No. 24-6280

In the Supreme Court of the United States

MARGALY PHILIPPE, *PETITIONER*

v.

WELLS FARGO, N.A. AS TRUSTEE FOR OPTION ONE MORTGAGE LOAN, TRUST 2007-FXD1 – *RESPONDENT*

BRIEF OF AMICUS CURIAE – GRACE ROSS

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February 12, 2025

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AMICUS STATEMENT[1]

This Court's *Amicus Curiae* Grace Ross has relevant Massachusetts specific legal research in this area. As coordinator of the 70-organization Massachusetts Alliance Against Predatory Lending (MAAPL) for 13 years, this Court's *Amicus,* Grace C Ross, has served as a focal point for attorneys in private practice who litigate foreclosure issues in federal and MA courts for 15 years. Through MAAPL, she supports homeowners statewide to understand their legal rights, articulate the facts and caselaw in their cases and navigate our legal system when representing themselves in post-purported-foreclosure Housing Court, Massachusetts Appeals and Supreme Judicial Court ("SJC") eviction cases.

Ross has had twenty-one Amicus briefs accepted by the Massachusetts Supreme Judicial Court, eight by the Appeals Court[2]; two by Massachusetts Housing Courts; two by the First Circuit Court of Appeals.

Your *Amicus* is not an attorney. Yet Ross' decades as a housing policy analyst, lobbyist for housing-related organizations, crafting legislation to address the ongoing home foreclosure crisis, and in detailed negotiations with legislators over the precise meanings of proposed wording in related laws, make her well qualified to construe it. Her 2008 brief to the United Nations was cited in debate in the General Assembly, garnering coverage by 56 international news outlets.

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[1] Counsel had no opposing counsel of record in this matter ten days prior to the deadline. Where the tenth day prior fell on a Sunday, she arranged courtesy notice to the lower court counsels of record on February 3rd, 2025. Counsel reviewed and edited brief. Neither counsel, nor any party made a monetary contribution.

[2] In the *HSBC Bank as Trustee v. Matt*, 464 Mass. 193 (2013), the Court directly addressed part of Ross's argument at footnote 7. Further, in *Schumacher v. Gleason*, 97 Mass. App. Cr. 1109 (2020), Ross's *Amicus* is referenced as Note 5 to a key finding by the court.

SUMMARY OF ARGUMENT

This Court can finally give recognition to consumer, real property and negotiable note violations in the attempted origination rendering the original mortgages and Notes void. Under Public Interest Law, homeowner-mortgagors' new actual knowledge and proven evidence of pattern and practice of fraudulent mortgage contract offering have rendered their attempts to be heard as to these violations timely, as long as raised once actually acquired. Yet, denied their due process (and contractual[3]) rights to defend the titles and possession to their homes in the Massachusetts courts in accordance with both the mandated statutory proceedings in the state foreclosure-by-sale scheme and state eviction scheme (with its unique SJC-promulgated procedural rules and requirements), the Petitioners here (and the tens of thousands of homeowners like them) have been rendered legally-mute.

Mortgage origination fraud is covered under public interest law. As such, a victim is not even charged with inquiry knowledge until he/she has actual knowledge of the violation of his/her rights. At that point, as long as he/she acts reasonably quickly, as soon as he/she notifies a court, the offer at origination is to be recognized as a nullity; that is, it is a nullity before an 'acceptance' could even be considered to have been made via execution of the contractual instruments.

Moreover, where each piece of land is unique, the victim not only has a right to "the injured party shall be placed in the same position they would have been in, if the contract had been performed", but he/she is due specific

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[3] This posture in the uniform FNMA/FHMLC mortgage contract language, the SJC held strict compliance with it for a foreclosure by sale valid not "wholly void": "of the right to reinstate after acceleration and *the right to bring a court action to assert the non-existence of a default or any other defense of [the plaintiffs] to acceleration and sale*" *Eaton v. FNMA*, 462 Mass. 569 (2012) [emphasis by SJC]

performance to retain ownership.

