



House of Representatives

General Assembly

File No. 413

February Session, 2014

Substitute House Bill No. 5514

House of Representatives, April 7, 2014

The Committee on Banks reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING AN OPTIONAL METHOD OF FORECLOSURE.

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

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 Section 49-24 of the general statutes is repealed and the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

3 All liens and mortgages affecting real property may, on the written
4 motion of any party to any suit relating thereto, be foreclosed (1) by a
5 decree of sale instead of a strict foreclosure at the discretion of the
6 court before which the foreclosure proceedings are pending, or (2)
7 with respect to mortgages, as defined in section 2 of this act, that are a
8 first encumbrance against the property, by a judgment of foreclosure
9 by market sale upon the written motion of the mortgagee, as defined in
10 section 2 of this act, and with consent of the mortgagor, as defined in
11 section 2 of this act, in accordance with sections 2 to 7, inclusive, of this
12 act, sections 49-26 to 49-28, inclusive, as amended by this act, and
13 section 11 of this act.

14 Sec. 2. (NEW) (*Effective October 1, 2014*) For purposes of a foreclosure

15 by market sale in accordance with this section, sections 3 to 7,
16 inclusive, of this act, and section 11 of this act:

17 (1) "Mortgage" means a mortgage deed, deed of trust or other
18 equivalent consensual security interest on residential real property
19 securing a loan made primarily for personal, family or household
20 purposes that is first in priority over any other mortgages or liens
21 encumbering the residential real property, except those liens that are
22 given priority over a mortgage pursuant to state or federal law;

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

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

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

36 Sec. 3. (NEW) (*Effective October 1, 2014*) (a) A mortgagee who desires
37 to foreclose upon a mortgage encumbering residential real property of
38 a mortgagor by means of a market sale shall give notice to the
39 mortgagor by registered or certified mail, postage prepaid, at the
40 address of the residential real property that is secured by such
41 mortgage, in accordance with the notice provisions of chapter 846 of
42 the general statutes. No such mortgagee may commence a foreclosure
43 of a mortgage prior to mailing such notice. Such notice shall advise the
44 mortgagor of his or her delinquency or other default under the
45 mortgage and that the mortgagor has the option to contact the
46 mortgagee to discuss whether the property may, by mutual consent of

47 the mortgagee and mortgagor, be marketed for sale pursuant to a
48 listing agreement established in accordance with section 5 of this act.
49 Such notice shall also advise the mortgagor (1) of the mailing address,
50 telephone number, facsimile number and electronic mail address that
51 should be used to contact the mortgagee; (2) of a date not less than
52 sixty days after the date of such notice by which the mortgagor must
53 initiate such contact, with contemporaneous confirmation in writing of
54 the election to pursue such option sent to the designated mailing
55 address or electronic mail address of the mortgagee; (3) that the
56 mortgagor should contact a real estate agent licensed under chapter
57 392 of the general statutes to discuss the feasibility of listing the
58 property for sale pursuant to the foreclosure by market sale process;
59 (4) that, if the mortgagor and mortgagee both agree to proceed with
60 further discussions concerning an acceptable listing agreement, the
61 mortgagor must first permit an appraisal to be obtained in accordance
62 with section 4 of this act for purposes of verifying eligibility for
63 foreclosure by market sale; (5) that the appraisal will require both an
64 interior and exterior inspection of the property; (6) that the terms and
65 conditions of the listing agreement, including the duration and listing
66 price, must be acceptable to both the mortgagee and mortgagor; (7)
67 that the terms and conditions of any offer to purchase, including the
68 purchase price and any contingencies, must be acceptable to both the
69 mortgagor and mortgagee; (8) that if an acceptable offer is received,
70 the mortgagor will sign an agreement to sell the property through a
71 foreclosure by market sale; and (9) in bold print and at least ten-point
72 font, that if the mortgagor consents to a foreclosure by market sale, the
73 mortgagor will not be eligible for foreclosure mediation in any type of
74 foreclosure action that is commenced following the giving of such
75 consent. The notice provided under this subsection may be combined
76 with and delivered at the same time as any other notice required by
77 subsection (a) of section 8-265ee of the general statutes or federal law.

