

SENATE No. 471

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to preserving homeownership..

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

1 SECTION 1. Chapter 244 of the General Laws, as appearing in the 2006 Official
2 Edition, is hereby amended by inserting, after section 35A, the following section:—

3 Section 35B. Partial Payment

4 (a) For purposes of this section, the following words shall, unless the context otherwise
5 requires, have the following meanings:-

6 “Borrower”, the owner of a one-to-four family residential real property located in the
7 state that is occupied in whole or in part by the owner or of a condominium unit created pursuant
8 to chapter 183A of the general laws that is occupied in whole or in part by the owner, who is the
9 obligor on the mortgage debt encumbering such real property or condominium unit.

10 “Mortgagee”, a creditor that makes a loan secured by residential real property or a
11 condominium created pursuant to chapter 183A of the general laws, or any successor in interest
12 and/or assignee of the mortgagee’s rights, interests or obligations under the mortgage agreement.

13 “Mortgage Servicer”, an entity which administers the mortgage loan, including, but not
14 limited to, calculating principal and interest, collecting payments from the mortgagor, acting as
15 an escrow agent, and foreclosing in the event of a default by the borrower.

16 “Partial Payment”, payment of at least 60% of the total monthly mortgage payment.

17 “Total Monthly Mortgage Payment”, principal, interest, and any taxes and insurance
18 paid by the mortgagee or mortgage servicer on behalf of the borrower.

19 (b) A partial payment by a borrower shall be accepted by a mortgagee or mortgage
20 servicer and applied to mortgage debt, provided that the debt arises from a mortgage loan with
21 high points, fees or interest in violation of chapter 183C or a mortgage loan having the following
22 characteristics: (i) adjustable rate loans with an introductory period of three years or less; (ii) a
23 debt-to income ratio in excess of 50% of recurring debt under the fully indexed rate; (iii) the loan
24 was approved on a stated income basis; (iv) interest only loans or (v) the loan-to-value ratio is
25 100% or the loan carries pre-payment penalties of greater than three months interest.

26 (c) The partial payment shall be applied in the following priority order: (i) interest, (ii)
27 principal, and (iii) any taxes and insurance that the mortgagee or mortgage servicer is obligated
28 to pay on the mortgage loan on behalf of the borrower. A regularly scheduled mortgage payment
29 subsequent to a partial payment shall be applied as if the partial payment was a full payment.

30 (d) No mortgagee or mortgage servicer shall be required to accept a partial payment in
31 consecutive months or more than two partial payments in a twelve month period. A partial
32 payment shall not constitute a default of the mortgage loan if made in accordance with this
33 section, provided that the difference between the total monthly mortgage payment and the partial
34 payment is remitted within ninety (90) days of the date that the total monthly mortgage payment

35 was due and the mortgagee has paid the amount of monthly mortgage payment owed by that date
36 in full by said date.

37 (e) Upon receipt of a partial payment, the mortgagee or mortgage servicer shall issue to
38 the borrower a statement reflecting the deficiency payment due and specifying that the next
39 regularly scheduled payment will not be reduced by the amount of any deficiency payments. A
40 borrower who has made a partial payment under this section shall clearly identify the funds
41 being remitted to complete the mortgage payment on which a partial payment was previously
42 made.

43 (f) Late fees shall not be assessed in connection with a partial payment or deficiency
44 payment made in accordance with this section. Nothing in this section shall preclude or limit the
45 right to initiate a foreclosure proceeding pursuant to chapter 244.

46 (g) The attorney general shall enforce this section and may obtain injunctive or
47 declaratory relief for this purpose.