



General Assembly

February Session, 2006

Raised Bill No.

551

LCO No. 2585



Referred to Committee on

Introduced by: **JUDICIARY**
(JUD)

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:

- 1 Section 1. Section 49-31d of the general statutes is repealed and the
2 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
6 purposes of chapter 567.
- 7 (2) "Homeowner" means a person who has [an] a legal or equitable
8 ownership interest in residential real property secured by a mortgage,
9 or is a mortgagor of a mortgage, which is the subject of a foreclosure
10 action, and who has [owned] had such interest and occupied such
11 property as his or her principal residence for a continuous period of
12 not less than two years immediately preceding the commencement of
13 such foreclosure action.
- 14 (3) "Restructured mortgage debt" means the adjustment by a court

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

16 (4) "Protection from foreclosure" means a court-ordered
17 restructuring of a mortgage debt designed to eliminate an arrearage in
18 payments on such debt and to provide a period not to exceed [six]
19 twenty-four months during which foreclosure is stayed.

20 (5) "Lender" means any person who makes or holds mortgage loans
21 in the ordinary course of business and who is the holder of any [first]
22 mortgage on residential real estate which is the subject of a foreclosure
23 action.

24 (6) "Underemployed person" means a person whose [earned]
25 income during the twelve-month period immediately preceding the
26 commencement of the foreclosure action is (A) less than fifty thousand
27 dollars, and (B) less than seventy-five per cent of [his] such person's
28 average annual [earned] income during the two years immediately
29 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.

33 Sec. 2. Section 49-31e of the general statutes is repealed and the
34 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.

48 (c) No judgment foreclosing the title to real property by strict
49 foreclosure or by a decree of sale shall be entered unless the court is
50 satisfied from pleadings or affidavits on file with the court that notice
51 has been given to the homeowner against whom the foreclosure action
52 is commenced of the availability of the provisions of sections 49-31d to
53 [49-31i] 49-31j, inclusive, as amended by this act.

54 (d) If a homeowner against whom the foreclosure action is
55 commenced was not given notice of the availability of the provisions of
56 sections 49-31d to [49-31i] 49-31j, inclusive, as amended by this act, at
57 the time the action was commenced, and such homeowner was eligible
58 to apply for protection from foreclosure at such time, the court, upon
59 its own motion or upon the written motion of such homeowner, may
60 issue an order staying the foreclosure action for [fifteen] twenty-five
61 days, during which period the homeowner may apply to the court for
62 protection from foreclosure by submitting an application together with
63 a financial affidavit as required by subsection (a) of section 49-31f, as
64 amended by this act.

65 Sec. 3. Section 49-31f of the general statutes is repealed and the
66 following is substituted in lieu thereof (*Effective October 1, 2006*):

67 (a) Subject to the provisions of subsection (b) of this section, a
68 homeowner who is [underemployed or] an unemployed person or an
69 underemployed person, against whom a foreclosure action is brought,
70 may make application, together with a financial affidavit, to the court
71 having jurisdiction over the foreclosure action for protection from
72 foreclosure if: (1) The mortgage being foreclosed encumbers the
73 residential real property, which property has served as [his] such
74 homeowner's principal residence, for a period of not less than two
75 years, (2) such homeowner has not had a foreclosure action
76 commenced against [him] such homeowner in the preceding [seven-

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
80 under the provisions of sections 8-265cc to 8-265ii, inclusive.

81 (b) If the residential real property which is the subject of a
82 foreclosure action is owned by more than one person, (1) no
83 homeowner shall be deemed an unemployed person or an
84 underemployed person, for the purposes of sections 49-31d to [49-31i]
85 49-31j, inclusive, as amended by this act, unless the aggregate [earned]
86 income of all the homeowners of the residential real property which is
87 the subject of such foreclosure action during the twelve-month period
88 immediately preceding the commencement of the foreclosure action is
89 less than fifty thousand dollars and less than seventy-five per cent of
90 the average aggregate annual [earned] income during the two years
91 immediately preceding such twelve-month period for all such
92 homeowners, and (2) all homeowners of [said] such property, other
93 than the homeowner making application in accordance with
94 subsection (a) of this section, shall file a financial affidavit in
95 connection with such application.

96 [(c) The court shall determine the eligibility of such homeowner for
97 protection from foreclosure pursuant to the provisions of sections 49-
98 31d to 49-31i, inclusive.]

