



General Assembly

Substitute Bill No. 5483

February Session, 2014



AN ACT EXTENDING THE FORECLOSURE MEDIATION PROGRAM.

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

1 Section 1. Section 49-31l of the 2014 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective from passage*):

4 (a) Prior to July 1, [2014] 2018: (1) Any action for the foreclosure of a
5 mortgage on residential real property with a return date during the
6 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to
7 the provisions of subsection (b) of this section, and (2) any action for
8 the foreclosure of a mortgage on (A) residential real property with a
9 return date during the period from July 1, 2009, to June 30, [2014] 2018,
10 inclusive, or (B) real property owned by a religious organization with a
11 return date during the period from October 1, 2011, to June 30, [2014]
12 2018, inclusive, shall be subject to the provisions of subsection (c) of
13 this section.

14 (b) (1) Prior to July 1, [2014] 2018, when a mortgagee commences an
15 action for the foreclosure of a mortgage on residential real property
16 with a return date during the period from July 1, 2008, to June 30, 2009,
17 inclusive, the mortgagee shall give notice to the mortgagor of the
18 foreclosure mediation program established in section 49-31m by
19 attaching to the front of the foreclosure complaint that is served on the
20 mortgagor: (A) A copy of the notice of the availability of foreclosure

21 mediation, in such form as the Chief Court Administrator prescribes,
22 and (B) a foreclosure mediation request form, in such form as the Chief
23 Court Administrator prescribes.

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

31 (3) The court may grant a mortgagor permission to submit a
32 foreclosure mediation request form and file an appearance after the
33 fifteen-day period established in subdivision (2) of this subsection, for
34 good cause shown.

35 (4) No foreclosure mediation request form may be submitted to the
36 court under this subsection on or after July 1, [2014] 2018.

37 (5) If at any time on or after July 1, 2008, but prior to July 1, [2014]
38 2018, the court determines that the notice requirement of subdivision
39 (1) of this subsection has not been met, the court may, upon its own
40 motion or upon the written motion of the mortgagor, issue an order
41 that no judgment may enter for fifteen days during which period the
42 mortgagor may submit a foreclosure mediation request form to the
43 court.

44 (6) Notwithstanding any provision of the general statutes or any
45 rule of law to the contrary, prior to July 1, [2014] 2018, no judgment of
46 strict foreclosure nor any judgment ordering a foreclosure sale shall be
47 entered in any action subject to the provisions of this subsection and
48 instituted by the mortgagee to foreclose a mortgage on residential real
49 property unless: (A) Notice to the mortgagor has been given by the
50 mortgagee in accordance with subdivision (1) of this subsection and
51 the time for submitting a foreclosure mediation request form has

52 expired and no foreclosure mediation request form has been
53 submitted, or if such notice has not been given, the time for submitting
54 a foreclosure mediation request form pursuant to subdivision (2) or (3)
55 of this subsection has expired and no foreclosure mediation request
56 form has been submitted, or (B) the mediation period set forth in
57 subdivision (b) of section 49-31n, as amended by this act, has expired
58 or has otherwise terminated, whichever is earlier.

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

62 (c) (1) Prior to July 1, [2014] 2018, when a mortgagee commences an
63 action for the foreclosure of a mortgage on residential real property
64 with a return date on or after July 1, 2009, or, with respect to real
65 property owned by a religious organization, a return date on or after
66 October 1, 2011, the mortgagee shall give notice to the mortgagor of
67 the foreclosure mediation program established in section 49-31m by
68 attaching to the front of the writ, summons and complaint that is
69 served on the mortgagor: (A) A copy of the notice of foreclosure
70 mediation, in such form as the Chief Court Administrator prescribes,
71 (B) a copy of the foreclosure mediation certificate form described in
72 subdivision (3) of this subsection, in such form as the Chief Court
73 Administrator prescribes, (C) a blank appearance form, in such form as
74 the Chief Court Administrator prescribes, (D) with respect to an action
75 for the foreclosure of a mortgage on residential real property with a
76 return date on or after October 1, 2011, to September 30, 2013,
77 inclusive, a mediation information form and a notice containing
78 contact information for authority-approved consumer credit
79 counseling agencies, which form and notice shall be in such form as
80 the Chief Court Administrator prescribes, and which form shall be
81 designed to elicit current financial information and such other
82 nonfinancial information from the mortgagor as the Chief Court
83 Administrator, in consultation with representatives from the banking
84 industry and consumer advocates, determines will further the

85 objectives of the mediation program. The instructions to the mediation
86 information form shall explain that the completed mediation
87 information form, along with accompanying documentation
88 reasonably requested from the mortgagor by way of such instructions,
89 shall be delivered to the mortgagee's counsel not later than fifteen
90 business days prior to the date of the initial mediation session, as
91 identified in the notice provided pursuant to subdivision (2) of
92 subsection (c) of section 49-31n, as amended by this act, and (E) for an
93 action to foreclose a mortgage on residential real property with a
94 return date on or after October 1, 2013, the mediation information form
95 shall instruct the mortgagor as to the objectives of the mediation
96 program, explain the preliminary process of meeting with the
97 mediator as described in subdivision (4) of this subsection, instruct the
98 mortgagor to begin gathering financial documentation commonly used
99 in foreclosure mediation for use in meeting with the mediator and in
100 mediation, and include a notice containing contact information for
101 authority-approved consumer counseling agencies, which shall be in
102 such form as the Chief Court Administrator prescribes. The content of
103 the mediation information form shall be designed by the Chief Court
104 Administrator in consultation with representatives from the banking
105 industry and consumer advocates.

