

HOUSE No. 4323

The Commonwealth of Massachusetts

The committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2298) of the House Bill preventing unlawful and unnecessary foreclosures (House, No. 4096), reports recommending passage of the accompanying bill (House, No.4323). July 25, 2012.

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—————
In the Year Two Thousand Twelve
—————

An Act preventing unlawful and unnecessary foreclosures.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect forthwith the citizens of the commonwealth and prevent unnecessary foreclosures, 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 striking out section 14, as
2 appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

3 Section 14. The mortgagee or person having estate in the land mortgaged, or a person
4 authorized by the power of sale, or the attorney duly authorized by a writing under seal or the
5 legal guardian or conservator of such mortgagee or person acting in the name of such mortgagee

6 or person, may, upon breach of condition and without action, perform all acts authorized or
7 required by the power of sale; provided, however, that no sale under such power shall be
8 effectual to foreclose a mortgage, unless, previous to such sale, notice of the sale has been
9 published once in each of 3 successive weeks, the first publication of which shall be not less than
10 21 days before the day of sale, in a newspaper published in the city or town where the land lies
11 or in a newspaper with general circulation in the city or town where the land lies and notice of
12 the sale has been sent by registered mail to the owner or owners of record of the equity of
13 redemption as of 30 days prior to the date of sale, said notice to be mailed by registered mail at
14 least 14 days prior to the date of sale to said owner or owners to the address set forth in section
15 61 of chapter 185, if the land is then registered or, in the case of unregistered land, to the last
16 address of the owner or owners of the equity of redemption appearing on the records of the
17 holder of the mortgage, if any, or if none, to the address of the owner or owners as given on the
18 deed or on the petition for probate by which the owner or owners acquired title, if any, or if in
19 either case no owner appears, then mailed by registered mail to the address to which the tax
20 collector last sent the tax bill for the mortgaged premises to be sold, or if no tax bill has been sent
21 for the last preceding 3 years, then mailed by registered mail to the address of any of the parcels
22 of property in the name of said owner of record which are to be sold under the power of sale and
23 unless a copy of said notice of sale has been sent by registered mail to all persons of record as of
24 30 days prior to the date of sale holding an interest in the property junior to the mortgage being
25 foreclosed, said notice to be mailed at least 14 days prior to the date of sale to each such person
26 at the address of such person set forth in any document evidencing the interest or to the last
27 address of such person known to the mortgagee. Any person of record as of 30 days prior to the
28 date of sale holding an interest in the property junior to the mortgage being foreclosed may

29 waive at any time, whether prior or subsequent to the date of sale, the right to receive notice by
30 mail to such person under this section and such waiver shall constitute compliance with such
31 notice requirement for all purposes. If no newspaper is published in such city or town, or if there
32 is no newspaper with general circulation in the city or town where the land lies, notice may be
33 published in a newspaper published in the county where the land lies, and this provision shall be
34 implied in every power of sale mortgage in which it is not expressly set forth. A newspaper
35 which by its title page purports to be printed or published in such city, town or county, and
36 having a circulation in that city, town or county, shall be sufficient for the purposes of this
37 section.

38 The following form of foreclosure notice may be used and may be altered as
39 circumstances require; but nothing in this section shall be construed to prevent the use of other
40 forms.

41 (Form.)

42 MORTGAGEE'S SALE OF REAL ESTATE.

43 By virtue and in execution of the Power of Sale contained in a certain mortgage given
44 by..... to..... dated..... and recorded with
45

46 Deeds, Book....., page....., of which mortgage the undersigned is the present
47 holder,.....

48 (If by assignment, or in any fiduciary capacity, give reference to the assignment or
49 assignments recorded withDeeds, Book....., page....., of which mortgage the
50 undersigned is the present holder,.....)

51 for breach of the conditions of said mortgage and for the purpose of foreclosing the
52 same will be sold at Public Auction at.....o'clock,..... M. on the..... day of.....
53 A.D. (insert year),..... (place)..... all and singular the premises described in said
54 mortgage,

55 (In case of partial releases, state exceptions.)

56 To wit: “(Description as in the mortgage, including all references to title, restrictions,
57 encumbrances, etc., as made in the mortgage.)”

