



**AN ACT TO PROVIDE REMEDIES TO CONSUMERS FOR CLEARING TITLE
AFTER PAYOFF OF MORTGAGES**

3-08-04

Fact Sheet / Outline of Legislation

By 2003, the mortgage discharge statutory scheme that performed adequately for earlier generations became so problematic and out-of-date as residential real estate lending evolved from a local to a regional and ultimately to a national marketplace. The Massachusetts real estate mortgage discharge practice could not keep up with the increased volume of residential refinancing, bringing issues of hardship and inconvenience to consumers, and concerns of quality control and liability to lenders and their attorneys. Missing or unrecorded mortgage discharges had become a widespread and vexing problem.

In early 2003, at the height of the residential refinance boom, in response to increasing complaints from the home-buying public and concerns from the lending community, the title insurance industry and REBA began work on a comprehensive overhaul of residential real estate mortgage satisfaction practice in Massachusetts. REBA launched this project at the invitation of members of the legislature's Joint Committee on the Judiciary.

An outline of the REBA's legislative proposal follows:

1. Require a bank or mortgage company that is receiving payments, upon request by the mortgagor or other authorized person, to provide a written payoff statement within 5 days. Similar proposal recommended by Committee on Banks & Banking, H.2731. See new section 54D of M.G.L. c.183, in Section 2 of the bill.
2. Effective with respect to mortgages recorded on and after July 1, 2004, a new provision would provide for a single recording fee at the time of recording a mortgage that would include the fee for recording the discharge thereof - i.e. a prepaid fee that would result in no fee when the discharge is recorded, thereby obviating the need for mortgagees or closing attorneys to withhold discharge recording fees. See amendments to sections 38 and 39 of G.L. c. 262, in Sections 7 and 8 of the bill.
3. A mortgagee that receives full payment of a mortgage on one-to-four family residential property that was recorded before July 1, 2004 (i.e. before elimination of the separate discharge recording fee), and either charges the borrower or withholds

from borrower's funds the recording fee for recording a discharge, shall record within 45 days, rather than just provide, a mortgage discharge together with necessary assignments and other authority-supporting documents. A copy of the properly recorded discharge, together with the recording information, shall be provided to the closing attorney who transmitted the payoff. See new subsections (a), (b) and (d) of section 55 of c. 183, also in Section 3 of the bill. If the mortgagee fails to record the discharge, it shall return to the borrower, or credit the borrower's account, all fees charged or withheld for recording such discharge, and it shall be liable in damages to the borrower in an amount equal to the greater of: the amount of such fees that were not refunded or credited plus \$2500, or such borrower's actual damages, plus reasonable attorneys fees. See new subsections (c) and (e) of section 55 of c. 183, also in Section 3 of the bill.

4. In all other cases the mortgagee shall within 45 days of receipt of a mortgage payoff, provide to the closing attorney either (a) the duly executed and acknowledged discharge, together with necessary assignments and other authority-supporting documents, or (b) a copy of the same together with the recording information. Merely providing a copy of the discharge or evidence that the discharge was sent to a registry of deeds for recording shall not be deemed to comply with this requirement, unless the recording information required herein is noted on the copy. Failure to comply will result in the same penalties as above. See new subsection (a) of section 55 of c. 183, in Section 3 of the bill.

5. If the holder of a mortgage and note is not the holder of record, the discharge shall also specify by what instrument(s) the holder became the holder of such mortgage and the note, with the recording information, or the holder himself shall record such documentation or provide it to the closing attorney. See new subsection (b) of section 55 of c. 183, in Section 3 of the bill. A discharge that includes a recital of corporate succession from a holder of record, may be relied upon without further evidence of corporate merger, consolidation, charter amendment or conversion of entity. See new subsection (i) of section 55 of c. 183, in Section 3 of the bill.

6. A new provision for one-to-four-family residential property allows for the discharge of a mortgage by recording an original note marked paid by the holder. If the note is not already in recordable form, it can be recorded as an exhibit to a c.183, sect. 5B affidavit. See new subsection (h) of section 55 of c. 183, in Section 3 of the bill.

7. In the case of discharge by a note holder who is not the holder of record of the mortgage, an original or photocopy of the note, with the endorsements thereon evidencing the transfer of ownership of such note to said holder, may be attached to or referenced in a discharge. A copy of the note may be attached to an affidavit by the noteholder that it is a true copy, or an affidavit by an attorney that such attorney has seen the original note with the endorsements thereon and the copy being recorded is a true copy thereof. See revised section 54C, paragraph (B) of c. 183, in Section 2 of the bill.

8. Retain the opportunity for an attorney to record a discharge by affidavit if the mortgagee fails to either record or provide to the closing attorney a discharge of a mortgage within 45 days from receipt and acceptance of payment in accordance with a written payoff statement as evidenced by a cancelled check. See new subsection (g)(1) of section 55 of c. 183, in Section 3 of the bill. Also permits such an affidavit if there is a failure to record or provide the authority documentation for the entity

executing the discharge. See also subsection (g)(1). For wired funds a written confirmation of payment that recites the payee information prescribed in the payoff statement, when issued by the bank transmitting payment, would be equivalent to a cancelled check, if attached to the affidavit. See new subsections (f) and (g)(1) of section 55 of c. 183, in Section 3 of the bill. The notice of intent to record such an affidavit may be sent by the closing attorney with the mortgage payoff, or, as under present law, it may be sent if the mortgagee fails to provide or record a discharge with respect to a mortgage that has already been paid off. In either case, if the mortgagee sends a notice of inadequate payment or other objection, the affiant must not record the affidavit until the inadequacy or objection is satisfied and must add to the affidavit a copy of the notice of objection and either evidence or a statement that the inadequacy or objection has been satisfied. See subsection (g), paras.(1), (2), (3), (5) and (6), of section 55 of c. 183, in Section 3 of the bill.

9. Reduce the current 50-year statute of limitations for enforcement of a mortgage to a period that, for a mortgage in which no term of the mortgage is stated, shall be 35 years from the recording of the mortgage and, for a mortgage in which the term or maturity date of the mortgage is stated, the limitations period shall be 5 years from the expiration of the term or from the maturity date, unless, in either case, an extension of the mortgage, or an acknowledgment or affidavit that the mortgage is not satisfied, is recorded prior to the expiration of such period. These provisions shall also apply to mortgages on registered land. See revised sections 33 and 35 of G.L. c. 260, in Sections 5 and 6 of the bill.

10. Amend the statute governing judicial discharges by adding a new first paragraph allowing a mortgagor, his heirs, successors or assigns, who has some evidence of the payoff of a mortgage but who is unable to obtain a discharge from the mortgagee, and cannot fully meet the affidavit or document requirements of the statute for some reason, to file a petition in the Land Court or the Superior Court to have a mortgage discharged at any time without respect to any particular waiting periods or periods of uninterrupted possession. Alternatively, when there is no actual or direct evidence of payoff sufficient to proceed under the first paragraph, the second paragraph retains the procedure previously set forth in the statute for discharging old mortgages but allows for shorter possession periods than the previous statute. See revised section 15 of G.L. c. 240, in Section 4 of the bill.

[Proposed Mortgage Discharge Legislation \(pdf document\)](#)