



# House of Representatives

General Assembly

**File No. 416**

February Session, 2016

Substitute House Bill No. 5567

*House of Representatives, April 4, 2016*

The Committee on Banking reported through REP. LESSER of the 100th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING ALTERNATIVES TO FORECLOSURES, THE FORECLOSURE MEDIATION PROGRAM, AND THE MORTGAGOR IN GOOD STANDING STATUTES.***

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

1 Section 1. (NEW) (*Effective from passage*) For purposes of this section  
2 and sections 2 to 6, inclusive, of this act:

3 (1) "Mortgage" has the same meaning as provided in section 49-24a  
4 of the general statutes, as amended by this act;

5 (2) "Mortgagee" has the same meaning as provided in section 49-24a  
6 of the general statutes, as amended by this act;

7 (3) "Mortgagor" has the same meaning as provided in section 49-24a  
8 of the general statutes, as amended by this act;

9 (4) "Residential real property" has the same meaning as provided in  
10 section 49-24a of the general statutes, as amended by this act;

11 (5) "Senior lien" means the first security interest placed upon a  
12 property to secure payment of a debt or performance of an obligation  
13 before one or more junior liens;

14 (6) "Junior lien" means a security interest placed upon a property to  
15 secure payment of a debt or performance of an obligation after a senior  
16 lien is placed on such property, but shall not include a mechanic's lien,  
17 as defined in section 49-33 of the general statutes;

18 (7) "Lienholder" means a person who holds a security interest in real  
19 property; and

20 (8) "Underwater mortgage" means a mortgage where the debt  
21 associated with such mortgage, along with any senior lien, exceeds the  
22 fair market value of the mortgaged property as determined by a court  
23 in accordance with sections 4 and 5 of this act.

24 Sec. 2. (NEW) (*Effective from passage*) Notwithstanding any provision  
25 of the general statutes, any underwater mortgage on residential real  
26 property may be modified, and the principal balance increased by the  
27 amount of accrued interest, fees and costs allowed by law, without the  
28 consent of the holders of junior liens and without loss of priority for  
29 the full amount of the modified mortgage, provided such modification  
30 is approved by the court through entry of a judgment of loss  
31 mitigation under sections 4 and 5 of this act.

32 Sec. 3. (NEW) (*Effective from passage*) A mortgagor of an underwater  
33 mortgage may elect to transfer the residential real property  
34 encumbered by the mortgage to a mortgagee in satisfaction of the  
35 mortgagor's obligation to the mortgagee by agreeing to transfer such  
36 property in a record executed by both parties. The transfer agreement  
37 shall: (1) Transfer to the mortgagee all interests in the property, except  
38 the interests reserved to the mortgagor in the transfer agreement or the  
39 interests held by more senior mortgagees or lienholders; (2) discharge  
40 the mortgage; and (3) contemplate the termination of any other interest  
41 in the property subordinate to that of the lienholder party to the  
42 transfer agreement following a court's entry of a judgment of loss

43 mitigation under sections 4 and 5 of this act.

44 Sec. 4. (NEW) (*Effective from passage*) A mortgagee or mortgagor may  
45 file a motion for judgment of loss mitigation in a pending foreclosure  
46 action following a modification under section 2 of this act or execution  
47 of a transfer agreement under section 3 of this act. Upon motion of the  
48 mortgagee or mortgagor and with the consent of the counterparty, the  
49 court, after notice and hearing, may render a judgment of loss  
50 mitigation approving the modification or transfer. Such judgment shall  
51 be a final judgment for purposes of appeal. The only issues at such  
52 hearing shall be (1) a finding of the fair market value of the residential  
53 real property encumbered by the mortgage, which may be determined  
54 by an appraisal conducted by a court-appointed disinterested real  
55 estate appraiser, (2) a finding of the fair market value of any priority  
56 liens on such property, (3) the mortgagor's debt, (4) whether the  
57 mortgage is an underwater mortgage, and (5) whether the  
58 modification or transfer was agreed to in good faith and for the  
59 purpose of mitigating the loss the mortgagor and mortgagee would  
60 incur through a judgment of foreclosure. If the court renders a  
61 judgment of loss mitigation, immediately after the expiration of any  
62 applicable appeal period or after the disposition of an appeal that  
63 affirms the judgment, then either (A) the mortgage held by the  
64 mortgagee shall be increased as contemplated in such judgment and  
65 any junior lienholder's lien shall be deemed subordinated to such  
66 mortgage, in the same order as existed prior to the subordination, or  
67 (B) the transfer contemplated in the transfer agreement shall be  
68 effectuated. The mortgagor and mortgagee shall, thirty days after the  
69 modification or transfer, submit the judgment of loss mitigation to the  
70 town clerk for recording in accordance with title 7 of the general  
71 statutes.

72 Sec. 5. (NEW) (*Effective from passage*) If the court does not enter a  
73 judgment of loss mitigation, then the modification or transfer  
74 contemplated by the mortgagor and mortgagee under section 2 or 3 of  
75 this act shall not be consummated. In the event of such nonentry:

76 (1) The mortgagor may, if eligible, petition for inclusion in the  
77 foreclosure mediation program established pursuant to section 49-31m  
78 of the general statutes, provided the mortgagor did not substantially  
79 contribute to the events leading to such denial or circumstances. In  
80 determining whether to grant such petition the court shall give  
81 consideration to any testimony or affidavits the parties may submit in  
82 support of or in opposition to such petition. The court may grant such  
83 petition upon a determination that (A) such petition is not motivated  
84 primarily by a desire to delay entry of a judgment of foreclosure, and  
85 (B) it is highly probable the parties will reach an agreement through  
86 mediation; and

87 (2) The mortgagee shall have the right to request the entry of a  
88 judgment of foreclosure in accordance with the other provisions of  
89 law, including the provisions governing strict foreclosure.

90 Sec. 6. (NEW) (*Effective from passage*) Nothing in sections 2 to 5,  
91 inclusive, of this act shall be construed as eliminating the debt or any  
92 judgment associated with an affected junior lien on the residential real  
93 property encumbered by the underwater mortgage.

