



General Assembly

February Session, 2016

Raised Bill No. 170

LCO No. 1481



Referred to Committee on BANKING

Introduced by:
(BA)

AN ACT CONCERNING THE FORECLOSURE MEDIATION PROGRAM.

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

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 Section 49-31e of the general statutes is repealed and the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

3 [(a)] In an action by a lender for the foreclosure of a mortgage of
4 residential real property, [such lender shall give notice to the
5 homeowner of the availability of the provisions of sections 49-31d to
6 49-31i, inclusive, at the time the action is commenced.

7 (b) A homeowner who is given notice of the availability of the
8 provisions of sections 49-31d to 49-31i, inclusive, must] the
9 homeowner shall make application for protection from foreclosure,
10 [within] under the provisions of sections 49-31d to 49-31i, inclusive,
11 not later than twenty-five days [of] after the return day.

12 [(c) No judgment foreclosing the title to real property by strict
13 foreclosure or by a decree of sale shall be entered unless the court is
14 satisfied from pleadings or affidavits on file with the court that notice

15 has been given to the homeowner against whom the foreclosure action
16 is commenced of the availability of the provisions of sections 49-31d to
17 49-31i, inclusive.

18 (d) If a homeowner against whom the foreclosure action is
19 commenced was not given notice of the availability of the provisions of
20 sections 49-31d to 49-31i, inclusive, at the time the action was
21 commenced, and such homeowner was eligible to apply for protection
22 from foreclosure at such time, the court, upon its own motion or upon
23 the written motion of such homeowner, may issue an order staying the
24 foreclosure action for fifteen days during which period the homeowner
25 may apply to the court for protection from foreclosure by submitting
26 an application together with a financial affidavit as required by
27 subsection (a) of section 49-31f.]

28 Sec. 2. Section 49-22 of the general statutes is repealed and the
29 following is substituted in lieu thereof (*Effective from passage*):

30 (a) In any action brought for the foreclosure of a mortgage or lien
31 upon land, or for any equitable relief in relation to land, the plaintiff
32 may, in his complaint, demand possession of the land, and the court
33 may, if it renders judgment in his favor and finds that he is entitled to
34 the possession of the land, issue execution of ejectment, commanding
35 the officer to eject the person or persons in possession of the land not
36 later than five business days after the date of service of such execution
37 and to put in possession thereof the plaintiff or the party to the
38 foreclosure entitled to the possession by the provisions of the decree of
39 said court, provided no execution shall issue against any person in
40 possession who is not a party to the action except a transferee or lienor
41 who is bound by the judgment by virtue of a lis pendens. The officer
42 shall eject the person or persons in possession and may remove such
43 person's possessions and personal effects and deliver such possessions
44 and effects to the place of storage designated by the chief executive
45 officer of the town for such purposes.

46 (b) Before any such removal, the state marshal charged with
47 executing upon the ejectment shall give the chief executive officer of
48 the town twenty-four hours notice of the ejectment, stating the date,
49 time and location of such ejectment as well as a general description, if
50 known, of the types and amount of property to be removed from the
51 land and delivered to the designated place of storage. [Before] Not
52 later than four business days before giving such notice to the chief
53 executive officer of the town, the state marshal shall use reasonable
54 efforts to locate and notify the person or persons in possession of the
55 date and time such ejectment is to take place and of the possibility of a
56 sale pursuant to subsection (c) of this section and shall provide clear
57 instructions as to how and where such person or persons may reclaim
58 any possessions and personal effects removed and stored pursuant to
59 this section, including a telephone number that such person or persons
60 may call to arrange release of such possessions and personal effects.

61 (c) Whenever a mortgage or lien upon land has been foreclosed and
62 execution of ejectment issued, and the possessions and personal effects
63 of the person in possession thereof are removed by a state marshal
64 under this section, such possessions and effects shall be delivered by
65 such marshal to the designated place of storage. Such removal,
66 delivery and storage shall be at the expense of such person. If the
67 possessions and effects are not reclaimed by such person and the
68 expense of the storage is not paid to the chief executive officer within
69 fifteen days after such ejectment, the chief executive officer shall sell
70 the same at public auction, after using reasonable efforts to locate and
71 notify such person of the sale and after posting notice of the sale for
72 one week on the public signpost nearest to the place where the
73 ejectment was made, if any, or at some exterior place near the office of
74 the town clerk. The chief executive officer shall deliver to such person
75 the net proceeds of the sale, if any, after deducting a reasonable charge
76 for storage of such possessions and effects. If such person does not
77 demand the net proceeds within thirty days after the sale, the chief
78 executive officer shall turn over the net proceeds of the sale to the town

79 treasury.

