

**HOUSE . . . . . No. 01454**

**[LOCAL APPROVAL RECEIVED.]**

The Commonwealth of Massachusetts

PRESENTED BY:

*Elizabeth A. Malia*

*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 passage of the accompanying bill:

An Act to facilitate mediation of mortgage foreclosures of owner occupied residential real property in the city of Boston.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Carlo Basile</i>	<i>1st Suffolk</i>
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>Carlos Henriquez</i>	<i>5th Suffolk</i>
<i>Martin J. Walsh</i>	<i>13th Suffolk</i>
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>

# HOUSE . . . . . No. 01454

By Ms. Elizabeth A. Malia of Boston, petition (accompanied by bill, House, No. 01454) of Marty Walz and others facilitating mediation of mortgage foreclosures of owner occupied residential real property in the city of Boston. [Local Approval Received] Joint Committee on Municipalities and Regional Government.

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to facilitate mediation of mortgage foreclosures of owner occupied residential real property in the city of Boston.

*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. For the purposes of this Act, the following words shall, unless the context clearly
- 2 requires otherwise, have the following meanings:
- 3 “Creditor”, a person or entity that holds or controls, partially, wholly, indirectly, directly, or in a
- 4 nominee capacity, a mortgage loan securing a residential property, including, without limitation,
- 5 a mortgagee, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder,
- 6 Mortgage Electronic Registration System or mortgage servicer, including the Federal National
- 7 Mortgage Association or the Federal Home Loan Mortgage Corporation. “Creditor” shall also
- 8 include any servant, employee or agent of a creditor with the authority to negotiate and modify
- 9 the terms of a mortgage loan.

10 “Good Faith Effort”, shall have the meaning as described and determined in G.L. c. 244,  
11 §35A(c).

12 “Homeowner”, shall mean an individual mortgagor, his or her assignee, successor, or a trust or  
13 trustee who owns and resides in residential real property located in the city, and for whom such  
14 residential real property is his/her principal residence.

15 “Loan/mortgage mediation conference”, shall mean the formal discussion and negotiation  
16 undertaken by the parties in a good faith effort to negotiate and agree upon a commercially  
17 reasonable alternative to avoid foreclosure and held at a location mutually convenient to the  
18 parties. Both the homeowner/mortgagor and lender/mortgagee must be physically present for the  
19 mediation conference unless telephone participation is mutually agreed upon. Homeowners may  
20 be represented at the mediation conference by a person of their choice, but homeowner shall be  
21 present in the mediation.

22 “Mediation Program” or “Program”, shall mean the foreclosure mediation program established in  
23 the city of Boston pursuant to this Act and described in Section 6.

24 “Mediation Program Manager”, shall mean a neutral not-for-profit organization with offices  
25 located in the city of Boston and experienced in the mediation of the residential foreclosure  
26 process, familiar with all programs available to help homeowners avoid foreclosure, and  
27 knowledgeable of the mortgage foreclosure laws of the commonwealth. The Mediation Program  
28 Manager shall sign a user agreement with the city authorizing the receipt and use of personal and  
29 financial information for the purposes of the mediation program only. Such Mediation Program  
30 Manager shall ensure the security and confidentiality of any and all information received or  
31 exchanged under the program consistent with applicable federal, state, and city laws. Access to

32 such program information shall be limited to those officers and employees of the organization  
33 who require the information to properly perform services under the city's mediation program,  
34 and that the organization and its officers and employees may not access, modify, use or  
35 disseminate such information for inconsistent or unauthorized purposes.

36 "Mediator", shall mean an individual approved by the City (a) whose training complies with the  
37 qualifications standards for neutrals specified in the guidelines for training mediators adopted by  
38 the Supreme Judicial Court of Massachusetts pursuant to Rule 8 of the Uniform Rules for  
39 Dispute Resolution and (b) who has completed training on foreclosure mediation; and (c) who  
40 has a working knowledge of all federal, state, and city programs available to help homeowners  
41 retain their homes.

42 "Mortgagee", an entity to whom property is mortgaged, the mortgage creditor or lender  
43 including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent,  
44 servant or employee of the mortgagee or any successor in interest or assignee of the mortgagee's  
45 rights, interests or obligations under the mortgage agreement.

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

48 "Mortgage servicer", an entity which administers or at any point administered the mortgage;  
49 provided, however that such administration shall include, but not be limited to, calculating  
50 principal and interest, collecting payments from the mortgagor, acting as escrow agent or  
51 foreclosing in the event of a default.

52 "Mortgagor", is the borrower of a mortgage loan that is secured wholly or partially by a  
53 mortgage on residential property.

54 “Residential property”, shall mean real property that is owner-occupied as an owner's principal  
55 residence, located within the city, that is either a single-family dwelling or a structure containing  
56 not more than four (4) residential units, and shall also include a residential condominium unit or  
57 a residential co-op unit occupied by an owner as an owner's principal residence.

58 “The parties”, shall mean the homeowner or mortgagor and the creditor or mortgagee, or their  
59 assigns or successors.