94 Sec. 7. Subsection (a) of section 49-24b of the general statutes is  
95 repealed and the following is substituted in lieu thereof (*Effective from*  
96 *passage*):

97 (a) On and after January 1, 2015, a mortgagee who desires to  
98 foreclose upon a mortgage encumbering residential real property of a  
99 mortgagor shall give notice to the mortgagor by registered or certified  
100 mail, postage prepaid, at the address of the residential real property  
101 that is secured by such mortgage, in accordance with the relevant  
102 notice provisions of this chapter and chapter 134. No such mortgagee  
103 may commence a foreclosure of a mortgage prior to mailing such  
104 notice. Such notice shall advise the mortgagor of his or her  
105 delinquency or other default under the mortgage and that the  
106 mortgagor has the option to contact the mortgagee to discuss whether  
107 the property may, by mutual consent of the mortgagee and mortgagor,  
108 be marketed for sale pursuant to a listing agreement established in

109 accordance with section 49-24d. Such notice shall also advise the  
110 mortgagor (1) of the mailing address, telephone number, facsimile  
111 number and electronic mail address that should be used to contact the  
112 mortgagee; (2) of a date not less than sixty days after the date of such  
113 notice by which the mortgagor must initiate such contact, with  
114 contemporaneous confirmation in writing of the election to pursue  
115 such option sent to the designated mailing address or electronic mail  
116 address of the mortgagee; (3) that the mortgagor should contact a real  
117 estate agent licensed under chapter 392 to discuss the feasibility of  
118 listing the property for sale pursuant to the foreclosure by market sale  
119 process; (4) that, if the mortgagor and mortgagee both agree to proceed  
120 with further discussions concerning an acceptable listing agreement,  
121 the mortgagor must first permit an appraisal to be obtained in  
122 accordance with section 49-24c for purposes of verifying eligibility for  
123 foreclosure by market sale; (5) that the appraisal will require both an  
124 interior and exterior inspection of the property; (6) that the terms and  
125 conditions of the listing agreement, including the duration and listing  
126 price, must be acceptable to both the mortgagee and mortgagor; (7)  
127 that the terms and conditions of any offer to purchase, including the  
128 purchase price and any contingencies, must be acceptable to both the  
129 mortgagor and mortgagee; (8) that if an acceptable offer is received,  
130 the mortgagor will sign an agreement to sell the property through a  
131 foreclosure by market sale; and (9) in bold print and at least ten-point  
132 font, that if the mortgagor consents to a foreclosure by market sale, the  
133 mortgagor will not be eligible for foreclosure mediation in any type of  
134 foreclosure action that is commenced following the giving of such  
135 consent. The notice provided under this subsection may be combined  
136 with and delivered at the same time as any other notice required by  
137 subsection (a) of section 8-265ee or federal law. Should the mortgagor  
138 and mortgagee, by their mutual consent, choose to enter into  
139 discussions at any point subsequent to the commencement of a  
140 foreclosure action regarding the possibility of marketing the property  
141 pursuant to a listing agreement established in accordance with section  
142 49-24d, nothing in this section, sections 1 to 6, inclusive, of this act or  
143 section 49-24e, as amended by this act, shall be construed as

144 prohibiting the parties from entering into the listing agreement.

145 Sec. 8. Subsections (a) and (b) of section 49-24e of the general  
146 statutes are repealed and the following is substituted in lieu thereof  
147 (*Effective from passage*):

148 (a) If a mortgagor executes a listing agreement that is acceptable to  
149 both the mortgagee and mortgagor pursuant to section 49-24d and  
150 receives an offer to purchase the residential real property that  
151 encompasses a price, terms and conditions that are acceptable to both  
152 the mortgagor and the mortgagee, the mortgagor shall execute a  
153 contract for sale with the purchaser that shall reflect the agreed-upon  
154 price, terms and conditions and be contingent upon the completion of  
155 the foreclosure by market sale in accordance with sections 49-24 to 49-  
156 24g, inclusive, as amended by this act, and sections 49-26 to 49-28,  
157 inclusive. [ and 49-31t.] If an offer is received, but is unacceptable to  
158 the mortgagee, the mortgagee shall provide the mortgagor with  
159 written notice of its decision and, without limiting the breadth of its  
160 discretion, a general explanation of the reason or reasons for such  
161 decision. Such notice shall not be required in instances where the offer  
162 is unacceptable to the mortgagor. The mortgagor shall, not later than  
163 five days after the date of the execution of the purchase and sale  
164 contract, provide the mortgagee with a copy of such contract along  
165 with written documentation, in a form and substance acceptable to the  
166 mortgagee, evidencing the mortgagor's consent to the filing of a  
167 motion for judgment of foreclosure by market sale.

168 (b) Unless otherwise prohibited by applicable law, not later than  
169 thirty days after the receipt of such contract and the documentation  
170 evidencing consent, or not later than thirty days after the satisfaction  
171 or expiration of any contingencies in the contract that must either have  
172 been satisfied or expired before the foreclosure action may be  
173 commenced to consummate the sale, whichever thirty-day time frame  
174 is later, the mortgagee shall commence a foreclosure by market sale by  
175 writ, summons and complaint. Any such complaint shall claim, in the  
176 prayer for relief, a foreclosure of the mortgage pursuant to sections 49-

177 24 to 49-24g, inclusive, as amended by this act, and sections 49-26 to  
178 49-28, inclusive, [and 49-31t,] and shall contain a copy of the contract  
179 between the mortgagor and the purchaser as well as a copy of the  
180 appraisal obtained pursuant to section 49-24c. If the mortgagee has  
181 already commenced a foreclosure action at the time of either receipt of  
182 such contract or such satisfaction or expiration, then, not later than  
183 thirty days after the latest of such receipt, satisfaction or expiration, the  
184 mortgagee shall make a motion for judgment of foreclosure by market  
185 sale in accordance with the provisions of section 49-24f and attach the  
186 contract and appraisal to the motion. No mortgagee may require the  
187 employ or use of a particular list of persons licensed under chapter 392  
188 as a condition of approval of an offer. No mortgagee may require the  
189 use of an auction or other alternative method of sale as a condition of  
190 approval of an offer once the listing agreement required pursuant to  
191 section 49-24d has been executed by the mortgagor. Nothing in this  
192 section shall be construed as requiring either the mortgagee or  
193 mortgagor to approve any offer that is made pursuant to this section.

194 Sec. 9. Section 49-24 of the general statutes is repealed and the  
195 following is substituted in lieu thereof (*Effective from passage*):

196 All liens and mortgages affecting real property may, on the written  
197 motion of any party to any suit relating thereto, be foreclosed (1) by a  
198 decree of sale instead of a strict foreclosure at the discretion of the  
199 court before which the foreclosure proceedings are pending, or (2)  
200 with respect to mortgages, as defined in section 49-24a, as amended by  
201 this act, that are a first mortgage against the property, by a judgment of  
202 foreclosure by market sale upon the written motion of the mortgagee,  
203 as defined in section 49-24a, as amended by this act, and with consent  
204 of the mortgagor, as defined in section 49-24a, as amended by this act,  
205 in accordance with sections 49-24a to 49-24g, inclusive, as amended by  
206 this act, and sections 49-26 to 49-28, inclusive. [, and 49-31t.]