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

110 (3) The notice of foreclosure mediation shall instruct the mortgagor
111 to file the appearance and foreclosure mediation certificate forms with
112 the court not later than the date fifteen days from the return date for
113 the foreclosure action. With respect to actions with a return date on or
114 after October 1, 2011, to September 30, 2013, inclusive, such notice shall
115 remind the mortgagor to deliver the completed mediation information
116 form and the accompanying documentation described in subdivision
117 (1) of this subsection and encourage such delivery in advance of the

118 required date. With respect to actions with a return date on or after
119 October 1, 2013, to June 30, [2014] 2018, inclusive, such notice shall
120 instruct the mortgagor to begin gathering financial information
121 commonly used in foreclosure mediation for use in meeting with the
122 mediator and in mediation. The mediation information form and
123 accompanying documentation shall not, without the explicit written
124 instruction of the mortgagor, be publicly available. Such notice of
125 foreclosure mediation shall be accompanied by materials from the
126 Department of Banking, as prescribed by the Chief Court
127 Administrator, which shall describe the community-based resources
128 available to the mortgagor, including authority-approved housing
129 counseling agencies that may assist with preparation for mediation
130 and application for mortgage assistance programs. The foreclosure
131 mediation certificate form shall require the mortgagor to provide
132 sufficient information to permit the court to confirm that the defendant
133 in the foreclosure action is a mortgagor, and to certify that said
134 mortgagor has sent a copy of the mediation certificate form to the
135 plaintiff in the action.

136 (4) Upon receipt of the mortgagor's appearance and foreclosure
137 mediation certificate forms, and provided the court confirms the
138 defendant in the foreclosure action is a mortgagor and that said
139 mortgagor has sent a copy of the mediation certificate form to the
140 plaintiff, the court shall assign the case to mediation and issue notice of
141 such assignment to all appearing parties, which notice shall include an
142 electronic mail address for all communications related to the
143 mediation. The court shall issue such notice not earlier than the date
144 five business days after the return date or by the date three business
145 days after the date on which the court receives the mortgagor's
146 appearance and foreclosure mediation certificate forms, whichever is
147 later, except that if the court does not receive the appearance and
148 foreclosure mediation certificate forms from the mortgagor by the date
149 fifteen days after the return date for the foreclosure action, the court
150 shall not assign the case to mediation. Promptly upon receipt of the
151 notice of assignment, but not later than the thirty-fifth day following

152 the return date, the mortgagee or its counsel shall deliver to the
153 mediator, via the electronic mail address provided for communications
154 related to the mediation, and to the mortgagor, via first class, priority
155 or overnight mail, (A) an account history identifying all credits and
156 debits assessed to the loan account and any related escrow account in
157 the immediately preceding twelve-month period and an itemized
158 statement of the amount required to reinstate the mortgage loan with
159 accompanying information, written in plain language, to explain any
160 codes used in the history and statement which are not otherwise self-
161 explanatory, (B) the name, business mailing address, electronic mail
162 address, facsimile number and direct telephone number of an
163 individual able to respond with reasonable adequacy and promptness
164 to questions relative to the information submitted to the mediator
165 pursuant to this subdivision, and any subsequent updates to such
166 contact information, which shall be provided reasonably promptly to
167 the mediator via the electronic mail address provided for
168 communication related to the mediation, (C) all reasonably necessary
169 forms and a list of all documentation reasonably necessary for the
170 mortgagee to evaluate the mortgagor for common alternatives to
171 foreclosure that are available through the mortgagee, if any, (D) a copy
172 of the note and mortgage, (E) summary information regarding the
173 status of any pending foreclosure avoidance efforts being undertaken
174 by the mortgagee, (F) a copy of any loss mitigation affidavit filed with
175 the court, and (G) at the mortgagee's option, (i) the history of
176 foreclosure avoidance efforts with respect to the mortgagor, (ii)
177 information regarding the condition of mortgaged property, and (iii)
178 such other information as the mortgagee may determine is relevant to
179 meeting the objectives of the mediation program. Following the
180 mediator's receipt of such information, the court shall assign a
181 mediator to the mediation and schedule a meeting with the mediator
182 and the mortgagor and shall endeavor to schedule such meeting on or
183 prior to the forty-ninth day following the return date. The notice of
184 such meeting shall instruct the mortgagor to complete the forms prior
185 to the meeting and to furnish such forms together with the
186 documentation contained in the list, as provided by the mortgagee

