

HOUSE No. 1237

By Mr. Honan of Boston, petition of Kevin G. Honan and others for legislation to protect homeowners from mortgage foreclosure. Housing.

The Commonwealth of Massachusetts

PETITION OF:

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In the Year Two Thousand and Seven.

AN ACT TO PROTECT HOMEOWNERS FROM MORTGAGE 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 SECTION 1. The General Laws, as appearing in the 2004 Offi-
2 cial Edition, are hereby amended by inserting after sub-section
3 Section 3 (v) of Chapter 23B, the following new sub-section:—
4 (w) establish, conduct and maintain a program to provide
5 mortgage foreclosure counseling services and emergency mort-
6 gage assistance loans to eligible homeowners facing mortgage
7 foreclosure.

1 SECTION 2. The General Laws, as so appearing, are hereby
2 further amended by inserting after Section 29 of Chapter 23B, the
3 following new sections:—

4 Section 30. Massachusetts Homeownership Protection
5 Program.

6 The department shall, subject to appropriation, operate an
7 emergency mortgage assistance loan program for eligible home-
8 owners facing mortgage foreclosure.

9 Section 31. Regulations.

10 The department shall adopt, and may from time to time amend
11 or repeal, regulations to determine said program's eligibility
12 requirements that shall include, but not be limited to, job loss,
13 injury or illness, victimization by crime, defaults on child support,
14 predatory or high cost loans as defined in chapter 183C, or unfair
15 or deceptive practices by mortgage brokers or lenders.

16 Said eligibility requirements shall further include that home-
17 owners eligible to receive financial or other assistance under this
18 program shall be mortgagors of a single-family property,
19 including condominiums and two, three and four unit structures,
20 occupied by the mortgagor as his or her primary residence, and
21 who:

22 (a) has been notified by any mortgagee of its intention to fore-
23 close on one or more mortgages on said primary residence.

24 (b) the mortgagor has registered in a timely manner with a
25 credit or housing counseling agency approved by the department
26 to provide mortgage foreclosure prevention services under this
27 program.

28 The department shall adopt, and may from time to time amend
29 or repeal, any other rules and regulations which it deems neces-
30 sary for the proper administration said program.

31 Section 32. Credit counseling; criteria.

32 The department shall establish a set of criteria and procedures
33 to assess and certify the capacity of not-for-profit credit and
34 housing counseling agencies to provide mortgage foreclosure pre-
35 vention services under this program. Subject to appropriations,
36 the department may enter into contracts with qualified not-for
37 profit organizations to provide said foreclosure prevention serv-
38 ices.

39 Section 33. Foreclosure Prevention Fund.

40 The department shall establish a foreclosure prevention fund to
41 provide loans of up to \$25,000 to eligible homeowners partici-
42 pating in this program and to provide foreclosure intervention
43 counseling services under section 32. Loans may be used to cure
44 any mortgage delinquency, reduce mortgage principal or interest
45 payments or provide such other financial assistance deemed nec-
46 essary to ensure the sustainability of the mortgagor's homeowner-
47 ship. Loans may only be provided to eligible homeowners who

48 can reasonably be expected to resume regular mortgage payments
49 within a two-year period. The department may tailor the terms
50 and interest rate of the loans to meet the financial needs of each
51 borrower. However, all loans shall be repaid to the loan fund in
52 the event of the sale or refinancing of the property. All repay-
53 ments of principle and interest on the loans shall be retained by
54 the department and used for the continued operation of the loan
55 fund.

56 The fund shall consist of all revenues received by registers of
57 deeds under section 34 , any repayments of loan principal and
58 interest received from loans made by the fund, any funds appro-
59 priated by the legislature for the purposes of the program and all
60 other monies credited to or transferred to from any other fund or
61 source pursuant to law. The department may also utilize a reason-
62 able percentage of any funds appropriated, not exceeding 10 per
63 cent of such funds, for administrative costs of the program.

64 Section 34. Surcharges; fees of register of deeds; fees of assis-
65 tant recorder.

66 The fees of the registers of deeds, except as otherwise provided,
67 to be paid when a mortgage foreclosure deed & affidavit are left
68 for recording, filing or deposit shall be subject to a surcharge of
69 \$500. All surcharges on fees collected pursuant to this section
70 shall be forwarded to the Massachusetts Foreclosure Prevention
71 Fund, established in section 33.

