



# House of Representatives

## File No. 745

General Assembly

February Session, 2014

**(Reprint of File No. 413)**

Substitute House Bill No. 5514  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
May 2, 2014

### ***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 Section 49-24 of the general statutes is repealed and the  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 mortgage against the property, by a judgment of foreclosure by  
9 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 8, inclusive, of this  
12 act, sections 49-26 to 49-28, inclusive, as amended by this act, and  
13 section 12 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 8,

16 inclusive, of this act, and section 12 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) On and after October 1,  
37 2014, a mortgagee who desires to foreclose upon a mortgage  
38 encumbering residential real property of a mortgagor shall give notice  
39 to the 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 relevant notice provisions of  
42 chapters 134 and 846 of the general statutes. No such mortgagee may  
43 commence a foreclosure of a mortgage prior to mailing such notice.  
44 Such notice shall advise the mortgagor of his or her delinquency or  
45 other default under the mortgage and that the mortgagor has the  
46 option to contact the mortgagee to discuss whether the property may,  
47 by mutual consent of the mortgagee and mortgagor, be marketed for

48 sale pursuant to a listing agreement established in accordance with  
49 section 5 of this act. Such notice shall also advise the mortgagor (1) of  
50 the mailing address, telephone number, facsimile number and  
51 electronic mail address that should be used to contact the mortgagee;  
52 (2) of a date not less than sixty days after the date of such notice by  
53 which the mortgagor must initiate such contact, with  
54 contemporaneous confirmation in writing of the election to pursue  
55 such option sent to the designated mailing address or electronic mail  
56 address of the mortgagee; (3) that the mortgagor should contact a real  
57 estate agent licensed under chapter 392 of the general statutes to  
58 discuss the feasibility of listing the property for sale pursuant to the  
59 foreclosure by market sale process; (4) that, if the mortgagor and  
60 mortgagee both agree to proceed with further discussions concerning  
61 an acceptable listing agreement, the mortgagor must first permit an  
62 appraisal to be obtained in accordance with section 4 of this act for  
63 purposes of verifying eligibility for foreclosure by market sale; (5) that  
64 the appraisal will require both an interior and exterior inspection of the  
65 property; (6) that the terms and conditions of the listing agreement,  
66 including the duration and listing price, must be acceptable to both the  
67 mortgagee and mortgagor; (7) that the terms and conditions of any  
68 offer to purchase, including the purchase price and any contingencies,  
69 must be acceptable to both the mortgagor and mortgagee; (8) that if an  
70 acceptable offer is received, the mortgagor will sign an agreement to  
71 sell the property through a foreclosure by market sale; and (9) in bold  
72 print and at least ten-point font, that if the mortgagor consents to a  
73 foreclosure by market sale, the mortgagor will not be eligible for  
74 foreclosure mediation in any type of foreclosure action that is  
75 commenced following the giving of such consent. The notice provided  
76 under this subsection may be combined with and delivered at the  
77 same time as any other notice required by subsection (a) of section 8-  
78 265ee of the general statutes or federal law.

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

82 provided the mortgagee files an affidavit with the court stating that the  
83 notice provisions of said subsection have been complied with and that  
84 either the mortgagor failed to confirm his or her election in accordance  
85 with said subsection by the date disclosed in the notice or that  
86 discussions were initiated, but (1) the mortgagee and mortgagor were  
87 unable to reach a mutually acceptable agreement to proceed; (2) based  
88 on the appraisal obtained pursuant to section 4 of this act, the property  
89 does not appear to be subject to a mortgage that is eligible for  
90 foreclosure by market sale; (3) the mortgagor did not grant reasonable  
91 interior access for the appraisal required by section 4 of this act; (4) the  
92 mortgagee and mortgagor were unable to reach an agreement as to a  
93 mutually acceptable listing agreement pursuant to section 5 of this act;  
94 (5) a listing agreement was executed, but no offers to purchase were  
95 received; (6) an offer or offers were received, but were unacceptable to  
96 either or both the mortgagee and mortgagor; or (7) other circumstances  
97 exist that would allow the mortgagee or mortgagor to elect not to  
98 proceed with a foreclosure by market sale pursuant to section 49-24 of  
99 the general statutes, as amended by this act, sections 2 to 8, inclusive,  
100 of this act, sections 49-26 to 49-28, inclusive, of the general statutes, as  
101 amended by this act, and section 12 of this act, or that would otherwise  
102 make the mortgage ineligible for foreclosure by market sale. The  
103 affidavit required by this subsection may be combined with the  
104 affidavit required by subsection (b) of section 8-265ee of the general  
105 statutes.

