



2018 Edition

Foreclosure of Mortgages in Connecticut

A Guide to Resources in the Law Library

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Introduction

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 (Bkrtcy. 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).
- **"In a foreclosure action, 'the owner of the equity is an absolutely necessary party, and is usually the first named defendant.'** 1 D. Caron & G. Milne, [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), (7th Ed. 2017), § 5-3:1, p. 213. Moreover, executors, administrators, and fiduciaries are not appropriate parties to a foreclosure action. See *Id.*, § 5-3:1.1, pp. 214-15; see also [Connelly v. Federal National Mortgage Assn.](#), 251 F.Sup.2d 1071 (D .Conn. 2003) (concluding mortgagee is not required to name executor of estate in order to **foreclosure a mortgage, provided plaintiff is not seeking deficiency judgment**). '[A]n estate cannot hold title to property and cannot participate in a foreclosure action **against the property.**' [Trumbull v. Palmer](#), 104 Conn .App. 498, 503, 934 A.2d 323 (2007) cert. denied, 286 Conn. 905, 944 A.2d 981 (2008)." [Bank of America, N.A. v. Schonberger](#), Superior Court, Judicial District of New London at New London, No. CV14-6021747-S (July 21, 2017) (64 Conn. L. Rptr. 858) (2017 WL 3880353).

Section 1: Strict Foreclosure in Connecticut

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to strict foreclosures in Connecticut.

CURRENCY:

- November 2018

DEFINITIONS:

- **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:** "Generally, foreclosure means to cut off the equity of redemption, the equitable owner's right to redeem the property. See [Barclays Bank of New York v. Ivler](#), 20 Conn. App. 163, 166, 565 A.2d 252... 'Under our law, an action for strict foreclosure is brought by a mortgagee who, holding legal title, seeks . . . to foreclose an equity of redemption unless the mortgagor satisfies the debt on or before his law day. [Cook v. Bartholomew](#), 60 Conn. 24, 27, 22 A. 444 (1891).' [Barclays Bank of New York v. Ivler](#), supra, 166. The holder of the equity of redemption has until the passing of his law day to redeem the premises. Law days are set for subsequent encumbrancers in the inverse order of their priorities thereafter. The effect of the passing of the law day is that such right to redeem the premises is cut off and title to the property becomes **unconditional in the encumbrancer.**" [JP Morgan Chase Bank v. Gianopoulos et al.](#), 131 Conn. App. 15, 21-22, 30 A.3d 697, 701 (2011).
- **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 plaintiff [redeeming encumbrancer], with a consequent and accompanying right

to possession. . . The mortgagor has no remaining title or interest which he can **convey.**" The City Lumber Co. of Bridgeport, Inc. v. Murphy, 120 Conn. 16, 25, 179 A. 339, 342 (1935).

- **Strict foreclosure vs. foreclosure by market sale 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 (1) by a decree of sale instead of a strict foreclosure at the discretion of the court before which the foreclosure proceedings are pending, or (2) with respect to mortgages, as defined in section 49-24a, that are a first mortgage against the property, by a judgment of foreclosure by market sale upon the written motion of the mortgagee, as defined in section 49-24a, and with consent of the mortgagor, as defined in section 49-24a, in accordance with sections 49-24a to 49-24g, inclusive, 49-26 to 49-28, inclusive, and 49-31t." Conn. Gen. Stat. § [49-24](#) (2017).
- **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:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2017)
 - [Title 49](#). Mortgages and Liens
 - Chapter [846](#). Mortgages
 - § [49-17](#). Foreclosure by owner of debt without legal title.
 - § [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 or market sale.
 - § [49-30](#). Omission of parties in foreclosure actions.
 - § [49-31s](#). Simultaneous filing of motions for judgment of foreclosure and for default for failure to appear permitted for vacant, abandoned and unoccupied real property.
 - [Title 51](#). Courts
 - [Chapter 890](#). Judicial Districts, Geographical Areas, Civil and Criminal Venue, Filing and Designation of Court Location
 - § [51-345\(b\)](#). Venue in Civil Actions. Return of Process. Actions involving land.

[Title 52](#). Civil Actions

[Chapter 901](#). Damages, Costs and Fees

§ [52-249](#). **Costs and attorney's fees in actions for foreclosure and substitution of bond.**

[Chapter 904](#). Attachments

§ [52-325](#). Notice of lis pendens.

PUBLIC ACT:

- [Public Act No. 18-174](#)- *An Act Concerning Water Pollution Control Authorities* (Effective July 1, 2018)
 - [Summary for Public Act No. 18-174](#)

"Beginning July 1, 2018, this act prohibits a water pollution control authority (WPCA) or its representative from instituting a lien foreclosure action for one year after it is filed. (Presumably, meaning that it stays a foreclosure action for one year after the action's filing.)"

The act also requires each municipality with a population of at least 100,000 and that is served by a private water company regulated by the Public Utilities Regulatory Authority (PURA) to adopt an ordinance to:

1. lower the interest rate the municipality charges on delinquent sewer assessments;
2. restrict WPCA assignees from purchasing foreclosed properties;
3. establish financial guidelines for triggering foreclosure due to fee nonpayment; and
4. protect seniors, veterans, and low-income families **from WPCA foreclosures by restricting "accelerated foreclosure" proceedings for delinquent sewer fees.**

The ordinance adoption requirement applies to towns, cities, consolidated towns and cities, and consolidated towns and boroughs meeting the population threshold, regardless of any conflicting statute, special act, or **municipal ordinance or charter."**

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- **Complaint**

"The complaint in all actions seeking the foreclosure of a mortgage or other lien upon real estate shall set forth, in addition to the other essentials of such complaint: All encumbrances of record upon the property both prior and subsequent to the encumbrance sought to be foreclosed, the dates of such encumbrances, the amount of each and **the date when such encumbrance was recorded...**" CT Practice Book [10-69](#) (2018).
- **Appraisal**

"At the time the plaintiff files a motion for judgment of foreclosure, the plaintiff shall serve on each appearing

defendant, in accordance with Sections 10-12 through 10-17, a copy of the appraisal report of the property being foreclosed. The motion for judgment shall contain a certification that such service **was made.**" CT Practice Book [23-16](#) (2018).

- **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](#) (2018).

- **Proof of Debt in Foreclosures**

"(a) In any action to foreclose a mortgage where no defense as to the amount of the mortgage debt is interposed, such debt may be proved by presenting to the judicial authority the original note and mortgage, together with the affidavit of the plaintiff or other person familiar with the indebtedness, stating what amount, including interest to the date of the hearing, is due, and that there is no setoff or counterclaim thereto.

(b) No less than five days before the hearing on the motion for judgment of foreclosure, the plaintiff 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 statement of the plaintiff's monetary claim.**" CT Practice Book [23-18](#) (2018).

- **Defaults**

"In an action commenced by a mortgagee prior to July 1, 2014, for the foreclosure of (1) 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.**" CT Practice Book [17-20\(b\)](#) (2018).

- **Motions for judgment of foreclosure**

"Since the effect of a default is to preclude the defendant from making any further defense in the case so far as liability is concerned, the judicial authority, at or after the

time it renders the default, notwithstanding Section 17-32 (b), may also render judgment in foreclosure cases . . . provided the plaintiff has also made a motion for judgment and provided further that any necessary affidavits of debt or accounts or statements verified by oath, in proper form, are **submitted to the judicial authority.**" CT Practice Book [17-33\(b\)](#) (2018).

"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](#) (2018).

- **Oral Argument of Motions in Civil Matters**

"Oral argument is at the discretion of the judicial authority except as to . . . motions for judgment of foreclosure . . . For those motions, oral argument shall be a matter of right, provided..." CT Practice Book [11-18\(a\)](#) (2018).

PAMPHLETS:

- [Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners](#), Connecticut Fair Housing Center, 10th ed.,
Motion for Judgment of Strict Foreclosure, [p. 14](#)
Judgment of Strict Foreclosure, [p. 15](#)
Judgment of Strict Foreclosure – Law Day, [p. 31](#)
- [Strict Foreclosure or Foreclosure by Sale . . . Which Is Right for Me? in Foreclosure: Your Rights and Options](#), August 2017, CTLawHelp.Org

FORMS:

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- [JD-CV-47](#), Certificate of Judgment - Strict Foreclosure (rev. 11/05)
- [JD-CV-77](#), Foreclosure Worksheet (rev. 12/16)
- [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), Denis R. Caron & Geoffrey K. Milne (8th ed., 2018) [Vol. 1] - CD only
Official forms – Practice Book Forms
2-003. 704.31 Foreclosure of Mortgage
2-007. 707.1 Judgment of strict foreclosure
Unofficial forms
6-008. Motion for judgment of strict foreclosure
- [Connecticut Practice Series: Civil Practice Forms](#), Joel M. Kaye et al. (4th, 2004) [Vol. 3]
Foreclosure of Mortgage, Form 704.31
Judgment of Strict Foreclosure, Form 707.1 (see 2018 pocket part for additional notes)
Judgment of Strict Foreclosure after Opening of Original Judgment, Form 707.5

- [Connecticut Lawyers' Deskbook: Forms Index](#), Dennis P. Anderson, Denis R. Caron & Geoffrey K. Milne (2d ed., 2000)
Chapter XIV. *Real Property Foreclosure In Connecticut*
"Motion for Judgment of Strict Foreclosure"
"List of Proposed Law Dates"
"Certificate of Foreclosure"
"Notice of Lis Pendens"
- [Library of Connecticut Civil Complaints for Business Litigation](#) (2010) [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* #1674 Strict foreclosure

DIGESTS:

- [Dowling's Digest: Mortgages](#) §§ 20-21
- [Phillip's Digest: Mortgages](#) §§ 20-21

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Christiana Trust, A Division of Wilmington Savings Fund Society, FSB, Trustee v. Lewis](#), 184 Conn. App. 659, 661-662, -- A.3d.-- (2018). "On appeal, the defendant claims that the court improperly rendered summary judgment, as to liability only, in favor of the named plaintiff, Christiana Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for Stanwich Mortgage Loan Trust, Series 2012-17 (original plaintiff), because a genuine issue of material fact exists as to whether the signature on the mortgage is his."
- [Chase Home Finance, LLC v. Scroggin](#), 178 Conn.App. 727, 176 A.3d 1210 (2017). "The defendant claims that the court improperly granted the plaintiff's motion for judgment of strict foreclosure because (1) the judgment was based upon a default for failure to plead in response to the original complaint, but the plaintiff's predecessor in this action, thereafter, had significantly amended the pleadings and added additional parties to the action..." (p. 730, 1213)

"In light of the changes to the plaintiff's case that were reflected in the amended complaint, it was inequitable for the court not to have considered the default entered in 2010 to have been extinguished. Thus, the court should have considered the defendant's answer to the amended complaint as well as his disclosed defense. Although it was appropriate for the court to have considered the lengthy period of time that followed the entry of the default, it

