

# Legislative Changes to the Foreclosure Mediation Program

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## Issue

Describe the changes to the state's Foreclosure Mediation Program (FMP) since its inception in 2008. This report updates and expands upon OLR Report [2020-R-0293](#).

## Summary

In Connecticut, foreclosures of real property located in the state are judicial, which means they must go through a 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.

Generally, the FMP is available to the following types of owners: (1) occupants of one- to four-family residential real property who use it as their primary residence and are borrowers or successors-in-interest and (2) religious organizations that are borrowers. If an eligible borrower or successor-in-interest files an appearance and requests mediation, the lender must participate. Among other things, the law establishes (1) a deadline for requesting the mediation, (2) the length of the mediation period and conditions under which this period may be extended, and (3) requirements that the parties and mediator must comply with.

The legislature established the program in 2008, as part of [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 2021.

Since its inception, 19 acts have modified the FMP. The changes include such things as:

1. extending the program's duration (most recently extended through June 30, 2029, by [PA 21-44](#));
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. adjusting various document requirements and deadlines;
5. funding the FMP within available appropriations, with program size to be determined by fund availability and the number of participants and their needs;
6. authorizing sanctions on parties or counsel for engaging in intentional or ongoing actions that are contrary to program objectives; and
7. allowing mediators to conduct pre-mediation meetings and mediation sessions virtually, using a virtual platform the mediator approves

## **Timeline of Principal FMP Changes Since Inception**

The principal program changes since the FMP's enactment in 2008 are described below, organized chronologically by public act. Please note that they do not include all the acts' changes.

### **2008**

[PA 08-2, November Sp. Sess., § 8:](#)

- Allowed (1) mediation periods to be extended by 30, rather than up to 10, days and (2) courts to grant an extension at the written request of a mediator
- Required that first mediation sessions be held within 15, rather than 10, days after notice of the mediation request is sent

### **2009**

[PA 09-209, §§ 34 to 36:](#)

- Made the FMP mandatory, rather than optional, for foreclosure actions with return dates beginning July 1, 2009, and correspondingly required mortgagees to provide certain mediation notices and forms to the mortgagors

- Allowed the courts to refer mortgagees to the FMP whenever they appear in a foreclosure action and meet its requirements
- Required that the foreclosure mediation certificate solicit enough information from the mortgagor to show that he or she is eligible to participate in the program
- Prohibited 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 (i.e., being available telephonically or electronically, with authority to agree to a settlement), unless there is reasonable cause
- Exempted information submitted by the mortgagor to the mediator from disclosure by the judicial branch

[PA 09-7, September Sp. Sess., § 95:](#)

- Required that the court-issued mediation notice be issued within three business days after the mortgagee returns the foreclosure writ to a court, rather than within three days
- Required courts to:
  - issue the mediation date notice three business days after they receive the mortgagor's appearance and certain forms, if it is later than the return date and
  - follow the same timeline as when mediation is formally requested for times when a court refers a foreclosure action to mediation

**2010**

[PA 10-181, §§ 1 & 2:](#)

- Extended the FMP by two years, through June 30, 2012
- Narrowed 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

**2011**

[PA 11-51, §§ 31 & 32](#) and [PA 11-201, §§ 2 & 4:](#)

- Extended the FMP by two years, through June 30, 2014, for foreclosure actions with return dates on or after July 1, 2009

[PA 11-201, §§ 1 to 4:](#)

- Extended the FMP to properties owned by religious organizations, except that it did not allow a mediator to refer a religious organization to certain state-approved mortgage assistance programs as he or she may do for residential mortgagors
- Required, for residential foreclosures:
  - mortgagees to give the mortgagor a specific mediation information form and contact information for Connecticut Housing Finance Authority (CHFA)-approved consumer credit counseling agencies
  - that the mediation information form, plus any related documents, be delivered to the mortgagee's counsel within 15 business days before the first mediation session
  - that the court-issued notice of foreclosure mediation have information from the Banking Department about community-based resources, including housing counseling agencies
  - that the first mediation session be held within 35 days, rather than 15 business days, after a court sends the notice scheduling the session and
  - mortgagees to, at least 15 business days before the first session, send to the mortgagor (1) an account history of the loan account for the previous 12 months and (2) contact information for someone who can take actions to avoid foreclosure (e.g., refinance)
- (1) Extended the time restriction on when a judgement of strict foreclosure or foreclosure by sale may occur after mediation ends and (2) restricted the actions that may occur in the foreclosure litigation for eight months after the return date
- Required the mortgagee, when its attorney appears at the mediation session instead of the mortgagee, to (1) be available to participate by speakerphone and (2) have an opportunity to engage in confidential discussions with counsel
- Required, 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; the non-attending mortgagors must be available by speakerphone and able to have confidential discussions with counsel
- Specified 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**

### [PA 12-1, June Sp. Sess., § 129:](#)

- Required the following:
  - mortgagees to include the judicial branch's form on community-based resources for parties involved in foreclosure mediation with any notice to accelerate a mortgagor's loan;
  - municipalities to include the form with any statement sent to a homeowner about a public sewer, water service, or property tax arrearage; and
  - 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**

