

2024 Edition

Prejudgment Proceedings in Connecticut Mortgage Foreclosures

A Guide to Resources in the Law Library

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Judge Support Services, Law Library Services Unit*

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- [Foreclosure of Mortgages in Connecticut](#) (Including Strict Foreclosure, Foreclosure by Sale, Foreclosure by Market Sale and Loss Mitigation)
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These guides are provided with the understanding that they represent only a beginning to research. It is the responsibility of the person doing legal research to come to his or her own conclusions about the authoritativeness, reliability, validity, and currency of any resource cited in this research guide.

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This guide links to advance release opinions on the Connecticut Judicial Branch website **and to case law hosted on Google Scholar and Harvard's Case Law Access Project.** The online versions are for informational purposes only.

References to online legal research databases refer to in-library use of these databases. Remote access is not available.

[Connecticut Judicial Branch Website Policies and Disclaimers](https://www.jud.ct.gov/policies.htm)
<https://www.jud.ct.gov/policies.htm>

Introduction

A Guide to Resources in the Law Library

- **“It is well settled that a mortgage foreclosure is a common-law cause of action. . . . Mortgage foreclosures are distinguishable from other forms of foreclosure actions—for example, the right to foreclose a lien for common charges—that have been properly characterized as statutory rights of action, as they are grounded in the legislature’s expansion of Connecticut foreclosure rights through statute. . . . The Superior Court’s equitable power to hear mortgage foreclosure cases, however, derives solely from the common law.”** [Keybank, N.A. v. Yazar](#), 347 Conn. 381, 297 A.3d 968 (2023).
- **“A plaintiff establishes its prima facie case in a mortgage foreclosure action by demonstrating by a preponderance of the evidence that it is the owner of the note, that the defendant mortgagor has defaulted on the note, and that conditions precedent to foreclosure have been satisfied.”** [Deutsche Bank National Trust Company, Trustee v. Bliss et al.](#), 159 Conn. App. 483, 124 A.3d 890 (2015), cert. den. 320 Conn. 903, 127 A3d 186.
- Mediation: **“Such foreclosure mediation shall (1) address all issues of foreclosure, including, but not limited to, reinstatement of the mortgage, disposition of the property through means other than the foreclosure process, including short sales and deeds in lieu of foreclosure, assignment of law days, assignment of sale date, restructuring of the mortgage debt and foreclosure by decree of sale Such mediators may refer mortgagors . . . to community-based resources when appropriate and to the mortgage assistance programs.”** Conn. Gen. Stat. § [49-31m](#) (2023).
- Reinstatement: **“(a) A mortgagee shall, upon written request of the mortgagor or the mortgagor’s attorney or other authorized agent provide a payoff statement or reinstatement payment statement in writing to the person requesting the payoff statement or reinstatement payment statement on or before the date specified in such request, provided such request date is at least seven business days after the date of receipt of the written request.”** Conn. Gen. Stat. § [49-10a](#) (2023).
- Defenses: **“Historically, the defenses available in a foreclosure action have been limited to payment, discharge, release, satisfaction or invalidity of a lien.’ . . . In recognition that a foreclosure action is an equitable proceeding, however, several courts have recently allowed allegations of mistake, accident, fraud, equitable estoppel, CUTPA, laches, breach of the implied covenant of good faith and fair dealing, and refusal to agree to a favorable sale to a third party as defenses to a foreclosure action. . . . ‘Foreclosure is an equitable action, permitting the trial court to examine all matters to ensure that complete justice may be done.’ (Citations omitted; internal quotation marks omitted.)”** [Farmers & Mechanics Bank v. Santangelo](#), Superior Court, Judicial District of Middlesex at Middletown, No. 67481, (Dec. 8, 1995) (1995 Conn. Super. LEXIS 3442) (1995 WL 779034)
- Bankruptcy: **“The filing of a petition under any chapter of the Bankruptcy Code automatically stays all actions against the debtor, including foreclosure actions. 11 U.S.C § 362(a)(5).”** [Roy v. Beilin](#), Superior Court, Judicial District of Danbury, No. 315057 (Sep. 8, 1997) (1997 WL 583838).

Section 1: Mediation

A Guide to Resources in the Law Library

SCOPE:

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

DEFINITIONS:

- **(1) "Mortgagor" means: (A) The** owner-occupant of one-to-four family residential real property located in this state, which is the primary residence of such owner-occupant, who is also the borrower under a mortgage encumbering such residential real property, or if not the borrower under such a mortgage, is a permitted successor-in-interest, except an heir or occupying nonowner of a property encumbered by a reverse annuity mortgage, or (B) a religious organization that is (i) the owner of real property located in this state, and (ii) the borrower under a mortgage encumbering such real property;
- **(2) "Residential real property" means a one-to-four** family dwelling, occupied as a residence by a mortgagor;
- **(3) "Mortgagee" means the owner or servicer of the debt** secured by a mortgage on residential real property or real property owned by a religious organization securing a loan made primarily for personal, family, religious or household purposes that is the subject of a foreclosure action;
- **(5) "Mortgage assistance programs" means the mortgage** assistance programs developed and implemented by the authority in accordance with sections 8-265cc to 8-265kk, inclusive, 8-265rr and 8-265ss;
- **(7) "Objectives of the mediation program" (A) means a** determination as to whether or not the parties can reach an agreement that will (i) avoid foreclosure by means that may include consideration of any loss mitigation options available through the mortgagee, or (ii) expedite or facilitate the foreclosure in a manner acceptable to the parties, and (B) includes an expectation that all parties shall endeavor to reach such determination with reasonable speed and efficiency by participating in the mediation process in good faith, but without unreasonable and unnecessary delays;
- **(8) "Ability to mediate" means an exhibition on the part of the** relevant person of a willingness, including a reasonable ability, to participate in the mediation process in a manner consistent with the objectives of the mediation program and in conformity with any obligations imposed in accordance with section 49-31n, including, but not limited to, a willingness and reasonable ability to respond to questions and specify or estimate when particular decisions will be made or particular information will be furnished and, with respect to the mortgagee, a reasonable familiarity with the loan file, any loss mitigation options that are

available to the mortgagor and the material issues raised in prior mediation sessions. Reasonable familiarity with such material issues may be achieved by becoming reasonably familiar with the mediator reports submitted in accordance with subsection (b) of section 49-31n, to the extent such reports are available;

- **(9) "Permitted successor-in-interest" means a person who is a defendant in a foreclosure action with a return date on or after October 1, 2015, and either (A) the former spouse of a decedent-mortgagor, who acquired sole title to the residential real property by virtue of a transfer from the decedent-mortgagor's estate or by virtue of the death of the decedent-mortgagor where title was held as joint tenants or tenants in the entirety, or (B) the spouse or former spouse of a mortgagor or former mortgagor who (i) acquired title to the residential real property by virtue of a transfer from such mortgagor or former mortgagor where such transfer resulted from a court decree dissolving the marriage, a legal separation agreement or a property settlement agreement incidental to such a decree or separation agreement, and (ii) ensures that all necessary consents to the disclosure of nonpublic personal financial information have been provided to the mortgagee in accordance with subsection (c) of section 49-31l." Sec. 49-31k**
- Program Description – "The Chief Court Administrator shall establish . . . a foreclosure mediation program in actions to foreclose mortgages on residential real property . . . [S]uch program shall be known as the 'Ezequiel Santiago Foreclosure Mediation Program'. Such foreclosure mediation shall (1) address all issues of foreclosure, including, but not limited to, reinstatement of the mortgage, disposition of the property through means other than the foreclosure process, including short sales and deeds in lieu of foreclosure, assignment of law days, assignment of sale date, restructuring of the mortgage debt and foreclosure by decree of sale, and (2) be conducted by foreclosure mediators who (A) have a duty to be unbiased and are employed by the Judicial Branch, (B) are trained in mediation and all relevant aspects of the law as determined by the Chief Court Administrator, (C) have knowledge of the community-based resources that are available in the judicial district in which they serve, and (D) have knowledge of the mortgage assistance programs. Such mediators may refer mortgagors who participate in the Ezequiel Santiago Foreclosure Mediation Program to community-based resources when appropriate and to the mortgage assistance programs. Such mediators shall not give legal advice to any party in mediation." **Conn. Gen. Stat. § 49-31m** (2023).
- Stay of Litigation - ". . . no judgment of strict foreclosure nor any judgment ordering a foreclosure sale shall be entered in any action subject to the provisions of this subsection and instituted by the mortgagee to foreclose a mortgage on residential real property . . . unless: (A) The mediation period

set forth in subsection (a) of section 49-31n has expired or has otherwise terminated, whichever is earlier, and, if fewer than eight months has elapsed from the return date at the time of termination, fifteen days have elapsed since such termination and any pending motion or request to extend the mediation period has been heard and denied by the court, or (B) the **mediation program is not otherwise required or available.**" Conn. Gen. Stat. § [49-31l](#) (f)(2)(2023).

- Appeals - **"In no event shall** any determination issued by a mediator under this program form the basis of an appeal of any foreclosure judgment." Conn. Gen. Stat. § [49-31n](#)(f) (2023).
- **"Consent of mortgagee required for changes. Sending of mortgage modification to mortgagor. Disclosure of information submitted to mediator. (a) Nothing in sections 49-31k to 49-31n, inclusive, shall require a mortgagee to modify a mortgage or change the terms of payment of a mortgage without its consent.**

(b) (1) A mortgagee that agrees to modify a mortgage pursuant to the Ezequiel Santiago Foreclosure Mediation Program, established pursuant to section 49-31m, shall send such modification to the mortgagor for execution at least fifteen business days prior to the first modified payment due date under such modification. The mortgagee or the mortgagee's attorney may satisfy the requirements of this subdivision by sending the modification to (A) the mortgagor, or (B) if the mortgagor is represented by an attorney, the mortgagor and the mortgagor's attorney.

(2) Any failure by a mortgagee to timely send a modification pursuant to subdivision (1) of this subsection shall constitute grounds for a court to, in a pending foreclosure action, after notice and a hearing, issue an order requiring the mortgagee to send such modification in accordance with the requirements of subdivision (1) of this subsection.

(3) Any failure by a mortgagee to send a modification in accordance with the requirements of subdivision (2) of this subsection shall constitute conduct contrary to the objectives of the mediation program for the purpose of imposing sanctions under subsection (b) of section 49-31n.

(c) Information submitted by the mortgagor to a mediator, either orally or in writing, including financial documents, shall **not be subject to disclosure by the Judicial Branch.**" Conn. Gen. Stat. § [49-31o](#) (2023). (As amended by 2024 Supplement)

STATUTES:

- Conn. Gen. Stat. (2023)
[Title 49](#). Mortgages and Liens
[Chapter 846](#). Mortgages
[§ 49-31k](#). Definitions.

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.

- § [49-31j](#). Foreclosure Mediation: Notice of foreclosure mediation program. Forms. Procedure. Stay of litigation.
- § [49-31m](#). Ezequiel Santiago Foreclosure Mediation Program.
- § [49-31n](#). Mediation period. Information required. Termination of program.
- § [49-31o](#). Consent of mortgagee required for changes. Sending of mortgage modification to mortgagor. Disclosure of information submitted to mediator. ([2024 Supplement](#))
- § [49-31r](#). Foreclosure mediation: Notice of community-based resources.
- § [49-31v](#). Foreclosure mediation program: Funding.

OLR RESEARCH REPORTS:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

- *Legislative Changes to the Foreclosure Mediation Program*, George Miles, Connecticut General Assembly, Office of Legislative Research Report, [2022-R-0262](#) (December 9, 2022)
- *Issue Brief: Foreclosure Mediation Program*, George Miles, Connecticut General Assembly, Office of Legislative Research Report, [2022-R-0263](#) (December 9, 2022)
- *Foreclosure Mediation Program*, James Orlando, Connecticut General Assembly, Office of Legislative Research Report, [2011-R-0331](#) (October 20, 2011)

COURT RULES:

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

- CT Practice Book (2024 ed.)
 - § [10-12](#). Service of the Pleading and Other Papers; Responsibility of Counsel or Self-Represented Party; Documents and Persons to Be Served
 - § [17-20\(b\)](#). Motion for Default and Nonsuit for Failure to Appear

STANDING ORDERS:

- [Uniform Foreclosure Mediation Standing Orders](#)

FORMS:

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

- [Foreclosure Mediation, Notice to Homeowner or Religious Organization \(For cases with a Return Date of 10/1/2011 or later\), JD-CV-127](#) (rev. 07/15)
- [Foreclosure Mediation Certificate, JD-CV-108](#) (rev. 07/15)
- [Foreclosure Mediation Notice to Homeowner, JD-CV-94](#) (rev. 05/21)
- [Foreclosure Mediation – Objection, JD-CV-95](#) (rev. 05/21)
- [Foreclosure Mediation – Motion For Permission To Request Mediation Later Than 15 Days After Return Date Or To Change Mediation Period, JD-CV-96](#) (rev. 2/24)

- [Foreclosure Mediation Notice of Community-Based Resources, JD-CV-126](#) (rev. 10/19)
- [Foreclosure Mediation – Supplemental Information by Party, JD-CV-133](#) (rev. 9/19)
- [Mediation Information Form \(For cases with a Return Date of 10/1/13 or later\), JD-CV-135](#) (rev. 9/19)
- [Foreclosure Mediation – Petition For Reinclusion, JD-CV-136](#) (rev. 8/13)

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.

- For summaries of recent CT Supreme and Appellate Court foreclosure cases, see the foreclosure section of our Newslog at: <http://jud.ct.gov/LawLib/LawLibNews/Default.aspx?CatID=14>
- [Connecticut Housing Finance Authority v. McCarthy et al.](#), 204 Conn. App. 330, 253 A.3d 494 (2021). “In her petition for reinclusion in the foreclosure mediation program, the defendant argued that the parties would benefit from the assistance of the mediator in determining the proper reinstatement figure due to ‘the [p]laintiff’s recent major adjustment to the reinstatement and representations that prior reinstatements included amounts that would be credited back once paid’ On April 5, 2019, the plaintiff filed an objection directed to both the defendant’s motion to open the judgment and the petition for reinclusion in the foreclosure mediation program. In its objection, the plaintiff noted the defendant’s multiple attempts to open the judgment and either vacate the judgment or extend the law day. The plaintiff contended that the defendant’s participation in the mediation program during the prior years was unproductive and fruitless. The plaintiff argued further that the request for mediation was simply an attempt to delay the proceedings in the case. The plaintiff also contended that the issues raised in the defendant’s motion to open the judgment were moot, as the issues previously had been addressed and ruled on by the court when it rendered judgment on August 21, 2017, and made a finding as to the amount of the debt owed by the defendant.” (p. 338)

“The defendant’s second claim on appeal is that the trial court abused its discretion in denying her petition for reinclusion in the foreclosure mediation program. The defendant contends that the parties were likely to benefit from mediation because the only impediment to reinstatement was an agreement on the reinstatement amount. In addition, the defendant argues that there was a substantial change in circumstances because she obtained the funds to reinstate after the previous **mediation.**” (p. 344)

“In the present case, the record shows that the defendant was given two opportunities to participate in the foreclosure mediation program and that those opportunities failed to yield a

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fruitful result. Furthermore, the plaintiff made it clear to the court in its opposition to the petition for reinclusion that it would not engage in any further discussions regarding the amount due from the defendant to reinstate the mortgage because that amount had been determined finally by the court when it rendered judgment on August 21, 2017. Thus, we conclude, on the basis of our review of the record, that the trial court acted well within its discretion in denying the petition for reinclusion on the ground that the defendant had not shown that the parties were likely to **benefit from mediation.**" (pp. 345-346)

- [Christiana Trust, A Division of Wilmington Savings Fund Society, FSB, Trustee v. Walter J. Lewis, Jr., et al.](#), 184 Conn. App. 659, 195 A.3d 1176 (2018). "The substitute plaintiff further argues that the fact that the defendant signed a foreclosure mediation certificate in which he represented that his primary residence was subject to the mortgage [. . .] supports the court's determination that the defendant implicitly recognized that the mortgage was valid. We agree with the **defendant.**" (p. 666)

"[W]e conclude that the court improperly considered the defendant's participation in the foreclosure mediation program as admissible evidence relating to the issue of the validity of the mortgage. General Statutes § 49-311 (c) (8), which governs the foreclosure mediation program, makes clear that a party's participation in the foreclosure mediation program does not result in a waiver of any rights of the mortgagee or mortgagor. Specifically, that subdivision provides: 'None of the mortgagor's or mortgagee's rights in the foreclosure action shall be waived by participation in the foreclosure mediation program.' General Statutes § 49-311 (c) (8). Simply put, holding participation in the foreclosure mediation program against a mortgagor by restricting his or her ability to contest the validity of the mortgage would run afoul of the plain language of § 49-311 (c) (8) and would contravene the public policy of **promoting foreclosure mediation.**" (p. 668)

- [U.S. Bank, N.A., Trustee v. Anna Morawska et al.](#), 165 Conn. App. 421, 425-426, 139 A.3d 747 (2016). "The defendant first claims that the court should have held a hearing before deciding her petition for reinclusion in the foreclosure mediation program. The plaintiff replies that the only requirement for reinclusion in the mediation program under General Statutes § 49-311 is that the movant show good cause, and that the court properly determined that the defendant had not.

Section 49-311 (c)(5) provides in relevant part that 'the court may refer a foreclosure action brought by a mortgagee to the foreclosure mediation program at any time, for good cause shown When determining whether good cause exists, the court shall consider whether the parties are likely to benefit from mediation and, in the case of a referral after prior attempts at mediation have been terminated, whether there

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has been a material change in circumstances.’ Therefore, for a referral after prior attempts at mediation have been terminated, showing good cause requires showing both that the parties are likely to benefit from mediation and that a material change in circumstances has occurred. Section 49-311 does not contain a hearing requirement. In her request for reinclusion in the foreclosure mediation program, the only ground advanced by the defendant was that the plaintiff had contacted her to see if they could work out a modification of the mortgage. The court denied the petition; we conclude that it was well within its discretion to determine that the defendant had not shown good cause.”