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nonetheless abused its discretion by failing to consider the effect of the amended complaint upon that default. 'If the effect of an amendment of a complaint ... is to substantially change the cause of action originally stated, the defendant is entitled to file new or amended pleadings and present further evidence. Also, if the amendment interjects material new issues, the adversary is entitled to reasonable opportunity to meet them by pleading and proof.' *Mazulis v. Zeldner*, 116 Conn. 314, 317, 164 A. 713 (1933)". (p. 745, 1221)

- [Rockstone Capital, LLC v. Sanzo](#), 175 Conn. App. 770, 777, 171 A.3d 77, 82 (2017). "... **this** court previously has **determined that '[a] judgment of foreclosure constitutes an appealable final judgment** when the court has determined the method of foreclosure and the amount of the debt.' *J & E Investment Co., LLC v. Athan*, 131 Conn. App. 471, 483, 27 A.3d 415 (2011); see also *Essex Savings Bank v. Frimberger*, 26 Conn. App. 80, 81, 597 A.2d 1289 (1991). (in foreclosure action, there is no appealable final judgment until court determines amount of debt and decides whether foreclosure should be strict or by sale). In *Morici v. Jarvie*, 137 Conn. 97, 103, 75 A.2d 47 (1950), the court noted: **'Any judgment, to be adequate as such, must respond to the prayers for relief. ... In a foreclosure action, the judgment must either find *the issues for the defendant or determine the amount of the debt, direct a foreclosure and fix the law days.*'"** (Citations omitted; emphasis added.)
- [Bank of America, N.A. v. Schonberger](#), Superior Court, Judicial District of New London at New London, No. CV14-6021747-S (July 21, 2017) (64 Conn. L. Rptr. 858) (2017 WL 3880353 "In a foreclosure action, 'the owner of the equity is an absolutely necessary party, and is usually the first named **defendant.**' 1 D. Caron & G. Milne, [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), (7th Ed. 2017), § 5-3:1, p. 213. Moreover, executors, administrators, and fiduciaries are not appropriate parties to a foreclosure action. See *Id.*, § 5-3:1.1, pp. 214-15; see also [Connelly v. Federal National Mortgage Assn.](#), 251 F.Supp.2d 1071 (D. Conn. 2003) (concluding mortgagee is not required to name executor of estate in order to foreclosure a mortgage, provided plaintiff is not seeking deficiency judgment). '[A]n estate cannot hold title to property and cannot participate in a foreclosure action **against the property.**' *Trumbull v. Palmer*, 104 Conn. App. 498, 503, 934 A.2d 323 (2007) cert. denied, 286 Conn. 905, 944 A.2d 981 (2008)."
- [JPMorgan Chase Bank, N.A. v. Cam](#), 172 Conn. App. 659, 161 A.3d 650 (2017). "Prior to trial, the parties reached a **settlement agreement to resolve their respective claims...** The agreement provided that the plaintiff was to pay the

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defendant a certain sum of money, paying one half of the sum 'within [thirty] days of execution of this Agreement' and the other half 'within ten days of title vesting to [the plaintiff].' In exchange, the defendant agreed to stipulate to a judgment of strict foreclosure, which provided that the defendant would vacate the property on or before October 28, 2014." (p. 662, 651)

"On September 29, 2015, the court granted the plaintiff's renewed motion to enforce [the settlement agreement]. The court found that the parties had entered into an enforceable agreement. It also found that 'there [did] not appear to be any provision in the agreement that made enforcement or execution of its terms time-critical, in a time is of the essence or equivalent sense' and noted that 'in the absence of an indication that timing is critical, reasonableness as to timing is to be presumed.'" (p. 663, 652)

- 3333 Main Street, LLC v. SA Challenger, Inc., Superior Court, Judicial District of Fairfield at Bridgeport, No. FBT-CV15-6051921S (April 4, 2016). "Plaintiff . . . points to several procedural irregularities in the Prior Foreclosure proceedings which, it claims, resulted in its mortgage not being foreclosed out. Plaintiff notes that Judge Tyma's verbal order . . . giving it a law day was never entered as a court order on the electronic docket of the Prior Foreclosure. Plaintiff seems to argue that the verbal granting of a law day was therefore ineffective. The court disagrees. . . . The absence of a formal written or electronic order is of no consequence. . . . Subsequent law days were assigned generically to encumbrancer defendants such as 3333 Main Street, LLC 'in the inverse order of their priorities' which is now the standard form of order of judgment of strict foreclosure. 'Although several defendants may be involved, necessitating several law days, the court customarily announces only the law day for the owner of the equity redemption and orders that subsequent days be assigned to subsequent encumbrancers in the inverse order of their priorities.' Dennis R. Caron and Geoffrey K. Milne, Connecticut Foreclosures, An Attorney's Manual of Practice and Procedure, p. 334 (5th Ed. 2011). Since, as previously described, 3333 Main Street, LLC had as a matter of record, all the information necessary to calculate its own priority and its own law day, and had the right to request a judicial determination of priorities, but failed to do so, it was not prejudiced by the court's failure to assign to it a specific law day by date."
- 3333 Main Street, LLC v. SA Challenger, Inc., Superior Court, Judicial District of Fairfield at Bridgeport, No. FBT-CV15-6051921S (April 4, 2016). "[P]laintiff has cited no authority that the failure to file a List of Proposed Law Days is grounds for vacating a judgment of strict foreclosure or

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would prevent title from vesting when there has been no redemption. 3333 Main Street, LLC suffered no prejudice **from SA Challenger's failure** to file a List of Proposed Law Days listing it as an encumbrancer. . . . Despite not appearing on a List of Proposed Law Days, it got the same treatment as all the other encumbrancer defendants who did appear on the two lists that had been filed, namely a law day in inverse order of priority. The failure to file a List of Proposed Law Days naming 3333 Main Street LLC as a defendant did not prevent its mortgage from being **foreclosed out when it failed to redeem."**

- [Chase Home Finance, LLC v. Fequiere](#), 119 Conn App 570, 572, footnote 2, **989 A2d 606 (2010)**. "As one court has explained, 'MERS does not originate, lend, service, or invest in home mortgage loans. Instead, MERS acts as the nominal mortgagee for the loans owned by its members. The MERS system is designed to allow its members, which include originators, lenders, servicers, and investors, to assign home mortgage loans without having to record each transfer in the local land recording offices where the real estate securing the mortgage is located. . . . The benefit of naming MERS as the nominal mortgagee of record is that when the member transfers an interest in a mortgage loan to another MERS member, MERS privately tracks the assignment within its system but remains the mortgagee of record. According to MERS, this system saves lenders time and money, and reduces paperwork, by eliminating the need to prepare and record assignments when trading loans. . . . If, on the other hand, a MERS member transfers an interest in a mortgage loan to a non-MERS member, MERS no longer acts as the mortgagee of record and an assignment of the security instrument to the non-MERS member is drafted, executed, and typically recorded in the **local land recording office.**' (Internal quotation marks omitted.) [Jackson v. Mortgage Electronic Registration Systems, Inc.](#), 770 N.W.2d 487, 490-91 (Minn. 2009)."
- [Ocwen Federal Bank v. Charles](#), 95 Conn. App. 315, 326, 898 A2d 197, 206 (2006). "We note that the plaintiff **brought a foreclosure action.** 'Such actions are equitable in nature and, therefore, do not give rise to a right to a jury trial under article first, § 19, of the Connecticut constitution.' [669 Atlantic Street Associates v. Atlantic-Rockland Stamford Associates](#), 43 Conn. App. 113, 129, 682 A.2d 572, cert. denied, 239 Conn. 949, 950, 686 A.2d 126 (1996). The defendants were not entitled to a jury trial on the foreclosure action. The court's decision to sever the equitable foreclosure action from the legal counterclaim is not of constitutional dimension, but properly is characterized as a claim involving the law of the case doctrine."

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- [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. Realty 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."**

ENCYCLOPEDIAS:

- 55 [Am. Jur. 2d Mortgages](#) (2009)
 - § 469 Strict foreclosure
 - 10. Decree or Judgment
 - a. In General
 - § 634. Generally
 - § 635. Amount due
 - § 636. Description of property
 - § 637. Matters concluded
 - § 638. Upon judgment by default
 - § 639. Merger of mortgage lien in decree
 - b. Allowance of Attorney's Fees
 - § 640. Generally
 - § 641. Statutory provisions
 - § 642. Amount and reasonableness of fees; control by court

- § 643. Disallowance of fee where inequitable or unconscionable
- § 644. Conflict of laws
- c. Interest; Taxes; Costs
 - § 645. Interest
 - § 646. Taxes
 - § 647. Costs

- 59A [C.J.S. Mortgages](#) (2009)
 - § 880 Strict foreclosure
 - § 881 Strict foreclosure – When permitted; discretion of court
 - § 882 Strict foreclosure – Deeds; land contracts; mortgages for support
 - § 1060 Provision for transfer of title under strict foreclosure
 - § 1420 Equitable right to redeem – After strict foreclosure

TEXTS & TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), Denis R. Caron & Geoffrey K. Milne (8th ed., 2018) [Vol. 1]
 - § 6-1:7. Motion for Judgment of Strict Foreclosure
 - § 6-2:1.6. Strict Foreclosure or Foreclosure by Sale?
 - § 6-2:1.6a. The *Irick* Limitations
 - § 6-2:1-6b. Tactical Concerns re Contesting Valuation
 - § 6-3. The Judgment of Strict Foreclosure
 - § 6-3:1. Judgment Not Modifiable in Absence of Motion
 - § 6-5. Priorities Issues in Strict Foreclosure
- [Connecticut Lawyers' Deskbook: A Reference Manual](#), Dennis P. Anderson, Denis R. Caron and Geoffrey K. Milne (3d ed., 2008)
 - Chapter 17, *Real Property Foreclosure in Connecticut*
 - Types of Foreclosure Judgments, pp. 420-421
- [A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut](#), Christian R. Hoheb, editor (2012)
 - Chapter 9, Foreclosure Procedure from Complaint Through Sale
 - § 9.1.1. Methods of Foreclosure in Connecticut
 - § 9.2.4. Motion for Judgment
 - (a) Motion for Judgment of Strict Foreclosure
 - § 9.4.2. Court Orders Unique to Judgment of Strict Foreclosure
- [Connecticut Practice Series: Civil Practice Forms](#), Joel M. Kaye et al. (4th ed., 2004) [Vol.3]
 - Authors' Comments following Forms 704.31 and 707.1 (see 2018 pocket part for additional notes)

- [Connecticut Standards of Title](#), Connecticut Bar Association (2013)
 - Chapter XIX. Foreclosure of Mortgages and Liens
 - Standard 19.1. The Nature and Scope of a Notice of *Lis Pendens* in a Foreclosure Action
 - Standard 19.2. Effect of Errors in a Statutory Certificate of Foreclosure
 - Standard 19.3. Failure to Release Mortgages and Other Interests Involved in a Foreclosure Action
 - Standard 19.4. Effect of Failure to Grant a Continuance in Foreclosure and other Actions Involving Connecticut Land Against Nonresident Defendants
 - Standard 19.5. Conclusiveness of Foreclosure and Other Judgments Affecting Title to Land
 - Standard 19.6. Judicial Proceedings in Foreclosure and Other Land Actions Presumed to Comply with **the Soldier's and Sailors' Civil Relief Act**
 - Standard 19.7. Effect of Errors in the Certificate of Foreclosure or Satisfaction of Judgment

- [Powell on Real Property](#), by Richard R. Powell, (2018) [Vol. 4]
 - Chapter 37. Mortgages and Mortgage Foreclosures
 - § 37.43. Strict foreclosure

- [Foreclosures and Mortgage Servicing](#), National Consumer Law Center (5th ed., 2014)
 - § 8.2.4 Other Methods of Foreclosure

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.

