



House of Representatives

General Assembly

File No. 240

January Session, 2019

Substitute House Bill No. 5163

House of Representatives, April 1, 2019

The Committee on Banking reported through REP. SANTIAGO, E. of the 130th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING DEFICIENCY JUDGMENTS AND
RESIDENTIAL PROPERTIES WITH A CONCRETE FOUNDATION
AFFECTED BY PYRRHOTITE.***

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

1 Section 1. Section 49-14 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2019*):

3 (a) At any time within thirty days after the time limited for
4 redemption has expired, any party to a mortgage foreclosure may file a
5 motion seeking a deficiency judgment. Such motion shall be placed on
6 the short calendar for an evidentiary hearing. Such hearing shall be
7 held not less than fifteen days following the filing of the motion, except
8 as the court may otherwise order. At such hearing the court shall hear
9 the evidence, establish a valuation for the mortgaged property and
10 shall render judgment for the plaintiff for the difference, if any,
11 between such valuation and the plaintiff's claim. The plaintiff in any
12 further action upon the debt, note or obligation, shall recover only the

13 amount of such judgment. Notwithstanding the provisions of this
14 subsection, no deficiency judgment shall be granted with respect to
15 any residential mortgage loan, as defined in section 36a-485, originated
16 on or after October 1, 2019, where the mortgaged property has a
17 concrete foundation that has deteriorated in whole or in part due to the
18 presence of pyrrhotite.

19 (b) Upon the motion of any party and for good cause shown, the
20 court may refer such motion to a state referee, who shall have and
21 exercise the powers of the court with respect to trial, judgment and
22 appeal in such case.

23 (c) Any party to a mortgage foreclosure who has moved for an
24 appraisal of property for the purpose of obtaining a deficiency
25 judgment, but has not been granted a deficiency judgment, or has not
26 received full satisfaction of any deficiency judgment obtained
27 subsequent to the filing of such motion, may make a motion to the
28 court for a deficiency judgment as set forth in subsection (a) of this
29 section. If such motion is made on or before November 1, 1979, such
30 moving party shall be deemed to have complied with all of the
31 requirements of subsection (a) of this section and shall be entitled to
32 the benefit of any deficiency judgment rendered pursuant to said
33 subsection (a).

34 (d) Any appeal pending in the Supreme Court with regard to any
35 deficiency judgment or proceedings relating thereto shall be stayed
36 until a hearing is held pursuant to subsection (a) of this section. Any
37 appellant in such an appeal shall have the right for a period of thirty
38 days after the rendering of judgment pursuant to subsection (a) of this
39 section to amend his appeal. There shall be no stay of such an appeal if
40 no motion has been filed pursuant to this section on or before
41 November 1, 1979.

42 Sec. 2. Section 49-28 of the general statutes is repealed and the
43 following is substituted in lieu thereof (*Effective October 1, 2019*):

44 If the proceeds of the sale are not sufficient to pay in full the amount

45 secured by any mortgage or lien thereby foreclosed, the deficiency
46 shall be determined, and thereupon judgment may be rendered in the
47 cause for the deficiency against any party liable to pay the same who is
48 a party to the cause and has been served with process or has appeared
49 therein, [and all] except that no deficiency shall be granted under this
50 section with respect to any residential mortgage loan, as defined in
51 section 36a-485, originated on or after October 1, 2019, where the
52 mortgaged property has a concrete foundation that has deteriorated in
53 whole or in part due to the presence of pyrrhotite. Any persons liable
54 to pay the debt secured by the mortgage or lien may be made parties [;
55 but] to the cause and all other proceedings for the collection of the debt
56 shall be stayed during the pendency of the foreclosure suit, and, if a
57 deficiency judgment is finally rendered therein, the other proceedings
58 shall forthwith abate. Other than in the case of a foreclosure by market
59 sale, if the property has sold for less than the appraisal provided for in
60 section 49-25, no judgment shall be rendered in the suit or in any other
61 for the unpaid portion of the debt or debts of the party or parties upon
62 whose motion the sale was ordered, nor shall the same be collected by
63 any other means than from the proceeds of the sale until one-half of
64 the difference between the appraised value and the selling price has
65 been credited upon the debt or debts as of the date of sale; and, when
66 there are two or more debts to which it is to be applied, it shall be
67 apportioned between them.