207 Sec. 10. Section 49-24a of the general statutes is repealed and the  
208 following is substituted in lieu thereof (*Effective from passage*):

209 For purposes of a foreclosure by market sale in accordance with this

210 section [,] and sections 49-24b to 49-24g, inclusive, as amended by this  
211 act: [, and section 49-31t:]

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

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

220 (3) "Mortgagor" means the owner-occupant of residential real  
221 property located in this state who is also the borrower under the loan  
222 that is secured by a mortgage, other than a reverse annuity mortgage,  
223 encumbering such residential real property that is the primary  
224 residence of such owner-occupant, where the amount due on such  
225 mortgage loan, including accrued interest, late charges and other  
226 amounts secured by the mortgage, when added to amounts for which  
227 there is a prior lien by operation of law, exceeds the appraised value of  
228 the property; and

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

231 Sec. 11. Subsection (b) of section 49-24b of the general statutes is  
232 repealed and the following is substituted in lieu thereof (*Effective from*  
233 *passage*):

234 (b) At any time after the date provided in the notice required under  
235 subsection (a) of this section, the foreclosure of the mortgagor's  
236 mortgage may continue without any further restriction or requirement,  
237 provided the mortgagee files an affidavit with the court stating that the  
238 notice provisions of said subsection have been complied with and that  
239 either the mortgagor failed to confirm his or her election in accordance  
240 with said subsection by the date disclosed in the notice or that

241 discussions were initiated, but (1) the mortgagee and mortgagor were  
242 unable to reach a mutually acceptable agreement to proceed; (2) based  
243 on the appraisal obtained pursuant to section 49-24c, the property does  
244 not appear to be subject to a mortgage that is eligible for foreclosure by  
245 market sale; (3) the mortgagor did not grant reasonable interior access  
246 for the appraisal required by section 49-24c; (4) the mortgagee and  
247 mortgagor were unable to reach an agreement as to a mutually  
248 acceptable listing agreement pursuant to section 49-24d; (5) a listing  
249 agreement was executed, but no offers to purchase were received; (6)  
250 an offer or offers were received, but were unacceptable to either or  
251 both the mortgagee and mortgagor; or (7) other circumstances exist  
252 that would allow the mortgagee or mortgagor to elect not to proceed  
253 with a foreclosure by market sale pursuant to sections 49-24 to 49-24g,  
254 inclusive, as amended by this act, and sections 49-26 to 49-28,  
255 inclusive, [and 49-31t,] or that would otherwise make the mortgage  
256 ineligible for foreclosure by market sale. The affidavit required by this  
257 subsection may be combined with the affidavit required by subsection  
258 (b) of section 8-265ee.

259 Sec. 12. Section 49-31e of the general statutes is repealed and the  
260 following is substituted in lieu thereof (*Effective from passage*):

261 [(a)] In an action by a lender for the foreclosure of a mortgage of  
262 residential real property, [such lender shall give notice to the  
263 homeowner of the availability of the provisions of sections 49-31d to  
264 49-31i, inclusive, at the time the action is commenced.

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

270 [(c) No judgment foreclosing the title to real property by strict  
271 foreclosure or by a decree of sale shall be entered unless the court is  
272 satisfied from pleadings or affidavits on file with the court that notice  
273 has been given to the homeowner against whom the foreclosure action

274 is commenced of the availability of the provisions of sections 49-31d to  
275 49-31i, inclusive.

276 (d) If a homeowner against whom the foreclosure action is  
277 commenced was not given notice of the availability of the provisions of  
278 sections 49-31d to 49-31i, inclusive, at the time the action was  
279 commenced, and such homeowner was eligible to apply for protection  
280 from foreclosure at such time, the court, upon its own motion or upon  
281 the written motion of such homeowner, may issue an order staying the  
282 foreclosure action for fifteen days during which period the homeowner  
283 may apply to the court for protection from foreclosure by submitting  
284 an application together with a financial affidavit as required by  
285 subsection (a) of section 49-31f.]

286 Sec. 13. Section 49-22 of the general statutes is repealed and the  
287 following is substituted in lieu thereof (*Effective from passage*):

288 (a) In any action brought for the foreclosure of a mortgage or lien  
289 upon land, or for any equitable relief in relation to land, the plaintiff  
290 may, in his complaint, demand possession of the land, and the court  
291 may, if it renders judgment in his favor and finds that he is entitled to  
292 the possession of the land, issue execution of ejectment, commanding  
293 the officer to eject the person or persons in possession of the land no  
294 fewer than five business days after the date of service of such  
295 execution and to put in possession thereof the plaintiff or the party to  
296 the foreclosure entitled to the possession by the provisions of the  
297 decree of said court, provided no execution shall issue against any  
298 person in possession who is not a party to the action except a  
299 transferee or lienor who is bound by the judgment by virtue of a lis  
300 pendens. The officer shall eject the person or persons in possession and  
301 may remove such person's possessions and personal effects and  
302 deliver such possessions and effects to the place of storage designated  
303 by the chief executive officer of the town for such purposes.

304 (b) Before any such removal, the state marshal charged with  
305 executing upon the ejectment shall give the chief executive officer of  
306 the town twenty-four [hours] hours<sup>1</sup> notice of the ejectment, stating the

307 date, time and location of such ejectment as well as a general  
308 description, if known, of the types and amount of property to be  
309 removed from the land and delivered to the designated place of  
310 storage. [Before] At least five business days before giving such notice  
311 to the chief executive officer of the town, the state marshal shall use  
312 reasonable efforts to locate and notify the person or persons in  
313 possession of the date and time such ejectment is to take place and of  
314 the possibility of a sale pursuant to subsection (c) of this section and  
315 shall provide clear instructions as to how and where such person or  
316 persons may reclaim any possessions and personal effects removed  
317 and stored pursuant to this section, including a telephone number that  
318 such person or persons may call to arrange release of such possessions  
319 and personal effects.

320 (c) Whenever a mortgage or lien upon land has been foreclosed and  
321 execution of ejectment issued, and the possessions and personal effects  
322 of the person in possession thereof are removed by a state marshal  
323 under this section, such possessions and effects shall be delivered by  
324 such marshal to the designated place of storage. Such removal,  
325 delivery and storage shall be at the expense of such person. If the  
326 possessions and effects are not reclaimed by such person and the  
327 expense of the storage is not paid to the chief executive officer within  
328 fifteen days after such ejectment, the chief executive officer shall sell  
329 the same at public auction, after using reasonable efforts to locate and  
330 notify such person of the sale and after posting notice of the sale for  
331 one week on the public signpost nearest to the place where the  
332 ejectment was made, if any, or at some exterior place near the office of  
333 the town clerk. The chief executive officer shall deliver to such person  
334 the net proceeds of the sale, if any, after deducting a reasonable charge  
335 for storage of such possessions and effects. If such person does not  
336 demand the net proceeds within thirty days after the sale, the chief  
337 executive officer shall turn over the net proceeds of the sale to the town  
338 treasury.

