

HOUSE No. 947

The Commonwealth of Massachusetts

PRESENTED BY:

John J. Mahoney and Mary S. Keefe

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 alternatives to foreclosure.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>John J. Mahoney</i>	<i>13th Worcester</i>	<i>1/18/2013</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>1/31/2013</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/31/2013</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>1/18/2013</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>	<i>1/18/2013</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/18/2013</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>1/18/2013</i>
<i>John P. Fresolo</i>	<i>16th Worcester</i>	<i>1/18/2013</i>
<i>Christine E. Canavan</i>	<i>10th Plymouth</i>	<i>1/18/2013</i>
<i>Christopher G. Fallon</i>	<i>33rd Middlesex</i>	<i>1/18/2013</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>	<i>1/18/2013</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/18/2013</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>	<i>1/18/2013</i>
<i>Michael D. Brady</i>	<i>9th Plymouth</i>	<i>1/18/2013</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>	<i>1/18/2013</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>	<i>1/18/2013</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>	<i>1/18/2013</i>
<i>Carlos Henriquez</i>	<i>5th Suffolk</i>	<i>1/18/2013</i>

<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>1/18/2013</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	<i>1/18/2013</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>1/18/2013</i>
<i>Dennis A. Rosa</i>	<i>4th Worcester</i>	<i>1/18/2013</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>1/18/2013</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>	<i>1/18/2013</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>	<i>1/18/2013</i>
<i>William M. Straus</i>	<i>10th Bristol</i>	<i>1/18/2013</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>1/18/2013</i>
<i>Cheryl A. Coakley-Rivera</i>	<i>10th Hampden</i>	<i>1/18/2013</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>	<i>1/18/2013</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>	<i>1/18/2013</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>	<i>1/18/2013</i>
<i>Walter F. Timilty</i>	<i>7th Norfolk</i>	<i>1/18/2013</i>
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>	<i>1/18/2013</i>
<i>Geoff Diehl</i>	<i>7th Plymouth</i>	<i>1/18/2013</i>

HOUSE No. 947

By Representatives Mahoney of Worcester and Keefe of Worcester, a petition (accompanied by bill, House, No. 947) of John J. Mahoney and others for legislation to establish a foreclosure mediation program within the Office of Public Collaboration at the University of Massachusetts at Boston to offer alternatives to foreclosures. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to facilitate alternatives to foreclosure.

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

1 AMENDMENTS TO G.L. c. 244 §35:

2 Chapter 244 §35 of the Massachusetts General Laws is hereby amended by adding
3 subsection 35D

4 Section 35D. (a) As used in this section, the following words shall, unless the context
5 clearly requires otherwise, have the following meanings:-

6 “Borrower”, an individual mortgagor, his or her assignee, successor, or a trust or trustee
7 who owns and resides in residential real property located in the city, and for whom such
8 residential real property is his/her principal residence.

9 “Commercially reasonable alternative” – an alternative based on a comparison of the net
10 present value of receiving payments pursuant to a modified mortgage loan or the likely financial
11 recovery from other foreclosure alternatives to the anticipated net recovery following foreclosure
12 incorporating an assessment of the borrower’s current circumstances, including without
13 limitation the borrower’s current income, debts and obligations.

14

15 “Creditor”, a person or entity that holds, owns or controls, partially, wholly, directly or
16 indirectly, or in a nominee capacity, a mortgage loan secured by residential property, including,
17 without limitation, a mortgagee, an originator, holder, investor, assignee, successor, trust, trustee,
18 nominee holder, Mortgage Electronic Registration System or mortgage loan servicer, including,

19 but not limited to the Federal National Mortgage Association or the Federal Home Loan
20 Mortgage Corporation or any other Government Sponsored Entity. The term “creditor” shall
21 also include any servant, employee, subcontractor or agent of a creditor.

22 “Creditor’s representative”, a person who has the authority to negotiate and approve the
23 terms of and modify a mortgage loan.

24 “Modified mortgage loan”, a mortgage modified from its original terms including, but not
25 limited to, a loan modified under 1 of the following: (i) the Home Affordable Modification
26 Program (ii) the Federal Deposit Insurance Corporation’s Loan Modification Program, (iii) any
27 modification program that a lender uses which is based on accepted principles and the safety and
28 soundness of the institution and authorized by the National Credit Union Administration or the
29 division of banks, (iv) the Federal Housing Administration or (v) a similar federal loan
30 modification plan.

31 “Mortgage loan”, a loan to a natural person (or to a nominee trust or any such other entity
32 commonly recognized under Massachusetts law as a lawful borrower) made primarily for
33 personal, family or household purposes secured wholly or partially by a mortgage on residential
34 property.

35 Mortgagee, assignee or current holder of a mortgage and note on real property including
36 but not limited to, any lender(s) or any successor in interest and/or assignee of the mortgagee’s
37 rights, interests or obligations under a mortgage and note.