187 following the filing of the foreclosure mediation certificate, at the
188 meeting. At such meeting, the mediator shall review such forms and
189 documentation with the mortgagor, along with the information
190 supplied by the mortgagee, in order to discuss the options that may be
191 available to the mortgagor, including any community-based resources,
192 and assist the mortgagor in completing the forms and furnishing the
193 documentation necessary for the mortgagee to evaluate the mortgagor
194 for alternatives to foreclosure. The mediator may elect to schedule
195 subsequent meetings with the mortgagor and determine whether any
196 mortgagor may be excused from an in-person appearance at such
197 subsequent meeting. As soon as practicable, but in no case later than
198 the eighty-fourth day following the return date, the mediator shall
199 facilitate and confirm the submission by the mortgagor of the forms
200 and documentation to the mortgagee's counsel via electronic means
201 and, at the mortgagee's election, directly to the mortgagee per the
202 mortgagee's instruction, and determine, based on the mortgagor's
203 attendance at the meetings and the extent the mortgagor completed the
204 forms and furnished the documentation contemplated in this
205 subdivision, or failed to perform such tasks through no material fault
206 of the mortgagee, and file a report with the court indicating, (I)
207 whether mediation shall be scheduled with the mortgagee, (II) whether
208 the mortgagor attended scheduled meetings with the mediator, (III)
209 whether the mortgagor fully or substantially completed the forms and
210 furnished the documentation requested by the mortgagee, (IV) the
211 date on which the mortgagee supplied the forms and documentation,
212 and (V) any other information the mediator determines to be relevant
213 to the objectives of the mediation program. No meeting or
214 communication between the mediator and mortgagor under this
215 subdivision shall be treated as an impermissible ex parte
216 communication. If the mediator determines that the mortgagee shall
217 participate in mediation, the court shall promptly issue notice to all
218 parties of such determination and schedule a mediation session
219 between the mortgagee and mortgagor in accordance with subsection
220 (c) of section 49-31n, as amended by this act, to be held not later than
221 five weeks following the submission to the mortgagee of the forms and

222 documentation contemplated in this subdivision. If the mediator
223 determines that no sessions between the mortgagee and mortgagor
224 shall be scheduled, the court shall promptly issue notice to all parties
225 regarding such determination and mediation shall be terminated. Any
226 mortgagor wishing to contest such determination shall petition the
227 court and show good cause for reinclusion in the mediation program,
228 including, but not limited to, a material change in financial
229 circumstances or a mistake or misunderstanding of the facts by the
230 mediator.

231 (5) Notwithstanding the provisions of this subsection, the court may
232 refer a foreclosure action brought by a mortgagee to the foreclosure
233 mediation program at any time, for good cause shown, provided the
234 mortgagor has filed an appearance in said action and further provided
235 the court shall, not later than the date three business days after the date
236 on which it makes such referral, send a notice to each appearing party
237 assigning the case to mediation and requiring the parties to participate
238 in the premediation process described in subdivision (4) of this
239 subsection, with the court establishing deadlines to ensure that the
240 premediation process is to be completed by the parties as
241 expeditiously as the circumstances warrant and permit. When
242 determining whether good cause exists, the court shall consider
243 whether the parties are likely to benefit from mediation and, in the
244 case of a referral after prior attempts at mediation have been
245 terminated, whether there has been a material change in
246 circumstances.

247 (6) Notwithstanding any provision of the general statutes or any
248 rule of law, prior to July 1, [2014] 2018, (A) for the period of time which
249 shall not exceed eight months from the return date, the mortgagor
250 shall be permitted to file an answer, special defenses or counterclaims,
251 but no mortgagee or mortgagor shall make any motion, request or
252 demand with respect to the other, except those motions, requests or
253 demands that relate to the mediation program described in section 49-
254 31m and the mediation sessions held pursuant to such program,

255 provided (i) a mortgagor seeking to contest the court's jurisdiction may
256 file a motion to dismiss and the mortgagee may object to such motion
257 to dismiss in accordance with applicable law and the rules of the
258 courts, and (ii) if the mortgagor elects to make any other motion,
259 request or demand with respect to the mortgagee, the eight-month
260 limit shall no longer apply to either party; and (B) no judgment of strict
261 foreclosure nor any judgment ordering a foreclosure sale shall be
262 entered in any action subject to the provisions of this subsection and
263 instituted by the mortgagee to foreclose a mortgage on residential real
264 property or real property owned by a religious organization unless: (i)
265 The mediation period set forth in subsection (c) of section 49-31n, as
266 amended by this act, has expired or has otherwise terminated,
267 whichever is earlier, and, if fewer than eight months has elapsed from
268 the return date at the time of termination, fifteen days have elapsed
269 since such termination and any pending motion or request to extend
270 the mediation period has been heard and denied by the court, or (ii)
271 the mediation program is not otherwise required or available. Nothing
272 in this subdivision shall affect any motion made or any default or
273 judgment entered on or before June 30, 2011.

