

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



**PA 14-84—sHB 5514**

*Banks Committee*

*Judiciary Committee*

**AN ACT CONCERNING AN OPTIONAL METHOD OF FORECLOSURE**

**SUMMARY:** By law, in a foreclosure proceeding involving real property, the court may issue a judgment of (1) foreclosure by sale, which usually involves auctioning the property, or (2) strict foreclosure, which transfers title to the lender. This act adds another option for certain residential properties, called “foreclosure by market sale,” which is a court-approved sale on the open market. The mortgagee (lender) must request and the mortgagor (borrower) must consent to such a sale. The act limits this option to the first mortgage on a one-to-four family residential property that is the mortgagor’s residence.

The act establishes procedures for foreclosure by market sale, including requirements for the foreclosure notice, property appraisal, listing agreement, and purchase and sale contract. The act allows a mortgagee to proceed with other foreclosure options if certain conditions are not met.

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

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

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

EFFECTIVE DATE: October 1, 2014 (PA 14-217, § 207, changes the effective date of this act to January 1, 2015.)

**§ 3 — FORECLOSURE NOTICE AND MORTGAGEE AFFIDAVIT**

*Foreclosure Notice*

By law, before beginning a mortgage foreclosure, a mortgagee must send notice by registered or certified mail with postage prepaid to the mortgagor at the address of the residential property (i.e., owner-occupied one-to-four family dwelling) secured by the mortgage.

Under the act, beginning October 1, 2014 (PA 14-217, § 249, changes this date to January 1, 2015), such a notice must inform the mortgagor of the:

## OLR PUBLIC ACT SUMMARY

1. mortgage delinquency or default;
2. option to contact the mortgagee to discuss selling the property through foreclosure by market sale;
3. mortgagee's contact information (mailing address, telephone and fax numbers, and email address); and
4. opportunities to contact the mortgagee and elect, in writing, the market sale option. (The notice must set a deadline at least 60 days after the notice to contact the mortgagee.)

The notice must also inform the mortgagor that:

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

Additionally, the notice must inform the mortgagor that he or she will not be eligible for the state's foreclosure mediation program in any foreclosure action that begins after giving consent to foreclosure by market sale. (The act does not require the notice to include disclosure of the exception that allows some mortgagors to participate in the mediation program.)

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

### *Mortgagee Affidavit*

Under the act, the mortgagee may continue the mortgage foreclosure without the restrictions or further requirements of the foreclosure by market sale option if it files an affidavit with the court indicating that the notice described above was provided and either the mortgagor failed to elect foreclosure by market sale by the required date or discussions were initiated but:

1. the mortgagee and mortgagor were unable to reach a mutually acceptable agreement to proceed;
2. the mortgage does not appear to be eligible for foreclosure by market sale, based on the appraisal of the property (the act does not specify eligibility criteria);
3. the mortgagor did not grant reasonable interior access for the appraisal;
4. the mortgagee and mortgagor (a) were unable to reach a mutually acceptable listing agreement or (b) executed a listing agreement but received no purchase offers;
5. an offer or offers were received, but were unacceptable to either the mortgagee, mortgagor, or both; or

## OLR PUBLIC ACT SUMMARY

6. other circumstances exist that would (a) allow the mortgagee or mortgagor to decide not to proceed or (b) otherwise make the mortgage ineligible for foreclosure by market sale.

The mortgagee may combine this affidavit with any other affidavit required under the Connecticut Housing Authority Act.

### §§ 4-6 — PROPERTY APPRAISAL AND LISTING AGREEMENT

#### *Appraisal*

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

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

#### *Listing Agreement*

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

The listing agreement the mortgagor executes must (1) be acceptable to both mortgagee and mortgagor and (2) require the listing agent to report any offer to both the mortgagor and mortgagee as soon as practicable. The mortgagee must give the listing agent a name, a mailing address, telephone and fax numbers, and an email address to report purchase offers.

