

2011 Edition

# Foreclosure of Mortgages in Connecticut

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*A Guide to Resources in the Law Library*

- “In Connecticut, a mortgagee [creditor] has legal title to the mortgaged property and the mortgagor [debtor] has equitable title, also called the equity of redemption.” [Barclays Bank of New York v. Ivler](#), 20 Conn. App. 163, 166, 565 A.2d 252, 253 (1989).
- “Connecticut is considered a ‘title theory’ state wherein the mortgagor [debtor] pledges property to the mortgagee [creditor] as security for a debt and conveys ‘legal title’ to the mortgaged premises; the mortgagor retains ‘equitable title’ or the ‘equity of redemption’....The equity of redemption permits the mortgagor to regain legal title to the mortgaged property upon satisfying the conditions of the mortgage, which usually entails the payment of the mortgage debt in full.” [In Re Fitzgerald](#), 237 B.R. 252, 261 (Bkrcty. D.Conn. 1999).
- “Generally, foreclosure means to cut off the equity of redemption, the equitable owner’s right to redeem the property.” [Madison Hills Ltd. Partnership II v. Madison Hills, Inc.](#), 35 Conn. App. 81, 90, 644 A.2d 363, 369 (1994).
- “Foreclosure is peculiarly an equitable action, and the court may entertain such questions as are necessary to be determined in order that complete justice may be done.” [Hartford Federal Savings & Loan Assn. v. Lenczyk](#), 153 Conn. 457, 463, 217 A.2d 694, 697 (1966).

## Table of Contents

|  |           |
|--|-----------|
| Table 1: Resources on the Internet: Homeowner’s Options for Avoiding Foreclosure.....  | 4         |
| <b>Section 1: Strict Foreclosure in Connecticut.....</b>   | <b>5</b>  |
| Figure 1: Motion for Judgment of Strict Foreclosure .....  | 9         |
| <b>Section 2: Foreclosure by Sale.....</b>   | <b>10</b> |
| Figure 2: Motion for Foreclosure by Sale.....  | 14        |
| Figure 3: Motion for Judgment of Foreclosure by Sale.....  | 15        |
| <b>Section 3: Connecticut’s Emergency Mortgage Assistance Act.....</b>   | <b>17</b> |
| <b>Section 4: Mediation.....</b>   | <b>20</b> |
| <b>Section 5: Application for Protection from Foreclosure .....</b>  | <b>30</b> |
| Table 2: Unreported Connecticut Cases: Application for Protection from Foreclosure .....   | 34        |
| Figure 4: Application for Protection from Foreclosure .....  | 37        |
| Figure 5: Objection to Application for Protection from Foreclosure.....  | 40        |
| <b>Section 6: Defenses to Foreclosure .....</b>  | <b>42</b> |
| Figure 6: Special Defense and Counterclaim to Foreclosure.....   | 48        |
| Table 3: LaSalle National Bank v. Freshfield Meadows, LLC.....   | 49        |
| Table 4: Disclosure of Defense.....  | 51        |
| <b>Section 7: Redemption in Foreclosure .....</b>  | <b>53</b> |
| Table 5: Reinstatement .....   | 57        |
| <b>Section 8: Motion to Open Judgment of Foreclosure .....</b>   | <b>58</b> |
| Table 6: Unreported Connecticut Cases: Motion to Open Judgment of Foreclosure, prior to 10/1/09 (see CGS 49-15, 2011 edition)..... | 64        |
| Figure 7: Motion to Open and Modify Judgment of Strict Foreclosure .....   | 66        |
| Figure 8: Motion to Set New Law Day .....  | 70        |
| <b>Section 9: Appeals and Foreclosure .....</b>  | <b>72</b> |
| <b>Section 10: Bankruptcy and Foreclosure.....</b>   | <b>74</b> |
| Figure 9: Claim for Statutory Stay by Reason of Bankruptcy .....   | 78        |
| Figure 10: Notice of Relief from Stay from Bankruptcy Court.....   | 80        |
| <b>Section 11: Deficiency Judgment.....</b>  | <b>81</b> |
| Table 7: Defenses to a Deficiency .....  | 86        |
| Table 8: Deed in Lieu of Foreclosure .....   | 88        |
| <b>Section 12: Execution of Ejectment.....</b>   | <b>89</b> |
| <b>Section 13: Tenant Issues in Foreclosure.....</b>   | <b>92</b> |

**These guides are provided with the understanding that they represent only a beginning to research.**

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**This guide links to advance release slip opinions on the Connecticut Judicial Branch website and to case law hosted on Google Scholar.  
The online versions are for informational purposes only.**

**ACKNOWLEDGMENT:** The grateful assistance of Douglas J. Apicella while he was an intern at the Law Library at Middletown.

**Table 1: Resources on the Internet: Homeowner’s Options for Avoiding Foreclosure**

| <b>Resources on the Internet</b>  |  |
|---|--|
| <a href="http://www.cga.ct.gov/2009/rpt/2009-R-0159.htm">http://www.cga.ct.gov/2009/rpt/2009-R-0159.htm</a>   | <i>Jillian L. Redding, State and Federal Mortgage Assistance Programs, CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH, Report No. 2009-R-0159 (April 6, 2009).</i> |
| <a href="http://www.hud.gov/foreclosure/index.cfm">http://www.hud.gov/foreclosure/index.cfm</a>   | U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, <i>Avoiding Foreclosure.</i>   |
| <a href="http://www.justice.gov/ust/eo/public_affairs/consumer_info/foreclosure_scams.htm">http://www.justice.gov/ust/eo/public_affairs/consumer_info/foreclosure_scams.htm</a>   | U.S. DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES, <i>U.S. Trustee Program: Don't Get "Locked Out" of Your Home by a Bankruptcy Scam Operator.</i>         |
| <a href="http://www.larcc.org/pamphlets/housing/my_house_is_being_foreclosed.htm">http://www.larcc.org/pamphlets/housing/my_house_is_being_foreclosed.htm</a>   | STATEWIDE LEGAL SERVICES, <i>My House is Being Foreclosed. What Can I Do?</i>  |
| <a href="http://www.cga.ct.gov/2009/rpt/2009-R-0159.htm">http://www.cga.ct.gov/2009/rpt/2009-R-0159.htm</a>   | <i>Jillian L. Redding, State and Federal Mortgage Assistance Programs, CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH, Report No. 2009-R-0159 (April 6, 2009).</i> |
| <a href="http://makinghomeaffordable.gov/about.html">http://makinghomeaffordable.gov/about.html</a>   | Making Home Affordable Plan  |
| <a href="http://www.chfa.org/Homeownership/for%20Homeowners%20at%20Risk%20of%20Foreclosure/CTFAMLIESProgram.aspx">http://www.chfa.org/Homeownership/for%20Homeowners%20at%20Risk%20of%20Foreclosure/CTFAMLIESProgram.aspx</a>   | Connecticut: CT FAMLIES (Connecticut Fair Alternative Mortgage Lending Initiative and Education Services Program)  |
| <a href="http://www.chfa.org/Homeownership/for%20Homeowners%20at%20Risk%20of%20Foreclosure/EmergencyMortgageAssistanceProgram.aspx">http://www.chfa.org/Homeownership/for%20Homeowners%20at%20Risk%20of%20Foreclosure/EmergencyMortgageAssistanceProgram.aspx</a>                       | Connecticut: CT EMAP (Emergency Mortgage Assistance Program)   |
| <a href="http://www.chfa.org/Homeownership/for%20Homeowners%20at%20Risk%20of%20Foreclosure/Foreclosure%20Prevention%20Counseling/default.aspx">http://www.chfa.org/Homeownership/for%20Homeowners%20at%20Risk%20of%20Foreclosure/Foreclosure%20Prevention%20Counseling/default.aspx</a> | Connecticut: Foreclosure Prevention Counseling   |

# Section 1: Strict Foreclosure in Connecticut

*A Guide to Resources in the Law Library*

## SCOPE:

- Bibliographic resources relating to strict foreclosures in Connecticut.

## DEFINITION:

- **Connecticut is a title state:** “Both by common-law rule and by statute, a mortgagee [creditor] in Connecticut is deemed to have taken legal title under the execution of a mortgage on real property. [Conference Center, Ltd. v. TRC](#), 189 Conn. 212, 218, 455 A.2d 857 (1983); [State v. Stonybrook, Inc.](#), 149 Conn. 492, 496, 181 A.2d 601, cert. denied, 371 U.S. 185, 83 S.Ct. 265, 9 L.Ed.2d 227 (1962). Nonetheless, the mortgagee's legal title is a defeasible fee ‘subject to [an equitable] right of redemption which persists until it is extinguished by an action of foreclosure.’ [State v. Stonybrook, Inc.](#), supra, 496. Even after the initiation of a foreclosure action, the mortgagee's title does not become absolute until all eligible parties have failed to exercise their rights to redeem the property. [City Lumber Co. of Bridgeport, Inc. v. Murphy](#), 120 Conn. 16, 19, 179 A. 339 (1935).” [New Milford Savings Bank v. Jajer](#), 244 Conn. 251, 256 fn. 11, 708 A.2d 1378, 1382 (1998).
- **Strict foreclosure:** “‘Under our law, an action for strict foreclosure is brought by a mortgagee [creditor] who, holding legal title, seeks . . . to foreclose an equity of redemption unless the mortgagor [debtor] satisfies the debt *on or before his law day*. [Cook v. Bartholomew](#), 60 Conn. 24, 27, 22 A. 444 (1891).’ (Emphasis added.)” [Connecticut National Bank v. L & R Realty](#), 40 Conn. App. 492, 494, 671 A.2d 1315, 1316 (1996).
- **Law day:** “Where a foreclosure decree has become absolute by the passing of the law days, the outstanding rights of redemption have been cut off and the title has become unconditional in the [redeeming encumbrancer] . . . The mortgagor has no remaining title or interest which he can convey.” [City Lumber Co. of Bridgeport, Inc. v. Murphy](#), 120 Conn. 16, 25, 179 A. 339, 342 (1935).
- **Strict foreclosure vs. foreclosure by sale:** “All liens and mortgages affecting real property may, on the written motion of any party to any suit relating thereto, be foreclosed by a decree of sale instead of strict foreclosure at the discretion of the court before which the foreclosure proceedings are pending.” CONN. GEN. STAT. (2011) § [49-24](#).
- **Substantial excess equity:** “It has been held, however, that when the value of the property substantially exceeds the value of the lien being foreclosed, the trial court abuses its discretion when it refuses to order a foreclosure by sale.” [Voluntown v. Rytman](#), 27 Conn. App. 549, 555, 607 A.2d 896, 899 (1992).

## STATUTES:

- CONN. GEN. STAT. (2011)

Title [49](#). Mortgages and Liens

Chapter [846](#). Mortgages

§ [49-19](#). Title to vest in encumbrancer paying debt and costs.

§ [49-20](#). Redemption by holder of encumbrance on part of property foreclosed.

§ [49-21](#). Defendant to receive and file certificate of satisfaction or certificates of judgment of strict foreclosure or foreclosure by sale.

§ [49-24](#). Court may foreclose lien or mortgage on land by sale.

**COURT RULES:**

- **Listing of Law Days**  
“(a) In any action to foreclose a mortgage or lien, any party seeking a judgment of strict foreclosure shall file, with the motion for judgment, a list indicating the order in which law days should be assigned to the parties to the action. The order of the law days so indicated shall reflect the information contained in the plaintiff’s complaint, as that information may have been modified by the pleadings. Objections to the order of law days indicated on said list shall only be considered in the context of a motion for determination of priorities, which motion must be filed prior to the entry of judgment.” CT Practice Book [23-17](#) (2011).
- **Motions for Judgment of Foreclosure**  
“In all foreclosure actions, motions for judgment shall not be filed prior to the expiration of 30 days after the return date.” CT Practice Book [17-33A](#) (2011).

**PAMPHLETS:**

- Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners, Connecticut Fair Housing Center  
<http://ctfairhousing.org/wp/wp-content/uploads/2010/01/CFHC-ForeclosMan-Repr5-Jul11-R2.pdf>

**FORMS:**

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY’S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004).  
Appendix of official forms  
Form 707.1 Judgment of strict foreclosure, p. 627  
Form 707.5 Judgment of strict foreclosure after opening of original judgment, p. 633  
Appendix of unofficial forms  
Form 9. Motion for judgment of strict foreclosure, p. 696  
Form 26. Judgment for deficiency after strict foreclosure, p. 719
- 3 JOEL M. KAYE ET AL. [CONNECTICUT PRACTICE SERIES: CIVIL PRACTICE FORMS](#) 4<sup>TH</sup> (2004).  
Judgment of Strict Foreclosure, Form 707.1, pp. 655-656
- Dennis P. Anderson, Denis R. Caron & Geoffrey K. Milne, *Real Property Foreclosure In Connecticut*, [CONNECTICUT LAWYERS’ DESKBOOK: FORMS INDEX](#) (2d ed. 2000). Chapter XIV. “Motion for Judgment of Strict Foreclosure”
- Certificate of Judgment - Strict Foreclosure, JD-CV-47  
<http://www.jud2.ct.gov/webforms/forms/cv047.pdf>
- [Library of Connecticut Civil Complaints for Business Litigation](#), vol. 1  
Checklist – Commercial Foreclosure, p. 16  
Complaint – Commercial Foreclosure, p. 17-20

**RECORDS & BRIEFS:**

- Motion for Judgment of Strict Foreclosure, CONNECTICUT SUPREME COURT RECORDS & BRIEFS, January 2003, [Webster Bank v. Oakley et al.](#), 265 Conn. 539, 830 A2d 139 (2003). [Figure 1](#).

**WEST KEY NUMBERS:**

- *Mortgages* #384 Strict foreclosure

**DIGESTS:**

- [DOWLING'S DIGEST](#): *Mortgages* §§ 20-24
- [PHILLIP'S DIGEST](#): *Mortgages* §§ 20-22

**COURT CASES:**

- [New Milford Savings Bank v. Jajer](#), 244 Conn. 251, 256, 708 A.2d 1378, 1382 (1998). "The law governing strict foreclosure lies at the crossroads between equitable remedies provided by the judiciary and the statutory remedies provided by the legislature."
- [New England Savings Bank v. Lopez](#), 227 Conn. 270, 284, 630 A.2d 1010, 1018 (1993). "whether to order a strict foreclosure or a foreclosure by sale is a matter committed to the sound discretion of the trial court, to be exercised with regard to all the facts and circumstances of the case."
- [F.D.I.C. v. M.F.P. Associates](#), 870 F. Supp. 451, 454 (D. Conn. 1994). "In Connecticut, it is within the Court's discretion whether to order foreclosure by sale or by strict foreclosure."
- [Farmers & Mechanics Savings Bank v. Sullivan](#), 216 Conn. 341, 352, 579 A.2d 1054, 1059 (1990). "Frequently strict foreclosures are ordered, despite a property appraisal substantially higher than the mortgage debt, because the owner believes he will be able to redeem and he seeks to avoid the additional expense involved in a foreclosure by sale."
- [Fidelity Trust Co. v. Irick](#), 206 Conn. 484, 487-488, 538 A.2d 1027, 1029 (1988). "Because the total of all liens, taxes, costs and fees, plus the estimated expenses of a foreclosure by sale of \$7000, amounted to \$123, 580.22, and the appraiser valued the property at \$96,750, the trial court concluded, in the exercise of its discretion, and the Appellate Court agreed, that strict foreclosure was proper in this case. We disagree."
- [Bradford Realty Corporation v. Beetz](#), 108 Conn. 26, 31, 142 A. 395, 397 (1928). "As no equity in the property over and above the first mortgage and the plaintiff's mortgage was shown in defendant Cohen, the trial court wisely refused, in the exercise of its discretion, to impose upon the plaintiff the additional cost and expense of a foreclosure by sale."
- For summaries of recent CT Supreme and Appellate Court foreclosure cases, see our foreclosure section on our NewsLog at: <http://ersa.jud.ct.gov/lawlibnews/Lists/Categories/Category.aspx?Name=Foreclosure%20Opinions>

**ENCYCLOPEDIAS:**

- 55 [AM. JUR. 2d](#) *Mortgages* (2009).  
§ 469 Strict foreclosure
- 59 & 59A [C.J.S.](#) *Mortgages* (2009).  
§§ 716, 717, 880-882, 1060 Strict foreclosure

**TEXTS & TREATISES:**

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004).  
§ 5.02D. Strict foreclosure or foreclosure by sale

§ 5.02D1. Judgment of strict foreclosure

- 3 JOEL M. KAYE ET AL. [CONNECTICUT PRACTICE SERIES: CIVIL PRACTICE FORMS](#) 4<sup>TH</sup> (2004).  
Authors' Comments following Forms 704.31 and 707.1
- 4 RICHARD R. POWELL, [POWELL ON REAL PROPERTY](#) (2011)  
Chapter 37. Mortgages and Mortgage Foreclosure  
§ 37.43. Strict foreclosure
- DENNIS P. ANDERSON, DENIS R. CARON AND GEOFFREY K. MILNE, [CONNECTICUT LAWYERS' DESKBOOK: A REFERENCE MANUAL](#), 3D (2008)  
Chapter 17, *Real Property Foreclosure in Connecticut*, p.401 et seq.  
Types of Foreclosure Judgments, pp. 420-426

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Supervising Law Librarian.

**Figure 1: Motion for Judgment of Strict Foreclosure**

CV-99-0498989S

SUPERIOR COURT

WEBSTER BANK

J.D. NEW BRITAIN

VS.

OAKLEY, LORNA T., ET AL

DECEMBER 1, 2000

**MOTION FOR JUDGMENT OF STRICT FORECLOSURE**

The Plaintiff in the above-entitled action respectfully represents that the Defendant, VI WEST CONDOMINIUM ASSOCIATION, INC., has filed a Disclosure of No Defense to the above entitled matter, and a Summary Judgment as to liability has entered as to the Defendant, LORNA T. OAKLEY.

WHEREFORE, the Plaintiff moves that a Judgment of Strict Foreclosure enter in the above-entitled matter. The Plaintiff submits that Law Days ought to be assigned to the Defendants in the following order:

- Law Day 1: Lorna T. Oakley
- Law Day 2: VI West Condominium Association, Inc.
- Law Day 3: Plaintiff to own if no prior redemption.

PLAINTIFF, WEBSTER BANK

By: \_\_\_\_\_

Name  
Firm  
Address  
Telephone Number  
Its Attorneys

**ORAL ARGUMENT REQUESTED**

# Section 2: Foreclosure by Sale

*A Guide to Resources in the Law Library*

## SCOPE:

- Bibliographic resources relating to foreclosure by sale mainly in Connecticut.

## DEFINITION:

- "Connecticut provides for the foreclosure of a mortgage of real property by either public sale or by strict foreclosure. The property is foreclosed by strict foreclosure unless the court orders foreclosure by sale." [In Re Fitzgerald](#), 237 B.R. 252, 261 (Bkrcty.D.Conn. 1999).
- "All liens and mortgages affecting real property may, on the written motion of any party to any suit relating thereto, be foreclosed by a decree of sale instead of a strict foreclosure at the discretion of the court before which the foreclosure proceedings are pending." CONN. GEN. STAT. § [49-24](#) (2011).
- "The purpose of the judicial sale in a foreclosure action is to convert the property into money and, following the sale, a determination of the rights of the parties in the funds is made, and the money received from the sale takes the place of the property." [National City Mortgage v. Stoecker](#), 92 Conn. App. 787, 794, 888 A2d 95, 100 (2006).
- **Termination of the equity of redemption in foreclosure by sale:** "The court finds that in Connecticut, the law is that the rights of a mortgagor [debtor] in mortgaged property are terminated by confirmation of a foreclosure sale, and that subsequent to such a sale, any interest the mortgagor may claim is in proceeds of the sale solely and not in the property. The delivery of a deed is a ministerial act only and does not constitute the event which terminates an equity of redemption." [Matter of Loubier](#), 6 B.R. 298, 303 (1980).
- "...where the value of the property foreclosed exceeds the amount of the mortgage debt, the mortgagee is entitled to nothing more. [Gruss v. Curry](#), 132 Conn. 22, 25-26, 42 A.2d 358 (1945). Accordingly, when the mortgagee takes title to the property, the fair market value of which exceeds the amount of the debt, its debt is satisfied by virtue of its ownership of the collateral. When the mortgagee becomes the owner of the property and its debt is satisfied, its status as mortgagee ceases and the rights and obligations established by the terms of the mortgage are nullified. See [First National Bank & Trust Co. v. Griebel](#), 20 Conn. Sup. 460, 463-64, 139 A.2d 503 (1957).  
Under Connecticut law, the rights of the mortgagor in the mortgaged property are terminated by confirmation of the foreclosure sale, and subsequent to such sale, any interest the mortgagor may claim is in the proceeds of the sale solely and not in the property. [In Re Kane](#), 236 B.R. 131, 133 (Bankr.D. Conn.