38 “Net present value”, the present net value of a residential property based on a calculation
39 using 1 of the following: (i) the federal home affordable modification program base net present
40 value model, (ii) the Federal Deposit Insurance Corporation’s loan modification program, (iii)
41 the Massachusetts Housing Finance Agency’s loan program used solely by the agency to
42 compare the expected economic outcome of a loan with or without a modified mortgage loan or
43 (iv) any model approved by the division of banks with similar affordability requirements,
44 characteristics and based on federally recognized present-day inputs and including principal
45 reduction.

46 “Net Recovery following foreclosure”, a calculation including but not limited to costs
47 from projected delinquency, interest, fees by date of foreclosure based on current actual length of
48 foreclosure process in Massachusetts, costs associated with all legally required actions to
49 foreclose and percentage loss from foreclosure sale, costs to meet all sanitary code requirements,
50 property maintenance and costs associated with eviction if part of standard operating procedure
51 for creditor and other ownership costs until projected sale or re-sale to third party purchaser.

52 “Proof of ownership”, all documents evidencing an unbroken chain of ownership of the
53 debt including the mortgage, a certified copy of the promissory note in its then-current condition

54 evidencing the debt, all assignments of the mortgage loan whether recorded or unrecorded and
55 authority documents.

56 “Residential property”, real property located in the commonwealth, on which there is a
57 dwelling house with accommodations for 4 or fewer separate households or a residential
58 condominium unit or a residential co-op unit and occupied, or to be occupied, in whole or in part
59 by the obligor on the mortgage debt; provided, however, that residential property shall be limited
60 to the principal residence of a person; provided, further, that residential property shall not include
61 residential property taken in whole or in part as collateral for a commercial loan.

62 (b) There shall be a Massachusetts Foreclosure Mediation Program administered by the
63 Massachusetts Office of Public Collaboration at the University of Massachusetts at Boston.

64 (c) A mortgagee shall, concurrently with the notice sent to the borrower of residential
65 property under section 35A, also send a copy to the Massachusetts Foreclosure Mediation
66 Program (MFMP). The MFMP shall then send to the mortgagor the notice of right to mediation
67 and a foreclosure mediation request form. If a notice of right to cure is not required, the
68 mortgagee shall send a notice of intent to foreclose to the MFMP and the mortgagor at least one
69 hundred and fifty (150) days before initiating foreclosure; the MFMP shall then send the
70 mortgagor the notice of right to mediation. The MFMP will also telephone mortgagors to inform
71 them of their right to participate in mediation. The notice shall be mailed in the 5 most common
72 languages in addition to English.

73 A borrower may request foreclosure mediation by submitting the foreclosure mediation
74 request form to the MFMP not more than 30 days after receipt of the notice.

75 (d) An in-person mediation session shall be conducted by a neutral third-party mediator
76 between the borrower, the borrower’s representative or housing counselor and the creditor’s
77 representative, who shall provide proof of the authority to negotiate an alternative to foreclosure,
78 including, but not limited to, (i) reinstatement of the loan, (ii) a modified mortgage loan, (iii) a
79 reduction in principal, (iv) a reduction in interest rate, (v) an increase in the amortization period
80 of the mortgage loan or (vi) a shortsale or deed in lieu; provided, however, in exceptional
81 circumstance, as determined by the mediator, a meeting by phone, video-conference or
82 equivalent may be mutually agreed upon by the mortgagor, the mortgagee and the mediator.

83 As early as possible, but not later than 5 days before the scheduled mediation, the creditor
84 shall provide to the borrower and the Massachusetts Foreclosure Mediation Program: proof of
85 ownership, a written net present value analysis including inputs and their basis, an accounting
86 and history of the outstanding balance on the debt, documents evidencing any loss mitigation
87 restrictions and the creditor’s anticipated net recovery following foreclosure. When required, the
88 creditor shall bring additional documents supporting the net present value analysis to the
89 mediation session.

90 Borrowers will be referred to and encouraged to work with a non-profit housing
91 counseling agency. Borrower will provide to creditor and the Massachusetts Foreclosure
92 Mediation Program: current income, expenses, assets and debts and proof of income and releases
93 standardly required by the affordable home ownership program or similar federal program.

94 If the initial mediation session does not result in an agreement, the parties may agree to
95 additional mediation sessions which the mediator will document.

96 If mediation results in an agreement, the borrower shall have not fewer than 7 days to
97 review and sign the mediation agreement and return it to the Massachusetts Foreclosure
98 Mediation Program and the creditor. Not later than 5 days after the mediation session is
99 complete, the mediator shall write a report setting forth the specific compliance with mediation
100 requirements and result of the mediation and send a copy of the report to the borrower and the
101 creditor.