### [PA 13-136, §§ 1 to 4:](#)

- Expanded the FMP's scope to include short sales and deeds in lieu of foreclosure
- Extended the FMP by two years, through June 30, 2014, for foreclosure actions with return dates from July 1, 2008, to June 30, 2009, and allowed the courts to extend the period for submitting a mediation request form and filing an appearance in those cases, if there was good cause
- Expressly prohibited the mediators from giving legal advice
- Established a new mediation information form for residential foreclosures with October 1, 2013, or later return dates
- Prohibited the courts from assigning a case to mediation if they do not receive the appearance and mediation certificate forms within 15 days of the return date
- Required mortgagees, once a case is assigned to mediation and within 35 days of the return date, to 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
- Required the courts to assign a 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
- Required mediators to review the forms and documentation with the mortgagor at the pre-mediation meeting and discuss options for the mortgagor

- Required the mediator, within 84 days after the return date, to (a) inform the mortgagee about the mortgagor's submitted documents and (b) file a report with the court saying if mediation must be scheduled and providing information about the supplied forms and documents
- Required, if the mediator determines the mortgagee must participate in mediation, the court to schedule the first mediation session, which must be held within five weeks of the mortgagor submitting the required forms and documents to the mortgagee
- Allowed a mortgagor to contest a mediator's decision not to have a mediation session scheduled
- Limited when courts may refer an action to the FMP to only when there is good cause
- Required that the mediation period end the earlier of the end of the third mediation session or seven months after the return date, unless extended by a court at the request of the mediator or a party for one additional session by mutual agreement of the parties
- Limited the courts' discretion to extend or shorten the mediation period to cases in which a party or the mediator requests it, but removed the 30-day extension period limit
- Required parties to attend mediation with the ability to mediate rather than with the authority to agree to a proposed settlement
- Exempted either party from having to attend a mediation session if counsel attends on its behalf, except that a mortgagor must attend the first session
- Limited, in mediations with at least two mortgagors, the requirement that at least one mortgagor appear at mediation sessions after the first one in person to those who are self-represented
- Allowed 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
- Required a mortgagee to:
  - 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
  - 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
- Required 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

- Authorized sanctions against any party or counsel for engaging in intentional or ongoing actions contrary to the FMP’s objectives
- Eliminated a provision that prohibited making failure to comply with document requirements grounds to end the mediation period before the second session
- Specified, for cases pending on October 1, 2013, how sessions held before that date should be counted for determining if mediation should continue
- Required 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

[PA 13-247, § 326](#) and [PA 13-276, § 42](#):

- Modified and ultimately eliminated the requirement that municipalities include the judicial branch’s form on community-based resources with any statement sent to a homeowner about a public sewer, water service, or property tax arrearage

**2014**

[PA 14-7, § 21](#):

- Required 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](#))

[PA 14-84, §§ 7 & 12](#) and [PA 14-217, §§ 207 & 249](#):

- Generally barred a mortgagor who consents to a foreclosure by sale from the FMP (repealed by [PA 16-65](#))
- Allowed mortgagors to participate in the FMP if a (1) court denies a foreclosure by sale or circumstances develop that make it unlikely to occur and (2) mortgagor petitions to participate in the program and did not substantially contribute to the reasons for the incomplete sale

[PA 14-89, §§ 37, 38 & 46](#):

- Extended the FMP by two years, through June 30, 2016
- Required that the FMP be funded within available appropriations, with program size determined by fund availability and participant volume and need
- Required the chief court administrator to develop a pre-mediation review protocol for mediators to seek resubmitted documents from mortgagors

## **2015**

### [PA 15-124:](#)

- Extended the FMP by three years, through June 30, 2019
- Expanded the FMP to include eligible owner-occupants who are not borrowers on the mortgage but are permitted successors-in-interest
- Expanded 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
- Required that the pre-mediation meeting occur within 49 days of the return date, rather than only having the date scheduled during that time
- Extended the deadline for the mediator to provide the mortgagee or counsel with confirmation of the mortgagor's 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
- Allowed the courts to extend pre-mediation beyond the 84th day after the return date at a mediator's request, for good cause, and specified the procedure for doing so
- Required annual reporting on the FMP from the chief court administrator to the Banking Committee

## **2016**

### [PA 16-65, §§ 79, 87, 88, 92 & 94:](#)

- Allowed certain mortgagors whose mortgage was the subject of a judgment of loss mitigation filing to participate in the FMP if a court does not enter the judgment
- Required the courts 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
- Expanded 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
- Eliminated, for residential foreclosure cases with a return date from July 1, 2008, to June 30, 2009, the requirement that a represented mortgagor attend the first mediation session in person
- Eliminated the program's general ban on participation by mortgagors who consent to foreclosures by market sale



- Eliminated a requirement that mortgagees, on request, provide a certificate of good standing to certain mortgagors who have completed the FMP

## **2018**

### [PA 18-53:](#)

- Eliminated the requirement that a represented mortgagor attend the first mediation session in person

## **2019**

### [PA 19-145:](#)

- Extended the FMP by four years, through June 30, 2023
- Correspondingly extended its data reporting requirement, but on a reduced schedule (biennially, rather than annually)
- Designated the program as the “Ezequiel Santiago Foreclosure Mediation Program”

## **2021**

### [PA 21-44 §§ 1-5:](#)

- Extended the FMP by six years, through June 30, 2029
- Allowed mediators to conduct pre-mediation meetings and mediation sessions virtually, using a virtual platform the mediator approves
- Eliminated the FMP data reporting requirement
- Required that mortgagee and mediator reports include (1) the mortgagee’s history of voluntary foreclosure avoidance efforts and, (2) for federally backed mortgages, the mortgagee’s history of compliance with any obligation to notify the mortgagor of loss mitigation or foreclosure alternatives, including any required or made available by federal authorities in response to COVID-19

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