



General Assembly

Amendment

February Session, 2014

LCO No. 4606

HB0551404606HDO

Offered by:

REP. TONG, 147th Dist.
SEN. LEONE, 27th Dist.
SEN. LINARES, 33rd Dist.
REP. ALBERTS, 50th Dist.
REP. DIMINICO, 13th Dist.

To: Subst. House Bill No. 5514

File No. 413

Cal. No. 248

"AN ACT CONCERNING AN OPTIONAL METHOD OF FORECLOSURE."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

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 Section 49-24 of the general statutes is repealed and the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

5 All liens and mortgages affecting real property may, on the written
6 motion of any party to any suit relating thereto, be foreclosed (1) by a
7 decree of sale instead of a strict foreclosure at the discretion of the
8 court before which the foreclosure proceedings are pending, or (2)
9 with respect to mortgages, as defined in section 2 of this act, that are a
10 first mortgage against the property, by a judgment of foreclosure by
11 market sale upon the written motion of the mortgagee, as defined in

12 section 2 of this act, and with consent of the mortgagor, as defined in
13 section 2 of this act, in accordance with sections 2 to 8, inclusive, of this
14 act, sections 49-26 to 49-28, inclusive, as amended by this act, and
15 section 12 of this act.

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

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

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

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

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

38 Sec. 3. (NEW) (*Effective October 1, 2014*) (a) On and after October 1,
39 2014, a mortgagee who desires to foreclose upon a mortgage
40 encumbering residential real property of a mortgagor shall give notice
41 to the mortgagor by registered or certified mail, postage prepaid, at the
42 address of the residential real property that is secured by such

43 mortgage, in accordance with the relevant notice provisions of
44 chapters 134 and 846 of the general statutes. No such mortgagee may
45 commence a foreclosure of a mortgage prior to mailing such notice.
46 Such notice shall advise the mortgagor of his or her delinquency or
47 other default under the mortgage and that the mortgagor has the
48 option to contact the mortgagee to discuss whether the property may,
49 by mutual consent of the mortgagee and mortgagor, be marketed for
50 sale pursuant to a listing agreement established in accordance with
51 section 5 of this act. Such notice shall also advise the mortgagor (1) of
52 the mailing address, telephone number, facsimile number and
53 electronic mail address that should be used to contact the mortgagee;
54 (2) of a date not less than sixty days after the date of such notice by
55 which the mortgagor must initiate such contact, with
56 contemporaneous confirmation in writing of the election to pursue
57 such option sent to the designated mailing address or electronic mail
58 address of the mortgagee; (3) that the mortgagor should contact a real
59 estate agent licensed under chapter 392 of the general statutes to
60 discuss the feasibility of listing the property for sale pursuant to the
61 foreclosure by market sale process; (4) that, if the mortgagor and
62 mortgagee both agree to proceed with further discussions concerning
63 an acceptable listing agreement, the mortgagor must first permit an
64 appraisal to be obtained in accordance with section 4 of this act for
65 purposes of verifying eligibility for foreclosure by market sale; (5) that
66 the appraisal will require both an interior and exterior inspection of the
67 property; (6) that the terms and conditions of the listing agreement,
68 including the duration and listing price, must be acceptable to both the
69 mortgagee and mortgagor; (7) that the terms and conditions of any
70 offer to purchase, including the purchase price and any contingencies,
71 must be acceptable to both the mortgagor and mortgagee; (8) that if an
72 acceptable offer is received, the mortgagor will sign an agreement to
73 sell the property through a foreclosure by market sale; and (9) in bold
74 print and at least ten-point font, that if the mortgagor consents to a
75 foreclosure by market sale, the mortgagor will not be eligible for
76 foreclosure mediation in any type of foreclosure action that is
77 commenced following the giving of such consent. The notice provided

78 under this subsection may be combined with and delivered at the
79 same time as any other notice required by subsection (a) of section 8-
80 265ee of the general statutes or federal law.

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

108 Sec. 4. (NEW) (*Effective October 1, 2014*) If a mortgagee and
109 mortgagor both elect, pursuant to section 3 of this act, to proceed with
110 further discussions about the possibility of pursuing a mutually
111 acceptable foreclosure by market sale, the mortgagee shall cause a

112 written appraisal of the fair market value of the residential real
113 property to be performed by an appraiser licensed under chapter 400g
114 of the general statutes. The mortgagor shall, promptly upon request,
115 permit such appraiser access at reasonable times to the interior and
116 exterior of the residential real property for the sole purpose of
117 gathering facts necessary to perform the appraisal assignment.
118 Nothing in this section shall be construed as requiring either the
119 mortgagor or the mortgagee to proceed with further discussions.