106 Sec. 4. (NEW) (*Effective October 1, 2014*) If a mortgagee and  
107 mortgagor both elect, pursuant to section 3 of this act, to proceed with  
108 further discussions about the possibility of pursuing a mutually  
109 acceptable foreclosure by market sale, the mortgagee shall cause a  
110 written appraisal of the fair market value of the residential real  
111 property to be performed by an appraiser licensed under chapter 400g  
112 of the general statutes. The mortgagor shall, promptly upon request,  
113 permit such appraiser access at reasonable times to the interior and  
114 exterior of the residential real property for the sole purpose of  
115 gathering facts necessary to perform the appraisal assignment.

116 Nothing in this section shall be construed as requiring either the  
117 mortgagee or the mortgagor to proceed with further discussions.

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

137 Sec. 6. (NEW) (*Effective October 1, 2014*) (a) If a mortgagor executes a  
138 listing agreement that is acceptable to both the mortgagee and  
139 mortgagor pursuant to section 5 of this act and receives an offer to  
140 purchase the residential real property that encompasses a price, terms  
141 and conditions that are acceptable to both the mortgagor and the  
142 mortgagee, the mortgagor shall execute a contract for sale with the  
143 purchaser that shall reflect the agreed-upon price, terms and  
144 conditions and be contingent upon the completion of the foreclosure  
145 by market sale in accordance with section 49-24 of the general statutes,  
146 as amended by this act, sections 2 to 8, inclusive, of this act, sections  
147 49-26 to 49-28, inclusive, of the general statutes, as amended by this  
148 act, and section 12 of this act. If an offer is received, but is unacceptable  
149 to the mortgagee, the mortgagee shall provide the mortgagor with

150 written notice of its decision and, without limiting the breadth of its  
151 discretion, a general explanation of the reason or reasons for such  
152 decision. Such notice shall not be required in instances where the offer  
153 is unacceptable to the mortgagor. The mortgagor shall, not later than  
154 five days after the date of the execution of the purchase and sale  
155 contract, provide the mortgagee with a copy of such contract along  
156 with written documentation, in a form and substance acceptable to the  
157 mortgagee, evidencing the mortgagor's consent to the filing of a  
158 motion for judgment of foreclosure by market sale.

159 (b) Unless otherwise prohibited by applicable law, not later than  
160 thirty days after the receipt of such contract and the documentation  
161 evidencing consent, or not later than thirty days after the satisfaction  
162 or expiration of any contingencies in the contract that must either have  
163 been satisfied or expired before the foreclosure action may be  
164 commenced to consummate the sale, whichever thirty-day time frame  
165 is later, the mortgagee shall commence a foreclosure by writ, summons  
166 and complaint. Any such complaint shall claim, in the prayer for relief,  
167 a foreclosure of the mortgage pursuant to section 49-24 of the general  
168 statutes, as amended by this act, sections 2 to 8, inclusive, of this act,  
169 sections 49-26 to 49-28, inclusive, of the general statutes, as amended  
170 by this act, and section 12 of this act, and shall contain a copy of the  
171 contract between the mortgagor and the purchaser as well as a copy of  
172 the appraisal obtained pursuant to section 4 of this act. No mortgagee  
173 may require the employ or use of a particular list of persons licensed  
174 under chapter 392 of the general statutes as a condition of approval of  
175 an offer. No mortgagee may require the use of an auction or other  
176 alternative method of sale as a condition of approval of an offer once  
177 the listing agreement required pursuant to section 5 of this act has  
178 been executed by the mortgagor. Nothing in this section shall be  
179 construed as requiring either the mortgagee or mortgagor to approve  
180 any offer that is made pursuant to this section.