ARGUMENT

Denied Statutory Hearings, Homeowners' Defense Then Denied as Untimely

Homeowner borrowers are routinely told by Massachusetts courts that they are untimely in their defenses of their title and, even, possession of their home and on that basis even cursory review is denied. Denied access to court proceedings which are statutorily provided to defend their title, when they are finally notified of the one still-enforced defensive proceeding – that of an eviction/"Summary Process" case – Housing Court judges (who overwhelmingly hear these cases) refuse transfer to a Court competent to adjudicate title after Plaintiff's title claim is challenged and any otherwise meaningful review in compliance with due process standards.

As with these four petitioners, and hundreds like them, having raised the predatory and prohibited nature of the origination of their loans, as an original defense at the beginning of their eviction cases, the judges denied them consideration as to those violations; judges told them that they should have raised these earlier in the life of the loan and purported default and foreclosure, and were, then, too late. Even though Massachusetts law requires a proof of an entire, unbroken, and valid chain of title, judges denied review of legal statutory[4] violations and various steps in the purported conveyancing of title and transfer of a still negotiable mortgage note; any violations of strict compliance of these, if true, demonstrate voidness. They further ignore

[4] Cf. the 2004 Massachusetts Predatory Home Loan Practices Act (MGL Chap. 183C), which codified the 1990s regulatory protections; Massachusetts Consumer Law (MGL Chap. 93A) and the regulatory codification of the ancient warrant of merchantability (940 CMR 3) and hundreds of years of real property conveyancing requirements.

that voidness is never subject to *laches*[5], and can neither ever ripen[6] into or be judicially declared[7] a legal act.

As well, these petitioners, like tens of thousands of other homeowners, were denied the jurisprudence that holds that their sworn and uncontroverted statements require judicial reliance by these same judges[8]. Such competent sworn personal knowledge includes as to violations that meant: the origination instruments were prohibited and, therefore, void; failures of legally required origination disclosures; public record evidence that parties that claimed to have ownership via a compliant "chain of title and ownership of the Note and mortgage"[9] did not legally comply and/or are barred from such acquisition by their own founding documents and other prohibitions, such as purported trusts that fail the Statute of Frauds as having never had an executed founding document.

The untimeliness mischaracterization is especially problematic where statutorily required origination disclosures were routinely denied or misrepresented. The actual necessary parties to the mortgage and note contract, likewise, were routinely misrepresented.

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[5] "the mortgagor, who never has been deprived of the legal title to the land, may maintain a bill in equity to redeem it from the mortgage at any time within twenty years, and no delay on his part within the period of limitation can be accounted laches." Moore v. Dick, 187 Mass. 207, 207 (1905)

[6] *Denny v. Mattoon*, 2 Allen 361, 383 (1861)

[7] Kleber, John C, VOID Judicial and Execution Sales and the Rights, Remedies and Liabilities of Purchasers Thereat with a Brief Discussion of Curative Statutes and Special Statutes Authorizing Involuntary Sales, Library of the University of Michigan Law School (1899), p. 70

[8] Citing FRCP Rules 12, 56 & 60 interpretation, see *Farley v. Sprague,* 374 Mass. 419, 424 (1978); *Olde Towne Liquor Store, Inc. v. Alcoholic Beverages Control Com'n,* 372 Mass. 152, 154-155 (1977); *Community Nat'l Bank v. Dawes,* 369 Mass. 550, 554 (1976)

[9] 209 CMR 18.24 regulatory proof and certification required in pre-foreclosure Notice of Sale to homeowner; not ever complied with.

Homeowner borrowers with the contractual right to defend their title[10] are overwhelmingly denied participation at the first court proceeding immediately after default and acceleration of the loan. This proceeding is called the "Active Military Service Proceeding" and is denied to anyone not in active military service.

In such proceedings, with homeowners denied the right to discovery, provide evidence and defend their title at that stage in the nonjudicial foreclosure process, Massachusetts law requires that Active Military Proceeding judges have a *sua sponte* responsibility to demand such discovery, to ensure the "person selling" has the requisite interest in a still enforceable mortgage and note. Active Military Service judges make no requests for discovery of any kind. They fail their jurisprudential obligation to determine standing, and, therefore, their own subject matter jurisdiction[11] and their obligation to the defendant who has been denied the right to participate[12].

Homeowner borrowers in the last 30 or so years have, then, been further denied their right to the judicial review step in the foreclosure by sale statutory scheme in Massachusetts (MGL Chapter 244 §§12 & 13) which the foreclosure auction "person selling" is required to commence within 10 days well before the 30-day closing deadline[13].

