

HOUSE No. 3953

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>1/20/2023</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>2/2/2023</i>

HOUSE No. 3953

By Representative DuBois of Brockton, a petition (accompanied by bill, House, No. 3953) of Michelle M. DuBois and Angelo J. Puppolo, Jr., for legislation to establish a publicly owned and administered trust fund for receipt of reasonable mortgage payments. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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. Because changes in financial industry practice as to predatory lending have
2 significantly decapitalized the commonwealth, reduced the tax base of Massachusetts
3 communities, detrimentally affected Massachusetts residents as consumers of predatory
4 mortgage loan products, and made the chain of title of many mortgages of real property
5 untraceable, it is in the interest of the commonwealth to establish a publicly owned and
6 administered fund authorized to receive assets and monies, including residential mortgages and
7 mortgage payments where the mortgagee or note owner cannot be ascertained, and to discharge
8 related functions to help rebuild our economy and municipal tax base, especially in the
9 neighborhoods most affected by predatory lending and concomitant foreclosure. SECTION 2.
10 Chapter 40H of the General Laws, as appearing in the 2020 Official Edition, is hereby amended
11 by inserting after section 4 the following 2 sections:-

12 Section 4A. (a) For the purposes of this section and section 4B, the following terms shall,
13 unless the context clearly requires otherwise, have the following meanings:

14 “All loans documents”, document files and electronic records related to a mortgage loan,
15 including: (i) the closing file, loan collateral file and servicer file; (ii) onboarding or intake sheets
16 or screenshots; (iii) transaction and payment history; (iv) the original wet ink note with all
17 allonges attached affixed in their present condition, or a court determination that the note has
18 been lost; (v) all recorded and off-record assignments or certified copies thereof; (vi) the fully
19 executed founding documents of any securitized trust, limited liability corporation or other entity
20 in the chain of title; and (vii) any documents associated with the loan from its document
21 custodian or claimed holder of the mortgage or associated claimed note owner.

22 “Eaton affidavit”, an affidavit prepared pursuant to section 35C of chapter 244.

23 “Mortgage loan”, a mortgage note and its associated mortgage

24 “Mortgage note”, a promissory note, bearing the original signatures of the mortgagors,
25 promising to pay the lender, or any successor who is entitled to enforce the mortgage note as
26 note owner or on behalf of the note owner, and specifying the requirements for the repayment of
27 the debt including the principal amount, interest and charges.

28 “Mortgagee of record”, a mortgagee so identified in the instrument that thereafter was
29 subsequently recorded.

30 “Mortgagee” or “mortgage holder”, a person who has invested funds or other
31 consideration to hold legal title to real property upon which a mortgage is granted, and who is
32 named as such in the mortgage instrument or any assignment thereof.

33 "Mortgagor", a grantor of a mortgage, the grantor's heirs, successors or assigns

34 "Note owner", the lender or a transferee of the mortgage note, who is entitled to receive
35 payments under and to enforce the note.

36 (b) There shall be established and set up on the books of the Commonwealth a separate
37 fund to be known as the Resolution Trust Fund, to be administered by CEDAC and established
38 in accordance with the requirements in section 4B.

39 There shall be credited to the fund:

40 (i) transfers of mortgage loans, the current mortgagee or note owner of which cannot be
41 identified, which are accepted by CEDAC under this section pursuant to regulations and
42 standards promulgated by CEDAC;

43 (ii) revenue from appropriations and other money authorized by the general court and
44 specifically designated to be credited to the fund; and

45 (iii) monies that a court or an agency in receipt of settlement funds designates for
46 payment into the fund.

47 (c) The fund may accept any mortgage loan that through legal procedure is found to not
48 have an identifiable mortgagee or note owner. To determine whether a mortgage loan has an
49 identifiable mortgagee or note owner, CEDAC shall be provided evidence including: (i) the
50 records and results of any legal procedure pertaining to the mortgage or property, including
51 administrative actions, mediations and negotiations; (ii) the records of the appropriate registry of
52 deeds; and (iii) any original source documents demonstrating present legal note owner or
53 mortgagee status.

54 (d) The fund shall receive any residential mortgage loan transferred to the commonwealth
55 by operation of law or in accordance with the provisions of this act.

56 (e) A court or other entity transferring such a mortgage loan to the fund shall, if it has
57 jurisdiction to do so, modify the mortgage loan to the extent necessary to obtain compliance with
58 traditional prime lending characteristics, these traditional prime lending characteristics will be
59 annually promulgated in regulations by the Division of Banks including, but not limited to, an
60 original principal of not more than 80 per cent of the real value of the home on date of
61 origination, a prime lending rate, a fixed payment schedule, standard underwriting criteria, no
62 prepayment penalties and no balloon payments.