181 Sec. 7. (NEW) (*Effective October 1, 2014*) A mortgagee may file a  
182 motion for judgment of foreclosure by market sale on or after the ten  
183 days following the return date specified in the complaint filed in

184 accordance with subsection (b) of section 6 of this act. Upon motion of  
185 the mortgagee and with the consent of the mortgagor, the court, after  
186 notice and hearing, may render a judgment of foreclosure by market  
187 sale approving the purchase and sale contract, which judgment shall  
188 be a final judgment for purposes of appeal, and appoint a person to  
189 make the sale. The only issues at such hearing shall be a finding of the  
190 fair market value of the residential real property and of any priority  
191 liens on such property and a determination of the amount of the fees  
192 and expenses of sale, including any real estate broker commissions, the  
193 person appointed to make the sale, the reasonable costs and expenses  
194 incurred by the purchaser of such property in connection with the  
195 purchase and sale contract, the mortgagee's debt and whether the  
196 mortgagee's debt together with any priority liens exceeds the fair  
197 market value of such property. Following such hearing, the court may  
198 render a supplemental judgment that specifies the persons who are  
199 entitled to proceeds from the market sale and the amount of such  
200 proceeds to which each such person is entitled. If the court denies the  
201 mortgagee's motion for the judgment of foreclosure by market sale  
202 contemplated by this section or if circumstances develop that make it  
203 reasonably likely that a sale will not be consummated in accordance  
204 with the judgment of foreclosure by market sale entered pursuant to  
205 this section, then, subject to the provisions of sections 49-31k to 49-31o,  
206 inclusive, of the general statutes, (1) the mortgagor may, if eligible,  
207 petition for inclusion in the foreclosure mediation program set forth in  
208 sections 49-31k to 49-31o, inclusive, of the general statutes, provided  
209 the mortgagor did not substantially contribute to the events leading to  
210 such denial or circumstances and, in order to grant such petition, the  
211 court shall (A) give consideration to any testimony or affidavits the  
212 parties may submit in support of or in opposition to such petition, and  
213 (B) find that (i) such petition is not motivated primarily by a desire to  
214 delay the entry of a judgment of a foreclosure, and (ii) it is highly  
215 probable the parties will reach an agreement through mediation, and  
216 (2) the mortgagee shall have the right to request the entry of a  
217 judgment of foreclosure in accordance with the other provisions of  
218 law, including the provisions governing strict foreclosure.

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

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

241 When a sale has been made pursuant to a judgment therefor and  
242 ratified by the court, a conveyance of the property sold shall be  
243 executed by the person appointed to make the sale, which conveyance  
244 shall vest in the purchaser the same estate that would have vested in  
245 the mortgagee or lienholder if the mortgage or lien had been  
246 foreclosed by strict foreclosure, and to this extent such conveyance  
247 shall be valid against all parties to the cause and their privies, but  
248 against no other persons. The court, at the time of or after ratification  
249 of the sale, may order possession of the property sold to be delivered  
250 to the purchaser and may issue an execution of ejectment after the time  
251 for appeal of the ratification of the sale has expired. When a sale has  
252 been made pursuant to a foreclosure by market sale in accordance with



253 section 49-24, as amended by this act, sections 2 to 8, inclusive, of this  
254 act, sections 49-27 and 49-28, as amended by this act, a conveyance of  
255 the property sold shall be executed by the person appointed to make  
256 the sale, which conveyance shall be valid against all parties to the  
257 cause and their privies, but against no other persons. The court, at the  
258 time of or after the sale in the case of a foreclosure by market sale may  
259 order possession of the property sold to be delivered to the purchaser  
260 and may issue an execution of ejectment after the time for appeal of the  
261 judgment of foreclosure by market sale has expired.