72 The fees of the assistant recorder, except as otherwise provided,
73 to be paid when a mortgage foreclosure deed & affidavit are left
74 for recording with respect to registered land, filing or deposit shall
75 be subject to a surcharge of \$500. All surcharges on fees col-
76 lected pursuant to this section shall be forwarded to the Massachu-
77 setts Foreclosure Prevention Fund, established in section 33.

1 SECTION 3. The General Laws, as so appearing, are hereby
2 further amended by inserting after Section 14 of Chapter 244, the
3 following new Section 14A: —

4 Section 14A. Pre-Foreclosure Notice to Mortgagor.

5 The mortgagee or person having his estate in the land mort-
6 gaged, or a person authorized by the power of sale, or the attorney
7 duly authorized by a writing under seal, or the legal guardian or
8 conservator of such mortgagee or person acting in the name of

9 such mortgagee or person, may, upon breach of condition and
10 without action, do all the acts authorized or required by the
11 power; but no sale under such power shall be effectual to fore-
12 close a mortgage, unless notice has been provided to the mort-
13 gator of their right to receive assistance under sections 30 through
14 33 of Chapter 23B as established by this Act.

15 No action may be commenced under section 14 of chapter 244
16 until 30 days after such notice has been provided to the mortgagor.
17 Said notice is to be provided to the mortgagor at the same time
18 that the first action to foreclose is commenced pursuant to the Sol-
19 diers' and Sailors' Civil Relief Act as required by Chapter 57 of
20 the Acts of 1943, as amended. If the mortgagor has registered
21 with an approved foreclosure counseling agency as defined in
22 section 32 of chapter 23B within thirty days of receiving notice
23 from the mortgagee, then no action may be commenced under
24 section 14 of chapter 244 for an additional sixty days in order to
25 provide the mortgagor and the mortgagee, with assistance from
26 the foreclosure counseling agency, to address the breach of condi-
27 tions and avoid foreclosure of the mortgage.

1 SECTION 4. Section 38 of Chapter 262 of the General Laws,
2 as so appearing, are hereby further amended by adding after the
3 last sentence the following new sentence:—

4 The fees of the registers of deeds, except as otherwise provided,
5 to be paid when a mortgage foreclosure deed & affidavit are left
6 for recording, filing or deposit shall be subject to a surcharge
7 under section 34 of chapter 23B.

1 SECTION 5. Chapter 183C of the General Laws, as so
2 appearing, is hereby further amended by inserting after Section 18
3 the following new Sections:—

4 Section 18A: Unfair and Deceptive High Cost Loan Adver-
5 tising Practices

6 Notwithstanding any other provisions to the contrary, it shall
7 henceforth be considered a deceptive act or practice pursuant to
8 section 2(a) of chapter 93A and chapters 167A and 167D to adver-
9 tise the availability of mortgage financing unless a consumer
10 warning or sufficient information is provided in the same adver-
11 tisement to enable the consumer to determine whether or not the

12 advertised financing would result in a high cost loan as defined in
13 this chapter.

14 Advertising practices that shall be considered unfair and decep-
15 tive practices includes, but is not limited to the following:

16 (a) Advertising indicating the availability of instant mortgage
17 financing approval or financing for persons with no credit or bad
18 credit without disclosing how the terms of financing available to
19 persons with impaired credit will differ from persons with a stan-
20 dard credit rating.

21 (b) Advertising indicating the availability of mortgage
22 financing at a particular interest rate or monthly payment amount
23 that does not also disclose and specify the term of the mortgage,
24 the nature and amount of any change in interest rate and monthly
25 payments in the first 5 years, any prepayment penalty or prohibi-
26 tion, and any negative amortization.

27 (c) Advertising availability of refinancing of pre-existing debt
28 that will result in reduction of a borrower's aggregate monthly
29 payment without also disclosing any increase in the borrower's
30 aggregate number of monthly debt payments and any increase in
31 the aggregate amount paid by the borrower over the term of the
32 loan.

33 Section 18B. Mortgage Labeling.

34 Notwithstanding any other provisions to the contrary, it shall
35 henceforth be considered a deceptive act or practice pursuant to
36 section 2(a) of chapter 93A and chapters 167A and 167D to pro-
37 vide mortgage financing unless the mortgagee also provided the
38 borrower with a plain language summary of the estimated 10 year
39 costs of the loan in a format proscribed by the Commissioner of
40 Banks. This summary shall provide 1) the borrower with a calcu-
41 lation of the maximum monthly required minimum payment the
42 borrower could face under the terms of the loan for each of the
43 first ten years of the loan in order to keep the loan in good
44 standing and 2) how much it would cost the buyer to payoff the
45 loan at the end of each of the first ten years if the borrower makes
46 the minimum required payments to keep the loan in good
47 standing. If the borrower is receiving more than one loan, the
48 summary must provide the same information for each loan sepa-
49 rately and for the total of all of the loans together.

