



## CT FAIR HOUSING CENTER

### STATEMENT OF JEFF GENTES OF THE CONNECTICUT FAIR HOUSING CENTER IN SUPPORT OF H.B. 5410

Senator Duff, Representative Barry, Members of the Committee: thank you for allowing me to speak today. I am Jeff Gentes, and I am the Foreclosure Prevention Staff Attorney at the Connecticut Fair Housing Center. We are a non-profit providing, among other things, legal resources and assistance to homeowners facing foreclosure. We support reauthorizing and updating the successful Foreclosure Mediation Program, and would support House Bill 5410 if it were amended to cover all mediations.

Everyone knows foreclosures cost homeowners their homes. Foreclosures also cost our towns – on average, more than \$19,000 in police, fire, and maintenance costs per foreclosure – and costs neighbors who see their property values plummet – depending on the study, between \$2,000 and \$6,800 per Connecticut neighbor, per foreclosure. You recognized how foreclosure costs Connecticut two years ago and created the country’s first statewide Foreclosure Mediation Program to reduce foreclosures. 3,300 Program participants have stayed in their homes, leading to more than \$60 million in cost savings for their towns, and millions more in preserved property value for their neighbors – and for their towns’ tax bases. Reducing foreclosures will continue to make financial sense, and we’re glad that House Bill 5410 would eliminate the Program’s June 30, 2010 sunset date.

At the Center we are on the front lines of this foreclosure crisis, and see many signs that the crisis will worsen. One out of twelve Connecticut homeowners is more than 90 days late on their mortgage – a new high. The outlook for the job market remains dismal, and today’s job losses are too often tomorrow’s foreclosure filings. We also expect 1,500 new filings from the next tranche of toxic loans – this time from borrowers with “resetting” Payment Option ARMs.

Increased foreclosure filings will strain Program resources. Lengthy mediation sessions caused by mortgage servicer disorganization and delay also pose a challenge. This January the Judicial Branch issued Standing Orders which state what should be obvious – for instance, parties must mediate in good faith – but the Orders are not enough. Foreclosures are more profitable for servicers than modifications, and servicers will act accordingly unless they have counter incentives to mediate.

House Bill 5410 has those counter incentives, and it gives guidance to judges and mediators who administer the Program. If a homeowner acts in bad faith, they lose their home. If servicers do not come to mediation prepared, lose documents submitted by the homeowner, use the wrong

information when evaluating the borrower's situation, or act in bad faith, the foreclosure case continues and the fees and costs of delay are passed to the homeowner. The homeowner loses either way. House Bill 5410 gives servicers the incentive to mediate in good faith.

House Bill 5410 also reflects innovations from states like Indiana and Maine who used the Program as a model for their own initiatives. Our written testimony includes a summary of other states' innovations.

As drafted, House Bill 5410 does contain a glitch – it would only apply to mediations for cases that started during the Program's first year. To have an impact, it must be amended to apply to all mediations. We have attached the bill with a proposed amendment to our testimony for your consideration.

If this amended bill were enacted, homeowners who have been struggling with their mortgage servicers would instead join the Program's 3300 success stories.

Thank you for your time. I am happy to answer any questions you may have.

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#### **ADDENDUM – INNOVATIONS TO MEDIATION FROM OTHER STATES**

- Both parties must make good faith efforts to mediate; if not, they will be subject to sanctions: Parties and their attorneys must make good faith efforts to mediate. Those who fail to negotiate in good faith may be sanctioned, and the mediator must report lack of good faith in report to court. (*Nevada and Maine*)
- Provide the analysis used to evaluate a homeowner for a loan modification: Servicers must produce documentation of the loan modification analysis. (*Nevada*)
- Plaintiffs must bring relevant loan documents to court: Lender must bring a copy of the original note and mortgage, a payment record, an itemization of all amounts due, and any other documents required by the court. (*Indiana*)
- Bring investor agreements to court: In addition to the note and mortgage, lender must also bring any agreement with an investor that affects mediation (such as a pooling and servicing agreement). (*Florida*)
- Plaintiff must prove that it has standing to proceed with foreclosure: Lender must prove standing by bringing original or certified copy of note and mortgage, and documentation of every assignment. (*Nevada and Florida*)

