



Senate

General Assembly

File No. 911

January Session, 2009

Substitute Senate Bill No. 619

Senate, May 7, 2009

The Committee on Appropriations reported through SEN. HARP of the 10th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING FORECLOSURE PROCEDURES.

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

1 Section 1. Section 49-31l of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) (1) Prior to July 1, 2010, when a mortgagee commences an action
4 for the foreclosure of a mortgage on residential real property [with a
5 return date on or after July 1, 2008,] the mortgagee shall give notice to
6 the mortgagor of the foreclosure mediation program established in
7 section 49-31m by attaching to the front of the foreclosure writ,
8 summons and complaint that is served on the mortgagor: [(1)] (A) A
9 copy of the notice of [the availability of] foreclosure mediation, in such
10 form as the Chief Court Administrator prescribes, and [(2)] a
11 foreclosure mediation request form, in such form as the Chief Court
12 Administrator prescribes] (B) a copy of the foreclosure mediation
13 certificate form described in subsection (b) of this section, in such form
14 as the Chief Court Administrator prescribes. Such mortgagee shall
15 include with such notice, certificate, writ, summons and complaint a

16 blank appearance form, in such form as the Chief Court Administrator
17 prescribes.

18 (2) The court shall issue a notice of foreclosure mediation described
19 in subsection (b) of this section to the mortgagor not later than three
20 days after the mortgagee returns the writ to the court.

21 (b) (1) [Except as provided in subdivision (2) of this subsection, a
22 mortgagor may request foreclosure mediation by submitting the
23 foreclosure mediation request form to the court and filing an
24 appearance not more than fifteen days after the return day for the
25 foreclosure action. Upon receipt of the foreclosure mediation request
26 form, the court shall notify each appearing party that a foreclosure
27 mediation request form has been submitted by the mortgagor.] The
28 notice of foreclosure mediation shall instruct the mortgagor to file the
29 appearance and foreclosure mediation certificate forms with the court
30 no later than the date fifteen days from the return date for the
31 foreclosure action. The foreclosure mediation certificate form shall
32 require the mortgagor to provide sufficient information to permit the
33 court to confirm that the defendant in the foreclosure action is a
34 mortgagor.

35 (2) [The court may grant a mortgagor permission to submit a
36 foreclosure mediation request form and file an appearance after the
37 fifteen-day period established in subdivision (1) of this subsection, for
38 good cause shown, except that no foreclosure mediation request form
39 may be submitted and no appearance may be filed more than twenty-
40 five days after the return date.] Upon receipt of the mortgagor's
41 appearance and foreclosure mediation certificate forms, and provided
42 the court determines the defendant in the foreclosure action is a
43 mortgagor, the court shall schedule a date for foreclosure mediation in
44 accordance with section 49-31n, as amended by this act, and shall issue
45 notice of such mediation date to all appearing parties no later than the
46 date two business days after the date the appearance and foreclosure
47 mediation certificate forms are filed. If the court does not receive the
48 appearance and foreclosure mediation certificate forms from the

49 mortgagor by the date fifteen days after the return date for the
50 foreclosure action, the court shall not schedule such mediation.

51 (3) [No foreclosure mediation request form may be submitted to the
52 court on or after July 1, 2010.] Notwithstanding the provisions of this
53 section, the court may refer to the foreclosure mediation program at
54 any time a mortgagor who appears in a foreclosure action.

55 [(c) If at any time on or after July 1, 2008, but prior to July 1, 2010,
56 the court determines that the notice requirement of subsection (a) of
57 this section has not been met, the court may, upon its own motion or
58 upon the written motion of the mortgagor, issue an order that no
59 judgment may enter for fifteen days during which period the
60 mortgagor may submit a foreclosure mediation request form to the
61 court.]