58 Terms of sale: (State here the amount, if any, to be paid in cash by the purchaser at the
59 time and place of the sale, and the time or times for payment of the balance or the whole as the
60 case may be.)

61 Other terms to be announced at the sale.

62 (Signed) _____

63 Present holder of said mortgage.____

64 A notice of sale in the above form, published in accordance with the power in the
65 mortgage and with this chapter, together with such other or further notice, if any, as is required
66 by the mortgage, shall be a sufficient notice of the sale; and the premises shall be deemed to have
67 been sold and the deed thereunder shall convey the premises, subject to and with the benefit of
68 all restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes,

69 assessments, liens or claims in the nature of liens, and existing encumbrances of record created
70 prior to the mortgage, whether or not reference to such restrictions, easements, improvements,
71 liens or encumbrances is made in the deed; provided, however, that no purchaser at the sale shall
72 be bound to complete the purchase if there are encumbrances, other than those named in the
73 mortgage and included in the notice of sale, which are not stated at the sale and included in the
74 auctioneer's contract with the purchaser.

75 For purposes of this section and section 21 of chapter 183, in the event a mortgagee
76 holds a mortgage pursuant to an assignment, no notice under this section shall be valid unless (i)
77 at the time such notice is mailed, an assignment, or a chain of assignments, evidencing the
78 assignment of the mortgage to the foreclosing mortgagee has been duly recorded in the registry
79 of deeds for the county or district where the land lies and (ii) the recording information for all
80 recorded assignments is referenced in the notice of sale required in this section. The notice shall
81 not be defective if any holder within the chain of assignments either changed its name or merged
82 into another entity during the time it was the mortgage holder; provided, that recited within the
83 body of the notice is the fact of any merger, consolidation, amendment, conversion or acquisition
84 of assets causing the change in name or identity, the recital of which shall be conclusive in favor
85 of any bona fide purchaser, mortgagee, lienholder or encumbrancer of value relying in good faith
86 on such recital.

87 SECTION 2. Said chapter 244 is hereby further amended by inserting after section 35A the
88 following 2 sections:-

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

91 “Affordable monthly payment”, monthly payments on a mortgage loan, which, taking
92 into account the borrower’s current circumstances, including verifiable income, debts, assets and
93 obligations enable a borrower to make the payments.

94 “Borrower”, a mortgagor of a mortgage loan.

95 “Certain mortgage loan”, a loan to a natural person made primarily for personal, family
96 or household purposes secured wholly or partially by a mortgage on an owner-occupied
97 residential property with 1 or more of the following loan features: (i) an introductory interest
98 rate granted for a period of 3 years or less and such introductory rate is at least 2 per cent lower
99 than the fully indexed rate; (ii) interest-only payments for any period of time, except in the case
100 where the mortgage loan is an open-end home equity line of credit or is a construction loan; (iii)
101 a payment option feature, where any 1 of the payment options is less than principal and interest
102 fully amortized over the life of the loan; (iv) the loan did not require full documentation of
103 income or assets; (v) prepayment penalties that exceed section 56 of chapter 183 or applicable
104 federal law; (vi) the loan was underwritten with a loan-to-value ratio at or above 90 per cent and
105 the ratio of the borrower’s debt, including all housing-related and recurring monthly debt, to the
106 borrower’s income exceeded 38 per cent; or (vii) the loan was underwritten as a component of a
107 loan transaction, in which the combined loan-to-value ratio exceeded 95 per cent; provided,
108 however, that a loan shall be a certain mortgage loan if, after the performance of reasonable due
109 diligence, a creditor is unable to determine whether the loan has 1 or more of the loan features in
110 clauses (i) to (vii), inclusive; and provided, further, that loans financed by the Massachusetts
111 Housing Finance Agency, established in chapter 708 of the acts of 1966 and loans originated
112 through programs administered by the Massachusetts Housing Partnership Fund board
113 established in section 35 of chapter 405 of the acts of 1985 shall not be certain mortgage loans.

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

123 “Creditor’s representative”, a person who has the authority to negotiate and approve the
124 terms of and modify a mortgage loan, or a person who, under a servicing agreement, has the
125 authority to negotiate and approve the terms of and modify a mortgage loan.