CURRENCY:

- November 2018

DEFINITIONS:

- "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 (1) 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](#) (2017).
- "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." [In the 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, 247, 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](#) (2017).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2017)
 - [Title 49](#). Mortgages and Liens
 - [Chapter 846](#). Mortgages
 - § [49-24](#). Court may foreclose lien or mortgage on land by sale or market 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.
- § [49-30](#). Omission of parties in foreclosure actions.

[Title 51](#). Courts

[Chapter 890](#). Judicial Districts, Geographical Areas, Civil and Criminal Venue, Filing and Designation of Court Location

- § [51-345\(b\)](#). Venue in Civil Actions. Return of Civil Process. Actions Involving Land

[Title 52](#). Civil Actions

[Chapter 901](#). Damages, Costs and Fees

- § [52-249](#). **Costs and attorney's fees in actions for foreclosure and substitution of bond.**

[Chapter 904](#). Attachments

- § [52-325](#). Notice of lis pendens.

PUBLIC ACT:

- [Public Act No. 18-174](#)- *An Act Concerning Water Pollution Control Authorities* (Effective July 1, 2018)
- [Summary for Public Act No.18-174](#)

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- **Complaint**
 "The complaint in all actions seeking the foreclosure of a mortgage or other lien upon real estate shall set forth, in addition to the other essentials of such complaint: All encumbrances of record upon the property both prior and subsequent to the encumbrance sought to be foreclosed, the dates of such encumbrances, the amount of each and **the date when such encumbrance was recorded...**" CT Practice Book [10-69](#) (2018).
- **Appraisal**
 "At the time the plaintiff files a motion for judgment of foreclosure, the plaintiff shall serve on each appearing defendant, in accordance with Sections 10-12 through 10-17, a copy of the appraisal report of the property being foreclosed. The motion for judgment shall contain a **certification that such service was made.**" CT Practice Book [23-16](#) (2018).
- **Proof of Debt in Foreclosures**
 "(a) In any action to foreclose a mortgage where no defense as to the amount of the mortgage debt is interposed, such debt may be proved by presenting to the judicial authority the original note and mortgage, together with the affidavit of the plaintiff or other person familiar with the indebtedness, stating what amount, including interest to the date of the hearing, is due, and that there is no setoff or counterclaim thereto.
 (b) No less than five days before the hearing on the motion for judgment of foreclosure, the plaintiff 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 statement of the **plaintiff's monetary claim.**" CT Practice Book [23-18](#) (2018).

- **Motions for Judgment of Foreclosure**
"Since the effect of a default is to preclude the defendant from making any further defense in the case so far as liability is concerned, the judicial authority, at or after the time it renders the default, notwithstanding Section 17-32 (b), may also render judgment in foreclosure cases . . . provided the plaintiff has also made a motion for judgment and provided further that any necessary affidavits of debt or accounts or statements verified by oath, in proper form, are submitted to the judicial authority." CT Practice Book [17-33\(b\)](#) (2018).

"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 (2018).

- **Oral Argument of Motions in Civil Matters**
"Oral argument is at the discretion of the judicial authority except as to . . . motions for judgment of foreclosure . . . For those motions, oral argument shall be a matter of right, provided..." CT Practice Book [11-18\(a\)](#)) (2018).

STANDING ORDERS:

- [Foreclosure – Uniform Orders, Procedures and Forms](#)
- [JD-CV-104](#), Uniform Foreclosure Standing Orders (rev. 4-11)
- [JD-CV-79](#), Foreclosure by Sale, Standing Orders (rev. 10/10)
- [Short Calendar Notice for Foreclosure Matters](#) (rev. 12/12)

PAMPHLETS:

- [Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners](#), Connecticut Fair Housing Center, 10th ed.,
Motion for Foreclosure by Sale, [p. 15](#)
Judgment of Foreclosure by Sale, [p. 16](#)
Motion for Approval of Committee Sale, [p. 17](#)
Judgment of Foreclosure by Sale – Sale Date, [p. 31](#)
- *Strict Foreclosure or Foreclosure by Sale . . . Which Is Right for Me?* in [Foreclosure: Your Rights and Options](#), August 2017, CTLawHelp.Org

FORMS:

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- [JD-CV-46](#), Certificate of Judgment – Foreclosure by Sale (rev 12/99)
- [JD-CV-74](#), Foreclosure by Sale Committee Deed (rev 5/17)
- [JD-CV-75](#), Foreclosure by Sale Committee Report (rev 9/11)
- [JD-CV-77](#), Foreclosure Worksheet (rev 12/16)

- [JD-CV-80](#), Foreclosure By Sale, Fact Sheet - Notice To Bidders (rev 10/10)
- [JD-CV-88](#), Sales Agreement — Foreclosure (rev 3/11)
- [JD-CV-97](#), Foreclosure Return of Sale — No Proceeds (rev 10/10)
- [JD-CV-98](#), Foreclosure – Return of Sales with Proceeds (rev 10/10)
- [JD-CV-99](#), Foreclosure / Motion For Approval of Committee Sale, Approval of Committee Deed, Acceptance of Committee Report, Allowance of Fees and Expenses, Allowance of Appraiser's Fees (rev 10/10)
- [JD-CV-100](#), Foreclosure Motion for Advice -- **“The Committee Requests the Advice of the court for the following reasons:”** (rev 9/08)
- [JD-CV-101](#), Foreclosure, Motion For Possession (rev 9/08)
- [JD-CV-102](#), **Foreclosure Plaintiff’s Bid at Foreclosure Sale and Committee’s Response** (rev 9/08)

- [Connecticut Practice Series: Civil Practice Forms](#), Joel M. Kaye et al. (4th, 2004) [Vol. 3]
 - Form 706.3. Motion for Foreclosure by Sale.
 - Form 707.2. Judgment for Foreclosure by Sale.
 - Form 707.3. Supplemental Judgment – Foreclosure by Sale
- [Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure](#), Denis R. Caron & Geoffrey K. Milne (8th ed., 2018) [Vol. 1] - CD only
 - Official forms – Practice Book Forms
 - 2-005. 706.3 Motion for Foreclosure by Sale
 - 2-008. 707.2 Judgment for Foreclosure by Sale
 - 2-009. 707.3 Supplemental Judgment – Foreclosure by Sale
 - Unofficial forms
 - 6-009. Form 9 Motion for Determination of Priorities
 - 6-011. Form 11 Motion to Modify Terms of Sales Agreement
 - 6-013. Form 13 Motion for Determination of Priorities and Supplemental Judgment
 - 6-014. Form 14 Further Supplemental Judgment
 - 6-015. Form 15 Supplemental Judgment (When plaintiff is purchaser and no funds are paid into Court)
 - 6-016. Form 16 Supplemental Judgment (When plaintiff is purchaser and the excess is paid into Court)

- [Library of Connecticut Civil Complaints for Business Litigation](#) (2010) [Vol. 1]
 - Checklist – Commercial Foreclosure, p. 16
 - Complaint – Commercial Foreclosure, p. 17-20

- [Connecticut Lawyers' Deskbook: Forms Index](#), Dennis P. Anderson, Denis R. Caron & Geoffrey K. Milne (2d ed., 2000)
Chapter XIV. *Real Property Foreclosure In Connecticut*
"Oath of Appraiser"
"Affidavit of Debt"
"Affidavit of Attorneys Fees"
"Bill of Costs"
"Certificate of Foreclosure"
"Notice of Lis Pendens"
- [A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut](#), Christian R. Hoheb, editor (2012)
Chapter 9. Foreclosure Procedure
Exhibit 9J – Motion for Determination of Priorities and Supplemental Judgment, p. 9-43
Supplemental Judgment, p. 9-45
Affidavit of Debt for Supplemental Judgment, p. 9-47
- Motion for Foreclosure by Sale, [Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners](#), Connecticut Fair Housing Center, 10th ed., pp. 71

RECORDS & BRIEFS:

- [Motion for judgment of foreclosure by sale](#), Connecticut Appellate Court Records & Briefs, November/December 2000, [Amresco New England II, L.P. v. Dominic Colossale, et al.](#), 63 Conn. App. 49, 774 A2d 1083, [Figure 3](#).

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [National City Real Estate Services, LLC v. Tuttle](#), 155 Conn. App. 290, 295-296, **109 A.3d 932 (2015)**. "It is not unusual for a foreclosure sale to yield considerably less than the property's appraised fair market value. See [Fidelity Trust Co. v. Irick](#), 206 Conn. 484, 490, 538 A.2d 1027 (1988). '[A] foreclosure by sale may result in bids not only less than the appraised value of the property, but even less than the foreclosing mortgagee's loan, allowable expenses and taxes. Because the trial court has control of the foreclosure proceedings, it can, in the exercise of its discretion, accept or reject a **proposed sale**.' Id. Further, as recognized by our Supreme Court, '[t]he usual notion of fair market value is inconsistent with the notion of a foreclosure sale. [F]air market value is generally said to be the value that would be fixed in fair negotiations between a desirous buyer and a willing seller, neither under any undue compulsion to make a deal.... An auction sale, such as a foreclosure sale, is not designed to reach that result because there is no opportunity for negotiations, and the seller, namely, the committee appointed by the trial court to conduct the sale, is under compulsion to make a deal, in the sense that it is required to take the highest bid, subject only to the **approval of the court**.' (Citations omitted; emphasis in original; internal quotation marks omitted.) [New England](#)

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[Savings Bank v. Lopez](#), 227 Conn. 270, 280, 630 A.2d 1010 (1993). No appellate case has established whether there is a certain percentage of fair market value below which a sale would trigger a trial court's obligation to reject a foreclosure sale on the ground that the price was inadequate or unfair as a matter of law. Nevertheless, this court has affirmed a court's approval of a foreclosure sale yielding as little as 40 percent of the property's fair market value. See [LaSalle Bank, N.A. v. Randall](#), supra, 125 Conn. App. 31.

