

SENATE No.

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 passage of the accompanying bill:

An Act to Establish a Foreclosure Mediation Program .

PETITION OF:

NAME:

Karen E. Spilka

DISTRICT/ADDRESS:

Second Middlesex and Norfolk

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

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 2006 official edition, are
2 hereby amended by inserting after section 35A the following section:-
- 3 Section 35B. (a) As used in this section, the following terms shall have the following meanings:
- 4 (1) "Mortgagor" means the owner-occupant of residential real property consisting of a dwelling
5 house with accommodations for 4 or less separate households located in the commonwealth who
6 is also the borrower under a mortgage encumbering such residential real property, which is the
7 primary residence of such owner-occupant;
- 8 (2) "Residential real property" means a one-to-four family dwelling occupied as a residence by a
9 mortgagor;

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

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

19 (c) A Foreclosure Mediation Program

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

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

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

29 (d) Notice Provision and Requests for Mediation

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

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

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

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

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

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

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

64 (g) Foreclosure Mediation Program Requirements

65 The attorney general, subject to appropriation, shall ensure that each judicial district has the
66 services of a foreclosure mediation program in actions to foreclose mortgages on residential real
67 property. Such foreclosure mediation shall (i) address all issues of foreclosure, including, but
68 not limited to, reinstatement of the mortgage, assignment of sale date, restructure, change in
69 terms of payment or other modification of the mortgage debt, and (ii) be conducted by
70 foreclosure mediators who (A) provide mediation services for the attorney general or are

71 mediators for current approved community mediation programs in the commonwealth, (B) are
72 trained in mediation and all relevant aspects of the foreclosure law, as determined by the attorney
73 general according to this section, (C) have knowledge of the community-based resources that are
74 available in the judicial district in which they serve, and (D) have knowledge of the mortgage
75 assistance programs. Such mediators may refer mortgagors who participate in the foreclosure
76 mediation program to community-based resources and to the mortgage assistance programs,
77 when appropriate.

78 (h) The Mediation Period

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

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

89 (3) The first mediation session shall be held not later than 5 business days after the court sends
90 notice to all parties that a foreclosure mediation request form has been submitted to the court.
91 The mortgagor and mortgagee shall appear in person at each mediation session and shall have

92 authority to agree to a proposed settlement, except that if the mortgagee is represented by
93 counsel, the mortgagee's counsel may appear in lieu of the mortgagee to represent the
94 mortgagee's interests at the mediation, provided such counsel has the authority to agree to a
95 proposed settlement and the mortgagee is available during the mediation session by telephone or
96 electronic means.

97 (4) Not later than 5 days after the conclusion of the first mediation session, the mediator shall
98 determine whether the parties will benefit from further mediation. The mediator shall file with
99 the court a report setting forth such determination and mail a copy of such report to each party. If
100 the mediator reports to the court that the parties will not benefit from further mediation, the
101 mediation period shall terminate automatically. If the mediator reports to the court after the first
102 mediation session that the parties may benefit from further mediation, the mediation period shall
103 continue.

104 (5) If the mediator has submitted a report to the court that the parties may benefit from further
105 mediation pursuant to this section, not more than 5 days after the conclusion of the mediation,
106 but no later than the termination of the mediation period set forth in subsection (1) of this
107 section, the mediator shall file a report with the court describing the proceedings and specifying
108 the issues resolved, if any, and any issues not resolved pursuant to the mediation. The filing of
109 the report shall terminate the mediation period automatically. If certain issues have not been
110 resolved pursuant to the mediation, the mediator may refer the mortgagor to any appropriate
111 community-based services that are available in the judicial district, but any such referral shall not
112 result in an extension of the mediation process.

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

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

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

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