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[10] As well as the mortgage covenant liability to defend the title of the real mortgagee but in contrast to *Ibanez* have been denied the right to have challenges to mortgage conveyances (with published facial defects) judicially enforced.

[11] Cf. *Abate v. Fremont Inv. & Loan,* 470 Mass. 821, 828 (2015); *Rhode Island v. Massachusetts*, 37 U.S. 12 Pet. 657 (1838)

[12] *HSBC Bank USA, N.A. v. Matt*, 464 Mass. 193 (2013)

[13] When these two laws were enacted in 1851 and 1854 respectively, the standard closing was in 60 days. Even 35 years ago when MGL Chapter 244 §§12&13 adjudication was still occurring the closing deadline was only initiated upon final statutorily-required affirmation of a foreclosure auction sale. See *146 Dundas Corp. v. Chemical Bank*, 400 Mass. 588, Note 9 (1987)

This leaves these Petitioners (and many 10s of thousands of homeowners), again, denied their timely discovery rights, their right to challenge the standing of the party claiming to foreclose, and, again, their right to timely defend their title to their property.

Judicial decisions from Housing Court eviction judges like in these Petitioners' cases, then, treat all of the above general defenses are precluded, because 1) the foreclosure sale purportedly went through, 2) the homeowner was induced to take the offer of mortgage and note instruments that fact and law show were a nullity when presented to them (See below), 3) they purportedly lack the very standing required to meet their jurisprudential legal obligation to ascertain the pre-foreclosure noteowner had legally acquired a still negotiable note[14] and the person selling legally acquired an enforceable mortgage[15], and 4) they are held responsible for not having challenged the foreclosure sale sooner.

Under MGL Chapter 93 §101, these homeowners' consumer law and regulatory defenses cannot be waived, including residential mortgage law and regulations unless a waiver is explicitly included[16]. The homeowners had no reason to presume such origination violations until they faced foreclosure; nor have 20 years of Massachusetts state and federal court action provided the discovery rights, so that the research, facts and widespread fundamental violations have been heard and adjudicated.

Public interest law includes Massachusetts consumer and thus mortgage law; direct violation of statue or

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[14] See *Murphy v. Barnard*, 162 Mass. 72, 78-79 (1894) requirements once mortgage paper became negotiable notes.

[15] Where Massachusetts mortgages are deeds (MGL Chapter 183 §18) and the homeowner warrantees the legal title of the real-mortgage-in-interest (mortgage contract wording and MGL Chapter 183 §19), they have liability and so must have standing.

[16] See "Cf. Henry v. Mansfield Beauty Acad., Inc., 353 Mass. 507, 511 (1968) (Wilkins, C.J.)

regulation render the mortgage and note contracts herein as a "nullity". Further, Specific Performance provides putting homeowners in the position they would be in if the verbal origination warrantees had been performed.

The misrepresented origination disclosures included written assurances of being able to afford a significantly overpriced property valuation. Via appraisals the homeowners themselves were assured the mortgage was not more than the real value. Only in recent years have these homeowners gotten actual knowledge that the Office of Comptroller of the Currency ("OCC") provided lenders the legal requirement that a loan cannot be more than the collateral's true value in 1997; that is, the full value of the loan (a key Truth-in-Lending Act provision) against the more accurate municipal assessment value available at that time. Their single underwritings were far beyond the permissible 97% of the OCC.[17] The OCC's still enduring position: no mortgage can be originated for over 100% of the real property value.[18]

A promise was also made as to the actual original lender but the named entities in the purported mortgages and Notes were not the real source of money violating 940 CMR 3 and OCC requirements[19].

However, Public Interest Law provides as to a residential mortgage and, thus, consumer transaction, the homeowners had no obligation to question the legality of the entity they were warranteed to be contracting with and are only charged with actual knowledge as they gained it.

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[17] OCC's Handbook of November 1997, "Asset Securitization; Liquidity and Funds Management"

[18] The Comptroller's 2015 Handbook on Safety and Soundness Asset Quality (Residential Real Estate section) breaks the institutions it monitors into 3 sections.

Only "Large Lenders" are allowed to sell "products with CLTV [combined loan to value] ratios up to 100% may exist."

