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Hon. Michael S. Day, Chair
Hon. Lydia Edwards, Chair
Joint Committee on the Judiciary
24 Beacon St., Room 136
Boston, MA 02133

October 21, 2025

Re: S1071/H 1983 - An Act relative to unlawful practices in the servicing and foreclosure of a subordinate mortgage

**TESTIMONY OF NATIONAL CONSUMER LAW CENTER & GREATER
BOSTON LEGAL SERVICES**

We submit these comments on behalf of the **National Consumer Law Center (NCLC)**, which works to advance consumer justice and economic security for low-income and other vulnerable communities across the United States. Thank you for the opportunity to testify in support of **S1071/H1983**—a bill that addresses a **growing and dangerous threat** to homeowners in Massachusetts and beyond: the foreclosure of long-dormant second mortgages.

These “**zombie**” second mortgages often **vanish for years**—no bills, no communication, no warning—only to **resurface without notice** when investors buy them for pennies on the dollar. Homeowners suddenly face **foreclosure threats and demands for enormous sums**, jeopardizing their homes and hard-earned equity.

This bill takes meaningful steps to **hold zombie mortgage holders accountable**, requiring them to follow the same consumer protection laws as other mortgage servicers and to provide borrowers with the **clear, consistent, and accurate information** they need to make informed decisions and protect their homes.

Key Points:

- Foreclosure of a second mortgage has devastating consequences for a homeowner – the loss of a home, and often a family’s life savings.
- Foreclosures of long-dormant second (or “zombie”) second mortgages have become a national scourge, with owners of these loans taking unfair advantages of homeowners who have been faithfully paying on their first mortgages for decades.

- Since the foreclosure crisis of 2008, many federal and state laws have been put in place that require owners and servicers of mortgage loans to communicate on a regular basis with borrowers about the status of their mortgage loans.
- For many years, and often for decades, the owners of zombie second mortgages consistently flouted the laws that obligated them to keep borrowers informed about the status of mortgage loans.
- After buying these loans for pennies on the dollar owed, buyers of zombie second mortgages take advantage of homeowners' lack of information about the status of the loans. They use the leverage of foreclosure to demand and collect sums that often far exceed the amounts borrowed long ago.
- [S1071/H1983](#) will protect vulnerable homeowners from the dangers of zombie foreclosures. The law defines certain practices in servicing a subordinate mortgage as unlawful. These unlawful practices involve failure to communicate with borrowers, either over long periods of time or in disregard of federal and state laws that require specific communications.
- The law requires that servicers who intend to foreclose on a subordinate mortgage first disclose to borrowers whether the servicer or its predecessors engaged in unlawful servicing practices.
- Upon review of the servicer's disclosure, the borrower can decide whether to ask a court to determine whether foreclosure is appropriate. The court evaluates the extent and severity of any unlawful servicing practices and their impact on the borrowers. The court can then exercise its traditional equitable powers to approve or withhold approval of a foreclosure.
- Under their equitable authority courts can ensure that arrearage amounts claimed are lawfully due. The courts may also see that borrowers who were harmed by unlawful servicing practices are appropriately compensated.

The Origins of the Zombie Second Mortgage Crisis

The zombie second mortgage problem stems from the surge of **subprime second mortgages** in the early 2000s. Lenders commonly used “80/20” or “piggyback” loans to finance home purchases—an 80% first mortgage paired with a 20% second mortgage, often eliminating the need for a down payment.¹ This structure increased lender profits through fees on two loans and frequently carried abusive terms, including steep interest rate adjustments.

¹National Commission on the Causes of the Financial and Economic Crisis in the United States, The Financial Crisis Inquiry Report 109–111(2011), available at www.govinfo.gov. According to the report, “Piggyback loans—which often required nothing down—guaranteed that many borrowers would end up with negative equity if housing prices fell, especially if the appraisal had overstated the initial value.” Id. at 110. The report noted that in a sample pool of first mortgage loans securitized by predatory lender New Century in 2006, thirty-three percent had a piggyback second mortgage on the same property. Id. at 111. Keeping the first mortgages at an eighty percent loan-to-value ratio also kept them within the guidelines for securitization by the GSEs. Id. at 110.

Many borrowers did not fully understand they had two separate loans, and loan modifications often applied only to the first mortgage. When housing values collapsed during the Great Recession, millions of borrowers owed more than their homes were worth. Servicers typically charged off second mortgages and abandoned collection for years.