68 Sec. 3. Section 36a-498 of the general statutes is repealed and the
69 following is substituted in lieu thereof (*Effective October 1, 2019*):

70 (a) Except as provided in subsection (c) of this section, every
71 advance fee paid or given, directly or indirectly, to a mortgage lender,
72 mortgage correspondent lender or mortgage broker required to be
73 licensed pursuant to sections 36a-485 to 36a-498e, inclusive, 36a-534a
74 and 36a-534b shall be refundable.

75 (b) No mortgage loan originator required to be licensed pursuant to
76 sections 36a-485 to 36a-498e, inclusive, 36a-534a and 36a-534b shall
77 accept payment of any advance fee except an advance fee on behalf of

78 a mortgage lender, mortgage correspondent lender or mortgage broker
79 licensee. Nothing in this subsection shall be construed as prohibiting
80 the mortgage lender, mortgage correspondent lender or mortgage
81 broker licensee from paying a mortgage loan originator all or part of
82 an advance fee, provided such advance fee paid is not refundable
83 under this section.

84 (c) Subsection (a) of this section shall not apply if: (1) The person
85 providing the advance fee and the mortgage lender, mortgage
86 correspondent lender or mortgage broker agree in writing that the
87 advance fee shall not be refundable, in whole or in part; and (2) the
88 written agreement complies in all respects with the provisions of
89 subsection (d) of this section.

90 (d) An agreement under subsection (c) of this section shall meet all
91 of the following requirements to be valid and enforceable: (1) The
92 agreement shall be dated, signed by both parties, and be executed
93 prior to the payment of any advance fee; (2) the agreement shall
94 expressly state the total advance fee required to be paid and any
95 amount of the advance fee that shall not be refundable; (3) the
96 agreement shall clearly and conspicuously state any conditions under
97 which the advance fee will be retained by the mortgage lender,
98 mortgage correspondent lender or mortgage broker; (4) the term
99 "nonrefundable" shall be used to describe each advance fee or portion
100 thereof to which the term is applicable, and shall appear in boldface
101 type in the agreement each time it is used; and (5) the form of the
102 agreement shall (A) be separate from any other forms, contracts, or
103 applications utilized by the mortgage lender, mortgage correspondent
104 lender or mortgage broker, (B) contain a heading in a size equal to at
105 least ten-point boldface type that shall title the form "AGREEMENT
106 CONCERNING NONREFUNDABILITY OF ADVANCE FEE", (C)
107 provide for a duplicate copy which shall be given to the person paying
108 the advance fee at the time of payment of the advance fee, and (D)
109 include such other specifications as the commissioner may by
110 regulation prescribe.

111 (e) An agreement under subsection (c) of this section that does not
112 meet the requirements of subsection (d) of this section shall be
113 voidable at the election of the person paying the advance fee.

114 (f) (1) No mortgage lender, mortgage correspondent lender or
115 mortgage broker required to be licensed pursuant to sections 36a-485
116 to 36a-498e, inclusive, 36a-534a and 36a-534b shall enter into an
117 agreement with or otherwise require any person to pay the mortgage
118 lender, mortgage correspondent lender or mortgage broker for any fee,
119 commission or other valuable consideration lost as a result of such
120 person failing to consummate a residential mortgage loan, provided
121 the mortgage lender, mortgage correspondent lender or mortgage
122 broker may collect such fee, commission or consideration as an
123 advance fee subject to the requirements of this section.

124 (2) No mortgage broker required to be licensed pursuant to sections
125 36a-485 to 36a-498e, inclusive, 36a-534a and 36a-534b shall enter into
126 an agreement with or otherwise require any person to pay the
127 mortgage broker any fee, commission or other valuable consideration
128 for the prepayment of the principal of a residential mortgage loan by
129 such person before the date on which the principal is due.