78 (b) At any time after the date provided in the notice required under
79 subsection (a) of this section, the foreclosure of the mortgagor's
80 mortgage may continue without any further restriction or requirement,
81 provided the mortgagee files an affidavit with the court at the time the

82 complaint is filed stating that the notice provisions of said subsection
83 have been complied with and that either the mortgagor failed to
84 confirm his or her election in accordance with said subsection by the
85 date disclosed in the notice or that discussions were initiated, but (1)
86 the mortgagee and mortgagor were unable to reach a mutually
87 acceptable agreement to proceed; (2) based on the appraisal obtained
88 pursuant to section 4 of this act, the property does not appear to be
89 subject to a mortgage that is eligible for foreclosure by market sale; (3)
90 the mortgagor did not grant reasonable interior access for the appraisal
91 required by section 4 of this act; (4) the mortgagee and mortgagor were
92 unable to reach an agreement as to a mutually acceptable listing
93 agreement pursuant to section 5 of this act; (5) a listing agreement was
94 executed, but no offers to purchase were received; (6) an offer or offers
95 were received, but were unacceptable to either or both the mortgagee
96 and mortgagor; or (7) other circumstances exist that would allow the
97 mortgagee or mortgagor to elect not to proceed with a foreclosure by
98 market sale pursuant to section 49-24 of the general statutes, as
99 amended by this act, sections 2 to 7, inclusive, of this act, sections 49-26
100 to 49-28, inclusive, of the general statutes, as amended by this act, and
101 section 11 of this act, or that would otherwise make the mortgage
102 ineligible for foreclosure by market sale. The affidavit required by this
103 subsection may be combined with the affidavit required by subsection
104 (b) of section 8-265ee of the general statutes.

105 Sec. 4. (NEW) (*Effective October 1, 2014*) If a mortgagee and
106 mortgagor both elect, pursuant to section 3 of this act, to proceed with
107 further discussions about the possibility of pursuing a mutually
108 acceptable foreclosure by market sale, the mortgagee shall cause a
109 written appraisal of the fair market value of the residential real
110 property to be performed by an appraiser licensed under chapter 400g
111 of the general statutes. The mortgagor shall, promptly upon request,
112 permit such appraiser access at reasonable times to the interior and
113 exterior of the residential real property for the sole purpose of
114 gathering facts necessary to perform the appraisal assignment.
115 Nothing in this section shall be construed as requiring either the
116 mortgagor or the mortgagee to proceed with further discussions.

117 Sec. 5. (NEW) (*Effective October 1, 2014*) As soon as practicable after
118 receiving a report of a written appraisal performed pursuant to section
119 4 of this act, the mortgagee shall furnish the mortgagor with a copy of
120 such appraisal. If the appraisal suggests that the mortgage would
121 likely be eligible for foreclosure by market sale, the mortgagor and the
122 mortgagee may reach an agreement on mutually acceptable terms and
123 conditions to list the property with a person licensed under chapter
124 392 of the general statutes and chosen by the mortgagor using a listing
125 agreement meeting the requirements of said chapter. Any such listing
126 agreement shall require such licensee to report any offer for the
127 residential real property to both the mortgagor and the mortgagee as
128 soon as practicable. The mortgagee shall provide the name, mailing
129 address, telephone number, facsimile number and electronic mail
130 address to be used to report offers to the mortgagee. The mortgagee
131 may not require the use of a particular licensee or group of licensees as
132 a condition to approving a listing agreement. Nothing in this section
133 shall be construed as requiring either the mortgagor or the mortgagee
134 to reach an agreement regarding a mutually acceptable listing
135 agreement.

