



Practice Note
Connecticut
August 2011

***Public Act 201: Revised Foreclosure Mediation Rules and
Registration Requirements / New Tenant Protections***

For agents involved in the practice of representing clients regarding foreclosures of mortgages on real estate located in the State of Connecticut, the legislature has, this session, enacted revisions to the existing foreclosure mediation program, revisions to the foreclosure registration requirements and added protections for tenants residing in foreclosed homes. The legislation is found in [Public Act 11-201](#) as Sections 1-4, 7 and 8 and 13-15.

Should you have any questions or need assistance please contact any underwriting attorney in our Rocky Hill or Norwalk offices.

Foreclosure Mediation Program Changes:

1. Sunset Date

The judicial foreclosure mediation program has been extended by two years, until July 1, 2014, for foreclosure actions with return dates on or after July 1, 2009. For actions with return dates from July 1, 2008 to June 30, 2009, the current end date of July 1, 2012 remains in place.

2. Religious Organizations

The program is expanded to include religious organizations that own real property in Connecticut where the organization is the borrower on a loan secured by a mortgage on that property. The purpose of the loan must have been for religious purposes.

3. Changes to Mediation Process

A. Additional Forms

When a mortgagee commences an action for the foreclosure of a mortgage on residential real property (as already defined in Conn. Gen. Stat. § 49-31k) or real property owned by a religious organization, which mortgage secures a loan made

primarily for personal, family, religious or household purposes, and which action has a return date on or after October 1, 2011, in addition to the documents already required by law to be attached to the front of the writ, summons and complaint, additional documents must now be attached. These new documents are referred to in the legislation as "*a mediation information form and a notice.*" The [form](#) and [notice](#) have been prescribed by the Chief Court Administrator, and are now available online. The form is designed to elicit current financial information and other nonfinancial information from the mortgagor which is deemed "useful" to the mediation process. The instructions tell the mortgagor to deliver the completed form, along with documentation stated in the instructions to the form, to the mortgagee's counsel, not later than fifteen business days prior to the date of the initial mediation session. The notice contains contact information for consumer credit counseling agencies. The notice reminds the mortgagor to deliver the completed mediation form and accompanying documentation, and encourages such delivery in advance of the required date. Such completed form and documentation will not be publicly available without the explicit written instructions of the mortgagor. The notice shall be accompanied by [materials](#) from the Department of Banking, as prescribed by the Chief Court Administrator, which describe community-based resources available to the mortgagor that may assist in the preparation of the mediation information form and application for mortgage assistance programs.

B. Additional Time Frame Before Non-Mediation Pleadings May Be Filed

For the period of time not exceeding eight (8) months from the return date, no mortgagee or mortgagor shall make any motion, request or demand with respect to the other, except those filings that relate to the mediation program and the mediation sessions. The one exception to this provision is that the mortgagor may file a motion to dismiss and the mortgagee may object to such motion. If the mortgagor elects to make any other motion, request or demand as to the mortgagee, the eight month limitation shall no longer apply to either party. No foreclosure judgment shall be entered in an action subject to this legislation unless the mediation period has expired or otherwise terminated and, if less than eight months has elapsed from the return date at the time of termination, fifteen days shall have elapsed since such termination. This new rule does not affect any motion made or any default or judgment entered on or before June 30, 2011.

C. Religious Organizations

Religious organizations are defined under the legislation as "an organization that meets the religious purposes test of Section 501(c)(3) of the Internal Revenue Code of 1986." Actions by a mortgagee for the foreclosure of a mortgage on real property owned by a religious organization, which mortgage secures a loan made to the religious organization primarily for religious purposes, shall be subject to the provisions of the foreclosure mediation program.

D. Expansion of Date for Initial Session When Court Elects to Make Referral

There has also been a revision to Section 49-31(c)(5) in that, when the court elects to make a referral to the mediation program [as opposed to the mandatory referral provisions of subsection (4)], the first foreclosure mediation session shall be on a date not later than thirty (35) days from the date of the referral. (The former timeframe was "not later than fifteen business days from the date of the referral.")