80 Sec. 3. Subsection (b) of section 49-24b of the general statutes is
81 repealed and the following is substituted in lieu thereof (*Effective July*
82 *1, 2016*):

83 (b) At any time after the date provided in the notice required under
84 subsection (a) of this section, the foreclosure of the mortgagor's
85 mortgage may continue without any further restriction or requirement,
86 [provided the] The mortgagee [files] shall file an affidavit with the
87 court [stating] not earlier than thirty days, but not later than ten days,
88 before any motion for judgment of foreclosure by market sale is heard.
89 Such affidavit shall state that the notice provisions of said subsection
90 have been complied with and that either the mortgagor failed to
91 confirm his or her election in accordance with said subsection by the
92 date disclosed in the notice or that discussions were initiated, but (1)
93 the mortgagee and mortgagor were unable to reach a mutually
94 acceptable agreement to proceed; (2) based on the appraisal obtained
95 pursuant to section 49-24c, the property does not appear to be subject
96 to a mortgage that is eligible for foreclosure by market sale; (3) the
97 mortgagor did not grant reasonable interior access for the appraisal
98 required by section 49-24c; (4) the mortgagee and mortgagor were
99 unable to reach an agreement as to a mutually acceptable listing
100 agreement pursuant to section 49-24d; (5) a listing agreement was
101 executed, but no offers to purchase were received; (6) an offer or offers
102 were received, but were unacceptable to either or both the mortgagee
103 and mortgagor; or (7) other circumstances exist that would allow the
104 mortgagee or mortgagor to elect not to proceed with a foreclosure by
105 market sale pursuant to sections 49-24 to 49-24g, inclusive, 49-26 to 49-
106 28, inclusive, and 49-31t, or that would otherwise make the mortgage
107 ineligible for foreclosure by market sale. The affidavit required by this
108 subsection may be combined with the affidavit required by subsection
109 (b) of section 8-265ee.

110 Sec. 4. (NEW) (*Effective July 1, 2016*) Any loss mitigation affidavit

111 required under the general statutes, court rule or other applicable law
112 shall be filed not more than thirty days, but not less than ten days,
113 before any motion for judgment of foreclosure is heard.

114 Sec. 5. Subdivision (4) of subsection (c) of section 49-311 of the 2016
115 supplement to the general statutes is repealed and the following is
116 substituted in lieu thereof (*Effective from passage*):

117 (4) Upon receipt of the mortgagor's appearance and foreclosure
118 mediation certificate forms, and provided the court confirms the
119 defendant in the foreclosure action is a mortgagor and that said
120 mortgagor has sent a copy of the mediation certificate form to the
121 plaintiff, the court shall assign the case to mediation and issue notice of
122 such assignment to all appearing parties, which notice shall include an
123 electronic mail address for all communications related to the
124 mediation. The court shall issue such notice not earlier than the date
125 five business days after the return date or by the date three business
126 days after the date on which the court receives the mortgagor's
127 appearance and foreclosure mediation certificate forms, whichever is
128 later, except that if the court does not receive the appearance and
129 foreclosure mediation certificate forms from the mortgagor by the date
130 fifteen days after the return date for the foreclosure action, the court
131 shall not assign the case to mediation. Promptly upon receipt of the
132 notice of assignment, but not later than the thirty-fifth day following
133 the return date, the mortgagee or its counsel shall deliver to the
134 mediator, via the electronic mail address provided for communications
135 related to the mediation, and to the mortgagor, via first class, priority
136 or overnight mail, (A) an account history identifying all credits and
137 debits assessed to the loan account and any related escrow account in
138 the immediately preceding twelve-month period and an itemized
139 statement of the amount required to reinstate the mortgage loan with
140 accompanying information, written in plain language, to explain any
141 codes used in the history and statement which are not otherwise self-
142 explanatory, (B) the name, business mailing address, electronic mail
143 address, facsimile number and direct telephone number of an