Turning to the present matter, although it is undisputed that the price obtained at the foreclosure sale was substantially less than the fair market value determined by the court at the time of the foreclosure judgment, the defendants presented no claim to the court that the low sale price was the result of any irregularities in the sale process **or in 'the equitable process of the court.'** The defendants' claim, rather, was solely that the sale price was inadequate per se. At the hearing on the motion for approval of the sale, however, the defendants did not produce a witness or proffer any other evidence from which the court could have found that the sale price was fundamentally unfair under the circumstances presented or that a new sale likely would have yielded a better outcome. When the court directly asked the defendants' counsel whether the defendants had any indication that they would get better offers at a new sale, counsel answered only that there was a chance. Such speculation alone cannot provide a legal basis on which to deny approval of a foreclosure sale that was conducted without any irregularities."

- [Hudson Valley Bank v. Kissel](#), 303 Conn. 614, 622-623, 35 A3d 260, 266 (2012). **"In evaluating whether the motions to intervene were rendered untimely by virtue of being made after the foreclosure sale, we examined the nature of the interest asserted by each of the intervenors – both relied on an asserted right of redemption – and whether those rights survived the foreclosure sale. . . . Because a foreclosure sale is not absolute until it is confirmed by the court, we concluded that the right of redemption survives the foreclosure sale, and, therefore, that a motion to intervene to protect the right of redemption is timely when filed before confirmation of the sale. Similarly, in the present case, First American's only asserted interest in the foreclosure action was in receiving the surplus proceeds. Because the foreclosure sale did not extinguish that interest, we conclude that the filing of the motion to intervene following the sale and prior to the confirmation of the sale was timely."**
- [Hudson Valley Bank v. Kissel](#), 303 Conn. 614, 626, 35 A3d 260, 266 (2012). **"Finally, we address Stewart Title's claim that the trial court improperly concluded that First American was entitled to recover all of the surplus proceeds. The trial**

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court arrived at its conclusion by applying the doctrine of **pari passu**. **First American argues that the trial court's decision may be affirmed on the alternate ground that, pursuant to the first in time, first in right principle, First American was entitled to recover all of the surplus proceeds because its mortgage was executed and recorded prior to that of Stewart Title. We agree with First American that the judgment of the trial court may be affirmed on this alternate ground.**

'The law relating to the priority of interest has its roots in early Connecticut jurisprudence. A fundamental principle is that a mortgage that is recorded first is entitled to priority over subsequently recorded mortgages provided that every grantee has a reasonable time to get his deed recorded.' [Independence One Mortgage Corp. v. Katsaros](#), 43 Conn. App. 71, 73, 681 A.2d 1005 (1996)."

- [Ocwen Federal Bank v. Charles](#), 95 Conn. App. 315, 326, 898 A.2d 197, 206 (2006). **"We note that the plaintiff brought a foreclosure action. 'Such actions are equitable in nature and, therefore, do not give rise to a right to a jury trial under article first, § 19, of the Connecticut constitution.'** [669 Atlantic Street Associates v. Atlantic-Rockland Stamford Associates](#), 43 Conn. App. 113, 129, 682 A.2d 572, cert. denied, 239 Conn. 949, 950, 686 A.2d 126 (1996). The defendants were not entitled to a jury trial on the foreclosure action. The court's decision to sever the equitable foreclosure action from the legal counterclaim is not of constitutional dimension, but properly is characterized as a claim involving the law of the case **doctrine.**"
- [Voluntown v. Rytman](#), 27 Conn. App. 549, 555, 607 A.2d 896, 899 (1992). **"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."**
- [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)."

WEST KEY NUMBERS:

- **Mortgages**
 - Nature, purpose, and form
 - #1672. Foreclosure by exercise of power of sale
 - Proceedings preliminary to nonjudicial foreclosure
 - #1856. Judgment, order, or decree
 - Foreclosure sale
 - #1931-2034
 - Disposition of proceeds and surplus
 - # 2101-2109.
 - Costs and fees
 - #2124
 - #2131(1,3)
 - Conclusiveness, operation and effect
 - #2154. Of foreclosure sale. In general
 - #2165. Persons concluded or affected. In general
 - #2169. Satisfaction of debt
 - #2172. Title to subject property

DIGESTS:

- [Dowling's Digest](#): *Mortgages* § 30
- [Phillip's Digest](#): *Mortgages* § 26

ENCYCLOPEDIAS:

- 55 [Am. Jur. 2d](#) *Mortgages* (2009)
 - 10. Decree or Judgment
 - a. In General
 - § 634. Generally
 - § 635. Amount due
 - § 636. Description of property
 - § 637. Matters concluded
 - § 638. Upon judgment by default
 - § 639. Merger of mortgage lien in decree
 - b. Allowance of Attorney's Fees**
 - § 640. Generally
 - § 641. Statutory provisions
 - § 642. Amount and reasonableness of fees; control by court
 - § 643. Disallowance of fee where inequitable or unconscionable
 - § 644. Conflict of laws
 - c. Interest; Taxes; Costs
 - § 645. Interest
 - § 646. Taxes
 - § 647. Costs
 - 11. Sale Under Decree
 - a. In General

- § 651. Generally; sale by whom
- § 652. Time of sale; adjournment
- b. Notice of Sale
 - § 653. Generally; length of time for giving, and contents of, notice
 - § 654. Publication
 - § 655. Description of property
 - § 656. Time of sale
 - § 657. Adjournment or postponement
 - § 658. Place of sale
- c. Manner of Sale
 - (1) In General
 - § 659. Generally
 - § 660. Avoidance of sale made in improper manner
 - § 661. Ratification by mortgagor; estoppel
 - (2) Sale in Parcels or En Masse
 - § 662. Generally
 - § 663. Discretion of officer selling property
 - § 664. Stipulation, agreement, or request of parties
 - § 665. Effect of description; property mortgaged or described as entirety or unit; subsequent division
 - § 666. Where mortgaged property includes homestead
 - § 667. Statutory provisions
- d. Bids and Purchase
 - § 668. Generally; who may bid or purchase
 - § 669. By mortgagee
 - § 670. By trustee; for benefit of bondholders – Express authority
 - § 671. Implied and judicial power
 - § 672. By bondholders
 - § 673. Amount of bid; fixing minimum bid or upset price
 - § 674. Conditional bids; abatement or change of bid
- e. Confirmation by Court
 - § 675. Generally
 - § 676. Inadequacy of bid as ground for refusing confirmation
 - § 677. Increase of bid as condition to confirmation
 - § 678. Effect of death of parties; necessity of reviver
- f. Vacation of Sale
 - § 679. Generally
 - § 680. For mistake
 - § 681. For fraud or bad faith
 - § 682. For inadequacy of price
 - § 683. To obtain or allow higher bid
- g. Resale
 - § 684. Generally

- § 685. By trustee bidding in property
- h. Deeds
 - § 686. Generally
 - § 687. Deed of substitute trustee
- F. Distribution of Proceeds of Sale; Surplus; Deficiency
 - 2. Distribution of Proceeds
 - a. In General
 - § 705. Generally
 - § 706. According to agreement, stipulation, consent, promise, or option of parties
 - § 707. Where part of indebtedness barred by limitations
 - § 708. Equalization of interest payments on secured obligations
 - § 709. Payment of taxes and assessments
 - § 710. Reimbursement for expenditures made for benefit of property
 - b. Surplus
 - § 711. Generally
 - § 712. Application to other liens or obligations
 - § 713. Where junior mortgagee not made party
 - § 714. Rights as between holders of other liens on different parts of property
 - § 715. Necessity for notice or demand by claimant
- G. Rights, Remedies, and Liabilities of Purchasers
 - 1. Rule of Caveat Emptor
 - 2. Title, Rights, and Liabilities
 - a. In General
 - b. Reacquisition of Title by Mortgagor, after Foreclosure of Senior Mortgage, as Affecting Rights Under Junior Mortgage
 - c. Right to Income, Products, and Appurtenances
 - d. Rights to Proceeds of Insurance Where Loss Occurs During Redemption Period
 - e. Liability for Taxes
 - f. Other Particular Matters
 - 3. Title, Rights, and Liabilities Under Invalid or Defective Sale
 - a. Under Decree of Foreclosure
 - b. Under Power
 - 4. Relief and Remedies
 - a. In General
 - b. Release from Purchase
 - c. Correction of Mistakes and Irregularities; Reformation
 - d. Remedy Where Claimant of Subordinate Title, Lien, or Interest Was Not Party to Foreclosure and Sale
 - e. Estoppel and Waiver

**TEXTS &
TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), Denis R. Caron & Geoffrey K. Milne (8th ed., 2018) [Vol. 1]
 - Chapter 6. Motions, the Hearing on Judgment, the Judgment File and the Bill of Costs
 - § 6-1:6. Motion for Foreclosure by Sale
 - § 6-2:1.6. Strict Foreclosure or Foreclosure by Sale?
 - § 6-2:1.6a. The *Irick* Limitations
 - § 6-2:1.6b. Tactical Concerns re Contesting Valuation
 - § 6-4. The Judgment of Foreclosure by Sale – Statutory Requirements
 - § 6-6. Rights of First Refusal and Foreclosure Sales
 - § 6-8. The Judgment File
 - § 6-8:2. Practice Book Form 707.2 – Judgment of Foreclosure by Sale
 - Chapter 7. The Committee
 - § 7-1. The Uniform Procedures and Uniform Standing Orders
 - § 7-1:1.1. The Property Description
 - § 7-1:1.2. Fixture Filings
 - § 7-1:1.3. Reviewing the Appraisal
 - § 7-2. Filing Appearance
 - § 7-3. Review of Land Records
 - § 7-4. Advertising the Sale
 - § 7-5. Obtaining Insurance
 - § 7-6. Procuring the Sign
 - § 7-6:1. The Missing-Sign Dilemma
 - § 7-7. Responding to Inquiries
 - § 7-8. Property Inspection
 - § 7-9. Preparing the Documents
 - § 7-10. Unusual Expenses
 - § 7-11. Conducting the Sale
 - § 7-11:1. Pre-Auction Bidding by Plaintiff
 - § 7-11:2. **Committee's Exercise of Discretion**
 - § 7-11:2.1. Disregarding the Automatic Bankruptcy Stay
 - § 7-11:2.2. Delaying the Auction Time
 - § 7-11:2.3. Gratuitous Information in Notice to Bidders
 - § 7-11:3. **Committee's Return of Sale**
 - § 7-12. Obtaining the Approval of the Sale
 - § 7-12:1. When Plaintiff Must Pay Committee Fees
 - § 7-12:1.1. The Plaintiff as Purchaser
 - § 7-12:1.2. Redemption
 - § 7-12:1.3. **"For Any Other Reason"**
 - § 7-13. The Committee Report
 - § 7-14. The Committee Deed
 - § 7-14:1. Effect of Validating Act on Defective Deeds
 - § 7-15. The Hearing on Approval

