

HOUSE No. 1717

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan, (BY REQUEST)

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 a moratorium on non-judicial residential foreclosure.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|-----------------------|---|------------------|
| <i>David Snieckus</i> | <i>99 Crescent St, Auburndale, MA 02466</i> | <i>2/19/2021</i> |

HOUSE No. 1717

By Ms. Khan of Newton (by request), a petition (accompanied by bill, House, No. 1717) of David Snieckus for legislation to establish a two-year moratorium on the non-judicial foreclosures. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1482 OF 2019-2020.]

The Commonwealth of Massachusetts

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

An Act relative to a moratorium on non-judicial residential foreclosure.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to facilitate forthwith the just, expeditious and final resolution of cases involving the recent crisis in foreclosures of mortgages on real property, including determinations of real estate title if necessary; whereas, Massachusetts non-judicial foreclosure laws have permitted the foreclosure of tens of thousands of owner-occupied homes where the foreclosing entity falsely purports to have authority and jurisdiction to foreclose, yet the homeowner has no day in court beforehand; and whereas the deferred operation of this act would tend to defeat its purpose, which echoes that of the 1692 Massachusetts Statute of Frauds, in a period of comparably high percentages of foreclosure, whose preamble set forth the mischief it sought to halt as: “For prevention of many fraudulent practices which are commonly endeavored to by upheld by perjury and subornation of perjury”; , therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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 is hereby amended by adding the
2 following section:

3 Section 41: Moratorium on Non-Judicial Residential Foreclosure. There shall be a two-
4 year moratorium on the non-judicial foreclosure of any 1-6 unit residential property where the
5 property is the sole real property of its owner.

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

9 SECTION 3. If the following criteria are met in any calendar year during the
10 moratorium, the legislature may terminate this moratorium as of the end of the applicable two-
11 year period:

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

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

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

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

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

27 (c) The court shall have the authority to rescind or modify the mortgage, recognize the
28 voidness of any acts where applicable, or grant any other appropriate relief as to the mortgagor;

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

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

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

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

38 (ii) This will commence a mediation in accordance with a program yet to be established
39 by the Commonwealth. Said program's design shall reflect best practices as to successful loan
40 modification mediation programs similar to that described as the Massachusetts Foreclosure
41 Mediation Program in the legislation presently pending in the General Court as section 35D of
42 chapter 244.

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

45 (iv.) Said Program will include a regular reporting to the division of banks of outcomes
46 and percentages of party compliance.

47 SECTION 5. The division of banks shall promulgate regulations to aid in the
48 administration and enforcement of the above sections.

49 SECTION 6. The division of banks shall, in consultation with the Attorney General,
50 provide an Annual Foreclosure Crisis Report to the joint committee on financial services within
51 ninety (90) days of the end of each calendar year on:

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

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

58 (c) Number of documents denominated as affidavits pursuant to sections 35B and 35C of
59 chapter 244 that have been recorded in the registries of deeds;

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

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

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

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

71 SECTION 7: Foreclosure Education Reform Review Task Force.

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

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

78 (ii) the secretary of the Commonwealth, or the secretary’s designee;

79 (iii) the senate president or a designee, the speaker of the House or a designee, and the
80 two chairs of the Joint Committee on Revenue or their designees;

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

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

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

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

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

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

95 (d) Task Force Purpose and Topics will include:

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

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

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

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

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