SENATE DOCKET, NO. 1320 FILED ON: 1/16/2025

SENATE . . . . . No. 765

The Commonwealth of Massachusetts

PRESENTED BY:

Adam Gómez

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 establishing a Massachusetts foreclosure prevention program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Adam Gómez	*Hampden*	
Mike Connolly	*26th Middlesex*	*4/8/2025*
Russell E. Holmes	*6th Suffolk*	*4/8/2025*
Joan B. Lovely	*Second Essex*	*5/14/2025*
James B. Eldridge	*Middlesex and Worcester*	*9/9/2025*

SENATE DOCKET, NO. 1320 FILED ON: 1/16/2025

SENATE . . . . . No. 765

By Mr. Gomez, a petition (accompanied by bill, Senate, No. 765) of Adam Gomez for legislation to establish a Massachusetts foreclosure prevention program. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *653* OF 2023-2024.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act establishing a Massachusetts foreclosure prevention program.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 244 of the Massachusetts General Laws is hereby amended by inserting after section 35C the following section: -

Section 35D. Foreclosure Prevention Program

Section 35D. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Massachusetts Foreclosure Prevention Program", the program established by this section, that provides supervised conferences where parties make a good faith effort to avoid foreclosure through application of sustainable foreclosure prevention alternatives.

"Covered loans", all loans secured by 1 or more liens placed with the borrower's consent on real property that serves as the borrower's primary residence, including properties with up to 4 rental units provided that the property also serves as the borrower's primary residence, including voluntary liens and liens created under terms of a deed of trust or mortgage, including loans secured by reverse mortgages, condominium, and cooperative units; provided further that covered loans shall not include judgment liens, tax liens, liens for municipal services, or any liens imposed by a governmental unit in connection with an assessment or penalty. This section applies to loans secured by reverse mortgages, condominium, and cooperative units.

"Creditor", a person or entity that holds or controls, partially, wholly, indirectly, directly or in a nominee capacity, a mortgage loan securing an owner-occupied residential property, including, but not limited to, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder, Mortgage Electronic Registration System or mortgage servicer, including the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; provided, that "creditor" shall also include any servant, employee or agent of a creditor; and provided, further, that the bodies politic and corporate and public instrumentalities of the commonwealth established in chapter 708 of the acts of 1966 and in section 35 of chapter 405 of the acts of 1985 shall not be a creditor.

"Creditor's representative", a person who has the authority to negotiate and approve the terms of and modify a mortgage loan, or a person who, under a servicing agreement, has the authority to negotiate and approve the terms of and modify a mortgage loan, and has the authority to appear on behalf of the creditor at the foreclosure prevention conferences, and has the authority and ability to communicate loss mitigation decisions at the foreclosure prevention

conference; provided further that the creditor's representative may not be the attorney representing the creditor of the loan in the foreclosure.

"Eligible borrowers", a mortgagor of a mortgage loan, or successor in interest to a mortgagor, who meet 1 or more of the following: (i) borrowers with covered loans who are served with a notice of right to cure pursuant to section 35A and elect to participate in the conference program; (ii) borrowers with covered loans who have not been served with a notice of right to cure pursuant to section 35A, including borrowers who are current in mortgage payments, but who are at imminent risk of default and elect to participate in the conference program; (iii) borrowers who are referred to the conference program by a judge at any time; (iv) borrowers in active bankruptcy cases whose loans are in default or are at imminent risk of default and are eligible to participate in the conference program so long as the bankruptcy court, either in the individual case or through a standing order, has granted relief from the automatic stay to all parties for the purpose of participating in the conferences, provided further that the borrower's prior discharge of personal liability on the underlying loan debt does not preclude participation in the conferences.

"Foreclosure prevention program administrator", a government or non-profit organization designated by the attorney general to administer the Massachusetts Foreclosure Prevention Program. The administrator shall develop guidelines and standards for conference monitor trainings to ensure monitors have a working knowledge of all federal and state programs available to help homeowners retain their homes.