- § 7-15: 1. Constitutionality of Connecticut General Statutes § 49-25 Challenged
 - § 7-15: 2. Bankruptcy Filing Stays Approval of Committee Fees and Expenses
 - § 7-16. The Closing
 - § 7-16: 1. Timing and Adjustments
 - § 7-16: 2. Conveyance Tax
 - § 7-16: 3. Form 1099-S
 - § 7-16: 4. Residential Condition Report
 - § 7-17. Some Common Problems
 - § 7-17: 1. The Plaintiff as Purchaser
 - § 7-17: 1.1. The Deposit
 - § 7-17: 1.2. The Sales Agreement
 - § 7-17: 1.2a. Assigning the Agreement
 - § 7-17: 2. Second Mortgage Sale
 - § 7-17: 3. Blanket Mortgages
 - § 7-18. Obtaining Possession for the Purchaser
- Chapter 8. Representing the Purchaser
 - § 8-1. Introduction
 - § 8-2. Prior to and at the Sale
 - § 8-3. After the Sale
 - § 8-3: 1. Property Damaged or Destroyed
 - § 8-3: 2. The Defaulting Purchaser
 - § 8-4. The Plaintiff as Purchaser
 - § 8-5. Effect of Appeal from Sale Approval on **Purchaser's Obligation to Close**
 - § 8-6. Purchasing the Same Property at Multiple Foreclosure Sales
 - § 8-7. Evaluating the Title Derived Through a Foreclosure
- Chapter 9. Determination of Priorities and the Supplemental Judgment
 - § 9-1. The Statutory Framework
 - § 9-2. Determination of Priorities
 - § 9-2: 1. The Uncontested Case
 - § 9-2: 1.1. Prepayment Penalties as Element of Debt
 - § 9-2: 2. The Contested Case
 - § 9-2: 2.1. Proper Timing of Challenge to Priority
 - § 9-2: 3. Apportionment
 - § 9-3. The Supplemental Judgment
 - § 9-3: 1. Post-Judgment Interest
 - § 9-3: 1.1. **Plaintiff's Right to Continuing Interest** Curtailed
 - § 9-3: 2. When Proof of Debt by Affidavit Not Sufficient
 - § 9-3: 3. Additional Debts of Pre-Lis Pendens Creditors
 - § 9-3: 4. **Reserve for Anticipated Attorneys' Fees**
 - § 9-4. The Partial Supplemental Judgment
 - § 9-4: 1. Further Supplemental Judgment
 - § 9-5. Supplemental Judgment When Plaintiff is Purchaser

§ 9-5:1. When No Funds Are Paid Into Court
§ 9-5:2. When the Excess Is Paid Into Court

- [Connecticut Lawyers' Deskbook: A Reference Manual](#),
Dennis P. Anderson, Denis R. Caron and Geoffrey K. Milne
(3d ed., 2008)
 - Chapter 17, *Real Property Foreclosure in Connecticut*
 - Types of Foreclosure Judgments, pp. 420-421
 - Foreclosure by Sale Procedures, pp. 426-441
 - Judgment of Foreclosure by Sale, pp. 426-427
 - Approval of Sale, pp. 427-429
 - Other Considerations, pp. 429-430
 - Fixture filings
 - Reviewing the Appraisal
 - Filing Appearance
 - Review of Land Records
 - Advertising the Sale, pp. 430-431
 - Obtaining Insurance, p. 431
 - Procuring the Sign, p. 431
 - The Missing-Sign Dilemma, pp. 431-432
 - Responding to Inquiries, p. 432
 - Preparing the Documents, p. 432
 - Unusual Expenses, pp. 432-433
 - Conducting the Sale, pp. 433-435
 - Obtaining Approval of the Sale, pp. 435-436
 - The Committee Report
 - The Committee Deed
 - The Hearing on Approval
 - The Closing, pp. 438-439
 - Timing and Adjustments
 - Conveyance Tax
 - Form 1099-S
 - Residential Condition Report
 - Some Common Problems, pp. 439-441
 - The Plaintiff as Purchaser
 - Second Mortgage Sale
 - Blanket Mortgages
 - Obtaining Possession for the Purchaser
- [A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut](#), Christian R. Hoheb, editor
(2012).
 - Chapter 9. Foreclosure Procedure from Complaint Through Sale
 - § 9.1. Commencing the Foreclosure Action
 - § 9.1.1. Methods of Foreclosure in Connecticut
 - § 9.2. Motions
 - § 9.2.4. Motion for Judgment
 - (b) Motion for Judgment of Foreclosure by Sale
 - § 9.4. Judgment
 - § 9.4.3. Court Orders Unique to Judgment of Foreclosure by Sale

- (a) Sale Date
 - (b) Committee Appointment
 - (c) Sign on the Premises
 - (d) Publication Dates
 - (e) Appointment of Appraiser/Return of the Appraisal
 - § 9.5. Conducting a Sale
 - § 9.5.1. The Committee
 - § 9.5.2. Activities Prior to Sale
 - (a) Deposit
 - (b) Obtaining Insurance
 - (c) Plaintiff as Purchaser
 - § 9.5.3. Auction Procedures
 - § 9.5.4. Approval of the Sale
 - (a) Committee Report
 - (b) Committee Deed
 - (c) Court Hearing on Approval of the Sale
 - § 9.6. Postsale Procedure
 - § 9.6.1. Determination of Priorities
 - § 9.6.2. Supplemental Judgment
 - (a) Partial Supplemental Judgment
 - (b) Further Supplemental Judgment
- [Connecticut Practice Series: Civil Practice Forms](#), Joel M. Kaye et al. (4th, 2004) [Vol. 3].
Authors' Comments for 706.3 (see 2018 pocket part for additional notes)
 - [Connecticut Standards of Title](#), Connecticut Bar Association (2013).
 Chapter XIX. Foreclosure of Mortgages and Liens
 Standard 19.1. The Nature and Scope of a Notice of *Lis Pendens* in a Foreclosure Action
 Standard 19.2. Effect of Errors in a Statutory Certificate of Foreclosure
 Standard 19.3. Failure to Release Mortgages and Other Interests Involved in a Foreclosure Action
 Standard 19.4. Effect of Failure to Grant a Continuance in Foreclosure and other Actions Involving Connecticut Land Against Nonresident Defendants
 Standard 19.5. Conclusiveness of Foreclosure and Other Judgments Affecting Title to Land
 Standard 19.6. Judicial Proceedings in Foreclosure and Other Land Actions Presumed to Comply with **the Soldier's and Sailors' Civil Relief Act**
 Standard 19.7. Effect of Errors in the Certificate of Foreclosure or Satisfaction of Judgment
 - [Foreclosures and Mortgage Servicing](#), National Consumer Law Center (5th ed., 2014).
 Chapter 8. Legal Defenses to Home Foreclosures
 § 8.2 Introduction to the Foreclosure Process

- § 8.2.2 Judicial Foreclosure
- Chapter 12. Issues Arising After a Foreclosure Sale
 - § 12.1 Re-Purchasing the Home During or After the Foreclosure Sale
 - § 12.1.1. Purchasing the Home at the Foreclosure Sale
 - § 12.1.2. Redeeming the Home After the Foreclosure Sale
 - § 12.4 Claiming a Foreclosure Sale Surplus
 - § 12.4.1. Procedure
 - § 12.4.2. Timelines in Distribution of a Surplus
 - § 12.4.3. Steps Homeowners Should Take
 - § 12.4.4. Relative Rights of Judicial Lien and Homestead Exemption
 - § 12.4.5. "Surplus Retrieval" Consultants**
 - § 12.5 Damage Claims for Wrongful Foreclosure
 - § 12.6 Tax Consequences of a Foreclosure Sale: An Introduction
 - § 12.7 Rights of Tenants in Possession Following **Foreclosure on Their Landlord's** Property
 - § 12.8 Former Owners in Possession of Property Following Foreclosure

- [Powell on Real Property](#), Richard R. Powell (2018) [Vol. 4]. Chapter 37. Mortgages and Mortgage Foreclosures
 - § 37.40 Foreclosure by Action – Sale
 - § 37.41 Foreclosure by Action – Surplus or Deficiency
- [Restatement of the Law Third: Property, Mortgages](#), American Law Institute, 1997 (with 2018 supplement). Chapter 4. Rights and Duties of the Parties Prior to Foreclosure
 - § 4.1 Mortgage Creates Security Interest Only
 - § 4.8 Effect of Foreclosure on Mortgagee's Right to Insurance and Eminent Domain Proceeds**
 - § 4.9 Acquisition of Foreclosure Title by the Holder of the Equity of Redemption or Other Junior Interests: Effect Upon Junior Interests
 Chapter 7. Priorities
 - § 7.1 Effect of Mortgage Priority on Foreclosure
 - § 7.3 Replacement and Modification of Senior Mortgages: Effect on Intervening Interests
 - § 7.4 Effect of Priority on the Disposition of Foreclosure Surplus
 Chapter 8. Foreclosure
 - § 8.1 Accrual of the Right to Foreclose – Acceleration
 - § 8.2 Mortgagee's Remedies on the Obligation and the Mortgage**
 - § 8.3 Adequacy of Foreclosure Sale Price
 - § 8.4 Foreclosure: Action for a Deficiency
 - § 8.5 The Merger Doctrine Inapplicable to Mortgages
 - § 8.6 Marshaling: Order of Foreclosure on Multiple Parcels

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; P.B. 1978, Form 706.3; 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: _____
Attorney's Name
Firm
Address
Telephone number
Its Attorneys

NO ORAL ARGUMENT IS REQUESTED,
NO TESTIMONY IS REQUIRED.

Section 3: Foreclosure by Market Sale

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to foreclosure by market sale in Connecticut pursuant to CT General Statutes 49-24 to 49-24g.

CURRENCY:

- November 2018

DEFINITIONS:

"For purposes of a foreclosure by market sale in accordance with this section and sections 49-24b to 49-24g, inclusive:

(1) "Mortgage" means a mortgage deed, deed of trust or other equivalent consensual security interest on residential real property securing a loan made primarily for personal, family or household purposes that is first in priority over any other mortgages or liens encumbering the residential real property, except those liens that are given priority over a mortgage pursuant to state or federal law;

(2) "Mortgagee" means the owner or servicer of the debt secured by a mortgage;

(3) "Mortgagor" means the owner-occupant of residential real property located in this state who is also the borrower under the loan that is secured by a mortgage, other than a reverse annuity mortgage, encumbering such residential real property that is the primary residence of such owner-occupant, where the amount due on such mortgage loan, including accrued interest, late charges and other amounts secured by the mortgage, when added to amounts for which there is a prior lien by operation of law, exceeds the appraised value of the property; and

(4) "Residential real property" means a one-to-four-family dwelling occupied as a residence by a mortgagor. Conn. Gen. Stat. § [49-24a](#) (2017).