If the mediation proceeds based upon a foreclosure mediation request submitted to the court, under revised Section 49-31(c)(2), the first mediation session shall be held not later than fifteen business days after the court sends notice to each appearing party that a request for mediation has been received. This applies to mediations commencing prior to October 1, 2011. On and after October 1, 2011, the first mediation session shall be held not later than thirty-five days after the court sends notice to each appearing party that a mediation request has been received.

E. New Mortgagee Obligation

1. On and after October 1, 2011, not later than fifteen days prior to the date of the first mediation session, the mortgagee shall deliver to the mortgagor: (A) an account history identifying all credits and debits assessed to the loan account in the immediately preceding twelve-month period; and (B) the name, business mailing address, electronic mail address, facsimile number and direct telephone number of an individual able to process requests to refinance or modify the mortgage loan at issue or otherwise take action to avoid foreclosure of the mortgage. The legislation also requires the mortgagee, with reasonable promptness, to provide the mortgagor and mortgagor's counsel with updates to the contact information.
2. If a mortgagee's attorney is appearing at the mediation session on behalf of the mortgagee, in addition to the counsel needing to have authority to agree to a proposed settlement and the mortgagee needing to be available during the session by telephone, effective October 1, 2011, the mortgagee must also be available to participate in the session by speakerphone, provided an opportunity is afforded for confidential discussions between the mortgagee and its counsel. Similarly, following the initial mediation session, if there are two or more mortgagors, only one need appear at subsequent sessions, provided the other must be available by speakerphone, provided an opportunity is afforded for confidential discussions among the mortgagors and their counsel.

F. Limitations on Termination of Mediation

Section 49-31n(c)(3) has been amended to add that either party's failure to comply with the documentation requirements of this section or 49-31l shall not be grounds for terminating the mediation period before a second session is conducted.

Foreclosure Registration Requirements:

Pre-existing law (Section 7-148hh, *et seq.*) created the obligation upon parties who had taken title to property improved by one-to-four family dwellings through foreclosure to register the property with the town clerk of the municipality in which the property was situated, if the property was vacant on the date title vested or if, as a result of an execution of ejectment or summary process action, such property became vacant.

Under the new legislation, effective October 1, 2011, Section 13 of PA 11-201 (the "Act") contains the following definitions:

- "Registrant" means the owner of residential property who is required to register such property (but the term is not applicable to the party foreclosing at the commencement of the action although the legislation does require the commencing party to register – see below).
- "Residential Property" means a building containing one or more dwelling units and includes a commercial building containing one or more dwelling units.
- "Dwelling Unit" means any house or building or portion thereof which is occupied, designed to be occupied or rented, leased or hired out to be occupied, exclusively as a home or residence of one or more persons.
- "Mortgage" means a mortgage on residential real property that is held by a person other than a natural person.
- "Person" includes all types of private entities, public corporations and governmental entities.

Under Section 14 of the Act, any holder of a mortgage who, on or after October 1, 2011, commences an action to foreclose a mortgage on residential property is required to register the property with the town clerk *at the time and place of the recording of the lis pendens in accordance with Section 52-325*. Such registration shall be maintained by the municipality separate and apart from the land records.

Therefore, the property needs to be registered by the party commencing the mortgage foreclosure whether or not it is vacant, if it includes one or more dwelling units. The only mortgagee that is exempt from registration is a natural person.

Registration shall contain:

1. the name, address, telephone number and electronic mail address of the plaintiff in the foreclosure action *and*, if the plaintiff is located out-of-state, the name, address, telephone number and electronic mail address of a direct contact in the state, provided a direct contact is available;
2. the name, address, telephone number and electronic mail address of the person, local property maintenance company or other entity serving as such plaintiff's contact with the municipality for any matters concerning the property;
3. the following heading in at least ten-point boldface capital letters: **NOTICE TO MUNICIPALITY: REGISTRATION OF PROPERTY BEING FORECLOSED.** The plaintiff must indicate on the form whether it prefers to be contacted by first class mail or electronic mail and the preferred address. The plaintiff also must report to the town clerk any change in the information by mail or other form of delivery not later than 30 days after the change of information.

