

Senate, April 3, 1998. The Committee on Judiciary reported through SEN. WILLIAMS, 29th DIST., Chairman of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CREATING A MORTGAGOR'S GOOD FAITH DEFENSE FOR PAYMENTS MADE TO AN ASSIGNOR WITHOUT NOTICE OF THE ASSIGNMENT.

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

1 Section 1. Section 49-10 of the general
2 statutes is repealed and the following is
3 substituted in lieu thereof:

4 (a) AS USED IN THIS SECTION, "MORTGAGE DEBT"
5 MEANS A DEBT OR OTHER OBLIGATION SECURED BY
6 MORTGAGE, ASSIGNMENT OF RENT OR ASSIGNMENT OF
7 INTEREST IN A LEASE AND "NOTICE" MEANS NOTICE AS
8 DEFINED IN SUBSECTION (25) OF SECTION 42a-1-201.

9 [(a)] (b) Whenever any MORTGAGE debt [or
10 other obligation secured by mortgage, assignment
11 of rent or assignment of interest in a lease,] is
12 assigned by an instrument in writing containing a
13 sufficient description to identify the mortgage,
14 assignment of rent or assignment of interest in a
15 lease, as security for the MORTGAGE debt, [or
16 obligation,] and that assignment has been
17 executed, attested and acknowledged in the manner
18 prescribed by law for the execution, attestation
19 and acknowledgment of deeds of land, the title
20 held by virtue of the mortgage, assignment of rent
21 or assignment of interest in a lease, shall vest

22 in the assignee. An instrument substantially in
23 the following form is sufficient for such
24 assignment:

25 Know all Men by these Presents, That of
26 in the county of and state of does
27 hereby grant, bargain, sell, assign, transfer and
28 set over a certain (mortgage, assignment of rent
29 or assignment of interest in a lease) from to
30 dated and recorded in the records of the
31 town of county of and state of
32 Connecticut, in book at page

33 In Witness Whereof have hereunto set
34 hand and seal, this day of A.D. ...

35 Signed, sealed and delivered
36 in the presence of

37 (Seal)
38 (Acknowledged)

39 [(b) Whenever] (c) IN ADDITION TO THE
40 REQUIREMENTS OF SUBSECTION (b) OF THIS SECTION,
41 WHENEVER an assignment of any residential mortgage
42 loan (1) made by a lending institution organized
43 under the laws of or having its principal office
44 in any other state and (2) secured by mortgage on
45 residential real estate located in this state is
46 made in writing, the instrument shall contain the
47 name and business or mailing address of all
48 parties to such assignment.

49 (d) IN ACCORDANCE WITH SECTION 42a-3-602, AS
50 AMENDED BY SECTION 2 OF THIS ACT, IF A MORTGAGE
51 DEBT IS ASSIGNED, A PARTY OBLIGED TO PAY SUCH DEBT
52 MAY DISCHARGE IT, TO THE EXTENT OF THE PAYMENT, BY
53 PAYING THE ASSIGNOR UNTIL THE PARTY OBLIGED TO PAY
54 RECEIVES SUFFICIENT NOTICE IN ACCORDANCE WITH
55 SUBSECTION (f) OF THIS SECTION THAT THE MORTGAGE
56 DEBT HAS BEEN ASSIGNED AND THAT PAYMENT IS TO BE
57 MADE TO THE ASSIGNEE. IF REQUESTED BY THE PARTY
58 OBLIGED TO PAY, THE ASSIGNEE MUST FURNISH
59 REASONABLE PROOF THAT THE ASSIGNMENT HAS BEEN
60 MADE, AND UNTIL THE ASSIGNEE DOES SO, THE PARTY
61 OBLIGED TO PAY MAY PAY THE ASSIGNOR. FOR THE
62 PURPOSES OF THIS SUBSECTION, "REASONABLE PROOF" OF
63 THE ASSIGNMENT MEANS NOTICE SIGNED BY THE ASSIGNOR
64 AND ASSIGNEE, OR IF A COPY OF THE ASSIGNMENT IS
65 ATTACHED, OR IF, PURSUANT TO THE INSTRUMENT OR BY

