

SENATE No. 1805

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to Establish 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. Chapter 244 of the General Laws as appearing in the 2006 official edition,
2 are hereby amended by inserting after section 35A the following section:-

3 Section 35B. (a) As used in this section, the following terms shall have the following
4 meanings:

5 (1) "Mortgagor" means the owner-occupant of residential real property consisting of a
6 dwelling house with accommodations for 4 or less separate households located in the
7 commonwealth who is also the borrower under a mortgage encumbering such residential real
8 property, which is the primary residence of such owner-occupant;

9 (2) "Residential real property" means a one-to-four family dwelling occupied as a
10 residence by a mortgagor;

11 (3) "Mortgagee" means the original lender or servicer under a mortgage, or its successors
12 or assigns, who is the holder of any mortgage on residential real property securing a loan made
13 primarily for personal, family or household purposes that is the subject of a foreclosure action;

14 (b) Any mortgagor of residential real property located in the commonwealth consisting
15 of a dwelling house with accommodations for 4 or less separate households and occupied in
16 whole or in part by the mortgagor, shall have the option to enter into mediation proceedings with
17 the mortgagee if the mortgagor defaults on a required payment as provided in such a residential
18 mortgage or note secured by such residential real property. The option to enter into a mediation
19 program prior to foreclosure proceedings shall be granted once during any 5 year period.

20 (c) A Foreclosure Mediation Program

21 (1) The attorney general shall administer a Foreclosure Mediation Program and shall
22 establish policies and procedures to implement this section.

23 (2) The attorney general, subject to appropriation, shall ensure that all judicial districts in
24 the commonwealth have access to a foreclosure mediation program, approved or provided by the
25 attorney general. The attorney general, subject to appropriation, shall expand existing mediation
26 services provided by the attorney general or shall expand current approved community mediation
27 programs in the commonwealth to provide mediation services to all judicial districts.

28 (3) Subject to appropriation, the attorney general shall create a program to train mediators
29 in the Foreclosure Mediation Program in all necessary aspects of foreclosure law.

30 (d) Notice Provision and Requests for Mediation

31 When a mortgagor defaults on a mortgage payment and the mortgagee notifies the
32 mortgagor of his 90 day right to cure a default of a required payment under Section 35A, the
33 mortgagee shall give notice to the mortgagor of the Foreclosure Mediation Program by attaching
34 to the 90 day right to cure a default notice that is served on the mortgagor: (1) A copy of the

35 notice of the availability of foreclosure mediation, in such form as the chief justice for
36 administration and management prescribes, and (2) a foreclosure mediation request form, in such
37 form as the chief justice for administration and management prescribes.

38 (i) Except as provided in subdivision (ii) of this subsection, a mortgagor may request
39 foreclosure mediation by submitting the foreclosure mediation request form to the court not more
40 than 15 days after receipt of the notice. Upon receipt of the foreclosure mediation request form,
41 the court shall notify each party that a foreclosure mediation request form has been submitted by
42 the mortgagor.

43 (ii) The court may grant a mortgagor permission to submit a foreclosure mediation
44 request form and file an appearance in court after the 15 day period established in subdivision (i)
45 of this subsection, for good cause shown, except that no foreclosure mediation request form may
46 be submitted and no appearance may be filed more than 30 days after receipt of the notice.

47 (iii) If the court determines that the notice requirement of this section has not been met,
48 the court may, upon its own motion or upon the written motion of the mortgagor, issue an order
49 that no judgment may enter for 15 days during which period the mortgagor may submit a
50 foreclosure mediation request form to the court.

51 (iv) If the court grants the mortgagor permission to submit a foreclosure mediation
52 request form with the court after the 15 day period according to this subsection, the 90 day right
53 to cure a default period under section 35A shall be extended if necessary.

54 (e) Notwithstanding any general or special law to the contrary, no judgment ordering a
55 foreclosure sale shall be entered in any action instituted by the mortgagee to foreclose a
56 mortgage on residential real property unless: (1) Notice to the mortgagor has been given by the

57 mortgagee in accordance with this section and the time for submitting a foreclosure mediation
58 request form has expired and no foreclosure mediation request form has been submitted, or if
59 such notice has not been given, the time for submitting a foreclosure mediation request form
60 pursuant to subsection (d)(1)(iii) of this section has expired and no foreclosure mediation request
61 form has been submitted, or (2) the mediation period set forth in this section has expired or has
62 otherwise terminated, whichever is earlier.