1999). ‘[A] judicial sale becomes complete and creates a legal right to obligations among parties when it is confirmed and ratified by the court.’ [Hartford Federal Savings & Loan Assn. v. Tucker](#), 13 Conn. App. 239, 536 A.2d 962, cert. denied, 207 Conn. 805, 540 A.2d 373 (1988). Although the court’s approval of a sale extinguishes the rights of redemption of other parties, it does not automatically vest title with the purchaser. General Statutes § [49-26](#) provides that after a sale has been ratified or confirmed by the court, ‘a conveyance of the property sold shall be executed by the person appointed to make the sale, which conveyance shall vest in the purchaser the same estate that would have vested in the mortgagee or lienholder if the mortgage or lien had been foreclosed by strict foreclosure....’ Accordingly, the muniment of title is the conveyance or the delivery of the deed to the purchaser.” [National City Mortgage v. Stoecker](#), 92 Conn. App. 787, 794-795, 888 A2d 95, 100-101 (2006).

- **Appraisal of property:** “When the court in any such proceeding is of the opinion that a foreclosure by sale should be decreed, it shall, in its decree, appoint a person to make the sale and fix a day therefor, and shall direct whether the property shall be sold as a whole or in parcels, and how the sale shall be made and advertised; but, in all cases in which such sale is ordered, the court shall appoint one disinterested appraiser who shall, under oath, appraise the property to be sold and make return of the appraisal to the clerk of the court. Upon motion of the owner of the equity of redemption, the court shall appoint a second appraiser in its decree. If the plaintiff is the purchaser at sale, or if the property is redeemed at any time prior to the approval of the sale, or if for any reason the sale does not take place, the expense of the sale and appraisal or appraisals shall be paid by the plaintiff and be taxed with the costs of the case. If, after judgment has been rendered, the amount found to be due and for which foreclosure is decreed, together with the interest and the costs, is paid to the plaintiff before the sale, all further proceedings in the suit shall be stayed.” CONN. GEN. STAT. § [49-25](#) (2011).

**STATUTES:**

- CONN. GEN. STAT. (2011)  
 Title [49](#). Mortgages and liens  
 Chapter [846](#). Mortgages  
 § [49-24](#). Court may foreclose lien or mortgage on land by sale.  
 § [49-25](#). Appraisal of property.  
 § [49-26](#). Conveyance; title of purchaser.  
 § [49-27](#). Disposal of proceeds of sale.  
 § [49-28](#). When proceeds of sale will not pay in full.  
 § [49-29](#). Expenses of sale and costs.

**COURT RULES:**

- **Motions for Judgment of Foreclosure**  
 “In all foreclosure actions motions for judgment shall not be filed prior to the expiration of 30 days after the return date.” CT Practice Book [17-33A](#) (2011 ed.)

**PAMPHLETS:**

- Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners, Connecticut Fair Housing Center  
<http://ctfairhousing.org/wp/wp-content/uploads/2010/01/CFHC->

**FORMS:**

- 3 Joel M. Kaye et al., [CONNECTICUT PRACTICE SERIES: CIVIL PRACTICE FORMS](#) 4<sup>TH</sup> (2004).  
Form 706.3. Motion for foreclosure by sale.
- DENIS R. CARON, [CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004).  
Form 706.3. Motion for foreclosure by sale, p. 626

**RECORDS & BRIEFS**

- [Motion for judgment of foreclosure by sale](#), CONNECTICUT APPELLATE COURT RECORDS & BRIEFS, December 2000, [Amresco New England II, L.P. v. Dominic Colossale, et al.](#), 63 Conn. App. 49, 774 A2d 1083, [Figure 3](#).

**COURT CASES**

- [Fidelity Trust Co. v. Irick](#), 206 Conn. 484, 488, 538 A.2d 1027, 1029 (1988). "In a foreclosure proceeding the authority of the trial court to order either a strict foreclosure or a foreclosure by sale is clear. General Statutes § 49-24 provides: 'All liens and mortgages affecting real property may, on the written motion of any party to any suit relating thereto, be foreclosed by a decree of sale instead of a strict foreclosure at the discretion of the court before which the foreclosure proceedings are pending.' In interpreting this statute, we have stated that '[i]n Connecticut, the law is well settled that whether a mortgage is to be foreclosed by sale or by strict foreclosure is a matter within the sound discretion of the trial court. General Statutes § 49-24; [City Savings Bank v. Lawler](#), 163 Conn. 149, 155, 302 A.2d 252 (1972); [Hartford Federal Savings & Loan Assn. v. Lenczyk](#), 153 Conn. 457, 463, 217 A.2d 694 (1966). 'The foreclosure of a mortgage by sale is not a matter of right, but rests in the discretion of the court before which the foreclosure proceedings are pending.' [Bradford Realty Corporation v. Beetz](#), 108 Conn. 26, 31, 142 A. 395 (1928).' [Hartford Federal Savings & Loan Assn. v. Tucker](#), 196 Conn. 172, 184, 491 A.2d 1084, cert. denied, 474 U.S. 920, 106 S.Ct. 250, 88 L.Ed.2d 258 (1985)."
- For summaries of recent CT Supreme and Appellate Court foreclosure cases, see our foreclosure section on our NewsLog at: <http://ersa.jud.ct.gov/lawlibnews/Lists/Categories/Category.aspx?Name=Foreclosure%20Opinions>

**WEST KEY NUMBERS:**

- *Mortgages*  
Foreclosure by the exercise of power by sale # 329-379.

**TEXTS & TREATISES:**

- Dennis P. Anderson, Denis R. Caron and Geoffrey K. Milne, *Real Property Foreclosure In Connecticut*, [CONNECTICUT LAWYERS' DESKBOOK: A REFERENCE MANUAL](#) (3d ed. 2008).  
"Foreclosure by sale procedures," ch. 17, pp. 426-441.
- Denis R. Caron & Geoffrey K. Milne, [CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004) and 2010 supplement.  
Chapter 5. Motions, the Hearing on Judgment, the Judgment File and the Bill of Costs  
§ 5.01H. Foreclosure by sale  
§ 5.02D. Strict foreclosure or foreclosure by sale  
§ 5.03B. Judgment of foreclosure by sale

Chapter 6. The Committee  
Chapter 7. Representing the Purchaser  
Chapter 8. Determination of Priorities and the Supplemental Judgment

- National Consumer Law Center, [FORECLOSURES: DEFENSES, WORKOUTS, AND MORTGAGE SERVICING](#) (3rd ed. 2010).
  - Chapter 14. Issues arising after a foreclosure sale
  - 14.1 Re-Purchasing the Home During or After the Foreclosure Sale
  - 14.2 Setting Aside a Completed Foreclosure Sale
  - 14.3 Deficiency Judgments
  - 14.4 Claiming a Foreclosure Sale Surplus
  - 14.5 Damage Claims for Wrongful Foreclosure
  - 14.6 Tax Consequences of a Foreclosure Sale: An Introduction
  - 14.7 Rights of Tenants in Possession Following Foreclosure on Their Landlord's Property
  - 14.8 Former Owners in Possession of Property Following Foreclosure
- 4 [Powell on Real Property](#) (2010)
  - § 37.40 Foreclosure by Action – Sale

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**Figure 2: Motion for Foreclosure by Sale**

706.3

Motion for Foreclosure by Sale

*(Caption of Case)*

The defendant (*name*) moves that, if a judgment of foreclosure is rendered in the above entitled action, it be for a foreclosure by sale.

(P.B.1963, Form 362; see Gen. Stat., § 49-24.)

**Figure 3: Motion for Judgment of Foreclosure by Sale**

DOCKET NO. CV-96-0563243-S : SUPERIOR COURT  
AMRESKO NEW ENGLAND II, L.P. : JUDICIAL DISTRICT OF  
HARTFORD/NEW BRITAIN  
v. : AT HARTFORD  
DOMINIC COLOSSALE, ET AL. : SEPTEMBER 4, 1998

MOTION FOR JUDGMENT OF FORECLOSURE BY SALE

The defendant and subsequent encumbrancer, Bank United, hereby respectfully requests that if a judgment of foreclosure is entered in this matter, that it be judgment of foreclosure by sale.

BANK UNITED

BY: \_\_\_\_\_  
Name  
Firm  
Address  
Telephone number  
Its Attorneys

NO ORAL ARGUMENT IS REQUESTED,  
NO TESTIMONY IS REQUIRED.

ORDER

The foregoing Motion having been duly presented and heard by the Court, it is hereby GRANTED/DENIED.

BY THE COURT ( \_\_\_\_\_, J.)

\_\_\_\_\_  
Judge/Clerk/Assistant Clerk

# Section 3: Connecticut's Emergency Mortgage Assistance Act

*A Guide to Resources in the Law Library*

**SCOPE:**

- Bibliographic resources relating to the Connecticut's Emergency Mortgage Assistance Act.

**AGENCY:**

- Connecticut Housing Finance Authority, 999 West Street, Rocky Hill, CT 06067-4005. 860-721-9501. CONN. GEN. STAT. § [8-244](#) (2011).

**DEFINITION:**

- **Sec. 8-265cc. Definitions. As used in sections 8-265cc to 8-265kk, inclusive:**

(1) "Aggregate family income" means the total income of persons residing in the same household as the mortgagor and any other resident of the household declared by the mortgagor as a dependent for federal tax purposes, from whatever source derived, including, but not limited to, pensions, annuities, retirement benefits and Social Security benefits, provided the authority may exclude from income (A) reasonable allowances for dependents, (B) reasonable allowances for medical expenses, (C) all or any part of the earnings of gainfully employed minors or family members other than the chief wage earner, (D) income not regularly received, and (E) such other expenses as the authority may allow;

(2) "Authority" means the Connecticut Housing Finance Authority created under section 8-244;

(3) "Mortgage" means a mortgage deed or other instrument which constitutes a first or second consensual lien on one-to-four family owner-occupied residential real property located in this state, including, but not limited to, a single-family unit in a common interest community;

(4) "Mortgagee" means the original lender under a mortgage, or its agents, successors, or assigns;

(5) "Mortgagor" means the owner-occupant of a one-to-four family residential real property located in this state, including, but not limited to, a single family unit in a common interest community, who is also the borrower under a mortgage encumbering such real property;

(6) "Housing expense" means the sum of the mortgagor's monthly maintenance expense in a common interest community, utility expense, heating expense, hazard insurance payment, taxes and required mortgage payment, including escrows;

(7) "Financial hardship due to circumstances beyond the mortgagor's control" means a significant reduction of aggregate family household income or increase in expenses which reasonably cannot be or could not have been alleviated by the liquidation of assets by the mortgagor as determined by the Connecticut Housing Finance Authority, including, but not limited to, a reduction resulting from (A) (i) unemployment or underemployment of one or more of the mortgagors; (ii) a loss, reduction or delay in receipt of such federal, state or municipal benefits as Social Security, supplemental security income, public assistance and government pensions; (iii) a loss, reduction or delay in receipt of such private benefits as pension, disability, annuity or retirement benefits; (iv) divorce or a loss of support payments; (v) disability, illness or death of a mortgagor; or (B) (i) a significant increase in the dollar amount of the periodic payments required by the mortgage; (ii) an unanticipated rise in housing expenses; or (iii) expenses related to the disability, illness or death of a member of the mortgagor's family, but does not include expenses related to the accumulation of credit or installment debt incurred for recreational or nonessential items prior to the occurrence of the alleged circumstances beyond the mortgagor's control in an amount that would have caused the mortgagor's total debt service to exceed sixty per cent of aggregate family income at that time;

(8) "Consumer credit counseling agency" means a nonprofit corporation or governmental agency located in this state which has been designated by the authority to provide homeowners' emergency mortgage assistance program counseling. A qualified consumer credit counseling agency must either be certified as a housing counseling agency by the federal Department of Housing and Urban Development or otherwise determined accepted by the authority;

(9) "Foreclosure mediation program" means the foreclosure mediation program established by section 49-31m; and

(10) "Periodic payments" means principal, interest, taxes, insurance and, if applicable, condominium fees." CONN. GEN. STAT. § [8-265cc](#) (2011)

**STATUTES:**

- CONN. GEN. STAT. (2011)
  - [Chapter 134](#). Connecticut Housing Finance Authority Act
  - [§8-265cc](#). Definitions.
  - [§8-265dd](#). Emergency mortgage assistance payment program. Foreclosure of eligible mortgage.
  - [§8-265ee](#). Notice to mortgagee of foreclosure. Meeting or conference with mortgagee or consumer credit counseling agency.
  - [§8-265ff](#). Application for loan. Disclosure of assets by mortgagor.

- Determination of eligibility by the authority.
- §8-265gg. Monthly payments. Calculation of amount. Procedures for review of mortgagor's financial circumstances.
- Modification to amount of payment.
- §8-265hh. Repayment agreement.
- §8-265ii. Written procedures.
- §8-265kk. Notification by authority to participating mortgagees of unavailability of funds.

**FORMS:**

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed., 2004) and 2010 supplement.
  - ❑ Mortgagee's Emergency Mortgage Assistance Notice to Mortgagor, p. 640 et seq. (see also 2010 supp., p. 153).
  - ❑ Form 41 Mortgagee's Affidavit of Compliance with the Emergency Mortgage Assistance Program, p. 737 (see also 2010 supp., p. 154).
  - ❑ Form 42 Affidavit of Non-applicability of the Emergency Mortgage Assistance Act, p. 738 (see also 2010 supp., p. 155).
  - ❑ Form 43 Affidavit of Mortgagor's Default under the Emergency Mortgage Assistance Act, p. 739 (see also 2010 supp., p. 158).

**TEXTS & TREATISES:**

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004) and 2010 supplement.
  - Chapter 15 Protection from Foreclosure for Unemployed Persons
    - §15.13 The Emergency Mortgage Assistance Act (refer to 2010 supplement for substantial changes to chapter)
    - §15.13A Act's scope ill-defined, then redefined
    - §15.13B "Eligible mortgage"
    - §15.13C "Mortgagor"
    - §15.13D The notice requirement
    - §15.13E The affidavit requirement
    - §15.13F Implementing the program
    - §15.13G Consequences of default
    - §15.13H Lender may limit period of participation
    - §15.13I Effect of unavailability of funding
    - §15.13J Mortgagor Assistance Agreement and open-end mortgage

**CURRENT COMPILER:**

Janet Zigadto, Connecticut Judicial Branch Law Library at New Haven, 235 Church Street, New Haven, CT 06510. (203) 503-6828. [Email](#).

\* Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.

# Section 4: Mediation

*A Guide to Resources in the Law Library*

## SCOPE:

- Bibliographic resources relating to the Connecticut Judicial Branch's Foreclosure Mediation Program.

## DEFINITION:

“**Definitions.** 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) "Mortgage" 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.” CONN. GEN. STAT. § 49-31k (as amended by [PA 11-201](#), section 1, effective July 1, 2011).

- “**Foreclosure mediation program.** 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.” CONN. GEN. STAT. § [49-31m](#) (as amended by PA 11-2011, section 3, **effective October 1, 2011**) (click the link to 49-31m to get text of statute effective before 10/1/11).

- **“Foreclosure mediation: Notice of foreclosure mediation program. Forms. Procedure.** 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.” CONN. GEN. STAT. § 49-31ℓ (as amended by [PA 11-201](#), section 2, effective July 1, 2011).

- **“Mediation period. Termination of program.** 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 [day] 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 mortgagee 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 49-317, 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 49-31l, 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 49-31l, 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 49-31l, 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 49-31l, as amended by this act, have been satisfied.” CONN. GEN. STAT. § 49-31n (as amended by PA 11-201, section 4, *effective July 1, 2011*).

- **“Consent of mortgagee required for changes. Disclosure of information submitted to mediator.** (a) Nothing in sections 49-31k to 49-31n, inclusive, shall require a mortgagee to modify a mortgage or change the terms of payment of a mortgage without its consent.

(b) Information submitted by the mortgagor to a mediator, either orally or in writing, including financial documents, shall not be subject to disclosure by the Judicial Branch.” CONN. GEN. STAT. § 49-31o (2011)

**STATUTES:**

- CONN. GEN. STAT. (2011)
  - Title 49. Mortgages and Liens
  - Chapter 846. Mortgages
  - § 49-31k. Definitions. (see PA 11-201, section 1)
  - § 49-31l. Foreclosure Mediation: Notice of foreclosure

- mediation program. Forms. Procedure. (see [PA 11-201](#), section 2)
- § [49-31m](#). Foreclosure mediation program. (see [PA 11-201](#), section 3)
- § [49-31n](#). Mediation period. Termination of program. (see [PA 11-201](#), section 4)
- § [49-31o](#). Consent of mortgagee required for changes. Disclosure of information submitted to mediator.

**COURT RULES:**

- **Sec. 17-20. Motion for Default and Nonsuit for Failure to Appear**

“(b) In an action commenced by a mortgagee prior to July 1, 2010, for the foreclosure of a mortgage on residential real property consisting of a one to four-family dwelling occupied as the primary residence of the mortgagor, with a return date on or after July 1, 2008, if no appearance has been entered for the mortgagor on or before the fifteenth day after the return day or, if the court has extended the time for filing an appearance and no appearance has been entered on or before the date ordered by the court, any other party to the action may make a motion that a default be entered for failure to appear.” CONN. PRAC. BK. [17-20](#) (2011 ed.)

- **Sec. 10-12. Service of the Pleading and Other Papers; Responsibility of Counsel or Pro Se Party: Documents and Persons to Be Served**

“(a) It is the responsibility of counsel or a pro se party filing the same to serve on each other party who has appeared one copy of every pleading subsequent to the original complaint, every written motion other than one in which an order is sought ex parte and every paper relating to discovery, request, demand, claim, notice or similar paper, **except a request for mediation under Public Act 08-176, § 16** (emphasis added). When a party is represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the judicial authority.” CONN. PRAC. BK. [10-12](#) (2011 ed.)

**FORMS:**

- [Foreclosure Mediation Request, JD-CV-93](#)
- [Foreclosure Mediation Notice to Homeowner, JD-CV-94](#)
- [Foreclosure Mediation – Objection, JD-CV-95](#)
- [Foreclosure Mediation — Motion For Permission To Request Mediation Later Than 15 Days After Return Date Or To Change Mediation Period, JD-CV-96](#)
- [Foreclosure Mediation Certificate, JD-CV-108](#)
- [Foreclosure Mediation – Notice of Mediation Program, JD-CV-109](#)
- [Motion for Inclusion in the Foreclosure Mediation Program](#), Form 10 in Appendix to [Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners](#), 5<sup>th</sup> ed., Connecticut Fair Housing Center

**PAMPHLETS:**

- [FORECLOSURE MEDIATION PROGRAM](http://www.jud.ct.gov/Publications/CV092.pdf)  
<http://www.jud.ct.gov/Publications/CV092.pdf>
- [Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners](#), 5<sup>th</sup> ed., Connecticut Fair Housing Center

**TEXTS & TREATISES:**

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004).  
2010 Cumulative Supplement, pp. 159-169  
§15.14 **Foreclosure Mediation**  
15.14A Limited Duration  
15.14A1 Scope of the Program  
15.14B The Notice Requirement  
15.14C Program Commencement  
15.14D The Stay  
15.14E The Mediation Sessions  
15.14F Additional Provisions

**COMPILER:**

Janet Zigadto, Connecticut Judicial Branch Law Library at New Haven, 235 Church Street, New Haven, CT 06510. (203) 503-6828. [Email](#).

# Section 5: Application for Protection from Foreclosure

*A Guide to Resources in the Law Library*

**SCOPE:**

- Bibliographic resources relating to the Connecticut's Protection from Mortgage Foreclosure Act.

