



House of Representatives

General Assembly

File No. 152

February Session, 2010

Substitute House Bill No. 5369

House of Representatives, March 25, 2010

The Committee on Housing reported through REP. GREEN of the 1st Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING FORECLOSURE MEDIATION.

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

1 Section 1. Section 49-31n of the 2010 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective July 1, 2010*):

4 (a) Prior to July 1, [2010] 2012: (1) Any action for the foreclosure of a
5 mortgage on residential real property with a return date during the
6 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to
7 the provisions of subsection (b) of this section, and (2) any action for
8 the foreclosure of a mortgage on residential real property with a return
9 date during the period from July 1, 2009, to June 30, [2010] 2012,
10 inclusive, shall be subject to the provisions of subsection (c) of this
11 section.

12 (b) (1) For any action for the foreclosure of a mortgage on residential
13 real property with a return date during the period from July 1, 2008, to
14 June 30, 2009, inclusive, the mediation period under the foreclosure

15 mediation program established in section 49-31m shall commence
16 when the court sends notice to each appearing party that a foreclosure
17 mediation request form has been submitted by a mortgagor to the
18 court, which notice shall be sent not later than three business days after
19 the court receives a completed foreclosure mediation request form. The
20 mediation period shall conclude not more than sixty days after the
21 return day for the foreclosure action, except that the court may, in its
22 discretion, for good cause shown, (A) extend, by not more than thirty
23 days, or shorten the mediation period on its own motion or upon
24 motion of any party, or (B) extend by not more than thirty days the
25 mediation period upon written request of the mediator.

26 (2) The first mediation session shall be held not later than fifteen
27 business days after the court sends notice to all parties that a
28 foreclosure mediation request form has been submitted to the court.
29 The mortgagor and mortgagee shall appear in person at each
30 mediation session and shall have authority to agree to a proposed
31 settlement, except that if the mortgagee is represented by counsel, the
32 mortgagee's counsel may appear in lieu of the mortgagee to represent
33 the mortgagee's interests at the mediation, provided such counsel has
34 the authority to agree to a proposed settlement and the mortgagee is
35 available during the mediation session by telephone or electronic
36 means. The court shall not award attorney's fees to any mortgagee for
37 time spent in a mediation session if the court finds that such
38 mortgagee has failed to comply with this subdivision, unless the court
39 finds reasonable cause for such failure.

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

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

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

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

71 (7) Foreclosure mediation request forms shall not be accepted by the
72 court on or after July 1, [2010] 2012, and the foreclosure mediation
73 program shall terminate when all mediation has concluded with
74 respect to any applications submitted to the court prior to July 1, [2010]
75 2012.

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

82 (c) (1) For any action for the foreclosure of a mortgage on residential
83 real property with a return date during the period from July 1, 2009, to
84 June 30, [2010] 2012, inclusive, the mediation period under the
85 foreclosure mediation program established in section 49-31m shall
86 commence when the court sends notice to each appearing party
87 scheduling the first foreclosure mediation session. The mediation
88 period shall conclude not later than the date sixty days after the return
89 date for the foreclosure action, except that the court may, in its
90 discretion, for good cause shown, (A) extend, by not more than thirty
91 days, or shorten the mediation period on its own motion or upon
92 motion of any party, or (B) extend by not more than thirty days the
93 mediation period upon written request of the mediator.

94 (2) The first mediation session shall be held not later than fifteen
95 business days after the court sends notice to each appearing party in
96 accordance with subdivision (4) of subsection (c) of section 49-31l, as
97 amended by this act. The mortgagor and mortgagee shall appear in
98 person at each mediation session and shall have authority to agree to a
99 proposed settlement, except that if the mortgagee is represented by
100 counsel, the mortgagee's counsel may appear in lieu of the mortgagee
101 to represent the mortgagee's interests at the mediation, provided such
102 counsel has the authority to agree to a proposed settlement and the
103 mortgagee is available during the mediation session by telephone or
104 electronic means. The court shall not award attorney's fees to any
105 mortgagee for time spent in a mediation session if the court finds that
106 such mortgagee has failed to comply with this subdivision, unless the
107 court finds reasonable cause for such failure.

108 (3) On or before the date of the first mediation session, the
109 mortgagee or counsel for such mortgagee shall provide to the
110 mortgagor the address, telephone number and electronic mail address
111 for persons who have authority to agree to a proposed settlement of
112 the foreclosure, including, but not limited to, the mortgagee, the
113 mortgage servicer and an agent of the mortgagee. The mortgagee's
114 agent shall verify the receipt of information requested from the
115 mortgagor.