126 “Modified mortgage loan”, a mortgage loan modified from its original terms including,
127 but not limited to, a loan modified under 1 of the following: (i) the Home Affordable
128 Modification Program; (ii) the Federal Deposit Insurance Corporation’s Loan Modification
129 Program ; (iii) any modification program that a lender uses which is based on accepted
130 principles and the safety and soundness of the institution and authorized by the National Credit
131 Union Administration, the division of banks or any other instrumentality of the commonwealth ;
132 (iv) the Federal Housing Administration; or (v) a similar federal loan modification plan.

133 “Mortgage loan”, a loan to a natural person made primarily for personal, family or
134 household purposes secured wholly or partially by a mortgage on residential property.

135 “Net present value”, the present net value of a residential property based on a
136 calculation using 1 of the following: (i) the federal Home Affordable Modification Program base
137 net present value model ; (ii) the Federal Deposit Insurance Corporation’s Loan Modification
138 Program ; (iii) the Massachusetts Housing Finance Agency’s loan program used solely by the
139 agency to compare the expected economic outcome of a loan with or without a modified
140 mortgage loan; or (iv) any model approved by the division of banks to consider the total present
141 value of a series of future cash flows relative to a mortgage loan.

142 “Residential property”, real property located in the commonwealth, on which there is a
143 dwelling house with accommodations for 4 or fewer separate households and occupied, or to be
144 occupied, in whole or in part by the obligor on the mortgage debt; provided, however, that
145 residential property shall be limited to the principal residence of a person; provided, further, that
146 residential property shall not include an investment property or residence other than a primary
147 residence; provided, further, that residential property shall not include residential property taken
148 in whole or in part as collateral for a commercial loan; and provided, further, that residential
149 property shall not include a property subject to condemnation or receivership.

150 (b) A creditor shall not cause publication of notice of a foreclosure sale, as required by
151 section 14, upon certain mortgage loans unless it has first taken reasonable steps and made a
152 good faith effort to avoid foreclosure. A creditor shall have taken reasonable steps and made a
153 good faith effort to avoid foreclosure if the creditor has considered: (i) an assessment of the
154 borrower’s ability to make an affordable monthly payment; (ii) the net present value of receiving
155 payments under a modified mortgage loan as compared to the anticipated net recovery following
156 foreclosure; and (iii) the interests of the creditor, including, but not limited to, investors.

157 (1) Except as otherwise specified in a contract, a servicer of pooled residential
158 mortgages may determine whether the net present value of the payments on the modified
159 mortgage loan is likely to be greater than the anticipated net recovery that would result from
160 foreclosure to all investors and holders of beneficial interests in such investment, but not to any
161 individual or groups of investors or beneficial interest holders. The servicer shall act in the best
162 interests of all such investors or holders of beneficial interests if the servicer agrees to or
163 implements a modified mortgage loan or takes reasonable loss mitigation actions that comply
164 with this section. Any modified mortgage loan offered to the borrower shall comply with current
165 federal and state law, including, but not limited to, all rules and regulations pertaining to
166 mortgage loans and the borrower shall be able to reasonably afford to repay the modified
167 mortgage loan according to its scheduled payments. Notwithstanding section 63A of chapter 183,
168 any modified mortgage loan may be made without the consent of the holders of junior
169 encumbrances and without loss of priority for the full amount of the loan thereby modified and
170 shall not be construed so as to grant to any such holder of a junior encumbrance rights which,
171 except for said revision, the holder would not otherwise have.

172 (2) A creditor shall be presumed to have acted in good faith and to have complied with
173 this subsection, if, prior to causing publication of notice of a foreclosure sale, as required by
174 section 14, the creditor:

175 (i) determines a borrower's current ability to make an affordable monthly
176 payment;

177 (ii) identifies a modified mortgage loan that achieves the borrower's affordable
178 monthly payment, which may include 1 or more of the following: reduction in principal,

179 reduction in interest rate or an increase in amortization period; provided, however, that the
180 amortization period shall not be more than a 15-year increase; provided, further, that no
181 modified mortgage loan shall have an amortization period that exceeds 45 years;

