

**SENATE . . . . . No. 425**

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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 passage 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>Gale D. Candaras</i>	<i>First Hampden and Hampshire</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Thomas P. Kennedy</i>	<i>Second Plymouth and Bristol</i>

**SENATE . . . . . No. 425**

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By Ms. Chandler, a petition (accompanied by bill, Senate, No. 425) of Harriette L. Chandler, Gale D. Candaras, Mary S. Keefe, Kay Khan and other members of the General Court for legislation relative to alternatives to foreclosure. Financial Services.

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The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen  
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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 §35 of the Massachusetts General Laws is hereby amended by adding  
2 subsection 35D

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,  
14 directly or indirectly, or in a nominee capacity, a mortgage loan secured by residential property,  
15 including, without limitation, a mortgagee, an originator, holder, investor, assignee, successor,  
16 trust, trustee, nominee holder, Mortgage Electronic Registration System or mortgage loan  
17 servicer, including, but not limited to the Federal National Mortgage Association or the Federal  
18 Home Loan Mortgage Corporation or any other Government Sponsored Entity. The term  
19 “creditor” shall also include any servant, employee, 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 “Modified mortgage loan”, a mortgage modified from its original terms including, but not  
23 limited to, a loan modified under 1 of the following: (i) the Home Affordable Modification  
24 Program (ii) the Federal Deposit Insurance Corporation’s Loan Modification Program, (iii) any  
25 modification program that a lender uses which is based on accepted principles and the safety and  
26 soundness of the institution and authorized by the National Credit Union Administration or the  
27 division of banks, (iv) the Federal Housing Administration or (v) a similar federal loan  
28 modification plan.

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

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

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

44 “Net Recovery following foreclosure”, a calculation including but not limited to costs  
45 from projected delinquency, interest, fees by date of foreclosure based on current actual length of  
46 foreclosure process in Massachusetts, costs associated with all legally required actions to  
47 foreclose and percentage loss from foreclosure sale, costs to meet all sanitary code requirements,  
48 property maintenance and costs associated with eviction if part of standard operating procedure  
49 for creditor and other ownership costs until projected sale or re-sale to third party purchaser.

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

54 “Residential property”, real property located in the commonwealth, on which there is a  
55 dwelling house with accommodations for 4 or fewer separate households or a residential

56 condominium unit or a residential co-op unit and occupied, or to be occupied, in whole or in part  
57 by the obligor on the mortgage debt; provided, however, that residential property shall be limited  
58 to the principal residence of a person; provided, further, that residential property shall not include  
59 residential property taken in whole or in part as collateral for a commercial loan.

60 (b) There shall be a Massachusetts Foreclosure Mediation Program administered by the  
61 Massachusetts Office of Public Collaboration at the University of Massachusetts at Boston.

62 (c) A mortgagee shall, concurrently with the notice sent to the borrower of residential  
63 property under section 35A, also send a copy to the Massachusetts Foreclosure Mediation  
64 Program (MFMP). The MFMP shall then send to the mortgagor the notice of right to mediation  
65 and a foreclosure mediation request form. If a notice of right to cure is not required, the  
66 mortgagee shall send a notice of intent to foreclose to the MFMP and the mortgagor at least one  
67 hundred and fifty (150) days before initiating foreclosure; the MFMP shall then send the  
68 mortgagor the notice of right to mediation. The MFMP will also telephone mortgagors to inform  
69 them of their right to participate in mediation. The notice shall be mailed in the 5 most common  
70 languages in addition to English.

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

73 (d) An in-person mediation session shall be conducted by a neutral third-party mediator  
74 between the borrower, the borrower's representative or housing counselor and the creditor's  
75 representative, who shall provide proof of the authority to negotiate an alternative to foreclosure,  
76 including, but not limited to, (i) reinstatement of the loan, (ii) a modified mortgage loan, (iii) a  
77 reduction in principal, (iv) a reduction in interest rate, (v) an increase in the amortization period  
78 of the mortgage loan or (vi) a shortsale or deed in lieu; provided, however, in exceptional  
79 circumstance, as determined by the mediator, a meeting by phone, video-conference or  
80 equivalent may be mutually agreed upon by the mortgagor, the mortgagee and the mediator.

