



General Assembly

Substitute Bill No. 6351

January Session, 2011

* _____HB06351BA_____031511_____*

AN ACT CONCERNING FORECLOSURE MEDIATION.

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

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 Section 49-31k of the general statutes is repealed and the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

3 As used in this section and sections 49-31l to 49-31o, inclusive, as
4 amended by this act:

5 (1) "Mortgagor" means: [the] (A) The owner-occupant of one-to-four
6 family residential real property located in this state who is also the
7 borrower under a mortgage encumbering such residential real
8 property, which is the primary residence of such owner-occupant, or
9 (B) the owner of real property (i) occupied by a nonprofit charitable or
10 religious organization, (ii) located in this state, and (iii) who is also the
11 borrower under a mortgage encumbering such real property;

12 (2) "Residential real property" means a one-to-four family dwelling
13 occupied as a residence by a mortgagor;

14 (3) "Mortgagee" means the original lender or servicer under a
15 mortgage, or its successors or assigns, who is the holder of any
16 mortgage on residential real property or real property occupied by a
17 nonprofit charitable or religious organization securing a loan made
18 primarily for personal, family, [or] household, nonprofit charitable or

19 religious purposes that is the subject of a foreclosure action;

20 (4) "Authority" means the Connecticut Housing Finance Authority
21 created under section 8-244; and

22 (5) "Mortgage assistance programs" means the mortgage assistance
23 programs developed and implemented by the authority in accordance
24 with sections 8-265cc to 8-265kk, inclusive, 8-265rr and 8-265ss.

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 Section 49-31l of the general statutes is repealed and the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

27 (a) Prior to July 1, 2012: (1) Any action for the foreclosure of a
28 mortgage on residential real property or real property occupied by a
29 nonprofit charitable or religious organization with a return date
30 during the period from July 1, 2008, to June 30, 2009, inclusive, shall be
31 subject to the provisions of subsection (b) of this section, and (2) any
32 action for the foreclosure of a mortgage on residential real property or
33 real property occupied by a nonprofit charitable or religious
34 organization with a return date during the period from July 1, 2009, to
35 June 30, 2012, inclusive, shall be subject to the provisions of subsection
36 (c) of this section.

37 (b) (1) Prior to July 1, 2012, when a mortgagee commences an action
38 for the foreclosure of a mortgage on residential real property or real
39 property occupied by a nonprofit charitable or religious organization
40 with a return date during the period from July 1, 2008, to June 30, 2009,
41 inclusive, the mortgagee shall give notice to the mortgagor of the
42 foreclosure mediation program established in section 49-31m, as
43 amended by this act, by attaching to the front of the foreclosure
44 complaint that is served on the mortgagor: (A) A copy of the notice of
45 the availability of foreclosure mediation, in such form as the Chief
46 Court Administrator prescribes, and (B) a foreclosure mediation
47 request form, in such form as the Chief Court Administrator
48 prescribes.

49 (2) Except as provided in subdivision (3) of this subsection, a

50 mortgagor may request foreclosure mediation by submitting the
51 foreclosure mediation request form to the court and filing an
52 appearance not more than fifteen days after the return day for the
53 foreclosure action. Upon receipt of the foreclosure mediation request
54 form, the court shall notify each appearing party that a foreclosure
55 mediation request form has been submitted by the mortgagor.

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

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

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

71 (6) Notwithstanding any provision of the general statutes or any
72 rule of law to the contrary, prior to July 1, 2012, (A) no default or
73 judgment [of strict foreclosure nor any judgment ordering a
74 foreclosure sale] shall be entered in any action subject to the provisions
75 of this subsection and instituted by the mortgagee to foreclose a
76 mortgage on residential real property or real property occupied by a
77 nonprofit charitable or religious organization, (B) no motion for default
78 or judgment or any motion or request with respect to the mortgagor's
79 pleadings in the foreclosure action shall be made by the foreclosing
80 mortgagee, and (C) the mortgagor's obligation to respond in the
81 foreclosure action in accordance with the applicable rules of court shall

82 be suspended, unless: [(A)] (i) Notice to the mortgagor has been given
83 by the mortgagee in accordance with subdivision (1) of this subsection
84 and the time for submitting a foreclosure mediation request form has
85 expired and no foreclosure mediation request form has been
86 submitted, or if such notice has not been given, the time for submitting
87 a foreclosure mediation request form pursuant to subdivision (2) or (3)
88 of this subsection has expired and no foreclosure mediation request
89 form has been submitted, or [(B)] (ii) the mediation period set forth in
90 subdivision (b) of section 49-31n, as amended by this act, has expired
91 or has otherwise terminated, whichever is earlier, and fifteen days
92 have elapsed since such expiration or termination. For actions pending
93 on or before the effective date of this act, no previously entered default
94 or judgment shall be vacated by operation of this subdivision.

