

Legislative Changes to the Foreclosure Mediation Program

By: Kristen Miller, Senior Legislative Attorney
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Issue

Describe the changes to the state's Foreclosure Mediation Program (FMP) since its inception in 2008. **This report has been updated by OLR Report [2022-R-0262](#).**

Summary

In Connecticut, foreclosures are judicial, which means they must go through the court. The FMP aims to help certain mortgagors (i.e., borrowers) or successors-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) and mortgagees (i.e., the original lender or servicer, or successor or assignee) reach an agreed-upon resolution of a mortgage foreclosure action by having state Judicial Branch employees work as mediators.

The legislature established the program in 2008, by passing Public Act (PA) [08-176](#), in response to the national financial crisis and its impact on homeowners. It is codified beginning at [CGS § 49-31k](#). The most recent legislative changes to the program occurred in 2019.

Since its inception, 16 acts have modified the FMP. The changes include such things as:

1. extending the program's duration (most recently extended through June 30, 2023, by [PA 19-145](#));
2. expanding its scope to include certain religious organizations and successors-in-interest;
3. incorporating a pre-mediation meeting with the mortgagor and mediator to have the mediator learn about the mortgagor's circumstances, review the mortgagor's required forms

and documents, and provide information about possible bank options and available resources;

4. allowing parties to attend mediation sessions remotely instead of in person, under certain conditions;
5. adjusting various document requirements and deadlines;
6. funding the FMP within available appropriations, with program size to be determined by fund availability and the number of participants and their needs;
7. including mortgage servicers as mortgagees;
8. authorizing sanctions on parties or counsel for engaging in intentional or ongoing actions that are contrary to program objectives; and
9. establishing a Judicial Branch reporting requirement on program data.

The table below provides the principal program changes since the FMP's enactment in 2008, organized by year; it does not include all the acts' provisions.

Table 1: Principal FMP Changes Since PA 08-176

Year	PA Number	Principal Program Changes
2008	08-2, November Sp. Sess., § 8	<ul style="list-style-type: none"> • allows the (1) mediation period to be extended by 30, rather than up to 10, days and (2) court to grant an extension at the written request of a mediator • requires the first mediation session to be held within 15, rather than 10, days after notice of the mediation request is sent
2009	09-209, §§ 34 to 36	<ul style="list-style-type: none"> • makes the FMP mandatory, rather than optional, for foreclosure actions with return dates beginning July 1, 2009, and correspondingly requires mortgagees to provide certain mediation notices and forms to the mortgagors • allows the court to refer mortgagees to the FMP whenever they appear in a foreclosure action and meet its requirements • requires that the foreclosure mediation certificate solicit enough information from the mortgagor to show that he or she is eligible to participate in the program • prohibits awarding attorney's fees to a mortgagee for time spent in the first mediation session if the mortgagee does not comply with the availability requirement (being

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		<p>available telephonically or electronically, with authority to agree to a settlement), unless there is reasonable cause</p> <ul style="list-style-type: none"> • exempts information submitted by the mortgagor to the mediator from disclosure by the Judicial Branch
	<p>09-7, September Sp. Sess., § 95</p>	<ul style="list-style-type: none"> • specifies that the court-issued mediation notice be issued within three business days after the mortgagee returns the foreclosure writ to the court, rather than within three days • requires the court to: <ol style="list-style-type: none"> 1. issue the mediation date notice three business days after it receives the mortgagor's appearance and certain forms, if it is later than the return date and 2. follow the same timeline as when mediation is formally requested for times when the court refers a foreclosure action to mediation
<p>2010</p>	<p>10-181, §§ 1 & 2</p>	<ul style="list-style-type: none"> • extends the FMP by two years, through June 30, 2012 • narrows the circumstances in which a mortgagee represented by counsel may be absent from a mediation session by requiring the mortgagee to be available telephonically, rather than by telephone or electronically
	<p>11-51, §§ 31 & 32 and 11-201, §§ 2 & 4</p>	<ul style="list-style-type: none"> • extends the FMP by two years, through June 30, 2014, for foreclosure actions with return dates on or after July 1, 2009
<p>2011</p>	<p>11-201, §§ 1 to 4</p>	<ul style="list-style-type: none"> • extends the FMP to properties owned by religious organizations, but a mediator cannot refer an organization to certain state-approved mortgage assistance programs as he or she may do for residential mortgagors • requires, for residential foreclosures: <ol style="list-style-type: none"> 1. mortgagees to give the mortgagor a specific mediation information form and contact information for Connecticut Housing Finance Authority (CHFA)-approved consumer credit counseling agencies 2. the mediation information form, plus any related documents, to be delivered to the mortgagee's counsel within 15 business days before the first mediation session 3. that the court-issued notice of foreclosure mediation has information from the Banking Department about community-based resources, including housing counseling agencies