339 Sec. 14. Subdivision (4) of subsection (c) of section 49-31l of the 2016  
340 supplement to the general statutes is repealed and the following is

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

342 (4) Upon receipt of the mortgagor's appearance and foreclosure  
343 mediation certificate forms, and provided the court confirms the  
344 defendant in the foreclosure action is a mortgagor and that said  
345 mortgagor has sent a copy of the mediation certificate form to the  
346 plaintiff, the court shall assign the case to mediation and issue notice of  
347 such assignment to all appearing parties, which notice shall include an  
348 electronic mail address for all communications related to the  
349 mediation. The court shall issue such notice not earlier than the date  
350 five business days after the return date or by the date three business  
351 days after the date on which the court receives the mortgagor's  
352 appearance and foreclosure mediation certificate forms, whichever is  
353 later, except that if the court does not receive the appearance and  
354 foreclosure mediation certificate forms from the mortgagor by the date  
355 fifteen days after the return date for the foreclosure action, the court  
356 shall not assign the case to mediation. Promptly upon receipt of the  
357 notice of assignment, but not later than the thirty-fifth day following  
358 the return date, the mortgagee or its counsel shall deliver to the  
359 mediator, via the electronic mail address provided for communications  
360 related to the mediation, and to the mortgagor, via first class, priority  
361 or overnight mail, (A) an account history identifying all credits and  
362 debits assessed to the loan account and any related escrow account in  
363 the immediately preceding twelve-month period and an itemized  
364 statement of the amount required to reinstate the mortgage loan with  
365 accompanying information, written in plain language, to explain any  
366 codes used in the history and statement which are not otherwise self-  
367 explanatory, (B) the name, business mailing address, electronic mail  
368 address, facsimile number and direct telephone number of an  
369 individual able to respond with reasonable adequacy and promptness  
370 to questions relative to the information submitted to the mediator  
371 pursuant to this subdivision, and any subsequent updates to such  
372 contact information, which shall be provided reasonably promptly to  
373 the mediator via the electronic mail address provided for  
374 communication related to the mediation, (C) current versions of all  
375 reasonably necessary forms and a list of all documentation reasonably

376 necessary for the mortgagee to evaluate the mortgagor for common  
377 alternatives to foreclosure that are available through the mortgagee, if  
378 any, (D) a copy of the note and mortgage, including any agreements  
379 modifying such documents, (E) summary information regarding the  
380 status of any pending foreclosure avoidance efforts being undertaken  
381 by the mortgagee, and (F) [a copy of any loss mitigation affidavit filed  
382 with the court, and (G)] at the mortgagee's option, (i) the history of  
383 foreclosure avoidance efforts with respect to the mortgagor, (ii)  
384 information regarding the condition of mortgaged property, and (iii)  
385 such other information as the mortgagee may determine is relevant to  
386 meeting the objectives of the mediation program. Following the  
387 mediator's receipt of such information, the court shall assign a  
388 mediator to the mediation and schedule a meeting with the mediator  
389 and [the mortgagor] all relevant mortgagors and shall endeavor to  
390 hold such meeting on or prior to the forty-ninth day following the  
391 return date. The notice of such meeting shall instruct the mortgagor to  
392 complete the forms prior to the meeting and to furnish such forms  
393 together with the documentation contained in the list, as provided by  
394 the mortgagee following the filing of the foreclosure mediation  
395 certificate, at the meeting. At such meeting, the mediator shall review  
396 such forms and documentation with the mortgagor, along with the  
397 information supplied by the mortgagee, in order to discuss the options  
398 that may be available to the mortgagor, including any community-  
399 based resources, and assist the mortgagor in completing the forms and  
400 furnishing the documentation necessary for the mortgagee to evaluate  
401 the mortgagor for alternatives to foreclosure. The mediator may elect  
402 to schedule subsequent meetings with the mortgagor and determine  
403 whether any mortgagor may be excused from an in-person appearance  
404 at such subsequent meeting. The mediator may excuse any mortgagor  
405 from attending such meeting or any subsequent meetings, provided  
406 the mortgagor shows cause for nonattendance. Such cause may  
407 include, but is not limited to, the mortgagor no longer owning the  
408 home pursuant to a judgment of marital dissolution and related  
409 transfer via deed or no longer residing in the home. As soon as  
410 practicable, but in no case later than the eighty-fourth day following

411 the return date, or the extended deadline if such an extended deadline  
412 is established pursuant to this subdivision, the mediator shall facilitate  
413 and confirm the submission by the mortgagor of the forms and  
414 documentation to the mortgagee's counsel via electronic means and, at  
415 the mortgagee's election, directly to the mortgagee per the mortgagee's  
416 instruction, and determine, based on the participating mortgagor's  
417 attendance at the meetings and the extent the mortgagor completed the  
418 forms and furnished the documentation contemplated in this  
419 subdivision, or failed to perform such tasks through no material fault  
420 of the mortgagee, and file a report with the court indicating, (I)  
421 whether mediation shall be scheduled with the mortgagee, (II) whether  
422 the mortgagor attended scheduled meetings with the mediator, (III)  
423 whether the mortgagor fully or substantially completed the forms and  
424 furnished the documentation requested by the mortgagee, (IV) the  
425 date on which the mortgagee supplied the forms and documentation,  
426 and (V) any other information the mediator determines to be relevant  
427 to the objectives of the mediation program. The mediator may file, and  
428 the court may grant, a motion for extension of the premediation period  
429 beyond the eighty-fourth day following the return date if good cause  
430 can be shown for such an extension. Any such motion shall be filed,  
431 with a copy simultaneously sent to the mortgagee and as soon as  
432 practicable to the mortgagor, not later than the eighty-fourth day  
433 following the return date. The mortgagee and mortgagor shall each  
434 have five business days from the day the motion was filed to file an  
435 objection or supplemental papers, and the court shall issue its ruling,  
436 without a hearing, not later than ten business days from the date the  
437 motion was filed. If the court determines that good cause exists for an  
438 extension, the court shall therewith establish an extended deadline so  
439 that the premediation period shall end as soon thereafter as may be  
440 practicable, but not later than thirty-five days from the date of the  
441 ruling, taking into account the complexity of the mortgagor's financial  
442 circumstances, the mortgagee's documentation requirements, and the  
443 timeliness of the mortgagee's and mortgagor's compliance with their  
444 respective premediation obligations. If the court denies the mediator's  
445 motion, the extended deadline for purposes of this subdivision shall be

