**PA 16-65**—sHB 5571
*Banking Committee*
*Judiciary Committee*

# AN ACT CONCERNING BANKING AND CONSUMER PROTECTIONS

## TABLE OF CONTENTS:

*Makes permanent protections available to certain tenants of foreclosed properties by eliminating the December 31, 2017 sunset date*

## § 45 — BANKING DEPARTMENT ASSESSMENTS

*Allows the banking commissioner to assess licensed money transmitters and student loan services to cover the Banking Department's expenses*

## § 46 — PROHIBITIONS ON MORTGAGE SERVICERS PLACING INSURANCE ON PROPERTY

*Changes when mortgage servicers can place insurance on mortgaged property*

## §§ 47-54 — CONSUMER COLLECTION AGENCIES AND CREDITORS

*Expands the consumer collection agency law to include persons who collect federal income tax debt on behalf of the federal government, creates new procedural requirements for certain court cases brought by consumer collection agencies, and makes other changes affecting debt collection*

## §§ 55 & 56 — SECURITY FREEZES

*Limits authority to place a security freeze on a child's credit to children under age 16, instead of under age 18, and makes procedural changes*

## § 57 — LOOK-BACK PERIOD TO DISCOVER AND REPORT FRAUD

*Allows a bank and its customers to agree to a shorter time period to report fraud*

## § 58 — POSSESSIONS LEFT INSIDE REPOSSESSED MOTOR VEHICLES

*Requires contract holders to notify customers of their responsibilities for personal property left inside repossessed motor vehicles and allows the contract holders to charge a total storage fee of up to $25*

## §§ 59-62 — STUDENT LOAN SERVICERS

*Requires the banking commissioner to set service standards for student loan servicers, exempts certain entities from student loan servicer licensure, and allows the student loan ombudsman to evaluate moving toward debt-free education in Connecticut*

## § 63 — HOUSING AUTHORITY PILOT PROGRAM TO BUILD TENANTS' CREDIT

*Creates a pilot program for local housing authorities to use rental payments to build tenants' credit*

## § 64 — FEE LIENS IN ESTATE SETTLEMENT PROBATE MATTERS

*Specifies when a property lien for unpaid estate settlement probate fees is unenforceable against a third party*

## §§ 65-71 — INTERNATIONAL TRADE AND INVESTMENT CORPORATIONS

*Creates a new optional license for international trade and investment corporations*

## § 72 — ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNTS

*Requires a report on converting education savings plans to ABLE accounts and any changes needed to successfully operate the ABLE program*

## §§ 73-80 & 91 — JUDGMENT OF LOSS MITIGATION

*Creates a new judicial process as an alternative to foreclosure for owner-occupants of one- to four-family residential properties, in which a court may enter a judgment of loss mitigation which allows (1) certain underwater mortgages to be modified without a junior lienholder's consent and (2) the mortgagor (borrower) to satisfy all or part of his or her obligation by transferring the property to the mortgagee (lender) or a third party*

§§ 81-84, 89 & 90 — FORECLOSURE BY MARKET SALE

*Allows a mortgagee, in certain circumstances, to file a motion for judgment of foreclosure by market sale within 30 days of receipt of a sales contract or the expiration or satisfaction of any contingencies, eliminates certain mortgagee notice and affidavit requirements, and makes other modifications to the process*

§ 85 — FORECLOSURE PROTECTION

*Eliminates a requirement that lenders notify certain unemployed and underemployed homeowners of the availability of foreclosure protection*

§ 86 — FORECLOSURE EVICTIONS

*Prohibits a state marshal from carrying out a foreclosure-related eviction order sooner than five days after the court executes it and requires the marshal to use reasonable efforts to find and notify a defendant of an eviction at least five days before notifying the town of the eviction*

§§ 87, 88, 92 & 94 — FORECLOSURE MEDIATION PROGRAM

*Authorizes mediators in the judicial branch's foreclosure mediation program to excuse certain parties from mediation sessions and eliminates the (1) restriction that disqualifies a mortgagor from the program when he or she consents to foreclosure by market sale and (2) requirement that a mortgagee provide a certificate of good standing to a mortgagor who has completed the mediation program*

§ 93 — EXPEDITED FORECLOSURE WORKING GROUP

*Requires the Banking Committee, within available appropriations, to convene a working group to recommend methods to expedite foreclosures of abandoned properties and requires the working group to submit its findings to the committee by January 1, 2017*

## § 1 — TROUBLED CREDIT UNIONS' SENIOR MANAGEMENT

*Requires banking commissioner approval to add members to a troubled credit union's senior management*

The act requires the banking commissioner to approve the election, appointment, or employment of any potential member of a troubled Connecticut credit union's senior management. The law already requires him to approve the election or appointment of a director to the credit union's governing board.

By law, a troubled credit union is one the commissioner determines is (1) in danger of becoming insolvent; (2) not likely to meet its members' demands or pay its normal obligations; (3) likely to incur losses that substantially deplete its capital; or (4) operating in an unsafe and unsound manner.

EFFECTIVE DATE: Upon passage

## §§ 2, 3, 5, 7 & 9-13 — VARIOUS MINOR CHANGES TO BANKING LAWS

*Updates certain capital requirements, makes changes to interest on bank collateral, extends Banking Department confidentiality requirements, makes technical changes, and updates references to federal law*

### *Bank Capital (§ 2)*

The act updates certain capital requirements to match those in federal law.

*Commissioner's Interest in Certain Bank Collateral (§ 3)*

State law requires certain public depositories to maintain, in segregated trust accounts, certain amounts of collateral for their uninsured deposits. Prior law gave the commissioner a perfected security interest in the collateral for the benefit of public depositors, pursuant to an agreement between the depositor and the depository. The act allows the commissioner to have a perfected interest without such an agreement. Generally, someone with a perfected interest has priority over those who later claim an interest in the same property.

*Confidential Records (§ 5)*

The law generally makes confidential and prohibits Banking Department disclosure of confidential, supervisory, or investigative information the department obtains from regulatory or law enforcement agencies of other states, the federal government, or foreign countries. The act also applies these rules to other supervisory or investigative confidential records from these agencies.

*Technical Changes and References to Federal Law (§§ 7 & 9-13)*

The act makes technical changes and updates references to federal securities law.

EFFECTIVE DATE: Upon passage, except certain technical changes are effective July 1, 2016.

## § 4 — BANKERS' BANK EXPANSION

*Expands who may join a bankers' bank*

The act extends, to banks and credit unions in any state or a bank holding company owned exclusively by a combination of them, the ability to join a group of banks that owns a Connecticut-chartered bankers' bank. Existing law allows banks and credit unions in Connecticut, other New England states, New Jersey, New York, and Pennsylvania to join.

Previously, a bankers' bank could only provide services to other banks and their directors, officers, and employees except as further limited by the commissioner's regulations. The act instead subjects a bankers' bank to the laws governing Connecticut banks, except as limited by the commissioner's regulations.

EFFECTIVE DATE: Upon passage

## § 6 — MARTIN LUTHER KING, JR. CORRIDORS

*Creates Martin Luther King, Jr. Corridors*

The act requires the commissioner to designate three Martin Luther King, Jr. Corridors to promote secured and unsecured lending in the state. It does not provide additional information about these corridors.

EFFECTIVE DATE: October 1, 2016

## § 8 — MORTGAGE SERVICERS HANDLING OF ESCROW FUNDS

*Imposes requirements for recordkeeping and handling of escrow funds*

By law, a mortgage servicer holding a mortgagor's funds in escrow to pay taxes and insurance premiums must use the money to pay the taxes and premiums when they become due. The act requires servicers to keep records of the handling of each escrow account, including amounts paid into and from the account and the initial and annual escrow statements required by federal regulations. The servicer must keep the records for at least five years after last servicing the account and may do so through electronic, microfiche, or any computerized storage, as long as the information is readily retrievable.

The act also requires licensed servicers and certain mortgage lenders and correspondent lenders exempt from licensure to deposit or invest these escrow funds in one or more segregated deposit or trust accounts with a federally-insured bank, Connecticut or federal credit union, or out-of-state bank. The accounts must be reconciled monthly, including through monthly account statements from the depository institution, if the:

1. institution maintains the accounts in a way that reasonably reflects that the funds are for escrow purposes;
2. funds are not commingled with the servicer's funds and are not used for the servicer's business expenses; and
3. servicer adopts, implements, and maintains internal accounting controls reasonably designed to ensure compliance with the provisions governing escrow funds.

EFFECTIVE DATE: July 1, 2016

## §§ 14-18 — RETAIL INSTALLMENT LOANS

*Specifies how, with regard to repossessed goods, retail installment contract holders must (1) apply unearned insurance premiums and resale proceeds and (2) calculate fair market value; establishes record keeping requirements for sales finance companies; and specifies what must be included in a notice of intent to repossess*

### *Insurance Refunds*

The act requires, in certain situations, a retail installment contract holder to apply unearned insurance premiums toward a buyer's outstanding obligations under the contract. This applies when goods have been repossessed and the contract holder has received a refund of all or part of the unearned insurance premiums paid by the buyer.

Under the act, "unearned insurance premiums" are the premiums insurers collect in advance but that are subject to return if the coverage ends before the term expires.

### *Records*

Beginning October 1, 2016, the act requires sales finance companies to acquire and maintain adequate records, in the form and manner the commissioner directs, for each retail installment contract they acquire by purchase, discount, pledge, loan, advance, or other means.

It also requires these companies to keep records of installment contract

applications for the retail sale of motor vehicles in Connecticut that they have reviewed or that relate to a contract they acquired. These records must include the:

1. name, address, income, and credit score of the applicant and any co-applicant, and if known, their ethnicity, race, and sex;
2. type, amount, and annual percentage rate of the loan; and
3. application results.

Sales finance companies must make these records available to the banking commissioner within five business days after he requests them.

They must retain records of (1) denied applications for at least two years after the application date and (2) acquired applications for at least two years after the date of the final payment, sale, or assignment of the contract, whichever occurs first, or a longer period if required by law.

The act requires each sales finance company to provide the commissioner, by January 30, 2017, the records it collects between October 1, 2016 and December 31, 2016.

