age, education, training, physical and mental ability and number of dependents; gross and net income; regular and extraordinary expense, if any; assets and liabilities; whether or not he is a recipient of public assistance and for what purposes; and any other facts which are relevant to the applicant's ability to pay court costs.

(4) If the court makes a finding of indigency, it shall not deny any request with respect to normal fees and costs, and it shall not deny any request with respect to extra fees and costs if it finds the document, service or object is reasonably necessary to assure the applicant as effective a prosecution, defense or appeal as he would have if he were financially able to pay. The court shall not deny any request without first holding a hearing thereon; and if there is an appeal pursuant to section twenty-seven D following a denial, the court shall, within three days, set forth its written findings and reasons justifying such denial, which document shall be part of the record on appeal.

(5) The clerk of each court shall conspicuously post in the part of his office open to the public a notice informing the public in plain language of the availability of waiver, substitution or payment by the commonwealth of fees and costs for indigent persons.

(6) If the court makes a finding that the applicant could reasonably pay part of the normal fees and costs or extra fees and costs, the court may assess a reasonable partial payment towards said fees or costs and a date by which same is to be paid by the applicant. The court shall not order partial payment without first holding a hearing thereon, and if there is an appeal pursuant to section 27D following such an order, the court shall, within 3 days, set forth its written findings and reasons justifying the order of partial payment, which document shall be part of the record on appeal.

Section 27D: Appeal; notice; record; speedy hearing; stay of proceedings; decision final

Section 27D. In any case where the court denies a request for waiver, substitution or payment by the commonwealth of fees and costs, pursuant to section twenty-seven C or any other provision of law, the applicant may take an appeal as hereafter provided. If the matter arises in the superior, the land, the probate or the housing court departments, the appeal shall be to a single justice of the appeals court at the next sitting thereof. If the matter arises in the juvenile court department, the appeal shall be to the superior court sitting in the nearest county or in Suffolk county. If the matter arises in the district court or Boston municipal court departments, the appeal shall be to the appellate division. Upon being notified of the denial the applicant shall also be advised of his right of appeal, and he shall have seven days thereafter to file a notice of appeal with the clerk or register. Upon receipt of notice of appeal timely filed the clerk or register shall forthwith notify the judge or justice, who shall within three days set forth his written findings and reasons as provided in paragraph (4) of section twenty-seven C. The court denying the request may, with or without motion, stay proceedings pending appeal or issue any other order or process to preserve the rights of the parties pending the appeal. The clerk or register shall then forward the affidavit and request, the court's findings and reasons for denial and any other documents on file relevant to the appeal, to the clerk of the court deciding the appeal, who, upon receipt thereof, shall refer the matter to the court for speedy decision and shall promptly notify the applicant of such decision. The court deciding the appeal may enter a stay or revoke an existing stay or other order, and its decision shall be final with respect to such request."

Section 27E: Repayment; deductions from judgment or settlement; notice; procedure

Section 27E. Any party on whose behalf any fees or costs have been waived or paid by the commonwealth pursuant to sections twenty-seven C or twenty-seven F, or both, shall repay the total amount thereof to the clerk or register of the court if said party shall have recovered, as a result of the proceeding in which said fees or costs were waived or paid, an amount in excess of three times the total amount of said fees and costs. In any case in which any fees or costs have been so waived or paid, the court, upon the waiver or payment of any such fees or costs shall notify all parties of the total amount of said fees and costs to date and that any money judgment or settlement in favor of the party for whom said fees or costs were waived or paid which exceeds three times the total amount thereof shall be deposited with the clerk or register of the court in the following manner. Any party obligated to pay any judgment or settlement exceeding three times the total amount of said fees and costs, or any portion of such a judgment or settlement, shall pay to the clerk or register the total amount of said fees or costs, or if more than one party is so obligated, his proportional share thereof, and deduct the same from such judgment or settlement. The clerk or register shall notify all parties when the total

amount of fees and costs has been so reimbursed. When said notification is received by the party obligated to pay such judgment or settlement or portion thereof, or if no such notification is received after the expiration of thirty days after the payment by said party of such fees or costs or his share thereof, said party shall promptly forward the remainder of the judgment or settlement to the party entitled to it. This procedure shall not be construed to excuse any person on whose behalf any fees or costs have been waived or paid from the obligation to repay the same as provided in this section.

Section 27F: Substitute documents, services or objects at less cost; court order

Section 27F. The court may, upon its own motion or that of any party, order that the document, service or object for which a normal or extra fee or cost would be charged shall be provided by an alternative means at lower or no cost, if the substitute thereby provided is substantially equivalent and the provision thereof does not materially impair the rights of any party. In any such order the court may direct payment by the commonwealth of the cost of any substitute to the same extent that the court would but for this section have ordered payment by the commonwealth for the document, service or object in question.

Section 27G: Payment procedure; public record; report of expenditures

Section 27G. The clerk shall receive from any indigent party or his attorney all bills and vouchers for any document, service or object rendered to said party for which an order for payment by the commonwealth has been issued, and shall transmit said bills and vouchers and an attested copy of said order to the office of the court administrator, who shall make prompt payment thereon.

The office of the court administrator shall keep a record of all payments or waivers made pursuant to this section and of all repayments made pursuant to section twenty-seven E, including therein the name of the party, his attorney if any, the names and addresses of the person or persons to whom payment is made, the dates each was rendered to the party and the charge for each, and the dates payment was made by the office of the court administrator. This record shall be a public record.

The office of the court administrator shall on or before December first of each year make a written report to the general court indicating the amounts and purposes of all expenditures under sections twenty-seven A to twenty-seven G, inclusive, and making such recommendations for change in the law as he deems necessary.

CERTIFICATE OF COMPLIANCE WITH RULE 16(k) and 17

I hereby certify that the foregoing Amicus Brief complies, to the best of my knowledge and belief, with the rules of Court pertaining to filing of appellate briefs, including those specified in MRAP 16(k). It is formatted in compliance with monospaced font, 12-point Courier, requirements.

I also certify that no party or party's counsel authored the brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; no person or entity – other than the *amicus curiae* – contributed money that was intended to fund preparing or submitting the brief; and nor does Amicus Curiae represent nor has *Amicus* represented one of the parties to the present appeal in another proceeding involving similar issues, nor was a party or represented a party in a proceeding or legal transaction that is at issue in this appeal,

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DATE: 8/23/22

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished on 8/23, 2022 by E-Service and US Mail upon the following:

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