



Senate

General Assembly

File No. 366

February Session, 2008

Substitute Senate Bill No. 347

Senate, April 1, 2008

The Committee on Planning and Development reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING HOMEOWNERS' PROTECTION.

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 Section 49-31d of the general statutes is repealed and the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 July 1, 2008*):

3 (a) For the purposes of sections 49-31d to 49-31i, inclusive, as
4 amended by this act, and section 6 of this act:

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

7 [(2)] (1) "Homeowner" means a person who has [an] a legal or
8 equitable ownership interest in residential real property secured by a
9 mortgage or who is the holder of a mortgage which is the subject of a
10 foreclosure action, and who has [owned] had such interest and
11 occupied such property as [his] a principal residence for a continuous
12 period of not less than two years immediately preceding the

13 commencement of such foreclosure action.

14 (2) "Residential real property" means property occupied as a
15 residence by a homeowner.

16 (3) "Restructured mortgage debt" means the adjustment by a court
17 of a mortgage debt to give protection from a foreclosure action.

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

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

26 (6) ["Underemployed] "Protected person" means a [person whose
27 earned income during the twelve-month period immediately
28 preceding the commencement of the foreclosure action is (A) less than
29 fifty thousand dollars and (B) less than seventy-five per cent of his
30 average annual earned income during the two years immediately
31 preceding such twelve-month period] homeowner who is not current
32 on mortgage payments because of a reduction in household income, an
33 increase in the dollar amount of such mortgage payments or other
34 good cause.

35 (7) "Restructuring period" or "period of restructuring" means the
36 period of time that a foreclosure action is stayed while the court
37 restructures the mortgage.

38 (b) Sections 49-31d to 49-31j, inclusive, as amended by this act, and
39 section 6 of this act are remedial in nature and shall be construed to
40 implement the remedial purpose of said sections.

41 Sec. 2. Section 49-31e of the general statutes is repealed and the
42 following is substituted in lieu thereof (*Effective July 1, 2008*):

43 (a) In an action by a lender for the foreclosure of a mortgage of
44 residential real property, such lender shall give notice to the
45 homeowner of the availability of the provisions of sections 49-31d to
46 49-31i, inclusive, as amended by this act, and section 6 of this act at the
47 time the action is commenced.

48 (b) A homeowner who is given notice of the availability of the
49 provisions of sections 49-31d to 49-31i, inclusive, as amended by this
50 act, and section 6 of this act must make application for protection from
51 foreclosure within twenty-five days of the return day or of the date
52 such homeowner files an appearance in the action, whichever is later,
53 provided the court may extend the time for filing such application.

54 (c) No judgment foreclosing the title to real property by strict
55 foreclosure or by a decree of sale shall be entered unless the court is
56 satisfied from pleadings or affidavits on file with the court that notice
57 has been given to the homeowner against whom the foreclosure action
58 is commenced of the availability of the provisions of sections 49-31d to
59 49-31i, inclusive, as amended by this act, and section 6 of this act.

60 (d) If a homeowner against whom the foreclosure action is
61 commenced was not given notice of the availability of the provisions of
62 sections 49-31d to 49-31i, inclusive, as amended by this act, and section
63 6 of this act at the time the action was commenced, and such
64 homeowner was eligible to apply for protection from foreclosure at
65 such time, the court, upon its own motion or upon the written motion
66 of such homeowner, may issue an order staying the foreclosure action
67 for [fifteen] twenty-five days during which period the homeowner
68 may apply to the court for protection from foreclosure by submitting
69 an application together with a financial affidavit as required by
70 subsection (a) of section 49-31f of the 2008 supplement to the general
71 statutes, as amended by this act.

