



General Assembly

February Session, 2010

**Amendment**

LCO No. 5088

**\*HB0527005088HDO\***

Offered by:

REP. BARRY, 12<sup>th</sup> Dist.

SEN. DUFF, 25<sup>th</sup> Dist.

To: Subst. House Bill No. 5270

File No. 273

Cal. No. 148

**"AN ACT CONCERNING FORECLOSURE MEDIATION."**

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. Section 49-31l of the 2010 supplement to the general  
4 statutes is repealed and the following is substituted in lieu thereof  
5 (*Effective from passage*):

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

14 (b) (1) Prior to July 1, [2010] 2012, when a mortgagee commences an

15 action for the foreclosure of a mortgage on residential real property  
16 with a return date during the period from July 1, 2008, to June 30, 2009,  
17 inclusive, the mortgagee shall give notice to the mortgagor of the  
18 foreclosure mediation program established in section 49-31m by  
19 attaching to the front of the foreclosure complaint that is served on the  
20 mortgagor: (A) A copy of the notice of the availability of foreclosure  
21 mediation, in such form as the Chief Court Administrator prescribes,  
22 and (B) a foreclosure mediation request form, in such form as the Chief  
23 Court Administrator prescribes.

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

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

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

39 (5) If at any time on or after July 1, 2008, but prior to July 1, [2010]  
40 2012, the court determines that the notice requirement of subdivision  
41 (1) of this subsection has not been met, the court may, upon its own  
42 motion or upon the written motion of the mortgagor, issue an order  
43 that no judgment may enter for fifteen days during which period the  
44 mortgagor may submit a foreclosure mediation request form to the  
45 court.

46 (6) Notwithstanding any provision of the general statutes or any

47 rule of law to the contrary, prior to July 1, [2010] 2012, no judgment of  
48 strict foreclosure nor any judgment ordering a foreclosure sale shall be  
49 entered in any action subject to the provisions of this subsection and  
50 instituted by the mortgagee to foreclose a mortgage on residential real  
51 property unless: (A) Notice to the mortgagor has been given by the  
52 mortgagee in accordance with subdivision (1) of this subsection and  
53 the time for submitting a foreclosure mediation request form has  
54 expired and no foreclosure mediation request form has been  
55 submitted, or if such notice has not been given, the time for submitting  
56 a foreclosure mediation request form pursuant to subdivision (2) or (3)  
57 of this subsection has expired and no foreclosure mediation request  
58 form has been submitted, or (B) the mediation period set forth in  
59 subdivision (b) of section 49-31n, as amended by this act, has expired  
60 or has otherwise terminated, whichever is earlier.

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

64 (c) (1) Prior to July 1, [2010] 2012, when a mortgagee commences an  
65 action for the foreclosure of a mortgage on residential real property  
66 with a return date on or after July 1, 2009, the mortgagee shall give  
67 notice to the mortgagor of the foreclosure mediation program  
68 established in section 49-31m by attaching to the front of the writ,  
69 summons and complaint that is served on the mortgagor: (A) A copy  
70 of the notice of foreclosure mediation, in such form as the Chief Court  
71 Administrator prescribes, (B) a copy of the foreclosure mediation  
72 certificate form described in subdivision (3) of this subsection, in such  
73 form as the Chief Court Administrator prescribes, and (C) a blank  
74 appearance form, in such form as the Chief Court Administrator  
75 prescribes.

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

80 (3) The notice of foreclosure mediation shall instruct the mortgagor  
81 to file the appearance and foreclosure mediation certificate forms with  
82 the court no later than the date fifteen days from the return date for the  
83 foreclosure action. The foreclosure mediation certificate form shall  
84 require the mortgagor to provide sufficient information to permit the  
85 court to confirm that the defendant in the foreclosure action is a  
86 mortgagor, and to certify that said mortgagor has sent a copy of the  
87 mediation certificate form to the plaintiff in the action.