*Service Fee Limits*

With some exceptions, the law prohibits contract holders from receiving or collecting any charges or expenses for delinquent payment collections. The act specifies that this includes any service fees for accepting delinquent payments by telephone or through the internet.

*Notice of Intention to Repossess*

By law, contract holders must give buyers at least 10 days' notice before retaking goods. The notice must state that the buyer is in default and the date when the goods will be retaken. Under the act, the notice must also indicate (1) what the buyer is required to do to cure the default, including the amount of any required payment, and (2) the date by which the buyer must meet these requirements (i.e., the cure period).

*Resale Proceeds*

Under existing law, a contract holder must apply proceeds from the resale of repossessed goods to the payment of (1) actual and reasonable expenses associated with the resale, repossession, and storage of the goods and (2) the balance owed under the contract. The act specifies that resale proceeds must be applied in this order of priority.

*Fair Market Value of Repossessed Motor Vehicles and Boats*

The law establishes a formula for calculating the fair market value of a repossessed motor vehicle or boat with an aggregate cash price above a threshold amount. The act increases, from $2,000 to $4,000, the amount above which the motor vehicle or boat's value must be calculated using the statutory formula.

Under the act, the fair market value of such a vehicle or boat is the average of its (1) average trade-in value and (2) highest-stated retail value. Under prior law,

it was the average of its (1) average trade-in value and (2) average retail value. By law, these values are determined according to the National Automobile Dealers Association Used Car Guide, eastern edition, or National Automobile Dealers Association Guide for Boats, eastern edition, as applicable. If these guides do not provide a motor vehicle's or boat's average trade-in value, the act requires that the highest-stated trade-in value be used instead.

EFFECTIVE DATE: October 1, 2016, except the records provision is effective upon passage.

## §§ 19-36 — SMALL LOAN LICENSEES

*Revises the small loan statutes, maintaining many of prior law's provisions; conforms the law to existing practice by requiring all licensing activities to be done through the Nationwide Mortgage Licensing System Registry; establishes a comprehensive list of permitted and prohibited licensee practices and loan provisions; converts the interest rate structure to an annual percentage rate capped at 36%; and makes other changes affecting small loans*

The act revises the small loan statutes and in so doing maintains many of prior law's provisions. Additionally, it:

1. establishes a comprehensive list of permitted and prohibited licensee practices and loan provisions;
2. creates a statutory definition of the term "small loan" using the parameters set under prior law (i.e., an amount or value of $15,000 or less and an Annual Percentage Rate (APR) greater than 12%);
3. converts the existing interest rate structure to an APR capped at the maximum 36% allowed under the federal Military Lending Act;
4. conforms to existing practice by requiring small loan licensure to be done through the Nationwide Mortgage Licensing System and Registry (NMLS or "the system");
5. changes the license application fee structure and the length of time a license remains valid; and
6. with some exceptions, voids any small loan made in connection with unlicensed activity, noncompliance with statutory restrictions, or prohibited licensee conduct.

### *Definitions (§ 19)*

The act defines several terms used throughout the small loan statutes, some of which are as follows:

"APR" means the annual percentage rate for the loan calculated according to the federal Truth-in-Lending Act and its implementing regulations. "Disclosed APR" means the APR disclosed, as applicable, pursuant to federal regulations on open-end and closed-end credit. If more than one APR is disclosed, the "disclosed APR" is the highest APR disclosed.

"Connecticut borrower" means any borrower who resides in or maintains a domicile in this state and who:

1. negotiates or agrees to the terms of the small loan in person, by mail, by telephone, or through the internet while physically present in Connecticut;
2. enters into or executes a small loan agreement with the lender in person,

by mail, by telephone, or through the internet while physically present in Connecticut; or

3. makes a payment on the loan in this state, including a debit on an account the borrower holds in a branch of a financial institution or the use of a negotiable instrument drawn on an account at a financial institution (i.e., any bank or credit union chartered or licensed under the laws of this or any other state, or the United States, and having its main office or a branch office in Connecticut).

"Control person" means an individual that directly or indirectly exercises control over another person, including any person who:

1. is a director, general partner, or executive officer;
2. in the case of a corporation, directly or indirectly has the right to vote at least 10% of a class of any voting security or has the power to sell or direct the sale of at least 10% of any class of voting securities;
3. in the case of a limited liability company, is a managing member; or
4. in the case of a partnership, has the right to receive upon dissolution, or has contributed, at least 10% of the capital.

"Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.

"Lead" means any information identifying a potential small loan consumer.

"Generating leads" means:

1. engaging in the business of selling leads for small loans;
2. generating or augmenting leads for small loans for other persons for or with the expectation of compensation or gain; or
3. referring consumers to other persons for a small loan for, or with the expectation of, compensation or gain for the referral, excluding generating or augmenting leads for small loans for an exempt entity (see below) using the exempt entity's data or customer information.

"Open-end small loan" means consumer credit extended by a creditor under a plan in which the (1) creditor reasonably contemplates repeated transactions and may impose a finance charge on an outstanding unpaid balance and (2) amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

"Trigger lead" means a consumer report obtained pursuant to the federal Fair Credit Reporting Act (15 USC § 1681b) triggered by an inquiry made to a consumer reporting agency in response to an application for credit. Trigger lead does not include a consumer report obtained by a small loan lender that holds or services existing indebtedness of the applicant who is the subject of the report.

"Unique identifier" means a number or other identifier assigned by protocols established by the system.

*Licensure Required (§§ 19 & 20)*

As under existing law, anyone engaged in making small loans to a Connecticut borrower must first obtain a license from the Banking Department.

"Small loan" means any loan of money or extension of credit, or the purchase of, or an advance of money on, a borrower's future income where the amount or value is $15,000 or less and the APR is greater than 12%.

Under the act, licensure is also required for anyone who, with respect to a prospective Connecticut borrower:

1. offers, solicits, brokers, directly or indirectly arranges, places, or finds a small loan;
2. engages in other activity intended to help the borrower obtain a small loan, including, but not limited to, generating leads;
3. receives payments of principal and interest in connection with the loan;
4. purchases, acquires, or receives assignment of such a loan; or
5. advertises a small loan or related services in Connecticut.

The act prohibits anyone from accepting, from a person who is not licensed or exempt from licensure, any lead, referral, or application for a small loan to a prospective Connecticut borrower.

It also prohibits anyone from selling, transferring, pledging, assigning, or otherwise disposing of, to a person who is not licensed or exempt from licensure, any small loan made to a Connecticut borrower.

Under the act, similar to prior law, a small loan does not include:

1. a loan or extension of credit for agricultural, commercial, industrial, or government use;
2. a residential mortgage loan; or
3. an open-end credit account accessed by a credit card issued by a federally insured bank or credit union.

The act also excludes a retail installment contract from the definition of small loan.

*Exemptions (§ 21)*

*Licensure Exemption.* The act exempts the following persons from small loan licensure:

1. licensed pawnbrokers (also exempt under prior law);
2. licensed consumer collection agencies, when engaged in the activities of such an agency in the normal course of business;
3. small loan servicers for federally insured banks and credit unions and certain of their subsidiaries (see below) who own the small loans, provided the servicing arrangements include receiving payments of principal and interest in connection with the small loans and providing accounting, recordkeeping, and data processing services;
4. retail sellers who offer, extend, or facilitate credit through an open-end or closed-end credit plan for the purchase of goods or services from them;
5. consumer reporting agencies when generating leads; and
6. passive buyers of a small loan.

(A “passive buyer” is a person who: (1) has acquired a small loan from a licensee or a person exempt under the first three listed exemptions for investment purposes, (2) will receive the principal and interest and any other money due under the small loan, and (3) has not had and will not have communications of

any kind with the Connecticut borrower regarding the loan.)

*Exempt Entities.* Under the act, the following entities are exempt from the small loan statutes:

1. any federally insured bank, out-of-state bank, Connecticut credit union, federal credit union, or out-of-state credit union;
2. any wholly-owned subsidiary of such bank or credit union; and
3. any operating subsidiary where each owner of such operating subsidiary is wholly owned by the same bank or credit union.

Prior law exempted similar financial institutions from the small loan statutes.

*Exempt Loans.* The act exempts from the small loan statutes any loan made by an exempt entity. This includes the provisions applicable to licensed persons, even if:

1. the exempt person uses the services of a person exempt from licensing or required to be licensed in connection with the small loans that are made by the exempt person and
2. a person exempt from licensing or required to be licensed engages in activities intended to assist a prospective or current Connecticut borrower in obtaining a small loan that is made or will be made by an exempt entity.

The act prohibits a licensee, or anyone required to be licensed, from engaging in any activity that requires licensing for any small loan that has a disclosed APR greater than 36%, if that small loan contains any condition or provision inconsistent with the requirements summarized below.

*Small Loan Activities by Licensees and Exempt Entities (§ 22)*

Under the act, except as provided for exempt loans described above, a small loan licensee or anyone required to have a small loan license may not make; offer, solicit, broker, arrange, place, or find; assist borrowers with; receive payments in connection with; purchase; acquire; receive assignment of; or advertise small loans with conditions or provisions inconsistent with the requirements described below. Also, banks, credit unions, or other exempt entities or persons may not receive payments in connection with; purchase, acquire, or receive assignment of; or advertise small loans made by a licensee, if the loan has provisions inconsistent with the requirements below. Any such small loan is unenforceable in Connecticut except for a bona fide error (e.g., clerical, calculation, programming, or printing errors) or if the loan was valid under another state's law and the borrower was not a Connecticut resident at the time of the loan's inception, but has since become a Connecticut borrower.

