



General Assembly

February Session, 2008

Raised Bill No. 5552

LCO No. 1535

01535_____HSG

Referred to Committee on Select Committee on Housing

Introduced by:
(HSG)

AN ACT CONCERNING PROCEDURES IN THE FORECLOSURE OF RESIDENTIAL PREMISES.

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

1 Section 1. (NEW) (*Effective July 1, 2008*) As used in sections 2 to 6,
2 inclusive, of this act:

3 (1) "Dwelling unit" means any house or building, or portion thereof,
4 which is occupied, designed to be occupied, or rented, leased or hired
5 out to be occupied as a home or residence of one or more persons;

6 (2) "Foreclosure action" means a civil action to foreclose a mortgage
7 or other lien on residential premises;

8 (3) "Residential premises" means a building or buildings that
9 contain one or more dwelling units; and

10 (4) "Reasonable effort to negotiate a fair resolution of the dispute"
11 means the use of applicable loss mitigation practices intended to help
12 the mortgagor retain ownership of the residential premises, including,
13 but not limited to, capitalizing arrearages, extending the term of the
14 loan, waiving late and other fees, and modifying the interest rate,

15 except that if the mortgagor does not want to retain ownership of the
16 residential premises, loss mitigation practices include, but are not
17 limited to, short sales and deeds in lieu of foreclosure.

18 Sec. 2. (NEW) (*Effective July 1, 2008*) (a) At least thirty days prior to
19 filing any foreclosure action regarding residential premises, but not
20 earlier than a date the mortgage is at least sixty days in default, the
21 mortgagee or mortgage servicer shall mail to each mortgagor, on its
22 own letterhead, a notice, in plain and simple language and readable
23 format, containing at least the following information: (1) A statement
24 that the mortgage is in default and a warning that failure to correct the
25 default could result in the loss of the mortgagor's home; (2) a statement
26 of the amount of the default and how a reinstatement figure may be
27 obtained, including the telephone number for obtaining such figure;
28 (3) a statement that the mortgagee is prepared to make a reasonable
29 effort to negotiate a fair resolution of the dispute and that the
30 mortgagor should make direct contact with the mortgagee or its
31 servicer; (4) the name, address and contact information, including the
32 toll-free telephone number, for the mortgagee's loss mitigation contact
33 or other person authorized to negotiate a resolution of the default, a
34 modification of the loan or other workout of the dispute; (5) the
35 telephone number of the foreclosure hotline of the Department of
36 Banking; and (6) a statement that the mortgagor should contact a
37 housing counselor certified by the United States Department of
38 Housing and Urban Development. The plaintiff shall attach to the
39 notice a list of housing counselors certified by the United States
40 Department of Housing and Urban Development in the region where
41 the property being foreclosed upon is located.

42 (b) Beginning prior to initiation of a foreclosure action and
43 continuing until a foreclosure judgment becomes final, the plaintiff
44 shall have a duty to make a demonstrable and documented reasonable
45 effort to negotiate a fair resolution of the dispute.

46 (c) The Banking Commissioner may adopt regulations pursuant to

47 chapter 54 of the general statutes to implement the provisions of this
48 section.

49 Sec. 3. (NEW) (*Effective July 1, 2008*) (a) The Chief Court
50 Administrator shall prescribe the following foreclosure forms in plain
51 and simple language and readable format:

52 (1) A notice form that shall include, but not be limited to, (A) a
53 statement that identifies the form as a legal action that may result in
54 the loss of the defendant's home; (B) a statement that a defendant, that
55 wants to be heard, should file an appearance and an answer or other
56 permissible response, for which forms are attached; (C) an advisement
57 that the defendant should seek legal counsel, along with the name and
58 telephone number of the foreclosure hotline of the Department of
59 Banking, any pro bono attorney foreclosure referral networks, the
60 state-wide legal services hotline, and the lawyer referral service of the
61 state or local bar association; (D) an advisement that the defendant
62 should contact a housing counselor certified by the United States
63 Department of Housing and Urban Development; (E) a place for the
64 plaintiff to fill in the name, address and contact information, including
65 the toll-free telephone number, for the loss mitigation contact of the
66 plaintiff or other person authorized to negotiate a settlement of the
67 action, a modification of the loan or other resolution of the dispute; (F)
68 a place for the plaintiff to state whether consent is given to the
69 defendant's attorney to communicate directly with the loss mitigation
70 contact regarding any temporary indulgence, repayment plan,
71 forbearance proposal or other settlement, provided a copy of any
72 written correspondence is also sent to the plaintiff's attorney; (G) a
73 statement that the plaintiff has a duty to make a reasonable effort to
74 negotiate a fair resolution of the dispute and that the defendant should
75 make direct contact with the plaintiff, its servicer or person identified
76 in subparagraph (E) of this subdivision; and (H) a statement for the
77 plaintiff describing how an itemized reinstatement figure may be
78 obtained, including the telephone number for obtaining such a figure.
79 The form shall also include the name of the plaintiff, the docket

80 number of the case, the address of the court and the telephone number
81 of the office of the court clerk.

82 (2) A foreclosure answer form that can be returned to the court and
83 that includes a (A) place for the defendant to admit, deny or plead lack
84 of knowledge of each paragraph of the complaint; (B) checklist of
85 foreclosure defenses, including equitable defenses; and (C) space for
86 the defendant to state any other legal or equitable defenses or special
87 defenses that such defendant may claim.

