



# House of Representatives

General Assembly

**File No. 214**

January Session, 2013

Substitute House Bill No. 6419

*House of Representatives, March 27, 2013*

The Committee on Housing reported through REP. BUTLER of the 72nd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT EXTENDING THE FORECLOSURE MEDIATION PROGRAM.***

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

1 Section 1. Section 49-311 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2013*):

3 (a) Prior to July 1, [2014] 2016: (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 (A) residential real property with a  
8 return date during the period from July 1, 2009, to June 30, [2014] 2016,  
9 inclusive, or (B) real property owned by a religious organization with a  
10 return date during the period from October 1, 2011, to June 30, [2014]  
11 2016, inclusive, shall be subject to the provisions of subsection (c) of  
12 this section.

13 (b) (1) Prior to July 1, 2012, when a mortgagee commences an action  
14 for the foreclosure of a mortgage on residential real property with a

15 return date during the period from July 1, 2008, to June 30, 2009,  
16 inclusive, the mortgagee shall give notice to the mortgagor of the  
17 foreclosure mediation program established in section 49-31m by  
18 attaching to the front of the foreclosure complaint that is served on the  
19 mortgagor: (A) A copy of the notice of the availability of foreclosure  
20 mediation, in such form as the Chief Court Administrator prescribes,  
21 and (B) a foreclosure mediation request form, in such form as the Chief  
22 Court Administrator prescribes.

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

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

36 (4) No foreclosure mediation request form may be submitted to the  
37 court under this subsection on or after July 1, 2012.

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

45 (6) Notwithstanding any provision of the general statutes or any  
46 rule of law to the contrary, prior to July 1, 2012, no judgment of strict

47 foreclosure nor any judgment ordering a foreclosure sale shall be  
48 entered in any action subject to the provisions of this subsection and  
49 instituted by the mortgagee to foreclose a mortgage on residential real  
50 property unless: (A) Notice to the mortgagor has been given by the  
51 mortgagee in accordance with subdivision (1) of this subsection and  
52 the time for submitting a foreclosure mediation request form has  
53 expired and no foreclosure mediation request form has been  
54 submitted, or if such notice has not been given, the time for submitting  
55 a foreclosure mediation request form pursuant to subdivision (2) or (3)  
56 of this subsection has expired and no foreclosure mediation request  
57 form has been submitted, or (B) the mediation period set forth in  
58 subdivision (b) of section 49-31n, as amended by this act, has expired  
59 or has otherwise terminated, whichever is earlier.

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

63 (c) (1) Prior to July 1, [2014] 2016, when a mortgagee commences an  
64 action for the foreclosure of a mortgage on residential real property  
65 with a return date on or after July 1, 2009, or, with respect to real  
66 property owned by a religious organization, a return date on or after  
67 October 1, 2011, the mortgagee shall give notice to the mortgagor of  
68 the foreclosure mediation program established in section 49-31m by  
69 attaching to the front of the writ, summons and complaint that is  
70 served on the mortgagor: (A) A copy of the notice of foreclosure  
71 mediation, in such form as the Chief Court Administrator prescribes,  
72 (B) a copy of the foreclosure mediation certificate form described in  
73 subdivision (3) of this subsection, in such form as the Chief Court  
74 Administrator prescribes, (C) a blank appearance form, in such form as  
75 the Chief Court Administrator prescribes, and (D) with respect to an  
76 action for the foreclosure of a mortgage on residential real property  
77 with a return date on or after October 1, 2011, a mediation information  
78 form and a notice containing contact information for authority-  
79 approved consumer credit counseling agencies, which form and notice  
80 shall be in such form as the Chief Court Administrator prescribes. Such

81 mediation information form shall be designed to elicit current financial  
82 information and such other nonfinancial information from the  
83 mortgagor as the Chief Court Administrator, in consultation with  
84 representatives from the banking industry and consumer advocates,  
85 determines will be useful to the mediation process. The instructions to  
86 the mediation information form shall explain that the completed  
87 mediation information form, along with accompanying documentation  
88 reasonably requested from the mortgagor by way of such instructions,  
89 shall be delivered to the mortgagee's counsel not later than fifteen  
90 business days prior to the date of the initial mediation session, as  
91 identified in the notice provided pursuant to subdivision (2) of  
92 subsection (c) of section 49-31n, as amended by this act.