- **"SUMMARY:** By law, in a foreclosure proceeding involving real property, the court may issue a judgment of (1) foreclosure by sale, which usually involves auctioning the property, or (2) strict foreclosure, which transfers title to the lender. This act adds another option for certain **residential properties, called "foreclosure by market sale,"** which is a court-approved sale on the open market. The mortgagee (lender) must request and the mortgagor (borrower) must consent to such a sale. The act limits this option to the first mortgage on a one-to-four family residential property that is the mortgagor's residence.

The act establishes procedures for foreclosure by market sale, including requirements for the foreclosure notice,

property appraisal, listing agreement, and purchase and sale contract. The act allows a mortgagee to proceed with other foreclosure options if certain conditions are not met.

The act also establishes court procedures for foreclosure by market sale, including a process that allows subordinate lienholders to preserve their interests in the property. It requires the court to appoint someone to execute the conveyance of the sold property and exempts such a transfer from the real estate conveyance tax.

The act specifies that it should not be construed as requiring either the mortgagor or the mortgagee to (1) proceed with discussions after the foreclosure by market sale notice has been sent, (2) reach an agreement regarding a listing agent, or (3) approve any purchase offers received.

Lastly, the act bars a mortgagor who consents to **foreclosure by market sale from participating in the state's** foreclosure mediation program, but allows him or her to petition the court to participate under certain circumstances."

[Summary of 2014 Public Acts](#), p. 68, PA 14-84—sHB 5514 (An Act Concerning an Optional Method of Foreclosure), Office of Legislative Research

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2017)
 - [Title 49](#). Mortgages and Liens
 - [Chapter 846](#). Mortgages
 - [49-24](#). Court may foreclose lien or mortgage on land by sale or market sale.
 - [49-24a](#). Definitions.
 - [49-24b](#). Notice of foreclosure by market sale option. Affidavit when not proceeding with foreclosure by market sale.
 - [49-24c](#). Appraisal of property in foreclosure by market sale.
 - [49-24d](#). Listing agreement in foreclosure by market sale.
 - [49-24e](#). Contract for sale of property in foreclosure by market sale.
 - [49-24f](#). Judgment of foreclosure by market sale.
 - [49-24g](#). Right-of-first-refusal law days.
 - [49-26](#). Conveyance; title of purchaser.
 - [49-27](#). Disposal of proceeds of sale.
 - [49-28](#). When proceeds of sale will not pay in full.
 - [49-31t](#). Eligibility for foreclosure mediation program after consent to foreclosure by market sale. (Repealed by [PA 16-65, section 94](#), effective October 1, 2016)

FORMS:

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- [Motion for Judgment of Foreclosure by Market Sale](#), JD-CV-151 (rev. 10/16)
- [Motion for Supplemental Judgment - Foreclosure by Market Sale](#), JD-CV-152 (rev. 10/16)
- [Foreclosure by Market Sale Committee Deed](#), JD-CV-153 (rev. 05/15)
- [Connecticut Practice Series: Civil Practice Forms](#), Joel M. Kaye et al. (4th, 2004) [Vol. 3]
 - Form 706.5 Motion for foreclosure by market sale – in 2018 pocket part only
 - Form 706.6 Defendant mortgagor’s consent to judgment** for foreclosure by market sale – in 2018 pocket part only

PAMPHLETS:

- [Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners](#), Connecticut Fair Housing Center, 10th ed.,
 - reference to foreclosure by market sale, [p. 8](#)
 - definition of foreclosure by market sale, [p. 41](#)

TEXTS & TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- [Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure](#), Denis R. Caron & Geoffrey K. Milne (8th ed., 2018) [Vol. 2]
 - Chapter 37. Foreclosure by Market Sale
 - § 37-1. Introduction
 - § 37-2. Definitions
 - § 37-3. The Notice Requirement Repealed
 - § 37-3:1. The Definitional Dilemma
 - § 37-3:2. The Notice: Requirements and Content
 - § 37-3:3. Limitation on Commencement and Further Prosecution of Foreclosure
 - § 37-4. Exploring a Possible Foreclosure by Market Sale
 - § 37-5. The Complaint
 - § 37-5:1. Procedure if Foreclosure Already Begun
 - § 37-6. Obtaining the Judgment
 - § 37-6:1. If the Court Denies FBMS
 - § 37-7. Right-of-First-Refusal Law Days
 - § 37-7:1. Law Day Priority Amended
 - § 37-8. The Role of the Committee
 - § 37-8:1. The Committee Deed
 - § 37-8:1.1. The Ratification Question
 - § 37-8:2. The Closing
 - § 37-8:2.1. Adjustments
 - § 37-8:2.2. Sale Free and Clear of Subsequent Liens
 - § 37-8:2.3. Disposition of Proceeds
 - § 37-8:2.4. Closing Affidavits
 - § 37-8:2.5. Conveyance Taxes
 - § 37-9. The Supplemental Judgment
 - § 37-10. Deficiency Penalty Inapplicable

- [Connecticut Practice Series: Civil Practice Forms](#), Joel M. Kaye et al. (4th, 2004) [Vol. 3]
Authors Commentary for 704.31 – Foreclosure by market sale in 2018 pocket part

Table 1: Excerpts from the Legislative History of Connecticut Public Act 14-84 (Conn. Gen. Stats. §§ 49-24 to 49-24g)

<p>The Connecticut General Assembly</p> <p>The House of Representatives</p> <p>Thursday, May 1, 2014</p>	
<p>PURPOSE:</p>	<p>Rep. Tong (147th):</p> <p>“Yes, thank you, Mr. Speaker. This bill creates a new optional method of foreclosure. It creates an alternative whereby a mortgagor and the mortgagee, the homeowner and the lender can come together early in the process and decide that instead of entering the process of foreclosure, which can take a very long time, they can contract with a real estate broker and put the property up for sale and get a market price.</p> <p>It's a foreclosure by market sale alternative to a strict foreclosure or a foreclosure by auction, which is what many of us are used to seeing.”</p>
<p>ELIGIBILITY FOR FORECLOSURE MEDIATION PARTICIPATION:</p>	<p>Rep. Tong (147th):</p> <p>“. . . Once you select the foreclosure by market sale process you are no longer eligible to participate in the foreclosure mediation program. However, if that market sale should fall apart and you meet certain strict requirements, your right to participate in foreclosure mediation could spring back to life.”</p>
<p>JUNIOR/ SECONDARY LIEN HOLDER</p>	<p>Rep. Alberts (50th):</p> <p>“Thank you, Mr. Speaker. Now, one of the things that we've been trying to do in this legislation is to make sure that there is protection for the junior lien holders.</p> <p>In Section 8 there's a lot of language that refers to the law day methodology and the right of junior lien holders to have access to potentially buy out their interests.</p> <p>Could the proponent explain how this would work?”</p> <p>. . .</p>

	<p>Rep. Tong (147th):</p> <p>" . . . yes. After the point at which the homeowner, mortgagor, has entered into a contract with a potential purchaser, the court is given an opportunity to review that contract and make some findings.</p> <p>Within a period after the court has made its findings and approved the foreclosure by market sale, the secondary lien holders then have an opportunity in a manner of speaking, to redeem their liens and their interest by tendering the full purchase price set forth in the contract.</p> <p>So a secondary lien holder can step forward and say, I'll buy the property. If they do that, they will do so through a law day process, which created a right of first refusal law day, so essentially they'll have a right of first refusal and they can exercise that on an appointed law day within 30 days of the judgment approving the market sale, and those law days will proceed in inverse order of priority and the secondary lien holders will have the opportunity to tender the full purchase price or not."</p>
<p>FORECLOSURES ALREADY IN PROGRESS:</p>	<p>Rep. Alberts (50th):</p> <p>" . . . And I understand that if there's a regular foreclosure action that's already started, this new process that we're contemplating today cannot be used for that. Is that not correct?</p> <p>. . .</p> <p>Rep. Tong (147th):</p> <p>" . . . that's correct."</p>
<p>SIMILARITIES TO REGULAR SALE:</p>	<p>Rep. Alberts (50th):</p> <p>" . . . Now, even though we're proceeding and creating a new option of foreclosure to add to strict foreclosure in deed in lieu, there are some elements as I read them that are very similar to the present methodology, so for example, in a typical real estate closing, there's some adjustment often by the parties for the purchase price for things such as real estate taxes, fuel oil, so those real estate contracts that are contemplated there, those would still have the same issues, the same resolution as a typical sale. Is that not correct?"</p>

	<p>...</p> <p>Rep. Tong (147th):</p> <p>"... Yes, this process and the bill contemplates that many of the processes that we're used to both in a real estate transaction, but also in the context of a foreclosure, pertain here.</p> <p>A lot of the process will be addressed by standing orders of the court. There will be the participation of a committee that will handle the money at the outset and deposit that money into court, and as part of that process, there may be adjustments because of home heating oil or other adjustments that need to be made, and those will be governed by the contract and in accordance with the court's normal process."</p>
<p>SALE PROCEEDS TO CLERK:</p>	<p>Rep. Alberts (50th):</p> <p>"... so for example, the buyer would pay any funds to that court appointed committee that you referenced just as they would do in a traditional foreclosure by sale. Is that correct</p> <p>...</p> <p>Rep. Tong (147th):</p> <p>... yes. Those funds come in, but they are then transported and deposited into court to the clerk of the court and the clerk will determine, based on the court's direction, how much of those proceeds are to be distributed to the seller of the property. In this instance it will be essentially distributed to the first position mortgagee at some point, and then if there are expenses of sale like real estate broker commissions, those will be given in one check back to the committee by the court. The court will issue a check to the committee and the committee will then distribute those funds accordingly."</p>
<p>BENEFITS:</p>	<p>Rep. Diminico (13th):</p> <p>"... I rise in support of this bill as well, having had the opportunity to work on this bill in a collaborative way with the Connecticut Bankers Association, the Connecticut Association of Realtors and the Housing Coalition, facilitated by the Commissioner of Banking, Howard Pitkin, who I'd like to thank publicly.</p> <p>This is a bill that's a home run for all, for the mortgagor and the mortgagee. It will provide the mortgagor to stay in the home so it doesn't become blighted, provide the</p>