1 SECTION 7. The General Laws, as so appearing, are hereby
2 further amended by inserting the following new Section F after
3 Chapter 255E:—

4 **CHAPTER 255F.**
5 **Licensing of Mortgage Loan Originators.**

6 Section 1. Definitions.

7 As used in this chapter the following words shall have the
8 following meanings:

9 “Division”, The Commonwealth of Massachusetts Division of
10 Banks.

11 “Commissioner”, the Commissioner of the Division of Banks.

12 “Entity”, a person or entity that is a “bank” as defined under
13 section 1 of chapter 167, or a “licensee” as defined under
14 section 1 of chapter 255E, regulated by the Commonwealth of
15 Massachusetts Division of Banks.

16 “Mortgage loan originator”, a natural person: (a) who is
17 employed by or associated with one and not more than one entity
18 as defined above; and (b) who solicits, provides or accepts mort-
19 gage loan applications, or assists consumers in completing such
20 applications; and, (c) whose compensation for such activity is in
21 any way based on a number or dollar volume of mortgage loan
22 applications or mortgage loan closings, or other mortgage loan
23 activity.

24 “Mortgage loan”, a loan to a natural person made primarily for
25 personal, family or household purposes secured wholly or par-
26 tially by a mortgage on residential property.

27 “Residential property”, real property located in the common-
28 wealth having thereon a dwelling house with accommodations for
29 four or less separate households and occupied, or to be occupied,
30 in whole or in part by the obligor on the mortgage debt.

31 Section 2. Mortgage loan originator license requirement.

32 No natural person shall act as a mortgage loan originator unless
33 such person has first obtained a mortgage loan originator license
34 from the Commissioner. A natural person who meets the defini-
35 tion of a mortgage loan originator prior to enactment of this
36 chapter 255F shall file an application and obtain a license from
37 the Commissioner within one hundred eighty (180) days of the

38 enactment of chapter 255F without being required to comply with
39 Section 4(b) hereof. An entity shall not knowingly employ or
40 retain a mortgage loan originator unless the mortgage loan origi-
41 nator is licensed hereunder.

42 Section 3. Rules and regulations.

43 The Commissioner may adopt, amend or repeal rules and regu-
44 lations to aid in the administration and enforcement of this
45 chapter.

46 Section 4. License application; residential mortgage lending
47 course requirements.

48 (a) The application for a license shall be in writing and in the
49 form prescribed by the Commissioner, signed under the pains and
50 penalties of perjury, and shall contain the name and address of the
51 entity with whom a mortgage loan originator is employed or asso-
52 ciated and other information as the Commissioner may require,
53 including evidence of compliance with subsection (b). Such
54 application shall also include a description of the activities of the
55 applicant, in such detail and for such periods, as the Commis-
56 sioner may require, as well as such further information as the
57 Commissioner may require. Each application for a license shall
58 be accompanied by an investigation. Investigation and license
59 fees shall be determined annually by the Commissioner of admin-
60 istration under the provisions of section 3B of chapter 7.

61 (b) An applicant shall (i) have completed a residential mortgage
62 lending course accredited by the Commonwealth's division of
63 professional licensure and managed by the board of residential
64 mortgage lending, not later than the two-year period immediately
65 preceding the date of the application and (ii) provide evidence that
66 the applicant has received a passing grade on the residential mort-
67 gage lending course examination administered by the board of
68 mortgage lending within such two-year period.