- Nationstar Mortgage, LLC v. Marcio Demelo, Superior Court, Judicial District of Fairfield at Bridgeport, No. FBT-CV15-6050091-S (2016 WL 8468078) (December 22, 2016). **“Connecticut General Statutes § 49-311** requires notice of mediation rights, but limits the remedies for violation to temporary delay in the foreclosure proceeding to facilitate mediation; the statutory remedies do not preclude granting summary judgment on liability in the appropriate case after the **mediation period has expired.**”
- Workers Federal Credit Union v. Kim Fluery et al., Superior Court, Judicial District of Tolland at Rockville, No. TTD-CV13-6006983-S (June 23, 2015) (2015 WL 4496791). **“Finally,** to the extent that the defendants claim that the mediator's report constitutes some type of court order or direction in this case, the court is unpersuaded. The defendants produced no evidence, and the record does not reflect, that the court reviewed or approved the agreement of the parties or the [*sic*] that the mediator's report was entered as an order of the court in this case or intended to be an order of the court binding the plaintiff to a modification of the parties' February 29, 2012 Letter Agreement. Moreover, the statutes governing the foreclosure mediation program make clear that a mediator's report is not part of the court's judgment in a foreclosure case. Specifically, General Statutes § 49-311(c)(6) provides: ‘In no event shall any determination issued by a mediator under [the foreclosure mediation] program form the basis of an appeal of **any foreclosure judgment.**’ It would defy logic to interpret this statute to allow a mediator's report to form the basis of a trial court's judgment while thereafter prohibiting the parties to appeal that judgment on the basis of that same report. Accordingly, for this reason as well, the mediator's final report cannot supplant the agreement reached between the parties in the February 29, 2012 Letter Agreement or form the basis of a finding by this court that the defendants are entitled to judgment in this foreclosure action based on the plaintiff's purported breach of terms set forth in that report.”
- Citimortgage, Inc. v. Rey, 150 Conn. App. 595, 92 A.3d 278 (2014), cert denied 314 Conn. 905, 99 A.3d 635. **“This appeal** calls upon the court to decide whether, in a residential

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foreclosure action in which the parties have participated in court-sponsored forbearance mediation and in which a final forbearance agreement has been reported to the court, a defendant may counterclaim for damages allegedly caused by the plaintiff's subsequent pursuit of the foreclosure complaint in an alleged breach of the forbearance agreement. Because, in the particular factual and procedural circumstances of this case, we answer that question in the affirmative, we reverse the judgment of the trial court.” (p. 596)

“Finally, there are reasons well grounded in public policy and consistent with the equitable nature of foreclosure, to find that a mortgagee who enters into a forbearance agreement during foreclosure litigation with a qualified residential borrower should not be permitted to pursue the remedy of foreclosure when the borrower has fully complied with its terms. Accordingly, a lender who wrongfully pursues the remedy of foreclosure in violation of the terms of a foreclosure forbearance agreement it has negotiated in the midst of litigation may be liable for any harm it causes to a borrower for its failure to forbear as promised. If there is no potential for consequences to a lender who determines, unilaterally, to violate the terms of a forbearance agreement reached through the aegis of the court-mandated foreclosure forbearance mediation program, the program itself may sink into irrelevance and ultimate disuse. Surely the General Assembly did not envision such an outcome in the creation of the foreclosure forbearance mediation program.” (pp. 609-610)

- [Wells Fargo Bank Minnesota, N.A. v. Russo et al.](#), 148 Conn. App. 302, 307-308, 84 A.3d 1204 (2014). “The defendant . . . contends that the court improperly denied his December 5, 2012 request for referral to the foreclosure mediation program. We disagree. On July 18, 2011, the trial court ordered a foreclosure by sale of the property in question. The defendant's referral request was filed more than sixteen months after that outstanding judgment was rendered. As such, the court could not entertain that request unless it first granted the defendant's motion to open, which it did not. We therefore conclude that the court properly denied the defendant's referral request in the **present case.**”

PAMPHLETS:

- [Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners](#), 12th ed., Connecticut Fair Housing Center
Complaint/Summons and Foreclosure Mediation, p. 8
Court Proceedings and Mediation, p. 10
Judgment (or Successful Mediation), p. 13
Be Effective in Mediation, p. 19
If Mediation Does Not Resolve Your Case, p. 23

TEXTS &
TREATISES:

- *2 Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure*, 14th ed., by Denis R. Caron, Geoffrey K. Milne and Andrew P. Barsom, Connecticut Law Tribune, 2023.
Chapter 18: State and Federal Foreclosure Relief Programs

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- § 18-5 Foreclosure Mediation
 - § 18-5:1 General Statutes § 49-31k Definitions
 - § 18-5:2 General Statutes § 49-31l - Mediation Procedures
 - § 18-5:2.1 Notice Requirements
 - § 18-5:2.2 The Court Notice of Mediation
 - § 18-5:3 The Premediation Period and Requirements
 - § 18-5:4 Court Can Refer Parties to Mediation
 - § 18-5:5 Responsive Pleadings Explicitly Permitted/Stay of Litigation
 - § 18-5:6 Simultaneous Default and Motion for Judgment
 - § 18-5:7 Mediation Can Consider Short Sale and Deed-in-Lieu as Options
 - § 18-5:8 Scope of the Mediation Program
 - § 18-5:9 The Mediation Period
 - § 18-5:10 The Mediation Sessions
 - § 18-5:11 Good Cause Needed for Further Mediation
 - § 18-5:12 The Mediation Standing Orders
 - § 18-5:13 Additional Noteworthy Provisions
 - § 18-5:13.1 Unresolved Issues Regarding the Mediation Program

- *A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut*, 2d ed., by Christian R. Hoheb, Editor, Massachusetts Continuing Legal Education, Inc., 2021 (also available on Westlaw).
 - Chapter 9. Foreclosure Procedure from Complaint Through Sale
 - § 9.3 Mediation
 - § 9.3.1 The Foreclosure Mediation Program
 - § 9.3.2 Qualified Cases
 - § 9.3.3 Statutory Requirements
 - (a) Mortgagee
 - (b) Mortgagor
 - § 9.3.4 Duration of the Mediation Period
 - § 9.3.5 Issues to Be Addressed During Mediation
 - § 9.3.6 The Mediator's Report**
- *Home Foreclosures: Including Reverse Mortgages, Tax Liens, Condominium Liens, Land Installment Sales, and Seizure of Manufactured Homes*, 2nd ed., National Consumer Law Center, 2023
 - Chapter 5. Procedural and Equitable Defenses to Home Foreclosures
 - § 5.13. State and Local Mediation Programs
 - § 5.13.1. State and Local Responses to the 2007 Foreclosure Crisis
 - § 5.13.2. State Statutes Requiring Foreclosure Conferences or Mediation
 - § 5.13.2.1. Generally
 - § 5.13.2.2. State and Local Judicial Directives for Foreclosure Mediation
 - § 5.13.2.2.1. Introduction

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

§ 5.13.2.2.2. Foreclosure conference programs implemented by bankruptcy courts

§ 5.13.2.3. Judicial Enforcement of Conference and Mediation Requirements

§ 5.13.2.4. Finding an Obligation to Negotiate in Good Faith in the Absence of a Foreclosure Conference or Mediation Program

§ 5.13.2.4.1. Introduction

§ 5.13.2.4.2. The meaning of “good faith”

- *Mortgage Servicing and Loan Modifications*, 2nd ed., National Consumer Law Center, 2023.

Chapter 3. Servicing Requirements Under the Real Estate Settlement Procedures Act

§ 3.7. Early Intervention Requirements

§ 3.8. Loss Mitigation Procedures

STATISTICS:

Judicial Branch Statistics - Foreclosure Mediation Program (FMP) - <http://www.jud.ct.gov/statistics/fmp/>

Section 2: Connecticut's Emergency Mortgage Assistance Act

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AGENCY: [Connecticut Housing Finance Authority](#), 999 West Street, Rocky Hill, CT 06067-4005. 860-721-9501 or 1-844-CT1-HOME (toll free). Conn. Gen. Stat. § [8-244](#) (2023).

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

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

(3) "Mortgage" means a mortgage deed or other instrument which constitutes a first or second consensual lien, including a reverse mortgage or a home equity conversion mortgage, on residential real property;

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

(5) "Mortgagor" means a homeowner who is also the borrower under a mortgage encumbering such real property;

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

(7) "Financial hardship due to circumstances beyond the homeowner's control" means a significant reduction of aggregate family household income or increase in expenses which reasonably cannot be or could not have been alleviated by the liquidation of assets by the homeowner as determined by the Connecticut Housing Finance Authority, including, but not limited to, a reduction resulting from (A) (i) unemployment or underemployment of one or more of the homeowners; (ii) a loss, reduction or delay in receipt of such federal, state or municipal benefits as Social Security, supplemental security

income, public assistance and government pensions; (iii) a loss, reduction or delay in receipt of such private benefits as pension, disability, annuity or retirement benefits; (iv) divorce or a loss of support payments; or (v) disability, illness or death of a homeowner; or (B) (i) a significant increase in the dollar amount of the periodic payments required by the mortgage; (ii) an unanticipated rise in housing expenses; or (iii) expenses related to the disability, illness or death of a member of the homeowner's family, but does not include expenses related to the accumulation of credit or installment debt incurred for recreational or nonessential items prior to the occurrence of the alleged circumstances beyond the homeowner's control; [in an amount that would have caused the homeowner's total debt service to exceed sixty per cent of aggregate family income at that time;]

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

(9) "Foreclosure mediation program" means the Ezequiel Santiago Foreclosure Mediation Program established pursuant to section 49-31m;

(10) "Periodic payments" means principal, interest, taxes, insurance and, if applicable, condominium fees;

(11) "Lien" means debt secured by a lien on residential real property pursuant to section 7-239, 7-254, 7-258 or 47-258 or chapter 205;

(12) "Lienholder" means the original lienor of a lien, or its agents, successors or assigns;

(13) "Homeowner" means the owner-occupant of residential real property; and

(14) "Residential real property" means [a] one-to-four family owner-occupied residential real estate located in this state, including, but not limited to, a single-family unit in a common interest community. Conn. Gen. Stat. 8-265cc (As amended by [P.A. 24-66](#), sec. 1, effective October 1, 2024) Deletions in brackets; new material underscored

STATUTES:

- Conn. Gen. Stat. (2023) [Chapter 134](#). Connecticut Housing Finance Authority Act § [8-265cc](#). Definitions. (Amended by [P.A. 24-66](#), sec. 1)

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.

- § [8-265dd](#). Emergency mortgage assistance payment program. Emergency lien assistance payments. Foreclosure of eligible mortgage.
- § [8-265ee](#). Notice to mortgagee of foreclosure. Meeting or conference with mortgagee or consumer credit counseling agency.
- § [8-265ff](#). Eligibility for emergency mortgage or lien assistance payments. Application for loan. Disclosure of assets by homeowner. Determination of eligibility by the authority. (Amended by [P.A. 24-66](#), sec. 2)
- § [8-265gg](#). Monthly payments by authority and homeowner. Periodic review of financial circumstances. Modification to amount of payment. Emergency lien assistance payments by authority. Foreclosure of lien. (Amended by [P.A. 24-66](#), sec. 3)
- § [8-265hh](#). Repayment agreement. (Amended by [P.A. 24-66](#), sec. 4)
- § [8-265ij](#). Adoption of procedures. (Amended by [P.A. 24-66](#), sec. 5)
- § [8-265kk](#). Establishment of component program. Notification to participating homeowners of unavailability of funds. (Amended by [P.A. 24-66](#), sec. 6)

OLR RESEARCH REPORTS:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

FORMS:

- *Mortgage Modification Programs in Connecticut*, Michelle Kirby, Connecticut General Assembly, Office of Legislative Research Report, [2013-R-0075](#) (February 5, 2013).
- *2 Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure*, 14th ed., by Denis R. Caron, Geoffrey K. Milne and Andrew P. Barsom, Connecticut Law Tribune, 2023
 - Chapter 18: State and Federal Foreclosure Relief Programs
 - § 18-3:2 The Notice Requirement
 - **Mortgagee's Emergency Mortgage Assistance Notice to Mortgagor**, pp. 261-262
 - § 18-3:3 The Affidavit Requirement
 - **Mortgagee's Affidavit of Compliance with the Emergency Mortgage Assistance Program**, pp. 263-265
 - Affidavit of Non-Applicability of the Emergency Mortgage Assistance Act, pp. 266
 - § 18-3:6 **Consequences of Borrower's Default**

- o **Affidavit of Mortgagor’s Default under the** Emergency Mortgage Assistance Program, pp. 271-272

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.

- For summaries of recent CT Supreme and Appellate Court foreclosure cases, see the foreclosure section of our Newslog at: <http://jud.ct.gov/LawLib/LawLibNews/Default.aspx?CatID=14>
- [Keybank, N.A. v. Yazar](#), 347 Conn. 381, 297 A.3d 968 (2023). “[W]e conclude that the EMAP notice provision in § 8-265ee is a mandatory requirement. We also conclude that the EMAP notice is a condition precedent to the filing of a foreclosure action. To have a cause of action on which relief can be granted, the notice requirement must be fulfilled. The legislature has made it clear that the burden rests with the mortgagee to demonstrate compliance with the EMAP notice requirement. Specifically, subsection (b) of § 8-265ee requires the mortgagee to file an affidavit with the court stating that the notice provisions of subsection (a) have been complied with and that the relevant time period has expired. Only after the mortgagee files such an affidavit may the foreclosure suit continue. See General Statutes § 8-265ee (b). If a mortgagee fails to comply with § 8-265ee (a), it has failed to satisfy a mandatory condition precedent and, therefore, has failed to allege a claim on which relief **can be granted.**” (pp. 393-394)

“[B]ecause a mortgage foreclosure is a common-law process, the EMAP notice requirement in § 8-265ee is not jurisdictional unless the legislature clearly evidenced an intent to abrogate this common-law process.” (p. 395)

“We see no such clear and plain expression of an intent to change the jurisdiction of the courts in § 8-265ee. . . . Therefore, we conclude that the EMAP notice requirement is not jurisdictional. Rather, it is a mandatory condition **precedent to the commencement of a foreclosure action.**” (pp. 395-396)

“**We agree with the amicus that our state foreclosure system is a combination of both statutory laws and common law; however, we disagree that the legislature has abrogated the common law or that the common-law process is now dominated by statute. The statutes enacted in this area merely supplement the common law and add requirements to carry out important public policies of the state as they relate to foreclosure; the statutes do not supplant the common-law cause of action itself. Mortgage foreclosure, especially, is a category of foreclosure actions that originated in and has remained a creature of the common law.**” (p. 397)

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.

“[C]ompliance with the requirement must be affirmatively pleaded by the plaintiff. See General Statutes § 8-265ee (b).” (p. 398)

“The legislative history surrounding the enactment of EMAP in this state makes clear that protections for homeowners was the impetus behind providing more stringent requirements on lenders under EMAP. The program provides assistance to eligible homeowners in bringing their mortgages current and retaining rights to their homes and properties. The EMAP notice is a crucial step in this process and serves to inform homeowners of the resources available to them to assist in avoiding foreclosure and what rights they have in accessing those resources. After all, if a homeowner does not know of the existence of EMAP, then the important protections afforded to homeowners through the program would be rendered meaningless. A

homeowner’s right to access EMAP does not end after a first action is dismissed or withdrawn. Furthermore, the homeowners protected by EMAP are not necessarily individuals with particularized legal knowledge as to the mechanics of foreclosures, and the dismissal of a foreclosure action does not foretell that another action will always be filed in its place. The ability to access EMAP continues, and, therefore, a defendant homeowner must receive notice that the resources are still available in subsequent actions because it would be unreasonable to expect lay homeowners to know that they continue to have access to this specialized program, especially after they already had participated to some extent in EMAP during the pendency of the first foreclosure. Without a new notice being sent prior to the commencement of a subsequent foreclosure, it would be just as reasonable for homeowners to think that their prior participation in EMAP was their only opportunity to benefit from its objectives. Accordingly, we conclude that § 8-265ee requires mortgagees to provide a new EMAP notice upon initiation of any foreclosure action, including a successive foreclosure action predicated on the same default. This requirement is likely to have a remedial benefit for homeowners and their awareness of EMAP, while imparting a **very minimal, if any, burden on mortgagees.**” (pp. 401-402)

“[T]he sending of the EMAP notice prompts the beginning of a timeline for receiving EMAP aid. . . . Once the notice is sent, the statute provides requisite deadlines for applying for assistance, meeting with the mortgagee, and ultimately proceeding with the foreclosure, each of which is based on a specified length of time from sending the notice. . . . If a new notice is not required, and therefore a new timeline is **not set, the remedies would appear to be ‘expired’ based on** the notice of a previously withdrawn or dismissed case, which is not how EMAP functions. The remedies remain available under each foreclosure; as such, the notice and

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accompanying timeline are reset at the initiation of each **new foreclosure.**" (pp. 402-403)

- M&T Bank v. Wolterstorff, et. al., Superior Court, Judicial District of Stamford, No. FST-CV-16-6029152-S (September 10, 2018) (2018 WL 4655926) (67 Conn. L. Rptr. 45). "An incorrect street address does raise in the court's mind legitimate and serious questions as to whether the letter providing the required substantive notices of programs that might assist the defendants was in fact delivered. While our courts have long recognized the presumption that a letter properly addressed and mailed was received by the addressee, DiSimone v. Vitello, Conn. App. 390, 393 (1986), that presumption only attaches when the letter is properly **addressed.**" (p. 4)
- Washington Mutual Bank v. Coughlin, 168 Conn. App. 278, 287, 145 A. 3d 408 (2016), cert. denied 323 Conn. 939, 151 A.3d 387. "According to the plaintiff, because its predecessor sought to foreclose a mortgage that did not **encumber property that was the defendants' 'principal residence' at the time the action was commenced, § 8-265ee** is inapplicable and we should affirm the court's denial of the motion to dismiss on that basis. We agree with the **plaintiff.**"
- Thomaston Savings Bank v. Hardisty, Superior Court, Judicial District of Litchfield at Litchfield, No. CV-09-5006672S (Sep. 13, 2010) (2010 WL 4072018). "**Specifically, the defendants argue in their third special defense** that the plaintiff, by failing to comply with § 8-265ee, has not satisfied a necessary condition precedent to bringing the foreclosure action. In the defendants' opposition to the present motion they argue that the action was commenced prior to the expiration of the sixty-day period required by the statute. Further, they argue that disclosure was inadequate, as it failed to notify the defendants of their right to a face-to-face conference and only stated the defendants had thirty days to respond to the notice. . . . The defendants' third special defense is not sufficient to defeat the plaintiff's motion for summary **judgment.**" (p. 4)
- **2 Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure**, 14th ed., by Denis R. Caron, Geoffrey K. Milne and Andrew P. Barsom, Connecticut Law Tribune, 2023
 - Chapter 18: State and Federal Foreclosure Relief Programs
 - § 18-3 The Emergency Mortgage Assistance Program ("EMAP")
 - § 18-3:1 Which Mortgages Fall Within the Scope of EMAP?

TEXTS & TREATISES:

You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the treatises cited.

References to online databases refer to in-library use of these databases.