136 Sec. 6. (NEW) (*Effective October 1, 2014*) (a) If a mortgagor executes a
137 listing agreement that is acceptable to both the mortgagee and
138 mortgagor pursuant to section 5 of this act and receives an offer to
139 purchase the residential real property that encompasses a price, terms
140 and conditions that are acceptable to both the mortgagor and the
141 mortgagee, the mortgagor shall execute a contract for sale with the
142 purchaser that shall reflect the agreed-upon price, terms and
143 conditions and be contingent upon the completion of the foreclosure
144 by market sale in accordance with section 49-24 of the general statutes,
145 as amended by this act, sections 2 to 7, inclusive, of this act, sections
146 49-26 to 49-28, inclusive, of the general statutes, as amended by this
147 act, and section 11 of this act. The mortgagor shall, not later than five
148 days after the date of the execution of the purchase and sale contract,
149 provide the mortgagee with a copy of such contract along with written
150 documentation, in a form and substance acceptable to the mortgagee,
151 evidencing the mortgagor's consent to the filing of a motion for

152 judgment of foreclosure by market sale.

153 (b) Unless otherwise prohibited by applicable law, not later than
154 thirty days after the receipt of such contract and the documentation
155 evidencing consent, or not later than thirty days after the satisfaction
156 or expiration of any contingencies in the contract that must either have
157 been satisfied or expired before the foreclosure action may be
158 commenced to consummate the sale, whichever thirty-day time frame
159 is later, the mortgagee shall commence a foreclosure by writ, summons
160 and complaint. Any such complaint shall claim, in the prayer for relief,
161 a foreclosure of the mortgage pursuant to section 49-24 of the general
162 statutes, as amended by this act, sections 2 to 7, inclusive, of this act,
163 sections 49-26 to 49-28, inclusive, of the general statutes, as amended
164 by this act, and section 11 of this act, and shall contain a copy of the
165 contract between the mortgagor and the purchaser as well as a copy of
166 the appraisal obtained pursuant to section 4 of this act. No mortgagee
167 may require the employ or use of a particular list of persons licensed
168 under chapter 392 of the general statutes as a condition of approval of
169 an offer. No mortgagee may require the use of an auction or other
170 alternative method of sale as a condition of approval of an offer once
171 the listing agreement required pursuant to section 5 of this act has
172 been executed by the mortgagor. Nothing in this section shall be
173 construed as requiring either the mortgagee or mortgagor to approve
174 any offer that is made pursuant to this section. If an offer is received,
175 but is unacceptable to the mortgagee, the mortgagee shall provide the
176 mortgagor with written notice of its decision and, without limiting the
177 breadth of its discretion, a general explanation of the reason or reasons
178 for such decision. Such notice shall not be required in instances where
179 the offer is unacceptable to the mortgagor.

180 Sec. 7. (NEW) (*Effective October 1, 2014*) A mortgagee shall have the
181 right to file a motion for judgment of foreclosure by market sale on or
182 after the ten days following the return date specified in the complaint
183 filed in accordance with subsection (b) of section 6 of this act. Upon
184 motion of the mortgagee and with the consent of the mortgagor, the
185 court, after notice and hearing, shall render a judgment of foreclosure

186 by market sale and enter a judgment approving the purchase and sale
187 contract, which judgments shall be final judgments for purposes of
188 appeal. The only issues at such hearing shall be the determination of
189 the amount of the mortgagee's debt, whether the mortgagee's debt
190 exceeds the appraised value of the residential real property, the
191 determination of the expenses of sale, and the determination of
192 priorities for distribution of the sale proceeds. If the court denies the
193 mortgagee's motions for the judgments contemplated by this section or
194 if circumstances develop that make it reasonably likely that a sale will
195 not be consummated in accordance with the judgments entered
196 pursuant to this section, then, subject to the provisions of sections 49-
197 31k to 49-31o, inclusive, of the general statutes, (1) the mortgagor may,
198 if eligible, petition for inclusion in the foreclosure mediation program
199 set forth in sections 49-31k to 49-31o, inclusive, of the general statutes,
200 provided the mortgagor did not substantially contribute to the events
201 leading to such denial or circumstances and, in order to grant such
202 petition, the court shall (A) give consideration to any testimony or
203 affidavits the parties may submit in support of or in opposition to such
204 petition, and (B) find that (i) such petition is not motivated primarily
205 by a desire to delay the entry of a judgment of a foreclosure, and (ii) it
206 is highly probable the parties will reach an agreement through
207 mediation, and (2) the mortgagee shall have the right to request the
208 entry of a judgment of foreclosure in accordance with the other
209 provisions of law, including the provisions governing strict
210 foreclosure.