144 individual able to respond with reasonable adequacy and promptness
145 to questions relative to the information submitted to the mediator
146 pursuant to this subdivision, and any subsequent updates to such
147 contact information, which shall be provided reasonably promptly to
148 the mediator via the electronic mail address provided for
149 communication related to the mediation, (C) current versions of all
150 reasonably necessary forms and a list of all documentation reasonably
151 necessary for the mortgagee to evaluate the mortgagor for common
152 alternatives to foreclosure that are available through the mortgagee, if
153 any, (D) a copy of the note and mortgage, including any agreements
154 modifying such documents, (E) summary information regarding the
155 status of any pending foreclosure avoidance efforts being undertaken
156 by the mortgagee, and (F) [a copy of any loss mitigation affidavit filed
157 with the court, and (G)] at the mortgagee's option, (i) the history of
158 foreclosure avoidance efforts with respect to the mortgagor, (ii)
159 information regarding the condition of mortgaged property, and (iii)
160 such other information as the mortgagee may determine is relevant to
161 meeting the objectives of the mediation program. Following the
162 mediator's receipt of such information, the court shall assign a
163 mediator to the mediation and schedule a meeting with the mediator
164 and [the mortgagor] all relevant mortgagors and shall endeavor to
165 hold such meeting on or prior to the forty-ninth day following the
166 return date. The notice of such meeting shall instruct the mortgagor to
167 complete the forms prior to the meeting and to furnish such forms
168 together with the documentation contained in the list, as provided by
169 the mortgagee following the filing of the foreclosure mediation
170 certificate, at the meeting. At such meeting, the mediator shall review
171 such forms and documentation with the mortgagor, along with the
172 information supplied by the mortgagee, in order to discuss the options
173 that may be available to the mortgagor, including any community-
174 based resources, and assist the mortgagor in completing the forms and
175 furnishing the documentation necessary for the mortgagee to evaluate
176 the mortgagor for alternatives to foreclosure. The mediator may elect
177 to schedule subsequent meetings with the mortgagor and determine

178 whether any mortgagor may be excused from an in-person appearance
179 at such subsequent meeting. The mediator may excuse any mortgagor
180 from attending such meeting or any subsequent meetings, provided
181 the mortgagor shows cause for nonattendance. Such cause may
182 include, but is not limited to, the mortgagor no longer owning the
183 home pursuant to a judgment of marital dissolution or no longer
184 residing in the home. As soon as practicable, but in no case later than
185 the eighty-fourth day following the return date, or the extended
186 deadline if such an extended deadline is established pursuant to this
187 subdivision, the mediator shall facilitate and confirm the submission
188 by the mortgagor of the forms and documentation to the mortgagee's
189 counsel via electronic means and, at the mortgagee's election, directly
190 to the mortgagee per the mortgagee's instruction, and determine,
191 based on the relevant mortgagor's attendance at the meetings and the
192 extent the mortgagor completed the forms and furnished the
193 documentation contemplated in this subdivision, or failed to perform
194 such tasks through no material fault of the mortgagee, and file a report
195 with the court indicating, (I) whether mediation shall be scheduled
196 with the mortgagee, (II) whether the mortgagor attended scheduled
197 meetings with the mediator, (III) whether the mortgagor fully or
198 substantially completed the forms and furnished the documentation
199 requested by the mortgagee, (IV) the date on which the mortgagee
200 supplied the forms and documentation, and (V) any other information
201 the mediator determines to be relevant to the objectives of the
202 mediation program. The mediator may file, and the court may grant, a
203 motion for extension of the premediation period beyond the eighty-
204 fourth day following the return date if good cause can be shown for
205 such an extension. Any such motion shall be filed, with a copy
206 simultaneously sent to the mortgagee and as soon as practicable to the
207 mortgagor, not later than the eighty-fourth day following the return
208 date. The mortgagee and mortgagor shall each have five business days
209 from the day the motion was filed to file an objection or supplemental
210 papers, and the court shall issue its ruling, without a hearing, not later
211 than ten business days from the date the motion was filed. If the court