*Small Loan-Related Activities.* Small loan-related activities are those activities that involve making; offering; soliciting; brokering; arranging; placing; finding; assisting with; receiving payments for; purchasing; advertising; or acceptance of leads, referrals, or applications of small loans. Small loans that are the subject of the activities listed above must not contain:

1. for a small loan under $5,000, an APR that exceeds the 36% maximum APR permitted with respect to the consumer credit extended under the federal Military Lending Act, or for a small loan between $5,000 and $15,000, an APR that exceeds 25% as calculated under the Military

Lending Act;

2. for small loans that are not open-end loans, a provision that increases the interest rate due to default;
3. a payment schedule with regular periodic payments that (a) when aggregated do not fully amortize the outstanding principal balance or (b) cause the principal balance to increase;
4. a payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds, unless such payments are required to be escrowed by a governmental agency;
5. a prepayment penalty;
6. an adjustable rate provision;
7. a waiver of participation in a class action or a provision requiring a borrower, whether acting individually or on behalf of others similarly situated, to assert any claim or defense in a non-judicial forum that: (a) utilizes principles inconsistent with the statutes or common law or (b) limits any claim or defense the borrower may have;
8. a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness, except when repayment of the loan is accelerated by a bona fide default pursuant to a due-on-sale clause;
9. a security interest, except as described below; or
10. fees or charges of any kind, except as expressly permitted below.

*Small Loans that are the Subject of Licensees' and Exempt Entities' Activities (described above).* Small loans that are the subject of licensees' and exempt entities' activities may contain provisions:

1. for late fees, if: (a) the fees are assessed after an installment remains unpaid for at least ten consecutive days, including Sundays and holidays; (b) the fees do not exceed the lesser of 5% of the outstanding installment payment, excluding any previously assessed late fees, or a total of $25 per month; and (c) no interest is charged on the fees;
2. allowing charges for a dishonored check or any other form of returned payment, provided the total fee for such returned payment is no more than $20;
3. allowing for collection of deferral charges, but only with the specific written authorization of the borrower and in a total amount not exceeding the interest due during the applicable billing cycle;
4. allowing interest accrual after the maturity date or the deferred maturity date, provided the interest must not exceed 12% per year computed on a daily basis on the respective unpaid balances;
5. providing for reasonable attorney's fees;
6. including credit life insurance or credit accident and health insurance subject to certain conditions and restrictions described below; or
7. taking a security interest in a motor vehicle in connection with a closed-end small loan made solely for the purchase or refinancing of the motor vehicle, provided the APR of the loan must not exceed the rates indicated for the respective vehicle classifications as follows: (a) new motor vehicles, 15%; (b) used motor vehicles up to two model years old, 17%;

and (c) used motor vehicles more than two model years old, 19%.

*Open-end Small Loans – Additional Requirements.* Open-end small loans, in addition to the requirements listed above, must:

1. not provide for a money advance exceeding at any one time an unpaid principal of $15,000;
2. provide for payments and credits to be made to the same borrower's account from which advances, interest, charges, and costs on the loan are debited;
3. provide for interest to be computed on the unpaid principal balance of the account in each billing cycle by one of the following methods: (a) converting the APR to a daily rate and multiplying that rate by the daily unpaid principal balance, in which case the daily rate is determined by dividing the APR by 365 or (b) converting the APR to a monthly rate and multiplying the monthly rate by the average daily unpaid principal balance of the account in the billing cycle in which case the rate is determined by dividing the APR by 12;
4. not compound interest or charges by adding any unpaid interest or charges to the unpaid principal balance of the borrower's account; or
5. not include any other fees or charges of any kind, except as expressly permitted below.

Under the act, as under prior law, in addition to the requirements listed above, open-end small loans may:

1. provide for an annual fee of up to $50 and
2. include credit life insurance or credit accident and health insurance, subject to certain conditions and restrictions.

*Prohibited Actions for Lead Generators.* Under the act, a person licensed or required to be licensed who provides information identifying a potential customer (i.e., lead generator) must not, in connection with lead generation activities:

1. initiate any telephone call using an automatic telephone dialing system or an artificial or prerecorded voice without the prior express written consent of the recipient;
2. fail to transmit the lead generator's name and telephone number to any caller identification service a consumer uses;
3. initiate a telephone call to a consumer's home between 9:00 p.m. and 8:00 a.m. local time at the consumer's location;
4. fail to clearly and conspicuously identify the lead generator and the purpose of the contact in its written and oral communications with a consumer;
5. fail to provide the consumer the ability to opt out of any unsolicited advertisement communicated to the consumer via an email address;
6. initiate an unsolicited advertisement via email to a consumer more than 10 business days after receiving a request from the consumer opting out of such unsolicited advertisements;
7. use a subject heading or email address in a commercial email message that would likely mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the sender, contents, or

subject matter of the message;

8. sell, lease, exchange, or otherwise transfer or release the email address or telephone number of a consumer who has asked to opt out of future solicitations;
9. collect, buy, lease, exchange, or otherwise transfer or receive an individual's Social Security or bank account number;
10. use information from a trigger lead to solicit consumers who have opted out of firm offers of credit under the federal Fair Credit Reporting Act;
11. initiate a telephone call to a consumer who has placed his or her contact information on a federal or state Do Not Call list, unless the consumer has provided express written consent;
12. represent to the public, through advertising or other means of communicating or providing information, such as the use of business cards or stationery, brochures, signs, or other promotional items, that such lead generator can or will perform any other activity requiring licensure under the banking laws, unless such lead generator is duly licensed to perform such other activity or is exempt from the licensure requirements;
13. refer applicants to, or receive a fee from, any person who must be licensed under the banking laws but was not licensed when the lead generator's services were provided; or
14. assist or aid and abet any person in the conduct of business requiring licensure when such person does not hold the required license.

*Credit Insurance (§ 23)*

As under existing law, a licensee may sell insurance to a Connecticut borrower at his or her request for (1) insuring the lives of the persons obligated on a small loan and (2) providing accident and health insurance covering one person on a small loan. The act allows the borrower to cancel such insurance at any time by giving written notice. Prior law provided a 15-day cancellation period after the date of the loan.

*Open-end Small Loan.* Under the act, as under prior law, in the case of an open-end small loan, the additional charge for credit life insurance or credit accident and health insurance must be calculated in each billing cycle by applying the current monthly premium rate for such insurance, as determined by the Insurance Commissioner, to the unpaid balances in the account, using any of the methods for the calculation of loan charges described above. The licensee cannot cancel the credit life insurance or credit accident and health insurance written in connection with an open-end small loan because the borrower is delinquent in making the required minimum payments on the loan, unless:

1. one or more of such payments is past due for a period of at least 90 days and
2. the licensee advances to the insurer the amounts required to keep the insurance in force during such period, which may be debited from the borrower's account.

Any cancellation is effective at the end of the billing cycle in which notice is received and the licensee cannot impose further charges for the insurance.

*Prohibited Practices (§§ 24 & 25)*

*Licensees.* Under the act, a small loan licensee is prohibited from:

1. causing a borrower, including a co-borrower or guarantor, to owe at any one time more than $15,000 in principal on one or more small loans;
2. inducing or permitting a borrower to split or divide any small loan or loans, or induce or permit a borrower to become obligated, directly or indirectly, under more than one loan contract at a time, primarily for the purpose of obtaining rates or charges that would otherwise be prohibited by the small loan laws;
3. taking any: (a) confession of judgment; (b) power of attorney; (c) note or promise to pay that does not state the actual amount of the loan, the time period for which the loan is made, and the charges for such loan; or (d) instrument related to the loan in which blanks are left to be filled in after the loan is made;
4. offering the borrower any other product or service for which there is or will be any cost to the borrower in connection with a small loan unless (a) permitted by the small loan laws, (b) authorized under another license, or by applicable exemption from any requirement for such licensure, to offer such product or services, or (c) if no separate license or exemption is required to offer such product or services, the product or service is authorized in advance, in writing, by the commissioner after he is satisfied that it is of such a character that the granting of this authority would not permit or easily result in evasion of the small loan statutes or any implementing regulations; or
5. renewing or refinancing a small loan unless it will result in a distinct advantage to the borrower, provided restoration to a contractually up-to-date condition does not, in itself, constitute a distinct advantage to the borrower.

*Licensee or Anyone Required to be Licensed.* The act explicitly prohibits any licensee or anyone required to be licensed from directly or indirectly:

1. assisting or aiding and abetting any person in conduct prohibited by the small loan statutes;
2. employing any scheme, device or artifice to defraud or mislead any person in connection with a small loan;
3. making, in any manner, any false, misleading, or deceptive statement or representation in connection with a small loan or engaging in bait-and-switch advertising; or
4. engaging in any unfair or deceptive practice toward any person or misrepresenting or omitting any material information in connection with a small loan.

*Main and Branch Offices (§ 26)*

Under the act, a small loan licensee, in each case where a license is required, must have a main office license and may have a branch office license. All offices must be located in the United States. Each main office must have a qualified individual responsible for supervising all aspects of the licensee's small loan

business. Each branch must have a branch manager responsible for supervising all aspects of the branch's small loan business.

*License Application Process (§ 27)*

*Processed through the System.* Under the act, an application for a small loan license must be made and processed on the Nationwide Mortgage Licensing System and Registry ("the system") in a form the commissioner prescribes. The form must contain information based on the commissioner's instruction or procedure and may be changed or updated as he deems necessary.

*Criminal History Records Check.* Similar to prior law, the act requires applicants to furnish the commissioner with information concerning their identity, and that of any control person, the qualified individual, and any branch manager. This includes personal history and experience and information related to any administrative, civil, or criminal findings by any government jurisdiction. The commissioner may conduct a state and national criminal history records check of the applicant and its control persons, qualified individual, and branch manager. He may require the applicant to submit fingerprints to the FBI database or other state, national, or international criminal databases and may require control persons, qualified individuals, and branch managers to authorize the system and the commissioner to obtain an independent credit report from a consumer reporting agency.

*Audited Financial Statements.* Under the act, applicants also may be required to provide the system with an audited financial statement prepared by a certified public accountant in accordance with generally accepted accounting principles dated not later than 90 days after the end of the applicant's fiscal year. The financial statement must include a balance sheet, income statement, statement of cash flows, and all relevant notes. Only an initial statement of condition is required of a start-up company.

*Application Deemed Abandoned.* Under the act and similar to prior law, the commissioner may deem an application for a small loan license abandoned if the applicant fails to respond, within 60 days, to any request for information required by the act or any adopted regulations. The commissioner must notify the applicant of this provision on the system.

