

General Assembly

Raised Bill No.

551

February Session, 2006

LCO No. 2585



Referred to Committee on

Introduced by: (IUD)

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AN ACT CONCERNING PROTECTION FROM FORECLOSURE FOR UNEMPLOYED AND UNDEREMPLOYED PERSONS.

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

- Section 1. Section 49-31d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):
- 3 (a) For the purposes of sections 49-31d to [49-31i] 49-31j, inclusive, 4 as amended by this act:
- 5 (1) "Unemployed person" means a person who is unemployed for purposes of chapter 567.
 - (2) "Homeowner" means a person who has [an] a legal or equitable ownership interest in residential real property secured by a mortgage, or is a mortgage or is a mortgage, which is the subject of a foreclosure action, and who has [owned] had such interest and occupied such property as his or her principal residence for a continuous period of not less than two years immediately preceding the commencement of such foreclosure action.
- 14 (3) "Restructured mortgage debt" means the adjustment by a court

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15 of a mortgage debt to give protection from a foreclosure action.

- (4) "Protection from foreclosure" means a court-ordered
 restructuring of a mortgage debt designed to eliminate an arrearage in
 payments on such debt and to provide a period not to exceed [six]
 twenty-four months during which foreclosure is stayed.
- (5) "Lender" means any person who makes or holds mortgage loans
 in the ordinary course of business and who is the holder of any [first]
 mortgage on residential real estate which is the subject of a foreclosure
 action.

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- (6) "Underemployed person" means a person whose [earned] income during the twelve-month period immediately preceding the commencement of the foreclosure action is (A) less than fifty thousand dollars, and (B) less than seventy-five per cent of [his] such person's average annual [earned] income during the two years immediately preceding such twelve-month period.
- 30 (b) It is the intent of the General Assembly that sections 49-31d to
 31 49-31j, inclusive, as amended by this act, are remedial and are to be so
 32 construed.
- Sec. 2. Section 49-31e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):
- 35 (a) In an action by a lender for the foreclosure of a mortgage of 36 residential real property, such lender shall give notice to the 37 homeowner of the availability of the provisions of sections 49-31d to 38 [49-31i] 49-31j, inclusive, as amended by this act, at the time the action 39 is commenced.
- 40 (b) A homeowner who is given notice of the availability of the
 41 provisions of sections 49-31d to [49-31i] 49-31j, inclusive, as amended
 42 by this act, must make application for protection from foreclosure
 43 within twenty-five days of the [return day] date the homeowner files
 44 an appearance in the foreclosure action, provided, if the homeowner

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45 appears pro se and an attorney subsequently enters an appearance to
46 represent the homeowner, such application may be made within
47 twenty-five days of the date such attorney files such appearance.

- (c) No judgment foreclosing the title to real property by strict foreclosure or by a decree of sale shall be entered unless the court is satisfied from pleadings or affidavits on file with the court that notice has been given to the homeowner against whom the foreclosure action is commenced of the availability of the provisions of sections 49-31d to [49-31i] 49-31j, inclusive, as amended by this act.
- (d) If a homeowner against whom the foreclosure action is commenced was not given notice of the availability of the provisions of sections 49-31d to [49-31i] 49-31j, inclusive, as amended by this act, at the time the action was commenced, and such homeowner was eligible to apply for protection from foreclosure at such time, the court, upon its own motion or upon the written motion of such homeowner, may issue an order staying the foreclosure action for [fifteen] twenty-five days, during which period the homeowner may apply to the court for protection from foreclosure by submitting an application together with a financial affidavit as required by subsection (a) of section 49-31f, as amended by this act.
- Sec. 3. Section 49-31f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1*, 2006):
- (a) Subject to the provisions of subsection (b) of this section, a homeowner who is [underemployed or] an unemployed person or an underemployed person, against whom a foreclosure action is brought, may make application, together with a financial affidavit, to the court having jurisdiction over the foreclosure action for protection from foreclosure if: (1) The mortgage being foreclosed encumbers the residential real property, which property has served as [his] such homeowner's principal residence, for a period of not less than two years, (2) such homeowner has not had a foreclosure action commenced against [him] such homeowner in the preceding [seven-

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77 year] two-year period, and (3) such homeowner has not received an 78 emergency mortgage assistance loan and has not applied for 79 emergency mortgage assistance for two years before the application under the provisions of sections 8-265cc to 8-265ii, inclusive.

