

**State Foreclosure Mediation Laws: Examples and Research for a Uniform Statute**  
**Alan White, Reporter**  
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The first part of this memorandum describes the state and local foreclosure mediation laws and programs that have been adopted in response to the 2007 foreclosure crisis. The second part summarizes the existing research on the effectiveness of various foreclosure mediation programs. Appended to the memo are the Connecticut (judicial state) and Nevada (nonjudicial state) statutes as well as a model statute drafted by the National Consumer Law Center.

## **I. Statutes and Court Programs**

Seventeen states have adopted statewide foreclosure mediation programs to date. Twelve statewide programs were established by statute,<sup>1</sup> while another five were implemented via court rule or other court or agency initiative.<sup>2</sup> In at least eight other states, local or county court mediation programs have been established without statewide legislation or court action.<sup>3</sup> California enacted a statute requiring a 30-day or 90-day delay before nonjudicial foreclosure, during which the servicer must make efforts to contact the borrower and offer foreclosure alternatives.<sup>4</sup> The California law is not, strictly speaking, a mediation statute.

Mediation statutes address a variety of issues, including

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<sup>1</sup> Connecticut Public Act 08-176, amended by 09-209; District of Columbia Municipal Regulations Chapter 26-C27; Hawaii Act 48 of 2011, Hawaii Rev. Stat. Chapter 667; Indiana Code 32-30-10.5 et seq. (2009); Maine Pub. Laws 2009 Chapter 402; Maryland Ann. Code Real Property Article, §7-105.1 (2010); Mich. Cons. L. Ann. §§600.3205a-3205e (2012); Nevada Rev. Stat. §107.086 (2009); New York Civil Procedure Law & Rules §3408 (2009); Oregon Laws 2008, Ch. 19, Section 20, amended by S.B. 628(2009); 12 Vermont S.A. § 4631-4632 (2010); Rev. Code Wash. Ann. §61.24.163 (2011).

<sup>2</sup> Delaware Administrative Directive of the President Judge of the Superior Court of the State of Delaware No. 2011-2; Florida Supreme Court order No. AOSC09-54 (2009) rescinded in part by Florida Supreme Court Administrative Order No AOSC11-44 (2011); Iowa Mediation Service initiative (<http://iowamediatioonservice.com/>); New Jersey Supreme Court, Residential Mortgage Foreclosure Mediation Program – Rule Relaxation Order (Nov. 17, 2008); Ohio Foreclosure Mediation program Model, <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/foreclosureMediation.pdf>.

<sup>3</sup> Douglas County, Colorado (<http://www.douglascountyhousingpartnership.org/foreclosure.htm>); Cook County Illinois (Chicago), General Administrative Order No. 2010-01; Jefferson County Kentucky (Louisville) 30th Circuit Court Administrative Order (March 30, 2009); Boston, Massachusetts City Council ordinance Docket #1592 (2010); New Mexico First District (Santa Fe) Administrative Order No. 2009-00001; First Judicial District of Philadelphia Court of Common Pleas, Joint General Court Regulation No. 2008-01; Providence Rhode Island Code of Ordinances §§13-213 to 13-218 (2008); Milwaukee Wisconsin foreclosure mediation program, <http://www.mediatemilwaukee.com/>.

<sup>4</sup> Cal. Civ. Code §§2923.5, 2923.52, 2923.53 (sunsets January 1, 2013).

- the form and content of the notice of mediation availability and other outreach to homeowners;
- whether mediation is scheduled automatically or only upon request (opt-in vs. opt-out);
- which documents the servicer and homeowner must provide, and to whom (each other, mediator, administrative agency);
- the obligation to attend in-person mediation or have parties with authority present or available;
- the servicer's obligation to evaluate the homeowner's eligibility for HAMP or other programs;
- the duty to participate in good faith;<sup>5</sup> and
- what properties and homeowners are covered or exempted from mediation. Eligibility provisions sometimes require homeowners to be screened by housing counselors or attorneys prior to mediation.

Mediation statutes and rules are inextricably linked to the question of pre-foreclosure notice, because they will affect the content and timing of notice(s). The generic notice of default and acceleration, or notices of intent to foreclose, or notices of sale, may or may not be readily combined with a mediation notice, depending on the sequence and process in each state. There are competing policies of avoiding serial notice periods to avoid extending foreclosure timelines, on the one hand, while insuring that each notice including the mediation notice serves its purpose and encourages default resolution as early as possible in the process, and does not result in information overload.

The main differences between mediation programs in judicial states and nonjudicial states are administrative. In a judicial state, the courts can send notices or prescribe their form, can schedule and supervise mediation sessions, can enforce the rules against recalcitrant parties, and can monitor and evaluate the mediation program's effects and report back to the legislature. In a nonjudicial state, effective monitoring and enforcement requires the involvement of some state agency, which could be the courts, as in Nevada and Maryland, or another state agency such as the Washington Department of Commerce.

Sunset provisions are very common in the state statutes, presumably based on the expectation that foreclosures will return to normal levels as the crisis wanes. For example, Connecticut's law sunsets on July 1, 2014 and New York's on February 13, 2015. On the other hand, the District of Columbia, Maryland, Nevada and Washington have no sunset date. Maine's law requires a report and review by 2013.<sup>6</sup>

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<sup>5</sup> E.g. Nev. Rev. Stat. §107.086(5); N.Y. C.P.L.R. §3408(f).