69 Section 5. Issuance of license by Commissioner; notice of
70 license denial; appeal.

71 If the Commissioner finds that the financial responsibility,
72 character, reputation, integrity and general fitness of the applicant
73 is such as to warrant belief that the applicant will act honestly,
74 fairly, soundly and efficiently in the public interest consistent with
75 the purposes of this chapter, he shall thereupon issue the applicant
76 a license to engage in the business of a mortgage loan originator

77 upon payment of the required fees. If the Commissioner shall not
78 so find, he shall not issue a license and he shall notify the appli-
79 cant of the denial. Within twenty (20) days thereafter, he shall
80 enter upon his records a written decision and findings containing
81 the reasons supporting the denial and shall forthwith give written
82 notice thereof by registered mail to the applicant. Within thirty
83 (30) days after the date of such notice, such appeal should be
84 processed as a de novo appeal pursuant to chapter.30(a). The
85 Commissioner shall approve or deny every application for a
86 license within sixty days after the filing thereof, but any failure of
87 the Commissioner to act within such period shall not be deemed to
88 be an approval of any such application.

89 Section 6. Amount and use of license fees.

90 The fee for a mortgage originator license shall be not less than
91 \$150 but not more than \$500. Not less than fifty percent of the
92 revenue from said fee shall be retained by the division of banks
93 for the implementation and enforcement of the requirement of this
94 Act.

95 Section 7. Bonding requirements.

96 Each entity employing one or more mortgage loan originators
97 shall obtain a mortgage originator license bond for each licensed
98 mortgage loan originator employed by the entity.

99 Section 8. Information on license; changes; notice require-
100 ments.

101 Each license shall state the name and address of the mortgage
102 loan originator licensee. The license shall be the property of the
103 licensee and must be prominently posted at the place of business
104 of the entity at which the mortgage originator is employed. In the
105 event that the mortgage loan originator is no longer associated
106 with or employed by the entity, both the entity and the mortgage
107 loan originator are obligated to so notify the Commissioner. Such
108 notice shall be in writing and provide such other information as
109 the Commissioner may require. The licensee shall pay any fee
110 required by the Commissioner to process the notice.

111 Section 9. License renewal.

112 Licenses shall expire annually. Each licensee shall, annually,
113 on or before a date to be determined by the Commissioner, submit
114 a license renewal application with the Commissioner. Said license
115 renewal application shall be on a form prescribed by the Commis-

116 sioner, signed under the pains and penalties or perjury, containing
117 such information as said Commissioner may require, including
118 evidence satisfactory to the Commissioner that the licensee has
119 completed at least eight (8) hours of residential mortgage lending
120 continuing education courses accredited by the Division of Profes-
121 sional Licensure and the Independent Board of Mortgage Lending
122 during the year immediately preceding license renewal. Failure of
123 the licensee to satisfy the continuing education requirement will
124 render the mortgage loan originator ineligible for renewal and
125 deemed to be inactive. A mortgage loan originator neglecting to
126 file such application or failing to amend the same within fifteen
127 days of notice from said Commissioner directing the same shall be
128 deemed inactive. Inactive mortgage loan originators are prohib-
129 ited from engaging in business as a mortgage loan originator.

130 Section 10. License suspension or revocation; notice and
131 hearing.

132 The Commissioner may suspend, revoke or refuse to renew any
133 license issued pursuant to this chapter if said Commissioner finds
134 that: (a) the licensee has violated any provision of this chapter or
135 any rule or regulation adopted hereunder, or any other law applic-
136 able to the conduct of its business; (b) any fact or condition exists
137 which, if it had existed at the time of the original application for
138 such license, would have warranted the Commissioner in refusing
139 to issue such license; or (c) the licensee has committed any fraud,
140 misappropriated funds or misrepresented any of the material par-
141 ticulars of a mortgage loan transaction.

142 No license shall be revoked or suspended except after notice
143 and a hearing thereon pursuant to chapter 30(a). Any order issued
144 pursuant to this section shall be subject to de novo review as pro-
145 vided in chapter 30(a).

146 A licensee may surrender a license by delivering to the Com-
147 missioner written notice that it thereby surrenders such license,
148 but such surrender shall not affect the civil or criminal liability of
149 the licensee for acts committed before such surrender.

150 Section 11. Commissioner's order to cease and desist from
151 unlawful act or practice; prior notice and opportunity for hearing;
152 temporary order.

153 (a) If the Commissioner determines, after giving notice of and
154 opportunity for a hearing, that a licensee has engaged in or is

155 about to engage in an act or practice constituting a violation of a
156 provision of this chapter or a rule, regulation or order hereunder,
157 he may order such licensee to cease and desist from such unlawful
158 act or practice and take such affirmative action as in his judgment
159 will effect the purposes of this chapter.

