

**SENATE . . . . . No. 00865**

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The Commonwealth of Massachusetts

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PRESENTED BY:

***Karen E. Spilka***

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*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 .

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PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</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>

# SENATE . . . . . No. 00865

By Ms. Spilka, petition (accompanied by bill, Senate, No. 865) of Swan, Walsh, DiDomenico and other members of the General Court for legislation to establish a foreclosure mediation program [Joint Committee on the Judiciary].

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

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 Official  
2 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 following  
4 meanings:

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

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

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

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

21                   (c) A Foreclosure Mediation Program

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

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

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

32                   (d) Notice Provision and Requests for Mediation

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

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

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

50                   (iii) If the court determines that the notice requirement of this  
51 section has not been met, the court may, upon its own motion or upon the written motion of the

52 mortgagor, issue an order that no judgment may enter for 15 days during which period the  
53 mortgagor may submit a foreclosure mediation request form to the court.

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

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

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

69 (g) Foreclosure Mediation Program Requirements

70 The attorney general, subject to appropriation, shall ensure that each judicial district has the  
71 services of a foreclosure mediation program in actions to foreclose mortgages on residential real  
72 property. Such foreclosure mediation shall (i) address all issues of foreclosure, including, but  
73 not limited to, reinstatement of the mortgage, assignment of sale date, restructure, change in

74 terms of payment or other modification of the mortgage debt, and (ii) be conducted by  
75 foreclosure mediators who (A) provide mediation services for the attorney general or are  
76 mediators for current approved community mediation programs in the commonwealth, (B) are  
77 trained in mediation and all relevant aspects of the foreclosure law, as determined by the attorney  
78 general according to this section,

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

83 (h) The Mediation Period

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

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

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

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

110                   (5) If the mediator has submitted a report to the court that the parties may  
111 benefit from further mediation pursuant to this section, not more than 5 days after the conclusion  
112 of the mediation, but no later than the termination of the mediation period set forth in subsection  
113 (1) of this section, the mediator shall file a report with the court describing the proceedings and  
114 specifying the issues resolved, if any, and any issues not resolved pursuant to the mediation. The  
115 filing of the report shall terminate the mediation period automatically. If certain issues have not  
116 been resolved pursuant to the mediation, the mediator may refer the mortgagor to any

117 appropriate community-based services that are available in the judicial district, but any such  
118 referral shall not result in an extension of the mediation process.

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

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

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

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