**[PROPOSED AMENDMENT TO HB 5410]**

**AN ACT CONCERNING MODIFICATIONS TO THE FORECLOSURE MEDIATION PROGRAM.**

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

Section 1. Section 49-311 of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) [Prior to July 1, 2010:] (1) Any action for the foreclosure of a mortgage on residential real property with a return date during the period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to the provisions of subsection (b) of this section, and (2) any action for the foreclosure of a mortgage on residential real property with a return date [during the period from] on or after July 1, 2009, [to June 30, 2010, inclusive,] shall be subject to the provisions of subsection (c) of this section.

(b) (1) [Prior to July 1, 2010, when] When a mortgagee commences an action for the foreclosure of a mortgage on residential real property with a return date during the period from July 1, 2008, to June 30, 2009, inclusive, the mortgagee shall give notice to the mortgagor of the foreclosure mediation program established in section 49-31m by attaching to the front of the foreclosure complaint that is served on the mortgagor: (A) A copy of the notice of the availability of foreclosure mediation, in such form as the Chief Court Administrator prescribes, and (B) a foreclosure mediation request form, in such form as the Chief Court Administrator prescribes.

(2) Except as provided in subdivision (3) of this subsection, a mortgagor may request foreclosure mediation by submitting the foreclosure mediation request form to the court and filing an appearance not more than fifteen days after the return day for the foreclosure action. Upon receipt of the foreclosure mediation request form, the court shall notify each appearing party that a foreclosure mediation request form has been submitted by the mortgagor.

(3) The court may grant a mortgagor permission to submit a foreclosure mediation request form and file an appearance after the fifteen-day period established in subdivision (2) of this subsection, for good cause shown, except that no foreclosure mediation request form may be submitted and no appearance may be filed more than twenty-five days after the return date.

[(4) No foreclosure mediation request form may be submitted to the court on or after July 1, 2010.]

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

[(6)] (5) Notwithstanding any provision of the general statutes, [or any rule of law to the contrary, prior to July 1, 2010,] no judgment of strict foreclosure nor any judgment ordering a foreclosure sale shall be entered in any action subject to the provisions of this subsection and instituted by the mortgagee to foreclose a mortgage on residential real property unless: (A) Notice to the mortgagor has been given by the mortgagee in accordance with subdivision (1) of this subsection and the time for submitting a foreclosure mediation request form has expired and no foreclosure mediation request form has been submitted, or if such notice has not been given, the time for submitting a foreclosure mediation request form pursuant to subdivision (2) or (3) of this subsection has expired and no foreclosure mediation request form has been submitted, or (B) the mediation period set forth in subdivision (b) of section 49-31n, as amended by this act, has expired or has otherwise terminated, whichever is earlier.

[(7)] (6) None of the mortgagor's or mortgagee's rights in the foreclosure action shall be waived by the mortgagor's submission of a foreclosure mediation request form to the court.

(c) (1) [Prior to July 1, 2010, when] When a mortgagee commences an action for the foreclosure of a mortgage on residential real property with a return date on or after July 1, 2009, the mortgagee shall give notice to the mortgagor of the foreclosure mediation program established in section 49-31m by attaching to the front of the writ, summons and complaint that is served on the mortgagor: (A) A copy of the notice of foreclosure mediation, in such form as the Chief Court Administrator prescribes, (B) a copy of the foreclosure mediation certificate form described in subdivision (3) of this subsection, in such form as the Chief Court Administrator prescribes, and (C) a blank appearance form, in such form as the Chief Court Administrator prescribes.

(2) The court shall issue a notice of foreclosure mediation described in subdivision (3) of this subsection to the mortgagor not later than the date three business days after the date the mortgagee returns the writ to the court.

(3) The notice of foreclosure mediation shall instruct the mortgagor to file the appearance and foreclosure mediation certificate forms with the court no later than the date fifteen days from the return date for the foreclosure action. The foreclosure mediation certificate form shall require the mortgagor to provide sufficient information to permit the court to confirm that the defendant in the foreclosure action is a

mortgagor, and to certify that said mortgagor has sent a copy of the mediation certificate form to the plaintiff in the action.