When property values rose again, **debt buyers** acquired these long-dormant loans at steep discounts and reactivated them. They demanded repayment of **years of accumulated interest and fees**, frequently threatening foreclosure to extract lump-sum settlements or repayment agreements.

A recent investigation by Bloomberg News estimated **600,000 zombie second mortgages** remain nationwide.² In one example, an investor called “ARC” bought 7,000 loans with a face value of \$47.7 million for \$4.8 million, then collected \$17.1 million from settlements, \$6 million from resales, and \$4.8 million from foreclosures.³

The consequences of foreclosure of a second mortgage are drastic.

Under the law, if a **second mortgage** (or any junior mortgage) is foreclosed, the homeowner loses all rights to the property. The buyer at the foreclosure sale can **evict the homeowner** and take ownership. If the home has a lot of equity, that buyer can then **pay off the first mortgage** and end up with a valuable property free and clear.

Some debt buyers **actively look for these situations** to make big profits. This can be especially unfair to homeowners who **have stayed current on their first mortgage for years**, but heard nothing from the second mortgage holder until foreclosure suddenly looms.

Even without foreclosing, second mortgage holders can **use the threat of foreclosure to pressure homeowners** into expensive repayment agreements. The same investigation by Bloomberg News found that many borrowers agree to pay simply to avoid losing their homes—but the agreements often create **serious financial strain**.

Because home values have gone up, many properties now have more equity, making them **prime targets** for zombie mortgage foreclosures. After surviving the 2008 foreclosure crisis and the COVID-19 pandemic, many homeowners are again **at risk of losing their homes and hard-earned equity**.

Zombie foreclosures are a growing threat.

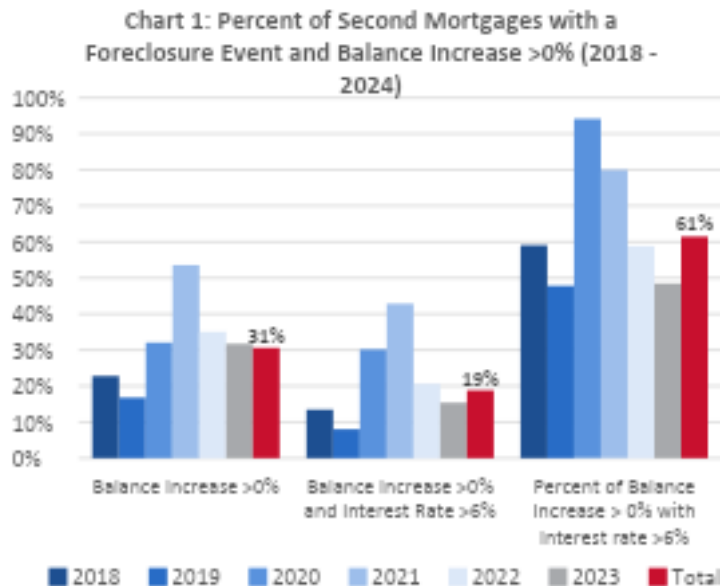
Massachusetts

In Massachusetts, lenders must file foreclosure petitions and sale information with the Division of Banks before a foreclosure sale. In early 2025, NCLC requested and reviewed data from the Massachusetts Division of Banks (DOB) on mortgages that had a “foreclosure event,” which involved sending a default notice or conducting a foreclosure sale, between 2018 and 2024. From

² Noah Buhayar, et al., *Zombie Debt : Pay Up or Move Out*, Part I, Bloomberg News Oct. 6, 2025.

