

HOUSE No. 1649

The Commonwealth of Massachusetts

PRESENTED BY:

Vincent A. Pedone

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 passage of the accompanying bill:

An Act Regarding Massachusetts Foreclosure Mediation Program.

PETITION OF:

NAME:

Vincent A. Pedone

DISTRICT/ADDRESS:

15th Worcester

The Commonwealth of Massachusetts

In the Year Two Thousand and 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:

I. Amendments to G.L. c. 244, § 35A

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

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

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

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

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

II. New Section Creating Foreclosure Mediation Program

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

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

(a) Duty to engage in loss mitigation. A mortgagee shall not initiate a foreclosure of a residential real property consisting of a dwelling house with accommodations for four or less separate households and occupied in whole or in part by the mortgagor unless it has made a good faith review of the borrower's financial situation and offered, whenever feasible, a loan modification, or other option to assist the borrower in bringing the arrears current. A good faith review of the borrower's financial situation

22 includes, but is not limited to an evaluation of the mortgagor's eligibility for all loan modification
23 programs established by the federal government or the mortgage industry, and if the mortgagor's elects,
24 participation in the Foreclosure Mediation Program established in subsection (b). Failure to comply with
25 this section constitutes a defense to the foreclosure.

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

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

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

39 (3) Upon receiving notice from the commissioner of the division of banks of a filing pursuant to section
40 35A(f) of Chapter 244 of the Massachusetts General Laws, the Court shall send a notice of the availability
41 of the mediation program to the mortgagor. The notice shall inform mortgagors of the program and
42 encourage mortgagors to meet with a housing counselor or attorney prior to mediation. The mortgagor has
43 fifteen business days to return a foreclosure mediation request form to the Court.

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

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

57 (6) Not later than five business days after the conclusion of the first mediation session, the mediator shall
58 determine whether the parties will benefit from further mediation. The mediator shall file with the court a
59 report setting forth such determination and mail a copy of such report to each appearing party. If the
60 mediator reports to the court that the parties will not benefit from further mediation, the mediation period

61 shall terminate automatically. If the mediator reports to the court after the first mediation session that the
62 parties may benefit from further mediation, the mediation period shall continue for an additional thirty
63 days.

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

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

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

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