

**HOUSE . . . . . No.**

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**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:*

1           **I. Amendments to G.L. c. 244, § 35A**

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

5

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

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

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

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

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21 **II. New Section Creating Foreclosure Mediation Program**

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

24

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

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27 (a) Duty to engage in loss mitigation. A mortgagee shall not initiate a foreclosure of a residential real  
28 property consisting of a dwelling house with accommodations for four or less separate households and  
29 occupied in whole or in part by the mortgagor unless it has made a good faith review of the borrower's  
30 financial situation and offered, whenever feasible, a loan modification, or other option to assist the  
31 borrower in bringing the arrears current. A good faith review of the borrower's financial situation  
32 includes, but is not limited to an evaluation of the mortgagor's eligibility for all loan modification  
33 programs established by the federal government or the mortgage industry, and if the mortgagor's  
34 elects, participation in the Foreclosure Mediation Program established in subsection (b). Failure to  
35 comply with this section constitutes a defense to the foreclosure.

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

43

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

46

47 (2) be conducted by mediators who are employed by the Court, trained in mediation and all relevant

48 aspects of the law, as determined by the Chief Justice for Administration and Management, have  
49 knowledge of the community-based resources that are available in the commonwealth, and have  
50 knowledge of any assistance programs established by the commonwealth or other sources. Such  
51 mediators may refer mortgagors who participate in the foreclosure mediation program to community-  
52 based resources when appropriate and to assistance programs.

53

54 (3) Upon receiving notice from the commissioner of the division of banks of a filing pursuant to section  
55 35A(f) of Chapter 244 of the Massachusetts General Laws, the Court shall send a notice of the  
56 availability of the mediation program to the mortgagor. The notice shall inform mortgagors of the  
57 program and encourage mortgagors to meet with a housing counselor or attorney prior to mediation.  
58 The mortgagor has fifteen business days to return a foreclosure mediation request form to the Court.

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

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

74

75 (6) Not later than five business days after the conclusion of the first mediation session, the mediator  
76 shall determine whether the parties will benefit from further mediation. The mediator shall file with the  
77 court a report setting forth such determination and mail a copy of such report to each appearing party.  
78 If the mediator reports to the court that the parties will not benefit from further mediation, the  
79 mediation period shall terminate automatically. If the mediator reports to the court after the first  
80 mediation session that the parties may benefit from further mediation, the mediation period shall  
81 continue for an additional thirty days.

82

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

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

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94

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

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

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