

HOUSE No. 3300

The Commonwealth of Massachusetts

PRESENTED BY:

Carlos Gonzalez

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>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Peter Capano</i>	<i>11th Essex</i>
<i>Gerard J. Cassidy</i>	<i>9th Plymouth</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Nick Collins</i>	<i>First Suffolk</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Daniel R. Cullinane</i>	<i>12th Suffolk</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>

<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>Chynah Tyler</i>	<i>7th Suffolk</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>

HOUSE No. 3300

By Mr. Gonzalez of Springfield, a petition (accompanied by bill, House, No. 3300) of Carlos Gonzalez and others relative to establishing a foreclosure review division of the Superior Court. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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

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

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

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

CHAPTER 212A

FORECLOSURE REVIEW DIVISION

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

9

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

14 Section 3. The chief justice of the trial court shall designate one of the judges of the
15 foreclosure review division as the presiding justice of that division.

16 Section 4. (a) The foreclosure review division shall be divided into not fewer than four
17 and not more than six 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 one location, as appropriate.

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

23 Section 5. 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 self-represented litigants, mediators, title

27 examiners, information technology personnel and any other personnel essential to the
28 expeditious establishment and efficient functioning of the foreclosure review division.

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30 Section 6. (a) Notwithstanding any general or special law to the contrary, the foreclosure
31 review division shall have jurisdiction, concurrently with the other divisions of the superior court
32 department and with the land court department, the housing court department and the district
33 court department, over all actions involving the foreclosure or purported foreclosure of
34 mortgages on residential property whether by action, by sale, by entry or otherwise, including,
35 but not limited to: actions that concern the validity of a foreclosure or purported foreclosure;
36 post-foreclosure summary process actions to evict; actions to try title, to quiet title and to remove
37 cloud on title; and actions that may otherwise involve questions concerning title to such property;
38 petitions brought under Chapter 185 regarding registered title to such property; actions that
39 concern notices regarding a right to cure a deficiency secured by a mortgage and notices
40 regarding intent to foreclose or otherwise to exercise a power of sale; actions that concern
41 modification of a loan secured by a mortgage, regardless of whether the issue is raised by way of
42 the original complaint or by an amendment to the original complaint, by affirmative defense or
43 by counterclaim; and criminal jurisdiction in matters arising out of or pertaining to foreclosure or
44 attempted foreclosure, and larceny or attempted larceny of real property, and foreclosure-related
45 issues including mortgage loan origination and the transfer of real property and interests in
46 mortgage notes.

47 (b) The foreclosure review division shall promptly transmit for recordation or
48 registration, to the registry of deeds of the county or district in which the land lies, a copy of any

49 final determination affecting title to land. Fee for such recordation or registration shall be waived
50 for the losing party to the extent allowable under the Court Indigency Laws.

51 (c) Any party to a civil action within the jurisdiction of the foreclosure review division
52 that is pending in another court department or another division of the superior court department,
53 or a judge of the court department or division in which the action is pending, acting sua sponte,
54 may transfer that action to the foreclosure review division. No additional filing fee shall be
55 charged to transfer such a case. An action transferred to the foreclosure review division shall
56 thereafter proceed in that division as though originally entered there

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58 (d) In a civil action in which another court has dismissed a claim for lack of jurisdiction
59 or denied a claim that is within the jurisdiction of the foreclosure review division, a party shall
60 have thirty (30) days after the date of receipt of the notice of dismissal or, in the case of an
61 appeal from the dismissal, thirty (30) days after the date of receipt of the notice of the decision,
62 to file the case in the foreclosure review division, regardless of whether the time permitted under
63 the applicable statute of limitations would have expired at any time from the original
64 commencement of that action to the end of this thirty (30) day period.

65 (e) Any document informing a litigant or his or her attorney of such a dismissal or denial
66 shall include complete information about the right to file the case in the foreclosure review
67 division, together with instructions for doing so.

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69 Section 7. The chief justice of the trial court, in consultation with the chief justice of the
70 superior court department and the presiding justice of the foreclosure review division, may from
71 time to time make alternative or supplemental rules, standing orders and forms of procedure to
72 govern proceedings in that division.

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74 Section 8. (a) There shall be an advisory board to assist the presiding justice and the
75 justices of the foreclosure review division and the division's court administrator.

76 (b) The advisory board shall consist of the Attorney General or a designee; the executive
77 director of the Massachusetts office of victim assistance; and the following additional members
78 appointed by the Chief Justice of the Supreme Judicial Court: one person who has significant
79 experience in each of the following areas: court or business administration; information
80 technology, in particular, in designing systems to assist members of the public to use information
81 technology effectively; promoting judicial economy by assisting self represented litigants in
82 presenting their cases effectively; mediation programs on complex topics, particularly those
83 involving cases in which self represented and sophisticated parties have adverse interests; real
84 estate title examination in the commonwealth; and at least four lawyers with significant
85 experience in various relevant areas of law and litigation, including access to justice and
86 banking, bankruptcy, civil rights, access to justice, the Americans with Disabilities Act,
87 consumer rights, criminal law, landlord-tenant, real property, secured transactions and securities
88 and securitized trust law. At least two of the four lawyers will have represented homeowners in
89 preserving their homes from foreclosure or will have represented consumers.

90 (c) The advisory board shall choose its chair. The appointed members of that board shall
91 each serve for a term of three years or for the remainder of the term of the foreclosure review
92 division, whichever is less.

93 (d) The board shall advise the presiding justice and the justices of the foreclosure review
94 division and the division's court administrator on matters of judicial and administrative concern
95 including, but not limited to, developments in relevant legal issues, real estate title examination,
96 mediation, assisting self-represented litigants, access to justice and the allocation of resources
97 based on the caseload of each of the division's courts.

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99 Section 9. This chapter shall be in force for a period of five years commencing
100 immediately upon enactment and shall apply to all cases within the jurisdiction of the foreclosure
101 review division, whether pending in one or more departments of the trial court as of the date of
102 enactment or commenced after that date.

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104 SECTION 2. Chapter 212A of the General Laws shall renew for an additional five year
105 term on January 1st of the fifth year after the effective date of this Act and every five years
106 thereafter unless the legislature repeals this law prior to its next renewal date.

107 SECTION 3. Any cases pending in the foreclosure review division at the conclusion of
108 its final term shall be transferred to the appropriate court.

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