211 Sec. 8. Section 49-26 of the general statutes is repealed and the
212 following is substituted in lieu thereof (*Effective October 1, 2014*):

213 (a) When a sale has been made pursuant to a judgment therefor,
214 [and] including a foreclosure by market sale pursuant to section 49-24,
215 as amended by this act, sections 2 to 7, inclusive, of this act, sections
216 49-27 and 49-28, as amended by this act, and section 11 of this act, and
217 a foreclosure other than a foreclosure by market sale, which is ratified
218 by the court, a conveyance of the property sold shall be executed by
219 the person appointed to make the sale, which conveyance shall vest in

220 the purchaser the same estate that would have vested in the mortgagee
221 or lienholder if the mortgage or lien had been foreclosed by strict
222 foreclosure, and to this extent such conveyance shall be valid against
223 all parties to the cause and their privies, but against no other persons.
224 The court, at the time of or after ratification of the sale, or at the time of
225 or after the sale in the case of a foreclosure by market sale, may order
226 possession of the property sold to be delivered to the purchaser and
227 may issue an execution of ejectment after the time for appeal of the
228 ratification of the sale has expired.

229 (b) In a foreclosure by market sale, the person appointed to make
230 the sale shall convey the premises to the purchaser in such manner and
231 form as provided in subsection (a) of this section, without the need for
232 subsequent ratification, and shall conduct the closing of the sale and
233 make disbursement of the expenses out of the proceeds as determined
234 in accordance with section 7 of this act and ordered by the court in
235 accordance with section 49-27, as amended by this act.

236 Sec. 9. Section 49-27 of the general statutes is repealed and the
237 following is substituted in lieu thereof (*Effective October 1, 2014*):

238 The proceeds of each such sale shall be brought into court, there to
239 be applied if the sale is ratified, in accordance with the provisions of a
240 supplemental judgment then to be rendered in the cause, specifying
241 the parties who are entitled to the same and the amount to which each
242 is entitled. If any part of the debt or obligation secured by the
243 mortgage or lien foreclosed or by any subsequent mortgage or lien was
244 not payable at the date of the judgment of foreclosure, it shall
245 nevertheless be paid as far as may be out of the proceeds of the sale as
246 if due and payable, with rebate of interest where the debt was payable
247 without interest, provided, if the plaintiff is the purchaser at any such
248 sale, he shall be required to bring into court only so much of the
249 proceeds as exceed the amount due upon his judgment debt, interest
250 and costs. In the case of a foreclosure by market sale, the person
251 appointed to make the sale shall pay all expenses of such sale directly
252 to those persons found entitled to such expenses and shall remit all

253 other proceeds directly to the plaintiff.

254 Sec. 10. Section 49-28 of the general statutes is repealed and the
255 following is substituted in lieu thereof (*Effective October 1, 2014*):

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

275 Sec. 11. (NEW) (*Effective October 1, 2014*) A mortgagor who consents
276 to a foreclosure by market sale pursuant to section 49-24 of the general
277 statutes, as amended by this act, sections 2 to 7, inclusive, of this act,
278 and sections 49-26 to 49-28, inclusive, of the general statutes, as
279 amended by this act, shall not be eligible for the foreclosure mediation
280 program established pursuant to section 49-31m of the general
281 statutes, except as otherwise provided in section 7 of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2014	49-24

Sec. 2	October 1, 2014	New section
Sec. 3	October 1, 2014	New section
Sec. 4	October 1, 2014	New section
Sec. 5	October 1, 2014	New section
Sec. 6	October 1, 2014	New section
Sec. 7	October 1, 2014	New section
Sec. 8	October 1, 2014	49-26
Sec. 9	October 1, 2014	49-27
Sec. 10	October 1, 2014	49-28
Sec. 11	October 1, 2014	New section

