

SENATE No. 952

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 establish a moratorium on non-judicial residential foreclosure.

PETITION OF:

NAME:

Nick Collins

DISTRICT/ADDRESS:

First Suffolk

SENATE No. 952

By Mr. Collins, a petition (accompanied by bill, Senate, No. 952) of Nick Collins for legislation to establish a moratorium on non-judicial residential foreclosure. The Judiciary.

The Commonwealth of Massachusetts

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

An Act to establish 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 moratorium,
10 the legislature may terminate this moratorium as of the end of the applicable two-year period:

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

13 foreclosures; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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