102 The mediation period shall conclude not more than 120 days after the borrower elects to
103 participate in mediation.

104 (e) If the borrower does not elect to participate in mediation and does not pursue a
105 modified mortgage loan under section 35B, if eligible, foreclosure may proceed under this
106 chapter. If a borrower elects to participate in the Massachusetts Foreclosure Mediation Program,
107 a creditor shall not accelerate the note or otherwise initiate foreclosure proceedings unless the
108 mediator has certified that the creditor participated in the Massachusetts Foreclosure Mediation
109 Program and engaged in mediation in good faith, made all reasonable efforts to find an
110 alternative to foreclosure and any agreement is in full compliance with all state and federal
111 guidelines.

112 (f) if, it is determined after a good faith effort made by the creditor and/or
113 homeowner/borrower at the mediation conference, that the parties cannot agree to a
114 commercially reasonable alternative to avoid foreclosure, such good faith effort on behalf of the
115 creditor and/or homeowner/borrower shall be deemed to satisfy the requirements of this Section.
116 A certificate verifying such good faith effort pursuant to this Section shall be issued to the
117 party(s) that made a good faith effort within five (5) days by the Massachusetts Foreclosure
118 Mediation Program to the certified creditor and/or certified homeowner/borrower authorizing
119 said party(s) to proceed with its rights under Chapter 244 of the General Laws.

120 (g) All mortgage modifications shall be recorded in the appropriate registry of deeds
121 within 30 days. In the case the mediator does not issue a good faith certificate, the
122 creditor/mortgagee will be prohibited from continuing with the foreclosure process. No sale
123 pursuant to G.L. c. 244 shall be effective to foreclose on any mortgage under this Section, unless
124 all notices required by G.L. c. 244, § 14 specifically reference that a good faith certificate has
125 been issued verifying that the creditor/mortgagee, its assignee or any person identified in G.L. c.
126 244, §14, has successfully participated in a mediation program in accordance with this Section.

127 No entry by foreclosure shall be effectual unless the memorandum or certificate recorded as
128 required by G.L. c. 244, § 2 includes as an attachment or exhibit a copy of a good faith certificate
129 verifying that the creditor/mortgagee has participated in mediation with the
130 mortgagor/homeowner as required by this Section.

131 (h) Any costs necessary to establish and operate the Massachusetts Foreclosure
132 Mediation Program shall be borne by the parties to the mediation under the guidelines developed
133 under subsection (g) and by a \$50 surcharge on the filing fee for foreclosure complaints filed
134 under the Servicemembers Civil Relief Act. A borrower's portion of the mediation fee shall not
135 exceed 15 percent of the total cost of the mediation. A borrower's inability to pay for mediation
136 shall not be a bar to participation in the Massachusetts Foreclosure Mediation Program. Any fees
137 assessed of the creditor or mortgagee pursuant to this Section shall not be charged to the
138 mortgagor/homeowner either directly or indirectly. Massachusetts Office of Public Collaboration
139 shall have the authority to set and collect fees for mediation sessions and the administration of
140 the same

141 (i) The Massachusetts Office of Public Collaboration shall develop guidelines and
142 standards for mediator training for the mediation process including training on foreclosure
143 mediation; and a working knowledge of all federal and state programs available to help
144 homeowners retain their homes, subject to approval by the attorney general.

145 (j) The borrower's or creditor's rights or defenses in the foreclosure action are not waived
146 by participating in the foreclosure mediation program.

147 (k) Nothing in this section shall require a creditor to modify a mortgage or change the
148 terms of payment of a mortgage.

149 (l) The Massachusetts Office of Public Collaboration shall ensure the security and
150 confidentiality of any and all information received consistent with applicable federal, state laws
151 and regulations. Access to personal information shall be limited to those officers and employees
152 of the organization who require the information to properly perform services under the
153 Mediation Program, and that the organization or individual and/or its officers and employees
154 shall not access, modify, use or disseminate any personal information for purposes unrelated to
155 the Mediation Program. Statistical information may be gathered to assess the program.
156 Documentation and outcome reports may be available for judicial proceedings.

157 (m) Massachusetts Foreclosure Mediation Program shall also provide annually a report
158 and data related to (a) the number of mortgagors who are notified of mediation; (b) the number
159 of homeowners/borrowers who attend mediation and who receive counseling or assistance; (c)
160 the number of certificates of good faith issued under the Massachusetts Foreclosure Mediation
161 Program, (d) the results of the mediation process, including the number of loans restructured,
162 number and total value of principal write-downs, interest rate reductions and, to the extent such
163 information is available, the number of mortgagors/homeowners who default on mortgages

164 within a year after successful mediation conferences, (e) any such other information as the
165 municipality may determine to be necessary and or helpful in assessing the value of
166 Massachusetts Foreclosure Mediation Program and any adjustments that may need to be made
167 thereto.