<sup>6</sup> National Consumer Law Center, *Rebuilding America: How States can Save Millions of Homes through Foreclosure Mediation* 41 (2012)(table with sunset dates).

## II. Research Summary

The available research uniformly supports the effectiveness of foreclosure mediation in achieving workouts and resolutions that avoid the need for foreclosure sales. Several state court systems have compiled statistics regarding their mediation programs. Typically, these tally the number of homeowners who elect mediation (or who appear at mandatory mediation), and sometimes the number and percentage of cases that are settled prior to judgment and foreclosure sale. Connecticut reports about 70% of foreclosure defendants appearing at conferences, 64% of those remaining in their homes, 15% negotiating a “graceful exit” such as a short sale, and 21% going to foreclosure sale.<sup>7</sup> In New York, defaults by homeowners have declined to 10%, i.e. 90% of eligible homeowners are participating in mediation.<sup>8</sup> Nevada and other states report similar outcomes, i.e. about 70% of mediated foreclosures result in an alternative to foreclosure sale.<sup>9</sup> Mediation has thus been highly successful as a means to get homeowners to respond and participate in loss mitigation and foreclosure prevention.

Court reports and other research also consistently show that automatic or “opt-out” foreclosure mediation results in much higher participation than an on-request or “opt-in” program.<sup>10</sup> Perhaps the clearest illustration of this is in Indiana, where the statewide statutory program was opt-in, i.e. called for a notice of optional mediation to be sent by the plaintiff’s attorney. Participation rates initially were less than 5% in 2009. Several county courts took the initiative to have the court, rather than the plaintiff, mail the notice, and to include a date and time for the mediation conference, and response rates increased to 50%. Pennsylvania, New York, and other states have confirmed the impact on participation of the form of notice and whether the mediation is automatically scheduled or held on request only.

On the other hand, opt-out programs require significantly more resources and funding. Chicago, for example, has been unwilling to schedule mediations automatically in all foreclosures because trained mediators, and the funds to pay them, are lacking. The Boston Fed study canvasses the different funding strategies used in various New England mediation programs, and Resolution Systems, Inc. offers a summary of foreclosure mediation funding approaches on its web site.<sup>11</sup>

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<sup>7</sup> The Connecticut courts data are summarized in a Boston Federal Reserve staff report, Robert Clifford, State Foreclosure Prevention Efforts in New England, Mediation and Assistance (Federal Reserve Bank of Boston New England Public Policy Research Report, September 2011), <http://www.bostonfed.org/economic/neppc/researchreports/2011/neppcrr1103.pdf>.

<sup>8</sup> STATE OF NEW YORK UNIFIED COURT SYSTEM, 2011 REPORT OF THE CHIEF ADMINISTRATOR OF THE COURTS PURSUANT TO CHAPTER 507 OF THE LAWS OF 2009, at 4, *available at* <http://www.courts.state.ny.us/publications/pdfs/ForeclosuresReportNov2011.pdf>.

<sup>9</sup> Clifford, *supra* note 8.

<sup>10</sup> See Andrea Kupfer Schneider and Natalie Fleury, There’s No Place Like Home: Applying Dispute Design Theory to Create a Foreclosure Mediation System, Nevada L. J. (forthcoming 2011) at 106 (17% to 20% of defendants in Milwaukee’s opt-in program request mediation).

<sup>11</sup> <http://aboutrsi.org/pfimages/ForeclosureMediationFunding.pdf>.

There are two empirical studies of the impact mediation has on foreclosure outcomes. Philadelphia's Reinvestment Fund's study<sup>12</sup> found that 70% of eligible homeowners appeared at mandatory mediation conferences, and of those, 35% achieved a settlement to remain in their home. The rate at which homes went to sale was cut in half, comparing foreclosures before and after the mediation program implementation. The results appeared to be lasting: 80% of homeowners with mediated agreements were still in their homes almost two years later.

Collins and Urban<sup>13</sup> studied the mandatory mediation programs in Philadelphia and in three Florida districts (Pensacola, Miami and Daytona). Controlling for a variety of factors, they found that mortgage modifications were significantly higher in localities with mediation programs than in those without. They also found that redefaults on modified loans were lower in areas with mediation programs after the programs were adopted. They theorized that this resulted primarily from better information exchange between the homeowner and the mortgage servicer.

There is little clear evidence on the impact that mediation programs have on foreclosure timelines. Somewhat simplistic analyses have been offered on both sides of the debate. On one hand, advocates point out that mediations can speed up the loss mitigation process by focusing the parties' attention, accelerating information exchange and getting to a definitive answer. On the other hand, opponents assume that the mediation process is added to existing timelines, and in the case of unsuccessful mediation, needlessly increases delay. The Philadelphia study found the mean time in the mediation diversion program was 54 days.