62 [(d)] (c) Notwithstanding any provision of the general statutes or
63 any rule of law to the contrary, prior to July 1, 2010, no judgment of
64 strict foreclosure nor any judgment ordering a foreclosure sale shall be
65 entered in any action instituted by the mortgagee to foreclose a
66 mortgage on residential real property unless: (1) [Notice to the
67 mortgagor has been given by the mortgagee in accordance with
68 subsection (a) of this section and the time for submitting a foreclosure
69 mediation request form has expired and no foreclosure mediation
70 request form has been submitted, or if such notice has not been given,
71 the time for submitting a foreclosure mediation request form pursuant
72 to subsection (b) or (c) of this section has expired and no foreclosure
73 mediation request form has been submitted, or (2) the] The mediation
74 period set forth in section 49-31n, as amended by this act, has expired
75 or has otherwise terminated, whichever is earlier, or (2) the mediation
76 program is not otherwise required or available.

77 [(e)] (d) None of the mortgagor's or mortgagee's rights in the
78 foreclosure action shall be waived by [the mortgagor's submission of a]
79 participation in the foreclosure mediation [request form to the court]
80 program.

81 Sec. 2. Section 49-31n of the general statutes is repealed and the
82 following is substituted in lieu thereof (*Effective October 1, 2009*):

83 (a) The mediation period under the foreclosure mediation program
84 established in section 49-31m shall commence when the court sends
85 notice to each appearing party [that a] scheduling the first foreclosure
86 mediation [request form has been submitted by a mortgagor to the
87 court, which] session, and except as provided in subsection (b) of
88 section 49-31l, as amended by this act, said notice shall be sent not later
89 than [three] two business days after [the court receives a completed
90 foreclosure mediation request form] the return date for the foreclosure
91 action. The mediation period shall conclude [not more than] no later
92 than the date sixty days after the return [day] date for the foreclosure
93 action, except that the court may, in its discretion, for good cause
94 shown, (1) extend, by not more than thirty days, or shorten the
95 mediation period on its own motion or upon motion of any party, or
96 (2) extend by not more than thirty days the mediation period upon
97 written request of the mediator.

98 (b) The first mediation session shall be held not later than fifteen
99 business days after the court sends notice to [all parties that a
100 foreclosure mediation request form has been submitted to the court]
101 each appearing party in accordance with subsection (b) of section 49-
102 31l, as amended by this act, or subsection (a) of this section. The
103 mortgagor and mortgagee shall appear in person at each mediation
104 session and shall have authority to agree to a proposed settlement,
105 except that if the mortgagee is represented by counsel, the mortgagee's
106 counsel may appear in lieu of the mortgagee to represent the
107 mortgagee's interests at the mediation, provided such counsel has the
108 authority to agree to a proposed settlement and the mortgagee is
109 available during the mediation session by telephone or electronic
110 means. The court shall not award attorney's fees to any mortgagee for
111 time spent in the first mediation session if such mortgagee does not
112 have a person with authority to agree to a proposed settlement
113 available during such session either in person or by telephone or
114 electronic means.

115 (c) Not later than two days after the conclusion of the first
116 mediation session, the mediator shall determine whether the parties
117 will benefit from further mediation. The mediator shall file with the
118 court a report setting forth such determination and mail a copy of such
119 report to each appearing party. If the mediator reports to the court that
120 the parties will not benefit from further mediation, the mediation
121 period shall terminate automatically. If the mediator reports to the
122 court after the first mediation session that the parties may benefit from
123 further mediation, the mediation period shall continue.

124 (d) If the mediator has submitted a report to the court that the
125 parties may benefit from further mediation pursuant to subsection (c)
126 of this section, not more than two days after the conclusion of the
127 mediation, but no later than the termination of the mediation period
128 set forth in subsection (a) of this section, the mediator shall file a report
129 with the court describing the proceedings and specifying the issues
130 resolved, if any, and any issues not resolved pursuant to the
131 mediation. The filing of the report shall terminate the mediation period
132 automatically. If certain issues have not been resolved pursuant to the
133 mediation, the mediator may refer the mortgagor to any appropriate
134 community-based services that are available in the judicial district, but
135 any such referral shall not cause a delay in the mediation process.

