



House of Representatives

General Assembly

File No. 85

January Session, 2019

House Bill No. 6996

House of Representatives, March 21, 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 bill ought to pass.

AN ACT EXTENDING THE FORECLOSURE MEDIATION PROGRAM.

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

1 Section 1. Section 49-311 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) Prior to July 1, [2019] 2023: (1) Any action for the foreclosure of a
4 mortgage on residential real property with a return date during the
5 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to
6 the provisions of subsection (b) of this section, and (2) any action for
7 the foreclosure of a mortgage on (A) residential real property with a
8 return date during the period from July 1, 2009, to June 30, [2019] 2023,
9 inclusive, or (B) real property owned by a religious organization with a
10 return date during the period from October 1, 2011, to June 30, [2019]
11 2023, inclusive, shall be subject to the provisions of subsection (c) of
12 this section.

13 (b) (1) Prior to July 1, [2019] 2023, when a mortgagee commences an
14 action for the foreclosure of a mortgage on residential real property

15 with a return date during the period from July 1, 2008, to June 30, 2009,
16 inclusive, the mortgagee shall give notice to the mortgagor of the
17 foreclosure mediation program established in section 49-31m by
18 attaching to the front of the foreclosure complaint that is served on the
19 mortgagor: (A) A copy of the notice of the availability of foreclosure
20 mediation, in such form as the Chief Court Administrator prescribes,
21 and (B) a foreclosure mediation request form, in such form as the Chief
22 Court Administrator prescribes.

23 (2) Except as provided in subdivision (3) of this subsection, a
24 mortgagor may request foreclosure mediation by submitting the
25 foreclosure mediation request form to the court and filing an
26 appearance not more than fifteen days after the return date for the
27 foreclosure action. Upon receipt of the foreclosure mediation request
28 form, the court shall notify each appearing party that a foreclosure
29 mediation request form has been submitted by the mortgagor.

30 (3) The court may grant a mortgagor permission to submit a
31 foreclosure mediation request form and file an appearance after the
32 fifteen-day period established in subdivision (2) of this subsection, for
33 good cause shown.

34 (4) No foreclosure mediation request form may be submitted to the
35 court under this subsection on or after July 1, [2019] 2023.

36 (5) If at any time on or after July 1, 2008, but prior to July 1, [2019]
37 2023, the court determines that the notice requirement of subdivision
38 (1) of this subsection has not been met, the court may, upon its own
39 motion or upon the written motion of the mortgagor, issue an order
40 that no judgment may enter for fifteen days during which period the
41 mortgagor may submit a foreclosure mediation request form to the
42 court.

43 (6) Notwithstanding any provision of the general statutes or any
44 rule of law to the contrary, prior to July 1, [2019] 2023, no judgment of
45 strict foreclosure nor any judgment ordering a foreclosure sale shall be
46 entered in any action subject to the provisions of this subsection and

47 instituted by the mortgagee to foreclose a mortgage on residential real
48 property unless: (A) Notice to the mortgagor has been given by the
49 mortgagee in accordance with subdivision (1) of this subsection and
50 the time for submitting a foreclosure mediation request form has
51 expired and no foreclosure mediation request form has been
52 submitted, or if such notice has not been given, the time for submitting
53 a foreclosure mediation request form pursuant to subdivision (2) or (3)
54 of this subsection has expired and no foreclosure mediation request
55 form has been submitted, or (B) the mediation period set forth in
56 subsection (b) of section 49-31n, as amended by this act, has expired or
57 has otherwise terminated, whichever is earlier.

58 (7) None of the mortgagor's or mortgagee's rights in the foreclosure
59 action shall be waived by the mortgagor's submission of a foreclosure
60 mediation request form to the court.

61 (c) (1) Prior to July 1, [2019] 2023, when a mortgagee commences an
62 action for the foreclosure of a mortgage on residential real property
63 with a return date on or after July 1, 2009, or, with respect to real
64 property owned by a religious organization, a return date on or after
65 October 1, 2011, the mortgagee shall give notice to the mortgagor of
66 the foreclosure mediation program established in section 49-31m by
67 attaching to the front of the writ, summons and complaint that is
68 served on the mortgagor: (A) A copy of the notice of foreclosure
69 mediation, in such form as the Chief Court Administrator prescribes,
70 (B) a copy of the foreclosure mediation certificate form described in
71 subdivision (3) of this subsection, in such form as the Chief Court
72 Administrator prescribes, (C) a blank appearance form, in such form as
73 the Chief Court Administrator prescribes, (D) with respect to an action
74 for the foreclosure of a mortgage on residential real property with a
75 return date on or after October 1, 2011, to September 30, 2013,
76 inclusive, a mediation information form and a notice containing
77 contact information for authority-approved consumer credit
78 counseling agencies, which form and notice shall be in such form as
79 the Chief Court Administrator prescribes, and which form shall be
80 designed to elicit current financial information and such other