274 (7) With respect to foreclosure actions with a return date on or after
275 July 1, 2011, to June 30, [2014] 2018, inclusive, notwithstanding any
276 provision of the general statutes or any rule of law to the contrary, the
277 mortgagee shall be permitted following the eight-month or fifteen-day
278 period described in subdivision (6) of this subsection, to
279 simultaneously file, as applicable, (A) a motion for default, and (B) a
280 motion for judgment of strict foreclosure or a motion for judgment of
281 foreclosure by sale with respect to the mortgagor in the foreclosure
282 action.

283 (8) None of the mortgagor's or mortgagee's rights in the foreclosure
284 action shall be waived by participation in the foreclosure mediation
285 program.

286 Sec. 2. Section 49-31n of the 2014 supplement to the general statutes
287 is repealed and the following is substituted in lieu thereof (*Effective*

288 *from passage):*

289 (a) Prior to July 1, [2014] 2018: (1) Any action for the foreclosure of a
290 mortgage on residential real property with a return date during the
291 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to
292 the provisions of subsection (b) of this section, and (2) any action for
293 the foreclosure of a mortgage on (A) residential real property with a
294 return date during the period from July 1, 2009, to June 30, [2014] 2018,
295 inclusive, or (B) real property owned by a religious organization with a
296 return date during the period from October 1, 2011, to June 30, [2014]
297 2018, inclusive, shall be subject to the provisions of subsection (c) of
298 this section.

299 (b) (1) For any action for the foreclosure of a mortgage on residential
300 real property with a return date during the period from July 1, 2008, to
301 June 30, 2009, inclusive, the mediation period under the foreclosure
302 mediation program established in section 49-31m shall commence
303 when the court sends notice to each appearing party that a foreclosure
304 mediation request form has been submitted by a mortgagor to the
305 court, which notice shall be sent not later than three business days after
306 the court receives a completed foreclosure mediation request form. The
307 mediation period shall conclude not later than the conclusion of the
308 third mediation session between the mortgagor and mortgagee or
309 seven months after the return date, whichever is earlier, except that the
310 court may, in its discretion, for good cause shown, upon the motion of
311 any party or the mediator, (A) extend the mediation period subject to
312 the provisions of subdivision (9) of this subsection or shorten the
313 mediation period.

314 (2) The first mediation session shall be held not later than fifteen
315 business days after the court sends notice to all parties that a
316 foreclosure mediation request form has been submitted to the court.
317 The mortgagor and mortgagee shall appear in person at each
318 mediation session and shall have the ability to mediate, except that (A)
319 if a party is represented by counsel, the party's counsel may appear in
320 lieu of the party to represent the party's interests at the mediation,

321 provided the party has the ability to mediate, the mortgagor attends
322 the first mediation session in person, and the party is available (i)
323 during the mediation session by telephone, and (ii) to participate in the
324 mediation session by speakerphone, provided an opportunity is
325 afforded for confidential discussions between the party and party's
326 counsel, (B) following the initial mediation session, if there are two or
327 more mortgagors who are self-represented, only one mortgagor shall
328 be required to appear in person at each subsequent mediation session
329 unless good cause is shown, provided the other mortgagors are
330 available (i) during the mediation session, and (ii) to participate in the
331 mediation session by speakerphone, and (C) if a party suffers from a
332 disability or other significant hardship that imposes an undue burden
333 on such party to appear in person, the mediator may grant permission
334 to such party to participate in the mediation session by telephone. A
335 mortgagor's spouse, who is not a mortgagor but who lives in the
336 subject property, may appear at each mediation session, provided all
337 appearing mortgagors consent, in writing, to such spouse's appearance
338 or such spouse shows good cause for his or her appearance and the
339 mortgagors consent in writing to the disclosure of nonpublic personal
340 information to such spouse. If the mortgagor has submitted a complete
341 package of financial documentation in connection with a request for a
342 particular foreclosure alternative, the mortgagee shall have thirty-five
343 days from the receipt of the completed package to respond with a
344 decision and, if the decision is a denial of the request, provide the
345 reasons for such denial. If the mortgagor has, in connection with a
346 request for a foreclosure alternative, submitted a financial package that
347 is not complete, or if the mortgagee's evaluation of a complete package
348 reveals that additional information is necessary to underwrite the
349 request, the mortgagee shall request the missing or additional
350 information within a reasonable period of time of such evaluation. If
351 the mortgagee's evaluation of a complete package reveals that
352 additional information is necessary to underwrite the request, the
353 thirty-five-day deadline for a response shall be extended but only for
354 so long as is reasonable given the timing of the mortgagor's submission
355 of such additional information and the nature and context of the