130 (g) (1) For the purposes of this subsection:

131 (A) "Unfair or deceptive act or practice" means (i) the failure to
132 clearly and conspicuously state in the initial phase of the solicitation
133 that the solicitor is not affiliated with the mortgage lender, mortgage
134 correspondent lender or mortgage broker with which the consumer
135 initially applied, (ii) the failure to clearly and conspicuously state in
136 the initial phase of the solicitation that the solicitation is based on
137 personal information about the consumer that was purchased, directly
138 or indirectly, from a consumer reporting agency without the
139 knowledge or permission of the mortgage lender, mortgage
140 correspondent lender or mortgage broker with which the consumer
141 initially applied, (iii) the failure in the initial solicitation to comply
142 with the provisions of the federal Fair Credit Reporting Act relating to
143 prescreening solicitations that use consumer reports, including the

144 requirement to make a firm offer of credit to the consumer, or (iv)
145 knowingly or negligently using information from a mortgage trigger
146 lead (I) to solicit consumers who have opted out of prescreened offers
147 of credit under the federal Fair Credit Reporting Act, or (II) to place
148 telephone calls to consumers who have placed their contact
149 information on a federal or state Do Not Call list; and

150 (B) "Mortgage trigger lead" means a consumer report obtained
151 pursuant to Section 604(c)(1)(B) of the federal Fair Credit Reporting
152 Act, 15 USC 1681b, where the issuance of the report is triggered by an
153 inquiry made with a consumer reporting agency in response to an
154 application for credit. "Mortgage trigger lead" does not include a
155 consumer report obtained by a mortgage lender or mortgage
156 correspondent lender that holds or services existing indebtedness of
157 the applicant who is the subject of the report.

158 (2) No mortgage lender, mortgage correspondent lender, mortgage
159 broker or mortgage loan originator shall engage in an unfair or
160 deceptive act or practice in soliciting an application for a residential
161 mortgage loan when such solicitation is based, in whole or in part, on
162 information contained in a mortgage trigger lead. Any violation of this
163 subsection shall be deemed an unfair or deceptive trade practice under
164 subsection (a) of section 42-110b.

165 (h) No mortgage lender or mortgage correspondent lender shall
166 include in a residential mortgage loan for which an application is
167 received by such lender on or after October 1, 2009, a provision that
168 increases the interest rate as a result of a default other than a failure to
169 comply with a provision to maintain an automatic electronic payment
170 feature where such maintenance provision has been provided in return
171 for an interest rate reduction and the increase is no greater than such
172 reduction.

173 (i) (1) No mortgage lender or mortgage correspondent lender may
174 deny an application for a residential mortgage loan on the sole basis
175 that the applicant previously (A) defaulted on a residential mortgage
176 loan secured by residential real estate, (B) conveyed residential real

177 estate by a deed in lieu of foreclosure or short sale, or (C) was the
178 mortgagor of residential real estate against whom a final judgment of
179 foreclosure has been entered, provided, at the time of such default,
180 conveyance or foreclosure, such residential real estate had a concrete
181 foundation that deteriorated in whole or in part due to the presence of
182 pyrrhotite. Any person who violates this subdivision shall be liable for
183 a civil penalty of not more than ten thousand dollars for each violation.

184 (2) No mortgage lender or mortgage correspondent lender may
185 report to a credit rating agency, as defined in section 36a-695, or
186 otherwise publicly disclose that a residential mortgage loan, as defined
187 in section 36a-485, entered on or after October 1, 2019, is subject to a
188 deficiency judgment under section 49-14, as amended by this act, or
189 section 49-28, as amended by this act, where the mortgaged property
190 has a concrete foundation that has deteriorated in whole or in part due
191 to the presence of pyrrhotite.

192 Sec. 4. Section 36a-719h of the general statutes is repealed and the
193 following is substituted in lieu thereof (*Effective October 1, 2019*):

194 (a) No mortgage servicer shall, directly or indirectly:

195 (1) Employ any scheme, device or artifice to defraud or mislead
196 mortgagors or mortgagees or to defraud any person;

197 (2) Engage in any unfair or deceptive practice toward any person or
198 misrepresent or omit any material information in connection with the
199 servicing of the residential mortgage loan, including, but not limited
200 to, misrepresenting the amount, nature or terms of any fee or payment
201 due or claimed to be due on a residential mortgage loan, the terms and
202 conditions of the servicing agreement or the mortgagor's obligations
203 under the residential mortgage loan;

