



General Assembly

Substitute Bill No. 6355

January Session, 2013



AN ACT CONCERNING HOMEOWNER PROTECTION RIGHTS.

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 Section 49-31k of the general statutes is repealed and the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, and sections 5 and 6 of this act:

5 (1) "Mortgagor" means: (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, except an heir or occupying nonowner of a property
9 encumbered by a reverse annuity mortgage, which is the primary
10 residence of such owner-occupant, or (B) a religious organization that
11 is (i) the owner of real property located in this state, and (ii) the
12 borrower under a mortgage encumbering such real property;

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

15 (3) "Mortgagee" means the [original lender or servicer under a
16 mortgage, or its successors or assigns, who is the holder of any
17 mortgage] owner or servicer of the debt secured by a mortgage on
18 residential real property or real property owned by a religious

19 organization securing a loan made primarily for personal, family,
20 religious or household purposes that is the subject of a foreclosure
21 action;

22 (4) "Authority" means the Connecticut Housing Finance Authority
23 created under section 8-244;

24 (5) "Mortgage assistance programs" means the mortgage assistance
25 programs developed and implemented by the authority in accordance
26 with sections 8-265cc to 8-265kk, inclusive, 8-265rr and 8-265ss; [and]

27 (6) "Religious organization" means an organization that meets the
28 religious purposes test of Section 501(c)(3) of the Internal Revenue
29 Code of 1986; [.]

30 (7) "Objectives of the mediation program" (A) include (i) a
31 determination as to whether or not the parties can reach an agreement
32 that will (I) avoid foreclosure by means that may include consideration
33 of any loss mitigation options available through the mortgagee, or (II)
34 expedite or facilitate the foreclosure in a manner acceptable to the
35 parties, and (ii) an expectation that all parties shall endeavor to reach
36 such determination with reasonable speed and efficiency by
37 participating in the mediation process in good faith, but (B) shall not
38 include unreasonable and unnecessary delays. A failure to participate
39 in good faith does not necessarily include acting with malice, intent to
40 injure or otherwise in bad faith; and

41 (8) "Ability to mediate" means an exhibition on the part of the
42 relevant person of a general willingness, including a general ability, to
43 participate in the mediation process in a manner consistent with the
44 objectives of the mediation program and in conformity with any
45 obligations imposed in accordance with subdivision (2) of subsection
46 (b) or (c), as applicable, of section 49-31n, as amended by this act,
47 including, but not limited to, a general willingness and general ability
48 to respond to questions and specify or estimate when particular
49 decisions will be made or particular information will be furnished,

50 along with a general familiarity with the loan file and the loss
51 mitigation options that are available to the mortgagor.

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

54 (a) Prior to July 1, 2014: (1) Any action for the foreclosure of a
55 mortgage on residential real property with a return date during the
56 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to
57 the provisions of subsection (b) of this section, and (2) any action for
58 the foreclosure of a mortgage on (A) residential real property with a
59 return date during the period from July 1, 2009, to June 30, 2014,
60 inclusive, or (B) real property owned by a religious organization with a
61 return date during the period from October 1, 2011, to June 30, 2014,
62 inclusive, shall be subject to the provisions of subsection (c) of this
63 section.

64 (b) (1) Prior to July 1, [2012] 2014, when a mortgagee commences an
65 action for the foreclosure of a mortgage on residential real property
66 with a return date during the period from July 1, 2008, to June 30, 2009,
67 inclusive, the mortgagee shall give notice to the mortgagor of the
68 foreclosure mediation program established in section 49-31m by
69 attaching to the front of the foreclosure complaint that is served on the
70 mortgagor: (A) A copy of the notice of the availability of foreclosure
71 mediation, in such form as the Chief Court Administrator prescribes,
72 and (B) a foreclosure mediation request form, in such form as the Chief
73 Court Administrator prescribes.

74 (2) Except as provided in subdivision (3) of this subsection, a
75 mortgagor may request foreclosure mediation by submitting the
76 foreclosure mediation request form to the court and filing an
77 appearance not more than fifteen days after the return date for the
78 foreclosure action. Upon receipt of the foreclosure mediation request
79 form, the court shall notify each appearing party that a foreclosure
80 mediation request form has been submitted by the mortgagor.

81 (3) The court may grant a mortgagor permission to submit a
82 foreclosure mediation request form and file an appearance after the
83 fifteen-day period established in subdivision (2) of this subsection, for
84 good cause shown. [except that no foreclosure mediation request
85 form may be submitted and no appearance may be filed more than
86 twenty-five days after the return date.]

87 (4) No foreclosure mediation request form may be submitted to the
88 court under this subsection on or after July 1, [2012] 2014.

89 (5) If at any time on or after July 1, 2008, but prior to July 1, [2012]
90 2014, the court determines that the notice requirement of subdivision
91 (1) of this subsection has not been met, the court may, upon its own
92 motion or upon the written motion of the mortgagor, issue an order
93 that no judgment may enter for fifteen days during which period the
94 mortgagor may submit a foreclosure mediation request form to the
95 court.

96 (6) Notwithstanding any provision of the general statutes or any
97 rule of law to the contrary, prior to July 1, [2012] 2014, no judgment of
98 strict foreclosure nor any judgment ordering a foreclosure sale shall be
99 entered in any action subject to the provisions of this subsection and
100 instituted by the mortgagee to foreclose a mortgage on residential real
101 property unless: (A) Notice to the mortgagor has been given by the
102 mortgagee in accordance with subdivision (1) of this subsection and
103 the time for submitting a foreclosure mediation request form has
104 expired and no foreclosure mediation request form has been
105 submitted, or if such notice has not been given, the time for submitting
106 a foreclosure mediation request form pursuant to subdivision (2) or (3)
107 of this subsection has expired and no foreclosure mediation request
108 form has been submitted, or (B) the mediation period set forth in
109 subdivision (b) of section 49-31n has expired or has otherwise
110 terminated, whichever is earlier.