81 nonfinancial information from the mortgagor as the Chief Court
82 Administrator, in consultation with representatives from the banking
83 industry and consumer advocates, determines will further the
84 objectives of the mediation program. The Chief Court Administrator
85 shall develop a premediation review protocol pursuant to which the
86 mediator shall request that any documents submitted to the mediator
87 for initial review that are incomplete, contain errors or are likely to be
88 found unacceptable by the mortgagee be completed or corrected and
89 that the completed or corrected documents be resubmitted to the
90 mediator for review. Such premediation review, including any
91 recommendations to complete or correct documents, shall not be
92 construed to be the practice of law on behalf of any party to the
93 mediation or the provision of legal advice by the mediator. The
94 instructions to the mediation information form shall explain that the
95 completed mediation information form, along with accompanying
96 documentation reasonably requested from the mortgagor by way of
97 such instructions, shall be delivered to the mortgagee's counsel not
98 later than fifteen business days prior to the date of the initial mediation
99 session, as identified in the notice provided pursuant to subdivision (2)
100 of subsection (c) of section 49-31n, as amended by this act, and (E) for
101 an action to foreclose a mortgage on residential real property with a
102 return date on or after October 1, 2013, the mediation information form
103 shall instruct the mortgagor as to the objectives of the mediation
104 program, explain the preliminary process of meeting with the
105 mediator as described in subdivision (4) of this subsection, instruct the
106 mortgagor to begin gathering financial documentation commonly used
107 in foreclosure mediation for use in meeting with the mediator and in
108 mediation, and include a notice containing contact information for
109 authority-approved consumer counseling agencies, which shall be in
110 such form as the Chief Court Administrator prescribes. The content of
111 the mediation information form shall be designed by the Chief Court
112 Administrator in consultation with representatives from the banking
113 industry and consumer advocates.

114 (2) The court shall issue a notice of foreclosure mediation described
115 in subdivision (3) of this subsection to the mortgagor not later than the

116 date three business days after the date the mortgagee returns the writ
117 to the court.

118 (3) The notice of foreclosure mediation shall instruct the mortgagor
119 to file the appearance and foreclosure mediation certificate forms with
120 the court not later than the date fifteen days from the return date for
121 the foreclosure action. With respect to actions with a return date
122 during the period from October 1, 2011, to September 30, 2013,
123 inclusive, such notice shall remind the mortgagor to deliver the
124 completed mediation information form and the accompanying
125 documentation described in subdivision (1) of this subsection and
126 encourage such delivery in advance of the required date. With respect
127 to actions with a return date during the period from October 1, 2013, to
128 June 30, [2019] 2023, inclusive, such notice shall instruct the mortgagor
129 to begin gathering financial information commonly used in foreclosure
130 mediation for use in meeting with the mediator and in mediation. The
131 mediation information form and accompanying documentation shall
132 not, without the explicit written instruction of the mortgagor, be
133 publicly available. Such notice of foreclosure mediation shall be
134 accompanied by materials from the Department of Banking, as
135 prescribed by the Chief Court Administrator, which shall describe the
136 community-based resources available to the mortgagor, including
137 authority-approved housing counseling agencies that may assist with
138 preparation for mediation and application for mortgage assistance
139 programs. The foreclosure mediation certificate form shall require the
140 mortgagor to provide sufficient information to permit the court to
141 confirm that the defendant in the foreclosure action is a mortgagor,
142 and to certify that said mortgagor has sent a copy of the mediation
143 certificate form to the plaintiff in the action. With respect to actions
144 with a return date on or after October 1, 2015, in order to ensure that
145 all necessary consents to the disclosure of nonpublic personal financial
146 information have been provided to the mortgagee, such that a spouse
147 may be considered a permitted successor-in-interest, the court shall
148 confirm that the foreclosure mediation certificate submitted by (A) the
149 spouse or former spouse provides consent to the full disclosure by the
150 mortgagee of such spouse's or former spouse's nonpublic personal

151 financial information to any other person who is obligated as a
152 borrower on the note, to the extent the mortgagee has such
153 information, and (B) any other person who is a mortgagor provides
154 consent to the full disclosure by the mortgagee of such person's
155 nonpublic personal financial information to such spouse or former
156 spouse, to the extent the mortgagee has such information. If a
157 foreclosure mediation certificate is not submitted by a mortgagor,
158 other than a spouse or former spouse claiming to be a permitted
159 successor-in-interest, the court shall confirm, in lieu of the
160 requirements of subparagraph (B) of this subdivision, that the
161 foreclosure mediation certificate submitted by the spouse or former
162 spouse contains a statement, signed by the spouse or former spouse,
163 certifying that all persons who are obligated on the note have
164 otherwise given documentation to the mortgagee which allows for the
165 full disclosure by the mortgagee of such person's nonpublic personal
166 information to the spouse or former spouse, to the extent the
167 mortgagee has such information. Such a certification may be rebutted
168 conclusively by the mortgagee if the mortgagee submits a written
169 statement to the court in which the mortgagee certifies that, based
170 upon reasonable belief, the mortgagee does not possess such
171 documentation.

172 (4) Upon receipt of the mortgagor's appearance and foreclosure
173 mediation certificate forms, and provided the court confirms the
174 defendant in the foreclosure action is a mortgagor and that said
175 mortgagor has sent a copy of the mediation certificate form to the
176 plaintiff, the court shall assign the case to mediation and issue notice of
177 such assignment to all appearing parties, which notice shall include an
178 electronic mail address for all communications related to the
179 mediation. The court shall issue such notice not earlier than the date
180 five business days after the return date or by the date three business
181 days after the date on which the court receives the mortgagor's
182 appearance and foreclosure mediation certificate forms, whichever is
183 later, except that if the court does not receive the appearance and
184 foreclosure mediation certificate forms from the mortgagor by the date
185 fifteen days after the return date for the foreclosure action, the court