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

98 (c) (1) Prior to July 1, 2012, when a mortgagee commences an action
99 for the foreclosure of a mortgage on residential real property or real
100 property occupied by a nonprofit charitable or religious organization
101 with a return date on or after July 1, 2009, the mortgagee shall give
102 notice to the mortgagor of the foreclosure mediation program
103 established in section 49-31m, as amended by this act, by attaching to
104 the front of the writ, summons and complaint that is served on the
105 mortgagor: (A) A copy of the notice of foreclosure mediation, in such
106 form as the Chief Court Administrator prescribes, (B) a copy of the
107 foreclosure mediation certificate form described in subdivision (3) of
108 this subsection, in such form as the Chief Court Administrator
109 prescribes, and (C) a blank appearance form, in such form as the Chief
110 Court Administrator prescribes.

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

115 (3) The notice of foreclosure mediation shall instruct the mortgagor
116 to file the appearance and foreclosure mediation certificate forms with
117 the court no later than the date fifteen days from the return date for the
118 foreclosure action. The foreclosure mediation certificate form shall
119 require the mortgagor to provide sufficient information to permit the
120 court to confirm that the defendant in the foreclosure action is a
121 mortgagor, and to certify that said mortgagor has sent a copy of the
122 mediation certificate form to the plaintiff in the action.

123 (4) Upon receipt of the mortgagor's appearance and foreclosure
124 mediation certificate forms, and provided the court confirms the
125 defendant in the foreclosure action is a mortgagor and that said
126 mortgagor has sent a copy of the mediation certificate form to the
127 plaintiff, the court shall schedule a date for foreclosure mediation in
128 accordance with subsection (c) of section 49-31n, as amended by this
129 act. The court shall issue notice of such mediation date to all appearing
130 parties not earlier than the date five business days after the return date
131 or by the date three business days after the date on which the court
132 receives the mortgagor's appearance and foreclosure mediation forms,
133 whichever is later, except that if the court does not receive the
134 appearance and foreclosure mediation certificate forms from the
135 mortgagor by the date fifteen days after the return date for the
136 foreclosure action, the court shall not schedule such mediation.

137 (5) Notwithstanding the provisions of this subsection, the court may
138 refer a foreclosure action brought by a mortgagee to the foreclosure
139 mediation program at any time, provided the mortgagor has filed an
140 appearance in said action and further provided the court shall, not
141 later than the date three business days after the date on which it makes
142 such referral, send a notice to each appearing party scheduling the first
143 foreclosure mediation session for a date not later than the date fifteen
144 business days from the date of such referral.

145 (6) Notwithstanding any provision of the general statutes or any
146 rule of law, prior to July 1, 2012, (A) no judgment [of strict foreclosure
147 nor any judgment ordering a foreclosure sale] or default shall be

148 entered in any action subject to the provisions of this subsection and
149 instituted by the mortgagee to foreclose a mortgage on residential real
150 property or real property occupied by a nonprofit charitable or
151 religious organization, (B) no motion for default or judgment or any
152 motion or request with respect to the mortgagor's pleadings in the
153 foreclosure action shall be made by the foreclosing mortgagee, and (C)
154 the mortgagor's obligation to respond in the foreclosure action in
155 accordance with the applicable rules of court shall be suspended
156 unless: [(A)] (i) The mediation period set forth in subsection (c) of
157 section 49-31n, as amended by this act, has expired or has otherwise
158 terminated, whichever is earlier, and fifteen days have elapsed since
159 such expiration or termination, or [(B)] (ii) the mediation program is
160 not otherwise required or available. For actions pending on or before
161 the effective date of this act, no previously entered default or judgment
162 shall be vacated by operation of this subdivision.

