

HOUSE No. 1649

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Regarding Massachusetts Foreclosure Mediation Program..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 I. Amendments to G.L. c. 244, § 35A

2 Section 35A(a) of Chapter 244 of the Massachusetts General Laws is hereby amended by
3 striking out the second sentence.

4 Chapter 244 of the Massachusetts General Laws is hereby amended by adding the
5 following new section at the end of 35A (c):

6 (7) the mortgagor shall be offered the opportunity to participate in a court-supervised
7 Foreclosure Mediation Program. In that program the mortgagor will have the opportunity to
8 negotiate an agreement with the mortgagee. The mortgagor is encouraged to meet with a
9 housing counselor or attorney prior to mediation.

10 Chapter 244 of the Massachusetts General Laws is hereby amended by adding the
11 following new section at the end of 35A:

12 (g) The commissioner of the division of banks shall make available to the Chief Justice
13 for Administration and Management a copy of the notice required by this section.

14 II. New Section Creating Foreclosure Mediation Program

15 Chapter 244 of the Massachusetts General Laws is hereby amended by adding the
16 following new section

17 Section 35B. Duty to Engage in Loss Mitigation and Foreclosure Mediation Program

18 (a) Duty to engage in loss mitigation. A mortgagee shall not initiate a foreclosure of a
19 residential real property consisting of a dwelling house with accommodations for four or less
20 separate households and occupied in whole or in part by the mortgagor unless it has made a good
21 faith review of the borrower's financial situation and offered, whenever feasible, a loan
22 modification, or other option to assist the borrower in bringing the arrears current. A good faith
23 review of the borrower's financial situation includes, but is not limited to an evaluation of the
24 mortgagor's eligibility for all loan modification programs established by the federal government
25 or the mortgage industry, and if the mortgagor's elects, participation in the Foreclosure
26 Mediation Program established in subsection (b). Failure to comply with this section constitutes
27 a defense to the foreclosure.

28 (b) Foreclosure Mediation Program. Not later than <DATE>, the Chief Justice for
29 Administration and Management shall establish in each judicial district a foreclosure mediation
30 program in actions to foreclose mortgages on residential real property consisting of a dwelling
31 house with accommodations for four or less separate households and occupied in whole or in
32 part by the mortgagor. Such foreclosure mediation program shall:

33 (1) address all the issues related to the foreclosure, including, but not limited to,
34 reinstatement of the mortgage, and the restructuring of the mortgage debt; and

35 (2) be conducted by mediators who are employed by the Court, trained in mediation and
36 all relevant aspects of the law, as determined by the Chief Justice for Administration and
37 Management, have knowledge of the community-based resources that are available in the
38 commonwealth, and have knowledge of any assistance programs established by the
39 commonwealth or other sources. Such mediators may refer mortgagors who participate in the
40 foreclosure mediation program to community-based resources when appropriate and to
41 assistance programs.

42 (3) Upon receiving notice from the commissioner of the division of banks of a filing
43 pursuant to section 35A(f) of Chapter 244 of the Massachusetts General Laws, the Court shall
44 send a notice of the availability of the mediation program to the mortgagor. The notice shall
45 inform mortgagors of the program and encourage mortgagors to meet with a housing counselor
46 or attorney prior to mediation. The mortgagor has fifteen business days to return a foreclosure
47 mediation request form to the Court.

48 (4) The mediation period under the foreclosure mediation program established in this
49 section shall commence when the court sends notice to each party that a foreclosure mediation
50 request form has been submitted by a mortgagor to the court, which notice shall be sent not later
51 than three business days after the court receives a completed foreclosure mediation request form.
52 Except as outlined in subsection (6), the mediation period shall conclude not more than sixty
53 days after the return day for the foreclosure action

54 (5) The first mediation session shall be held not later than ten business days after the
55 court sends notice to all parties that a foreclosure mediation request form has been submitted to
56 the court. The mortgagor and mortgagee shall appear in person at each mediation session and

57 shall have authority to agree to a proposed settlement, except that if the mortgagee is represented
58 by counsel, the mortgagee's counsel may appear in lieu of the mortgagee to represent the
59 mortgagee's interests at the mediation, provided such counsel has the authority to agree to a
60 proposed settlement and the mortgagee is available during the mediation session by telephone or
61 electronic means.

62 (6) Not later than five business days after the conclusion of the first mediation session,
63 the mediator shall determine whether the parties will benefit from further mediation. The
64 mediator shall file with the court a report setting forth such determination and mail a copy of
65 such report to each appearing party. If the mediator reports to the court that the parties will not
66 benefit from further mediation, the mediation period shall terminate automatically. If the
67 mediator reports to the court after the first mediation session that the parties may benefit from
68 further mediation, the mediation period shall continue for an additional thirty days.

69 (7) The Chief Justice for Administration and Management shall establish policies and
70 procedures to implement this section. Such policies and procedures shall, at a minimum, provide
71 that the mediator shall advise the mortgagor at the first mediation session required by subsection
72 (b) of this section that: (1) during the mediation period, the foreclosure process is suspended; (2)
73 if the parties are unable to come to an agreement and the foreclosure process resumes, such
74 mediation does not suspend the mortgagor's obligation to respond to the foreclosure action in
75 accordance with applicable law; and (3) a foreclosure sale may cause the mortgagor to lose the
76 residential real property.

77 (8) If no agreement is reached during the mediation, the mortgagor shall receive written
78 notice as to when the foreclosure proceeding will resume and a description of the ensuing
79 procedure.

80 (c) An affidavit demonstrating compliance with this section (a) shall be filed by the
81 mortgagee, or anyone holding thereunder, in any action or proceeding to foreclose on such
82 residential real property.

83 (d) The sum of _ million dollars is appropriated to the Judicial Department, from the ---,
84 to establish the foreclosure mediation program.