

HOUSE No. 4003

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to a 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 SECTION 1. Subsection (a) of section 35A of chapter 244 of the General Laws is hereby
2 amended by striking out the second sentence.

3 SECTION 2. Subsection (c) of said section 35A of chapter 244 of the General Laws is
4 hereby amended by adding the following clause:-

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

9 SECTION 3. Section 35A of chapter 244 of the General Laws is hereby amended by
10 adding the following subsection:-

11 (g) The commissioner of the division of banks shall make available to the chief justice for
12 administration and management a copy of the notice required by this section.

13 SECTION 4. Chapter 244 of the Massachusetts General Laws is hereby amended by
14 inserting after section 35A the following section:-

15 Section 35B.(a) A mortgagee shall not initiate a foreclosure of a residential real property
16 consisting of a dwelling house with accommodations for 4 or less separate households and
17 occupied in whole or in part by the mortgagor unless it has made a good faith review of the
18 borrower's financial situation and offered, whenever feasible, a loan modification, or other
19 option to assist the borrower in bringing the arrears current. A good faith review of the
20 borrower's financial situation includes, but is not limited to, an evaluation of the mortgagor's
21 eligibility for all loan modification programs established by the federal government or the
22 mortgage industry, and if the mortgagor's elects, participation in the foreclosure mediation
23 program established in this section. Failure to comply with this section constitutes a defense to
24 the foreclosure.

25 (b) Not later than June 30, 2009 the chief justice for administration and management
26 shall establish in each judicial district a foreclosure mediation program in actions to foreclose
27 mortgages on residential real property consisting of a dwelling house with accommodations for 4
28 or less separate households and occupied in whole or in part by the mortgagor.

29 (c) The foreclosure mediation program shall: (i) address all the issues related to the
30 foreclosure, including, but not limited to, reinstatement of the mortgage, and the restructuring of
31 the mortgage debt; and (ii) be conducted by mediators who are employed by the court, trained in
32 mediation and all relevant aspects of the law, as determined by the chief justice for
33 administration and management, have knowledge of the community-based resources that are
34 available in the commonwealth, and have knowledge of any assistance programs established by

35 the commonwealth or other sources. Such mediators may refer mortgagors who participate in
36 the foreclosure mediation program to community-based resources when appropriate and to
37 assistance programs.

38 (d) Upon receiving notice from the commissioner of the division of banks of a filing
39 pursuant to subsection (f) of section 35A, the court shall send a notice of the availability of the
40 mediation program to the mortgagor. The notice shall inform mortgagors of the program and
41 encourage mortgagors to meet with a housing counselor or attorney prior to mediation. The
42 mortgagor has 15 business days to return a foreclosure mediation request form to the court.

43 (e) The mediation period under the foreclosure mediation program established in this
44 section shall commence when the court sends notice to each party that a foreclosure mediation
45 request form has been submitted by a mortgagor to the court, which notice shall be sent not later
46 than three business days after the court receives a completed foreclosure mediation request form.
47 Except as outlined in subsection (g), the mediation period shall conclude not more than 60 days
48 after the return day for the foreclosure action.

49 (f) The first mediation session shall be held not later than 10 business days after the court
50 sends notice to all parties that a foreclosure mediation request form has been submitted to the
51 court. The mortgagor and mortgagee shall appear in person at each mediation session and shall
52 have authority to agree to a proposed settlement, except that if the mortgagee is represented by
53 counsel, the mortgagee's counsel may appear in lieu of the mortgagee to represent the
54 mortgagee's interests at the mediation, provided such counsel has the authority to agree to a
55 proposed settlement and the mortgagee is available during the mediation session by telephone or
56 electronic means.

57 (g) Not later than 5 business days after the conclusion of the first mediation session, the
58 mediator shall determine whether the parties will benefit from further mediation. The mediator
59 shall file with the court a report setting forth such determination and mail a copy of such report
60 to each appearing party. If the mediator reports to the court that the parties will not benefit from
61 further mediation, the mediation period shall terminate automatically. If the mediator reports to
62 the court after the first mediation session that the parties may benefit from further mediation, the
63 mediation period shall continue for an additional 30 days.

64 (h) The chief justice for administration and management shall establish policies and
65 procedures to implement this section. Such policies and procedures shall, at a minimum, provide
66 that the mediator shall advise the mortgagor at the first mediation session required by this section
67 that: (i) during the mediation period, the foreclosure process is suspended; (ii) if the parties are
68 unable to come to an agreement and the foreclosure process resumes, such mediation does not
69 suspend the mortgagor's obligation to respond to the foreclosure action in accordance with
70 applicable law; and (iii) a foreclosure sale may cause the mortgagor to lose the residential real
71 property.

72 (i) If no agreement is reached during the mediation, the mortgagor shall receive written
73 notice as to when the foreclosure proceeding will resume and a description of the ensuing
74 procedure.

75 (j) An affidavit demonstrating compliance with subsection (a) shall be filed by the
76 mortgagee, or anyone holding thereunder, in any action or proceeding to foreclose on such
77 residential real property.

78 (k) The money necessary to establish and operate the foreclosure mediation program shall
79 be appropriated to the judicial department.