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

166 Sec. 3. Section 49-31m of the general statutes is repealed and the
167 following is substituted in lieu thereof (*Effective October 1, 2011*):

168 [Not later than July 1, 2008, the] The Chief Court Administrator
169 shall establish in each judicial district a foreclosure mediation program
170 in actions to foreclose mortgages on residential real property or real
171 property occupied by a nonprofit charitable or religious organization.
172 Such foreclosure mediation shall (1) address all issues of foreclosure,
173 including, but not limited to, reinstatement of the mortgage,
174 assignment of law days, assignment of sale date, restructuring of the
175 mortgage debt and foreclosure by decree of sale, and (2) be conducted
176 by foreclosure mediators who (A) are employed by the Judicial Branch,
177 (B) are trained in mediation and all relevant aspects of the law, as
178 determined by the Chief Court Administrator, (C) have knowledge of
179 the community-based resources that are available in the judicial
180 district in which they serve, and (D) have knowledge of the mortgage

181 assistance programs. Such mediators may refer mortgagors who
182 participate in the foreclosure mediation program to community-based
183 resources when appropriate and to the mortgage assistance programs.

184 Sec. 4. Section 49-31n of the general statutes is repealed and the
185 following is substituted in lieu thereof (*Effective from passage*):

186 (a) Prior to July 1, 2012: (1) Any action for the foreclosure of a
187 mortgage on residential real property or real property occupied by a
188 nonprofit charitable or religious organization with a return date
189 during the period from July 1, 2008, to June 30, 2009, inclusive, shall be
190 subject to the provisions of subsection (b) of this section, and (2) any
191 action for the foreclosure of a mortgage on residential real property or
192 real property occupied by a nonprofit charitable or religious
193 organization with a return date during the period from July 1, 2009, to
194 June 30, 2012, inclusive, shall be subject to the provisions of subsection
195 (c) of this section.

196 (b) (1) For any action for the foreclosure of a mortgage on residential
197 real property or real property occupied by a nonprofit charitable or
198 religious organization with a return date during the period from July
199 1, 2008, to June 30, 2009, inclusive, the mediation period under the
200 foreclosure mediation program established in section 49-31m, as
201 amended by this act, shall commence when the court sends notice to
202 each appearing party that a foreclosure mediation request form has
203 been submitted by a mortgagor to the court, which notice shall be sent
204 not later than three business days after the court receives a completed
205 foreclosure mediation request form. The mediation period shall
206 conclude not more than sixty days after the return day for the
207 foreclosure action, except that the court may, in its discretion, for good
208 cause shown, (A) extend [, by not more than thirty days,] or shorten
209 the mediation period on its own motion or upon motion of any party,
210 or (B) extend [by not more than thirty days] the mediation period upon
211 written request of the mediator.

212 (2) The first mediation session shall be held not later than fifteen

213 business days after the court sends notice to all parties that a
214 foreclosure mediation request form has been submitted to the court.
215 The mortgagor and mortgagee shall appear in person at each
216 mediation session and shall have authority to agree to a proposed
217 settlement, except that if the mortgagee is represented by counsel, the
218 mortgagee's counsel may appear in lieu of the mortgagee to represent
219 the mortgagee's interests at the mediation, provided such counsel has
220 the authority to agree to a proposed settlement and the mortgagee is
221 available during the mediation session by telephone. The court shall
222 not award attorney's fees to any mortgagee for time spent in any
223 mediation session if the court finds that such mortgagee has failed to
224 comply with this subdivision, unless the court finds reasonable cause
225 for such failure.

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

235 (4) If the mediator has submitted a report to the court that the
236 parties may benefit from further mediation pursuant to subdivision (3)
237 of this subsection, not more than two days after the conclusion of the
238 mediation, but no later than the termination of the mediation period
239 set forth in subdivision (1) of this subsection, the mediator shall file a
240 report with the court describing the proceedings and specifying the
241 issues resolved, if any, and any issues not resolved pursuant to the
242 mediation. The filing of the report shall terminate the mediation period
243 automatically. If certain issues have not been resolved pursuant to the
244 mediation, the mediator may refer the mortgagor to any appropriate
245 community-based services that are available in the judicial district, but
246 any such referral shall not cause a delay in the mediation process.

