



General Assembly

File No. 183

**January Session,
2009**

Substitute Senate Bill No. 619

Senate, March 25, 2009

The Committee on Banks reported through SEN. DUFF of the 25th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING FORECLOSURE PROCEDURES.

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

Section 1. Section 49-31l of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) (1) Prior to July 1, 2010, when a mortgagee commences an action for the foreclosure of a mortgage on residential real property [**with a return date on or after July 1, 2008,**] the mortgagee shall give notice to the mortgagor of the foreclosure mediation program established in section 49-31m by attaching to the front of the foreclosure writ, summons and complaint that is served on the mortgagor: [(1) (A) A copy of the notice of [the availability of] foreclosure mediation, in such form as the Chief Court Administrator prescribes, and [(2) a foreclosure mediation request form, in such form as the Chief Court Administrator prescribes] (B) a copy of the foreclosure mediation certificate form described in subsection (b) of this section, in such form as the Chief Court Administrator prescribes. Such mortgagee shall include with such notice, certificate, writ, summons and complaint a blank appearance form, in such form as the Chief Court Administrator prescribes.

(2) The court shall issue a notice of foreclosure mediation described in subsection (b) of this section to the mortgagor not later than three days after the mortgagee returns the writ to the court.

(b) (1) [Except as provided in subdivision (2) of this subsection, a mortgagor may request foreclosure mediation by submitting the foreclosure mediation request form to the court and filing an appearance not more than fifteen days after the return day for the foreclosure action. Upon receipt of the foreclosure mediation request form, the court shall notify each appearing party that a foreclosure mediation request form has been submitted by the mortgagor.] The notice of foreclosure mediation shall instruct the mortgagor to file the appearance and foreclosure mediation certificate forms with the court no later than the date fifteen days from the return date for the foreclosure action. The foreclosure mediation certificate form shall require the mortgagor to provide sufficient information to permit the court to confirm that the defendant in the foreclosure action is a mortgagor.

(2) [The court may grant a mortgagor permission to submit a foreclosure mediation request form and file an appearance after the fifteen-day period established in subdivision (1) of this subsection, for good cause shown, except that no foreclosure mediation request form may be submitted and no appearance may be filed more than twenty-five days after the return date.] Upon receipt of the mortgagor's appearance and foreclosure mediation certificate forms, and provided the court determines the defendant in the foreclosure action is a mortgagor, the court shall schedule a date for foreclosure mediation in accordance with section 49-31n, as amended by this act, and shall issue notice of such mediation date to all appearing parties no later than the date two business days after the date the appearance and foreclosure mediation certificate forms are filed. If the court does not receive the appearance and foreclosure mediation certificate forms from the mortgagor by the date fifteen days after the return date for the foreclosure action, the court shall not schedule such mediation.

(3) [No foreclosure mediation request form may be submitted to the court on or after July 1, 2010.] Notwithstanding the provisions of this section, the court may refer to the foreclosure mediation program at any time a mortgagor who appears in a foreclosure action.

[(c) If at any time on or after July 1, 2008, but prior to July 1, 2010, the court determines that the notice requirement of subsection (a) of this section has not been met, the court may, upon its own motion or upon the written motion of the mortgagor, issue an order that no judgment may enter for fifteen days during which period the mortgagor may submit a foreclosure mediation request form to the court.]

[(d)] (c) Notwithstanding any provision of the general statutes or any rule of law to the contrary, prior to July 1, 2010, no judgment of strict foreclosure nor any judgment ordering a foreclosure sale shall be entered in any action instituted by the mortgagee to foreclose a mortgage on residential real property unless: (1) [Notice to the mortgagor has been given by the mortgagee in accordance with subsection (a) of this section and the time for submitting a foreclosure mediation request form has expired and no foreclosure mediation request form has been submitted, or if such notice has not been given, the time for submitting a foreclosure mediation request form pursuant to subsection (b) or (c) of this section has expired and no foreclosure mediation request

form has been submitted, or (2) the] The mediation period set forth in section 49-31n, as amended by this act, has expired or has otherwise terminated, whichever is earlier, or (2) the mediation program is not otherwise required or available.

