



Substitute House Bill No. 5514

Public Act No. 14-84

AN ACT CONCERNING AN OPTIONAL METHOD OF FORECLOSURE.

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

Section 1. Section 49-24 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

All liens and mortgages affecting real property may, on the written motion of any party to any suit relating thereto, be foreclosed (1) by a decree of sale instead of a strict foreclosure at the discretion of the court before which the foreclosure proceedings are pending, or (2) with respect to mortgages, as defined in section 2 of this act, that are a first mortgage against the property, by a judgment of foreclosure by market sale upon the written motion of the mortgagee, as defined in section 2 of this act, and with consent of the mortgagor, as defined in section 2 of this act, in accordance with sections 2 to 8, inclusive, of this act, sections 49-26 to 49-28, inclusive, as amended by this act, and section 12 of this act.

Sec. 2. (NEW) (*Effective October 1, 2014*) For purposes of a foreclosure by market sale in accordance with this section, sections 3 to 8, inclusive, of this act, and section 12 of this act:

(1) "Mortgage" means a mortgage deed, deed of trust or other

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equivalent consensual security interest on residential real property securing a loan made primarily for personal, family or household purposes that is first in priority over any other mortgages or liens encumbering the residential real property, except those liens that are given priority over a mortgage pursuant to state or federal law;

(2) "Mortgagee" means the owner or servicer of the debt secured by a mortgage;

(3) "Mortgagor" means the owner-occupant of residential real property located in this state who is also the borrower under the loan that is secured by a mortgage, other than a reverse annuity mortgage, encumbering such residential real property that is the primary residence of such owner-occupant, where the amount due on such mortgage loan, including accrued interest, late charges and other amounts secured by the mortgage, when added to amounts for which there is a prior lien by operation of law, exceeds the appraised value of the property; and

(4) "Residential real property" means a one-to-four-family dwelling occupied as a residence by a mortgagor.

Sec. 3. (NEW) (*Effective October 1, 2014*) (a) On and after October 1, 2014, a mortgagee who desires to foreclose upon a mortgage encumbering residential real property of a mortgagor shall give notice to the mortgagor by registered or certified mail, postage prepaid, at the address of the residential real property that is secured by such mortgage, in accordance with the relevant notice provisions of chapters 134 and 846 of the general statutes. No such mortgagee may commence a foreclosure of a mortgage prior to mailing such notice. Such notice shall advise the mortgagor of his or her delinquency or other default under the mortgage and that the mortgagor has the option to contact the mortgagee to discuss whether the property may, by mutual consent of the mortgagee and mortgagor, be marketed for

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sale pursuant to a listing agreement established in accordance with section 5 of this act. Such notice shall also advise the mortgagor (1) of the mailing address, telephone number, facsimile number and electronic mail address that should be used to contact the mortgagee; (2) of a date not less than sixty days after the date of such notice by which the mortgagor must initiate such contact, with contemporaneous confirmation in writing of the election to pursue such option sent to the designated mailing address or electronic mail address of the mortgagee; (3) that the mortgagor should contact a real estate agent licensed under chapter 392 of the general statutes to discuss the feasibility of listing the property for sale pursuant to the foreclosure by market sale process; (4) that, if the mortgagor and mortgagee both agree to proceed with further discussions concerning an acceptable listing agreement, the mortgagor must first permit an appraisal to be obtained in accordance with section 4 of this act for purposes of verifying eligibility for foreclosure by market sale; (5) that the appraisal will require both an interior and exterior inspection of the property; (6) that the terms and conditions of the listing agreement, including the duration and listing price, must be acceptable to both the mortgagee and mortgagor; (7) that the terms and conditions of any offer to purchase, including the purchase price and any contingencies, must be acceptable to both the mortgagor and mortgagee; (8) that if an acceptable offer is received, the mortgagor will sign an agreement to sell the property through a foreclosure by market sale; and (9) in bold print and at least ten-point font, that if the mortgagor consents to a foreclosure by market sale, the mortgagor will not be eligible for foreclosure mediation in any type of foreclosure action that is commenced following the giving of such consent. The notice provided under this subsection may be combined with and delivered at the same time as any other notice required by subsection (a) of section 8-265ee of the general statutes or federal law.