356 required underwriting. Not later than the third business day after each
357 mediation session held on or after June 18, 2013, the mediator shall file
358 with the court a report indicating, to the extent applicable, (i) the
359 extent to which each of the parties complied with the requirements set
360 forth in this subdivision, including the requirement to engage in
361 conduct that is consistent with the objectives of the mediation program
362 and to possess the ability to mediate, (ii) whether the mortgagor
363 submitted a complete package of financial documentation to the
364 mortgagee, (iii) a general description of the foreclosure alternative
365 being requested by the mortgagor, (iv) whether the mortgagor has
366 previously been evaluated for similar requests, whether prior to
367 mediation or in mediation, and, if so, whether there has been any
368 apparent change in circumstances since a decision was made with
369 respect to that prior evaluation, (v) whether the mortgagee has
370 responded to the mortgagor's request for a foreclosure alternative and,
371 if so, a description of the response and whether the mediator is aware
372 of any material reason not to agree with the response, (vi) whether the
373 mortgagor has responded to an offer made by the mortgagee on a
374 reasonably timely basis, and if so, an explanation of the response, (vii)
375 whether the mortgagee has requested additional information from the
376 mortgagor and, if so, the stated reasons for the request and the date by
377 which such additional information shall be submitted so that
378 information previously submitted by the mortgagor, to the extent
379 possible, may still be used by the mortgagee in conducting its review,
380 (viii) whether the mortgagor has supplied, on a reasonably timely
381 basis, any additional information that was reasonably requested by the
382 mortgagee, and, if not, the stated reason for not doing so, (ix) if
383 information provided by the mortgagor is no longer current for
384 purposes of evaluating a foreclosure alternative, a description of the
385 out-of-date information and an explanation as to how and why such
386 information is no longer current, (x) whether the mortgagee has
387 provided a reasonable explanation of the basis for a decision to deny a
388 request for a loss mitigation option or foreclosure alternative and
389 whether the mediator is aware of any material reason not to agree with
390 that decision, (xi) whether the mortgagee has complied with the time

391 frames set forth in this subdivision for responding to requests for
392 decisions, (xii) if a subsequent mediation session is expected to occur, a
393 general description of the expectations for such subsequent session
394 and for the parties prior to such subsequent session and, if not
395 otherwise addressed in the report, whether the parties satisfied the
396 expectations set forth in previous reports, and (xiii) a determination of
397 whether the parties will benefit from further mediation. The mediator
398 shall deliver a copy of such report to each party to the mediation when
399 the mediator files the report. The parties shall have the opportunity to
400 submit their own supplemental information following the filing of the
401 report, provided such supplemental information shall be submitted
402 not later than five business days following the receipt of the mediator's
403 report. Any request by the mortgagee to the mortgagor for additional
404 or updated financial documentation shall be made in writing. The
405 court may impose sanctions on any party or on counsel to a party if
406 such party or such counsel engages in intentional or a pattern or
407 practice of conduct during the mediation process that is contrary to the
408 objectives of the mediation program. Any sanction that is imposed
409 shall be proportional to the conduct and consistent with the objectives
410 of the mediation program. Available sanctions shall include, but not be
411 limited to, terminating mediation, ordering the mortgagor or
412 mortgagee to mediate in person, forbidding the mortgagee from
413 charging the mortgagor for the mortgagee's attorney's fees, awarding
414 attorney's fees, and imposing fines. In the case of egregious
415 misconduct, the sanctions shall be heightened. The court shall not
416 award attorney's fees to any mortgagee for time spent in any
417 mediation session if the court finds that such mortgagee has failed to
418 comply with this subdivision, unless the court finds reasonable cause
419 for such failure.

420 (3) If the mediator reports to the court that the parties will not
421 benefit from further mediation, the mediation period shall terminate
422 automatically. If the mediator reports to the court after the first or
423 second mediation session that the parties may benefit from further
424 mediation, the mediation period shall continue.

425 (4) If the mediation period concludes and certain issues have not
426 been resolved pursuant to the mediation, the mediator may refer the
427 mortgagor to any appropriate community-based services that are
428 available.

429 (5) The Chief Court Administrator shall establish policies and
430 procedures to implement this subsection. Such policies and procedures
431 shall, at a minimum, provide that the mediator shall advise the
432 mortgagor at the first meeting required by subdivision (4) of
433 subsection (c) of section 49-31l, as amended by this act, that a judgment
434 of strict foreclosure or foreclosure by sale may cause the mortgagor to
435 lose the residential real property to foreclosure.

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

438 (7) Foreclosure mediation request forms shall not be accepted by the
439 court under this subsection on or after July 1, [2014] 2018, and the
440 foreclosure mediation program shall terminate when all mediation has
441 concluded with respect to any applications submitted to the court prior
442 to July 1, [2014] 2018.

