

**HOUSE . . . . . No. 1083**

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**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>1/20/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/1/2023</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>2/3/2023</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>2/23/2023</i>

**HOUSE . . . . . No. 1083**

By Representative LeBoeuf of Worcester, a petition (accompanied by bill, House, No. 1083) 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-Third General Court  
(2023-2024)**

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 and related proceeding incorporating an assessment of the borrower’s current circumstances,  
12 including without 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, holder, investor, assignee, successor, trust, trustee, or mortgage loan servicer,  
16 including but not limited to the Federal National Mortgage Association, the Federal Home Loan  
17 Mortgage Corporation or any other government sponsored entity. The term “creditor” shall also  
18 include any servant, employee, subcontractor or agent of a creditor.

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

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

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

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

33 “Modified mortgage loan”, a mortgage modified from its original terms including, but not  
34 limited to, a loan modified under 1 of the following: (i) the Home Affordable Modification

35 Program; (ii) the Federal Deposit Insurance Corporation Loan Modification Program; (iii) any  
36 modification program that a lender uses which is based on accepted principles and the safety and  
37 soundness of the institution and authorized by the National Credit Union Administration or the  
38 division of banks; (iv) the Federal Housing Administration; or (v) a similar federal loan  
39 modification plan.

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

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

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

55 “Net recovery following foreclosure”, a calculation of mortgagee’s costs until projected  
56 sale or resale to third party purchaser, including but not limited to: (i) costs from projected

57 delinquency; (ii) interest; (iii) fees by date of foreclosure based on current actual length of  
58 foreclosure process in Massachusetts; (iv) costs associated with all legally required actions to  
59 foreclose and percentage loss from foreclosure sale; (v) costs to meet all sanitary code  
60 requirements; (vi) property maintenance costs; (vii) costs associated with eviction, if part of  
61 standard operating procedure for creditor; and (viii) other ownership costs.

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

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

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

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

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

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

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

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

101 anticipated net recovery following foreclosure. When required, the creditor shall bring additional  
102 documents supporting the net present value analysis to the mediation session.

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

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

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

114           The mediation period shall conclude not more than 120 days after the Mortgagor elects to  
115 participate in mediation.

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

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

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

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



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

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

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

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

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

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

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