136 (e) The Chief Court Administrator shall establish policies and
137 procedures to implement this section. Such policies and procedures
138 shall, at a minimum, provide that the mediator shall advise the
139 mortgagor at the first mediation session required by subsection (b) of
140 this section that: (1) Such mediation does not suspend the mortgagor's
141 obligation to respond to the foreclosure action in accordance with
142 applicable rules of the court; and (2) a judgment of strict foreclosure or
143 foreclosure by sale may cause the mortgagor to lose the residential real
144 property to foreclosure.

145 (f) In no event shall any determination issued by a mediator under
146 this program form the basis of an appeal of any foreclosure judgment.

147 (g) [Foreclosure mediation request forms shall not be accepted by

148 the court on or after July 1, 2010, and the] The foreclosure mediation
 149 program shall terminate when all mediation has concluded with
 150 respect to any [applications submitted to the court] foreclosure action
 151 commenced prior to July 1, 2010.

152 (h) At any time during the mediation period, the mediator may refer
 153 the mortgagor to the mortgage assistance programs, except that any
 154 such referral shall not prevent a mortgagee from proceeding to
 155 judgment when the conditions specified in subsection [(d)] (c) of
 156 section 49-31l, as amended by this act, have been satisfied.

157 Sec. 3. (*Effective July 1, 2009*) Notwithstanding any provision of the
 158 general statutes, for the fiscal years ending June 30, 2010, and June 30,
 159 2011, moneys received or collected by the Banking Commissioner on
 160 account of, or derived from, assessments or fees pursuant to section
 161 36a-65 of the general statutes shall be allocated by the Secretary of the
 162 Office of Policy and Management to the Judicial Department and the
 163 State Comptroller in the amounts necessary for funding foreclosure
 164 mediation programs pursuant to sections 49-31k to 49-31o, inclusive, of
 165 the general statutes, as amended by this act, until the termination of
 166 such programs.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	49-31l
Sec. 2	<i>October 1, 2009</i>	49-31n
Sec. 3	<i>July 1, 2009</i>	New section

APP *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Judicial Dept.	BF - Cost	\$4.8 million	\$1.6 million

Note: BF=Banking Fund

Municipal Impact: None

Explanation

The bill makes the foreclosure mediation program established under PA 08-176 mandatory (effective October 1, 2009) for any foreclosure action on residential real property. This policy change would triple the number of mediations conducted under current law, which makes such mediation contingent upon the filing of a request for mediation.

The bill does not alter the current law provision that closes the program to new participants on and after July 1, 2010. However, since the mediation deadline is 90 days after mediation begins, the cost of the bill would continue for three months into FY 11.

The annual, incremental cost of the bill's caseload increase is estimated to be \$6.4 million including salaries, fringe benefits and other expenses; however, only a portion (75%) of this cost would be incurred in FY 10 since the bill's effective date is October 1st.

The bill provides that the cost of the program expansion shall be borne by the Banking Fund, which is projected to have \$17.5 million balance at the close of FY 09.

The Out Years

The fiscal impact of the bill would cease in FY 11, as indicated above, in accordance with the current law provision that effectively

terminates the program on June 30, 2010.

Source: Judicial Department Foreclosure Mediation Program Statistics as of 12/31/2008 included in the PowerPoint slideshow presented at the Banks Committee's 2/2/09 Informational Forum held on Foreclosure Mediation.

OLR Bill Analysis**sSB 619*****AN ACT CONCERNING FORECLOSURE PROCEDURES.*****SUMMARY:**

This bill makes the foreclosure mediation program established under PA 08-176 mandatory, rather than optional. To that end, the bill changes the mechanism by which borrowers are notified and makes other conforming changes.

The bill specifies that no judgment of strict foreclosure or foreclosure by sale can be entered before July 1, 2010 unless the mediation period has expired or otherwise terminated, whichever is earlier, or the mediation program is not otherwise required or available (see COMMENT).