111 (7) None of the mortgagor's or mortgagee's rights in the foreclosure
112 action shall be waived by the mortgagor's submission of a foreclosure

113 mediation request form to the court.

114 (c) (1) Prior to July 1, 2014, when a mortgagee commences an action
115 for the foreclosure of a mortgage on residential real property with a
116 return date on or after July 1, 2009, or, with respect to real property
117 owned by a religious organization, a return date on or after October 1,
118 2011, the mortgagee shall give notice to the mortgagor of the
119 foreclosure mediation program established in section 49-31m, as
120 amended by this act, by attaching to the front of the writ, summons
121 and complaint that is served on the mortgagor: (A) A copy of the
122 notice of foreclosure mediation, in such form as the Chief Court
123 Administrator prescribes, (B) a copy of the foreclosure mediation
124 certificate form described in subdivision (3) of this subsection, in such
125 form as the Chief Court Administrator prescribes, (C) a blank
126 appearance form, in such form as the Chief Court Administrator
127 prescribes, [and] (D) with respect to an action for the foreclosure of a
128 mortgage on residential real property with a return date on or after
129 October 1, 2011, to September 30, 2013, inclusive, a mediation
130 information form and a notice containing contact information for
131 authority-approved consumer credit counseling agencies, which form
132 and notice shall be in such form as the Chief Court Administrator
133 prescribes, [. Such mediation information form shall be] and which
134 form shall be designed to elicit current financial information and such
135 other nonfinancial information from the mortgagor as the Chief Court
136 Administrator, in consultation with representatives from the banking
137 industry and consumer advocates, determines will be useful to the
138 mediation process. The instructions to the mediation information form
139 shall explain that the completed mediation information form, along
140 with accompanying documentation reasonably requested from the
141 mortgagor by way of such instructions, shall be delivered to the
142 mortgagee's counsel not later than fifteen business days prior to the
143 date of the initial mediation session, as identified in the notice
144 provided pursuant to subdivision (2) of subsection (c) of section 49-
145 31n, as amended by this act, and (E) for an action to foreclose a
146 mortgage on residential real property with a return date on or after

147 October 1, 2013, the mediation information form shall instruct the
148 mortgagor as to the objectives of the mediation program, explain the
149 preliminary process of meeting with the mediator as described in
150 subdivision (4) of this subsection, instruct the mortgagor to begin
151 gathering financial documentation commonly used in foreclosure
152 mediation for use in meeting with the mediator and in mediation, and
153 include a notice containing contact information for authority-approved
154 consumer counseling agencies, which shall be in such form as the
155 Chief Court Administrator prescribes. The content of the mediation
156 information form shall be designed by the Chief Court Administrator
157 in consultation with representatives from the banking industry and
158 consumer advocates.

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

163 (3) The notice of foreclosure mediation shall instruct the mortgagor
164 to file the appearance and foreclosure mediation certificate forms with
165 the court not later than the date fifteen days from the return date for
166 the foreclosure action. [Such] With respect to actions with a return date
167 on or after October 1, 2011, to September 30, 2013, inclusive, such
168 notice shall remind the mortgagor to deliver the completed mediation
169 information form and the accompanying documentation described in
170 subdivision (1) of this subsection and encourage such delivery in
171 advance of the required date. The mediation information form and
172 accompanying documentation shall not, without the explicit written
173 instruction of the mortgagor, be publicly available. Such notice of
174 foreclosure mediation shall be accompanied by materials from the
175 Department of Banking, as prescribed by the Chief Court
176 Administrator, which shall describe the community-based resources
177 available to the mortgagor, including authority-approved housing
178 counseling agencies that may assist with preparation [of the mediation
179 information form] for mediation and application for mortgage

180 assistance programs. The foreclosure mediation certificate form shall
181 require the mortgagor to provide sufficient information to permit the
182 court to confirm that the defendant in the foreclosure action is a
183 mortgagor, and to certify that said mortgagor has sent a copy of the
184 mediation certificate form to the plaintiff in the action.

185 (4) Upon receipt of the mortgagor's appearance and foreclosure
186 mediation certificate forms, and provided the court confirms the
187 defendant in the foreclosure action is a mortgagor and that said
188 mortgagor has sent a copy of the mediation certificate form to the
189 plaintiff, the court shall [schedule a date for foreclosure mediation in
190 accordance with subsection (c) of section 49-31n. The court shall issue
191 notice of such mediation date to all appearing parties] assign a
192 mediator to the mortgagor and issue notice of such assignment to all
193 appearing parties. The court shall issue such notice not earlier than the
194 date five business days after the return date or by the date three
195 business days after the date on which the court receives the
196 mortgagor's appearance and foreclosure mediation certificate forms,
197 whichever is later, except that if the court does not receive the
198 appearance and foreclosure mediation certificate forms from the
199 mortgagor by the date fifteen days after the return date for the
200 foreclosure action, the court shall not [schedule such mediation.]
201 assign a mediator to the mortgagor. Promptly upon receipt of the
202 notice of assignment, but not later than the twenty-fourth day
203 following the return date, the mortgagee or its counsel shall deliver to
204 the mediator, via electronic mail (A) an account history identifying all
205 credits and debits assessed to the loan account and any related escrow
206 account in the immediately preceding twelve-month period and an
207 itemized statement of the amount required to reinstate the mortgage
208 loan in accordance with section 49-10a, with accompanying
209 information, written in plain language, to explain any codes used in
210 the history and statement which are not otherwise self-explanatory, (B)
211 the name, business mailing address, electronic mail address, facsimile
212 number and direct telephone number of an individual able to respond
213 with reasonable adequacy and promptness to questions relative to the

