

HOUSE No. 1640

The Commonwealth of Massachusetts

PRESENTED BY:

Aaron Vega

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 establishing a foreclosure review division of the Superior Court.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>

<i>Brian R. Mannal</i>	<i>2nd Barnstable</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>Michael D. Brady</i>	<i>9th Plymouth</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>

HOUSE No. 1640

By Mr. Vega of Holyoke, a petition (accompanied by bill, House, No. 1640) of Aaron Vega and others relative to Superior Court foreclosure procedures. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act establishing a foreclosure review division of the Superior Court.

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

1 Whereas, The deferred operation of this act would tend to defeat its purpose, which is to
2 facilitate forthwith the just, expeditious and final resolution of cases involving the recent crisis in
3 foreclosures of mortgages on real property, including determinations of real estate title if
4 necessary, therefore it is hereby declared to be an emergency law, necessary for the immediate
5 preservation of the public convenience.

6 SECTION 1. The General Laws are hereby amended by inserting after chapter 212 the
7 following chapter:-

8 CHAPTER 212A

9 FORECLOSURE REVIEW DIVISION

10 Section 1. There shall be a special division of the superior court department, known as
11 the foreclosure review division.

12 Section 2. The foreclosure review division shall have a presiding justice and such other
13 justices as the chief justice of the trial court, in consultation with the chief justice of the superior
14 court department, shall assign from among those justices of the various departments of the trial
15 court with an interest in relevant areas of law.

16 Section 3. (a) The foreclosure review division shall be divided into not less than 4 and not
17 more than 6 sessions statewide, as determined by the chief justice of the trial court in
18 consultation with the chief justice of the superior court department and the presiding justice of
19 the division, based on factors including projected caseloads and on the convenience of litigants.

20 (b) Each session may hold its sittings in more than 1 location, as appropriate.

21 (c) The foreclosure review division shall provide online and other materials to assist pro
22 se litigants and shall offer alternative dispute resolution services.

23 Section 4. There shall be selected, as determined by the chief justice of the trial court in
24 consultation with the chief justice of the superior court department and the presiding justice of
25 the foreclosure review division, a court administrator, deputy court administrators if appropriate,
26 court clerks, clerks for the justices, facilitators for pro se litigants, mediators, title examiners,
27 information technology personnel and any other personnel essential to the expeditious
28 establishment and efficient functioning of the foreclosure review division.

29 Section 5. (a) Notwithstanding any general or special law to the contrary, the foreclosure
30 review division shall have jurisdiction, concurrently with the other divisions of the superior court
31 department and with the land court department, the housing court department and the district
32 court department, over all actions involving foreclosure of mortgages on residential property
33 whether by action, by sale, by entry or otherwise, including, but not limited to: actions that

34 concern the validity of a foreclosure; actions of summary process; actions to try title, to quiet
35 title and to remove cloud on title or actions that may otherwise raise questions regarding title to
36 such property; petitions brought under section 114 of chapter 185 regarding registered land;
37 actions that concern notices regarding a right to cure a deficiency secured by a mortgage and
38 notices regarding intent to foreclose or otherwise to exercise a power of sale; and actions that
39 concern modification of a loan secured by a mortgage, regardless of whether the issue is raised
40 by way of the original complaint or by an amendment to the original complain, by affirmative
41 defense or by counterclaim.

42 (b) The foreclosure review division shall promptly transmit for recordation, to the
43 registry of deeds of the district in which the land lies, a copy of any final determination affecting
44 title to land. No fee shall be charged for such recordation.

45 (c) A civil action within the jurisdiction of the foreclosure review division that is pending
46 in another court department or another division of the superior court department, may be
47 transferred to the foreclosure review division by any party to that action, as well as sua sponte by
48 a justice of the court department or division in which the action is pending. There shall not be an
49 additional filing fee charged to transfer such a case. An action transferred to the foreclosure
50 review division shall thereafter proceed in that division as though originally entered there.

51 (d) In a civil action in which another court has dismissed a claim for lack of jurisdiction
52 or denied a claim within the jurisdiction of the division, a party shall be given 30 days after the
53 date of receipt of the notice of dismissal or, in the case of an appeal from the dismissal, 30 days
54 after the date of receipt of notice of the decision, to file the case in the foreclosure review
55 division, regardless of whether the time permitted under the applicable statute of limitations

56 would have expired at any time from the original commencement of the action to the end of the
57 30-day period.

58 Section 6. The chief justice of the trial court, in consultation with the chief justice of the
59 superior court department and the presiding justice of the foreclosure review division, may from
60 time to time make alternative or supplemental rules, standing orders and forms of procedure to
61 govern proceedings in the division.

62 Section 7. (a) There shall be an advisory board to assist the presiding justice and the
63 justices of the foreclosure review division and the division's court administrator.

64 (b) The advisory board shall consist of the attorney general or a designee; the executive
65 director of the Massachusetts office of victim assistance; and the following additional members
66 appointed by the supreme judicial court: 1 person who has significant experience in court or
67 business administration; 1 person who has significant experience in information technology, in
68 particular, in designing systems to assist members of the public to use information technology
69 effectively; 1 person who has significant experience in promoting judicial economy by assisting
70 pro se claimants in presenting their cases efficiently and effectively; 1 person who has significant
71 experience with mediation programs on complex topics, particularly programs involving cases in
72 which pro se and sophisticated parties have adverse interests; 1 person who has significant
73 experience in real estate title examination in the commonwealth; at least 4 lawyers with
74 significant experience in the practice of various relevant areas of civil law and litigation,
75 including access to justice and banking, bankruptcy, civil rights, consumer rights, landlord-
76 tenant, real property, secured transactions and securities and trust law.

77 (c) The advisory board shall choose its chair. The appointed members of that board shall
78 each serve for a term of 3 years or for the remainder of the term of the foreclosure review
79 division, whichever is less.

80 (d) The board shall advise the presiding justice and the justices of the foreclosure review
81 division and the division's court administrator on matters of judicial and administrative concern
82 including, but not limited to, developments in relevant legal issues, real estate title examination,
83 mediation, assisting pro se litigants and the allocation of resources based on the caseload of each
84 of the division's courts.

85 Section 8. This chapter shall be implemented by the chief justice of the trial court for a
86 period of 5 years commencing immediately upon passage and shall apply to all cases within the
87 jurisdiction of the foreclosure review division, whether pending in 1 or more departments of the
88 trial court as of the date of enactment or commenced after that date.

89 SECTION 2. Chapter 212A of the General Laws shall be presumed to renew for an
90 additional 5 year term on January 1 of the 5th year after the effective date of this act and every 5
91 years thereafter unless the legislature acts to repeal this law prior to its next renewal date..

92 SECTION 3. Chapter 212A of the General Laws is hereby repealed.

93 SECTION 4. Section 3 shall take effect upon January 1st of the year after the year in
94 which the legislature votes not to renew the foreclosure court division as authorized by section 1
95 of chapter 212A of the General Laws.