60 SECTION 2. Notwithstanding any general or special law to the contrary, no mortgage  
61 foreclosure in the city of Boston pertaining to residential property which is owner occupied as  
62 the owner’s principal residence shall be effective unless a certificate is issued by a city-approved  
63 mediation program manager verifying the creditor’s or mortgagee’s good faith participation in  
64 foreclosure mediation.

65 SECTION 3. The city of Boston is hereby empowered to establish a mediation program relative  
66 to mortgage foreclosures in accordance with this Act and promulgate regulations as necessary  
67 and appropriate to implementing such a mediation program involving mortgagees, creditors,  
68 mortgagors, and homeowners, utilizing city-approved mediation program managers and  
69 mediators to mediate between the mortgagee, or its assigns, and a mortgagor / homeowner who  
70 owns residential real property in the city which is occupied by the homeowner or mortgagor as  
71 his or her principal residence. Such mediation shall be facilitated by a city-approved mediation  
72 program manager and mediator according to procedures established by this Act. Except as  
73 hereinafter provided in sections 4 and 5 relating to foreclosure by power of sale or by entry, and  
74 notwithstanding any contrary provision of G.L. c. 244, inclusive, or any special law relating to  
75 the regulation of mortgage foreclosures, such mediation program may only relate to the

76 mediation of mortgage foreclosures of residential real property in the city of Boston that is the  
77 homeowner's principal residence.

78 SECTION 4. Notwithstanding section 14 of Chapter 244 of the General Laws relating to the  
79 power of sale, no sale in the city of Boston shall be effectual to foreclose a mortgage, unless, all  
80 notices required by § 14 reference a certificate from a city-approved mediation program manager  
81 verifying that the mortgagee, its assignee or any person identified in §14 who may do the acts  
82 authorized or required by the power of sale, has participated in a mediation program in  
83 accordance with this Act.

84 SECTION 5. No entry by foreclosure in the city of Boston shall be effectual unless the  
85 memorandum or certificate recorded as required by G.L. c. 244, § 2 includes as an attachment or  
86 exhibit a copy of a certificate from a city-approved mediation program manager verifying that  
87 the creditor or mortgagee (or its assignee or attorney) has participated in mediation with the  
88 mortgagor as required by this Act.

89

90 SECTION 6. Pursuant to this Act, the city shall establish a mediation program to provide  
91 mediation for all foreclosures of mortgages on owner-occupied residential property with no more  
92 than 4 units that is the primary residence of the owner-occupant. The program shall address all  
93 issues of foreclosure, including but not limited to reinstatement of the mortgage, modification of  
94 the loan and restructuring of the mortgage debt, including the reduction and forgiveness of  
95 mortgage debt. Mediations conducted pursuant to the program shall, by mutual agreement of the  
96 parties, use the calculations, assumptions and forms found in modification programs that are  
97 established by (i) the Federal Deposit Insurance Corporation and published in the Federal

98 Deposit Insurance Corporations Loan Modification Program Guide available on the Federal  
99 Deposit Insurance Corporation's publicly accessible website, (ii) the Home Affordable  
100 Modification Program; (iii) any modification program that a lender uses which is based on  
101 accepted principles and the safety and soundness of the institution and recognized by the  
102 National Credit Union Administration, the Division of Banks or any other instrumentality of the  
103 commonwealth; (iv) the Federal Housing Agency; or (v) similar federal programs.

104 The city shall provide for a means of evaluating and selecting qualified Mediation Program  
105 Managers and Mediators. The city shall also provide for a means of assessing and evaluating  
106 annually the city's mediation program including reports and data related to (a) the number of  
107 mortgagors who are notified of mediation; (b) the number of mortgagors who attend mediation  
108 and who receive counseling or assistance; (c) the number of certificates of completion issued  
109 under the program, and (d) the results of the mediation process, including the number of loans  
110 restructured or modified, number of principal write-downs, interest rate reductions and, to the  
111 extent such information is available, the number of mortgagors who default on mortgages within  
112 a year after restructuring.

113 The city may terminate a Mediation Program Manager's participation in the mediation program  
114 for good cause, as determined by the appropriate city official. In such case, the Mediation  
115 Program Manager shall deliver to the city all records and information in its possession for  
116 appropriate preservation and storage.

117 SECTION 7. Except for financial information otherwise permitted by law to be disclosed, any  
118 financial statement or information provided to the city or its approved independent counseling  
119 agencies or provided to the mortgagee or mortgagor during the course of mediation in

120 accordance with this Act is confidential and shall not be available for public inspection. Any  
121 financial statement or information to reasonably facilitate the mediation shall be made available  
122 as necessary to the mediator and to the attorneys or representatives, if any, of the parties to the  
123 mediation. Any financial statement or information designated as confidential under this section  
124 shall be kept separate and apart from other papers and matters not the subject of the mediation.