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- (b) If the residential real property which is the subject of a foreclosure action is owned by more than one person, (1) no homeowner shall be deemed an unemployed person or an underemployed person, for the purposes of sections 49-31d to [49-31i] 49-31i, inclusive, as amended by this act, unless the aggregate [earned] income of all the homeowners of the residential real property which is the subject of such foreclosure action during the twelve-month period immediately preceding the commencement of the foreclosure action is less than fifty thousand dollars and less than seventy-five per cent of the average aggregate annual [earned] income during the two years immediately preceding such twelve-month period for all such homeowners, and (2) all homeowners of [said] such property, other than the homeowner making application in accordance with subsection (a) of this section, shall file a financial affidavit in connection with such application.
- [(c) The court shall determine the eligibility of such homeowner for protection from foreclosure pursuant to the provisions of sections 49-31d to 49-31i, inclusive.]
- [(d) In determining] (c) The court shall determine the eligibility of a homeowner for protection from foreclosure [under] pursuant to the provisions of sections 49-31d to [49-31i] 49-31j, inclusive, as amended by this act. In making such determination, the court may consider any relevant facts and shall consider:
- (1) The likelihood that the homeowner will be able to make timely payments on the restructured mortgage commencing at the end of the restructuring period; [.] and
- (2) The presence of any substantial prejudice to the lender or any

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108	subordinate lienor	or	encumbrancer	which	would	result	from	a
109	restructuring of the	moi	rtgage debt.					

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[(e)] (d) If the court determines the equity the homeowner has in the property and hears testimony from an appraiser produced by the lender in connection with such determination, (1) the reasonable cost of the appraisal and the appraiser's appearance as a witness shall be part of the court costs to be added to the principal balance pursuant to subdivision (4) of subsection (a) of section 49-31i, as amended by this act, if a restructuring order is granted, and (2) the reasonable cost of said appraiser's appearance as a witness shall be part of the taxable costs of the action, in addition to the taxable costs for such appraisal and the appraiser's appearance as a witness at a subsequent hearing for a judgment of foreclosure if such order is not granted.

[(f)] (e) If the court approves the application for protection from foreclosure and restructures the mortgage debt, the foreclosure action shall be stayed for the restructuring period. If, for a period of three months following the end of the restructuring period, there are no further proceedings to continue the foreclosure proceedings based upon a default on the mortgage as restructured, the foreclosure action shall be dismissed. The restructured mortgage debt shall have the same priority as if it had been advanced at the time the mortgage was delivered.

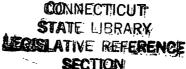
[(g) No homeowner who files a defense to any action for foreclosure shall be eligible to make application for protection from such foreclosure pursuant to the provisions of this section.]

Sec. 4. Section 49-31g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

[(a) If it determines that a homeowner who is an underemployed person is eligible for protection from foreclosure pursuant to subsections (a) and (c) of section 49-31f, the court in its discretion may order the restructuring of the mortgage debt of such homeowner so as