186 shall not assign the case to mediation. Promptly upon receipt of the
187 notice of assignment, but not later than the thirty-fifth day following
188 the return date, the mortgagee or its counsel shall deliver to the
189 mediator, via the electronic mail address provided for communications
190 related to the mediation, and to the mortgagor, via first class, priority
191 or overnight mail, (A) an account history identifying all credits and
192 debits assessed to the loan account and any related escrow account in
193 the immediately preceding twelve-month period and an itemized
194 statement of the amount required to reinstate the mortgage loan with
195 accompanying information, written in plain language, to explain any
196 codes used in the history and statement which are not otherwise self-
197 explanatory, (B) the name, business mailing address, electronic mail
198 address, facsimile number and direct telephone number of an
199 individual able to respond with reasonable adequacy and promptness
200 to questions relative to the information submitted to the mediator
201 pursuant to this subdivision, and any subsequent updates to such
202 contact information, which shall be provided reasonably promptly to
203 the mediator via the electronic mail address provided for
204 communication related to the mediation, (C) current versions of all
205 reasonably necessary forms and a list of all documentation reasonably
206 necessary for the mortgagee to evaluate the mortgagor for common
207 alternatives to foreclosure that are available through the mortgagee, if
208 any, (D) a copy of the note and mortgage, including any agreements
209 modifying such documents, (E) summary information regarding the
210 status of any pending foreclosure avoidance efforts being undertaken
211 by the mortgagee, (F) a copy of any loss mitigation affidavit filed with
212 the court, and (G) at the mortgagee's option, (i) the history of
213 foreclosure avoidance efforts with respect to the mortgagor, (ii)
214 information regarding the condition of mortgaged property, and (iii)
215 such other information as the mortgagee may determine is relevant to
216 meeting the objectives of the mediation program. Following the
217 mediator's receipt of such information, the court shall assign a
218 mediator to the mediation and schedule a meeting with the mediator
219 and all mortgagors who are relevant and necessary to the mediation
220 and to any agreement being contemplated in connection with the

221 mediation and shall endeavor to hold such meeting on or prior to the
222 forty-ninth day following the return date. The notice of such meeting
223 shall instruct the mortgagor to complete the forms prior to the meeting
224 and to furnish such forms together with the documentation contained
225 in the list, as provided by the mortgagee following the filing of the
226 foreclosure mediation certificate, at the meeting. At such meeting, the
227 mediator shall review such forms and documentation with the
228 mortgagor, along with the information supplied by the mortgagee, in
229 order to discuss the options that may be available to the mortgagor,
230 including any community-based resources, and assist the mortgagor in
231 completing the forms and furnishing the documentation necessary for
232 the mortgagee to evaluate the mortgagor for alternatives to
233 foreclosure. The mediator may elect to schedule subsequent meetings
234 with the mortgagor and determine whether any mortgagor may be
235 excused from an in-person appearance at such subsequent meeting.
236 The mediator may excuse any mortgagor from attending such meeting
237 or any subsequent meetings, provided the mortgagor shows good
238 cause for nonattendance. Such good cause may include, but is not
239 limited to, the mortgagor no longer owning the home pursuant to a
240 judgment of marital dissolution and related transfer via deed, or no
241 longer residing in the home and not being a necessary party to any
242 agreement being contemplated in connection with the mediation. As
243 soon as practicable, but in no case later than the eighty-fourth day
244 following the return date, or the extended deadline if such an extended
245 deadline is established pursuant to this subdivision, the mediator shall
246 facilitate and confirm the submission by the mortgagor of the forms
247 and documentation to the mortgagee's counsel via electronic means
248 and, at the mortgagee's election, directly to the mortgagee per the
249 mortgagee's instruction, and determine, based on the participating
250 mortgagor's attendance at the meetings and the extent the mortgagor
251 completed the forms and furnished the documentation contemplated
252 in this subdivision, or failed to perform such tasks through no material
253 fault of the mortgagee, and file a report with the court indicating, (I)
254 whether mediation shall be scheduled with the mortgagee, (II) whether
255 the mortgagor attended scheduled meetings with the mediator, (III)

256 whether the mortgagor fully or substantially completed the forms and
257 furnished the documentation requested by the mortgagee, (IV) the
258 date on which the mortgagee supplied the forms and documentation,
259 and (V) any other information the mediator determines to be relevant
260 to the objectives of the mediation program. The mediator may file, and
261 the court may grant, a motion for extension of the premediation period
262 beyond the eighty-fourth day following the return date if good cause
263 can be shown for such an extension. Any such motion shall be filed,
264 with a copy simultaneously sent to the mortgagee and as soon as
265 practicable to the mortgagor, not later than the eighty-fourth day
266 following the return date. The mortgagee and mortgagor shall each
267 have five business days from the day the motion was filed to file an
268 objection or supplemental papers, and the court shall issue its ruling,
269 without a hearing, not later than ten business days from the date the
270 motion was filed. If the court determines that good cause exists for an
271 extension, the court shall therewith establish an extended deadline so
272 that the premediation period shall end as soon thereafter as may be
273 practicable, but not later than thirty-five days from the date of the
274 ruling, taking into account the complexity of the mortgagor's financial
275 circumstances, the mortgagee's documentation requirements, and the
276 timeliness of the mortgagee's and mortgagor's compliance with their
277 respective premediation obligations. If the court denies the mediator's
278 motion, the extended deadline for purposes of this subdivision shall be
279 three days after the court rules on the motion. No meeting or
280 communication between the mediator and mortgagor under this
281 subdivision shall be treated as an impermissible ex parte
282 communication. If the mediator determines that the mortgagee shall
283 participate in mediation, the court shall promptly issue notice to all
284 parties of such determination and schedule a mediation session
285 between the mortgagee and all mortgagors who are relevant and
286 necessary to the mediation and to any agreement being contemplated
287 in connection with the mediation, in accordance with subsection (c) of
288 section 49-31n, as amended by this act, to be held not later than five
289 weeks following the submission to the mortgagee of the forms and
290 documentation contemplated in this subdivision. The mediator may

291 excuse any mortgagor from attending the mediation session or
292 subsequent meetings, provided good cause is shown for
293 nonattendance. Such good cause may include, but is not limited to, the
294 mortgagor no longer owning the home pursuant to a judgment of
295 marital dissolution and related transfer via deed, no longer residing in
296 the home or not being a necessary party to any agreement being
297 contemplated in connection with the mediation. If the mediator
298 determines that no sessions between the mortgagee and mortgagor
299 shall be scheduled, the court shall promptly issue notice to all parties
300 regarding such determination and mediation shall be terminated. Any
301 mortgagor wishing to contest such determination shall petition the
302 court and show good cause for reinclusion in the mediation program,
303 including, but not limited to, a material change in financial
304 circumstances or a mistake or misunderstanding of the facts by the
305 mediator.