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		<ul style="list-style-type: none"> 4. the first mediation session to be held within 35 days, rather than 15 business days, after the court sends the notice scheduling the session 5. mortgagees to, at least 15 business days before the first session, send to the mortgagor (a) an account history of the loan account for the previous 12 months and (b) contact information for someone who can take actions to avoid foreclosure (e.g., refinance) • extends the time restriction on when a judgement of strict foreclosure or foreclosure by sale may occur after mediation ends and restricts the actions that can occur in the foreclosure litigation for eight months after the return date, in residential foreclosures • requires, when the mortgagee’s attorney appears at the mediation session instead of the mortgagee, the mortgagee to (1) be available to participate by speakerphone and (2) have an opportunity to engage in confidential discussions with counsel (repealed in part by PA 13-136) • requires, in cases with multiple mortgagors, that only one appear at mediation sessions after the first session, unless there is good cause for all mortgagors to attend, but the non-attending mortgagors must be available by speakerphone and able to have confidential discussions with counsel • specifies that failing to comply with documentation requirements is grounds to end the mediation period before the second mediation session (repealed by PA 13-136)
2012	12-1, June Sp. Sess., § 129	<ul style="list-style-type: none"> • requires: <ul style="list-style-type: none"> 1. mortgagees to give the Judicial Branch’s form on community-based resources for parties involved in foreclosure mediation with any notice to accelerate a mortgagor’s loan and 2. the Judicial Branch to give copies of the form to public libraries, religious organizations, and community-based programs to make it readily available to mortgagors
2013	13-136, §§ 1 to 4	<ul style="list-style-type: none"> • expands the FMP’s scope to include short sales and deeds in lieu of foreclosure • extends the FMP by two years, through June 30, 2014, for foreclosure actions with return dates from July 1, 2008, to June 30, 2009, and allows the court to extend the period

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		<p>for submitting a mediation request form and filing an appearance in these cases, if there is good cause</p> <ul style="list-style-type: none"> • includes mortgage servicers as “mortgagees” • expressly prohibits the mediators from giving legal advice • establishes a new mediation information form for residential foreclosures with October 1, 2013, or later return dates • prohibits the court from assigning a case to mediation if it does not receive the appearance and mediation certificate forms within 15 days of the return date • requires mortgagees, once a case is assigned to mediation and within 35 days of the return date, give the mediator and the mortgagor certain mortgage-related documents, including the 12-month account history, an itemized statement of the amount needed for reinstatement, contact information of someone who can answer questions, and a copy of the note and mortgage • requires the court to assign the mediator and schedule the pre-mediation meeting once the mediator and mortgagor receive the account history, but no later than 49 days after the return date • requires the mediator to review the forms and documentation with the mortgagor at the pre-mediation meeting and discuss options for the mortgagor • requires the mediator, within 84 days after the return date, to (1) inform the mortgagee about the mortgagor’s submitted documents and (2) file a report with the court saying if mediation must be scheduled and providing information about the supplied forms and documents • if the mediator determines the mortgagee must participate in mediation, the court must schedule the first mediation session, which must be held within five weeks of the mortgagor submitting the required forms and documents to the mortgagee • allows a mortgagor to contest a mediator’s decision not to have a mediation session scheduled • limits when the court may refer an action to the FMP to only when there is good cause • requires the mediation period to end the earlier of the end of the third mediation session or seven months after the

