



General Assembly

January Session, 2011

Raised Bill No. 6351

LCO No. 2946

02946 _____ BA_

Referred to Committee on Banks

Introduced by:

(BA)

AN ACT CONCERNING FORECLOSURE MEDIATION.

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

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 Section 49-31l of the general statutes is repealed and the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

3 (a) Prior to July 1, 2012: (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, inclusive,
9 shall be subject to the provisions of subsection (c) of this section.

10 (b) (1) Prior to July 1, 2012, when a mortgagee commences an action
11 for the foreclosure of a mortgage on residential real property with a
12 return date during the period from July 1, 2008, to June 30, 2009,
13 inclusive, the mortgagee shall give notice to the mortgagor of the
14 foreclosure mediation program established in section 49-31m by
15 attaching to the front of the foreclosure complaint that is served on the
16 mortgagor: (A) A copy of the notice of the availability of foreclosure

17 mediation, in such form as the Chief Court Administrator prescribes,
18 and (B) a foreclosure mediation request form, in such form as the Chief
19 Court Administrator prescribes.

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

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

33 (4) No foreclosure mediation request form may be submitted to the
34 court on or after July 1, 2012.

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

42 (6) Notwithstanding any provision of the general statutes or any
43 rule of law to the contrary, prior to July 1, 2012, (A) no default or
44 judgment [of strict foreclosure nor any judgment ordering a
45 foreclosure sale] shall be entered in any action subject to the provisions
46 of this subsection and instituted by the mortgagee to foreclose a
47 mortgage on residential real property, (B) no motion for default or

48 judgment or any motion or request with respect to the mortgagor's
49 pleadings in the foreclosure action shall be made by the foreclosing
50 mortgagee, and (C) the mortgagor's obligation to respond in the
51 foreclosure action in accordance with the applicable rules of court shall
52 be suspended, unless: [(A)] (i) Notice to the mortgagor has been given
53 by the mortgagee in accordance with subdivision (1) of this subsection
54 and the time for submitting a foreclosure mediation request form has
55 expired and no foreclosure mediation request form has been
56 submitted, or if such notice has not been given, the time for submitting
57 a foreclosure mediation request form pursuant to subdivision (2) or (3)
58 of this subsection has expired and no foreclosure mediation request
59 form has been submitted, or [(B)] (ii) the mediation period set forth in
60 subdivision (b) of section 49-31n, as amended by this act, has expired
61 or has otherwise terminated, whichever is earlier, and fifteen days
62 have elapsed since such expiration or termination. For actions pending
63 on or before the effective date of this act, no previously entered default
64 or judgment shall be vacated by operation of this subdivision.

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

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

79 (2) The court shall issue a notice of foreclosure mediation described

80 in subdivision (3) of this subsection to the mortgagor not later than the
81 date three business days after the date the mortgagee returns the writ
82 to the court.

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

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

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

112 business days from the date of such referral.

113 (6) Notwithstanding any provision of the general statutes or any
114 rule of law, prior to July 1, 2012, (A) no judgment [of strict foreclosure
115 nor any judgment ordering a foreclosure sale] or default shall be
116 entered in any action subject to the provisions of this subsection and
117 instituted by the mortgagee to foreclose a mortgage on residential real
118 property, (B) no motion for default or judgment or any motion or
119 request with respect to the mortgagor's pleadings in the foreclosure
120 action shall be made by the foreclosing mortgagee, and (C) the
121 mortgagor's obligation to respond in the foreclosure action in
122 accordance with the applicable rules of court shall be suspended
123 unless: [(A)] (i) The mediation period set forth in subsection (c) of
124 section 49-31n, as amended by this act, has expired or has otherwise
125 terminated, whichever is earlier, and fifteen days have elapsed since
126 such expiration or termination, or [(B)] (ii) the mediation program is
127 not otherwise required or available. For actions pending on or before
128 the effective date of this act, no previously entered default or judgment
129 shall be vacated by operation of this subdivision.

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

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

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

142 (b) (1) For any action for the foreclosure of a mortgage on residential

143 real property with a return date during the period from July 1, 2008, to
144 June 30, 2009, inclusive, the mediation period under the foreclosure
145 mediation program established in section 49-31m shall commence
146 when the court sends notice to each appearing party that a foreclosure
147 mediation request form has been submitted by a mortgagor to the
148 court, which notice shall be sent not later than three business days after
149 the court receives a completed foreclosure mediation request form. The
150 mediation period shall conclude not more than sixty days after the
151 return day for the foreclosure action, except that the court may, in its
152 discretion, for good cause shown, (A) extend [, by not more than thirty
153 days,] or shorten the mediation period on its own motion or upon
154 motion of any party, or (B) extend [by not more than thirty days] the
155 mediation period upon written request of the mediator.

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

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

176 period shall terminate automatically. If the mediator reports to the
177 court after the first mediation session that the parties may benefit from
178 further mediation, the mediation period shall continue.

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

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

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

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

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

207 such referral shall not prevent a mortgagee from proceeding to
208 judgment when the conditions specified in subdivision (6) of
209 subsection (b) of section 49-31l, as amended by this act, have been
210 satisfied.

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

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

237 (3) Not later than two days after the conclusion of the first
238 mediation session, the mediator shall determine whether the parties

239 will benefit from further mediation. The mediator shall file with the
240 court a report setting forth such determination and mail a copy of such
241 report to each appearing party. If the mediator reports to the court that
242 the parties will not benefit from further mediation, the mediation
243 period shall terminate automatically. If the mediator reports to the
244 court after the first mediation session that the parties may benefit from
245 further mediation, the mediation period shall continue.

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

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

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

268 (7) The foreclosure mediation program shall terminate when all
269 mediation has concluded with respect to any foreclosure action with a
270 return date during the period from July 1, 2009, to June 30, 2012,

271 inclusive.

272 (8) At any time during the mediation period, the mediator may refer
273 the mortgagor to the mortgage assistance programs, except that any
274 such referral shall not prevent a mortgagee from proceeding to
275 judgment when the conditions specified in subdivision (6) of
276 subsection (c) of section 49-31l, as amended by this act, have been
277 satisfied.

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

Statement of Purpose:

To offer homeowners facing foreclosure an opportunity to participate in the foreclosure mediation program without simultaneously engaging in litigation and to give courts the discretion to extend the mediation period by more than thirty days.

[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.]