³ *Id.*

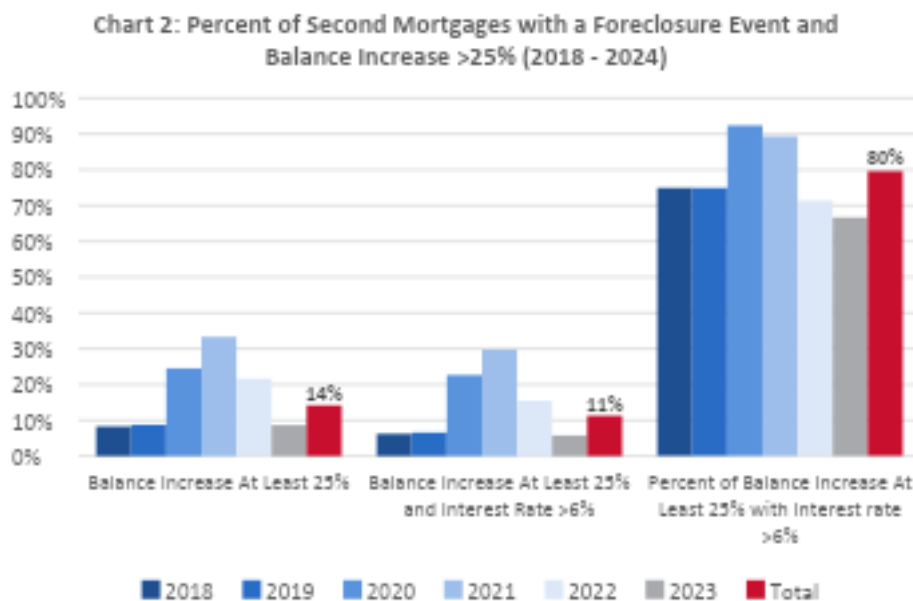
that data, we reviewed subordinate mortgages with increasing balances from origination to foreclosure filing, with original interest rates above 6%, and the estimated length of delay in collection activity.



Key Findings:

In **31%** of second mortgages with a foreclosure event, borrowers had higher loan balances than when they took out the loans.

- **61%** of loans with increased balances had original interest rates over 6%



- **14%** had a balance increase of at least 25%

- **80%** of loans with a 25%+ balance increase also had high original interest rates

Average borrower profile (for high-balance, high-rate loans):

10.2% interest rate

89% balance increase

144 payments missed—over 12 years of inaction by the lender

Conclusion: 31% of second mortgages in foreclosure since 2018 are most likely zombie second mortgages. Of these loans, 61% were subprime loans with interest rates above the current market rate at the time

****It is important to note that these numbers do not include the many zombie second mortgage loans that do not go to foreclosure because the homeowner sold the home, negotiated a payment amount- usually including high payments that include past due interest, fees, and costs, found a loan through another source (usually a hard-money lender or another high-cost loan) to pay the amounts alleged owed, or simply gave up and moved out of the home. As explained in the Bloomberg article: **Firms usually don't need to complete a foreclosure to profit. The threat of foreclosure is often enough to secure a payoff or payment plan, which allows the debt buyer to resell the debt.****

Nationwide

In addition to the recent Bloomberg article mentioned above, there have been several other news reports on zombie second mortgages. A July 2024 CBS News piece reported that, during 2006 and 2007, 30% of second mortgages became delinquent and many lenders wrote off the debts or sold the debts for less than what was owed.⁴ These mortgages are now coming to life and threatening foreclosure.

An NPR piece in May 2024 reported that in New York, foreclosure activity was initiated on at least 10,000 old second mortgages in just the past two years and Maryland had at least 500 old second mortgages that had been in default and unpaid for more than a decade and were now heading toward foreclosure.⁵ The NPR article highlights **Karen McDonough from Quincy, Massachusetts** who found out she lost her home when a group of about 20 people came to her home and told her the house was for sale. Karen bought her house in 2005 and the payments were affordable. By 2007, however, her monthly payments adjusted to \$700 a month more. Karen received a modification on her first mortgage and was told the second had been forgiven and she did not hear from the second mortgagee for over 10 years. When she finally did hear, she was on the verge of foreclosure and the owner of the loan was demanding a lump sum payment of \$77,000.

Examples of other Massachusetts' homeowners who have faced the financial devastation of zombie second mortgages can be found in:

- ***Hodges v. Newrez, LLC d/b/a Shellpoint Mortgage Servicing, and The Bank of New York Mellon***, No. 1:25-cv-10147 (D. Mass. filed Jan. 21, 2025) (class action alleging violations of the Truth-in-Lending Act, Massachusetts consumer protection law, and debt collection regulations for adding interest and fees to long-dormant second mortgages without required periodic statements) and

⁴ *Could a zombie mortgage put you at risk of foreclosure? Long-forgotten debt is coming back to haunt homeowners*, Ash-har Quraishi, Josh Peña, Ryan Beard, Taylor Johnston, Amy Corral, CBS News, July 24, 2024. Found at: <https://www.cbsnews.com/news/zombie-mortgages-debt-haunt-homeowners/>

