

HOUSE No. 1454

The Commonwealth of Massachusetts

PRESENTED BY:

Elizabeth A. Malia

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to facilitate mediation of mortgage foreclosures of owner occupied residential real property in the city of Boston.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|----------------------------|---------------------|------------------|
| <i>Elizabeth A. Malia</i> | <i>11th Suffolk</i> | <i>1/20/2011</i> |
| <i>Carlo Basile</i> | <i>1st Suffolk</i> | <i>2/3/2011</i> |
| <i>Linda Dorcena Forry</i> | <i>12th Suffolk</i> | <i>2/3/2011</i> |
| <i>Byron Rushing</i> | <i>9th Suffolk</i> | <i>2/3/2011</i> |
| <i>Martha M. Walz</i> | <i>8th Suffolk</i> | <i>2/3/2011</i> |
| <i>Carlos Henriquez</i> | <i>5th Suffolk</i> | <i>2/4/2011</i> |
| <i>Martin J. Walsh</i> | <i>13th Suffolk</i> | <i>2/4/2011</i> |
| <i>Jeffrey Sánchez</i> | <i>15th Suffolk</i> | <i>2/4/2011</i> |

HOUSE No. 1454

By Ms. Malia of Boston, a petition (accompanied by bill, House, No. 1454) of Elizabeth A. Malia and others facilitating mediation of mortgage foreclosures of owner occupied residential real property in the city of Boston. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to facilitate mediation of mortgage foreclosures of owner occupied residential real property in the city of Boston.

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. For the purposes of this Act, the following words shall, unless the context
2 clearly requires otherwise, have the following meanings:

3 “Creditor”, a person or entity that holds or controls, partially, wholly, indirectly, directly,
4 or in a nominee capacity, a mortgage loan securing a residential property, including, without
5 limitation, a mortgagee, an originator, holder, investor, assignee, successor, trust, trustee,
6 nominee holder, Mortgage Electronic Registration System or mortgage servicer, including the
7 Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

8 “Creditor” shall also include any servant, employee or agent of a creditor with the authority to
9 negotiate and modify the terms of a mortgage loan.

10 “Good Faith Effort”, shall have the meaning as described and determined in G.L. c. 244,
11 §35A(c).

12 “Homeowner”, shall mean an individual mortgagor, his or her assignee, successor, or a
13 trust or trustee who owns and resides in residential real property located in the city, and for
14 whom such residential real property is his/her principal residence.

15 “Loan/mortgage mediation conference”, shall mean the formal discussion and negotiation
16 undertaken by the parties in a good faith effort to negotiate and agree upon a commercially
17 reasonable alternative to avoid foreclosure and held at a location mutually convenient to the
18 parties. Both the homeowner/mortgagor and lender/mortgagee must be physically present for the
19 mediation conference unless telephone participation is mutually agreed upon. Homeowners may
20 be represented at the mediation conference by a person of their choice, but homeowner shall be
21 present in the mediation.

22 “Mediation Program” or “Program”, shall mean the foreclosure mediation program
23 established in the city of Boston pursuant to this Act and described in Section 6.

24 “Mediation Program Manager”, shall mean a neutral not-for-profit organization with
25 offices located in the city of Boston and experienced in the mediation of the residential
26 foreclosure process, familiar with all programs available to help homeowners avoid foreclosure,
27 and knowledgeable of the mortgage foreclosure laws of the commonwealth. The Mediation
28 Program Manager shall sign a user agreement with the city authorizing the receipt and use of
29 personal and financial information for the purposes of the mediation program only. Such
30 Mediation Program Manager shall ensure the security and confidentiality of any and all
31 information received or exchanged under the program consistent with applicable federal, state,
32 and city laws. Access to such program information shall be limited to those officers and
33 employees of the organization who require the information to properly perform services under

the city's mediation program, and that the organization and its officers and employees may not access, modify, use or disseminate such information for inconsistent or unauthorized purposes.

"Mediator", shall mean an individual approved by the City (a) whose training complies with the qualifications standards for neutrals specified in the guidelines for training mediators adopted by the Supreme Judicial Court of Massachusetts pursuant to Rule 8 of the Uniform Rules for Dispute Resolution and (b) who has completed training on foreclosure mediation; and (c) who has a working knowledge of all federal, state, and city programs available to help homeowners retain their homes.

"Mortgagee", an entity to whom property is mortgaged, the mortgage creditor or lender including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent, servant or employee of the mortgagee or any successor in interest or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

"Mortgage loan", a loan to a natural person made primarily for personal, family or household purposes secured wholly or partially by a mortgage on residential property.