182 (iii) conducts a compliant analysis comparing the net present value of the
183 modified mortgage loan and the creditor's anticipated net recovery that would result from
184 foreclosure; provided, that the analysis shall be compliant if the analysis is in accordance with
185 the formula presented in at least 1 of the following: (A) the Home Affordable Modification
186 Program ; (B) the Federal Deposit Insurance Corporation's Loan Modification Program ; (C)
187 any modification program that a lender uses which is based on accepted principles and the safety
188 and soundness of the institution and authorized by the National Credit Union Administration, the
189 division of banks or any other instrumentality of the commonwealth; (D) the Federal Housing
190 Administration; or (E) a similar federal loan modification plan; and

191 (iv) either (A) in all circumstances where the net present value of the modified
192 mortgage loan exceeds the anticipated net recovery at foreclosure, agrees to modify the loan in a
193 manner that provides for the affordable monthly payment; or (B) in circumstances where the net
194 present value of the modified mortgage loan is less than the anticipated net recovery of the
195 foreclosure, or does not meet the borrower's affordable monthly payment, notifies the borrower
196 that no modified mortgage loan will be offered and provides a written summary of the creditor's
197 net present value analysis and the borrower's current ability to make monthly payments, after
198 which the creditor may proceed with the foreclosure process in conformity with this chapter.

199 (c) Under this section, for certain mortgage loans, the creditor shall send notice,
200 concurrently with the notice required by subsection (g) of section 35A, of the borrower's rights

201 to pursue a modified mortgage loan. Said notice shall be considered delivered to the borrower
202 when sent by first class mail and certified mail or similar service by a private carrier to the
203 borrower at the borrower's address last known to the mortgagee or anyone holding thereunder.
204 A copy of said notice shall be filed with the attorney general. The process for determining
205 whether a modified mortgage loan is offered shall take no longer than 150 days. Not more than
206 30 days following delivery of the notice as provided for in this subsection, a borrower who holds
207 a certain mortgage loan shall notify a creditor of: (i) the borrower's intent to pursue a modified
208 mortgage loan which shall include a statement of the borrower's income and a complete list of
209 total debts and obligations, as requested by the creditor, at the time of receipt of the notice; (ii)
210 the borrower's intent to pursue an alternative to foreclosure, including a short sale or deed-in-lieu
211 of foreclosure; (iii) the borrower's intent not to pursue a modified mortgage loan and pursue the
212 right to cure period described in section 35A; or (iv) the borrower's intent to waive the right to
213 cure period and proceed to foreclosure. A borrower who holds a certain mortgage loan and fails
214 to respond to the creditor within 30 days of delivery of the notice provided for in this subsection
215 shall be considered to have forfeited the right to cure period and shall be subject to a right to cure
216 period of 90 days. A borrower shall be presumed to have notified the creditor if the borrower
217 provides proof of delivery through the United States Postal Service or similar carrier. Not more
218 than 30 days following receipt of the borrower's notification that the borrower intends to pursue
219 a modified mortgage loan, a creditor shall provide the borrower with its assessment, in writing,
220 under subsection (b). The assessment shall include, but not be limited to: (i) a written statement
221 of the borrower's income, debts and obligations as determined by the creditor; (ii) the creditor's
222 net present value analysis of the mortgage loan; (iii) the creditor's anticipated net recovery at
223 foreclosure; (iv) a statement of the interests of the creditor; and (v) a modified mortgage loan