"Foreclosure prevention program conference monitors", individuals appointed by the administrator and trained to facilitate foreclosure prevention conferences, who may include (i)

active retired justices or judges who may be assigned by the respective chief justice or justice of the court; (ii) people educated or experienced in the professions of law, real estate, accounting, or mediation, or (iii) people who have worked with homeowners or creditors. Conference monitors will be immune from civil liability for performance of their duties under this section, except for gross negligence.

"Good faith", honesty in fact and the observance of reasonable commercial standards of fair dealing, required by creditors participating in foreclosure prevention conferences in evaluating borrowers for all available foreclosure prevention options, in compliance with all state and federal laws, rules, and regulations,

"Certificate of compliance", certificate issued by the administrator upon finding that (i) the creditor made a good faith effort to reach a mutually agreeable commercially reasonable alternative to foreclosure, or (ii) despite reasonable notice, the borrower declined to participate in the foreclosure prevention program.

"Loss mitigation", systematic consideration of all alternatives to a foreclosure sale that will minimize losses to creditors in the covered loan and avoid foreclosure where possible.

(b) Conference procedure: The creditor of a covered loan and eligible borrower shall engage in good faith in the Foreclosure Prevention Program conferences as set out in this section.

(1) Notice of intention to foreclose. The creditor of a covered loan who serves a borrower with the notice of right to cure under section 35A shall concurrently serve the Administrator with a copy of the notice.

(2) Notice of conference. Within 5 business days of the Administrator's receipt of the copy of the notice of right to cure, or a request from an eligible borrower to participate in the foreclosure prevention program, the Administrator shall mail to the borrower a notice of right to participate in a supervised foreclosure prevention conference. The notice shall describe the rules and procedures for the conference and provide the borrower with referral information for HUD-certified housing counselors approved by the Administrator. The notice shall describe the state law foreclosure procedures and timeline.

(3) Election to proceed with conference. The notice of the conference shall include a check-box for the borrower to indicate an election to participate. The notice will also include a check-box for the borrower to indicate election for all parties to participate in-person rather than by videoconference. The notice shall indicate that the election form must be returned to the Administrator within 30 days of service in order to preserve the right to participate, but additional time may be granted for good cause. The Administrator will promptly notify the creditor of the borrower's election.

(4) Appointment of conference monitor. Upon receipt of the borrower's election to participate, the Administrator shall designate a conference monitor for the matter.

(5) Notice to the parties. Within 10 days of the Administrator's receipt of the borrower's election to participate, the conference monitor shall notify in writing the creditor or creditor's attorney and the borrower of the Foreclosure Prevention Program and inform the parties of the identity of the conference monitor, the requirements of the program, and the date, time and location of the initial phone conference. Sending the notice shall constitute the beginning of the conference process as set forth in this section. Together with the notice the Administrator shall

provide a list of documents that the creditor will be required to provide to the monitor and the borrower before the conference. The monitor shall set deadlines for the submission of documents.

(6) Notice to non-foreclosing lien holders of covered loans. The Administrator shall provide written notice of the conference sessions and procedures to all non-foreclosing lien holders of a covered loan identifiable from public land records and invite their participation. The notice shall inform such lienholders that their rights could be affected by the loss mitigation conferences.

(7) Communication and document exchange. To the extent feasible and accessible by all parties, the monitor shall use secure internet portals or document storage sites for the exchange of documents. These shall be under the control of the Administrator and not the parties. Borrowers will not be denied access to the Program because they provided documents to the monitor and the parties by a method other than an internet portal or document storage site.

(8) The foreclosure prevention conference:

(i) The monitor shall schedule a conference which will be held virtually via a videoconferencing platform unless the borrower requests that all parties attend an in-person conference. The creditor's representative and the borrower may appear with counsel. The borrower may appear with a housing counselor or other individual designated by the borrower.

(ii) The creditor's representative shall provide, 10 days prior to the conference, relevant information concerning the loan and the property required for a loss mitigation review, in a form to be developed by the Administrator.

