



General Assembly

January Session, 2007

**Raised Bill No. 7005**

LCO No. 3720

\*03720\_\_\_\_\_BA\_\*

Referred to Committee on Banks

Introduced by:  
(BA )

***AN ACT PROVIDING PROTECTION FROM FORECLOSURE FOR  
UNEMPLOYED AND UNDEREMPLOYED PERSONS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 49-31d of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) For the purposes of sections 49-31d to [49-31i] 49-31j, inclusive,  
4 as amended by this act:

5 (1) "Unemployed person" means a person who is unemployed for  
6 purposes of chapter 567.

7 (2) "Homeowner" means a person who has [an] a legal or equitable  
8 ownership interest in residential real property secured by a mortgage,  
9 or is a mortgagor of a mortgage, which is the subject of a foreclosure  
10 action, and who has [owned] had such interest and occupied such  
11 property as his or her principal residence for a continuous period of  
12 not less than two years immediately preceding the commencement of  
13 such foreclosure action.

14 (3) "Restructured mortgage debt" means the adjustment by a court

15 of a mortgage debt to give protection from a foreclosure action.

16 (4) "Protection from foreclosure" means a court-ordered  
17 restructuring of a mortgage debt designed to eliminate an arrearage in  
18 payments on such debt and to provide a period not to exceed [six]  
19 twenty-four months during which foreclosure is stayed.

20 (5) "Lender" means any person who makes or holds mortgage loans  
21 in the ordinary course of business and who is the holder of any [first]  
22 mortgage on residential real estate which is the subject of a foreclosure  
23 action.

24 (6) "Underemployed person" means a person whose [earned]  
25 income during the twelve-month period immediately preceding the  
26 commencement of the foreclosure action is (A) less than fifty thousand  
27 dollars, and (B) less than seventy-five per cent of [his] such person's  
28 average annual [earned] income during the two years immediately  
29 preceding such twelve-month period.

30 (b) It is the intent of the General Assembly that sections 49-31d to  
31 49-31j, inclusive, as amended by this act, are remedial and are to be so  
32 construed.

33 Sec. 2. Section 49-31e of the general statutes is repealed and the  
34 following is substituted in lieu thereof (*Effective October 1, 2007*):

35 (a) In an action by a lender for the foreclosure of a mortgage of  
36 residential real property, such lender shall give notice to the  
37 homeowner of the availability of the provisions of sections 49-31d to  
38 [49-31i] 49-31j, inclusive, as amended by this act, at the time the action  
39 is commenced.

40 (b) A homeowner who is given notice of the availability of the  
41 provisions of sections 49-31d to [49-31i] 49-31j, inclusive, as amended  
42 by this act, [must] shall make application for protection from  
43 foreclosure within twenty-five days of the [return day] date the  
44 homeowner files an appearance in the foreclosure action, provided, if

45 the homeowner appears pro se and an attorney subsequently enters an  
46 appearance to represent the homeowner, such application may be  
47 made not later than twenty-five days after the date such attorney files  
48 such appearance.

49 (c) No judgment foreclosing the title to real property by strict  
50 foreclosure or by a decree of sale shall be entered unless the court is  
51 satisfied from pleadings or affidavits on file with the court that notice  
52 has been given to the homeowner against whom the foreclosure action  
53 is commenced of the availability of the provisions of sections 49-31d to  
54 [49-31i] 49-31j, inclusive, as amended by this act.

55 (d) If a homeowner against whom the foreclosure action is  
56 commenced was not given notice of the availability of the provisions of  
57 sections 49-31d to [49-31i] 49-31j, inclusive, as amended by this act, at  
58 the time the action was commenced, and such homeowner was eligible  
59 to apply for protection from foreclosure at such time, the court, upon  
60 its own motion or upon the written motion of such homeowner, may  
61 issue an order staying the foreclosure action for [fifteen] twenty-five  
62 days, during which period the homeowner may apply to the court for  
63 protection from foreclosure by submitting an application together with  
64 a financial affidavit as required by subsection (a) of section 49-31f, as  
65 amended by this act.

66 Sec. 3. Section 49-31f of the general statutes is repealed and the  
67 following is substituted in lieu thereof (*Effective October 1, 2007*):

68 (a) Subject to the provisions of subsection (b) of this section, a  
69 homeowner who is [underemployed or] an unemployed person or an  
70 underemployed person, against whom a foreclosure action is brought,  
71 may make application, together with a financial affidavit, to the court  
72 having jurisdiction over the foreclosure action for protection from  
73 foreclosure if: (1) The mortgage being foreclosed encumbers the  
74 residential real property, which property has served as [his] such  
75 homeowner's principal residence, for a period of not less than two  
76 years, (2) such homeowner has not had a foreclosure action

77 commenced against [him] such homeowner in the preceding [seven-  
78 year] two-year period, and (3) such homeowner has not received an  
79 emergency mortgage assistance loan and has not applied for  
80 emergency mortgage assistance for two years before the application  
81 under the provisions of sections 8-265cc to 8-265ii, inclusive.