[19] OCC Advisory Letter AL 2003-2

Moreover, only one party entered the negotiations signing a 30-year commitment; the other parties drafted, provided and oversaw alleged executing of mortgage and note contracts knowing they would be bound for, at most, a few months until they sold on the secondary market.[20].

As the jurisprudence holds, justice is not only necessary for these homeowners but to end predatory victimization to benefit Commonwealth's people, in general. See *Arcidi* below.

Where the state land law is comparable to that of Massachusetts, this Court's action will benefit people of numerous states and is necessary to enforce the Federal Trade Commission Act §5.

Facts As To Originations

Prior to closing both the real mortgagee and lender were not disclosed to these homeowners. In closing, each homeowner was guided to sign two adhesion contracts – one titled "Mortgage" as the security instrument for one titled "Note". In separate consumer law violation, they were never given a chance to review in advance nor at closing. They were provided over-inflated appraisals – a well-documented industry-wide malpractice[21] later addressed in the Dodd-Frank Act. The funding stream and securitization of the mortgage loan (mortgage and note together) within 90 days was not notified to them and misrepresented in the public Registries for many years whether by FNMA or FHLMC or a private label bundler hiding an *ultra vires* and thus void act[22].

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[20] Cf. Justice Gants' discussion, *Commonwealth of Massachusetts v. H&R Block, Inc. et al.,* No. 08-2474-BLS (Mass. Super. Ct. file June 3, 2008)

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

[22] "[I]t has long been the rule in Massachusetts that an ultra vires contract is void, no action thereon being maintainable." *Herbert v.*

Void Origination Offer Per Public Interest Law

In 1937[23], the SJC formulated a three-part test for recognizing as void a contract violation of public interest laws::

> "The right to recover the consideration paid, though the transaction is illegal and fully executed, rests on the ground that [1] the purchaser belongs to the class of persons which the statute aims to protect, [2] that the prohibition of the statute does not apply to the purchaser but applies only to the seller, and [3] that the purchaser does not participate in the wrongdoing with full knowledge of material facts. *Kneeland v. Emerton*, 280 Mass. 371, 378-379, 383 [(1932)]. " *Comm'r of Banks v. Chase Securities Corporation*, 298 Mass. 285, 292 (1937).

Also, a contract is recognized as void firstly to ensure public interest purpose is met:

> "'[T]he interest of the public, rather than the equitable standing of the individual parties, is of determining importance.'" *O'Hara* v. *Ahlgren, Blumenfeld Kempster*, 127 Ill. 2d 333, 348 (1989), quoting *Parish* v. *Schwartz*, 344 Ill. 563, 572 (1931). See 8 Williston, Contracts § 19:79 (4th ed. 1998).

And only actual knowledge once obtained controls:

> "in the view most favorable to the defendant … Until reason to the contrary appeared the plaintiffs were entitled to assume that the defendant was not violating the law. Kneeland v. Emerton, 280 Mass. 371, 383. They had no primary duty to use diligence to discover a possible violation of the statute. See Higgins v.

Sullivan, 123 F.2d 477, 478 (1st Cir. 1941)

[23] Shepardization demonstrates still good law

Crouse, 147 N.Y. 411, 420. Compare Murray v. C.N. Nelson Lumber Co. 143 Mass. 250, 251" Commissioner of Banks v. Chase Sec. Corp., 298 Mass. 285, 325 (1937)

Moreover, where the contract in question regards a conveyance of property, 'specific performance' is implicated:

"specific performance… is usually granted in disputes involving the conveyance of land. *Raynor* v. *Russell*, 353 Mass. 366, 367 (1967), …. "It is well-settled law in this Commonwealth that real property is unique and that money damages will often be inadequate to redress a deprivation of an interest in land." *Greenfield Country Estates Tenants Ass'n, Inc.* v. *Deep*, 423 Mass. 81, 88 (1996)." *McCarthy v. Tobin*, 429 Mass. 84 (Mass. 1999)