§ 18-3:2 The Notice Requirement
§ 18-3:3 The Affidavit Requirement
§ 18-3:4 What Happens if the Homeowner Applies for Assistance?
§ 18-3:5 Implementing EMAP
§ 18-3:6 Consequences of Borrower's Default
§ 18-3:7 Coordination With Other Aspects of the Act

- *A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut*, 2d ed., by Christian R. Hoheb, Editor, Massachusetts Continuing Legal Education, Inc., 2021 (also available on Westlaw).
Chapter 8. Preforeclosure Issues
§ 8.2.3. The Emergency Mortgage Assistance Program

Table 1: Reinstatement

Reinstatement
<ul style="list-style-type: none">• Conn. Gen. Stat. § 49-10a (2023). "Request for payoff statement or reinstatement payment statement. (a) A mortgagee shall, upon written request of the mortgagor or the mortgagor's attorney or other authorized agent provide a payoff statement or reinstatement payment statement in writing to the person requesting the payoff statement or reinstatement payment statement on or before the date specified in such request, provided such request date is at least seven business days after the date of receipt of the written request. If the request is made in connection with a default, the mortgagor's attorney may make such written request directly to the mortgagee, provided such written request contains a representation that the person requesting the payoff statement or reinstatement payment statement is the mortgagor's attorney and that the mortgagor has authorized the request. <p>(b) If the mortgagee fails to provide the payoff statement or reinstatement payment statement on or before such request date, the mortgagee shall not be entitled to the payment of any interest on the mortgage loan which is secured by such mortgage which accrues after the expiration of such request date. If the mortgagee provides the payoff statement or reinstatement payment statement to the person requesting such statement after the expiration of such request date, interest on the mortgage loan which accrues after the receipt of the payoff statement or the reinstatement payment statement by the person who has requested it shall again be payable. The burden of proof shall be on the mortgagor with respect to the receipt by the mortgagee of the mortgagor's request for a payoff statement or a reinstatement payment statement of the mortgage loan, and thereafter shall be on the mortgagee with respect to the receipt of the payoff statement or reinstatement payment statement by the mortgagor or the mortgagor's attorney or other authorized agent.</p> <p>(c) The mortgagee shall not impose any fee or charge for the first payoff statement or reinstatement payment statement requested within a calendar year, unless the mortgagor or the mortgagor's attorney or other authorized agent requests expedited delivery of such statement, agrees to pay a fee for such expedited delivery and the statement is provided by the agreed upon date.</p> <p>(d) For the purposes of this section, 'reinstatement payment statement' means a statement setting forth the total sum owed by a mortgagor to a mortgagee, which, if paid, will cause the loan to be reinstated, provided any other contractual conditions for reinstatement are satisfied.</p> <p>(e) Nothing in this section shall create an obligation on the part of the mortgagee to provide a reinstatement payment statement if a right to cure the payment default and reinstate the mortgage loan does not exist under the mortgage loan documents or at law."</p>
<p>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.</p>

Texts, Treatises & Encyclopedias

- **1 Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure**, 14th ed., by Denis R. Caron, Geoffrey K. Milne & Andrew P. Barsom, Connecticut Law Tribune, 2023.
 - Chapter 1. Preliminary Considerations
 - § 1.6 Reinstatement
 - § 1-6:1 Reinstatement Letters Not a Basis for a Defense to Foreclosure
- **Connecticut Lawyers' Deskbook: A Reference Manual**, 3d ed., LawFirst Publishing, 2008.
 - Chapter 17. Real Property Foreclosure In Connecticut Reinstatement, pp. 408-411
- 55 *Am Jur 2d* Mortgages, Thomson West, 2020 (Also available on Westlaw).
 - E. Reinstatement of Mortgage; Vacating Discharge or Release
 - § 389. Constraints upon reinstatement
 - § 390. Proceeding to set aside discharge of mortgage
 - § 391. Applicable rules of equity; remedies available
 - § 392. Persons subject to action
 - § 393. Laches and limitations
 - § 394. Adequate grounds, generally; Discharge without authority
 - § 395. Mistake of fact or law
 - § 396. Inadvertent, accidental, or unintentional release
 - § 397. Ignorance of intervening rights
 - § 398. Fraud

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

Table 2: Deed in Lieu of Foreclosure: Texts & Treatises

Deed in Lieu of Foreclosure	
<u>SEE ALSO:</u>	<ul style="list-style-type: none"> • Foreclosure of Mortgages in Connecticut section 4: Judgment of Loss Mitigation
<u>TREATISES:</u>	<ul style="list-style-type: none"> • <i>Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure</i>, 14th ed., by Denis R. Caron, Geoffrey K. Milne & Andrew P. Barsom, Connecticut Law Tribune, 2023 <ul style="list-style-type: none"> Volume 1 <ul style="list-style-type: none"> Chapter 8: Foreclosure by Market Sale and Judgment of Loss Mitigation <ul style="list-style-type: none"> § 8-5 Types of Relief Afforded <ul style="list-style-type: none"> § 8-5:2 Deed in Lieu of Foreclosure § 8-5:4 General Statutes § 49-30t–Modifications and Deeds in Lieu Volume 2 <ul style="list-style-type: none"> Chapter 18: State and Federal Foreclosure Relief Programs <ul style="list-style-type: none"> § 18-5.7 Mediation Can Consider Short Sale and Deed-in-Lieu as Options § 18-6:2 Conveyance Tax Exemption for Deed in Lieu of Foreclosure Chapter 34: Deeds in Lieu of Foreclosure: Lender Concerns and Title Issues <ul style="list-style-type: none"> § 34-1 Introduction § 34-2 Lenders' Concerns <ul style="list-style-type: none"> § 34-2:1 Consideration § 34-2:2 Effect of Unaccepted Tender of Deed § 34-2:3 "Clogging" the Equity of Redemption § 34-2:4 Merger of Title § 34-2.5 Deed Absolute § 34-2:6 Bankruptcy <ul style="list-style-type: none"> § 34-2:6.1 Preference § 34-2:6.2 Fraudulent Transfers § 34-2:7 Effect of the Uniform Fraudulent Transfer Act § 34-2.8 Conveyance Tax <ul style="list-style-type: none"> § 34-2:8.1 Exemption for Principal Residence § 34-2:8.2 Calculating the Tax on Non-Exempt Deeds in Lieu of Foreclosure § 34-3 Title Issues <ul style="list-style-type: none"> § 34-3:1 Lender Title Issues <ul style="list-style-type: none"> § 34-3:1.1 Consideration § 34-3:1.2 "Clogging" § 34-3:1.3 Merger § 34-3:1.4 Deed Absolute § 34-3:2 Insuring Good-Faith Purchasers <ul style="list-style-type: none"> § 34-3:2.1 Common Law Issues § 34-3:2.2 Bankruptcy Issues § 34-4 Conclusion
<p>Each of our law libraries own the Connecticut treatises cited. You can contact us or visit our catalog to determine which of our law libraries own the other treatises cited or to search for more treatises.</p> <p>References to online databases refer to in-library use of these databases. Remote access is not available.</p>	
	<ul style="list-style-type: none"> • <i>A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut</i>, 2d ed., by Christian R. Hoheb,

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

Editor, Massachusetts Continuing Legal Education, Inc., 2021 (also available on Westlaw).

Chapter 10. Title Issues in Foreclosure Practice
§ 10.9. Deeds in Lieu of Foreclosure

- *Connecticut Standards of Title*, Connecticut Bar Association, 1999, rev. to November 11, 2013 (2014 supplement).
Chapter XVIII. Release of Mortgages, Assignment of Rents, Lis Pendens and Financing Statements
Standard 18.1. Effect of Deed In Lieu of Foreclosure from Mortgagee to Mortgagee – The Doctrine of Merger
- *4 Powell on Real Property*, by Michael Allan Wolf, Matthew Bender, 1989, with 2024 supplement (Also available on Lexis).
Chapter 37. Mortgages and Mortgage Foreclosures
§ 37.44. Deed in Lieu of Foreclosure
 - [1]—Introduction
 - [2]—Factors Considered in Determining Whether an Absolute Conveyance is to be a Mortgage
 - [3]—Effect of a Decree that an Absolute Conveyance is a Mortgage
 - [4]—Possible Disadvantages of a Deed in Lieu of Foreclosure
 - [5]—Procedures§ 37.45. Foreclosure—Deed in lieu of Foreclosure—Federal Income Tax Effects
 - [1]—In general
 - [2]—The Mortgagee Creditor
 - [a] Foreclosure and Purchase by Independent Third Party
 - [b] Foreclosure and Purchase by Mortgagee-Creditor
 - [c] Deed in Lieu of Foreclosure
 - [3]—The Mortgagor Debtor
 - [a] Foreclosure and Purchase by Creditor or Independent Third Party
 - [b] Deed in Lieu of Foreclosure
- *The Foreclosure Survival Guide*, 9th ed., Amy Loftsgordon and Cara O’Neill, Nolo, 2023.
Chapter 8. If You Decide to Leave Your House
Offer the Lender a Deed in Lieu of Foreclosure...p. 192
Will the Lender Accept a Deed in Lieu?...p. 192
Fannie Mae and Freddie Mac Deeds in Lieu of Foreclosure...p. 194

LAW
REVIEWS:

- Dennis R. Caron, *Connecticut Deeds in Lieu of Foreclosure: Lender Concerns and Title Issues*, 64 Connecticut Bar Journal 433 (1990)

Public access to law review databases is available on-site at each of our [law libraries](#).

Table 3: Short Sales - Texts & Treatises

Short Sales	
<u>SEE ALSO:</u>	Foreclosure of Mortgages in Connecticut section 4: Judgment of Loss Mitigation
<ul style="list-style-type: none"> • “In a short sale, the borrower sells the home to a third party for an amount that falls short of the outstanding loan balance; the lender agrees to release its lien on the property to facilitate the sale; and the borrower agrees to give all the proceeds to the lender.” Coker v. JPMorgan Chase Bank, N.A., 364 P.3d 176, 177, 62 Cal. 4th 667, 197 Cal. Rptr. 3d 131, (2016 Cal. LEXIS 42) (2016). 	
<ul style="list-style-type: none"> • <i>Short Sales</i>, Michelle Kirby, Connecticut General Assembly, Office of Legislative Research, 2013-R-0400 (November 25, 2013). • <i>State Requirements For Debt Negotiators in Short Sale Negotiations</i>, Michelle Kirby, Connecticut General Assembly, Office of Legislative Research, 2013-R-0083 (February 5, 2013). • <i>Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure</i>, 14th ed., Denis R. Caron, Geoffrey K. Milne & Andrew P. Barsom, Connecticut Law Tribune, 2023. <ul style="list-style-type: none"> Volume 1 <ul style="list-style-type: none"> Chapter 8. Foreclosure by Market Sale and Judgment of Loss Mitigation <ul style="list-style-type: none"> § 8-5. Types of Relief Afforded <ul style="list-style-type: none"> § 8-5: 3 Short Sale § 8-5: 5 General Statutes § 49-30u–Short Sales Volume 2 <ul style="list-style-type: none"> Chapter 18: State and Federal Foreclosure Relief Programs <ul style="list-style-type: none"> § 18-5: 7 Mediation Can Consider Short Sale and Deed-in-Lieu as Options § 18-6: 1 Conveyance Tax Exemption for Short Sale • Short Sales: Frequently Asked Questions, Connecticut Fair Housing Center • Las Ventas Cortas: Preguntas Comunes, (Short Sales: Frequently Asked Questions in Spanish), Connecticut Fair Housing Center • Foreclosure/Short-Sale Contacts for Connecticut Consumers, Connecticut Department of Consumer Protection (accessed 8/15/2024) • <i>The Foreclosure Survival Guide</i>, 9th ed., Amy Loftsgordon and Cara O’Neill, Nolo, 2023. <ul style="list-style-type: none"> Chapter 8. If You Decide to Leave Your House <ul style="list-style-type: none"> Sell the House in a Short Sale...p. 184 Advantages of a Short Sale...p. 184 Disadvantages of a Short Sale...p. 185 Will You Be Able to Work Out a Short Sale?...p.187 	

Section 3: Application for Protection from Foreclosure

A Guide to Resources in the Law Library

SCOPE:

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

DEFINITIONS:

- Conn. Gen. Stat. (2023)
§ [49-31d](#). Definitions. For the purposes of sections 49-31d to 49-31i, inclusive:
 - (1) **“Unemployed person” means a person who is unemployed for purposes of chapter 567.**
 - (2) **“Homeowner” means a person who has an ownership interest in residential real property secured by a mortgage which is the subject of a foreclosure action, and who has owned and occupied such property as his principal residence for a continuous period of not less than two years immediately preceding the commencement of such foreclosure action.**
 - (3) **“Restructured mortgage debt” means the adjustment by a court of a mortgage debt to give protection from a foreclosure action.**
 - (4) **“Protection from foreclosure” means a court-ordered restructuring of a mortgage debt designed to eliminate an arrearage in payments on such debt and to provide a period not to exceed six months during which foreclosure is stayed.**
 - (5) **“Lender” means any person who makes or holds mortgage loans in the ordinary course of business and who is the holder of any first mortgage on residential real estate which is the subject of a foreclosure action.**
 - (6) **“Underemployed person” means a person whose earned income during the twelve-month period immediately preceding the commencement of the foreclosure action is (A) less than fifty thousand dollars and (B) less than seventy-five per cent of his average annual earned income during the two years immediately preceding such twelve-month period.**
- Regulations of Connecticut State Agencies (2024)
§ [49-31j-1](#). Definitions
As used in sections 49-31j-1 to 49-31j-5, inclusive, of the Regulations of Connecticut State Agencies:
 - (1) **“Additional principal” means the sum added to the existing principal balance by the court pursuant to**

subsection (a) of section 49-31i of the Connecticut General Statutes;

(2) "Existing principal balance" means the principal balance of the mortgage debt due the lender as of the entry date of the court ordered restructuring of the mortgage debt;

(3) "Homeowner" means "homeowner" as defined in section 49-31d of the Connecticut General Statutes;

(4) "Lender" means "lender" as defined in section 49-31d of the Connecticut General Statutes;

(5) "Original mortgage interest rate" means the interest rate set forth in the mortgage note. If the mortgage note provides for a different rate of interest after default or after judgment, those provisions shall not apply;

(6) "Prevailing interest rate" means the most recent "National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders" made available by the Federal Housing Finance Board not less than fifteen nor more than forty-five days prior to the entry of the court ordered restructuring of the mortgage debt;

(7) "Person who is underemployed" means an "underemployed person" as defined in section 49-31d of the Connecticut General Statutes;

(8) "Person who is unemployed" means an "unemployed person" as defined in section 49-31d of the Connecticut General Statutes; and

(9) "Protection from foreclosure" means "protection from foreclosure" as defined in section 49-31d of the Connecticut General Statutes.

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. (2023)
 - [Title 49](#). Mortgages and Liens
 - § [49-31d](#). Definitions.
 - § [49-31e](#). Application for protection from foreclosure.
 - § [49-31f](#). Application for protection from foreclosure action. Qualifications. Court determination of eligibility. Stay of foreclosure action.
 - § [49-31g](#). Restructuring of mortgage debt by court.
 - § [49-31h](#). Partial payment by homeowner mandated by court as condition for granting restructuring order.
 - § [49-31i](#). Determination of restructured mortgage debt. Limitations on amount of mortgage debt following restructuring. Computation of new mortgage debt.

§ [49-31j](#). Regulations.

OLR RESEARCH REPORTS:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

REGULATIONS:

You can visit your local law library or browse the [Connecticut eRegulations System](#) on the Secretary of the State website to check if a regulation has been updated.

FORMS:

RECORDS & BRIEFS:

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.

- *Mortgage Foreclosure-Unemployed Homeowners*, George Coppolo, Connecticut General Assembly, Office of Legislative Research Report, [2002-R-0363](#) (March 22, 2002).
- *Foreclosure Notification Requirements Applicable to Connecticut Landlords*, Shaun McGann, Connecticut General Assembly, Office of Legislative Research Report, [2020-R-0219](#) (September 2, 2020)
- Regulations of Connecticut State Agencies §§ [49-31j-1 to 49-31j-9](#)
 - § 49-31j-1. Definitions
 - § 49-31j-2. Notice
 - §§ 49-31j-3 to 49-31j-4. Repealed, February 9, 2009
 - § 49-31j-5. Composite interest rate
 - §§ 49-31j-6 to 49-31j-9. Repealed, February 9, 2009
- *Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure*, 7th ed., by Denis R. Caron & Geoffrey K. Milne, Connecticut Law Tribune, 2017 (CD only)
 - Unofficial Forms
 - Form 6-028. Application for Protection from Foreclosure
- Connecticut Supreme Court Records and Briefs, May/June 1998. [Shawmut Mortgage Company v. Wheat](#), 245 Conn. 744, 717 A2d 664 (1998).
 - Application for protection from foreclosure, [Figure 1](#)
 - Objection to application for protection from foreclosure action, [Figure 2](#)
- For summaries of recent CT Supreme and Appellate Court foreclosure cases, see the foreclosure section of our Newslog at: <http://jud.ct.gov/LawLib/LawLibNews/Default.aspx?CatID=14>
- [Deutsche Bank National Trust Co. v. Angle](#), 284 Conn. 322, 323-324 & 327, 933 A.2d 1143, 1144 & 1146 (2007). "... the defendant claims that, in denying the application, the trial court improperly relied on § 49-31j-4 of the Regulations of Connecticut State Agencies because that section: (1) exceeds the statutory authority conferred on the banking commissioner under General Statutes (Rev. to 2005) § 49-31j; and (2) violates the separation of powers doctrine under the state constitution because it purports to limit the court's broad discretion over foreclosure proceedings." (pp. 323-324)

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.

“Because the trial court never provided any reason for its denial of the defendant’s application, the record is inadequate to review the claim. We therefore do not know whether the trial court denied the application because of the **regulation or for another reason, such as the defendant’s ineligibility for relief.** ‘Under these circumstances, the plaintiff should have filed a motion for articulation to **preserve an adequate record for review.**” (p. 327)

- [Savings Bank Life Ins. Co. v. Linthicum](#), 43 Conn. App. 467, 683 A.2d 737, 739 (1996). “**We agree with the plaintiff that the denial of an application for protection from foreclosure under General Statutes § 49-31f is not immediately appealable.**” (p. 468)

“**The purpose of an application for protection from foreclosure under § 49-31f is to grant the defendant an opportunity for the restructuring of the mortgage debt.** General Statutes § 49-31g. If the application is approved, the foreclosure action is stayed for the restructuring period, pursuant to **§ 49-31f (f).**” (p. 469)

- [Citicorp Mortgage, Inc. v. Conant](#), 54 Conn. App. 529, 534, 736 A.2d 928, 931 (1999), cert. denied 251 Conn. 909, 739 A.2d 264. “We agree, in this case, that the trial court did not abuse its discretion when it **denied the defendants’** application. Its findings that the defendants’ visions of their future earnings were speculative, that they had no equity in the mortgaged property, that their financial situation would make it unlikely that they would be able to make timely payments on the restructured mortgage and that the plaintiff would be prejudiced by a restructuring of the mortgage were based on the evidence before it. We conclude, therefore, that the trial court properly denied the defendants’ application for protection from foreclosure.”
- [Shawmut Mortgage Co. v. Wheat](#), 245 Conn. 744, 754-755, **717 A.2d 664, 670 (1998)**. “...we conclude that the defendant, as an individual who never previously has been **employed, is not an ‘unemployed person’ within the meaning of § 49-31d (1) and, therefore, may not qualify for protection from mortgage foreclosure under the mortgage act.**”

- See also [Table 4: Unreported Connecticut decisions](#)
- *2 Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure*, 14th ed., by Denis R. Caron, Geoffrey K. Milne & Andrew P. Barsom, Connecticut Law Tribune, 2023
 - Chapter 18: State and Federal Foreclosure Relief Programs
 - § 18-1 Protection From Foreclosure Act
 - § 18-1.1 Legislative History

TEXTS &
TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

§ 18-1:2 What Mortgages are Subject to the Act?
§ 18-1:3 Who Qualifies to Invoke Protection Under the Act?