72 Sec. 3. Section 49-31f of the 2008 supplement to the general statutes
73 is repealed and the following is substituted in lieu thereof (*Effective July*
74 *1, 2008*):

75 (a) Subject to the provisions of subsection (b) of this section, a
76 homeowner [who is underemployed or unemployed] against whom a
77 foreclosure action is brought may make application, together with a
78 financial affidavit, to the court having jurisdiction over the foreclosure
79 action for protection from foreclosure if: (1) The mortgage being
80 foreclosed encumbers the residential real property, which property has
81 served as such homeowner's principal residence, for a period of not
82 less than two years, (2) such homeowner has not had a foreclosure
83 [action commenced] judgment entered against such homeowner in
84 regard to the residential real property owned by such homeowner in
85 the preceding [seven-year] two-year period, and (3) such homeowner
86 has not received an emergency mortgage assistance loan and has not
87 applied for emergency mortgage assistance for two years before the
88 application under the provisions of sections 8-265cc to 8-265ii,
89 inclusive.

90 (b) [If the residential real property which is the subject of a
91 foreclosure action is owned by more than one person, (1) no] No
92 homeowner shall be deemed [an unemployed person or an
93 underemployed] a protected person, for the purposes of sections 49-
94 31d to 49-31i, inclusive, as amended by this act, and section 6 of this act
95 unless the aggregate [earned] income of all the homeowners of the
96 residential real property which is the subject of such foreclosure action
97 during the twelve-month period immediately preceding the
98 commencement of the foreclosure action is less than [fifty thousand
99 dollars and less than seventy-five per cent of the average aggregate
100 annual earned income during the two years immediately preceding
101 such twelve-month period for all such homeowners, and (2) all] one
102 hundred fifty per cent of the median income for a four-person
103 household for the area that includes the municipality in which the
104 residential real property is located, as determined by the United States
105 Department of Housing and Urban Development. All homeowners of
106 such property other than the homeowner making application in
107 accordance with subsection (a) of this section shall file a financial
108 affidavit in connection with such application.

109 (c) The court shall determine the eligibility of such homeowner for
110 protection from foreclosure pursuant to the provisions of sections 49-
111 31d to 49-31i, inclusive, as amended by this act, and section 6 of this
112 act.

113 (d) In determining the eligibility of a homeowner for protection
114 from foreclosure under the provisions of sections 49-31d to 49-31i,
115 inclusive, as amended by this act, and section 6 of this act, the court
116 may consider any relevant facts and shall consider:

117 (1) The likelihood that the homeowner will be able to make timely
118 payments on the restructured mortgage commencing at the end of the
119 restructuring period or will be able to refinance the mortgage by the
120 end of the restructuring period; and

121 (2) The presence of any specific facts indicating substantial prejudice
122 to the lender or any subordinate lienor or encumbrancer which would
123 result from a restructuring of the mortgage debt.

124 (e) If the court determines the equity the homeowner has in the
125 property and hears testimony from an appraiser produced by the
126 lender in connection with such determination, (1) the reasonable cost
127 of the appraisal and the appraiser's appearance as a witness shall be
128 part of the court costs to be added to the principal balance pursuant to
129 subdivision (4) of subsection (a) of section 49-31i, as amended by this
130 act, if a restructuring order is granted, and (2) the reasonable cost of
131 such appraiser's appearance as a witness shall be part of the taxable
132 costs of the action, in addition to the taxable costs for such appraisal
133 and the appraiser's appearance as a witness at a subsequent hearing
134 for a judgment of foreclosure if such order is not granted.

135 (f) If the court approves the application for protection from
136 foreclosure and restructures the mortgage debt, the foreclosure action
137 shall be stayed for the restructuring period. If, for a period of three
138 months following the end of the restructuring period, there are no
139 further proceedings to continue the foreclosure proceedings based
140 upon a default on the mortgage as restructured, the foreclosure action

141 shall be dismissed. The restructured mortgage debt shall have the
142 same priority as if it had been advanced at the time the mortgage was
143 delivered.

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

147 Sec. 4. Section 49-31g of the general statutes is repealed and the
148 following is substituted in lieu thereof (*Effective July 1, 2008*):

149 [(a) If it determines that a homeowner who is an underemployed
150 person is eligible for protection from foreclosure pursuant to
151 subsections (a) and (c) of section 49-31f, the court in its discretion may
152 order the restructuring of the mortgage debt of such homeowner so as
153 to eliminate any arrearage in payments on the mortgage debt and may
154 allow a restructuring period not to exceed six months.]