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

450 (9) (A) The mediation period shall conclude following the third
451 mediation session or if more than seven months have elapsed since the
452 return date. Not later than fifteen days following the conclusion of the
453 mediation period, and any extended mediation sessions held in
454 accordance with this subdivision, any party may move for, or the
455 mediator may request, an extension of the mediation period. The court

456 shall grant only one additional mediation session per motion or
457 request upon a finding that it is highly probable the parties will reach
458 an agreement through mediation. The court may also grant one
459 additional mediation session per motion or request upon a finding that
460 any party has engaged, either intentionally or by a pattern or practice,
461 in conduct that is contrary to the objectives of the mediation program.
462 The court shall make its ruling not later than twenty days after the
463 filing of such motion or request, and no judgment of strict foreclosure
464 or any judgment ordering a foreclosure sale shall be entered until (i)
465 the court denies the motion or request, or (ii) the conclusion of the
466 extended mediation session, except as provided in subparagraph (B) of
467 this subdivision. Upon the grant of an additional mediation session
468 following the proper finding, the court shall establish an expeditious
469 deadline for such extended mediation session to occur. Such extended
470 mediation period shall conclude following such extended mediation
471 session.

472 (B) The mediation period may be extended for one additional
473 mediation session without a hearing held pursuant to this subdivision
474 provided all parties to the mediation agree that such parties would
475 benefit from such a session and, in consultation with the mediator,
476 establish an expeditious deadline for such session to take place.

477 (C) To determine whether to extend mediation, the court may
478 consider all matters that have arisen in the mediation, including, but
479 not limited to, the number of motions to extend mediation, the reasons
480 for which an agreement has not been reached, the objectives of the
481 mediation program, the extent to which the parties will benefit from
482 further mediation, the reports submitted by the mediator, papers
483 submitted in connection with any motion, and any supplemental
484 reports submitted by a party. The court shall articulate its reasons in
485 the order granting or denying any such motion or request to extend
486 mediation.

487 (10) For any case pending as of October 1, [2013] 2017, in which
488 mediation is ongoing, (A) if three or fewer sessions have been held,

489 such case shall be treated as if no sessions have been held as of said
490 date for purposes of subdivision (9) of this subsection, and (B) if four
491 or more sessions have been held, then any party or the mediator may
492 move to terminate the mediation period or extend such period in
493 accordance with subdivision (9) of this subsection and, if no such
494 motion to extend is made, the mediation period shall conclude after
495 the third mediation session occurring after October 1, [2013] 2017.

496 (c) (1) For any action for the foreclosure of a mortgage on residential
497 real property with a return date during the period from July 1, 2009, to
498 June 30, [2014] 2018, inclusive, or for any action for the foreclosure of a
499 mortgage on real property owned by a religious organization with a
500 return date during the period from October 1, 2011, to June 30, [2014]
501 2018, inclusive, the mediation period under the foreclosure mediation
502 program established in section 49-31m shall commence when the court
503 sends notice to each appearing party scheduling the first foreclosure
504 mediation session. The mediation period shall conclude not later than
505 the conclusion of the third mediation session between the mortgagor
506 and mortgagee or seven months after the return date, whichever is
507 earlier, except that the court may, in its discretion, for good cause
508 shown, upon the motion of any party or request by the mediator,
509 extend the mediation period subject to the provisions of subdivision
510 (9) of this subsection or shorten the mediation period.

511 (2) The mortgagor and mortgagee shall appear in person at each
512 mediation session and shall have the ability to mediate, except that (A)
513 if a party is represented by counsel, the party's counsel may appear in
514 lieu of the party to represent the party's interests at the mediation,
515 provided the party has the ability to mediate, the mortgagor attends
516 the first mediation session in person and the party is available (i)
517 during the mediation session by telephone, and (ii) to participate in the
518 mediation session by speakerphone, provided an opportunity is
519 afforded for confidential discussions between the party and party's
520 counsel, (B) following the initial mediation session, if there are two or
521 more mortgagors who are self-represented, only one mortgagor shall

522 be required to appear in person at each subsequent mediation session
523 unless good cause is shown, provided the other mortgagors are
524 available (i) during the mediation session, and (ii) to participate in the
525 mediation session by speakerphone, and (C) if a party suffers from a
526 disability or other significant hardship that imposes an undue burden
527 on such party to appear in person, the mediator may grant permission
528 to such party to participate in the mediation session by telephone. A
529 mortgagor's spouse, who is not a mortgagor but who lives in the
530 subject property, may appear at each mediation session, provided all
531 appearing mortgagors consent, in writing, to such spouse's appearance
532 or such spouse shows good cause for his or her appearance and the
533 mortgagors consent, in writing, to the disclosure of nonpublic personal
534 information to such spouse. If the mortgagor has submitted a complete
535 package of financial documentation in connection with a request for a
536 particular foreclosure alternative, the mortgagee shall have thirty-five
537 days from the receipt of the completed package to respond with a
538 decision and, if the decision is a denial of the request, provide the
539 reasons for such denial. If the mortgagor has, in connection with a
540 request for a foreclosure alternative, submitted a financial package that
541 is not complete, or if the mortgagee's evaluation of a complete package
542 reveals that additional information is necessary to underwrite the
543 request, the mortgagee shall request the missing or additional
544 information within a reasonable period of time of such evaluation. If
545 the mortgagee's evaluation of a complete package reveals that
546 additional information is necessary to underwrite the request, the
547 thirty-five-day deadline for a response shall be extended but only for
548 so long as is reasonable given the timing of the mortgagor's submission
549 of such additional information and the nature and context of the
550 required underwriting. Not later than the third business day after each
551 mediation session, the mediator shall file with the court a report
552 indicating, to the extent applicable, (i) the extent to which each of the
553 parties complied with the requirements set forth in this subdivision,
554 including the requirement to engage in conduct that is consistent with
555 the objectives of the mediation program and to possess the ability to
556 mediate, (ii) whether the mortgagor submitted a complete package of

