



General Assembly

January Session, 2011

Raised Bill No. 6463

LCO No. 3614

03614_____HSG

Referred to Committee on Housing

Introduced by:
(HSG)

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 Section 49-31l of the general statutes is repealed and the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

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

67 (c) (1) Prior to July 1, [2012] 2014, when a mortgagee commences an
68 action for the foreclosure of a mortgage on residential real property
69 with a return date on or after July 1, 2009, the mortgagee shall give
70 notice to the mortgagor of the foreclosure mediation program
71 established in section 49-31m by attaching to the front of the writ,
72 summons and complaint that is served on the mortgagor: (A) A copy
73 of the notice of foreclosure mediation, in such form as the Chief Court
74 Administrator prescribes, (B) a copy of the foreclosure mediation
75 certificate form described in subdivision (3) of this subsection, in such
76 form as the Chief Court Administrator prescribes, and (C) a blank
77 appearance form, in such form as the Chief Court Administrator
78 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, no judgment of strict foreclosure nor
115 any judgment ordering a foreclosure sale shall be entered] July 1, 2014,
116 in any action subject to the provisions of this subsection and instituted
117 by the mortgagee to foreclose a mortgage on residential real property,
118 no motion concerning the mortgagor's pleadings shall be filed by a
119 mortgagee, no default or judgment shall be entered by the court and
120 no mortgagor shall be obligated to respond in the foreclosure action
121 unless: (A) The mediation period set forth in subsection (c) of section
122 49-31n, as amended by this act, has expired or has otherwise
123 terminated, whichever is earlier, and fifteen days have elapsed since
124 the date of such expiration or termination, or (B) the mediation
125 program is not otherwise required or available. Nothing in this
126 subdivision shall affect any default or judgment entered on or before
127 June 30, 2011.

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

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

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

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

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

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

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

176 court after the first mediation session that the parties may benefit from
177 further mediation, the mediation period shall continue.

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

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

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

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

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] 2014, inclusive, the mediation period under the
214 foreclosure mediation program established in section 49-31m shall
215 commence when the court sends notice to each appearing party
216 scheduling the first foreclosure mediation session. The mediation
217 period shall conclude not later than the date sixty days after the return
218 date for the foreclosure action, except that the court may, in its
219 discretion, for good cause shown, (A) extend [, by not more than thirty
220 days,] or shorten the mediation period on its own motion or upon
221 motion of any party, or (B) extend [by not more than thirty days] the
222 mediation period upon 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] 2014,

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>July 1, 2011</i>	49-31l
Sec. 2	<i>July 1, 2011</i>	49-31n

Statement of Purpose:

To extend the foreclosure mediation program and 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.]