

HOUSE No. 1482

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan, (BY REQUEST)

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 relative to a jubilee foreclosure moratorium.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

David Snieckus

26th Middlesex

Mike Connolly

HOUSE No. 1482

By Ms. Khan of Newton (by request), a petition (accompanied by bill, House, No. 1482) of David Snieckus and Mike Connolly for legislation to establish a two-year moratorium on the non-judicial foreclosures. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to a jubilee foreclosure moratorium.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to Whereas, Massachusetts non-judicial foreclosure laws have permitted the foreclosure of tens of thousands of owner-occupied homes where the foreclosing entity falsely purports to have authority an jurisdiction to foreclose, yet the homeowner has no day in court beforehand; and the deferred operation of this act would tend to defeat its purpose, which echoes that of the 1692 Massachusetts statute of frauds, in a period of comparably high percentages of foreclosure, whose preamble set forth the mischief it sought to halt as: “For prevention of many fraudulent practices which are commonly endeavored to be upheld by perjury and subornation of perjury”, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public, 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 adding the
2 following section:-

3 Section 41. There shall be a two-year moratorium on the non-judicial foreclosure of any
4 1-6 unit residential property where the property is the sole real property of its owner.

5 SECTION 2. Said moratorium shall take effect as of the date of enactment of this Act,
6 and shall renew for an additional two-year term on each anniversary of its effective date to a
7 maximum of ten (10) years.

8 SECTION 3. If the following criteria are met in any calendar year during the
9 moratorium, the legislature may terminate it as of the end of the applicable two-year period:

10 a. The percentage of foreclosures of “certain mortgages,” as defined in section 35B of
11 chapter 244 of the General Laws, which qualify as predatory is less than a quarter of all
12 foreclosures; and

13 b. The percentage of foreclosures of mortgages where more than one assignment is
14 recorded, or which section 14 of chapter 244 of the General Laws requires to be recorded, is less
15 than one fifth of all foreclosures.

16 SECTION 4. The courts of the commonwealth will continue to have jurisdiction to
17 determine foreclosures by action under chapter 244, section 1 of the General Laws, and as
18 modified in the following five subsections:

19 (a) In addition to applicable Superior Court rules of service, if service is not effected in
20 hand, then it must be effected both by posting in a prominent place on the property and by
21 certified mailing;

22 (b) A defendant-mortgagor may raise all legal and equitable claims and defenses against
23 the mortgagee or any predecessor in interest, assignee, agent or any person or entity acting on
24 behalf of such mortgagee.

25 (c) The court shall have the authority to modify the mortgage or grant any other
26 appropriate relief as to the mortgagor;

27 (d) Nothing in this section shall affect the rights of tenants or any legal occupants
28 residing in the property;

29 (e) The court may set aside a default judgment for good cause shown; and

30 (f) Foreclosure by court action pursuant this Act shall be available only if pre-
31 foreclosure mediation

32 has not resulted in a commercially-reasonable, mutually agreeable resolution.

33 (i) Concurrently with the mailing of the notice of the right to cure period prescribed in
34 section 35A of chapter 244 of the General Laws, the mortgagee shall mail to the mortgagor by
35 certified mail a notification of opportunity to seek resolution of any breach of the mortgage.

36 (ii) This will commence mediation in accordance with a program yet to be established by
37 the Commonwealth. Said program's design shall reflect best practices as to successful loan
38 modification mediation programs similar to that described as the Massachusetts Foreclosure
39 Mediation Program in legislation presently pending in the General Court.

40 (iii) Said Program shall include issuance of a Certificate of Mediation Completion to any
41 party that participates in good faith should mediation not yield a mutually acceptable resolution.

42 (iv). Said Program will include a regular reporting of outcomes and percentages of party

43 Compliance.

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45 SECTION 5. The Division of Banks shall promulgate regulations to aid in the
46 administration and enforcement of the above sections.