**DEFINITION:**

- CONN. GEN. STAT. (2011)  
§ [49-31d](#). **Definitions.** For the purposes of sections 49-31d to 49-31i, inclusive:

(1) "Unemployed person" means a person who is unemployed for purposes of chapter 567.

(2) "Homeowner" means a person who has an ownership interest in residential real property secured by a mortgage which is the subject of a foreclosure action, and who has owned and occupied such property as his principal residence for a continuous period of not less than two years immediately preceding the commencement of such foreclosure action.

(3) "Restructured mortgage debt" means the adjustment by a court 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 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.

(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 average annual earned income during the two years immediately preceding such twelve-month period.

## STATUTES:

- CONN. GEN. STAT. (2011)
  - [Title 49](#). Mortgages and liens
    - § [49-31d](#). Definitions.
    - § [49-31e](#). Notice to homeowner of protections from foreclosure.
      - (b) A homeowner who is given notice of the availability of the provisions of sections 49-31d to 49-31i, inclusive, must make application for protection from foreclosure within twenty-five days of the return day.
    - § [49-31f](#). Application for protection from foreclosure action. Qualifications. Court determination of eligibility. Stay of foreclosure action.
      - (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.
    - § [49-31g](#). Restructuring of mortgage debt by court.
    - § [49-31h](#). Partial payment by homeowner mandated by court as condition for granting restructuring order.
    - §[49-31i](#). Determination of restructured mortgage debt. Limitations on amount of mortgage debt following restructuring. Computation of new mortgage debt.
    - §[49-31j](#). Regulations: “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, (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.”

## REGULATIONS:

- CONN. AGENCIES REGS. §§ 49-31j-1 to 49-31j-9
  - § [49-31j-1](#). Definitions
  - § [49-31j-2](#). Notice
  - §§ 49-31j-3 to 49-31j-4. Repealed, February 9, 2009
  - § [49-31j-5](#). Composite interest rate
  - §§ 49-31j-6 to 49-31j-9. Repealed, February 9, 2009

## LEGISLATIVE:

- *George Coppola, Mortgage Foreclosure-Unemployed Homeowners*, CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH, Report No. 2002-R-0363 (March 22, 2002). URL: <http://www.cga.ct.gov/2002/olrdata/jud/rpt/2002-R-0363.htm>

## FORMS:

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY’S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004).
  - Form 34. Application for protection from foreclosure, p. 727

## RECORDS & BRIEFS

- [CONNECTICUT SUPREME COURT RECORDS AND BRIEFS](#), May/June 1998. [Shawmut Mortgage Company v. Wheat](#), 245 Conn. 744, 717 A2d 664 (1998).

[Figure 4](#): Application for protection from foreclosure, p.34

[Figure 5](#): Objection to application for protection from foreclosure action, p.37

## **COURT CASES**

- [Savings Bank Life Ins. Co. v. Linthicum](#), 43 Conn. App. 467, 469, 683 A.2d 737, 739 (1996). “The purpose of an application for protection from foreclosure under § 49-31f is to grant the defendant an opportunity for the restructuring of the mortgage debt. General Statutes § 49-31g. If the application is approved, the foreclosure action is stayed for the restructuring period, pursuant to § 49-31f (f).”
- [Citicorp Mortgage, Inc. v. Conant](#), 54 Conn. App. 529, 534, 736 A.2d 928, 931 (1999). "We agree, in this case, that the trial court did not abuse its discretion when it denied the defendants' application. Its findings that the defendants' visions of their future earnings were speculative, that they had no equity in the mortgaged property, that their financial situation would make it unlikely that they would be able to make timely payments on the restructured mortgage and that the plaintiff would be prejudiced by a restructuring of the mortgage were based on the evidence before it. We conclude, therefore, that the trial court properly denied the defendants' application for protection from foreclosure."
- [Shawmut Mortgage Co. v. Wheat](#), 245 Conn. 744, 754-755, 717 A.2d 664, 670 (1998). “. . . we conclude that the defendant, as an individual who never previously has been employed, is not an ‘unemployed person’ within the meaning of §49-31d (1) and , therefore, may not qualify for protection from mortgage foreclosure under the mortgage act.”
- See also [Table 2: Unreported Connecticut decisions](#)
- For summaries of recent CT Supreme and Appellate Court foreclosure cases, see our foreclosure section on our NewsLog at: <http://ersa.jud.ct.gov/lawlibnews/Lists/Categories/Category.aspx?Name=Foreclosure%20Opinions>

## **TEXTS & TREATISES:**

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY’S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004) and 2010 supplement.
  - Chapter 15 Protection from foreclosure for unemployed persons
    - § 15.01 Legislative history
    - § 15.02 What mortgages are subject to the Act?
    - § 15.03 Who qualifies to invoke the protection under the Act
    - § 15.04 How is the Act’s protection invoked?
    - § 15.05 What factors does the court consider?
    - § 15.06 When is the debt restructured?
    - § 15.07 How is the debt restructured?
    - § 15.08 What takes place during the restructuring period?
    - § 15.09 How is the interest handled?
    - § 15.10 How is the prevailing rate computed?
    - § 15.11 Notice requirement
    - § 15.12 Time limitations for invoking protection

## **CURRENT COMPILER:**

Janet Zigadto, Connecticut Judicial Branch Law Library at New Haven, 235 Church Street, New Haven, CT 06510. (203) 503-6828. [Email](#).

\* Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.

**Table 2: Unreported Connecticut Cases: Application for Protection from Foreclosure**

| <h2 style="margin: 0;">Unreported Connecticut Decisions:<br/>Application for Protection from Foreclosure</h2> |   |
|---|---|
| In general  | <p>“The court having reviewed the evidence and the statutory criteria found in General Statutes 49-31d through 49-31i finds the following:</p> <ol style="list-style-type: none"> <li>1. The mortgage being foreclosed is a residential first mortgage which has been the principal residence of the defendants for more than two years.</li> <li>2. The homeowners have not had a prior foreclosure action commenced against them in the past seven years.</li> <li>3. The defendants have not received emergency mortgage assistance.</li> <li>4. The court finds the defendants to be underemployed and/or unemployed persons as defined by the statutes.</li> </ol> <p><b>The court finds the value of the property to be \$240,000.00.</b></p> <ol style="list-style-type: none"> <li>5. The court finds the new principal balance as of June 1, 2004 to be \$172,287.07, which is computed by adding 28 days of per diem interest at a rate of \$45.43 per day which equals \$1,262.04, to the balance of \$171,028.03 provided by the plaintiff. The court finds the monthly payment at a variable interest rate of 11.95% for a period of 318 months to be \$1,779.31. The first payment is due on June 1, 2004 and each month thereafter in arrears. The defendants shall in addition continue to pay any escrows previously collected under the terms of the mortgage.</li> <li>6. The court finds the debt to be less than 90% of the property's value.</li> <li>7. All other conditions of the mortgage and promissory note, including any escrows, shall remain in effect.</li> <li>8. The court finds the defendants have sufficient income to make the new payments.</li> </ol> <p>The court notes there are subsequent encumbrancers whose debt exclusive of accrued interest is in excess of \$55,000.00. None of these encumbrancers have objected to this application and in the court's opinion would benefit from the reinstatement of this mortgage.</p> <p>The defendants' application for relief is granted, further action on this mortgage is stayed for six months in accordance with General Statute 49-31g, and the mortgage is ordered reinstated.” <u>Long Beach Mortgage Company v. Belmonte</u>, No. CV 04-0092102 (Conn. Super. Ct., Litchfield, May 4, 2004), 37 CLR 14.</p> |
| Homeowner   | <p>“Thus, the court concludes that the term ‘homeowner,’ as defined in § 49-31d(2), is limited to one who has legal title, and, as Neola Wood is the sole record owner of the property in this foreclosure action, James E. Wood, a mortgagor, does not have the requisite ownership interest to qualify as a homeowner under the foreclosure moratorium act.” <u>Home Loan &amp; Investment Bank v. Wood</u>, No. CV 03-0399404 S (Conn. Super. Ct., Fairfield at Bridgeport, Jul. 8, 2003), 35 CLR 108.</p>   |

[cont'd]

**Unreported Connecticut Cases: Application for Protection from Foreclosure [cont'd]**

|                          |   |
|--------------------------|---|
| <p>Untimely filing</p>   | <p>“In this action the return date was September 30, 2003. General Statute 49-31e(b) requires the homeowner to file for protection within 25 days of the return date which would have been October 26, 2003. The application here was not filed until February 20, 2004 long past the statutory period.</p> <p>Accordingly the court finds due to the untimely filing of the application for protection the Defendants' application is denied.” <u>Country Wide Home Loans, Inc. v. Barth</u>, No. CV03-0091545 (Conn. Super. Ct., Litchfield, Mar. 8, 2004).</p> <p>“The statute at issue simply does not provide for any extensions of the time period stated therein, and as it is in derogation of the common law, such statutes are to be strictly construed. As another judge noted in denying a motion for extension of time to file such an application in a different foreclosure case, ‘Statutory time period requirements set out in Connecticut General Statutes § 49-31e(b) [are] mandatory. When a statute creates a remedy which does not exist at common law, all the statutory requirements must be complied with for the statutory remedy to be granted.’ <u>Wachovia Bank v. Braunstein</u>, No. 4003225 (J.D. at New London, Devine, J.), citing <u>Fleet Bank Association, As Assignee of FDJC, As Receiver of the Connecticut Bank and Trust Company, N.A. v. Shirley Holmes et al.</u>, No. CV-91-0399662S (J.D. at Hartford, Satter, J.) [5 Conn. L. Rptr. 532].” <u>Wells Fargo Bank, N.A., as Trustee v. John H. Harrington</u>, No. CV 07-5010723 S, (Conn. Super. Ct., Judicial District of Fairfield at Bridgeport, March 31, 2009), 47 CLR 473.</p> |
| <p>Restructured debt</p> | <p>“The court finds that the defendant is ineligible for protection from foreclosure under the provisions of Conn. Gen. Stat. §§ 49-31i (b). Under that statute, assuming the applicant is otherwise eligible for the protection from foreclosure afforded by 49-31f, the court cannot grant the application if the amount of the restructured debt would be ninety per cent or less of the fair market value of the property. At present, through June 30, 2003, based on the unopposed submissions of the plaintiff, the debt stands at over \$87,000, and the fair market value of the property at 255 Oak Street, Waterbury, is \$80,000.” <u>National City Mortgage Co. v. Minnis</u>, No. CV 03-0176969 (Conn. Super. Ct., Waterbury, July 16, 2003).</p>   |
| <p>Unemployed person</p> | <p>“Likewise, the foreclosure moratorium act ‘was designed as a temporary mortgage moratorium for unemployed <i>workers</i>; (emphasis in original; internal quotation marks omitted) <i>id.</i>, 752; and was intended’ only to help persons who are experiencing <i>temporary</i> economic difficulties.” (Emphasis in original.) <i>Id.</i>, 753. In fact, ‘the legislature had in mind only persons who are experiencing <i>temporary</i> employment-related losses or decreases in earned income as beneficiaries when it enacted the [foreclosure moratorium] act.’ (Emphasis added.) <i>Id.</i> In the present case, according to the defendants, Neola Wood ‘has not worked in many years, is of an age where she can collect Social Security Benefits, and . . . is too ill currently to work . . .’ (Defendants' Supplemental Memorandum, p. 4.) Like the plaintiff in <u>Shawmut Mortgage Co. v. Wheat</u> <i>supra</i>, 245 Conn. 753, Neola Wood ‘presently is not experiencing a temporary employment-related decrease in earned income,’ and she does not qualify, therefore, as an ‘unemployed person’ within the meaning of the foreclosure moratorium act.” <u>Home Loan &amp; Investment Bank v. Wood</u>, No. CV 03-0399404 S (Conn. Super. Ct., Fairfield at Bridgeport, Jul. 8, 2003), 35 CLR 108.</p>  |

|                            |  |
|----------------------------|--|
| <p>Filing Defenses</p>     | <p>“The plaintiff’s first argument is that all of the defendant’s special defenses should be stricken because the defendant has waived her right to file special defenses by filing an application for protection from foreclosure action pursuant to General Statutes §§ 49-31d et seq. In support of its argument, the defendant cites to General Statutes § 49-31f(g), which provides that “[n]o 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.”</p> <p>A literal reading of the language of General Statutes § 49-31f(g) demonstrates simply that a homeowner who files a special defense in a foreclosure action is prevented from <u>thereafter</u> filing an application for protection under the section. The plaintiff’s argument, however, seeks to obtain a converse result. Thus, the plaintiff has taken the position that once an application is filed under that section, the homeowner may not subsequently file a special defense in a foreclosure action. This converse reading of the statute is incorrect. The filing of an application for protection under General Statutes §§ 49-31d et seq. does not vitiate a homeowner’s right to file special defenses in a foreclosure action <u>after</u> an application for protection has been filed. See <u>BancBoston Mortgage Corp. v. McCormack</u>, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. 503184 (January 14, 1992, Satter, S.T.R., 8 CSCR 257); <u>Dime Savings Bank v. Romano</u>, Superior Court, Judicial District of Fairfield at Bridgeport, Docket No. 284925 (June 17, 1992, Katz, J., 7 CSCR 890). The defendant’s first argument, therefore, is without merit.” <u>Berkeley Fed. Bk. &amp; Trust v. Phillips</u>, No. CV94 031 79 57 S (Conn. Super. Ct., Fairfield at Bridgeport, Jan. 23, 1996).</p> |
| <p>Filing Requirements</p> | <p>“Also, he has failed to supply the court with a financial affidavit as required by General Statutes § 49-31f(a). Without an affidavit, the court is unable to determine his eligibility as unemployed or underemployed person, General Statutes § 49-31f(a), nor can it make the other financial evaluations required by the statutes, such as whether he is likely to make timely payments on a restructured mortgage commencing at the end of the restructuring period, General Statutes § 49-31f(a), or whether he is capable of eliminating the arrearage, General Statutes § 49-31g, or what partial payments can be made during the restructuring period. General Statutes § 49-31h.” <u>Deutsche Bank National Trust Co. v. Granger et al.</u>, No. HHB CV 08-5007914-S (Connecticut Superior Court Judicial District of New Britain at New Britain, May 19, 2009).</p>  |

**Figure 4: Application for Protection from Foreclosure**

RET. JANUARY 12, 1993 : SUPERIOR COURT  
SHAMUT MORTGAGE COMPANY : J.D. OF STAMFORD/  
VS. : NORWALK  
MARY C. WHEAT : AT STAMFORD  
: JANUARY 25, 1993

APPLICATION FOR PROTECTION FROM FORECLOSURE

The Defendant, Mary C. Wheat, being the owner of the premises which are the subject of the above-referenced foreclosure action, hereby make application to this Honorable Court for protection! From foreclosure, pursuant to the provisions of C.G.S. sections 49-31d through 49-31j, and represent as follows:

- a) that Mary C. Wheat is a homeowner as defined in section 49-31d, having owned and occupied the subject property as her principal residence for a continuous period of not less than two years immediately preceding the commencement of this action;
- b) that the mortgage sought to be foreclosed is a first mortgage upon the subject property and the Plaintiff, holder of said mortgage, is a lender as defined in the act;
- c) that neither Mary C. Wheat, nor Clayton E. Wheat, her husband who also signed the Note, have had a foreclosure action commenced against their in the past seven years; and
- d) that both Mary C. Wheat, and Clayton E. wheat are unemployed/~~under employed~~ as defined in the act . . . .

ORAL ARG. REQ.  
TESTIMONY REQ.

WHEREFORE, the applicant moves as follows:

- I) That the Court determine her eligibility for protection from foreclosure
- II) That the Court Order the Restructuring of the mortgage debt and establish a restructuring period for the elimination of the arrearage on said debt; and
- III) That further prosecution of the foreclosure be stayed during the restructuring period.

THE DEFENDANT, Mary C. Wheat

By \_\_\_\_\_  
Name  
Address  
Juris No.  
Telephone No.

ORDER

The forgoing Application, having been heard, is HEREBY ORDERED:

GRANTED/DENIED

BY THE COURT,

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Judge/Clerk

Certification

This is to certify that a true copy of the foregoing Application has been mailed this 25th day of January 1993 to all parties, and counsel of record.

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Commissioner of the Superior Court

**Figure 5: Objection to Application for Protection from Foreclosure**

NO. CV-93 0128882 S : SUPERIOR COURT  
SHAWMUT MORTGAGE COMPANY D/R/A  
CONNECTICUT NATIONAL MORTGAGE COMPANY : J.D. OF STAMFORD/  
VS. : NORWALK  
MARY C. WHEAT A/K/A, ET AL. : AT STAMFORD  
: APRIL 28, 1993

OBJECTION TO APPLICATION FOR PROTECTION  
FROM FORECLOSURE ACTION

The plaintiff in the above-entitled action hereby objects to the defendant, MARY C. WHEAT's Application for Protection from Foreclosure under Connecticut General Statutes 49-31d through 49-31j et seq. and in support thereof states the following:

1. There is no likelihood that the mortgagors will be able to make timely payments on the restructured mortgage commencing at the end of the restructuring period.
2. The restructured payments would be in the approximate amount of \$7,084.97 per month, if restructured as of March 1, 1993, and the mortgagors' monthly income is only \$9,520.33.
3. The restructured payments do not take into account the living expenses of the mortgagors, including but not limited to \$300.00 per week for nursing care.

ORAL ARGUMENT IS REQUESTED  
TESTIMONY IS REQUIRED

WHEREFORE, plaintiff moves that its Objection to Application for Protection be sustained and the Application denied.

PLAINTIFF

By \_\_\_\_\_

Name

Address

Phone number

Juris number

Its Attorneys

ORDER

The foregoing Objection having been presented to this Court, it is hereby Ordered:

SUSTAINED/OVERRULED.

BY THE COURT

\_\_\_\_\_  
Judge/Clerk

# Section 6:

## Defenses to Foreclosure

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*A Guide to Resources in the Law Library*

### SCOPE:

- Bibliographic resources relating to defenses to foreclosure including equitable defenses.

### DEFINITION:

- "At common law, the only defenses to an action of this character would have been payment, discharge, release or satisfaction; White v. Watkins, 23 Ill. 480; or, if there had never been a valid lien." Petterson v. Weinstock, 106 Conn. 436, 441, 138 A. 433, 435 (1927).
- "So, if the mortgagor is prevented by accident, mistake or fraud, from fulfilling a condition of the mortgage, foreclosure cannot be had; 1 Pomeroy's Equity Jurisprudence (4<sup>th</sup> Ed.) § 162; Wilcox v. Allen, 36 Mich. 160; Bell v. Romaine, 30 N.J. Eq. 24; Bennett v. Stevenson, 53 N.Y. 508; and this equitable consideration has long been recognized in this State. Doty v. Whittlesey, 1 Root, 310; Crane v. Hanks, 1 Root, 468; Bridgeport Savings Bank v. Eldredge, 28 Conn. 556; Bostwick v. Stiles, 35 Conn. 195, 198." Id., 442.
- "... our courts have permitted several equitable defenses to a foreclosure action . . . . Other equitable defenses that our Supreme Court has recognized in foreclosure actions include unconscionability; Hamm v. Taylor, supra, 180 Conn. [491,]494-96; abandonment of security; Glotzer v. Keyes, 125 Conn. 227, 233, 5 A.2d 1 (1939); and usury. Atlas Realty Corp. v. House, 120 Conn. 661, 669-70, 83 A. 9 (1936), overruled in part on other grounds, Ferrigno v. Cromwell Development Associates, 244 Conn. 189, 202, 708 A.2d 1371 (1998)." Southbridge Assoc. v. Garofalo, 53 Conn. App. 11, 15-16, 728 A.2d 1114, 1117 (1999).
- "... Historically, the defenses available in a foreclosure action have been limited to payment, discharge, release, satisfaction or invalidity of a lien." *Connecticut National Bank v. Grella Family Investment Partnership*, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. 292814 (August 19, 1993, Leheny, J.), citing *Petterson v. Weinstock*, 106 Conn. 436, 441, 138 A. 433 (1927); *Hans L. Levi, Inc. v. Kovacs*, Superior Court, judicial district of Litchfield, Docket No. 56101 (November 4, 1991, Pickett, J., 5 CTLR 260). In recognition that a foreclosure action is an equitable proceeding, however, several courts have recently allowed allegations of mistake, accident, fraud, equitable estoppel, CUTPA, laches, breach of the implied covenant of good faith and fair dealing, and refusal to agree to a favorable sale...to a third party as defenses to a foreclosure action. See *Great Western Bank v. McNulty*, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. 139799 (March 16, 1995, D'Andrea, J.); *National Mortgage Co. v. McMahan*, Superior Court, judicial district of New Haven, Docket No. 349246 (February 18, 1994, Celotto, J., 9 CSCR 300).