Statement of Legislative Commissioners:

For purposes of accuracy, "as defined in section 2 of this act" was added to section 1, "section 49-24 of the general statutes, as amended by this act" and "sections 49-26 to 49-28, inclusive, of the general statutes, as amended by this act," were deleted from section 2, and "this section" was added to section 2; and for purposes of clarity, " by means of a market sale" was added to the first sentence of section 3, "notice" was added before "provisions" in the first sentence of section 3, and "for purposes of such contact" was deleted from section 3(a)(1).

BA *Joint Favorable Subst.*

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.

OFA Fiscal Note**State Impact:** None**Municipal Impact:** None**Explanation**

The bill concerns transactions between private entities and individuals and results in no fiscal impact to the state or municipalities.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis

sHB 5514

AN ACT CONCERNING AN OPTIONAL METHOD OF FORECLOSURE.

SUMMARY:

By law, in a foreclosure proceeding involving real property, the court may issue a judgment of (1) foreclosure by sale or (2) strict foreclosure. This bill adds another option for certain residential properties called, "foreclosure by market sale," which is a court-approved sale on the open market upon the mortgagee's (lender's) request and with the mortgagor's (borrower's) consent. The bill limits this option to a mortgage that is the highest priority lien on a one-to-four family residential property that is the mortgagor's principal residence.

The bill establishes procedures for the foreclosure by market sale option. It requires a mortgagee to notify a mortgagor, in a specified manner, of the loan default and the option of foreclosure by market sale. It also allows a mortgagee, by filing an affidavit, to proceed with a foreclosure action if certain foreclosure by market sale conditions are not met. It also establishes other procedural requirements.

The bill specifies that it should not be construed as requiring either the mortgagor or the mortgagee to (1) proceed with discussions after the foreclosure by market sale notice has been sent, (2) reach an agreement regarding a listing agent, or (3) approve any purchase offers received.

Lastly, the bill bars a mortgagor who consents to foreclosure by market sale from participating in the state's foreclosure mediation program, but allows him or her to petition the court to participate under certain circumstances.

EFFECTIVE DATE: October 1, 2014

§ 3 — FORECLOSURE NOTICE AND MORTGAGEE AFFIDAVIT

Foreclosure Notice

By law, before beginning a mortgage foreclosure, a mortgagee must send notice by registered or certified mail with postage prepaid to the mortgagor at the address of the residential property secured by the mortgage.

Under the bill, the notice of a foreclosure by market sale must inform the mortgagor of the (1) mortgage delinquency or default, (2) option to contact the mortgagee to discuss selling the property through foreclosure by market sale, and (3) mortgagee's contact information (i.e., mailing address, telephone and fax number, and email address). It must state that the mortgagor has at least 60 days from the notice date to contact the mortgagee and elect, in writing, the market sale option.

The notice must also inform the mortgagor that:

1. he or she should contact a licensed real estate agent to discuss the feasibility of listing the property for sale through the foreclosure by market sale process;
2. before he or she can discuss a listing agreement with the mortgagee, he or she must allow a property appraisal in order to verify eligibility for the foreclosure by market sale option;
3. the appraisal will require both an interior and exterior property inspection;
4. the mortgagor and mortgagee must agree to the terms and conditions of the (a) listing agreement, including the duration and listing price and (b) any purchase offer, including the purchase price and any contingencies; and
5. if an acceptable offer is received, the mortgagor will sign an agreement to sell the property through a foreclosure by market

sale.

Additionally, the notice must inform the mortgagor, that he or she will not be eligible for the state's foreclosure mediation program in any foreclosure action that begins after giving consent to foreclosure by market sale. (The bill does not require the notice to include disclosure of the exception that allows a mortgagor to petition the court for inclusion in the mediation program under certain circumstances.)

The mortgagee may combine this notice with any other notice that is required under the Connecticut Housing Authority Act or federal law.