446 three days after the court rules on the motion. No meeting or  
447 communication between the mediator and mortgagor under this  
448 subdivision shall be treated as an impermissible ex parte  
449 communication. If the mediator determines that the mortgagee shall  
450 participate in mediation, the court shall promptly issue notice to all  
451 parties of such determination and schedule a mediation session  
452 between the mortgagee and [mortgagor] relevant mortgagors in  
453 accordance with subsection (c) of section 49-31n to be held not later  
454 than five weeks following the submission to the mortgagee of the  
455 forms and documentation contemplated in this subdivision. The  
456 mediator may excuse any mortgagor from attending the mediation  
457 session or subsequent meetings, provided cause is shown for  
458 nonattendance. Such cause may include, but is not limited to, the  
459 mortgagor no longer owning the home pursuant to a judgment of  
460 marital dissolution and related transfer via deed or no longer residing  
461 in the home. If the mediator determines that no sessions between the  
462 mortgagee and mortgagor shall be scheduled, the court shall promptly  
463 issue notice to all parties regarding such determination and mediation  
464 shall be terminated. Any mortgagor wishing to contest such  
465 determination shall petition the court and show good cause for  
466 reinclusion in the mediation program, including, but not limited to, a  
467 material change in financial circumstances or a mistake or  
468 misunderstanding of the facts by the mediator.

469 Sec. 15. Subdivision (2) of subsection (b) of section 49-31n of the  
470 2016 supplement to the general statutes is repealed and the following  
471 is substituted in lieu thereof (*Effective from passage*):

472 (2) The first mediation session shall be held not later than fifteen  
473 business days after the court sends notice to all parties that a  
474 foreclosure mediation request form has been submitted to the court.  
475 The mortgagor and mortgagee shall appear in person at each  
476 mediation session and shall have the ability to mediate, except that (A)  
477 if a party is represented by counsel, the party's counsel may appear in  
478 lieu of the party to represent the party's interests at the mediation,  
479 provided the party has the ability to mediate, [the mortgagor attends

480 the first mediation session in person,] and the party is available (i)  
481 during the mediation session by telephone, and (ii) to participate in the  
482 mediation session by speakerphone, provided an opportunity is  
483 afforded for confidential discussions between the party and party's  
484 counsel, (B) following the initial mediation session, if there are two or  
485 more mortgagors who are self-represented, only one mortgagor shall  
486 be required to appear in person at each subsequent mediation session  
487 unless good cause is shown, provided the other mortgagors are  
488 available (i) during the mediation session, and (ii) to participate in the  
489 mediation session by speakerphone, [and] (C) if a party suffers from a  
490 disability or other significant hardship that imposes an undue burden  
491 on such party to appear in person, the mediator may grant permission  
492 to such party to participate in the mediation session by telephone, and  
493 (D) a mortgagor may be excused from appearing at the mediation  
494 session if cause is shown that the presence of such mortgagor is not  
495 needed to further the interests of mediation. Such cause may include,  
496 but is not limited to, the mortgagor no longer owning the home  
497 pursuant to a judgment of marital dissolution and related transfer via  
498 deed or no longer residing in the home. A mortgagor's spouse, who is  
499 not a mortgagor but who lives in the subject property, may appear at  
500 each mediation session, provided all appearing mortgagors consent, in  
501 writing, to such spouse's appearance or such spouse shows good cause  
502 for his or her appearance and the mortgagors consent in writing to the  
503 disclosure of nonpublic personal information to such spouse. If the  
504 mortgagor has submitted a complete package of financial  
505 documentation in connection with a request for a particular  
506 foreclosure alternative, the mortgagee shall have thirty-five days from  
507 the receipt of the completed package to respond with a decision and, if  
508 the decision is a denial of the request, provide the reasons for such  
509 denial. If the mortgagor has, in connection with a request for a  
510 foreclosure alternative, submitted a financial package that is not  
511 complete, or if the mortgagee's evaluation of a complete package  
512 reveals that additional information is necessary to underwrite the  
513 request, the mortgagee shall request the missing or additional  
514 information within a reasonable period of time of such evaluation. If

515 the mortgagee's evaluation of a complete package reveals that  
516 additional information is necessary to underwrite the request, the  
517 thirty-five-day deadline for a response shall be extended but only for  
518 so long as is reasonable given the timing of the mortgagor's submission  
519 of such additional information and the nature and context of the  
520 required underwriting. Not later than the third business day after each  
521 mediation session held on or after June 18, 2013, the mediator shall file  
522 with the court a report indicating, to the extent applicable, (i) the  
523 extent to which each of the parties complied with the requirements set  
524 forth in this subdivision, including the requirement to engage in  
525 conduct that is consistent with the objectives of the mediation program  
526 and to possess the ability to mediate, (ii) whether the mortgagor  
527 submitted a complete package of financial documentation to the  
528 mortgagee, (iii) a general description of the foreclosure alternative  
529 being requested by the mortgagor, (iv) whether the mortgagor has  
530 previously been evaluated for similar requests, whether prior to  
531 mediation or in mediation, and, if so, whether there has been any  
532 apparent change in circumstances since a decision was made with  
533 respect to that prior evaluation, (v) whether the mortgagee has  
534 responded to the mortgagor's request for a foreclosure alternative and,  
535 if so, a description of the response and whether the mediator is aware  
536 of any material reason not to agree with the response, (vi) whether the  
537 mortgagor has responded to an offer made by the mortgagee on a  
538 reasonably timely basis, and if so, an explanation of the response, (vii)  
539 whether the mortgagee has requested additional information from the  
540 mortgagor and, if so, the stated reasons for the request and the date by  
541 which such additional information shall be submitted so that  
542 information previously submitted by the mortgagor, to the extent  
543 possible, may still be used by the mortgagee in conducting its review,  
544 (viii) whether the mortgagor has supplied, on a reasonably timely  
545 basis, any additional information that was reasonably requested by the  
546 mortgagee, and, if not, the stated reason for not doing so, (ix) if  
547 information provided by the mortgagor is no longer current for  
548 purposes of evaluating a foreclosure alternative, a description of the  
549 out-of-date information and an explanation as to how and why such