557 financial documentation to the mortgagee, (iii) a general description of
558 the foreclosure alternative being requested by the mortgagor, (iv)
559 whether the mortgagor has previously been evaluated for similar
560 requests, whether prior to mediation or in mediation, and, if so,
561 whether there has been any apparent change in circumstances since a
562 decision was made with respect to that prior evaluation, (v) whether
563 the mortgagee has responded to the mortgagor's request for a
564 foreclosure alternative and, if so, a description of the response and
565 whether the mediator is aware of any material reason not to agree with
566 the response, (vi) whether the mortgagor has responded to an offer
567 made by the mortgagee on a reasonably timely basis, and if so, an
568 explanation of the response, (vii) whether the mortgagee has requested
569 additional information from the mortgagor and, if so, the stated
570 reasons for the request and the date by which such additional
571 information shall be submitted so that information previously
572 submitted by the mortgagor, to the extent possible, may still be used
573 by the mortgagee in conducting its review, (viii) whether the
574 mortgagor has supplied, on a reasonably timely basis, any additional
575 information that was reasonably requested by the mortgagee, and, if
576 not, the stated reason for not doing so, (ix) if information provided by
577 the mortgagor is no longer current for purposes of evaluating a
578 foreclosure alternative, a description of the out-of-date information
579 and an explanation as to how and why such information is no longer
580 current, (x) whether the mortgagee has provided a reasonable
581 explanation of the basis for a decision to deny a request for a loss
582 mitigation option or foreclosure alternative and whether the mediator
583 is aware of any material reason not to agree with that decision, (xi)
584 whether the mortgagee has complied with the time frames set forth in
585 this subdivision for responding to requests for decisions, (xii) if a
586 subsequent mediation session is expected to occur, a general
587 description of the expectations for such subsequent session and for the
588 parties prior to such subsequent session and, if not otherwise
589 addressed in the report, whether the parties satisfied the expectations
590 set forth in previous reports, and (xiii) a determination of whether the
591 parties will benefit from further mediation. The mediator shall deliver

592 a copy of such report to each party to the mediation when the mediator
593 files the report. The parties shall have the opportunity to submit their
594 own supplemental information following the filing of the report,
595 provided such supplemental information shall be submitted not later
596 than five business days following the receipt of the mediator's report.
597 Any request by the mortgagee to the mortgagor for additional or
598 updated financial documentation shall be made in writing. The court
599 may impose sanctions on any party or on counsel to a party if such
600 party or such counsel engages in intentional or a pattern or practice of
601 conduct during the mediation process that is contrary to the objectives
602 of the mediation program. Any sanction that is imposed shall be
603 proportional to the conduct and consistent with the objectives of the
604 mediation program. Available sanctions shall include, but not be
605 limited to, terminating mediation, ordering the mortgagor or
606 mortgagee to mediate in person, forbidding the mortgagee from
607 charging the mortgagor for the mortgagee's attorney's fees, awarding
608 attorney's fees, and imposing fines. In the case of egregious
609 misconduct, the sanctions shall be heightened. The court shall not
610 award attorney's fees to any mortgagee for time spent in any
611 mediation session if the court finds that such mortgagee has failed to
612 comply with this subdivision, unless the court finds reasonable cause
613 for such failure.

614 (3) If the mediator reports to the court that the parties will not
615 benefit from further mediation, the mediation period shall terminate
616 automatically. If the mediator reports to the court after the first or
617 second mediation session that the parties may benefit from further
618 mediation, the mediation period shall continue.

619 (4) If the mediation period concludes and certain issues have not
620 been resolved pursuant to the mediation, the mediator may refer the
621 mortgagor to any appropriate community-based services that are
622 available in the judicial district, but any such referral shall not cause a
623 delay in the mediation process.