	<p>opportunity not to become stigmatized in a foreclosure process, and somewhat preserve their credit scores.</p> <p>It will also be a benefit to the neighborhood because the house won't become blighted, as well as to the community and it will be home run for all because it will be put on the open market, which will bring more money, which in turn will not impact values. As a matter of fact, it will increase the values in the long run for the real estate market, which will be a benefit to all."</p>
<p>ROLE OF THE COMMITTEE:</p>	<p>Rep. Smith (108th):</p> <p>"So when does the committee come into play? Do they actually conduct the sale once a contract is entered into? Is that how it works?"</p> <p>...</p> <p>Rep. Tong (147th):</p> <p>". . . they are in a manner of speaking, charged with conducting the sale, but I think in practical terms, their role is to manage the transfer of the proceeds from the sale to the clerk of the court, and then once the clerk of the court decides how the proceeds are to be distributed and what expenses are to be paid, and how the proceeds are to be paid out, then those funds will be paid back to the committee and the committee will distribute those with the authorization of the court. . . ."</p> <p>...</p> <p>Rep. Smith (108th):</p> <p>". . . So as I understand it then, once the sale is agreed upon and actually transpires, a check is issued. I suspect it's issued to the court. The committee would then transfer the check to the court. The judge makes the determination of who gets paid what. Are checks then issued back to the committee for disbursement purposes? Just to be sure. . . ."</p> <p>...</p> <p>Rep. Tong (147th):</p> <p>". . . that is correct."</p>

<p>ROLE OF THE COMMITTEE, CONT'D:</p>	<p>Rep. Smith (108th):</p> <p>"And other than the conduit to disburse the checks, does the committee have any other role?"</p> <p>...</p> <p>Rep. Tong (147th):</p> <p>". . . I believe that the committee's role will include preparing the deed and getting it approved."</p> <p>...</p> <p>Rep. Smith (108th):</p> <p>". . . does the committee have any role in preparing the contract and negotiating the sale?"</p> <p>...</p> <p>Rep. Tong (147th):</p> <p>". . . no, the committee has no role in that process."</p>
<p>COMMERCIAL TRANSACTIONS:</p>	<p>Rep. Smith (108th):</p> <p>"I thank the gentleman for his answers and just to continue along. I noticed as I was listening, that it seems that this only applies to residential mortgages and not commercial transactions. Is that accurate?"</p> <p>...</p> <p>Rep. Tong (147th):</p> <p>". . . that is correct."</p>
<p>REVERSE MORTGAGES:</p>	<p>Rep. Smith (108th):</p> <p>"And I also thought I saw some language in the bill that it does not apply to reverse mortgages. Is that accurate?"</p> <p>...</p> <p>Rep. Tong (108th):</p>

	<p>“. . . that is correct.”</p>
<p>JUNIOR/ SECONDARY LIEN HOLDER, CONT'D:</p>	<p>Rep. Smith (108th):</p> <p>“And you discussed a junior lien holder's positions and how that all works, and that was one of my concerns with the bill when it came before the Judiciary Committee, which seems to have been resolved, and then I was interrupted so I didn't hear all your answers.</p> <p>So if you could just again, explain how that works. I have some understanding of the inverse order but let's, I'm going to give you a scenario.</p> <p>Let's assume there's just three junior lien holders. The one in second place decides to match the purchase price. What type of process has to take place? Do they have to actually issue a check? Do they have to just give notice of that desire? How does that work?”</p> <p>. . .</p> <p>Rep. Tong (147th):</p> <p>“. . . just as a threshold matter, I should note that the amendment, the bill contemplates that these are properties that at the outset are under water with respect to the first position mortgagee.</p> <p>It contemplates that we're already in a position where the homeowner owes more on the first mortgage than the house is worth.</p> <p>That being said, and so against that backdrop, the secondary lien holders will likely not have much of an opportunity to recover anything in any event.</p> <p>That being said, we as a committee and as a group of collaborators working on this bill, wanted to make sure that the rights of secondary lien holders were acknowledged and to the extent that we could, provide them an opportunity to participate in this process and so what happens now is, there will be set right of first refusal law days.</p> <p>Within 30 days of the judgment of foreclosure by market sale, the court must set law days in reverse order of priority for each secondary lien holder. So let's assume in your paradigm that are four, three additional secondary lien holders, they would go in reverse order of priority and so the last in priority would go first, and they would have the</p>

	<p>opportunity to tender the full purchase price set forth in the contract. They have to do that on that day by tendering a check, which will be paid into court.”</p> <p>...</p> <p>Rep. Smith (108th):</p> <p>“And I thank the Chairman for his clarification on that. I understand the concept here that this probably will mostly apply to those who are under water, those properties who are under water.</p> <p>Does it have to be a situation where the properties are under water for this to apply?”</p> <p>...</p> <p>Rep. Tong (147th):</p> <p>“... yes.”</p> <p>...</p> <p>Rep. Smith (108th):</p> <p>“So there's language in the amendment that talks about doing an appraisal and the appraisal, I guess, would be given to the court and then a determination would have to be made that the property is, in fact, under water before this process could be, they could proceed with this process?”</p> <p>...</p> <p>Rep. Tong (147th):</p> <p>“... yes.”</p>
<p>CONVEYANCE TAXES:</p>	<p>Rep. Smith (108th):</p> <p>“And this may be in the bill and it may not be. I'm just wondering. As I'm sure the Representative knows, many of these foreclosure sales, the conveyance taxes are exempted, transfer taxes. Is there language in this bill that would also exempt the conveyance taxes?”</p> <p>...</p>

	<p>Rep. Tong (147th):</p> <p>"That is correct."</p>
<p>FORECLOSURES ALREADY IN PROGRESS, CONT'D:</p>	<p>Rep. Smith (108th):</p> <p>"And for this procedure to apply, based on what I've heard so far, I suspect the property, the foreclosure has to have been commenced for this to apply. I'm assuming."</p> <p>...</p> <p>Rep. Tong (147th):</p> <p>". . . I want to clarify the good Representative's questions. It's very clear under the bill that notice must be given at the outset of the option to pursue foreclosure by market sale. It is a process that can be undertaken by consent of both the mortgagor and the first position mortgagee.</p> <p>That process must be commenced at the outset and then the commencement of foreclosure reflects that agreement.</p> <p>What this bill does not provide for is if you are already in foreclosure, you cannot somewhere down the line choose a foreclosure by market sale according to the language in this bill."</p>
<p>MEDIATION/ JUDGMENT:</p>	<p>Rep. Smith (108th):</p> <p>"And then just lastly, and I'll continue to listen to the debate. The conditions by which one can get back into mediation, I know they're set forth in the bill. I just didn't have a chance to peer through those. If the Chairman could just explain those."</p> <p>...</p> <p>Rep. Tong (147th):</p> <p>". . . It's set forth in Section 7, starting at line 208 and it provides that there may be testimony or affidavits in support or opposition to such petition that the petitioner cannot be motivated by, primarily by a desire to delay the entry of judgment of foreclosure.</p> <p>The court must find at line 216, 217, that it is highly probable that the parties will reach an agreement through mediation and in line 218 the mortgagee shall have the</p>

	right to request the entry of a judgment of foreclosure in accordance with the other provisions of the law.”
JUDGMENT:	<p>Rep. Smith (108th):</p> <p>“. . . Assuming the market sale goes through and the sale actually takes place and the bank has issued a check, I'm assuming there is no judgment that is actually entered against the mortgagor. Is that accurate?"</p> <p>. . .</p> <p>Rep. Tong (147th):</p> <p>“. . . it is a judgment of foreclosure by market sale. It is unlike a judgment of foreclosure. I think you're referring to a, you know, a judgment of foreclosure in the normal course under our current statutes. No, it is not the same judgment.”</p>
PURPOSE, cont'd:	<p>Rep. Smith (108th):</p> <p>“You know, this is, ladies and gentlemen, the foreclosures in Connecticut are still rampant and this is an effort, and I give the Chairman and the ranking member and Representative Diminico, who have worked on this bill a lot of credit. I know they've been working on this for the past few years and it looks like they put together a fine bill here that will help, hopefully, a lot of people in Connecticut.</p> <p>It's not unusual for those properties that are underwater for the people to just throw up their hands and kind of walk away and then do a foreclosure by sale. A foreclosure by sales generally do not render very much money, if at all to the bank, so then the bank has to take title and sell it again.</p> <p>This, hopefully, will bring more money to the parties so there's less of a deficiency, if one at all and actually make for a fair and marketable sale, so I stand in support of the bill and the amendment, or in support of the amendment and the bill as it becomes law.”</p>
PURPOSE, cont'd:	<p>Rep. Berger (73rd):</p> <p>“The delays in moving property that are foreclosed on has a chilling effect on the real estate market, deflates the entire market, both in the residential and commercial sector, devalues the market and ultimately devalues the properties</p>

	<p>in all of our communities throughout the State of Connecticut.</p> <p>So the work that has been done on this strike-all amendment will help alleviate that, bring back stability, Mr. Speaker, to our neighborhoods and to our real estate market ultimately then helping the economy of the State of Connecticut."</p>
APPRAISAL	<p>Rep. Candelora (86th):</p> <p>"In Section 5 there's a reference to an appraisal that's mutually agreed upon between the mortgagee and mortgagor.</p> <p>My first question is, can those appraisals be done by a realtor or are we envisioning the full license appraisal of the house that you typically see when somebody's going out to get a mortgage?"</p> <p>...</p> <p>Rep. Tong (147th):</p> <p>". . . it would be conducted in accordance with current law, which I believe would be a full licensed appraiser."</p>
APPRAISAL, CONT'D:	<p>Rep. Candelora (86th):</p> <p>". . . So just to be clear then, there's no language in this bill that apportions the cost of the appraisal to either party. It's whatever current law is?"</p> <p>...</p> <p>Rep. Tong (147th):</p> <p>". . . that is correct."</p>
FINAL VOTE:	<p>The Clerk:</p> <p>"House Bill 5514 as amended by House "A".</p> <p>Total number voting 133</p> <p>Necessary for passage 67</p> <p>Those voting Yea 133</p>

	<p>Those voting Nay 0</p> <p>Those absent and not voting 18”</p> <p>Speaker Sharkey:</p> <p>“The bill as amended passes.”</p>
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Section 4: Judgment of Loss Mitigation

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to judgment of loss mitigation in Connecticut pursuant to CT Public Act 16-65.