Mortgage Origination Is In The Public Interest Law Arena

"Courts grant **equitable relief to a party to an illegal contract "where the provision of law rendering the contract illegal was clearly** intended to benefit one party over the other, i.e., the public policy is **intended to protect persons of the class to which one party belongs**." *Arcidi,* 447 Mass. at 621, …. **In *Council v. Cohen*, 303 Mass. 348,… (1939)**, … the court held that a second mortgage was invalid as prohibited by the Home Owner's Loan Act, but nonetheless **allowed the plaintiff to recover interest paid on the mortgage because the act's "intent is to aid the home owner and not the mortgagee**." *Stanton v. Lighthouse Financial Services*, 621 F. Supp. 2d 5, 17-18 (D. Mass. 2009) [bold added]

Residential mortgage loans are, by definition, consumer products. See mortgage origination and servicer

regulations (940 CMR 3, 7, 8 & 209 CMR 18, 32, 40) are per se Chapter 93A violations. Consumer law, a perfect exemplar of public interest law, provides up to triple damages:

> ""Like the punitive …, the multiple damages available under G. L. c. 93A, § 11, are part of a legislative scheme to vindicate broader public interests. … to eradicate unfair methods of competition or deceptive acts or practices in trade and commerce. See International Fid. Ins. Co. v. Wilson, 387 Mass. 841, 857 (1983), quoting McGrath v. Mishara, 386 Mass. 74, 85 (1982)…
> "**We have previously explained that multiple damages are meant to deter both "actual and potential wrongdoers**." Drywall Sys., Inc. v. ZVI Constr. Co., 435 Mass. 664, 670 (2002)." Kraft Power Corp. v. Merrill, 464 Mass. 145, 163-64 (2012) [bold added]

Public Interest Law – Evolution and Treatment of Fraudulent Offering

Violation of a statute governing contracts and passed with the intention of protecting the public from fraud can render the offer of such a purported contract void. Once identified as void, no court can ratify into existence a void act nor would one ever want to uphold a fraudulent contract harming not only that party but the public interest in protecting that 'class' of parties.

In *Kneeland v. Emerton*, 280 Mass. 371, 376 (1932), the SJC explicated the effect of regulations governing contracts intended to prevent fraud. Faced with whether a violation of MGL Ch. 100A ("the Sale of Securities Act") could render a transaction "absolutely void" the Court held it does:

> "In construing statutes of that nature, **it is established doctrine that a contract prohibited by the statute under penalty made for the benefit of the person parting with his valuable property**

> **will be void at his instance in like manner as if in terms declared to be a nullity**. The plaintiff as purchaser in ignorance of the fact that as to the shares of stock sold him by the defendant there had been failure to comply with the statute is not in *pari delicto* with the defendant." *Id.* at 373 [emphasis added].

The Court here is not voiding the contract but held it void at offer given statutory violation (before it could be "fully executed".) The long-standing principal is that "the large class" statutes designed to protect individuals paying "money or other consideration" to a receiver engaged in legislated fraudulent activity renders the contract void for reasons of public policy. The Court noted that although "[t]here is no express provision to that effect in the statute," the recent amendments were enacted because a commission reported "the great evil existing from lack of regulation of the sale of stock and other corporate securities and the enormous losses sustained annually by the people of the Commonwealth through sales to him of such securities." *Id.* at 376. (Similarly, the extensively researched 1992 Harshbarger Task Force Report warned of the pattern of predatory lending as "urban economic violence") As such, the Court found that:

> "[t]he statute here in question falls within the large class whereby it has been enacted that contracts are prohibited chiefly for the benefit of the person paying money or other consideration and the receiver is the principal offender. In such instances the latter may be compelled to refund." [Emphasis added] *Id.* at 379.

A purchaser who has been defrauded by a seller violating this statute is entitled to the highest level of protection available from the legislature: that such transactions are void as a matter of law:

> "In construing statutes of that nature, **it is established doctrine that a contract prohibited by the**

> **statute under penalty made for the benefit of the person parting with his valuable property will be void at his instance in like manner as if in terms declared to be a nullity**." *Id.* at 379 [emphasis added].