550 information is no longer current, (x) whether the mortgagee has  
551 provided a reasonable explanation of the basis for a decision to deny a  
552 request for a loss mitigation option or foreclosure alternative and  
553 whether the mediator is aware of any material reason not to agree with  
554 that decision, (xi) whether the mortgagee has complied with the time  
555 frames set forth in this subdivision for responding to requests for  
556 decisions, (xii) if a subsequent mediation session is expected to occur, a  
557 general description of the expectations for such subsequent session  
558 and for the parties prior to such subsequent session and, if not  
559 otherwise addressed in the report, whether the parties satisfied the  
560 expectations set forth in previous reports, and (xiii) a determination of  
561 whether the parties will benefit from further mediation. The mediator  
562 shall deliver a copy of such report to each party to the mediation when  
563 the mediator files the report. The parties shall have the opportunity to  
564 submit their own supplemental information following the filing of the  
565 report, provided such supplemental information shall be submitted  
566 not later than five business days following the receipt of the mediator's  
567 report. Any request by the mortgagee to the mortgagor for additional  
568 or updated financial documentation shall be made in writing. The  
569 court may impose sanctions on any party or on counsel to a party if  
570 such party or such counsel engages in intentional or a pattern or  
571 practice of conduct during the mediation process that is contrary to the  
572 objectives of the mediation program. Any sanction that is imposed  
573 shall be proportional to the conduct and consistent with the objectives  
574 of the mediation program. Available sanctions shall include, but not be  
575 limited to, terminating mediation, ordering the mortgagor or  
576 mortgagee to mediate in person, forbidding the mortgagee from  
577 charging the mortgagor for the mortgagee's attorney's fees, awarding  
578 attorney's fees, and imposing fines. In the case of egregious  
579 misconduct, the sanctions shall be heightened. The court shall not  
580 award attorney's fees to any mortgagee for time spent in any  
581 mediation session if the court finds that such mortgagee has failed to  
582 comply with this subdivision, unless the court finds reasonable cause  
583 for such failure.

584 Sec. 16. Subdivision (2) of subsection (c) of section 49-31n of the

585 general statutes is repealed and the following is substituted in lieu  
586 thereof (*Effective from passage*):

587 (2) The mortgagor and mortgagee shall appear in person at each  
588 mediation session and shall have the ability to mediate, except that (A)  
589 if a party is represented by counsel, the party's counsel may appear in  
590 lieu of the party to represent the party's interests at the mediation,  
591 provided the party has the ability to mediate, the mortgagor attends  
592 the first mediation session in person and the party is available (i)  
593 during the mediation session by telephone, and (ii) to participate in the  
594 mediation session by speakerphone, provided an opportunity is  
595 afforded for confidential discussions between the party and party's  
596 counsel, (B) following the initial mediation session, if there are two or  
597 more mortgagors who are self-represented, only one mortgagor shall  
598 be required to appear in person at each subsequent mediation session  
599 unless good cause is shown, provided the other mortgagors are  
600 available (i) during the mediation session, and (ii) to participate in the  
601 mediation session by speakerphone, [and] (C) if a party suffers from a  
602 disability or other significant hardship that imposes an undue burden  
603 on such party to appear in person, the mediator may grant permission  
604 to such party to participate in the mediation session by telephone, and  
605 (D) a mortgagor may be excused from appearing at the mediation  
606 session if cause is shown that the presence of such mortgagor is not  
607 needed to further the interests of mediation. Such cause may include,  
608 but is not limited to, the mortgagor no longer owning the home  
609 pursuant to a judgment of marital dissolution and related transfer via  
610 deed or no longer residing in the home. A mortgagor's spouse, who is  
611 not a mortgagor but who lives in the subject property, may appear at  
612 each mediation session, provided all appearing mortgagors consent, in  
613 writing, to such spouse's appearance or such spouse shows good cause  
614 for his or her appearance and the mortgagors consent, in writing, to  
615 the disclosure of nonpublic personal information to such spouse. If the  
616 mortgagor has submitted a complete package of financial  
617 documentation in connection with a request for a particular  
618 foreclosure alternative, the mortgagee shall have thirty-five days from  
619 the receipt of the completed package to respond with a decision and, if

620 the decision is a denial of the request, provide the reasons for such  
621 denial. If the mortgagor has, in connection with a request for a  
622 foreclosure alternative, submitted a financial package that is not  
623 complete, or if the mortgagee's evaluation of a complete package  
624 reveals that additional information is necessary to underwrite the  
625 request, the mortgagee shall request the missing or additional  
626 information within a reasonable period of time of such evaluation. If  
627 the mortgagee's evaluation of a complete package reveals that  
628 additional information is necessary to underwrite the request, the  
629 thirty-five-day deadline for a response shall be extended but only for  
630 so long as is reasonable given the timing of the mortgagor's submission  
631 of such additional information and the nature and context of the  
632 required underwriting. Not later than the third business day after each  
633 mediation session, the mediator shall file with the court a report  
634 indicating, to the extent applicable, (i) the extent to which each of the  
635 parties complied with the requirements set forth in this subdivision,  
636 including the requirement to engage in conduct that is consistent with  
637 the objectives of the mediation program and to possess the ability to  
638 mediate, (ii) whether the mortgagor submitted a complete package of  
639 financial documentation to the mortgagee, (iii) a general description of  
640 the foreclosure alternative being requested by the mortgagor, (iv)  
641 whether the mortgagor has previously been evaluated for similar  
642 requests, whether prior to mediation or in mediation, and, if so,  
643 whether there has been any apparent change in circumstances since a  
644 decision was made with respect to that prior evaluation, (v) whether  
645 the mortgagee has responded to the mortgagor's request for a  
646 foreclosure alternative and, if so, a description of the response and  
647 whether the mediator is aware of any material reason not to agree with  
648 the response, (vi) whether the mortgagor has responded to an offer  
649 made by the mortgagee on a reasonably timely basis, and if so, an  
650 explanation of the response, (vii) whether the mortgagee has requested  
651 additional information from the mortgagor and, if so, the stated  
652 reasons for the request and the date by which such additional  
653 information shall be submitted so that information previously  
654 submitted by the mortgagor, to the extent possible, may still be used