306 (5) Notwithstanding the provisions of this subsection, the court may
307 refer a foreclosure action brought by a mortgagee to the foreclosure
308 mediation program at any time, for good cause shown, provided the
309 mortgagor has filed an appearance in said action and further provided
310 the court shall, not later than the date three business days after the date
311 on which it makes such referral, send a notice to each appearing party
312 assigning the case to mediation and requiring the parties to participate
313 in the premediation process described in subdivision (4) of this
314 subsection, with the court establishing deadlines to ensure that the
315 premediation process is to be completed by the parties as
316 expeditiously as the circumstances warrant and permit. When
317 determining whether good cause exists, the court shall consider
318 whether the parties are likely to benefit from mediation and, in the
319 case of a referral after prior attempts at mediation have been
320 terminated, whether there has been a material change in
321 circumstances.

322 (6) Notwithstanding any provision of the general statutes or any
323 rule of law, prior to July 1, [2019] 2023, (A) for the period of time which
324 shall not exceed eight months from the return date, the mortgagor

325 shall be permitted to file an answer, special defenses or counterclaims,
326 but no mortgagee or mortgagor shall make any motion, request or
327 demand with respect to the other, except those motions, requests or
328 demands that relate to the mediation program described in section 49-
329 31m and the mediation sessions held pursuant to such program,
330 provided (i) a mortgagor seeking to contest the court's jurisdiction may
331 file a motion to dismiss and the mortgagee may object to such motion
332 to dismiss in accordance with applicable law and the rules of the
333 courts, and (ii) if the mortgagor elects to make any other motion,
334 request or demand with respect to the mortgagee, the eight-month
335 limit shall no longer apply to either party; and (B) no judgment of strict
336 foreclosure nor any judgment ordering a foreclosure sale shall be
337 entered in any action subject to the provisions of this subsection and
338 instituted by the mortgagee to foreclose a mortgage on residential real
339 property or real property owned by a religious organization unless: (i)
340 The mediation period set forth in subsection (c) of section 49-31n, as
341 amended by this act, has expired or has otherwise terminated,
342 whichever is earlier, and, if fewer than eight months has elapsed from
343 the return date at the time of termination, fifteen days have elapsed
344 since such termination and any pending motion or request to extend
345 the mediation period has been heard and denied by the court, or (ii)
346 the mediation program is not otherwise required or available. Nothing
347 in this subdivision shall affect any motion made or any default or
348 judgment entered on or before June 30, 2011.

349 (7) With respect to foreclosure actions with a return date during the
350 period from July 1, 2011, to June 30, [2019] 2023, inclusive,
351 notwithstanding any provision of the general statutes or any rule of
352 law to the contrary, the mortgagee shall be permitted following the
353 eight-month or fifteen-day period described in subdivision (6) of this
354 subsection, to simultaneously file, as applicable, (A) a motion for
355 default, and (B) a motion for judgment of strict foreclosure or a motion
356 for judgment of foreclosure by sale with respect to the mortgagor in
357 the foreclosure action.

358 (8) None of the mortgagor's or mortgagee's rights in the foreclosure

359 action shall be waived by participation in the foreclosure mediation
360 program.

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

363 (a) Prior to July 1, [2019] 2023: (1) Any action for the foreclosure of a
364 mortgage on residential real property with a return date during the
365 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to
366 the provisions of subsection (b) of this section, and (2) any action for
367 the foreclosure of a mortgage on (A) residential real property with a
368 return date during the period from July 1, 2009, to June 30, [2019] 2023,
369 inclusive, or (B) real property owned by a religious organization with a
370 return date during the period from October 1, 2011, to June 30, [2019]
371 2023, inclusive, shall be subject to the provisions of subsection (c) of
372 this section.

373 (b) (1) For any action for the foreclosure of a mortgage on residential
374 real property with a return date during the period from July 1, 2008, to
375 June 30, 2009, inclusive, the mediation period under the foreclosure
376 mediation program established in section 49-31m shall commence
377 when the court sends notice to each appearing party that a foreclosure
378 mediation request form has been submitted by a mortgagor to the
379 court, which notice shall be sent not later than three business days after
380 the court receives a completed foreclosure mediation request form. The
381 mediation period shall conclude not later than the conclusion of the
382 third mediation session between the mortgagor and mortgagee or
383 seven months after the return date, whichever is earlier, except that the
384 court may, in its discretion, for good cause shown, upon the motion of
385 any party or the mediator, extend the mediation period subject to the
386 provisions of subdivision (9) of this subsection or shorten the
387 mediation period.