The difficulty with measuring foreclosure delays in the current environment is the number of contributing causes. For example, most mediations experience frequent postponements because of servicers' failure to appear with settlement authority and complete documentary evidence. New York is experiencing lengthy delays to begin mediation, because foreclosure attorneys are currently unwilling to submit affidavits imposed as a result of the robo-signing scandal, verifying the accuracy of their pleadings. In fact homeowner attorneys have filed a class action demanding that foreclosure plaintiffs be compelled to file the affidavits so that mediation and foreclosure delays can be reduced.<sup>14</sup> Cases may settle as a result of mediation in a shorter time than the full foreclosure timeline, so any added time attributable to the mediation process has to be balanced against the savings in time and money resulting

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<sup>12</sup> The Reinvestment Fund, Philadelphia Residential Mortgage Foreclosure Diversion Program: Initial Report of Findings (June 2011) avail. at [www.trfund.org](http://www.trfund.org). The research was funded by the William Penn Foundation and the Open Society Institute.

<sup>13</sup> J. Michael Collins and Carly Urban, Mandatory Mediation and Mortgage Contracts (working paper 2011, <http://ssrn.com/abstract=1917410>).

<sup>14</sup> Andrew Keshner, Advocates Seek to Eliminate Foreclosure 'Shadow Docket', New York Law Journal (March 27, 2012).

from mediated settlements. In short, there is no good empirical evidence on the net impact mediation has on shortening or lengthening aggregate foreclosure timelines.

Research to date does support the usefulness of mediation in improving homeowner response and participation in loss mitigation, and in reducing foreclosures sales.

**Links to Additional Resources:**

Boston Federal Reserve Board staff study:

<http://www.bostonfed.org/economic/neppc/researchreports/2011/neppcrr1103.pdf>.

U.S. Department of Justice conference summary:

[www.justice.gov/atj/foreclosure-mediation.pdf](http://www.justice.gov/atj/foreclosure-mediation.pdf)

RSI Foreclosure Mediation Resources:

<http://courtdr.org/specialtopics.php?sec=6>

## Appendix – Sample Mediation Statutes

### Connecticut Mediation Statute (Judicial Foreclosure State)

\*/Public Act No. 11-201/\*

\*/AN ACT CONCERNING FORECLOSURE MEDIATION AND ASSISTANCE PROGRAMS, THE HIGHLY COMPENSATED EMPLOYEE EXEMPTION FOR MORTGAGE LOAN ORIGINATORS, GENERAL-USE PREPAID CARDS AND NEIGHBORHOOD PROTECTION. /\*

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

Section 1. Section 49-31k of the general statutes is repealed and the following is substituted in lieu thereof (/Effective July 1, 2011/):

As used in this section and sections 49-31l/ to 49-31o, inclusive, as amended by this act:

(1)\*\*"Mortgagor" means: \*[the]\* (A) The owner-occupant of one-to-four family residential real property located in this state who is also the borrower under a mortgage encumbering such residential real property, which is the primary residence of such owner-occupant, or (B) a religious organization that is (i) the owner of real property located in this state, and (ii) the borrower under a mortgage encumbering such real property;

(2)\*\*"Residential real property" means a one-to-four family dwelling occupied as a residence by a mortgagor;

(3)\*\*"Mortgagee" means the original lender or servicer under a mortgage, or its successors or assigns, who is the holder of any mortgage on residential real property or real property owned by a religious organization securing a loan made primarily for personal, family, religious or household purposes that is the subject of a foreclosure action;

(4)\*\*"Authority" means the Connecticut Housing Finance Authority created under section 8-244; \*[and]\*

(5)\*\*"Mortgage assistance programs" means the mortgage assistance programs developed and implemented by the authority in accordance with sections 8-265cc to 8-265kk, inclusive, 8-265rr and 8-265ss; and

(6) "Religious organization" means an organization that meets the religious purposes test of Section 501(c)(3) of the Internal Revenue Code of 1986.

Sec. 2. Section 49-31l/ of the general statutes is repealed and the following is substituted in lieu thereof (/Effective July 1, 2011/):

(a) Prior to July 1, \*[2012]\* 2014: (1) Any action for the foreclosure of a mortgage on residential real property with a return

date during the period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to the provisions of subsection (b) of this section, and (2) any action for the foreclosure of a mortgage on (A) residential real property with a return date during the period from July 1, 2009, to June 30, [\*2012\*] 2014, inclusive, or (B) real property owned by a religious organization with a return date during the period from October 1, 2011, to June 30, 2014, inclusive, shall be subject to the provisions of subsection (c) of this section.

(b)\*\*(1)\*\*Prior to July 1, 2012, when a mortgagee commences an action for the foreclosure of a mortgage on residential real property with a return date during the period from July 1, 2008, to June 30, 2009, inclusive, the mortgagee shall give notice to the mortgagor of the foreclosure mediation program established in section 49-31m, as amended by this act, by attaching to the front of the foreclosure complaint that is served on the mortgagor: (A) A copy of the notice of the availability of foreclosure mediation, in such form as the Chief Court Administrator prescribes, and (B) a foreclosure mediation request form, in such form as the Chief Court Administrator prescribes.

(2)\*\*Except as provided in subdivision (3) 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\*] date 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.

(3)\*\*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 (2) 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.

(4)\*\*No foreclosure mediation request form may be submitted to the court on or after July 1, 2012.

(5)\*\*If at any time on or after July 1, 2008, but prior to July 1, 2012, the court determines that the notice requirement of subdivision (1) of this subsection 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.