An application filing fee paid before an application is deemed abandoned is not refunded. Abandonment of an application does not preclude the applicant from submitting a new application.

*License Fees (§ 28)*

Under the act, each applicant for a small loan license must pay, through the system, a $400 license fee and any other system-required fees or charges. Each license expires at the close of business on December 31 of the year in which the license was approved unless it is approved or renewed after November 1st, in which case it expires at the close of business on December 31 of the following year. Under prior law, a biennial license, which cost $800, expired on September 30 of the odd year following its issuance. Also, under prior law, the application fee was $400 if filed less than a year before it would expire.

The act requires a renewal application to be filed between November 1 and December 31 of the year in which the license expires. The renewal fee is $400, plus any other system-required fees or charges. Under prior law, the renewal fee was $800 and there was a $100 late fee.

The act requires, as under prior law, the commissioner to automatically suspend a license if the system indicates the return of a required payment. He must (1) give the licensee notice of the automatic suspension, pending proceedings for revocation or refusal to renew, and an opportunity for a hearing, and (2) require the licensee to take or refrain from taking action as he deems necessary.

Application and renewal fees are nonrefundable.

*Investigation and Approval or Denial (§ 29)*

*Investigation of Applicant.* Under the act, upon the license applicant filing the required application and fee, the commissioner must investigate the following facts.

As under prior law, the commissioner may not issue a license unless he finds that the:

1. experience, character, and general fitness of the applicant and its control persons, qualified individual, and any branch manager are satisfactory;
2. applicant's activities will be conducted for the convenience and advantage of the consumers it seeks to serve;
3. applicant has the required minimum available funds (see below); and
4. applicant and its control persons and any qualified individual and branch manager have not made a material misstatement in the application.

The commissioner cannot issue a license if he fails to make these findings, and must notify the applicant of the denial and the reasons for the denial.

*Application Denial.* The act allows the commissioner to deny an application if the applicant, its control persons, qualified individual, or branch manager have demonstrated a lack of financial responsibility (i.e., when he or she shows a disregard in the management of his or her own financial condition). A determination that a person has not shown financial responsibility may include:

1. current outstanding judgments, except judgments solely due to medical expenses;
2. current outstanding tax liens or other government liens and filings;
3. foreclosures during the three years preceding the application date; or
4. a pattern of seriously delinquent accounts within the previous three years.

The commissioner also may deny an application based on the history of criminal convictions of the applicant, its control persons, qualified individual, or branch manager.

*Minimum Available Funds Required.* The act requires an applicant to have a minimum of $50,000 continuously available for each licensed location. This may include cash or lines of credit. Prior law required a minimum capital investment of $10,000 or $25,000, depending on the size of the municipality where the business would be located.

*Renewal Standards.* To renew a small loan license, an applicant must meet

the minimum standards for an initial license, pay all required renewal fees, and any outstanding examination fees or other money due the commissioner.

*Withdrawal and Surrender of License.* A license application withdrawal is effective when the commissioner accepts the request on the system.

Within 15 days after a licensee ceases to be a small loan lender in the state, the licensee must surrender its license on the system for each location in which the licensee has ceased to be a small loan lender. Similar rules applied under prior law.

*Failure to Renew*. If a license expires because of the licensee's failure to renew, the commissioner may institute a revocation or suspension proceeding or issue an order suspending or revoking the license within one year after the expiration date.

A small loan license remains effective until it is surrendered, revoked, suspended, or expires.

*Commissioner's Approval of Changes (§ 30)*

Under the act, small loan licenses are not assignable or transferable. Similar to prior law, any proposed change in the control persons requires advance notice, filed on the system at least 30 days before the change takes place. The commissioner must approve any change in the control persons.

No licensee may use any name other than (1) its legal name or (2) a fictitious name approved by the commissioner. A licensee is prohibited from engaging in any activity requiring a small loan license under any other name or at any other place of business than that named in the license. Any proposed change in a licensee's name, place of business, or control persons requires an advance change notice to be filed on the system at least 30 days before the effective date of the change. Any such change requires the commissioner's approval.

*Updating Information in the System (§ 31)*

Under the act, a licensee must file with the system any change in the license information most recently submitted. If the information cannot be filed on the system, the licensee must directly notify the commissioner, in writing, not later than 15 days after the licensee has reason to know of any such change or the occurrence of any of the following developments:

1. filing for bankruptcy or the consummation of a corporate restructuring of the licensee;
2. filing of a criminal indictment against the licensee related to the licensee's activities or receiving notification of the filing of any criminal felony indictment or felony conviction of any of the licensee's control persons or qualified individual or branch manager;
3. receiving notification of a license denial, cease and desist order, suspension, or revocation procedures, or other formal or informal action by any governmental agency against the licensee and the reasons for it;
4. receiving notification of the initiation of any action by the attorney general of Connecticut or any other state and the reasons for it;
5. receiving notice of a material adverse action with respect to any existing

line of credit or warehouse credit agreement;
6. receiving notice of the filing for bankruptcy of any of the licensee's control persons, qualified individual, or branch manager; or
7. a decrease in the $50,000 available funds the act requires.

*Advertising (§ 32)*

*Unique Identifier*. The act requires the unique identifier of any small loan licensee to be clearly shown on the licensee's small loan application forms and all of the licensee's solicitations or advertisements, including business cards or internet websites, and any other documents as determined by the commissioner.

*Licensee Advertising.* Under the act, a licensee's advertising:

1. must not include any statement that it is endorsed in any way by this state, but may include a statement that it is licensed here;
2. must not include any statement or claim which is deceptive, false, or misleading;
3. must be retained for one year from the date of its use; and
4. must otherwise conform to the requirements of the small loan statutes and related regulations.

*Record Keeping and Retention (§ 33)*

The act changes the record keeping and record retention requirements for small loan licensees.

*Retention Period.* As under prior law, the act requires each small loan licensee to keep, at the place of business specified in the license, adequate books and records in the form and manner the commissioner prescribes. All books, accounts, and records must be preserved for the following time periods:

1. at least two years after the date the licensee offered, solicited, brokered, directly or indirectly arranged, placed, found, or generated leads for a small loan, or
2. if the licensee made, owns, or services a small loan, at least two years after the date the licensee (a) no longer owns the small loan or (b) made the final entry on the loan.

*Commissioner's Inspection of Books and Records.* Small loan licensees must make their books and records available to the commissioner at the office specified in the license or send the books to him by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, not later than five business days after the commissioner requests them. Upon request, the commissioner may grant a licensee additional time to make such books and records available or send them to him.

*Reporting Through the System.* Licensees must complete any reports of their condition the system requires. Any such reports must be accurately and timely filed on the system according to the due dates and formats it requires.

Until the information can be captured by a system-based report, each licensee must furnish on or before January 30 annually, a sworn statement of the condition of the business as of the preceding December 31, together with such other

information and statements the commissioner may require.

*License Suspension and Revocation (§ 34)*

*Conditions Necessary for Revocation or Suspension of License.* As under prior law, the commissioner may suspend, revoke, or refuse to renew any small loan license or take any other action for any reason that would be sufficient grounds for the commissioner to deny an application for such a license. Under the act, the commissioner may also do so if he finds that the licensee or any control person of the licensee, qualified individual, branch manager with supervisory authority, trustee, employee, or agent of such licensee has done any of the following:

1. made any material misstatement in the application;
2. committed fraud, misappropriated funds, or misrepresented, concealed, suppressed, intentionally omitted, or otherwise intentionally failed to disclose any of the material particulars of any small loan transaction to anyone entitled to such information, including any disclosures required by the Truth-In-Lending Act or related regulations;
3. violated any of the provisions of the act, any regulations adopted under it or any other law or regulation applicable to the conduct of its business; or
4. failed to perform any agreement with a licensee or a borrower.

The commissioner may take action whenever it appears that (1) a violation has occurred, is occurring, or is about to occur; (2) the violation is due to an act or omission such person knew or should have known would contribute to the violation; or (3) any licensee has failed to perform any agreement with a borrower, committed fraud, misappropriated funds or misrepresented, concealed, suppressed, intentionally omitted, or otherwise intentionally failed to disclose any of the material particulars of any small loan transaction to anyone entitled to such information.

*Removal of Violator.* The act allows the commissioner to order a licensee to remove any individual from office and from employment or retention as an independent contractor in the small loan business in this state whenever the commissioner finds, after investigating, (1) that such individual has violated the small loan statutes or regulations or (2) any reason that would be sufficient grounds for the commissioner to deny a license. The commissioner must do so by notifying the individual by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt. The notice is deemed received by the individual on the earlier of the date of actual receipt or seven days after mailing or sending.

*Notice.* The notice must include:

1. a statement of the time, place, nature, and legal authority for the hearing and the jurisdiction where it is to be held;
2. a reference to the particular statutes, regulations, or orders alleged to have been violated;
3. a short and plain statement of the matters asserted; and
4. a statement indicating that the individual may file a written request for his or her own hearing not later than 14 days after receipt of the notice.

*Hearing.* The commissioner must hold a hearing on the matters asserted if one is requested within the time specified, unless the individual fails to appear at the hearing. If the commissioner finds after a hearing that any of the necessary grounds exist for removal of the individual, the commissioner may order a licensee to remove the individual from office and from any employment in the small loan business in this state. The commissioner may also do this if the individual fails to appear at the hearing.

If the commissioner finds that he must act immediately to protect borrowers, he may suspend any individual from office and require him or her to take or refrain from taking an action or actions that will, in the opinion of the commissioner, carry out the purposes of this act, by incorporating a finding to that effect in the suspension notice. The suspension or prohibition becomes effective on receipt of the notice and, unless stayed by a court, remains in effect until the entry of a permanent order or the matter's dismissal.

*Temporary Order to Cease Business.* The commissioner may issue a temporary order to cease business if he determines that the license was issued erroneously. The commissioner must give the licensee an opportunity for a hearing. The temporary order becomes effective when the licensee receives it and, unless set aside or modified by a court, remains in effect until the effective date of a permanent order or dismissal of the matters asserted in the notice.