(iii) During the conference the parties must first engage in evaluating the borrower for all options to retain the home. When home retention options have been exhausted or if the borrower wishes to exit the property, the creditor must review for non-retention options such as a short sale or deed-in-lieu of foreclosure. This section does not mandate the implementation of a specific loss mitigation option under a particular set of circumstances.

(iv) If the creditor appears for the conference with appropriate authority, has provided all required documents, made a good-faith effort to agree to a commercially reasonable alternative to foreclosure, and has reviewed all loss mitigation options without reaching an agreement, the monitor shall issue a Certificate of Compliance with the conference program. If the borrower declines the election to participate, or fails to appear at a conference without cause, there shall be a basis to certify the creditor's compliance with this section.

(v) Continuance of a conference for cause may be granted once by the conference monitor and thereafter only upon agreement of all parties. Notice of continuance dates shall be provided to all interested parties, including non-foreclosing lien holders of a covered loan.

(vi) As a pre-condition to conducting a valid judicial or non-judicial foreclosure sale the creditor must first record in the registry of deeds of the county where the property is located a Certificate of Compliance with the provisions of this section. The Certificate must bear the signature of a duly authorized conference monitor or a judge. If the conference monitor does not issue a Certificate of Compliance, the creditor will be prohibited from continuing with the foreclosure process.

(vii) A foreclosure sale of a covered loan shall not pass title to the purchaser unless the Certificate of Compliance was recorded before the sale.

(viii) Conducting a foreclosure sale without having obtained and recorded a Certificate of Compliance shall constitute an unfair and deceptive business practice under section 2, chapter 93A of the General Laws.

(ix) If the borrower does not elect to participate in the Program and does not pursue a modified mortgage loan under section 35B, if eligible, foreclosure may proceed under this chapter. If a borrower elects to participate in the Program, a creditor shall not accelerate the note or otherwise initiate foreclosure proceedings unless the conference monitor has issued a Certificate of Compliance to show that the creditor participated in the program in good faith.

(9) Conference Report. The conference monitor shall complete a Conference Report and provide a copy of the Report to the parties and the Administrator within 5 business days of the date of the conference. The Report shall state the names and addresses of attendees and the dates and times of all conferences, list the documents presented, and summarize the options considered. If an agreement was reached in full or partial settlement, the Report shall summarize the terms of the agreement. If the agreement provides for a trial modification or forbearance plan, the Report shall schedule an appropriate review date to monitor the finalization of the agreement. The Report shall state with specificity the grounds for the monitor's decision to provide or decline to provide a Certificate of Compliance. The Report shall not be a matter of public record.

(c) Judicial enforcement and sanctions. Either party may seek judicial enforcement of this section.

(1) If a creditor or their attorney fails to attend a conference or to make a good faith effort to participate in the Foreclosure Prevention Program, including review for all loss mitigation

options, the court may impose appropriate sanctions. In determining the nature and extent of appropriate sanctions, the court shall consider the need for deterrence of similar future conduct by the entity being sanctioned and by others and may take into account prior orders imposing sanctions upon the sanctioned party, whether in the same case or in other previous cases. The imposition of any sanction does not bar any independent action by a defendant to seek recovery with respect to the actions giving rise to the order of sanctions.

(2) Sanctions. The court may impose sanctions upon the creditor. The sanctions may apply prospectively to compel compliance or retroactively to punish past non-compliance, or the court may impose sanctions that operate both prospectively and retroactively. Sanctions may include: tolling of interest and other charges pending good faith completion of the conferences, per diem monetary penalties, assessment of costs and fees, assessment of reasonable attorney fees, entry of judgment, dismissal without prejudice, dismissal without prejudice with a prohibition on refiling the foreclosure action for a stated period of time, dismissal with prejudice or reduction or release of the lien, or any other sanctions the court deems appropriate. Sanctions assessed to a creditor shall not be shifted to the borrower.

(3) A creditor's violation of the provisions of this section shall constitute an unfair and deceptive act in commerce and a violation of chapter 93A of the General Laws.