(6)\*\*Notwithstanding any provision of the general statutes or any rule of law to the contrary, prior to July 1, 2012, no judgment of strict foreclosure nor any judgment ordering a foreclosure sale shall be entered in any action subject to the provisions of this subsection and instituted by the mortgagee to foreclose a mortgage on residential real property unless: (A) Notice to the mortgagor has been given by the mortgagee in accordance with subdivision (1) of this subsection 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 subdivision (2) or (3) of this subsection has expired and no foreclosure mediation request form has been submitted, or (B) the mediation period set forth in subdivision (b) of section 49-31n, as amended by this act, has expired or has otherwise terminated, whichever is earlier.

(7)\*\*None of the mortgagor's or mortgagee's rights in the foreclosure action shall be waived by the mortgagor's submission of a foreclosure mediation request form to the court.

(c)\*\*(1)\*\*Prior to July 1, [\*2012\*] 2014, 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, 2009, or, with respect to real property owned by a religious organization, a return date on or after October 1, 2011, the mortgagee shall give notice to the mortgagor of the foreclosure mediation program established in section 49-31m, as amended by this act, by attaching to the front of the writ, summons and complaint that is served on the mortgagor: (A) A copy of the notice of foreclosure mediation, in such form as the Chief Court Administrator prescribes, (B) a copy of the foreclosure mediation certificate form described in subdivision (3) of this subsection, in such form as the Chief Court Administrator prescribes, [\*and\*] (C) a blank appearance form, in such form as the Chief Court Administrator prescribes, and (D) with respect to an action for the foreclosure of a mortgage on residential real property with a return date on or after October 1, 2011, a mediation information form and a notice containing contact information for authority-approved consumer credit counseling agencies, which form and notice shall be in such form as the Chief Court Administrator prescribes. Such mediation information form shall be designed to elicit current financial information and such other nonfinancial information from the mortgagor as the Chief Court Administrator, in consultation with representatives from the banking industry and consumer advocates, determines will be useful to the mediation process. The instructions to the mediation information form shall explain that the completed mediation information form, along with accompanying documentation reasonably requested from the mortgagor by way of such instructions, shall be delivered to the mortgagee's counsel not later than fifteen business days prior to the date of the initial mediation session, as identified in the notice provided pursuant to subdivision (2) of subsection (c) of section 49-31n, as amended by this act.

(2)\*\*The court shall issue a notice of foreclosure mediation described in subdivision (3) of this subsection to the mortgagor not later than the date three business days after the date the mortgagee returns the writ to the court.

(3)\*\*The notice of foreclosure mediation shall instruct the mortgagor to file the appearance and foreclosure mediation certificate forms with the court [\*no\*] not later than the date fifteen days from the return date for the foreclosure action. Such notice shall remind the



mortgagor to deliver the completed mediation information form and the accompanying documentation described in subdivision (1) of this subsection and encourage such delivery in advance of the required date. The mediation information form and accompanying documentation shall not, without the explicit written instruction of the mortgagor, be publicly available. Such notice shall be accompanied by materials from the Department of Banking, as prescribed by the Chief Court Administrator, which shall describe the community-based resources available to the mortgagor, including authority-approved housing counseling agencies that may assist with preparation of the mediation information form and application for mortgage assistance programs. 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, and to certify that said mortgagor has sent a copy of the mediation certificate form to the plaintiff in the action.

(4)\*\*Upon receipt of the mortgagor's appearance and foreclosure mediation certificate forms, and provided the court confirms the defendant in the foreclosure action is a mortgagor and that said mortgagor has sent a copy of the mediation certificate form to the plaintiff, the court shall schedule a date for foreclosure mediation in accordance with subsection (c) of section 49-31n, as amended by this act. The court shall issue notice of such mediation date to all appearing parties not earlier than the date five business days after the return date or by the date three business days after the date on which the court receives the mortgagor's appearance and foreclosure mediation certificate forms, whichever is later, except that 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.

(5)\*\*Notwithstanding the provisions of this subsection, the court may refer a foreclosure action brought by a mortgagee to the foreclosure mediation program at any time, provided the mortgagor has filed an appearance in said action and further provided the court shall, not later than the date three business days after the date on which it makes such referral, send a notice to each appearing party scheduling the first foreclosure mediation session for a date not later than the date \*[\*fifteen business\*]\* thirty-five days from the date of such referral.

(6)\*\*Notwithstanding any provision of the general statutes or any rule of law, prior to July 1, \*[\*2012,\*]\* 2014, (A) for the period of time which shall not exceed eight months from the return date, no mortgagee or mortgagor shall make any motion, request or demand with respect to the other, except those motions, requests or demands that relate to the mediation program described in section 49-31m, as amended by this act, and the mediation sessions held pursuant to such program, provided (i) a mortgagor seeking to contest the court's jurisdiction may file a motion to dismiss and the mortgagee may object to such motion to dismiss in accordance with applicable law and the rules of the courts, and (ii) if the mortgagor elects to make any other motion, request or demand with respect to the mortgagee, the eight-month limit shall no longer apply to

either party; and (B) no judgment of strict foreclosure nor any judgment ordering a foreclosure sale shall be entered in any action subject to the provisions of this subsection and instituted by the mortgagee to foreclose a mortgage on residential real property or real property owned by a religious organization unless: **[(A)]** (i) The mediation period set forth in subsection (c) of section 49-31n, as amended by this act, has expired or has otherwise terminated, whichever is earlier, and, if fewer than eight months has elapsed from the return date at the time of termination, fifteen days have elapsed since such termination, or **[(B)]** (ii) the mediation program is not otherwise required or available. Nothing in this subdivision shall affect any motion made or any default or judgment entered on or before June 30, 2011.

