

HOUSE No. 550

The Commonwealth of Massachusetts

PRESENTED BY:

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:
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Bud Williams</i>	<i>11th Hampden</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Thomas P. Walsh</i>	<i>12th Essex</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>

<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Natalie Higgins</i>	<i>4th Worcester</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>

HOUSE No. 550

By Ms. Keefe of Worcester, a petition (accompanied by bill, House, No. 550) of Mary S. Keefe and others that banks be required to mediate in good faith with homeowners to identify alternative resolutions before starting foreclosures. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 888 OF 2015-2016.]

The Commonwealth of Massachusetts

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

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 SECTION 1. Chapter 244 of the General Laws, as appearing in the 2014 Official Edition,
2 is hereby amended by inserting after section 35C the following section:- Section 35D. (a) As
3 used in this section, the following words shall, unless the context clearly requires otherwise, have
4 the following meanings:- “Borrower”, an individual mortgagor, his or her assignee, successor, or
5 a trust or trustee who owns and resides in residential real property located in the city, and for
6 whom such residential real property is his/her principal residence.

7 “Commercially reasonable alternative” – an alternative based on a comparison of the net
8 present value of receiving payments pursuant to a modified mortgage loan or the likely financial
9 recovery from other foreclosure alternatives to the anticipated net recovery following foreclosure

10 incorporating an assessment of the borrower’s current circumstances, including without
11 limitation the borrower’s current income, debts and obligations.

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

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

21 “Mediator” shall mean an individual: (A) Whose training complies with the qualification
22 standards for neutrals specified in the guidelines for training mediators adopted by the Supreme
23 Judicial Court of Massachusetts pursuant to Rule 8 of the Uniform Rules for Dispute Resolution;
24 and (B) Who has completed training on foreclosure mediation; and (C) Who has a working
25 knowledge of all federal, state and regional programs available to help homeowners retain their
26 homes “Modified mortgage loan”, a mortgage modified from its original terms including, but
27 not limited to, a loan modified under 1 of the following: (i) the Home Affordable Modification
28 Program (ii) the Federal Deposit Insurance Corporation’s Loan Modification Program, (iii) any
29 modification program that a lender uses which is based on accepted principles and the safety and
30 soundness of the institution and authorized by the National Credit Union Administration or the

31 division of banks, (iv) the Federal Housing Administration or (v) a similar federal loan
32 modification plan.

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

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

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

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

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

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

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

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

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

74 mortgagee shall send a notice of intent to foreclose to the MFMP and the mortgagor at least 90
75 days before initiating foreclosure; the MFMP shall then send the mortgagor the notice of right to
76 mediation. The MFMP will also telephone mortgagors to inform them of their right to
77 participate in mediation. The notice shall be mailed in the 5 most common languages in addition
78 to English.

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

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

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

96 creditor shall bring additional documents supporting the net present value analysis to the
97 mediation session.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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