‘Foreclosure is an equitable action, permitting the trial court to examine all matters to ensure that complete justice may be done. . . . Thus, the determination of what equity requires in a particular case . . . is a matter for the discretion of the trial court.’ (Citations omitted; internal quotation marks omitted.) *Federal Deposit Ins. Corp. v. Bombero*, 37 Conn. App. 764, 773, 657 A.2d 668 (1995).” *Farmers & Mechanics Bank v. Santangelo*, (Conn. Super. Ct., Middletown, December 8, 1995).

- “In exercising its equitable discretion, however, the courts must comply with mandatory statutory provisions that limit the remedies available to a foreclosing mortgagee.” *New Milford Savings Bank v. Jajer*, 244 Conn. 251, 256-257, 708 A.2d 1378, 1382 (1998).

**STATUTES:**

- CONN. GEN. STAT. (2011)
  - [Chapter 668](#). Nondepository financial institutions
    - § [36a-488](#). Mortgage lender, mortgage correspondent lender and mortgage broker licenses. Requirements.
  - [Chapter 669](#). Regulated activities: Part IXa
    - § [36a-746](#) et seq. Connecticut Abuse Home Loan Lending Practices Act
  - Uniform Commercial Code, [Article 3](#), Negotiable instruments
    - § [42a-3-303](#). Value and consideration.
  - [Chapter 821](#). Land titles
    - § [47-5](#). Conveyances to be in writing, acknowledged and attested. Conveyance pursuant to power of attorney.
    - § [47-17](#). Records of documents as notice of equitable rights.
  - [Chapter 821b](#). Validation of conveyance defects
    - § [47-36aa](#). Validations re conveyancing defects of instrument recorded after January 1, 1997, insubstantial defects re power of attorney, defects re conveyance by fiduciary.
  - [Chapter 846](#). Mortgages and liens
    - § [49-4a](#). Open-end mortgages, United States or its instrumentalities and certain banks authorized to hold.
  - [Chapter 847](#). Liens
    - § [49-36](#). Liens limited; apportionment; payments to original contractor.
  - [Chapter 906](#). Postjudgment procedures
    - § [52-380i](#). Foreclosure of lien when plaintiff holds mortgage.

**PAMPHLETS:**

- Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners, Connecticut Fair Housing Center  
<http://ctfairhousing.org/wp/wp-content/uploads/2010/01/CFHC-ForeclosMan-Repr5-Jul11-R2.pdf>

**FORMS:**

- 3 [Conn. Practice Series: Civil Practice Forms, 4<sup>th</sup> ed.](#), Form 705.7 (2004).  
Special defense and counterclaim to foreclosure: mistake, fraud or accident in failure to make payment. [Figure 6](#).

**WEST KEY NUMBERS:**

- *Mortgages* # 415. Defenses
  - (1). In general
  - (3). Set-off or counterclaim

**DIGEST TOPICS:**

- [DOWLING’S DIGEST](#): Mortgages §§ 20-24

- § 20. Foreclosure
- § 21. —In general
- § 22. —Right to foreclose; Defenses
- § 23. ——In general
- § 24. ——Particular cases
- [PHILLIPS' DIGEST](#): Mortgages §§ 20-22
  - § 20. Foreclosure
  - § 21. —In general
  - § 22. —Right to foreclose; Defenses

## COURT CASES

- [Monetary Funding Group, Inc. v. Pluchino](#), 87 Conn. App. 401, 413, 867 A.2d 841, 850 (2005). “In the present case, the court determined that the plaintiff acted with unclean hands and engaged in an unconscionable transaction. The conduct of the plaintiff, therefore, was unfair, oppressive and unscrupulous, and constituted a violation of CUTPA.”
- [BAC Home Loans Servicing, L.P. v. Presutti](#), No. HHD CV09-5029746S (Conn. Super. Ct., Hartford, April 8, 2010), 49 CLR 609 (July 5, 2010), “. . . the allegations that the Plaintiff entered into a loan mortgage modification which it refused to honor, are sufficient to support a CUTPA claim.”
- [Homecomings Financial Network, Inc. v. Starbala](#), 85 Conn. App. 284, 289, 857 A.2d 366, 369 (2004). “. . . the defense of payment is a legally sufficient defense in a foreclosure action, and whether payment was tendered is a question of fact appropriately decided by the trier of fact.”
- [Morgera v. Chiappardi](#), 74 Conn. App. 442, 459, 813 A.2d 89, 100 (2003). “The judgment of strict foreclosure and the denial of the defendant's counterclaim are reversed and the case is remanded for a new trial in which the plaintiff's complaint and the defendant's claim of setoff and her special defenses and counterclaim are to be tried together in the same trial.”
- [Hooie v. Webster Bank](#), No. CV 000093117 (Conn. Super. Ct., Middletown, June 12, 2003), 35 CONN. L. RPTR. 91 (August 18, 2003), 2003 WL 21525116 (Conn. Super. 2003). *Unjust enrichment in a strict foreclosure action.*
- [Franklin Credit Management Corp. v. Nicholas](#), 73 Conn. App. 830, 838, 812 A.2d 51, 57 (2002). “In a mortgage foreclosure action, [t]o make out its prima facie case, [the foreclosing party] had to prove by a preponderance of the evidence that it was the owner of the note and mortgage and that [the mortgagee] had defaulted on the note.’ *Webster Bank v. Flanagan*, 51 Conn. App. 733, 750-51, 725 A.2d 975 (1999) . . . Franklin Credit alleged, among other things, that it is the owner of the note and that the note was in default. In response, the defendant asserted the special defense that ‘[t]he debt subject of the lawsuit was discharged and released, including as evidenced by Form 1099 issued by [Franklin Credit's] predecessor to the right, title and interest in the debt instruments.’”
- [LaSalle National Bank v. Freshfield Meadows, LLC](#), 69 Conn. App. 824 , 832-833, 798 A.2d 445, 450 (2002). “The defendant next claims that the court improperly granted the plaintiff's summary judgment motions despite the special defenses that it had raised. Specifically, the defendant argues that summary judgment should not have been granted based on (1) the implied covenant of good faith and fair dealing, (2) the doctrine of unclean hands, (3) the common-law duty of good faith and

fair dealing, (4) the doctrine of unconscionability and (5) the doctrine of equitable estoppel. We will address each special defense in turn.” See [Table 3](#).

- [Webster Bank v. Oakley](#), 265 Conn. 539, 577, 830 A.2d 139, 163 (2003). “In light of these well reasoned opinions in the closely analogous factual context of insurance policies, we conclude that Title III of the ADA regulates a lender’s provision of access to its mortgage loans, which are the goods and services that it offers, but does not regulate the content of those loan agreements. Thus, although a lender like the plaintiff may not refuse to provide equal access to its mortgage policies on the basis of the disabilities of potential mortgagors, it was not required to alter the otherwise universally applicable terms or conditions of its mortgage policies to accommodate the disabilities of borrowers such as the defendant.”
- [F.D.I.C. v. Altholtz](#), 4 F. Supp.2d 80 (1998) (D. Conn.). Discussion of statute of frauds, breach of covenant of good faith and fair dealing. Defense of unclean hands.
- [New England Savings Bank v. Bedford Realty Corp.](#), 246 Conn. 594, 607, 717 A.2d 713, 720 (1998). “The problem of proving a debt that has been assigned several times is of great importance to mortgage lenders and financial institutions.”
- [Shawmut Mortgage Co. v. Wheat](#), 245 Conn. 744, 754-755, 717 A.2d 664, 670 (1998). “. . . we conclude that the defendant, as an individual who never previously has been employed, is not an ‘unemployed person’ within the meaning of §49-31d (1) and , therefore, may not qualify for protection from mortgage foreclosure under the mortgage act.”
- [Mechanics & Farmers Savings Bank, FSB v. Delco Development Co.](#), 43 Conn. Supp. 408, 414, 656 A.2d 1075, 1080 (1993). “The principle that a bank’s violation of regulatory provisions in making a loan neither precludes recovery on the loan nor provides a defense, unless specifically provided by statute, has been well established for well over 100 years.”
- [Pettersen v. Weinstock](#), 106 Conn. 436, 441, 138 A. 433, 435 (1927). “At common law, the only defenses to an action of this character would have been payment, discharge, release or satisfaction . . . or, if there had never been a valid lien.”  
“So, if the mortgagor is prevented by accident, mistake or fraud, from fulfilling a condition of the mortgage, foreclosure cannot be had.” Id. at 442.
- [D’Oench, Duhme & Co. v. FDIC](#), 315 U.S. 447 (1942)
- For summaries of recent CT Supreme and Appellate Court foreclosure cases, see our foreclosure section on our NewsLog at: <http://ersa.jud.ct.gov/lawlibnews/Lists/Categories/Category.aspx?Name=Foreclosure%20Opinions>

#### **ENCYCLOPEDIAS:**

- 59 [C.J.S. Mortgages](#) §§531-538  
“Defenses to foreclosure in general”
  - § 531 In general
  - § 532 Collateral rights and agreements
  - § 533 Invalidity of mortgage
  - § 534 Payment or discharge
  - § 535 Waiver or estoppel

§ 536 Effect of possession of additional or cumulative security  
“Limitations and laches”

§ 537 Limitations

§ 538 Laches

- 59 [C.J.S. Mortgages](#) § 700 “Defenses”

**TEXTS & TREATISES:**

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY’S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004) and 2010 supplement.  
Chapter 28. Defenses to foreclosure
  - § 28.01. Introduction
  - Common law defenses**
  - § 28.02A. Payment
  - § 28.02B. Duress
  - § 28.02C. Release
  - § 28.02D. Lack of consideration
  - § 28.02E. Fraud in factum
  - § 28.02F. Fraud
  - § 28.02G. Negligent Misrepresentation (supp. only)
  - § 28.03A. **State law defenses**
  - § 28.03A1. Usury
  - § 28.03B. Connecticut Unfair Trade Practices Act (CUTPA)
  - § 28.03C. Connecticut Abusive Home Loan Practices Act
  - § 28.03D. Defective mortgage instrument
  - § 28.03E. Unlicensed lender
  - § 28.03F. Connecticut Protection from Foreclosure Act
  - § 28.03G. Payoff letter
  - § 28.03H. Loan to person only secondarily liable (C.G.S. § 49-4a)
  - § 28.03I. The Marshalling Statute—C.G.S. § 52-380i
  - § 28.03J. Payment to contractor – re Mechanic’s lien foreclosure
  - § 28.03K. Alteration
  - § 28.03L. Conditions precedent under the loan documents
  - § 28.03M. Failure to release mortgage (supp. only)
  - § 28.03N. Sovereign Immunity (supp. only)
  - § 28.03O. Statute of Limitations (supp. only)
  - § 28.03P. Homestead Exemption (supp. only)
  - § 28.04. **Federal law defenses**
  - § 28.04A. Fair Debt Collection Practices Act
  - § 28.04B. Truth in Lending
  - § 28.04C. RESPA
  - § 28.05. **Equitable defenses**
  - § 28.05A. The Clean Hands Doctrine
  - § 28.05B. Meeting of the minds
  - § 28.05C. Breach of implied covenant of good faith and fair dealing
  - § 28.05D. Unconscionability
  - § 28.05E. Equitable estoppel
  - § 28.05F. Equitable subrogation
  - § 28.05G. Bad Faith Settlement Practices (supp. only)
  - § 28.06. **Counterclaims**
  - § 28.07. **Jury Verdicts** (supp. only)
- Dennis P. Anderson, Denis R. Caron and Geoffrey K. Milne, *Real*

*Property Foreclosure In Connecticut*, [CONNECTICUT LAWYERS' DESKBOOK: A REFERENCE MANUAL](#) (3rd ed. 2008).

“Contested Matters,” pp. 418-419.

- 3 JOEL M. KAYE ET AL., [CONNECTICUT PRACTICE SERIES: CIVIL PRACTICE FORMS](#) 4<sup>TH</sup> (2004).

Authors' Comments following Form 705.7

- JOHN RAO ET AL. [FORECLOSURES: DEFENSES, WORKOUTS, AND MORTGAGE SERVICING](#) (3rd ed. 2010) .

#### Chapter 4. Legal Defenses to Home Foreclosures

§ 4.1. Introduction

§ 4.2. Introduction to the foreclosure process

§ 4.3. Procedural defenses

§ 4.4. Who has the right to foreclose?

§ 4.5. Challenging a servicer's standing to foreclose

§ 4.6. Defenses to foreclosure by the Mortgage Electronic Registration System

§ 4.7. Due process challenges to foreclosure by power of sale

§ 4.8. Foreclosure of a deed of trust

§ 4.9. Enforceability of due on sale contract provisions

§ 4.10. Using equitable grounds to prevent a foreclosure

§ 4.11. State and local moratorium and mediation programs

§ 4.9. Protections from Foreclosure Available under the Servicemembers Civil Relief Act

#### Chapter 5. Defending Foreclosures by Challenging Unfair Lending Practices

§ 5.1. Introduction

§ 5.2. Market incentives for unfair lending

§ 5.3. Common types of misconduct

§ 5.4. Raising origination misconduct to stop a foreclosure substantive claims and defenses

§ 5.5. Unfair and deceptive acts and practices (UDAP) statutes

§ 5.6. Truth in Lending rescission and damage claims

§ 5.7. TILA rights concerning higher-priced mortgage loans

§ 5.8. The Home Ownership and Equity Protection Act (HOEPA)

§ 5.9. Real Estate Settlement Procedures Act (RESPA)

§ 5.10. Fair Lending Statutes

§ 5.11. State high-cost mortgage statutes

§ 5.12. Fraud or misrepresentation

§ 5.13. Other defenses

§ 5.14. Raising origination-related claims and defenses against assignees

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Janet Zigadto, Connecticut Judicial Branch Law Library at  
New Haven, 235 Church Street, New Haven, CT 06510.  
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\* Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.

## Figure 6: Special Defense and Counterclaim to Foreclosure

### Special Defense and Counterclaim to Foreclosure; Mistake, Fraud or Accident in Failure to Make Payment

#### SPECIAL DEFENSES

1. The non payment of the installment of principal and interest described in the plaintiff's complaint and the resulting default was due to mistake (*or fraud or accident*) in that (*describe facts which resulted in non payment* ).

2. The defendant has offered to and is now willing to pay the installment which is past due or is willing to deposit it in court for the use of the plaintiff.

#### COUNTERCLAIM

Paragraphs 1 and 2 of the defendant's Special Defense are hereby made paragraphs 1 and 2 of this counterclaim.

The defendant claims judgment

1. That foreclosure of the plaintiff's mortgage be denied.
2. That the defendant be permitted to pay the plaintiff the installment or deposit the same in court for the plaintiff's use.
3. That upon such payment or deposit the defendant be relieved of any default which may have occurred by reason of his failure to pay the installment when due and of any forfeiture which might ensue by reason of such default.

(P.B.1963, Form 334; see 106 Conn. 436.)

**Table 3: LaSalle National Bank v. Freshfield Meadows, LLC**

| <p><b><u>LaSalle National Bank v. Freshfield Meadows, LLC,</u></b><br/> <b>69 Conn. App. 824, 798 A.2d 445 (2002)</b></p> |   |
|---|---|
| <p>Implied covenant of good faith and fair dealing</p>  | <p>“We recently stated that ‘special defenses and counterclaims alleging a breach of an implied covenant of good faith and fair dealing . . . are not equitable defenses to a mortgage foreclosure.’ <a href="#">New Haven Savings Bank v. LaPlace</a> . . . 66 Conn. App. [1,] 10; see also <a href="#">Southbridge Associates, LLC v. Garofalo</a> . . . 53 Conn. App. [11,] 16-19. Even if a breach of the implied covenant of good faith and fair dealing were an equitable defense to a mortgage foreclosure, the clear language of the mortgage and the note fails to support the defendant’s claim that the plaintiff breached such an implied covenant.” p. 835.</p>  |
| <p>Unclean hands</p>  | <p>“The defendant next claims that the court improperly rendered summary judgment despite the plaintiff’s having unclean hands for refusing to accept future payments. That claim is without merit.</p> <p>‘The doctrine of unclean hands expresses the principle that where a plaintiff seeks equitable relief, he must show that his conduct has been fair, equitable and honest as to the particular controversy in issue. . . . Unless the plaintiff’s conduct is of such a character as to be condemned and pronounced wrongful by honest and fair-minded people, the doctrine of unclean hands does not apply.’ (Internal quotation marks omitted.) <a href="#">Thompson v. Orcutt</a>, 257 Conn. 301, 310, 777 A.2d 670 (2001).</p> <p>As we stated in part IV A, the plaintiff did not have an obligation to renegotiate the terms of the agreement upon the event of the defendant’s default; nor did the plaintiff have to accept payment after the indebtedness was accelerated due to the default. Accordingly, because the plaintiff’s conduct was not of ‘such a character as to be condemned and pronounced wrongful by honest and fair-minded people,’; id.; there is no genuine issue of material fact that the clean hands doctrine does not apply.” pp. 835-836.</p> |
| <p>Common-law duty of good faith and fair dealing</p>   | <p>“‘The common-law duty of good faith and fair dealing implicit in every contract requires that neither party [will] do anything that will injure the right of the other to receive the benefits of the agreement. . . . Essentially it is a rule of construction designed to fulfill the reasonable expectations of the contracting parties as they presumably intended.’ (Internal quotation marks omitted.) <a href="#">Elm Street Builders, Inc. v. Enterprise Park Condominium Assn., Inc.</a>, 63 Conn. App. 657, 665, 778 A.2d 237 (2001). As we discussed in part IV A, a reading of the unambiguous language of the mortgage and note negates any claim that the plaintiff did not comply with the common-law duty of good faith and fair dealing.” p. 836</p>  |
| <p>Doctrine of Unconscionability</p>  | <p>“Because unconscionability is judged at the time of the making of the contract, and the defendant’s claim rests on alleged actions taken by the plaintiff subsequent to the making of the contract, the doctrine of unconscionability is not applicable to this case.” p. 837.</p>   |

[Cont’d]

**LaSalle National Bank v. Fresfield Meadows, LLC [cont'd]**

|                                       |  |
|---------------------------------------|--|
| <p>Doctrine of equitable estoppel</p> | <p>“Our Supreme Court . . . stated, in the context of an equitable estoppel claim, that [t]here are two essential elements to an estoppel: the party must do or say something which is intended or calculated to induce another to believe in the existence of certain facts and to act upon that belief; and the other party, influenced thereby, must actually change his position or do something to his injury which he otherwise would not have done. Estoppel rests on the misleading conduct of one party to the prejudice of the other. In the absence of prejudice, estoppel does not exist.’ (Internal quotation marks omitted.) <a href="#"><i>SKW Real Estate Ltd. Partnership v. Mitsubishi Motor Sales of America, Inc.</i></a>, 56 Conn. App. 1, 8, 741 A.2d 4 (1999), cert. denied, 252 Conn. 931, 746 A.2d 793 (2000); see also 2 B. Holden &amp; J. Daly, <i>Connecticut Evidence</i> (2d Ed. 1988) § 60b, p. 365 &amp; (Cum. Sup. 2001) pp. 385-86.</p> <p>In its appellate brief, the defendant has failed to state how it was misled by the plaintiff’s conduct. Without a showing that the defendant was misled, its argument that the doctrine of equitable estoppel should have precluded the court from rendering summary judgment has no basis.” p. 838.</p> |
|---------------------------------------|--|

**Table 4: Disclosure of Defense**

| <b>Disclosure of Defense</b> |   |
|------------------------------|---|
| <b>DEFINITIONS:</b>          | <p>“In order for foreclosure cases to move as swiftly as possible through our court system, it is imperative that a defendant disclose any defenses to the mortgage debt prior to the hearing. In the present case, the defendants' failure to disclose a defense in a timely manner barred them from later contesting liability at the foreclosure hearing. Accordingly, we conclude that the trial court properly refused to allow the defendants to present evidence of any defense to liability.” <a href="#">Suffield Bank v. Berman</a>, 25 Conn. App. 369, 373, 594 A.2d 493, 495 (1991).</p>  |
| <b>COURT RULE:</b>           | <ul style="list-style-type: none"> <li>• <b>Disclosure of Defense</b><br/>           “In any action to foreclose or to discharge any mortgage or lien or to quiet title, or in any action upon any written contract, in which there is an appearance by an attorney for any defendant, the plaintiff may at any time file and serve in accordance with Sections 10-12 through 10-17 a written demand that such attorney present to the court, to become a part of the file in such case, a writing signed by the attorney stating whether he or she has reason to believe and does believe that there exists a bona fide defense to the plaintiff’s action and whether such defense will be made, together with a general statement of the nature or substance of such defense. If the defendant fails to disclose a defense within five days of the filing of such demand, or within ten days of the filing of such demand in any action to foreclose a mortgage, the plaintiff may file a written motion that a default be entered against the defendant by reason of the failure of the defendant to disclose a defense. If no disclosure of defense has been filed, the judicial authority may order judgment upon default to be entered for the plaintiff at the time the motion is heard or thereafter, provided that in either event a separate motion for such judgment has been filed. The motions for default and for judgment upon default may be served and filed simultaneously but shall be separate motions.” Connecticut Practice Book § <a href="#">13-19</a> (2011).</li> </ul> |
| <b>FORMS: :</b>              | <ul style="list-style-type: none"> <li>• 3A JOEL M. KAYE AND WAYNE D. EFFRON, <a href="#">CONNECTICUT PRACTICE SERIES, CIVIL PRACTICE FORMS</a> (4th ed. 2004).<br/> <i>Demand for Disclosure of Defense</i> – Form S-1, pp. 196-197<br/> <i>Motion for Default for Failure to Disclose Defense</i> – Form S-2, pp. 197-198<br/> <i>Motion for Judgment upon Default for Failure to Disclose Defense</i> – Form S-2-A, p. 198</li> </ul>  |
| <b>CASES:</b>                | <ul style="list-style-type: none"> <li>• <a href="#">First New Haven National Bank v. Rowan</a>, 2 Conn. App. 114, 116, 476 A.2d 1079, 1081 (1984). “Since these defendants were not represented by an attorney, the disclosure of defense was correctly expunged. Practice Book 236 [now 13-19].”</li> </ul>   |

### TEXTS AND TREATISES

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004).  
§ 5.01E. Disclosure of defense
- 1 WESLEY W. HORTON AND KIMBERLY A. KNOX, [CONNECTICUT PRACTICE SERIES, CONNECTICUT SUPERIOR COURT RULES](#) (2011 edition).  
Authors' Comments following § 13-19

# Section 7: Redemption in Foreclosure

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*A Guide to Resources in the Law Library*

**SCOPE:**

- Bibliographic resources relating to the equity of redemption in foreclosure.