(7) With respect to foreclosure actions with a return date on or after July 1, 2011, notwithstanding any provision of the general statutes or any rule of law to the contrary, the mortgagee shall be permitted, on or before July 1, 2014, and following the eight-month or fifteen-day period described in subdivision (6) of this subsection, to simultaneously file, as applicable, (A) a motion for default, and (B) a motion for judgment of strict foreclosure or a motion for judgment of foreclosure by sale with respect to the mortgagor in the foreclosure action.

**[(7)]** (8) None of the mortgagor's or mortgagee's rights in the foreclosure action shall be waived by participation in the foreclosure mediation program.

Sec. 3. Section 49-31m of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2011/):

**Not later than July 1, 2008, the** The Chief Court Administrator shall establish in each judicial district a foreclosure mediation program in actions to foreclose mortgages on residential real property or real property owned by a religious organization. Such foreclosure mediation shall (1) address all issues of foreclosure, including, but not limited to, reinstatement of the mortgage, assignment of law days, assignment of sale date, restructuring of the mortgage debt and foreclosure by decree of sale, and (2) be conducted by foreclosure mediators who (A) are employed by the Judicial Branch, (B) are trained in mediation and all relevant aspects of the law, as determined by the Chief Court Administrator, (C) have knowledge of the community-based resources that are available in the judicial district in which they serve, and (D) have knowledge of the mortgage assistance programs. Such mediators may refer mortgagors who participate in the foreclosure mediation program to community-based resources when appropriate and to the mortgage assistance programs.

Sec. 4. Section 49-31n of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2011/):

(a) Prior to July 1, **2012** 2014: (1) Any action for the foreclosure of a mortgage on residential real property with a return date during the period from July 1, 2008, to June 30, 2009, inclusive,

shall be subject to the provisions of subsection (b) of this section, and (2) any action for the foreclosure of a mortgage on (A) residential real property with a return date during the period from July 1, 2009, to June 30, ~~2012~~ 2014, inclusive, or (B) real property owned by a religious organization with a return date during the period from October 1, 2011, to June 30, 2014, inclusive, shall be subject to the provisions of subsection (c) of this section.

(b)(1) For any action for the foreclosure of a mortgage on residential real property with a return date during the period from July 1, 2008, to June 30, 2009, inclusive, the mediation period under the foreclosure mediation program established in section 49-31m, as amended by this act, shall commence when the court sends notice to each appearing party that a foreclosure mediation request form has been submitted by a mortgagor to the court, which notice shall be sent not later than three business days after the court receives a completed foreclosure mediation request form. The mediation period shall conclude not more than sixty days after the return ~~date~~ date for the foreclosure action, except that the court may, in its discretion, for good cause shown, (A) extend, by not more than thirty days, or shorten the mediation period on its own motion or upon motion of any party, or (B) extend by not more than thirty days the mediation period upon written request of the mediator.

(2) 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. The mortgagor and mortgagee shall appear in person at each mediation session and shall have authority to agree to a proposed settlement, except that (A) 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 (i) during the mediation session by telephone, and (ii) to participate in the mediation session by speakerphone, provided an opportunity is afforded for confidential discussions between the mortgagor and mortgagee's counsel, and (B) following the initial mediation session, if there are two or more mortgagors, only one mortgagor shall appear in person at each subsequent mediation session unless good cause is shown, provided the other mortgagors are available (i) during the mediation session, and (ii) to participate in the mediation session by speakerphone, provided an opportunity is afforded for confidential discussions among the mortgagors and such mortgagors' counsel. The court shall not award attorney's fees to any mortgagee for time spent in any mediation session if the court finds that such mortgagee has failed to comply with this subdivision, unless the court finds reasonable cause for such failure.

(3) 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.

(4)\*\*If the mediator has submitted a report to the court that the parties may benefit from further mediation pursuant to subdivision (3) of this subsection, not more than two days after the conclusion of the mediation, but no later than the termination of the mediation period set forth in subdivision (1) of this subsection, 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.

(5)\*\*The Chief Court Administrator shall establish policies and procedures to implement this subsection. Such policies and procedures shall, at a minimum, provide that the mediator shall advise the mortgagor at the first mediation session required by subdivision (2) of this subsection that: (A) Such mediation does not suspend the mortgagor's obligation to respond to the foreclosure action; and (B) a judgment of strict foreclosure or foreclosure by sale may cause the mortgagor to lose the residential real property to foreclosure.

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

(7)\*\*Foreclosure mediation request forms shall not be accepted by the court on or after July 1, 2012, and the foreclosure mediation program shall terminate when all mediation has concluded with respect to any applications submitted to the court prior to July 1, [\*2012\*] 2014.

