



# House of Representatives

General Assembly

**File No. 200**

January Session, 2011

Substitute House Bill No. 6463

*House of Representatives, March 24, 2011*

The Committee on Housing reported through REP. BUTLER of the 72nd 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 Section 49-311 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2011*):

3 (a) Prior to July 1, [2012] 2014: (1) Any action for the foreclosure of a  
4 mortgage on residential real property with a return date during the  
5 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to  
6 the provisions of subsection (b) of this section, and (2) any action for  
7 the foreclosure of a mortgage on residential real property with a return  
8 date during the period from July 1, 2009, to June 30, [2012] 2014,  
9 inclusive, shall be subject to the provisions of subsection (c) of this  
10 section.

11 (b) (1) Prior to July 1, [2012] 2014, when a mortgagee commences an  
12 action for the foreclosure of a mortgage on residential real property  
13 with a return date during the period from July 1, 2008, to June 30, 2009,  
14 inclusive, the mortgagee shall give notice to the mortgagor of the

15 foreclosure mediation program established in section 49-31m by  
16 attaching to the front of the foreclosure complaint that is served on the  
17 mortgagor: (A) A copy of the notice of the availability of foreclosure  
18 mediation, in such form as the Chief Court Administrator prescribes,  
19 and (B) a foreclosure mediation request form, in such form as the Chief  
20 Court Administrator prescribes.

21 (2) Except as provided in subdivision (3) 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.

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

34 (4) No foreclosure mediation request form may be submitted to the  
35 court on or after July 1, ~~[2012]~~ 2014.

36 (5) If at any time on or after July 1, 2008, but prior to July 1, ~~[2012]~~  
37 2014, the court determines that the notice requirement of subdivision  
38 (1) of this subsection has not been met, the court may, upon its own  
39 motion or upon the written motion of the mortgagor, issue an order  
40 that no judgment may enter for fifteen days during which period the  
41 mortgagor may submit a foreclosure mediation request form to the  
42 court.

43 (6) Notwithstanding any provision of the general statutes or any  
44 rule of law to the contrary, prior to ~~[July 1, 2012, no judgment of strict~~  
45 ~~foreclosure nor any judgment ordering a foreclosure sale shall be~~  
46 ~~entered]~~ July 1, 2014, in any action subject to the provisions of this

47 subsection and instituted by the mortgagee to foreclose a mortgage on  
48 residential real property, no mortgagee shall make any motion or  
49 request concerning the mortgagor's pleadings or seeking default or  
50 judgment with respect to the mortgagor, no court shall enter any  
51 default or judgment against the mortgagor and the mortgagor's  
52 obligation to respond in the foreclosure action shall be suspended  
53 unless: (A) Notice to the mortgagor has been given by the mortgagee  
54 in accordance with subdivision (1) of this subsection and the time for  
55 submitting a foreclosure mediation request form has expired and no  
56 foreclosure mediation request form has been submitted, or if such  
57 notice has not been given, the time for submitting a foreclosure  
58 mediation request form pursuant to subdivision (2) or (3) of this  
59 subsection has expired and no foreclosure mediation request form has  
60 been submitted, or (B) the mediation period set forth in subdivision (b)  
61 of section 49-31n, as amended by this act, has expired or has otherwise  
62 terminated, whichever is earlier, and fifteen days have elapsed since  
63 the date of such expiration or termination, provided nothing in this  
64 subdivision shall affect any default or judgment entered on or before  
65 June 30, 2011.

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

69 (c) (1) Prior to July 1, [2012] 2014, when a mortgagee commences an  
70 action for the foreclosure of a mortgage on residential real property  
71 with a return date on or after July 1, 2009, the mortgagee shall give  
72 notice to the mortgagor of the foreclosure mediation program  
73 established in section 49-31m by attaching to the front of the writ,  
74 summons and complaint that is served on the mortgagor: (A) A copy  
75 of the notice of foreclosure mediation, in such form as the Chief Court  
76 Administrator prescribes, (B) a copy of the foreclosure mediation  
77 certificate form described in subdivision (3) of this subsection, in such  
78 form as the Chief Court Administrator prescribes, and (C) a blank  
79 appearance form, in such form as the Chief Court Administrator  
80 prescribes.

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

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

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

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

114 business days from the date of such referral.