63 (f) If any payments transferred to the fund are for a mortgage loan that is or might be
64 predatory and has not been modified accordingly before transfer, the fund shall immediately
65 request a determination of traditional prime lending characteristics for such payments from the
66 division of banks or another appropriate state agency and modify mortgage characteristics
67 according to subsection (e).

68 (g) To the extent possible, any mortgage loan transferred pursuant to this act shall be
69 accompanied by all loans documents.

70 (h) Within 20 days of the transfer of the mortgage loan to the fund, the fund shall record
71 in the appropriate registry of deeds, at its own cost, a certified copy of all documents evidencing
72 the transfer.

73 (i) Within 30 days of the transfer of mortgage payments, the fund shall notify each
74 mortgagor of the periodic payment to be made to the fund and notify the mortgagor of any
75 modified mortgage loan characteristics, including present principal, interest rate, monthly

76 payment, amortization schedule, escrowing of taxes and insurance, payment requirements and
77 authorized payee contact information.

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

80 (j) The fund may retain up to 15 per cent of all mortgage payments transferred to it and
81 expend such amounts to defray administrative overhead. CEDAC shall prudently invest any
82 excess over the amounts required to administer the fund for a given fiscal year, with the income
83 thereof being paid into the fund.

84 (k) In case of the dissolution of the fund, any balance of such administrative overhead
85 remaining shall revert to the General Fund.

86 (l) If a homeowner whose mortgage loan payments have been transferred to the fund
87 becomes delinquent, the fund shall make every effort, including pre-foreclosure mediation if
88 applicable, to assist the mortgagor to stay in its home. If the mortgagor nonetheless defaults, and
89 cure is not feasible, the fund may accelerate the maturity of the remaining principal balance and
90 foreclose by court action in the name of the commonwealth pursuant to section 1 of chapter 244.

91 (m) Any sale of a property after such a foreclosure shall convey title in fee simple from
92 the commonwealth to the purchaser. The proceeds of any such sale shall, after subtracting any
93 legally-required distribution of proceeds and costs, including costs of recordation in the
94 appropriate registry of deeds, be credited to the fund.

95 (n) When a mortgagor completes payments of a mortgage loan transferred to the fund, the
96 fund shall provide a discharge of the mortgage, and record this at its expense within 30 days of
97 payoff in the appropriate registry of deeds.

98 Section 4B. (a) CEDAC shall appoint a director to administer the fund and promptly
99 establish criteria for its regulation.

100 (b) CEDAC shall ensure that monies from the fund are invested prudently.

101 (c) At the close of each fiscal year, the fund shall determine the number of Eaton
102 affidavits filed with each registry of deeds in the preceding 5 calendar years.

103 (d) Monies, beyond administrative expenses, that the fund receives by appropriation or
104 otherwise that are not attributable to a given county or former county, and interest on any monies
105 invested on the fund's behalf, shall be allocated among the counties at the close of each fiscal
106 year according to the proportion of Eaton affidavits filed with the appropriate registry of deeds in
107 the previous 5 calendar years.

108 (e) If as of July 1 of any year, payments to the fund from a given county (plus any
109 allocated monies to the fund for that County) equal at least \$300,000 per County or payments to
110 the fund from a given city or a cluster of up to 5 towns has reached \$100,000, CEDAC shall, in
111 consultation with community agencies, hold a hearing within that county for public input into the
112 distribution within that county of the funds and the purposes, including affordable housing, for
113 which CEDAC shall expend them. CEDAC shall give preference to areas or neighborhoods with
114 the highest proportions of Eaton affidavits filed in the appropriate registry of deeds during the
115 preceding 5 years. CEDAC shall publicize each such hearing widely through community

116 agencies, the relevant members of the general court, and in the local media in the county in
117 which the hearing is to be held.

118 (f) CEDAC shall establish a point system for potential projects, based upon public input.
119 CEDAC shall announce a request for proposals, review and rank such proposals and award
120 contracts. CEDAC shall conduct an annual accounting of the funds distributed for each project
121 with a specification of the results obtained.

122 (g) Annually, not later than December 15, the director of the fund shall file a report with
123 the speaker of the house of representatives, the president of the senate, the house and senate
124 committees on ways and means, the joint committee on housing, the joint committee on
125 community development and small businesses and the joint committee on financial services,
126 providing an accounting of the fund's monies expended, including the regional distribution and
127 usage of expended monies, a description of the respective projects' funding, and the funding's
128 impact on affordable housing and community development.

129 SECTION 3. The division of banks shall promulgate, amend or repeal regulations
130 necessary to implement this act.