214 information submitted to the mediator pursuant to this subdivision,
215 and any subsequent updates to such contact information, which shall
216 be provided reasonably promptly to the mediator, (C) all reasonably
217 necessary forms and a list of all documentation reasonably necessary
218 for the mortgagee to evaluate the mortgagor for common alternatives
219 to foreclosure that are available through the mortgagee, if any, (D) a
220 copy of the note and mortgage, (E) information regarding the status of
221 any pending foreclosure avoidance efforts being undertaken by the
222 mortgagee, (F) a copy of any loss mitigation affidavit filed with the
223 court, and (G) at the mortgagee's option, (i) the history of foreclosure
224 avoidance efforts with respect to the mortgagor, (ii) information
225 regarding the condition of mortgaged property, and (iii) such other
226 information as the mortgagee may determine is relevant to meeting the
227 objectives of the mediation program. Following the mediator's receipt
228 of such information, the court shall schedule a meeting with the
229 mediator and the mortgagor and shall endeavor to schedule such
230 meeting on or prior to the thirty-eighth day following the return date.
231 The notice of such meeting shall include the forms and account history
232 supplied by the mortgagee and instruct the mortgagor to complete the
233 forms prior to the meeting and furnish the documentation contained in
234 the list at the meeting. At such meeting, the mediator shall review such
235 forms and documentation with the mortgagor, along with the
236 information supplied by the mortgagee, in order to discuss the options
237 available to the mortgagor and assist the mortgagor in completing the
238 forms and furnishing the documentation necessary for the mortgagee
239 to evaluate the mortgagor for alternatives to foreclosure. The mediator
240 may elect to schedule subsequent meetings with the mortgagor and
241 determine whether any mortgagor may be excused from an in-person
242 appearance at such subsequent meeting. On or prior to the seventy-
243 third day following the return date, the mediator shall facilitate the
244 delivery of the forms and documentation to the mortgagee's counsel
245 via facsimile or electronic mail and, at the mortgagee's election,
246 directly to the mortgagee per the mortgagee's instruction, and
247 determine, based on the mortgagor's attendance at the meetings and
248 the extent the mortgagor completed the forms and furnished the

249 documentation contemplated in this subdivision, or failed to perform
250 such tasks through no fault of the mortgagee, and file a report with the
251 court indicating, (I) whether mediation shall be scheduled with the
252 mortgagee, (II) whether the mortgagor attended scheduled meetings
253 with the mediator, (III) whether the mortgagor fully or substantially
254 completed the forms and furnished the documentation requested by
255 the mortgagee, (IV) the date on which the mortgagee supplied the
256 forms and documentation to the mediator, and (V) any other
257 information the mediator determines to be relevant to the objectives of
258 the mediation program. No meeting or communication between the
259 mediator and mortgagor under this subdivision shall be treated as an
260 impermissible ex parte communication. If the mediator determines
261 that the mortgagee shall participate in mediation, the court shall
262 promptly issue notice to all parties of such determination and schedule
263 a mediation session between the mortgagee and mortgagor in
264 accordance with subsection (c) of section 49-31n, as amended by this
265 act, to be held not later than five weeks following the final meeting
266 between the mediator and the mortgagor. If the mediator determines
267 that no sessions between the mortgagee and mortgagor shall be
268 scheduled, the court shall promptly issue notice to all parties regarding
269 such determination and mediation shall be terminated. Any mortgagor
270 wishing to contest such determination shall petition the court and
271 show good cause for reinclusion in the mediation program, including,
272 but not limited to, a material change in financial circumstances or a
273 misapprehension of facts by the mediator.

274 (5) Notwithstanding the provisions of this subsection, the court may
275 refer a foreclosure action brought by a mortgagee to the foreclosure
276 mediation program at any time, for good cause shown, provided the
277 mortgagor has filed an appearance in said action and further provided
278 the court shall, not later than the date three business days after the date
279 on which it makes such referral, send a notice to each appearing party
280 [scheduling the first foreclosure mediation session for a date not later
281 than the date thirty-five days from the date of such referral] assigning
282 a mediator and requiring the parties to participate in the premediation

283 process described in subdivision (4) of this subsection, with the court
284 establishing deadlines to ensure that the premediation process is to be
285 completed by the parties as expeditiously as the circumstances warrant
286 and permit. When determining whether good cause exists, the court
287 shall consider whether the parties are likely to benefit from mediation
288 and, in the case of a referral after prior attempts at mediation have
289 been terminated, whether there has been a material change in
290 circumstances.

291 (6) Notwithstanding any provision of the general statutes or any
292 rule of law, prior to July 1, 2014, (A) for the period of time which shall
293 not exceed eight months from the return date, the mortgagor shall be
294 permitted to file an answer, special defenses or counterclaims, but no
295 mortgagee or mortgagor shall make any motion, request or demand
296 with respect to the other, except those motions, requests or demands
297 that relate to the mediation program described in section 49-31m, as
298 amended by this act, and the mediation sessions held pursuant to such
299 program, provided (i) a mortgagor seeking to contest the court's
300 jurisdiction may file a motion to dismiss and the mortgagee may object
301 to such motion to dismiss in accordance with applicable law and the
302 rules of the courts, and (ii) if the mortgagor elects to make any other
303 motion, request or demand with respect to the mortgagee, the eight-
304 month limit shall no longer apply to either party; and (B) no judgment
305 of strict foreclosure nor any judgment ordering a foreclosure sale shall
306 be entered in any action subject to the provisions of this subsection and
307 instituted by the mortgagee to foreclose a mortgage on residential real
308 property or real property owned by a religious organization unless: (i)
309 The mediation period set forth in subsection (c) of section 49-31n, as
310 amended by this act, has expired or has otherwise terminated,
311 whichever is earlier, and, if fewer than eight months has elapsed from
312 the return date at the time of termination, fifteen days have elapsed
313 since such termination, or (ii) the mediation program is not otherwise
314 required or available. Nothing in this subdivision shall affect any
315 motion made or any default or judgment entered on or before June 30,
316 2011.