155 [(b)] If it determines that a homeowner who is [an unemployed
156 person] a protected person is eligible for protection from foreclosure
157 pursuant to subsection (a) of section 49-31f of the 2008 supplement to
158 the general statutes, as amended by this act, the court shall order the
159 restructuring of the mortgage debt to eliminate any arrearage in
160 payments on the mortgage debt and shall order a restructuring period
161 not to exceed [six] twelve months.

162 Sec. 5. Section 49-31i of the general statutes is repealed and the
163 following is substituted in lieu thereof (*Effective July 1, 2008*):

164 (a) In determining the restructured mortgage debt, the court shall
165 add the following to the existing principal balance of the mortgage
166 debt: (1) All interest then due the lender and any interest that will be
167 earned to the end of any restructuring period, including interest on
168 any payments advanced by the lender during the restructuring period,
169 such interest to be computed at the rate provided in the mortgage note,
170 (2) real property taxes, (3) premiums for Federal Housing
171 Administration, Veterans' Administration and private mortgage

172 insurance, and (4) court costs, legal fees and any other sums the court
173 determines to be due under the terms of the mortgage indebtedness by
174 the court. The court shall then apply the composite interest rate as
175 provided in subsection (c) of this section to such total restructured debt
176 over the remaining term of the loan. In determining the restructured
177 mortgage, the court may extend the term of the loan in order to
178 accomplish the purposes of sections 49-31d to 49-31i, inclusive, as
179 amended by this act, and section 6 of this act.

180 (b) The amount of the mortgage debt at the end of any period of
181 restructuring shall in no event exceed either the amount of the original
182 mortgage debt or [ninety] one hundred twenty per cent of the fair
183 market value of the property as determined by an accredited real
184 estate appraiser at the time of restructuring, whichever is greater. The
185 provisions for restructuring the mortgage debt and staying the
186 foreclosure shall apply only if the debt as restructured would not
187 exceed such amount. Any sums added to the existing mortgage debt as
188 a result of a restructuring order shall accrue interest at prevailing
189 market rates after the conclusion of the restructuring period, which
190 rate shall be either fixed or variable depending upon the underlying
191 mortgage note.

192 (c) At the conclusion of the restructuring period, the new mortgage
193 debt shall be computed based upon a composite rate of interest. The
194 composite rate of interest shall be a weighted average of the original
195 mortgage interest rate as to the principal balance and the prevailing
196 interest rate as to all sums added to the principal balance to establish
197 the total restructured mortgage debt, except that in the case of a
198 flexible rate, variable rate or similar adjustable rate mortgage note, the
199 [provisions of the underlying mortgage note for the redetermination of
200 the interest rate on the mortgage shall continue to apply and remain in
201 full force and effect during the remainder of the term of the mortgage]
202 court may compute the rate of interest on the new mortgage debt
203 based upon the current prevailing interest rate or at such other rate as
204 the court deems fair and equitable.

205 Sec. 6. (NEW) (*Effective July 1, 2008*) The Chief Court Administrator
 206 shall adopt and make available to the public (1) a form for the notice,
 207 required to be given to homeowners pursuant to subsection (a) of
 208 section 49-31e of the general statutes, as amended by this act, which
 209 shall be designed so that the defendant may, on such form, make
 210 application for relief under sections 49-31d to 49-31j, inclusive, of the
 211 general statutes or the 2008 supplement to the general statutes, as
 212 amended by this act, and this section by returning such form to the
 213 clerk of the court; and (2) a financial affidavit form, required by
 214 subsection (a) of section 49-31f of the general statutes, as amended by
 215 this act. Such forms shall be in clear and simple language and format
 216 so as to be usable by litigants not represented by an attorney.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2008</i>	49-31d
Sec. 2	<i>July 1, 2008</i>	49-31e
Sec. 3	<i>July 1, 2008</i>	49-31f
Sec. 4	<i>July 1, 2008</i>	49-31g
Sec. 5	<i>July 1, 2008</i>	49-31i
Sec. 6	<i>July 1, 2008</i>	New section

Statement of Legislative Commissioners:

In section 4, brackets were inserted around "an unemployed person" and the phrase "a protected person" inserted after the closing bracket for consistency with the bill. In section 6 the reference to the 2008 supplement to the general statutes following the string citation was added for clarity.