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

97 (3) The notice of foreclosure mediation shall instruct the mortgagor  
98 to file the appearance and foreclosure mediation certificate forms with  
99 the court not later than the date fifteen days from the return date for  
100 the foreclosure action. Such notice shall remind the mortgagor to  
101 deliver the completed mediation information form and the  
102 accompanying documentation described in subdivision (1) of this  
103 subsection and encourage such delivery in advance of the required  
104 date. The mediation information form and accompanying  
105 documentation shall not, without the explicit written instruction of the  
106 mortgagor, be publicly available. Such notice shall be accompanied by  
107 materials from the Department of Banking, as prescribed by the Chief  
108 Court Administrator, which shall describe the community-based  
109 resources available to the mortgagor, including authority-approved  
110 housing counseling agencies that may assist with preparation of the  
111 mediation information form and application for mortgage assistance  
112 programs. The foreclosure mediation certificate form shall require the  
113 mortgagor to provide sufficient information to permit the court to  
114 confirm that the defendant in the foreclosure action is a mortgagor,

115 and to certify that said mortgagor has sent a copy of the mediation  
116 certificate form to the plaintiff in the action.

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

131 (5) Notwithstanding the provisions of this subsection, the court may  
132 refer a foreclosure action brought by a mortgagee to the foreclosure  
133 mediation program at any time, provided the mortgagor has filed an  
134 appearance in said action and further provided the court shall, not  
135 later than the date three business days after the date on which it makes  
136 such referral, send a notice to each appearing party scheduling the first  
137 foreclosure mediation session for a date not later than the date thirty-  
138 five days from the date of such referral.

139 (6) Notwithstanding any provision of the general statutes or any  
140 rule of law, prior to July 1, [2014] 2016, (A) for the period of time which  
141 shall not exceed eight months from the return date, no mortgagee or  
142 mortgagor shall make any motion, request or demand with respect to  
143 the other, except those motions, requests or demands that relate to the  
144 mediation program described in section 49-31m and the mediation  
145 sessions held pursuant to such program, provided (i) a mortgagor  
146 seeking to contest the court's jurisdiction may file a motion to dismiss  
147 and the mortgagee may object to such motion to dismiss in accordance

148 with applicable law and the rules of the courts, and (ii) if the  
149 mortgagor elects to make any other motion, request or demand with  
150 respect to the mortgagee, the eight-month limit shall no longer apply  
151 to either party; and (B) no judgment of strict foreclosure nor any  
152 judgment ordering a foreclosure sale shall be entered in any action  
153 subject to the provisions of this subsection and instituted by the  
154 mortgagee to foreclose a mortgage on residential real property or real  
155 property owned by a religious organization unless: (i) The mediation  
156 period set forth in subsection (c) of section 49-31n, as amended by this  
157 act, has expired or has otherwise terminated, whichever is earlier, and,  
158 if fewer than eight months has elapsed from the return date at the time  
159 of termination, fifteen days have elapsed since such termination, or (ii)  
160 the mediation program is not otherwise required or available. Nothing  
161 in this subdivision shall affect any motion made or any default or  
162 judgment entered on or before June 30, 2011.

163 (7) With respect to foreclosure actions with a return date on or after  
164 July 1, 2011, notwithstanding any provision of the general statutes or  
165 any rule of law to the contrary, the mortgagee shall be permitted, on or  
166 before July 1, [2014] 2016, and following the eight-month or fifteen-day  
167 period described in subdivision (6) of this subsection, to  
168 simultaneously file, as applicable, (A) a motion for default, and (B) a  
169 motion for judgment of strict foreclosure or a motion for judgment of  
170 foreclosure by sale with respect to the mortgagor in the foreclosure  
171 action.

