

SENATE NO. 747



AN ACT TO PRESERVE HOME OWNERSHIP

*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. The General Laws are hereby amended by inserting after chapter 121D the following
2 new chapter:-

3 Chapter 121E. Home Preservation Fund

4 Section 1. There is hereby established and placed upon the books of the commonwealth a home
5 preservation fund to be administered by the department of housing and community development, into
6 which shall be credited:

7 (a) any appropriations or other monies authorized by the general court and specifically designated to
8 be credited to the fund;

9 (b) grants, gifts or any other monies directed to the fund;

10 (c) any income derived from an investment of amounts credited to the fund; and

11 (d) the repayment of loans made to qualified homeowners as set forth in this section.

12 Section 2. The department shall hold the fund in an account segregated from other department funds
13 and accounts and shall utilize, invest or reinvest the proceeds of the fund and income derived
14 therefrom for the following general purposes:

15 (a) For grants to non-profit organizations approved by the department to provide services as part of a
16 Massachusetts home preservation initiative. Those services shall include, but not be limited to:
17 providing outreach and education to Massachusetts homeowners and potential homeowners to expand
18 the awareness about the rise in mortgage foreclosures, the warning signs of predatory loans, the steps
19 they can take to protect their property and finances and where to go for assistance; providing in person
20 counseling and legal services to Massachusetts homeowners who are facing foreclosure of their
21 owner-occupied homes or are at risk of foreclosure, working with lenders to resolve issues of arrears
22 owed on mortgages of such homeowners, and assisting homeowners to refinance their home
23 mortgages when possible;

24 For grants and loans to provide payment relief to Massachusetts homeowners facing foreclosure of
25 their owner-occupied homes because they have been victims of abusive mortgage lending practices, as
26 defined by the department of housing and community development. The Fund may be used to
27 refinance, assist in refinancing, or pay the arrearage due on loans as described in this section.

28 Assistance may be provided in accordance with this section if:

29 The property securing the mortgage, or other security interest in the case of units in cooperative
30 projects, is a dwelling house of 4 or less separate households or a residential condominium or
31 cooperative unit that is owner-occupied, serves as the principal residence of the mortgagor, and is
32 located in Massachusetts;

33 The mortgagor is a resident of Massachusetts and is suffering financial hardship, including a lack of
34 assets, which render the mortgagor unable to correct the delinquency or delinquencies within a
35 reasonable time and make full mortgage payment;

36 The mortgagor earns no more than 135% of the area median income, adjusted for family size;

37 Any mortgagee has indicated to the mortgagor its intention to foreclose;

38 Payments under any mortgage have been contractually delinquent for at least sixty days; and

39 The department has determined that there is a reasonable prospect that the mortgagor will be able to
40 resume full mortgage payments within twelve months after the beginning of the period for which
41 assistance payments are provided under this section.

42 SECTION 2. Section 3 of Chapter 183C of the General Laws is hereby amended by striking out the
43 second sentence and inserting in place thereof the following new sentence:-

44 Counseling shall be performed in person and shall include, at a minimum, a review of the mortgagor's
45 income and expenses, the terms of the proposed loan transaction, and the truth in lending and good
46 faith estimate statements provided by the lender.

47 SECTION 3. Chapter 183 of the General Laws is hereby amended by adding the following new
48 section:- Section 57A: Good Faith and Fair Dealing in Home Loan Servicing

49 (a) For the purposes of this section, the following words, unless the context otherwise requires, shall
50 have the following meanings:

51 "Accelerated", means any action by the mortgagee or servicer to declare the entire mortgage amount
52 due before the maturity date following the mortgagor's breach of any covenant or agreement in the
53 security instrument.

54 "Home loan", any loan secured by a first lien or second or subsequent lien on a dwelling house of 4 or
55 less separate households or on a residential condominium or cooperative unit occupied or to be
56 occupied in whole or in part by the mortgagor.

57 "Mortgagee" or "mortgage holder", the holder of record of a mortgage deed; provided, however, that
58 if the mortgage deed has been assigned of record, mortgagee or mortgage holder shall mean the last
59 person to whom such mortgage deed has been assigned of record.

60 "Mortgage servicer", the last person servicing a home loan, whether or not appearing of record as the
61 mortgagee or the mortgage holder.

62 "Person", an individual, corporation, business trust, testamentary trust, partnership, association, joint
63 venture, government, governmental subdivision or department or other legal or commercial entity.