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

264 The proceeds of each such sale shall be brought into court, there to  
265 be applied if the sale is ratified, in accordance with the provisions of a  
266 supplemental judgment then to be rendered in the cause, specifying  
267 the parties who are entitled to the same and the amount to which each  
268 is entitled. If any part of the debt or obligation secured by the  
269 mortgage or lien foreclosed or by any subsequent mortgage or lien was  
270 not payable at the date of the judgment of foreclosure, it shall  
271 nevertheless be paid as far as may be out of the proceeds of the sale as  
272 if due and payable, with rebate of interest where the debt was payable  
273 without interest, provided, if the plaintiff is the purchaser at any such  
274 sale, he shall be required to bring into court only so much of the  
275 proceeds as exceed the amount due upon his judgment debt, interest  
276 and costs. In the case of a foreclosure by market sale, the person  
277 appointed to make the sale shall bring the proceeds of the market sale  
278 into court.

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

281 If the proceeds of the sale are not sufficient to pay in full the amount  
282 secured by any mortgage or lien thereby foreclosed, the deficiency  
283 shall be determined, and thereupon judgment may be rendered in the  
284 cause for the deficiency against any party liable to pay the same who is

285 a party to the cause and has been served with process or has appeared  
286 therein, and all persons liable to pay the debt secured by the mortgage  
287 or lien may be made parties; but all other proceedings for the collection  
288 of the debt shall be stayed during the pendency of the foreclosure suit,  
289 and, if a deficiency judgment is finally rendered therein, the other  
290 proceedings shall forthwith abate. [If] Other than in the case of a  
291 foreclosure by market sale, if the property has sold for less than the  
292 appraisal provided for in section 49-25, no judgment shall be rendered  
293 in the suit or in any other for the unpaid portion of the debt or debts of  
294 the party or parties upon whose motion the sale was ordered, nor shall  
295 the same be collected by any other means than from the proceeds of  
296 the sale until one-half of the difference between the appraised value  
297 and the selling price has been credited upon the debt or debts as of the  
298 date of sale; and, when there are two or more debts to which it is to be  
299 applied, it shall be apportioned between them.

300 Sec. 12. (NEW) (*Effective October 1, 2014*) A mortgagor who consents  
301 to a foreclosure by market sale pursuant to section 49-24 of the general  
302 statutes, as amended by this act, sections 2 to 8, inclusive, of this act,  
303 and sections 49-26 to 49-28, inclusive, of the general statutes, as  
304 amended by this act, shall not be eligible for the foreclosure mediation  
305 program established pursuant to section 49-31m of the general  
306 statutes, except as otherwise provided in section 7 of this act.

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

310 (a) The tax imposed by section 12-494 shall not apply to: (1) Deeds  
311 which this state is prohibited from taxing under the Constitution or  
312 laws of the United States; (2) deeds which secure a debt or other  
313 obligation; (3) deeds to which this state or any of its political  
314 subdivisions or its or their respective agencies is a party; (4) tax deeds;  
315 (5) deeds of release of property which is security for a debt or other  
316 obligation; (6) deeds of partition; (7) deeds made pursuant to mergers  
317 of corporations; (8) deeds made by a subsidiary corporation to its