224 offer under the requirements of this section or notice that no modified mortgage loan will be
225 offered. If a creditor offers a modified mortgage loan, the offer shall include the first and last
226 names and contact phone numbers of the creditor's representative; provided, that the creditor
227 shall not assign more than 2 creditor's representatives responsible for negotiating and approving
228 the terms of and modifying the mortgage loan. The assessment shall be provided by first class
229 and certified mail. A creditor shall be presumed to have provided the assessment to the borrower
230 if the creditor provides proof of delivery through the United States Postal Service or similar
231 carrier. A borrower who receives a modified mortgage loan offer from a creditor shall respond
232 within 30 days of receipt of the assessment and offer of a modified mortgage loan. The borrower
233 may: (i) accept the offer of a loan modification as provided by the creditor; (ii) make a
234 reasonable counteroffer; or (iii) state that the borrower wishes to waive the borrower's rights as
235 provided by this section and proceed to foreclosure. The borrower's response shall be in writing
236 and, if a counteroffer is proposed, shall include substantiating documentation in support of the
237 counteroffer. The response shall be provided by first class and certified mail. A borrower shall
238 be presumed to have responded if the borrower provides proof of delivery through the United
239 States Postal Service or similar carrier. A borrower who fails to respond to the creditor within 30
240 days of receipt of a modified mortgage loan offer shall be considered to have forfeited the 150
241 day right to cure period and shall be subject to a right to cure period of 90 days. Where a
242 counteroffer is proposed, the creditor shall accept, reject or propose a counteroffer to the
243 borrower within 30 days of receipt. Under this section, additional offers by both parties shall be
244 considered during the right to cure period; provided, however, that a borrower may at any time
245 state, in writing, that the borrower wishes to waive the borrower's rights as provided by this
246 section and proceed to foreclosure. Nothing in this section shall be construed as preventing a

247 creditor and a borrower from negotiating the terms of a modified mortgage loan by telephone or
248 in person following the initial offer of a modified mortgage loan by a creditor; provided,
249 however, that all offers, whether by a creditor or a borrower, shall be in writing and signed by
250 the offeror. The right to a modified mortgage loan, as described in this section, shall be granted
251 once during any 3-year period, regardless of the mortgage holder.

252 (d) The notice required in subsection (c) shall, at a minimum, include the appropriate
253 contact information for modification assistance within the office of the attorney general;
254 provided, that, the notice shall be similar in substance and form to the notice promulgated by the
255 division of banks under section 35A.

256 (e) Nothing in this section shall prevent a creditor from offering or accepting an
257 alternative to foreclosure, such as a short sale or deed-in-lieu of foreclosure, if the borrower
258 requests such alternative, rejects a modified mortgage loan offer or does not qualify for a
259 modified mortgage loan under this section.

260 (f) Prior to publishing a notice of a foreclosure sale, as required by section 14, the
261 creditor, or if the creditor is not a natural person, an officer or duly authorized agent of the
262 creditor, shall certify compliance with this section in an affidavit based upon a review of the
263 creditor's business records. The creditor, or an officer or duly authorized agent of the creditor,
264 shall record this affidavit with the registry of deeds for the county or district where the land lies.

265 The affidavit certifying compliance with this section shall be conclusive evidence in
266 favor of an arm's-length third party purchaser for value, at or subsequent to the resulting
267 foreclosure sale, that the creditor has fully complied with this section and the mortgagee is
268 entitled to proceed with foreclosure of the subject mortgage under the power of sale contained in

269 the mortgage and any 1 or more of the foreclosure procedures authorized in this chapter;
270 provided, that the arm's-length third party purchaser for value relying on such affidavit shall not
271 be liable for any failure of the foreclosing party to comply and title to the real property thereby
272 acquired shall not be set aside on account of such failure. The filing of such affidavit shall not
273 relieve the affiant, or other person on whose behalf the affidavit is executed, from liability for
274 failure to comply with this section, including by reason of any statement in the affidavit. For
275 purposes of this subsection, the term "arm's-length, third party purchaser for value" shall include
276 such purchaser's heirs, successors and assigns.

277 (g) On a bi-annual basis, a creditor shall report the final outcome of each loan
278 modification on all mortgage loans for which the creditor sent to a borrower a notice of the right
279 to pursue a modified mortgage loan to the division of banks.

280 (h) The division of banks shall adopt, amend or repeal regulations to aid in the
281 administration and enforcement of this section, including the minimum requirements which
282 constitute a good faith effort by the borrower to respond to the notice required under subsection
283 (c); provided, that, such regulations may include requirements for reasonable steps and good
284 faith efforts of the creditor to avoid foreclosure and safe harbors for compliance in addition to
285 those under this section. The division of banks shall make any available net present value
286 models accessible to all creditors.

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

289 "Borrower", a mortgagor of a mortgage loan.

290 "Creditor", a person or entity that holds or controls, partially, wholly, indirectly, directly
291 or in a nominee capacity, a mortgage loan securing a residential property, including, but not
292 limited to, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder,
293 Mortgage Electronic Registration System or mortgage servicer, including the Federal National
294 Mortgage Association or the Federal Home Loan Mortgage Corporation. The term creditor shall
295 also include any servant, employee or agent of a creditor.

