

HOUSE No. 1355

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 adoption of the accompanying bill:

An Act to establish the mandatory foreclosure mediation with judicial review.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Vincent A. Pedone</i>	<i>15th Worcester</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Richard Bastien</i>	<i>2nd Worcester</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Karen E. Spilka</i>	
<i>Carlos Henriquez</i>	<i>5th Suffolk</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>John J. Binienda</i>	<i>17th Worcester</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Michael O. Moore</i>	

<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>William N. Brownsberger</i>	
<i>Harriette L. Chandler</i>	
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Christopher G. Fallon</i>	<i>33rd Middlesex</i>
<i>Christine E. Canavan</i>	<i>10th Plymouth</i>
<i>Cheryl A. Coakley-Rivera</i>	<i>10th Hampden</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>John P. Fresolo</i>	<i>16th Worcester</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Martin J. Walsh</i>	<i>13th Suffolk</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>David B. Sullivan</i>	<i>6th Bristol</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>

HOUSE No. 1355

By Mr. Pedone of Worcester, a petition (accompanied by bill, House, No. 1355) of Vincent A. Pedone and others relative to establishing mandatory foreclosure mediation with judicial review. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to establish the mandatory foreclosure mediation with judicial review.

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

1 AMENDMENTS TO G.L. c. 244 §35A:

2 Chapter 244 §35A of the Massachusetts General Laws is hereby amended in subsection

3 (b) by striking the words “provided, however, that if a creditor certifies that: (i) it has engaged in

4 a good faith effort to negotiate a commercially reasonable alternative to foreclosure as described

5 in subsection (c); (ii) its good faith effort has involved at least 1 meeting, either in person or by

6 telephone, between a creditor’s representative and the borrower, the borrower’s attorney or the

7 borrower’s representative; and (iii) after such meeting the borrower and the creditor were not

8 successful in resolving their dispute, then the creditor may begin foreclosure proceedings after a

9 right to cure period lasting 90 days. A borrower who fails to respond within 30 days to any

10 mailed communications offering to negotiate a commercially reasonable alternative to

11 foreclosure sent via certified and first class mail or similar service by a private carrier from the

12 lender shall be deemed to have forfeited the right to a 150-day right to cure period and shall be

13 subject to a right to cure period lasting 90 days. The right to cure a default of a required payment

14 shall be granted once during any 3 year period, regardless of mortgage holder.” In subsection (c)
15 inserting after the word “section”, “and §35B”; and striking the words “provided, further, that
16 the creditor shall provide by first class and certified mail or similar service by a private carrier to
17 a borrower documentation of good faith effort 10 days prior to meeting, telephone conversation
18 or a meeting pursuant to subsection (b).” by replacing in (h)(10) “The division of banks shall
19 adopt regulations in accordance with the subsection.” with “The Attorney General shall adopt
20 regulations in accordance with this subsection..” and by striking subsections (c), (d), (f) and (g)
21 and adding the words “and §35B” after the words “this section” to subsection (k)

22 INSERT NEW §35B after the end of §35A:

23 Section 35B: Massachusetts Foreclosure Mediation Program and Judicial Review

24

25 1) Establishment of the Massachusetts Foreclosure Mediation Program. Not later than
26 ninety (90) days after the enactment of this legislation, the Attorney General shall establish the
27 Massachusetts Foreclosure Mediation Program (MFMP) and promulgate regulations as
28 necessary and appropriate to implementing such a mediation program. The Attorney General
29 shall also set standards for training mediators in foreclosure mediation, loss mitigation and
30 alternatives to foreclosure.

31

32 2) Notice of Right to Mediation. When a mortgagee of residential real property sends a
33 notice of right to cure pursuant to §35A to the mortgagor, it shall also send a copy to the
34 Massachusetts Foreclosure Mediation Program (MFMP). The MFMP shall then send to the

