

Massachusetts Alliance Against Predatory Lending

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AN ACT TO FACILITATE ALTERNATIVES TO FORECLOSURE: FACT SHEET

Senate Bill S425, Main Sponsor: Senator Chandler
House Bill H947, Main Sponsors: Representatives Mahoney, O'Day, Keefe

What Does This Bill Do?

This Bill requires banks to mediate in good faith with homeowners to identify alternative resolutions before starting foreclosure. It establishes the Massachusetts Foreclosure Mediation Program (MFMP), administered by the Massachusetts Office of Public Collaboration and overseen by the Attorney General. The MFMP will train neutral, third-party mediators in foreclosure alternatives and ensure all borrowers have the option of participating in mediation before foreclosure can begin. If a mutually acceptable mediated agreement cannot be reached, a good faith certificate will issue to any party whose participation fulfilled good faith requirements. Said certificate will be required to record a foreclosure deed.

Two Other Bills Have Been Filed:

Preventing Unnecessary Vacancies of Foreclosed Homes, Judicial Foreclosure

How Will the Massachusetts Foreclosure Mediation Program Work?

Banks usually foreclose by an auction in Massachusetts, using the power of sale. Under current law, foreclosing lenders must first send the homeowner a notice of Right to Cure at least 150 days before initiating foreclosure (subject to G.L. c.244 s.35A). This Bill requires the lender to send the same notice to the MFMP. (If no notice of Right to Cure is required, the lender must send a notice of intent to foreclose at least 150 days before accelerating the note.) The MFMP then notifies homeowner of their right to participate in the mediation. Homeowners must reply to the MFMP to schedule a mediation session.

Before the mediation, the lender will send the homeowner and MFMP a net present value analysis of the loan to review. The homeowner will be referred to and encouraged to work with a housing counselor before mediation. The mediation session will be conducted in person, between the homeowner and his/her representative or attorney, and the lender's representative, who must have authority to make an agreement. Additional mediation can be scheduled by mutual agreement. A mediated agreement could include any commercially reasonable alternative to foreclosure including a loan modification with principal reduction, interest rate reduction, or change in the term of the mortgage. If agreement is reached, the homeowner has seven days to sign and return it. The entire mediation process will last no longer than 120 days from the time the homeowner contacts the MFMP. The mediator must certify the lender participated in mediation in good faith to complete foreclosure.

Why Do We Need Pre-Foreclosure Mediation?

Massachusetts is the only New England state that has not tried pre-foreclosure mediation, yet the cumulative impact of its foreclosures continues to grow. ***The 3rd quarter of 2013 saw a 217% rise in scheduled foreclosure auctions in the state – an avalanche waiting to fall. Petitions in January 2014 increased 307% over December 2013!*** This increases the negative impacts on our state's families, communities and economy with an estimated loss of up to \$4.1B per month to our state. Foreclosures now occur statewide, including in rural communities and high income suburbs. The National Consumer Law Center has affirmed an estimated ~100,000 more Massachusetts foreclosures before the crisis ends.

Voluntary refinancing programs fall far short of their projected impact. The \$75B federal Home Affordable Modification Program (HAMP) was designed to help 3 to 4 million homeowners by the end of 2012, but by March 2010, there were only 170,000 permanent modifications. The HAMP process takes over 14 months and homeowners send the same documents to lenders 6 times on average. Borrowers report: extremely long telephone waits to reach lenders; being transferred between departments and lost paperwork. Most homeowners are denied but not told why, while lenders foreclose during the process in violation of HAMP rules.

Many homeowners have legal claims and realistic, mutually satisfactory solutions to propose to an authorized representative of their lender but do not know how to present them. They need the skilled guidance of an educated, neutral third party – the trained foreclosure mediator. For most distressed homeowners, all they need for resolution is an opportunity to speak with the lender in a proven meaningful way, which the Bill would provide.

Have any Massachusetts Municipalities enacted Pre-Foreclosure Mediation?

Yes, 4 have: Springfield in September 2011, Lynn and Lawrence in Spring 2013 and most recently Worcester in December, 2013; more are preparing to. In the absence of prior, statewide passage of *Pre-Foreclosure Mediation*, cities have felt an urgent need to establish their own programs although they are not certain if, as municipalities, they have the legal authority. Springfield recently asked the Massachusetts Supreme Judicial Court to rule on this question. Municipalities' need is great – a statewide program is more economical and provides vital consistency.

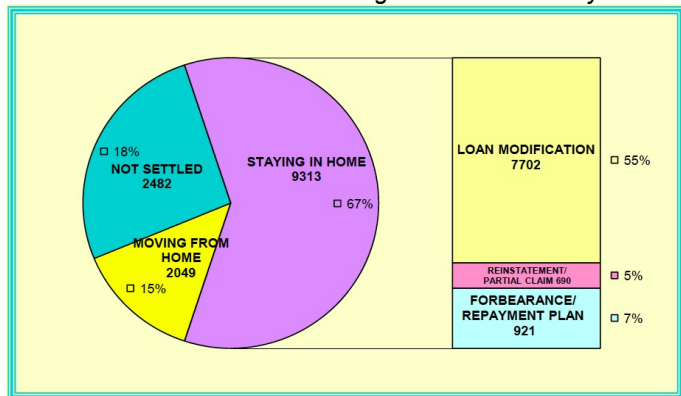
How will Pre-Foreclosure Mediation Help?