99 [(d) In determining] (c) The court shall determine the eligibility of a
100 homeowner for protection from foreclosure [under] pursuant to the
101 provisions of sections 49-31d to [49-31i] 49-31j, inclusive, as amended
102 by this act. In making such determination, the court may consider any
103 relevant facts and shall consider:

104 (1) The likelihood that the homeowner will be able to make timely
105 payments on the restructured mortgage commencing at the end of the
106 restructuring period; [.] and

107 (2) The presence of any substantial prejudice to the lender or any

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

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

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

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

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

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

139 to eliminate any arrearage in payments on the mortgage debt and may
140 allow a restructuring period not to exceed six months.]

141 [(b) If it] If the court determines that a homeowner who is an
142 unemployed person or an underemployed person is eligible for
143 protection from foreclosure pursuant to [subsection (a) of] section 49-
144 31f, as amended by this act, the court shall order the restructuring of
145 the mortgage debt to eliminate any arrearage in payments on the
146 mortgage debt and shall order a restructuring period not to exceed
147 [six] twenty-four months.

148 Sec. 5. Section 49-31h of the general statutes is repealed and the
149 following is substituted in lieu thereof (*Effective October 1, 2006*):

150 (a) As a condition to the granting of a restructuring order pursuant
151 to section 49-31g, as amended by this act, the court may order the
152 homeowner to pay to the lender during the restructuring period an
153 amount not to exceed twenty-five per cent of [his] the homeowner's
154 net income per month as a means of demonstrating the homeowner's
155 good faith effort to reduce [his] the homeowner's mortgage
156 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.

160 Sec. 6. Section 49-31i of the general statutes is repealed and the
161 following is substituted in lieu thereof (*Effective October 1, 2006*):

162 (a) In determining the restructured mortgage debt, the court shall
163 add the following to the existing principal balance of the mortgage
164 debt: (1) All interest then due the lender and any interest that will be
165 earned to the end of any restructuring period, including interest on
166 any payments advanced by the lender during the restructuring period,
167 such interest to be computed at the rate provided in the mortgage note,
168 (2) real property taxes, (3) premiums for Federal Housing

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

175 (b) The amount of the mortgage debt at the end of any period of
176 restructuring shall in no event exceed either the amount of the original
177 mortgage debt or ninety per cent of the fair market value of the
178 property as determined by an accredited real estate appraiser at the
179 time of restructuring, whichever is greater. The provisions for
180 restructuring the mortgage debt and staying the foreclosure shall
181 apply only if the debt as restructured would not exceed such amount.
182 Any sums added to the existing mortgage debt as a result of a
183 restructuring order shall accrue interest at prevailing market rates after
184 the conclusion of the restructuring period, which rate shall be either
185 fixed or variable depending upon the underlying mortgage note. The
186 restructured mortgage debt shall be repayable over a term that may
187 extend not more than twenty-four months beyond the original term of
188 the loan that is being restructured.

189 (c) At the conclusion of the restructuring period, the new mortgage
190 debt shall be computed based upon a composite rate of interest. The
191 composite rate of interest shall be a weighted average of the original
192 mortgage interest rate as to the principal balance and the prevailing
193 interest rate as to all sums added to the principal balance to establish
194 the total restructured mortgage debt, except that in the case of a
195 flexible rate, variable rate or similar adjustable rate mortgage note, the
196 provisions of the underlying mortgage note for the redetermination of
197 the interest rate on the mortgage shall continue to apply and remain in
198 full force and effect during the remainder of the term of the mortgage.

199 Sec. 7. Section 49-31j of the 2006 supplement to the general statutes
200 is repealed and the following is substituted in lieu thereof (*Effective*

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201 October 1, 2006):

202 (a) The Banking Commissioner shall adopt such regulations, in
 203 accordance with chapter 54, as the commissioner deems necessary
 204 specifying (1) the manner in which a composite interest rate shall be
 205 computed for the new mortgage debt pursuant to subsection (c) of
 206 section 49-31i, as amended by this act, and (2) the method or standard
 207 by which prevailing market rates of interest are to be determined. [,
 208 and (3) a form a lender may use to give notice pursuant to section 49-
 209 31e to a homeowner of the availability of the provisions of sections
 210 49-31d to 49-31i, inclusive.]

211 (b) The Chief Court Administrator shall develop, and make
 212 available to the public, forms for (1) the notice to a homeowner
 213 required pursuant to section 49-31e, as amended by this act, that shall
 214 include an application for protection from foreclosure under sections
 215 49-31d to 49-31j, inclusive, as amended by this act, returnable to the
 216 clerk of the court having jurisdiction over the foreclosure action, and
 217 (2) the financial affidavit required pursuant to section 49-31f, as
 218 amended by this act. Such forms shall be in clear and simple language
 219 and in a format designed for use by pro se litigants.

This act shall take effect as follows and shall amend the following sections:		
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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