HSG *Joint Favorable C/R*

PD

PD *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Judicial Dept.	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill makes numerous policy changes that are expected to increase the frequency of court-ordered homeowner protections from foreclosure. The bill requires the court to order restructuring of mortgage debt for any homeowner it finds to be eligible for such protection, and extends the maximum period of restructuring from six to 12 months.

These changes are not expected to alter the number of foreclosure actions brought each year. However, the per-case workload of the court would likely increase under the bill as the court considers, issues and enforces more orders of protection. It is anticipated that any such workload increase would not require additional resources (staffing or expenses).

The Out Years

The fiscal impact identified above would continue into the future.

OLR Bill Analysis**sSB 347*****AN ACT CONCERNING HOMEOWNERS' PROTECTION.*****SUMMARY:**

This bill makes numerous revisions in the homeowner mortgage foreclosure protection law. It:

1. expands eligibility for court-ordered homeowner protection,
2. extends the filing deadline,
3. revises the factors the court must consider when determining eligibility,
4. extends the maximum restructuring period from six to 12 months,
5. raises the cap on the amount of mortgage debt following restructuring,
6. requires the chief court administrator to issue certain disclosure forms, and
7. requires courts to construe the law in a way to implement its remedial nature.

EFFECTIVE DATE: July 1, 2008

FINANCIAL ELIGIBILITY FACTORS

Current law allows unemployed and underemployed homeowners to apply for protection. The bill eliminates the eligibility classifications and instead allows a protected homeowner to apply. It defines a protected homeowner as a homeowner who is not current on mortgage payments due to (1) a reduction in income, (2) an increase in

the dollar amounts of the mortgage payments, or (3) other good cause.

The bill repeals the definitions of “unemployed” (unemployed for purposes of unemployment compensation) and “underemployed” (having earned income during the 12-month period immediately preceding the beginning of the foreclosure action of (1) less than \$50,000 and (2) less than 75% of his average annual earned income during the two years immediately preceding the 12-month period). It redefines “homeowner” by specifying that an ownership interest means a legal and equitable ownership interest in, or is a mortgagor of, the property in foreclosure.

The bill also changes the income eligibility limit in situations in which the residence is owned by more than one person. Under current law, joint homeowners are eligible if their aggregate earned income in the 12 months immediately preceding the beginning of the foreclosure action is less than \$50,000 and less than 75% of their average aggregate annual earned income during the two years immediately preceding the 12-month period. Under the bill, joint homeowners are eligible if their aggregate income is less than 150% of the median income for a four-person household for the area that includes the municipality in which the home is located, as determined by the federal Department of Housing and Urban Development.

OTHER ELIGIBILITY FACTORS

Current law makes a homeowner ineligible for foreclosure protection if he or she has had a foreclosure action commenced against him or her in the preceding seven years. The bill, instead, makes a homeowner ineligible if he or she has had a foreclosure judgment entered against him or her in the preceding two years in regard to the property occupied as a residence by the homeowner.

Current law makes a homeowner who files a defense to any foreclosure action ineligible for foreclosure protection. The bill eliminates this prohibition.

FILING FOR PROTECTION

The bill extends the time for filing for protection. The law requires a lender foreclosing on a residential mortgage to give notice to the homeowner of the availability of the protections provided by the law when it begins the foreclosure action. A homeowner who gets this notice has 25 days from the return date to apply to the court for protection. Under the bill, a homeowner has 25 days from the return date or the date the homeowner files an appearance in the foreclosure action, whichever is later. Additionally, the bill allows a court to extend the filing period.

