

SENATE No. 566

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

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 establish a resolution trust fund for receipt of reasonable mortgage payments.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Julian Cyr</i>	<i>Cape and Islands</i>	
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/29/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/31/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/1/2019</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/1/2019</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/1/2019</i>

SENATE No. 566

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 566) of Julian Cyr, Mike Connolly, Mary S. Keefe, Sal N. DiDomenico and other members of the General Court for legislation to establish a resolution trust fund for receipt of reasonable mortgage payments. Financial Services.

The Commonwealth of Massachusetts

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

An Act to establish a resolution trust fund for receipt of reasonable mortgage payments.

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. The General Court hereby declares and finds that because changes in
2 financial industry practice as to predatory lending have significantly decapitalized the
3 commonwealth, reduced the tax base of Massachusetts communities, detrimentally affected
4 Massachusetts residents as consumers of predatory mortgage loan products, and made the chain
5 of title of many mortgages of real property untraceable, it is in the interest of the commonwealth
6 to establish a publicly owned and administered fund authorized to receive assets and monies,
7 including residential mortgages where the mortgagee and/or note-owner cannot be ascertained,
8 and to discharge related functions to help rebuild our economy and municipal tax base,
9 especially in the neighborhoods most affected by predatory lending and concomitant foreclosure.

10 SECTION 2. For the purposes of this act, the following terms shall have the following
11 meanings:

12 “Mortgagee” or “mortgage holder”, a person who has invested funds or other
13 consideration to hold legal title to real property upon which a mortgage is granted, and who is
14 named as such in the mortgage or any assignment thereof.

15 “Mortgagee of Record”, a “mortgagee” or “mortgage holder” so identified in an
16 instrument that thereafter was recorded.

17 “Mortgage Note”, a promissory note, signed by the mortgagor, promising to pay the
18 lender, or any successor who is entitled to enforce the mortgage note, and specifying the
19 requirements for the repayment of the debt including the amount, interest and charges.

20 “Note Owner”, the lender or a transferee of the note, who is entitled to receive payments
21 under and to enforce the note.

22 SECTION 3. Chapter 40H of the General Laws, as appearing in the 2014 Official
23 Edition, is hereby amended by inserting after section 4 the following section:

24 Section 4A. (a) CEDAC shall establish a Resolution Trust Fund, hereinafter “the Fund”,
25 which is hereby authorized to receive transfers of mortgage loans as to which the current
26 mortgagee and/or note-owner cannot be identified; monies including those appropriated from the
27 general fund or paid into the Fund by bequest or otherwise; targeted funding streams through the
28 Massachusetts state government; and monies that a court or an agency in receipt of settlement
29 funds designates for payment into the Fund. The Fund will be established in accordance with the
30 requirements defined in subsection (a) of section 2A.

31 (b) The Fund may accept any mortgage that through legal action, administrative action
32 such as a qualified written request, documents produced in a legally required mediation or

33 negotiation, or otherwise is evidenced as not being owned by the mortgagee of record in the
34 appropriate registry of deeds or the claimed note-owner has not produced required original
35 source documents.

36 (c) A court or other entity transferring such a mortgage to the Fund shall, if it has
37 jurisdiction to do so, modify these payments to the extent necessary to obtain compliance with
38 traditional prime lending characteristics including, but not limited to, a principal of not more than
39 80 percent of the present day value of the home, prime lending rates, fixed payment schedules,
40 standard underwriting criteria, no prepayment penalties, and no balloon payments.

41 (d) If any mortgage payments transferred to the Fund are or might be predatory and have
42 not been modified accordingly before transfer, the Fund shall immediately request a
43 determination of traditional prime lending characteristics for such payments from the division of
44 banks or another appropriate state agency, and modify mortgage characteristics accordingly.

45 (e) To the extent possible, any mortgage transferred pursuant to this Act shall be
46 accompanied by the loan collateral file, servicer file; onboarding or intake sheet(s) or
47 screenshot(s); transaction and payment history; the original wet ink note with all allonges
48 attached in their present condition, or a court determination that the note has been lost or a
49 certified copy thereof; all off-record assignments or certified copies thereof; the founding
50 documents of any securitized trust, limited liability corporation or other entity in the chain of
51 title; and any documents associated with the loan from its document custodian or claimed holder
52 of the mortgage or associated claimed note-owner.