(b) At any time after the date provided in the notice required under

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subsection (a) of this section, the foreclosure of the mortgagor's mortgage may continue without any further restriction or requirement, provided the mortgagee files an affidavit with the court stating that the notice provisions of said subsection have been complied with and that either the mortgagor failed to confirm his or her election in accordance with said subsection by the date disclosed in the notice or that discussions were initiated, but (1) the mortgagee and mortgagor were unable to reach a mutually acceptable agreement to proceed; (2) based on the appraisal obtained pursuant to section 4 of this act, the property does not appear to be subject to a mortgage that is eligible for foreclosure by market sale; (3) the mortgagor did not grant reasonable interior access for the appraisal required by section 4 of this act; (4) the mortgagee and mortgagor were unable to reach an agreement as to a mutually acceptable listing agreement pursuant to section 5 of this act; (5) a listing agreement was executed, but no offers to purchase were received; (6) an offer or offers were received, but were unacceptable to either or both the mortgagee and mortgagor; or (7) other circumstances exist that would allow the mortgagee or mortgagor to elect not to proceed with a foreclosure by market sale pursuant to section 49-24 of the general statutes, as amended by this act, sections 2 to 8, inclusive, of this act, sections 49-26 to 49-28, inclusive, of the general statutes, as amended by this act, and section 12 of this act, or that would otherwise make the mortgage ineligible for foreclosure by market sale. The affidavit required by this subsection may be combined with the affidavit required by subsection (b) of section 8-265ee of the general statutes.

Sec. 4. (NEW) (*Effective October 1, 2014*) If a mortgagee and mortgagor both elect, pursuant to section 3 of this act, to proceed with further discussions about the possibility of pursuing a mutually acceptable foreclosure by market sale, the mortgagee shall cause a written appraisal of the fair market value of the residential real property to be performed by an appraiser licensed under chapter 400g

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of the general statutes. The mortgagor shall, promptly upon request, permit such appraiser access at reasonable times to the interior and exterior of the residential real property for the sole purpose of gathering facts necessary to perform the appraisal assignment. Nothing in this section shall be construed as requiring either the mortgagor or the mortgagee to proceed with further discussions.

Sec. 5. (NEW) (*Effective October 1, 2014*) As soon as practicable after receiving a report of a written appraisal performed pursuant to section 4 of this act, the mortgagee shall furnish the mortgagor with a copy of such appraisal. If the appraisal indicates that the mortgage would likely be eligible for foreclosure by market sale, the mortgagor and the mortgagee may reach an agreement on mutually acceptable terms and conditions to list the property with a person licensed under chapter 392 of the general statutes and chosen by the mortgagor using a listing agreement meeting the requirements of said chapter. Any such listing agreement shall require such licensee to report any offer for the residential real property to both the mortgagor and the mortgagee as soon as practicable. The mortgagee shall provide the name, mailing address, telephone number, facsimile number and electronic mail address to be used to report offers to the mortgagee. The mortgagee may not require the use of a particular licensee or group of licensees as a condition to approving a listing agreement. Nothing in this section shall be construed as requiring either the mortgagor or the mortgagee to reach an agreement regarding a mutually acceptable listing agreement.

Sec. 6. (NEW) (*Effective October 1, 2014*) (a) If a mortgagor executes a listing agreement that is acceptable to both the mortgagee and mortgagor pursuant to section 5 of this act and receives an offer to purchase the residential real property that encompasses a price, terms and conditions that are acceptable to both the mortgagor and the mortgagee, the mortgagor shall execute a contract for sale with the

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purchaser that shall reflect the agreed-upon price, terms and conditions and be contingent upon the completion of the foreclosure by market sale in accordance with section 49-24 of the general statutes, as amended by this act, sections 2 to 8, inclusive, of this act, sections 49-26 to 49-28, inclusive, of the general statutes, as amended by this act, and section 12 of this act. If an offer is received, but is unacceptable to the mortgagee, the mortgagee shall provide the mortgagor with written notice of its decision and, without limiting the breadth of its discretion, a general explanation of the reason or reasons for such decision. Such notice shall not be required in instances where the offer is unacceptable to the mortgagor. The mortgagor shall, not later than five days after the date of the execution of the purchase and sale contract, provide the mortgagee with a copy of such contract along with written documentation, in a form and substance acceptable to the mortgagee, evidencing the mortgagor's consent to the filing of a motion for judgment of foreclosure by market sale.

(b) Unless otherwise prohibited by applicable law, not later than thirty days after the receipt of such contract and the documentation evidencing consent, or not later than thirty days after the satisfaction or expiration of any contingencies in the contract that must either have been satisfied or expired before the foreclosure action may be commenced to consummate the sale, whichever thirty-day time frame is later, the mortgagee shall commence a foreclosure by writ, summons and complaint. Any such complaint shall claim, in the prayer for relief, a foreclosure of the mortgage pursuant to section 49-24 of the general statutes, as amended by this act, sections 2 to 8, inclusive, of this act, sections 49-26 to 49-28, inclusive, of the general statutes, as amended by this act, and section 12 of this act, and shall contain a copy of the contract between the mortgagor and the purchaser as well as a copy of the appraisal obtained pursuant to section 4 of this act. No mortgagee may require the employ or use of a particular list of persons licensed under chapter 392 of the general statutes as a condition of approval of

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an offer. No mortgagee may require the use of an auction or other alternative method of sale as a condition of approval of an offer once the listing agreement required pursuant to section 5 of this act has been executed by the mortgagor. Nothing in this section shall be construed as requiring either the mortgagee or mortgagor to approve any offer that is made pursuant to this section.