116 (4) The mortgagee or counsel for such mortgagee shall bring to the
117 first mediation session a current itemized list of all fees and costs,
118 including (A) any charges and attorney's fees requested by such
119 mortgagee, and (B) all overdue amounts that must be paid by the
120 mortgagor in order to satisfy the full obligations of the mortgage loan.
121 Such mortgagee shall bring to each subsequent mediation session a
122 current itemized list of any changes to the list brought to the first
123 mediation session. While in mediation, the mortgagor and mortgagee
124 and any attorney representing such mortgagor or mortgagee shall
125 make a good-faith effort to mediate all issues. The court may sanction
126 any mortgagor, mortgagee or attorney who does not make such good-
127 faith effort.

128 ~~[(3)]~~ (5) Not later than two days after the conclusion of the first
129 mediation session, the mediator shall determine whether the parties
130 will benefit from further mediation. The mediator shall file with the
131 court a report setting forth such determination and mail a copy of such
132 report to each appearing party. If the mediator reports to the court that
133 the parties will not benefit from further mediation, the mediation
134 period shall terminate automatically. If the mediator reports to the
135 court after the first mediation session that the parties may benefit from
136 further mediation, the mediation period shall continue.

137 ~~[(4)]~~ (6) If the mediator has submitted a report to the court that the
138 parties may benefit from further mediation pursuant to subdivision
139 ~~[(3)]~~ (5) of this subsection, not more than two days after the conclusion
140 of the mediation, but no later than the termination of the mediation
141 period set forth in subdivision (1) of this subsection, the mediator shall
142 file a report with the court describing the proceedings and specifying
143 the issues resolved, if any, and any issues not resolved pursuant to the
144 mediation. The filing of the report shall terminate the mediation period
145 automatically. If certain issues have not been resolved pursuant to the
146 mediation, the mediator may refer the mortgagor to any appropriate
147 community-based services that are available in the judicial district, but
148 any such referral shall not cause a delay in the mediation process.

149 [(5)] (7) The Chief Court Administrator shall establish policies and
150 procedures to implement this subsection. Such policies and procedures
151 shall, at a minimum, provide that the mediator shall advise the
152 mortgagor at the first mediation session required by subdivision (2) of
153 this subsection that: (A) Such mediation does not suspend the
154 mortgagor's obligation to respond to the foreclosure action; and (B) a
155 judgment of strict foreclosure or foreclosure by sale may cause the
156 mortgagor to lose the residential real property to foreclosure.

157 [(6)] (8) In no event shall any determination issued by a mediator
158 under this program form the basis of an appeal of any foreclosure
159 judgment.

160 [(7)] (9) The foreclosure mediation program shall terminate when all
161 mediation has concluded with respect to any foreclosure action with a
162 return date during the period from July 1, 2009, to June 30, [2010] 2012,
163 inclusive.

164 [(8)] (10) At any time during the mediation period, the mediator
165 may refer the mortgagor to the mortgage assistance programs, except
166 that any such referral shall not prevent a mortgagee from proceeding
167 to judgment when the conditions specified in subdivision (6) of
168 subsection (c) of section 49-31l, as amended by this act, have been
169 satisfied.

170 Sec. 2. Section 49-31l of the 2010 supplement to the general statutes
171 is repealed and the following is substituted in lieu thereof (*Effective July*
172 *1, 2010*):

173 (a) Prior to July 1, [2010] 2012: (1) Any action for the foreclosure of a
174 mortgage on residential real property with a return date during the
175 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to
176 the provisions of subsection (b) of this section, and (2) any action for
177 the foreclosure of a mortgage on residential real property with a return
178 date during the period from July 1, 2009, to June 30, [2010] 2012,
179 inclusive, shall be subject to the provisions of subsection (c) of this
180 section.

181 (b) (1) Prior to July 1, [2010] 2012, when a mortgagee commences an
182 action for the foreclosure of a mortgage on residential real property
183 with a return date during the period from July 1, 2008, to June 30, 2009,
184 inclusive, the mortgagee shall give notice to the mortgagor of the
185 foreclosure mediation program established in section 49-31m by
186 attaching to the front of the foreclosure complaint that is served on the
187 mortgagor: (A) A copy of the notice of the availability of foreclosure
188 mediation, in such form as the Chief Court Administrator prescribes,
189 and (B) a foreclosure mediation request form, in such form as the Chief
190 Court Administrator prescribes.

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

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

204 (4) No foreclosure mediation request form may be submitted to the
205 court on or after July 1, [2010] 2012.

206 (5) If at any time on or after July 1, 2008, but prior to July 1, [2010]
207 2012, the court determines that the notice requirement of subdivision
208 (1) of this subsection has not been met, the court may, upon its own
209 motion or upon the written motion of the mortgagor, issue an order
210 that no judgment may enter for fifteen days during which period the
211 mortgagor may submit a foreclosure mediation request form to the
212 court.