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

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

110 (6) Notwithstanding any provision of the general statutes or any  
111 rule of law, prior to July 1, [2010] 2012, no judgment of strict  
112 foreclosure nor any judgment ordering a foreclosure sale shall be

113 entered in any action subject to the provisions of this subsection and  
114 instituted by the mortgagee to foreclose a mortgage on residential real  
115 property unless: (A) The mediation period set forth in [subdivision]  
116 subsection (c) of section 49-31n, as amended by this act, has expired or  
117 has otherwise terminated, whichever is earlier, or (B) the mediation  
118 program is not otherwise required or available.

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

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

125 (a) Prior to July 1, [2010] 2012: (1) Any action for the foreclosure of a  
126 mortgage on residential real property with a return date during the  
127 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to  
128 the provisions of subsection (b) of this section, and (2) any action for  
129 the foreclosure of a mortgage on residential real property with a return  
130 date during the period from July 1, 2009, to June 30, [2010] 2012,  
131 inclusive, shall be subject to the provisions of subsection (c) of this  
132 section.

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

145 motion of any party, or (B) extend by not more than thirty days the  
146 mediation period upon written request of the mediator.

147 (2) The first mediation session shall be held not later than fifteen  
148 business days after the court sends notice to all parties that a  
149 foreclosure mediation request form has been submitted to the court.  
150 The mortgagor and mortgagee shall appear in person at each  
151 mediation session and shall have authority to agree to a proposed  
152 settlement, except that if the mortgagee is represented by counsel, the  
153 mortgagee's counsel may appear in lieu of the mortgagee to represent  
154 the mortgagee's interests at the mediation, provided such counsel has  
155 the authority to agree to a proposed settlement and the mortgagee is  
156 available during the mediation session by telephone, [or electronic  
157 means.] The court shall not award attorney's fees to any mortgagee for  
158 time spent in [a] any mediation session if the court finds that such  
159 mortgagee has failed to comply with this subdivision, unless the court  
160 finds reasonable cause for such failure.

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

170 (4) If the mediator has submitted a report to the court that the  
171 parties may benefit from further mediation pursuant to subdivision (3)  
172 of this subsection, not more than two days after the conclusion of the  
173 mediation, but no later than the termination of the mediation period  
174 set forth in subdivision (1) of this subsection, the mediator shall file a  
175 report with the court describing the proceedings and specifying the  
176 issues resolved, if any, and any issues not resolved pursuant to the  
177 mediation. The filing of the report shall terminate the mediation period

178 automatically. If certain issues have not been resolved pursuant to the  
179 mediation, the mediator may refer the mortgagor to any appropriate  
180 community-based services that are available in the judicial district, but  
181 any such referral shall not cause a delay in the mediation process.

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

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

192 (7) Foreclosure mediation request forms shall not be accepted by the  
193 court on or after July 1, [2010] 2012, and the foreclosure mediation  
194 program shall terminate when all mediation has concluded with  
195 respect to any applications submitted to the court prior to July 1, [2010]  
196 2012.

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

203 (c) (1) For any action for the foreclosure of a mortgage on residential  
204 real property with a return date during the period from July 1, 2009, to  
205 June 30, [2010] 2012, inclusive, the mediation period under the  
206 foreclosure mediation program established in section 49-31m shall  
207 commence when the court sends notice to each appearing party  
208 scheduling the first foreclosure mediation session. The mediation  
209 period shall conclude not later than the date sixty days after the return

210 date for the foreclosure action, except that the court may, in its  
211 discretion, for good cause shown, (A) extend, by not more than thirty  
212 days, or shorten the mediation period on its own motion or upon  
213 motion of any party, or (B) extend by not more than thirty days the  
214 mediation period upon written request of the mediator.