317 (7) With respect to foreclosure actions with a return date on or after
318 July 1, 2011, to June 30, 2014, inclusive, notwithstanding any provision
319 of the general statutes or any rule of law to the contrary, the mortgagee
320 shall be permitted [, on or before July 1, 2014, and] following the eight-
321 month or fifteen-day period described in subdivision (6) of this
322 subsection, to simultaneously file, as applicable, (A) a motion for
323 default, and (B) a motion for judgment of strict foreclosure or a motion
324 for judgment of foreclosure by sale with respect to the mortgagor in
325 the foreclosure action.

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

329 Sec. 3. Section 49-31m of the general statutes is repealed and the
330 following is substituted in lieu thereof (*Effective from passage*):

331 The Chief Court Administrator shall establish in each judicial
332 district a foreclosure mediation program in actions to foreclose
333 mortgages on residential real property or real property owned by a
334 religious organization. Such foreclosure mediation shall (1) address all
335 issues of foreclosure, including, but not limited to, reinstatement of the
336 mortgage, disposition of the property through means other than the
337 foreclosure process, including short sales and deeds in lieu of
338 foreclosure, assignment of law days, assignment of sale date,
339 restructuring of the mortgage debt and foreclosure by decree of sale,
340 and (2) be conducted by foreclosure mediators who (A) have a duty to
341 be unbiased and are employed by the Judicial Branch, (B) are trained
342 in mediation and all relevant aspects of the law, as determined by the
343 Chief Court Administrator, (C) have knowledge of the community-
344 based resources that are available in the judicial district in which they
345 serve, and (D) have knowledge of the mortgage assistance programs.
346 Such mediators may refer mortgagors who participate in the
347 foreclosure mediation program to community-based resources when
348 appropriate and to the mortgage assistance programs. Such mediators
349 shall not give legal advice to any party in mediation.

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

352 (a) Prior to July 1, 2014: (1) Any action for the foreclosure of a
353 mortgage on residential real property with a return date during the
354 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to
355 the provisions of subsection (b) of this section, and (2) any action for
356 the foreclosure of a mortgage on (A) residential real property with a
357 return date during the period from July 1, 2009, to June 30, 2014,
358 inclusive, or (B) real property owned by a religious organization with a
359 return date during the period from October 1, 2011, to June 30, 2014,
360 inclusive, shall be subject to the provisions of subsection (c) of this
361 section.

362 (b) (1) For any action for the foreclosure of a mortgage on residential
363 real property with a return date during the period from July 1, 2008, to
364 June 30, 2009, inclusive, the mediation period under the foreclosure
365 mediation program established in section 49-31m, as amended by this
366 act, shall commence when the court sends notice to each appearing
367 party that a foreclosure mediation request form has been submitted by
368 a mortgagor to the court, which notice shall be sent not later than three
369 business days after the court receives a completed foreclosure
370 mediation request form. The mediation period shall conclude not
371 [more than sixty days after the return date for the foreclosure action]
372 later than the conclusion of the third mediation session between the
373 mortgagor and mortgagee, except that the court may, in its discretion,
374 for good cause shown, (A) extend [, by not more than thirty days,] or
375 shorten the mediation period on its own motion or upon motion of any
376 party, or (B) extend [by not more than thirty days] the mediation
377 period upon written request of the mediator. If the court enters an
378 order extending the mediation period beyond six months after the
379 return date, the court shall set forth its rationale for entering such
380 order in such order. In entering such order, the court may rely on the
381 findings and reports submitted by the mediator and any supplemental
382 report submitted by a party.

383 (2) The first mediation session shall be held not later than fifteen
384 business days after the court sends notice to all parties that a
385 foreclosure mediation request form has been submitted to the court.
386 The mortgagor and mortgagee shall appear in person at each
387 mediation session and shall have [authority to agree to a proposed
388 settlement] the ability to mediate, except that (A) if [the mortgagee] a
389 party is represented by counsel, the [mortgagee's] party's counsel may
390 appear in lieu of the [mortgagee] party to represent the [mortgagee's]
391 party's interests at the mediation, provided [such counsel has the
392 authority to agree to a proposed settlement] the party has the ability to
393 mediate, the mortgagor attends the first mediation session in person,
394 and the [mortgagee] party is available (i) during the mediation session
395 by telephone, and (ii) to participate in the mediation session by
396 speakerphone, provided an opportunity is afforded for confidential
397 discussions between the [mortgagee and mortgagee's] party and
398 party's counsel, [and] (B) following the initial mediation session, if
399 there are two or more mortgagors, only one mortgagor shall be
400 required to appear in person at each subsequent mediation session
401 unless good cause is shown, provided the other mortgagors are
402 available (i) during the mediation session, and (ii) to participate in the
403 mediation session by speakerphone, [provided an opportunity is
404 afforded for confidential discussions among the mortgagors and such
405 mortgagors' counsel. The] and (C) if a party suffers from a disability or
406 other significant hardship that imposes an undue burden on such
407 party to appear in person, the mediator may grant permission to such
408 party to participate in the mediation session by telephone. A
409 mortgagor's spouse, who is not a mortgagor but who lives in the
410 subject property, may appear at each mediation session, provided all
411 appearing mortgagors consent to such spouse's appearance or such
412 spouse shows good cause for his or her appearance and the
413 mortgagors consent to the disclosure of nonpublic personal
414 information to such spouse. If the mortgagor has submitted a complete
415 package of financial documentation in connection with a request for a
416 particular foreclosure alternative, the mortgagee shall have thirty-five
417 days from the receipt of the completed package to respond with a