318 parent corporation for no consideration other than the cancellation or  
319 surrender of the subsidiary's stock; (9) deeds made pursuant to a  
320 decree of the Superior Court under section 46b-81, 49-24, as amended  
321 by this act, or 52-495 or pursuant to a judgment of foreclosure by  
322 market sale under section 49-24, as amended by this act; (10) deeds,  
323 when the consideration for the interest or property conveyed is less  
324 than two thousand dollars; (11) deeds between affiliated corporations,  
325 provided both of such corporations are exempt from taxation pursuant  
326 to paragraph (2), (3) or (25) of Section 501(c) of the Internal Revenue  
327 Code of 1986, or any subsequent corresponding internal revenue code  
328 of the United States, as from time to time amended; (12) deeds made  
329 by a corporation which is exempt from taxation pursuant to paragraph  
330 (3) of Section 501(c) of the Internal Revenue Code of 1986, or any  
331 subsequent corresponding internal revenue code of the United States,  
332 as from time to time amended, to any corporation which is exempt  
333 from taxation pursuant to said paragraph (3) of said Section 501(c); (13)  
334 deeds made to any nonprofit organization which is organized for the  
335 purpose of holding undeveloped land in trust for conservation or  
336 recreation purposes; (14) deeds between spouses; (15) deeds of  
337 property for the Adriaen's Landing site or the stadium facility site, for  
338 purposes of the overall project, each as defined in section 32-651; (16)  
339 land transfers made on or after July 1, 1998, to a water company, as  
340 defined in section 16-1, provided the land is classified as class I or class  
341 II land, as defined in section 25-37c, after such transfer; (17) transfers or  
342 conveyances to effectuate a mere change of identity or form of  
343 ownership or organization, where there is no change in beneficial  
344 ownership; (18) conveyances of residential property which occur not  
345 later than six months after the date on which the property was  
346 previously conveyed to the transferor if the transferor is (A) an  
347 employer which acquired the property from an employee pursuant to  
348 an employee relocation plan, or (B) an entity in the business of  
349 purchasing and selling residential property of employees who are  
350 being relocated pursuant to such a plan; (19) deeds in lieu of  
351 foreclosure that transfer the transferor's principal residence; and (20)  
352 any instrument transferring a transferor's principal residence where

353 the gross purchase price is insufficient to pay the sum of (A) mortgages  
354 encumbering the property transferred, and (B) any real property taxes  
355 and municipal utility or other charges for which the municipality may  
356 place a lien on the property and which have priority over the  
357 mortgages encumbering the property transferred.

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill establishes an additional method of foreclosure which concerns transactions between private entities and individuals and results in no fiscal impact to the state or municipalities. The bill also adds foreclosure by market sale to the list of exemptions from the Real Estate Conveyance Tax. This does not result in any fiscal impact as foreclosures are currently exempt from the Real Estate Conveyance Tax.

House Amendment "A" strikes the underlying bill and its associated fiscal impact and replaces it with the impact described above.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

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**OLR Bill Analysis****sHB 5514 (as amended by House "A")\*****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 the first mortgage on a one-to-four family residential property that is the mortgagor's principal residence.

The bill establishes industry procedures for the foreclosure by market sale option, including requirements for the foreclosure notice, property appraisal, listing agreement, and purchase and sale contract. On and after October 1, 2014, a mortgagee's foreclosure notice must advise the mortgagor of the market sale option. The bill allows a mortgagee, by filing an affidavit with the court, to proceed with other foreclosure options if certain foreclosure by market sale conditions are not met.

The bill also establishes court procedures for the foreclosure by market sale option, including a process that allows subordinate lienholders to preserve their interests in the property. It requires the court to appoint someone to execute the conveyance of the sold property and exempts such a transfer from real estate conveyance tax.

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.

\*House Amendment "A" replaces the underlying bill with similar provisions. It also:

1. requires the court to appoint a person to make the sale and bring the proceeds to court;
2. broadens the issues to be determined at the hearing;
3. establishes a process for subordinate lienholders to preserve their interests in the property;
4. exempts, from the real estate conveyance tax, transfers made pursuant to foreclosure by market sale;
5. removes the requirement for a mortgagee to file an affidavit at the time the complaint is filed; and
6. makes minor, technical, and conforming changes.

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, beginning October 1, 2014, such a notice 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 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, unless the offer is also unacceptable to the mortgagor.

**§§ 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, Motion for Judgment, and Judgment***

Under the bill, to consummate the sale the mortgagee, unless otherwise prohibited by law, must file a foreclosure complaint 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.