53 (f) When mortgages are transferred to the Fund, within twenty (20) the Fund shall record
54 in the appropriate registry of deeds, at its own cost, a certified copy of the document(s)
55 evidencing the transfer.

56 (g) Within thirty (30) days of the transfer of mortgage payments, the Fund shall notify
57 each mortgagor of the periodic payment to be made to the Fund, with any modified mortgage
58 loan characteristics, including present principal, interest rate, monthly payment, amortization
59 schedule, escrowing of taxes and insurance, payment requirements and authorized payee contact
60 information.

61 (h) The Fund shall pay applicable real estate taxes and other costs out of mortgage
62 payments transferred to it and shall otherwise service the loan.

63 (i) The Fund may retain up to fifteen (15) percent of all mortgage payments transferred
64 to it and expend such amounts to defray administrative overhead. Any excess over the amounts
65 required to administer the Fund for a given fiscal year shall be invested prudently, with the
66 income thereof being paid into the Fund.

67 (j) In case of the dissolution of the Fund, any balance of such administrative overhead
68 remaining shall inure to the General Fund.

69 (k) If a homeowner whose mortgage payments have been transferred to the Fund
70 becomes delinquent, the Fund shall make every effort to assist the family to stay in its home. If
71 the homeowner nonetheless defaults, and cure is not feasible, the Fund may accelerate the
72 maturity of the remaining principle balance and foreclose by court action in the name of the
73 commonwealth pursuant to section 1 of chapter 244 of the General Laws.

74 (l) Any sale of a property after such a foreclosure shall convey title in fee simple from
75 the commonwealth to the purchaser. The proceeds of any such sale shall, after subtracting any
76 legally required distribution of proceeds and costs, including costs of recordation in the
77 appropriate registry of deeds, be credited to the Fund.

78 (m) When a mortgagor completes payments of such mortgage transferred to the Fund, the
79 Fund shall provide a discharge of the mortgage, and record this at its expense within thirty (30)
80 days of payoff in the appropriate registry of deeds.

81 (n) CEDAC shall appoint a director to administer the Fund through CEDAC and under
82 criteria that it shall establish promptly by regulation pursuant to this Act

83 (o) CEDAC shall ensure that the Fund is invested prudently.

84 (p) At the close of each fiscal year, the Fund shall determine the number of “Eaton” or
85 section 35C of chapter 244 affidavits filed with each registry of deeds in the previous five
86 calendar years.

87 (q) Monies, beyond administrative expenses, that the Fund receives by appropriation or
88 otherwise that are not attributable to a given county or former county (herein, “county”), and
89 interest on any monies invested on the Fund’s behalf, shall be allocated (herein, “allocated
90 monies”) among the counties at the close of each fiscal year according to the proportion of Eaton
91 affidavits filed with the appropriate registry of deeds in the previous five calendar years.

92 (r) When payments to the Fund from a given county plus any allocated monies equal at
93 least \$300,000, the CEDAC, in consultation with community agencies in the county, shall hold a
94 hearing within that county for public input into the distribution within that county of the funds

95 and the purposes, including affordable housing, for which CEDAC will expend them. Preference
96 shall be given to areas or neighborhoods with the highest proportions of Eaton affidavits filed in
97 the appropriate registry of deeds during the previous five years. CEDAC shall publicize each
98 such hearing widely through community agencies and relevant members of the general court as
99 well as by means of the media in the county in which the hearing is to be held.

100 (s) CEDAC shall by regulation establish a point system for potential projects, based upon
101 public input; announce a request for proposals; review and rank such proposals; award contracts
102 accordingly; and require an annual accounting of the funds distributed for each such project with
103 a specification of the results obtained.

104 (t) Once the revenue to the Fund from a city or a cluster of up to 5 towns has reached an
105 income threshold of \$100,000 in a year, a local hearing will be held upon request and funds
106 distributed similarly to subsection (c) and (d). The Fund will be established in accordance with
107 the requirements defined in subsection (a) of section 2A.

108 (u) The director of the Fund shall file an annual report on December 15 with the speaker
109 of the house of representatives, the president of the senate, and the chairs of the house and senate
110 joint committees on ways and means, housing, community development and small business, and
111 insurance and financial services, providing an accounting of the Fund's monies expended,
112 including their regional distribution, the usage of those monies, a description of the respective
113 projects' funding, and their impact on affordable housing and community development.