212 determines that good cause exists for an extension, the court shall
213 therewith establish an extended deadline so that the premediation
214 period shall end as soon thereafter as may be practicable, but not later
215 than thirty-five days from the date of the ruling, taking into account
216 the complexity of the mortgagor's financial circumstances, the
217 mortgagee's documentation requirements, and the timeliness of the
218 mortgagee's and mortgagor's compliance with their respective
219 premediation obligations. If the court denies the mediator's motion, the
220 extended deadline for purposes of this subdivision shall be three days
221 after the court rules on the motion. No meeting or communication
222 between the mediator and mortgagor under this subdivision shall be
223 treated as an impermissible ex parte communication. If the mediator
224 determines that the mortgagee shall participate in mediation, the court
225 shall promptly issue notice to all parties of such determination and
226 schedule a mediation session between the mortgagee and [mortgagor]
227 relevant mortgagors in accordance with subsection (c) of section 49-
228 31n to be held not later than five weeks following the submission to
229 the mortgagee of the forms and documentation contemplated in this
230 subdivision. The mediator may excuse any mortgagor from attending
231 the mediation session or subsequent meetings, provided the mortgagor
232 shows cause for nonattendance. Such cause may include, but is not
233 limited to, the mortgagor no longer owning the home pursuant to a
234 judgment of marital dissolution and related transfer via deed or no
235 longer residing in the home. If the mediator determines that no
236 sessions between the mortgagee and mortgagor shall be scheduled, the
237 court shall promptly issue notice to all parties regarding such
238 determination and mediation shall be terminated. Any mortgagor
239 wishing to contest such determination shall petition the court and
240 show good cause for reinclusion in the mediation program, including,
241 but not limited to, a material change in financial circumstances or a
242 mistake or misunderstanding of the facts by the mediator.

243 Sec. 6. Subdivision (2) of subsection (b) of section 49-31n of the 2016
244 supplement to the general statutes is repealed and the following is

245 substituted in lieu thereof (*Effective from passage*):

246 (2) The first mediation session shall be held not later than fifteen
247 business days after the court sends notice to all parties that a
248 foreclosure mediation request form has been submitted to the court.
249 The mortgagor and mortgagee shall appear in person at each
250 mediation session and shall have the ability to mediate, except that (A)
251 if a party is represented by counsel, the party's counsel may appear in
252 lieu of the party to represent the party's interests at the mediation,
253 provided the party has the ability to mediate, [the mortgagor attends
254 the first mediation session in person,] and the party is available (i)
255 during the mediation session by telephone, and (ii) to participate in the
256 mediation session by speakerphone, provided an opportunity is
257 afforded for confidential discussions between the party and party's
258 counsel, (B) following the initial mediation session, if there are two or
259 more mortgagors who are self-represented, only one mortgagor shall
260 be required to appear in person at each subsequent mediation session
261 unless good cause is shown, provided the other mortgagors are
262 available (i) during the mediation session, and (ii) to participate in the
263 mediation session by speakerphone, [and] (C) if a party suffers from a
264 disability or other significant hardship that imposes an undue burden
265 on such party to appear in person, the mediator may grant permission
266 to such party to participate in the mediation session by telephone, and
267 (D) a mortgagor may be excused from appearing at the mediation
268 session if cause is shown that the presence of such mortgagor is not
269 needed to further the interests of mediation because the mortgagor no
270 longer owns the home pursuant to a judgment of marital dissolution or
271 no longer resides in the home. A mortgagor's spouse, who is not a
272 mortgagor but who lives in the subject property, may appear at each
273 mediation session, provided all appearing mortgagors consent, in
274 writing, to such spouse's appearance or such spouse shows good cause
275 for his or her appearance and the mortgagors consent in writing to the
276 disclosure of nonpublic personal information to such spouse. If the
277 mortgagor has submitted a complete package of financial