215 (2) The first mediation session shall be held not later than fifteen  
216 business days after the court sends notice to each appearing party in  
217 accordance with subdivision (4) of subsection (c) of section 49-311, as  
218 amended by this act. The mortgagor and mortgagee shall appear in  
219 person at each mediation session and shall have authority to agree to a  
220 proposed settlement, except that if the mortgagee is represented by  
221 counsel, the mortgagee's counsel may appear in lieu of the mortgagee  
222 to represent the mortgagee's interests at the mediation, provided such  
223 counsel has the authority to agree to a proposed settlement and the  
224 mortgagee is available during the mediation session by telephone, [or  
225 electronic means.] The court shall not award attorney's fees to any  
226 mortgagee for time spent in [a] any mediation session if the court finds  
227 that such mortgagee has failed to comply with this subdivision, unless  
228 the court finds reasonable cause for such failure.

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

238 (4) If the mediator has submitted a report to the court that the  
239 parties may benefit from further mediation pursuant to subdivision (3)  
240 of this subsection, not more than two days after the conclusion of the  
241 mediation, but no later than the termination of the mediation period  
242 set forth in subdivision (1) of this subsection, the mediator shall file a

243 report with the court describing the proceedings and specifying the  
244 issues resolved, if any, and any issues not resolved pursuant to the  
245 mediation. The filing of the report shall terminate the mediation period  
246 automatically. If certain issues have not been resolved pursuant to the  
247 mediation, the mediator may refer the mortgagor to any appropriate  
248 community-based services that are available in the judicial district, but  
249 any such referral shall not cause a delay in the mediation process.

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

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

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

264 (8) At any time during the mediation period, the mediator may refer  
265 the mortgagor to the mortgage assistance programs, except that any  
266 such referral shall not prevent a mortgagee from proceeding to  
267 judgment when the conditions specified in subdivision (6) of  
268 subsection (c) of section 49-311, as amended by this act, have been  
269 satisfied.

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

272 Upon the foreclosure of a mortgage or lien of residential real  
273 property, any money or other valuable consideration offered by a

274 mortgagee, lienholder or other successor in interest to a tenant in  
275 possession as an incentive to vacate the premises shall [(1) if there is  
276 evidence of the amount or value of the security deposit paid by the  
277 tenant,] be at least equal in amount or value to the greater of (1) the  
278 security deposit and interest that would be due such tenant pursuant  
279 to chapter 831 upon the termination of the tenancy [and be in addition  
280 to] plus any such security deposit and interest, [or] (2) [if there is no  
281 evidence of the amount or value of the security deposit paid by the  
282 tenant or no security deposit was paid by the tenant, be in the amount  
283 of] two months' rent, or (3) two thousand dollars, [, whichever is  
284 greater.] No mortgagee, lienholder or other successor in interest may  
285 require a tenant in possession, as a condition of the receipt of such  
286 money or other valuable consideration, to waive or forfeit any rights or  
287 remedies such tenant may have under law against such mortgagee,  
288 lienholder or successor in interest other than the right to bring an  
289 action to reclaim the security deposit and interest that would be due  
290 such tenant.

291 Sec. 4. Section 52-352a of the general statutes is repealed and the  
292 following is substituted in lieu thereof (*Effective October 1, 2010*):

293 For the purposes of this section and sections 52-352b and 52-353, the  
294 following terms shall have the following meanings:

295 (a) "Value" means fair market value of the exemptioner's equity or  
296 unencumbered interest in the property;

297 (b) "Necessary" means reasonably required to meet the needs of the  
298 exemptioner and his or her dependents including any special needs by  
299 reason of health or physical infirmity;

300 (c) "Exempt" means, unless otherwise specified, not subject to any  
301 form of process or court order for the purpose of debt collection;

302 (d) "Exemptioner" means the natural person entitled to an  
303 exemption under this section or section 52-352b;

304 (e) "Homestead" means owner-occupied real property, co-op or  
305 mobile manufactured home, as defined in subdivision (1) of section 21-  
306 64, used as a primary residence."

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-20f
Sec. 4	<i>October 1, 2010</i>	52-352a