⁵ *Zombie 2nd mortgages are coming to life, threatening thousands of Americans' homes*, Chris Arnold, Robert Smith, Jess Jiang, Sam Yellowhorse Kesler, Robert Benincasa, Nick McMillan, Planet Money, NPR May 18, 2024. Found at: <https://www.npr.org/2024/05/10/1197959049/zombie-second-mortgages-homeowners-foreclosure>

- *Commonwealth of Massachusetts, Office of the Attorney General & Franklin Credit Management Corporation, Assurance of Discontinuance* under G.L. c. 93A § 5 (Sept. 26, 2024) (“Assurance of Discontinuance”) (addressing violations of Massachusetts foreclosure-prevention and debt collection laws for zombie second mortgages)

In a February 2024 survey, NCLC asked homeowner advocates how often their clients had been on the verge of losing their homes or lost their homes because of a zombie second mortgage when they came for help.⁶

- **64%** percent of 101 respondents reported having seen clients with zombie second mortgages (defined as mortgages that were more than ten years delinquent and for which the homeowner had not received periodic mortgage statements in recent years), and **81%** of that total reported seeing clients with zombie second mortgages **several or many times**.
- **72%** of respondents who saw clients with zombie second mortgages said they had **several or many cases** where the **servicer was attempting to collect mortgage interest that accrued over a period of time when the homeowner was not receiving periodic mortgage statements**.
- **68%** of respondents who saw clients with zombie second mortgages had **several or many** clients whose **first communication from the servicer after many years of no communication was a notice of intent to foreclose** or other communication related to initiating foreclosure on their home.

While this was a nationwide survey, we have no reason to believe that Massachusetts homeowners are less affected than those in other states.

In the Appendix to NCLC’s 2024 mortgage servicing report, we described borrowers affected by these unfair practices.⁷ For example, a low-income Latina single mother mistakenly believed the second mortgage of an 80/20 loan was discharged when she received a HAMP (Making Home Affordable government loss mitigation program) modification in 2010 and she stopped receiving any correspondence on the second. More than a decade later, she started getting multiple harassing calls from a debt collector threatening to foreclose if she did not start making payments on the second mortgage. They claimed she owed the original principal balance plus over ten years of interest and fees. The stress of potentially losing her home along with other challenges exacerbated her underlying mental health issues, and she had to be hospitalized for several months. The debt collector offered her a loan modification, which she could not afford but, desperate to save her home, signed anyway. She then fell into default on that modification and was facing foreclosure.

Holders of Zombie Second Mortgages Routinely Violate Consumer Protection Laws

⁶ National Consumer Law Center, Homeowners at Risk: Nationwide Survey Reveals Critical Gaps the CFPB Must Address to Prevent Foreclosures, February 21, 2024 Appendix A, Question 15, available at <https://www.nclc.org/resources/homeowners-at-risk-nationwide-survey-reveals-critical-gaps-the-cfpb-must-address-to-prevent-foreclosures/>

⁷ National Consumer Law Center, Homeowners at Risk: Nationwide Survey Reveals Critical Gaps the CFPB Must Address to Prevent Foreclosures, February 21, 2024 Appendix B, pp. 1-4, available at <https://www.nclc.org/resources/homeowners-at-risk-nationwide-survey-reveals-critical-gaps-the-cfpb-must-address-to-prevent-foreclosures/>

Zombie second mortgages devastate homeowners because payment demands often appear after years of silence. Following the 2008 foreclosure crisis, federal and state laws were adopted to prevent exactly this kind of “surprise” foreclosure. Major mortgage servicers have generally complied with these laws, but zombie second mortgage owners and servicers have ignored them, and in turn, have profited from years of unlawful noncompliance.

Federal law requires servicers to **regularly communicate with borrowers** and disclose ownership or servicing changes. Under the Truth-in-Lending Act, mortgage owners must notify borrowers of ownership transfers within 30 days of the transaction.⁸ Similarly, the Real Estate Settlement Procedures Act (RESPA) requires timely notice of transfers of servicing responsibilities.⁹ In practice, zombie mortgage holders rarely provide these notices, leaving borrowers unaware of who owns their loan, who is servicing the loan, or whether it’s still active.

