SENATE DOCKET, NO. 2121 FILED ON: 1/18/2019

SENATE . . . . . No. 868

The Commonwealth of Massachusetts

PRESENTED BY:

Nick Collins

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 require pre-foreclosure mediation and judicial oversight.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Nick Collins	*First Suffolk*	
Mike Connolly	*26th Middlesex*	*1/28/2019*
Mary S. Keefe	*15th Worcester*	*1/31/2019*
Jack Patrick Lewis	*7th Middlesex*	*2/1/2019*
Michael D. Brady	*Second Plymouth and Bristol*	*2/1/2019*
James K. Hawkins	*2nd Bristol*	*2/5/2019*

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SENATE . . . . . No. 868

By Mr. Collins, a petition (accompanied by bill, Senate, No. 868) of Nick Collins, Mike Connolly, Mary S. Keefe, Jack Patrick Lewis and other members of the General Court for legislation to require pre-foreclosure mediation and judicial oversight. The Judiciary.

The Commonwealth of Massachusetts

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

An Act to require pre-foreclosure mediation and judicial oversight.

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. Notwithstanding any general or special law to the contrary, there shall be a two-year moratorium on the non-judicial foreclosure of any 1-6 unit residential property where the property is the sole real property of its owner.

Section 2. Said moratorium shall take effect as of the date of enactment of this Act, and shall renew for an additional two-year term on each anniversary of its effective date to a maximum of ten (10) years.

Section 3. If the following criteria are met in any calendar year during the moratorium, the legislature may terminate it as of the end of the applicable two-year period:

a. The percentage of foreclosures of "certain mortgages," as defined in section 35B of chapter 244 of the General Laws, which qualify as predatory is less than a quarter of all foreclosures; and

b. The percentage of foreclosures of mortgages where more than one assignment is recorded, or which section 14 of chapter 244 of the General Laws requires to be recorded, is less than one fifth of all foreclosures.

Section 4. The courts of the commonwealth will continue to have jurisdiction to determine foreclosures by action under chapter 244, section 1 of the General Laws, and as modified in the following five subsections:

(a) In addition to applicable Superior Court rules of service, if service is not effected in hand, then it must be effected both by posting in a prominent place on the property and by certified mailing;

(b) A defendant-mortgagor may raise all legal and equitable claims and defenses against the mortgagee or any predecessor in interest, assignee, agent or any person or entity acting on behalf of such mortgagee.

(c) The court shall have the authority to modify the mortgage or grant any other appropriate relief as to the mortgagor;

(d) Nothing in this section shall affect the rights of tenants or any legal occupants residing in the property;

(e) The court may set aside a default judgment for good cause shown; and

(f) Foreclosure by court action pursuant this Act shall be available only if pre-foreclosure mediation has not resulted in a commercially-reasonable, mutually agreeable resolution.

(i) Concurrently with the mailing of the notice of the right to cure period prescribed in section 35A of chapter 244 of the General Laws, the mortgagee shall mail to the mortgagor by certified mail a notification of opportunity to seek resolution of any breach of the mortgage.

(ii) This will commence a mediation in accordance with a program yet to be established by the Commonwealth. Said program's design shall reflect best practices as to successful loan modification mediation programs similar to that described as the Massachusetts Foreclosure Mediation Program in legislation presently pending in the General Court.

(iii) Said Program shall include issuance of a Certificate of Mediation Completion to any party that participates in good faith should mediation not yield a mutually acceptable resolution.

(iv). Said Program will include a regular reporting of outcomes and percentages of party compliance.

Section 5. The Division of Banks shall promulgate regulations to aid in the administration and enforcement of the above sections.

Section 6. The Division of Banks shall, in consultation with the Attorney General, provide an Annual Foreclosure Crisis Report to the joint committee on financial services within ninety (90) days of the end of each calendar year on:

(a) Number of "certain mortgage loans" as defined in section 35B of chapter 244 of the General Laws for which the creditor sent to a borrower a notice of the right to pursue a modified mortgage loan;

(b) Number of loans upon which a certified copy of the original wet-ink mortgage note in its present condition, demonstrating that all allonges are affixed, have been recorded at least once in the registries of deeds;

(c) Number of documents denominated as Affidavits pursuant to Section 35B and 35C of Chapter 244 that have been recorded in the registries of deeds;

(d). Number of such documents that append a copy of each business record or other document, or else make reference to where such documents are available on the public record, as required of affidavits pursuant to Massachusetts and Federal Rules of Evidence Rule 803, and which include the certification by an attorney required under section 5B of chapter 183 of the General Laws;

(e) Number of recorded documents that are denominated as Foreclosure Deeds;

(f) Percentage of foreclosures of mortgages qualifying as predatory as defined under "certain mortgages" as defined in section 35B of chapter 244 of the General Laws; and

(g) Percentage of foreclosures of mortgages where more than one assignment of a given mortgage is recorded in any registry of deeds, or which section 14 of chapter 244 of the General Laws requires to be recorded.

Section 6: Foreclosure Education Reform Review Task Force.

(a) A Foreclosure Education Reform Review Task Force shall be convened no later than five (5) months after enactment of this Act, for the purpose of reviewing the use of any and all activities used by the entities foreclosing. This shall include a review of the law, statutes, courts and paperwork. The task force shall consist of the following stakeholders:

(i) twelve (12) homeowners whose homes have already been foreclosed upon identified through the Massachusetts Alliance Against Predatory Lending.

(ii) the Secretary of Commonwealth, or the Secretary's designee;

(iii) the Senate President or a designee, the Speaker of the House or a designee, and the two chairs of the Joint Committee on Revenue or their designees;

(iv) one member chosen by the Governor from a list of three names submitted by the Massachusetts Alliance Against Predatory Lending;

(v) three parents selected by the Massachusetts Alliance Against Predatory Lending.

(vi) three college students selected competitively among those who apply shall serve on this task force by the Massachusetts Alliance Against Predatory Lending; and

(vii) three high school students selected competitively among those who apply shall serve on this task force by the Massachusetts Alliance Against Predatory Lending. Said students should be chosen to represent various school districts across the commonwealth.

(b) Appointments to the task force shall be made within sixty (60) days of the effective date of this ct. Vacancies in the membership of the task force shall be filled in the same manner as the original appointments. Members of the task force shall serve without compensation.

(c) The task force shall appoint its first meeting: two co-chairs, one elected by the members designated in sub-sections b (1), (2) and (3) and the second elected by the members described in sub-sections b (4) and (5).

(d) Task Force Purpose and Topics will include:

(i) The initial meeting will be solely to understand the reasons for the past 95,000 plus foreclosures in Massachusetts.

(ii) The Task Force will examine the purpose of the initial homeowners contracts used at the closing the subsequent paperwork for securitizations, the robo-signing, and the beginnings of the foreclosure process to make the process more transparent and understandable by ordinary people.

(iii) Subsequent meetings will be held for the purpose of understanding money, the history of money, how money is created, and how best to change our current usurious, debt based monetary system into a honest, credit based monetary system.

(iv) The Task Force will consider whether the current debt based monetary system is democratic.

(e) The Task Force will hold open educational meeting, promulgate reports and share its findings in settings such as trainings of credit counselors, primary and secondary educational setting and where it sees fit.