By law, lenders must appear in person at the first mediation session and be authorized to agree to a proposed settlement. If the lender's attorney appears instead, he or she must have such authority, and the lender must be available by phone or electronic means. The bill specifies that the court cannot award attorney's fees to any lender for time spent in the first mediation session if the lender does not have a person with authority available during the session in person, by phone, or electronic means. This appears to contradict existing law, which requires the person with authority to be present.

Finally, for FYs 10 and 11, the bill requires that some funds the Banking Department receives or collects from assessments or fees that the law requires Connecticut credit unions and banks pay to fund the department be used to fund the mediation program. It requires the Office of Policy and Management secretary to allocate enough of the money in the State Banking Fund to the Judicial Department and the State Comptroller for the program (see BACKGROUND).

EFFECTIVE DATE: October 1, 2009, except for the funding mechanism, which is effective July 1, 2009.

MEDIATION PROCEDURE

By law, the lender has to inform the borrower about the mediation program by attaching a notice of availability of foreclosure mediation and a mediation request form to the front of the foreclosure complaint. Because the bill makes mediation automatic, it requires lenders to attach instead (1) a notice of foreclosure mediation; (2) a foreclosure mediation certificate; and (3) a blank appearance form, all in a chief court administrator-prescribed form. The foreclosure mediation certificate must require the borrower to provide enough information to allow the court to confirm that the defendant in the foreclosure action is actually an owner-occupant of a one-to-four family residential real property located in Connecticut and also the borrower under a mortgage encumbering the real property, which is the primary residence. The bill also specifies that the notice and certificate should be attached to the front of the writ summons, which typically appears in front of the complaint.

Generally, when a lender serves a borrower in the foreclosure action, it must return the writ to the court. After the lender returns the writ, the bill gives the court three days to issue a notice of foreclosure mediation to the borrower. The notice must tell the borrower to file the appearance form and foreclosure mediation certificate with the court no more than 15 days after the foreclosure action return date (the date by which the lender must respond to the foreclosure action). When the court receives the forms from a borrower who meets the above-referenced requirements, the court must schedule a foreclosure mediation date and notify all appearing parties two business days after receiving the forms (see COMMENT). If the forms are not returned by the deadline, the court cannot schedule mediation. However, the bill allows the court to refer people meeting the requirements to the program any time they appear in a foreclosure action.

BACKGROUND

State Banking Fund

By law, the DOB commissioner generally assesses Connecticut banks and credit unions the amount necessary to cover DOB expenses. The assessments cannot be more than the budget estimates the commissioner must submit. The State Treasurer must place all funds received from the commissioner and all moneys received from any person for documents or reports sold by the commissioner in the State Banking Fund. Money in the fund can spent only after being appropriated by the General Assembly.

The Comptroller must determine DOB expenses for each fiscal year. The Office of Policy and Management secretary must annually examine the fund after the Comptroller makes her determination and direct the Treasurer to set aside within the Banking Fund amounts in excess of a reasonable contingency reserve.

This amount is considered surplus, which must be used to reduce pro rata the bank and credit union assessments of prior fiscal years.

Legislative History

On April 22, the Senate referred the bill to the Appropriations Committee, which added the funding mechanism.

COMMENT**Foreclosure Judgments Entered After July 1, 2010**

By law, and under the bill, mediations are allowed to begin up until June 30, 2010 (and therefore continue after that date). However, it appears that this provision allows actions that continue after June 30, 2010 to go to judgment without meeting the bill's requirements.

Scheduling the First Mediation

The section on scheduling the first mediation session appears to conflict with another section of the bill which, except as noted above, requires the notice scheduling the first mediation to be sent no more than two business days after the foreclosure action's return date. It is unclear in what situation this timeline would apply. Additionally, the

provision is unworkable in conjunction with the first timeline because the trigger for the scheduling (the borrower's filing of an appearance the certificate) is not required until 15 days after the return date.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 15 Nay 1 (03/10/2009)

Appropriations Committee

Joint Favorable Substitute

Yea 51 Nay 0 (04/27/2009)