The plaintiff must pay to the municipality with the registration a land record filing fee as specified in Section 7-34a. It appears the town clerk will expect a filing fee of \$53.00 for the first page of the filing and \$5.00 per page thereafter, if any.

In addition to the registration that must be done at the commencement of the foreclosure, a second registration will also be required once title has vested upon completion of the foreclosure and not later than fifteen (15) days after title has vested. If title vests in the party who filed the registration notice at the commencement of the action, that party must file a document in at least ten point boldface type titled, "**NOTICE TO MUNICIPALITY: UPDATED REGISTRATION FOR PROPERTY ACQUIRED THROUGH FORECLOSURE.**" This document will be mailed or delivered to the town clerk.

It must include the same information as the original registration, *as well as the date on which absolute title vested in the registrant.*

If the party who acquires absolute title to the foreclosure is other than the party who filed the registration at the commencement of the foreclosure action, the acquiring party must file a registration with the town clerk within the same time frame as above. The title of the document in that instance would be "**NOTICE TO MUNICIPALITY: REGISTRATION OF PROPERTY ACQUIRED THROUGH FORECLOSURE.**"

The penalty for failure to register at the commencement of an action is a civil penalty of \$100.00 for each violation, up to a maximum of \$5,000.00. Each property for which there is a violation constitutes a separate violation.

The penalty for failure to register upon vesting of title at the completion of the foreclosure is a civil penalty of \$250.00 for each violation up to a maximum of \$25,000.00. Each property for which there is a violation constitutes a separate violation.

Such penalties do not constitute a lien on the property, but the municipality has the right to sue in Superior Court to collect the penalties.

New Tenant Protections:

A. Sections 7 and 8 of the Act provide protections for certain tenants residing at foreclosed homes. These sections apply to foreclosures with return dates on or after July 13, 2011 through December 31, 2017. Mortgages affected are:

1. A mortgage that secures a federally-related mortgage loan, which has the same meaning as it does under RESPA, which is a loan:
 - a. made by any lender whose deposits are insured by a federal agency or that is federally regulated; and/or
 - b. made or insured, guaranteed, supplemented or assisted by HUD or any other federal agency, or under a program administered by HUD or any other federal agency; and/or
 - c. intended to be sold to FNMA, GNMA or FHLMC; and/or
 - d. made by any creditor as defined in federal law regarding consumer credit disclosure who makes or invests in residential real estate loans totaling more than one million dollars annually, except the term "creditor" excludes any state agency or instrumentality.

OR

2. A mortgage on a dwelling or residential property.

B. The party who obtains title to the property upon the foreclosure, assumes such title subject to the rights of *bona fide* tenants. *Bona fide* tenancies are those:

1. in which the mortgagor or such party's child, spouse or parent is not the tenant;
2. which were the result of an arm's length transaction; and
3. that require payment of rent not substantially less than fair market rent for the property or rent which is reduced or subsidized due to a governmental subsidy.

C. *Bona fide* tenants are entitled to a 90-day notice to vacate after title vests pursuant to the foreclosure, except that, as to *bona fide* tenants who entered into a lease prior to title vesting, those tenants have the right to remain in occupancy for the balance of the lease term if it is longer than 90 days after title vests.

However, if the party in whom title vests sells the property to a purchaser who will occupy the unit as a primary residence, a tenant who otherwise has a lease with a longer expiration date is entitled only to the 90-day notice.

- D.** In the case of so-called "Section 8" tenants, the party who obtains title pursuant to the foreclosure takes that title subject to the lease between the prior owner and the tenant and subject to the housing assistance payments contract between the prior owner and the public housing agency. The import is that the successor in title is subject to the Section 8 rules relating to evicting only for "good cause" under the federal rules. Therefore, the sale of the property by the successor will not constitute "good cause" for termination of the lease. The exception to the "good cause" rule is that if the successor in title will occupy the unit as a primary residence, the tenant's right to occupy can be terminated by a 90-day notice once the title vests in the successor.

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