[(e)] (d) None of the mortgagor's or mortgagee's rights in the foreclosure action shall be waived by [the mortgagor's submission of a] participation in the foreclosure mediation [request form to the court] program.

Sec. 2. Section 49-31n of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) The mediation period under the foreclosure mediation program established in section 49-31m shall commence when the court sends notice to each appearing party [that a] scheduling the first foreclosure mediation [request form has been submitted by a mortgagor to the court, which] session, and except as provided in subsection (b) of section 49-31l, as amended by this act, said notice shall be sent not later than [three] two business days after [the court receives a completed foreclosure mediation request form] the return date for the foreclosure action. The mediation period shall conclude [not more than] no later than the date sixty days after the return [day] date for the foreclosure action, except that the court may, in its discretion, for good cause shown, (1) extend, by not more than thirty days, or shorten the mediation period on its own motion or upon motion of any party, or (2) extend by not more than thirty days the mediation period upon written request of the mediator.

(b) The first mediation session shall be held not later than fifteen business days after the court sends notice to [all parties that a foreclosure mediation request form has been submitted to the court] each appearing party in accordance with subsection (b) of section 49-31l, as amended by this act, or subsection (a) of this section. The mortgagor and mortgagee shall appear in person at each mediation session and shall have authority to agree to a proposed settlement, except that if the mortgagee is represented by counsel, the mortgagee's counsel may appear in lieu of the mortgagee to represent the mortgagee's interests at the mediation, provided such counsel has the authority to agree to a proposed settlement and the mortgagee is available during the mediation session by telephone or electronic means. The court shall not award attorney's fees to any mortgagee for time spent in the first mediation session if such mortgagee does not have a person with authority to agree to a proposed settlement available during such session either in person or by telephone or electronic means.

(c) Not later than two days after the conclusion of the first mediation session, the mediator shall determine whether the parties will benefit from further mediation. The mediator shall file with the court a report setting forth such determination and mail a copy of such report to each appearing party. If the mediator reports to the court that the parties will not benefit from further mediation, the mediation period shall terminate automatically. If the mediator reports to the court after the first mediation session that the parties may benefit from further mediation, the mediation period shall continue.

(d) If the mediator has submitted a report to the court that the parties may benefit from further mediation pursuant to subsection (c) of this section, not more than two days after the conclusion of the mediation, but no later than the termination of the mediation period set forth in subsection (a) of this section, the mediator shall file a report with the court describing the proceedings and specifying the issues resolved, if any, and any issues not resolved pursuant to the mediation. The filing of the report shall terminate the mediation period automatically. If certain issues have not been resolved pursuant to the mediation, the mediator may refer the mortgagor to any appropriate community-based services that are available in the judicial district, but any such referral shall not cause a delay in the mediation process.

(e) The Chief Court Administrator shall establish policies and procedures to implement this section. Such policies and procedures shall, at a minimum, provide that the mediator shall advise the mortgagor at the first mediation session required by subsection (b) of this section that: (1) Such mediation does not suspend the mortgagor's obligation to respond to the foreclosure action in accordance with applicable rules of the court; and (2) a judgment of strict foreclosure or foreclosure by sale may cause the mortgagor to lose the residential real property to foreclosure.

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

(g) **[Foreclosure mediation request forms shall not be accepted by the court on or after July 1, 2010, and the]** [The](#) foreclosure mediation program shall terminate when all mediation has concluded with respect to any **[applications submitted to the court]** [foreclosure action commenced](#) prior to July 1, 2010.

(h) At any time during the mediation period, the mediator may refer the mortgagor to the mortgage assistance programs, except that any such referral shall not prevent a mortgagee from proceeding to judgment when the conditions specified in subsection **[(d)]** [\(c\)](#) of section 49-31l, [as amended by this act](#), have been satisfied.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	49-31l
Sec. 2	<i>October 1, 2009</i>	49-31n

BA *Joint Favorable Subst.*

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 10 \$	FY 11 \$
Judicial Dpt; State Comptroller - Fringe Benefits	GF - Cost	\$4.8 million	\$1.6 million

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill makes the foreclosure mediation program established under PA 08-176 mandatory (effective October 1, 2009) for any foreclosure action on residential real property. This policy change would triple the number of mediations conducted under current law, which makes such mediation contingent upon the filing of a request for mediation.