(4) Upon receipt of the mortgagor's appearance and foreclosure mediation certificate forms, and provided the court confirms the defendant in the foreclosure action is a mortgagor and that said mortgagor has sent a copy of the mediation certificate form to the plaintiff, the court shall schedule a date for foreclosure mediation in accordance with subsection (c) of section 49-31n, as amended by this act. The court shall issue notice of such mediation date to all appearing parties not earlier than the date five business days after the return date or by the date three business days after the date on which the court receives the mortgagor's appearance and foreclosure mediation forms, whichever is later, except that if the court does not receive the appearance and foreclosure mediation certificate forms from the mortgagor by the date fifteen days after the return date for the foreclosure action, the court shall not schedule such mediation.

(5) Notwithstanding the provisions of this subsection, the court may refer a foreclosure action brought by a mortgagee to the foreclosure mediation program at any time, provided the mortgagor has filed an appearance in said action and further provided the court shall, not later than the date three business days after the date on which it makes such referral, send a notice to each appearing party scheduling the first foreclosure mediation session for a date not later than the date fifteen business days from the date of such referral.

(6) Notwithstanding any provision of the general statutes, [or any rule of law, prior to July 1, 2010,] no judgment of strict foreclosure nor any judgment ordering a foreclosure sale shall be entered in any action subject to the provisions of this subsection and instituted by the mortgagee to foreclose a mortgage on residential real property unless [:(A) The] the mediation period set forth in [subdivision] subsection (c) of section 49-31n, as amended by this act, has expired or has otherwise terminated, whichever is earlier, [ or (B) the mediation program is not otherwise required or available.]

(7) None of the mortgagor's or mortgagee's rights in the foreclosure action shall be waived by participation in the foreclosure mediation program.

Sec. 2. Section 49-31n of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) [Prior to July 1, 2010:] (1) Any action for the foreclosure of a mortgage on residential real property with a return date during the period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to the provisions of subsection (b) of this section, and (2) any action for the foreclosure of a mortgage on residential real property with a return date [during the period from] on or after July 1, 2009, [to June 30, 2010, inclusive,] shall be subject to the provisions of subsection (c) of this section.

(b) (1) For any action for the foreclosure of a mortgage on residential real property with a return date during the period from July 1, 2008, to June 30, 2009, inclusive, the mediation period under the foreclosure mediation program established in section 49-31m shall commence when the court sends notice to each appearing party that a foreclosure mediation request form has been submitted by a mortgagor to the court, which notice shall be sent not later than three business days after the court receives a completed foreclosure mediation request form. The mediation period shall conclude not more than sixty days after the return day for the foreclosure action, except that the court may, in its discretion, for good cause shown, (A) extend, by not more than thirty days, or shorten the mediation period on its own motion or upon motion of any party, or (B) extend by not more than thirty days the mediation period upon written request of the mediator.

(2) The first mediation session shall be held not later than fifteen business days after the court sends notice to all parties that a foreclosure mediation request form has been submitted to the court. If any party is not ready to mediate, such party shall file a motion for continuance or a motion for extension of the mediation period, or both, with the foreclosure caseflow coordinator. In the event the mortgagee is not ready to mediate, the court shall not award attorney's fees to the mortgagee for the scheduled mediation session. For each mediation session: (A) The mortgagor and mortgagee shall appear in person at each mediation session and shall have authority to agree to a proposed settlement, except that if the mortgagee is represented by counsel, the mortgagee's counsel may appear in lieu of the mortgagee to represent the mortgagee's interests at the mediation, provided such counsel has the authority to agree to a proposed settlement and the mortgagee is available [during] to participate in the mediation session by telephone. [or electronic means] The mortgagee or the mortgagee's counsel shall bring to the mediation session (i) a certified copy of the original note and mortgage, (ii) documentation of each negotiation and assignment of such note and mortgage, (iii) a record of payment on the mortgage loan, (iv) a complete itemization of all fees and costs, including attorney's fees and any other charges, that must be paid in order to reinstate the mortgage or satisfy the full obligations of the mortgage loan, (v) an itemization of any overdue payments causing the mortgage loan to be in default status, (vi) any agreement with an investor or other party that affects mediation, including, but not limited to, a pooling and servicing agreement, and (vii) any other documentation required by the court. The mortgagee or the mortgagee's counsel shall provide the mortgagor with the address, telephone number and any other contact information for any person who has authority to agree to a proposed settlement of the foreclosure action, including, but not limited to, the mortgagee, the mortgagee's agent and the mortgage servicer. The mortgagee, the mortgagee's counsel or the mortgagee's agent shall verify the receipt of any information requested from the mortgagor. The court shall not award attorney's fees to any mortgagee for time spent in a mediation session if the court finds that such mortgagee has failed to comply with this subdivision, unless the court finds reasonable cause for such failure. (B) Each party shall