64 (b) Duty of Good Faith and Fair Dealing. The servicer is the agent of the mortgagee or mortgage
65 holder, and both owe a duty of good faith and fair dealing to the mortgagor in all dealings related to a
66 home loan.

67 (c) Rules for Assessment of Fees. The following rules shall be applicable to every home loan:

68 No mortgagee or servicer shall assess or receive any fees or charges other than interest, late charges or
69 penalties as specifically authorized in section 59, fees authorized by section 63A, or fees assessed for
70 non-sufficient funds, and charges allowed pursuant to the section, until the loan is accelerated.

71 Any fee charged by a mortgagee or servicer must be i) reasonable, ii) for services actually rendered,
72 and iii) specifically authorized by the loan contract and this chapter.

73 A fee which is otherwise legal under this section shall be i) assessed within 30 days of the date on
74 which the fee was accrued; and ii) explained clearly and conspicuously in the next periodic statement
75 provided to the mortgagor. Failure to provide this information or charge the fee within the allowable
76 time and in the manner required, shall be a waiver of the fee.

77 A monthly periodic statement shall be provided to the mortgagor which includes, but is not limited to
78 the following information: (i) the application of the prior month's payment including the allocation of
79 the payment to interest, principal, escrow and fees; (ii) the status of the escrow account, including the
80 payments into and from the escrow account; (iii) the assessment of fees, accruing in the previous
81 month, including their cause and the date they accrued; and (iv) a local or toll-free telephone number
82 that allows the mortgagor access to a live person with the information and authority to answer
83 questions and resolve disputes regarding the account.

84 (d) Information Exchange and Dispute Requirements – The servicer shall respond in writing within 10
85 days of receipt of a mortgagor's written request for information and resolution of disputes. This
86 obligation shall include, but not be limited to –

87 Correcting of errors relating to allocation of payments;

88 Providing the current balance due on the loan, including the principal due, interest, late fees due, the
89 escrow balance, and the amount of any escrow deficiencies or shortages;

90 Providing a full payment history; and

91 Providing the identity, address and other relevant information about the owner or assignee of the loan.

92 (e) Notwithstanding the forgoing, section (d) shall not apply to a mortgagee's or servicer's duties
93 under sections 54 to 55, inclusive.

94 (f) Prompt Posting of Payments Required – All amounts paid to a mortgagee or its servicer shall be
95 credited on the date it is received against payments due.

96 (g) Obligations of Servicer to Handle Escrow Funds - The servicer shall make all payments from the
97 escrow account held for the mortgagor for insurance, taxes and other charges with respect to the
98 property in a timely manner.

99 Penalties. Any person who fails to comply with any requirement imposed under this section, shall be
100 liable to a mortgagor in an amount equal to the actual damages sustained by the mortgagor as a result
101 of the failure, but in no event less than \$1,000.

102 An action under this section shall be brought in any court within three years from the date of the
103 occurrence. This paragraph does not bar a person from asserting a violation of this section in an action
104 to collect the debt, or foreclose upon the home, or to stop a foreclosure upon the home, which was
105 brought more than three years from the date of the occurrence of the violation as a matter of defense
106 by recoupment or set-off in such action. An action under this section does not create an independent
107 basis for removal of an action to a court.

108 An action to enforce a violation of this section may also be brought in any court, by the attorney
109 general of the commonwealth within three years of the violation. An action under this section does not
110 create an independent basis for removal of an action to a court.

111 The prevailing party in an action brought pursuant to this section shall be awarded the costs of the
112 action and a reasonable attorney's fee as determined by the court.

113 SECTION 4. Chapter 244 of the General Laws is hereby amended by adding the following new
114 section 35A:-

115 Section 35A. Right to Cure

116 A mortgagor shall have the right at any time, up to the time the property is sold at auction or otherwise
117 transferred, to cure a default or breach of the security instrument and reinstate the loan.

