Bill Title: An Act relative to unlawful practices in the servicing and foreclosure of a subordinate mortgage. S.1071 / H.1983

Primary Sponsors: Senator William J. Driscoll, Jr. and Representative Amy Mah Sangiolo

THE ZOMBIE MORTGAGE THREAT: A TICKING TIME BOMB FOR MASSACHUSETTS HOMEOWNERS

Remember the subprime mortgage crisis of the early 2000s? One toxic product that contributed to the crisis was the "80-20 mortgage," where homeowners took out a first and *second* mortgage simultaneously. When the housing bubble burst, these second mortgages, often held by investors, became worthless. Many homeowners, understandably, believed these second mortgages were dead and gone.

They were wrong.

Now, two decades later, with rising property values, these "zombie second mortgages" are being resurrected so investors can collect on the long-dormant loans. Investors who bought these debts for pennies on the dollar are suddenly foreclosing on homeowners who are current on their *first* mortgages and have built significant equity in their homes. Families who thought their housing situations were stable are now facing devastating surprise foreclosures, and families are being thrown into crisis.

S.1071 / H.1983 provides a crucial lifeline for these homeowners.

This legislation targets the predatory practices of zombie second mortgage investors and protects homeowners from unfair and deceptive tactics. It brings transparency and accountability to a system that has been shrouded in secrecy, and has allowed zombie second mortgages to fester until they are used suddenly to attack families.

KEY PROVISIONS – PROTECTING HOMEOWNERS:

- **Stops Unlawful Practices:** Specifically prohibits practices like failing to provide required notices and statements, and attempting to collect on debts when there is no longer a legal right to do so. These are the tactics zombie second mortgage holders use to ambush homeowners.

- **Empowers Homeowners:** Mandates clear, written notices to homeowners about these unlawful practices and requires creditors to verify a loan's legitimacy. This gives homeowners the information they need to fight back.

- **Gives Courts Power to Help:** Authorizes courts to pause foreclosures, waive fees and interest, release the loan entirely, and set aside wrongful foreclosure sales. This provides real recourse for homeowners facing these predatory actions.

- **Holds Lenders Accountable:** Makes creditors liable for damages, including punitive damages, for engaging in these unlawful practices. This creates a strong deterrent against these predatory tactics.

- **Creates Strong Enforcement:** Designates violations as per se violations of the Massachusetts consumer protection law (Chapter 93A) and empowers the Attorney General to enforce these protections.

- **Allows for Accessibility for All:** Requires all notices to be provided in English and Spanish, with clear instructions on how to obtain translation into the top seven languages spoken in the Commonwealth. This ensures that language barriers don't prevent homeowners from accessing critical information.

THE TIME TO ACT IS NOW:

Zombie second mortgages are a growing threat to Massachusetts homeowners. This bill provides essential protections against these predatory practices, ensuring fairness and transparency in the mortgage process. It's about protecting families and preserving homeownership now, and preventing another foreclosure crisis down the road.

For more information, please contact Geoff Walsh (gwalsh@NCLC.org) or Andrea Bopp Stark (astark@NCLC.org)

See also:

- NCLC Zombie Second Toolkit: https://library.nclc.org/zombie-second-mortgages

- NPR Article Zombie 2nd mortgages are coming to life, threatening thousands of Americans' homes: https://www.npr.org/2023/07/11/1187843477/zombie-second-mortgages-foreclosure