35 mortgagor the notice of right to mediation, offering the mortgagor the opportunity to participate
36 in mediation. If a notice of right to cure is not required, the mortgagee shall send a notice of
37 intent to foreclose to the MFMP and the mortgagor at least one hundred and fifty (150) days
38 before initiating foreclosure; the MFMP shall then send the mortgagor the notice of right to
39 mediation. The MFMP will also telephone mortgagors to inform them of their right to
40 participate in mediation. If the mortgagor elects to participate in mediation, he/she will have the
41 opportunity to negotiate a commercially reasonable alternative to foreclosure with the mortgagee
42 with the assistance of a neutral third-party mediator. A commercially reasonable alternative may
43 include but shall not be limited to a modification of the loan, principal, interest rate or term of the
44 mortgage. If an agreement is not reached in mediation, the mortgagee must seek court
45 permission to proceed with foreclosure under power of sale or entry as set forth in this chapter of
46 the Massachusetts General Laws. If the mortgagor does not elect to participate in mediation,
47 foreclosure may proceed in accordance with the provisions of this chapter of the Massachusetts
48 General Laws.

49 3) Duty to Engage in Good Faith Mediation. If a mortgagor elects to participate in the
50 Massachusetts Foreclosure Mediation Program (MFMP), a mortgagee shall not accelerate the
51 note or otherwise initiate foreclosure proceedings unless the mediator has certified that the
52 mortgagee participated in the MFMP and engaged in mediation in good faith; made all
53 reasonable efforts to find an alternative to foreclosure; and that any agreement is in full
54 compliance with all state and federal guidelines. Engaging in good faith mediation shall include
55 a review of the borrower's financial situation including but not limited to evaluating the
56 mortgagor's eligibility for all loan modification programs, including providing a written net

57 present value (NPV) analysis. Failure to comply with this section shall constitute a defense to
58 the foreclosure.

59 4) Administration of the Massachusetts Foreclosure Mediation Program.

60 a. The notice of right to mediation shall be promulgated by the Attorney General, and
61 shall include a declaration in the five most common languages other than English, appearing on
62 the first page and stating: “This is an important notice regarding a possible foreclosure of your
63 home. Have it translated immediately.” The mortgagor will also be provided with a self-
64 addressed, stamped envelope in which to return a form electing to participate in mediation. The
65 mortgagor or his/her representative may also indicate his/her intention to participate in mediation
66 via telephone, online, or in-person at designated non-profit agencies.

67 b. An in-person mediation session shall be conducted between the mortgagor and his/her
68 representative and/or housing counselor, and the mortgagee's representative, who must have
69 authority to negotiate alternatives to foreclosure, including but not limited to a modification of
70 the loan, principal, interest rate or term of the mortgage. As early as possible but no later than
71 five (5) days before the scheduled mediation, the mortgagee shall provide proof of ownership
72 and a written net present value analysis to the mortgagor and the MFMP. Where required, the
73 mortgagee shall bring additional documents supporting the net present value analysis to the
74 mediation session.

75 c. Borrowers will be referred to and encouraged to work with a non-profit housing
76 counseling agency. If the initial mediation session does not result in an agreement, the parties
77 may agree to a second mediation session.

78 d. The mediation period shall conclude not more than one hundred and twenty (120)
79 days after the mortgagor elects to participate in mediation. During this time the mortgagee shall
80 not accelerate the note or otherwise initiate foreclosure proceedings.

81 e. If mediation results in an agreement, the mortgagor shall have not fewer than seven (7)
82 days to review and sign the mediation agreement and return it to the MFMP and the mortgagee.
83 The mortgagor shall not be required to waive any legal rights or defenses by entering into a
84 mediation agreement. All mortgage modifications shall be recorded in the appropriate registry of
85 deeds.

86 f. Any costs necessary to establish and operate the Massachusetts Foreclosure Mediation
87 Program shall be borne by the parties to the mediation as set forth in the regulations; and by the
88 filing fee for foreclosure complaints pursuant to paragraph 5 below. A mortgagor's portion of
89 the fee shall not exceed 15% of the total cost of the mediation. A mortgagor's inability to pay
90 for mediation shall not be a bar to participation in the MFMP.

91 5. Judicial Requirement for Mediation Without Agreement. If the mediation process
92 does not result in an agreement, the mortgagee must file in Superior Court a Complaint to
93 Proceed with Foreclosure under power of sale or entry. The mortgagor can file an answer to
94 such action and can raise all legal and equitable defenses. If judgment for the mortgagee enters,
95 the mortgagee may complete foreclosure by power of sale or entry pursuant to this chapter of the
96 Massachusetts General Laws.