**DEFINITION:**

- “The equity of redemption gives the mortgagor the right to redeem the legal title previously conveyed by performing whatever conditions are specified in the mortgage, the most important of which is usually the payment of money.” [New Milford Savings Bank v. Jajer](#), 44 Conn. App. 588, 593, 691 A.2d 598, 601 (1997).
- **Debt, Interest and costs:** “In any action brought by a mortgagee of real estate, or any person holding title under him, against the mortgagor, or any person holding title to the estate under him, to obtain possession of the estate by virtue of title derived by mortgage, a tender by the defendant of the amount of the debt, with interest and the costs of the suit, is a bar to its further prosecution.” Conn. Gen. Stats. § [49-23](#) (2011).
- **Law Day (strict foreclosure):** “(a)(1) Any judgment foreclosing the title to real estate by strict foreclosure may, at the discretion of the court rendering the judgment, upon the written motion of any person having an interest in the judgment and for cause shown, be opened and modified, notwithstanding the limitation imposed by section 52-212a, upon such terms as to costs as the court deems reasonable, provided no such judgment shall be opened after the title has become absolute in any encumbrancer except as provided in subdivision (2) of this subsection.

(2) Any judgment foreclosing the title to real estate by strict foreclosure may be opened after title has become absolute in any encumbrancer upon agreement of each party to the foreclosure action who filed an appearance in the action and any person who acquired an interest in the real estate after title became absolute in any encumbrancer, provided (A) such judgment may not be opened more than four months after the date such judgment was entered or more than thirty days after title became absolute in any encumbrancer, whichever is later, and (B) the rights and interests of each party, regardless of whether the party filed an appearance in the action, and any person who acquired an interest in the real estate after title became absolute in any encumbrancer, are restored to the status that existed on the date the judgment was entered.

(3) If a judgment is opened pursuant to this subsection, the person who filed the written motion pursuant to subdivision (1) of this subsection shall record a certified copy of the court's order to open such judgment on the land records in the town in which the real estate is

situated.

(b) Upon the filing of a bankruptcy petition by a mortgagor under Title 11 of the United States Code, any judgment against the mortgagor foreclosing the title to real estate by strict foreclosure shall be opened automatically without action by any party or the court, provided, the provisions of such judgment, other than the establishment of law days, shall not be set aside under this subsection, provided no such judgment shall be opened after the title has become absolute in any encumbrancer or the mortgagee, or any person claiming under such encumbrancer or mortgagee. The mortgagor shall file a copy of the bankruptcy petition, or an affidavit setting forth the date the bankruptcy petition was filed, with the clerk of the court in which the foreclosure matter is pending. Upon the termination of the automatic stay authorized pursuant to 11 USC 362, the mortgagor shall file with such clerk an affidavit setting forth the date the stay was terminated.” Conn. Gen. Stat. § [49-15](#) (2011).

- **Termination of equity of redemption in foreclosure by sale:** “The court finds that in Connecticut, the law is that the rights of a mortgagor [debtor] in mortgaged property are terminated by confirmation of a foreclosure sale, and that subsequent to such a sale, any interest the mortgagor may claim is in proceeds of the sale solely and not in the property. The delivery of a deed is a ministerial act only and does not constitute the event which terminates the equity of redemption. This finding leads me to conclude that in the case at bar, the court can have no jurisdiction over the property. When the foreclosure sale of June 7, 1980 was confirmed by superior court on July 7, 1980, at that moment, Loubier’s equity of redemption in the property was terminated, and his interest, if any, thereafter was in the proceeds of the sale.” [Matter of Loubier](#), 6 B.R. 298 (1980).
- **Time to Appeal:** “A party may not effectively be deprived of the right to appeal within the twenty days by having the law day pass within that time, thereby causing a loss of the right of redemption. The defendant’s motion, therefore, cannot be deemed to be untimely filed under these circumstances; she must be afforded due process in the form of a hearing and a determination on the merits of her motion to open.” [Continental Capital Corp. v. Lazarte](#), 57 Conn. App. 271, 274, 749 A.2d 646, 648 (2000).

**STATUTES:**

- CONN. GEN. STAT. (2011)
  - [Title 49](#). Mortgages and liens
  - [Chapter 846](#). Mortgages
  - § [49-19](#). Title to vest in encumbrancer paying debt and costs.
  - § [49-20](#). Redemption by holder of encumbrance on part of property foreclosed.
  - § [49-21](#). Defendant to receive and file certificate of satisfaction or certificates of judgment of strict foreclosure or foreclosure by sale.
  - § [49-23](#). Ejectment by mortgagee barred by tender of debt and costs.
  - § [49-25](#). Appraisal of property [Foreclosure by sale].

**COURT RULES:**

- “Unless otherwise ordered by the judicial authority at the time it renders the judgment of strict foreclosure, the following provisions shall be deemed to be part of every such judgment:  
(1) That, upon the payment of all of the sums found by the judicial authority to be due the plaintiff, including all costs as allowed by the judicial authority and taxed by the clerk, by any defendant, after all subsequent parties in interest have been foreclosed, the title to the premises shall vest absolutely in the defendant making such payment, subject to such unpaid encumbrances, if any, as precede the interest of the redeeming defendant.  
(2) That the defendants, and all persons claiming possession of the premises through any of the defendants under any conveyance or instrument executed or recorded subsequent to the date of the lis pendens or whose interest shall have been thereafter obtained by descent or otherwise, deliver up possession of the premises to the plaintiff or the defendant redeeming in accordance with this decree, with stay of execution of ejectment in favor of the redeeming defendant until one day after the time herein limited to redeem, and if all parties fail to redeem, then until the day following the last assigned law day.” CT Practice Book § [23-17\(b\)](#) (2011 ed.)

**ENCYCLOPEDIAS:**

- 59A [C.J.S. Mortgages](#) (2009).
  - §§ 1362-1372 Redemption – In General
  - §§ 1373-1386 Existence and Nature of Right
  - §§ 1387-1415 Persons Entitled to Redeem
  - §§ 1416-1418 Persons from whom Redemption may be Made
  - §§ 1419-1435 Time for Redemption
  - §§ 1436-1449 Amount Required to Redeem
  - §§ 1450-1459 Tender and Payment into Court
  - §§ 1460-1471 Proceedings for Redemption
  - §§ 1472-1487 Accounting
  - §§ 1488-1517 Actions for Redemption
  - §§ 1518-1522 Operation and Effect of Redemption

**PAMPHLETS:**

- Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners, Connecticut Fair Housing Center  
<http://ctfairhousing.org/wp/wp-content/uploads/2010/01/CFHC-ForeclosMan-Repr5-Jul11-R2.pdf>

**FORMS:**

- *Satisfaction of Judgment*, Denis R. Caron & Geoffrey K. Milne, [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#) (4th ed., 2004). Form 30, p. 723.
- [Certificate of Judgment of Strict Foreclosure](#), JD-CV-47
- [Certificate of Judgment Foreclosure by Sale](#), JD-CV-46

**TEXTS & TREATISES:**

- Dennis P. Anderson, Denis R. Caron and Geoffrey K. Milne, *Real Property Foreclosure in Connecticut*, [CONNECTICUT LAWYERS' DESKBOOK: A REFERENCE MANUAL](#) (3D ED. 2008).  
Redemption, p. 449.
- Denis R. Caron & Geoffrey K. Milne, [CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004).
  - § 9.02. Redemption
  - § 9.02A. In strict foreclosure
  - § 9.02A1. Satisfaction of judgment

- § 9.02A2. Redemption by one cotenant
- § 9.02B. In foreclosure by sale
- § 9.02C. Effect of redemption on post-lis pendens attaching creditor

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Supervising Law Librarian.

Table 5: Reinstatement

# Reinstatement

## Texts & Treatises

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE](#) (4<sup>th</sup> ed., 2004).  
Chapter 1. Preliminary Considerations  
§ 1.05B Reinstatement (see also 2010 supplement)
- DENNIS P. ANDERSON, DENIS R. CARON & GEOFFREY K. MILNE, *Real Property Foreclosure In Connecticut*, [CONNECTICUT LAWYERS' DESKBOOK: A REFERENCE MANUAL](#) (3d ed., 2008)  
Chapter 17. Real Property Foreclosure In Connecticut  
Reinstatement, pp. 408-411

# Section 8: Motion to Open Judgment of Foreclosure

*A Guide to Resources in the Law Library*

**SCOPE:**

- Bibliographic resources relating to motion to open a judgment in either strict foreclosure or foreclosure by sale in Connecticut.

**DEFINITION:**

**STRICT FORECLOSURE**

- **Opening of judgments of foreclosure:** “(a)(1) Any judgment foreclosing the title to real estate by strict foreclosure may, at the discretion of the court rendering the judgment, upon the written motion of any person having an interest in the judgment and for cause shown, be opened and modified, notwithstanding the limitation imposed by section 52-212a, upon such terms as to costs as the court deems reasonable, provided no such judgment shall be opened after the title has become absolute in any encumbrancer except as provided in subdivision (2) of this subsection.

(2) Any judgment foreclosing the title to real estate by strict foreclosure may be opened after title has become absolute in any encumbrancer upon agreement of each party to the foreclosure action who filed an appearance in the action and any person who acquired an interest in the real estate after title became absolute in any encumbrancer, provided (A) such judgment may not be opened more than four months after the date such judgment was entered or more than thirty days after title became absolute in any encumbrancer, whichever is later, and (B) the rights and interests of each party, regardless of whether the party filed an appearance in the action, and any person who acquired an interest in the real estate after title became absolute in any encumbrancer, are restored to the status that existed on the date the judgment was entered.

(3) If a judgment is opened pursuant to this subsection, the person who filed the written motion pursuant to subdivision (1) of this subsection shall record a certified copy of the court's order to open such judgment on the land records in the town in which the real estate is situated.” CONN. GEN. STAT. § [49-15](#) (2011).

- **Purpose:** “Section 49-15 has the remedial purpose of providing relief to property owners and their creditors when this can be done without jeopardizing the security interest of the foreclosing mortgagee. It has often been utilized in the trial courts to extend law days or to convert a strict foreclosure to a foreclosure by sale when, at the time of the

decision upon the motion to open, it appeared that a modification of the terms of the original judgment would produce a more equitable result.” [Farmers & Mechanics Savings Bank v. Sullivan](#), 216 Conn. 341, 352, 579 A.2d 1054, 1059 (1990).

- **Conditions:** (See CT General Statutes [49-15](#), 2011 edition for updated/current conditions.) “Unlike General Statutes § 52-212, which provides for opening default judgments generally and requires a defaulted defendant to show that he had a good defense that he was prevented from making by ‘mistake, accident or other reasonable cause,’ § 49-15 prescribes only four conditions for opening a judgment of strict foreclosure: (1) that the motion be in writing; (2) that the movant be a person having an interest in the property; (3) that the motion be acted upon before an encumbrancer has acquired title; and (4) that ‘cause,’ obviously good cause, be shown for opening the judgment.” *Ibid.*, 352-353.
- **Bankruptcy:** “Upon the filing of a bankruptcy petition by a mortgagor under Title 11 of the United States Code, any judgment against the mortgagor foreclosing the title to real estate by strict foreclosure shall be opened automatically without action by any party or the court, provided, the provisions of such judgment, other than the establishment of law days, shall not be set aside under this subsection, provided no such judgment shall be opened after the title has become absolute in any encumbrancer or the mortgagee, or any person claiming under such encumbrancer or mortgagee. The mortgagor shall file a copy of the bankruptcy petition, or an affidavit setting forth the date the bankruptcy petition was filed, with the clerk of the court in which the foreclosure matter is pending. Upon the termination of the automatic stay authorized pursuant to 11 USC 362, the mortgagor shall file with such clerk an affidavit setting forth the date the stay was terminated.” Conn. Gen. Stat. § [49-15\(b\)](#) (2011).

#### **FORECLOSURE BY SALE**

- “. . . Upon motion of the owner of the equity of redemption, the court shall appoint a second appraiser in its decree. If the plaintiff is the purchaser at sale, or if the property is redeemed at any time prior to the approval of the sale, or if for any reason the sale does not take place, the expense of the sale and appraisal or appraisals shall be paid by the plaintiff and be taxed with the costs of the case. If, after judgment has been rendered, the amount found to be due and for which foreclosure is decreed, together with the interest and the costs, is paid to the plaintiff before the sale, all further proceedings in the suit shall be stayed.” CONN. GEN. STAT. [49-25](#) (2011).
- [Washington Trust Company v. Smith](#), 241 Conn. 734, 742, 699 A.2d 73, 78 (1997). “. . . the duration of rights of redemption. Under our cases, such rights survive the auction of the foreclosed property and may be exercised until such time as the judicial authority approves the foreclosure sale.”
- “The court finds that in Connecticut, the law is that the rights of a mortgagor [debtor] in mortgaged property are terminated by confirmation of a foreclosure sale, and that subsequent to such a sale, any interest the mortgagor may claim is in proceeds of the sale solely and not in the property. The delivery of a deed is a ministerial act only and does not constitute the event which terminates the equity of redemption.” [In the Matter of Loubier](#), 6 B.R. 298, 303 (1980).
- “The sale is not absolute until confirmed. The order of confirmation

gives the judicial sanction of the court, and when made it relates back to the time of the sale and cures all defects and irregularities except those founded in want of jurisdiction or fraud. The court has power to confirm the sale, although the terms of the decree may not have been strictly followed.” Raymond v. Gilman, 111 Conn. 605, 613-614, 151 A. 248, 251 (1930). *Citing Nevada Nickel Syndicate v. National Nickel Co.*, 103 F. 391, 395.

**STATUTES:**

- CONN. GEN. STAT. (2011)  
§ [49-15](#). Opening of judgments of strict foreclosure.  
§ [49-25](#). Appraisal of property. [Foreclosure by sale]

**COURT RULES:**

- **Sec. 17-4. Setting Aside or Opening Judgments**  
“(a) Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, any civil judgment or decree rendered in the superior court may not be opened or set aside unless a motion to open or set aside is filed within four months succeeding the date on which notice was sent. The parties may waive the provisions of this subsection or otherwise submit to the jurisdiction of the court.

(b) Upon the filing of a motion to open or set aside a civil judgment, except a judgment in a juvenile matter, the moving party shall pay to the clerk the filing fee prescribed by statute unless such fee has been waived by the judicial authority.

**(c) The expedited procedures set forth in this subsection may be followed with regard to a motion to open a judgment of foreclosure filed by a plaintiff in which the filing fee has been paid, the motion has been filed prior to the vesting of title or the sale date, the plaintiff states in the motion that the committee and appraisal fees have been paid or will be paid within thirty days of court approval, and the motion has been served on each party as provided by Sections 10-12 through 10-17 and with proof of service endorsed thereon.**

(1) Parties shall have five days from the filing of the motion to file an objection with the court. Unless otherwise ordered by the judicial authority, the motion shall be heard not less than seven days after the date the motion was filed. If the plaintiff states in the motion that all appearing parties have received actual notice of the motion and are in agreement with it, the judicial authority may grant the motion without a hearing.

(2) When a motion to open judgment is filed pursuant to this subsection, the court will retain jurisdiction over the action to award committee fees and expenses and appraisal fees, if necessary. If judgment is not entered or the case has not been withdrawn within 120 days of the granting of the motion, the judicial authority shall forthwith enter a judgment of dismissal.” CONN. PRACTICE BOOK [17-4](#) (2011) (Emphasis added.)

- CONNECTICUT PRACTICE BOOK (2011 ed.)  
Chapter 61. Remedy by appeal  
§ [61-11](#). Stay of execution in noncriminal cases

Chapter 63. Filing the appeal; Withdrawals  
§ [63-1](#). Time to appeal

**PAMPHLETS:**

- Representing Yourself in Foreclosure: a Guide for Connecticut Homeowners, CT Fair Housing Center  
<http://ctfairhousing.org/wp/wp-content/uploads/2010/01/CFHC-ForeclosMan-Repr5-Jul11-R2.pdf>

**FORMS:**

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004).  
Appendix of Unofficial Forms  
Form 29. *Motion to open judgment and extend law day*, p. 722.
- JOEL M. KAYE AND WAYNE D. EFFRON, 3 [CONN. PRACTICE SERIES: CIVIL PRACTICE FORMS](#), Form 707.5 (2004). *Judgment of strict foreclosure after opening of original judgment*.
- [Motion to Open Judgment \(Civil Matters other than Small Claims and Housing Matters\) – JD-CV-107](#)

**RECORDS & BRIEFS:**

- CONNECTICUT SUPREME COURT RECORDS & BRIEFS, February 1990, [Farmers & Mechanics Savings Bank v. Sullivan](#), 216 Conn. 341, 579 A.2d 1054 (1990).  
Motion to open and modify judgment of strict foreclosure. [Figure 7](#).  
Motion to set new law day. [Figure 8](#).