§ 18-1:4 How is the Act's Protection Invoked?

§ 18-1:5 What Factors Does the Court Consider?

§ 18-1:6 When is the Debt Restructured?

§ 18-1:7 How is the Debt Restructured?

§ 18-1:7.1 The Role of Projected Interest

§ 18-1:7.2 The Role of Real Property Taxes

§ 18-1:7.3 The Role of Court Costs, Legal Fees and Other Sums

§ 18-1:8 What Takes Place During the Restructuring Period?

§ 18-1:9 How is Interest Handled?

§ 18-1:10 How is the Prevailing Rate Computed?

§ 18-1:11 Notice Requirement Eliminated

§ 18-1:12 Time Limitations for Invoking Protection

Figure 1: Application for Protection from Foreclosure

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

APPLICATION FOR PROTECTION FROM FORECLOSURE

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

a) that Mary C. Wheat is a homeowner as defined in section 49-31d, having owned and occupied the subject property as her principal residence for a continuous period of not less than two years immediately preceding the commencement of this action;

b) that the mortgage sought to be foreclosed is a first mortgage upon the subject property and the Plaintiff, holder of said mortgage, is a lender as defined in the act;

c) that neither Mary C. Wheat, nor Clayton E. Wheat, her husband who also signed the Note, have had a foreclosure action commenced against their in the past seven years; and

d) that both Mary C. Wheat, and Clayton E. wheat are unemployed/~~under employed~~ as defined in the act

ORAL ARG. REQ.

TESTIMONY REQ.

WHEREFORE, the applicant moves as follows:

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

THE DEFENDANT, Mary C. Wheat

By _____
Name
Address
Juris No.
Telephone No.

ORDER

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

GRANTED/DENIED

BY THE COURT,

Judge/Clerk

Certification

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

Commissioner of the Superior Court

Figure 2: Objection to Application for Protection from Foreclosure

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

OBJECTION TO APPLICATION FOR PROTECTION
FROM FORECLOSURE ACTION

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

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

ORAL ARGUMENT IS REQUESTED
TESTIMONY IS REQUIRED

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

PLAINTIFF

By

Name
Address
Phone number
Juris number
Its Attorneys

ORDER

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

SUSTAINED/OVERRULED.

BY THE COURT

Judge/Clerk

Table 4: Unreported Connecticut Cases - Application for Protection from Foreclosure

Unreported Connecticut Decisions Application for Protection from Foreclosure	
In general	<ul style="list-style-type: none"> • “The burden of showing eligibility for relief under the Act remains on the defendants, and the legislature has built into the Act eligibility standards to ensure that, if restructuring is allowed, the lender will ultimately receive the substantial equivalent of full payment under the existing note.” <u>Virtual Bank v. Cassidy</u>, Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. CV08-5007288S (Apr. 15, 2009) (47 Conn. L. Rptr. 560) (2009 WL 1312627). • “The court having reviewed the evidence and the statutory criteria found in General Statutes 49-31d through 49-31i finds the following: <ol style="list-style-type: none"> 1. The mortgage being foreclosed is a residential first mortgage which has been the principal residence of the defendants for more than two years. 2. The homeowners have not had a prior foreclosure action commenced against them in the past seven years. 3. The defendants have not received emergency mortgage assistance. 4. The court finds the defendants to be underemployed and/or unemployed persons as defined by the statutes. 5. The court finds the value of the property to be \$240,000.00. 6. The court finds the new principal balance as of June 1, 2004 to be \$172,287.07, which is computed by adding 28 days of per diem interest at a rate of \$45.43 per day which equals \$1,262.04, to the balance of \$171,028.03 provided by the plaintiff. The court finds the monthly payment at a variable interest rate of 11.95% for a period of 318 months to be \$1,779.31. The first payment is due on June 1, 2004 and each month thereafter in arrears. The defendants shall in addition continue to pay any escrows previously collected under the terms of the mortgage. 7. The court finds the debt to be less than 90% of the property's value. 8. All other conditions of the mortgage and promissory note, including any escrows, shall remain in effect. 9. The court finds the defendants have sufficient income to make the new payments. <p>The court notes there are subsequent encumbrancers whose debt exclusive of accrued interest is in excess of \$55,000.00. None of these encumbrancers have objected to this application</p>

	<p>and in the court's opinion would benefit from the reinstatement of this mortgage.</p> <p>The defendants' application for relief is granted, further action on this mortgage is stayed for six months in accordance with General Statute 49-31g, and the mortgage is ordered reinstated." <u>Long Beach Mortgage Company v. Belmonte</u>, Superior Court, Judicial District of Litchfield at Litchfield, No. CV 04-0092102 (May 4, 2004) (37 Conn. L. Rptr. 14) (2004 WL 1098812).</p>
Homeowner	<ul style="list-style-type: none"> • "Thus, the court concludes that the term 'homeowner,' as defined in § 49-31d(2), is limited to one who has legal title, and, as Neola Wood is the sole record owner of the property in this foreclosure action, James E. Wood, a mortgagor, does not have the requisite ownership interest to qualify as a homeowner under the foreclosure moratorium act." <u>Home Loan & Investment Bank v. Wood</u>, Superior Court, Judicial District of Fairfield at Bridgeport, No. CV 03-0399404 S (Jul. 8, 2003) (35 Conn. L. Rptr. 108) (2003 WL 21718382).
Untimely filing	<ul style="list-style-type: none"> • "In this action the return date was September 30, 2003. General Statute 49-31e(b) requires the homeowner to file for protection within 25 days of the return date which would have been October 26, 2003. The application here was not filed until February 20, 2004 long past the statutory period. Accordingly the court finds due to the untimely filing of the application for protection the Defendants' application is denied." <u>Country Wide Home Loans, Inc. v. Barth</u>, Superior Court, Judicial District of Litchfield at Litchfield, No. CV03-0091545 (Mar. 8, 2004) (2004 WL 574797). • "The statute at issue simply does not provide for any extensions of the time period stated therein, and as it is in derogation of the common law, such statutes are to be strictly construed. As another judge noted in denying a motion for extension of time to file such an application in a different foreclosure case, 'Statutory time period requirements set out in Connecticut General Statutes § 49-31e(b) [are] mandatory. When a statute creates a remedy which does not exist at common law, all the statutory requirements must be complied with for the statutory remedy to be granted.' <u>Wachovia Bank v. Braunstein</u>, No. 4003225 (J.D. at New London, Devine, J.), citing <u>Fleet Bank Association, As Assignee of FDJC, As Receiver of the Connecticut Bank and Trust Company, N.A. v. Shirley Holmes et al.</u>, No. CV-91-0399662S (J.D. at Hartford, Satter, J.) [5 Conn. L. Rptr. 532]." <u>Wells Fargo Bank, N.A., as Trustee v. John H. Harrington</u>, Superior Court, Judicial District of Fairfield at Bridgeport, No. CV 07-5010723 S (March 31, 2009) (47 Conn. L. Rptr. 473) (2009 WL 1140876).
Restructured debt	<ul style="list-style-type: none"> • "The court finds that the defendant is ineligible for protection from foreclosure under the provisions of Conn. Gen. Stat. §§ 49-31i(b). Under that statute, assuming the applicant is otherwise

	<p>eligible for the protection from foreclosure afforded by 49-31f, the court cannot grant the application if the amount of the restructured debt would be ninety per cent or less of the fair market value of the property. At present, through June 30, 2003, based on the unopposed submissions of the plaintiff, the debt stands at over \$87,000, and the fair market value of the property at 255 Oak Street, Waterbury, is \$80,000." <u>National City Mortgage Co. v. Minnis</u>, Superior Court, Judicial District of Waterbury at Waterbury, No. CV 03-0176969 (July 16, 2003) (2003 WL 21771764).</p> <ul style="list-style-type: none"> • "According to the applicant's own financial affidavit...the outstanding mortgage debt is \$262,799.98 and the fair market value of the premises is \$261,000, leaving the applicant with negative equity. Under § 49-31i(b), the amount of the debt at the end of the restructuring period, which cannot exceed six months by virtue of § 49-31g(b), must be less than ninety percent of the fair market value, viz. \$261,000. Ninety percent of \$261,000 equals \$234,900. Subtracting \$234,900 from the current mortgage debt of \$262,799.98 yields a difference of almost \$27,900. <p>This \$27,900 difference would have to be paid down within the maximum six-month restructuring period, i.e. at a rate of around \$4,650 per month in order to decrease the mortgage debt to ninety percent of the fair market value. Under § 49-31h, during the restructuring period the applicant's payments cannot exceed twenty-five percent of her net income which she estimated will be \$928.89 per <i>week</i>, leaving a maximum <i>monthly</i> payment of only around \$930 when \$4,650 is needed. Clearly, it is mathematically impossible for the applicant to satisfy all the necessary conditions attendant to the foreclosure protection statutory restructuring scheme. For these reasons, the application is denied." <u>Rockville Bank v. Messino</u>, Superior Court, Judicial District of Tolland at Rockville, No. TTD-CV-085002921-S (July 30, 2008) (2008 WL 3916041).</p>
Unemployed person	<ul style="list-style-type: none"> • "Likewise, the foreclosure moratorium act 'was designed as a temporary mortgage moratorium for unemployed <i>workers</i>; (emphasis in original; internal quotation marks omitted) <i>id.</i>, 752; and was intended 'only to help persons who are experiencing <i>temporary</i> economic difficulties.'" (Emphasis in original.) <i>Id.</i>, 753. In fact, 'the legislature had in mind only persons who are experiencing <i>temporary</i> employment-related losses or decreases in earned income as beneficiaries when it enacted the [foreclosure moratorium] act.'" (Emphasis added.) <i>Id.</i> <p>In the present case, according to the defendants...Wood 'has not worked in many years, is of an age where she can collect Social Security Benefits, and . . . is too ill currently to work . . .' (Defendants' Supplemental Memorandum, p. 4.) Like the plaintiff in <i>Shawmut Mortgage Co. v. Wheat supra</i>, 245 Conn. 753...Wood 'presently is not experiencing a temporary employment-related</p>

	<p>decrease in earned income,' and she does not qualify, therefore, as an 'unemployed person' within the meaning of the foreclosure moratorium act." <u>Home Loan & Investment Bank v. Wood</u>, Superior Court, Judicial District of Fairfield at Bridgeport, No. CV 03-0399404-S (Jul. 8, 2003) (35 Conn. L. Rptr. 108) (2003 WL 21718382).</p>
<p>Filing Defenses</p>	<ul style="list-style-type: none"> • "The plaintiff's first argument is that all of the defendant's special defenses should be stricken because the defendant has waived her right to file special defenses by filing an application for protection from foreclosure action pursuant to General Statutes §§ 49-31d et seq. In support of its argument, the defendant cites to General Statutes § 49-31f(g), which provides that '[n]o homeowner who files a defense to any action for foreclosure shall be eligible to make application for protection from such foreclosure pursuant to the provisions of this section.' <p>A literal reading of the language of General Statutes § 49-31f(g) demonstrates simply that a homeowner who files a special defense in a foreclosure action is prevented from <i>thereafter</i> filing an application for protection under the section. The plaintiff's argument, however, seeks to obtain a converse result. Thus, the plaintiff has taken the position that once an application is filed under that section, the homeowner may not subsequently file a special defense in a foreclosure action. This converse reading of the statute is incorrect. The filing of an application for protection under General Statutes §§ 49-31d et seq. does not vitiate a homeowner's right to file special defenses in a foreclosure action <i>after</i> an application for protection has been filed. See <u>BancBoston Mortgage Corp. v. McCormack</u>, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. 503184 (January 14, 1992) (Satter, S.T.R., 5 Conn. L. Rptr. 465, 8 CSCR 257) ... The defendant's first argument, therefore, is without merit." <u>Berkeley Fed. Bk. & Trust v. Phillips</u>, Superior Court, Judicial District of Fairfield at Bridgeport, No. CV-94-0317957-S (Jan. 24, 1996) (1996 WL 57060).</p>
<p>Filing Requirements</p>	<ul style="list-style-type: none"> • "Also, he has failed to supply the court with a financial affidavit as required by General Statutes § 49-31f(a). Without an affidavit, the court is unable to determine his eligibility as unemployed or underemployed person, General Statutes § 49-31f(a), nor can it make the other financial evaluations required by the statutes, such as whether he is likely to make timely payments on a restructured mortgage commencing at the end of the restructuring period, General Statutes § 49-31f(a), or whether he is capable of eliminating the arrearage, General Statutes § 49-31g, or what partial payments can be made during the restructuring period. General Statutes § 49-31h." <u>Deutsche Bank National Trust Co. v. Granger et al.</u>, Judicial District of New Britain at New Britain, No. HHB-CV-08-5007914-S (May 19, 2009) (2009 WL 1706906).

- **“Although the affidavit of the...defendants is insufficient, they have filed a timely petition for relief under the Act, and there is Superior Court precedent for giving them another chance to provide more detailed information in affidavit form so as to comply with the ‘financial affidavit’ requirement of the Act. In *Bednarz, supra*, the court denied the application for relief ‘without prejudice,’ giving the applicants fifteen days ‘to refile with proper financial background.’ Also, in *US Bank National Ass’n v. Bozzi*, Docket No. CV07-6000652S, Superior Court, Judicial District of Stamford-Norwalk at Stamford, (February 6, 2008, Nadeau, J.) the court denied an application for protection under the Act but without prejudice to a new filing by a date certain nineteen days **after the court’s decision, saying, ‘That it is within the court’s discretion to deny the defendant’s motion without prejudice is underscored by the notion that a foreclosure action is a equitable proceeding.’** (Citations [all from this judicial district] omitted.) *Id.* Fn.2.**

The court is inclined in the exercise of equitable discretion to follow the above-cited precedent and allow the...defendants another opportunity to meet the ‘financial affidavit’ requirement of the Act.” *Virtual Bank v. Cassidy*, Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. CV08-5007288S (Apr. 15, 2009) (47 Conn. L. Rptr. 560) (2009 WL 1312627).

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.

Section 4: Defenses to Foreclosure

A Guide to Resources in the Law Library

SCOPE:

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

DEFINITIONS:

- "At common law, the only defenses to an action of this character would have been payment, discharge, release or satisfaction; [White v. Watkins](#), 23 Ill. 480; or, if there had **never been a valid lien.**" [Petterson v. Weinstock](#), 106 Conn. 436, 441, 138 A. 433, 435 (1927).
- **"So, if the mortgagor is prevented by accident, mistake or fraud, from fulfilling a condition of the mortgage, foreclosure cannot be had; 1 Pomeroy's Equity Jurisprudence (4th Ed.) § 162; [Wilcox v. Allen](#), 36 Mich. 160; [Bell v. Romaine](#), 30 N.J. Eq. 24; [Bennett v. Stevenson](#), 53 N.Y. 508; and this equitable consideration has long been recognized in this State. [Doty v. Whittlesey](#), 1 Root, 310; [Crane v. Hanks](#), 1 Root, 468; [Bridgeport Savings Bank v. Eldredge](#), 28 Conn. 556; [Bostwick v. Stiles](#), 35 Conn. 195, 198."** [Petterson v. Weinstock](#), 106 Conn. 436, 442, 138 A. 433 (1927).
- **". . . our courts have permitted several equitable defenses to a foreclosure action** Other equitable defenses that our Supreme Court has recognized in foreclosure actions include unconscionability; [Hamm v. Taylor](#), supra, 180 Conn. 494-96; abandonment of security; [Glotzer v. Keyes](#), 125 Conn. 227, 233, 5 A.2d 1 (1939); and usury. [Atlas Realty Corp. v. House](#), 120 Conn. 661, 669-70, 83 A. 9 (1936), overruled in part on other grounds, [Ferrigno v. Cromwell Development Associates](#), 244 Conn. 189, 202, 708 A.2d 1371 (1998)." [Southbridge Assoc. v. Garofalo](#), 53 Conn. App. 11, 15-16, 728 A.2d 1114, 1117 (1999), cert. denied 249 Conn. 919, 733 A.2d 229.
- **"Historically, the defenses available in a foreclosure action have been limited to payment, discharge, release, satisfaction or invalidity of a lien."** *Connecticut National Bank v. Grella Family Investment Partnership*, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. 292814 (August 19, 1993, Leheny, J.), citing [Petterson v. Weinstock](#), 106 Conn. 436, 441, 138 A. 433 (1927); *Hans L. Levi, Inc. v. Kovacs*, Superior Court, judicial district of Litchfield, Docket No. 56101 (November 4, 1991, Pickett, J., 5 CTLR 260). In recognition that a foreclosure action is an equitable proceeding, however, several courts have recently allowed allegations of mistake, accident, fraud, equitable estoppel, CUTPA, laches, breach of the implied covenant of good faith and fair dealing, and refusal to agree to a favorable sale to a third party as defenses to a foreclosure action. See *Great Western Bank v. McNulty*, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. 139799 (March 16, 1995, D'Andrea,

J.); *National Mortgage Co. v. McMahon*, Superior Court, judicial district of New Haven, Docket No. 349246 (February 18, 1994, Celotto, J., 9 CSCR 300). ‘Foreclosure is an equitable action, permitting the trial court to examine all matters to ensure that complete justice may be done. . . . Thus, the determination of what equity requires in a particular case . . . is a matter for the discretion of the trial court.’ (Citations omitted; internal quotation marks omitted.) *Federal Deposit Ins. Corp. v. Bombero*, 37 Conn. App. 764, 773, 657 A.2d 668 (1995).” *Farmers & Mechanics Bank v. Santangelo*, Superior Court, Judicial District of Middlesex at Middletown, No. 67481, (Dec, 8, 1995) (1995 Conn. Super. LEXIS 3442) (1995 WL 779034)

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

STATUTES:

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. (2023)
 - [Chapter 668](#). Nondepository Financial Institutions
 - § [36a-486](#). Licenses required. Exemptions. Prohibited advertisements. Violations. Temporary authority to act as mortgage loan originator. ([2024 Supplement](#))
 - § [36a-488](#). Mortgage lender, mortgage correspondent lender, mortgage broker, mortgage loan originator, loan processor, underwriter and lead generator licenses. Requirements.
 - [Chapter 669](#). Regulated activities
 - § [36a-746](#) Short title: Connecticut Abusive Home Loan Lending Practices Act.
 - [Uniform Commercial Code, Article 3](#), Negotiable Instruments
 - § [42a-3-303](#). Value and consideration.
 - [Chapter 821](#). Land Titles
 - § [47-5](#). Requirements re conveyances of land. Conveyance pursuant to power of attorney.
 - § [47-17](#). Records of documents as notice of equitable rights.
 - [Chapter 821b](#). Validation of Conveyance Defects
 - § [47-36aa](#). Validations re conveyancing defects of instrument recorded after January 1, 1997, insubstantial defects, defects re power of attorney, defects re conveyance by fiduciary.
 - [Chapter 846](#). Mortgages
 - § [49-4a](#). Open-end mortgages, United States or its instrumentalities and certain banks authorized to hold.
 - [Chapter 847](#). Liens
 - § [49-36](#). Liens limited; apportionment; payments to original contractor.
 - [Chapter 906](#). Postjudgment Procedures
 - § [52-380j](#). Foreclosure of lien when plaintiff holds mortgage.

