

HOUSE No. 4003

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 relative to a 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 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 amended by
2 striking out the second sentence.

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

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

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

11 (g) The commissioner of the division of banks shall make available to the chief justice for administration
12 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 inserting after
14 section 35A the following section:-

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

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

27 households and occupied in whole or in part by the mortgagor.

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

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

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

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

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

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

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

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

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