Under the act, once the mortgagor executes the listing agreement, the mortgagee (1) is prohibited from requiring the use of an auction, other alternative method of sale, or a specific listing agent as a condition of approving an offer and (2) must explain in writing to a mortgagor its decision that an offer is unacceptable, unless the offer is also unacceptable to the mortgagor. The act does not limit the mortgagee's discretion in its reason or reasons for such a decision.

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

#### *Purchase and Sale Contract*

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

## OLR PUBLIC ACT SUMMARY

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

### *Complaint and Motion for Judgment*

Under the act, to consummate the sale the mortgagee, unless otherwise prohibited by law, must file a foreclosure complaint within the later of the following time periods:

1. 30 days after receiving the contract and the mortgagor's written consent or
2. 30 days after the satisfaction or expiration of any contract contingencies that must be satisfied or have expired before the foreclosure action may begin.

The filed or revised complaint must contain a copy of the contract and appraisal.

Ten days after the filed complaint return date, the mortgagee may file a motion for judgment of foreclosure by market sale. Under the act, after a hearing and notice, and with the mortgagor's consent, the court may (1) render a judgment of foreclosure by market sale approving the purchase and sale contract and (2) appoint a person to make the sale. The judgment is final for appeal purposes. The issues at the hearing are limited to finding the property's fair market value and determining:

1. whether any priority lien holders exist;
2. the sale fees and expenses, including any real estate broker commissions;
3. who to appoint to make the sale;
4. the purchaser's reasonable costs and expenses incurred in connection with the contract;
5. the amount of the mortgagee's debt; and
6. whether the mortgagee's debt plus any priority liens exceed the property's fair market value.

Under the act, after the hearing, the court may render a supplemental judgment stating who is entitled to the sale proceeds and how much each will receive.

### § 8 — SUBORDINATE LIENHOLDERS

Under the act, within 30 days after the court renders a judgment of foreclosure by market sale, it must schedule "right-of-first-refusal law days," a specific day when each other person with a lien against the property (a subordinate lien holder) can pay the agreed-upon price in the purchase and sale contract to the person appointed to make the sale to preserve their equity interest in the property. The court must schedule the days in inverse order of priority.

A subordinate lienholder's interest terminates after its designated right-of-first-refusal law date passes if, on that date, the lienholder took no action. If a subordinate lienholder purchases the property on the designated law day, the purchaser specified in the market sale contract must be reimbursed from the sale

## OLR PUBLIC ACT SUMMARY

proceeds for any costs and expenses associated with the contract as determined by the court.

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

Under the act, the person appointed to make the sale must (1) execute the conveyance of the property and (2) bring the proceeds to court. The conveyance is valid against all parties and their privies (people having legal interest in the property).

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

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

### §§ 7 & 12 — FORECLOSURE MEDIATION, FORECLOSURE BY SALE, AND STRICT FORECLOSURE

Under the act, a mortgagor who consents to a foreclosure by market sale is ineligible for the foreclosure mediation program unless the court denies the mortgagee's motion for judgment of foreclosure by market sale or it becomes likely that a sale will not be completed according to the judgment. In such circumstances, the (1) mortgagee has the right to request the other foreclosure options available under law, "foreclosure by sale" or "strict foreclosure" (see BACKGROUND) and (2) mortgagor may file a petition with the court to be included in the mediation program, if he or she did not substantially contribute to the denial or circumstances that resulted in the incomplete sale. (The mortgagor must otherwise be eligible for the mediation program available under existing law.)

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

### BACKGROUND

#### *Foreclosure by Sale*

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

## OLR PUBLIC ACT SUMMARY

borrower to repay any remaining mortgage balance).

### *Strict Foreclosure*

With strict foreclosure the lender obtains a court order that the borrower is in default of the mortgage and title transfers to the lender immediately. However, the court sets an amount of time in which the borrower may redeem the property, but if he or she fails to do so, the lender gets unequivocal ownership and the borrower no longer has any claim to the property.

### *Foreclosure Mediation Program*

The state's foreclosure mediation program determines whether parties can reach an agreement that will avoid foreclosure. Judicial Branch foreclosure mediators conduct mediation sessions in a statutorily prescribed timeframe. PA 14-89 extends the program, which will sunset on July 1, 2016.

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