The onus is on the seller to understand and comply with the law. The Court held:

> "The plaintiff in all the circumstances disclosed was not chargeable to his harm with constructive knowledge…**[The plaintiff] had a right to assume that the defendant was not violating the law.** There is nothing in the record to support a contention that the plaintiff has waived his rights under said chapter, or that he has been guilty of laches in enforcing them. Suburban Land Co. Inc. v. Brown, 237 Mass. 166, 168. Stewart v. Finkelstone, 206 Mass. 28, 35-36." *Id.* at 384 [emphasis added]. ,

The Court felt that preventing fraud touches "almost everyone" and that legislature dealing with preventing fraud was familiar to most of the general population. *Id.* at 388 – 389. As such, the statutory terms should be read as the average person, whom the law protects, would understand them.

In *Council v. Cohen*, 303 Mass. 348, 355 (1939), this principle was applied to mortgage contracts. The Court declared his second mortgage void, stating:

> "It is well settled that 'courts will not aid in the enforcement, nor afford relief against the evil consequences, of an illegal or immoral contract… **where the parties are not in equal fault as to the illegal element of the contract**, …, **and where there are elements of public policy more outraged by the conduct of one than of the other, then relief in equity may be granted to the less guilty.**'" *Council*, 303 Mass. at 354, *citing Berman v. Coakley*, 243 Mass. 348, 350 [emphasis added].

Commonwealth v. Gustafsson, 370 Mass. 181, 187 (1976) held:

> "A court may be guided by the text of the statute and a consideration of the abuses sought to be remedied by its enactment. …, or on the well settled common law meanings of words such as 'unfair' and 'unreasonable' … long … part of our judicial system. See, e.g., *Kneeland …"*

Through *Gustafsson*, the 1st Circuit also affirmed *Kneeland*:

> "In speaking of unfair or deceptive practices, Congress and the Federal Trade Commission have taken the position that a specific definition of such practices is not appropriate as it would necessarily be under-inclusive, creating a shield for subsequent unfair or deceptive practices as the markets for goods and services evolve. See Sperry & Hutchinson Co., 405 U.S. at 239, 92 S. Ct. 898;Federal Trade Comm'n v. R.F. Keppel & Bro., Inc., 291 U.S. 304, 310, 54 S. Ct. 423, 78 L. Ed. 814 (1934) … Gustafsson, 370 Mass. at 187, [] (quoting Sears, Roebuck & Co. v. Federal Trade Comm'n, 258 F. 307, 311 (7th Cir.1919)" *United Companies Lending Corp. v. Sargeant*, 20 F. Supp. 2d 192, 205 (D. Mass. 1998).

Contracts made in violation of laws that protect the public from fraud are void at origination; any court is to treat them as "void at [the victim's] insistence in like manner as if in terms declared to be a nullity." *Kneeland* at 379.

Similarly in the public interest, Attorney General Harshbarger promulgated "unprecedented and creative regulations to curb future abuses"[24] (940 CMR 8[25]) of the

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[24] P.2 cover letter, *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")*

[25]Harshbarger also garnered enactment of corresponding criminal

mortgage lending practices then being regularly practiced by brokers originators and lenders. He forewarned Massachusetts courts and Government generally that "aggressive vigilance" would be necessary:

> "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."

State and Federal industry notices expressed concern about the burgeoning number of subprime loans, the ease with which those could be predatory. See MA Commissioner of Banks 1997 Industry Letter as to prohibited practices from origination through foreclosure. The 2004 Predatory Home Loan Practices Act was enacted because "a purely regulatory approach proved insufficient."[26]

What Was The Recent Pattern In Mortgage Fraud?

In *Commonwealth v. Fremont Savings & Loan*, No. 07-4373-BLS1 (2008), the later Chief SJC Justice Gants defined mortgages "doomed to foreclose":

> "To issue a home mortgage loan whose success relies on the hope that the fair market value of the home will increase … is as unfair as issuing a home mortgage loan whose success depends on the hope that the borrower's income will increase…." At 21-22.

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enforcement MGL Ch. 255E.

[26] Holtzman, Duke Univ., *American Predatory Lending and the Global Financial Crisis Oral History Project: Interview with John Quinn*, AM. PREDATORY LENDING, at 6 (Jul. 24, 2020).