115 (6) Notwithstanding any provision of the general statutes or any  
116 rule of law, prior to [July 1, 2012, no judgment of strict foreclosure nor  
117 any judgment ordering a foreclosure sale shall be entered] July 1, 2014,  
118 in any action subject to the provisions of this subsection and instituted  
119 by the mortgagee to foreclose a mortgage on residential real property,  
120 no mortgagee shall make any motion or request concerning the  
121 mortgagor's pleadings or seeking default or judgment with respect to  
122 the mortgagor, no court shall enter any default or judgment against the  
123 mortgagor and the mortgagor's obligation to respond in the  
124 foreclosure action shall be suspended unless: (A) The mediation period  
125 set forth in subsection (c) of section 49-31n, as amended by this act, has  
126 expired or has otherwise terminated, whichever is earlier, and fifteen  
127 days have elapsed since the date of such expiration or termination, or  
128 (B) the mediation program is not otherwise required or available.  
129 Nothing in this subdivision shall affect any default or judgment  
130 entered on or before June 30, 2011.

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

134 Sec. 2. Section 49-31n of the general statutes is repealed and the  
135 following is substituted in lieu thereof (*Effective July 1, 2011*):

136 (a) Prior to July 1, [2012] 2014: (1) Any action for the foreclosure of a  
137 mortgage on residential real property with a return date during the  
138 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to  
139 the provisions of subsection (b) of this section, and (2) any action for  
140 the foreclosure of a mortgage on residential real property with a return  
141 date during the period from July 1, 2009, to June 30, [2012] 2014,  
142 inclusive, shall be subject to the provisions of subsection (c) of this  
143 section.

144 (b) (1) For any action for the foreclosure of a mortgage on residential  
145 real property with a return date during the period from July 1, 2008, to

146 June 30, 2009, inclusive, the mediation period under the foreclosure  
147 mediation program established in section 49-31m shall commence  
148 when the court sends notice to each appearing party that a foreclosure  
149 mediation request form has been submitted by a mortgagor to the  
150 court, which notice shall be sent not later than three business days after  
151 the court receives a completed foreclosure mediation request form. The  
152 mediation period shall conclude not more than sixty days after the  
153 return day for the foreclosure action, except that the court may, in its  
154 discretion, for good cause shown, (A) extend [, by not more than thirty  
155 days,] or shorten the mediation period on its own motion or upon  
156 motion of any party, or (B) extend [by not more than thirty days] the  
157 mediation period upon written request of the mediator.

158 (2) The first mediation session shall be held not later than fifteen  
159 business days after the court sends notice to all parties that a  
160 foreclosure mediation request form has been submitted to the court.  
161 The mortgagor and mortgagee shall appear in person at each  
162 mediation session and shall have authority to agree to a proposed  
163 settlement, except that if the mortgagee is represented by counsel, the  
164 mortgagee's counsel may appear in lieu of the mortgagee to represent  
165 the mortgagee's interests at the mediation, provided such counsel has  
166 the authority to agree to a proposed settlement and the mortgagee is  
167 available during the mediation session by telephone. The court shall  
168 not award attorney's fees to any mortgagee for time spent in any  
169 mediation session if the court finds that such mortgagee has failed to  
170 comply with this subdivision, unless the court finds reasonable cause  
171 for such failure.

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

180 further mediation, the mediation period shall continue.

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

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

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

203 (7) Foreclosure mediation request forms shall not be accepted by the  
204 court on or after July 1, [2012] 2014, and the foreclosure mediation  
205 program shall terminate when all mediation has concluded with  
206 respect to any applications submitted to the court prior to July 1, [2012]  
207 2014.

208 (8) At any time during the mediation period, the mediator may refer  
209 the mortgagor to the mortgage assistance programs, except that any  
210 such referral shall not prevent a mortgagee from proceeding to  
211 judgment when the conditions specified in subdivision (6) of

212 subsection (b) of section 49-31l, as amended by this act, have been  
213 satisfied.

214 (c) (1) For any action for the foreclosure of a mortgage on residential  
215 real property with a return date during the period from July 1, 2009, to  
216 June 30, [2012] 2014, inclusive, the mediation period under the  
217 foreclosure mediation program established in section 49-31m shall  
218 commence when the court sends notice to each appearing party  
219 scheduling the first foreclosure mediation session. The mediation  
220 period shall conclude not later than the date sixty days after the return  
221 date for the foreclosure action, except that the court may, in its  
222 discretion, for good cause shown, (A) extend [, by not more than thirty  
223 days,] or shorten the mediation period on its own motion or upon  
224 motion of any party, or (B) extend [by not more than thirty days] the  
225 mediation period upon written request of the mediator.