388 (2) The first mediation session shall be held not later than fifteen
389 business days after the court sends notice to all parties that a
390 foreclosure mediation request form has been submitted to the court.
391 The mortgagor and mortgagee shall appear in person at each

392 mediation session and shall have the ability to mediate, except that (A)
393 if a party is represented by counsel, the party's counsel may appear in
394 lieu of the party to represent the party's interests at the mediation,
395 provided the party has the ability to mediate, and the party is available
396 (i) during the mediation session by telephone, and (ii) to participate in
397 the mediation session by speakerphone, provided an opportunity is
398 afforded for confidential discussions between the party and party's
399 counsel, (B) following the initial mediation session, if there are two or
400 more mortgagors who are self-represented, only one mortgagor shall
401 be required to appear in person at each subsequent mediation session
402 unless good cause is shown, provided the other mortgagors are
403 available (i) during the mediation session, and (ii) to participate in the
404 mediation session by speakerphone, (C) if a party suffers from a
405 disability or other significant hardship that imposes an undue burden
406 on such party to appear in person, the mediator may grant permission
407 to such party to participate in the mediation session by telephone, and
408 (D) a mortgagor may be excused from appearing at the mediation
409 session if good cause is shown that the presence of such mortgagor is
410 not needed to further the interests of mediation. Such good cause may
411 include, but is not limited to, the mortgagor no longer owning the
412 home pursuant to a judgment of marital dissolution and related
413 transfer via deed, no longer residing in the home or not being a
414 necessary party to any agreement being contemplated in connection
415 with the mediation. A mortgagor's spouse, who is not a mortgagor but
416 who lives in the subject property, may appear at each mediation
417 session, provided all appearing mortgagors consent, in writing, to such
418 spouse's appearance or such spouse shows good cause for his or her
419 appearance and the mortgagors consent in writing to the disclosure of
420 nonpublic personal information to such spouse. If the mortgagor has
421 submitted a complete package of financial documentation in
422 connection with a request for a particular foreclosure alternative, the
423 mortgagee shall have thirty-five days from the receipt of the completed
424 package to respond with a decision and, if the decision is a denial of
425 the request, provide the reasons for such denial. If the mortgagor has,
426 in connection with a request for a foreclosure alternative, submitted a

427 financial package that is not complete, or if the mortgagee's evaluation
428 of a complete package reveals that additional information is necessary
429 to underwrite the request, the mortgagee shall request the missing or
430 additional information within a reasonable period of time of such
431 evaluation. If the mortgagee's evaluation of a complete package reveals
432 that additional information is necessary to underwrite the request, the
433 thirty-five-day deadline for a response shall be extended but only for
434 so long as is reasonable given the timing of the mortgagor's submission
435 of such additional information and the nature and context of the
436 required underwriting. Not later than the third business day after each
437 mediation session held on or after June 18, 2013, the mediator shall file
438 with the court a report indicating, to the extent applicable, (i) the
439 extent to which each of the parties complied with the requirements set
440 forth in this subdivision, including the requirement to engage in
441 conduct that is consistent with the objectives of the mediation program
442 and to possess the ability to mediate, (ii) whether the mortgagor
443 submitted a complete package of financial documentation to the
444 mortgagee, (iii) a general description of the foreclosure alternative
445 being requested by the mortgagor, (iv) whether the mortgagor has
446 previously been evaluated for similar requests, whether prior to
447 mediation or in mediation, and, if so, whether there has been any
448 apparent change in circumstances since a decision was made with
449 respect to that prior evaluation, (v) whether the mortgagee has
450 responded to the mortgagor's request for a foreclosure alternative and,
451 if so, a description of the response and whether the mediator is aware
452 of any material reason not to agree with the response, (vi) whether the
453 mortgagor has responded to an offer made by the mortgagee on a
454 reasonably timely basis, and if so, an explanation of the response, (vii)
455 whether the mortgagee has requested additional information from the
456 mortgagor and, if so, the stated reasons for the request and the date by
457 which such additional information shall be submitted so that
458 information previously submitted by the mortgagor, to the extent
459 possible, may still be used by the mortgagee in conducting its review,
460 (viii) whether the mortgagor has supplied, on a reasonably timely
461 basis, any additional information that was reasonably requested by the

462 mortgagee, and, if not, the stated reason for not doing so, (ix) if
463 information provided by the mortgagor is no longer current for
464 purposes of evaluating a foreclosure alternative, a description of the
465 out-of-date information and an explanation as to how and why such
466 information is no longer current, (x) whether the mortgagee has
467 provided a reasonable explanation of the basis for a decision to deny a
468 request for a loss mitigation option or foreclosure alternative and
469 whether the mediator is aware of any material reason not to agree with
470 that decision, (xi) whether the mortgagee has complied with the time
471 frames set forth in this subdivision for responding to requests for
472 decisions, (xii) if a subsequent mediation session is expected to occur, a
473 general description of the expectations for such subsequent session
474 and for the parties prior to such subsequent session and, if not
475 otherwise addressed in the report, whether the parties satisfied the
476 expectations set forth in previous reports, and (xiii) a determination of
477 whether the parties will benefit from further mediation. The mediator
478 shall deliver a copy of such report to each party to the mediation when
479 the mediator files the report. The parties shall have the opportunity to
480 submit their own supplemental information following the filing of the
481 report, provided such supplemental information shall be submitted
482 not later than five business days following the receipt of the mediator's
483 report. Any request by the mortgagee to the mortgagor for additional
484 or updated financial documentation shall be made in writing. The
485 court may impose sanctions on any party or on counsel to a party if
486 such party or such counsel engages in intentional or a pattern or
487 practice of conduct during the mediation process that is contrary to the
488 objectives of the mediation program. Any sanction that is imposed
489 shall be proportional to the conduct and consistent with the objectives
490 of the mediation program. Available sanctions shall include, but not be
491 limited to, terminating mediation, ordering the mortgagor or
492 mortgagee to mediate in person, forbidding the mortgagee from
493 charging the mortgagor for the mortgagee's attorney's fees, awarding
494 attorney's fees, and imposing fines. In the case of egregious
495 misconduct, the sanctions shall be heightened. The court shall not
496 award attorney's fees to any mortgagee for time spent in any

497 mediation session if the court finds that such mortgagee has failed to
498 comply with this subdivision, unless the court finds reasonable cause
499 for such failure.