624 (5) The Chief Court Administrator shall establish policies and

625 procedures to implement this subsection. Such policies and procedures
626 shall, at a minimum, provide that the mediator shall advise the
627 mortgagor at the first meeting required by subdivision (4) of
628 subsection (c) of section 49-31l, as amended by this act, that: (A) Such
629 mediation does not suspend the mortgagor's obligation to respond to
630 the foreclosure action beyond the limited time frame described in
631 subdivision (6) of subsection (c) of section 49-31l, as amended by this
632 act; and (B) a judgment of strict foreclosure or foreclosure by sale may
633 cause the mortgagor to lose the residential real property or real
634 property owned by a religious organization to foreclosure.

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

637 (7) The foreclosure mediation program shall terminate when all
638 mediation has concluded with respect to any foreclosure action with a
639 return date during the period from July 1, 2009, to June 30, [2014] 2018,
640 inclusive.

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

648 (9) (A) The mediation period shall conclude following the third
649 mediation session or if more than seven months have elapsed since the
650 return date. Not later than fifteen days following the conclusion of the
651 mediation period, and any subsequent extended mediation sessions
652 held in accordance with this subdivision, any party may move for, or
653 the mediator may request, an extension of the mediation period. The
654 court shall grant only one additional mediation session per motion or
655 request upon a finding that it is highly probable the parties will reach
656 an agreement through mediation. The court may also grant one

657 additional mediation session per motion or request upon a finding that
658 any party has engaged, either intentionally or by a pattern or practice,
659 in conduct that is contrary to the objectives of the mediation program.
660 The court shall make its ruling not later than twenty days after the
661 filing of such motion or request, and no judgment of strict foreclosure
662 or any judgment ordering a foreclosure sale shall be entered until (i)
663 the court denies the motion or request, or (ii) the conclusion of the
664 subsequent extended mediation session, except as provided in
665 subparagraph (B) of this subdivision. Upon the grant of an additional
666 mediation session following the proper finding, the court shall
667 establish a reasonably expeditious deadline for such subsequent
668 extended mediation session to occur. Such extended mediation period
669 shall conclude following such subsequent extended mediation session.

670 (B) The mediation period may be extended for one additional
671 mediation session without a hearing held pursuant to this subdivision
672 provided all parties to the mediation agree that such parties would
673 benefit from such a session and, in consultation with the mediator,
674 establish a reasonably expeditious deadline for such session to take
675 place.

676 (C) To determine whether to extend mediation, the court may
677 consider all matters that have arisen in the mediation, including, but
678 not limited to, the number of motions to extend mediation, the reasons
679 for which an agreement has not been reached, the objectives of the
680 mediation program, the extent to which the parties will benefit from
681 further mediation, the reports submitted by the mediator, papers
682 submitted in connection with any motion, and any supplemental
683 reports submitted by a party. The court shall articulate its reasons in
684 the order granting or denying any such motion or request to extend
685 mediation.

686 (10) For any case pending as of October 1, [2013] 2017, in which
687 mediation is ongoing, (A) if three or fewer sessions have been held,
688 such case shall be treated as if no sessions have been held as of said
689 date for purposes of subdivision (9) of this subsection, and (B) if four

690 or more sessions have been held, then any party or the mediator may
691 move to terminate the mediation period or extend such period in
692 accordance with subdivision (9) of this subsection and, if no such
693 motion to extend is made, the mediation period shall conclude after
694 the third mediation session occurring after October 1, [2013] 2017.

695 (d) (1) Not later than February 14, 2014, the Chief Court
696 Administrator shall submit, in accordance with the provisions of
697 section 11-4a, to the joint standing [committee] committees of the
698 General Assembly having cognizance of matters relating to banks and
699 housing, a summary regarding the mediation program and a general
700 summary of the data collected in the reports submitted pursuant to
701 subdivision (2) of subsections (b) and (c) of this section from July 1,
702 2013, to December 31, 2013, inclusive. Such summaries shall include,
703 but not be limited to, the aggregate data regarding the number of cases
704 in mediation, the number of mediation sessions held, the number of
705 agreements reached before the conclusion of the mediation period, the
706 number of motions or requests for an extension or continuance and the
707 identity of the party that made such a motion or request, whether the
708 loan at issue was serviced by a third party, the judicial district in which
709 the mediation took place and whether the mortgagor was self-
710 represented.

711 (2) Not later than February 14, 2015, the Chief Court Administrator
712 shall submit, in accordance with the provisions of section 11-4a, to the
713 joint standing [committee] committees of the General Assembly having
714 cognizance of matters relating to banks and housing, a summary of the
715 reports submitted from July 1, 2013, to December 31, 2014, inclusive,
716 pursuant to subdivision (2) of subsections (b) and (c) of this section.
717 The detailed data points for such summary, including data to be
718 collected but not reported, shall be developed by the Chief Court
719 Administrator in consultation with representatives from the
720 Governor's office, the banking industry and consumer advocates.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	49-31l
Sec. 2	<i>from passage</i>	49-31n

Statement of Legislative Commissioners:

In Subsec. (c) (1) of section 1, "as amended by this act," was inserted for accuracy.

HSG *Joint Favorable Subst. -LCO*