**CASES**

**Prior to 10/1/09**  
**(see CGS [49-15](#),**  
**2011 edition)**

- [Chase Manhattan Mortgage Corporation v. Burton](#), 81 Conn. App. 662, 667-668, 841 A.2d 248, 252 (2004). “Because there was no procedural error, as the defendant claims there was, which would have resulted in an improper rendering of the judgment of strict foreclosure and the denial of the motion to open the judgment, we conclude that title vested properly and absolutely in the plaintiff following the law day on October 15, 2002, because the automatic stay had expired. As a result, there is no practical relief that this court can grant the defendant. We therefore conclude that the defendant's claims are moot and dismiss this appeal.”
- [Continental Capital Corp. v. Lazarte](#), 57 Conn. App. 271, 273-274, 749 A.2d 646, 648 (2000). “Law days in a strict foreclosure cannot run if a motion to open is filed during the appeal period but is yet to be ruled on . . . . Law days are ineffective while the appeal period is pending. To conclude otherwise would be tantamount to depriving a party of judicial review and, therefore, of due process of law.”
- [Farmers & Mechanics Savings Bank v. Sullivan](#), 216 Conn. 341, 354, 579 A.2d 1054,1060 (1990). “Since a mortgage foreclosure is an equitable proceeding, either a forfeiture or a windfall should be avoided if possible. . . . We recently found an abuse of such discretion in the failure to order a foreclosure by sale when a sale would have resulted in making approximately \$10,000 available to a subsequent encumbrancer and thus reduced the indebtedness of the owner.”
- [Melillo v. Spiro](#), 187 Conn. 333, 333-334, 445 A.2d 921 (1982). “In this action for strict foreclosure, the named defendant has appealed from the trial court's denial of his second ‘motion to reopen judgment and extend law day.’ By way of this motion, the named defendant sought to obtain a six month extension in the law day set for March 1, 1980. A motion to open a judgment of strict foreclosure is addressed to the discretion of the

trial court; see General Statutes §49-15; and ‘unless that discretion was abused or was based upon some error in law, the denial of the motion must stand.’”

- Carrington v. Muhlfeld, 122 Conn. 334, 337, 189 A. 184, 185-186 (1937). “The trial court evidently believed that under the circumstances Muhlfeld would not be able to, or would not, pay the debt before the expiration of the time he sought to have fixed for redemption and that the right of the plaintiff to have the debt paid or secure title to the property should not be postponed for some months beyond the time fixed in the judgment. Whether or not it should open the judgment was a matter resting within its discretion and, unless that discretion was abused or was based upon some error in law, the denial of the motion must stand.”
- Raymond v. Gilman, 111 Conn. 605, 613, 151 A. 248, 251 (1930). “While we have indulged in discussion of the several objections raised by the appellants, the effect of the judgment confirming the sale, being final and unappealed from, is ample, of itself, to dispose of these contentions.”
- For summaries of recent CT Supreme and Appellate Court foreclosure cases, see our foreclosure section on our NewsLog at:  
<http://ersa.jud.ct.gov/lawlibnews/Lists/Categories/Category.aspx?Name=Foreclosure%20Opinions>

**WEST KEY NUMBERS:**

- *Mortgage* # 496. Opening or vacating judgment or decree

**TEXTS & TREATISES:**

- CONNECTICUT LAWYERS’ DESKBOOK: A REFERENCE MANUAL, (3d ed. 2008).  
Chapter 17, *Real Property Foreclosure in Connecticut* by Dennis P. Anderson, Denis R. Caron and Geoffrey K. Milne  
Opening the Judgment Following Strict Foreclosure, pp. 444-446  
Effect of Passing of Owner’s Law Day on §49-15 motion, pp. 446-448  
Following Foreclosure by Sale, pp. 448-449  
Extension of Law Day, p. 449
- DENIS R. CARON & GEOFFREY K. MILNE, CONNECTICUT FORECLOSURES: AN ATTORNEY’S MANUAL OF PRACTICE AND PROCEDURE (4th ed. 2004).  
Chapter 9. Post Judgment Proceedings  
§ 9.01 Opening the Judgment  
§ 9.01A Following Strict Foreclosure (and 2010 supp.)  
§ 9.01B Following Foreclosure by Sale (and 2010 supp.)  
§ 9.01C Extension of Law Day  
§ 9.01D Extension of Sale Date  
§ 9.01E Adding Defendants  
§ 9.01F Other Reasons
- Renee Bevacqua Bollier et al., STEPHENSON’S CONNECTICUT CIVIL PROCEDURE (3rd ed., 2002), volume 2.  
§ 199f Reopening Mortgage Foreclosure, p. 429
- Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners, Connecticut Fair Housing Center  
<http://ctfairhousing.org/wp/wp-content/uploads/2010/01/CFHC-ForeclosMan-Repr5-Jul11-R2.pdf>

**CURRENT  
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Janet Zigadto, Connecticut Judicial Branch Law Library at  
New Haven, 235 Church Street, New Haven, CT 06510.  
(203) 503-6828. [Email](#).

\* Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch  
Supervising Law Librarian.

**Table 6: Unreported Connecticut Cases: Motion to Open Judgment of Foreclosure, prior to 10/1/09 (see CGS [49-15](#), 2011 edition)**

| <b>Unreported Decisions</b>   |  |
|---|--|
| <p><u>Bank United v. Blancato</u>, No. CV-00-0553756 S (Aug. 14, 2001), 2001 Ct. Sup. 11186, 11187-11188, 2001 WL 1043184, 2001 Conn. Super. LEXIS 2427.</p>      | <p>“The defendant moves to open the judgment of strict foreclosure on the ground that the court should use its equitable powers to open the judgment because (1) the defendant never received notice of the foreclosure proceedings ‘[d]ue to the fact that defendant’s mail has been consistently tampered with and his home burglarized on numerous occasions,’ and (2) the defendant ‘was misled into believing that he had until 2/15/2001 to file for bankruptcy protection.’ (Defendant’s motion to reopen judgment, ¶ 3.)</p> <p>The court does not have the authority to open a judgment of strict foreclosure after the law day has passed and title has vested. <a href="#">New Milford Savings Bank v. Jajer</a>, 244 Conn. 251, 708 Conn. App. 1378 (1998). See also <a href="#">GMAC Mortgage Corporation v. Barclay</a>, Superior Court, judicial district of Hartford, Docket No. 5937115 (June 15, 2000, Stengel, J.) (judgment of strict foreclosure could not be opened once title had vested); <a href="#">Bridgeport v. Voll</a>, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. 318563 (March 30, 2000, Mottolese, J.) (denying motion to open where title had vested months before motion to open was filed.)</p> <p>Title vested in the plaintiff on February 9, 2001. Further, the defendant did not move to open the judgment within four months as required by General Statutes 52-212a. The court does not have the authority to open the judgment. Therefore, the motion to reopen is denied.”</p> <p><b>(see CGS <a href="#">49-15</a>, 2011 edition)</b></p> |
| <p><u>First National Bank v. Luecken</u>, No. CV99 036 74 43 (Feb. 28, 2001), 2001 Ct. Sup. 3132-ex, 28 CLR 722, 2001 WL 254324, 2001 Conn. Super. LEXIS 578.</p> | <p>“The plaintiff has asked that the court vacate its prior orders opening and reopening the judgment and extending the law day on the grounds that the court had no jurisdiction to do so pursuant to § 49-15 of the General Statutes. The defendant argues that title does not vest until the close of business on the first day court is open following the last day set for a defendant to redeem (the last law day). There is no rational support for this argument because there is no need for any party to avail itself of the court’s power because by that time all law days would have expired. The defendant reads into the word ‘after’ in the last line of § 49-15 a period of time consisting of the first business day after the expiration of the last law day. Such a construction is untenable and unwarranted.”</p> <p>JUDGMENT AFFIRMED AT 66 CONN. APP. 606 (2001), CERTIFICATION FOR APPEAL DENIED AT 259 CONN. 915 (2002)</p> <p><b>(see CGS <a href="#">49-15</a>, 2011 edition)</b><br/>[Cont’d]</p>   |

|  |  |
|--|--|
| <p><u>Washington Mutual Bank v. Turner</u>, No. CV98 0263975 (Jul. 19, 1999), 1999 Ct. Sup. 9424, 25 CLR 126, 2000 WL 1405596, 1999 Conn. Super. LEXIS 1919.</p> | <p>“The bank claims that this court has no jurisdiction of the motion for the stay because, pursuant to § 49-15 of the General Statutes, the judgment, having resulted in title vesting in the bank, may not be reopened. This is so, but the defendants are not asking for the judgment to be opened. Rather, they are asking for an equitable stay.</p> <p>Similarly, this is not a writ of audita querela, which is a remedy granted to one against whom execution has issued, the enforcement of which would be contrary to justice because of (1) matters arising subsequent to the rendition of the judgment; (2) previously existing defenses which were not available at the time of the original judgment, or (3) fraud on the part of the judgment creditor, or circumstances over which the judgment debtor had no control. <a href="#">Oakland Heights Mobile Park, Inc. v. Simon</a>, 40 Conn. App. 30, 32 (1995); see also <a href="#">Anthony Julian RR Construction Co. v. Mary Ellen Drive Assoc.</a>, 50 Conn. App. 289, 294 (1998); <a href="#">Ames v. Sears Roebuck &amp; Co.</a>, 206 Conn. 16, 20-22 (1988). If there is no defense so affecting the judgment, and no fraud by the creditor nor circumstances beyond the control of the defendant affecting the judgment, then the writ may not be granted. <a href="#">Ellington Ridge Condominium Ass'n. v. Surrells</a>, CV97-63402 (J.D. Tolland, September 24, 1997) (Zarella, J.).</p> <p>Even if a writ is not appropriate and the judgment may not be opened, the court has equitable jurisdiction to grant a stay, if the circumstances are appropriate. See, e.g., <a href="#">Pleasant Valley Mobile Home Park v. Harl</a>, CV10-96-12806 (May 14, 1997) (Purtill, J.). Such an inquiry involves a balancing of the hardships between the parties. Cf. <a href="#">Fellows v. Martin</a>, 217 Conn. 57, 63 n. 9 (1991).”</p> <p><b>(see CGS <a href="#">49-15</a>, 2011 edition)</b></p> |
| <p><u>People's Bank v. Lemdon</u>, No. CV 97 034 0634 (Jan. 5, 1999), 1999 Ct. Sup. 135, 23 CLR 683, 1999 WL 27170, 1999 Conn. Super. LEXIS 25.</p>              | <p>“It is well-established that the ‘power of the court to vacate a judgment for fraud is regarded as inherent and independent of statutory provisions authorizing the opening of judgments; [and] hence judgments obtained by fraud may be attacked at any time.’ <a href="#">Kenworthy v. Kenworthy</a>, 180 Conn. 129, 131, 429 A.2d 837 (1980). ‘Our courts have made clear, however, that while fraud may be grounds for collateral attack on a judgment of strict foreclosure by an independent action in equity, fraud is not ground for opening a judgment after title has become absolute in an encumbrancer.’ <a href="#">Merry-Go-Round Enterprises, Inc. v. Molnar</a>, supra, 10 Conn. App. [160,]162 n.1[521 A.2d 1065 (1987)]. See also <a href="#">Hoey v. Investors' Mortgage &amp; Guaranty Co.</a>, 118 Conn. 226, 230-31, 171 A. 438 (1934); <a href="#">City Savings Bank of Bridgeport v. Miko</a>, 1 Conn. App. 30, 34 n.2, 467 A.2d 929 (1983). Thus, even when the encumbrancer's conduct is ‘outrageous and unconscionable’ it is ‘sad to relate, [that] the only relief that can be obtained by the plaintiffs . . . is through the medium of an independent action . . .’ <a href="#">East Hartford v. Miller</a>, 27 Conn. Sup. 503, 507, 245 A.2d 396 (1968).</p> <p>The motion to reopen the strict foreclosure must therefore be denied.”</p> <p><b>(see CGS <a href="#">49-15</a>, 2011 edition)</b></p>  |

**Figure 7: Motion to Open and Modify Judgment of Strict Foreclosure**

NO. CV-87-0050014S

FARMERS & MECHANICS SAVINGS : SUPERIOR COURT  
BANK : JUDICIAL DISTRICT OF  
VS. : MIDDLESEX  
MARTIN F. SULLIVAN, ET AL. : AT MIDDLETOWN  
: MARCH 11, 1988

MOTION TO OPEN AND MODIFY JUDGMENT  
OF STRICT FORECLOSURE

The defendants **MARTIN F. SULLIVAN** and **PATRICIA M.**

**SULLIVAN** respectfully represent:

1. A judgment entered in the above first mortgage foreclosure on January 19, 1988 (Higgins, J.).
2. The Court ordered a strict foreclosure rather than a foreclosure by sale.
3. The appraised value of the subject property is \$170,000.00.
4. The debt owed the foreclosing plaintiff bank was \$80,663.91 as of January 19, 1988, the day judgment entered.
5. Accordingly, there is over \$80,000.00 of equity in the property.
6. The order of strict foreclosure will foreclose the interests of the undersigned defendants unless they redeem.

7. The undersigned defendants have not the means to redeem.

8. The Wirtzes claim an interest in the subject premises by virtue of a bond for deed recorded on December 30, 1986, which was earlier than the recording of the mortgage of the defendants on February 19, 1987.

9. The Wirtzes' bond for deed requires them to pay \$116,000.00 for the subject property.

10. If the Wirtzes redeem the property for a sum in the vicinity of \$82,000.00, they will own the property without paying the \$116,000.00 required by their bond for deed. They will enjoy a windfall of between \$34,000.00 and \$88,000.00 at the expense of, among others, the undersigned defendants.

11. The Wirtzes' recorded contract at best constitutes a purchaser's lien and the court's actions in granting a contract under litigation a law day outweighs the undersigned defendants the due process of law to litigate the claimed contract right.

12. A foreclosure by sale protects the Wirtzes' legitimate rights in the property, while a strict foreclosure gives them the property at a bargain price without having to prove the validity of their claim at all.

14. Since a strict foreclosure wipes out all the rights of the undersigned defendants while creating the possibility of a windfall for the Wirtzes, and a sale foreclosure protects the rights of all of the defendants, a strict foreclosure is inequitable under the circumstances and a sale foreclosure is the only equitable judgment under the circumstances.

15. This motion is filed with the required fee and memorandum of law.

WHEREFORE, the undersigned defendants move the Court to open the judgment and modify it to order a foreclosure by sale.

DEFENDANTS

MARTIN F. SULLIVAN  
and PATRICIA M.  
SULLIVAN

BY \_\_\_\_\_  
Name  
Firm  
Address  
Telephone  
Juris No.

ORDER

The foregoing Motion having been heard, it is hereby ORDERED:

GRANTED/DENIED

BY THE COURT

\_\_\_\_\_ CLERK

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed to all counsel of record on March 11, 1988.

-----  
Name

**Figure 8: Motion to Set New Law Day**

NO. CV-87-0050014S

FARMERS & MECHANICS SAVINGS : SUPERIOR COURT  
BANK : JUDICIAL DISTRICT OF  
VS. : MIDDLESEX  
MARTIN F. SULLIVAN, ET AL. : AT MIDDLETOWN  
: MAY 19, 1988

**MOTION TO SET NEW LAW DAYS**

The defendants, MARTIN F. SULLIVAN and PATRICIA M. SULLIVAN respectfully represent:

1. A judgment entered in the above first mortgage foreclosure on January 19, 1988 (Higgins, J.).
2. The Court ordered a strict foreclosure rather than a foreclosure by sale.
3. On February 8, 1988 prior to the law days set in the initial judgment a Motion to open and Modify Judgment of Strict Foreclosure was filed which suspended said law days.
4. Said motion has not been heard and the law days set thereunder are void as they fall within the appeal period as determined by § 400 of the Rules of Appellate Practice.
5. The setting of new law days are required should this court deny the motion to open and modify the judgment.

WHEREFORE, the undersigned defendants move the Court to set new law days should the Motion to Open and Modify Judgment of Strict Foreclosure be denied.

The foregoing Motion having been heard, it is hereby ORDERED:

SULLIVAN

DEFENDANTS,  
MARTIN F. SULLIVAN and PATRICIA M.

By \_\_\_\_\_  
Name  
Firm  
Address  
Telephone number  
Juris No.

ORDER

The foregoing Motion having been heard, it is hereby ORDERED:

GRANTED/DENIED

BY THE COURT

\_\_\_\_\_ CLERK

# Section 9: Appeals and Foreclosure

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*A Guide to Resources in the Law Library*

## **SCOPE:**

- Bibliographic resources relating to appeals of foreclosure judgments in Connecticut.

## **STATUTES:**

- “In no event shall any determination issued by a mediator under this program (Foreclosure Mediation Program) form the basis of an appeal of any foreclosure judgment.” CONN. GEN. STAT. § [49-31n\(6\)](#) (2011)
- “Upon the trial of all matters of fact in any cause or action in the Superior Court, whether to the court or jury, or before any judge thereof when the jurisdiction of any action or proceeding is vested in him, if either party is aggrieved by the decision of the court or judge upon any question or questions of law arising in the trial, including the denial of a motion to set aside a verdict, he may appeal to the court having jurisdiction from the final judgment of the court or of such judge, or from the decision of the court granting a motion to set aside a verdict, except in small claims cases, which shall not be appealable, and appeals as provided in sections 8-8 and 8-9.” CONN. GEN. STAT. § [52-263](#) (2011)

## **COURT RULES:**

- CONNECTICUT PRACTICE BOOK (2011)  
RULES OF APPELLATE PROCEDURE  
[Chapter 60](#). General Provisions Relating to Appellate Rules and Appellate Review  
[Chapter 61](#). Remedy by Appeal  
[Chapter 62](#). Chief Judge, Appellate Clerk and Docket: General Administrative Matters  
[Chapter 63](#). Filing the Appeal; Withdrawals  
[Chapter 64](#). Procedure Concerning Memorandum of Decision  
[Chapter 66](#). Motion and Other Procedures  
[Chapter 67](#). Briefs  
[Chapter 68](#). Record  
[Chapter 69](#). Assignment of Cases for Argument

## **COURT CASES:**

- **Time to Appeal:** “A party may not effectively be deprived of the right to appeal within the twenty days by having the law day pass within that time, thereby causing a loss of the right of redemption. The defendant's motion, therefore, cannot be deemed to be untimely filed under these circumstances; she must be afforded due process in the form of a hearing and a determination on the merits of her motion to open.” [Continental Capital Corp. v. Lazarte](#), 57 Conn. App. 271, 274, 749 A.2d 646, 648 (2000).

**TEXTS & TREATISES:**

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004) and 2010 supplement.  
Chapter 17. Appeals
  - § 17.01. Introduction
  - § 17.02. The Finality Test
  - § 17.03. Strict Foreclosure
  - § 17.04. Foreclosure by Sale
    - § 17.04A Judgment of Foreclosure by Sale
    - § 17.04B Approval of Sale
    - § 17.04C Supplemental Judgment
  - § 17.05. Appointment of Receiver of Rents
    - § 17.05A Orders for Disbursement of Receiver's Funds
  - § 17.06. Motion to Reopen Judgment
  - § 17.07. Appeal by Committee
  - § 17.08 Appeals by Property Owner (supp. only)
  - § 17.09 Motions to Strike (supp. only)
  - § 17.10 Motions for Summary Judgment (supp. only)
  - § 17.11 Executions of Ejectment (supp. only)
  - § 17.12 Appeal of Order Granting Application for Protection from Foreclosure (supp. only)
- [CONNECTICUT LAWYERS' DESKBOOK: A REFERENCE MANUAL](#), (3d ed. 2008).  
Chapter 17, *Real Property Foreclosure in Connecticut* by Dennis P. Anderson, Denis R. Caron and Geoffrey K. Milne  
Appeals, pp. 450-452

**PAMPHLETS:**

- [Handbook of Connecticut Appellate Procedure](#)  
<http://www.jud.ct.gov/Publications/appellatehandbook.pdf>

**CURRENT COMPILER:**

Janet Zigadto, Connecticut Judicial Branch Law Library at New Haven, 235 Church Street, New Haven, CT 06510. (203) 503-6828. [Email](#).

# Section 10: Bankruptcy and Foreclosure

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*A Guide to Resources in the Law Library*

## SCOPE:

- Bibliographic resources relating to the effect of bankruptcy on an action for foreclosure.