500 (3) If the mediator reports to the court that the parties will not
501 benefit from further mediation, the mediation period shall terminate
502 automatically. If the mediator reports to the court after the first or
503 second mediation session that the parties may benefit from further
504 mediation, the mediation period shall continue.

505 (4) If the mediation period concludes and certain issues have not
506 been resolved pursuant to the mediation, the mediator may refer the
507 mortgagor to any appropriate community-based services that are
508 available.

509 (5) The Chief Court Administrator shall establish policies and
510 procedures to implement this subsection. Such policies and procedures
511 shall, at a minimum, provide that the mediator shall advise the
512 mortgagor at the first meeting required by subdivision (4) of
513 subsection (c) of section 49-311, as amended by this act, that a judgment
514 of strict foreclosure or foreclosure by sale may cause the mortgagor to
515 lose the residential real property to foreclosure.

516 (6) In no event shall any determination issued by a mediator under
517 this program form the basis of an appeal of any foreclosure judgment.

518 (7) Foreclosure mediation request forms shall not be accepted by the
519 court under this subsection on or after July 1, [2019] 2023, and the
520 foreclosure mediation program shall terminate when all mediation has
521 concluded with respect to any applications submitted to the court prior
522 to July 1, [2019] 2023.

523 (8) At any time during the mediation period, the mediator may refer
524 a mortgagor who is the owner-occupant of one-to-four family
525 residential real property to the mortgage assistance programs, except
526 that any such referral shall not prevent a mortgagee from proceeding
527 to judgment when the conditions specified in subdivision (6) of

528 subsection (b) of section 49-311, as amended by this act, have been
529 satisfied.

530 (9) (A) The mediation period shall conclude following the third
531 mediation session or if more than seven months have elapsed since the
532 return date. Not later than fifteen days following the conclusion of the
533 mediation period, and any extended mediation sessions held in
534 accordance with this subdivision, any party may move for, or the
535 mediator may request, an extension of the mediation period. The court
536 shall grant only one additional mediation session per motion or
537 request upon a finding that it is highly probable the parties will reach
538 an agreement through mediation. The court may also grant one
539 additional mediation session per motion or request upon a finding that
540 any party has engaged, either intentionally or by a pattern or practice,
541 in conduct that is contrary to the objectives of the mediation program.
542 The court shall make its ruling not later than twenty days after the
543 filing of such motion or request, and no judgment of strict foreclosure
544 or any judgment ordering a foreclosure sale shall be entered until (i)
545 the court denies the motion or request, or (ii) the conclusion of the
546 extended mediation session, except as provided in subparagraph (B) of
547 this subdivision. Upon the grant of an additional mediation session
548 following the proper finding, the court shall establish an expeditious
549 deadline for such extended mediation session to occur. Such extended
550 mediation period shall conclude following such extended mediation
551 session.

552 (B) The mediation period may be extended for one additional
553 mediation session without a hearing held pursuant to this subdivision
554 provided all parties to the mediation agree that such parties would
555 benefit from such a session and, in consultation with the mediator,
556 establish an expeditious deadline for such session to take place.

557 (C) To determine whether to extend mediation, the court may
558 consider all matters that have arisen in the mediation, including, but
559 not limited to, the number of motions to extend mediation, the reasons
560 for which an agreement has not been reached, the objectives of the

561 mediation program, the extent to which the parties will benefit from
562 further mediation, the reports submitted by the mediator, papers
563 submitted in connection with any motion, and any supplemental
564 reports submitted by a party. The court shall articulate its reasons in
565 the order granting or denying any such motion or request to extend
566 mediation.

567 (10) For any case pending as of October 1, 2013, in which mediation
568 is ongoing, (A) if three or fewer sessions have been held, such case
569 shall be treated as if no sessions have been held as of said date for
570 purposes of subdivision (9) of this subsection, and (B) if four or more
571 sessions have been held, then any party or the mediator may move to
572 terminate the mediation period or extend such period in accordance
573 with subdivision (9) of this subsection and, if no such motion to extend
574 is made, the mediation period shall conclude after the third mediation
575 session occurring after October 1, 2013.

576 (c) (1) For any action for the foreclosure of a mortgage on residential
577 real property with a return date during the period from July 1, 2009, to
578 June 30, [2019] 2023, inclusive, or for any action for the foreclosure of a
579 mortgage on real property owned by a religious organization with a
580 return date during the period from October 1, 2011, to June 30, [2019]
581 2023, inclusive, the mediation period under the foreclosure mediation
582 program established in section 49-31m shall commence when the court
583 sends notice to each appearing party scheduling the first foreclosure
584 mediation session. The mediation period shall conclude not later than
585 the conclusion of the third mediation session between the mortgagor
586 and mortgagee or seven months after the return date, whichever is
587 earlier, except that the court may, in its discretion, for good cause
588 shown, upon the motion of any party or request by the mediator,
589 extend the mediation period subject to the provisions of subdivision
590 (9) of this subsection or shorten the mediation period.

