

**SENATE . . . . . No. 865**

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The Commonwealth of Massachusetts

PRESENTED BY:

***Karen E. Spilka***

*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 a foreclosure mediation program ..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Karen E. Spilka</i>	
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex, Suffolk, and Essex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>

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By Ms. Spilka, a petition (accompanied by bill, Senate, No. 865) of Karen E. Spilka, Carolyn C. Dykema, Elizabeth A. Malia, Sal N. DiDomenico and other members of the General Court for legislation to establish a foreclosure mediation program. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1805 OF 2009-2010.]

The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
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An Act to establish 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. Chapter 244 of the General Laws, as appearing in the 2008  
2 Official Edition, are hereby amended by inserting after section 35A the following new section:-

3 Section 35B. (a) As used in this section, the following terms shall have the  
4 following meanings:

5 (1) "Mortgagor" means the owner-occupant of residential real  
6 property consisting of a dwelling house with accommodations for 4 or less separate households  
7 located in the commonwealth who is also the borrower under a mortgage encumbering such  
8 residential real property, which is the primary residence of such owner-occupant;

9 (2) "Residential real property" means a one-to-four family dwelling  
10 occupied as a residence by a mortgagor;

11 (3) "Mortgagee" means the original lender or servicer under a  
12 mortgage, or its successors or assigns, who is the holder of any mortgage on residential real  
13 property securing a loan made primarily for personal, family or household purposes that is the  
14 subject of a foreclosure action;

15 (b) Any mortgagor of residential real property located in the commonwealth  
16 consisting of a dwelling house with accommodations for 4 or less separate households and  
17 occupied in whole or in part by the mortgagor, shall have the option to enter into mediation  
18 proceedings with the mortgagee if the mortgagor defaults on a required payment as provided in  
19 such a residential mortgage or note secured by such residential real property. The option to enter  
20 into a mediation program prior to foreclosure proceedings shall be granted once during any 5  
21 year period.

22 (c) A Foreclosure Mediation Program

23 (1) The attorney general shall administer a Foreclosure Mediation  
24 Program and shall establish policies and procedures to implement this section.

25 (2) The attorney general, subject to appropriation, shall ensure that all  
26 judicial districts in the commonwealth have access to a foreclosure mediation program, approved  
27 or provided by the attorney general. The attorney general, subject to appropriation, shall expand  
28 existing mediation services provided by the attorney general or shall expand current approved  
29 community mediation programs in the commonwealth to provide mediation services to all  
30 judicial districts.

31 (3) Subject to appropriation, the attorney general shall create a  
32 program to train mediators in the Foreclosure Mediation Program in all necessary aspects of  
33 foreclosure law.

34 (d) Notice Provision and Requests for Mediation

35 When a mortgagor defaults on a mortgage payment and the mortgagee notifies the  
36 mortgagor of his 90 day right to cure a default of a required payment under Section 35A, the  
37 mortgagee shall give notice to the mortgagor of the Foreclosure Mediation Program by attaching  
38 to the 90 day right to cure a default notice that is served on the mortgagor: (1) A copy of the  
39 notice of the availability of foreclosure mediation, in such form as the chief justice for  
40 administration and management prescribes, and (2) a foreclosure mediation request form, in such  
41 form as the chief justice for administration and management prescribes.

42 (i) Except as provided in subdivision (ii) of this subsection,  
43 a mortgagor may request foreclosure mediation by submitting the foreclosure mediation request  
44 form to the court not more than 15 days after receipt of the notice. Upon receipt of the  
45 foreclosure mediation request form, the court shall notify each party that a foreclosure mediation  
46 request form has been submitted by the mortgagor.

47 (ii) The court may grant a mortgagor permission to submit  
48 a foreclosure mediation request form and file an appearance in court after the 15 day period  
49 established in subdivision (i) of this subsection, for good cause shown, except that no foreclosure  
50 mediation request form may be submitted and no appearance may be filed more than 30 days  
51 after receipt of the notice.

52 (iii) If the court determines that the notice requirement of  
53 this section has not been met, the court may, upon its own motion or upon the written motion of  
54 the mortgagor, issue an order that no judgment may enter for 15 days during which period the  
55 mortgagor may submit a foreclosure mediation request form to the court.

56 (iv) If the court grants the mortgagor permission to submit  
57 a foreclosure mediation request form with the court after the 15 day period according to this  
58 subsection, the 90 day right to cure a default period under section 35A shall be extended if  
59 necessary.

60 (e) Notwithstanding any general or special law to the contrary, no judgment  
61 ordering a foreclosure sale shall be entered in any action instituted by the mortgagee to foreclose  
62 a mortgage on residential real property unless: (1) Notice to the mortgagor has been given by the  
63 mortgagee in accordance with this section and the time for submitting a foreclosure mediation  
64 request form has expired and no foreclosure mediation request form has been submitted, or if  
65 such notice has not been given, the time for submitting a foreclosure mediation request form  
66 pursuant to subsection (d)(1)(iii) of this section has expired and no foreclosure mediation request  
67 form has been submitted, or (2) the mediation period set forth in this section has expired or has  
68 otherwise terminated, whichever is earlier.