PAMPHLETS:

- [Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners](#), Connecticut Fair Housing Center, 12th ed., pp. 23-24

FORMS:

- 3 Connecticut Practice Series, *Civil Practice Forms*, 5th ed., by Daniel A. Morris, Thomson West, 2023-2024 edition (Also available on Westlaw).
57:5. Foreclosure responsive pleading - Special defense and counterclaim - Mistake, fraud or accident in failure to make payment. [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.

Supreme and Appellate Court:

- For summaries of recent CT Supreme and Appellate Court foreclosure cases, see the foreclosure section of our Newslog at: <http://jud.ct.gov/LawLib/LawLibNews/Default.aspx?CatID=14>
- [Rockstone Capital, LLC v. Caldwell](#), 206 Conn. App. 801, 811, 261 A.3d 1171 (2021), cert. denied 339 Conn. 914, 262 A.3d 136. **"In the present case, the trial court found that the defendant lacked business acumen; the closing was rushed because the defendant was on her lunch break; the defendant was unrepresented at the closing; neither Caldwell nor Caldwell's attorneys explained the settlement agreement or the mortgage to the defendant; and the documents for the defendant to sign were folded back so that only the signature page was exposed. We conclude that these findings are insufficient to render the settlement agreement procedurally unconscionable."**
- [Cenatiempo v. Bank of America, NA](#), 333 Conn. 769, 777, 219 A.3d 767 (2019). **"The essence of the plaintiffs' argument on appeal is that the trial court improperly struck their complaint 'largely because [the trial court] reached the wrong conclusions with respect to the public policy implications of allowing them to proceed.' It is the plaintiffs' position that HAMP, RESPA, the 2011 federal consent order, the national mortgage settlement, and this state's foreclosure mediation statutes form a comprehensive policy framework that supports the imposition of liability under CUTPA and under a negligence claim. More specifically, the plaintiffs contend that the foregoing programs and policies prescribe the defendant's obligations, including the speed and accuracy with which mortgage servicers must evaluate customer loan workout applications. The defendant's conduct in contravention of those obligations, the plaintiffs contend, was immoral, unethical, oppressive, and unscrupulous, and, as such, violated CUTPA. Additionally, the plaintiffs assert that the totality of the circumstances weigh in favor of allowing them to proceed on their negligence claim. Finally, the plaintiffs assert that the trial court did not consider the negligence per se aspects of their negligence claim and contend that the negligence count also should not have been stricken on the basis of that theory.**

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.

We reverse the judgment of the trial court insofar as it granted the defendant's motion to strike the CUTPA count but affirm **insofar as it struck the negligence count of the complaint.**"

- [U.S. Bank N.A., Trustee v. Blowers](#), 332 Conn. 656, 665, 212 A.3d 226 (2019). "At its essence, the defendant's position is that, given the equitable nature of a foreclosure action, a mortgagee's misconduct that hinders a mortgagor's efforts to cure a default, such as through obtaining a modification agreement, and adds to the mortgagor's debt while the mortgagor is making such good faith efforts, is a proper basis for special defenses or counterclaims in that action. Although the defendant suggests that the standard test set forth in our rules of practice should be the sole measure of legal sufficiency, he contends that such misconduct sufficiently relates to enforcement of the note or mortgage if the making, validity, or enforcement test is applied. We conclude that the **Appellate Court's judgment must be reversed.**"
- [Deutsche Bank National Trust Company, Trustee v. Bliss et al.](#), 159 Conn. App. 483, 124 A.3d 890 (2015), appeals denied 324 Conn. 922, 320 Conn. 903, 579 US 903. "At trial, the defendant alleged as a special defense and attempted to demonstrate that the note and mortgage were unenforceable because prior to engaging in the mortgage loan transaction with the defendant, and before the note and mortgage were executed on April 27, 2006, the initial lender, Long Beach Mortgage Company, had surrendered its Connecticut license as a mortgage lender. Also, the defendant alleged that '[w]hen Long Beach Mortgage Company engaged in the business of making [a] mortgage . . . loan to [her] . . . without a license, that conduct was a violation of public policy and, consequently, the debt and note along with the mortgage being foreclosed in this action that putatively secures the debt and note are all **unenforceable.**' The plaintiff, in reply, argued that the loan was enforceable because, at times relevant, Long Beach Mortgage Company was a subsidiary of a bank operating under federal banking laws and, because federal banking regulations preempt state licensing laws, it was of no consequence to the present case that Long Beach Mortgage Company was not licensed under state law.

In its memorandum of decision, the court stated as an initial matter that it was not in dispute that, at the time of the origination of the loan, Long Beach Mortgage **Company** 'was not licensed to make loans under Connecticut banking statutes and indeed had surrendered its license to do so a few months **earlier.**' The court stated that the issue raised by the defendant could be narrowed **'to the determination of whether federal banking regulations preempt state banking laws and especially those relating to licenses for organizations in the mortgage loan business.'**" (pp. 497-498)

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“The defendant, relying on the applicability of state licensing laws that did not apply to Long Beach Mortgage Company, has not demonstrated that the loan and mortgage were unenforceable. In light of the foregoing, we reject the defendant’s arguments that the loan and mortgage were ‘illegal and unenforceable’ under [Solomon v. Gilmore](#), 248 Conn. 769, 731 A.2d 280 (1999) – which is factually and legally distinguishable from the case at hand – or that the ‘illegality’ of the transaction (under Connecticut licensing laws) negated any defenses available to the plaintiff under the Uniform Commercial Code.” (p. 501)

- [GMAC Mortgage, LLC v. Eric M. Ford et al.](#), 144 Conn. App. 165, 181-182, 73 A3d 742 (2013). **“The ‘special defense’ asserted by the defendant in his original answer amounted to an acknowledgement that he had quitclaimed his interest in the subject property to a third party prior to the commencement of the action. As a mortgagor, the defendant held only equitable title to the property, sometimes referred to as the equity of redemption. See [Ocwen Federal Bank, FSB v. Charles](#), 95 Conn. App. 315, 323, 898 A.2d 197, cert. denied, 279 Conn. 909, 902 A.2d 1069 (2006). His act of quitclaiming that interest to a third party did not implicate the making, validity or enforcement of the note or mortgage, nor establish one of the aforementioned equitable defenses. The defendant remained liable for repayment of the note despite the quitclaim deed to a third party, who took title subject to the mortgage and any potential foreclosure. The asserted special defense failed as a matter of law, and no amount of repleading would have remedied that legal defect.”**
- [Monetary Funding Group, Inc. v. Pluchino](#), 87 Conn. App. 401, 413, 867 A.2d 841, 850 (2005). **“In the present case, the court determined that the plaintiff acted with unclean hands and engaged in an unconscionable transaction. The conduct of the plaintiff, therefore, was unfair, oppressive and unscrupulous, and constituted a violation of CUTPA.”**
- [Homecomings Financial Network, Inc. v. Starbala](#), 85 Conn. App. 284, 289, 857 A.2d 366, 369 (2004). **“ . . . the defense of payment is a legally sufficient defense in a foreclosure action, and whether payment was tendered is a question of fact appropriately decided by the trier of fact.”**
- [Franklin Credit Management Corp. v. Nicholas](#), 73 Conn. App. 830, 838, 812 A.2d 51, 57 (2002), cert. denied 262 Conn. 937, 815 A.2d 136. **“In a mortgage foreclosure action, ‘[t]o make out its prima facie case, [the foreclosing party] had to prove by a preponderance of the evidence that it was the owner of the note and mortgage and that [the mortgagee] had defaulted on the note.’ [Webster Bank v. Flanagan](#), 51 Conn. App. 733, 750-51, 725 A.2d 975 (1999)**

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Franklin Credit alleged, among other things, that it is the owner of the note and that the note was in default. In response, the defendant asserted the special defense that **'[t]he debt subject of the lawsuit was discharged and released, including as evidenced by Form 1099 issued by [Franklin Credit's] predecessor to the right, title and interest in the debt instruments.'**"

- [LaSalle National Bank v. Freshfield Meadows, LLC](#), 69 Conn. App. 824, 832-833, 798 A.2d 445, 450 (2002). **"The defendant next claims that the court improperly granted the plaintiff's summary judgment motions despite the special defenses that it had raised. Specifically, the defendant argues that summary judgment should not have been granted based on (1) the implied covenant of good faith and fair dealing, (2) the doctrine of unclean hands, (3) the common-law duty of good faith and fair dealing, (4) the doctrine of unconscionability and (5) the doctrine of equitable estoppel. We will address each special defense in turn."** See [Table 5](#).
- [Webster Bank v. Oakley](#), 265 Conn. 539, 577, 830 A.2d 139, 163 (2003), writ of certiorari denied 541 U.S. 903, 124 S. Ct. 1603, 158 L. Ed. 2d 244. "In light of these well reasoned opinions in the closely analogous factual context of insurance policies, we conclude that Title III of the ADA regulates a **lender's provision of access to its mortgage loans, which are** the goods and services that it offers, but does not regulate the content of those loan agreements. Thus, although a lender like the plaintiff may not refuse to provide equal access to its mortgage policies on the basis of the disabilities of potential mortgagors, it was not required to alter the otherwise universally applicable terms or conditions of its mortgage policies to accommodate the disabilities of borrowers such as **the defendant.**"
- [F.D.I.C. v. Altholtz](#), 4 F. Supp.2d 80 (1998) (D. Conn.). Discussion of statute of frauds, breach of covenant of good faith and fair dealing. Defense of unclean hands.
- [New England Savings Bank v. Bedford Realty Corp.](#), 246 Conn. 594, 607, 717 A.2d 713, 720 (1998). "The problem of proving a debt that has been assigned several times is of great **importance to mortgage lenders and financial institutions.**"
- [Mechanics & Farmers Savings Bank, FSB v. Delco Development Co.](#), 43 Conn. Supp. 408, 414, 656 A.2d 1075, 1080 (1993), affirmed at [232 Conn. 594](#), 656 A.2d 1034, writ of certiorari denied 516 U.S. 930, 116 S. Ct. 335, 133 L. Ed. 2d 235. **"The principle that a bank's violation of regulatory provisions in making a loan neither precludes recovery on the loan nor provides a defense, unless specifically provided by statute, has been well established for well over 100 years."**

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- [Petterson v. Weinstock](#), 106 Conn. 436, 138 A. 433, 435 (1927). "At common law, the only defenses to an action of this character would have been payment, discharge, release or satisfaction . . . or, if there had never been a valid lien." (p. 441)

"So, if the mortgagor is prevented by accident, mistake or fraud, from fulfilling a condition of the mortgage, foreclosure cannot be had." (p. 442)

Superior Court:
- [U.S. Bank Trust, N.A. as Trustee for LSF9 Master Participation Trust v. John Kinison Et Al.](#), Superior Court, Judicial District of Litchfield at Torrington, No. CV17-6016000-S (May 2, 2019) (2019 WL 2602562) (68 Conn. L. Rptr. 514). "The essence of Anderson's special defense is that she contests the order of priority. This purported special defense, therefore, does not defeat liability, for priority is not an element of a prima facie case of foreclosure. [Bank of New York v. Conway](#), supra, 50 Conn.Sup. 193-94. Furthermore, this purported special defense does not affect the making, validity or enforcement of the underlying note or mortgage, modified or otherwise because even if this special defense were permitted, it would only affect the order of payment in a foreclosure by sale or affect which liens survive foreclosure. [GMAC Mortgage, LLC v. Ford](#), supra, 144 Conn. App. 181. Moreover, Practice Book § 23-17(a) specifically indicates that any objection to the order of law days is to be disputed through the procedural vehicle of a motion to determine priorities. This motion must be filed and adjudicated before a judgment of strict foreclosure enters. Id.; [J&E Investment Co., LLC v. Athan](#), supra, 131 Conn. App. 483. Where foreclosure by sale is likely or ordered, a subsequent mortgagee can file a motion to determine priorities after judgment has entered. [Moran v. Morneau](#), supra, 140 Conn. App. 224 n.7. Anderson's special defense is, accordingly, **legally insufficient.**"
- [Spectrum Stamford, LLC v 400 Atlantic Title, LLC](#), Superior Court, Judicial District of Stamford, No. FST-CV-18-6034655-S (October 18, 2018) (67 Conn. L. Rptr. 331) (2018 WL 5797819). "The counterclaims are stated in two counts. The first count alleges that the plaintiff's predecessor breached its obligation of good faith and fair dealing and that the plaintiff as successor in interest is liable for the breach of the obligation to negotiate in good faith with the defendant for a definitive loan modification. The second count of the counterclaim alleges that the plaintiff's predecessor, and more particularly its agent, tortiously interfered with the defendant's business relationship with its major tenant."
- [FEC Enterprises LLC v. Lin Mare, LLC](#), Superior Court, Judicial District of Hartford, No. HHD-CV-15-6060522S (February 5,

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2018) (2018 WL 1177011). "The exhibits do not support the defendant's contention that the parties reached a final, binding, loan modification in 2015. Because the agreement concerns property and is for more than \$50,000, the agreement must conform to the statute of frauds. General Statutes § 52-550. Exhibit 1 does not identify any party other than Forrest E. Crisman, Jr. and FEC Enterprises, LLC, specify the subject property, or include the essential terms of the agreement. Specifically, the document lacks vital payment information, such as when monthly payments would commence and whether the payments would go towards **principal or interest.**")

- JP Morgan Chase Bank v Syed, Superior Court, Judicial District of Hartford, No. HHD-CV-13-6041948-S (January 2, 2018) (2018 WL 632179). **"In this foreclosure action, the substitute plaintiff Christiana Trust, A Division of Wilmington Savings Fund Society, FSB, as Trustee for Normandy Mortgage Loan Trust, Series 2013-18, moves for summary judgment in its favor as to liability. The defendant Sonia Syed opposes the motion `on the grounds that there exists disputes of material fact, namely that the Plaintiff took assignment of the loan through a fraudulent endorsement."**
- Pacific Union Financial, LLC v. McKinney, Superior Court of New Britain, No. HHB-CV-16-6031874-S (December 20, 2017) (2017 WL 7038408). "The motion has been coded in the court **file as a `motion to open judgment,' however, and the court will treat it as such.** The self-represented defendant is entitled to challenge the jurisdiction of the court to enter judgment in the first place even after the law day has come and gone. That claim, that the plaintiff lacked standing to sue the defendant, is clearly raised in the motion and is a defect of subject matter jurisdiction, which must be resolved even though title has vested in the plaintiff. Highgate Condominium Ass'n v. Miller, supra, 129 Conn. App. 435."
- Wells Fargo Bank, N.A. v. DeQuattro, Superior Court of Bridgeport, No. FBT-CV-16-6056445-S (November 27, 2017) (2017 WL 6601801). "The defendants memorialized their agreement by executing an Adjustable Rate Mortgage Note (the note) and an Open-End Mortgage Deed (the mortgage). On or before July 15, 2015, and since then, the plaintiff became the party entitled to collect the debt and enforce the mortgage. Months later, the defendants defaulted on the note. On August 30, 2017, the plaintiff filed a motion for summary judgment on the ground that it has established a prima facie case of liability in this foreclosure action. The plaintiff also claims a deficiency judgment and other relief, including a judgment awarding it attorney's fees and costs incurred in the **prosecution of this action.**"
- Deutsche Bank National Trust Co. v. Pinto, Superior Court of Waterbury, No. UWY-CV-13-6017507-S (August 31, 2017)

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(2017 WL 4633842). “The plaintiff counters the factual claim of a modification with two legal claims. First, that modification of the mortgage note is not a proper special defense because it does not attack the making, validity or enforcement of the lien. The second legal claim raises the application of the statute of frauds, as there is no allegation of a written agreement to modify the mortgage loan, originally in the principal amount of \$365,000. This allegation of an oral modification of the mortgage note therefore violates the \$50,000 limit for loan agreements, as well as a transaction involving an interest in real property. General Statutes § 52-550.”

- Caires v. JP Morgan Chase NA, Superior Court, Judicial District of Stamford, No. FST-CV-09-6002651-S (April 5, 2017) (2017 WL 2541858). **“Once the plaintiff establishes standing, it is the defendant's burden of proof to establish facts that show this court has lack of subject matter jurisdiction by proving the claims set forth in the Motion to Dismiss. Defendant's standard of proof in that regard is the civil standard of proof; fair preponderance of the evidence. *Deutsche Bank National Trust Company as Trustee et al. v. Juchneiwich et al.*, Superior Court, judicial district of Stamford/Norwalk at Stamford, Docket No. FST CV 16-6028759 S (February 27, 2017, Tierney, J.T.R.). In this case the moving party in the Motion to Dismiss is the plaintiff who commenced this litigation in 2009 and he is the defendant in the October 21, 2010 Counterclaim. Therefore, this court has used the given names of the parties instead of the usual designations of plaintiff and defendant. The above citation of general law assumes that the plaintiff is the foreclosing party, wherein in this litigation the defendant is the foreclosing party.”**

- JP Morgan Chase Bank, N.A. et al. v. Robert J. Virgulak et al., Superior Court, Judicial District of Stamford, No. FST-CV13-6017120-S (November 10, 2016) (2016 WL 7196500) (Conn. L. Rptr. 359). **“The . . . third count purports to state a claim that [the defendant] has been unjustly enriched by living at the property since 1996 without making adequate payments on the promissory note.**

The motion to strike the unjust enrichment count is premised on the contention that the claim is barred by the six-year statute of limitations applicable to simple and implied contracts found at General Statutes §52-576(a).”

“A right of recovery under the doctrine of unjust enrichment is essentially equitable . . . Although courts in equitable proceedings may look by analogy to the statute of limitations to determine whether, in the interests of justice, a particular action should be heard, they are by no means obliged to adhere to those time limitations. Rossmann v. Morasco, 115 Conn. App. 234, 256 (2009) [citing] Vertex, Inc. V. Waterbury,

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278 Conn. 557, 573 (2006) the motion to strike the third count is denied.”

- Nationstar Mortgage, LLC v. Marcio Demelo, Superior Court, Judicial District of Fairfield at Bridgeport, No. FBT-CV15-6050091-S (2016 WL 8468078) (**December 22, 2016**). “The court finds that a violation of the FDCPA is not a valid defense to a **foreclosure action.**’ . . . **the FDCPA addresses a creditor’s collection practices rather than the making, validity or enforcement of the note or mortgage.**’ . . . **‘A foreclosure action is not the collection of a debt, and thus does not trigger the notice provision of the FDCPA.’**” (Internal citations omitted.)
- HSBC Bank USA, National Association Trustee v. Leckey et al., Superior Court, Judicial District of New Haven, No. NNH-CV14-6047103 (July 20, 2016) (62 Conn. L. Rptr. 700) (2016 WL **4497606**). “The defendants have submitted affidavits and other documents in support of the fact that while Wells Fargo, the original lender and still the loan servicer, is obliged to participate in loss mitigation efforts on behalf of distressed homeowners, HSBC, as trustee of a securitized trust, does not participate in such programs, is not required to do so, and in fact denied the benefits of such programs to the defendants. The defendants claim that this goes to the enforcement of the note, LaSalle National Bank v. Shook, supra, that such conduct on the part of the plaintiff is unfair, and that the court ought to take such conduct into consideration in determining whether to permit the plaintiff to proceed with this foreclosure action.