(8)\*\*At any time during the mediation period, the mediator may refer [\*the\*] a mortgagor who is the owner-occupant of one-to-four family residential real property to the mortgage assistance programs, except that any such referral shall not prevent a mortgagee from proceeding to judgment when the conditions specified in subdivision (6) of subsection (b) of section 49-31/l/, as amended by this act, have been satisfied.

(c)\*\*(1)\*\*For any action for the foreclosure of a mortgage on residential real property with a return date during the period from July 1, 2009, to June 30, [\*2012\*] 2014, inclusive, or for any action for the foreclosure of a mortgage on real property owned by a religious organization with a return date during the period from October 1, 2011, to June 30, 2014, inclusive, the mediation period under the foreclosure mediation program established in section 49-31m, as amended by this act, shall commence when the court sends notice to each appearing party scheduling the first foreclosure mediation session. The mediation period shall conclude not later than the date sixty days

after the return date for the foreclosure action, except that the court may, in its discretion, for good cause shown, (A) extend, by not more than thirty days, or shorten the mediation period on its own motion or upon motion of any party, or (B) extend by not more than thirty days the mediation period upon written request of the mediator.

(2)\*\*The first mediation session shall be held not later than fifteen business days after the court sends notice to each appearing party in accordance with subdivision (4) of subsection (c) of section 49-311/, as amended by this act. 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 in accordance with subdivision (4) of subsection (c) of this section. On and after October 1, 2011, not later than fifteen business days prior to the date of the initial 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. Any updates to the information provided pursuant to subparagraph (B) of this subdivision shall be provided reasonably promptly to the mortgagor and such mortgagor's counsel. The mortgagor and mortgagee shall appear in person at each mediation session and shall have authority to agree to a proposed settlement, except that (i) 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 (I) during the mediation session by telephone, and (II) to participate in the mediation session by speakerphone, provided an opportunity is afforded for confidential discussions between the mortgagee and mortgagee's counsel, and (ii) following the initial mediation session, if there are two or more mortgagors, only one mortgagor shall appear in person at each subsequent mediation session unless good cause is shown, provided the other mortgagors are available (I) during the mediation session, and (II) to participate in the mediation session by speakerphone, provided an opportunity is afforded for confidential discussions among the mortgagors and such mortgagors' counsel. The court shall not award attorney's fees to any mortgagee for time spent in any mediation session if the court finds that such mortgagee has failed to comply with this subdivision, unless the court finds reasonable cause for such failure.

(3)\*\*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. Either party's failure

to comply with the documentation requirements of this section or section 49-31/l/, as amended by this act, shall not be grounds for terminating the mediation period before a second mediation session is conducted.

(4)\*\*If the mediator has submitted a report to the court that the parties may benefit from further mediation pursuant to subdivision (3) of this subsection, not more than two days after the conclusion of the mediation, but no later than the termination of the mediation period set forth in subdivision (1) of this subsection, 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.

(5)\*\*The Chief Court Administrator shall establish policies and procedures to implement this subsection. Such policies and procedures shall, at a minimum, provide that the mediator shall advise the mortgagor at the first mediation session required by subdivision (2) of this subsection that: (A) Such mediation does not suspend the mortgagor's obligation to respond to the foreclosure action beyond the limited time frame described in subdivision (6) of subsection (c) of section 49-31/l/, as amended by this act; and (B) a judgment of strict foreclosure or foreclosure by sale may cause the mortgagor to lose the residential real property or real property owned by a religious organization to foreclosure.

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

(7)\*\*The foreclosure mediation program shall terminate when all mediation has concluded with respect to any foreclosure action with a return date during the period from July 1, 2009, to June 30, ~~2012~~ 2014, inclusive.

(8)\*\*At any time during the mediation period, the mediator may refer ~~the~~ a mortgagor who is the owner-occupant of one-to-four family residential real property to the mortgage assistance programs, except that any such referral shall not prevent a mortgagee from proceeding to judgment when the conditions specified in subdivision (6) of subsection (c) of section 49-31/l/, as amended by this act, have been satisfied.

Sec. 5. (Effective from passage)/(a) There is established a task force to review and evaluate loss mitigation programs administered by the Connecticut Housing Finance Authority.

(b) The task force shall consist of the following members:

(1) The Governor, or the Governor's designee;

- (2) The speaker of the House of Representatives, or the speaker's designee;
  - (3) The majority leader of the House of Representatives, or the majority leader's designee;
  - (4) The minority leader of the House of Representatives, or the minority leader's designee;
  - (5) The president pro tempore of the Senate, or the president pro tempore's designee;
  - (6) The majority leader of the Senate, or the majority leader's designee;
  - (7) The minority leader of the Senate, or the minority leader's designee;
  - (8) The Banking Commissioner, or the commissioner's designee;
  - (9) The chief housing officer of the Connecticut Housing Finance Authority, or the officer's designee;
  - (10) The chairpersons of the joint standing committee of the General Assembly having cognizance of matters relating to banks, or the chairpersons' designee; and
  - (11) The chairpersons of the joint standing committee of the General Assembly having cognizance of matters relating to housing, or the chairpersons' designee.
- (c) The task force members shall elect a chairperson from among the members of the task force.
- (d) The chairperson shall schedule the first meeting of the task force, which shall be held not later than sixty days after the effective date of this section.
- (e) The administrative staff of the joint standing committee of the General Assembly having cognizance of matters relating to banks shall serve as administrative staff of the task force.
- (f) Not later than January 1, 2012, the task force shall submit a report on its findings and recommendations to the joint standing committee of the General Assembly having cognizance of matters relating to banks, in accordance with the provisions of section 11-4a of the general statutes. The task force shall terminate on the date that it submits such report or January 1, 2012, whichever is later.