66 AGREEMENT WITH THE PARTY OBLIGED TO PAY THE
67 MORTGAGE DEBT, OTHER REASONABLE PROOF IS GIVEN.

68 (e) IF A MORTGAGE DEBT IS ASSIGNED, A PARTY
69 OBLIGED TO PAY SUCH DEBT WHO, IN GOOD FAITH AND
70 WITHOUT SUFFICIENT NOTICE OF THE ASSIGNMENT,
71 EXECUTES A MODIFICATION OR EXTENSION OF THE
72 MORTGAGE WITH THE ASSIGNOR, SHALL HAVE THE BENEFIT
73 OF SUCH MODIFICATION OR EXTENSION. HOWEVER, THE
74 ASSIGNEE ACQUIRES CORRESPONDING RIGHTS UNDER THE
75 MODIFIED OR EXTENDED MORTGAGE. THE ASSIGNMENT MAY
76 PROVIDE THAT MODIFICATION OR EXTENSION OF THE
77 MORTGAGE SIGNED BY THE ASSIGNOR AFTER EXECUTION OF
78 THE ASSIGNMENT IS A BREACH BY THE ASSIGNOR OF ITS
79 CONTRACT WITH THE ASSIGNEE.

80 (f) NOTICE OF ASSIGNMENT UNDER SUBSECTION (d)
81 OF THIS SECTION IS SUFFICIENT IF THE ASSIGNEE
82 NOTIFIES A PARTY OBLIGED TO PAY THE MORTGAGE DEBT
83 (1) BY MAILING TO THE PARTY OBLIGED TO PAY, AT THE
84 PARTY'S LAST BILLING ADDRESS, A NOTICE OF THE
85 ASSIGNMENT IDENTIFYING THE INSTRUMENT AND MORTGAGE
86 DEBT ASSIGNED, THE PARTY OBLIGED TO PAY SUCH DEBT,
87 ASSIGNOR AND ASSIGNEE, THE DATE OF THE ASSIGNMENT,
88 AND THE NAME AND ADDRESS OF THE PERSON TO WHOM
89 PAYMENTS SHOULD BE MADE, (2) BY GIVING NOTICE OF
90 THE ASSIGNMENT PURSUANT TO 12 USC SECTION 2605,
91 SECTION 6 OF THE FEDERAL REAL ESTATE SETTLEMENT
92 PROCEDURES ACT OF 1974 AND THE REGULATIONS
93 PROMULGATED PURSUANT TO THAT SECTION, AS AMENDED
94 FROM TIME TO TIME, OR (3) BY GIVING ACTUAL NOTICE
95 REASONABLY IDENTIFYING THE RIGHTS ASSIGNED IN ANY
96 OTHER MANNER. NO SIGNATURE ON THE NOTICE IS
97 NECESSARY TO GIVE NOTICE OF THE ASSIGNMENT AND THE
98 NOTICE MAY INCLUDE ANY OTHER INFORMATION.

99 (g) RECORDATION OF AN ASSIGNMENT OF MORTGAGE
100 DEBT, WITHOUT OTHER SUFFICIENT NOTICE, IS NOT
101 NOTICE OF THE ASSIGNMENT UNDER SUBSECTION (d) or
102 (e) OF THIS SECTION TO THE PARTY OBLIGED TO PAY.

103 Sec. 2. Section 42a-3-602 of the general
104 statutes is repealed and the following is
105 substituted in lieu thereof:

106 (a) Subject to subsection (b), an instrument
107 is paid to the extent payment is made [(i)] by or
108 on behalf of a party obliged to pay the instrument
109 [, and (ii)] (1) to a person entitled to enforce
110 the instrument OR (2) AS PROVIDED BY SECTION
111 49-10, AS AMENDED BY SECTION 1 OF THIS ACT, TO THE
112 ASSIGNOR IN THE CASE OF A MORTGAGE DEBT THAT IS
113 ASSIGNED WITHOUT SUFFICIENT NOTICE TO THE PARTY

114 OBLIGED TO PAY. To the extent of the payment, the
115 obligation of the party obliged to pay the
116 instrument is discharged even though payment is
117 made with knowledge of a claim to the instrument
118 under section 42a-3-306 by another person.