The Truth-in-Lending Act, as amended by the Consumer Financial Protection Bureau’s Regulation Z, also requires **periodic mortgage account statements** for both first and second mortgages.¹⁰ These statements must include amounts due, contact information, transaction history, and counseling resources.¹¹ If a borrower is delinquent, the statement must provide additional foreclosure warnings.¹² Compliance with these rules would prevent the sudden reappearance of long-dormant debt and inflated claims for years of interest and fees. Virginia¹³ and California¹⁴ have enacted legislation to address the attempt to collect interest that accrued during periods of Truth-in-Lending Act noncompliance.

Zombie second mortgage servicing practices also violate laws barring **unfair or deceptive debt collection**. The Fair Debt Collection Practices Act (FDCPA) prohibits deceptive foreclosure-related practices, and the CFPB has confirmed that the FDCPA applies to zombie mortgage servicing and foreclosure.¹⁵ Massachusetts’ own debt collection and consumer protection statutes mirror these prohibitions.¹⁶ Investors frequently acquire these loans with incomplete records, lacking proof of servicing history or authority to enforce the note—both critical requirements under state foreclosure law.

Existing Laws Do Not Provide Effective Remedies

While the Truth-in-Lending Act, RESPA, and the FDCPA establish clear obligations, **violations of these federal statutes rarely offer homeowners meaningful defenses** to foreclosure. The

⁸ 15 U.S.C. § 1641(g).

⁹ 12 U.S.C. § 2605(b), (c).

¹⁰ 15 U.S.C. § 1638(f); 12 C.F.R. § 1026.41.

¹¹ 12 C.F.R. § 1026.41(d).

¹² 12 C.F.R. § 1026.41(d)(8).

¹³ Va. Code Ann. § 55.1-321 et seq. (2024).

¹⁴ California passed Assembly Bill 130 (AB 130) which took effect on June 30, 2025, codified at Cal. Civ. Code 2924.13.

¹⁵ 15 U.S.C. § 1692 et seq.; Consumer Financial Protection Bureau, Fair Debt Collection Practices Act (Regulation F); Time-Barred Debt, 88 Fed. Reg. 26,475, 26,476 (May 1, 2023), stay pending review 90 Fed. Reg. 20,084 (May 12, 2025).

¹⁶ Mass. Gen. Laws ch. 93 and ch. 93A.

federal laws give consumers some limited monetary remedies, and consumers face short statutes of limitation (typically one to three years) to bring a claim.¹⁷ This leaves homeowners with no way to stop a foreclosure based on years of unlawful conduct.

Further, foreclosing entities are often **downstream assignees** of loans that have been traded over many years. Servicing violations may span multiple prior owners, each trying to shift liability elsewhere. This fragmented chain of responsibility creates significant barriers to accountability and impedes effective legal defense against a foreclosure.

S1071/H 1983 creates effective protections for consumers facing foreclosure of a zombie second mortgage

1. Addressing abusive servicing practices.

Section 35D(b) identifies red-flag servicing failures—especially the failure to communicate with borrowers. These breakdowns are a core cause of zombie mortgage foreclosures. When servicers ignore legal obligations, foreclosures should not proceed as routine matters. Oversight is critical.

2. Ensuring accountability before foreclosure.

Section 35D(c) requires servicers to review their own records and disclose whether they met their communication duties before foreclosing. This is not a new burden— Federal RESPA regulations require that servicers keep records showing their compliance with federal and state mortgage servicing laws.¹⁸ The review simply ensures compliance is verified and transparent.

3. Providing judicial oversight.

Section 35D(d) gives courts authority to review foreclosures of subordinate mortgages tainted by unlawful practices. This aligns with long-standing judicial foreclosure practice and allows courts to weigh misconduct without imposing automatic outcomes.

4. Flexible, fair remedies.

Sections 35D(d)–(h) empower courts to craft appropriate relief when servicing violations have harmed borrowers, using established authority under Massachusetts law, Chapter 93A. Oversight also ensures fair treatment of interest and charges accrued during non-compliance.

In short: This bill strengthens oversight where zombie second mortgage abuses are most likely, without burdening servicers who follow the law. It preserves homeownership and promotes fair, transparent foreclosure processes.

We would welcome the opportunity to discuss this further. Thank you.

Respectfully submitted,

Geoff Walsh
Senior Attorney

¹⁷ See 15 U.S.C. § 1640(e); 15 U.S.C. § 1692k(d); 12 U.S.C. § 2614.

¹⁸ 12 C.F.R. § 1024.38.

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