226 (2) The first mediation session shall be held not later than fifteen  
227 business days after the court sends notice to each appearing party in  
228 accordance with subdivision (4) of subsection (c) of section 49-31l, as  
229 amended by this act. The mortgagor and mortgagee shall appear in  
230 person at each mediation session and shall have authority to agree to a  
231 proposed settlement, except that if the mortgagee is represented by  
232 counsel, the mortgagee's counsel may appear in lieu of the mortgagee  
233 to represent the mortgagee's interests at the mediation, provided such  
234 counsel has the authority to agree to a proposed settlement and the  
235 mortgagee is available during the mediation session by telephone. The  
236 court shall not award attorney's fees to any mortgagee for time spent  
237 in any mediation session if the court finds that such mortgagee has  
238 failed to comply with this subdivision, unless the court finds  
239 reasonable cause for such failure.

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

245 the parties will not benefit from further mediation, the mediation  
246 period shall terminate automatically. If the mediator reports to the  
247 court after the first mediation session that the parties may benefit from  
248 further mediation, the mediation period shall continue.

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

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

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

271 (7) The foreclosure mediation program shall terminate when all  
272 mediation has concluded with respect to any foreclosure action with a  
273 return date during the period from July 1, 2009, to June 30, [2012] 2014,  
274 inclusive.

275 (8) At any time during the mediation period, the mediator may refer  
276 the mortgagor to the mortgage assistance programs, except that any

277 such referral shall not prevent a mortgagee from proceeding to  
278 judgment when the conditions specified in subdivision (6) of  
279 subsection (c) of section 49-31l, as amended by this act, have been  
280 satisfied.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</i>	49-31l
Sec. 2	<i>July 1, 2011</i>	49-31n

**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:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 13 \$</b>	<b>FY 14 \$</b>	<b>FY 15 \$</b>
Judicial Dept.	BF - Cost	5.2 million	5.2 million	1.4 million

Note: BF=Banking Fund

**Municipal Impact:** None

**Explanation**

The bill extends the sunset date of the Foreclosure Mediation Program from July 1, 2012 to July 1, 2014, and results in a cost of \$5.2 million in both FY 13 and FY 14 and \$1.4 million in FY 15. Since the mediation deadline is 90 days after mediation begins, the cost of the bill would continue for three months into FY 15.

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 Caseload Coordinators.

**The Out Years**

Since the program is due to sunset in FY 15 under the bill, there is no out year impact.

Sources: Core-CT Financial Accounting System

**OLR Bill Analysis****sHB 6463*****AN ACT CONCERNING FORECLOSURE MEDIATION.*****SUMMARY:**

This bill extends, from July 1, 2012 until July 1, 2014, the judicial foreclosure mediation program's termination date. In addition, the bill:

1. limits the types of actions mortgagees and courts may take against mortgagors participating in the program,
2. extends the time during which mortgagees and courts are prohibited from taking these actions for 15 days past the earlier of the mediation period's expiration or termination, and
3. suspends the mortgagor's obligation to respond in the foreclosure action for the same 15-day period.

The bill eliminates the current 30-day limit on mediation extensions, thus allowing the court to set extension periods over 30 days at its discretion and for good cause shown. In the absence of an extension, the law requires the mediation period to conclude by the 60<sup>th</sup> day after the foreclosure action return date.

The bill specifies that it does not affect any notice of default or judgment entered on or before June 30, 2011.

It also makes conforming changes.

EFFECTIVE DATE: July 1, 2011

**PROHIBITED ACTIONS**

Current law prohibits a court from entering, and a mortgagee from

instituting, a judgment of strict foreclosure or foreclosure by sale against a mortgagor unless the mediation period has expired or terminated or the program is not required or available.

The bill places additional limitations on mortgagees and courts, assuming the mediation period has not expired or terminated and the program is required and available. It prohibits (1) a mortgagee from making any motion or request (a) concerning a mortgagor's pleadings, (b) seeking a default against the mortgagor on his or her financial obligation or (c) seeking judgment against the mortgagor and (2) a court from entering any default or judgment against a mortgagor. It also extends the time during which mortgagees and courts are prohibited from taking these actions to 15 days past the earlier of the mediation period's expiration or termination.

**BACKGROUND**

***Related Bill***

The Banks Committee favorably reported sHB 6351, which (1) suspends the mortgagor's obligation to respond in the foreclosure action, and prohibits the mortgagee from making a motion or the court from entering a default or judgment, until 15 days have passed after the earlier of the mediation period's expiration or termination and (2) eliminates the current 30-day limit for extensions of the mediation period.

**COMMITTEE ACTION**

Housing Committee

Joint Favorable Substitute

Yea 11 Nay 0 (03/10/2011)