Recognizing that our consumer law is neither 'wholly torturous nor wholly statutory" he cited the PHLPA:

> "The Legislature plainly deemed it predatory and, thus, unfair for a lender to make a high cost home loan, quickly reap the financial rewards from the high points, fees, or interest, and then collect the balance of the debt by foreclosing on the borrower when, as the lender reasonably should have foreseen, he cannot meet the scheduled payments. The Legislature… was disturbed by mortgage foreclosures of the borrower's principal dwelling …" At 18

In the modern era, the originator's quick 'reaping' was sped up not considering the realistic loan value but by fashioning an attractive sale within 3 months on the "secondary market" recouping their entire investment. Gants again:

> "What has changed since the Legislature promulgated the Act is the increasing prevalence of mortgage-backed securities, which enabled lenders… to assign large quantities of their high-risk mortgages, take a quick profit, and avoid the risks inherent in the loan." At 23 (Gants' cites the regulatory guidance to offload such loans within 3 months to avoid regulatory audits.)

Hence, any judicial presumption, even if no legal written mortgage contract could exist, that the homeowner was bound to a 30 year presumptive obligation (*Quantum Meruit)* was made folly not by the actions and presumptions of committed and trusting homeowners but by originators and a restructuring of the mortgage markets.

Further, Petitioners were confronted with adhesion contracts they were promised were legal and affordable – they were neither but homeowners relied on those promised meanings.[27]

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[27] See Nutter & Company v. Murphy, 478 Mass. 664 (2018) citing

Public Interest Law Requires not Providing the Fraudulent Offeror with their Desired Result

> ""The fundamental principle of law upon which damages for breach of contract are assessed is that the injured party shall be placed in the same position he would have been in, if the contract had been performed, so far as loss can be ascertained to have followed as a natural consequence and to have been within the contemplation of the parties as reasonable men as a probable result of the breach, ..." John Hetherington & Sons, Ltd. v. William Firth Co. 210 Mass. 8, 21." Eastern Massachusetts Street Railway v. Union Street Railway, 269 Mass. 329, 333 (1929)

'Reasonable men' of the highly developed banking industry cannot deny that 'natural consequence' as a more than 'probably result'. The FNMA-financed, historic literature review back to the 1960s[28] demonstrated loan-to-value ratios close to, at or, certainly if over, 100% were either the single most important factor to default/foreclosure or was so when combined with Debt-to-income ratio to lead.

Thus, the informed and fraudulent seller cannot be rewarded with the default and foreclosure, which its actions predictably put in motion:

> "Such a purchaser is permitted to recover the consideration paid by him, notwithstanding the fact that the transaction is fully executed, for the reason that,

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Lechmere Tire & Sales Co. v. Burwick, 360 Mass. 718, 720-721 (1972) ("an 'adhesion' contract [is] to be construed strictly against [the party] in whose behalf it ha[s] been drafted"). See also Restatement (Second) of Contracts, supra at § 211 comment c ("standard terms . . . are construed against the draftsman").

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

> if such relief were denied, the statute, as stated in Kneeland v. Emerton, 280 Mass. 371, 379, "would signally fail of its beneficent object," or, as expressed in Goodwin v. Simpson, 292 Mass. 148, 155, "the full and complete protection which the statute was intended to afford buyers" would not be given." Commissioner of Banks v. Chase Sec. Corp., 298 Mass. 285, 329 (1937)

Commonwealth of Massachusetts v. H&R Block, Inc. No. 08-2474-BLS (June 3, 2008) defined predatory loans as "reckless disregard of the risk of foreclosure." See as prohibited by 209 CMR 18.24: Mortgage Loan Servicing Practices: "(1)(d) Knowingly or recklessly facilitating the illegal foreclosure of real property collateral."

In Massachusetts, mortgage contracts bifurcate the deed and so, if not void, are conveyances of title.[29] Roche v. Gryzmish, 277 Mass. 575, 578-579 (1931) provided a review of that "long settled" law as to 'specific performance':

> "It has long been settled that in an action on a promissory note, given for the price of personal property, the maker may show in reduction of damages that the sale was entered into by him by reason of the false representations or fraud on the part of the payee, although the property has not been returned or tendered to him. Harrington v. Stratton, 22 Pick. 510. Stacy v. Kemp, 97 Mass. 166….The rule is well established that a purchaser of property who is defrauded in the purchase may keep the property and recover…damages occasioned by the fraud…Perley v.

