

HOUSE No. 1144

The Commonwealth of Massachusetts

PRESENTED BY:

David Henry Argosky LeBoeuf

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:	DATE ADDED:
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/19/2021</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/26/2021</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>2/26/2021</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>3/15/2021</i>

HOUSE No. 1144

By Mr. LeBoeuf of Worcester, a petition (accompanied by bill, House, No. 1144) of David Henry Argosky LeBoeuf and others for legislation to facilitate alternatives to foreclosures. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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 2018 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 “Mortgagor” or “Borrower”, an individual mortgagor, their assignee, successor, or a trust
6 or trustee who owns and resides in residential real property located in the city, and for whom
7 such residential real property is their 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, a mortgage loan secured by residential property, including, without limitation, a
15 mortgagee, originator, holder, investor, assignee, successor, trust, trustee, or mortgage loan
16 servicer, including but not limited to the Federal National Mortgage Association, the Federal
17 Home Loan Mortgage Corporation or any other government sponsored entity. The term
18 “creditor” shall also include any servant, employee, subcontractor or agent of a creditor.

19 “Creditor’s representative”, a person with documented prior authorization from the
20 principal a person has the authority to negotiate and approve the terms of and modify a mortgage
21 loan.

22 “Massachusetts Foreclosure Mediation Program” or “the program”, the program created
23 pursuant to subsection (b).

24 “Mediation program manager”, a neutral not-for-profit organization or law firm selected
25 by the attorney general whose personnel qualify as mediators under this Act

26 “Mediator”, An individual, employee of the Attorney General’s Office, certified housing
27 counselor certified through the Department of Housing and Urban Development or certified
28 housing counselor through the Citizens’ Housing and Planning Association or personnel of the
29 Mediation program manager (1) trained in compliance with the qualification standards for
30 neutrals specified in the guidelines for training mediators adopted by the Supreme Judicial Court
31 of Massachusetts pursuant to Rule 8 of the Uniform Rules for Dispute Resolution; (2)
32 knowledgeable of the mortgage foreclosure laws of the Commonwealth; (3) with a working
33 knowledge of all federal, state and regional programs available to help homeowners retain their
34 homes;

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

42 “Mortgage loan”, a loan, both mortgage note and mortgage on residential property, to a
43 natural person, a nominee trust or any other entity commonly recognized under Massachusetts
44 law as a lawful Mortgagor made primarily for personal, family or household purposes.

45 “Mortgagee”, or “mortgage holder” a person who has invested funds or other
46 consideration for the grant of and who is names as such in the mortgage or any assignment
47 thereof.

48 “Net present value”, the present net value of a residential mortgage loan based on a
49 calculation using 1 of the following: (i) the federal Home Affordable Modification Program base
50 net present value model; (ii) the Federal Deposit Insurance Corporation’s loan modification
51 program; (iii) the Massachusetts Housing Finance Agency’s loan program, used solely by the
52 agency to compare the expected economic outcome of a loan with or without a modified
53 mortgage loan; or (iv) any model approved by the division of banks with similar affordability
54 requirements and characteristics based on federally recognized present-day inputs and including
55 principal reduction.

56 “Net recovery following foreclosure”, a calculation of mortgagee’s costs until projected
57 sale or resale to third party purchaser, including but not limited to: (i) costs from projected
58 delinquency; (ii) interest; (iii) fees by date of foreclosure based on current actual length of
59 foreclosure process in Massachusetts; (iv) costs associated with all legally required actions to
60 foreclose and percentage loss from foreclosure sale; (v) costs to meet all sanitary code
61 requirements; (vi) property maintenance costs; (vii) costs associated with eviction, if part of
62 standard operating procedure for creditor; and (viii) other ownership costs.

63 “Proof of ownership”, all documents evidencing an unbroken chain of ownership of the
64 mortgage note including, all assignments of the mortgage whether recorded or unrecorded
65 evidencing an unbroken chain of title, the wet ink mortgage note in its then-current condition
66 evidencing the debt unless the parties agree in writing to accept a certified copy, fully executed
67 founding document if the mortgagee is a non-governmental entity, and authority documents.

68 “Residential property”, real property located in the commonwealth, on which there is a
69 dwelling house with accommodations for 4 or fewer separate households or a residential
70 condominium unit or a residential co-op unit and occupied, or to be occupied, in whole or in part
71 as her or his principal residence; provided, further, that residential property shall not include
72 residential property taken in whole or in part as collateral for a commercial loan.

73 (b) There shall be a Massachusetts Foreclosure Mediation Program administered by a
74 mediation program manager.

75 (c) A mortgagee shall concurrently send to the program a copy of the notice sent to the
76 Mortgagor of residential property under section 35A. The program shall then send to the
77 mortgagor the notice of right to mediation and a foreclosure mediation request form. If a notice

78 of right to cure is not required, the mortgagee shall, at least 90 days before initiating foreclosure,
79 send a notice of intent to foreclose to the program and the mortgagor. The program shall then
80 send the mortgagor the notice of right to mediation. The program shall also telephone
81 mortgagors to inform them of their right to participate in mediation. The notice shall be mailed in
82 the 5 languages most commonly spoken in the commonwealth in addition to English.

