



# Senate

General Assembly

**File No. 839**

January Session, 2011

Substitute Senate Bill No. 950

*Senate, May 24, 2011*

The Committee on Banks reported through SEN. DUFF of the 25th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE DUTIES OF A MORTGAGEE IN A FORECLOSURE ACTION ON RESIDENTIAL REAL PROPERTY.***

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

1 Section 1. (NEW) (*Effective October 1, 2011*) (a) As used in this  
2 section:

3 (1) "Mortgagee" means the original lender or servicer under a  
4 mortgage, or its successors or assigns, who is the holder of any  
5 mortgage on residential real property securing a loan made primarily  
6 for personal, family or household purposes that is the subject of a  
7 foreclosure action;

8 (2) "Mortgagor" means the owner-occupant of one-to-four family  
9 residential real property located in this state who is also the borrower  
10 under a mortgage encumbering such residential real property, which is  
11 the primary residence of such owner-occupant; and

12 (3) "Residential real property" means a one-to-four family dwelling

13 occupied as a residence by a mortgagor.

14 (b) When a mortgagee commences an action for the foreclosure of a  
15 mortgage on residential real property with a return date on or after  
16 October 1, 2011, the mortgagee shall provide notice to the mortgagor,  
17 in such form as the Chief Court Administrator prescribes, of the name,  
18 business mailing address, electronic mail address and telephone  
19 number of an individual the mortgagor may contact who has  
20 authority, on behalf of the mortgagee, to process requests to refinance  
21 or modify the mortgage agreement or otherwise take action to avoid  
22 foreclosure of the mortgage. After a mortgagee provides such notice,  
23 the mortgagee may assign a different individual who has such  
24 authority to act as an individual the mortgagor may contact, provided  
25 the mortgagee gives the mortgagor notice, not later than seven  
26 calendar days after such individual is assigned, that permits the  
27 mortgagor to contact such individual, which notice shall include the  
28 name, business mailing address, electronic mail address and telephone  
29 number of such individual. Each notice under this subsection shall  
30 indicate the name of the individual and such individual's business  
31 mailing address, electronic mail address and telephone number in  
32 boldface type at least fourteen points in size.

33 (c) Notwithstanding any provision of the general statutes or any  
34 rule of law to the contrary, a court may delay the entry of a judgment  
35 of strict foreclosure or foreclosure by sale when, in the court's  
36 judgment, such delay is appropriate or required under the facts and  
37 circumstances of the case if the court finds that the mortgagee in an  
38 action instituted by the mortgagee to foreclose a mortgage on  
39 residential real property (1) failed to provide notice in accordance with  
40 subsection (b) of this section, (2) failed to respond within five business  
41 days to a request from the mortgagor to refinance or modify the  
42 mortgage agreement to avoid foreclosure of the mortgage, or (3)  
43 engaged in conduct with respect to the mortgagor that the court  
44 determines would constitute an unfair or deceptive act or practice in  
45 violation of subsection (a) of section 42-110b of the general statutes.

46 (d) Notwithstanding any provision of the general statutes or any  
47 rule of law to the contrary, a court may delay the entry of a deficiency  
48 judgment on behalf of the mortgagee when, in the court's judgment,  
49 such delay is appropriate or required under the facts and  
50 circumstances of the case if the court finds that the mortgagee in an  
51 action instituted by the mortgagee to foreclose a mortgage on  
52 residential real property (1) failed to provide notice in accordance with  
53 subsection (b) of this section, (2) failed to respond within five business  
54 days to a request from the mortgagor to refinance or modify the  
55 mortgage agreement to avoid foreclosure of the mortgage, or (3)  
56 engaged in conduct with respect to the mortgagor that the court  
57 determines would constitute an unfair or deceptive act or practice in  
58 violation of subsection (a) of section 42-110b of the general statutes.

59 Sec. 2. Section 49-14 of the general statutes is repealed and the  
60 following is substituted in lieu thereof (*Effective October 1, 2011*):

61 (a) At any time within thirty days after the time limited for  
62 redemption has expired, any party to a mortgage foreclosure may file a  
63 motion seeking a deficiency judgment. Such motion shall be placed on  
64 the short calendar for an evidentiary hearing. Such hearing shall be  
65 held not less than fifteen days following the filing of the motion, except  
66 as the court may otherwise order. At such hearing the court shall hear  
67 the evidence, establish a valuation for the mortgaged property and,  
68 except as provided in subsection (d) of section 1 of this act, shall render  
69 judgment for the plaintiff for the difference, if any, between such  
70 valuation and the plaintiff's claim. The plaintiff in any further action  
71 upon the debt, note or obligation, shall recover only the amount of  
72 such judgment.