Sec. 7. (NEW) (/Effective from passage/) (a) In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property that has a return date on or after the effective date of this section, but not later than December 31, 2017, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to (1) the provision, by

such successor in interest, of a notice to vacate to any bona fide tenant not less than ninety days before the effective date of such notice; and (2) the rights of any bona fide tenant, as of the date absolute title vests in such successor in interest (A) under any bona fide lease entered into before such date to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the ninety-day notice under subdivision (1) of this subsection; or (B) without a lease or with a lease terminable at will under state law, subject to the receipt by the tenant of the ninety-day notice under subdivision (1) of this subsection, except that nothing under this section shall affect the requirements for termination of any federally-subsidized or state-subsidized tenancy or of any state or local law that provides longer time periods or other additional protections for tenants.

(b) For purposes of this section, a lease or tenancy shall be considered bona fide only if (1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant, (2) the lease or tenancy was the result of an arms-length transaction, and (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a federal, state or local subsidy.

(c) For purposes of this section, the term "federally-related mortgage loan" has the same meaning as in 12 USC 2602(1), the Real Estate Settlement Procedures Act of 1974. For purposes of this section, the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust or security deed.

Sec. 8. (NEW) (/Effective from passage/) (a) On or before December 31, 2017, in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of a lease, vacating the property prior to sale shall not constitute other good cause for terminating the lease of a tenant who is a recipient of assistance under 42 USC 1437f(o), the federal Housing Choice Voucher Program, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner (1) will occupy the unit as a primary residence, and (2) has provided the tenant a notice to vacate at least ninety days before the effective date of such notice.

(b) On or before December 31, 2017, in the case of any foreclosure on any federally-related mortgage loan, as that term is defined in 12 USC 2602(1), the Real Estate Settlement Procedures Act of 1974, or on any residential real property in which a recipient of assistance under 42 USC 1437(o), the federal Housing Choice Voucher Program, resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the



occupied unit, except that this provision and the provisions related to foreclosure in subsection (a) of this section shall not affect any state or local law that provides longer time periods or other additional protections for tenants.

...

Sec. 13. Section 7-148hh of the general statutes is repealed and the following is substituted in lieu thereof (/Effective October 1, 2011/):

As used in sections 7-148ff, 7-148ii, as amended by this act, 7-152c, 19a-206, 47a-52, 47a-53, 47a-58 and 49-73b, as amended by this act:

(1)\*\*"Registrant" means the owner of \*\*vacant\*\* residential property who is required to register such property pursuant to section 7-148ii, as amended by this act.

(2)\*\*"Residential property" means a \*\*one-to-four family\*\* building containing one or more dwelling units and includes a commercial building containing one or more dwelling units.

(3)\*\*"Vacant" means uninhabited. \* "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.

(4)\*\*"MERS" means the Mortgage Electronic Registration Systems. \* "Mortgage" means a mortgage on residential real property that is held by a person other than a natural person.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

Sec. 14. Section 7-148ii of the general statutes is repealed and the following is substituted in lieu thereof (/Effective October 1, 2011/):

(a) Any person \*\*in whom title to a residential property has vested after October 1, 2009, through a foreclosure action pursuant to sections 49-16 to 49-19, inclusive, or 49-26,\*\* who, on or after October 1, 2011, commences an action to foreclose a mortgage on residential property shall register such property with the town clerk of the municipality in which the property is located \*\*or with MERS (1) no later than ten days after the date title vests in such person if such residential property is vacant on the date title vests, or (2) if, as a result of an execution of ejectment pursuant to section 49-22 or a summary process action pursuant to chapter 832, such residential property becomes vacant before the date one hundred twenty days after the date title vests in such person, then no later than ten days after the date on which such property becomes vacant\*\* at the time and place of the recording of the notice of lis pendens as to the

residential property being foreclosed in accordance with section 52-325. Such registration shall be maintained by the municipality separate and apart from the land records.

(b) Registration made pursuant to subsection (a) of this section shall contain (1) the name, address, telephone number and electronic mail address of the plaintiff in the foreclosure action and, if such plaintiff is a corporation an entity or an individual who resides out-of-state, the name, address, telephone number and electronic mail address of a direct contact in the state, provided such 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 residential property; if such a management company has been engaged by the registrant and (3) the following heading in at least ten-point boldface capital letters: NOTICE TO MUNICIPALITY: REGISTRATION OF PROPERTY BEING FORECLOSED. The plaintiff in the foreclosure action shall indicate on such registration whether it prefers to be contacted by first class mail or electronic mail and the preferred addresses for such communications. Such plaintiff shall report to the town clerk of the municipality in which the property is located, by mail or other form of delivery, any change in the information provided on the registration not later than thirty days following the date of the change of information. At the time of registration, such plaintiff shall pay a one-hundred-dollar land record filing fee to the municipality as specified in section 7-34a.