118 Following a mortgagor's breach of the security instrument, and prior to acceleration, a notice of the
119 right to cure the default must be delivered to the mortgagor informing the mortgagor of the following:

120 (1) The nature of the default claimed on the home loan and of the mortgagor's right to cure

121 the default by paying the sum of money required to cure the default. If the amount necessary to cure
122 the default will change during the 30 day period after the effective date of the notice due to the
123 application of a daily interest rate or the addition of late fees, the notice shall give sufficient
124 information to enable the mortgagor to calculate the amount due at any point during the 30 day period;

125 (2) The date by which the mortgagor shall cure the default to avoid acceleration and initiation of
126 foreclosure or other action to seize the home, which date shall not be less than 30 days after the date
127 the notice is mailed and the name, address and local or toll free phone number of a person to whom the
128 payment or tender shall be made;

129 (3) That, if the mortgagor does not cure the default by the date specified, the mortgagee or servicer
130 may take steps to terminate the mortgagor's ownership in the property by commencing a foreclosure
131 proceeding or other action to seize the home;

132 (4) The name and address of the mortgagee or servicer and the toll-free telephone number of a
133 representative of the mortgagee or servicer whom the mortgagor may contact if the mortgagor
134 disagrees with the mortgagee's or servicer's assertion that a default has occurred or the correctness of
135 the mortgagee's or servicer's calculation of the amount required to cure the default;

136 (5) That a repayment plan, forbearance, loan modification, or other workout tool may be available
137 to help the mortgagor repay the arrears and the name, address, and local or toll free telephone number
138 of the creditor or servicer whom the mortgagor may contact to request this assistance; and

139 (6) That the mortgagor may be eligible for assistance from the home preservation fund created
140 pursuant to chapter 121E to cure the default, a short description of the eligibility requirements, and the
141 name, address, and local or toll free telephone number the mortgagor may call to request this
142 assistance.

143 To cure a default prior to acceleration, a mortgagor shall not be required to pay any charge, fee,
144 or penalty attributable to the exercise of the right to cure a default. The mortgagor shall not be liable
145 for any attorneys' fees relating to the mortgagor's default that are incurred by the mortgagee or servicer
146 prior to or during the period set forth in the notice required by section (b).

147 If a creditor or servicer asserts that grounds for acceleration of a home loan exist and requires the
148 payment in full of all sums secured by the security instrument, the mortgagor or anyone authorized to
149 act on the mortgagor's behalf shall have the right at any time, up to the time title is transferred by
150 means of a sale or otherwise, to cure the default and reinstate the home loan by tendering the total
151 amount of principal, interest, late fees, escrow deposits in arrears, reasonable and necessary expenses
152 incurred by the mortgagee or servicer, and reasonable attorney fees. Cure of default as provided in
153 this paragraph shall reinstate the mortgagor to the same position as if the default had not occurred and
154 shall nullify as of the date of the cure any acceleration of any obligation under the security instrument
155 or note arising from the default. The cure shall constitute payment in full satisfaction of all delinquent
156 principal, interest, late fees, escrow shortages, legal fees, and costs of any kind.

157 After the mortgagee or servicer initiates a foreclosure action or takes other action to seize or transfer
158 ownership of the home, the mortgagor shall only be liable for attorneys' fees that are reasonable and
159 actually incurred by the mortgagee or servicer based on a reasonable hourly rate and a reasonable
160 number of hours plus any other reasonable and necessary expenses incurred by the creditor or servicer.

161 If a default is cured after the initiation of any action to foreclose, the creditor or servicer shall take
162 such steps as are necessary to terminate the foreclosure proceeding or other action.

163 A copy of the notice required by section (d) and an affidavit demonstrating compliance with the
164 section shall be filed in any action or proceeding to foreclose on a home loan.

165 Penalties. Any person who fails to comply with any requirement imposed under this section with
166 respect to a mortgagor shall be liable to the mortgagor in an amount equal to the actual damages
167 sustained by the mortgagor as a result of the failure, but in no event less than \$1,000.

168 Any action under this section shall be brought in any court within three years from the date of the
169 occurrence. This paragraph does not bar a person from asserting a violation of this Chapter in an
170 action to collect the debt, or foreclose upon the home, or to stop a foreclosure upon the home, which
171 was brought more than three years from the date of the occurrence of the violation as a matter of
172 defense by recoupment or set-off in such action. An action under this section does not create an
173 independent basis for removal of an action to a court.

174 An action to enforce a violation of this section may also be brought in any court by the attorney general
175 of the commonwealth within three years of the violation. An action under this section does not create
176 an independent basis for removal of an action to a court.

177 The prevailing party in an action brought pursuant to this section shall be awarded the costs of the
178 action and a reasonable attorney's fee as determined by the court.