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

175 Sec. 2. Section 49-31n of the general statutes is repealed and the  
176 following is substituted in lieu thereof (*Effective July 1, 2013*):

177 (a) Prior to July 1, [2014] 2016: (1) Any action for the foreclosure of a  
178 mortgage on residential real property with a return date during the  
179 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to  
180 the provisions of subsection (b) of this section, and (2) any action for

181 the foreclosure of a mortgage on (A) residential real property with a  
182 return date during the period from July 1, 2009, to June 30, [2014] 2016,  
183 inclusive, or (B) real property owned by a religious organization with a  
184 return date during the period from October 1, 2011, to June 30, [2014]  
185 2016, inclusive, shall be subject to the provisions of subsection (c) of  
186 this section.

187 (b) (1) For any action for the foreclosure of a mortgage on residential  
188 real property with a return date during the period from July 1, 2008, to  
189 June 30, 2009, inclusive, the mediation period under the foreclosure  
190 mediation program established in section 49-31m shall commence  
191 when the court sends notice to each appearing party that a foreclosure  
192 mediation request form has been submitted by a mortgagor to the  
193 court, which notice shall be sent not later than three business days after  
194 the court receives a completed foreclosure mediation request form. The  
195 mediation period shall conclude not more than sixty days after the  
196 return date for the foreclosure action, except that the court may, in its  
197 discretion, for good cause shown, (A) extend, by not more than thirty  
198 days, or shorten the mediation period on its own motion or upon  
199 motion of any party, or (B) extend by not more than thirty days the  
200 mediation period upon written request of the mediator.

201 (2) The first mediation session shall be held not later than fifteen  
202 business days after the court sends notice to all parties that a  
203 foreclosure mediation request form has been submitted to the court.  
204 The mortgagor and mortgagee shall appear in person at each  
205 mediation session and shall have authority to agree to a proposed  
206 settlement, except that (A) if the mortgagee is represented by counsel,  
207 the mortgagee's counsel may appear in lieu of the mortgagee to  
208 represent the mortgagee's interests at the mediation, provided such  
209 counsel has the authority to agree to a proposed settlement and the  
210 mortgagee is available (i) during the mediation session by telephone,  
211 and (ii) to participate in the mediation session by speakerphone,  
212 provided an opportunity is afforded for confidential discussions  
213 between the mortgagee and mortgagee's counsel, and (B) following the  
214 initial mediation session, if there are two or more mortgagors, only one

215 mortgagor shall appear in person at each subsequent mediation  
216 session unless good cause is shown, provided the other mortgagors are  
217 available (i) during the mediation session, and (ii) to participate in the  
218 mediation session by speakerphone, provided an opportunity is  
219 afforded for confidential discussions among the mortgagors and such  
220 mortgagors' counsel. The court shall not award attorney's fees to any  
221 mortgagee for time spent in any mediation session if the court finds  
222 that such mortgagee has failed to comply with this subdivision, unless  
223 the court finds reasonable cause for such failure.

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

233 (4) If the mediator has submitted a report to the court that the  
234 parties may benefit from further mediation pursuant to subdivision (3)  
235 of this subsection, not more than two days after the conclusion of the  
236 mediation, but not later than the termination of the mediation period  
237 set forth in subdivision (1) of this subsection, the mediator shall file a  
238 report with the court describing the proceedings and specifying the  
239 issues resolved, if any, and any issues not resolved pursuant to the  
240 mediation. The filing of the report shall terminate the mediation period  
241 automatically. If certain issues have not been resolved pursuant to the  
242 mediation, the mediator may refer the mortgagor to any appropriate  
243 community-based services that are available in the judicial district, but  
244 any such referral shall not cause a delay in the mediation process.

245 (5) The Chief Court Administrator shall establish policies and  
246 procedures to implement this subsection. Such policies and procedures  
247 shall, at a minimum, provide that the mediator shall advise the

248 mortgagor at the first mediation session required by subdivision (2) of  
249 this subsection that: (A) Such mediation does not suspend the  
250 mortgagor's obligation to respond to the foreclosure action; and (B) a  
251 judgment of strict foreclosure or foreclosure by sale may cause the  
252 mortgagor to lose the residential real property to foreclosure.

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

255 (7) Foreclosure mediation request forms shall not be accepted by the  
256 court under this subsection on or after July 1, 2012, and the foreclosure  
257 mediation program shall terminate when all mediation has concluded  
258 with respect to any applications submitted to the court prior to July 1,  
259 [2014] 2016.