make a good faith effort to mediate all issues arising out of the foreclosure action. A good faith effort includes, but is not limited to, (i) procuring documents evidencing compliance with governmental loan modification programs, (ii) providing written reasons for denials of any loan modification applications, (iii) disclosing the inputs for any formulas used to determine whether to modify the mortgage loan, (iv) documenting any restrictions that prevent modification of the mortgage loan, and (v) demonstrating reasonable efforts on the part of the mortgagee or the mortgagee's agent to obtain a waiver of such restrictions. If any party or attorney for such party fails to attend a mediation session or to make a good faith effort to mediate, the court may sanction such party or such party's attorney unless the court finds reasonable cause for such failure to attend or to make a good faith effort. Sanctions shall include, but not be limited to, dismissing the foreclosure action, tolling interest accrual on the mortgage loan, and forbidding the mortgagee from charging the mortgagor for the mortgagee's attorney's fees.

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

(4) If the mediator has submitted a report to the court that the parties may benefit from further mediation pursuant to subdivision (3) of this subsection, not more than two days after the conclusion of the mediation, but no later than the termination of the mediation period set forth in subdivision (1) of this subsection, the mediator shall file a report with the court describing the proceedings and specifying the issues resolved, if any, and any issues not resolved pursuant to the mediation. The filing of the report shall terminate the mediation period automatically. If certain issues have not been resolved pursuant to the mediation, the mediator may refer the mortgagor to any appropriate community-based services that are available in the judicial district, but any such referral shall not cause a delay in the mediation process.

(5) The Chief Court Administrator shall establish policies and procedures to implement this subsection. Such policies and procedures shall, at a minimum, provide that the mediator shall advise the mortgagor at the first mediation session required by subdivision (2) of this subsection that: (A) Such mediation does not suspend the mortgagor's obligation to respond to the foreclosure action; and (B) a judgment of strict foreclosure or foreclosure by sale may cause the mortgagor to lose the residential real property to foreclosure.

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

[(7) Foreclosure mediation request forms shall not be accepted by the court on or after July 1, 2010, and the foreclosure mediation program shall terminate when all mediation has concluded with respect to any applications submitted to the court prior to July 1, 2010.]

[(8)] (7) At any time during the mediation period, the mediator may refer the mortgagor to the mortgage assistance programs, except that any such referral shall not prevent a mortgagee from proceeding to judgment when the conditions specified in subdivision (6) of subsection (b) of section 49-31l, as amended by this act, have been satisfied.

(8) Any foreclosure action that has been reported as settled shall be withdrawn not later than one hundred twenty days following the settlement date. If a settled foreclosure action is not withdrawn in accordance with the provision of this subdivision, the action shall be dismissed unless the court, upon a showing of good cause, extends the time for withdrawal.

(c) (1) For any action for the foreclosure of a mortgage on residential real property with a return date [during the period from] on or after July 1, 2009, [to June 30, 2010, inclusive,] the mediation period under the foreclosure mediation program established in section 49-31m shall commence when the court sends notice to each appearing party scheduling the first foreclosure mediation session. The mediation period shall conclude not later than the date sixty days after the return date for the foreclosure action, except that the court may, in its discretion, for good cause shown, (A) extend, by not more than thirty days, or shorten the mediation period on its own motion or upon motion of any party, or (B) extend by not more than thirty days the mediation period upon written request of the mediator.