69 (f) None of the mortgagor's or mortgagee's rights in the foreclosure action shall  
70 be waived by the mortgagor's submission of a foreclosure mediation request form to the court.

71 (g) Foreclosure Mediation Program Requirements

72 The attorney general, subject to appropriation, shall ensure that each judicial district has  
73 the services of a foreclosure mediation program in actions to foreclose mortgages on residential

74 real property. Such foreclosure mediation shall (i) address all issues of foreclosure, including,  
75 but not limited to, reinstatement of the mortgage, assignment of sale date, restructure, change in  
76 terms of payment or other modification of the mortgage debt, and (ii) be conducted by  
77 foreclosure mediators who (A) provide mediation services for the attorney general or are  
78 mediators for current approved community mediation programs in the commonwealth, (B) are  
79 trained in mediation and all relevant aspects of the foreclosure law, as determined by the attorney  
80 general according to this section,

81 (C) have knowledge of the community-based resources that are available in the judicial  
82 district in which they serve, and (D) have knowledge of the mortgage assistance programs. Such  
83 mediators may refer mortgagors who participate in the foreclosure mediation program to  
84 community-based resources and to the mortgage assistance programs, when appropriate.

85 (h) The Mediation Period

86 (1) The mediation period under the foreclosure mediation program  
87 established in this section shall commence when the court sends notice to each party that a  
88 foreclosure mediation request form has been submitted by a mortgagor to the court, which notice  
89 shall be sent not later than 3 business days after the court receives a completed foreclosure  
90 mediation request form. The mediation period shall conclude not more than 50 days after receipt  
91 of notice from the court, except that the court may, in its discretion, for good cause shown,  
92 extend by not more than 10 days, or shorten, the mediation period on its own motion or upon  
93 motion of any party.

94 (2) The court shall be responsible for referring foreclosure mediation  
95 requests to the attorney general's Foreclosure Mediation Program, not later than 3 business days  
96 after the court receives a completed foreclosure mediation form.

97 (3) The first mediation session shall be held not later than 5 business  
98 days after the court sends notice to all parties that a foreclosure mediation request form has been  
99 submitted to the court. The mortgagor and mortgagee shall appear in person at each mediation  
100 session and shall have authority to agree to a proposed settlement, except that if the mortgagee is  
101 represented by counsel, the mortgagee's counsel may appear in lieu of the mortgagee to represent  
102 the mortgagee's interests at the mediation, provided such counsel has the authority to agree to a  
103 proposed settlement and the mortgagee is available during the mediation session by telephone or  
104 electronic means.

105 (4) Not later than 5 days after the conclusion of the first mediation  
106 session, the mediator shall determine whether the parties will benefit from further mediation. The  
107 mediator shall file with the court a report setting forth such determination and mail a copy of  
108 such report to each party. If the mediator reports to the court that the parties will not benefit from  
109 further mediation, the mediation period shall terminate automatically. If the mediator reports to  
110 the court after the first mediation session that the parties may benefit from further mediation, the  
111 mediation period shall continue.

112 (5) If the mediator has submitted a report to the court that the parties  
113 may benefit from further mediation pursuant to this section, not more than 5 days after the  
114 conclusion of the mediation, but no later than the termination of the mediation period set forth in  
115 subsection (1) of this section, the mediator shall file a report with the court describing the

116 proceedings and specifying the issues resolved, if any, and any issues not resolved pursuant to  
117 the mediation. The filing of the report shall terminate the mediation period automatically. If  
118 certain issues have not been resolved pursuant to the mediation, the mediator may refer the  
119 mortgagor to any appropriate community-based services that are available in the judicial district,  
120 but any such referral shall not result in an extension of the mediation process.

121 (6) The attorney general shall establish policies and procedures to  
122 implement this section. Such policies and procedures shall, at a minimum, provide that the  
123 mediator shall advise the mortgagor at the first mediation session that: (i) Such mediation does  
124 not suspend the mortgagor's obligation to respond to the foreclosure action in accordance with  
125 applicable rules of the court; and (ii) foreclosure by entry or action or foreclosure by sale may  
126 cause the mortgagor to lose the residential real property to foreclosure.

127 (7) In no event shall any determination issued by a mediator under  
128 this program form the basis of an appeal of any foreclosure judgment.

129 (8) At any time during the mediation period, the mediator may refer  
130 the mortgagor to the mortgage assistance programs, except that any such referral shall not  
131 prevent a mortgagee from proceeding to judgment when the conditions specified in this section  
132 have been satisfied.

133 (i) Nothing in this section shall require a mortgagee to  
134 modify a mortgage or change the terms of payment of a mortgage.