*Commissioner's Oversight (§§ 35 & 36)*

As under existing law, the act gives the commissioner broad oversight of small loan licensees and the authority to adopt regulations he believes necessary to administer and enforce the small loan statutes. In order to carry out his duties under these laws, the commissioner, among other things, may (1) accept and rely on examination or investigation reports made by other government officials, (2) accept audit reports from independent certified public accountants, and (3) use, hire, contract, or employ public or privately available analytical systems.
EFFECTIVE DATE: July 1, 2016

## § 37 — TENANTS' SECURITY DEPOSITS

*Imposes certain notice requirements on landlords pertaining to tenants' security deposits, and imposes a minimum $10 penalty on a landlord who fails to pay a tenant the accrued interest on a security deposit*

*Notice to Tenant about Escrow Account*

The act requires landlords to provide each tenant with a written notice stating the amount of his or her security deposit and the name and address of the financial institution that holds the deposit. The landlord must do so within 30 days after (1) receiving the security deposit from the tenant or the tenant's previous landlord or (2) transferring the security deposit to another financial institution or escrow account.

*Interest Payment*

By law, tenants generally forfeit a month's interest otherwise payable to them

when they are more than 10 days delinquent in paying rent in a given month. Prior law provided an exception if the rental agreement imposed a late charge for failing to pay rent within a statutorily specified time period. The act broadens this exception by allowing such a tenant to receive interest if the landlord imposes a late charge, regardless of whether the rental agreement provides for it.

The act imposes a minimum $10 penalty on a landlord who fails to pay a tenant the accrued interest on a security deposit. Prior law limited this penalty to twice the amount of the accrued interest. The act instead requires the landlord to pay the greater of $10 or twice the accrued interest. Under the act, "accrued interest" is interest due on a security deposit, compounded annually.

*Commissioner's Jurisdiction*

The act further limits the commissioner's jurisdiction when a landlord has a good faith claim for actual damages for which the tenant has received written notice. Under the act, the commissioner has no jurisdiction over a landlord who has a good faith claim of actual damages who fails to pay the tenant interest accrued on a security deposit when required to do so. Under prior law, this was the case in situations where the landlord refused or failed to return all or part of the tenant's security deposit.

EFFECTIVE DATE: July 1, 2016

## §§ 38-42 — DEPOSIT INDEX

*Specifies how the deposit index should be (1) determined and applied by holders of certain deposits, such as a tenant's security deposit, and (2) published and disseminated by the banking commissioner*

The act changes the "deposit index" used to determine the interest paid on certain deposits, including (1) tenants' security deposits; (2) claims with the treasurer related to abandoned property held by a bank or other financial organization; (3) security deposits with public service companies, electric suppliers, telephone companies, and certified telecommunications providers; (4) certain loans with annual interest rates not greater than the deposit index; and (5) mortgage-related escrows.

The act specifies that the deposit index is (1) the average of the national rates for savings deposits and money market deposits for the last week in November of the prior year as published by the Federal Deposit Insurance Corporation (FDIC) in accordance with 12 CFR § 337.6 or (2) if the FDIC no longer publishes these rates, the average of substantially similar national rates for the last week in November of the prior year as published by a federal banking agency. Under prior law, the deposit index was equal to the average rate paid on savings deposits by insured commercial banks as last published in the Federal Reserve Board bulletin in November of the prior year.

As under prior law, the act requires the banking commissioner to determine the deposit index for each calendar year and publish it in the department's news bulletin by December 15 of the year before it takes effect. Under the act, he must also publish the deposit index on the department's website by this date.

The act requires the commissioner to also disseminate the deposit index and any information he deems appropriate in a manner designed to alert the parties that may rely on the index. This includes issuing press releases and public service announcements, encouraging news stories, and posting conspicuous notices at financial institutions. Prior law instead required the commissioner to take similar steps to disseminate the deposit index to landlords and tenants.
EFFECTIVE DATE: July 1, 2016

## §§ 43 & 44 — PROTECTING TENANTS OF FORECLOSED PROPERTY

*Makes permanent protections available to certain tenants of foreclosed properties by eliminating the December 31, 2017 sunset date*

The act makes permanent existing law's protections available to certain tenants of foreclosed dwellings by eliminating the December 31, 2017 deadline for these protections to end. These protections are summarized below.

### *Tenants of Foreclosed Dwellings*

By law, an immediate successor in interest to a foreclosed property takes the property subject to the rights of bona fide tenants on the date absolute title vests in the successor in interest. A successor in interest must give tenants at least 90 days' notice to vacate. Under the law, tenants with a lease entered into before absolute title vests in the successor must generally be allowed to remain until the end of the lease but may be evicted under certain circumstances.

### *Section 8 Tenants*

The law limits the circumstances in which an owner who is an immediate successor in interest to a property following foreclosure may terminate the lease of a Section 8 tenant (i.e., a tenant receiving assistance under the federal Housing Choice Voucher Program). By law, an owner may terminate the tenancy on the date he or she takes ownership if the owner (1) will occupy the unit as his or her primary residence and (2) provides the tenant with at least 90 days' notice to vacate.

By law, for foreclosures involving federally-regulated mortgage loans or any residential property occupied by a Section 8 tenant the immediate successor in interest takes the property subject to the (1) lease between the tenant and prior owner and (2) housing assistance payments contract between the prior owner and the public housing agency that administers the program.
EFFECTIVE DATE: October 1, 2016

## § 45 — BANKING DEPARTMENT ASSESSMENTS

*Allows the banking commissioner to assess licensed money transmitters and student loan services to cover the Banking Department's expenses*

By law, the commissioner collects an assessment from Connecticut banks and credit unions, pro rata based on asset size, to cover the Banking Department's expenses. The assessments are annual, but the commissioner may impose them

more frequently.

The act allows the commissioner to also assess licensed money transmitters and student loan servicers. The act applies the assessment pro rata based on the dollar volume of money transmissions for money transmitters and student loans serviced for student loan servicers. The act requires licensees to pay the assessment by the date the commissioner specifies. Failure to do so may result in an action against the person's license.

EFFECTIVE DATE: Upon passage

## § 46 — PROHIBITIONS ON MORTGAGE SERVICERS PLACING INSURANCE ON PROPERTY

*Changes when mortgage servicers can place insurance on mortgaged property*

Prior law prohibited mortgage servicers from placing hazard, homeowners, or flood insurance on mortgaged property when the servicer knew or had reason to know the mortgagor had an effective insurance policy. The act instead prohibits the servicer from placing the insurance on the property when the servicer knew or should have known of the mortgagor's policy.

EFFECTIVE DATE: October 1, 2016

## §§ 47-54 — CONSUMER COLLECTION AGENCIES AND CREDITORS

*Expands the consumer collection agency law to include persons who collect federal income tax debt on behalf of the federal government, creates new procedural requirements for certain court cases brought by consumer collection agencies, and makes other changes affecting debt collection*

### *Federal Income Tax Debt Collection Agencies (§§ 47-50)*

The act expands the consumer collection agency law to include persons engaged in the business of collecting federal income tax on behalf of the U.S. Treasury Department, and makes several conforming changes. Among other things, these persons must obtain a license from the Banking Department and meet specified bonding and record-keeping requirements.

As under existing law for other consumer collection agencies, the act applies to agencies with a place of business in Connecticut, and to out-of-state businesses who (1) collect from in-state debtors on behalf of in-state creditors or for the agencies' own accounts or (2) regularly collect from in-state debtors on behalf of out-of-state creditors.

The act applies the same license qualifications and exemptions from licensure and related requirements that apply under the existing consumer collection agency law (e.g., banks and state-licensed attorneys are exempt).

*Prohibited Practices and Penalties*. The act subjects these consumer collection agencies to the applicable prohibitions and corresponding penalties that already apply to other consumer collection agencies (CGS § 36a-805).

By law, a consumer collection agency that engages in a prohibited practice is subject to license suspension, revocation, or other disciplinary action (CGS § 36a-804). In addition, any person who operates a consumer collection agency without a license or who otherwise violates the consumer collection agency law is subject

to misdemeanor criminal penalties (CGS § 36a-810). The act also applies these provisions to persons collecting federal tax debt.

As under existing law for other consumer debts, the act allows anyone damaged by the wrongful conversion of federal income tax debtor funds received by a consumer collection agency to recover damages from the bond the agency filed with the banking commissioner.

*Deposit of Funds (§ 51)*

Existing law requires a third-party consumer collection agency to deposit funds collected on behalf of others in one or more trust accounts maintained at a bank, Connecticut credit union, federal credit union, or out-of-state bank that maintains a branch in Connecticut. Under the act, these institutions must be federally insured.

*Legal Actions by Consumer Collection Agencies (§ 52)*

The act creates new procedural requirements for legal actions brought by consumer collection agencies to collect consumer debts that they purchased from a creditor.

The act specifies that these provisions do not apply to actions begun before October 1, 2016. These provisions also do not apply to debt purchased by a licensed mortgage lender under a recourse requirement. (In the event of nonpayment of a recourse loan, the lender can pursue the debtor's assets that were not used as collateral for the loan.)

*Evidence*. The act requires the consumer collection agency to file evidence with the court establishing the amount and nature of the debt before the court may enter judgment against the consumer debtor. The evidence must comply with Superior Court rules and must include a copy of the assignment or other documentation indicating:

1. that the plaintiff owns the debt;
2. the original or charge-off account number, if any, which may be partially redacted to protect the debtor's privacy;
3. the name associated with the debt; and
4. if the debt has been assigned more than once, each assignor's name, address, and dates of ownership, and a copy of each assignment or other documentation that establishes the plaintiff's unbroken chain of ownership of the debt.

*Default Judgment*. The act requires a plaintiff who claims a default judgment to file a sworn affidavit with specified information in addition to the evidence required under Superior Court rules. The affidavit must list the name, address, and dates of ownership of each owner of the debt, from the charge-off creditor to the current owner.

The plaintiff must also attach documentation to the affidavit that fully substantiates the amount of the debt. Under the act, the following documents generally suffice to substantiate credit card debts subject to federal charge-off requirements:

1. a copy of the most recent monthly statement recording a purchase

transaction, service billed, last payment, or balance transfer;
2. a statement reflecting the charge-off balance;
3. an itemization of the balance after the charge-off if different from the charge-off amount;
4. for consumer debts purchased on or after October 1, 2016, an additional monthly account statement sent to the debtor while the account was active, which shows the debtor's name and address; or
5. any other statements that the federal Consumer Financial Protection Bureau's regulations may require.