418 decision and, if the decision is a denial of the request, provide the
419 reasons for such denial. If the mortgagor has, in connection with a
420 request for a foreclosure alternative, submitted a financial package that
421 is not complete, or if the mortgagee's evaluation of a complete package
422 reveals that additional information is necessary to underwrite the
423 request, the mortgagee shall request the missing or additional
424 information within a reasonable period of time. If the mortgagee's
425 evaluation of a complete package reveals that additional information is
426 necessary to underwrite the request, the thirty-five-day deadline for a
427 response shall be extended but only for so long as is reasonable given
428 the timing of the mortgagor's submission of such additional
429 information and the nature and context of the required underwriting.
430 Following each mediation session, the mediator shall file with the
431 court a report indicating, to the extent applicable, (i) the extent to
432 which each of the parties complied with the requirements set forth in
433 this subdivision, including the requirement to engage in conduct that
434 is consistent with the objectives of the mediation program, (ii) whether
435 the mortgagor submitted a complete package of financial
436 documentation to the mortgagee, (iii) a general description of the
437 foreclosure alternative being requested by the mortgagor, (iv) whether
438 the mortgagor has previously been evaluated for similar requests,
439 whether prior to mediation or in mediation, and, if so, whether there
440 has been any apparent change in circumstances since a decision was
441 made with respect to that prior evaluation, (v) whether the mortgagee
442 has responded to the mortgagor's request for a foreclosure alternative
443 and, if so, a description of the response and the apparent
444 reasonableness of such response, (vi) whether the mortgagor has
445 responded to an offer made by the mortgagee on a reasonably timely
446 basis, and if so, an explanation of the response, (vii) whether the
447 mortgagee has requested additional information from the mortgagor
448 and, if so, the stated reasons for the request and the date by which
449 such additional information shall be submitted so that information
450 previously submitted by the mortgagor may still be used by the
451 mortgagee in conducting its review, (viii) whether the mortgagor has
452 supplied, on a reasonably timely basis, any additional information that

453 was reasonably requested by the mortgagee, and, if not, the stated
454 reason for not doing so, (ix) if information provided by the mortgagor
455 is no longer current for purposes of evaluating a foreclosure
456 alternative, a description of the out-of-date information and an
457 explanation as to how and why such information is no longer current,
458 (x) whether the mortgagee has provided a reasonable explanation of
459 the basis for a decision to deny a request for a loss mitigation option or
460 foreclosure alternative and whether the mediator is aware of any
461 material reason not to agree with that decision, (xi) whether the
462 mortgagee has complied with the timeframes set forth in this
463 subdivision for responding to requests for decisions, and (xii) if a
464 subsequent mediation session is expected to occur, a general
465 description of the expectations for such subsequent session and, if not
466 otherwise addressed in the report, whether the parties satisfied the
467 expectations set forth in previous reports. Such report shall be filed
468 with the court not later than the third business day following the
469 mediation session, and a copy shall be emailed to the parties to
470 mediation when it is filed. The parties shall have the opportunity to
471 submit their own supplemental information following the filing of the
472 report, provided such supplemental information shall be submitted
473 not later than five business days following the mediation session. Any
474 request by the mortgagee to the mortgagor for additional or updated
475 financial documentation shall be made in writing. The court may
476 impose sanctions on any party or on counsel to a party if such party or
477 such counsel engages in intentional or multiple instances of conduct
478 during the mediation process that is contrary to the objectives of the
479 mediation program. Any sanction that is imposed shall be
480 proportional to the conduct and consistent with the objectives of the
481 mediation program. Available sanctions shall include, but not be
482 limited to, terminating mediation, ordering the mortgagor or
483 mortgagee to mediate in person, forbidding the mortgagee from
484 charging the mortgagor for the mortgagee's attorney's fees, awarding
485 attorney's fees, imposing fines payable to the court or aggrieved party,
486 and, in egregious situations, barring interest accrual with regard to the
487 underlying loan. The court shall not award attorney's fees to any

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

491 (3) Not later than two days after the conclusion of [the first] each
492 mediation session, the mediator shall determine whether the parties
493 will benefit from further mediation. The mediator shall file with the
494 court a report setting forth such determination and mail a copy of such
495 report to each appearing party. If the mediator reports to the court that
496 the parties will not benefit from further mediation, the mediation
497 period shall terminate automatically. If the mediator reports to the
498 court after the first or second mediation session that the parties may
499 benefit from further mediation, the mediation period shall continue.

500 (4) If the mediator has submitted a report to the court that the
501 parties may benefit from further mediation pursuant to subdivision (3)
502 of this subsection, not more than two days after the conclusion of the
503 mediation, but not later than the termination of the mediation period
504 set forth in subdivision (1) of this subsection, the mediator shall file a
505 report with the court describing the proceedings and specifying the
506 issues resolved, if any, and any issues not resolved pursuant to the
507 mediation. The filing of the report shall terminate the mediation period
508 automatically. If certain issues have not been resolved pursuant to the
509 mediation, the mediator may refer the mortgagor to any appropriate
510 community-based services that are available in the judicial district, but
511 any such referral shall not cause a delay in the mediation process.

512 (5) The Chief Court Administrator shall establish policies and
513 procedures to implement this subsection. Such policies and procedures
514 shall, at a minimum, provide that the mediator shall advise the
515 mortgagor at the first [mediation session] meeting required by
516 [subdivision (2) of this subsection] subdivision (4) of subsection (c) of
517 section 49-31l, as amended by this act, that [:(A) Such mediation does
518 not suspend the mortgagor's obligation to respond to the foreclosure
519 action; and (B)] a judgment of strict foreclosure or foreclosure by sale
520 may cause the mortgagor to lose the residential real property to

521 foreclosure.

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

524 (7) Foreclosure mediation request forms shall not be accepted by the
525 court under this subsection on or after July 1, [2012] 2014, and the
526 foreclosure mediation program shall terminate when all mediation has
527 concluded with respect to any applications submitted to the court prior
528 to July 1, 2014.

529 (8) At any time during the mediation period, the mediator may refer
530 a mortgagor who is the owner-occupant of one-to-four family
531 residential real property to the mortgage assistance programs, except
532 that any such referral shall not prevent a mortgagee from proceeding
533 to judgment when the conditions specified in subdivision (6) of
534 subsection (b) of section 49-311, as amended by this act, have been
535 satisfied.

