

Massachusetts Alliance Against Predatory Lending

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AN ACT ESTABLISHING A FORECLOSURE MEDIATION PROCESS FACT SHEET

House Bill 4003, Main Sponsor: Representative Pedone

What does this bill do?

This bill amends Chapter 244 of the Massachusetts General Laws to offer struggling homeowners the opportunity to participate in a court-supervised Foreclosure Mediation Program. Homeowners will have the opportunity to sit down face-to-face with the mortgage company or servicer and work out the best plan to save their home. This mediation process is designed to occur within a 90 day period prior to the filing of a foreclosure petition.

Also filed are three other bills: *An Act to Protect Tenants from Eviction in Foreclosed Properties*, *An Act Relative to a Temporary Moratorium on Foreclosures*, and *An Act to Require Judicial Foreclosures*.

Why do we need a Foreclosure Mediation Program?

A Foreclosure Mediation Program will level the playing field between the homeowner and the mortgage lender. One of the biggest obstacles homeowners face in saving their home is simply communicating with the mortgage lender or servicer. Stories abound of exasperated homeowners attempting to navigate vast voice mail systems, being bounced around from one department to another, and receiving contradictory information from different servicer representatives. In addition, it is generally recognized that one type of workout – a modification of the terms of the loan – is the most effective way to save many homeowners from foreclosure. Yet many lenders refuse to modify loans or offer modification that actually increase the amount struggling homeowners have to pay each month. In the Boston Globe Fall of 2008, Attorney General Coakley noted the industry's dismal record. In the three month period she examined, lenders issued 4,721 new foreclosure notices in the state while only 144 loan modifications were filed. Of those 144 modified mortgages, virtually none reduced the monthly payment by the homeowner.

How does the Foreclosure Mediation Program work?

Once the lender files a copy of the 90 day "right to cure" notice with the state, the court will send the homeowner a notice offering them the opportunity to participate in a court-supervised Foreclosure Mediation Program. The notice will encourage homeowners to meet with a housing counselor or attorney prior to mediation. If the homeowner chooses to participate, the mediation will be conducted over the next 60 days by a mediator trained in all aspects of foreclosure and lending law. The mediation will address all the issues related to the foreclosure, including, but not limited to, reinstatement of the mortgage and the restructuring of the mortgage debt. The lender must appear in person at the mediation session.

Will this Foreclosure Mediation Program help?

Yes. Before the foreclosure process can be initiated, the lender must sit down with homeowner and negotiate in good faith to cure the default, if possible. Lenders are not required to offer homeowners workout plans that are not feasible. However, they must perform a good faith review of the homeowner's financial situation and offer a plan that will work. Court supervision of the process insures that it is fair for both parties.

Have other states had success with similar programs?

Yes. Five other states or cities, including New York, New Jersey, and Philadelphia, have established mediation programs. Many more states are considering the option. The program established by the courts in Philadelphia has been widely praised for saving many homes: 63% of those diverted to the program actually participated and up to 62% of those who participated in the program in a recent quarter reached some form of resolution. The Philadelphia program has also saved significant court resources as recent figures show about an initial 73% diversion rate and cases that are successfully mediated do not end up in court.

How much will this program cost?

Total cost to the state will depend on the program and fee structure. For a similar program, Connecticut allocated 2.5 million; New Jersey allocated 12.5 million.

The cost of the program, however, is dwarfed by the millions of dollars the state and municipalities are now spending to deal with the impact of the foreclosure crisis. The money is spent on legal costs of locating owners, code inspectional services, guarding foreclosed buildings from vandalism, dealing with displaced tenants and former homeowners who may be at risk of being homeless, redeveloping foreclosed properties, fighting abandonment that lowers values of remaining homes and community destabilization.

***MAAPL MEMBERS/SUPPORTING ORGANIZATIONS:** Action for Boston Community Development, Inc., Association for Community Organizing for Reform Now (ACORN), Action for Regional Equity, ARISE for Social Justice, Arlington Community Trabajando, Boston Tenants Coalition, Brazilian Women's Group, Carpenters Local 40, Carpenters Local 107, Charles Hamilton Houston Institute For Race & Justice, Chelsea Collaborative, Chinese Progressive Association, City Life/Vida Urbana, Coalition for Social Justice, Community Economic Development Ctr of S.E. MA, Community Labor United, Democratic Socialists of America, Dorchester People for Peace, Era Key Realty Services, ESAC, Fair Housing Center of Greater Boston, Greater Boston Legal Services, Greater Four Corners Action Coalition, Green-Rainbow Party of MA, Harvard Legal Aid Bureau, Homeowner Options for MA Elders, Jewish Alliance for Law and Social Action, Lawrence Community Works, Lawyers' Committee for Civil Rights Under Law, Mass Advocates for Children, Mass AFL-CIO, Mass Coalition for the Homeless, Mass Community Action Network, Massachusetts Fair Housing Center, Mass Jobs With Justice, Mass Law Reform Institute, Mass Welfare Rights Union, Merrimack Valley Labor Council, NAACP N.E. Area Council, National Community Reinvestment Coalition, National Consumer Law Center, National Lawyers Guild, Neighbor-to-Neighbor, Neighborhood Legal Services, North Shore Labor Council, Oiste?, Organization for a New Equality, Painters District Council 35, Pleasant St. Neighborhood Network Center, Southbridge Community Connections, Survivors Inc., Tri-City Community Action Program, UE Northeast Region, Union of Minority Neighborhoods, United Auto Workers Mass CAP, United Food & Commercial Workers 1445, United For a Fair Economy, United Steel Workers Local 5696, Volunteer Lawyers Project.*

maaplinfo@yahoo.com

www.MAAPL.info

Legislative Contacts: Grace Ross, 617-291-5591 Debra Silva, MLRI, 617-357-0700 x 340