296 "Mortgage loan", a loan to a natural person made primarily for personal, family or
297 household purposes secured wholly or partially by a mortgage on residential property.

298 "Residential property", real property located in the commonwealth on which there is a
299 dwelling house with accommodations for 4 or fewer separate households and occupied, or to be
300 occupied, in whole or in part, by the obligor on the mortgage debt; provided, however, that
301 residential property shall be limited to the principal residence of a person; provided, further, that
302 residential property shall not include an investment property or residence other than a primary
303 residence; and provided, further, that residential property shall not include residential property
304 taken in whole or in part as collateral for a commercial loan.

305 (b) A creditor shall not cause publication of notice of foreclosure, as required under
306 section 14, when the creditor knows or should know that the mortgagee is neither the holder of
307 the mortgage note nor the authorized agent of the note holder.

308 Prior to publishing a notice of a foreclosure sale, as required by section 14, the creditor, or if the
309 creditor is not a natural person, an officer or duly authorized agent of the creditor, shall certify
310 compliance with this subsection in an affidavit based upon a review of the creditor's business
311 records. The creditor, or an officer or duly authorized agent of the creditor, shall record this

312 affidavit with the registry of deeds for the county or district where the land lies. The affidavit
313 certifying compliance with this subsection shall be conclusive evidence in favor of an arm's-
314 length third party purchaser for value, at or subsequent to the resulting foreclosure sale, that the
315 creditor has fully complied with this section and the mortgagee is entitled to proceed with
316 foreclosure of the subject mortgage under the power of sale contained in the mortgage and any 1
317 or more of the foreclosure procedures authorized in this chapter; provided that, the arm's-length
318 third party purchaser for value relying on such affidavit shall not be liable for any failure of the
319 foreclosing party to comply and title to the real property thereby acquired shall not be set aside
320 on account of such failure. The filing of such affidavit shall not relieve the affiant, or other
321 person on whose behalf the affidavit is executed, from liability for failure to comply with this
322 section, including by reason of any statement in the affidavit. For purposes of this subsection, the
323 term "arm's-length, third party purchaser for value" shall include such purchaser's heirs,
324 successors and assigns.

325 (c) A creditor violates this chapter if the creditor imposes upon a third party the cost of
326 correcting, curing or confirming documentation relating to the sale, transfer or assignment of a
327 mortgage loan, including, but not limited to, costs related to curative actions taken because a
328 foreclosure was commenced without the creditor's possession of a valid, written, signed and
329 dated assignment evidencing the assignment of the mortgage, in violation of section 14. A third
330 party may recover all of the third party's costs including reasonable attorneys' fees for having to
331 correct, cure or confirm documentation.

332 (d) A creditor violates this chapter if the creditor makes statements to a state or federal
333 court related to foreclosure or compliance with this chapter, orally or in writing, that it knows or
334 should know are false, including, but not limited to, statements about the offering of a loan

335 modification, the borrower's history of payments, the validity of the assignment of the mortgage
336 loan, that the creditor is the record holder of the mortgage loan or the creditor's compliance with
337 any other requirements of this chapter.

338 (e) A creditor violates this chapter if the creditor imposes a fee upon a borrower for
339 goods not rendered or services not performed in connection with a foreclosure.

340 (f) No person shall give and no person shall accept any portion, split or percentage of
341 any charge made or received for the rendering of a service in connection with a transaction
342 involving a foreclosure upon a mortgage loan other than for services actually performed.

343 (g) The division of banks may adopt, amend or repeal rules and regulations for the
344 administration and enforcement of this section.

345 (h) In all circumstances in which an offer to purchase either a mortgage loan or
346 residential property is made by an entity with a tax-exempt filing status under section 501(c)(3)
347 of the Internal Revenue Code, or an entity controlled by an entity with such tax exempt filing
348 status, no creditor shall require as a condition of sale or transfer to any such entity any affidavit,
349 statement, agreement or addendum limiting ownership or occupancy of the residential property
350 by the borrower and, if obtained, such affidavit, statement, agreement or addendum shall not
351 provide a basis to avoid a sale or transfer nor shall it be enforceable against such acquiring entity
352 or any real estate broker, borrower or settlement agent named in such affidavit, statement or
353 addendum.