The plaintiff argues that because the real estate trust was created before the MHA programs were enacted, the real estate trust could not have been created with the intent of being a repository of loan documents for the purpose of avoiding the MHA process. The court, however, places no reliance on the argument of the defendants that the transfer of the note was done *solely* for that purpose. Rather, in the court’s view, it would be sufficient to create a triable issue if the defendants could demonstrate that avoiding the MHA programs or other loss mitigation efforts was the effect of the transfer. A trial court could then determine if, under the totality of the circumstances, the plaintiff should be permitted to foreclose.

The court is aware that it is usually the case that special defenses and counterclaims alleging a breach of an implied covenant of good faith and fair dealing are not equitable defenses to a mortgage foreclosure. See New Haven Savings Bank v. LaPlace, 66 Conn. App. 1, 10, 783 A.2d 1174 (2001). However, where there is a question of whether the lender had an obligation to afford the defendants an opportunity to modify their loan obligation, the court may determine that the

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avoidance such obligation ought equitably to affect the **enforcement of the note.**"

- Bank of America, N.A. v. Voog, Superior Court, Judicial District of Danbury, No. DBD-CV-12-6008819-S (July 23, 2015) (60 Conn. L. Rptr. **652**) (2015 WL 4965858). "The defendant's primary argument against summary judgment concerns the signature of Sjolander on the note. The defendant assails the propriety of the **signature as the product of a 'robo-signer'** and maintains that it is insufficient to substantiate the transfer of the note from Countrywide to the plaintiff. The plaintiff cites the uncertified deposition transcript as an example of Sjolander's involvement in the endorsement of other notes and argues that the details of Sjolander's endorsement of the note in the present case will be obtained when she is deposed. The defendant's argument is unavailing, however, because under the Uniform Commercial Code, as adopted in the General Statutes, he has admitted to the authenticity of Sjolander's signature, as well as her authority to make it, based upon the following.

General Statutes § 42a-3-308(a) provides in relevant **part**: 'In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted *unless specifically denied* in the **pleadings ...**' (Emphasis **added.**) " **'In the absence of such specific denial the signature stands admitted, and is not in issue.'** A.L.I., Uniform Commercial Code [(14th Ed.1995)] § 3-308, official **comment 1.**" Cadle Co. v. Ginsburg, 51 Conn. App. 392, 406, 721 A.2d 1246 (1998), cert. denied, 247 Conn. 963, 724 A.2d 1125 (1999). In Deutsche Bank National Trust Co. v. Shivers, 52 Conn. Sup. 358, 359-60, 48 A.3d 143 (2010) [49 Conn. L. Rptr. 679], aff'd, 136 Conn. App. 291, 44 A.3d 879, cert. denied, 307 Conn. 938, 56 A.3d 950 (2012), a foreclosure action, the defendant opposed the plaintiff's motion for summary judgment in part by challenging the authenticity of certain signatures on the note as well as the authority of the signatory to make the signatures. The trial court rejected the argument, noting that if the defendant 'wished to assail [the signatory's] authority to act, § 42a-3-308(a) makes it incumbent upon him to deny that authority "specifically" in a pleading. Id., at 360. The court concluded that due **to the defendant's failure** 'to proceed in accordance **with this statutory provision,**' § 42a-3-308(a) relieved the plaintiff of any burden to produce additional evidence to support the authenticity of the signatures or the authority of the signatory to endorse the note. Id.

The defendant in the present case filed an answer in which he admitted signing the note and being the owner in possession of the premises while, at the same time, pleading insufficient knowledge as to the complaint's remaining allegations. The note bearing Sjolander's signature was attached to the complaint. The defendant's answer pleaded no

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special defenses, and he did not specifically deny the authenticity of Sjolander's signature or her authority to make it. Therefore, the defendant admitted the propriety of the signature under the plain terms of § 42a-3-308(a)."

- **People's United Bank v. Estate of Jones**, Superior Court, Judicial District of Waterbury at Waterbury, No. CV12-6014130S (May 28, 2013) (2013 WL 330721556) (56 Conn. L. Rptr. 224). "Equitable estoppel may be a valid special defense in a foreclosure action. See [Barasso v. Rear Still Hill Road, LLC](#), 81 Conn. App. 798, 805, 842 A.2d 1134 (2004).

'Equitable estoppel is a doctrine that operates in many contexts to bar a party from asserting a right that it otherwise would have but for its own conduct . . . In its general application, we have recognized that [t]here are two essential elements to an estoppel — the party must do or say something that is intended or calculated to induce another to believe in the existence of certain facts and to act upon that belief, and the other party, influenced thereby, must actually change his position or do some act to his injury which he otherwise would not have done.' (Citations omitted; internal quotation marks omitted.) [Glazer v. Dress Barn, Inc.](#), 274 Conn. 33, 60, 873 A.2d 929 (2005)." (p. 1)

"The limitation on special defenses in foreclosures to those relating to the 'making, validity or enforcement' of the note and mortgage, on its face, appears applicable to inequitable post-execution actions by creditors, as the very language of this phrase encompasses the 'enforcement' of notes and mortgages, which would inevitably occur after a mortgage closing. Furthermore, 'while this construction of "making, validity or enforcement" has been utilized by Superior Court judges for well over a decade . . . it has not been adopted by our Supreme Court . . . It is also noted that some Superior Court judges have rejected a construction of "making, validity or enforcement" that prevents a court from considering post-execution conduct of the mortgagee.' (Citation omitted.) (p. 2)

- **Thomaston Savings Bank v. Hardisty**, Superior Court, Judicial District of Litchfield at Litchfield, No. CV-09-5006672S (Sep. 13, 2010) (2010 WL 4072018). "In the third special defense, the defendants allege that the plaintiff failed to comply with § 8-265ee. The foreclosing party must demonstrate that all conditions precedent to foreclosure, as mandated by the note and mortgage, have been satisfied. See [Bank of America, FSB v. Hanlon](#), 65 Conn. App. 577, 581, 783 A.2d 88 (2001). 'While courts have recognized equitable defenses in foreclosure actions, they have generally only been considered proper when they attack the making, validity or enforcement of the lien, rather than some act or procedure of the lienholder . . . The rationale behind this is that counterclaims and special defenses which are not limited to the making, validity or enforcement of the note or mortgage

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fail to assert any connection with the subject matter of the foreclosure action and as such do not arise out of the same transaction as the foreclosure action . . . Moreover, courts have held that defenses to foreclosure are recognized when they attack the note itself rather than some behavior of the **mortgagor.**' (Citations omitted; internal quotation marks omitted.)”

- BAC Home Loans Servicing, L.P. v. Presutti, Superior Court, Judicial District of Hartford at Hartford, No. HHD CV09-5029746S (April 8, 2010) (49 Conn. L. Rptr. 609) (2010 WL 1883681). “...the allegations that the Plaintiff entered into a loan mortgage modification which it refused to honor, are sufficient to support a CUTPA claim.”
- Hooie v. Webster Bank, Superior Court, Judicial District of Middlesex at Middletown, No. CV 000093117 (June 12, 2003) (35 Conn. L. Rptr. 91) (2003 WL 21525116). Unjust enrichment in a strict foreclosure action.

WEST KEY NUMBERS:

- *Mortgages* # 1701. Defenses to Foreclosure

DIGESTS:

- ***Dowling’s Digest:*** Mortgages §§ 20-24
 - § 20. Foreclosure
 - § 21. —In general
 - § 22. —Right to foreclose; Defenses
 - § 23. — —In general
 - § 24. — —Particular cases
- ***Phillips’ Digest:*** Mortgages §§ 20-22
 - § 20. Foreclosure
 - § 21. —In general
 - § 22. —Right to foreclose; Defenses

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- 54A *Am Jur 2d* Mortgages, Thomson West, 2020 (Also available on Westlaw)
 - II. Requisites and Validity
 - A. In General
 - § 10. Creation; generally
 - § 12. Validity; generally
 - § 13. Unconscionability of mortgage
 - § 14. Modification of mortgage
 - B. Consideration
 - § 15. Consideration for mortgage, generally
 - § 16. Failure of consideration for mortgage
 - § 17. Application of consideration received for mortgage
 - C. Execution
 - § 18. Execution of mortgage, generally
 - § 19. Signatures; forgeries
 - § 20. Acknowledgment
 - D. Delivery and Acceptance
 - § 23. Delivery and acceptance of mortgage

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- § 24. Delivery of mortgage by less than all mortgagors
- § 25. Determination of whether mortgage delivered
- E. Effect of Fraud Undue Influence, or Duress
- F. Property and Interests Subject to Mortgage
- 55 *Am Jur 2d* Mortgages, Thomson West, 2020 (Also available on Westlaw)
 - b. Defenses to Foreclosure Actions
 - § 536. Defenses, generally
 - § 537. Equitable considerations; fraud as defenses to foreclosure actions
 - § 538. Usurious interest rate as defense
 - § 539. Tender during foreclosure as precluding foreclosure action; necessity of including costs and **attorney's fees**
 - c. Setoffs, Recoupment, and Counterclaims
 - § 540. Generally
 - § 541. Setoffs, recoupment, and counterclaims in suits to foreclose purchase-money mortgages
 - § 542. Claims of setoff, recoupment, and counterclaim in foreclosure actions as barred by limitations
 - 3. Jurisdiction, Venue, and Process in Foreclosure Actions
 - § 543. Generally
 - § 544. Jurisdiction over land in another state in foreclosure actions
 - § 545. Process in foreclosure actions
 - 4. Limitations and Laches in Foreclosure Actions
 - a. Limitations and Laches in General
 - § 546. Generally
 - § 547. Limitations statute applicable
 - § 548. Statute of limitations for installment mortgages
 - § 549. Effect of acceleration provision in mortgage on statute of limitations
 - § 550. Limitations bar of debt as barring mortgage
 - § 551. – Deed absolute intended as mortgage
 - b. Extension or Revival of Limitations Period in Foreclosure Actions
 - (2) Part Payment, New Promise, and Extension Agreement as Affecting Limitations Period
 - § 556. Extension of time for payment; giving new obligation
 - § 557. Effect of act of person other than mortgagor
 - § 558. Effect of statutes requiring memorandum of payment, or renewal or extension agreement, to be placed on record
 - § 559. Persons protected
 - § 560. Effect of knowledge or recognition of mortgage
- 59 *CJS* Mortgages, Thomson West, 2019 (Also available on Westlaw)
 - IX. Validity of Mortgages
 - § 175. Generally
 - § 176. Mental capacity

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- § 177. Mistake
- § 178. Fraud
- § 179. Fraud – Fraud practiced on mortgagor
- § 180. Fraud – Reliance
- § 181. Fraud – Misrepresentation of material fact
- § 182. Duress
- § 183. Duress – Arrest, criminal prosecution, or threats thereof
- § 184. Undue influence
- § 185. Illegality
- § 186. Partial invalidity
- § 187. Right to contest validity
- § 188. Right to contest validity – Estoppel or waiver
- § 189. Right to contest validity – Ratification of invalid mortgage
- § 190. Evidence as to validity
- § 191. Evidence as to validity – Admissibility
- § 192. Evidence as to validity – Weight and sufficiency of evidence
- § 193. Questions of law and fact

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- 1 ***Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure***, 14th ed., by Denis R. Caron, Geoffrey K. Milne & Andrew P. Barsom, Connecticut Law Tribune, 2023.
 - Chapter 1: Preliminary Considerations
 - § 1.6 Reinstatement
 - § 1-6: 1 Reinstatement Letters Not a Basis for a Defense to Foreclosure
 - Chapter 6. Defenses to foreclosure
 - § 6-1. Introduction
 - § 6-2. Common Law Defenses
 - § 6-2: 1 Payment
 - § 6-2: 2 Duress
 - § 6-2: 3 Release
 - § 6-2: 4 Lack of consideration
 - § 6-2: 5 Fraud in factum
 - § 6-2: 6 Fraud
 - § 6-2: 7 Negligent Misrepresentation
 - § 6-2: 8 Accord and Satisfaction
 - § 6-2: 9 Abandonment of Security
 - § 6-2: 10 Breach of Loan Modification Agreement
 - § 6-2: 10.1 Oral Modification Agreements
 - § 6-2: 11 No Fiduciary Duty between Lender and Borrower
 - § 6-2: 12 Res Judicata and Collateral Estoppel
 - § 6-2: 13 Failure to Pay Rent as a Defense to a Commercial Mortgage Foreclosure
 - § 6-2: 14 Robo-Signing
 - § 6-2: 15 Breach of a Settlement Agreement
 - § 6-2: 16 Modification Agreements
 - § 6-2: 17 Challenge to the Debt
 - § 6-3. State Statutory Law Defenses
 - § 6-3: 1 Usury

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- § 6-3:2 Connecticut Unfair Trade Practices Act (CUTPA)
- § 6-3:3 Connecticut Abusive Home Loan Lending Practices Act
- § 6-3:4 Defective Mortgage Instrument
- § 6-3:5 Unlicensed Lender
- § 6-3:6 Connecticut Protection from Foreclosure Act
- § 6-3:7 Payoff Letter
- § 6-3:8 Loan to Person only Secondarily Liable – Connecticut General Statutes § 49-4a
- § 6-3:9 The Marshalling Statute – Connecticut General Statutes § 52-380i
- § 6-3:10 Payment to Contractor – re: **Mechanic's** Lien Foreclosure
- § 6-3:11 Conditions Precedent Under the Loan Documents
- § 6-3:12 Failure to Release Mortgage
- § 6-3:13 Sovereign Immunity
- § 6-3:14 Statute of Limitations
 - § 6-3:14.1 Limitation on Suit Against Guarantor
- § 6-3:15 Homestead Exemption
- § 6-3:16 Conn. Gen. Stat. § 52-588 as a Defense
- § 6-3:17 Death of a Party and § 52-600
- § 6-4. Federal Law Defenses
 - § 6-4:1 Fair Debt Collection Practices Act
 - § 6-4:2 Truth in Lending
 - § 6-4:2.1 Fair Credit Billing Act
 - § 6-4:3 RESPA
 - § 6-4:4 The Dodd-Frank Wall Street Reform and Consumer Protection Act
 - § 6-4:5 HUD Regulations
 - § 6-4:5.1 HUD Servicing Regulations vs. Origination Regulations
 - § 6-4:6 Note Subject to Federal Law
- § 6-5 Equitable Defenses
 - § 6-5:1 The Clean Hands Doctrine
 - § 6-5:2 Meeting of the Minds
 - § 6-5:3 Breach of Implied Covenant of Good Faith and Fair Dealing
 - § 6-5:4 Unconscionability
 - § 32-5:4.1. Interest Rate as Unconscionable
 - § 6-5:5 Equitable Estoppel
 - § 6-5:6 Equitable Subrogation
 - § 6-5:7 Bad Faith Settlement Practices
 - § 6-5:8 Laches
 - § 6-5:9 Predatory Lending
 - § 6-5:10 Agency and Mortgage Brokers
- § 6-6 Counterclaims
 - § 6-6:1 General Statutes 49-13 – Petition for Discharge of Mortgage
 - § 6-6:2 CUTPA and Settlement Practices
- § 6-7 Jury Verdicts
- § 6-8 Lender Defenses to Consumer Claims for Improper Loss Mitigation

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§ 6-9 Lender Liability Claims Involving Loan Modification Negotiations

§ 6-10 Real Estate Broker Liens and Antitrust Considerations

- *Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators*, by Jeanine M. Dumont, 1998
 - VI. Answers, Special Defenses, Counterclaims, Setoffs and Other Pleadings
 - 2. Special Defenses
 - f. Special Defenses in Foreclosures, pp. 82-84
- *Connecticut Lawyers' Deskbook: A Reference Manual*, 3d ed., LawFirst Publishing, 2008.
 - Chapter 17, Real Property Foreclosure in Connecticut
 - "Contested Matters," pp. 418-419**
- *Home Foreclosures*, 2nd edition, by Geoff Walsh, John Rao and Steve Sharpe, National Consumer Law Center, 2023.
 - Chapter 3. Challenging the Authority to Foreclose
 - § 3.1. Introduction
 - § 3.2. Identifying Mortgage Holders
 - § 3.3. Challenging Authority to Foreclose in Judicial Foreclosure Sales
 - § 3.6. Common Issues in Challenges to Foreclosure Based on Faulty Documentation
 - Chapter 5. Procedural and Equitable Defenses to Home Foreclosures
 - § 5.1. Introduction
 - § 5.2. Introduction to the Foreclosure Process
 - § 5.3. Statute of Limitations Defenses
 - § 5.4. Res Judicata Following a Ruling on the Merits Against the Lender
 - § 5.5. Procedural Defenses
 - § 5.6. Default: Waiver and Estoppel
 - § 5.7. Other Procedural Defenses
 - § 5.11. Using Equitable Grounds to Prevent a Foreclosure
 - § 5.14. Foreclosure Defenses and Claims Related to COVID-19 Pandemic
 - § 8.10. Finding an Obligation to Negotiate in Good Faith in the Absence of a Foreclosure Conference or Mediation Program
 - § 5.15. Protections from Foreclosure Available under the Servicemembers Civil Relief Act
 - Chapter 7. Defending Foreclosures by Challenging Unfair Lending Practices
 - § 7.1. Introduction
 - § 7.2. Common Types of Misconduct
 - § 7.3. Raising Origination Misconduct to Stop a Foreclosure - Substantive Claims and Defenses
 - § 7.4. Unfair and Deceptive Acts and Practices (UDAP) Statutes
 - § 7.5. The Truth in Lending Act

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- § 7.6. Real Estate Settlement Procedures Act (RESPA)
 - § 7.7. Fair Lending Statutes
 - § 7.8. Civil RICO
 - § 7.9. SAFE Act Licensing
 - § 7.10. State High-Cost Mortgage Statutes
 - § 7.11. Fraud or Misrepresentation
 - § 7.12. Fiduciary Duty
 - § 7.13. Unconscionability
 - § 7.14. Usury
 - § 7.15. Other Defenses
 - § 7.16. Raising Origination-Related Claims and Defenses Against Assignees
- *Foreclosure Defense: A Practical Litigation Guide*, 2nd Ed., Rebecca A. Taylor, American Bar Association, 2020.
 - Chapter 19. Affirmative Defenses
 - Plaintiff's Motion to Strike Affirmative Defenses**
 - Deceptive and Unfair Trade Practices and Subprime Loans
 - The Truth in Lending Act
 - Home Owner's Equity Protection Act**
 - Real Estate Settlement Procedures Act
 - Qualified Written Requests
 - Fraud
 - Failure to Comply with Conditions Precedent
 - Payment
 - Counterclaims
 - Class-Action Complaint
 - *Mortgage Servicing and Loan Modifications*, by John Rao and Steve Sharpe, National Consumer Law Center, 2nd ed., 2023.
 - Chapter 2. Common Mortgage Servicing Problems
 - Chapter 3. Servicing Requirements Under the Real Estate Settlement Procedures Act
 - Chapter 5. State Law Servicing Claims
 - Chapter 11. Litigating Mortgage Service Claims
 - Chapter 12. Homeowner Rights During Natural Disaster and COVID-19