The law prohibits the court from granting a foreclosure unless it is satisfied that the homeowner has been given the appropriate notice. If the homeowner was not given notice and was eligible to apply for the protection, the court may on its own or on the homeowner's motion, issue an order delaying the foreclosure for 15 days during which time the homeowner may apply to the court for protection. The bill extends the delay from 15 days to 25.

COURT DISCRETION TO DETERMINE ELIGIBILITY

The court has broad discretion to determine whether a homeowner is eligible. The law allows it to consider any relevant fact but requires the court to consider certain facts such as the likelihood the homeowner will be able to make timely payments when the mortgage is restructured. The bill also requires the court to consider the likelihood that a homeowner will be able to refinance the mortgage by the end of the restructuring period. The law requires the court to consider the presence of any substantial prejudice to the lender or a subsequent lienor or encumbrancer that would result from the restructuring. The bill narrows this consideration to specific facts indicating such substantial prejudice.

RESTRUCTURING THE MORTGAGE DEBT

Under current law, if the court determines that an unemployed homeowner is eligible for protection from foreclosure, it must order the restructuring of the mortgage debt to eliminate any arrearage and must order a restructuring period up to six months. If the court

determines that an underemployed homeowner is eligible, it may in its discretion order the restructuring of the mortgage debt to eliminate any arrearage and may allow a restructuring period of up to six months.

The bill extends the restructuring period from six to 12 months, eliminates the distinction between under- and unemployed, and requires the court to order restructuring if it finds that a homeowner is eligible for protection from foreclosure.

RESTRUCTURED DEBT

Current law specifies that the amount of the mortgage debt following a restructuring period may not exceed the amount of the original mortgage debt or 90% of the property's fair market value, as determined by a licensed real estate appraiser at the time of restructuring, whichever is greater. The bill raises the second limit to 120% of the property's fair market value. In addition, the bill allows a court to extend the term of the loan to accomplish the bill's purposes when restructuring the debt.

After the restructuring period, the law requires the court to compute the new mortgage debt based on a composite rate of interest (original balance plus balance for restructured period at their respective interest rates). If the underlying mortgage has a flexible, variable, or other adjustable rate, then current law requires that its provisions continue to apply during the remainder of the mortgage term. The bill instead allows a court, when computing a new interest rate when the underlying mortgage has a flexible, variable, or other adjustable rate, to base the new rate on the current prevailing interest rate or on another rate that it determines is fair and equitable.

DISCLOSURE FORMS

The bill requires the chief court administrator to adopt and make available to the public (1) a form for lenders initiating a foreclosure action to give homeowners notifying them of the foreclosure protection law and designed to allow the defendant to apply for the

protection by returning the form to the clerk of the court and (2) a financial affidavit form for homeowners required by the law's provisions relating to financial eligibility. The bill requires both forms to be in clear and simple language and format to be usable by litigants not represented by an attorney. Current law requires that the banking commissioner adopt regulations specifying a form that lenders use to notify homeowners of the foreclosure protection law.

LEGAL CONSTRUCTION

The bill states that the law's mortgage foreclosure protection provisions are remedial in nature and must be construed to implement their remedial purpose.

BACKGROUND

Related Bills

Two legislative committees, Housing and Banks, have reported bills to the floor broadly addressing residential foreclosure. The General Law Committee reported HB 5758, which is virtually identical to this bill, except that its effective date is October 1, 2008 (see below).

<i>Bill No.</i>	<i>Committee</i>	<i>File No.</i>
HB5758	General Law	123
HB 5553	Housing	Not available
HB 5577	Banks	114

COMMITTEE ACTION

Select Committee on Housing

Joint Favorable Change of Reference
 Yea 10 Nay 0 (03/04/2008)

Planning and Development Committee

Joint Favorable
 Yea 15 Nay 5 (03/12/2008)

