



General Assembly

February Session, 2014

Raised Bill No. 5514

LCO No. 2252



Referred to Committee on BANKS

Introduced by:
(BA)

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 Section 49-24 of the general statutes is repealed and the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 that are a first encumbrance against the
8 property, by a judgment of foreclosure by market sale upon the written
9 motion of the mortgagee and with consent of the mortgagor, in
10 accordance with sections 2 to 7, inclusive, of this act, sections 49-26 to
11 49-28, inclusive, as amended by this act, and section 11 of this act .

12 Sec. 2. (NEW) (*Effective October 1, 2014*) For purposes of a foreclosure
13 by market sale in accordance with section 49-24 of the general statutes,
14 as amended by this act, sections 3 to 7, inclusive, of this act, sections
15 49-26 to 49-28, inclusive, of the general statutes, as amended by this

16 act, and section 11 of this act:

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

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

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

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

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

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

78 (b) At any time after the date provided in the notice required under
79 subsection (a) of this section, the foreclosure of the mortgagor's

80 mortgage may continue without any further restriction or requirement,
81 provided the mortgagee files an affidavit with the court at the time the
82 complaint is filed stating that the notice provisions of said subsection
83 have been complied with and that either the mortgagor failed to
84 confirm his or her election in accordance with said subsection by the
85 date disclosed in the notice or that discussions were initiated, but (1)
86 the mortgagee and mortgagor were unable to reach a mutually
87 acceptable agreement to proceed; (2) based on the appraisal obtained
88 pursuant to section 4 of this act, the property does not appear to be
89 subject to a mortgage that is eligible for foreclosure by market sale; (3)
90 the mortgagor did not grant reasonable interior access for the appraisal
91 required by section 4 of this act; (4) the mortgagee and mortgagor were
92 unable to reach an agreement as to a mutually acceptable listing
93 agreement pursuant to section 5 of this act; (5) a listing agreement was
94 executed, but no offers to purchase were received; (6) an offer or offers
95 were received, but were unacceptable to either or both the mortgagee
96 and mortgagor; or (7) other circumstances exist that would allow the
97 mortgagee or mortgagor to elect not to proceed with a foreclosure by
98 market sale pursuant to section 49-24 of the general statutes, as
99 amended by this act, sections 2 to 7, inclusive, of this act, sections 49-26
100 to 49-28, inclusive, of the general statutes, as amended by this act, and
101 section 11 of this act, or that would otherwise make the mortgage
102 ineligible for foreclosure by market sale. The affidavit required by this
103 subsection may be combined with the affidavit required by subsection
104 (b) of section 8-265ee of the general statutes.

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

113 exterior of the residential real property for the sole purpose of
114 gathering facts necessary to perform the appraisal assignment.
115 Nothing in this section shall be construed as requiring either the
116 mortgagor or the mortgagee to proceed with further discussions.

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

136 Sec. 6. (NEW) (*Effective October 1, 2014*) (a) If a mortgagor executes a
137 listing agreement that is acceptable to both the mortgagee and
138 mortgagor pursuant to section 5 of this act and receives an offer to
139 purchase the residential real property that encompasses a price, terms
140 and conditions that are acceptable to both the mortgagor and the
141 mortgagee, the mortgagor shall execute a contract for sale with the
142 purchaser that shall reflect the agreed-upon price, terms and
143 conditions and be contingent upon the completion of the foreclosure
144 by market sale in accordance with section 49-24 of the general statutes,
145 as amended by this act, sections 2 to 7, inclusive, of this act, sections

146 49-26 to 49-28, inclusive, of the general statutes, as amended by this
147 act, and section 11 of this act. The mortgagor shall, not later than five
148 days after the date of the execution of the purchase and sale contract,
149 provide the mortgagee with a copy of said contract along with written
150 documentation, in a form and substance acceptable to the mortgagee,
151 evidencing the mortgagor's consent to the filing of a motion for
152 judgment of foreclosure by market sale.

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

179 the offer is unacceptable to the mortgagor.