160 (b) If the Commissioner makes written findings of fact that the
161 public interest will be irreparably harmed by delay in issuing an
162 order under subsection (a) he may issue a temporary cease and
163 desist order. Upon the entry of a temporary cease and desist
164 order, the Commissioner shall promptly notify, in writing, the
165 licensee affected thereby that such order has been so entered, the
166 reasons therefor, and that within twenty days after the receipt of a
167 written request from such licensee, the matter will be scheduled
168 for hearing to determine whether or not such temporary order
169 shall become permanent and final. If no such hearing is requested
170 and none is ordered by the Commissioner, the order shall remain
171 in effect until it is modified or vacated by the Commissioner. If a
172 hearing is requested or ordered, the Commissioner, after giving
173 notice of and opportunity for a hearing to the licensee subject to
174 said order, shall, by written finding of facts and conclusions of
175 law, vacate, modify or make permanent the order.

176 (c) No order under this section, except an order issued pursuant
177 to subsection (b), may be entered without prior notice of and
178 opportunity for a hearing. The Commissioner may vacate or
179 modify an order under this section upon finding that the condi-
180 tions which required such an order have changed and that it is in
181 the public interest to so vacate or modify.

182 Any order issued pursuant to this section shall be subject to de
183 novo review as provided in chapter 30(a).

184 Section 12. Civil actions filed by Commissioner.

185 The Commissioner may enforce the provisions of this chapter,
186 or restrain any violations thereof, by filing a civil action in any
187 court of competent jurisdiction. Nothing herein shall be construed
188 so as to create a private cause of action.

189 Section 13. Penalties.

190 Whoever violates any provision of section 2 of this chapter or
191 any rule or regulation made thereunder by the Commissioner shall
192 be punished by a fine of not more than five hundred dollars. Each
193 day such violation occurs or continues shall be deemed a separate
194 offense.

195 Section 14. Responsibilities of the Employing Entity.

196 The Commissioner may suspend, revoke or refuse to renew the
197 license of the entity employing any licensed mortgage originator
198 if said Commissioner finds that: (a) the entity was aware of or
199 could reasonably have been expected to be aware that the licensee
200 has violated any provision of this chapter or any rule or regulation
201 adopted hereunder, or any other law applicable to the conduct of
202 its business; (b) the entity was aware of any fact or condition
203 exists which, if it had existed at the time of the original applica-
204 tion for such license, would have warranted the Commissioner in
205 refusing to issue such license; or (c) the licensee has committed
206 any fraud, misappropriated funds or misrepresented any of the
207 material particulars of a mortgage loan transaction approved by
208 the entity.

1 SECTION 8. Chapter 13 of the General Laws, as so appearing,
2 are further amended by adding the following new sections:—

3 Section 98. Independent Board of Mortgage Lending.

4 There is hereby created an Independent Board of Mortgage
5 Lending whose exclusive purpose shall be to (i) review residential
6 mortgage lending course curricula for mortgage loan originators
7 as defined in section 1 of chapter 255F to be offered or sponsored
8 by any enterprise (including for profit or not for profit entities),
9 recommend accreditation thereof by the Division of Professional
10 Licensure, and issue certificates of completion thereof, and
11 (ii) develop and administer a residential mortgage lending course
12 examination. The board of mortgage lending shall consist of five
13 persons who are residents of the commonwealth, of whom four
14 shall be employed by an entity as defined in section 1 of Chapter
15 255F and have at least five (5) years' experience in the residential
16 mortgage loan industry, and one of whom shall be a representative
17 of the public, subject to the provisions of section 9B. The mem-
18 bers of said board shall be appointed in January of each year by
19 the governor, for a term of three years from the first day of the
20 following February. Any member of the board may be reap-
21 pointed by the governor to serve successive terms.

22 Section 99. Independent Board of Mortgage Lending; organi-
23 zation; meetings.

24 The members of the board shall meet in February in each year
25 at such time or place as they shall determine, and shall organize
26 by electing from its own members a chairman and a secretary,
27 who shall hold their respective offices for one year. The board
28 shall hold regular meetings in February, May, August and
29 November, and such additional meetings as it may determine, at
30 such times and places as may be agreed upon by the members.

31 Section 100. Independent Board of Mortgage Lending; com-
32 pensation and expenses.

33 Each member of the board shall serve without compensation,
34 but shall be paid by the commonwealth the expenses necessarily
35 incurred by him in the discharge of his official duties. The com-
36 monwealth shall provide the board with adequate office space and
37 shall pay the expenses of the board incurred in the performance of
38 its duties.