The filed or revised complaint must contain a copy of the (1) purchase and sale contract and (2) appraisal.

Ten days after the filed complaint 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 may (1) render a judgment of foreclosure by market sale approving the purchase and sale contract and (2) appoint a person to make the sale. The judgment is final. The issues at the hearing are

limited to a (1) finding of the property's fair market value and any priority lien holders and (2) determination of:

1. the sale fees and expenses, including any real estate broker commissions;
2. the person appointed to make the sale;
3. the purchaser's reasonable costs and expenses incurred in connection with the purchase and sale contract;
4. the amount of the mortgagee's debt; and
5. whether the mortgagee's debt plus any priority liens exceeds the property's fair market value.

Under the bill, after the hearing, the court may render a supplemental judgment that specifies the (1) persons who are entitled to proceeds from the market sale and (2) amount to which each person is entitled.

### **§ 8 — SUBORDINATE LIENHOLDERS**

Under the bill, within 30 days after the court renders a judgment of foreclosure by market sale, it must schedule right-of-first-refusal law days in inverse order of priority. This allows subordinate lienholders to pay the agreed-upon price in the purchase and sale contract to the person appointed to make the sale to preserve their equity interest in the property.

A subordinate lienholder's interest terminates after the designated right-of-first-refusal law date passes if on that date the lienholder took no action. If a subordinate lienholder purchases the property on the designated law day, the purchaser specified in the market sale contract must be reimbursed from the sale proceeds for any costs and expenses associated with the contract as determined by the court.

### **§§ 9-11 — SALE AND CONVEYANCE OF TITLE**

Under the bill, in a foreclosure by market sale, the person appointed

to make the sale must (1) execute the conveyance of the sold property and (2) bring the proceeds of the market sale into court. The conveyance is valid against all parties and their privies (i.e., persons having legal interest in the property).

The court, either at the time of or after the sale, may (1) order possession of the property to be given to the purchaser and (2) issue an execution of ejectment after the time for appeal of the foreclosure judgment has expired.

In a foreclosure by sale, if the property sells for less than the appraised value, the court cannot enter a deficiency judgment until one-half of the difference between the appraised value and the selling price is credited against the debt. This same condition does not apply under the bill to foreclosures by market sale.

#### **§§ 7 & 12 — 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) mortgagee has the right to request the other foreclosure options available under law, "foreclosure by sale" or "strict foreclosure" (see BACKGROUND) and (2) mortgagor may file a petition with the court to be included in the mediation program, if he or she did not substantially contribute to the denial or circumstances that resulted in the incomplete sale.

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.

#### **§ 13 — REAL ESTATE CONVEYANCE TAX EXEMPTION**

The bill exempts transfers made pursuant to a foreclosure by market sale from the real estate conveyance tax.

Under existing law, among the deeds that are exempt from the real estate conveyance tax are (1) transfers made pursuant to a foreclosure by sale and (2) transfers of a seller's principal residence when the transfer is (a) in lieu of a foreclosure or (b) a "short sale" (i.e., the sale of a real estate property for less than the balance remaining on the mortgage).

By law, the conveyance of real estate for \$2,000 or more is subject to a tax, of which part goes to the state and the other part goes to the municipality where the tax is paid. The applicable state and municipal rates are combined to get the total tax rate for a particular transaction. The combined rate is applied to the sale price. Under existing law, the state's portion of the tax is 0.75% of (1) the first \$800,000 of the sale price of a residential property and (2) the full sale price of unimproved land and certain bank foreclosures for mortgage delinquencies. A 1.25% rate applies to any portion of the sale price of a residential dwelling that exceeds \$800,000 (CGS § 12-494).

## **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 (File 363, as amended by House “A”), favorably reported by the Banks Committee, extends the foreclosure mediation program by two years, until July 1, 2016.

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)

Judiciary Committee

Joint Favorable  
Yea 28 Nay 2 (04/17/2014)