

SENATE No. 492

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. Spilka

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 establish a foreclosure mediation program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>John V. Fernandes</i>	<i>10th Worcester</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>

SENATE No. 492

By Ms. Spilka, a petition (accompanied by bill, Senate, No. 492) of Karen E. Spilka, Daniel A. Wolf, Sal N. DiDomenico, John V. Fernandes and other members of the General Court for legislation to establish a foreclosure mediation program. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to establish a foreclosure mediation program.

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 amended by chapter 194 of the Acts of
2 2012, is hereby amended by inserting after section 35C the following section:-

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

5 “Borrower”, a mortgagor of a mortgage loan.

6 “Creditor”, a person or entity that holds or controls, partially, wholly, indirectly, directly
7 or in a nominee capacity, a mortgage loan securing an owner-occupied residential property,
8 including, but not limited to, an originator, holder, investor, assignee, successor, trust, trustee,
9 nominee holder, mortgage electronic registration system or mortgage servicer, including the
10 Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation;
11 provided, that “creditor” shall also include any servant, employee or agent of a creditor.

12 “Creditor’s representative”, a person who has the authority to negotiate and approve the
13 terms of and modify a mortgage loan, under a servicing agreement.

14 “Modified mortgage loan”, a mortgage modified from its original terms including, but not
15 limited to, a loan modified under 1 of the following: (i) the Home Affordable Modification
16 Program (ii) the Federal Deposit Insurance Corporation’s Loan Modification Program, (iii) any
17 modification program that a lender uses which is based on accepted principles and the safety and
18 soundness of the institution and authorized by the National Credit Union Administration, the

19 division of banks or any other instrumentality of the commonwealth, (iv) the Federal Housing
20 Administration or (v) a similar federal loan modification plan.

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

23 “Net present value”, the present net value of a residential property based on a calculation
24 using 1 of the following: (i) the federal home affordable modification program base net present
25 value model, (ii) the Federal Deposit Insurance Corporation’s loan modification program, (iii)
26 the Massachusetts Housing Finance Agency’s loan program used solely by the agency to
27 compare the expected economic outcome of a loan with or without a modified mortgage loan or
28 (iv) any model approved by the division of banks to consider the total present value of a series of
29 future cash flows relative to a mortgage loan.

30 “Residential property”, real property located in the commonwealth, on which there is a
31 dwelling house with accommodations for 4 or fewer separate households and occupied, or to be
32 occupied, in whole or in part by the obligor on the mortgage debt; provided, however, that
33 residential property shall be limited to the principal residence of a person; provided, further, that
34 residential property shall not include an investment property or residence other than a primary
35 residence; provided, further, that residential property shall not include residential property taken
36 in whole or in part as collateral for a commercial loan.

37 (b) There shall be a Massachusetts foreclosure mediation program administered by the
38 Massachusetts office of public collaboration at the University of Massachusetts at Boston.

39 (c) A creditor shall, concurrently with the notice sent to the borrower of residential
40 property under section 35A, give notice to the borrower of the borrower’s right to participate in
41 the Massachusetts foreclosure mediation program by attaching to the right to cure default notice
42 (i) notice of the availability of foreclosure mediation, in such form as the office of public
43 collaboration prescribes and (ii) a foreclosure mediation request form, in such form as the office
44 of public collaboration prescribes. The notice shall include a declaration in the 5 most common
45 languages other than English, appearing on the first page and stating: “This is an important
46 notice regarding a possible foreclosure on your home. Have it translated immediately.”

47 A borrower may request foreclosure mediation by submitting the foreclosure mediation
48 request form to the creditor not more than 30 days after receipt of the notice.

49 (d) An in-person mediation session shall be conducted by a neutral third-party mediator
50 between the borrower, the borrower’s representative or housing counselor and the creditor’s
51 representative, who shall have the authority to negotiate an alternative to foreclosure, including,
52 but not limited to, (i) a modified mortgage loan, (ii) a reduction in principal, (iii) a reduction in
53 interest rate or (iv) an increase in the amortization period of the mortgage loan; provided,
54 however, that an alternative form of meeting may be mutually agreed upon by the mortgagor, the

55 mortgagee and the mediator. As early as possible, but not later than 5 days before the scheduled
56 mediation, the creditor shall provide proof of ownership, a written net present value analysis and
57 the creditor's anticipated net recovery at foreclosure to the borrower and the Massachusetts
58 foreclosure mediation program. When required, the creditor shall bring additional documents
59 supporting the net present value analysis to the mediation session. If the initial mediation does
60 not result in an agreement, the parties may agree to a second mediation session. If mediation
61 results in an agreement, the borrower shall have not fewer than 7 days to review and sign the
62 mediation agreement and return it to the Massachusetts foreclosure mediation program and the
63 creditor. Not later than 5 days after the mediation session is complete, the mediator shall write a
64 report setting forth the result of the mediation and send a copy of the report to the borrower and
65 the creditor. The mediation period shall conclude not more than 120 days after the borrower
66 elects to participate in mediation. The right to foreclosure mediation under this section shall be
67 granted once during any 3-year period, regardless of the mortgage holder.

68 (e) If the borrower does not elect to participate in mediation and does not pursue a
69 modified mortgage loan under section 35B, if eligible, foreclosure may proceed under this
70 chapter. If a borrower elects to participate in the Massachusetts foreclosure mediation program, a
71 creditor shall not accelerate the note or otherwise initiate foreclosure proceedings unless the
72 mediator has certified that the creditor participated in the Massachusetts foreclosure mediation
73 program and engaged in mediation in good faith, made all reasonable efforts to find an
74 alternative to foreclosure and any agreement is in full compliance with all state and federal
75 guidelines.

76 (f) Any costs necessary to establish and operate the Massachusetts foreclosure mediation
77 program shall be borne by the parties to the mediation under the guidelines developed under
78 subsection (g) and by a \$50 surcharge on the filing fee for foreclosure complaints filed under the
79 Servicemembers Civil Relief Act. A borrower's portion of the mediation fee shall not exceed 15
80 per cent of the total cost of the mediation. A borrower's inability to pay for mediation shall not
81 be a bar to participation in the Massachusetts foreclosure mediation program.

82 (g) The Massachusetts office of public collaboration shall develop guidelines for the
83 mediation process, subject to approval by the attorney general.

84 (h) The borrower's or creditor's rights or defenses in the foreclosure action are not
85 waived by participating in the foreclosure mediation program.

86 (i) Nothing in this section shall require a creditor to modify a mortgage or change the
87 terms of payment of a mortgage.