## DEFINITION:

- “Upon the filing of a bankruptcy petition by a mortgagor under Title 11 of the United States Code, any judgment against the mortgagor foreclosing the title to real estate by strict foreclosure shall be opened automatically without action by any party or the court, provided, the provisions of such judgment, other than the establishment of law days, shall not be set aside under this subsection, provided no such judgment shall be opened after the title has become absolute in any encumbrancer or the mortgagee, or any person claiming under such encumbrancer or mortgagee. The mortgagor shall file a copy of the bankruptcy petition, or an affidavit setting forth the date the bankruptcy petition was filed, with the clerk of the court in which the foreclosure matter is pending. Upon the termination of the automatic stay authorized pursuant to 11 USC 362, the mortgagor shall file with such clerk an affidavit setting forth the date the stay was terminated.” CONN. GEN. STAT. § [49-15\(b\)](#) (2011).
- **Automatic stay:** “is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all *foreclosure actions*.” H.R. Rep. No. 595, 95th Cong., 2d Sess. 340-42 (1977), 1978 [U.S. Code Cong. & Admin. News](#) 5787, 5963, 6296-97, (emphasis added).
- “The filing of a petition under any chapter of the Bankruptcy Code automatically stays all actions against the debtor, including foreclosure actions. 11 U.S.C § 362 (a) (5).” [Roy v. Beilin](#), No. 31 50 57 (Sep. 8, 1997), 1997 Ct. Sup. 9042, 1997 WL 583838.
- **Stay continues:** “The stay of any other act under subsection (a) of this section continues until the earliest of—  
(A) the time the case is closed  
(B) the time the case is dismissed; or  
(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied.” [11 U.S.C § 362 \(c\) \(2\)](#).

## STATUTES:

- 11 UNITED STATES CODE  
§ [362](#). Automatic stay

- § [522](#). Exemptions
- § [541](#). Property of the estate

**COURT RULES:**

- **Claim for Statutory Exemption or Stay by Reason of Bankruptcy**  
 “When a claim for a statutory exemption or stay by reason of bankruptcy is filed, it shall be accompanied by an affidavit setting forth the date the bankruptcy petition was filed, the district of the bankruptcy court in which it was filed and the address, the name of the bankruptcy debtor and the number of the bankruptcy case. When the stay has been relieved or terminated, the plaintiff, the person filing the petition, or any other interested party shall file with the court a copy of the relief or termination of stay issued by the bankruptcy court.” CT Practice Book § [14-1](#) (2011 ed.)

**COURT CASES**

- Roy v. Beilin, No. 31 50 57 (Sep. 8, 1997), 1997 Ct. Sup. 9042. “While all property in which the debtors had an interest at the time the bankruptcy petition was filed becomes property of the bankruptcy estate under 11 U.S.C. § 541, any property that is exempted under 11 U.S.C. § 522 (b) is removed from the estate. In re Rodriguez, 9 B.R. 643 (S.D. Florida 1981). Since the defendants contend that the subject property was exempted, such property is no longer considered part of the bankruptcy estate and the stay ‘continues only until the *earliest* of the time when the case is closed or dismissed or the time when a discharge is granted to the debtor.’ (Emphasis in original.) In re Rodriguez, supra, 9 B.R. 643-44 (granting mortgagee's motion to modify stay seeking to continue its foreclosure action on the debtor's home even though the property was exempted, on the ground that the stay had lifted since the debtor had received a discharge).”
- Kilduff v. Adams, Inc., 219 Conn. 314, 321, 593 A.2d 478 (1991). “If the plaintiffs had filed a bankruptcy petition prior to the redemption by Adams, Inc., an automatic stay would have been imposed that would have barred temporarily any further proceedings in the foreclosure action, including the defendants' redemption. 11 U.S.C. § 362 (a).”
- In Re Lohnes, 26 B.R. 593, 596 (Bkrcty. D.Conn. 1983). “In the instant proceeding, there is no question that the automatic stay was violated by the foreclosure sale.”
- For summaries of recent CT Supreme and Appellate Court foreclosure cases, see our foreclosure section on our NewsLog at: <http://ersa.jud.ct.gov/lawlibnews/Lists/Categories/Category.aspx?Name=Foreclosure%20Opinions>

**TEXTS & TREATISES:**

- NATIONAL CONSUMER LAW CENTER, [FORECLOSURES: DEFENSES, WORKOUTS, AND MORTGAGE SERVICING](#) (3rd ed. 2010).  
 Chapter 9. Using bankruptcy to prevent foreclosure
  - § 9.1. Introduction
  - § 9.2. Bankruptcy Basics
  - § 9.3. Obtaining the Automatic Stay
  - § 9.4. Curing Defaults on Home Loans
  - § 9.5. Paying Secured Claims in Full
  - § 9.6. Using Consumer Defenses in Response to a Motion for Relief from Stay in Chapter 13
  - § 9.7. Stripping Down Residential Mortgages to the Value of the Collateral
  - § 9.8. Avoiding Judicial Liens – Section 522(f)(1)

- § 9.9. Debtor’s Statement of Intention Regarding Secured Property
- § 9.10. Sale of Property
- § 9.11. Impact of Bankruptcy on Later Foreclosure Prevention Efforts

Chapter 14. Issues Arising after a Foreclosure Sale

- §14.2.4. Setting Aside a Foreclosure Sale in Bankruptcy

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY’S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004) and 2010 supplement.  
Chapter 20. Bankruptcy
  - § 20.1. Introduction
  - § 20.2. The petition
  - § 20.3. The proceeding
  - § 20.4. The stay of the proceedings
  - § 20.5. Relief from stay
  - § 20.6. Chapter 11, Chapter 12, Chapter 13
  - § 20.7. Selected problems
  - § 20.08 “Waterfall” Analysis of the new Automatic Stay Provisions (supp. only)
 General Rules Pertaining to the Automatic Stay in Individual Cases § 362(c)(3), pp.264-270 (supp. only)
  
- 4 RICHARD R. POWELL, [POWELL ON REAL PROPERTY](#) (2010).  
Chapter 37. Mortgages and Mortgage Foreclosure
  - § 37.48. Statutory Modifications – Bankruptcy
    - [1] Arrearages Protection
    - [2] The Automatic Bankruptcy Stay
    - [3] Sale of the Property by the Bankruptcy Court
    - [4] Impact of a Reorganization Plan on the Mortgagee
    - [5] Farmer Reorganizations
    - [6] Rents
  
- [COLLIER ON BANKRUPTCY](#), Lawrence P. King, editor-in-chief, 16<sup>th</sup> edition.  
HUD foreclosures excepted from automatic stay - Volume 3: 362.03[6][d], 362.05[8]  
Extension of time for redemption – Volume 2: 108.03[3]
  
- [COLLIER ON BANKRUPTCY](#), Lawrence P. King, editor-in-chief, 15<sup>th</sup> rev. ed.  
Volume 13, Pt. CS6 – Automatic Stay
  - CS6.22 Setting Aside Foreclosure Sale Made in Violation of the Automatic Stay
  - CS6.22-2 Findings of Fact and Conclusions of Law; Foreclosure Sale Violative of Automatic Stay
  - CS6.22-3 Judgment Setting Aside Foreclosure Sale in Violation of Automatic Stay
  
- Claim for Statutory Stay by Reason of Bankruptcy, [Figure 9](#).
- Notice of Relief from Stay from Bankruptcy Court, [Figure 10](#).

**FORMS:**

**CURRENT**  
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\* Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch  
Supervising Law Librarian.

**Figure 9: Claim for Statutory Stay by Reason of Bankruptcy**

Docket No. HHD-CV-08-5020417-S : SUPERIOR COURT  
COUNTRYWIDE BANK, FSB : JUDICIAL DISTRICT OF  
HARTFORD  
V. : AT HARTFORD  
JOSE JIMENEZ A/K/A JUAN JOSE : NOVEMBER 07, 2008  
JIMINEZ A/K/A JOSE JIMINEZ A/K/A  
JUAN J. JIMENEZ A/K/A J. JOSE JIMINEZ,  
*ET AL.*

**CLAIM FOR STATUTORY STAY BY REASON OF BANKRUPTCY**

The Plaintiff in the above captioned matter respectfully notifies this Court and the other parties in this action that there is currently a proceeding pending in the United States Bankruptcy Court, District of Hartford, Connecticut, as more fully set forth as follows.

A Bankruptcy Petition under 11 U.S.C. Chapter 7 was filed by the Defendant Lissette B. Jimenez, on october 29, 2008, under Case No. 08-22117. The bankruptcy debtor is the Defendant in the above-entitled foreclosure case.

The filing of said bankruptcy Petition operates as an automatic stay against the assets of the Defendant-debtor by virtue of Title 11 U.S.C. Section 362 in this proceeding.

RESPECTFULLY SUBMITTED

By \_\_\_\_\_  
Plaintiff's Attorney  
Address  
Juris No.

**CERTIFICATION**

This is to certify that a copy of the foregoing was mailed on November 7, 2008 to all counsel and pro se parties of record, as follows:

---

Plaintiff's Attorney

**Figure 10: Notice of Relief from Stay from Bankruptcy Court**

DOCKET NO. HHD-CV-08-5025560-S : SUPERIOR COURT  
COUNTRYWIDE HOME LOANS : JUDICIAL DISTRICT OF HARTFORD  
SERVICING, L.P.  
V. : AT HARTFORD  
AHMED JILU, ET AL. : JUNE 05, 2009

**NOTICE OF RELIEF FROM STAY FROM BANKRUPTCY COURT**

The Plaintiff in the above-entitled action hereby gives Notice that on 6/4/09 the United States Bankruptcy granted Plaintiff's Relief from Stay, ending the automatic stay, which went into effect upon the filing of a bankruptcy petition. A copy of the Order is attached hereto.

By \_\_\_\_\_  
Plaintiff's Attorney

ORAL ARGUMENT REQUESTED  
NO TESTIMONY REQUIRED

**CERTIFICATION**

This is to certify that a copy of the foregoing has been mailed, postage prepaid, by first class mail on June 5, 2009 to the following:

No Appearances

\_\_\_\_\_  
Plaintiff's Attorney

# Section 11: Deficiency Judgment

*A Guide to Resources in the Law Library*

## SCOPE:

- Bibliographic resources relating to the deficiency judgment after strict foreclosure and foreclosure by sale.

## DEFINITION:

### IN GENERAL

- “Historically, a foreclosure proceeding was an absolute bar to further action on the mortgage debt. In *M'Ewen v. Welles*, 1 Root 202, 203 (1790), the Supreme Court enunciated that ‘[i]f [the mortgagee] choose[s] to take the land and to make it his own absolutely, whereby the mortgagor is totally divested of his equity of redemption, the debt is thereby paid and discharged: And if it eventually proves insufficient to raise the sum due, it is the mortgagee's own fault, and at his risk.’ Starting in 1835, a succession of statutes established a mortgagee's right to a judgment for the deficiency when the value of the property proves inadequate to satisfy the mortgage debt in full. ‘Since the entry of a judgment of foreclosure precludes any further common law proceedings upon the note, the legislatively created remedy of the deficiency judgment is the only available means of satisfying a mortgage debt when the security is inadequate to make the plaintiff whole.’ D. CARON, *CONNECTICUT FORECLOSURES* (2d Ed.) § 9.05A, pp. 157-58; see *Eichman v. J & J Building Co.*, 216 Conn. 443, 448, 582 A.2d 182 (1990); *First Bank v. Simpson*, 199 Conn. 368, 370-72, 507 A.2d 997 (1986). The *Simpson* court articulated that ‘[u]nder General Statutes § 49-1, a judgment of strict foreclosure extinguishes all rights of the foreclosing mortgagee on the underlying note, except those enforceable through the use of the deficiency judgment procedure delineated in General Statutes § 49-14.’” [Factor v. Fallbrook, Inc.](#), 25 Conn. App. 159, 161-162, 593 A.2d 520, 521-522 (1991).

### STRICT FORECLOSURE

- **Deficiency judgment:** “At any time within thirty days after the time limited for redemption has expired, any party to a mortgage foreclosure may file a motion seeking a deficiency judgment.” CONN. GEN. STAT. § [49-14\(a\)](#) (2011).
- **Evidentiary hearing:** “Such motion shall be placed on the short calendar for an evidentiary hearing. Such hearing shall be held not less than fifteen days following the filing of the motion, except as the court may otherwise order. At such hearing the court shall hear the evidence, establish a valuation for the mortgaged property and shall render judgment for the plaintiff for the difference, if any, between such valuation and the plaintiff's claim. The plaintiff in any further action upon the debt, note or obligation, shall recover only the amount of such judgment.” *Ibid*.
- **State Referee:** “Upon the motion of any party and for good cause shown, the court may refer such motion to a state referee, who shall have and exercise the powers of the court with respect to trial, judgment

- and appeal in such case.” CONN. GEN. STAT. § [49-14\(b\)](#) (2011).
- “Any party to a mortgage foreclosure who has moved for an appraisal of property for the purpose of obtaining a deficiency judgment, but has not been granted a deficiency judgment, or has not received full satisfaction of any deficiency judgment obtained subsequent to the filing of such motion, may make a motion to the court for a deficiency judgment as set forth in subsection (a) of this section. If such motion is made on or before November 1, 1979, such moving party shall be deemed to have complied with all of the requirements of subsection (a) of this section and shall be entitled to the benefit of any deficiency judgment rendered pursuant to said subsection (a).” CONN. GEN. STAT. § [49-14\(c\)](#) (2011).
  - **Appeal:** “Any appeal pending in the Supreme Court with regard to any deficiency judgment or proceedings relating thereto shall be stayed until a hearing is held pursuant to subsection (a) of this section. Any appellant in such an appeal shall have the right for a period of thirty days after the rendering of judgment pursuant to subsection (a) of this section to amend his appeal. There shall be no stay of such an appeal if no motion has been filed pursuant to this section on or before November 1, 1979.” CONN. GEN. STAT. § [49-14\(d\)](#) (2011)

#### FORECLOSURE BY SALE

- “If the proceeds of the sale are not sufficient to pay in full the amount secured by any mortgage or lien thereby foreclosed, the deficiency shall be determined, and thereupon judgment may be rendered in the cause for the deficiency against any party liable to pay the same who is a party to the cause and has been served with process or has appeared therein, and all persons liable to pay the debt secured by the mortgage or lien may be made parties; but all other proceedings for the collection of the debt shall be stayed during the pendency of the foreclosure suit, and, if a deficiency judgment is finally rendered therein, the other proceedings shall forthwith abate.” CONN. GEN. STAT. § [49-28](#) (2011).
- “If the property has sold for less than the appraisal provided for in section [49-25](#), no judgment shall be rendered in the suit or in any other for the unpaid portion of the debt or debts of the party or parties upon whose motion the sale was ordered, nor shall the same be collected by any other means than from the proceeds of the sale until one-half of the difference between the appraised value and the selling price has been credited upon the debt or debts as of the date of sale; and, when there are two or more debts to which it is to be applied, it shall be apportioned between them.” Ibid.

#### STATUTES:

- CONN. GEN. STAT. (2009)  
[Title 49. Mortgages and liens](#)  
[Chapter 846. Mortgages](#)  
 § [49-14](#). Deficiency judgment.  
 § [49-28](#). When proceeds of sale will not pay in full.

## COURT RULES:

- “**Sec. 23-19. —Motion for Deficiency Judgment**  
(a) Whenever a deficiency judgment is claimed in a foreclosure action, the party claiming such judgment shall file with the clerk of the court within the time limited by statute a written motion setting forth the facts relied on as the basis for the judgment, which motion shall be placed on the short calendar for an evidentiary hearing. Such hearing shall be held not less than fifteen days following the filing of the motion, except as the judicial authority may otherwise order. At such hearing the judicial authority shall hear the evidence, establish a valuation for the mortgaged property and shall render judgment for the plaintiff for the difference, if any, between such valuation and the plaintiff’s claim. The plaintiff in any further action upon the debt, note or obligation, shall recover only the amount of such judgment.  
(b) Upon the motion of any party and for good cause shown, the court may refer such motion to a judge trial referee for hearing and judgment.  
(c) Not less than fifteen days prior to the hearing on the motion for deficiency judgment, the party claiming the deficiency judgment shall file with the clerk of the court and serve on each appearing party, in accordance with Sections 10-12 through 10-17, a preliminary computation of the debt, the name of any expert on whose opinion the party will rely to prove the value of the property on the date of vesting, and a statement of the party’s claims as to the value. If any party intends to offer evidence contradicting the debt or the valuation of the property, such party shall file an objection five days before the hearing on the motion and shall disclose the name of any person who will testify as to the value of the property.” CT PRAC BOOK [23-19](#) (2011)

## FORMS:

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY’S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004).
  - *Motion for Deficiency Judgment*, Form 25, p. 716
  - *Notice of Computation of Debt, Disclosure of Expert and Statement of Value*, Form 25A, p. 717
  - *Objection to Motion for Deficiency Judgment*, Form 25B, p. 718
  - *Judgment for Deficiency after Strict Foreclosure*, Form 26, p. 719
  - *Motion for Deficiency Judgment*, Form 27, p. 720
  - *Judgment for Deficiency after Foreclosure by Sale*, Form 28, p. 721
- Dennis P. Anderson, Denis R. Caron & Geoffrey K. Milne, *Real Property Foreclosure In Connecticut*, [CONNECTICUT LAWYERS’ DESKBOOK: A REFERENCE MANUAL](#), FORMS INDEX (2d ed. 2000). Chapter XIV. “Motion for Deficiency Judgment”
- 3 JOEL M. KAYE ET AL. [CONNECTICUT PRACTICE BOOK ANNOTATED: CIVIL PRACTICE FORMS](#) (2004).
  - Motion for Deficiency Judgment – Strict Foreclosure, Form 706.1, pp. 630-635
  - Supplemental Judgment for Deficiency on Strict Foreclosure, Form 707.4, pp. 671-673

## CASES:

- [First Federal Bank, FSB v. Gallup](#), 51 Conn. App. 39, 42, 719 A.2d 923, 925 (1998). “A deficiency proceeding has a very limited purpose. ‘In the hearing contemplated under § 49-14 to obtain a deficiency judgment, the court, after hearing the party's appraisers, determines the value of the property and calculates any deficiency. This deficiency judgment procedure presumes the amount of the debt as established by the foreclosure judgment and merely provides for a hearing on the value of the property. *First Bank v. Simpson*, 199 Conn. 368, 373, 507 A.2d 997 (1986).’ (Internal quotation marks omitted.) *Ferrigno v. Cromwell Development Associates*, 44 Conn. App. 439, 444, 689 A.2d 1150 (1997), *aff'd*, 244 Conn. 189, 708 A.2d 1371 (1998). The deficiency hearing concerns the fair market value of the subject property as of the date title vests in the foreclosing plaintiff under § 49-14. *Eichman v. J & J Building Co.*, 216 Conn. 443, 449, 582 A.2d 182 (1990).”
- [Factor v. Fallbrook, Inc.](#), 25 Conn. App. 159, 163, 593 A.2d 520 (1991) “The trial court relied on *Simpson* [*First Bank v. Simpson*, 199 Conn. 368, 370-72, 507 A.2d 997 (1986)] in ruling that the § 49-1 bar applies only to a foreclosing mortgagee and that it does not affect the rights of a subsequent encumbrancer to pursue its remedies on the underlying obligation. *Id.*, 377. This is a correct statement of the law but the proposition is inapposite to the facts of the present case.”
- For summaries of recent CT Supreme and Appellate Court foreclosure cases, see our foreclosure section on our NewsLog at: <http://ersa.jud.ct.gov/lawlibnews/Lists/Categories/Category.aspx?Name=Foreclosure%20Opinions>

## TEXTS & TREATISES:

- Dennis P. Anderson, Denis R. Caron and Geoffrey K. Milne, *Real Property Foreclosure In Connecticut*, [CONNECTICUT LAWYERS' DESKBOOK: A REFERENCE MANUAL](#) (3d ed. 2008).
  - Deficiency judgments after strict foreclosure, pp. 441-443
  - Deficiency judgments after foreclosure by sale, pp. 443-444
- DENIS R. CARON AND GEOFFREY K. MILNE , [CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004) and 2010 supplement.  
Chapter 9 Post Judgment Proceedings  
§ 9.05. The deficiency judgment  
§ 9.05A. After strict foreclosure
  - § 9.05A(1) PJR to secure deficiency judgment.
  - § 9.05A(2) Time for filing motion for deficiency judgment.
  - § 9.05A(3) Technical defects in motion for deficiency judgment.
  - § 9.05A(4) Substituting plaintiff prior to deficiency judgment.
  - § 9.05A(5) Time for filing defenses to deficiency judgment.
  - § 9.05A(6) Section 49-1 as a defense.
  - § 9.05A(7) Appraisals.
  - § 9.05A(8) Blanket or multiple mortgages.
  - § 9.05(A)(9) Right of contribution between co-guarantors on deficiency. (supp. Only)
  - § 9.05A1 Calculating the deficiency.

§ 9.05B After foreclosure by sale.