536 (9) If the third mediation session concludes without resolution of the
537 action and with a request for a subsequent mediation session, the court
538 shall conduct a hearing following such third mediation session and
539 each subsequent mediation session as to the status of the case and the
540 reasons for which a resolution has not yet been achieved, except no
541 such hearing shall be held if, through a motion by a mediator or a
542 party to the mediation, good cause is shown for postponing such
543 hearing until the conclusion of the subsequent mediation session. For
544 purposes of this subdivision, mediation sessions which were continued
545 with the consent of the mortgagor and mortgagee shall be counted as a
546 mediation session, provided the first such continued session shall not
547 count as a separate mediation session.

548 (10) For any case pending as of October 1, 2013, in which mediation
549 is ongoing, (A) if three or fewer sessions have been held, such case
550 shall be treated as if no sessions have been held as of said date for
551 purposes of subdivision (9) of this subsection, and (B) if four or more

552 sessions have been held, then a hearing may be held under subdivision
553 (9) of this subsection after either the first or second sessions which
554 occur on or after October 1, 2013, following the granting of a motion
555 made by the mediator or a party, and, after the third session occurring
556 after October 1, 2013, a hearing shall be conducted in accordance with
557 subdivision (9) of this subsection.

558 (c) (1) For any action for the foreclosure of a mortgage on residential
559 real property with a return date during the period from July 1, 2009, to
560 June 30, 2014, inclusive, or for any action for the foreclosure of a
561 mortgage on real property owned by a religious organization with a
562 return date during the period from October 1, 2011, to June 30, 2014,
563 inclusive, the mediation period under the foreclosure mediation
564 program established in section 49-31m, as amended by this act, shall
565 commence when the court sends notice to each appearing party
566 scheduling the first foreclosure mediation session. The mediation
567 period shall conclude [not later than the date sixty days after the return
568 date for the foreclosure action] not later than the conclusion of the
569 third mediation session between the mortgagor and mortgagee, except
570 that the court may, in its discretion, for good cause shown, (A) extend
571 [by not more than thirty days,] or shorten the mediation period on its
572 own motion or upon motion of any party, or (B) extend [by not more
573 than thirty days] the mediation period upon written request of the
574 mediator. If the court enters an order extending the mediation period
575 beyond six months after the return date, the court shall set forth its
576 rationale for entering such order in such order. In entering such order,
577 the court may rely on the findings and reports submitted by the
578 mediator and any supplemental report submitted by a party.

579 (2) [The first mediation session shall be held not later than fifteen
580 business days after the court sends notice to each appearing party in
581 accordance with subdivision (4) of subsection (c) of section 49-31l. On
582 and after October 1, 2011, the first mediation session shall be held not
583 later than thirty-five days after the court sends notice to each
584 appearing party in accordance with subdivision (4) of subsection (c) of

585 this section. On and after October 1, 2011, not later than fifteen
586 business days prior to the date of the initial mediation session, the
587 mortgagee shall deliver to the mortgagor (A) an account history
588 identifying all credits and debits assessed to the loan account in the
589 immediately preceding twelve-month period, and (B) the name,
590 business mailing address, electronic mail address, facsimile number
591 and direct telephone number of an individual able to process requests
592 to refinance or modify the mortgage loan at issue or otherwise take
593 action to avoid foreclosure of the mortgage. Any updates to the
594 information provided pursuant to subparagraph (B) of this subdivision
595 shall be provided reasonably promptly to the mortgagor and such
596 mortgagor's counsel.] The mortgagor and mortgagee shall appear in
597 person at each mediation session and shall have [authority to agree to
598 a proposed settlement] the ability to mediate, except that [(i) (A) if
599 [the mortgagee] a party is represented by counsel, the [mortgagee's]
600 party's counsel may appear in lieu of the [mortgagee] party to
601 represent the [mortgagee's] party's interests at the mediation, provided
602 [such counsel has the authority to agree to a proposed settlement] the
603 party has the ability to mediate, the mortgagor attends the first
604 mediation session in person and the [mortgagee] party is available [(I)
605 (i) during the mediation session by telephone, and [(II) (ii) to
606 participate in the mediation session by speakerphone, provided an
607 opportunity is afforded for confidential discussions between the
608 [mortgagee] party and [mortgagee's] party's counsel, [and (ii) (B)
609 following the initial mediation session, if there are two or more
610 mortgagors who are self-represented, only one mortgagor shall be
611 required to appear in person at each subsequent mediation session
612 unless good cause is shown, provided the other mortgagors are
613 available [(I) (i) during the mediation session, and [(II) (ii) to
614 participate in the mediation session by speakerphone, [provided an
615 opportunity is afforded for confidential discussions among the
616 mortgagors and such mortgagors' counsel. The] and (C) if a party
617 suffers from a disability or other significant hardship that imposes an
618 undue burden on such party to appear in person, the mediator may
619 grant permission to such party to participate in the mediation session

620 by telephone. A mortgagor's spouse, who is not a mortgagor but who
621 lives in the subject property, may appear at each mediation session,
622 provided all appearing mortgagors consent to such spouse's
623 appearance or such spouse shows good cause for his or her appearance
624 and the mortgagors consent to the disclosure of nonpublic personal
625 information to such spouse. If the mortgagor has submitted a complete
626 package of financial documentation in connection with a request for a
627 particular foreclosure alternative, the mortgagee shall have thirty-five
628 days from the receipt of the completed package to respond with a
629 decision and, if the decision is a denial of the request, provide the
630 reasons for such denial. If the mortgagor has, in connection with a
631 request for a foreclosure alternative, submitted a financial package that
632 is not complete, or if the mortgagee's evaluation of a complete package
633 reveals that additional information is necessary to underwrite the
634 request, the mortgagee shall request the missing or additional
635 information within a reasonable period of time. If the mortgagee's
636 evaluation of a complete package reveals that additional information is
637 necessary to underwrite the request, the thirty-five-day deadline for a
638 response shall be extended but only for so long as is reasonable given
639 the timing of the mortgagor's submission of such additional
640 information and the nature and context of the required underwriting.
641 Following each mediation session, the mediator shall file with the
642 court a report indicating, to the extent applicable, (i) the extent to
643 which each of the parties complied with the requirements set forth in
644 this subdivision, including the requirement to engage in conduct that
645 is consistent with the objectives of the mediation program, (ii) whether
646 the mortgagor submitted a complete package of financial
647 documentation to the mortgagee, (iii) a general description of the
648 foreclosure alternative being requested by the mortgagor, (iv) whether
649 the mortgagor has previously been evaluated for similar requests,
650 whether prior to mediation or in mediation, and, if so, whether there
651 has been any apparent change in circumstances since a decision was
652 made with respect to that prior evaluation, (v) whether the mortgagee
653 has responded to the mortgagor's request for a foreclosure alternative
654 and, if so, a description of the response and the apparent