278 documentation in connection with a request for a particular
279 foreclosure alternative, the mortgagee shall have thirty-five days from
280 the receipt of the completed package to respond with a decision and, if
281 the decision is a denial of the request, provide the reasons for such
282 denial. If the mortgagor has, in connection with a request for a
283 foreclosure alternative, submitted a financial package that is not
284 complete, or if the mortgagee's evaluation of a complete package
285 reveals that additional information is necessary to underwrite the
286 request, the mortgagee shall request the missing or additional
287 information within a reasonable period of time of such evaluation. If
288 the mortgagee's evaluation of a complete package reveals that
289 additional information is necessary to underwrite the request, the
290 thirty-five-day deadline for a response shall be extended but only for
291 so long as is reasonable given the timing of the mortgagor's submission
292 of such additional information and the nature and context of the
293 required underwriting. Not later than the third business day after each
294 mediation session held on or after June 18, 2013, the mediator shall file
295 with the court a report indicating, to the extent applicable, (i) the
296 extent to which each of the parties complied with the requirements set
297 forth in this subdivision, including the requirement to engage in
298 conduct that is consistent with the objectives of the mediation program
299 and to possess the ability to mediate, (ii) whether the mortgagor
300 submitted a complete package of financial documentation to the
301 mortgagee, (iii) a general description of the foreclosure alternative
302 being requested by the mortgagor, (iv) whether the mortgagor has
303 previously been evaluated for similar requests, whether prior to
304 mediation or in mediation, and, if so, whether there has been any
305 apparent change in circumstances since a decision was made with
306 respect to that prior evaluation, (v) whether the mortgagee has
307 responded to the mortgagor's request for a foreclosure alternative and,
308 if so, a description of the response and whether the mediator is aware
309 of any material reason not to agree with the response, (vi) whether the
310 mortgagor has responded to an offer made by the mortgagee on a
311 reasonably timely basis, and if so, an explanation of the response, (vii)

312 whether the mortgagee has requested additional information from the
313 mortgagor and, if so, the stated reasons for the request and the date by
314 which such additional information shall be submitted so that
315 information previously submitted by the mortgagor, to the extent
316 possible, may still be used by the mortgagee in conducting its review,
317 (viii) whether the mortgagor has supplied, on a reasonably timely
318 basis, any additional information that was reasonably requested by the
319 mortgagee, and, if not, the stated reason for not doing so, (ix) if
320 information provided by the mortgagor is no longer current for
321 purposes of evaluating a foreclosure alternative, a description of the
322 out-of-date information and an explanation as to how and why such
323 information is no longer current, (x) whether the mortgagee has
324 provided a reasonable explanation of the basis for a decision to deny a
325 request for a loss mitigation option or foreclosure alternative and
326 whether the mediator is aware of any material reason not to agree with
327 that decision, (xi) whether the mortgagee has complied with the time
328 frames set forth in this subdivision for responding to requests for
329 decisions, (xii) if a subsequent mediation session is expected to occur, a
330 general description of the expectations for such subsequent session
331 and for the parties prior to such subsequent session and, if not
332 otherwise addressed in the report, whether the parties satisfied the
333 expectations set forth in previous reports, and (xiii) a determination of
334 whether the parties will benefit from further mediation. The mediator
335 shall deliver a copy of such report to each party to the mediation when
336 the mediator files the report. The parties shall have the opportunity to
337 submit their own supplemental information following the filing of the
338 report, provided such supplemental information shall be submitted
339 not later than five business days following the receipt of the mediator's
340 report. Any request by the mortgagee to the mortgagor for additional
341 or updated financial documentation shall be made in writing. The
342 court may impose sanctions on any party or on counsel to a party if
343 such party or such counsel engages in intentional or a pattern or
344 practice of conduct during the mediation process that is contrary to the
345 objectives of the mediation program. Any sanction that is imposed

346 shall be proportional to the conduct and consistent with the objectives
 347 of the mediation program. Available sanctions shall include, but not be
 348 limited to, terminating mediation, ordering the mortgagor or
 349 mortgagee to mediate in person, forbidding the mortgagee from
 350 charging the mortgagor for the mortgagee's attorney's fees, awarding
 351 attorney's fees, and imposing fines. In the case of egregious
 352 misconduct, the sanctions shall be heightened. The court shall not
 353 award attorney's fees to any mortgagee for time spent in any
 354 mediation session if the court finds that such mortgagee has failed to
 355 comply with this subdivision, unless the court finds reasonable cause
 356 for such failure.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	49-31e
Sec. 2	<i>from passage</i>	49-22
Sec. 3	<i>July 1, 2016</i>	49-24b(b)
Sec. 4	<i>July 1, 2016</i>	New section
Sec. 5	<i>from passage</i>	49-311(c)(4)
Sec. 6	<i>from passage</i>	49-31n(b)(2)

Statement of Purpose:

To make certain improvements to the foreclosure mediation program, to emphasize Connecticut's public policy commitment to establishing a coherent state foreclosure policy through the foreclosure mediation program, and to encourage the federal courts to abstain under the *Burford* doctrine from hearing and deciding foreclosure cases that would be best served by the foreclosure mediation program.

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