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

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

146 conditions and be contingent upon the completion of the foreclosure
147 by market sale in accordance with section 49-24 of the general statutes,
148 as amended by this act, sections 2 to 8, inclusive, of this act, sections
149 49-26 to 49-28, inclusive, of the general statutes, as amended by this
150 act, and section 12 of this act. If an offer is received, but is unacceptable
151 to the mortgagee, the mortgagee shall provide the mortgagor with
152 written notice of its decision and, without limiting the breadth of its
153 discretion, a general explanation of the reason or reasons for such
154 decision. Such notice shall not be required in instances where the offer
155 is unacceptable to the mortgagor. The mortgagor shall, not later than
156 five days after the date of the execution of the purchase and sale
157 contract, provide the mortgagee with a copy of such contract along
158 with written documentation, in a form and substance acceptable to the
159 mortgagee, evidencing the mortgagor's consent to the filing of a
160 motion for judgment of foreclosure by market sale.

161 (b) Unless otherwise prohibited by applicable law, not later than
162 thirty days after the receipt of such contract and the documentation
163 evidencing consent, or not later than thirty days after the satisfaction
164 or expiration of any contingencies in the contract that must either have
165 been satisfied or expired before the foreclosure action may be
166 commenced to consummate the sale, whichever thirty-day time frame
167 is later, the mortgagee shall commence a foreclosure by writ, summons
168 and complaint. Any such complaint shall claim, in the prayer for relief,
169 a foreclosure of the mortgage pursuant to section 49-24 of the general
170 statutes, as amended by this act, sections 2 to 8, inclusive, of this act,
171 sections 49-26 to 49-28, inclusive, of the general statutes, as amended
172 by this act, and section 12 of this act, and shall contain a copy of the
173 contract between the mortgagor and the purchaser as well as a copy of
174 the appraisal obtained pursuant to section 4 of this act. No mortgagee
175 may require the employ or use of a particular list of persons licensed
176 under chapter 392 of the general statutes as a condition of approval of
177 an offer. No mortgagee may require the use of an auction or other
178 alternative method of sale as a condition of approval of an offer once
179 the listing agreement required pursuant to section 5 of this act has

180 been executed by the mortgagor. Nothing in this section shall be
181 construed as requiring either the mortgagee or mortgagor to approve
182 any offer that is made pursuant to this section.

183 Sec. 7. (NEW) (*Effective October 1, 2014*) A mortgagee may file a
184 motion for judgment of foreclosure by market sale on or after the ten
185 days following the return date specified in the complaint filed in
186 accordance with subsection (b) of section 6 of this act. Upon motion of
187 the mortgagee and with the consent of the mortgagor, the court, after
188 notice and hearing, may render a judgment of foreclosure by market
189 sale approving the purchase and sale contract, which judgment shall
190 be a final judgment for purposes of appeal, and appoint a person to
191 make the sale. The only issues at such hearing shall be a finding of the
192 fair market value of the residential real property and of any priority
193 liens on such property and a determination of the amount of the fees
194 and expenses of sale, including any real estate broker commissions, the
195 person appointed to make the sale, the reasonable costs and expenses
196 incurred by the purchaser of such property in connection with the
197 purchase and sale contract, the mortgagee's debt and whether the
198 mortgagee's debt together with any priority liens exceeds the fair
199 market value of such property. Following such hearing, the court may
200 render a supplemental judgment that specifies the persons who are
201 entitled to proceeds from the market sale and the amount of such
202 proceeds to which each such person is entitled. If the court denies the
203 mortgagee's motion for the judgment of foreclosure by market sale
204 contemplated by this section or if circumstances develop that make it
205 reasonably likely that a sale will not be consummated in accordance
206 with the judgment of foreclosure by market sale entered pursuant to
207 this section, then, subject to the provisions of sections 49-31k to 49-31o,
208 inclusive, of the general statutes, (1) the mortgagor may, if eligible,
209 petition for inclusion in the foreclosure mediation program set forth in
210 sections 49-31k to 49-31o, inclusive, of the general statutes, provided
211 the mortgagor did not substantially contribute to the events leading to
212 such denial or circumstances and, in order to grant such petition, the
213 court shall (A) give consideration to any testimony or affidavits the

214 parties may submit in support of or in opposition to such petition, and
215 (B) find that (i) such petition is not motivated primarily by a desire to
216 delay the entry of a judgment of a foreclosure, and (ii) it is highly
217 probable the parties will reach an agreement through mediation, and
218 (2) the mortgagee shall have the right to request the entry of a
219 judgment of foreclosure in accordance with the other provisions of
220 law, including the provisions governing strict foreclosure.

