

**SENATE . . . . . No. 482**

The Commonwealth of Massachusetts

PRESENTED BY:

*Harriette L. Chandler*

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:
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>James T. Welch</i>	<i>Hampden</i>
<i>Brian A. Joyce</i>	<i>Norfolk, Bristol and Plymouth</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Brian R. Mannal</i>	<i>2nd Barnstable</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Kate D. Campanale</i>	<i>17th Worcester</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>



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By Ms. Chandler, a petition (accompanied by bill, Senate, No. 482) of Harriette L. Chandler, Mary S. Keefe, Timothy R. Madden, Timothy J. Toomey, Jr. and other members of the General Court for legislation relative to alternatives to foreclosure. Financial Services.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 425 OF 2013-2014.]

**The Commonwealth of Massachusetts**

—————  
**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
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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 Chapter 244 of the Massachusetts General Laws as appearing in the 2012 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 “Borrower”, an individual mortgagor, his or her assignee, successor, or a trust or trustee  
6 who owns and resides in residential real property located in the city, and for whom such  
7 residential real property is his/her 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 incorporating an assessment of the borrower's current circumstances, including without  
12 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, or in a nominee capacity, a mortgage loan secured by residential property, including,  
15 without limitation, a mortgagee, an originator, holder, investor, assignee, successor, trust, trustee,  
16 nominee holder, mortgage loan servicer, including, but not limited to the Federal National  
17 Mortgage Association or the Federal Home Loan Mortgage Corporation or any other  
18 Government Sponsored Entity. The term "creditor" shall also include any servant, employee,  
19 subcontractor or agent of a creditor.

20 "Creditor's representative", a person who has the authority to negotiate and approve the  
21 terms of and modify a mortgage loan.

22 "Mediator" shall mean an individual: (A) Whose training complies with the qualification  
23 standards for neutrals specified in the guidelines for training mediators adopted by the Supreme  
24 Judicial Court of Massachusetts pursuant to Rule 8 of the Uniform Rules for Dispute Resolution;  
25 and (B) Who has completed training on foreclosure mediation; and (C) Who has a working  
26 knowledge of all federal, state and regional programs available to help homeowners retain their  
27 homes

28 "Modified mortgage loan", a mortgage modified from its original terms including, but  
29 not limited to, a loan modified under 1 of the following: (i) the Home Affordable Modification  
30 Program (ii) the Federal Deposit Insurance Corporation's Loan Modification Program, (iii) any  
31 modification program that a lender uses which is based on accepted principles and the safety and

32 soundness of the institution and authorized by the National Credit Union Administration or the  
33 division of banks, (iv) the Federal Housing Administration or (v) a similar federal loan  
34 modification plan.

35 “Mortgage loan”, a loan to a natural person (or to a nominee trust or any such other entity  
36 commonly recognized under Massachusetts law as a lawful borrower) made primarily for  
37 personal, family or household purposes secured wholly or partially by a mortgage on residential  
38 property.

39 “Mortgagee”, assignee or current holder of a mortgage and note on real property  
40 including but not limited to, any lender(s) or any successor in interest and/or assignee of the  
41 mortgagee’s rights, interests or obligations under a mortgage and note.

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

50 “Net Recovery following foreclosure”, a calculation including but not limited to costs  
51 from projected delinquency, interest, fees by date of foreclosure based on current actual length of  
52 foreclosure process in Massachusetts, costs associated with all legally required actions to  
53 foreclose and percentage loss from foreclosure sale, costs to meet all sanitary code requirements,

54 property maintenance and costs associated with eviction if part of standard operating procedure  
55 for creditor and other ownership costs until projected sale or re-sale to third party purchaser.

56 “Proof of ownership”, all documents evidencing an unbroken chain of ownership of the  
57 debt including the mortgage, a certified copy of the promissory note in its then-current condition  
58 evidencing the debt, all assignments of the mortgage loan whether recorded or unrecorded and  
59 authority documents.

60 “Residential property”, real property located in the commonwealth, on which there is a  
61 dwelling house with accommodations for 4 or fewer separate households or a residential  
62 condominium unit or a residential co-op unit and occupied, or to be occupied, in whole or in part  
63 by the obligor on the mortgage debt; provided, however, that residential property shall be limited  
64 to the principal residence of a person; provided, further, that residential property shall not include  
65 residential property taken in whole or in part as collateral for a commercial loan.

66 (b) There shall be a Massachusetts Foreclosure Mediation Program administered by a  
67 “Mediation Program Manager” who is a neutral not-for-profit organization or law firm  
68 experienced in the mediation of the foreclosure process, familiar with all programs available to  
69 help homeowners avoid foreclosure, and knowledgeable of the mortgage foreclosure laws of the  
70 Commonwealth of Massachusetts. Such entity or entities shall be selected by the Attorney  
71 General.

72 (c) A mortgagee shall, concurrently with the notice sent to the borrower of residential  
73 property under section 35A, also send a copy to the Massachusetts Foreclosure Mediation  
74 Program (MFMP). The MFMP shall then send to the mortgagor the notice of right to mediation  
75 and a foreclosure mediation request form. If a notice of right to cure is not required, the

76 mortgagee shall send a notice of intent to foreclose to the MFMP and the mortgagor at least one  
77 hundred and fifty (150) days before initiating foreclosure; the MFMP shall then send the  
78 mortgagor the notice of right to mediation. The MFMP will also telephone mortgagors to inform  
79 them of their right to participate in mediation. The notice shall be mailed in the 5 most common  
80 languages in addition to English.