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		<p>return date, unless extended by the court at the request of the mediator or a party or, for one additional session by mutual agreement of the parties</p> <ul style="list-style-type: none"> • limits the court’s discretion to extend or shorten the mediation period to cases in which a party or the mediator requests it, but removes the 30-day extension period limit • requires parties to attend mediation with the ability to mediate, not only able to agree to a proposed settlement • exempts either party from having to attend a mediation session if counsel attends on its behalf, except that a mortgagor must attend the first session • in mediations with at least two mortgagors, limits the requirement that at least one mortgagor appear at mediation sessions after the first one in person to those who are self-represented • allows for a (1) party to participate in mediation telephonically if the party has a disability or other significant hardship and (2) mortgagor’s spouse who is not a mortgagor but lives on the property to appear at mediation under certain conditions • requires a mortgagee to: <ol style="list-style-type: none"> 1. respond to a mortgagor’s request for a foreclosure alternative within 35 days (unless extended) after receiving a complete financial documentation package and give the reason for a denied request, or 2. request, within a reasonable time, any missing or additional needed information if the financial package is incomplete or more information is needed to underwrite a foreclosure alternative • eliminates the requirement for a represented mortgagor to have an opportunity for confidential discussions with counsel for the mortgagor to not attend mediation in person • requires mediators to file a report with the court (and provide copies to the parties) within three business days after each mediation session providing certain information, such as the parties’ actions in the case and compliance with program requirements • authorizes sanctions for engaging in intentional or ongoing actions contrary to the FMP’s objectives

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		<ul style="list-style-type: none"> • eliminates a provision that failing to comply with document requirements is not grounds to end the mediation period before the second session • for cases pending on October 1, 2013, specifies how sessions should be counted for determining if mediation should continue • requires the chief court administrator, by February 14 of 2014 and 2015, to provide the Banking Committee with certain specified FMP data collected from mediator reports
2014	14-7, § 21	<ul style="list-style-type: none"> • requires mortgagees to provide a “certificate of good standing” to a mortgagor who (1) requests one, (2) completes the FMP, and (3) has been current on the mortgage payment for three years after completing the FMP (repealed by PA 16-65)
	14-84, § 12 and 14-217, § 207	<ul style="list-style-type: none"> • generally bars a mortgagor who consents to a foreclosure by sale from the FMP (repealed by PA 16-65) • allows the mortgagor to participate if (1) the court denies the foreclosure by sale or it is unlikely to occur and (2) he or she petitions to participate and did not substantially contribute to the reasons for the incomplete sale
	14-89, §§ 37, 38 & 46	<ul style="list-style-type: none"> • extends the FMP by two years, through June 30, 2016 • requires funding the FMP within available appropriations, with program size to be determined by fund availability and participant volume and need • requires the chief court administrator to develop a pre-mediation review protocol for mediators to seek resubmitted documents from mortgagors
2015	15-124	<ul style="list-style-type: none"> • extends the FMP by three years, through June 30, 2019 • expands the FMP to include eligible owner-occupants who are not borrowers on the mortgage but are permitted successors-in-interest • expands the information a mortgagee must provide to the mediator and mortgagor to include copies of agreements that modify the note or mortgage and the most current version of the required evaluation form • requires the pre-mediation meeting to occur within 49 days of the return date, rather than only having the date scheduled during that time • extends the deadline for the mediator to provide the mortgagee or counsel with confirmation of the mortgagor’s

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		<p>submitting forms and documents to the end of any pre-mediation extension period or three days after the denial of an extension request, rather than within 84 days after the return date</p> <ul style="list-style-type: none"> • allows the court to extend pre-mediation beyond the 84th day after the return date at a mediator’s request, for good cause, and provides the court procedure for doing so • requires annual reporting on the FMP from the chief court administrator to the Banking Committee
2016	16-65, §§ 87, 88, 92 & 94	<ul style="list-style-type: none"> • requires the court to schedule the pre-mediation meeting and first mediation session with all mortgagors who are relevant and necessary to the mediation, rather than only the appearing party mortgagor • expands the conditions in which a mediator may, for good cause, excuse a mortgagor’s nonattendance at mediation to include no longer owning or living in the home or not being a necessary party to a proposed agreement • eliminates the requirement that a represented mortgagor in a residential foreclosure case with a return date from July 1, 2008, to June 30, 2009, attend the first mediation session in person • eliminates the general ban on mortgagors who consent to foreclosures my market sale from the FMP • eliminates a requirement that mortgagees, on request, provide a certificate of good standing to certain mortgagors who have completed the FMP
2018	18-53, § 1	<ul style="list-style-type: none"> • eliminates the requirement that a represented mortgagor attend the first mediation session in person (PA 16-65 eliminated this requirement for residential mortgage foreclosures with a return date from July 1, 2008, to June 30, 2009)
2019	19-145	<ul style="list-style-type: none"> • extends the FMP by four years, through June 30, 2023 • correspondingly extends its data reporting requirement, but on a reduced schedule (biennially, rather than annually) • designates it the “Ezequiel Santiago Foreclosure Mediation Program”

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