213 (6) Notwithstanding any provision of the general statutes or any
214 rule of law to the contrary, prior to July 1, [2010] 2012, no judgment of
215 strict foreclosure nor any judgment ordering a foreclosure sale shall be
216 entered in any action subject to the provisions of this subsection and
217 instituted by the mortgagee to foreclose a mortgage on residential real
218 property unless: (A) Notice to the mortgagor has been given by the
219 mortgagee in accordance with subdivision (1) of this subsection and
220 the time for submitting a foreclosure mediation request form has
221 expired and no foreclosure mediation request form has been
222 submitted, or if such notice has not been given, the time for submitting
223 a foreclosure mediation request form pursuant to subdivision (2) or (3)
224 of this subsection has expired and no foreclosure mediation request
225 form has been submitted, or (B) the mediation period set forth in
226 [subdivision] subsection (b) of section 49-31n, as amended by this act,
227 has expired or has otherwise terminated, whichever is earlier.

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

231 (c) (1) Prior to July 1, [2010] 2012, when a mortgagee commences an
232 action for the foreclosure of a mortgage on residential real property
233 with a return date on or after July 1, 2009, the mortgagee shall give
234 notice to the mortgagor of the foreclosure mediation program
235 established in section 49-31m by attaching to the front of the writ,
236 summons and complaint that is served on the mortgagor: (A) A copy
237 of the notice of foreclosure mediation, in such form as the Chief Court
238 Administrator prescribes, (B) a copy of the foreclosure mediation
239 certificate form described in subdivision (3) of this subsection, in such
240 form as the Chief Court Administrator prescribes, and (C) a blank
241 appearance form, in such form as the Chief Court Administrator
242 prescribes.

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

246 to the court.

247 (3) The notice of foreclosure mediation shall instruct the mortgagor
248 to file the appearance and foreclosure mediation certificate forms with
249 the court no later than the date fifteen days from the return date for the
250 foreclosure action. The foreclosure mediation certificate form shall
251 require the mortgagor to provide sufficient information to permit the
252 court to confirm that the defendant in the foreclosure action is a
253 mortgagor, and to certify that said mortgagor has sent a copy of the
254 mediation certificate form to the plaintiff in the action.

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

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

277 (6) Notwithstanding any provision of the general statutes or any
278 rule of law, prior to July 1, [2010] 2012, no judgment of strict

279 foreclosure nor any judgment ordering a foreclosure sale shall be
 280 entered in any action subject to the provisions of this subsection and
 281 instituted by the mortgagee to foreclose a mortgage on residential real
 282 property unless: (A) The mediation period set forth in [subdivision]
 283 subsection (c) of section 49-31n, as amended by this act, has expired or
 284 has otherwise terminated, whichever is earlier, or (B) the mediation
 285 program is not otherwise required or available.

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2010	49-31n
Sec. 2	July 1, 2010	49-31l

HSG *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 11 \$	FY 12 \$	FY 13 \$
Judicial Dept.	BF - Cost	3,349,982	4,466,643	1,116,660

Note: BF=Banking Fund

Municipal Impact: None

Explanation

The bill extends the sunset date on the Foreclosure Mediation Program from July 1, 2010 to July 1, 2012, and results in the costs indicated in the table above. Since the mediation deadline is 90 days after mediation begins, the cost of the bill would continue for three months into FY 13.

Currently, the program is supported via a Banking Fund appropriation to the Connecticut Housing Finance Authority, which transfers funds to the Judicial Department to employ 50 positions. These positions include 25 Mediation Specialists, 17 Office Clerks and 8 Caseflow Coordinators.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 5369*****AN ACT CONCERNING FORECLOSURE MEDIATION.*****SUMMARY:**

This bill extends until July 1, 2012 the foreclosure mediation program for residential real property scheduled to expire on July 1, 2010.

The bill also sets certain requirements for the mediation. Specifically, it requires the lender or lender's counsel to provide the borrower with the address, phone number, and e-mail address for persons with the authority to agree to a proposed settlement, including the lender, mortgage servicer, and lender's agent. This information must be provided by the date of the first mediation session. The bill also requires the lender's agent to verify the receipt of information requested from the borrower.

The bill requires the lender or lender's attorney to bring a current itemized list of all fees and costs to the first mediation session, including:

1. any charges and attorney's fees requested by the lender and
2. all overdue amounts that the borrower must pay to fully satisfy the mortgage loan.

The lender must bring an itemized list of any changes to subsequent mediation sessions.

Finally, the bill requires the lender, borrower, and their attorneys to make a good faith effort to mediate all issues and allows the court to sanction any party who fails to comply with this requirement.

EFFECTIVE DATE: July 1, 2010

BACKGROUND

Related Bill

HB 5270, reported favorably by the Banks Committee, makes similar changes to the foreclosure mediation program.

COMMITTEE ACTION

Housing Committee

Joint Favorable Substitute

Yea 11 Nay 0 (03/11/2010)