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

267 (c) (1) For any action for the foreclosure of a mortgage on residential  
268 real property with a return date during the period from July 1, 2009, to  
269 June 30, [2014] 2016, inclusive, or for any action for the foreclosure of a  
270 mortgage on real property owned by a religious organization with a  
271 return date during the period from October 1, 2011, to June 30, [2014]  
272 2016, inclusive, the mediation period under the foreclosure mediation  
273 program established in section 49-31m shall commence when the court  
274 sends notice to each appearing party scheduling the first foreclosure  
275 mediation session. The mediation period shall conclude not later than  
276 the date sixty days after the return date for the foreclosure action,  
277 except that the court may, in its discretion, for good cause shown, (A)  
278 extend, by not more than thirty days, or shorten the mediation period  
279 on its own motion or upon motion of any party, or (B) extend by not  
280 more than thirty days the mediation period upon written request of

281 the mediator.

282 (2) The first mediation session shall be held not later than fifteen  
283 business days after the court sends notice to each appearing party in  
284 accordance with subdivision (4) of subsection (c) of section 49-311, as  
285 amended by this act. On and after October 1, 2011, the first mediation  
286 session shall be held not later than thirty-five days after the court  
287 sends notice to each appearing party in accordance with subdivision  
288 (4) of subsection (c) of this section. On and after October 1, 2011, not  
289 later than fifteen business days prior to the date of the initial mediation  
290 session, the mortgagee shall deliver to the mortgagor (A) an account  
291 history identifying all credits and debits assessed to the loan account in  
292 the immediately preceding twelve-month period, and (B) the name,  
293 business mailing address, electronic mail address, facsimile number  
294 and direct telephone number of an individual able to process requests  
295 to refinance or modify the mortgage loan at issue or otherwise take  
296 action to avoid foreclosure of the mortgage. Any updates to the  
297 information provided pursuant to subparagraph (B) of this subdivision  
298 shall be provided reasonably promptly to the mortgagor and such  
299 mortgagor's counsel. The mortgagor and mortgagee shall appear in  
300 person at each mediation session and shall have authority to agree to a  
301 proposed settlement, except that (i) if the mortgagee is represented by  
302 counsel, the mortgagee's counsel may appear in lieu of the mortgagee  
303 to represent the mortgagee's interests at the mediation, provided such  
304 counsel has the authority to agree to a proposed settlement and the  
305 mortgagee is available (I) during the mediation session by telephone,  
306 and (II) to participate in the mediation session by speakerphone,  
307 provided an opportunity is afforded for confidential discussions  
308 between the mortgagee and mortgagee's counsel, and (ii) following the  
309 initial mediation session, if there are two or more mortgagors, only one  
310 mortgagor shall appear in person at each subsequent mediation  
311 session unless good cause is shown, provided the other mortgagors are  
312 available (I) during the mediation session, and (II) to participate in the  
313 mediation session by speakerphone, provided an opportunity is  
314 afforded for confidential discussions among the mortgagors and such  
315 mortgagors' counsel. The court shall not award attorney's fees to any

316 mortgagee for time spent in any mediation session if the court finds  
317 that such mortgagee has failed to comply with this subdivision, unless  
318 the court finds reasonable cause for such failure.

319 (3) Not later than two days after the conclusion of the first  
320 mediation session, the mediator shall determine whether the parties  
321 will benefit from further mediation. The mediator shall file with the  
322 court a report setting forth such determination and mail a copy of such  
323 report to each appearing party. If the mediator reports to the court that  
324 the parties will not benefit from further mediation, the mediation  
325 period shall terminate automatically. If the mediator reports to the  
326 court after the first mediation session that the parties may benefit from  
327 further mediation, the mediation period shall continue. Either party's  
328 failure to comply with the documentation requirements of this section  
329 or section 49-311, as amended by this act, shall not be grounds for  
330 terminating the mediation period before a second mediation session is  
331 conducted.