81 As early as possible, but not later than 5 days before the scheduled mediation, the creditor  
82 shall provide to the borrower and the Massachusetts Foreclosure Mediation Program: proof of  
83 ownership, a written net present value analysis including inputs and their basis, an accounting  
84 and history of the outstanding balance on the debt, documents evidencing any loss mitigation  
85 restrictions and the creditor's anticipated net recovery following foreclosure. When required, the  
86 creditor shall bring additional documents supporting the net present value analysis to the  
87 mediation session.

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

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

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

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

102 (e) If the borrower does not elect to participate in mediation and does not pursue a  
103 modified mortgage loan under section 35B, if eligible, foreclosure may proceed under this  
104 chapter. If a borrower elects to participate in the Massachusetts Foreclosure Mediation Program,  
105 a creditor shall not accelerate the note or otherwise initiate foreclosure proceedings unless the  
106 mediator has certified that the creditor participated in the Massachusetts Foreclosure Mediation  
107 Program and engaged in mediation in good faith, made all reasonable efforts to find an  
108 alternative to foreclosure and any agreement is in full compliance with all state and federal  
109 guidelines.

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

118 (g) All mortgage modifications shall be recorded in the appropriate registry of deeds  
119 within 30 days. In the case the mediator does not issue a good faith certificate, the  
120 creditor/mortgagee will be prohibited from continuing with the foreclosure process. No sale  
121 pursuant to G.L. c. 244 shall be effective to foreclose on any mortgage under this Section, unless  
122 all notices required by G.L. c. 244, § 14 specifically reference that a good faith certificate has  
123 been issued verifying that the creditor/mortgagee, its assignee or any person identified in G.L. c.  
124 244, §14, has successfully participated in a mediation program in accordance with this Section.  
125 No entry by foreclosure shall be effectual unless the memorandum or certificate recorded as  
126 required by G.L. c. 244, § 2 includes as an attachment or exhibit a copy of a good faith certificate  
127 verifying that the creditor/mortgagee has participated in mediation with the  
128 mortgagor/homeowner as required by this Section.

129 (h) Any costs necessary to establish and operate the Massachusetts Foreclosure  
130 Mediation Program shall be borne by the parties to the mediation under the guidelines developed  
131 under subsection (g) and by a \$50 surcharge on the filing fee for foreclosure complaints filed  
132 under the Servicemembers Civil Relief Act. A borrower's portion of the mediation fee shall not  
133 exceed 15 percent of the total cost of the mediation. A borrower's inability to pay for mediation  
134 shall not be a bar to participation in the Massachusetts Foreclosure Mediation Program. Any fees  
135 assessed of the creditor or mortgagee pursuant to this Section shall not be charged to the  
136 mortgagor/homeowner either directly or indirectly. Massachusetts Office of Public Collaboration  
137 shall have the authority to set and collect fees for mediation sessions and the administration of  
138 the same

139 (i) The Massachusetts Office of Public Collaboration shall develop guidelines and  
140 standards for mediator training for the mediation process including training on foreclosure  
141 mediation; and a working knowledge of all federal and state programs available to help  
142 homeowners retain their homes, subject to approval by the attorney general.

143 (j) The borrower's or creditor's rights or defenses in the foreclosure action are not waived  
144 by participating in the foreclosure mediation program.

145 (k) Nothing in this section shall require a creditor to modify a mortgage or change the  
146 terms of payment of a mortgage.

147 (l) The Massachusetts Office of Public Collaboration shall ensure the security and  
148 confidentiality of any and all information received consistent with applicable federal, state laws  
149 and regulations. Access to personal information shall be limited to those officers and employees  
150 of the organization who require the information to properly perform services under the  
151 Mediation Program, and that the organization or individual and/or its officers and employees  
152 shall not access, modify, use or disseminate any personal information for purposes unrelated to  
153 the Mediation Program. Statistical information may be gathered to assess the program.  
154 Documentation and outcome reports may be available for judicial proceedings.

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