63 (f) None of the mortgagor's or mortgagee's rights in the foreclosure action shall be
64 waived by the mortgagor's submission of a foreclosure mediation request form to the court.

65 (g) Foreclosure Mediation Program Requirements

66 The attorney general, subject to appropriation, shall ensure that each judicial district has
67 the services of a foreclosure mediation program in actions to foreclose mortgages on residential
68 real property. Such foreclosure mediation shall (i) address all issues of foreclosure, including,
69 but not limited to, reinstatement of the mortgage, assignment of sale date, restructure, change in
70 terms of payment or other modification of the mortgage debt, and (ii) be conducted by
71 foreclosure mediators who (A) provide mediation services for the attorney general or are
72 mediators for current approved community mediation programs in the commonwealth, (B) are
73 trained in mediation and all relevant aspects of the foreclosure law, as determined by the attorney
74 general according to this section, (C) have knowledge of the community-based resources that are
75 available in the judicial district in which they serve, and (D) have knowledge of the mortgage
76 assistance programs. Such mediators may refer mortgagors who participate in the foreclosure
77 mediation program to community-based resources and to the mortgage assistance programs,
78 when appropriate.

79 (h) The Mediation Period

80 (1) The mediation period under the foreclosure mediation program established in this
81 section shall commence when the court sends notice to each party that a foreclosure mediation
82 request form has been submitted by a mortgagor to the court, which notice shall be sent not later
83 than 3 business days after the court receives a completed foreclosure mediation request form.
84 The mediation period shall conclude not more than 50 days after receipt of notice from the court,
85 except that the court may, in its discretion, for good cause shown, extend by not more than 10
86 days, or shorten, the mediation period on its own motion or upon motion of any party.

87 (2) The court shall be responsible for referring foreclosure mediation requests to the
88 attorney general's Foreclosure Mediation Program, not later than 3 business days after the court
89 receives a completed foreclosure mediation form.

90 (3) The first mediation session shall be held not later than 5 business days after the court
91 sends notice to all parties that a foreclosure mediation request form has been submitted to the
92 court. The mortgagor and mortgagee shall appear in person at each mediation session and shall
93 have authority to agree to a proposed settlement, except that if the mortgagee is represented by
94 counsel, the mortgagee's counsel may appear in lieu of the mortgagee to represent the
95 mortgagee's interests at the mediation, provided such counsel has the authority to agree to a
96 proposed settlement and the mortgagee is available during the mediation session by telephone or
97 electronic means.

98 (4) Not later than 5 days after the conclusion of the first mediation session, the mediator
99 shall determine whether the parties will benefit from further mediation. The mediator shall file
100 with the court a report setting forth such determination and mail a copy of such report to each

101 party. If the mediator reports to the court that the parties will not benefit from further mediation,
102 the mediation period shall terminate automatically. If the mediator reports to the court after the
103 first mediation session that the parties may benefit from further mediation, the mediation period
104 shall continue.

105 (5) If the mediator has submitted a report to the court that the parties may benefit from
106 further mediation pursuant to this section, not more than 5 days after the conclusion of the
107 mediation, but no later than the termination of the mediation period set forth in subsection (1) of
108 this section, the mediator shall file a report with the court describing the proceedings and
109 specifying the issues resolved, if any, and any issues not resolved pursuant to the mediation. The
110 filing of the report shall terminate the mediation period automatically. If certain issues have not
111 been resolved pursuant to the mediation, the mediator may refer the mortgagor to any
112 appropriate community-based services that are available in the judicial district, but any such
113 referral shall not result in an extension of the mediation process.

114 (6) The attorney general shall establish policies and procedures to implement this section.
115 Such policies and procedures shall, at a minimum, provide that the mediator shall advise the
116 mortgagor at the first mediation session that: (i) Such mediation does not suspend the
117 mortgagor's obligation to respond to the foreclosure action in accordance with applicable rules of
118 the court; and (ii) foreclosure by entry or action or foreclosure by sale may cause the mortgagor
119 to lose the residential real property to foreclosure.

120 (7) In no event shall any determination issued by a mediator under this program form the
121 basis of an appeal of any foreclosure judgment.

122 (8) At any time during the mediation period, the mediator may refer the mortgagor to the
123 mortgage assistance programs, except that any such referral shall not prevent a mortgagee from
124 proceeding to judgment when the conditions specified in this section have been satisfied.

125 (i) Nothing in this section shall require a mortgagee to modify a mortgage or change the
126 terms of payment of a mortgage.