



**Connecticut
Fair Housing Center**

**TESTIMONY OF ATTORNEY JEFF GENTES
IN SUPPORT OF H.B. 6463**

Co-Chairs Gomes and Butler, Members of the Committee, thank you for the opportunity to speak today. My name is Jeff Gentes, and I'm the Foreclosure Prevention Attorney for the Connecticut Fair Housing Center. I am here today to strongly support House Bill 6463. As an attorney who teaches homeowners how to represent themselves in foreclosure litigation and foreclosure mediation, I can assure you that House Bill 6463 would greatly help homeowners navigate the confusing world of foreclosure.

Connecticut has benefited greatly from the Foreclosure Mediation Program you created in 2008: more than 5,000 homeowners who've completed mediation have been able to keep their homes. House Bill 6463 would recognize that success by extending the Program's sunset date by two years to June 30, 2014, and I strongly support that extension.

At the Connecticut Fair Housing Center we run legal clinics for homeowners where we teach people how to use the Mediation Program to prevent foreclosure. Last year we taught over 1100 homeowners how to use the Program, and we distributed more than 6,000 copies of our manual on self-representation. We also provide individualized advice and assistance to homeowners referred by HUD/CHFA-approved housing counselors and by the Department of Banking's Mortgage Foreclosure Assistance Hotline. We also represent homeowners in foreclosure and mediation, and in the past year appeared in nine judicial districts across the state.

About 90 percent of homeowners who participate in the Program are unrepresented. When speaking to these homeowners, one theme is constant – we must explain that, in addition

to dealing with their mortgage servicer over the phone, mail, and fax machine, sometimes while working with a housing counselor, and in addition to participating in the Foreclosure Mediation Program, homeowners must also deal with foreclosure litigation. Banks file interim motions and foreclosure motions during mediation, which only add confusion and costs, in the form of banks' attorneys' fees and homeowners' missed time from work, that hurt mediation's chances of success. Putting mediation first would allow homeowners to focus on mediation alone.

Connecticut's courts would benefit if we put mediation first. The Program you created not only saves homes – it also makes litigation unnecessary, as about 78% of mediation cases settle. By passing House Bill 6463, and by putting mediation first, we'd eliminate needless costs.

As proposed, House Bill 6463 would not delay cases in which the homeowner does not appear. It would only add a few weeks to cases in which a homeowner had participated in ultimately unsuccessful mediation. More importantly, it would improve the chances of success in mediation and allow both sides to reach a settlement that was mutually beneficial.

Over the past two years, we've learned from other states that used Connecticut's Foreclosure Mediation Program as a model for their own programs. Based on their experience, and my prior experience representing homeowners in New York, putting mediation first would reflect "best practices" in foreclosure cases, and increase the chances that a homeowner could save their home. In order to ensure that homeowners could focus on mediation, we would propose minor changes to the bill. I attached proposed language to my testimony.

Thank you for your time and for your support of the Foreclosure Mediation Program. On behalf of the unrepresented homeowners in mediation and those who will enter mediation as the crisis continues, I ask that you support House Bill 6463. I'm happy to answer any questions you may have.

AN ACT CONCERNING FORECLOSURE MEDIATION.

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

Section 1. Section 49-31l of the 2011 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Prior to July 1, [2012] 2014: (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 July 1, 2009, to June 30, [2012] 2014, inclusive, shall be subject to the provisions of subsection (c) of this section.

(b) (1) Prior to July 1, [2012] 2014, 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, [2012] 2014.

(5) If at any time on or after July 1, 2008, but prior to July 1, [2012] 2014, 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) Notwithstanding any provision of the general statutes or any rule of law, prior to July 1, [2012] 2014, no default or 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 against the mortgagor, no motion for such default or judgment nor any motion or request in respect of the mortgagor's pleadings shall be made by the foreclosing mortgagee, and the mortgagor's obligation to respond in the foreclosure action in accordance with the applicable rules of the court shall be suspended, 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 and (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, and fifteen days has elapsed since such termination. For actions pending as of the enactment hereof, no previously entered default or judgment shall be vacated by operation of this subdivision.

(7) 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, [2012] 2014, 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, [2012] 2014, no default or 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 against the mortgagor, no motion for such default or judgment nor any motion or request in respect of the mortgagor's pleadings shall be made by the foreclosing mortgagee, and the mortgagor's obligation to respond in the foreclosure action in accordance with the applicable rules of the court shall be suspended, unless: (A) The mediation period set forth in subsection (c) of section 49-31n, as amended by this act, has expired or has otherwise terminated, whichever is earlier, and fifteen days has elapsed since such termination or (B) the mediation program is not otherwise required or available. For actions pending as of the enactment hereof, no previously entered default or judgment shall be vacated by operation of this subdivision.

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

Section 2. Section 49-31n of the 2011 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Prior to July 1, [2012] 2014: (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 July 1, 2009, to June 30, [2012] 2014, 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. 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 the mediation session by telephone. The court shall not award attorney's fees to any mortgagee for time spent in any 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.

(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, [2012] 2014, 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, [2012] 2014.

(8) 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.

(c) (1) For any action for the foreclosure of a mortgage on residential real property with a return date during the period from July 1, 2009, to June 30, [2012] 2014, 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 each appearing party in accordance with subdivision (4) of subsection (c) of section 49-31l, as amended by this act. 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 the mediation session by telephone. The court shall not award attorney's fees to any mortgagee for time spent in any 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.

(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, [2012] 2014, inclusive.

(8) 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.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	49-31l
Section 2	<i>from passage</i>	49-31n

Statement of Purpose:

To offer homeowners facing foreclosure an opportunity to participate in the foreclosure mediation program without simultaneously engaging in litigation.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]