Pre-foreclosure Mediation gives homeowners the ability to review their mortgage in a safe, mediated face-to-face meeting with an authorized decision-maker from their lender and develop a solution satisfactory to both parties in a time period shorter than Massachusetts' present 150 day, Right to Cure period. These resolutions require only one session (although more are allowed) where all required documents have already been gathered to reach an agreement that may include principal reduction, interest rate reduction, or change in the term of the mortgage.

Is Pre-Foreclosure Mediation Working in Other Places?

In other jurisdictions with mediation requirements, approximately half of homeowners respond to offers to mediate. On average, over 50% of homeowners and lenders who sit down to third-party mediation are able to find an agreement that keeps the homeowner in the home. In Connecticut, 40% of homeowners participate in mediation with 67% staying in their homes as a result and 83% obtaining some alternative to foreclosure. 60-70% of Philadelphia's homeowners go to the initial session, with roughly 1/3 remaining in their home long-term. In New York, ~80% of homeowners go to mediation, with ~half staying in their homes. Over 30 cities or states require foreclosure mediation (such as Maine, Maryland, Nevada, Vermont, and Providence, RI). Nevada's program reports lenders saved millions.

CT Foreclosure Mediation Program Results – May 2012



Will Pre-Foreclosure Mediation Delay the Foreclosure Process?

No. The Bill specifies that the mediation process will take less time than the Right to Cure period defined in G.L. 244, s.35A, enacted in 2010. In the instances where mediation results in no satisfactory agreement, a certificate of good faith will be issued to either or both parties that met participation requirements. A good faith certificate is sufficient to allow the mortgage/note-holder to proceed.

Will this Bill cost or save the Commonwealth money?

Foreclosures cost everyone. One foreclosed home has a devastating ripple effect on surrounding home values. (In Boston alone, one vacant, foreclosure home costs neighbors, residents and the city itself from \$190,000 to \$1,072,000.) Volunteer modification programs have not slowed down the rate of foreclosures and have fallen staggeringly short of projected numbers. HUD Counseling for loan modification has only a 20% average success rate. Lenders are also losing money; in September 2010 alone, mortgage servicer portfolios lost \$2.7 B in foreclosure sales nationally, or 58% of original principal balances. Loan modifications reduce losses to everyone, even lenders - mortgages modified to forgive a portion of principal lost only 20% of loan balances.

The Massachusetts Foreclosure Mediation Program is structured so that program costs are covered by fees in a manner that has successfully provided for mediation programs across the country.

maaplinfo@yahoo.com

www.MAAPL.info

Legislative Contact: Grace Ross, 617-291-5591

MAAPL MEMBERS/SUPPORTING ORGANIZATIONS: Action for Boston Community Development, Inc., Action for Regional Equity, Alliance of Providers of Legal Services to Individuals Facing Foreclosure, ARISE for Social Justice, Arlington Community Trabajando, Boston Tenants Coalition, Brazilian Women's Group, Brockton Interfaith Community, Carpenters Local 40, Carpenters Local 107, Charles Hamilton Houston Institute For Race & Justice, Chelsea Collaborative, Chinese Progressive Association, City Life/Vida Urbana, Coalition for Social Justice, Community Economic Development Ctr of S.E. MA, Community Labor United, Democratic Socialists of America, Dorchester People for Peace, Era Key Realty Services, ESAC, Fair Housing Center of Greater Boston, Greater Boston Legal Services, Greater Four Corners Action Coalition, Green-Rainbow Party of MA, Harvard Legal Aid Bureau, Homeowner Options for MA Elders, Jewish Alliance for Law and Social Action, Lawrence Community Works, Lawyers' Committee for Civil Rights Under Law, Lynn United for Change, Legal Assistance Corporation of Central Mass, Mass Advocates for Children, Mass AFL-CIO, Mass Coalition for the Homeless, Mass Community Action Network, Massachusetts Fair Housing Center, Mass Jobs With Justice, Mass Law Reform Institute, Mass Welfare Rights Union, Merrimack Valley Labor Council, NAACP N.E. Area Council, National Community Reinvestment Coalition, National Consumer Law Center, National Lawyers Guild, Neighbor-to-Neighbor, Neighborhood Legal Services, New England United for Justice, North Shore Labor Council, Oiste?, Organization for a New Equality, Painters District Council 35, Pleasant St. Neighborhood Network Center, Southbridge Community Connections, Springfield No One Leaves Coalition, Survivors Inc., Tri-City Community Action Program, UE Northeast Region, Union of Minority Neighborhoods, United Auto Workers Mass CAP, United Food & Commercial Workers 1445, United For a Fair Economy, United Steel Workers Local 5696, Volunteer Lawyers Project, Worcester Anti-Foreclosure Team.