

SENATE No. 1017

The Commonwealth of Massachusetts

PRESENTED BY:

Edward J. Kennedy

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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>2/7/2023</i>

SENATE No. 1017

By Mr. Kennedy, a petition (accompanied by bill, Senate, No. 1017) of Edward J. Kennedy and Angelo J. Puppolo, Jr. for legislation to establish a foreclosure review division. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1065 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act establishing a foreclosure review division.

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. The General Laws are hereby amended by inserting after chapter 212 the
2 following chapter:- CHAPTER 212A

3 FORECLOSURE REVIEW DIVISION

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

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

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

12 Section 4. (a) The foreclosure review division shall be divided into not fewer than four
13 and not more than six sessions statewide, as determined by the chief justice of the trial court in
14 consultation with the chief justice of the superior court department and the presiding justice of
15 the division, based on factors including projected caseloads and on the convenience of litigants.

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

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

19 Section 5. There shall be selected, as determined by the chief justice of the trial court in
20 consultation with the chief justice of the superior court department and the presiding justice of
21 the foreclosure review division, a court administrator, deputy court administrators if appropriate,
22 court clerks, clerks for the justices, facilitators for self-represented litigants, mediators, title
23 examiners, information technology personnel and any other personnel essential to the
24 expeditious establishment and efficient functioning of the foreclosure review division.

25 Section 6. (a) Notwithstanding any general or special law to the contrary, the foreclosure
26 review division shall have jurisdiction, concurrently with the other divisions of the superior court
27 department and with the land court department, the housing court department and the district
28 court department, over all actions involving the foreclosure or purported foreclosure of
29 mortgages on residential property whether by action, by sale, by entry or otherwise, including,
30 but not limited to: actions that concern the validity of a foreclosure or purported foreclosure;
31 post-foreclosure summary process actions to evict; actions to try title, to quiet title and to remove

32 cloud on title; and actions that may otherwise involve questions concerning title to such property;
33 petitions brought under Chapter 185 regarding registered title to such property; actions that
34 concern notices regarding a right to cure a deficiency secured by a mortgage and notices
35 regarding intent to foreclose or otherwise to exercise a power of sale; actions that concern
36 modification of a loan secured by a mortgage, regardless of whether the issue is raised by way of
37 the original complaint or by an amendment to the original complaint, by affirmative defense or
38 by counterclaim; and criminal jurisdiction in matters arising out of or pertaining to foreclosure or
39 attempted foreclosure, and larceny or attempted larceny of real property, and foreclosure-related
40 issues including mortgage loan origination and the transfer of real property and interests in
41 mortgage notes.

42 (b) The foreclosure review division shall promptly transmit for recordation or
43 registration, to the registry of deeds of the county or district in which the land lies, a copy of any
44 final determination affecting title to land. Fee for such recordation or registration shall be waived
45 for the losing party to the extent allowable under the Court Indigency Laws.

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

52 (d) In a civil action in which another court has dismissed a claim for lack of jurisdiction
53 or denied a claim that is within the jurisdiction of the foreclosure review division, a party shall

54 have thirty (30) days after the date of receipt of the notice of dismissal or, in the case of an
55 appeal from the dismissal, thirty (30) days after the date of receipt of the notice of the decision,
56 to file the case in the foreclosure review division, regardless of whether the time permitted under
57 the applicable statute of limitations would have expired at any time from the original
58 commencement of that action to the end of this thirty (30) day period.

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

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

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

68 (b) The advisory board shall consist of the Attorney General or a designee; the executive
69 director of the Massachusetts office of victim assistance; and the following additional members
70 appointed by the Chief Justice of the Supreme Judicial Court: one person who has significant
71 experience in each of the following areas: court or business administration; information
72 technology, in particular, in designing systems to assist members of the public to use information
73 technology effectively; promoting judicial economy by assisting self represented litigants in
74 presenting their cases effectively; mediation programs on complex topics, particularly those
75 involving cases in which self represented and sophisticated parties have adverse interests; real

76 estate title examination in the commonwealth; and at least four lawyers with significant
77 experience in various relevant areas of law and litigation, including access to justice and
78 banking, bankruptcy, civil rights, access to justice, the Americans with Disabilities Act,
79 consumer rights, criminal law, landlord-tenant, real property, secured transactions and securities
80 and securitized trust law. At least two of the four lawyers will have represented homeowners in
81 preserving their homes from foreclosure or will have represented consumers.

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

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

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

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

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

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