"Mortgage servicer", an entity which administers or at any point administered the mortgage; provided, however that such administration shall include, but not be limited to, calculating principal and interest, collecting payments from the mortgagor, acting as escrow agent or foreclosing in the event of a default.

"Mortgagor", is the borrower of a mortgage loan that is secured wholly or partially by a mortgage on residential property.

“Residential property”, shall mean real property that is owner-occupied as an owner's principal residence, located within the city, that is either a single-family dwelling or a structure containing not more than four (4) residential units, and shall also include a residential condominium unit or a residential co-op unit occupied by an owner as an owner's principal residence.

“The parties”, shall mean the homeowner or mortgagor and the creditor or mortgagee, or their assigns or successors.

SECTION 2. Notwithstanding any general or special law to the contrary, no mortgage foreclosure in the city of Boston pertaining to residential property which is owner occupied as the owner’s principal residence shall be effective unless a certificate is issued by a city-approved mediation program manager verifying the creditor’s or mortgagee’s good faith participation in foreclosure mediation.

SECTION 3. The city of Boston is hereby empowered to establish a mediation program relative to mortgage foreclosures in accordance with this Act and promulgate regulations as necessary and appropriate to implementing such a mediation program involving mortgagees, creditors, mortgagors, and homeowners, utilizing city-approved mediation program managers and mediators to mediate between the mortgagee, or its assigns, and a mortgagor / homeowner who owns residential real property in the city which is occupied by the homeowner or mortgagor as his or her principal residence. Such mediation shall be facilitated by a city-approved mediation program manager and mediator according to procedures established by this Act. Except as hereinafter provided in sections 4 and 5 relating to foreclosure by power of sale or by entry, and notwithstanding any contrary provision of G.L. c. 244, inclusive, or any special law

relating to the regulation of mortgage foreclosures, such mediation program may only relate to the mediation of mortgage foreclosures of residential real property in the city of Boston that is the homeowner's principal residence.

SECTION 4. Notwithstanding section 14 of Chapter 244 of the General Laws relating to the power of sale, no sale in the city of Boston shall be effectual to foreclose a mortgage, unless, all notices required by § 14 reference a certificate from a city-approved mediation program manager verifying that the mortgagee, its assignee or any person identified in §14 who may do the acts authorized or required by the power of sale, has participated in a mediation program in accordance with this Act.

SECTION 5. No entry by foreclosure in the city of Boston shall be effectual unless the memorandum or certificate recorded as required by G.L. c. 244, § 2 includes as an attachment or exhibit a copy of a certificate from a city-approved mediation program manager verifying that the creditor or mortgagee (or its assignee or attorney) has participated in mediation with the mortgagor as required by this Act.

SECTION 6. Pursuant to this Act, the city shall establish a mediation program to provide mediation for all foreclosures of mortgages on owner-occupied residential property with no more than 4 units that is the primary residence of the owner-occupant. The program shall address all issues of foreclosure, including but not limited to reinstatement of the mortgage, modification of the loan and restructuring of the mortgage debt, including the reduction and forgiveness of mortgage debt. Mediations conducted pursuant to the program shall, by mutual agreement of the parties, use the calculations, assumptions and forms found in modification programs that are

established by (i) the Federal Deposit Insurance Corporation and published in the Federal Deposit Insurance Corporations Loan Modification Program Guide available on the Federal Deposit Insurance Corporation's publicly accessible website, (ii) the Home Affordable Modification Program; (iii) any modification program that a lender uses which is based on accepted principles and the safety and soundness of the institution and recognized by the National Credit Union Administration, the Division of Banks or any other instrumentality of the commonwealth; (iv) the Federal Housing Agency; or (v) similar federal programs.

The city shall provide for a means of evaluating and selecting qualified Mediation Program Managers and Mediators. The city shall also provide for a means of assessing and evaluating annually the city's mediation program including reports and data related to (a) the number of mortgagors who are notified of mediation; (b) the number of mortgagors who attend mediation and who receive counseling or assistance; (c) the number of certificates of completion issued under the program, and (d) the results of the mediation process, including the number of loans restructured or modified, number of principal write-downs, interest rate reductions and, to the extent such information is available, the number of mortgagors who default on mortgages within a year after restructuring.

The city may terminate a Mediation Program Manager's participation in the mediation program for good cause, as determined by the appropriate city official. In such case, the Mediation Program Manager shall deliver to the city all records and information in its possession for appropriate preservation and storage.

SECTION 7. Except for financial information otherwise permitted by law to be disclosed, any financial statement or information provided to the city or its approved independent

counseling agencies or provided to the mortgagee or mortgagor during the course of mediation in accordance with this Act is confidential and shall not be available for public inspection. Any financial statement or information to reasonably facilitate the mediation shall be made available as necessary to the mediator and to the attorneys or representatives, if any, of the parties to the mediation. Any financial statement or information designated as confidential under this section shall be kept separate and apart from other papers and matters not the subject of the mediation.