(c) If the registration is with MERS, it shall contain (1) the name, address, telephone number and electronic mail address of the registrant, and (2) the name, address, telephone number and electronic address of the local property maintenance company responsible for the maintenance of the property, if such a management company has been engaged by the registrant.

(c) Any person in whom title to a residential property has vested on or after October 1, 2011, through a foreclosure action pursuant to sections 49-16 to 49-21, inclusive, or 49-26, shall register such property, in accordance with subsection (d) of this section, with the municipality in which such property is located not later than fifteen days after absolute title vests in such person. If such person is the plaintiff in the foreclosure action, such person shall, prior to the expiration of such fifteen-day period, update the registration with any change in registration information for purposes of complying with said subsection (d). The updated registration shall include the following heading in at least ten-point boldface capital letters: NOTICE TO MUNICIPALITY: UPDATED REGISTRATION FOR PROPERTY ACQUIRED THROUGH FORECLOSURE.

(d) Registration made pursuant to subsection (c) of this section shall be mailed or delivered to the town clerk of the municipality in which the residential property is located and include (1) the name, address, telephone number and electronic mail address of the registrant and, if the registrant is an entity or an individual who resides out-of-state, the name, address, telephone number and electronic mail address of a direct contact in the state, provided such a direct contact is available; (2) the date on which absolute title vested in the registrant; (3) the name, address, telephone number and electronic mail address of the person, local property maintenance company or other entity responsible for the security and maintenance of the residential property; and (4) the following heading in at least ten-point boldface capital letters: NOTICE TO MUNICIPALITY: REGISTRATION OF PROPERTY ACQUIRED THROUGH FORECLOSURE. The registration, or updated registration, shall be accompanied by a land record filing fee payable to the municipality as specified in section 7-34a. The registrant shall report to the town clerk by mail or other form of delivery any change in the information provided on the registration not later than thirty days from the date of the change in information.

\*(d)\* (e)\*\*If a registrant required to register pursuant to subsection (c) of this section fails to comply with any provision of the general statutes or of any municipal ordinance concerning the repair or maintenance of real estate, including, without limitation, an ordinance relating to the prevention of housing blight pursuant to subparagraph (H)(xv) of subdivision (7) of subsection (c) of section 7-148, the maintenance of safe and sanitary housing as provided in subparagraph (A) of subdivision (7) of subsection (c) of section 7-148, or the abatement of nuisances as provided in subparagraph (E) of subdivision (7) of subsection (c) of section 7-148, the municipality may issue a notice to the registrant citing the conditions on such property that violate such provisions. Such notice shall be sent by either first class or electronic mail, or both, and shall be sent to the address or addresses of the registrant identified on the registration. A copy of such notice shall be sent by first class mail or electronic mail to the person, property maintenance company \*if such a company has been identified\* or other entity responsible for the security and maintenance of the residential property designated on the registration. Such notice shall comply with section 7-148gg.

\*(e)\* (f)\*\*The notice described in subsection \*(d)\* (e) of this section shall provide a date, reasonable under the circumstances, by which the registrant \*may\* shall remedy the condition or conditions on such registrant's property. If the registrant, registrant's contact or \*property management company\* registrant's agent does not remedy the condition or conditions on such registrant's property before the date following the date specified in such notice, the municipality may enforce its rights under the relevant provisions of the general statutes or of any municipal ordinance.

\*(f)\* (g)\*\*A municipality shall only impose registration requirements upon registrants and plaintiffs in foreclosure actions

in accordance with this section, except that any municipal registration requirements effective on or before passage of public act 09-144 shall remain effective.

(h) Any plaintiff in a foreclosure action who fails to register in accordance with this section shall be subject to a civil penalty of one hundred dollars for each violation, up to a maximum of five thousand dollars. Each property for which there has been a failure to register shall constitute a separate violation.

(i) Any person in whom title to a residential property has vested on or after October 1, 2011, through a foreclosure action pursuant to sections 49-16 to 49-21, inclusive, or 49-26, and who has not registered in accordance with subsection (c) of this section within thirty days of absolute title vesting in such owner shall be subject to a civil penalty of two hundred fifty dollars for each violation, up to a maximum of twenty-five thousand dollars. Each property for which there has been a failure to register shall constitute a separate violation.

(j) An authorized official of the municipality may file a civil action in Superior Court to collect the penalties imposed pursuant to subsections (h) and (i) of this section, which penalties shall be payable to the treasurer of such municipality. Such penalties shall not create or constitute a lien against the residential property.

(k) Neither the registration by a foreclosing party nor the failure to register in accordance with subsection (a) of this section shall imply or create any legal obligations on the part of the foreclosing party to repair, maintain or secure the residential property for which a registration is required prior to the time that title passes to the foreclosing party.

Sec. 15. Subsection (h) of section 49-73b of the general statutes is repealed and the following is substituted in lieu thereof (/Effective October 1, 2011/):

(h)\*\*The provisions of this section shall not apply to policies on single-family or two-family dwellings, unless such dwellings are \*[\*vacant\*]\* residential properties owned by a registrant subject to section 7-148ii, as amended by this act.

Approved July 13, 2011