655 by the mortgagee in conducting its review, (viii) whether the  
656 mortgagor has supplied, on a reasonably timely basis, any additional  
657 information that was reasonably requested by the mortgagee, and, if  
658 not, the stated reason for not doing so, (ix) if information provided by  
659 the mortgagor is no longer current for purposes of evaluating a  
660 foreclosure alternative, a description of the out-of-date information  
661 and an explanation as to how and why such information is no longer  
662 current, (x) whether the mortgagee has provided a reasonable  
663 explanation of the basis for a decision to deny a request for a loss  
664 mitigation option or foreclosure alternative and whether the mediator  
665 is aware of any material reason not to agree with that decision, (xi)  
666 whether the mortgagee has complied with the time frames set forth in  
667 this subdivision for responding to requests for decisions, (xii) if a  
668 subsequent mediation session is expected to occur, a general  
669 description of the expectations for such subsequent session and for the  
670 parties prior to such subsequent session and, if not otherwise  
671 addressed in the report, whether the parties satisfied the expectations  
672 set forth in previous reports, and (xiii) a determination of whether the  
673 parties will benefit from further mediation. The mediator shall deliver  
674 a copy of such report to each party to the mediation when the mediator  
675 files the report. The parties shall have the opportunity to submit their  
676 own supplemental information following the filing of the report,  
677 provided such supplemental information shall be submitted not later  
678 than five business days following the receipt of the mediator's report.  
679 Any request by the mortgagee to the mortgagor for additional or  
680 updated financial documentation shall be made in writing. The court  
681 may impose sanctions on any party or on counsel to a party if such  
682 party or such counsel engages in intentional or a pattern or practice of  
683 conduct during the mediation process that is contrary to the objectives  
684 of the mediation program. Any sanction that is imposed shall be  
685 proportional to the conduct and consistent with the objectives of the  
686 mediation program. Available sanctions shall include, but not be  
687 limited to, terminating mediation, ordering the mortgagor or  
688 mortgagee to mediate in person, forbidding the mortgagee from  
689 charging the mortgagor for the mortgagee's attorney's fees, awarding

690 attorney's fees, and imposing fines. In the case of egregious  
 691 misconduct, the sanctions shall be heightened. The court shall not  
 692 award attorney's fees to any mortgagee for time spent in any  
 693 mediation session if the court finds that such mortgagee has failed to  
 694 comply with this subdivision, unless the court finds reasonable cause  
 695 for such failure.

696 Sec. 17. Sections 49-31t and 49-31u of the general statutes are  
 697 repealed. (*Effective from passage*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	New section
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>from passage</i>	49-24b(a)
Sec. 8	<i>from passage</i>	49-24e(a) and (b)
Sec. 9	<i>from passage</i>	49-24
Sec. 10	<i>from passage</i>	49-24a
Sec. 11	<i>from passage</i>	49-24b(b)
Sec. 12	<i>from passage</i>	49-31e
Sec. 13	<i>from passage</i>	49-22
Sec. 14	<i>from passage</i>	49-311(c)(4)
Sec. 15	<i>from passage</i>	49-31n(b)(2)
Sec. 16	<i>from passage</i>	49-31n(c)(2)
Sec. 17	<i>from passage</i>	Repealer section

**Statement of Legislative Commissioners:**

In Section 2, "encumbrances" was changed to "liens," "loan modified" was changed to "modified mortgage," and sections "3 to 5" was changed to sections "4 and 5" for accuracy and for consistency with other provisions of the act; in Section 3, "subject property" was replaced with "residential real property encumbered by the mortgage" and "Any" was changed to "The" for clarity; in Section 4, "an existing foreclosure case" was changed to "a pending foreclosure action" and "a transfer" was added before "agreement" for clarity, "residential

property" was changed to "residential real property encumbered by the mortgage", "contemplated transaction" was changed to "modification or transfer" and, "losses" was changed to "loss" for clarity and consistency with other provisions of the section and "as applicable" was deleted for conciseness; in Section 5, Subdivs. (1) and (2) were paragraphed, the second sentence was divided into three sentences, "set forth in sections 29-31k to 49-31o, inclusive" was replaced with "established pursuant to section 49-31m," "and in order" was replaced by "In determining whether," the original Subpara. designators (A) and (B) were deleted, clauses (i) and (ii) were changed to new Subparas. (A) and (B), "and (B) find" was replaced by "The court may grant such petition upon a determination," for clarity; in Section 6, "on the residential real property encumbered by the underwater mortgage" was added after junior lien for clarity; in Section 7, "at any point subsequent to the commencement of a foreclosure action" was shifted to an earlier place in the sentence for clarity; in Section 8(b), "by market sale" was added after "foreclosure" and "such receipt, satisfaction" was replaced with "either receipt of such contract or such satisfaction" to capture the intended meaning. Section 16 was added to make conforming changes to 49-31n(c)(2) for consistency with other provisions of the section and the remaining section was renumbered.

**BA**        *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

The bill makes changes to mortgage modifications and does not result in a fiscal impact to the state or municipalities.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

**OLR Bill Analysis**

**sHB 5567**

***AN ACT CONCERNING ALTERNATIVES TO FORECLOSURES,  
THE FORECLOSURE MEDIATION PROGRAM, AND THE  
MORTGAGOR IN GOOD STANDING STATUTES.***

**SUMMARY:**

This bill creates a new process whereby a court may enter a judgment of loss mitigation which allows (1) certain underwater mortgages to be modified without a junior lienholder's consent or (2) the mortgagor (borrower) to satisfy his or her obligation by transferring the property using a transfer agreement.

The bill also makes several changes to certain existing foreclosure prevention programs.

It modifies the foreclosure by market sale process by allowing a mortgagee (lender), under 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. It also clarifies when a listing agreement may be used.

With regard to the foreclosure mediation program (see BACKGROUND), the bill authorizes mediators to excuse certain parties from mediation sessions. It also eliminates the:

1. requirement that a mortgagee send a copy of any loss mitigation affidavit to the mediator and mortgagor,
2. restriction that disqualifies a mortgagor from the program when he or she consents to foreclosure by market sale, and
3. requirement that a mortgagee provide a certificate of good standing to a mortgagor who has completed the mediation

program.

The bill eliminates a requirement that lenders notify certain unemployed and underemployed homeowners of the availability of foreclosure protection.

It also (1) prohibits a state marshal from carrying out a foreclosure-related eviction order sooner than five days after the court executes it and (2) 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 bill also makes technical and conforming changes.

EFFECTIVE DATE: Upon passage

**§§ 1-6 — JUDGMENT OF LOSS MITIGATION**

This bill creates a new process whereby a court may enter a judgment of loss mitigation which allows (1) certain underwater residential mortgages to be modified without a junior lienholder's consent or (2) the mortgagor to satisfy his or her obligation by transferring the property using a transfer agreement.

The bill specifies that its provisions should not be construed as eliminating the debt or any judgment associated with a junior lienholder.

Under the bill:

1. an "underwater mortgage" is a one in which the debt associated with the mortgage, along with any senior lien, exceeds the fair market value of the property 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. It does not include a mechanic's lien.

### ***Mortgage Modification***

Under the bill, if approved by the court through a judgment of loss mitigation, an underwater mortgage may 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 lien holder's consent and (2) any loss of priority to the senior lien holder for the full amount of the modified loan.

### ***Transfer Agreement***

The bill allows a mortgagor of an underwater mortgage to satisfy his or her obligation to the mortgagee by transferring the property to the mortgagee. The mortgagor may do so through a transfer agreement executed by both parties. The transfer agreement must:

1. transfer to the mortgagee all interests in the property except for any interests (a) reserved to the mortgagor in the agreement or (b) held by more senior mortgagees or lienholders;
2. discharge the mortgage; and
3. contemplate the termination of any other interest in the property subordinate to the lienholder party to the transfer agreement following a judgment of loss mitigation.