125 SECTION 8. For the purpose of the mediation program established by the city, the city shall  
126 receive a copy of all notices within ten (10) days of receipt by the Commissioner of the Division  
127 of Banks pursuant to G.L. c. 244, §35A(k) that relate to residential properties in the city of  
128 Boston. The city shall notify the creditor/mortgagee and the mortgagor of their rights and  
129 responsibilities under this Act regarding mediation. It is the intent and purpose of this Act that  
130 mediation commence within 45 days of the mortgagor receiving notice of his or her right to cure  
131 as provided in M.G.L. c. 244, §35A (g) and (h). The city shall refer the matter for mediation to  
132 an approved mediation program manager which shall have the responsibility of assigning a  
133 mediator and scheduling the parties to immediately commence mediation pursuant to this Act.  
134 The parties shall participate in good faith in such mediation consistent with the creditor's and  
135 mortgagor's rights and obligations in G.L. c. 244, §35A and the mediation shall proceed with the  
136 parties' good faith effort to negotiate and agree upon a commercially reasonable alternative to  
137 foreclosure as defined in c. 244, §35A(c). A creditor must send a representative to the mediation  
138 who has the authority to negotiate and modify the terms of the mortgage loan or agree to other  
139 commercially reasonable alternatives to foreclosure. A homeowner or mortgagor shall be  
140 permitted to bring a representative of their choice to the mediation. The mediation shall continue  
141 without delay until completion but shall not go beyond ninety (90) days from the date that the  
142 mortgagor received notice of his or her right to cure unless the creditor or mortgagee agrees to



143 continue to engage in a good faith effort to negotiate an alternative to foreclosure pursuant to  
144 M.G.L. c. 244, §35A(b).

145 SECTION 9. The mediation program established by this Act shall include, and be limited to, the  
146 following steps:-

147 (a) the parties shall participate in a mandatory loan/mortgage mediation conference at a location  
148 mutually convenient to the parties. Telephone participation by the creditor/mortgagee shall not  
149 be permitted unless mutually agreed to by all parties.

150 (b) said mediation conference shall be scheduled at a time and place to be determined by the  
151 mediation program manager, but not later than forty-five (45) days following the mortgagor's  
152 receipt of his or her notice of right to cure pursuant to G.L. c. 244§, 35A(b). The parties will be  
153 noticed under the mediation program by certified and first class mail.

154 (c) prior to the scheduled mediation conference, the mortgagor shall be assigned a city-approved  
155 loan counselor. If the mortgagor is already working with a city-approved loan counselor or legal  
156 services advocate, no assignment is necessary. However, such loan counselor or advocate must  
157 agree to work with the mortgagor during the mediation process in accordance with the provisions  
158 of this Act.

159 (d) the mortgagor shall cooperate in all respects with the Mediation Program Manager, providing  
160 all necessary financial and employment information. The mortgagor shall complete any and all  
161 loan resolution proposals and applications as appropriate. The mortgagor must provide evidence  
162 of current income. The mortgagee shall cooperate in all respects with the Mediation Program  
163 Manager. The mortgagee's representative must bring and make available, the mortgage, note, all

164 assignments, a detailed accounting of the outstanding balance, costs and fees; and an analysis of  
165 the mortgagor's eligibility for a loan modification as described in G.L. c.244 §35A(c).

166 (e) if after two (2) attempts by the mediation program manager to contact the mortgagor, the  
167 mortgagor fails to respond to the mediation program manager's request to appear for the  
168 mediation conference, or the mortgagor fails to cooperate in any respect with the requirements  
169 outlined in this Act, the requirements of the Act will be deemed to be satisfied upon verification  
170 by the city-approved mediation program manager that the required notice was sent; and if so, a  
171 certificate shall be issued immediately by the mediation program manager certifying that the  
172 creditor/mortgagee has satisfied the mediation requirements of this Act.

173 (f) if, it is determined after a good faith effort made by the creditor/mortgagee at the mediation  
174 conference with the mortgagor, that the parties cannot come to an agreement to re-negotiate the  
175 terms of the loan in an effort to avoid foreclosure, such good faith effort on behalf of the  
176 creditor/mortgagee shall be deemed to satisfy the requirements of this Act. A certificate  
177 certifying such good faith effort pursuant to this Act shall be issued immediately and without  
178 delay by the Mediation Program Manager authorizing the creditor/mortgagee to proceed with its  
179 rights under Chapter 244 of the General Laws.

180 SECTION 10. The city of Boston is hereby authorized to enact and from time to time revise by  
181 ordinance, a reasonable and appropriate mediation registration fee to be paid for by the parties  
182 for the services attendant to administering the mediation program and issuing the creditor's good  
183 faith certification required under this Act. No fee charged to the homeowner may exceed \$75  
184 and a hardship waiver request from a homeowner may be approved by the mediator. The  
185 creditor is hereby prohibited from transferring, charging or in any way imposing on the

186 homeowner any fee for the creditor's costs or expenses as a result of the creditor's participation  
187 in any mediation pursuant to this Act.

188 SECTION 11. This Act shall take effect no later than sixty (60) days from its passage.