(4) Either party may seek judicial relief to compel a party to execute a written agreement embodying the terms of a conference settlement;

(5) The borrower may bring an action to enforce the provisions of this section, including the requirements for creditor participation, the designation of a creditor's representative, and the

production of documents. The borrower may also bring an action to enforce program time frames or to require compliance with an agreement reached in the course of the conference process.

(6) Breach of settlement agreement. If the creditor claims that the borrower breached the terms of a conference agreement and wishes to foreclose, the creditor may notify the monitor and borrower of the creditor's claim of breach and intention to proceed with a foreclosure. The conference monitor shall provide the borrower with at least 10 days to object to the creditor's request. If the borrower does not timely object, the monitor shall issue a certificate of compliance allowing the foreclosure to proceed and so notify the parties and the Administrator. If the borrower objects, the monitor shall schedule a further conference to determine whether a breach occurred and whether the creditor should be given certification to foreclose. The rules contained in this section for conferences shall apply to such a conference, except that additional documentation and the scope of the conference shall be limited to evidence of the alleged breach of agreement.

(7) Use of conference information. The information discussed in or presented during a conference session shall be kept confidential and shall not be used in any legal proceeding, except for actions to enforce this section or if the information can be obtained from sources outside the Program.

(8) Data reporting. The monitor shall submit copies of conference records, including document checklists, conference scheduling orders, conference reports, and settlement agreements, to the Administrator. These records shall not be available to the public. However, the Administrator or its designee may, consistent with the policy of protecting participant confidentiality, review the conference records for research purposes. The Administrator shall

review conference records on a regular basis in order to provide the legislature and publicly posted a summary of Program data including (a) the number of borrowers who are notified of the program; (b) the participation rate for borrowers and creditors; and (c) the number of Certificates of Compliance issued, and any other relevant data.

(d) Program Funding

(1) Costs. In addition to the charge currently assessed for filing a complaint under the Servicemembers Civil Relief Act (SCRA) under chapter 57 of the acts of 1943, as amended through Chapter 142 of the Acts of 1998, the creditor shall pay a fee in an amount and manner to be determined by the attorney general upon the filing of each Servicemember case. This cost shall not be shifted to the borrower. The Administrator will deposit these funds into a segregated fund known as the "Foreclosure Prevention Fund."

(2) Foreclosure prevention fund. (i) The funds deposited into the Foreclosure Prevention Fund shall be designated primarily for costs of administration of the Foreclosure Prevention Program and payment of monitor fees. Any remaining funds shall be applied to cover costs of administration of the program, as well as outreach directed to homeowners at risk of foreclosure or in foreclosure. The Administrator shall implement a plan for outreach that will include mailings and phone contact designed to encourage participation in the supervised conference program.

(ii) The funds deposited in the Foreclosure Prevention Fund, including interest earned, shall be used solely for the purposes outlined in this section and shall not be transferred to the state's general fund.

(iii) Fee shifting barred. Other than the filing fee surcharge, the parties participating in foreclosure prevention conferences shall bear their own costs for participation. Unless ordered as a sanction for non-compliance by a court, a creditor shall not shift its costs of participation to the borrower, including costs for attorney's fees or the conference program fee. Creditors may not charge borrowers fees as a condition of agreement to a loss mitigation option.

(e) Implementation. The provisions of this section will apply to all foreclosures in which the creditor gives an initial foreclosure notice or notices of acceleration 60 days after the date of enactment of this section.

(f) Relation to other laws. This section does not preclude courts from enforcing other state and federal statutes, common law remedies, and equitable doctrines that might bar foreclosure in particular circumstances, or require implementation of a loss mitigation option. As set forth in section 4, a court is authorized to impose sanctions on the creditor of a covered loan or the creditor's attorney, upon finding that the creditor failed to participate in the conference process in good faith as defined in section 2.8. Unless expressly provided for in the terms of a written agreement, by participating in the conferences under this section the parties do not waive existing and future legal claims arising from the loan transaction.