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[29] "In Massachusetts, a "mortgage splits the title in two parts… Maglione v. BancBoston Mtge. Corp., 29 Mass. App. Ct. 88, 90 (1990). The purpose of the split is "to give to the mortgagee an effectual security for the payment of a debt [while] leav[ing] to the mortgagor . . . the full control, disposition and ownership of the estate." Santiago v. Alba Mgt., Inc., 77 Mass. App. Ct. 46, 49 (2010), quoting Charlestown Five Cents Sav. Bank v. White, 30 F. Supp. 416, 418-419 (D. Mass. 1939)." *Bevilacqua v. Rodriguez*, 460 Mass. 762, 774 (2011)

Balch, 23 Pick. 283. McKinley v. Warren, 218 Mass. 310. Patch v. Cashman, 244 Mass. 378."

In placing the parties back pre-void contract, the homeowner's land is not be returned. See U.S. Supreme Court unanimous decision as to residential mortgage recission.[30] As Public Interest Law, the members of the targeted "class" remain the priority to be made whole in the unraveling of the fraudulent offer:

> ""cases where the public interest requires that [the courts] should, for the promotion of public policy, interpose, and the relief in such cases is given to the public through the party." *Choquette*, 65 Mass.App.Ct. at 4, …(quoting *Council v. Cohen*, 303 Mass. 348, 354-55, …(1939))" *Fine v. Sovereign Bank*, 634 F. Supp. 2d 126, 141 (D. Mass. 2008)

940 CMR 3.01 (codification of the ancient warranty of merchantability):

> "Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is an implied warranty that the goods shall be fit for such purpose.

In contrast to the later induced but void execution, homeowners were warranteed a loan for real percentage of the then real assessed property value[31], a 30-year affordable interest rate with the true lender. Law including specific performance requires Petitioners retain their home, affordable mortgage payments based the original promised percentage of real property value *at origination*. They must

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[30] Jesinoski v. Countrywide (2015): "it is also true that the act disclaims the common law condition precedent to rescission at law that the borrower tender the proceeds received under the transaction 15USC Section 1635b."

[31] OCC 2015 guidance relies upon municipal assessments

be made whole as to the harm to health, relationships, credit and any other damage. Thus far muted as to its use, the PHLPA provides recognizing the origination void even as a Summary Process defense. *HSBC Bank as Trustee v. Morris*, 490 Mass. 322, 327-329 (2022).

Actual Knowledge Whenever Finally Acquired Determines Judicial Course Of Action

As an area of public interest law, homeowner-borrower as victim of a trusted professional are not even charged with 'inquiry notice'. *Commissioner of Banks v. Chase Sec. Corp*., 298 Mass. 285, 325 (1937:

> "**there could be no ratification or confirmation of the sale in question "unless and until the plaintiff had knowledge of the facts upon which he now bases his right to rescind" or "by any act of the purchaser done without knowledge of those facts which render the sale void."**

Massachusetts law recognizes trustee/fiduciary relationship with the (real) mortgagee in a mortgage conveyance inclusive of the preservation of equitable right to redeem in the face of the Private Power of Sale:

> "There can be no laches so long as there is no knowledge of the wrong complained of and no failure to avail one's self of reasonable opportunities to ascertain the facts…., the statute of limitations does not begin to run until the facts have been or ought to have been discovered." *Old Dominion Copper, C. Co. v. Bigelow*, 203 Mass. 159, 161 (Mass. 1909)

The Petitioners know now and have repeatedly provided under uncontroverted oath personal and documentary evidence of violations in their own mortgaging contract histories, based on ancient and recent caselaw and more recently as part of massive patterns. Yet, a meaningful time

and manner alludes them in repeated attempts to preserve their possession while repeatedly muted in proving up their title ***in pursuit of the judicial oversight and enforcement.***

CONCLUSION

This Court's action could still be timely to provide justice to Petitioners and the public: (i) Massachusetts's shortest Statute of Limitations (adverse possession) is 20 years for the illegal taking of a real property interest; (ii) Consumer law cannot be waived and is timely when raised timely to the actual knowledge of the victims of widespread public interest law violators; (iii) specific performance is the standard for a land contract; (iv) full justice and restitution is provided under equity and in specific statutes and regulatory promulgation . These all guarantee meaningful impact by this Court on tens of thousands of Massachusetts households and in other states with similar foreclosure-by-sale statutory schemes.

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February 12, 2025