### ***Judgment***

Under the bill, in an existing foreclosure case, a mortgagee or mortgagor may file a motion for judgment of loss mitigation following (1) a modification approval or (2) the execution of a transfer agreement (described above). After notice and a hearing involving the consenting parties, a court may enter a judgment of loss mitigation approving such modification or transfer. The judgment is final for purposes of appeal.

The issues at the hearing must be limited to:

1. a finding of the fair market value of the residential property, which may be determined by an appraisal by a court-appointed disinterested real estate appraiser;
2. a finding of the fair market value of any priority liens on such property;
3. the mortgagor's debt;
4. whether the mortgage is underwater; and
5. whether the contemplated transaction was agreed to in good faith to mitigate the losses such mortgagor and mortgagee would incur through a judgment of foreclosure.

If the court renders a judgment of loss mitigation, immediately after the expiration of any applicable appeal period or after the judgment has been affirmed on appeal, (1) the mortgage must be increased in accordance with the judgment and any junior lienholder's lien must be deemed subordinated to such mortgage, in the same order as existed before the subordination or (2) the transfer takes effect in accordance with the transfer agreement, as applicable.

The mortgagor and mortgagee must record the judgment of loss mitigation with the town clerk within 30 days after the modification or transfer.

***Mortgagor's Petition to Enter Foreclosure Mediation***

If the court denies 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.

In addition to existing law's eligibility criteria for the mediation

program, the mortgagor must not have substantially contributed to the events leading to the denial. The court has discretion whether to grant the mortgagor's petition. To do so, 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 judgment of foreclosure. The court must consider any testimony or affidavits the parties submit in support of or in opposition to the mortgagor's petition.

### **§§ 7-11 — FORECLOSURE BY MARKET SALE**

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 the property on the open market.

#### ***Listing Agreement***

The law allows the mortgagee and mortgagor to agree to list the property for sale with a licensed real estate broker or sales person chosen by the mortgagor using a listing agreement. The bill specifies that if the parties, after the foreclosure action has started, choose to discuss marketing the property in this manner, neither existing law's requirements nor the bill's new provisions on loss mitigation judgments should be construed as prohibiting the parties from entering a listing agreement.

#### ***Motion for Judgment***

Under the bill, if the mortgagee has already initiated a foreclosure action on the date when the sales contract was received or any contingencies satisfied or expired, then, within 30 days after the latest of such dates, the mortgagee must (1) file a motion for judgment of foreclosure by market sale and (2) attach the contract and appraisal to the motion.

### **§§ 14-16 — FORECLOSURE MEDIATION PROGRAM**

The bill makes changes to certain components of the foreclosure mediation program.

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

***Notice***

By law, the court must notify all appearing parties when it (1) assigns a case to mediation and (2) when a mediator determines that the mortgagor must participate in mediation. The court must schedule (1) a premediation meeting with the mediator and mortgagor and (2) the first mediation session with the mortgagee and mortgagor. The bill specifies that these meetings must be scheduled with relevant mortgagors. (The bill does not define “relevant mortgagors.”)

***Information Sharing***

By law, the mortgagee or its counsel, upon receiving the notice that a case has been assigned to mediation, must send an account history and related information to the mediator and mortgagor for the premediation meeting. The bill eliminates the requirement to send a copy of any loss mitigation affidavit filed with the court.

***Mediator and Mortgagor Premediation Meetings***

The bill expands the conditions under which a mediator may excuse a mortgagor’s attendance at meetings.

Under the bill, the mediator may excuse a mortgagor who shows cause for nonattendance, such as no longer (1) owning the home because of divorce or a related deed transfer or (2) living in the home.

***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 under certain circumstances, but current law requires that the mortgagor attend the first mediation session in person.

For foreclosure actions with a return date of July 1, 2008 through

June 30, 2009, the bill:

1. eliminates the requirement that a represented mortgagor attend the first mediation session in person and
2. allows the mediator to excuse a mortgagor from attending mediation meetings if the mortgagor shows cause that his or her presence is not needed to further the interests of mediation, such as he or she no longer (a) owning the home due to divorce or a related deed transfer or (b) living in the home.

For foreclosure actions with return dates on or after July 1, 2009 for residential real property and on or after October 1, 2011 for real property owned by a religious organization, the bill:

1. maintains existing law's requirement that a represented mortgagor attend the first mediation session in person and
2. allows the mediator to excuse a mortgagor from mediation meetings if the mortgagor shows cause for nonattendance, as discussed above.

### ***Eligibility***

Under current law, a mortgagor who consents to a foreclosure by market sale is generally ineligible for the foreclosure mediation program. The bill eliminates this disqualification and makes corresponding conforming changes.

### ***Certificate of Good Standing***

The bill eliminates a requirement for a mortgagee, upon request, to provide a certificate of good standing to a mortgagor who has completed the foreclosure mediation program and remained current on payments for three years.

## **§ 12 — FORECLOSURE PROTECTION**

By law, certain unemployed or underemployed mortgagors facing foreclosure may apply for protection from foreclosure within 25 days of the start of the court action date. The court may stop the

proceedings for up to six months and order a restructuring of the mortgage debt. Generally, the property must be the homeowner's primary residence for at least two years.

The bill eliminates the requirement that a lender, at the start of a foreclosure action, notify homeowners of the availability of foreclosure protection. Under current law, if a lender fails to do so and the homeowner was eligible for such foreclosure protection, the court, on its own motion or upon the homeowner's request, may issue a stay on the action for 15 days to allow the homeowner time to apply for foreclosure protection.

### **§ 13 — FORECLOSURE EVICTIONS**

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

It also requires the state marshal to use reasonable efforts to find and notify the occupant of an eviction at least five days before notifying the town. Existing law does not impose a time limit on that requirement.

By law, a state marshal enforcing an eviction order following a mortgage foreclosure or similar court action must (1) notify the town's chief executive officer 24 hours before carrying out the order, (2) remove the occupants and any possessions and personal effects from the property, and (3) deliver the belongings to a storage place designated by the town.

### **BACKGROUND**

#### ***Foreclosure Mediation Program***

The state's foreclosure mediation program determines whether parties can reach an agreement that will avoid foreclosure. The program uses the judicial branch's foreclosure mediators to conduct mediation sessions between the mortgagee (lender) and the mortgagor (borrower) in a statutorily prescribed timeframe. The program is funded within available appropriations.

**COMMITTEE ACTION**

Banking Committee

Joint Favorable Substitute

Yea 15 Nay 3 (03/17/2016)