(2) The first mediation session shall be held not later than fifteen business days after the court sends notice to all parties that a foreclosure mediation request form has been submitted to the court. If any party is not ready to mediate, such party shall file a motion for continuance or a motion for extension of the mediation period, or both, with the foreclosure caseflow coordinator. In the event the mortgagee is not ready to mediate, the court shall not award attorney's fees to the mortgagee for the scheduled mediation session. For each mediation session: (A) The mortgagor and mortgagee shall appear in person at each mediation session and shall have authority to agree to a proposed settlement, except that if the mortgagee is represented by counsel, the mortgagee's counsel may appear in lieu of the mortgagee to represent the mortgagee's interests at the mediation, provided such counsel has the authority to agree to a proposed settlement and the mortgagee is available [during] to participate in the mediation session by telephone, [or electronic means] The mortgagee or the mortgagee's

counsel shall bring to the mediation session (i) a certified copy of the original note and mortgage, (ii) documentation of each negotiation and assignment of such note and mortgage, (iii) a record of payment on the mortgage loan, (iv) a complete itemization of all fees and costs, including attorney's fees and any other charges, that must be paid in order to reinstate the mortgage or satisfy the full obligations of the mortgage loan, (v) an itemization of any overdue payments causing the mortgage loan to be in default status, (vi) any agreement with an investor or other party that affects mediation, including, but not limited to, a pooling and servicing agreement, and (vii) any other documentation required by the court. The mortgagee or the mortgagee's counsel shall provide the mortgagor with the address, telephone number and any other contact information for any person who has authority to agree to a proposed settlement of the foreclosure action, including, but not limited to, the mortgagee, the mortgagee's agent and the mortgage servicer. The mortgagee, the mortgagee's counsel or the mortgagee's agent shall verify the receipt of any information requested from the mortgagor. The court shall not award attorney's fees to any mortgagee for time spent in a mediation session if the court finds that such mortgagee has failed to comply with this subdivision, unless the court finds reasonable cause for such failure. (B) Each party shall make a good faith effort to mediate all issues arising out of the foreclosure action. A good faith effort includes, but is not limited to, (i) procuring documents evidencing compliance with governmental loan modification programs, (ii) providing written reasons for denials of any loan modification applications, (iii) disclosing the inputs for any formulas used to determine whether to modify the mortgage loan, (iv) documenting any restrictions that prevent modification of the mortgage loan, and (v) demonstrating reasonable efforts on the part of the mortgagee or the mortgagee's agent to obtain a waiver of such restrictions. If any party or attorney for such party fails to attend a mediation session or to make a good faith effort to mediate, the court may sanction such party or such party's attorney unless the court finds reasonable cause for such failure to attend or to make a good faith effort. Sanctions shall include, but not be limited to, dismissing the foreclosure action, tolling interest accrual on the mortgage loan, and forbidding the mortgagee from charging the mortgagor for the mortgagee's attorney's fees.

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

(4) If the mediator has submitted a report to the court that the parties may benefit from further mediation pursuant to subdivision (3) of this subsection, not more than two days after the conclusion of the mediation, but no later than the termination of the

mediation period set forth in subdivision (1) of this subsection, the mediator shall file a report with the court describing the proceedings and specifying the issues resolved, if any, and any issues not resolved pursuant to the mediation. The filing of the report shall terminate the mediation period automatically. If certain issues have not been resolved pursuant to the mediation, the mediator may refer the mortgagor to any appropriate community-based services that are available in the judicial district, but any such referral shall not cause a delay in the mediation process.

(5) The Chief Court Administrator shall establish policies and procedures to implement this subsection. Such policies and procedures shall, at a minimum, provide that the mediator shall advise the mortgagor at the first mediation session required by subdivision (2) of this subsection that: (A) Such mediation does not suspend the mortgagor's obligation to respond to the foreclosure action; and (B) a judgment of strict foreclosure or foreclosure by sale may cause the mortgagor to lose the residential real property to foreclosure.

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

[(7) The foreclosure mediation program shall terminate when all mediation has concluded with respect to any foreclosure action with a return date during the period from July 1, 2009, to June 30, 2010, inclusive.]