119 (b) The obligation of a party to pay the
120 instrument is not discharged under subsection (a)
121 if: (1) A claim to the instrument under section
122 42a-3-306 is enforceable against the party
123 receiving payment and (i) payment is made with
124 knowledge by the payor that payment is prohibited
125 by injunction or similar process of a court of
126 competent jurisdiction, or (ii) in the case of an
127 instrument other than a cashier's check, teller's
128 check, or certified check, the party making
129 payment accepted, from the person having a claim
130 to the instrument, indemnity against loss
131 resulting from refusal to pay the person entitled
132 to enforce the instrument; or (2) the person
133 making payment knows that the instrument is a
134 stolen instrument and pays a person it knows is in
135 wrongful possession of the instrument.

136 STATEMENT OF LEGISLATIVE COMMISSIONERS: In section
137 1, "MEANS NOTICE AS" was added after "NOTICE" for
138 accuracy, and in subsections (d) and (f),
139 "mortgagor" was changed to "party obliged to pay
140 such debt" for consistency and accuracy.

141 JUD COMMITTEE VOTE: YEA 39 NAY 0 JFS-LCO

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF 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 HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER sSB 577

STATE IMPACT	None
MUNICIPAL IMPACT	None
STATE AGENCY(S)	None

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OLR BILL ANALYSIS

SB 577

AN ACT CREATING A MORTGAGOR'S GOOD FAITH DEFENSE FOR PAYMENTS MADE TO AN ASSIGNOR WITHOUT NOTICE OF THE ASSIGNMENT

SUMMARY: This bill allows a person obligated to pay a mortgage debt (obligor) after it has been assigned, under certain circumstances, (1) to continue to pay the person who assigned it (assignor) and (2) in good faith, to execute a binding modification or extension with the assignor. It allows the obligor to do so until he receives sufficient notice of the assignment, and, if he requests it from the assignee, reasonable proof that an assignment was made. It requires the assignee to provide such proof when the obligor requests it and defines reasonable proof as (1) a notice signed by the assignor and assignee, (2) a copy of the assignment, or (3) other reasonable proof given pursuant to an agreement with the obligor. The bill applies the same rules for assignments of rent and assignment of an interest in a lease as it does to assignments of debts secured by a mortgage.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION**Notice**

Under the bill, a person has "notice" of a fact when (1) he has actual knowledge of it, (2) he has received notice of it, or (3) from all the facts and circumstances known to him at the time he has reason to know it exists.

Notice Of Assignment

Under the bill, notice of assignment is sufficient if the assignee notifies the obligor (1) by mailing to him, at his last billing address, a notice of the assignment identifying the mortgage note and deed that were assigned, the mortgagor, assignor and assignee, the assignment date, and the name and address of the person to whom payments should be made; (2) by giving notice of the assignment pursuant to the Real Estate Settlement Procedures Act RESPA, and regulations promulgated under that section; or (3) by giving actual notice reasonably identifying the rights assigned in any other manner.

The bill specifies that recording an assignment does not constitute notice for its purposes.

Modification or Extension

The bill permits an obligor to execute a modification or extension of a mortgage with the assignor after the assignment if the obligor acts in good faith and without sufficient notice of the assignment. Under such circumstances, the obligor gets the benefit of the assignment or extension and the assignee acquires corresponding rights under the modified or extended mortgage. The bill specifies that an assignment can provide that modifications or extensions signed by the assignor after the assignment constitutes a breach by the assignor of its contract with the assignee.

BACKGROUND**RESPA Notice Requirements**

Federal law requires servicers of federally related mortgage loans to notify the borrower in writing of any

assignment, sale, or transfer of the servicing of the loan to any other person. Generally, the notice must include specified information such as:

1. the effective date of transfer;
2. the name, address, and toll-free or collect call telephone number of the transferee servicer;
3. the date on which the transferer or servicer will stop accepting payments and the date on which the transferee will begin to accept such payments (12 USC Sec. 2605).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Report

Yea 39 Nay 0