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48 SECTION 6. The Division of Banks shall, in consultation with the Attorney General,
49 provide an Annual Foreclosure Crisis Report to the joint committee on financial services within
50 ninety (90) days of the end of each calendar year on:

51

52 (a) Number of “certain mortgage loans” as defined in Section 35B of Chapter 244 of the
53 General laws for which the creditor sent to a borrower a notice of the right to pursue a modified
54 mortgage loan;

55 (b) Number of loans upon which a certified copy of the original wet-ink mortgage note in
56 its present condition, demonstrating that all allonges are affixed, have been recorded at least once
57 in the registries of deeds;

58 (c) Number of documents denominated as Affidavits pursuant to section 35B and 35C of
59 chapter 244 that have been recorded in the registries of deeds;

60 (d). Number of such documents that append a copy of each business record or other
61 document, or else make reference to where such documents are available on the public record, as
62 required of affidavits pursuant to Massachusetts and Federal Rules of Evidence Rule 803, and
63 which include the certification by an attorney required under section 5B of chapter 183 of the
64 General Laws;

65 (e) Number of recorded documents that are denominated as Foreclosure Deeds;

66 (f) Percentage of foreclosures of mortgages qualifying as predatory as defined under
67 “certain mortgages” as defined in section 35B of chapter 244 of the General Laws; and

68 (g) Percentage of foreclosures of mortgages where more than one assignment of a given
69 mortgage is recorded in any registry of deeds, or which section 14 of chapter 244 of the General
70 Laws requires to be recorded.

71

72 SECTION 7: Foreclosure Education Reform Review Task Force.

73 (a) A Foreclosure Education Reform Review Task Force shall be convened no later than
74 five (5) months after enactment of this Act, for the purpose of reviewing the use of any and all
75 activities used by the entities foreclosing. This shall include a review of the law, statutes, courts
76 and paperwork. The task force shall consist of the following stakeholders:

77 (i) twelve (12) homeowners whose homes have already been foreclosed upon identified
78 through the Massachusetts Alliance Against Predatory Lending.

79 (ii) the Secretary of Commonwealth, or the Secretary’s designee;

80 (iii) the Senate President or a designee, the Speaker of the House or a designee, and the
81 two chairs of the Joint Committee on Revenue or their designees;

82 (iv) one member chosen by the Governor from a list of three names submitted by the
83 Massachusetts Alliance Against Predatory Lending;

84 (v) three parents selected by the Massachusetts Alliance Against Predatory Lending.

85 (vi) three college students selected competitively among those who apply shall serve on
86 this task force by the Massachusetts Alliance Against Predatory Lending; and

87 (vii) three high school students selected competitively among those who apply shall serve
88 on this task force by the Massachusetts Alliance Against Predatory Lending. Said students
89 should be chosen to represent various school districts across the commonwealth.

90 (b) Appointments to the task force shall be made within sixty (60) days of the effective
91 date of this act. Vacancies in the membership of the task force shall be filled in the same manner
92 as the original appointments. Members of the task force shall serve without compensation.

93 (c) The task force shall appoint its first meeting: two co-chairs, one elected by the
94 members designated in sub-sections b (1), (2) and (3) and the second elected by the members
95 described in sub-sections b (4) and (5).

96 (d) Task Force Purpose and Topics will include:

97 (i) The initial meeting will be solely to understand the reasons for the past 95,000 plus
98 foreclosures in Massachusetts.

99 (ii) The Task Force will examine the purpose of the initial homeowners contracts used at
100 the closing the subsequent paperwork for securitizations, the robo-signing, and the beginnings of
101 the foreclosure process to make the process more transparent and understandable by ordinary
102 people.

103 (iii) Subsequent meetings will be held for the purpose of understanding money, the
104 history of money, how money is created and how best to change our current usurious, debt based
105 monetary system into a honest, credit based monetary system.

106 (iv) The Task Force will consider whether the current debt based monetary system is
107 democratic.

108 (e) The Task Force will hold open educational meeting, promulgate reports and share its
109 findings in settings such as trainings of credit counselors, primary and secondary educational
110 setting and where it sees fit.