



General Assembly

**Substitute Bill No. 5163**

January Session, 2019



**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 Section 49-14 of the general statutes is repealed and the  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