*Additional Documentation*. The act specifies that these provisions do not prevent the court or Superior Court rules from requiring the (1) plaintiff to submit additional documentation or (2) plaintiff, plaintiff's authorized representative, or other affiants or counsel to appear before the court before it renders judgment, if the court determines this is necessary.

*Redaction*. The act requires consumer collection agencies to indicate when they have redacted any items listed above for default judgments or additional documents requested by the court.

*Statute of Limitations in Actions by Creditors or Consumer Collection Agencies (§ 53)*

The act prohibits creditors and consumer collection agencies that purchased debt from initiating a cause of action to collect debt from a consumer when they know or reasonably should know that the applicable statute of limitations has expired.

Under the act, when the statute of limitations has expired, any subsequent payment toward, or written or oral affirmation of, a debt by the consumer does not extend the limitations period.

For these purposes, a "creditor" is (1) anyone to whom a debt is owed by a consumer debtor if the debt results from a transaction occurring in the ordinary course of such person's business or (2) anyone to whom such a debt is assigned. But a creditor is not a consumer collection agency or a federal, state, or local department or agency.

*Penalties for Creditor Violations (§ 54)*

Under existing law, a creditor (as defined above) that uses abusive, harassing, fraudulent, deceptive, or misleading practices to collect or attempt to collect a debt, in violation of the law or regulations on creditors' collection practices, is liable to the debtor in an amount equal to the sum of:

1. any actual damages;
2. if the debtor is an individual, any additional damages awarded by the court, up to $1,000; and
3. the costs incurred by a successful action to enforce liability, including reasonable attorney's fees at the court's discretion.

The act provides that creditors are also liable in this manner for such conduct that violates the consumer collection agency law or regulations.

EFFECTIVE DATE: October 1, 2016

## §§ 55 & 56 — SECURITY FREEZES

*Limits authority to place a security freeze on a child's credit to children under age 16, instead of under age 18, and makes procedural changes*

The law allows a parent or legal guardian to request that credit reporting agencies place a security freeze on a minor child's credit report. The act:

1. limits a parent's or legal guardian's authority to request these freezes to when the children are under age 16, instead of under age 18 as prior law allowed and
2. eliminates a parent's or guardian's option to have an agency temporarily lift a freeze for a specific third party or for a period of time, thus only allowing a parent or guardian to request that the agency completely remove the freeze.

The act provides that the law cannot be deemed to require an agency to provide a minor, parent, or legal guardian with a unique personal identification number, password, or similar device to authorize release of a minor's credit report. But it provides that the minor, parent, or legal guardian must use such a number, password, or device if applicable. The law continues to require a parent or legal guardian making a request on a minor child's behalf to present the agency with identification and sufficient proof of authority to act for the child.

The act specifies that any security freeze for an adult's or minor's credit report in effect on October 1, 2016 remains in effect until the adult or the minor's parent or guardian requests its removal.

EFFECTIVE DATE: October 1, 2016

## § 57 — LOOK-BACK PERIOD TO DISCOVER AND REPORT FRAUD

*Allows a bank and its customers to agree to a shorter time period to report fraud*

The law generally precludes a customer from asserting a claim of an unauthorized signature or alteration against a bank if he or she fails to discover and report the signature or alteration on a statement within one year after the statement is available.

The act specifically allows a bank and its customers to agree to a shorter time frame for discovering and reporting an unauthorized signature or alteration. Under the act, as under existing law, such an agreement does not negate the bank's responsibility for a lack of good faith or failure to exercise ordinary care, or limit the measure of damages.

EFFECTIVE DATE: Upon passage

## § 58 — POSSESSIONS LEFT INSIDE REPOSSESSED MOTOR VEHICLES

*Requires contract holders to notify customers of their responsibilities for personal property left inside repossessed motor vehicles and allows the contract holders to charge a total storage fee of up to $25*

This act makes changes to notice requirements and storage fee provisions for personal property left inside a motor vehicle that is being repossessed.

*Notice Requirements*

By law, a contract holder who intends to repossess a motor vehicle may provide notice to the buyer of his or her intention to do so because of the buyer's default. If the holder chooses to provide the notice, it must, among other things, inform the buyer when the vehicle will be taken and of his or her rights. The act requires that the notice also inform the buyer that he or she is responsible for removing all of his or her personal property from the vehicle before it is repossessed.

Additionally, the act requires the contract holder, within three days of repossessing a motor vehicle and regardless of whether advance notice of the repossession was provided to the buyer, to send a written notice to the buyer's last known address. The notice must inform the buyer:

1. that he or she is responsible for retrieving any personal property in the vehicle, other than items turned over to law enforcement;
2. that he or she may, for at least 60 days after the repossession, retrieve any personal property remaining in the vehicle unless the contract terms or holder specify a date at least 60 days after the repossession after which the buyer may no longer retrieve the property; and
3. of the contract holder's contact information and business hours.

*Property Storage Fee*

If the buyer retrieves some or all of his or her personal property more than 15 days after the repossession, the act permits the contract holder, or the holder's agent maintaining custody of the property, to charge a total storage fee of up to $25.

EFFECTIVE DATE: October 1, 2016

## §§ 59-62 — STUDENT LOAN SERVICERS

*Requires the banking commissioner to set service standards for student loan servicers, exempts certain entities from student loan servicer licensure, and allows the student loan ombudsman to evaluate moving toward debt-free education in Connecticut*

The act makes three changes to the laws that govern student loan servicers. It:

1. requires the banking commissioner to set service standards for licensed student loan servicers and post them on the department's website by July 1, 2017;
2. exempts entities that can act as student loan servicers without a license (e.g., banks and credit unions) from student loan record retention requirements; and
3. clarifies that the law's list of prohibited conduct by student loan servicers applies only to servicers licensed in Connecticut.

By law, a "student loan servicer" is any person, regardless of location, responsible for servicing any student education loan to any student loan borrower.

The act also authorizes the Banking Department's student loan ombudsman to evaluate how the state can move toward debt-free education. It specifies that on or before July 1, 2017, the student loan ombudsman may submit a report to the

Banking Committee on (1) the ombudsman's recommendations and (2) the feasibility of establishing a program requiring a student to sign a binding contract to pay a percentage of his or her adjusted gross income upon graduation (presumably to the state), for a specified number of years, instead of taking out a student loan.

EFFECTIVE DATE: October 1, 2016, except the provisions on record retention and prohibited acts are effective July 1, 2016.

## § 63 — HOUSING AUTHORITY PILOT PROGRAM TO BUILD TENANTS' CREDIT

*Creates a pilot program for local housing authorities to use rental payments to build tenants' credit*

The act requires the housing commissioner to create, within available appropriations, a three-year pilot program for local housing authorities to use rental payments as a way to build tenants' credit. By January 1, 2017, the commissioner must establish the program's parameters and designate up to three housing authorities in distressed municipalities that will record and report tenants' timely rental payments to nationally recognized consumer credit bureaus that agree to participate in the program.

Participating housing authorities must (1) receive technical assistance to implement rent-reporting software and track data on rental payments during the program and (2) train and support their staff. Authority staff must conduct educational briefings to teach tenants about the program and its benefits.

The commissioner must submit, to the Housing Committee, a program status report by July 1, 2017; an interim report by January 1, 2018; and a final report by July 1, 2019.

By law, the Department of Economic and Community Development commissioner annually designates distressed municipalities (CGS § 32-9p).

EFFECTIVE DATE: October 1, 2016

## § 64 — FEE LIENS IN ESTATE SETTLEMENT PROBATE MATTERS

*Specifies when a property lien for unpaid estate settlement probate fees is unenforceable against a third party*

PA 15-5, § 454, June Special Session, made unpaid estate settlement probate fees a lien in favor of the state on any in-state real property included in the basis for fees. This act specifies that the lien applies only to estates of individuals who died on or after January 1, 2015.

The act also specifies the circumstances in which the lien is unenforceable against a third party. Under prior law, the lien was not valid against a lienor, mortgagee, judgment creditor, or bona fide purchaser until notice of the lien was properly filed or recorded. The act replaces these terms with the terms "bona fine purchaser" and "qualified encumbrancer" and defines both terms, thus specifying the conditions in which a person can claim this status.

Under the act, a bona fide purchaser is a party who takes a conveyance of real property in good faith, pays valuable consideration for it, and had no actual,

implied, or constructive notice, that:

1. a holder or former holder of a title interest in the property died while holding an interest in the property or
2. a former holder of such an interest transferred an interest in the property during his or her lifetime to a trustee of a revocable trust, and the trustee held the interest when the former holder died.

A "qualified encumbrancer" is a party who places a burden, charge, or lien on real property, in good faith, without actual, implied, or constructive notice, as described above.

EFFECTIVE DATE: July 1, 2016

## §§ 65-71 — INTERNATIONAL TRADE AND INVESTMENT CORPORATIONS

*Creates a new optional license for international trade and investment corporations*

The act authorizes the banking commissioner to license international trade and investment corporations but does not require them to be licensed. The act defines these corporations as business entities or government agencies approved or seeking approval from the U.S. Export-Import Bank (EXIM), Overseas Private Investment Corporation (OPIC), or U.S. Department of Agriculture (USDA) as lenders under financing guarantee programs. These programs include EXIM loan guarantees for U.S. exporters, OPIC loan guarantees for investment projects in developing countries and emerging markets, and USDA loan guarantees for rural businesses.

The act imposes licensing requirements, fees, and recordkeeping requirements. It also authorizes the commissioner to adopt regulations to administer the act's provisions.

EFFECTIVE DATE: Upon passage

### *License Applications*

The act requires written license applications in a form acceptable to the commissioner. They must include the applicant's:

1. name and address and, if a corporation, its directors and officers;
2. assets and liabilities;
3. business plan; and
4. proof of compliance with applicable state and federal laws.