82 (b) If the residential real property which is the subject of a  
83 foreclosure action is owned by more than one person, (1) no  
84 homeowner shall be deemed an unemployed person or an  
85 underemployed person, for the purposes of sections 49-31d to [49-31i]  
86 49-31j, inclusive, as amended by this act, unless the aggregate [earned]  
87 income of all the homeowners of the residential real property which is  
88 the subject of such foreclosure action during the twelve-month period  
89 immediately preceding the commencement of the foreclosure action is  
90 less than fifty thousand dollars and less than seventy-five per cent of  
91 the average aggregate annual [earned] income during the two years  
92 immediately preceding such twelve-month period for all such  
93 homeowners, and (2) all homeowners of [said] such property, other  
94 than the homeowner making application in accordance with  
95 subsection (a) of this section, shall file a financial affidavit in  
96 connection with such application.

97 [(c) The court shall determine the eligibility of such homeowner for  
98 protection from foreclosure pursuant to the provisions of sections 49-  
99 31d to 49-31i, inclusive.]

100 [(d) In determining] (c) The court shall determine the eligibility of a  
101 homeowner for protection from foreclosure [under] pursuant to the  
102 provisions of sections 49-31d to [49-31i] 49-31j, inclusive, as amended  
103 by this act. In making such determination, the court may consider any  
104 relevant facts and shall consider:

105 (1) The likelihood that the homeowner will be able to make timely  
106 payments on the restructured mortgage commencing at the end of the  
107 restructuring period; [.] and

108 (2) The presence of any substantial prejudice to the lender or any  
109 subordinate lienor or encumbrancer which would result from a  
110 restructuring of the mortgage debt.

111 [(e)] (d) If the court determines the equity the homeowner has in the  
112 property and hears testimony from an appraiser produced by the  
113 lender in connection with such determination, (1) the reasonable cost  
114 of the appraisal and the appraiser's appearance as a witness shall be  
115 part of the court costs to be added to the principal balance pursuant to  
116 subdivision (4) of subsection (a) of section 49-31i, as amended by this  
117 act, if a restructuring order is granted, and (2) the reasonable cost of  
118 said appraiser's appearance as a witness shall be part of the taxable  
119 costs of the action, in addition to the taxable costs for such appraisal  
120 and the appraiser's appearance as a witness at a subsequent hearing  
121 for a judgment of foreclosure if such order is not granted.

122 [(f)] (e) If the court approves the application for protection from  
123 foreclosure and restructures the mortgage debt, the foreclosure action  
124 shall be stayed for the restructuring period. If, for a period of three  
125 months following the end of the restructuring period, there are no  
126 further proceedings to continue the foreclosure proceedings based  
127 upon a default on the mortgage as restructured, the foreclosure action  
128 shall be dismissed. The restructured mortgage debt shall have the  
129 same priority as if it had been advanced at the time the mortgage was  
130 delivered.

131 [(g) No homeowner who files a defense to any action for foreclosure  
132 shall be eligible to make application for protection from such  
133 foreclosure pursuant to the provisions of this section.]

134 Sec. 4. Section 49-31g of the general statutes is repealed and the  
135 following is substituted in lieu thereof (*Effective October 1, 2007*):

136 [(a) If it determines that a homeowner who is an underemployed  
137 person is eligible for protection from foreclosure pursuant to  
138 subsections (a) and (c) of section 49-31f, the court in its discretion may

139 order the restructuring of the mortgage debt of such homeowner so as  
140 to eliminate any arrearage in payments on the mortgage debt and may  
141 allow a restructuring period not to exceed six months.]

142 [(b) If it] If the court determines that a homeowner who is an  
143 unemployed person or an underemployed person is eligible for  
144 protection from foreclosure pursuant to [subsection (a) of] section 49-  
145 31f, as amended by this act, the court shall order the restructuring of  
146 the mortgage debt to eliminate any arrearage in payments on the  
147 mortgage debt and shall order a restructuring period not to exceed  
148 [six] twenty-four months.

149 Sec. 5. Section 49-31h of the general statutes is repealed and the  
150 following is substituted in lieu thereof (*Effective October 1, 2007*):

151 (a) As a condition to the granting of a restructuring order pursuant  
152 to section 49-31g, as amended by this act, the court may order the  
153 homeowner to pay to the lender during the restructuring period an  
154 amount not to exceed twenty-five per cent of [his] the homeowner's  
155 net income per month as a means of demonstrating the homeowner's  
156 good faith effort to reduce [his] the homeowner's mortgage  
157 indebtedness.