180 Sec. 7. (NEW) (*Effective October 1, 2014*) A mortgagee shall have the
181 right to file a motion for judgment of foreclosure by market sale on or
182 after the ten days following the return date specified in the complaint
183 filed in accordance with subsection (b) of section 6 of this act. Upon
184 motion of the mortgagee and with the consent of the mortgagor, the
185 court, after notice and hearing, shall render a judgment of foreclosure
186 by market sale and enter a judgment approving the purchase and sale
187 contract, which judgments shall be final judgments for purposes of
188 appeal. The only issues at such hearing shall be the determination of
189 the amount of the mortgagee's debt, whether the mortgagee's debt
190 exceeds the appraised value of the residential real property, the
191 determination of the expenses of sale, and the determination of
192 priorities for distribution of the sale proceeds. If the court denies the
193 mortgagee's motions for the judgments contemplated by this section,
194 the mortgagee shall have the right to request the entry of a judgment
195 of foreclosure in accordance with the other provisions of law,
196 including the provisions governing strict foreclosure. The mortgagee
197 shall retain the right to move for a judgment of foreclosure under other
198 provisions of law at any time if circumstances develop that make it
199 reasonably likely that a sale will not be consummated in accordance
200 with the judgment entered pursuant to this section.

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

203 (a) When a sale has been made pursuant to a judgment therefor,
204 including a foreclosure by market sale pursuant to section 49-24, as
205 amended by this act, sections 2 to 7, inclusive, of this act, sections 49-27
206 and 49-28, as amended by this act, and section 11 of this act, and a
207 foreclosure other than a foreclosure by market sale, which is ratified by
208 the court, a conveyance of the property sold shall be executed by the
209 person appointed to make the sale, which conveyance shall vest in the
210 purchaser the same estate that would have vested in the mortgagee or

211 lienholder if the mortgage or lien had been foreclosed by strict
212 foreclosure, and to this extent such conveyance shall be valid against
213 all parties to the cause and their privies, but against no other persons.
214 The court, at the time of or after ratification of the sale, or at the time of
215 or after the sale in the case of a foreclosure by market sale, may order
216 possession of the property sold to be delivered to the purchaser and
217 may issue an execution of ejectment after the time for appeal of the
218 ratification of the sale has expired.

219 (b) In a foreclosure by market sale, the person appointed to make
220 the sale shall convey the premises to the purchaser in such manner and
221 form as provided in subsection (a) of this section, without the need for
222 subsequent ratification, and shall conduct the closing of the sale and
223 make disbursement of the expenses out of the proceeds as determined
224 in accordance with section 7 of this act and ordered by the court in
225 accordance with section 49-27, as amended by this act.

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

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

243 other proceeds directly to the plaintiff.

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

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

265 Sec. 11. (NEW) (*Effective October 1, 2014*) A mortgagor who consents
266 to a foreclosure by market sale pursuant to section 49-24 of the general
267 statutes, as amended by this act, sections 2 to 7, inclusive, of this act,
268 and sections 49-26 to 49-28, inclusive, of the general statutes, as
269 amended by this act, shall not be eligible for the foreclosure mediation
270 program established pursuant to section 49-31m of the general
271 statutes.

<p>This act shall take effect as follows and shall amend the following sections:</p>
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Section 1	<i>October 1, 2014</i>	49-24
Sec. 2	<i>October 1, 2014</i>	New section
Sec. 3	<i>October 1, 2014</i>	New section
Sec. 4	<i>October 1, 2014</i>	New section
Sec. 5	<i>October 1, 2014</i>	New section
Sec. 6	<i>October 1, 2014</i>	New section
Sec. 7	<i>October 1, 2014</i>	New section
Sec. 8	<i>October 1, 2014</i>	49-26
Sec. 9	<i>October 1, 2014</i>	49-27
Sec. 10	<i>October 1, 2014</i>	49-28
Sec. 11	<i>October 1, 2014</i>	New section

Statement of Purpose:

To establish an additional method of foreclosure that will support the Connecticut real estate market by selling residential properties at market prices, encourage potential purchasers eligible for first-time homebuyer and other special lending programs or who wish to perform due diligence concerning a purchase to purchase a residence in foreclosure, provide a measure of dignity to residential borrowers faced with the prospect of foreclosure, reduce deficiencies by providing a procedure for a market sale instead of a forced auction sale or lender possession of property prior to sale and provide a speedy method of concluding a foreclosure when the borrower and first mortgage lender agree on a sale.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]