Sec. 7. (NEW) (*Effective October 1, 2014*) A mortgagee may file a motion for judgment of foreclosure by market sale on or after the ten days following the return date specified in the complaint filed in accordance with subsection (b) of section 6 of this act. Upon motion of the mortgagee and with the consent of the mortgagor, the court, after notice and hearing, may render a judgment of foreclosure by market sale approving the purchase and sale contract, which judgment shall be a final judgment for purposes of appeal, and appoint a person to make the sale. The only issues at such hearing shall be a finding of the fair market value of the residential real property and of any priority liens on such property and a determination of the amount of the fees and expenses of sale, including any real estate broker commissions, the person appointed to make the sale, the reasonable costs and expenses incurred by the purchaser of such property in connection with the purchase and sale contract, the mortgagee's debt and whether the mortgagee's debt together with any priority liens exceeds the fair market value of such property. Following such hearing, the court may render a supplemental judgment that specifies the persons who are entitled to proceeds from the market sale and the amount of such proceeds to which each such person is entitled. If the court denies the mortgagee's motion for the judgment of foreclosure by market sale contemplated by this section or if circumstances develop that make it reasonably likely that a sale will not be consummated in accordance with the judgment of foreclosure by market sale entered pursuant to this section, then, subject to the provisions of sections 49-31k to 49-31o, inclusive, of the general statutes, (1) the mortgagor may, if eligible,

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petition for inclusion in the foreclosure mediation program set forth in sections 49-31k to 49-31o, inclusive, of the general statutes, provided the mortgagor did not substantially contribute to the events leading to such denial or circumstances and, in order to grant such petition, the court shall (A) give consideration to any testimony or affidavits the parties may submit in support of or in opposition to such petition, and (B) find that (i) such petition is not motivated primarily by a desire to delay the entry of a judgment of a foreclosure, and (ii) it is highly probable the parties will reach an agreement through mediation, and (2) the mortgagee shall have the right to request the entry of a judgment of foreclosure in accordance with the other provisions of law, including the provisions governing strict foreclosure.

Sec. 8. (NEW) (*Effective October 1, 2014*) When the court renders a judgment of market sale pursuant to section 7 of this act, the court shall schedule, not later than thirty days from the date of the entry of a judgment of foreclosure by market sale in accordance with said section, right-of-first-refusal law days in inverse order of priority pursuant to which the subordinate lienholders may seek to preserve their interest in the equity in the residential real property by tendering to the person appointed to make the sale pursuant to section 7 of this act the amount of the agreed upon price in the purchase and sale contract. If a subordinate lienholder takes no action to preserve such lienholder's interest in such equity on such lienholder's designated right-of-first-refusal law day, such lienholder's subordinate lien shall be extinguished upon passage of such law day. If a subordinate lienholder's action to preserve such lienholder's interest in the residential real property results in such lienholder purchasing such property, the purchaser indicated in the contract for the market sale executed in accordance with section 6 of this act shall be entitled to reimbursement from the proceeds of the market sale of any costs and expenses associated with such contract as determined by the court pursuant to section 7 of this act.

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Sec. 9. Section 49-26 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

When a sale has been made pursuant to a judgment therefor and ratified by the court, a conveyance of the property sold shall be executed by the person appointed to make the sale, which conveyance shall vest in the purchaser the same estate that would have vested in the mortgagee or lienholder if the mortgage or lien had been foreclosed by strict foreclosure, and to this extent such conveyance shall be valid against all parties to the cause and their privies, but against no other persons. The court, at the time of or after ratification of the sale, may order possession of the property sold to be delivered to the purchaser and may issue an execution of ejectment after the time for appeal of the ratification of the sale has expired. When a sale has been made pursuant to a foreclosure by market sale in accordance with section 49-24, as amended by this act, sections 2 to 8, inclusive, of this act, sections 49-27 and 49-28, as amended by this act, a conveyance of the property sold shall be executed by the person appointed to make the sale, which conveyance shall be valid against all parties to the cause and their privies, but against no other persons. The court, at the time of or after the sale in the case of a foreclosure by market sale may order possession of the property sold to be delivered to the purchaser and may issue an execution of ejectment after the time for appeal of the judgment of foreclosure by market sale has expired.