158 (b) For the purposes of this section, "net income" [shall include]  
159 includes any unemployment benefit received by the homeowner in  
160 accordance with chapter 567.

161 Sec. 6. Section 49-31i of the general statutes is repealed and the  
162 following is substituted in lieu thereof (*Effective October 1, 2007*):

163 (a) In determining the restructured mortgage debt, the court shall  
164 add the following to the existing principal balance of the mortgage  
165 debt: (1) All interest then due the lender and any interest that will be  
166 earned to the end of any restructuring period, including interest on  
167 any payments advanced by the lender during the restructuring period,  
168 such interest to be computed at the rate provided in the mortgage note,

169 (2) real property taxes, (3) premiums for Federal Housing  
170 Administration, Veterans' Administration and private mortgage  
171 insurance, and (4) court costs, legal fees and any other sums the court  
172 determines to be due under the terms of the mortgage indebtedness.  
173 [by the court.] The court shall then apply the composite interest rate as  
174 provided in subsection (c) of this section to such total restructured debt  
175 over the remaining term of the loan.

176 (b) The amount of the mortgage debt at the end of any period of  
177 restructuring shall in no event exceed either the amount of the original  
178 mortgage debt or ninety per cent of the fair market value of the  
179 property as determined by an accredited real estate appraiser at the  
180 time of restructuring, whichever is greater. The provisions for  
181 restructuring the mortgage debt and staying the foreclosure shall  
182 apply only if the debt as restructured would not exceed such amount.  
183 Any sums added to the existing mortgage debt as a result of a  
184 restructuring order shall accrue interest at prevailing market rates after  
185 the conclusion of the restructuring period, which rate shall be either  
186 fixed or variable depending upon the underlying mortgage note. The  
187 restructured mortgage debt shall be repayable over a term that may  
188 extend not more than twenty-four months beyond the original term of  
189 the loan that is being restructured.

190 (c) At the conclusion of the restructuring period, the new mortgage  
191 debt shall be computed based upon a composite rate of interest. The  
192 composite rate of interest shall be a weighted average of the original  
193 mortgage interest rate as to the principal balance and the prevailing  
194 interest rate as to all sums added to the principal balance to establish  
195 the total restructured mortgage debt, except that in the case of a  
196 flexible rate, variable rate or similar adjustable rate mortgage note, the  
197 provisions of the underlying mortgage note for the redetermination of  
198 the interest rate on the mortgage shall continue to apply and remain in  
199 full force and effect during the remainder of the term of the mortgage.

200 Sec. 7. Section 49-31j of the general statutes is repealed and the

201 following is substituted in lieu thereof (*Effective October 1, 2007*):

202     (a) The Banking Commissioner shall adopt such regulations, in  
 203 accordance with chapter 54, as the commissioner deems necessary  
 204 specifying (1) the manner in which a composite interest rate shall be  
 205 computed for the new mortgage debt pursuant to subsection (c) of  
 206 section 49-31i, as amended by this act, and (2) the method or standard  
 207 by which prevailing market rates of interest are to be determined, ],  
 208 and (3) a form a lender may use to give notice pursuant to section 49-  
 209 31e to a homeowner of the availability of the provisions of sections  
 210 49-31d to 49-31i, inclusive.]

211     (b) The Chief Court Administrator shall develop, and make  
 212 available to the public, forms for (1) the notice to a homeowner  
 213 required pursuant to section 49-31e, as amended by this act, that shall  
 214 include an application for protection from foreclosure under sections  
 215 49-31d to 49-31j, inclusive, as amended by this act, returnable to the  
 216 clerk of the court having jurisdiction over the foreclosure action, and  
 217 (2) the financial affidavit required pursuant to section 49-31f, as  
 218 amended by this act. Such forms shall be in clear and simple language  
 219 and in a format designed for use by pro se litigants.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	49-31d
Sec. 2	<i>October 1, 2007</i>	49-31e
Sec. 3	<i>October 1, 2007</i>	49-31f
Sec. 4	<i>October 1, 2007</i>	49-31g
Sec. 5	<i>October 1, 2007</i>	49-31h
Sec. 6	<i>October 1, 2007</i>	49-31i
Sec. 7	<i>October 1, 2007</i>	49-31j

**Statement of Purpose:**

To improve statutory protections for unemployed and underemployed homeowners in foreclosure actions, while preserving the rights of foreclosing lenders.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*