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

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

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

263 (8) At any time during the mediation period, the mediator may refer
264 [the] a mortgagor who is the owner-occupant of one-to-four family
265 residential real property to the mortgage assistance programs, except
266 that any such referral shall not prevent a mortgagee from proceeding
267 to judgment when the conditions specified in subdivision (6) of
268 subsection (b) of section 49-31l, as amended by this act, have been
269 satisfied.

270 (c) (1) For any action for the foreclosure of a mortgage on residential
271 real property or real property occupied by a nonprofit charitable or
272 religious organization with a return date during the period from July
273 1, 2009, to June 30, 2012, inclusive, the mediation period under the
274 foreclosure mediation program established in section 49-31m, as
275 amended by this act, shall commence when the court sends notice to
276 each appearing party scheduling the first foreclosure mediation
277 session. The mediation period shall conclude not later than the date
278 sixty days after the return date for the foreclosure action, except that

279 the court may, in its discretion, for good cause shown, (A) extend [, by
280 not more than thirty days,] or shorten the mediation period on its own
281 motion or upon motion of any party, or (B) extend [by not more than
282 thirty days] the mediation period upon written request of the
283 mediator.

284 (2) The first mediation session shall be held not later than fifteen
285 business days after the court sends notice to each appearing party in
286 accordance with subdivision (4) of subsection (c) of section 49-311, as
287 amended by this act. The mortgagor and mortgagee shall appear in
288 person at each mediation session and shall have authority to agree to a
289 proposed settlement, except that if the mortgagee is represented by
290 counsel, the mortgagee's counsel may appear in lieu of the mortgagee
291 to represent the mortgagee's interests at the mediation, provided such
292 counsel has the authority to agree to a proposed settlement and the
293 mortgagee is available during the mediation session by telephone. The
294 court shall not award attorney's fees to any mortgagee for time spent
295 in any mediation session if the court finds that such mortgagee has
296 failed to comply with this subdivision, unless the court finds
297 reasonable cause for such failure.

298 (3) Not later than two days after the conclusion of the first
299 mediation session, the mediator shall determine whether the parties
300 will benefit from further mediation. The mediator shall file with the
301 court a report setting forth such determination and mail a copy of such
302 report to each appearing party. If the mediator reports to the court that
303 the parties will not benefit from further mediation, the mediation
304 period shall terminate automatically. If the mediator reports to the
305 court after the first mediation session that the parties may benefit from
306 further mediation, the mediation period shall continue.

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

312 report with the court describing the proceedings and specifying the
313 issues resolved, if any, and any issues not resolved pursuant to the
314 mediation. The filing of the report shall terminate the mediation period
315 automatically. If certain issues have not been resolved pursuant to the
316 mediation, the mediator may refer the mortgagor to any appropriate
317 community-based services that are available in the judicial district, but
318 any such referral shall not cause a delay in the mediation process.

319 (5) The Chief Court Administrator shall establish policies and
320 procedures to implement this subsection. Such policies and procedures
321 shall, at a minimum, provide that the mediator shall advise the
322 mortgagor at the first mediation session required by subdivision (2) of
323 this subsection that [:(A) Such mediation does not suspend the
324 mortgagor's obligation to respond to the foreclosure action; and (B)] a
325 judgment of strict foreclosure or foreclosure by sale may cause the
326 mortgagor to lose the residential real property or real property
327 occupied by a nonprofit charitable or religious organization to
328 foreclosure.

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

331 (7) The foreclosure mediation program shall terminate when all
332 mediation has concluded with respect to any foreclosure action with a
333 return date during the period from July 1, 2009, to June 30, 2012,
334 inclusive.

335 (8) At any time during the mediation period, the mediator may refer
336 [the] a mortgagor who is the owner-occupant of one-to-four family
337 residential real property to the mortgage assistance programs, except
338 that any such referral shall not prevent a mortgagee from proceeding
339 to judgment when the conditions specified in subdivision (6) of
340 subsection (c) of section 49-311, as amended by this act, have been
341 satisfied.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	49-31k
Sec. 2	<i>from passage</i>	49-31l
Sec. 3	<i>October 1, 2011</i>	49-31m
Sec. 4	<i>from passage</i>	49-31n

Statement of Legislative Commissioners:

In section 1(1), the existing definition of "mortgagor" was designated as subparagraph (A) and "the owner of real property occupied by a nonprofit charitable or religious organization" was redesignated as subparagraph (B) with conforming technical changes added for clarity in defining the term.

BA *Joint Favorable Subst.*