SENATE DOCKET, NO. 1259 FILED ON: 1/19/2023

SENATE . . . . . No. 1017

The Commonwealth of Massachusetts

PRESENTED BY:

Edward J. Kennedy

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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Edward J. Kennedy	*First Middlesex*	
Angelo J. Puppolo, Jr.	*12th Hampden*	*2/7/2023*

SENATE DOCKET, NO. 1259 FILED ON: 1/19/2023

SENATE . . . . . No. 1017

By Mr. Kennedy, a petition (accompanied by bill, Senate, No. 1017) of Edward J. Kennedy and Angelo J. Puppolo, Jr. for legislation to establish a foreclosure review division. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1065* OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act establishing a foreclosure review division.

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

SECTION 1. The General Laws are hereby amended by inserting after chapter 212 the following chapter:- CHAPTER 212A

FORECLOSURE REVIEW DIVISION

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

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

Section 3. The chief justice of the trial court shall designate one of the judges of the foreclosure review division as the presiding justice of that division.

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

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

(c) The foreclosure review division shall provide online and other materials to assist self-represented litigants and shall offer alternative dispute resolution services.

Section 5. There shall be selected, as determined by the chief justice of the trial court in consultation with the chief justice of the superior court department and the presiding justice of the foreclosure review division, a court administrator, deputy court administrators if appropriate, court clerks, clerks for the justices, facilitators for self-represented litigants, mediators, title examiners, information technology personnel and any other personnel essential to the expeditious establishment and efficient functioning of the foreclosure review division.

Section 6. (a) Notwithstanding any general or special law to the contrary, the foreclosure review division shall have jurisdiction, concurrently with the other divisions of the superior court department and with the land court department, the housing court department and the district court department, over all actions involving the foreclosure or purported foreclosure of mortgages on residential property whether by action, by sale, by entry or otherwise, including, but not limited to: actions that concern the validity of a foreclosure or purported foreclosure; post-foreclosure summary process actions to evict; actions to try title, to quiet title and to remove

cloud on title; and actions that may otherwise involve questions concerning title to such property; petitions brought under Chapter 185 regarding registered title to such property; actions that concern notices regarding a right to cure a deficiency secured by a mortgage and notices regarding intent to foreclose or otherwise to exercise a power of sale; actions that concern modification of a loan secured by a mortgage, regardless of whether the issue is raised by way of the original complaint or by an amendment to the original complaint, by affirmative defense or by counterclaim; and criminal jurisdiction in matters arising out of or pertaining to foreclosure or attempted foreclosure, and larceny or attempted larceny of real property, and foreclosure-related issues including mortgage loan origination and the transfer of real property and interests in mortgage notes.

(b) The foreclosure review division shall promptly transmit for recordation or registration, to the registry of deeds of the county or district in which the land lies, a copy of any final determination affecting title to land. Fee for such recordation or registration shall be waived for the losing party to the extent allowable under the Court Indigency Laws.

(c) Any party to a civil action within the jurisdiction of the foreclosure review division that is pending in another court department or another division of the superior court department, or a judge of the court department or division in which the action is pending, acting sua sponte, may transfer that action to the foreclosure review division. No additional filing fee shall be charged to transfer such a case. An action transferred to the foreclosure review division shall thereafter proceed in that division as though originally entered there.

(d) In a civil action in which another court has dismissed a claim for lack of jurisdiction or denied a claim that is within the jurisdiction of the foreclosure review division, a party shall

have thirty (30) days after the date of receipt of the notice of dismissal or, in the case of an appeal from the dismissal, thirty (30) days after the date of receipt of the notice of the decision, to file the case in the foreclosure review division, regardless of whether the time permitted under the applicable statute of limitations would have expired at any time from the original commencement of that action to the end of this thirty (30) day period.

(e) Any document informing a litigant or his or her attorney of such a dismissal or denial shall include complete information about the right to file the case in the foreclosure review division, together with instructions for doing so.

Section 7. The chief justice of the trial court, in consultation with the chief justice of the superior court department and the presiding justice of the foreclosure review division, may from time to time make alternative or supplemental rules, standing orders and forms of procedure to govern proceedings in that division.

Section 8. (a) There shall be an advisory board to assist the presiding justice and the justices of the foreclosure review division and the division's court administrator.

(b) The advisory board shall consist of the Attorney General or a designee; the executive director of the Massachusetts office of victim assistance; and the following additional members appointed by the Chief Justice of the Supreme Judicial Court: one person who has significant experience in each of the following areas: court or business administration; information technology, in particular, in designing systems to assist members of the public to use information technology effectively; promoting judicial economy by assisting self represented litigants in presenting their cases effectively; mediation programs on complex topics, particularly those involving cases in which self represented and sophisticated parties have adverse interests; real

estate title examination in the commonwealth; and at least four lawyers with significant experience in various relevant areas of law and litigation, including access to justice and banking, bankruptcy, civil rights, access to justice, the Americans with Disabilities Act, consumer rights, criminal law, landlord-tenant, real property, secured transactions and securities and securitized trust law. At least two of the four lawyers will have represented homeowners in preserving their homes from foreclosure or will have represented consumers.

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

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

Section 9. This chapter shall be in force for a period of five years commencing immediately upon enactment and shall apply to all cases within the jurisdiction of the foreclosure review division, whether pending in one or more departments of the trial court as of the date of enactment or commenced after that date.

SECTION 2. Chapter 212A of the General Laws shall renew for an additional five year term on January 1st of the fifth year after the effective date of this Act and every five years thereafter unless the legislature repeals this law prior to its next renewal date.

SECTION 3. Any cases pending in the foreclosure review division at the conclusion of its final term shall be transferred to the appropriate court.

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