



Senate

General Assembly

File No. 294

February Session, 2018

Senate Bill No. 391

Senate, April 5, 2018

The Committee on Banking reported through SEN. WINFIELD of the 10th Dist. and SEN. MARTIN of the 31st Dist., Chairpersons of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT ELIMINATING THE REQUIREMENT THAT A MORTGAGOR REPRESENTED BY COUNSEL ATTEND THE FIRST FORECLOSURE MEDIATION SESSION IN PERSON.

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

1 Section 1. Subdivision (2) of subsection (c) of section 49-31n of the
2 general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2018*):

4 (2) The mortgagor and mortgagee shall appear in person at each
5 mediation session and shall have the ability to mediate, except that (A)
6 if a party is represented by counsel, the party's counsel may appear in
7 lieu of the party to represent the party's interests at the mediation,
8 provided the party has the ability to mediate [, the mortgagor attends
9 the first mediation session in person] and the party is available (i)
10 during the mediation session by telephone, and (ii) to participate in the
11 mediation session by speakerphone, provided an opportunity is
12 afforded for confidential discussions between the party and party's

13 counsel, (B) following the initial mediation session, if there are two or
14 more mortgagors who are self-represented, only one mortgagor shall
15 be required to appear in person at each subsequent mediation session
16 unless good cause is shown, provided the other mortgagors are
17 available (i) during the mediation session, and (ii) to participate in the
18 mediation session by speakerphone, (C) if a party suffers from a
19 disability or other significant hardship that imposes an undue burden
20 on such party to appear in person, the mediator may grant permission
21 to such party to participate in the mediation session by telephone, and
22 (D) a mortgagor may be excused from appearing at the mediation
23 session if cause is shown that the presence of such mortgagor is not
24 needed to further the interests of mediation. Such cause may include,
25 but is not limited to, the mortgagor no longer owning the home
26 pursuant to a judgment of marital dissolution and related transfer via
27 deed or no longer residing in the home or not being a necessary party
28 to any agreement being contemplated in connection with the
29 mediation. A mortgagor's spouse, who is not a mortgagor but who
30 lives in the subject property, may appear at each mediation session,
31 provided all appearing mortgagors consent, in writing, to such
32 spouse's appearance or such spouse shows good cause for his or her
33 appearance and the mortgagors consent, in writing, to the disclosure of
34 nonpublic personal information to such spouse. If the mortgagor has
35 submitted a complete package of financial documentation in
36 connection with a request for a particular foreclosure alternative, the
37 mortgagee shall have thirty-five days from the receipt of the completed
38 package to respond with a decision and, if the decision is a denial of
39 the request, provide the reasons for such denial. If the mortgagor has,
40 in connection with a request for a foreclosure alternative, submitted a
41 financial package that is not complete, or if the mortgagee's evaluation
42 of a complete package reveals that additional information is necessary
43 to underwrite the request, the mortgagee shall request the missing or
44 additional information within a reasonable period of time of such
45 evaluation. If the mortgagee's evaluation of a complete package reveals
46 that additional information is necessary to underwrite the request, the
47 thirty-five-day deadline for a response shall be extended but only for

48 so long as is reasonable given the timing of the mortgagor's submission
49 of such additional information and the nature and context of the
50 required underwriting. Not later than the third business day after each
51 mediation session, the mediator shall file with the court a report
52 indicating, to the extent applicable, (i) the extent to which each of the
53 parties complied with the requirements set forth in this subdivision,
54 including the requirement to engage in conduct that is consistent with
55 the objectives of the mediation program and to possess the ability to
56 mediate, (ii) whether the mortgagor submitted a complete package of
57 financial documentation to the mortgagee, (iii) a general description of
58 the foreclosure alternative being requested by the mortgagor, (iv)
59 whether the mortgagor has previously been evaluated for similar
60 requests, whether prior to mediation or in mediation, and, if so,
61 whether there has been any apparent change in circumstances since a
62 decision was made with respect to that prior evaluation, (v) whether
63 the mortgagee has responded to the mortgagor's request for a
64 foreclosure alternative and, if so, a description of the response and
65 whether the mediator is aware of any material reason not to agree with
66 the response, (vi) whether the mortgagor has responded to an offer
67 made by the mortgagee on a reasonably timely basis, and if so, an
68 explanation of the response, (vii) whether the mortgagee has requested
69 additional information from the mortgagor and, if so, the stated
70 reasons for the request and the date by which such additional
71 information shall be submitted so that information previously
72 submitted by the mortgagor, to the extent possible, may still be used
73 by the mortgagee in conducting its review, (viii) whether the
74 mortgagor has supplied, on a reasonably timely basis, any additional
75 information that was reasonably requested by the mortgagee, and, if
76 not, the stated reason for not doing so, (ix) if information provided by
77 the mortgagor is no longer current for purposes of evaluating a
78 foreclosure alternative, a description of the out-of-date information
79 and an explanation as to how and why such information is no longer
80 current, (x) whether the mortgagee has provided a reasonable
81 explanation of the basis for a decision to deny a request for a loss
82 mitigation option or foreclosure alternative and whether the mediator

