HOUSE DOCKET, NO. 854 FILED ON: 1/17/2017

HOUSE . . . . . No. 514

The Commonwealth of Massachusetts

PRESENTED BY:

Geoff Diehl

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 provide for the Mass Emergency Homeowner Assistance Program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Geoff Diehl	*7th Plymouth*	*1/17/2017*
David F. DeCoste	*5th Plymouth*	*1/17/2017*

HOUSE DOCKET, NO. 854 FILED ON: 1/17/2017

HOUSE . . . . . No. 514

By Mr. Diehl of Whitman, a petition (accompanied by bill, House, No. 514) of Geoff Diehl and David F. DeCoste relative to mortgage assistance for citizens who are financially unable to make mortgage payments. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *831* OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act to provide for the Mass Emergency Homeowner Assistance Program.

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

SECTION 1. Section 14 of chapter 244 of the General Laws, as amended by chapter 194 of the acts of 2012 is hereby amended by inserting after the first sentence the following sentence:- A copy of such notice shall also be mailed no less than 30 days prior to the date of sale by any such person to the Massachusetts Housing Finance Agency.

SECTION 2. Section 35B of chapter 244 of the General Laws, as added by chapter 194 of the acts of 2012 is hereby amended by striking out the first paragraph of subsection (b) and inserting in place thereof the following paragraph:-

(b) A creditor shall not cause publication of notice of a foreclosure sale, as required by section 14, upon certain mortgage loans unless it has (i) received a determination on a

mortgagor's application for emergency mortgage assistance payments from the Massachusetts Housing Finance Agency, or the applicable time periods provided for in such program has expired whichever is earlier and (ii) taken reasonable steps and made a good faith effort to avoid foreclosure. A creditor shall have taken reasonable steps and made a good faith effort to avoid foreclosure if the creditor has considered: (i) an assessment of the borrower's ability to make an affordable monthly payment; (ii) the net present value of receiving payments under a modified mortgage loan as compared to the anticipated net recovery following foreclosure; and (iii) the interests of the creditor, including, but not limited to, investors.

SECTION 3. Chapter 708 of the acts of 1966 is hereby amended by inserting after section 5 the following section:-

Section 5A. (a) For the purposes of this section the following terms shall have the following meanings:-

“Gross household income”, the total income of a household, a married couple, and children residing in the same household as the applicant and any other resident of the household declared by the mortgagor as a dependent for federal tax purposes.

“Housing expense”, the sum of the mortgagor's monthly maintenance, utility, hazard insurance expense, taxes and required mortgage payments, including escrows.

“Net effective income”, gross household income less state and federal income and social security taxes.

(b) Loans secured by liens on residential real property located in the commonwealth to residents of Massachusetts eligible for loans as described in this section. MHFA shall carry out

the emergency mortgage assistance payments program established by this section. MHFA shall prepare a uniform notice for each mortgagor receiving a notice pursuant to section 14 of chapter 244 of the general laws. The notice shall include a statement that if the mortgagor was unable to resolve the delinquency or default the mortgagor may apply to the agency or its duly authorized agent at the address and phone number listed in the notice in order to obtain an application and information regarding the homeowner's emergency mortgage assistance program. If the mortgagor applies for mortgage assistance payments, the agency shall promptly notify all of the mortgagees secured by the mortgagor's real property. The agency shall make a determination of eligibility within 30 calendar days of receipt of the mortgagor's application. During the time that the application is pending, no mortgagee may commence legal action to foreclose upon its mortgage with the mortgagor. If the mortgagor's application for mortgage assistance payments is denied, the mortgagee may at any time thereafter take any legal action to enforce the mortgage without any further restriction or requirements under this section. Financial institutions shall not be the duly authorized agents of the agency and shall not make the decision on the approval of assistance under this section.

(c)No assistance may be made with respect to a mortgage under this section unless all of the following are established:

(1) the property securing the mortgage, is a one-family residence, or two-family owner-occupied residence including one-family units in a condominium project or a membership interest and occupancy agreement in a cooperative housing project, is the principal residence of the mortgagor and is located in this commonwealth;

(2)(i) any mortgagee has indicated to the mortgagor its intention to foreclose; or (ii) payments under any mortgage have been contractually delinquent for at least 60 days;

(3) the mortgage is not insured by the Federal Housing Administration under Title II of the National Housing Act;

(4) the mortgagor is a permanent resident of the commonwealth and is suffering financial hardship due to circumstances beyond the mortgagor's control which render the mortgagor unable to correct the delinquency or delinquencies within a reasonable time and make full mortgage payments;

(5) MHFA has determined that there is a reasonable prospect that the mortgagor will be able to resume full mortgage payments within 36 months after the beginning of the period for which assistance payments are provided under this article and pay the mortgage or mortgages in full by its maturity date or by a later date agreed to by the mortgagee or mortgagees for completing mortgage payments;

