SENATE DOCKET, NO. 948 FILED ON: 1/19/2017

SENATE . . . . . No. 500

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 equity law to foreclosure.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Harriette L. Chandler	*First Worcester*	
Mary S. Keefe	*15th Worcester*	*2/2/2017*
José F. Tosado	*9th Hampden*	*1/25/2017*
Carmine L. Gentile	*13th Middlesex*	*1/25/2017*
Robert M. Koczera	*11th Bristol*	*1/26/2017*
Dylan Fernandes	*Barnstable, Dukes and Nantucket*	*1/27/2017*
Kay Khan	*11th Middlesex*	*1/30/2017*
Denise Provost	*27th Middlesex*	*1/30/2017*
Jack Lewis	*7th Middlesex*	*1/31/2017*
Angelo J. Puppolo, Jr.	*12th Hampden*	*2/1/2017*
Jason M. Lewis	*Fifth Middlesex*	*2/3/2017*
Eric P. Lesser	*First Hampden and Hampshire*	*2/3/2017*
Elizabeth A. Malia	*11th Suffolk*	*2/3/2017*
Danielle W. Gregoire	*4th Middlesex*	*2/3/2017*
Jennifer L. Flanagan	*Worcester and Middlesex*	*2/8/2017*

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By Ms. Chandler, a petition (accompanied by bill, Senate, No. 500) of Harriette L. Chandler, Mary S. Keefe, Jose F. Tosado, Carmine L. Gentile 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. *482* OF 2015-2016.]

The Commonwealth of Massachusetts

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

An Act to equity law 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:

SECTION 1. Chapter 244 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after section 35C the following section:-

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

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

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

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

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

"Creditor's representative", a person who has the authority to negotiate and approve the terms of and modify a mortgage loan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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