204 (3) Obtain property by fraud or misrepresentation;

205 (4) Recklessly apply residential mortgage loan payments or
206 knowingly misapply residential mortgage loan payments to the
207 outstanding balance of a residential mortgage loan;

208 (5) Recklessly apply payments or knowingly misapply payments to
209 escrow accounts;

210 (6) Place hazard, homeowners or flood insurance on the mortgaged
211 property when the mortgage servicer knew or should have known that
212 the mortgagor has an effective policy for such insurance;

213 (7) Fail to comply with section 49-10a;

214 (8) Knowingly or recklessly provide inaccurate information to a
215 credit bureau that results in harm to a mortgagor's creditworthiness;

216 (9) Fail to report both the favorable and unfavorable payment
217 history of the mortgagor to a nationally recognized consumer credit
218 bureau at least annually if the mortgage servicer regularly reports
219 information to a credit bureau;

220 (10) Collect private mortgage insurance beyond the date for which
221 private mortgage insurance is required;

222 (11) Fail to issue a release of mortgage in accordance with section
223 49-8;

224 (12) Fail to provide written notice to a mortgagor upon taking action
225 to place hazard, homeowners or flood insurance on the mortgaged
226 property, including a clear and conspicuous statement of the
227 procedures by which the mortgagor may demonstrate that he or she
228 has the required insurance coverage and by which the mortgage
229 servicer shall terminate the insurance coverage placed by it and refund
230 or cancel any insurance premiums and related fees paid by or charged
231 to the mortgagor;

232 (13) Place hazard, homeowners or flood insurance on a mortgaged
233 property, or require a mortgagor to obtain or maintain such insurance,
234 in excess of the replacement cost of the improvements on the
235 mortgaged property as established by the property insurer;

236 (14) Fail to provide to the mortgagor a refund of unearned

237 premiums paid by a mortgagor or charged to the mortgagor for
238 hazard, homeowners or flood insurance placed by a mortgagee or the
239 mortgage servicer if the mortgagor provides reasonable proof that the
240 mortgagor has obtained coverage such that the forced placement
241 insurance is no longer necessary and the property is insured. If the
242 mortgagor provides reasonable proof that no lapse in coverage
243 occurred such that the forced placement was not necessary, the
244 mortgage servicer shall promptly refund the entire premium;

245 (15) Require any amount of funds to be remitted by means more
246 costly to the mortgagor than a bank or certified check or attorney's
247 check from an attorney's account to be paid by the mortgagor;

248 (16) Refuse to communicate with an authorized representative of the
249 mortgagor who provides a written authorization signed by the
250 mortgagor, provided the mortgage servicer may adopt procedures
251 reasonably related to verifying that the representative is in fact
252 authorized to act on behalf of the mortgagor;

253 (17) Conduct any business covered by sections 36a-715 to 36a-719l,
254 inclusive, without holding a valid license as required under said
255 sections, or assist or aid and abet any person in the conduct of business
256 without a valid license as required under this title;

257 (18) Negligently make any false statement or knowingly and
258 wilfully make any omission of a material fact in connection with any
259 information or reports filed with a governmental agency or the system
260 or in connection with any investigation conducted by the
261 commissioner or another governmental agency; [or]

262 (19) Collect, charge, attempt to collect or charge or use or propose
263 any agreement purporting to collect or charge any fee prohibited by
264 sections 36a-485 to 36a-498e, inclusive, 36a-534a and 36a-534b; [.] or

265 (20) Report to a credit rating agency, as defined in section 36a-695,
266 or otherwise publicly disclose that a residential mortgage loan, as
267 defined in section 36a-485, entered on or after October 1, 2019, is

268 subject to a deficiency judgment under section 49-14, as amended by
 269 this act, or section 49-28, as amended by this act, where the mortgaged
 270 property has a concrete foundation that has deteriorated in whole or in
 271 part due to the presence of pyrrhotite.