The act allows the commissioner to (1) require other information and exhibits and (2) arrange state and national criminal history record checks for the applicant's principals, executive officers, and directors.

The act requires the commissioner to investigate an applicant after receiving an application and a nonrefundable $2,500 license fee and authorizes him to issue a license if:

1. the applicant's net worth is at least $2.5 million and adequate to transact business as a licensee;
2. the directors and officers, if the applicant is a corporation, are of good character, competent to perform their functions, and collectively adequate

to manage the licensee's business;
3. it is reasonable to believe the applicant will comply with the act and regulations adopted under it; and
4. licensing the applicant will promote public convenience and advantage.

Licenses expire at the close of business on June 30 each year unless renewed. A license is not transferrable or assignable.

*Fees*

The act requires license applicants to pay a nonrefundable $2,500 fee. Licensees must pay a $1,000 renewal fee by June 20 annually. Licensees also pay the costs of examinations, investigations, and regulations adopted under the act.

*Commissioner's Authority over Licensees*

The act subjects licensees to the commissioner's investigative authority and sanctions for violating the banking laws, including authority to remove a person from office, issue cease and desist orders, and impose civil penalties.

If a check for the license fee is dishonored, the act requires the commissioner to automatically suspend the person's license or renewed license, if it is not yet effective. The commissioner must notify the licensee of the (1) proceeding for revocation or refusal to renew and (2) opportunity for a hearing.

Within 15 days of surrendering a license or having it terminated, the act requires a licensee to notify its customers and confirm this notification with the commissioner.

*Transacting Business*

The act requires licensees to use their best efforts to provide financing in conjunction with, and meet the expectations of, the federal financing guarantee programs with which they work. They must transact business in Connecticut in a safe and sound manner. The act prohibits licensees and, if a corporation, their directors and officers, from committing unsafe or unsound acts. Licensees must comply with all applicable state and federal laws and regulations.

*Required Records and Annual Reports*

The act requires licensees to keep books, accounts, and records in a form and manner the commissioner may require by regulation or order. They must file annual reports with the commissioner within 90 days of the end of a fiscal year or later as determined by the commissioner by regulation. Annual reports must include a:

1. financial statement with balance sheet, income or loss statement, and changes in capital accounts and financial position for the fiscal year or as of the end of the fiscal year, prepared with an audit by an independent certified public accountant (CPA) according to generally accepted accounting principles;
2. report, certificate, or opinion from the CPA that he or she prepared the financial statement according to generally accepted accounting principles

and will provide related working papers, policies, and procedures if the commissioner requests them; and
3. other information the commissioner requires.

The annual reports must also include information on the:

1. number and aggregate dollar amount of loans made during the fiscal year;
2. geographic distribution, including by census tract if applicable, of borrowers receiving the loans;
3. percentage of loans to minority- or women-owned U.S. and foreign businesses;
4. dollar amount of the licensee's loan portfolio at the end of the fiscal year;
5. percentage of the loan portfolio representing loans with payments more than 90 days past due at the end of the fiscal year;
6. number and dollar amount of loans in liquidation at the end of the fiscal year;
7. dollar amount of reserves for loan and lease losses; and
8. percentage of reserves relative to total loans and leases.

## § 72 — ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNTS

*Requires a report on converting education savings plans to ABLE accounts and any changes needed to successfully operate the ABLE program*

By January 1, 2017, the act requires the treasurer, within available appropriations and in consultation with the Department of Revenue Services, to report to the Banking Committee on:

1. ways to convert an education savings plan (such as a Connecticut Higher Education Trust (CHET) account) into an ABLE account and
2. appropriations or statutory changes needed to ensure successful operation of the ABLE program.

The law requires the treasurer to establish a federally qualified ABLE program and administer individual ABLE accounts. This program encourages and helps eligible individuals and families save to pay for qualifying expenses related to disability or blindness. The law establishes the Connecticut ABLE Trust, administered by the treasurer, to receive and hold ABLE account funds. Money in the trust and interest on it are generally exempt from state and local taxes; the treasurer must ensure that funds are exempt from federal taxation (CGS §§ 3-39j to 3-39r).

EFFECTIVE DATE: Upon passage

## §§ 73-80 & 91 — JUDGMENT OF LOSS MITIGATION

*Creates a new judicial process as an alternative to foreclosure for owner-occupants of one- to four-family residential properties, in which a court may enter a judgment of loss mitigation which allows (1) certain underwater mortgages to be modified without a junior lienholder's consent and (2) the mortgagor (borrower) to satisfy all or part of his or her obligation by transferring the property to the mortgagee (lender) or a third party*

The act creates a new process as an alternative to foreclosure in which a court may enter a judgment of loss mitigation for owner-occupied one- to four-family

residential properties that allows (1) certain "underwater" (see below) residential mortgages to be modified without a junior lienholder's consent or (2) the mortgagor to satisfy all or part of his or her obligation by conveying the property using a transfer agreement. The act does not prohibit the parties from completing a consensual mortgage modification or conveyance outside the judicial process.

The act specifies that its provisions should not be construed as eliminating the debt or any judgment associated with a junior lienholder on the residential real property encumbered by the underwater mortgage.

Under the act:

1. an "underwater mortgage" is one in which the debt associated with the mortgage, along with any senior lien, exceeds the property's fair market value, as determined by a court;
2. a "senior lien" is the first security interest placed on a property to secure payment of a debt or performance of an obligation before one or more junior liens; and
3. a "junior lien" is a security interest placed on a property to secure payment of a debt or performance of an obligation after a senior lien is placed on such property.

*Mortgage Modification*

If approved by the court through a judgment of loss mitigation, the act allows an underwater mortgage to be modified to increase the principal loan balance by the amount of any accrued interest, fees, and costs allowed by law, without (1) any junior lienholder's consent and (2) any loss of priority to the senior lienholder for the full amount of the modified loan.

*Conveyance to Mortgagee*

It allows a mortgagor of an underwater mortgage to satisfy all or part of his or her obligation to the mortgagee by conveying the residential real property to the mortgagee. The mortgagor may do so through a transfer agreement executed by both parties. This agreement must:

1. convey to the mortgagee all interests in the property except for any interests (a) reserved to the mortgagor in the agreement, (b) held by more senior mortgagees or lienholders, or (c) held by junior lienholders not subject or party to the action;
2. consider a discharge of the mortgage after the mortgagor satisfies the transfer agreement's conditions;
3. consider the termination of any other interest in the property subordinate to the lienholder that is party to the transfer agreement following a judgment of loss mitigation; and
4. contain other provisions mutually agreeable to the mortgagor and mortgagee including either party's cash contribution to the other or the execution of a promissory note by one party in favor of the other.

*Conveyance to a Third Party*

The act allows a mortgagor of an underwater mortgage to enter into a transfer agreement to convey residential real property subject to the mortgage to a third party and, as a condition of the conveyance, pay less to the mortgagee than the outstanding balance on the mortgage debt. Such payment must satisfy all or part of the mortgagor's obligation to the mortgagee. The transfer agreement must be executed by the mortgagor and the mortgagee and consider:

1. transferring all the mortgagor's interests in the property to the third party, except for interests (a) reserved to the mortgagor in the transfer agreement, (b) held by more senior mortgagees or lienholders, or (c) held by junior lienholders not subject or party to the action;
2. discharging the mortgage after the mortgagor satisfies the transfer agreement's conditions;
3. terminating any other interest in the property subordinate to the mortgagee following a judgment of loss mitigation; and
4. other provisions mutually agreeable to the mortgagor and mortgagee including either party's cash contribution to the other or the execution of a promissory note by one party in favor of the other.

*Judgment Following Transfer Agreement*

Under the act, 15 days after the return date of a pending foreclosure action, a mortgagee may file a motion for judgment of loss mitigation after entering into one of the transfer agreements described above. The act does not (1) allow the court to enter a judgment without the express written consent of both the mortgagor and mortgagee or (2) require a mortgagee to consider consenting to such a judgment in foreclosure mediation. A party's failure to consent to a judgment of loss mitigation is not a basis for a claim of bad faith.

*Findings at the Hearing*

Upon the motion of the mortgagee and with the mortgagor's consent, the court, after notice and a hearing, may enter a judgment of loss mitigation approving the modification or conveyance.

All parties to the action may participate in the hearing and the judgment is final for purposes of appeal. The issues at the hearing must be limited to:

1. a finding of the residential property's fair market value, which may be determined by a written appraisal obtained by the mortgagee and performed by a licensed appraiser;
2. a finding of the outstanding balance of any priority liens on such property, to the extent necessary;
3. the debt owed to the mortgagee secured by the mortgage;
4. whether the mortgage is underwater; and
5. for purposes of mitigation, whether the contemplated transaction was agreed to in good faith.

The hearing must also consider whether the parties to the contemplated transaction other than the mortgagee meet the financial requirements of a mortgagor (i.e., personal net liquid assets that are less than $100,000, excluding retirement and tax advantaged health savings plans). This must be determined by

(1) a financial statement submitted by the proposed mortgagor or mortgagors or (2) other financial information the court requires.

The act prohibits the court from entering a judgment of loss mitigation unless it makes express findings that the mortgage is an underwater mortgage and the parties agreed to the transaction in good faith. For cases involving mortgage modification or the conveyance of property to a mortgagee, the court must also find that the mortgagor meets the above financial requirements.

*Effect of Judgment*

The act establishes the effect of a judgment of loss mitigation in cases involving mortgage modification or conveyance to mortgagees. In such cases, if, immediately after the expiration of any applicable appeal period or after the judgment has been affirmed on appeal, the court enters a judgment of loss mitigation, the (1) mortgage must be increased according to the judgment and the lien of any junior lienholder subject or party to the action must be deemed subordinated to the mortgage, in the same order as before the judgment or (2) property is conveyed to the mortgagee in accordance with the transfer agreement. If a conveyance to a mortgagee is later set aside or avoided due to the application of Chapter 11 bankruptcy provisions, the judgment of loss mitigation must be set aside and all parties retain the same interests in the property as existed before the judgment to the extent permitted under the applicable bankruptcy laws.

