

SENATE No. 482

The Commonwealth of Massachusetts

PRESENTED BY:

Harriette L. Chandler

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:
Harriette L. Chandler	First Worcester
Mary S. Keefe	15th Worcester
Timothy R. Madden	Barnstable, Dukes and Nantucket
Timothy J. Toomey, Jr.	26th Middlesex
Angelo J. Puppolo, Jr.	12th Hampden
James B. Eldridge	Middlesex and Worcester
Jason M. Lewis	Fifth Middlesex
Sean Garballey	23rd Middlesex
James T. Welch	Hampden
Brian A. Joyce	Norfolk, Bristol and Plymouth
Daniel M. Donahue	16th Worcester
Brian R. Mannel	2nd Barnstable
Barbara A. L'Italien	Second Essex and Middlesex
Michelle M. DuBois	10th Plymouth
Kate D. Campanale	17th Worcester
Jose F. Tosado	9th Hampden
Sarah K. Peake	4th Barnstable
Carmine L. Gentile	13th Middlesex

SENATE No. 482

By Ms. Chandler, a petition (accompanied by bill, Senate, No. 482) of Harriette L. Chandler, Mary S. Keefe, Timothy R. Madden, Timothy J. Toomey, Jr. and other members of the General Court for legislation relative to alternatives to foreclosure. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 425 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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 Chapter 244 of the Massachusetts General Laws as appearing in the 2012 Official Edition
2 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”, an individual mortgagor, his or her assignee, successor, or a trust or trustee
6 who owns and resides in residential real property located in the city, and for whom such
7 residential real property is his/her principal residence.

8 “Commercially reasonable alternative” – an alternative based on a comparison of the net
9 present value of receiving payments pursuant to a modified mortgage loan or the likely financial

10 recovery from other foreclosure alternatives to the anticipated net recovery following foreclosure
11 incorporating an assessment of the borrower’s current circumstances, including without
12 limitation the borrower’s current income, debts and obligations.

13 “Creditor”, a person or entity that holds, owns or controls, partially, wholly, directly or
14 indirectly, or in a nominee capacity, a mortgage loan secured by residential property, including,
15 without limitation, a mortgagee, an originator, holder, investor, assignee, successor, trust, trustee,
16 nominee holder, mortgage loan servicer, including, but not limited to the Federal National
17 Mortgage Association or the Federal Home Loan Mortgage Corporation or any other
18 Government Sponsored Entity. The term “creditor” shall also include any servant, employee,
19 subcontractor or agent of a creditor.

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

22 “Mediator” shall mean an individual: (A) Whose training complies with the qualification
23 standards for neutrals specified in the guidelines for training mediators adopted by the Supreme
24 Judicial Court of Massachusetts pursuant to Rule 8 of the Uniform Rules for Dispute Resolution;
25 and (B) Who has completed training on foreclosure mediation; and (C) Who has a working
26 knowledge of all federal, state and regional programs available to help homeowners retain their
27 homes

28 “Modified mortgage loan”, a mortgage modified from its original terms including, but
29 not limited to, a loan modified under 1 of the following: (i) the Home Affordable Modification
30 Program (ii) the Federal Deposit Insurance Corporation’s Loan Modification Program, (iii) any
31 modification program that a lender uses which is based on accepted principles and the safety and

32 soundness of the institution and authorized by the National Credit Union Administration or the
33 division of banks, (iv) the Federal Housing Administration or (v) a similar federal loan
34 modification plan.

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

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

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

50 “Net Recovery following foreclosure”, a calculation including but not limited to costs
51 from projected delinquency, interest, fees by date of foreclosure based on current actual length of
52 foreclosure process in Massachusetts, costs associated with all legally required actions to
53 foreclose and percentage loss from foreclosure sale, costs to meet all sanitary code requirements,

54 property maintenance and costs associated with eviction if part of standard operating procedure
55 for creditor and other ownership costs until projected sale or re-sale to third party purchaser.

56 “Proof of ownership”, all documents evidencing an unbroken chain of ownership of the
57 debt including the mortgage, a certified copy of the promissory note in its then-current condition
58 evidencing the debt, all assignments of the mortgage loan whether recorded or unrecorded and
59 authority documents.

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

66 (b) There shall be a Massachusetts Foreclosure Mediation Program administered by a
67 “Mediation Program Manager” who is a neutral not-for-profit organization or law firm
68 experienced in the mediation of the foreclosure process, familiar with all programs available to
69 help homeowners avoid foreclosure, and knowledgeable of the mortgage foreclosure laws of the
70 Commonwealth of Massachusetts. Such entity or entities shall be selected by the Attorney
71 General.

72 (c) A mortgagee shall, concurrently with the notice sent to the borrower of residential
73 property under section 35A, also send a copy to the Massachusetts Foreclosure Mediation
74 Program (MFMP). The MFMP shall then send to the mortgagor the notice of right to mediation
75 and a foreclosure mediation request form. If a notice of right to cure is not required, the

76 mortgagee shall send a notice of intent to foreclose to the MFMP and the mortgagor at least one
77 hundred and fifty (150) days before initiating foreclosure; the MFMP shall then send the
78 mortgagor the notice of right to mediation. The MFMP will also telephone mortgagors to inform
79 them of their right to participate in mediation. The notice shall be mailed in the 5 most common
80 languages in addition to English.

