

HOUSE No. 1073

The Commonwealth of Massachusetts

PRESENTED BY:

Michelle M. DuBois

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: | DATE ADDED: |
|---------------------------|----------------------|------------------|
| <i>Michelle M. DuBois</i> | <i>10th Plymouth</i> | <i>2/19/2021</i> |
| <i>Elizabeth A. Malia</i> | <i>11th Suffolk</i> | <i>2/25/2021</i> |

HOUSE No. 1073

By Ms. DuBois of Brockton, a petition (accompanied by bill, House, No. 1073) of Michelle M. DuBois and Elizabeth A. Malia for legislation to establish a trust fund to protect citizens of the Commonwealth and municipalities impacted by the mortgage foreclosure crisis. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 961 OF 2019-2020.]

The Commonwealth of Massachusetts

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**In the One Hundred and Ninety-Second General Court
(2021-2022)**
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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 and mortgage payments where the mortgagee and/or note-owner
8 cannot be ascertained, and to discharge related functions to help rebuild our economy and
9 municipal tax base, especially in the neighborhoods most affected by predatory lending and
10 concomitant foreclosure.

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

13 “all loan documents”, document files and electronic records including the loan collateral
14 file, servicer file; onboarding or intake sheet(s) or screenshot(s); transaction and payment
15 history; the original wet ink note with all allonges attached in their present condition, or a court
16 determination that the note has been lost; all recorded and off-record assignments or certified
17 copies thereof; the fully executed founding documents of any securitized trust, limited liability
18 corporation or other entity in the chain of title; and any documents associated with the loan from
19 its document custodian or claimed holder of the mortgage or associated claimed note-owner.”

20 “Mortgagee” or “mortgage holder”, a person who has invested funds or other
21 consideration for the grant of a mortgage, and who is named as such in the mortgage or any
22 assignment thereof.

23 “Mortgagee of Record”, a “mortgagee” or “mortgage holder” so identified in an
24 instrument that was subsequently recorded.

25 “Mortgage Note”, a promissory note, bearing the original signature(s) of the
26 mortgagor(s), promising to pay the lender, or any successor who is entitled to enforce the
27 mortgage note, and specifying the requirements for the repayment of the debt including the
28 principal amount, interest and charges.

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

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

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

40 (b) The Fund may accept any mortgage loan that through legal procedure, including
41 administrative action such as a qualified written request, documents produced in a legally
42 required mediation or negotiation, or otherwise as evidenced as not being owned by the
43 mortgagee of record in the appropriate registry of deeds or as to which the claimed note-owner
44 has not produced required original source documents demonstrating present legal note owner
45 status

46 (c) The fund will receive any mortgage loan transferred to the Commonwealth by
47 operation of law or in accordance with provisions of this act.

48 (d) A court or other entity transferring such a mortgage to the Fund shall, if it has
49 jurisdiction to do so, modify the mortgage to the extent necessary to obtain compliance with
50 traditional prime lending characteristics including, but not limited to, an original principal of not
51 more than 80 percent of the value of the home on date of origination, prime lending rates, fixed

52 payment schedules, standard underwriting criteria, no prepayment penalties, and no balloon
53 payments.

54 (e) If any payments transferred to the Fund are for a mortgage which is or might be
55 predatory and has not been modified accordingly before transfer, the Fund shall immediately
56 request a determination of traditional prime lending characteristics for that mortgage from the
57 division of banks or another appropriate state agency, and modify mortgage characteristics
58 according to subsection (d).

59 (f) To the extent possible, any mortgage transferred pursuant to this Act shall be
60 accompanied by all loan documents.

61 (g) When a mortgage loan is transferred to the Fund, within twenty (20) days the Fund
62 shall record in the appropriate registry of deeds, at its own cost, a certified copy of all
63 document(s) evidencing the transfer.

64 (h) Within thirty (30) days of the transfer of a mortgage, the Fund shall notify each
65 mortgagor of the periodic payment to be made to the Fund, with any modified mortgage loan
66 characteristics, including present principal, interest rate, monthly payment, amortization
67 schedule, escrowing of taxes and insurance, payment requirements and authorized payee contact
68 information.

69 (i) The Fund shall establish an escrow account and pay applicable real estate taxes and
70 other costs out of mortgage payments transferred to it and shall otherwise service the loan.

71 (j) The Fund may retain up to fifteen (15) percent of all mortgage payments transferred
72 to it and expend such amounts to defray administrative overhead. Any excess over the amounts

73 required to administer the Fund for a given fiscal year shall be invested prudently, with the
74 income thereof being paid into the Fund.

75 (k) In case of the dissolution of the Fund, any balance of such administrative overhead
76 remaining shall inure to the General Fund.

77 (l) If a homeowner whose mortgage has been transferred to the Fund becomes delinquent,
78 the Fund shall make every effort, including pre-foreclosure mediation if applicable, to assist the
79 family to stay in its home. If the homeowner nonetheless defaults, and cure is not feasible, the
80 Fund may accelerate the maturity of the remaining principal balance and foreclose by court
81 action in the name of the commonwealth pursuant to section 1 of chapter 244 of the General
82 Laws.

83 (m) Any sale of a property after such a foreclosure' shall convey title in fee simple from
84 the commonwealth to the purchaser. The proceeds of any such sale shall, after subtracting any
85 legally required distribution of proceeds and costs, including costs of recordation in the
86 appropriate registry of deeds, be credited to the Fund.

87 (n) When a mortgagor completes payments on a mortgage transferred to the Fund, the
88 Fund shall provide a discharge of the mortgage, and record this at its expense within thirty (30)
89 days of payoff in the appropriate registry of deeds.

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

92 (p) CEDAC shall ensure that the Fund is invested prudently.

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

96 (r) Monies “... shall be allocated to the general fund for the 3 years after the end of the
97 Governor’s Covid-19 emergency declaration(s). Monies, beyond administrative expenses, that
98 the Fund receives by appropriation or otherwise that are not attributable to a given county or
99 former county (herein, “county”), and interest on any monies invested on the Fund’s behalf, shall
100 be allocated (herein, “allocated monies”) among the counties at the close of each fiscal year
101 according to the proportion of Eaton affidavits filed with the appropriate registry of deeds in the
102 previous five calendar years.

103 (s) When payments to the Fund from a given county plus any allocated monies equal at
104 least \$300,000, the CEDAC, in consultation with community agencies in the county, shall hold a
105 hearing within that county for public input into the distribution within that county of the funds
106 and the purposes, including affordable housing, for which CEDAC will expend them. Preference
107 shall be given to areas or neighborhoods with the highest proportions of Eaton affidavits filed in
108 the appropriate registry of deeds during the previous five years. CEDAC shall publicize each
109 such hearing widely through community agencies and relevant members of the general court as
110 well as by means of the media in the county in which the hearing is to be held.

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

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

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

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