179 SECTION 5. Chapter 255E of the General Laws, as appearing in the 2000 Official Edition is hereby
180 amended by inserting after section 10 the following section:-

181 Section 11. It shall be the continuing and affirmative obligation of each mortgage lender, who is
182 licensed pursuant to this chapter and who, directly or indirectly, makes more than fifty residential real
183 estate mortgage loans in the commonwealth in any calendar year, as reported under the Home
184 Mortgage Disclosure Act, 12 USC 1801 et seq., to help meet the housing credit needs of the
185 communities in the commonwealth, including low and moderate income neighborhoods and residents,
186 consistent with laws, rules and regulations of the commonwealth and the federal government relative
187 thereto, and with safe and sound business practices.

188 The Commissioner of Banks shall assess the record of each such lender in satisfying this continuing
189 and affirmative obligation. To assist in carrying out the provisions of this section, the commissioner
190 shall promulgate regulations which shall include, but need not be limited to, a consideration of such
191 mortgage lender's (a) origination of loans and other efforts to assist low and moderate income
192 residents, without distinction, to be able to acquire or to remain in affordable housing in their
193 neighborhoods, (b) origination of loans that show an undue concentration and a systematic pattern of
194 lending resulting in the loss of affordable housing units, and (c) such other considerations, including
195 notice of the schedule of examinations and the right of interested parties to submit written comments
196 relative to any such examination to the commissioner, as, in the judgment of the commissioner,
197 reasonably bear upon the extent to which a mortgage lender is helping to meet the housing needs of
198 communities in the commonwealth.

199 The Commissioner shall file any regulation proposed pursuant to this section, excluding emergency
200 regulations adopted pursuant to section 2 of chapter 30A, or any amendment or repeal thereof with the
201 clerks of the senate and house of representatives, together with a statement that the pertinent
202 provisions of chapter 30A have been complied with and a summary of the regulations in ordinary
203 language. The clerk shall refer such filing to the joint committee on banks and banking within 5 days
204 of the filing thereof. No regulation shall take effect until 90 days after it has been so filed; provided,
205 however, that such 90 day period shall not include days when the general court is prohibited by law or
206 rule from meeting in formal session.

207 In considering an application from a licensed mortgage lender for a renewal of a license under this
208 chapter, the commissioner shall consider, but shall not be limited to, the record of performance of any
209 such lender relative to the provisions of this section. Said record of performance may be the basis for
210 the denial of any such renewal application.

211 Upon the completion of the examination of a mortgage lender under this section, the commissioner
212 shall prepare a written evaluation of such lender's record of performance which shall be open to public
213 inspection upon request. Said written evaluation shall include: -

- 214 (1) the assessment factors utilized to determine the mortgage lender's descriptive rating;
- 215 (2) the commissioner's conclusions with respect to each such assessment factor;
- 216 (3) a discussion of the facts supporting such conclusions; and
- 217 (4) the mortgage lender's descriptive rating and the basis therefore.

218 Based upon such examination, the mortgage lender shall be assigned one of the following ratings: -

- 219 (a) outstanding record of performance in meeting the housing credit needs of communities in the
220 commonwealth;
- 221 (b) high satisfactory record of performance in meeting the housing credit needs of communities in the
222 commonwealth;
- 223 (c) satisfactory record of performance in meeting the housing credit needs of communities in the
224 commonwealth;
- 225 (d) needs to improve record of performance in meeting the housing credit needs of communities in the
226 commonwealth; or
- 227 (e) substantial noncompliance in meeting the housing credit needs of communities in the
228 commonwealth.

229 Notwithstanding the foregoing, the commissioner shall establish an alternative examination procedure
230 for any mortgage lender, which, as of the most recent examination, has been assigned a rating of
231 outstanding or high satisfactory for its record of performance in meeting its community housing credit
232 needs.

233 For the purposes of this section, no mortgage lender may include a loan origination or loan purchase
234 for consideration as part of its review under this section if another mortgage lender claims the same
235 loan origination or purchase for its review under this section or under section 14 of chapter 167 of the
236 General Laws.

237 SECTION 6. Section 2 of Chapter 255E of the General Laws is hereby amended by striking out in the
238 first sentence the words:- provided, however, that any person who is employed by or associated with a
239 licensed mortgage broker or mortgage lender in the capacity of a mortgage broker or mortgage lender
240 under the direction of said licensed mortgage broker or mortgage lender shall not be required to obtain
241 such license.

242 SECTION 7. Section 2 of Chapter 255E of the General Laws is hereby amended by inserting in the
243 fourth sentence the words:- “a person employed by” before the words “a bank.”

244 SECTION 8.

245 7004-XXXX For the home preservation fund established pursuant to chapter 121E.... \$10,000,000.