88 (b) The plaintiff in every foreclosure action of residential premises
89 shall attach to the foreclosure complaint, as the first sheets of the
90 document package on top of the summons, the following:

91 (1) The notice form prescribed by the Chief Court Administrator
92 pursuant to subdivision (1) of subsection (a) of this section, completed
93 appropriately with information available to the plaintiff;

94 (2) An appearance form for each defendant, with the portions of the
95 form known to the plaintiff completed;

96 (3) The answer form prescribed by the Chief Court Administrator
97 pursuant to subdivision (1) of subsection (a) of this section; and

98 (4) A list of housing counselors certified by the United States
99 Department of Housing and Urban Development in the region where
100 the property being foreclosed upon is located.

101 (c) If a mortgagee or mortgage servicer enters into an agreement
102 with a mortgagor to suspend, without withdrawing or dismissing, a
103 pending foreclosure action, the mortgagee shall not resume any
104 activity in pursuit of the foreclosure action unless, at least fifteen days
105 prior to such resumption or at such other time as may be specified by
106 court order, the mortgagee delivers to the mortgagor a notice stating
107 that such mortgagee will resume foreclosure procedures after fifteen
108 days and attaches a new copy of the notices required by subsection (b)
109 of this section.

110 (d) The plaintiff in each foreclosure action shall include within the
111 complaint an allegation as to whether the premises are or are not
112 residential premises.

113 Sec. 4. (NEW) (*Effective July 1, 2008*) (a) The plaintiff shall certify
114 upon each pleading in a foreclosure action that a copy of the pleading
115 has been sent to each party appearing pro se and to each appearing
116 counsel and, if any defendant has not appeared, to that defendant.

117 (b) Within five days after the filing of a foreclosure action, the
118 plaintiff shall file with the court and mail to the defendant or the
119 defendant's attorney a copy of the documents supporting the entry of a
120 judgment for the plaintiff, including, but not limited to, the note
121 evidencing the debt, the original mortgage executed by the borrower,
122 and any assignments or other evidence demonstrating the transfer of
123 ownership of the mortgage and note, and the succession of holders of
124 the mortgage and note.

125 (c) No judgment shall be entered in a foreclosure action unless the
126 plaintiff under oath certifies (1) that the notice required pursuant to
127 subsection (a) of section 2 of this act was sent to each defendant; (2)
128 that it has made reasonable efforts to comply with the loss mitigation
129 requirements of subsection (b) of section 2 of this act; (3) an itemized
130 statement of such efforts; and (4) that it has complied with all
131 applicable standing orders of the court. Upon its own initiative or
132 upon motion of the defendant, the court may stay proceedings upon a
133 finding that, despite reasonable efforts by the defendant to propose a
134 reasonable reinstatement or loan workout, the plaintiff has failed to
135 respond in a timely manner.

136 (d) No judgment shall be entered in a foreclosure action unless the
137 plaintiff establishes through evidence that the plaintiff was the owner
138 of the mortgage and note at the time the foreclosure action was
139 initiated and is the owner at the time that a judgment of foreclosure is
140 entered. If the plaintiff is not the original mortgagee of the mortgage,
141 the plaintiff shall establish through evidence the chain of title of the

142 mortgage and note documenting the plaintiff's ownership. No
143 judgment shall be entered in a foreclosure action against the owner of
144 residential property who resides in the property until at least ninety
145 days after the return day.

146 (e) No fees shall be approved in a foreclosure action unless the court
147 determines that the fees are reasonable. No fees for appraisals,
148 inspections or other services shall exceed their actual cost to the
149 plaintiff.

150 (f) In a foreclosure by sale, the court shall not award a deficiency
151 judgment to a plaintiff who fails to bid at least the appraised value of
152 the property.

153 Sec. 5. (NEW) (*Effective July 1, 2008*) (a) A mortgage of residential
154 premises shall be reinstated at any time prior to entry of judgment if
155 the defendant pays all amounts, other than amounts required by
156 acceleration of the mortgage, due at that time under the mortgage,
157 including unpaid principal and interest and the costs of the action to
158 the date of payment.

159 (b) The defendant in a foreclosure action may raise any legal or
160 equitable defense to the action.

161 Sec. 6. (NEW) (*Effective July 1, 2008*) (a) Foreclosure shall not affect
162 the rental agreement of a tenant whose rental payment is subsidized
163 under state or federal law or who occupies premises that are subject to
164 a state or federal loan or assistance contract.

165 (b) In any foreclosure action of residential premises in which one or
166 more dwelling units are occupied by a person other than the
167 mortgagor or his immediate household and in which any of such
168 persons are named defendants in the foreclosure action, the action
169 shall, upon motion by such a defendant, be transferred to the division
170 of the Superior Court with venue for housing matters pursuant to
171 section 47a-70 of the general statutes and subsections (b) and (c) of

172 section 51-348 of the general statutes.

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

Statement of Purpose:

To protect homeowners and renters in the foreclosure process by establishing a duty for mortgagors and mortgage servicers to resolve cases so that the homeowner retains the home, requires plain language notices and that pleadings be sent to defendants, and protects renters in foreclosed buildings.

[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.]