Figure 3: Special Defense and Counterclaim to Foreclosure

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

SPECIAL DEFENSES

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

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

COUNTERCLAIM

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

The defendant claims judgment

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

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

Table 5: LaSalle National Bank v. Freshfield Meadows, LLC

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

	not comply with the common-law duty of good faith and fair dealing.” p. 836
<u>Doctrine of Unconscionability</u>	“Because unconscionability is judged at the time of the making of the contract, and the defendant's claim rests on alleged actions taken by the plaintiff subsequent to the making of the contract, the doctrine of unconscionability is not applicable to this case.” p. 837.
<u>Doctrine of equitable estoppel</u>	<p>“Our Supreme Court . . . stated, in the context of an equitable estoppel claim, that [t]here are two essential elements to an estoppel: the party must do or say something which is intended or calculated to induce another to believe in the existence of certain facts and to act upon that belief; and the other party, influenced thereby, must actually change his position or do something to his injury which he otherwise would not have done. Estoppel rests on the misleading conduct of one party to the prejudice of the other. In the absence of prejudice, estoppel does not exist.’ (Internal quotation marks omitted.) SKW Real Estate Ltd. Partnership v. Mitsubishi Motor Sales of America, Inc., 56 Conn. App. 1, 8, 741 A.2d 4 (1999), cert. denied, 252 Conn. 931, 746 A.2d 793 (2000); see also 2 B. Holden & J. Daly, Connecticut Evidence (2d Ed. 1988) § 60b, p. 365 & (Cum. Sup. 2001) pp. 385-86.</p> <p>In its appellate brief, the defendant has failed to state how it was misled by the plaintiff's conduct. Without a showing that the defendant was misled, its argument that the doctrine of equitable estoppel should have precluded the court from rendering summary judgment has no basis.” p. 838.</p>
<p>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.</p>	

Table 6: Disclosure of Defense

Disclosure of Defense	
<p><u>DEFINITIONS:</u></p> <p>Once you have identified useful cases, it is important to update them to ensure they are still good law. You can contact your local law librarian to learn about updating cases.</p>	<ul style="list-style-type: none"> • “In order for foreclosure cases to move as swiftly as possible through our court system, it is imperative that a defendant disclose any defenses to the mortgage debt prior to the hearing. In the present case, the defendants' failure to disclose a defense in a timely manner barred them from later contesting liability at the foreclosure hearing. Accordingly, we conclude that the trial court properly refused to allow the defendants to present evidence of any defense to liability.” Suffield Bank v. Berman, 25 Conn. App. 369, 373, 594 A.2d 493, 495 (1991), cert denied 220 Conn. 914, appeal dismissed 220 Conn. 913, affirmed 228 Conn. 766.
<p><u>COURT RULE:</u></p> <p>Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted online.</p>	<ul style="list-style-type: none"> • Disclosure of Defense “In any action to foreclose or to discharge any mortgage or lien or to quiet title, or in any action upon any written contract, in which there is an appearance by an attorney for any defendant, the plaintiff may at any time file and serve in accordance with Sections 10-12 through 10-17 a written demand that such attorney present to the court, to become a part of the file in such case, a writing signed by the attorney stating whether he or she has reason to believe and does believe that there exists a bona fide defense to the plaintiff’s action and whether such defense will be made, together with a general statement of the nature or substance of such defense. If the defendant fails to disclose a defense within ten days of the filing of such demand in any action to foreclose a mortgage or lien or to quiet title, or in any action upon any written contract, the plaintiff may file a written motion that a default be entered against the defendant by reason of the failure of the defendant to disclose a defense. If no disclosure of defense has been filed, the judicial authority may order judgment upon default to be entered for the plaintiff at the time the motion is heard or thereafter, provided that in either event a separate motion for such judgment has been filed. The motions for default and for judgment upon default may be served and filed simultaneously but shall be separate motions.” Connecticut Practice Book § 13-19 (2024).
<p><u>FORMS:</u></p>	<ul style="list-style-type: none"> • Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure, Denis R. Caron & Geoffrey K. Milne, 7th ed., 2017 CD only Unofficial forms 6-007. Demand for Disclosure of Defense • 2 Connecticut Practice Series, <i>Civil Practice Forms</i>, 5th ed., by Daniel A. Morris, Thomson West, 2023-2024 edition (Also available on Westlaw)

	<p>13:13. Demand for disclosure of defense in action to foreclose, to quiet title or on contract 13:14. Default for failure to disclose defense - Motion 13:15. Motion for judgment upon default for failure to disclose defense</p> <ul style="list-style-type: none"> • <i>Connecticut Lawyers' Deskbook: Forms Index</i>, Dennis P. Anderson, Denis R. Caron & Geoffrey K. Milne, 2d ed., 2000 Chapter XIV. <i>Real Property Foreclosure In Connecticut</i> "Demand for Disclosure of Defense" "Motion for Default for Failure to Disclose a Defense"
<p><u>CASES:</u></p> <p>Once you have identified useful cases, it is important to update them to ensure they are still good law. You can contact your local law librarian to learn about updating cases.</p>	<ul style="list-style-type: none"> • First New Haven National Bank v. Rowan, 2 Conn. App. 114, 116, 476 A.2d 1079, 1081 (1984). "Since these defendants were not represented by an attorney, the disclosure of defense was correctly expunged. Practice Book 236 [now 13-19]."
<p><u>TEXTS AND TREATISES:</u></p> <p>Each of our law libraries own the Connecticut treatises cited. You can contact us or visit our catalog to determine which of our law libraries own the other treatises cited or to search for more treatises.</p> <p>References to online databases refer to in-library use of these databases. Remote access is not available.</p>	<ul style="list-style-type: none"> • 1 <i>Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure</i>, 14th ed., by Denis R. Caron, Geoffrey K. Milne & Andrew P. Barsom, Connecticut Law Tribune, 2023. § 5-2:3.3 Default for Failure to Disclose Defense § 5-2:3.3a Hearing May Be Required on Disclosure of Defense • <i>LexisNexis Practice Guide: Connecticut Civil Pretrial Practice</i>, 2023 ed. by Margaret Penny Mason, Editor, LexisNexis, 2023 (also available on Lexis Advance) Chapter 10. Discovery § 10.14. Disclosure of Defense • Connecticut Practice Series, <i>Connecticut Superior Court Civil Rules</i>, by Wesley W. Horton et al., 2024 ed., Thomson West, 2024 (also available on Westlaw). Authors' Comments following § 13-19
	<ul style="list-style-type: none"> • <i>A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut</i>, 2d ed., by Christian R. Hoheb, Editor, Massachusetts Continuing Legal Education, Inc., 2021 (also available on Westlaw). Chapter 9. Foreclosure Procedure from Complaint Through Sale § 9.2.2. Disclosure of Defense • 2 Connecticut Practice Series, <i>Civil Practice Forms</i>, 5th ed., by Daniel A. Morris, Thomson West, 2023-2024 edition (Also available on Westlaw) Chapter 13. Discovery – Generally

<p>You can contact us or visit our catalog to determine which of our law libraries own the treatises cited.</p> <p>References to online databases refer to in-library use of these databases.</p>	<p>13: 7. Required disclosure of defense in foreclosure or quiet title actions - Commentary</p> <ul style="list-style-type: none"> • <i>West's Connecticut Rules of Court Annotated</i>, 2024 ed., Thomson West, 2024 (also available on Westlaw). Notes of Decisions following § 13-19 • <i>A Practical Guide to Discovery and Depositions in Connecticut</i>, 2nd ed., by Sara R. Simeonidis, Editor, Massachusetts Continuing Legal Education, Inc., 2021. Chapter 11. Other Discovery Rules and Devices § 11.4. Disclosure of Defense

Table 7: Standing to Foreclose a Mortgage

Standing to Foreclose a Mortgage	
<p>Deutsche Bank National Trust Company, Trustee v. Bliss et al., 159 Conn. App. 483, 124 A.3d 890 (2015), appeals denied 324 Conn. 922, 320 Conn. 903, 579 US 903.</p>	<ul style="list-style-type: none"> • “Generally, in order to have standing to bring a foreclosure action the plaintiff must, <i>at the time the action is commenced</i>, be entitled to enforce the promissory note that is secured by the property.... Whether a party is entitled to enforce a promissory note is determined by the provisions of the Uniform Commercial Code, as codified in General Statutes § 42a-1-101 et seq. ‘Under [the Uniform Commercial Code], only a “holder” of an instrument or someone who has the rights of a holder is entitled to enforce the instrument.’ ... When a note is endorsed in blank, any person in possession of the note is a holder and is entitled to enforce the instrument. General Statutes §§ 42a-1-201(b)(21)(A), 42a-3-205(b) and 42a-3-301. If an endorsement makes a note payable to an identifiable person, it is a ‘special endorsement,’ and only the identified person in possession of the instrument is entitled to enforce the instrument. General Statutes §§ 42a-1-201(b)(21)(A), 42a-3-205(a) and 42a-3-301.’ (Citations omitted; emphasis added.) U.S. Bank v. Ugrin, 150 Conn.App. 393, 401-402, 91 A.3d 924 (2014). <p>‘The plaintiff’s possession of a note endorsed in blank is prima facie evidence that it is a holder and is entitled to enforce the note, thereby conferring standing to commence a foreclosure action.... After the plaintiff has presented this prima facie evidence, the burden is on the defendant to impeach the validity of [the] evidence that [the plaintiff] possessed the note at the time that it commenced the ... action or to rebut the presumption that [the plaintiff] owns the underlying debt.... The defendant [must] set up and prove the facts which limit or change the plaintiff’s rights.’ (Citation omitted; internal quotation marks omitted.) <i>Id.</i>, at 402, 91 A.3d 924. ‘The possession by the bearer of a note [e]ndorsed in blank imports prima facie [evidence] that he acquired the note in good faith for value and in the course of business, before maturity and without notice of any circumstances impeaching its validity. The production of the note establishes his case prima facie against the makers and he may rest there.... It [is] for the defendant to set up and prove the facts which limit or change the plaintiff’s rights.’ (Citations omitted.) Garris v. Calechman, 118 Conn. 112, 115, 170 A. 789 (1934).” (pp. 488-489)</p> <p>“We note, as well, that a loan servicer for the owner of legal title to a note has standing in its own right to foreclose on the real property securing the note. See, e.g., Wells Fargo Bank, N.A. v. Strong, supra, 149 Conn. App. at 398, 89 A.3d 392.” (p. 495, Footnote 5)</p>
<p>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.</p>	

<p>HSBC Bank USA, National Association Trustee v. Leckey et al., Superior Court, Judicial District of New Haven, No. NNH-CV14-6047103 (July 20, 2016) (62 CLR 700) (2016 WL 4497606).</p>	<ul style="list-style-type: none"> • “The defendants claim that HSBC has no standing to maintain this action because the loan was transferred from Wells Fargo to the current plaintiff HSBC in violation of a pooling and servicing agreement between those two entities. The identical issue was rejected in Wells Fargo v. Strong, 149 Conn. App. 384 (2014). In <i>Strong</i>, the Appellate Court ruled that any such violation did not implicate the standing of the plaintiff to bring the action. Accordingly, this claim of the defendants fails.”
<p>Deutsche Bank National Trust Co. v. Thompson, Superior Court, Judicial District of Hartford, No. HHD-CV09-5027964S (August 29, 2016) (63 Conn. L. Rptr. 15) (2016 WL 5415643).</p>	<ul style="list-style-type: none"> • “Although the plaintiff has established that it is presently the holder of the note by providing the court with the original endorsed note, the critical issue before the court is whether the plaintiff had standing to bring a foreclosure action at the time the action is commenced. In other words, the plaintiff must present evidence to show that it had possession of the note <i>at the time the action was commenced</i>. The plaintiff has failed to meet its burden. Neither the undated endorsement in blank nor the assignments of the mortgage that are dated after the commencement of the action are evidence that the plaintiff had possession of the note at the time of the commencement of the action. The plaintiff has failed to submit any other admissible evidence, such as an affidavit, that would show <i>when</i> it had acquired the note. Although the plaintiff contends that it is presently the holder of the note and rightly may foreclose the mortgage, ‘[t]hat argument . . . is beside the point. The relevant question is <i>when</i> the plaintiff became the holder.’ (Emphasis added.) Deutsche Bank National Trust Co. v. Bialobrzeski, supra, 123 Conn. App. 799 n. 11. Thus, the plaintiff has failed to show that it has standing because it has failed to satisfy its burden to present evidence that it had possession of the note at the time the action was commenced. For the foregoing reasons, the defendant’s motion to dismiss is granted.”
<p>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.</p>	
<p>Chase Home Finance, LLC v. Feguiere, 119 Conn. App. 570, 575, 989 A2d 606 (2010), cert. denied 295 Conn. 922, 991 A.2d 564.</p>	<ul style="list-style-type: none"> • “Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy.’ . . . Wilcox v. Webster Ins., Inc., 294 Conn. 206, 213-14, 982 A.2d 1053 (2009). ‘Standing [however] is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to

	<p>vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented.’ . . . <i>Fleet National Bank v. Nazareth</i>, 75 Conn. App. 791, 793-94, 818 A.2d 69 (2003).”</p>
<p>Equity One, Inc. v. Shivers, 310 Conn. 119, 136, 74 A3d 1225 (2013).</p>	<ul style="list-style-type: none"> • “[U]nder the facts and circumstances presented, the defendant has not demonstrated that he was entitled to a full evidentiary hearing on the issue of the plaintiff’s standing. It is apparent that the trial court reviewed the pertinent documents at the hearing on November 24, 2008, and at other hearings prior thereto, and that those documents fully support the trial court’s determination, predicated on the plaintiff’s status as the holder of the note, that the plaintiff had standing to commence this action.”
<p>J.E. Robert Company, Inc. v. Signature Properties, LLC, et al., 309 Conn. 307, 310-311 & 327-328, 71 A3d 492 (2013).</p>	<ul style="list-style-type: none"> • “Specifically, we must determine whether a loan servicer for the owner and holder of a note and mortgage can have standing in its own right to institute a foreclosure action against the mortgagor as a transferee of the holder’s rights under the Uniform Commercial Code (UCC), General Statutes §§ 42a-3-203 and 42a-3-301.” • “In light of our conclusion that a loan servicer need not be the owner or holder of the note and mortgage in order to have standing to bring a foreclosure action if it otherwise has established the right to enforce those instruments, we now turn to the fact specific question of whether J.E. Robert constituted a transferee entitled to enforce the note as a nonholder with the rights of the holder, LaSalle. We answer this question in the affirmative.”
<p>Washington Mutual Bank, F.A. v. Walpuck, 134 Conn. App. 446, 447, 43 A3d 174, 174-175 (2012), cert. denied 305 Conn. 902, 43 A.3d 663.</p>	<ul style="list-style-type: none"> • “The defendant claims that the plaintiff, Washington Mutual Bank, F.A., did not have standing to take title to the property because, having been acquired by JP Morgan Chase Bank, N.A., prior to the court’s approval of the sale, the plaintiff did not exist at that time. As the trial court held, this court’s opinion in <i>Dime Savings Bank of Wallingford v. Arpaia</i>, 55 Conn. App. 180, 738 A.2d 715 (1999), is dispositive of the defendant’s claim. In that case, this court held that an assignee has the option to pursue litigation in its own name or in the name of its assignor. Id., 184. Accordingly, the defendant’s claim must fail.”
<p>Kennedy Funding, Inc. v. Greenwich Landing, LLC, 135 Conn. App. 58, 59-60, 43 A3d 664 (2012), cert. denied 305</p>	<ul style="list-style-type: none"> • “In <i>RMS Residential Properties, LLC v. Miller</i>, 303 Conn. 224, 228–33, 32 A.3d 307 (2011), our Supreme Court held that, pursuant to General Statutes § 49-17, the holder of a negotiable promissory note secured by a mortgage has standing to bring a foreclosure action against the maker of the note, even before assignment of the mortgage to the holder. The principal issue in this appeal is whether, as the trial court held, such a holder has standing to bring a foreclosure action even if the holder is described in the

<p>Conn. 914, 45 A.3d 99.</p>	<p>promissory note as an agent for a number of identified principals. We affirm the judgment of the court.”</p>
<p>RMS Residential Properties, LLC v. Miller et al., 303 Conn. 224, 229-230 & 237-238, 32 A3d 307, 313 & 317 (2011).</p>	<ul style="list-style-type: none"> • “Whether § 49-17 provides a holder of a note secured by a mortgage with standing to bring a foreclosure action is an issue of first impression for this court. The Appellate Court has, however, consistently answered this question in the affirmative. See, e.g., HSBC Bank USA, N.A. v. Navin, 129 Conn. App. 707, 22 A.3d 647 (2011). We agree. Section 49-17 permits the ‘person entitled to receive the money secured’ by a mortgage to foreclose on the mortgage, even when the mortgage has not yet been assigned to him. The defendant contends that only the owner of the debt, not a mere holder of the note, is entitled to foreclose on a mortgage. The plaintiffs agree, but further contend that a holder of the note is presumed to be the owner of the debt, and unless the defendant rebuts that presumption, a holder of the note is entitled to foreclose the mortgage. We agree with the plaintiffs.”
<p>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.</p>	<ul style="list-style-type: none"> • “The defendant contends that MERS, because it was not the original lender, was not the party secured by the mortgage, and accordingly could not validly be named mortgagee. The mortgage, however, plainly discloses that MERS was named mortgagee as nominee for the original lender, Finance America, LLC. Accordingly, the real nature of the transaction was properly and sufficiently disclosed. The defendant does not contest that the original lender could create the mortgage interest to secure the debt, and then assign it to MERS. Accordingly, the defendant’s contention is that the lender may not accomplish in one recorded transaction that which it could undisputedly achieve in two. The mortgage makes clear that MERS is named mortgagee by the lender. MERS holds mortgages, given in good faith for the purpose of securing a debt, for the security of creditors. To hold such mortgages void would be to frustrate the intentions of both mortgagors and mortgagees. Accordingly, we conclude that a mortgage is not void, ab initio, by virtue of the naming of a nominee of the disclosed lender as mortgagee.”
	<ul style="list-style-type: none"> • “Our statement in RMS Residential Properties, LLC v. Miller, supra, 303 Conn. 231-32, that ‘a holder of a note is presumed to be the owner of the debt, and unless the presumption is rebutted, may foreclose the mortgage under § 49-17,’ was not intended to suggest that mere proof that someone other than the party seeking to foreclose is the owner of the note will require dismissal for lack of standing. Rather, under such circumstances, the burden would shift back to the plaintiff to demonstrate that the owner has vested it with the right to receive the money secured by the note. To the extent that our statement in RMS Residential Properties, LLC, can be read otherwise, it is hereby overruled.” J.E. Robert Company, Inc. v. Signature

	<p>Properties, LLC, et al., 309 Conn. 307, 325 – footnote 18, 71 A3d 492 (2013).</p>
<p><u>LAW REVIEWS:</u></p> <p>Public access to law review databases is available on-site at each of our law libraries.</p>	<p><i>Supreme Court Resolves Some Hot Foreclosure Issues</i>, 23 Connecticut Lawyer 3, (2012) – discusses the significance of RMS Residential Properties LLC v. Miller</p>

Section 5: Bankruptcy and Foreclosure

A Guide to Resources in the Law Library

SCOPE:

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

DEFINITIONS:

- **“Upon the filing of a bankruptcy petition by a mortgagor** under Title 11 of the United States Code, any judgment against the mortgagor foreclosing the title to real estate by strict foreclosure shall be opened automatically without action by any party or the court, provided, the provisions of such judgment, other than the establishment of law days, shall not be set aside under this subsection, provided no such judgment shall be opened after the title has become absolute in any encumbrancer or the mortgagee, or any person claiming under such encumbrancer or mortgagee. The mortgagor shall file a copy of the bankruptcy petition, or an affidavit setting forth the date the bankruptcy petition was filed, with the clerk of the court in which the foreclosure matter is pending. Upon the termination of the automatic stay authorized pursuant to 11 USC 362, the mortgagor shall file with such clerk an affidavit setting forth **the date the stay was terminated.”** Conn. Gen. Stat. § [49-15\(b\)](#) (2023).
- Automatic stay: **“is one of the fundamental debtor** protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all *foreclosure actions.*” H.R. Rep. No. 595, 95th Cong., 2d Sess. 340-42 (1977), 1978 U.S. Code Cong. & Admin. News 5787, 5963, 6296-97, (emphasis added).
- **“The filing of a petition under any chapter of the Bankruptcy Code automatically stays all actions against the debtor, including foreclosure actions. 11 U.S.C § 362(a)(5).”** Roy v. Beilin, Superior Court, Judicial District of Danbury, No. 315057 (Sep. 8, 1997) (1997 WL 583838).
- Stay continues: “(2) the stay of any other act under subsection (a) of this section continues until the earliest of—
 - (A) the time the case is closed;
 - (B) the time the case is dismissed; or
 - (C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied.” [11 U.S.C § 362 \(c\) \(2\)](#).