Sec. 10. Section 49-27 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

The proceeds of each such sale shall be brought into court, there to be applied if the sale is ratified, in accordance with the provisions of a supplemental judgment then to be rendered in the cause, specifying the parties who are entitled to the same and the amount to which each is entitled. If any part of the debt or obligation secured by the mortgage or lien foreclosed or by any subsequent mortgage or lien was

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not payable at the date of the judgment of foreclosure, it shall nevertheless be paid as far as may be out of the proceeds of the sale as if due and payable, with rebate of interest where the debt was payable without interest, provided, if the plaintiff is the purchaser at any such sale, he shall be required to bring into court only so much of the proceeds as exceed the amount due upon his judgment debt, interest and costs. In the case of a foreclosure by market sale, the person appointed to make the sale shall bring the proceeds of the market sale into court.

Sec. 11. Section 49-28 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

If the proceeds of the sale are not sufficient to pay in full the amount secured by any mortgage or lien thereby foreclosed, the deficiency shall be determined, and thereupon judgment may be rendered in the cause for the deficiency against any party liable to pay the same who is a party to the cause and has been served with process or has appeared therein, and all persons liable to pay the debt secured by the mortgage or lien may be made parties; but all other proceedings for the collection of the debt shall be stayed during the pendency of the foreclosure suit, and, if a deficiency judgment is finally rendered therein, the other proceedings shall forthwith abate. [If] Other than in the case of a foreclosure by market sale, if the property has sold for less than the appraisal provided for in section 49-25, no judgment shall be rendered in the suit or in any other for the unpaid portion of the debt or debts of the party or parties upon whose motion the sale was ordered, nor shall the same be collected by any other means than from the proceeds of the sale until one-half of the difference between the appraised value and the selling price has been credited upon the debt or debts as of the date of sale; and, when there are two or more debts to which it is to be applied, it shall be apportioned between them.

Sec. 12. (NEW) (*Effective October 1, 2014*) A mortgagor who consents

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to a foreclosure by market sale pursuant to section 49-24 of the general statutes, as amended by this act, sections 2 to 8, inclusive, of this act, and sections 49-26 to 49-28, inclusive, of the general statutes, as amended by this act, shall not be eligible for the foreclosure mediation program established pursuant to section 49-31m of the general statutes, except as otherwise provided in section 7 of this act.

Sec. 13. Subsection (a) of section 12-498 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

(a) The tax imposed by section 12-494 shall not apply to: (1) Deeds which this state is prohibited from taxing under the Constitution or laws of the United States; (2) deeds which secure a debt or other obligation; (3) deeds to which this state or any of its political subdivisions or its or their respective agencies is a party; (4) tax deeds; (5) deeds of release of property which is security for a debt or other obligation; (6) deeds of partition; (7) deeds made pursuant to mergers of corporations; (8) deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock; (9) deeds made pursuant to a decree of the Superior Court under section 46b-81, 49-24, as amended by this act, or 52-495 or pursuant to a judgment of foreclosure by market sale under section 49-24, as amended by this act; (10) deeds, when the consideration for the interest or property conveyed is less than two thousand dollars; (11) deeds between affiliated corporations, provided both of such corporations are exempt from taxation pursuant to paragraph (2), (3) or (25) of Section 501(c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended; (12) deeds made by a corporation which is exempt from taxation pursuant to paragraph (3) of Section 501(c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States,

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as from time to time amended, to any corporation which is exempt from taxation pursuant to said paragraph (3) of said Section 501(c); (13) deeds made to any nonprofit organization which is organized for the purpose of holding undeveloped land in trust for conservation or recreation purposes; (14) deeds between spouses; (15) deeds of property for the Adriaen's Landing site or the stadium facility site, for purposes of the overall project, each as defined in section 32-651; (16) land transfers made on or after July 1, 1998, to a water company, as defined in section 16-1, provided the land is classified as class I or class II land, as defined in section 25-37c, after such transfer; (17) transfers or conveyances to effectuate a mere change of identity or form of ownership or organization, where there is no change in beneficial ownership; (18) conveyances of residential property which occur not later than six months after the date on which the property was previously conveyed to the transferor if the transferor is (A) an employer which acquired the property from an employee pursuant to an employee relocation plan, or (B) an entity in the business of purchasing and selling residential property of employees who are being relocated pursuant to such a plan; (19) deeds in lieu of foreclosure that transfer the transferor's principal residence; and (20) any instrument transferring a transferor's principal residence where the gross purchase price is insufficient to pay the sum of (A) mortgages encumbering the property transferred, and (B) any real property taxes and municipal utility or other charges for which the municipality may place a lien on the property and which have priority over the mortgages encumbering the property transferred.

Approved June 3, 2014