655 reasonableness of such response, (vi) whether the mortgagor has
656 responded to an offer made by the mortgagee on a reasonably timely
657 basis, and if so, an explanation of the response, (vii) whether the
658 mortgagee has requested additional information from the mortgagor
659 and, if so, the stated reasons for the request and the date by which
660 such additional information shall be submitted so that information
661 previously submitted by the mortgagor may still be used by the
662 mortgagee in conducting its review, (viii) whether the mortgagor has
663 supplied, on a reasonably timely basis, any additional information that
664 was reasonably requested by the mortgagee, and, if not, the stated
665 reason for not doing so, (ix) if information provided by the mortgagor
666 is no longer current for purposes of evaluating a foreclosure
667 alternative, a description of the out-of-date information and an
668 explanation as to how and why such information is no longer current,
669 (x) whether the mortgagee has provided a reasonable explanation of
670 the basis for a decision to deny a request for a loss mitigation option or
671 foreclosure alternative and whether the mediator is aware of any
672 material reason not to agree with that decision, (xi) whether the
673 mortgagee has complied with the timeframes set forth in this
674 subdivision for responding to requests for decisions, and (xii) if a
675 subsequent mediation session is expected to occur, a general
676 description of the expectations for such subsequent session and, if not
677 otherwise addressed in the report, whether the parties satisfied the
678 expectations set forth in previous reports. Such report shall be filed
679 with the court not later than the third business day following the
680 mediation session, and a copy shall be emailed to the parties to
681 mediation when it is filed. The parties shall have the opportunity to
682 submit their own supplemental information following the filing of the
683 report, provided such supplemental information shall be submitted
684 not later than five business days following the mediation session. Any
685 request by the mortgagee to the mortgagor for additional or updated
686 financial documentation shall be made in writing. The court may
687 impose sanctions on any party or on counsel to a party if such party or
688 such counsel engages in intentional or multiple instances of conduct
689 during the mediation process that is contrary to the objectives of the

690 mediation program. Any sanction that is imposed shall be
691 proportional to the conduct and consistent with the objectives of the
692 mediation program. Available sanctions shall include, but not be
693 limited to, terminating mediation, ordering the mortgagor or
694 mortgagee to mediate in person, forbidding the mortgagee from
695 charging the mortgagor for the mortgagee's attorney's fees, awarding
696 attorney's fees, imposing fines payable to the court or aggrieved party,
697 and, in egregious situations, barring interest accrual with regard to the
698 underlying loan. The court shall not award attorney's fees to any
699 mortgagee for time spent in any mediation session if the court finds
700 that such mortgagee has failed to comply with this subdivision, unless
701 the court finds reasonable cause for such failure.

702 (3) Not later than two days after the conclusion of [the first] each
703 mediation session, the mediator shall determine whether the parties
704 will benefit from further mediation. The mediator shall file with the
705 court a report setting forth such determination and mail a copy of such
706 report to each appearing party. If the mediator reports to the court that
707 the parties will not benefit from further mediation, the mediation
708 period shall terminate automatically. If the mediator reports to the
709 court after the first or second mediation session that the parties may
710 benefit from further mediation, the mediation period shall continue.
711 [Either party's failure to comply with the documentation requirements
712 of this section or section 49-31l shall not be grounds for terminating the
713 mediation period before a second mediation session is conducted.]

714 (4) If the mediator has submitted a report to the court that the
715 parties may benefit from further mediation pursuant to subdivision (3)
716 of this subsection, not more than two days after the conclusion of the
717 mediation, but not later than the termination of the mediation period
718 set forth in subdivision (1) of this subsection, the mediator shall file a
719 report with the court describing the proceedings and specifying the
720 issues resolved, if any, and any issues not resolved pursuant to the
721 mediation. The filing of the report shall terminate the mediation period
722 automatically. If certain issues have not been resolved pursuant to the

723 mediation, the mediator may refer the mortgagor to any appropriate
724 community-based services that are available in the judicial district, but
725 any such referral shall not cause a delay in the mediation process.

726 (5) The Chief Court Administrator shall establish policies and
727 procedures to implement this subsection. Such policies and procedures
728 shall, at a minimum, provide that the mediator shall advise the
729 mortgagor at the first [mediation session] meeting required by
730 [subdivision (2) of this subsection] subdivision (4) of subsection (c) of
731 section 49-31l, as amended by this act, that: (A) Such mediation does
732 not suspend the mortgagor's obligation to respond to the foreclosure
733 action beyond the limited time frame described in subdivision (6) of
734 subsection (c) of section 49-31l; and (B) a judgment of strict foreclosure
735 or foreclosure by sale may cause the mortgagor to lose the residential
736 real property or real property owned by a religious organization to
737 foreclosure.

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

740 (7) The foreclosure mediation program shall terminate when all
741 mediation has concluded with respect to any foreclosure action with a
742 return date during the period from July 1, 2009, to June 30, 2014,
743 inclusive.

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

751 (9) If the third mediation session concludes without resolution of the
752 action and with a request for a subsequent mediation session, the court
753 shall conduct a hearing following such third mediation session and

754 each subsequent mediation session as to the status of the case and the
755 reasons for which a resolution has not yet been achieved, except no
756 such hearing shall be held if, through a motion by a mediator or a
757 party to the mediation, good cause is shown for postponing such
758 hearing until the conclusion of the subsequent mediation session. For
759 purposes of this subdivision, mediation sessions which were continued
760 with the consent of the mortgagor and mortgagee shall be counted as a
761 mediation session, provided the first such continued session shall not
762 count as a separate mediation session.