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

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

243 When a sale has been made pursuant to a judgment therefor and
244 ratified by the court, a conveyance of the property sold shall be
245 executed by the person appointed to make the sale, which conveyance
246 shall vest in the purchaser the same estate that would have vested in

247 the mortgagee or lienholder if the mortgage or lien had been
248 foreclosed by strict foreclosure, and to this extent such conveyance
249 shall be valid against all parties to the cause and their privies, but
250 against no other persons. The court, at the time of or after ratification
251 of the sale, may order possession of the property sold to be delivered
252 to the purchaser and may issue an execution of ejectment after the time
253 for appeal of the ratification of the sale has expired. When a sale has
254 been made pursuant to a foreclosure by market sale in accordance with
255 section 49-24, as amended by this act, sections 2 to 8, inclusive, of this
256 act, sections 49-27 and 49-28, as amended by this act, a conveyance of
257 the property sold shall be executed by the person appointed to make
258 the sale, which conveyance shall be valid against all parties to the
259 cause and their privies, but against no other persons. The court, at the
260 time of or after the sale in the case of a foreclosure by market sale may
261 order possession of the property sold to be delivered to the purchaser
262 and may issue an execution of ejectment after the time for appeal of the
263 judgment of foreclosure by market sale has expired.

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

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

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

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

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

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

312 (a) The tax imposed by section 12-494 shall not apply to: (1) Deeds

313 which this state is prohibited from taxing under the Constitution or
314 laws of the United States; (2) deeds which secure a debt or other
315 obligation; (3) deeds to which this state or any of its political
316 subdivisions or its or their respective agencies is a party; (4) tax deeds;
317 (5) deeds of release of property which is security for a debt or other
318 obligation; (6) deeds of partition; (7) deeds made pursuant to mergers
319 of corporations; (8) deeds made by a subsidiary corporation to its
320 parent corporation for no consideration other than the cancellation or
321 surrender of the subsidiary's stock; (9) deeds made pursuant to a
322 decree of the Superior Court under section 46b-81, 49-24, as amended
323 by this act, or 52-495 or pursuant to a judgment of foreclosure by
324 market sale under section 49-24, as amended by this act; (10) deeds,
325 when the consideration for the interest or property conveyed is less
326 than two thousand dollars; (11) deeds between affiliated corporations,
327 provided both of such corporations are exempt from taxation pursuant
328 to paragraph (2), (3) or (25) of Section 501(c) of the Internal Revenue
329 Code of 1986, or any subsequent corresponding internal revenue code
330 of the United States, as from time to time amended; (12) deeds made
331 by a corporation which is exempt from taxation pursuant to paragraph
332 (3) of Section 501(c) of the Internal Revenue Code of 1986, or any
333 subsequent corresponding internal revenue code of the United States,
334 as from time to time amended, to any corporation which is exempt
335 from taxation pursuant to said paragraph (3) of said Section 501(c); (13)
336 deeds made to any nonprofit organization which is organized for the
337 purpose of holding undeveloped land in trust for conservation or
338 recreation purposes; (14) deeds between spouses; (15) deeds of
339 property for the Adriaen's Landing site or the stadium facility site, for
340 purposes of the overall project, each as defined in section 32-651; (16)
341 land transfers made on or after July 1, 1998, to a water company, as
342 defined in section 16-1, provided the land is classified as class I or class
343 II land, as defined in section 25-37c, after such transfer; (17) transfers or
344 conveyances to effectuate a mere change of identity or form of
345 ownership or organization, where there is no change in beneficial
346 ownership; (18) conveyances of residential property which occur not
347 later than six months after the date on which the property was

348 previously conveyed to the transferor if the transferor is (A) an
 349 employer which acquired the property from an employee pursuant to
 350 an employee relocation plan, or (B) an entity in the business of
 351 purchasing and selling residential property of employees who are
 352 being relocated pursuant to such a plan; (19) deeds in lieu of
 353 foreclosure that transfer the transferor's principal residence; and (20)
 354 any instrument transferring a transferor's principal residence where
 355 the gross purchase price is insufficient to pay the sum of (A) mortgages
 356 encumbering the property transferred, and (B) any real property taxes
 357 and municipal utility or other charges for which the municipality may
 358 place a lien on the property and which have priority over the
 359 mortgages encumbering the property transferred."

This act shall take effect as follows and shall amend the following sections:		
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>	New section
Sec. 9	<i>October 1, 2014</i>	49-26
Sec. 10	<i>October 1, 2014</i>	49-27
Sec. 11	<i>October 1, 2014</i>	49-28
Sec. 12	<i>October 1, 2014</i>	New section
Sec. 13	<i>October 1, 2014</i>	12-498(a)