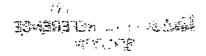
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- to eliminate any arrearage in payments on the mortgage debt and mayallow a restructuring period not to exceed six months.]
- [(b) If it] If the court determines that a homeowner who is an unemployed person or an underemployed person is eligible for protection from foreclosure pursuant to [subsection (a) of] section 49-31f, as amended by this act, the court shall order the restructuring of the mortgage debt to eliminate any arrearage in payments on the mortgage debt and shall order a restructuring period not to exceed [six] twenty-four months.
- Sec. 5. Section 49-31h of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):
- (a) As a condition to the granting of a restructuring order <u>pursuant</u> to section 49-31g, as amended by this act, the court may order the homeowner to pay to the lender during the restructuring period an amount not to exceed twenty-five per cent of [his] <u>the homeowner's</u> net income per month as a means of demonstrating the homeowner's good faith effort to reduce [his] <u>the homeowner's</u> mortgage indebtedness.
- 157 (b) For the purposes of this section, "net income" [shall include]
 158 includes any unemployment benefit received by the homeowner in
 159 accordance with chapter 567.
- Sec. 6. Section 49-31i of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):
 - (a) In determining the restructured mortgage debt, the court shall add the following to the existing principal balance of the mortgage debt: (1) All interest then due the lender and any interest that will be earned to the end of any restructuring period, including interest on any payments advanced by the lender during the restructuring period, such interest to be computed at the rate provided in the mortgage note, (2) real property taxes, (3) premiums for Federal Housing

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Administration, Veterans' Administration and private mortgage insurance, and (4) court costs, legal fees and any other sums the court determines to be due under the terms of the mortgage indebtedness. [by the court.] The court shall then apply the composite interest rate as provided in subsection (c) of this section to such total restructured debt over the remaining term of the loan.

- (b) The amount of the mortgage debt at the end of any period of restructuring shall in no event exceed either the amount of the original mortgage debt or ninety per cent of the fair market value of the property as determined by an accredited real estate appraiser at the time of restructuring, whichever is greater. The provisions for restructuring the mortgage debt and staying the foreclosure shall apply only if the debt as restructured would not exceed such amount. Any sums added to the existing mortgage debt as a result of a restructuring order shall accrue interest at prevailing market rates after the conclusion of the restructuring period, which rate shall be either fixed or variable depending upon the underlying mortgage note. The restructured mortgage debt shall be repayable over a term that may extend not more than twenty-four months beyond the original term of the loan that is being restructured.
- (c) At the conclusion of the restructuring period, the new mortgage debt shall be computed based upon a composite rate of interest. The composite rate of interest shall be a weighted average of the original mortgage interest rate as to the principal balance and the prevailing interest rate as to all sums added to the principal balance to establish the total restructured mortgage debt, except that in the case of a flexible rate, variable rate or similar adjustable rate mortgage note, the provisions of the underlying mortgage note for the redetermination of the interest rate on the mortgage shall continue to apply and remain in full force and effect during the remainder of the term of the mortgage.
- Sec. 7. Section 49-31j of the 2006 supplement to the general statutes is repealed and the following is substituted in lieu thereof (Effective

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 (a) The Banking Commissioner shall adopt such regulations, in accordance with chapter 54, as the commissioner deems necessary specifying (1) the manner in which a composite interest rate shall be computed for the new mortgage debt pursuant to subsection (c) of section 49-31i, as amended by this act, and (2) the method or standard by which prevailing market rates of interest are to be determined. [, and (3) a form a lender may use to give notice pursuant to section 49-31e to a homeowner of the availability of the provisions of sections 49-31d to 49-31i, inclusive.]

(b) The Chief Court Administrator shall develop, and make available to the public, forms for (1) the notice to a homeowner required pursuant to section 49-31e, as amended by this act, that shall include an application for protection from foreclosure under sections 49-31d to 49-31j, inclusive, as amended by this act, returnable to the clerk of the court having jurisdiction over the foreclosure action, and (2) the financial affidavit required pursuant to section 49-31f, as amended by this act. Such forms shall be in clear and simple language and in a format designed for use by pro se litigants.

This act sha sections:	all take effect as follows	and shall amend the following
Section 1	October 1, 2006	49-31d
Sec. 2	October 1, 2006	49-31e
Sec. 3	October 1, 2006	49-31f
Sec. 4	October 1, 2006	49-31g
Sec. 5	October 1, 2006	49-31h
Sec. 6	October 1, 2006	49-31i
Sec. 7	October 1, 2006	49-31j

Statement of Purpose:

To improve statutory protections for unemployed and underemployed homeowners in foreclosure actions, while preserving the rights of foreclosing lenders.

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[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

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