(6) the mortgagor has applied to the agency for assistance on an application form prescribed by the agency for this use which includes a financial statement disclosing all assets and liabilities of the mortgagor, whether singly or jointly held, and all household income regardless of source; provided, that any applicant who intentionally misrepresents any financial information in conjunction with the filing of an application for assistance under this section may be denied assistance or required to immediately repay any amount of assistance made as a result of such misrepresentation and the mortgagee may at any time thereafter take any legal action to enforce the mortgage without any further restrictions or requirements under this section;

(7) the mortgagee is not prevented by law from foreclosing upon the mortgage;

(8) MHFA has determined, based on the mortgagor's financial statement, that the mortgagor has insufficient household income or net worth to correct the delinquency or delinquencies within a reasonable period of time and make full mortgage payments;

(9) the mortgagor shall have exhausted unemployment compensation benefits during the calendar years of 2013, 2014 or 2015;

(10) the mortgagor shall have had a favorable credit history prior to any period of unemployment. Favorable credit history shall be determined by the agency;

(11) the mortgagors shall have a level of income from other family members and property income not in excess of an amount which indicates a significant need for assistance in making timely mortgage payments; provided, that such income ceilings shall be determined by the agency;

(12) all of the mortgagees shall agree to the eligibility of the mortgagor to participate in the homeowner's emergency mortgage assistance program; and

(13) any other requirements established by MHFA.

(d) Upon a determination that the conditions of eligibility set forth in this section have been met by a mortgagor and money is available in the homeowners' emergency mortgage assistance program, the mortgagor shall become eligible for the assistance.

If the agency determines that a mortgagor has not met the conditions of eligibility described in subsection (c), the mortgagor shall be prohibited from reapplying for assistance under this section for a period 6 months from the date of such determination unless there is a material change in circumstances: provided, however, that nothing is this subsection shall

prohibit any mortgagee from commencing legal action to enforce the mortgage without any further restriction or requirement under this article whenever MNHFA determines that the mortgagor is ineligible for assistance as provided in this section.

(e) If MHFA determines that a mortgagor is eligible for assistance under this section, MHFA shall pay directly to each mortgagee secured by the mortgagor's real estate payments on behalf of the mortgagor, secured by the mortgagor's real estate. MHFA shall pay to each mortgagee the full amount then due to that mortgagee pursuant to the terms of the mortgage without regard to any acceleration under the mortgage, or the full amount of any alternate mortgage payments agreed to by the mortgagee and mortgagor. This amount shall include, but not be limited to, the amount of principal, interest, taxes, assessments, flood or hazard insurance any mortgage insurance or credit insurance premiums. The initial payment made by MHFA to each mortgagee shall be an amount which makes each mortgage current and pays reasonable costs and reasonable attorneys' fees already incurred by such mortgagee.

(f) After the mortgagor has paid any and all arrearages pursuant to subsection (b) to each mortgagee, the mortgagor may be entitled to monthly mortgage assistance payments pursuant to this section. A mortgagor on whose behalf the agency is making mortgage assistance payments shall pay monthly payments to MHFA. Such payments shall be in an amount which will cause the mortgagor's total housing expense not to exceed 35 per cent of the mortgagor's net income. This shall be the maximum amount the mortgagor can be required to pay during the 36 months a mortgagor is eligible for emergency mortgage assistance. The mortgagor shall make the above payment to MHFA at least 7 days before each mortgage payment is due to each mortgagee. Upon receipt of this payment from the mortgagor, MHFA or its duly authorized agent shall send

the total mortgage payments payment directly to each mortgagee and shall include housing expenses.

If the mortgagor is receiving emergency mortgage assistance under a program other than that established in this section, the amount of the payment he or she is required to make to the agency under this section shall take into consideration the amount of assistance such person is receiving under such other programs.

(g) The amount by which the mortgagor assistance payments made by MHFA to all mortgagees exceeds the amount of payments made by the mortgagor to MHFA shall be a loan in that amount by MHFA to the mortgagor. Such loan shall be evidenced by such documents as MHFA shall determine and shall be subject to repayment with interest and secured as provided herein.

(h) If the mortgagor fails to pay to MHFA any amounts due directly from him or her under this section within 15 days of the due date, MHFA shall review the mortgagor's financial circumstances as provided in this section to determine whether the delinquency is the result of a change in the mortgagor's financial circumstance. If the delinquency is not the result of a change in the mortgagor's financial circumstances, MHFA shall terminate the emergency mortgage assistance payments and any mortgagee may at any time thereafter take any legal action to enforce its mortgage without any further restriction or requirement under this section. If the delinquency is the result of a change in the mortgagor's financial circumstances, MHFA shall modify the mortgagor's required payments to MHFA as MHFA shall determine.

(i) If any mortgagee scheduled to receive payments from MHFA pursuant to this section fails to receive from MHFA the full amount of such payment by within 30 days of the scheduled

due date, or if a mortgagor fails to observe and perform all the terms, covenants and conditions of the mortgage, that mortgagee may at any time thereafter take any legal action to enforce the mortgage without any further restriction or requirement under this section.