73 (b) Upon the motion of any party and for good cause shown, the  
74 court may refer such motion to a state referee, who shall have and  
75 exercise the powers of the court with respect to trial, judgment and  
76 appeal in such case.

77 (c) Any party to a mortgage foreclosure who has moved for an  
78 appraisal of property for the purpose of obtaining a deficiency

79 judgment, but has not been granted a deficiency judgment, or has not  
 80 received full satisfaction of any deficiency judgment obtained  
 81 subsequent to the filing of such motion, may make a motion to the  
 82 court for a deficiency judgment as set forth in subsection (a) of this  
 83 section. If such motion is made on or before November 1, 1979, such  
 84 moving party shall be deemed to have complied with all of the  
 85 requirements of subsection (a) of this section and shall be entitled to  
 86 the benefit of any deficiency judgment rendered pursuant to said  
 87 subsection (a).

88 (d) Any appeal pending in the Supreme Court with regard to any  
 89 deficiency judgment or proceedings relating thereto shall be stayed  
 90 until a hearing is held pursuant to subsection (a) of this section. Any  
 91 appellant in such an appeal shall have the right for a period of thirty  
 92 days after the rendering of judgment pursuant to subsection (a) of this  
 93 section to amend his appeal. There shall be no stay of such an appeal if  
 94 no motion has been filed pursuant to this section on or before  
 95 November 1, 1979.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2011	New section
Sec. 2	October 1, 2011	49-14

**BA**      *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:*** None***Municipal Impact:*** None***Explanation***

The bill makes procedural changes to the foreclosure process that will not result in a fiscal impact.

***The Out Years******State Impact:*** None***Municipal Impact:*** None

**OLR Bill Analysis****sSB 950*****AN ACT CONCERNING THE DUTIES OF A MORTGAGEE IN A FORECLOSURE ACTION ON RESIDENTIAL REAL PROPERTY.*****SUMMARY:**

This bill requires a mortgagee (lender) initiating a foreclosure action on an owner-occupied one-to-four family residential property to notify the mortgagor (borrower) of the contact information for a person the mortgagee authorizes to process requests to refinance or modify the mortgage or take other actions to avoid foreclosure. The bill allows the mortgagee, upon notice, to later assign a different individual with such authority. The requirement applies to foreclosure actions with a return date on or after October 1, 2011.

The bill also authorizes a court to delay the entry of a judgment of strict foreclosure, foreclosure by sale, or a deficiency judgment (when the value of the property is not enough to pay the debt) on the mortgagee's behalf when, in the court's judgment, the delay is appropriate or required under the facts and circumstances and the court finds that the mortgagee:

1. failed to provide the notice and contact information the bill requires;
2. failed to respond within five business days to the mortgagor's request to refinance or modify the mortgage to avoid foreclosure; or
3. engaged in conduct with respect to the mortgagor that the court determines would constitute an unfair or deceptive act or practice in violation of the Connecticut Unfair Trade Practices

---

Act (see BACKGROUND).

EFFECTIVE DATE: October 1, 2011

### **MORTGAGOR AND MORTGAGEE**

The bill defines mortgagor as the owner-occupant of one-to-four family residential real property located in Connecticut who is also the borrower under a mortgage encumbering the property. The property must be the borrower's primary residence.

The bill defines mortgagee as the original lender or servicer under a mortgage, or its successors or assigns, who is the holder of a mortgage on one-to-four family residential real property securing a loan made primarily for personal, family, or household purposes that is the subject of a foreclosure action.

### **REQUIRED CONTACT INFORMATION**

The required notice must include the contact individual's (1) name, (2) business mailing address, (3) email address, and (4) telephone number. The required information must be in boldface type and at least 14 point font, in a form prescribed by the chief court administrator.

### **ASSIGNING A DIFFERENT CONTACT PERSON**

The bill allows a mortgagee, after providing the required notice of the authorized person's contact information, to then assign a different individual the same authority. Within seven calendar days of assigning a new contact person, the mortgagee must provide the mortgagor the same contact information as specified above for the initial contact person.

### **BACKGROUND**

#### ***Connecticut Unfair Trade Practices Act (CUTPA)***

CUTPA prohibits businesses from engaging in unfair and deceptive acts or practices. It allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution

in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order (CGS §§ 42-110a to -110q).

**Legislative History**

The Senate referred the bill (File 692) to the Banks Committee, which reported a substitute allowing a court to delay the judgments specified above when the mortgagee fails to respond within five business days to the mortgagor’s request to refinance or modify the mortgage. (The file copy referenced a reasonable time rather than five business days).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable  
Yea 44 Nay 0 (04/12/2011)

Banks Committee

Joint Favorable Substitute  
Yea 16 Nay 1 (05/17/2011)