

SENATE No. 871

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas M. McGee

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a foreclosure review division of the Superior Court.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Thomas M. McGee</i>	<i>Third Essex</i>	
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>	
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>	
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>2/17/2016</i>

SENATE No. 871

By Mr. McGee, a petition (accompanied by bill, Senate, No. 871) of Thomas M. McGee, Timothy R. Madden, Carolyn C. Dykema, Sean Garballey and other members of the General Court for legislation to establish a foreclosure review division of the Superior Court. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act establishing a foreclosure review division of the Superior Court.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to facilitate forthwith the just, expeditious and final resolution of cases involving the recent crisis in foreclosures of mortgages on real property, including determinations of real estate title if necessary, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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 212 the
2 following chapter:-

3 CHAPTER 212A

4 FORECLOSURE REVIEW DIVISION

5 Section 1. There shall be a special division of the superior court department, known as
6 the foreclosure review division.

7 Section 2. The foreclosure review division shall have a presiding justice and such other
8 justices as the chief justice of the trial court, in consultation with the chief justice of the superior
9 court department, shall assign from among those justices of the various departments of the trial
10 court with an interest in relevant areas of law.

11 Section 3. (a) The foreclosure review division shall be divided into not less than 4 and not
12 more than 6 sessions statewide, as determined by the chief justice of the trial court in
13 consultation with the chief justice of the superior court department and the presiding justice of
14 the division, based on factors including projected caseloads and on the convenience of litigants.

15 (b) Each session may hold its sittings in more than 1 location, as appropriate.

16 (c) The foreclosure review division shall provide online and other materials to assist pro
17 se litigants and shall offer alternative dispute resolution services.

18 Section 4. There shall be selected, as determined by the chief justice of the trial court in
19 consultation with the chief justice of the superior court department and the presiding justice of
20 the foreclosure review division, a court administrator, deputy court administrators if appropriate,
21 court clerks, clerks for the justices, facilitators for pro se litigants, mediators, title examiners,
22 information technology personnel and any other personnel essential to the expeditious
23 establishment and efficient functioning of the foreclosure review division.

24 Section 5. (a) Notwithstanding any general or special law to the contrary, the foreclosure
25 review division shall have jurisdiction, concurrently with the other divisions of the superior court
26 department and with the land court department, the housing court department and the district
27 court department, over all actions involving foreclosure of mortgages on residential property
28 whether by action, by sale, by entry or otherwise, including, but not limited to: actions that

29 concern the validity of a foreclosure; actions of summary process; actions to try title, to quiet
30 title and to remove cloud on title or actions that may otherwise raise questions regarding title to
31 such property; petitions brought under section 114 of chapter 185 regarding registered land;
32 actions that concern notices regarding a right to cure a deficiency secured by a mortgage and
33 notices regarding intent to foreclose or otherwise to exercise a power of sale; and actions that
34 concern modification of a loan secured by a mortgage, regardless of whether the issue is raised
35 by way of the original complaint or by an amendment to the original complain, by affirmative
36 defense or by counterclaim.

37 (b) The foreclosure review division shall promptly transmit for recordation, to the
38 registry of deeds of the district in which the land lies, a copy of any final determination affecting
39 title to land. No fee shall be charged for such recordation.

40 (c) A civil action within the jurisdiction of the foreclosure review division that is pending
41 in another court department or another division of the superior court department, may be
42 transferred to the foreclosure review division by any party to that action, as well as sua sponte by
43 a justice of the court department or division in which the action is pending. There shall not be an
44 additional filing fee charged to transfer such a case. An action transferred to the foreclosure
45 review division shall thereafter proceed in that division as though originally entered there.

46 (d) In a civil action in which another court has dismissed a claim for lack of jurisdiction
47 or denied a claim within the jurisdiction of the division, a party shall be given 30 days after the
48 date of receipt of the notice of dismissal or, in the case of an appeal from the dismissal, 30 days
49 after the date of receipt of notice of the decision, to file the case in the foreclosure review
50 division, regardless of whether the time permitted under the applicable statute of limitations

51 would have expired at any time from the original commencement of the action to the end of the
52 30-day period.

53 Section 6. The chief justice of the trial court, in consultation with the chief justice of the
54 superior court department and the presiding justice of the foreclosure review division, may from
55 time to time make alternative or supplemental rules, standing orders and forms of procedure to
56 govern proceedings in the division.

57 Section 7. (a) There shall be an advisory board to assist the presiding justice and the
58 justices of the foreclosure review division and the division's court administrator.

59 (b) The advisory board shall consist of the attorney general or a designee; the executive
60 director of the Massachusetts office of victim assistance; and the following additional members
61 appointed by the supreme judicial court: 1 person who has significant experience in court or
62 business administration; 1 person who has significant experience in information technology, in
63 particular, in designing systems to assist members of the public to use information technology
64 effectively; 1 person who has significant experience in promoting judicial economy by assisting
65 pro se claimants in presenting their cases efficiently and effectively; 1 person who has significant
66 experience with mediation programs on complex topics, particularly programs involving cases in
67 which pro se and sophisticated parties have adverse interests; 1 person who has significant
68 experience in real estate title examination in the commonwealth; at least 4 lawyers with
69 significant experience in the practice of various relevant areas of civil law and litigation,
70 including access to justice and banking, bankruptcy, civil rights, consumer rights, landlord-
71 tenant, real property, secured transactions and securities and trust law.

72 (c) The advisory board shall choose its chair. The appointed members of that board shall
73 each serve for a term of 3 years or for the remainder of the term of the foreclosure review
74 division, whichever is less.

75 (d) The board shall advise the presiding justice and the justices of the foreclosure review
76 division and the division's court administrator on matters of judicial and administrative concern
77 including, but not limited to, developments in relevant legal issues, real estate title examination,
78 mediation, assisting pro se litigants and the allocation of resources based on the caseload of each
79 of the division's courts.

80 Section 8. This chapter shall be implemented by the chief justice of the trial court for a
81 period of 5 years commencing immediately upon passage and shall apply to all cases within the
82 jurisdiction of the foreclosure review division, whether pending in 1 or more departments of the
83 trial court as of the date of enactment or commenced after that date.

84 SECTION 2. Chapter 212A of the General Laws shall be presumed to renew for an
85 additional 5 year term on January 1 of the 5th year after the effective date of this act and every 5
86 years thereafter unless the legislature acts to repeal this law prior to its next renewal date.

87 SECTION 3. Chapter 212A of the General Laws is hereby repealed.

88 SECTION 4. Section 3 shall take effect upon January 1st of the year after the year in
89 which the legislature votes not to renew the foreclosure court division as authorized by section 1
90 of chapter 212A of the General Laws.