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

83 (d) An in-person mediation session shall be conducted by a neutral third-party mediator
84 between the borrower, the borrower's representative or housing counselor and the creditor's
85 representative, who shall provide proof of the authority to negotiate an alternative to foreclosure,
86 including, but not limited to, (i) reinstatement of the loan, (ii) a modified mortgage loan, (iii) a
87 reduction in principal, (iv) a reduction in interest rate, (v) an increase in the amortization period
88 of the mortgage loan or (vi) a shortsale or deed in lieu; provided, however, in exceptional
89 circumstance, as determined by the mediator, a meeting by phone, video-conference or
90 equivalent may be mutually agreed upon by the mortgagor, the mortgagee and the mediator; and
91 the mediator certifies that the Mortgagor has been made aware of his or her right to an in-person
92 Mediation Conference.

93 As early as possible, but not later than 5 days before the scheduled mediation, the creditor
94 shall provide to the borrower and the Massachusetts Foreclosure Mediation Program: proof of
95 ownership, a written net present value analysis including inputs and their basis, an accounting
96 and history of the outstanding balance on the debt, documents evidencing any loss mitigation
97 restrictions and the creditor's anticipated net recovery following foreclosure. When required, the

98 creditor shall bring additional documents supporting the net present value analysis to the
99 mediation session.

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

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

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

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

114 (e) If the borrower does not elect to participate in mediation and does not pursue a
115 modified mortgage loan under section 35B, if eligible, foreclosure may proceed under this
116 chapter. If a borrower elects to participate in the Massachusetts Foreclosure Mediation Program,
117 a creditor shall not accelerate the note or otherwise initiate foreclosure proceedings unless the
118 mediator has certified that the creditor participated in the Massachusetts Foreclosure Mediation
119 Program and engaged in mediation in good faith, made all reasonable efforts to find an

120 alternative to foreclosure and any agreement is in full compliance with all state and federal
121 guidelines.

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

130 (g) All mortgage modifications shall be recorded in the appropriate registry of deeds
131 within 30 days. In the case the mediator does not issue a good faith certificate, the
132 creditor/mortgagee will be prohibited from continuing with the foreclosure process. No sale
133 pursuant to G.L. c. 244 shall be effective to foreclose on any mortgage under this Section, unless
134 all notices required by G.L. c. 244, § 14 specifically reference that a good faith certificate has
135 been issued verifying that the creditor/mortgagee, its assignee or any person identified in G.L. c.
136 244, §14, has successfully participated in a mediation program in accordance with this Section.
137 No entry by foreclosure shall be effectual unless the memorandum or certificate recorded as
138 required by G.L. c. 244, § 2 includes as an attachment or exhibit a copy of a good faith certificate
139 verifying that the creditor/mortgagee has participated in mediation with the
140 mortgagor/homeowner as required by this Section.

141 (h) Any costs necessary to establish and operate the Massachusetts Foreclosure
142 Mediation Program shall be borne by the parties to the mediation under the guidelines developed
143 under subsection (g) and by a \$50 surcharge on the filing fee for foreclosure complaints filed
144 under the Servicemembers Civil Relief Act. A borrower's portion of the mediation fee shall not
145 exceed 15 percent of the total cost of the mediation. A borrower's inability to pay for mediation
146 shall not be a bar to participation in the Massachusetts Foreclosure Mediation Program. Any fees
147 assessed of the creditor or mortgagee pursuant to this Section shall not be charged to the
148 mortgagor/homeowner either directly or indirectly. Mediation Program Manager shall have the
149 authority to set and collect fees for mediation sessions and the administration of the same

150 (i) The Mediation Program Manager shall develop guidelines and standards for mediator
151 training for the mediation process including training on foreclosure mediation; and a working
152 knowledge of all federal and state programs available to help homeowners retain their homes,
153 subject to approval by the attorney general.

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

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

158 (l) The Mediation Program Manager shall ensure the security and confidentiality of any
159 and all information received consistent with applicable federal, state laws and regulations.
160 Access to personal information shall be limited to those officers and employees of the
161 organization who require the information to properly perform services under the Mediation
162 Program, and that the organization or individual and/or its officers and employees shall not

163 access, modify, use or disseminate any personal information for purposes unrelated to the
164 Mediation Program. Statistical information may be gathered to assess the program.
165 Documentation and outcome reports may be available for judicial proceedings.

166 (m) Massachusetts Foreclosure Mediation Program shall also provide annually a report
167 and data related to (a) the number of mortgagors who are notified of mediation; (b) the number
168 of homeowners/borrowers who attend mediation and who receive counseling or assistance; (c)
169 the number of certificates of good faith issued under the Massachusetts Foreclosure Mediation
170 Program, (d) the results of the mediation process, including the number of loans restructured,
171 number and total value of principal write-downs, interest rate reductions and, to the extent such
172 information is available, the number of mortgagors/homeowners who default on mortgages
173 within a year after successful mediation conferences, (e) any such other information as the
174 municipality may determine to be necessary and or helpful in assessing the value of
175 Massachusetts Foreclosure Mediation Program and any adjustments that may need to be made
176 thereto.