STATUTES, U.S.C.

You can visit your local law library or [search the most recent U.S. Code](#) on the U.S. Code website to confirm that you are accessing the most up-to-date laws.

- 11 United States Code
 - § [362](#). Automatic stay
 - § [522](#). Exemptions
 - § [541](#). Property of the estate

COURT RULES:

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

- Claim for Statutory Exemption or Stay by Reason of Bankruptcy
“When a claim for a statutory exemption or stay by reason of bankruptcy is filed, it shall be accompanied by an affidavit setting forth the date the bankruptcy petition was filed, the district of the bankruptcy court in which it was filed and the address, the name of the bankruptcy debtor and the number of the bankruptcy case.

When the stay has been relieved or terminated, the plaintiff, the person filing the petition, or any other interested party shall file with the court a copy of the relief **or termination of stay issued by the bankruptcy court.**” CT Practice Book § [14-1](#) (2024 ed.)

FORMS:

- *Collier on Bankruptcy*, 16th ed, by Richard Levin and Henry J. Sommer, with 2024 supplement.
Volume 18, Pt. CS6 – Modifying, Maintaining and Enforcing the Automatic Stay
 - § CS6.22 Setting Aside Foreclosure Sale Made in Violation of the Automatic Stay
 - Form No. CS6.22-1 Complaint by Debtor to Set Aside Foreclosure Sale Made in Violation of the Automatic Stay; 11 U.S.C. § 362
 - Form No. CS6.22-2 Findings of Fact and Conclusions of Law; Foreclosure Sale Violative of Automatic Stay; 11 U.S.C. § 362
 - Form No. CS6.22-3 Judgment Setting Aside Foreclosure Sale in Violation of Automatic Stay; 11 U.S.C. § 362

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.

- For summaries of recent CT Supreme and Appellate Court foreclosure cases, see the foreclosure section of our Newslog at:
<http://jud.ct.gov/LawLib/LawLibNews/Default.aspx?CatID=14>
- US Bank, National Association as Trustee v. Perkins, Superior Court, Judicial District of Danbury at Danbury, No. DBD-CV-12-6010846-S (August 2, 2021) (2021 WL 3727810) (71 Conn. Law Rptr. 285). “...[T]his court must also consider the relationship of § 49-15(b) with other provisions of the General Statutes governing foreclosures, relevant rules of practice and related provisions of the federal bankruptcy code, to determine whether an

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application of the plain meaning of the statute would yield absurd and unworkable results. In the present action, the **court concludes that it would.**"

- [Seminole Realty, LLC v. Sekretaev](#), 192 Conn. App. 405, 415, 218 A.3d 198 (2019). **"The question at the heart of this appeal is the effect of the bankruptcy court's suspension of the plaintiff's in rem relief for sixty days. We conclude that the bankruptcy court's suspension of the plaintiff's in rem relief extended the law day for sixty days and, therefore, title vested in the plaintiff on October 16, 2018, due to the defendant's failure to redeem. See [Provident Bank v. Lewitt](#), 84 Conn. App. 204, 206–209, 852 A.2d 852, cert. denied, 271 Conn. 924, 859 A.2d 580 (2004); see also 11 U.S.C. § 108 (b). The trial court, therefore, did not abuse its discretion on November 28, 2018, by overruling the defendant's objection to the execution of ejectment or by denying his emergency motion for a stay."**
- [Bank of New York Mellon v. Acker](#), Superior Court, Judicial District of Fairfield at Bridgeport, No. CV-186070436-S (May 1, 2019), (68 Conn. Law Rptr. 511) (2019 WL 2439040). **"Until the Appellate Court has the opportunity, itself, to reconsider *Shivers*, this Court is bound to apply its ruling in matters before it. Accordingly, the Court must decline to rule on the Committee's motion for fees and costs without prejudice for reconsideration when there is no longer a bankruptcy stay in place. While it may not seem 'fair' that the Committee remains uncompensated for work he has done on behalf of the Court, the Committee can move for relief of the bankruptcy stay or seek appellate review of this Order and the Court will award him the fees and costs incurred in doing so."**
- [Aurora Loan Services, LLC v. Bracey](#), Superior Court, Judicial District of Torrington, No. LLI-CV-11-6005113-S (October 16, 2017) (2017 WL 5505584) (65 Conn. L. Rptr. 392). "According to § 362(c)(4)(A)(i), 'if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed ... the stay under subsection (a) shall not go into effect upon the filing of the later case ...' (Emphasis added.) This language makes clear that the stay shall not go into effect upon the filing of the later case. The statute does not require that an additional step be taken by another party to prevent the stay from taking effect. Indeed, § 362(c)(4)(B) puts the burden on the filer to request a stay to go into effect within thirty days and show that the filing was in good faith, and § 362(c)(4)(D) creates a rebuttable presumption that it was not filed in good faith. Furthermore, although § 362(c)(4) (A)(ii) requires that 'the court shall promptly enter an order confirming that no stay is in effect' when a party in interest requests it to do so,

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there is no concomitant requirement that a party must request such an order to prevent the stay from going into effect. The court's interpretation of § 362(c)(4)(A) is **supported by the case law.**"

"[C]ourts have universally held that under § 362 (c) (4) (A) (i), where a debtor has filed a third bankruptcy case in a one-year period, the automatic stay never goes into effect.' [In re Bates](#), 446 B.R. 301, 304 (B.A.P. 8th Cir. 2011). '[I]f the debtor has had two bankruptcy cases pending within the preceding year that were dismissed, the automatic stay does not go into effect upon a third filing.' [In re Zarnel](#), 619 F.3d 156, 163 (2d Cir. 2010) (interpreting § 362(c)(4)(A))."

- [Manning v. Feltman](#), 149 Conn. App. 224, 225-226, 91 A3d 466 (2014). "The plaintiff in this foreclosure action . . . appeals from the judgment of dismissal rendered by the trial court in favor of the defendants.... The court concluded that it lacked subject matter jurisdiction over the foreclosure action after determining that the plaintiff lacked standing because he failed to list the note and mortgage deed at issue in his foreclosure complaint as an asset in his 1995 bankruptcy petition. The court ruled that the note and mortgage remain the property of the bankruptcy estate, not the plaintiff. On appeal, the plaintiff claims that the court erred in granting the defendants' motion to dismiss because (1) the court should have abstained from deciding bankruptcy law issues, stayed the case, and referred such issues to the Bankruptcy Court; (2) the defendants lacked standing to raise bankruptcy issues; and (3) the court should have substituted the bankruptcy trustee as a party plaintiff. We affirm the judgment of the trial court."
- [Roy v. Beilin](#), Superior Court, Judicial District of Danbury, No. 315057 (Sep. 8, 1997) (1997 WL 583838). "While all property in which the debtors had an interest at the time the bankruptcy petition was filed becomes property of the bankruptcy estate under 11 U.S.C. § 541, any property that is exempted under 11 U.S.C. § 522(b) is removed from the estate. [In re Rodriguez](#), 9 B.R. 643 (S.D. Florida 1981). Since the defendants contend that the subject property was exempted, such property is no longer considered part of the **bankruptcy estate and the stay 'continues only until the earliest of the time when the case is closed or dismissed or the time when a discharge is granted to the debtor.'** (Emphasis in original.) [In re Rodriguez](#), *supra*, 9 B.R. 643-44 (granting mortgagee's motion to modify stay seeking to continue its foreclosure action on the debtor's home even though the property was exempted, on the ground that the **stay had lifted since the debtor had received a discharge).**"

- [Kilduff v. Adams, Inc.](#), 219 Conn. 314, 321, 593 A.2d 478 (1991). “If the plaintiffs had filed a bankruptcy petition prior to the redemption by Adams, Inc., an automatic stay would have been imposed that would have barred temporarily any further proceedings in the foreclosure action, including the defendants’ redemption. 11 U.S.C. § 362 (a).”
- [In Re Lohnes](#), 26 B.R. 593, 596 (Bkrtcy. D.Conn. 1983). “In the instant proceeding, there is no question that the automatic stay was violated by the foreclosure sale.”

WEST KEY NUMBERS:

- *Bankruptcy*
 #2397(2) Foreclosure proceedings – automatic stay
 #2650(4) Price at foreclosure, judicial, or trustee sale – as consideration for transfer

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 9A *Am Jur 2d Bankruptcy*, Thomson West, 2016 (Also available on Westlaw).
 - b. Factors Affecting Determination of Good Faith in Filing § 912. Filing on the eve of foreclosure
 - d. Exemption of Particular Interests and Types of Property § 1432. Effect of foreclosure action or judgment § 1505. Consensual or judicial lien; mortgage foreclosures
- 9B *Am Jur 2d Bankruptcy*, Thomson West, 2016 (Also available on Westlaw).
 - § 1771. Mortgages; Foreclosure and sale
 - § 1815. Exception to stay for commencement of HUD foreclosure actions
- 9C *Am Jur 2d Bankruptcy*, Thomson West, 2016 (Also available on Westlaw).
 - § 2176. Foreclosure sale as involuntary prepetition fraudulent transfer or obligation
 - § 2214. Mortgage foreclosure sales as conclusive equivalent value in prepetition transfer or obligation
 - § 2856. Requirement of curing default for unimpaired claim or interest – Foreclosure judgment

TEXTS & TREATISES:

You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the treatises cited.

References to online databases refer to in-library use of these databases.

- 1 *Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure*, 14th ed., by Denis R. Caron, Geoffrey K. Milne & Andrew P. Barsom, Connecticut Law Tribune, 2023.
 - Chapter 12: The Committee
 - § 12-3 Conducting the Sale
 - § 12-3:2.1 Disregarding the Automatic Bankruptcy Stay
 - § 12-5 The Approval Hearing
 - § 12-5:2 Bankruptcy Filing Stays Approval of Committee Fees and Expenses

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- **2 Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure**, 14th ed., by Denis R. Caron, Geoffrey K. Milne & Andrew P. Barsom, Connecticut Law Tribune, 2023.

Chapter 26: Bankruptcy

§ 26-1 Introduction

§ 26-2 The Petition

§ 26-3 The Proceeding

§ 26-4 The Stay of the Proceedings

§ 26-4: 1 Timing Rule on Hearings to Vacate Automatic Stay

§ 26-4: 2 Time for Filing Petition to Halt Foreclosure

§ 26-4: 3 Effect of Petition by Guarantor upon a Pending Foreclosure Proceeding

§ 26-4: 5 Joint Tenancy Compels Another Result

§ 26-4: 6 Looking Beyond the Cases: *Wood and Pelzar*

§ 26-4: 7 The Automatic Stay May Not Be as "Automatic" as We Once Thought – *Canney* and BAPCPA Amendments

§ 26-4:8 The State Court's Interpretation of a Bankruptcy Court's Order Lifting the Automatic Stay

§ 26-5 Relief from Stay

§ 26-6 Selected Issues of General Interest

§ 26-6: 6 Some Chapter 13 Considerations – Conversion, Modification and Lien Stripping

§ 26-6: 7 Sale of Real Property or Foreclosure?

§ 26-6: 8 Preferences and Fraudulent Conveyances

§ 26-6: 9 Proofs of Claim

Chapter 27: Bankruptcy Litigation

§ 27-1 Introduction

§ 27-2 Jurisdiction and Venue

§ 27-2: 1 Jurisdiction

§ 27-2: 1.1. Core vs. Non-Core Proceedings

§ 27-2: 1.2 Non-Final v Final Judgments

§ 27-2: 2 Venue

§ 27-3 Contested Matters

§ 27-3: 1 Defining a Contested Matter

§ 27-3: 2 Adversary Proceedings

§ 27-3: 2.1 Defining an Adversary Proceeding

§ 27-3: 2.2 Bankruptcy Rules That Apply to Adversary Proceedings

§ 27-3: 2.3 Overview of Bankruptcy Rules

§ 27-4 The Filing of a Petition

§ 27-4: 1 Litigation

§ 27-4: 1.1 Applicability of the Automatic Stay: Effect of Automatic Stay as to Guarantors

§ 27-4: 1.2 Proof of Claim

§ 27-4: 1.3 Effect of Chapter 13 Conversion Upon Creditor Claims

§ 27-4: 1.4 Rule 3001

§ 27-4: 1.5 Rule 3002.1

§ 27-4: 2 Determination of Secured Claims

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§ 27-4:2.1 Section 544 and Determination of the Validity, Priority, or Extent of a Lien

§ 27-4:2.2 Defenses to Avoidance

§ 27-4:2.3 Preference Avoidance

§ 27-4:3 Fraudulent Conveyances

§ 27-4:4 Objections to Discharge Under Sections 523 and 727

§ 27-4:4.1 Dischargeability of a Debt Under Section 523

§ 27-4:4.2 **Objection to Debtor's Discharge** Under Section 727

§ 27-4:4.3 Revocation of Discharge under § 727

§ 27-4:4.3a Statement of Intention to Surrender and its Effect on a Foreclosure Action

§ 27-4:5 Objections to Confirmation

§ 27-4:5.1 Due on Sale Clauses within Mortgage

§ 27-4:5.2 Absolute Priority Rule

- *Home Foreclosures*, 2nd ed., by Geoff Walsh, John Rao and Steve Sharpe, National Consumer Law Center, 2023.
 - Chapter 9. Using Bankruptcy to Prevent Foreclosure
 - § 9.1. Introduction
 - § 9.2. Bankruptcy Basics
 - § 9.3. Obtaining the Automatic Stay
 - § 9.4. Curing Defaults on Home Loans
 - § 9.5. Paying Secured Claims in Full
 - § 9.6. Stripping Down Residential Mortgages to the Value of the Collateral
 - § 9.7. COVID-19-Related Mortgage and Forbearance Provisions
 - § 9.8. Avoiding Judicial Liens – Section 522(f)(1)
 - § 9.9. **Debtor's Statement of Intention** Regarding Secured Property
 - § 9.10. Sale of Property
 - § 9.11. Impact of Bankruptcy on Later Foreclosure Prevention Efforts
 - Chapter 10. Issues Arising after a Foreclosure Sale
 - § 10.3.4. Setting Aside a Foreclosure Sale in Bankruptcy
 - § 10.3.4.1. Sales That Violate the Automatic Stay
 - § 10.3.4.2. Fraudulent Transfers – 11 U.S.C. § 548
 - § 10.3.4.3. Using State Law Invalidity to Set Aside a Sale in Bankruptcy Court
 - § 10.3.4.4. Preferences – 11 U.S.C. § 547
 - § 10.3.4.5. Sales That Are Not Complete Under State Law
- *A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut*, 2d ed., by Christian R. Hoheb, Editor, Massachusetts Continuing Legal Education, Inc., 2021 (also available on Westlaw).
 - Chapter 8. Preforeclosure Issues

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References to online databases refer to in-library use of these databases. Remote access is not available.

§ 8.2. Initial Determinations and Considerations
§ 8.2.1. Has the Borrower Filed for Bankruptcy?

- 4 *Powell on Real Property*, by Michael Allan Wolf, Matthew Bender, 1989, with 2024 supplement (Also available on Lexis)
 - Chapter 37. Mortgages and Mortgage Foreclosures
 - § 37.48. Statutory Modifications – Bankruptcy
 - [1] Arrearages Protection
 - [2] The Automatic Bankruptcy Stay
 - [3] Sale of the Property by the Bankruptcy Court
 - [4] Impact of a Reorganization Plan on the Mortgagee
 - [5] Farmer Reorganizations
 - [6] Rents
- *Foreclosure Defense: A Practical Litigation Guide*, 2nd Ed., Rebecca A. Taylor, American Bar Association, 2020.
 - Chapter 23. Bankruptcy
- *Collier on Bankruptcy*, 16th ed, by Richard Levin and Henry J. Sommer, Matthew Bender, 2024.
 - Volume 3:
 - 362.05[8]. Commencement of HUD Foreclosures;
 - § 362(b)(8)
 - Volume 2:
 - § 108.03[3]. Relationship to Other Code Sections Providing for Powers of Debtor and Trustee (Extension of time for redemption)
 - Volume 7:
 - 1124.04[6]. Deacceleration of foreclosure judgment
- *The Foreclosure Survival Guide*, 9th ed., Amy Loftsgordon and Cara O'Neill, Nolo, 2023.
 - Chapter 5. How Chapter 13 Bankruptcy Can Delay or Stop Foreclosure
 - Chapter 6. How Chapter 7 Bankruptcy Can Delay Foreclosure
- *Mortgage Servicing and Loan Modifications*, by John Rao and Steve Sharpe, National Consumer Law Center, 2nd ed., 2023.
 - Chapter 2. Common Mortgage Servicing Problems
 - Chapter 3. Servicing Requirements Under the Real Estate Settlement Procedures Act
 - Chapter 5. State Law Servicing Claims
 - Chapter 11. Litigating Mortgage Service Claims
 - Chapter 12. Homeowner Rights During Natural Disaster and COVID-19