

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

John D. Keenan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative to Publication of Notice in Mortgage Foreclosures.

PETITION OF:

NAME:

John D. Keenan

DISTRICT/ADDRESS:

7th Essex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO PUBLICATION OF NOTICE IN MORTGAGE FORECLOSURES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 244 of the General Laws is hereby amended by striking out section 14 and
2 inserting in place thereof the following section:

3 Section 14. The mortgagee or person having his estate in the land mortgaged, or a person
4 authorized by the power of sale, or the attorney duly authorized by a writing under seal, or the
5 legal guardian or conservator of such mortgagee or person acting in the name of such mortgagee
6 or person, may, upon breach of condition and without action, do all the acts authorized or
7 required by the power; but no sale under such power shall be effectual to foreclose a mortgage,
8 unless, previous to such sale, notice thereof has been published once in each of three successive
9 weeks, the first publication to be not less than twenty-one days before the day of sale, in a
10 newspaper, if any, published in the town where the land lies or in a newspaper with general
11 circulation in the town where the land lies and notice thereof has been sent by registered mail to
12 the owner or owners of record of the equity of redemption as of thirty days prior to the date of
13 sale, said notice to be mailed at least fourteen days prior to the date of sale to said owner or

14 owners to the address set forth in section sixty-one of chapter one hundred and eighty-five, if the
15 land is then registered or, in the case of unregistered land, to the last address of the owner or
16 owners of the equity of redemption appearing on the records of the holder of the mortgage, if
17 any, or if none, to the address of the owner or owners as given on his deed or on the petition for
18 probate by which he acquired title, if any, or if in either case no address appears, then to the
19 address to which the tax collector last sent the tax bill for the mortgaged premises to be sold, or if
20 no tax bill has been sent for the last preceding three years, then to the address of any of the
21 parcels of property in the name of said owner of record which are to be sold under the power of
22 sale and unless a copy of said notice of sale has been sent by registered mail to all persons of
23 record as of thirty days prior to the date of sale holding an interest in the property junior to the
24 mortgage being foreclosed, said notice to be mailed at least fourteen days prior to the date of sale
25 to each such person at the address of such person set forth in any document evidencing the
26 interest or to the last address of such person known to the mortgagee. Any person of record as of
27 thirty days prior to the date of sale holding an interest in the property junior to the mortgage
28 being foreclosed may waive at any time, whether prior or subsequent to the date of sale, the right
29 to receive notice by mail to such person under this section and such waiver shall be deemed to
30 constitute compliance with such notice requirement for all purposes. If no newspaper is
31 published in such town, or if there is no newspaper with general circulation in the town where
32 the land lies, notice may be published in a newspaper published in the county where the land lies,
33 and this provision shall be implied in every power of sale mortgage in which it is not expressly
34 set forth. A newspaper which by its title page purports to be printed or published in such town,
35 city or county, and having a circulation therein, shall be sufficient for the purpose.

36 For a description of the mortgage premises in a notice of sale that is published pursuant to this
37 section, in lieu of a recital of the legal description of the premises, the notice shall refer to the
38 recorded mortgage by reference to the book and page or certificate or document number or other
39 recording reference to the mortgage. The notice shall also identify the names of the mortgagor
40 and mortgagee of record, and may also include the street address, or a similar commonly known
41 identification, if available, except that the failure to include the street address, or similar
42 commonly known identification, shall not affect the sufficiency of the notice.

43 The following form of foreclosure notice may be used and may be altered as circumstances
44 require; but nothing herein shall be construed to prevent the use of other forms.

45 (Form.)

46 MORTGAGEE'S SALE OF REAL ESTATE.

47 By virtue and in execution of the Power of Sale contained in a certain mortgage given by.....
48 to..... dated and recorded with
49 Deeds, Book....., page....., of which mortgage the undersigned is the
50 present holder,.....

51 (If by assignment, or in any fiduciary capacity, give reference.)

52

53 for breach of the conditions of said mortgage and for the purpose of foreclosing the same will be
54 sold at Public Auction at..... o'clock,..... M. on the..... day of..... A.D. (insert
55 year),..... (*place*)..... all and singular the premises described in said mortgage,

56 (In case of partial releases, state exceptions.)

57 Description of mortgage premises: “As stated in the mortgage recorded or filed at ”

58 Property address:

59 Terms of sale: (State here the amount, if any, to be paid in cash by the purchaser at the time and
60 place of the sale, and the time or times for payment of the balance or the whole as the case may
61 be.)

62 Other terms to be announced at the sale.

63 (Signed) _____

64 Present holder of said mortgage. ____

65 A notice of sale in the above form, published in accordance with the power in the mortgage and
66 with this chapter, together with such other or further notice, if any, as is required by the
67 mortgage, shall be a sufficient notice of the sale; and the premises shall be deemed to have been
68 sold, and the deed thereunder shall convey the premises, subject to and with the benefit of all
69 restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes,
70 assessments, liens or claims in the nature of liens, and existing encumbrances of record created
71 prior to the mortgage, whether or not reference to such restrictions, easements, improvements,
72 liens or encumbrances is made in the deed; but no purchaser at the sale shall be bound to
73 complete the purchase if there are encumbrances, other than those named in the mortgage and
74 included in the notice of sale, which are not stated at the sale and included in the auctioneer’s
75 contract with the purchaser.