763 (10) For any case pending as of October 1, 2013, in which mediation
764 is ongoing, (A) if three or fewer sessions have been held, such case
765 shall be treated as if no sessions have been held as of said date for
766 purposes of subdivision (9) of this subsection, and (B) if four or more
767 sessions have been held, then a hearing may be held under subdivision
768 (9) of this subsection after either the first or second sessions which
769 occur on or after October 1, 2013, following a grant of a motion by the
770 mediator or a party, and, after the third session occurring after October
771 1, 2013, a hearing shall be conducted in accordance with subdivision
772 (9) of this subsection.

773 Sec. 5. (NEW) (*Effective from passage*) (a) In a foreclosure action, the
774 mortgagee may, notwithstanding any other law or rule to the contrary,
775 file a motion for judgment of foreclosure simultaneously with a motion
776 for default for failure to appear, if such mortgagee proves, by clear and
777 convincing evidence and the use of a proper affidavit, that the real
778 property that is the subject of the foreclosure action is not occupied by
779 a mortgagor, tenant or other occupant and not less than three of the
780 following conditions exist:

781 (1) Statements of neighbors, delivery persons or government
782 employees indicating that the property is vacant and abandoned;

783 (2) Windows or entrances to the property that are boarded up or
784 closed off or multiple window panes that are damaged, broken or
785 unrepaired;

786 (3) Doors to the property are smashed through, broken off,
787 unhinged or continuously unlocked;

788 (4) Risk to the health, safety or welfare of the public or any
789 adjoining or adjacent property owners that exists due to acts of
790 vandalism, loitering, criminal conduct or the physical destruction of
791 the property;

792 (5) An order by municipal authorities declaring the property to be
793 unfit for occupancy and to remain vacant and unoccupied;

794 (6) The mortgagee secured or winterized the property due to the
795 property being deemed vacant and unprotected or in danger of
796 freezing; or

797 (7) A written statement issued by any mortgagor or tenant
798 expressing the clear intent of all occupants to abandon the property.

799 (b) A foreclosure action shall not proceed under the expedited
800 procedures contemplated under subsection (a) of this section if there is
801 on the property (1) an unoccupied building undergoing construction,
802 renovation or rehabilitation that is (A) proceeding diligently toward
803 completion, and (B) in compliance with all applicable ordinances,
804 codes, regulations and statutes, (2) a secure building occupied on a
805 seasonal basis, or (3) a secure building that is the subject of a probate
806 action to quiet title or other ownership dispute.

807 Sec. 6. (NEW) (*Effective from passage*) In a foreclosure action, a
808 mortgagor, as defined in subdivision (1) of section 49-31k of the
809 general statutes, as amended by this act, shall be permitted to plead
810 special defenses or counterclaims arising out of facts that occurred
811 after the making of the note or mortgage or after any alleged default
812 on such note or mortgage, irrespective of whether such pleading
813 relates to the making, validity or enforcement of the subject note and
814 mortgage, provided such pleading shall (1) relate to facts that entirely
815 or primarily precede the commencement of the foreclosure action, (2)
816 arise out of the relationship between the mortgagor and the

817 mortgagee, as defined in said section, or its servicer, (3) constitute a
818 valid special defense or counterclaim in law or equity, and (4) contain
819 facts alleged with particularity, and, should the court so require,
820 documented to the extent practicable. No mortgagor may file any
821 motion, request or demand with respect to such a pleading for so long
822 as mediation is pending unless the mortgagee first files a motion,
823 request or demand with respect to such pleading. A court may strike
824 any such special defense or counterclaim upon a finding that such
825 pleading was interposed for the primary purpose of improperly
826 delaying the prosecution of the foreclosure action.

827 Sec. 7. Subsection (g) of section 49-10 of the general statutes is
828 repealed and the following is substituted in lieu thereof (*Effective from*
829 *passage*):

830 (g) Any assignor of mortgage debt shall report biannually to the
831 town clerk of the municipality where the property is located regarding
832 every mortgage assignment involving property located in this state. If
833 such an assignment is not recorded in the municipal land records, the
834 assignor shall pay to the State Treasurer for each such assignment a fee
835 of fifty-three dollars. Thirty-six dollars of such fee shall be deposited
836 into the General Fund and credited to the community investment
837 account established pursuant to section 4-66aa. Two dollars of such fee
838 shall be deposited into the General Fund and credited to the historic
839 documents preservation account established under section 11-8i. The
840 State Treasurer shall remit fifteen dollars of such fee to the
841 municipality in which the property is located, eleven dollars of which
842 shall become part of the general revenue of such municipality and four
843 dollars of which shall be used by the municipality for the preservation
844 of historic documents and deposit into the town clerk fund. The report
845 shall contain (1) the name, address, telephone number and electronic
846 mail address of the assignor; (2) a list containing the street address and
847 municipality in which security for such assigned mortgage debt exists;
848 and (3) the date of execution of such assignment. Any person who
849 violates any provision of this subsection shall be subject to a civil

850 penalty of one hundred dollars for each day of such violation. Each
851 failure to report any single assignment shall constitute an independent
852 violation. The Attorney General may institute a civil action in Superior
853 Court to collect such penalty, which shall be payable to the state.
854 Recordation of an assignment of mortgage debt is not sufficient notice
855 of the assignment to the party obliged to pay for purposes of
856 subsection (d) or (e) of this section.

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>from passage</i>	49-31m
Sec. 4	<i>from passage</i>	49-31n
Sec. 5	<i>from passage</i>	New section
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>from passage</i>	49-10(g)

- BA** *Joint Favorable Subst.*
- JUD** *Joint Favorable*
- PD** *Joint Favorable*