CURRENCY:

- November 2018

DEFINITION:

- "For purposes of this section and sections 49-30q to 49-30w, inclusive:
 - (1) '**Mortgage**' has the same meaning as provided in section 49-24a;
 - (2) '**Mortgagee**' has the same meaning as provided in section 49-24a;
 - (3) '**Mortgagor**' has the same meaning as provided in section 49-24a, except a mortgagor, for the purposes of sections 49-30p to 49-30w, inclusive, as amended by this act, shall only include those mortgagors with personal net liquid assets, excluding retirement and tax advantaged health savings plans, that are less than one hundred thousand dollars;
 - (4) '**Residential real property**' has the same meaning as provided in section 49-24a;
 - (5) '**Senior lien**' means the first security interest placed upon a property to secure payment of a debt or performance of an obligation before one or more junior liens;
 - (6) '**Junior lien**' means a security interest placed upon a property to secure payment of a debt or performance of an obligation after a senior lien is placed on such property;
 - (7) '**Lienholder**' means a person who holds a security interest in real property; and
 - (8) '**Underwater mortgage**' means a mortgage where the debt associated with such mortgage, along with any senior lien, exceeds the fair market value of the mortgaged property as determined by a court in accordance with sections 49-30t and 49-30u." Conn. Gen. Stat. § [49-30p](#) (2017) ([2018 Supplement](#)).
- **Modification:** "Notwithstanding any provision of the general statutes, any underwater mortgage on residential real property may be modified, and the principal balance increased by the amount of accrued interest, fees and costs allowed by law, without the consent of the holders of junior liens and without loss of priority for the full amount of the modified mortgage, provided such modification is approved by the court through entry of a judgment of loss mitigation under section 49-30t." Conn. Gen. Stat. § [49-30q](#) (2017).
- **Conveyance to Mortgagee**
The act "allows a mortgagor of an underwater mortgage to satisfy all or part of his or her obligation to the mortgagee

by conveying the residential real property to the mortgagee. The mortgagor may do so through a transfer agreement executed by both parties. This agreement must:

1. convey to the mortgagee all interests in the property except for any interests (a) reserved to the mortgagor in the agreement, (b) held by more senior mortgagees or lienholders, or (c) held by junior lienholders not subject or party to the action;
2. consider a discharge of the mortgage after the mortgagor **satisfies the transfer agreement's conditions**;
3. consider the termination of any other interest in the property subordinate to the lienholder that is party to the transfer agreement following a judgment of loss mitigation; and
4. contain other provisions mutually agreeable to the **mortgagor and mortgagee including either party's cash contribution to the other or the execution of a promissory note by one party in favor of the other.**" Summary of 2016 Public Acts, Connecticut General Assembly, Office of Legislative Research, [page 50](#).

- **Conveyance to a Third Party**

"The act allows a mortgagor of an underwater mortgage to enter into a transfer agreement to convey residential real property subject to the mortgage to a third party and, as a condition of the conveyance, pay less to the mortgagee than the outstanding balance on the mortgage debt. Such **payment must satisfy all or part of the mortgagor's** obligation to the mortgagee. The transfer agreement must be executed by the mortgagor and the mortgagee and consider:

1. transferring all the mortgagor's interests in the property to the third party, except for interests (a) reserved to the mortgagor in the transfer agreement, (b) held by more senior mortgagees or lienholders, or (c) held by junior lienholders not subject or party to the action;
2. discharging the mortgage after the mortgagor **satisfies the transfer agreement's conditions**;
3. terminating any other interest in the property subordinate to the mortgagee following a judgment of loss mitigation; and
4. other provisions mutually agreeable to the mortgagor **and mortgagee including either party's cash contribution to the other or the execution of a promissory note by one party in favor of the other.**" Summary of 2016 Public Acts, Connecticut General Assembly, Office of Legislative Research, [page 50](#).

- **Judgment Following Transfer Agreement**

"Under the act, 15 days after the return date of a pending foreclosure action, a mortgagee may file a motion for judgment of loss mitigation after entering into one of the

transfer agreements described above. The act does not (1) allow the court to enter a judgment without the express written consent of both the mortgagor and mortgagee or (2) require a mortgagee to consider consenting to such a **judgment in foreclosure mediation. A party's failure to consent to a judgment of loss mitigation is not a basis for a claim of bad faith.**" Summary of 2016 Public Acts, Connecticut General Assembly, Office of Legislative Research, [page 51](#).

- **Findings at the Hearing**

"Upon the motion of the mortgagee and with the **mortgagor's consent, the court, after notice and a hearing,** may enter a judgment of loss mitigation approving the modification or conveyance.

All parties to the action may participate in the hearing and the judgment is final for purposes of appeal. The issues at the hearing must be limited to:

1. **a finding of the residential property's fair market value,** which may be determined by a written appraisal obtained by the mortgagee and performed by a licensed appraiser;
2. a finding of the outstanding balance of any priority liens on such property, to the extent necessary;
3. the debt owed to the mortgagee secured by the mortgage;
4. whether the mortgage is underwater; and
5. for purposes of mitigation, whether the contemplated transaction was agreed to in good faith.

The hearing must also consider whether the parties to the contemplated transaction other than the mortgagee meet the financial requirements of a mortgagor (i.e., personal net liquid assets that are less than \$100,000, excluding retirement and tax advantaged health savings plans). This must be determined by (1) a financial statement submitted by the proposed mortgagor or mortgagors or (2) other financial information the court requires.

The act prohibits the court from entering a judgment of loss mitigation unless it makes express findings that the mortgage is an underwater mortgage and the parties agreed to the transaction in good faith. For cases involving mortgage modification or the conveyance of property to a mortgagee, the court must also find that the mortgagor meets the above financial requirements." Summary of 2016 Public Acts, Connecticut General Assembly, Office of Legislative Research, [page 51](#).

- **Effect of Judgment**

"The act establishes the effect of a judgment of loss mitigation in cases involving mortgage modification or conveyance to mortgagees. In such cases, if, immediately after the expiration of any applicable appeal period or after the judgment has been affirmed on appeal, the court enters

a judgment of loss mitigation, the (1) mortgage must be increased according to the judgment and the lien of any junior lienholder subject or party to the action must be deemed subordinated to the mortgage, in the same order as before the judgment or (2) property is conveyed to the mortgagee in accordance with the transfer agreement. If a conveyance to a mortgagee is later set aside or avoided due to the application of Chapter 11 bankruptcy provisions, the judgment of loss mitigation must be set aside and all parties retain the same interests in the property as existed before the judgment to the extent permitted under the applicable bankruptcy laws.

In cases involving conveyance to a third party, the conveyance to the third party must be ordered to take place by the date in the transfer agreement. This may be extended up to 60 days if the parties agree, or longer as ordered by the court after notice and a hearing.” Summary of 2016 Public Acts, Connecticut General Assembly, Office of Legislative Research, [page 51](#).

- **Appeal:**

“Such judgment shall be a final judgment for purposes of appeal.” Conn. Gen. Stat. § [49-30t](#) (2017) and § [49-30u](#) (2017).

“In the event of an appeal, the mortgagor and the mortgagee may withdraw their consent to the foreclosure by loss mitigation. If either does so, the foreclosure may continue without any further restriction.” Summary of 2016 Public Acts, Connecticut General Assembly, Office of Legislative Research, [page 51](#).

- **Title Conveyance and Recording**

“Within 30 days after a mortgage modification or conveyance to a mortgagee, the mortgagor and mortgagee must record the judgment of loss mitigation with the town clerk.

For conveyances to third parties, the mortgagor must submit the judgment of loss mitigation to the town clerk for recording before recording the document conveying title to the third party. After the mortgagee receives the funds and other consideration as specified in the transfer agreement, the mortgagee must file a satisfaction of judgment of loss mitigation with the court.

The act does not prohibit (1) the parties from consummating a consensual mortgage modification or deed in lieu of foreclosure outside the judicial process or (2) a consensual release of a mortgage by a mortgagee for less than the full indebtedness secured by the mortgage.” Summary of 2016 Public Acts, Connecticut General Assembly, Office of Legislative Research, [page 52](#).

- **Real Estate Conveyance Tax Exemption**

"The act exempts title transfers resulting from judgments of loss mitigation from the real estate conveyance tax." Summary of 2016 Public Acts, Connecticut General Assembly, Office of Legislative Research, [page 52](#).

- **If no judgment:** "If the court does not enter a judgment of loss mitigation, then the modification or conveyance contemplated by the mortgagor and mortgagee under section 49-30q, 49-30r or 49-30s shall not be consummated. Nothing in this section shall be construed as prohibiting a consensual modification of a mortgage or conveyance from being consummated outside of the judicial process. In the event of such nonentry:

(1) The mortgagor may, if eligible, petition for inclusion in the foreclosure mediation program established pursuant to section 49-31m, provided the mortgagor did not substantially contribute to the events leading to the nonentry or other circumstances resulting in the nonentry. In determining whether to grant such petition, the court shall give consideration to any testimony or affidavits the parties may submit in support of or in opposition to such petition. The court may grant such petition upon a determination that (A) such petition is not motivated primarily by a desire to delay entry of a judgment of foreclosure, and (B) it is highly probable the parties will reach an agreement through mediation; and

(2) The mortgagee shall have the right to request the entry of a judgment of foreclosure in accordance with the other provisions of law, including the provisions governing strict foreclosure." Conn. Gen. Stat. § [49-30v](#) (2017).

- "Nothing in sections 49-30q to 49-30u, inclusive, shall be construed as eliminating the debt or any judgment associated with an affected junior lien on the residential real property encumbered by the underwater mortgage." Conn. Gen. Stat. § [49-30w](#) (2017).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2017)
 - [Title 49](#). Mortgages and Liens
 - [Chapter 846](#). Mortgages
 - [49-30p](#). Underwater mortgage: Definitions.
 - [49-30q](#). Modification of underwater mortgage
 - [49-30r](#). Conveyance of property encumbered by underwater mortgage in satisfaction of mortgagor's obligation. Transfer agreement.
 - [49-30s](#). Transfer agreement to convey property subject to underwater mortgage.
 - [49-30t](#). Judgment of loss mitigation following agreement under section 49-30q or 49-30r.

- [49-30u](#). Judgment of loss mitigation following agreement under section 49-30s.
- [49-30v](#). Nonentry of judgment of loss mitigation.
- [49-30w](#). Junior lien on property encumbered by underwater mortgage.

PUBLIC ACTS:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- 2016 Connecticut Public Acts
 - Public Act 16-65, [section 73](#) (49-30p)
 - Public Act 16-65, [section 74](#) (49-30q)
 - Public Act 16-65, [section 75](#) (49-30r)
 - Public Act 16-65, [section 76](#) (49-30s)
 - Public Act 16-65, [section 77](#) (49-30t)
 - Public Act 16-65, [section 78](#) (49-30u)
 - Public Act 16-65, [section 79](#) (49-30v)
 - Public Act 16-65, [section 80](#) (49-30w)
 - Public Act 16-65, [section 91](#) (12-498(a))

OLR RESEARCH REPORTS:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication.

- Judgment of Loss Mitigation, [2016-R-0334](#), by Michelle Kirby, Senior Legislative Attorney, December 29, 2016

TEXTS & TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), Denis R. Caron & Geoffrey K. Milne (8th ed., 2018) [Vol. 2]
 - Chapter 38. Judgment of Loss Mitigation
 - § 38-1. Introduction
 - § 38-2. Definitions
 - § 38-3. Policy Behind the New Law
 - § 38-4. Types of Relief Afforded
 - § 38-4: 1. Mortgage Modification
 - § 38-4: 2. Deed in Lieu of Foreclosure
 - § 38-4: 3. Short Sale
 - § 38-5. Statutory Scheme – Modifications and Deeds in Lieu
 - § 38-6. Statutory Scheme – Short Sales
 - § 38-7. Consequences of Judgment Not Entering
 - § 38-8. Rights of Junior Lienors
 - § 38-9. Conveyance Tax Exemption