

SENATE No. 547

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:	
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/28/2019</i>

SENATE No. 547

By Ms. Chandler, a petition (accompanied by bill, Senate, No. 547) of Harriette L. Chandler, Mary S. Keefe, David Henry Argosky LeBoeuf and Mike Connolly for legislation relative to alternatives to foreclosure. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 500 OF 2017-2018.]

The Commonwealth of Massachusetts

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

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 2016 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:

23 (A) an individual: (1) Whose training complies with the qualification standards for
24 neutrals specified in the guidelines for training mediators adopted by the Supreme Judicial Court
25 of Massachusetts pursuant to Rule 8 of the Uniform Rules for Dispute Resolution; and (2) Who
26 has completed training on foreclosure mediation; and (3) Who has a working knowledge of all
27 federal, state and regional programs available to help homeowners retain their homes;

28 (B) employees of the Attorney General’s Office engaged in mediation;

29 (C) certified housing counselors through the Department of Housing and Urban
30 Development; or

31 (D) certified housing counselors through the Citizens' Housing and Planning Association.

32 "Modified mortgage loan", a mortgage modified from its original terms including, but not
33 limited to, a loan modified under 1 of the following: (i) the Home Affordable Modification
34 Program (ii) the Federal Deposit Insurance Corporation's Loan Modification Program, (iii) any
35 modification program that a lender uses which is based on accepted principles and the safety and
36 soundness of the institution and authorized by the National Credit Union Administration or the
37 division of banks, (iv) the Federal Housing Administration or (v) a similar federal loan
38 modification plan.

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

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

46 "Net present value", the present net value of a residential property based on a calculation
47 using 1 of the following: (i) the federal home affordable modification program base net present
48 value model, (ii) the Federal Deposit Insurance Corporation's loan modification program, (iii)
49 the Massachusetts Housing Finance Agency's loan program used solely by the agency to
50 compare the expected economic outcome of a loan with or without a modified mortgage loan or
51 (iv) any model approved by the division of banks with similar affordability requirements,

52 characteristics and based on federally recognized present-day inputs and including principal
53 reduction.

54 “Net Recovery following foreclosure”, a calculation including but not limited to costs
55 from projected delinquency, interest, fees by date of foreclosure based on current actual length of
56 foreclosure process in Massachusetts, costs associated with all legally required actions to
57 foreclose and percentage loss from foreclosure sale, costs to meet all sanitary code requirements,
58 property maintenance and costs associated with eviction if part of standard operating procedure
59 for creditor and other ownership costs until projected sale or re-sale to third party purchaser.

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

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

70 (b) There shall be a Massachusetts Foreclosure Mediation Program administered by a
71 “Mediation Program Manager” who is a neutral not-for-profit organization or law firm
72 experienced in the mediation of the foreclosure process, familiar with all programs available to
73 help homeowners avoid foreclosure, and knowledgeable of the mortgage foreclosure laws of the

74 Commonwealth of Massachusetts. Such entity or entities shall be selected by the Attorney
75 General.

76 (c) A mortgagee shall, concurrently with the notice sent to the borrower of residential
77 property under section 35A, also send a copy to the Massachusetts Foreclosure Mediation
78 Program (MFMP). The MFMP shall then send to the mortgagor the notice of right to mediation
79 and a foreclosure mediation request form. If a notice of right to cure is not required, the
80 mortgagee shall send a notice of intent to foreclose to the MFMP and the mortgagor at least 90
81 days before initiating foreclosure; the MFMP shall then send the mortgagor the notice of right to
82 mediation. The MFMP will also telephone mortgagors to inform them of their right to participate
83 in mediation. The notice shall be mailed in the 5 most common languages in addition to English.

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

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

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

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

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

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

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

117 (e) If the borrower does not elect to participate in mediation and does not pursue a
118 modified mortgage loan under section 35B, if eligible, foreclosure may proceed under this
119 chapter. If a borrower elects to participate in the Massachusetts Foreclosure Mediation Program,
120 a creditor shall not accelerate the note or otherwise initiate foreclosure proceedings unless the
121 mediator has certified that the creditor participated in the Massachusetts Foreclosure Mediation
122 Program and engaged in mediation in good faith, made all reasonable efforts to find an
123 alternative to foreclosure and any agreement is in full compliance with all state and federal
124 guidelines.

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

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

140 accordance with this Section. No entry by foreclosure shall be effectual unless the memorandum
141 or certificate recorded as required by Section 2 of Chapter 244 includes as an attachment or
142 exhibit a copy of a good faith certificate verifying that the creditor/mortgagee has participated in
143 mediation with the mortgagor/homeowner as required by this Section.

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

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

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

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

161 (l) The Mediation Program Manager shall ensure the security and confidentiality of any
162 and all information received consistent with applicable federal, state laws and regulations.
163 Access to personal information shall be limited to those officers and employees of the
164 organization who require the information to properly perform services under the Mediation
165 Program, and that the organization or individual and/or its officers and employees shall not
166 access, modify, use or disseminate any personal information for purposes unrelated to the
167 Mediation Program. Statistical information may be gathered to assess the program.
168 Documentation and outcome reports may be available for judicial proceedings.

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