§ 9.05B1 Difference as to subsequent encumbrancers.

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\* Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch  
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**Table 7: Defenses to a Deficiency**

| <h2 style="margin: 0;">Defenses to a Deficiency Liability</h2>   |  |
|--|--|
| <ul style="list-style-type: none"> <li>• Dennis P. Anderson, Denis R. Caron and Geoffrey K. Milne, <i>Real Property Foreclosure In Connecticut</i>, <a href="#">CONNECTICUT LAWYERS' DESKBOOK: A REFERENCE MANUAL</a> (3d ed. 2008), "Deficiency Judgments after Strict Foreclosure," pp. 441-443 and "Deficiency Judgments after Foreclosures by Sale," pp. 443-444.</li> <li>• Denis R. Caron and Geoffrey K. Milne, <a href="#">CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE</a> (4th ed. 2004) and 2010 supplement.<br/>Chapter 9 Post Judgment Proceedings<br/>§ 9.05. The deficiency judgment<br/>    § 9.05A(5) Time for filing defenses to deficiency judgment.<br/>    § 9.05A(6) Section 49-1 as a defense.</li> </ul> |  |
| <p><a href="#">Vignot v. Bank Of Mystic</a>, 32 Conn. App. 309, 314, 628 A.2d 1339, 1342 (1993).</p>   | <ul style="list-style-type: none"> <li>• "While the hearing is a part of the foreclosure action, it is intended to decide only the limited issue of the defendants' liability beyond the amount secured by the property. We conclude that, because the Kushmans failed to raise their defense in the course of the foreclosure proceeding, the deficiency judgment is valid."</li> </ul>   |
| <p><a href="#">Bank of Stamford v. Alaimo</a>, 31 Conn. App. 1, 622 A.2d 1057 (1993).</p>  | <ul style="list-style-type: none"> <li>• "A defendant in a foreclosure action, against whom there appears in the complaint allegations sufficient to impose liability in personam based on the mortgage note, must interpose a defense to such complaint in the same manner as though he were served in a separate action to enforce such liability." p. 6</li> <li>• "Some defenses may be raised to a motion for deficiency judgment, but not those that were or could have been raised in the foreclosure hearing. <i>Maresca v. DeMatteo</i>, 6 Conn. App. 691, 506 A.2d 1096 (1986) (defense of usury) (timeliness of the filing of a motion for deficiency judgment in a strict foreclosure); see also <i>Baybank Connecticut, N.A. v. Thumlert</i>, 222 Conn. 784, 610 A.2d 658 (1992) (the defense of laches as to the issue of timeliness in filing the motion for deficiency in a foreclosure by sale proceeding under General Statutes 49-28); <i>Society for Savings v. Chestnut Estates, Inc.</i>, 176 Conn. 563, 409 A.2d 1020 (1979) (the constitutionality of 49-14). The Court of Appeals of Maryland in <i>McKenna v. Sachse</i>, 225 Md. 595, 602, 171 A.2d 732 (Md. 1961), discussing which defenses may be raised to a deficiency application, said '[t]he mortgagor, when pressed for a deficiency decree, may raise any `defense that could be made in an action at law on the covenants in the mortgage,' . . . that is, any defense such as payment or release, or any other defense to the claim which has arisen since confirmation of the sale.' (Citation omitted.)", pp. 9-10</li> </ul> |
| <p><a href="#">Federal Deposit Ins. Co. v. Voll</a>, 38 Conn. App. 198, 660 A.2d 358 (1995).</p>   | <ul style="list-style-type: none"> <li>• "We conclude that because a deficiency proceeding is not substantially similar to any common law claim triable to a jury in 1818, Guttman's claim that § 49-14 violates article first, § 19, fails." p. 210</li> </ul>  |

|  |   |
|--|---|
|  | <ul style="list-style-type: none"><li>• “Moreover, at no time during the foreclosure proceedings did Guttman claim that he had been prejudiced by any of the delays. At a minimum, Guttman could have filed an answer asserting the doctrine of laches, or asserted the doctrine when New CBT moved that the defendants disclose a defense, or objected to the calculation of debt at the time the FDIC moved for a judgment of foreclosure. Defenses that could have been raised during the foreclosure proceedings may not be raised at the deficiency hearing.” p. 211</li></ul> |
|--|---|

**Table 8: Deed in Lieu of Foreclosure**

# Deed in Lieu of Foreclosure

## Texts & Treatises

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004).  
Chapter 22. Connecticut deeds in lieu of foreclosure: Lender concerns and title issues
  - § 22.01. Introduction
  - § 22.02. Lender's Concerns
    - § 22.02A. Consideration
      - § 22.02A1. Effect of Unaccepted Tender of Deed
    - § 22.02B. "Clogging" the Equity of Redemption
    - § 22.02C. Merger of Title
    - § 22.02D. Deed Absolute
    - § 22.02E. Bankruptcy
      - § 22.02E1. Preference
      - § 22.02E2. Fraudulent transfer
    - § 22.02F. Effect of the Uniform Fraudulent Transfer Act
    - § 22.02G. Conveyance Tax (see also 2010 supplement)
  - § 22.03. Title Issues
    - § 22.03A. Lender Title Issues
      - § 22.03A1. Consideration
      - § 22.03A2. "Clogging"
      - § 22.03A3. Merger
      - § 22.04A. Deed Absolute
    - § 22.03B. Insuring Good Faith Purchasers
      - § 22.03B1. Common Law Issues
      - § 22.03B2. Bankruptcy Issues
  - § 22.04. Conclusion
- 4 RICHARD R. POWELL, [POWELL ON REAL PROPERTY](#) (2010).  
Chapter 37. Mortgages and Mortgage Foreclosure
  - § 37.44. Deed in Lieu of Foreclosure
    - [1]—Introduction
    - [2]—Factors considered in determining whether an absolute conveyance is to be a mortgage
    - [3]—Effect of a decree that an absolute conveyance is a mortgage
    - [4]—Possible disadvantages of a deed in lieu of foreclosure
    - [5]—Procedures
  - § 37.45. Foreclosure—Deed in lieu of foreclosure—Federal Income Tax Effects
    - [1]—In general
    - [2]—The Mortgagee Creditor
    - [3]—The Mortgagor Debtor

# Section 12: Execution of Ejectment

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*A Guide to Resources in the Law Library*

**SCOPE:**

- Bibliographic sources related to execution of ejectment as related to mortgage foreclosures in Connecticut.

**DEFINITION:**

- “In any action brought for the foreclosure of a mortgage or lien upon land, or for any equitable relief in relation to land, the plaintiff may, in his complaint, demand possession of the land, and the court may, if it renders judgment in his favor and finds that he is entitled to the possession of the land, issue execution of ejectment, commanding the officer to eject the person or persons in possession of the land and to put in possession thereof the plaintiff or the party to the foreclosure entitled to the possession by the provisions of the decree of said court, provided no execution shall issue against any person in possession who is not a party to the action except a transferee or lienor who is bound by the judgment by virtue of a *lis pendens*. The officer shall eject the person or persons in possession and may remove such person's possessions and personal effects and deliver such possessions and effects to the place of storage designated by the chief executive officer of the town for such purposes.” CONN. GEN. STAT. § [49-22\(a\)](#) (2011)

- **Procedure:** “Before any such removal, the state marshal charged with executing upon the ejectment shall give the chief executive officer of the town twenty-four hours notice of the ejectment, stating the date, time and location of such ejectment as well as a general description, if known, of the types and amount of property to be removed from the land and delivered to the designated place of storage. Before giving such notice to the chief executive officer of the town, the state marshal shall use reasonable efforts to locate and notify the person or persons in possession of the date and time such ejectment is to take place and of the possibility of a sale pursuant to subsection (c) of this section and shall provide clear instructions as to how and where such person or persons may reclaim any possessions and personal effects removed and stored pursuant to this section, including a telephone number that such person or persons may call to arrange release of such possessions and personal effects.

(c) Whenever a mortgage or lien upon land has been foreclosed and execution of ejectment issued, and the possessions and personal effects of the person in possession thereof are removed by a state marshal under this section, such possessions and effects shall be delivered by such marshal to the designated place of storage. Such removal, delivery and storage shall be at the expense of such person. If the possessions and effects are not reclaimed by such person and the expense of the storage is not paid to the chief executive officer within fifteen days after such ejectment, the chief executive officer shall sell the same at public auction, after using reasonable efforts to locate and notify such person of the sale and after posting notice of the sale for one week on the public signpost nearest to the place where the ejectment was made, if any, or at some exterior place near the office of the town clerk. The chief executive officer shall deliver to such person the net proceeds of the sale, if any, after deducting a reasonable charge for storage of such possessions and effects. If such person does not demand the net proceeds within thirty days after the sale, the chief executive officer shall turn over the net proceeds of the sale to the town treasury.” CONN. GEN. STAT. § [49-22](#) (b) and (c) (2011)

**STATUTES:**

- CONN. GEN. STAT. (2011)  
Title [49](#). Mortgages and Liens  
Chapter [846](#). Mortgages  
§ [49-22](#). Execution of ejectment on foreclosure judgment.  
Disposition of property.  
§ [49-22a](#). Execution of ejectment on foreclosure judgment on mortgage guaranteed by Administrator of Veterans' Affairs.  
§ [49-23](#). Ejectment by mortgagee barred by tender of debt and costs.  
§ [49-26](#). Conveyance; title of purchaser.

**COURT RULES:**

- “(b) Unless otherwise ordered by the judicial authority at the time it renders the judgment of strict foreclosure, the following provisions shall be deemed to be part of every such judgment: (2) That the defendants, and all persons claiming possession of the premises through any of the defendants under any conveyance or instrument executed or recorded subsequent to the date of the lis pendens or whose interest shall have been thereafter obtained by descent or otherwise, deliver up possession of the premises to the plaintiff or the defendant redeeming in accordance with this decree, with stay of execution of ejectment in favor of the redeeming defendant until one day after the time herein limited to redeem, and if all parties fail to redeem, then until the day following the last assigned law day.” CT Practice Book [23-17](#)(b)(2) (2011 ed.)

**CASES:**

- [TAPPIN v. HOMECOMINGS FINANCIAL NETWORK](#), 265 Conn. 741, 743, 830 A2d 731, 713 (2003)  
“The principal issue raised by this writ of error is whether a party who has acquired title to a property through a foreclosure action can eject a tenant who took possession after the lis pendens was filed, when the tenant was not joined as a party to the foreclosure action pursuant to General Statutes § 49- 22 (a)... We conclude that a tenant must be joined as a party to the foreclosure action in order to be ejected pursuant to § 49-22 (a)... General Statutes § 47a-26h (a) provides the finality that lenders seek by making the summary process judgment binding on any tenant taking occupancy after service of a valid notice to quit.”
- For summaries of recent CT Supreme and Appellate Court foreclosure cases, see our foreclosure section on our NewsLog at:  
<http://ersa.jud.ct.gov/lawlibnews/Lists/Categories/Category.aspx?Name=Foreclosure%20Opinions>

**PAMPHLETS:**

- Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners, Connecticut Fair Housing Center  
<http://ctfairhousing.org/wp/wp-content/uploads/2010/01/CFHC-ForeclosMan-Repr5-Jul11-R2.pdf>

**FORMS:**

- [JD-CV-30 Execution for Ejectment, Mortgage Foreclosure, Judicial Branch Forms](#)
- Motion for Stay of Ejectment – Form 12 – Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners, 5<sup>th</sup> ed., <http://ctfairhousing.org/wp/wp-content/uploads/2010/01/CFHC-ForeclosMan-Repr5-Jul11-R2.pdf>
- 3 JOEL M. KAYE AND WAYNE D. EFFRON, [CONNECTICUT PRACTICE SERIES, CIVIL PRACTICE FORMS](#) (4th ed. 2004)  
§ 707.7-A Execution of ejectment – mortgage foreclosure

**RECORDS & BRIEFS**

- [Objection to Execution of Ejectment, Affidavit, Motion for an Order to Enjoin Ejectment, Order to Enjoin Execution](#), CONNECTICUT SUPREME COURT RECORDS AND BRIEFS, February 2003. [Tappin v. Homecomings Financial Network](#), 265 Conn. 741, 830 A2d 711 (2003).

**TEXTS & TREATISES:**

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004) with 2010 supplement.
  - § 9.04 Execution of Ejectment.
  - § 9.04A Veterans' Administration Guaranteed Mortgages.
  - § 9.04B Ejectment Barred.
  - § 17.11 Executions of Ejectment (supp. only)
- 3 JOEL M. KAYE AND WAYNE D. EFFRON, [CONNECTICUT PRACTICE SERIES, CIVIL PRACTICE FORMS](#) (4th ed. 2004).
  - § 707.7-A Execution of ejectment – mortgage foreclosure
  - Authors' Commentary
- NATIONAL CONSUMER LAW CENTER, [FORECLOSURES: DEFENSES, WORKOUTS, AND MORTGAGE SERVICING](#) (3rd ed. 2010).
  - § 14.8 Former Owners in Possession of Property Following Foreclosure
- [CONNECTICUT LAWYERS' DESKBOOK: A REFERENCE MANUAL](#), (3d ed. 2008).
  - Chapter 17, *Real Property Foreclosure in Connecticut* by Dennis P. Anderson, Denis R. Caron and Geoffrey K. Milne
  - Obtaining Possession for the Purchaser, pp. 440-441
  - Obtaining Possession, p. 450

**COMPILER:**

Janet Zigadto, Connecticut Judicial Branch Law Library at New Haven, 235 Church Street, New Haven, CT 06510. (203) 503-6828. [Email](#).

# Section 13: Tenant Issues in Foreclosure

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*A Guide to Resources in the Law Library*

SCOPE:

- Bibliographic resources relating to tenant issues in foreclosure.

STATUTES:

- **FEDERAL LAW: TITLE VII—PROTECTING TENANTS AT FORECLOSURE ACT**  
**“SEC. 701. SHORT TITLE.**  
This title may be cited as the ‘Protecting Tenants at Foreclosure Act of 2009’.  
**SEC. 702. EFFECT OF FORECLOSURE ON PREEXISTING TENANCY.**  
(a) **IN GENERAL.**—In the case of any foreclosure on a federally related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, 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 at least 90 days before the effective date of such notice; and  
(2) the rights of any bona fide tenant, as of the date of such notice of foreclosure—  
(A) under any bona fide lease entered into before the notice of foreclosure 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 90 day notice under paragraph (1); or  
(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1), except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.  
(b) **BONA FIDE LEASE OR TENANCY.**—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) **DEFINITION.**—For purposes of this section, the term “federally-related mortgage loan” has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602).  
**SEC. 703. EFFECT OF FORECLOSURE ON SECTION 8**

## TENANCIES.

Section 8(o)(7) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amended—

(1) by inserting before the semicolon in subparagraph (C) the following: “and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner—

“(i) will occupy the unit as a primary residence; and

“(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.”; and

(2) by inserting at the end of subparagraph (F) the following: “In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential real property in which a recipient of assistance under this subsection 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 subparagraph (C) shall not affect any State or local law that provides longer time periods or other additional protections for tenants.”

## SEC. 704. SUNSET.

This title, and any amendments made by this title are repealed, and the requirements under this title shall terminate, on December 31, 2012.”

**PROTECTING TENANTS AT FORECLOSURE ACT, Title VII of Public Law (PL) 111-22, , 123 STAT. 1660 at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_public\\_laws&docid=f:publ022.111.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ022.111.pdf)**

- **STATE LAW:**

**“Protection of tenant in foreclosed property.** (a) For purposes of this section:

(1) ‘Bona fide tenant’ means a tenant who (A) is not the mortgagor or owner of the property, and (B) entered into the rental agreement in an arms-length transaction; and

(2) ‘Premises’, ‘rental agreement’ and ‘tenant’ have the same meanings as provided in section 47a-1.

(b) Whenever a mortgage or lien of residential real property has been foreclosed and there is a bona fide tenant in possession on the date absolute title to the property vests in the mortgagee, lienholder or successor in interest, any execution of ejectment issued pursuant to section 49-22 against such tenant shall be stayed and no summary process action pursuant to chapter 832 or other action to dispossess such tenant shall be commenced until (1) in the case of a written rental agreement entered into more than sixty days before the commencement of the foreclosure action, the expiration date contained in such rental agreement or sixty days after the date absolute title vests in the mortgagee, lienholder or successor in interest, whichever occurs first, or (2) in the case of a rental agreement other than one described in subdivision (1) of this subsection, thirty days after the date absolute title vests in the mortgagee, lienholder or successor in interest, except that a summary process action or other action to dispossess such tenant may be commenced prior to such date for a reason set forth in section

47a-23 or 47a-31 other than for the reason that the tenant no longer has the right or privilege to occupy the premises as a result of such judgment of foreclosure.” CONN. GEN. STAT. [§ 47a-20e](#) (2011).

**“Offer of incentive to tenant in foreclosed property to vacate.** Upon the foreclosure of a mortgage or lien of residential real property, any money or other valuable consideration offered by a mortgagee, lienholder or other successor in interest to a tenant in possession as an incentive to vacate the premises shall be at least equal in amount or value to the greater of (1) the security deposit and interest that would be due such tenant pursuant to chapter 831 upon the termination of the tenancy plus any such security deposit and interest, (2) two months' rent, or (3) two thousand dollars. No mortgagee, lienholder or other successor in interest may require a tenant in possession, as a condition of the receipt of such money or other valuable consideration, to waive or forfeit any rights or remedies such tenant may have under law against such mortgagee, lienholder or successor in interest other than the right to bring an action to reclaim the security deposit and interest that would be due such tenant.” CONN. GEN. STAT. [47a-20f](#) (2011).

“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.” [PA 11-201](#), sections 7 & 8

**PAMPHLETS:**

- LEGAL ASSISTANCE RESOURCE CENTER:

Is Your Landlord Going Through Foreclosure?: What a Tenant Needs to Know

[http://www.larcc.org/pamphlets/housing/is\\_landlord\\_foreclosing.pdf](http://www.larcc.org/pamphlets/housing/is_landlord_foreclosing.pdf)

NEW 2009 Federal Law Protects Tenants in Foreclosed Properties

[http://www.larcc.org/pamphlets/housing/foreclosure\\_act\\_of\\_2009.pdf](http://www.larcc.org/pamphlets/housing/foreclosure_act_of_2009.pdf)

Tenants in Foreclosed Properties: Complying with Tenant Protections in Connecticut “Best Practices” for Owners Taking Title after Foreclosure, Mortgage Loan Servicers and their Property Management Agents

[http://ct.gov/dcp/lib/dcp/pdf/final\\_-\\_tenantsinforeclosedproperties\\_\(3\)\\_\(2\).pdf](http://ct.gov/dcp/lib/dcp/pdf/final_-_tenantsinforeclosedproperties_(3)_(2).pdf)

**TREATISES:**

- DENIS R. CARON & GEOFFREY K. MILNE, [CONNECTICUT FORECLOSURES: AN ATTORNEY’S MANUAL OF PRACTICE AND PROCEDURE](#) (4th ed. 2004) 2010 supplement only

§9.04C Protecting Tenants at Foreclosure Act of 2009

§9.04D Stay of Execution of Ejectment for Residential Tenants

§9.04E Cash for Keys

- NATIONAL CONSUMER LAW CENTER, [FORECLOSURES: DEFENSES, WORKOUTS, AND MORTGAGE SERVICING](#) (3rd ed. 2010).

Chapter 14: Issues Arising After a Foreclosure Sale

§ 14.7 Rights of Tenants in Possession Following Foreclosure on Their Landlord’s Property

- § 14.7.1 Federal Protections
  - § 14.7.1.1 Protecting Tenants at Foreclosure Act
  - § 14.7.1.2 Fannie Mae and Freddie Mac Mortgages
  - § 14.7.1.3 Section 8 Tenants
- § 14.7.2 State Law
  - § 14.7.2.1 General
  - § 14.7.2.2 State “Good Cause” Eviction Statutes
  - § 14.7.2.3 Other State Statutes Offers Protections to Tenants
  - § 14.7.2.4 Redemption or Purchase by Group of Tenants

**LAW REVIEWS:**

- **“Real Estate Market Meltdown, Foreclosures and Tenants’ Rights”, by Aleatra P. Williams, 43 Indiana Law Review 1185, issue. no. 4, 2010.**

**COMPILER:**

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