

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Patrick Joseph Kearney

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 relative to protection of a deceased family member against foreclosure and other civil action.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>3/21/2019</i>

HOUSE No.

By Mr. Kearney of Scituate, a petition (subject to Joint Rule 12) of Patrick Joseph Kearney relative to protection of deceased family members against foreclosure and other civil action. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to protection of a deceased family member against foreclosure and other civil action.

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: Findings and purposes

2 It is hereby found that 1) losing a loved one is one of the most difficult experiences a
3 person can endure, 2) the process of becoming the appointed personal administrator of an estate
4 through probate in Massachusetts often take months, 3) the recurring costs of home ownership
5 hover over estates while a personal administrator awaits appointment, 4) the individual awaiting
6 court approval to administer the estate has no access to a decedent's funds to pay the estate's
7 debts, and 5) four in ten Americans can't according to a new study from the Federal reserve
8 Board, cover a \$400 expense. No person should be forced to endure threats of foreclosures, liens,
9 or late fees on estates when they would have made payments but for the state's own prohibition
10 on allowing that person to access the necessary funds.

11 Thus, it is found that a stay on foreclosure and enforcement of liens on estates in
12 probate is in the public interest of the commonwealth to promote the prosperity and general
13 welfare of its citizens.

14 SECTION 2: Chapter 188 of the General Laws is hereby amended by adding the
15 following section:

16 Section 15: This section applies to a creditor's foreclosure action or enforcement of a
17 lien on an estate of homestead, which at the time of filing an application under this section is
18 within probate court to obtain the appointment of a personal representative.

19 At any stage before final judgment in a civil action or proceeding in which an estate
20 described in this section is a party, the court may on its own motion and shall, upon application
21 by the homestead, stay the action for the period of not less than 90 days, if the estate submits an
22 application for stay including:

23 1. A letter or other communication setting forth facts stating the manner in which
24 current probate proceedings materially affect the ability of the decedent's estate to make
25 payments for the recurring costs of ownership.

26 2. A letter or other communication from the decedent's bank stating that the probate
27 proceeding prohibits the estate's future administrator from accessing the decedent's accounts to
28 make payments.

29 An application for a stay under this section does not constitute an appearance for
30 jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense.

31 An estate of homestead which is granted a stay of a civil action or proceeding under
32 subsection (b) may apply for an additional + stay based on continuing material affect of an
33 ongoing probate proceeding on the decedent's ability to make payments. The same information
34 required for the first application shall be included in subsequent applications.

35 If the court refuses to grant an additional stay of proceedings, the court shall appoint
36 counsel to represent the homestead in the action or proceeding.

37 Once the probate court has appointed a personal administrator for the estate, a creditor
38 may bring claims for back payments with interest. However the creditor may not charge fees
39 based on the lateness of the payment unless the court finds, in its discretion and if the equities so
40 require, good cause exists to assess such payments. Good cause includes but is not limited to
41 purposeful or untimely delay by the subsequently authorized administrator to get court approval
42 to probate the estate.