81 A borrower may request foreclosure mediation by submitting the foreclosure mediation  
82 request form to the MFMP not more than 30 days after receipt of the notice.

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

93 As early as possible, but not later than 5 days before the scheduled mediation, the creditor  
94 shall provide to the borrower and the Massachusetts Foreclosure Mediation Program: proof of  
95 ownership, a written net present value analysis including inputs and their basis, an accounting  
96 and history of the outstanding balance on the debt, documents evidencing any loss mitigation  
97 restrictions and the creditor's anticipated net recovery following foreclosure. When required, the

98 creditor shall bring additional documents supporting the net present value analysis to the  
99 mediation session.

100 Borrowers will be referred to and encouraged to work with a non-profit housing  
101 counseling agency. Borrower will provide to creditor and the Massachusetts Foreclosure  
102 Mediation Program: current income, expenses, assets and debts and proof of income and releases  
103 standardly required by the affordable home ownership program or similar federal program.

104 If the initial mediation session does not result in an agreement, the parties may agree to  
105 additional mediation sessions which the mediator will document.

106 If mediation results in an agreement, the borrower shall have not fewer than 7 days to  
107 review and sign the mediation agreement and return it to the Massachusetts Foreclosure  
108 Mediation Program and the creditor. Not later than 5 days after the mediation session is  
109 complete, the mediator shall write a report setting forth the specific compliance with mediation  
110 requirements and result of the mediation and send a copy of the report to the borrower and the  
111 creditor.

112 The mediation period shall conclude not more than 120 days after the borrower elects to  
113 participate in mediation.

114 (e) If the borrower does not elect to participate in mediation and does not pursue a  
115 modified mortgage loan under section 35B, if eligible, foreclosure may proceed under this  
116 chapter. If a borrower elects to participate in the Massachusetts Foreclosure Mediation Program,  
117 a creditor shall not accelerate the note or otherwise initiate foreclosure proceedings unless the  
118 mediator has certified that the creditor participated in the Massachusetts Foreclosure Mediation  
119 Program and engaged in mediation in good faith, made all reasonable efforts to find an



120 alternative to foreclosure and any agreement is in full compliance with all state and federal  
121 guidelines.

122 (f) if, it is determined after a good faith effort made by the creditor and/or  
123 homeowner/borrower at the mediation conference, that the parties cannot agree to a  
124 commercially reasonable alternative to avoid foreclosure, such good faith effort on behalf of the  
125 creditor and/or homeowner/borrower shall be deemed to satisfy the requirements of this Section.  
126 A certificate verifying such good faith effort pursuant to this Section shall be issued to the  
127 party(s) that made a good faith effort within five (5) days by the Massachusetts Foreclosure  
128 Mediation Program to the certified creditor and/or certified homeowner/borrower authorizing  
129 said party(s) to proceed with its rights under Chapter 244 of the General Laws.

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  
132 creditor/mortgagee will be prohibited from continuing with the foreclosure process. No sale  
133 pursuant to G.L. c. 244 shall be effective to foreclose on any mortgage under this Section, unless  
134 all notices required by G.L. c. 244, § 14 specifically reference that a good faith certificate has  
135 been issued verifying that the creditor/mortgagee, its assignee or any person identified in G.L. c.  
136 244, §14, has successfully participated in a mediation program in accordance with this Section.  
137 No entry by foreclosure shall be effectual unless the memorandum or certificate recorded as  
138 required by G.L. c. 244, § 2 includes as an attachment or exhibit a copy of a good faith certificate  
139 verifying that the creditor/mortgagee has participated in mediation with the  
140 mortgagor/homeowner as required by this Section.

141 (h) Any costs necessary to establish and operate the Massachusetts Foreclosure  
142 Mediation Program shall be borne by the parties to the mediation under the guidelines developed  
143 under subsection (g) and by a \$50 surcharge on the filing fee for foreclosure complaints filed  
144 under the Servicemembers Civil Relief Act. A borrower's portion of the mediation fee shall not  
145 exceed 15 percent of the total cost of the mediation. A borrower's inability to pay for mediation  
146 shall not be a bar to participation in the Massachusetts Foreclosure Mediation Program. Any fees  
147 assessed of the creditor or mortgagee pursuant to this Section shall not be charged to the  
148 mortgagor/homeowner either directly or indirectly. Mediation Program Manager shall have the  
149 authority to set and collect fees for mediation sessions and the 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 Mediation  
162 Program, and that the organization or individual and/or its officers and employees shall not

163 access, modify, use or disseminate any personal information for purposes unrelated to the  
164 Mediation Program. Statistical information may be gathered to assess the program.  
165 Documentation and outcome reports may be available for judicial proceedings.

166 (m) Massachusetts Foreclosure Mediation Program shall also provide annually a report  
167 and data related to (a) the number of mortgagors who are notified of mediation; (b) the number  
168 of homeowners/borrowers who attend mediation and who receive counseling or assistance; (c)  
169 the number of certificates of good faith issued under the Massachusetts Foreclosure Mediation  
170 Program, (d) the results of the mediation process, including the number of loans restructured,  
171 number and total value of principal write-downs, interest rate reductions and, to the extent such  
172 information is available, the number of mortgagors/homeowners who default on mortgages  
173 within a year after successful mediation conferences, (e) any such other information as the  
174 municipality may determine to be necessary and or helpful in assessing the value of  
175 Massachusetts Foreclosure Mediation Program and any adjustments that may need to be made  
176 thereto.