83 is aware of any material reason not to agree with that decision, (xi)
 84 whether the mortgagee has complied with the time frames set forth in
 85 this subdivision for responding to requests for decisions, (xii) if a
 86 subsequent mediation session is expected to occur, a general
 87 description of the expectations for such subsequent session and for the
 88 parties prior to such subsequent session and, if not otherwise
 89 addressed in the report, whether the parties satisfied the expectations
 90 set forth in previous reports, and (xiii) a determination of whether the
 91 parties will benefit from further mediation. The mediator shall deliver
 92 a copy of such report to each party to the mediation when the mediator
 93 files the report. The parties shall have the opportunity to submit their
 94 own supplemental information following the filing of the report,
 95 provided such supplemental information shall be submitted not later
 96 than five business days following the receipt of the mediator's report.
 97 Any request by the mortgagee to the mortgagor for additional or
 98 updated financial documentation shall be made in writing. The court
 99 may impose sanctions on any party or on counsel to a party if such
 100 party or such counsel engages in intentional or a pattern or practice of
 101 conduct during the mediation process that is contrary to the objectives
 102 of the mediation program. Any sanction that is imposed shall be
 103 proportional to the conduct and consistent with the objectives of the
 104 mediation program. Available sanctions shall include, but not be
 105 limited to, terminating mediation, ordering the mortgagor or
 106 mortgagee to mediate in person, forbidding the mortgagee from
 107 charging the mortgagor for the mortgagee's attorney's fees, awarding
 108 attorney's fees, and imposing fines. In the case of egregious
 109 misconduct, the sanctions shall be heightened. The court shall not
 110 award attorney's fees to any mortgagee for time spent in any
 111 mediation session if the court finds that such mortgagee has failed to
 112 comply with this subdivision, unless the court finds reasonable cause
 113 for such failure.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>October 1, 2018</i>	49-31n(c)(2)
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BA *Joint Favorable*

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 a change conforming statute to current practice and does not result in a fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**SB 391*****AN ACT ELIMINATING THE REQUIREMENT THAT A MORTGAGOR REPRESENTED BY COUNSEL ATTEND THE FIRST FORECLOSURE MEDIATION SESSION IN PERSON.*****SUMMARY**

This bill eliminates the requirement that a mortgagor (i.e., debtor) participating in the state's foreclosure mediation program who is represented by counsel attend the first mediation session in person. (PA 16-65 eliminated this requirement for residential mortgage foreclosures with a return date from July 1, 2008 to June 30, 2009.)

The foreclosure mediation program is available to (1) owner-occupants of one- to four-family residential real property who use it as their primary residence and (2) religious organizations. The property must be located in Connecticut, and the owner-occupant must be either the borrower under a mortgage on the property or a permitted successor-in-interest (i.e., someone who, among other things, has title to the property due to certain events such as divorce, legal separation, or the borrower's death).

The mediation program, which seeks to avoid, expedite, or facilitate foreclosure, brings together Judicial Branch mediators; lenders; and borrowers or owner-occupants, as applicable. If an eligible borrower or owner-occupant files an appearance and requests mediation, the lender must participate. Under current law, the program ends on June 30, 2019 (CGS § 49-31l) (see BACKGROUND).

EFFECTIVE DATE: October 1, 2018

BACKGROUND***Related Bill***

sHB 5495, favorably reported by the Banking Committee, makes the foreclosure mediation program permanent by eliminating the sunset date.

COMMITTEE ACTION

Banking Committee

Joint Favorable

Yea 19 Nay 0 (03/20/2018)