The bill does not alter the current law provision that closes the program to new participants on and after July 1, 2010. However, since the mediation deadline is 90 days after mediation begins, the cost of the bill would continue for three months into FY 11.

The annual, incremental cost of the bill's caseload increase is estimated to be \$6.4 million including salaries, fringe benefits and other expenses; however, only a portion (75%) of this cost would be incurred in FY 10 since the bill's effective date is October 1st.

The foreclosure mediation program currently is funded through an appropriation from the Banking Fund. Absent a specific appropriation in this bill, it is anticipated that the bill's cost would be borne by the General Fund (which is the default fund).

The Out Years

There would be no fiscal impact in the out years since the program is effectively terminated within three months of July 1, 2010.

Source: Judicial Department Foreclosure Mediation Program Statistics as of 12/31/2008 included in the PowerPoint slideshow presented at the Banks Committee's 2/2/09 Informational Forum held on Foreclosure Mediation.

OLR Bill Analysis

sSB 619

AN ACT CONCERNING FORECLOSURE PROCEDURES.

SUMMARY:

The bill makes the foreclosure mediation program established pursuant to PA 08-176 mandatory, rather than optional. To that end, the bill changes the mechanism by which borrowers are notified and makes other conforming changes.

The bill specifies that no judgment of strict foreclosure or foreclosure by sale can be entered before July 1, 2010 unless the mediation period has expired or otherwise terminated, whichever is earlier, or the mediation program is not otherwise required or available (see COMMENT).

By law, lenders must appear in person at the first mediation session and be authorized to agree to a proposed settlement. If the lender's attorney appears instead, he or she must have such authority, and the lender must be available by phone or electronic means. The bill specifies that the court cannot award attorney's fees to any lender for time spent in the first mediation session if the lender does not have a person with authority available during the session in person, by phone, or electronic means. This appears to contradict existing law, which requires the person with authority to be present.

EFFECTIVE DATE: October 1, 2009

MEDIATION PROCEDURE

By law, the lender has to inform the borrower about the mediation program by attaching a notice of availability of foreclosure mediation and a mediation request form to the front of the foreclosure complaint. Since the bill makes mediation automatic, it requires lenders to attach instead (1) a notice of foreclosure mediation, (2) a foreclosure mediation certificate, and (3) a blank appearance form, all in a chief court administrator prescribed form. The foreclosure mediation certificate must require the borrower to provide enough information to allow the court to confirm that the defendant in the foreclosure action is actually an owner-occupant of a one-to-four family residential real property located in this state who is also the borrower under a mortgage encumbering the real property, which is the primary residence. The bill also specifies that the notice and certificate should actually be attached to the front of the writ summons, which typically appears in front of the complaint.

Generally, when the lender serves the borrower in the foreclosure action, it must return the writ to the court. After the lender returns the writ to the court, the bill gives the court three days to issue a notice of foreclosure mediation to the borrower. The notice must tell the borrower to file the appearance form and foreclosure mediation certificate with the court no more than 15 days after the foreclosure action return date (the date by which the lender must respond to the foreclosure action). When the court receives the borrower's forms, if he or she meets the above-referenced requirements, the court must schedule a foreclosure mediation date and notify all appearing parties two business days after the forms are received (see COMMENT). If the forms are not returned by the deadline, the court cannot schedule mediation. However, the bill allows the court to refer a person meeting the requirements to the program any time they appear in a foreclosure action.

COMMENT

Foreclosure Judgments Entered After July 1, 2010

By law, and under the bill, mediations are allowed to begin up until June 30, 2010 (and therefore continue after that date). However, it appears that this provision allows actions that continue after June 30, 2010 to go to judgment without meeting the bill's requirements.

Scheduling the First Mediation

The section on scheduling the first mediation session appears to conflict with another section of the bill which, except as noted above, requires the notice scheduling the first mediation to be sent no more than two business days after the foreclosure action's return date. It is unclear in what situation this timeline would apply. Additionally, the provision is unworkable in conjunction with the first timeline because the trigger for the scheduling (the borrower's filing of an appearance the certificate) is not required until 15 days after the return date.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 15 Nay 1 (03/10/2009)

[TOP](#)