591 (2) The mortgagor and mortgagee shall appear in person at each
592 mediation session and shall have the ability to mediate, except that (A)
593 if a party is represented by counsel, the party's counsel may appear in

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

629 to underwrite the request, the mortgagee shall request the missing or
630 additional information within a reasonable period of time of such
631 evaluation. If the mortgagee's evaluation of a complete package reveals
632 that additional information is necessary to underwrite the request, the
633 thirty-five-day deadline for a response shall be extended but only for
634 so long as is reasonable given the timing of the mortgagor's submission
635 of such additional information and the nature and context of the
636 required underwriting. Not later than the third business day after each
637 mediation session, the mediator shall file with the court a report
638 indicating, to the extent applicable, (i) the extent to which each of the
639 parties complied with the requirements set forth in this subdivision,
640 including the requirement to engage in conduct that is consistent with
641 the objectives of the mediation program and to possess the ability to
642 mediate, (ii) whether the mortgagor submitted a complete package of
643 financial documentation to the mortgagee, (iii) a general description of
644 the foreclosure alternative being requested by the mortgagor, (iv)
645 whether the mortgagor has previously been evaluated for similar
646 requests, whether prior to mediation or in mediation, and, if so,
647 whether there has been any apparent change in circumstances since a
648 decision was made with respect to that prior evaluation, (v) whether
649 the mortgagee has responded to the mortgagor's request for a
650 foreclosure alternative and, if so, a description of the response and
651 whether the mediator is aware of any material reason not to agree with
652 the response, (vi) whether the mortgagor has responded to an offer
653 made by the mortgagee on a reasonably timely basis, and if so, an
654 explanation of the response, (vii) whether the mortgagee has requested
655 additional information from the mortgagor and, if so, the stated
656 reasons for the request and the date by which such additional
657 information shall be submitted so that information previously
658 submitted by the mortgagor, to the extent possible, may still be used
659 by the mortgagee in conducting its review, (viii) whether the
660 mortgagor has supplied, on a reasonably timely basis, any additional
661 information that was reasonably requested by the mortgagee, and, if
662 not, the stated reason for not doing so, (ix) if information provided by
663 the mortgagor is no longer current for purposes of evaluating a

664 foreclosure alternative, a description of the out-of-date information
665 and an explanation as to how and why such information is no longer
666 current, (x) whether the mortgagee has provided a reasonable
667 explanation of the basis for a decision to deny a request for a loss
668 mitigation option or foreclosure alternative and whether the mediator
669 is aware of any material reason not to agree with that decision, (xi)
670 whether the mortgagee has complied with the time frames set forth in
671 this subdivision for responding to requests for decisions, (xii) if a
672 subsequent mediation session is expected to occur, a general
673 description of the expectations for such subsequent session and for the
674 parties prior to such subsequent session and, if not otherwise
675 addressed in the report, whether the parties satisfied the expectations
676 set forth in previous reports, and (xiii) a determination of whether the
677 parties will benefit from further mediation. The mediator shall deliver
678 a copy of such report to each party to the mediation when the mediator
679 files the report. The parties shall have the opportunity to submit their
680 own supplemental information following the filing of the report,
681 provided such supplemental information shall be submitted not later
682 than five business days following the receipt of the mediator's report.
683 Any request by the mortgagee to the mortgagor for additional or
684 updated financial documentation shall be made in writing. The court
685 may impose sanctions on any party or on counsel to a party if such
686 party or such counsel engages in intentional or a pattern or practice of
687 conduct during the mediation process that is contrary to the objectives
688 of the mediation program. Any sanction that is imposed shall be
689 proportional to the conduct and consistent with the objectives of the
690 mediation program. Available sanctions shall include, but not be
691 limited to, terminating mediation, ordering the mortgagor or
692 mortgagee to mediate in person, forbidding the mortgagee from
693 charging the mortgagor for the mortgagee's attorney's fees, awarding
694 attorney's fees, and imposing fines. In the case of egregious
695 misconduct, the sanctions shall be heightened. The court shall not
696 award attorney's fees to any mortgagee for time spent in any
697 mediation session if the court finds that such mortgagee has failed to
698 comply with this subdivision, unless the court finds reasonable cause

699 for such failure.

700 (3) If the mediator reports to the court that the parties will not
701 benefit from further mediation, the mediation period shall terminate
702 automatically. If the mediator reports to the court after the first or
703 second mediation session that the parties may benefit from further
704 mediation, the mediation period shall continue.

705 (4) If the mediation period concludes and certain issues have not
706 been resolved pursuant to the mediation, the mediator may refer the
707 mortgagor to any appropriate community-based services that are
708 available in the judicial district, but any such referral shall not cause a
709 delay in the mediation process.

710 (5) The Chief Court Administrator shall establish policies and
711 procedures to implement this subsection. Such policies and procedures
712 shall, at a minimum, provide that the mediator shall advise the
713 mortgagor at the first meeting required by subdivision (4) of
714 subsection (c) of section 49-31l, as amended by this act, that: (A) Such
715 mediation does not suspend the mortgagor's obligation to respond to
716 the foreclosure action beyond the limited time frame described in
717 subdivision (6) of subsection (c) of section 49-31l, as amended by this
718 act; and (B) a judgment of strict foreclosure or foreclosure by sale may
719 cause the mortgagor to lose the residential real property or real
720 property owned by a religious organization to foreclosure.

721 (6) In no event shall any determination issued by a mediator under
722 this program form the basis of an appeal of any foreclosure judgment.

723 (7) The foreclosure mediation program shall terminate when all
724 mediation has concluded with respect to any foreclosure action with a
725 return date during the period from July 1, 2009, to June 30, [2019] 2023,
726 inclusive.

727 (8) At any time during the mediation period, the mediator may refer
728 a mortgagor who is the owner-occupant of one-to-four family
729 residential real property to the mortgage assistance programs, except

730 that any such referral shall not prevent a mortgagee from proceeding
731 to judgment when the conditions specified in subdivision (6) of
732 subsection (c) of section 49-311, as amended by this act, have been
733 satisfied.