332 (4) If the mediator has submitted a report to the court that the  
333 parties may benefit from further mediation pursuant to subdivision (3)  
334 of this subsection, not more than two days after the conclusion of the  
335 mediation, but not later than the termination of the mediation period  
336 set forth in subdivision (1) of this subsection, the mediator shall file a  
337 report with the court describing the proceedings and specifying the  
338 issues resolved, if any, and any issues not resolved pursuant to the  
339 mediation. The filing of the report shall terminate the mediation period  
340 automatically. If certain issues have not been resolved pursuant to the  
341 mediation, the mediator may refer the mortgagor to any appropriate  
342 community-based services that are available in the judicial district, but  
343 any such referral shall not cause a delay in the mediation process.

344 (5) The Chief Court Administrator shall establish policies and  
345 procedures to implement this subsection. Such policies and procedures  
346 shall, at a minimum, provide that the mediator shall advise the  
347 mortgagor at the first mediation session required by subdivision (2) of  
348 this subsection that: (A) Such mediation does not suspend the

349 mortgagor's obligation to respond to the foreclosure action beyond the  
 350 limited time frame described in subdivision (6) of subsection (c) of  
 351 section 49-31l, as amended by this act; and (B) a judgment of strict  
 352 foreclosure or foreclosure by sale may cause the mortgagor to lose the  
 353 residential real property or real property owned by a religious  
 354 organization to foreclosure.

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

357 (7) The foreclosure mediation program shall terminate when all  
 358 mediation has concluded with respect to any foreclosure action with a  
 359 return date during the period from July 1, 2009, to June 30, [2014] 2016,  
 360 inclusive.

361 (8) At any time during the mediation period, the mediator may refer  
 362 a mortgagor who is the owner-occupant of one-to-four family  
 363 residential real property to the mortgage assistance programs, except  
 364 that any such referral shall not prevent a mortgagee from proceeding  
 365 to judgment when the conditions specified in subdivision (6) of  
 366 subsection (c) of section 49-31l, as amended by this act, have been  
 367 satisfied.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2013	49-31l
Sec. 2	July 1, 2013	49-31n

**Statement of Legislative Commissioners:**

In section 1(b)(6)(B) and section 2(c)(3), "as amended by this act" was added for accuracy.

**HSG** Joint Favorable Subst. -LCO

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.

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**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 14 \$</b>	<b>FY 15 \$</b>
Judicial Dept.	BF - Cost	\$5.5 million	\$5.9 million

**Municipal Impact:** None

**Explanation**

The bill results in a cost of approximately \$5.5 million in FY 14 and \$5.9 million in FY 15 to the Banking Fund by extending the foreclosure mediation program in the Judicial Department. This includes 50 positions and programmatic funding. The program is currently scheduled to end in FY 13.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****HB 6419*****AN ACT EXTENDING THE FORECLOSURE MEDIATION PROGRAM.*****SUMMARY:**

This bill extends the judicial foreclosure mediation program by two years, until July 1, 2016. This extension applies to foreclosure actions with return dates on or after (1) July 1, 2009 for residential real property and (2) October 1, 2011 for religious organizations' real property.

EFFECTIVE DATE: July 1, 2013

**BACKGROUND*****Foreclosure Mediation Program***

The foreclosure mediation program is available to (1) religious organizations and (2) owner-occupants of one-to-four family residential real property who use the property as their primary residence. In either case, the property must be located in Connecticut, and the owner must also be the borrower under a mortgage on the property.

The mediation program brings together Judicial Branch mediators, borrowers, and lenders. Participation in the program is mandatory for all eligible foreclosure cases where the borrower has filed an appearance.

A return date is the date from which filing deadlines are calculated.

***Related Bill***

sHB 6355, favorably reported by the Banks Committee, changes the foreclosure mediation program by:

1. extending the program by two years for foreclosure return dates between July 1, 2008 and June 30, 2009;
2. identifying the program's goals;
3. specifying how mediation sessions are to be conducted;
4. adding information lenders must provide to mediators and borrowers;
5. broadening remedies available under the program; and
6. changing rules for foreclosure actions.

**COMMITTEE ACTION**

Housing Committee

Joint Favorable

Yea 12 Nay 0 (03/12/2013)