

**HOUSE . . . . . No. 888**

The Commonwealth of Massachusetts

PRESENTED BY:

*Mary S. Keefe*

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>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</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>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Michael D. Brady</i>	<i>9th Plymouth</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>

<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Brian R. Mannal</i>	<i>2nd Barnstable</i>
<i>Frank A. Moran</i>	<i>17th Essex</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>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>

**HOUSE . . . . . No. 888**

By Ms. Keefe of Worcester, a petition (accompanied by bill, House, No. 888) of Mary S. Keefe and others that banks be required to mediate in good faith with homeowners to identify alternative resolutions before starting foreclosures. Financial Services.

**The Commonwealth of Massachusetts**

**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**

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

14 “Creditor”, a person or entity that holds, owns or controls, partially, wholly, directly or  
15 indirectly, or in a nominee capacity, a mortgage loan secured by residential property, including,  
16 without limitation, a mortgagee, an originator, holder, investor, assignee, successor, trust, trustee,  
17 nominee holder, mortgage loan servicer, including, but not limited to the Federal National  
18 Mortgage Association or the Federal Home Loan Mortgage Corporation or any other  
19 Government Sponsored Entity. The term “creditor” shall also include any servant, employee,  
20 subcontractor or agent of a creditor.

21 “Creditor’s representative”, a person who has the authority to negotiate and approve the  
22 terms of and modify a mortgage loan.

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

29 “Modified mortgage loan”, a mortgage modified from its original terms including, but  
30 not limited to, a loan modified under 1 of the following: (i) the Home Affordable Modification  
31 Program (ii) the Federal Deposit Insurance Corporation’s Loan Modification Program, (iii) any  
32 modification program that a lender uses which is based on accepted principles and the safety and  
33 soundness of the institution and authorized by the National Credit Union Administration or the

34 division of banks, (iv) the Federal Housing Administration or (v) a similar federal loan  
35 modification plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

131 (g) All mortgage modifications shall be recorded in the appropriate registry of deeds  
132 within 30 days. In the case the mediator does not issue a good faith certificate, the  
133 creditor/mortgagee will be prohibited from continuing with the foreclosure process. No sale  
134 pursuant to G.L. c. 244 shall be effective to foreclose on any mortgage under this Section, unless  
135 all notices required by G.L. c. 244, § 14 specifically reference that a good faith certificate has  
136 been issued verifying that the creditor/mortgagee, its assignee or any person identified in G.L. c.  
137 244, §14, has successfully participated in a mediation program in accordance with this Section.  
138 No entry by foreclosure shall be effectual unless the memorandum or certificate recorded as  
139 required by G.L. c. 244, § 2 includes as an attachment or exhibit a copy of a good faith certificate  
140 verifying that the creditor/mortgagee has participated in mediation with the  
141 mortgagor/homeowner as required by this Section.

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

151 (i) The Mediation Program Manager shall develop guidelines and standards for mediator  
152 training for the mediation process including training on foreclosure mediation; and a working  
153 knowledge of all federal and state programs available to help homeowners retain their homes,  
154 subject to approval by the attorney general.

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

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

159 (l) The Mediation Program Manager shall ensure the security and confidentiality of any  
160 and all information received consistent with applicable federal, state laws and regulations.  
161 Access to personal information shall be limited to those officers and employees of the  
162 organization who require the information to properly perform services under the Mediation  
163 Program, and that the organization or individual and/or its officers and employees shall not

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

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