734 (9) (A) The mediation period shall conclude following the third
735 mediation session or if more than seven months have elapsed since the
736 return date. Not later than fifteen days following the conclusion of the
737 mediation period, and any subsequent extended mediation sessions
738 held in accordance with this subdivision, any party may move for, or
739 the mediator may request, an extension of the mediation period. The
740 court shall grant only one additional mediation session per motion or
741 request upon a finding that it is highly probable the parties will reach
742 an agreement through mediation. The court may also grant one
743 additional mediation session per motion or request upon a finding that
744 any party has engaged, either intentionally or by a pattern or practice,
745 in conduct that is contrary to the objectives of the mediation program.
746 The court shall make its ruling not later than twenty days after the
747 filing of such motion or request, and no judgment of strict foreclosure
748 or any judgment ordering a foreclosure sale shall be entered until (i)
749 the court denies the motion or request, or (ii) the conclusion of the
750 subsequent extended mediation session, except as provided in
751 subparagraph (B) of this subdivision. Upon the grant of an additional
752 mediation session following the proper finding, the court shall
753 establish a reasonably expeditious deadline for such subsequent
754 extended mediation session to occur. Such extended mediation period
755 shall conclude following such subsequent extended mediation session.

756 (B) The mediation period may be extended for one additional
757 mediation session without a hearing held pursuant to this subdivision
758 provided all parties to the mediation agree that such parties would
759 benefit from such a session and, in consultation with the mediator,
760 establish a reasonably expeditious deadline for such session to take
761 place.

762 (C) To determine whether to extend mediation, the court may

763 consider all matters that have arisen in the mediation, including, but
764 not limited to, the number of motions to extend mediation, the reasons
765 for which an agreement has not been reached, the objectives of the
766 mediation program, the extent to which the parties will benefit from
767 further mediation, the reports submitted by the mediator, papers
768 submitted in connection with any motion, and any supplemental
769 reports submitted by a party. The court shall articulate its reasons in
770 the order granting or denying any such motion or request to extend
771 mediation.

772 (10) For any case pending as of October 1, 2013, in which mediation
773 is ongoing, (A) if three or fewer sessions have been held, such case
774 shall be treated as if no sessions have been held as of said date for
775 purposes of subdivision (9) of this subsection, and (B) if four or more
776 sessions have been held, then any party or the mediator may move to
777 terminate the mediation period or extend such period in accordance
778 with subdivision (9) of this subsection and, if no such motion to extend
779 is made, the mediation period shall conclude after the third mediation
780 session occurring after October 1, 2013.

781 (d) (1) Not later than February 14, 2014, the Chief Court
782 Administrator shall submit, in accordance with the provisions of
783 section 11-4a, to the joint standing committee of the General Assembly
784 having cognizance of matters relating to banking, a summary
785 regarding the mediation program and a general summary of the data
786 collected in the reports submitted pursuant to subdivision (2) of
787 subsections (b) and (c) of this section from July 1, 2013, to December
788 31, 2013, inclusive. Such summaries shall include, but not be limited to,
789 the aggregate data regarding the number of cases in mediation, the
790 number of mediation sessions held, the number of agreements reached
791 before the conclusion of the mediation period, the number of motions
792 or requests for an extension or continuance and the identity of the
793 party that made such a motion or request, whether the loan at issue
794 was serviced by a third party, the judicial district in which the
795 mediation took place and whether the mortgagor was self-represented.

796 (2) Not later than March 1, 2016, and by March first each year
 797 thereafter until March 1, [2019] 2023, inclusive, the Chief Court
 798 Administrator shall submit, in accordance with the provisions of
 799 section 11-4a, to the joint standing committee of the General Assembly
 800 having cognizance of matters relating to banking, a summary of the
 801 reports submitted from July 1, 2013, to December thirty-first of the
 802 immediately preceding year, inclusive, pursuant to subdivision (2) of
 803 subsections (b) and (c) of this section. The detailed data points for such
 804 summary, including data to be collected but not reported, shall be
 805 developed by the Chief Court Administrator in consultation with
 806 representatives from the Governor's office, the Department of Banking,
 807 the banking industry and consumer advocates.

808 Sec. 3. Section 49-31v of the general statutes is repealed and the
 809 following is substituted in lieu thereof (*Effective from passage*):

810 The foreclosure mediation program established pursuant to section
 811 49-31m shall be funded within available appropriations and available
 812 until June 30, [2019] 2023. The size of such program shall be
 813 determined by available funding and the number and need of
 814 participants in such program.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	49-31l
Sec. 2	<i>from passage</i>	49-31n
Sec. 3	<i>from passage</i>	49-31v

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:

Agency Affected	Fund-Effect	FY 20 \$	FY 21 \$
Judicial Dept.	BF - Cost	1.9 million	2.0 million

Note: BF=Banking Fund

Municipal Impact: None

Explanation

The bill extends the Foreclosure Mediation Program through FY 23 and results in a cost of \$1.9 million in FY 20 and \$2 million in FY 21 to the Judicial Department (Banking Fund). Funding includes the salary and fringe benefits for 10 mediators. Currently the program is scheduled to sunset on June 20, 2019.

The Out Years

The annualized ongoing fiscal impact identified above would continue until FY 23.

OLR Bill Analysis**HB 6996****AN ACT EXTENDING THE FORECLOSURE MEDIATION PROGRAM.****SUMMARY**

This bill extends the state's foreclosure mediation program for four years, until July 1, 2023, at which time the court may not accept new mediation requests. By law, the program terminates when the mediation of all timely submitted requests conclude. Under current law, the court may not accept mediation requests on or after July 1, 2019.

The foreclosure mediation program is available to (1) owner-occupants of a 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 or the borrower's death).

The mediation program 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.

EFFECTIVE DATE: Upon passage

COMMITTEE ACTION

Banking Committee

Joint Favorable

Yea 10 Nay 5 (03/05/2019)