(j) Payments under this section shall be provided for a period not to exceed 36 months, either consecutively or non-consecutively. MHFA shall establish procedures for periodic review of the mortgagor's financial circumstances for the purpose of determining the necessity for continuation, termination or adjustment of the amount of the payments. Payments shall be discontinued when MHFA determines that, because of the changes in the mortgagor's financial circumstances the payments are no longer necessary in accordance with the standards set forth in section

(k) Repayment of amounts owed to MHFA from a mortgagor shall be secured by a mortgage lien on the property and by such other obligation as MHFA may require. The priority of any lien obtained by MHFA under this section shall be determined in the same manner as the lien of a general secured creditor of the mortgagor. The lien or other security interest of MHFA shall not be deemed to take priority over any other secured lien or secured interest in effect against the mortgagor's property on the date assistance payments begin. MHFA may allow subordination of the mortgage assistance lien if such subordination is necessary to permit the mortgagor to obtain a home improvement loan for repairs necessary to preserve the property.

(l) Upon approval of mortgage assistance, MHFA shall enter into an agreement with the mortgagor for repayment of all mortgage assistance made by MHFA plus interest as provided in clause (5) of this subsection. The agreement shall provide for monthly payments by the mortgagor and be subject to the following forbearance provisions:

(1) if the mortgagor's total housing expense as defined in this section is less than 35 per cent of his or her net effective income, the mortgagor shall pay to MHFA the difference between 35 per cent of the mortgagor's net effective income and the mortgagor's total housing expense unless otherwise determined by MHFA after examining the mortgagor's financial circumstances and ability to contribute to repayment of the mortgage assistance;

(2) if the mortgagor's total housing expense is more than 35 per cent of his or her net effective income, repayment of the mortgage assistance shall be deferred until the mortgagor's total housing expense is less than 35 per cent of his or her net effective income;

(3) if repayment of mortgage assistance is not made by the date any mortgage is paid, the mortgagor shall make mortgage assistance repayments in an amount not less than the mortgage payment until the mortgage assistance is repaid;

(4) MHFA shall establish procedures for periodic review of the mortgagor's financial circumstances to determine the amounts of repayment required under this section;

(5) interest shall accrue on all mortgage assistance made by MHFA at the rate equal to MHFA’s current market rate for residential mortgages. Interest shall start to accrue whenever the mortgagor begins to make repayment under this section. Interest shall accrue only during the period in which the mortgagor is required to make repayment under this section. When any mortgage for which mortgage assistance was made is paid, interest shall then accrue on all mortgage assistance due and owing at the same rate and on the same basis as the mortgage for which the mortgage assistance was made; and

(6) all moneys received from mortgagors for repayment of mortgage assistance shall be deposited in MHFA's homeowner's emergency mortgage assistance fund established by MHFA in this section for the sole purpose of implementing the provisions of this section.

(m) The homeowner's emergency mortgage assistance fund is hereby created as a separate account within MHFA for the sole purpose of implementing the provisions of this section. No other agency funds, moneys or interest earnings shall be utilized for the purposes of this section. The homeowner's emergency mortgage assistance fund shall only be utilized by MHFA whenever funds are appropriated by the general court for the purposes provided for in this section.

(n) All moneys paid by mortgagors to the agency to repay loans provided by MHFA shall be accounted for and transferred back to the source from which the funds are appropriated unless the funds cannot be lapsed or transferred pursuant to any other act of the general court: provided, however, that investment and interest earnings on moneys from this fund may be used by MHFA for the administrative costs of the program.

(o) The provisions of this section shall not be applicable to any mortgage which becomes delinquent at any time when MHFA does not have money currently available in the homeowner's emergency mortgage assistance fund to approve applications for emergency mortgage assistance or to continue making assistance payments on behalf of mortgagors previously approved. In the event that the funds available to MHFA in the homeowner's emergency mortgage assistance fund for purposes of this section become insufficient to approve application for emergency mortgage assistance, or to continue making assistance payments on behalf of mortgagors previously approved, MHFA shall immediately post a notice on its website and publish an announcement to

that effect and mortgagees shall no longer be subject to the provisions of this and mortgagees may at any time thereafter take legal action to enforce the mortgage without any further restriction or requirement under this section.

SECTION 4. Notwithstanding any general or special law to the contrary, a financial institution, shall not be deemed to be in violation of any statute, regulation or rule of supervisory authorities by reason of any agreement, forbearance of modification of the payment or other terms of a mortgage as an effect of the emergency mortgage assistance program established by this act or by reason of actions taken or not taken pursuant to the program. No mortgage loan as to which assistance payments are being made shall be deemed to be delinquent or classified as such by supervisory authorities during the continuance of such assistance payments. For the purposes of this section “financial institution” shall mean any banking corporation or institution, trust company, national bank, credit union, insurance company or related corporation, partnership, foundation or other institution engaged in lending funds and authorized to do such business within the commonwealth.

SECTION 5. Within 60 days of the effective date of this act, the Massachusetts Housing Finance Agency shall adopt uniform notices, rules and regulations and program guidelines for the implementation of section 3 of this act. The agency shall report annually to the general court on the effectiveness of the homeowner's emergency mortgage assistance program in accomplishing the purposes of this act.