In cases involving conveyance to a third party, the conveyance to the third party must be ordered to take place by the date in the transfer agreement. This may be extended up to 60 days if the parties agree, or longer as ordered by the court after notice and a hearing.

*Appeals*

In the event of an appeal, the mortgagor and the mortgagee may withdraw their consent to the foreclosure by loss mitigation. If either does so, the foreclosure may continue without any further restriction.

*Title Conveyance and Recording*

Within 30 days after a mortgage modification or conveyance to a mortgagee, the mortgagor and mortgagee must record the judgment of loss mitigation with the town clerk.

For conveyances to third parties, the mortgagor must submit the judgment of loss mitigation to the town clerk for recording before recording the document conveying title to the third party. After the mortgagee receives the funds and other consideration as specified in the transfer agreement, the mortgagee must file a satisfaction of judgment of loss mitigation with the court.

The act does not prohibit (1) the parties from consummating a consensual mortgage modification or deed in lieu of foreclosure outside the judicial process or (2) a consensual release of a mortgage by a mortgagee for less than the full indebtedness secured by the mortgage.

*Real Estate Conveyance Tax Exemption*

The act exempts title transfers resulting from judgments of loss mitigation from the real estate conveyance tax.

*Mortgagor's Petition to Enter Foreclosure Mediation*

If the court does not enter a judgment of loss mitigation, the loan modification or property transfer described above may not be completed. At this point, the (1) mortgagor may petition for inclusion in the foreclosure mediation program and (2) mortgagee may request a judgment of foreclosure available under existing law, including strict foreclosure.

To be eligible for the mediation program, the mortgagor, in addition to meeting existing law's eligibility criteria for the program, must not have substantially contributed to the events leading to the court's decision or other circumstances resulting in the decision not to enter a judgment. To grant the mortgagor's petition, the court must find that (1) it is highly probable the parties will reach an agreement through mediation and (2) the petition is not motivated primarily by a desire to delay a foreclosure judgment. The court must consider any testimony or affidavits the parties submit supporting or opposing the mortgagor's petition.

EFFECTIVE DATE: October 1, 2016

## §§ 81-84, 89 & 90 — FORECLOSURE BY MARKET SALE

*Allows a mortgagee, in certain circumstances, to file a motion for judgment of foreclosure by market sale within 30 days of receipt of a sales contract or the expiration or satisfaction of any contingencies, eliminates certain mortgagee notice and affidavit requirements, and makes other modifications to the process*

By law, a mortgagee and a mortgagor may agree to pursue foreclosure by market sale, which is a foreclosure option that involves a court-approved sale of residential real property on the open market. The act specifies that it cannot be construed to require either party to pursue a foreclosure by market sale or to consider a foreclosure by market sale in foreclosure mediation. The act also specifies that failure of either party to consent to a foreclosure by market sale for any reason is not a basis for a claim of bad faith.

*Foreclosure Notice*

By law, before beginning a mortgage foreclosure, a mortgagee must send notice by registered or certified mail, postage prepaid, to the mortgagor at the mortgaged property's address. Prior law required that the notice include specified information about foreclosure by market sale. For example, the notice had to advise the mortgagor to contact a licensed real estate agent to discuss the feasibility of listing the property for sale through the foreclosure by market sale process. The act eliminates the foreclosure notice requirements that specifically relate to the market sale process.

*Mortgagee Affidavit*

The act also eliminates the requirement that a mortgagee file an affidavit with

the court in order to continue the mortgage foreclosure. Under prior law, these affidavits had to indicate that the mortgagee provided the notice described above and either the mortgagor failed to elect foreclosure by market sale by the required date or discussions were initiated but did not proceed because of specific circumstances, such as the mortgagee and mortgagor being unable to agree.

*Motion for Judgment*

By law, in a foreclosure by market sale, if a mortgagor executes a listing agreement acceptable to both the mortgagee and mortgagor and receives an offer to purchase the property, the mortgagor must execute a sale contract with the purchaser and provide a copy to the mortgagee.

Under the act, if the mortgagee has already initiated a foreclosure action on the date when the sale contract was received or any contingencies satisfied or expired, then, within 30 days after the latest of such dates, the mortgagee must file a motion for judgment of foreclosure by market sale and attach the contract and appraisal to the motion.

*"Right of First Refusal Law Days"*

By law, 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 others with a lien against the property (i.e., subordinate lienholders) may pay the price agreed on in the purchase and sale contract to the person appointed to make the sale in order to preserve their equity interest in the property. Under prior law, the court was required to schedule the days in inverse order of priority. The act instead requires that it be done in order of priority.

*Title Conveyance*

By law, the person appointed to sell the property must (1) execute the conveyance of the property and (2) bring the proceeds to court. The conveyance is valid against all parties and people having a legal interest in the property. The act makes the conveyance also valid against all parties subject to the action because of a lawsuit that concerns title to or interest in the property (i.e., lis pendens).

EFFECTIVE DATE: October 1, 2016

## § 85 — FORECLOSURE PROTECTION

*Eliminates a requirement that lenders notify certain unemployed and underemployed homeowners of the availability of foreclosure protection*

By law, qualifying unemployed or underemployed homeowners facing foreclosure may apply for protection from foreclosure within 25 days of the start of the court action date. In such cases, the court may stop the proceedings for up to six months and order a restructuring of the mortgage debt.

The act eliminates the requirement that a lender, at the start of a foreclosure action, notify homeowners of the availability of foreclosure protection. Under prior law, if a lender failed to do so and the homeowner was eligible for such

foreclosure protection, the court, on its own motion or on the homeowner's request, could issue a stay of the action for 15 days to allow the homeowner time to apply for foreclosure protection.
EFFECTIVE DATE: October 1, 2016

## § 86 — FORECLOSURE EVICTIONS

*Prohibits a state marshal from carrying out a foreclosure-related eviction order sooner than five days after the court executes it and requires the marshal to use reasonable efforts to find and notify a defendant of an eviction at least five days before notifying the town of the eviction*

The act prohibits a state marshal from carrying out a foreclosure-related eviction order sooner than five days after the court executes it.

Existing law requires state marshals to use reasonable efforts to find and notify evicted persons before notifying the municipality about the eviction. The act requires them to do this at least five days before notifying the municipality.

By law, a state marshal enforcing an eviction order following a mortgage foreclosure or similar court action must notify the town's chief executive officer 24 hours before carrying out the order. The notice must state the (1) eviction's date, time, and location; (2) type and amount of the items to be removed; and (3) designated place for storage.
EFFECTIVE DATE: October 1, 2016

## §§ 87, 88, 92 & 94 — FORECLOSURE MEDIATION PROGRAM

*Authorizes mediators in the judicial branch's foreclosure mediation program to excuse certain parties from mediation sessions and eliminates the (1) restriction that disqualifies a mortgagor from the program when he or she consents to foreclosure by market sale and (2) requirement that a mortgagee provide a certificate of good standing to a mortgagor who has completed the mediation program*

The act makes changes to certain components of the state's foreclosure mediation program. This program, funded within available appropriations, uses judicial branch foreclosure mediators to mediate between the mortgagee and the mortgagor in a statutorily prescribed timeframe to determine whether the parties can agree to avoid foreclosure.

Except as specified below, the following changes apply to foreclosure actions with return dates (dates on which action must be taken) on or after (1) July 1, 2009 for residential real property and (2) October 1, 2011 for real property owned by a religious organization.

### *Notice*

By law, the court must notify all appearing parties when (1) it assigns a case to mediation and (2) a mediator determines that the mortgagor must participate in mediation. The court must schedule (1) a pre-mediation meeting with the mediator and mortgagor and (2) the first mediation session with the mortgagee and mortgagor. The act requires that pre-mediation meetings and mediation sessions be scheduled with all mortgagors who are relevant and necessary to the mediation and to any agreement being contemplated in connection with it.

*Mortgagor Failing to Attend Meetings with the Mediator*

The act expands the conditions in which a mediator may excuse a mortgagor's nonattendance at meetings.

Under the act, the mediator may excuse a mortgagor who shows good cause for nonattendance, such as (1) no longer (a) owning the home because of divorce or a related deed transfer or (b) living in the home, or (2) not being a necessary party to any agreement contemplated in connection with the mediation.

*Appearance at Mediation Sessions*

The law requires the mortgagor and mortgagee to attend each mediation session in person with the ability to mediate. The law makes an exception for a party represented by counsel in certain circumstances, but prior law required that the mortgagor attend the first mediation session in person. The act eliminates the requirement that a represented mortgagor attend the first mediation session in person.

For foreclosure actions with a return date of July 1, 2008 through June 30, 2009, the act allows the mediator to excuse a mortgagor from attending mediation meetings if the mortgagor shows good cause that his or her presence is not needed to further the interests of mediation. These reasons include those enumerated for nonattendance as discussed above.

For foreclosure actions with return dates on or after (1) July 1, 2009 for residential real property and (2) October 1, 2011 for real property owned by a religious organization, the act allows the mediator to excuse a mortgagor from mediation meetings if the mortgagor shows good cause for nonattendance, as discussed above.

*Eligibility*

Under prior law, a mortgagor who consented to a foreclosure by market sale was generally ineligible for the foreclosure mediation program. The act eliminates this disqualification and makes corresponding conforming changes.

*Certificate of Good Standing*

The act eliminates a requirement that a mortgagee, on request, provide a certificate of good standing to a mortgagor who has completed the foreclosure mediation program and remained current on payments for three years.
EFFECTIVE DATE: October 1, 2016

## § 93 — EXPEDITED FORECLOSURE WORKING GROUP

*Requires the Banking Committee, within available appropriations, to convene a working group to recommend methods to expedite foreclosures of abandoned properties and requires the working group to submit its findings to the committee by January 1, 2017*

By October 1, 2016, the act requires the Banking Committee, within available appropriations, to convene a working group to recommend methods to expedite foreclosures of abandoned properties. It must do so in consultation with

representatives of state agencies and departments, financial institutions, mortgage servicers, attorneys with experience in foreclosure law, and municipalities, and submit its findings to the committee by January 1, 2017.
EFFECTIVE DATE: July 1, 2016

OLR TRACKING: MK; See PA Log for Reviewers; PF; bs