Mortgagee Affidavit

Under the bill, the mortgagee may continue the foreclosure of the mortgage without the restrictions or further requirements of the foreclosure by market sale option, if it files an affidavit with a complaint to the court indicating that the notice described above was provided and (1) the mortgagor failed to elect foreclosure by market sale by the required date or (2) discussions were initiated but the mortgagee and the mortgagor were unable to proceed with the market sale option.

The bill specifies the following reasons why a mortgagee and mortgagor may be unable to proceed with a foreclosure by market sale:

1. the mortgagee and mortgagor were unable to reach a mutually acceptable agreement to proceed;
2. the mortgage does not appear to be eligible for foreclosure by market sale, based on the appraisal of the property (the bill does not specify how eligibility is determined);
3. the mortgagor did not grant reasonable interior access for the appraisal;
4. the mortgagee and mortgagor (a) were unable to reach a mutually acceptable listing agreement or (b) executed a listing

agreement but received no purchase offers;

5. an offer or offers were received, but were unacceptable to either the mortgagee, mortgagor, or both; or
6. other circumstances exist that would (a) allow the mortgagee or mortgagor to decide not to proceed or (b) otherwise make the mortgage ineligible for foreclosure by market sale.

The mortgagee may combine this affidavit with any other affidavit that is required under the Connecticut Housing Authority Act or federal law.

§§ 4-6 — PROPERTY APPRAISAL AND LISTING AGREEMENT

Appraisal

Under the bill, if the mortgagee and mortgagor agree to pursue foreclosure by market sale, the (1) mortgagee must have a licensed appraiser conduct a written appraisal of the property's fair market value and (2) mortgagor must, promptly upon request allow the appraiser reasonable access to the property only to gather facts necessary for the appraisal.

The bill requires the mortgagee to provide a copy of the appraisal to the mortgagor as soon as practicable after receiving it.

Listing Agreement

If the appraisal indicates that the mortgage would likely be eligible for foreclosure by market sale, the bill allows the mortgagee and mortgagor to agree to list the property for sale with a licensed real estate broker or sales person chosen by the mortgagor using a listing agreement. (The bill does not specify how the mortgage's eligibility for such a foreclosure would be determined.) The bill prohibits the mortgagee from conditioning approval of the listing agreement on the mortgagor's use of a specific listing agent.

The listing agreement the mortgagor executes must (1) be acceptable to both mortgagee and mortgagor and (2) require the listing agent to

report any offer to both the mortgagor and the mortgagee as soon as practicable. The mortgagee must give the listing agent a name, mailing address, telephone and fax numbers, and email address to report purchase offers.

Under the bill, once the mortgagor executes the listing agreement, the mortgagee (1) is prohibited from requiring the use of an auction, other alternative methods of sale, or a specific listing agent as a condition of approving an offer and (2) must explain in writing to a mortgagor its decision that an offer is unacceptable. If an offer is unacceptable to a mortgagor, a notice is not required.

§§ 6 & 7 — CONTRACT, FORECLOSURE COMPLAINT, AND MOTION FOR JUDGMENT

Purchase and Sale Contract

Under the bill, if the mortgagor executes a mutually agreeable listing agreement and receives a mutually agreeable purchase offer, it must execute a purchase and sale contract. The purchase and sale contract must (1) include the agreed-upon price, terms, and conditions; (2) be contingent on the completion of the foreclosure by market sale; and (3) be mutually agreeable to the mortgagor and mortgagee.

Within five days after executing the purchase and sale contract, the mortgagor must give the mortgagee (1) a copy of the contract and (2) written consent for the mortgagee to file a motion for judgment of foreclosure by market sale. The mortgagee may determine an acceptable form of the written consent.

Complaint and Motion for Judgment

Under the bill, the mortgagee, unless otherwise prohibited by law, must file a foreclosure complaint with the court that contains a copy of the (1) purchase and sale contract and (2) appraisal, within the later of the following time periods:

1. 30 days after receiving the purchase and sale contract and the mortgagor's written consent, or

2. 30 days after the satisfaction or expiration of any contract contingencies that must be satisfied or have expired before the foreclosure action may begin.