[(8)] (7) At any time during the mediation period, the mediator may refer the mortgagor to the mortgage assistance programs, except that any such referral shall not prevent a mortgagee from proceeding to judgment when the conditions specified in subdivision (6) of subsection (c) of section 49-31L, as amended by this act, have been satisfied.

(8) Any foreclosure action that has been reported as settled shall be withdrawn not later than one hundred twenty days following the settlement date. If a settled foreclosure action is not withdrawn in accordance with the provision of this subdivision, the action shall be dismissed unless the court, upon a showing of good cause, extends the time for withdrawal.

Sec. 3. Section 47a-20e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) For purposes of this section:

(1) "Bona fide tenant" means a tenant who (A) is not the mortgagor or [owner of the property] the child, spouse or parent of the mortgagor, and (B) entered into the rental agreement in an arms-length transaction; and

(2) "Premises", "rental agreement" and "tenant" have the same meanings as provided in section 47a-1.

(b) Whenever a mortgage or lien of residential real property has been foreclosed and there is a bona fide tenant in possession on the date absolute title to the property vests in the mortgagee, lienholder or other successor in interest, such interest shall be assumed subject to the rights of any bona fide tenant in accordance with the provisions of this subsection, and any execution of ejectment issued pursuant to section 49-22 against such tenant shall be stayed and no summary process action pursuant to chapter 832 or other action to dispossess such tenant shall be commenced until the later of (1) [in the case of a written rental agreement entered into more than sixty days before the commencement of the foreclosure action,] the expiration date contained in [such] any rental agreement entered into before the date absolute title vests in the mortgagee, lienholder or other successor in interest, or (2) [sixty] ninety days after the date absolute title vests in the mortgagee, lienholder or other successor in interest, [, whichever occurs first, or (2) in the case of a rental agreement other than one described in subdivision (1) of this subsection, thirty days after the date absolute title vests in the mortgagee, lienholder or successor in interest, except that] The mortgagee, lienholder or other successor in interest shall provide a notice to vacate to any such tenant at least ninety days prior to the effective date of such notice. Notwithstanding the provisions of this section, a summary process action or other action to dispossess such tenant may be commenced prior to such date for a reason set forth in section 47a-23 or 47a-31 other than for the reason that the tenant's rental agreement has terminated by lapse of time or that the tenant no longer has the right or privilege to occupy the premises as a result of such judgment of foreclosure. Nothing in this section shall reduce the rights of tenants otherwise protected against dispossession by sections 21-80 and 47a-23c or any other provision of law.

Sec. 4. Section 47a-20f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

Upon the foreclosure of a mortgage or lien of residential real property, any money or other valuable consideration offered by a mortgagee, lienholder or other successor in interest to a tenant in possession as an incentive to vacate the premises shall [(1) if there is evidence of the amount or value of the security deposit paid by the tenant,] be at least equal in amount or value to the greater of (1) the security deposit and interest that would be due such tenant pursuant to chapter 831 upon the termination of the tenancy [and be in addition to] plus any such security deposit and interest, [or] (2) [if there is no evidence of the amount or value of the security deposit paid by the tenant or no security deposit was paid by the tenant, be in the amount of] two months' rent, or (3) two thousand dollars. [, whichever is greater.] No mortgagee, lienholder or other successor in interest may require a tenant in possession, as a condition of the receipt of such money or other valuable consideration, to waive or forfeit any rights or remedies such

tenant may have under law against such mortgagee, lienholder or successor in interest other than the right to bring an action to reclaim the security deposit and interest that would be due such tenant.

Sec. 5. Section 49-24 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

All liens and mortgages affecting real property may, on the written motion of any party to any suit relating thereto, be foreclosed by a decree of sale instead of a strict foreclosure at the discretion of the court before which the foreclosure proceedings are pending or, if the property affected is real property containing any building or structure occupied or intended to be occupied by no more than four families, by a decree of sale in accordance with this section or a decree of market sale in accordance with section 6 of this act and section 49-26 of the general statutes, as amended by this act.