83 A Mortgagor may request foreclosure mediation by submitting the foreclosure mediation
84 request form to the program not more than 30 days after receipt of the notice.

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

95 As early as possible, but not later than 5 days before the scheduled mediation, the creditor
96 shall provide to the Mortgagor and the program: (i) proof of ownership, (ii) a written net present
97 value analysis including inputs and their basis, (iii) an accounting and history of the outstanding
98 balance on the debt, (iv) documents evidencing any loss mitigation restrictions, and (v) the

99 creditor's anticipated net recovery following foreclosure. When required, the creditor shall bring
100 additional documents supporting the net present value analysis to the mediation session.

101 Mortgagees shall be referred to and encouraged to work with a non-profit housing
102 counseling agency. Mortgagees shall provide to creditor and the program current income,
103 expenses, assets and debts and proof of income and releases standardly required by the
104 affordable home ownership program or similar federal program.

105 If the initial mediation session does not result in an agreement, the parties may agree to
106 additional mediation sessions that the mediator shall document.

107 If mediation results in an agreement, the Mortgagee shall have not fewer than 7 days to
108 review and sign the mediation agreement and return it to the program and the creditor. Not later
109 than 5 days after the mediation session is complete, the mediator shall write a report setting forth
110 the specific compliance with mediation requirements and result of the mediation and send a copy
111 of the report to the Mortgagee and the creditor.

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

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

121 (f) If it is determined, after a good faith effort made by the creditor, homeowner or
122 Mortgagor at the mediation conference, that the parties cannot agree to a commercially
123 reasonable alternative to avoid foreclosure, such good faith effort on behalf of the creditor,
124 homeowner or Mortgagor shall be deemed to satisfy the requirements of this section. A
125 certificate verifying such good faith effort pursuant to this section shall be issued to the party that
126 made a good faith effort within 5 days by the program to the certified creditor or certified
127 homeowner or Mortgagor authorizing the party to proceed with its rights under this chapter.

128 (g) All mortgage modifications shall be recorded in the appropriate registry of deeds
129 within 30 days. In the case the mediator does not issue a good faith certificate, the creditor or
130 mortgagee shall be prohibited from continuing with the foreclosure process. No sale pursuant to
131 this chapter shall be effective to foreclose on any mortgage under this section, unless all notices
132 required by section 14 specifically reference that a good faith certificate has been issued to both
133 parties verifying that the creditor or mortgagee, its assignee or any person identified in section 14
134 has successfully participated in a mediation program in accordance with this section. No entry by
135 foreclosure shall be effectual unless the memorandum or certificate recorded as required by
136 section 2 includes, as an attachment or exhibit, a copy of a good faith certificate verifying that
137 the creditor or mortgagee has participated in mediation with the mortgagor or homeowner as
138 required by this section.

139 (h) Any costs necessary to establish and operate the program shall be borne by the parties
140 to the mediation under the guidelines developed under subsection (g) and by a \$50 surcharge on
141 the filing fee for foreclosure complaints filed under the Servicemembers Civil Relief Act. A
142 Mortgagor's portion of the mediation fee shall not exceed 15 per cent of the total cost of the
143 mediation. A Mortgagor's inability to pay for mediation shall not be a bar to participation in the

144 program. Any fees assessed of the creditor or mortgagee pursuant to this section shall not be
145 charged to the mortgagor or homeowner either directly or indirectly. The mediation program
146 manager shall have the authority to set and collect fees for mediation sessions and the
147 administration of the same

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

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

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

156 (l) The mediation program manager shall ensure the security and confidentiality of any
157 and all information received consistent with applicable federal, state laws and regulations.
158 Access to personal information shall be limited to those officers and employees of the
159 organization who require the information to properly perform services under the program. The
160 organization or individual or its officers and employees shall not access, modify, use or
161 disseminate any personal information for purposes unrelated to the program. Statistical
162 information may be gathered to assess the program. Documentation and outcome reports may be
163 available for judicial proceedings.

164 (m) The program shall provide annually to the secretary of housing and economic
165 development a report and data related to: (i) the number of mortgagors who are notified of

166 mediation; (ii) the number of homeowners or borrowers who attend mediation and who receive
167 counseling or assistance; (iii) the number of certificates of good faith issued under the program;
168 (iv) the results of the mediation process, including the number of loans restructured, number and
169 total value of principal write-downs, interest rate reductions and, to the extent such information
170 is available, the number of mortgagors or homeowners who default on mortgages within a year
171 after successful mediation conferences; and (v) any such other information as the Legislature
172 may determine to be necessary and or helpful in assessing the value of the program and any
173 adjustments that may need to be made thereto.”