By law, the complaint must (1) claim as relief a foreclosure by market sale and (2) contain a copy of the contract and appraisal. Ten days after the complaint's return date, the mortgagee may file a motion for judgment of foreclosure by market sale. Under the bill, after a hearing and notice and with the mortgagor's consent, the court must approve the purchase and sale contract and render a judgment of foreclosure by market sale. The judgment is final. The issues at the hearing are limited to the determination of:

1. the amount of the mortgagee's debt,
2. whether the mortgagee's debt exceeds the property's appraised value,
3. the sale expenses, and
4. the priorities for distributing the sale proceeds.

§§ 8-10 — SALE AND CONVEYANCE OF TITLE

By law, when a sale of a property under foreclosure has been made and ratified by the court, the person appointed to make the sale must execute a conveyance of the property. The bill also requires this in the case of a foreclosure by market sale.

In a foreclosure by market sale, the person appointed to make the sale must (1) conduct the closing of the sale, (2) pay all related expenses directly to entitled persons, (3) remit remaining proceeds directly to the plaintiff (i.e., the mortgagee), and (4) convey the title to the purchaser. The court may, either at the time of or after the approval of the sale, (1) order possession of the property be given to the purchaser and (2) issue an execution of ejectment after the time for appeal of the ratification of the sale has expired.

Existing law establishes the conditions under which a judgment

may be ordered when the sale proceeds are less than the appraisal. The bill exempts foreclosure by market sale from these provisions.

§§ 7 & 11 — FORECLOSURE MEDIATION, FORECLOSURE BY SALE, AND STRICT FORECLOSURE

Under the bill, a mortgagor who consents to a foreclosure by market sale is ineligible for the foreclosure mediation program unless the court denies the mortgagee's motion for judgment of foreclosure by market sale or it becomes likely that a sale will not be completed according to the judgment. In such circumstances, the (1) mortgagor may file a petition with the court to be included in the mediation program and (2) mortgagee has the right to request the other foreclosure options available under law, "foreclosure by sale" or "strict foreclosure" (see BACKGROUND).

The court must consider any testimony or affidavits the parties submit in support of, or in opposition to, the mortgagor's petition for inclusion in the foreclosure mediation program. In order to grant the petition, the court must find that (1) it is not an attempt to delay the foreclosure and (2) it is likely the parties will reach an agreement through mediation.

BACKGROUND

Foreclosure by Sale

With a judgment of sale, the court (1) establishes the time and manner of the sale, (2) appoints a committee to sell the property, and (3) appoints three appraisers to determine its value. The borrower may stop the foreclosure proceedings at any time before the sale by paying the balance due on the mortgage. If no such payment is made, the committee must go forward with the sale. The lender may sue to obtain a deficiency judgment (an order for the borrower to repay any remaining mortgage balance).

Strict Foreclosure

With strict foreclosure, no actual foreclosure sale is held. Instead, the lender goes to court to try and obtain a court order demonstrating

the borrower is in default of the mortgage. If successful, the title transfers to the lender immediately. However, the court sets an amount of time in which the borrower may redeem the property, but if he or she fails to do so, the title becomes absolute to the lender and the borrower no longer has any claim to the property. The lender then has 30 days to record a certificate of foreclosure, which must contain a description of the property, the foreclosure proceedings, and the mortgage along with the date the title became absolute.

Foreclosure Mediation Program

The state’s foreclosure mediation program determines whether parties can reach an agreement that will avoid foreclosure. The program uses the judicial branch’s foreclosure mediators to conduct mediation sessions in a statutorily prescribed timeframe. Under existing law, the program will sunset on July 1, 2014.

Related Bills

sHB 5353, favorably reported by the Banks Committee extends the foreclosure mediation program by four years, until July 1, 2018.

HB 5483 (File 99), favorably reported by the Housing Committee, extends the foreclosure mediation program by four years, until July 1, 2018. It also adds the Housing Committee to the required recipients of two reports of the Judicial Branch's chief court administrator.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/18/2014)