Sec. 6. (NEW) (*Effective October 1, 2010*) (a) Any party to a foreclosure action may file a motion for a foreclosure by market sale that shall include such party's proposed plan to market the property. The court, if it approves the marketing plan, shall grant such motion and issue a decree setting a deadline, not earlier than one hundred twenty days after the granting of such motion, for the acceptance of any offers to purchase the property being foreclosed. A proposed marketing plan may include listing the property for sale with a person or persons licensed under chapter 392 of the general statutes and may list the proposed compensation to be paid to such person or persons. Such plan shall describe the advertising of the property to be performed and the proposed cost of such advertising. The moving party shall notify the court of any offers to purchase the property upon the party's receipt of such offers.

(b) Any offers to purchase made pursuant to this section shall be subject to approval by the court. After a hearing to review such offers, the court shall determine whether it is in the best interests of the parties to the foreclosure action to approve such offers of purchase. The court may not reject an offer solely on the basis that the offer contains contingencies for mortgage financing or a building inspection or other physical inspections of the property, but in the event of multiple competing offers, may consider the absence of contingencies in deciding which, if any, of the offers is in the best interests of the parties. The court may extend, upon a showing of good cause, the deadline for the receipt of an offer set in accordance with subsection (a) of this section. Good cause includes, but is not limited to, allowing reasonable time to meet any contingencies set forth in an offer.

(c) If no offers are received by the deadline date set in accordance with subsection (a) of this section or no offers received by such date are approved by the court, the court may either extend the deadline or issue a decree of sale in accordance with section 49-24 of the general statutes, as amended by this act, or a decree of strict foreclosure.

(d) If the court approves an offer made in accordance with this section, it shall issue a decree assigning a sale date, not earlier than sixty days from the date of such decree, by which the sale must occur. The court may extend such date upon a showing of good cause, as described in subsection (b) of this section. The court shall determine and approve the payment of (1) conveyance taxes, (2) encumbrances that have priority over the interests to be foreclosed, (3) marketing expenses, including compensation paid to persons licensed under chapter 392 of the general statutes, (4) recording fees, and (5) reasonable attorney's fees for the attorney representing the seller at the closing of the sale to be paid on the closing date.

Sec. 7. Section 49-26 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

When a sale has been made pursuant to a judgment therefor and ratified by the court, a conveyance of the property sold shall be executed by the person appointed to make the sale or, in the case of a foreclosure by market sale in accordance with section 6 of this act, a conveyance of the property sold shall be executed by the mortgagors, which conveyance shall vest in the purchaser the same estate that would have vested in the mortgagee or lienholder if the mortgage or lien had been foreclosed by strict foreclosure, and to this extent such conveyance shall be valid against all parties to the cause and their privies, but against no other persons. The court, at the time of or after ratification of the sale, may order possession of the property sold to be delivered to the purchaser and may issue an execution of ejectment after the time for appeal of the ratification of the sale has expired.

Sec. 8. Section 49-27 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

The proceeds of each such sale, less the expenses of marketing and sale approved pursuant to section six of this act, shall be brought into court, there to be applied if the sale is ratified, in accordance with the provisions of a supplemental judgment then to be rendered in the cause, specifying the parties who are entitled to the same and the amount to which each is entitled. If any part of the debt or obligation secured by the mortgage or lien foreclosed or by any subsequent mortgage or lien was not payable at the date of the judgment of foreclosure, it shall nevertheless be paid as far as may be out of the proceeds of the sale as if due and payable, with rebate of interest where the debt was payable without interest, provided, if the plaintiff is the purchaser at any such sale, he shall be required to bring into court only so much of the proceeds as exceed the amount due upon his judgment debt, interest and costs.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	49-31l
Sec. 2	<i>from passage</i>	49-31n
Sec. 3	<i>October 1, 2010</i>	47a-20e
Sec. 4	<i>October 1, 2010</i>	47a-20f
Sec. 5	<i>October 1, 2010</i>	49-24
Sec. 6	<i>October 1, 2010</i>	New section
Sec. 7	<i>October 1, 2010</i>	49-26
Sec. 8	<i>October 1, 2010</i>	49-27

***Statement of Purpose:***

To make certain modifications to the foreclosure mediation program, including the elimination of the sunset date of June 30, 2010, to adopt as state law the central protections for tenants after foreclosure contained in the federal Protecting Tenants at Foreclosure Act of 2009, to clarify the Cash for Keys Act, and to allow for a foreclosure by market sale.