272 (b) No mortgage servicer shall fail to establish, enforce and maintain
 273 policies and procedures reasonably designed to achieve compliance
 274 with subsection (a) of this section, and no qualifying individual or
 275 branch manager for such mortgage servicer shall fail to enforce such
 276 policies and procedures. No violation of this subsection shall be found
 277 unless the mortgage servicer, qualifying individual or branch
 278 manager's failure to establish, enforce or maintain policies and
 279 procedures resulted in conduct in violation of sections 36a-715 to 36a-
 280 724, inclusive, or rules or regulations adopted under said sections or
 281 any other state or federal law, including the rules and regulations
 282 thereunder, applicable to any business authorized or conducted under
 283 said sections.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2019	49-14
Sec. 2	October 1, 2019	49-28
Sec. 3	October 1, 2019	36a-498
Sec. 4	October 1, 2019	36a-719h

Statement of Legislative Commissioners:

In Section 1(a), "granted on" was changed to "granted with respect to" for clarity; in Section 2, "on any" was changed to "with respect to any" for clarity; in Section 3(i)(2), "36a-736" was changed to "36a-485" for accuracy and consistency; and in Section 4(a)(20), "residential" was inserted before "mortgage loan" and "36a-736" was changed to "36a-485" for accuracy and consistency.

BA Joint Favorable Subst. -LCO

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:

Agency Affected	Fund-Effect	FY 20 \$	FY 21 \$
Banking Dept.	BF - Potential Revenue Gain	See Below	See Below

Note: BF=Banking Fund

Municipal Impact: None

Explanation

The bill: 1) prohibits mortgage lenders or correspondent lenders from denying certain residential mortgage loan applications on the sole basis that the applicant previously defaulted, conveyed, or foreclosed on a residential property that had a deteriorated concrete foundation due to pyrrhotite, and 2) subjects violators to a civil penalty of up to \$10,000 per violation.

The Department of Banking has the necessary expertise to assess the anticipated level of potential violations based on the provisions of the bill. The process for assessing a penalty could take over two years to complete, and therefore any potential revenue would likely not be received until FY 22.

The Out Years

The potential revenue gain identified above would continue into the future subject to the number of penalties assessed.

OLR Bill Analysis**HB 5163*****AN ACT CONCERNING DEFICIENCY JUDGMENTS AND RESIDENTIAL PROPERTIES WITH A CONCRETE FOUNDATION AFFECTED BY PYRRHOTITE.*****SUMMARY**

This bill prohibits a court from granting a deficiency judgement as a part of a mortgage foreclosure proceeding on a residential mortgage loan originated on or after October 1, 2019, where the mortgaged property has a concrete foundation that has deteriorated due to pyrrhotite. (A deficiency judgement is a court order against a debtor for the unpaid balance of the debt if the foreclosure sale does not provide the full amount of the debt owed.)

The bill also prohibits:

1. mortgage lenders, correspondent lenders, or servicers from reporting to a credit rating agency or otherwise publicly disclosing that a residential mortgage loan entered on or after October 1, 2019, is subject to a deficiency judgement where the mortgaged property has a deteriorated concrete foundation due to pyrrhotite; and
2. mortgage lenders or correspondent lenders from denying a residential mortgage loan application on the sole basis that the applicant was previously involved in certain actions involving residential real estate with a concrete foundation that deteriorated due to pyrrhotite.

The bill also makes several technical changes.

EFFECTIVE DATE: October 1, 2019

LOAN APPLICATIONS

Under the bill, a mortgage lender or correspondent lender may not deny a residential mortgage loan application on the sole basis that (1) the applicant previously defaulted on a residential mortgage loan secured by residential property, conveyed residential real estate by a deed in lieu of foreclosure or by short sale, or had a final judgement of foreclosure entered against him or her, and (2) the residential property involved in the default, conveyance, or foreclosure had a deteriorated concrete foundation due to pyrrhotite. The bill subjects violators to a civil penalty of up to \$10,000 per violation.

BACKGROUND

Pyrrhotite

Pyrrhotite is a naturally occurring iron sulfide mineral. An investigation by the state consumer protection department and the Attorney General's office found that there is a crumbling foundation problem in northeastern Connecticut that stems from the presence of pyrrhotite in the stone aggregate used to produce concrete poured for certain foundations in parts of the state, beginning in the early 1980s.

COMMITTEE ACTION

Banking Committee

Joint Favorable

Yea 15 Nay 0 (03/12/2019)