SECTION 8. For the purpose of the mediation program established by the city, the city shall receive a copy of all notices within ten (10) days of receipt by the Commissioner of the Division of Banks pursuant to G.L. c. 244, §35A(k) that relate to residential properties in the city of Boston. The city shall notify the creditor/mortgagee and the mortgagor of their rights and responsibilities under this Act regarding mediation. It is the intent and purpose of this Act that mediation commence within 45 days of the mortgagor receiving notice of his or her right to cure as provided in M.G.L. c. 244, §35A (g) and (h). The city shall refer the matter for mediation to an approved mediation program manager which shall have the responsibility of assigning a mediator and scheduling the parties to immediately commence mediation pursuant to this Act. The parties shall participate in good faith in such mediation consistent with the creditor's and mortgagor's rights and obligations in G.L. c. 244, §35A and the mediation shall proceed with the parties' good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure as defined in c. 244, §35A(c). A creditor must send a representative to the mediation who has the authority to negotiate and modify the terms of the mortgage loan or agree to other commercially reasonable alternatives to foreclosure. A homeowner or mortgagor shall be permitted to bring a representative of their choice to the mediation. The mediation shall continue without delay until completion but shall not go beyond ninety (90) days from the date that the

mortgagor received notice of his or her right to cure unless the creditor or mortgagee agrees to continue to engage in a good faith effort to negotiate an alternative to foreclosure pursuant to M.G.L. c. 244, §35A(b).

SECTION 9. The mediation program established by this Act shall include, and be limited to, the following steps:-

(a) the parties shall participate in a mandatory loan/mortgage mediation conference at a location mutually convenient to the parties. Telephone participation by the creditor/mortgagee shall not be permitted unless mutually agreed to by all parties.

(b) said mediation conference shall be scheduled at a time and place to be determined by the mediation program manager, but not later than forty-five (45) days following the mortgagor's receipt of his or her notice of right to cure pursuant to G.L. c. 244§, 35A(b). The parties will be noticed under the mediation program by certified and first class mail.

(c) prior to the scheduled mediation conference, the mortgagor shall be assigned a city-approved loan counselor. If the mortgagor is already working with a city-approved loan counselor or legal services advocate, no assignment is necessary. However, such loan counselor or advocate must agree to work with the mortgagor during the mediation process in accordance with the provisions of this Act.

(d) the mortgagor shall cooperate in all respects with the Mediation Program Manager, providing all necessary financial and employment information. The mortgagor shall complete any and all loan resolution proposals and applications as appropriate. The mortgagor must provide evidence of current income. The mortgagee shall cooperate in all respects with the Mediation Program Manager. The mortgagee's representative must bring and make available, the

mortgage, note, all assignments, a detailed accounting of the outstanding balance, costs and fees; and an analysis of the mortgagor's eligibility for a loan modification as described in G.L. c.244 §35A(c).

(e) if after two (2) attempts by the mediation program manager to contact the mortgagor, the mortgagor fails to respond to the mediation program manager's request to appear for the mediation conference, or the mortgagor fails to cooperate in any respect with the requirements outlined in this Act, the requirements of the Act will be deemed to be satisfied upon verification by the city-approved mediation program manager that the required notice was sent; and if so, a certificate shall be issued immediately by the mediation program manager certifying that the creditor/mortgagee has satisfied the mediation requirements of this Act.

(f) if, it is determined after a good faith effort made by the creditor/mortgagee at the mediation conference with the mortgagor, that the parties cannot come to an agreement to re-negotiate the terms of the loan in an effort to avoid foreclosure, such good faith effort on behalf of the creditor/mortgagee shall be deemed to satisfy the requirements of this Act. A certificate certifying such good faith effort pursuant to this Act shall be issued immediately and without delay by the Mediation Program Manager authorizing the creditor/mortgagee to proceed with its rights under Chapter 244 of the General Laws.

SECTION 10. The city of Boston is hereby authorized to enact and from time to time revise by ordinance, a reasonable and appropriate mediation registration fee to be paid for by the parties for the services attendant to administering the mediation program and issuing the creditor's good faith certification required under this Act. No fee charged to the homeowner may exceed \$75 and a hardship waiver request from a homeowner may be approved by the

187 mediator. The creditor is hereby prohibited from transferring, charging or in any way imposing
188 on the homeowner any fee for the creditor's costs or expenses as a result of the creditor's
189 participation in any mediation pursuant to this Act.

190 SECTION 11. This Act shall take effect no later than sixty (60) days from its passage.