354 SECTION 3. Section 13 of chapter 258 of the acts of 2010 is hereby amended by striking out, in
355 line 5, the word "August 1, 2012" and inserting in place thereof the following word:- August 1,
356 2014.

357 SECTION 4. There is hereby established a task force to consist of 13 members , 1 of whom shall
358 be a representative of the Massachusetts Bankers Association; 1 of whom shall be the attorney
359 general, or a designee, who shall serve as chair of the task force; 2 of whom shall be the chairs of
360 the joint committee on housing; 2 of whom shall be the chairs of the joint committee on financial
361 services; 2 of whom shall be the chairs of the joint committee on the judiciary; 1 of whom shall
362 be appointed by the minority leader of the house of representatives; 1 of whom shall be
363 appointed by the minority leader of the senate; and 3 of whom shall be appointed by the
364 governor, 2 of whom shall be representatives of a legal organization which represents consumers
365 or homeowners in the commonwealth. The task force shall study ways in which the
366 commonwealth can encourage the prevention of unnecessary vacancies following foreclosures.
367 This shall include, but not be limited to, the feasibility of allowing a foreclosed homeowner to
368 continue to occupy the foreclosed property, in whole or in part, until a binding purchase and sale
369 agreement has been executed with a purchaser who intends to occupy the housing
370 accommodation as such purchaser's primary residence and who is not a foreclosing owner. The
371 task force shall study the feasibility in which these situations would be subject to landlord-tenant
372 law in the commonwealth and where the foreclosure sale purchaser may initiate eviction
373 proceedings against the foreclosed homeowner in possession of the property, under chapter 239
374 of the General Laws.

375 The task force shall also conduct a comprehensive review and evaluation of the existing
376 mediation programs throughout the United States. The evaluation made by the task force shall
377 include, but not be limited to, the varying models of mediation programs and their effectiveness;
378 the percentage of borrowers utilizing mediation, the percentage that remain in their homes after
379 mediation and the percentage who re-default; the costs and procedures necessary for

380 implementing and maintaining a state mediation program; funding sources for a state mediation
381 program; potential entities to oversee the state mediation program; potential credit and borrowing
382 obstacles in jurisdictions with mediation programs; and the feasibility for the judiciary to be
383 involved in the mediation process.

384 The task force shall submit its findings and recommendations with the clerks of the house of
385 representatives and senate, the joint committee on financial services, the joint committee on
386 housing and the joint committee on the judiciary not later than December 31, 2013.

387 SECTION 5. The division of banks shall, in consultation with the attorney general, annually
388 track the final outcome of the loan modification process on all certain mortgage loans for which
389 the creditor sent to a borrower a notice of the right to pursue a modified mortgage loan under
390 section 35B of chapter 244 of the General Laws and provide a report of said results to the joint
391 committee on financial services within 90 days of the end of each calendar year.

392 SECTION 6. The division of banks shall adopt, amend or repeal regulations to aid in the
393 administration and enforcement of section 35B of chapter 244 of the General Laws, including the
394 minimum requirements which constitute a good faith effort by the borrower to respond to the
395 notice required under subsection (c) of said section 35B of said chapter 244; provided, that, such
396 regulations may include requirements for reasonable steps and good faith efforts of the creditor
397 to avoid foreclosure and safe harbors for compliance in addition to those under said section 35B
398 of said chapter 244.

399 SECTION 7. Notwithstanding the effective date of section 2, the provisions of section 2 shall
400 apply to any person receiving notice under section 35A of chapter 244 of the General Laws after
401 the effective date of this act; provided, further, that if a creditor has sent the right to cure notice

402 described in said section 35A of said chapter 244 after the effective date of this act, the creditor
403 shall send the notice described in section 35B of said chapter 244 if the borrower would
404 otherwise qualify for such notice.

405 SECTION 8. Section 5 is hereby repealed.

406 SECTION 9. Sections 1, 2 and 5 shall take effect November 1, 2012.

407 SECTION 10. Section 8 shall take effect on December 31, 2017.