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2021 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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Treated Elsewhere

- [Foreclosure of Mortgages in Connecticut](#) (Including Strict Foreclosure, Foreclosure by Sale, Foreclosure by Market Sale and Loss Mitigation)
- [Postjudgment Proceedings in Connecticut Mortgage Foreclosures](#) (Including Deficiency Judgment, Redemption, Motion to Open Judgment, Appeals, Execution of Ejectment, Tenant Issues)
- [Foreclosure of Condominium Liens in Connecticut](#)
- [Mechanic's Liens in Connecticut](#) (Section 7. Foreclosure of Mechanic's Lien)
- [Collection of Delinquent Property Taxes in Connecticut](#) (Section 1. Foreclosure of Tax Liens)

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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.

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<https://www.jud.ct.gov/policies.htm>

Introduction

A Guide to Resources in the Law Library

- **Mediation:** “. . . 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: (i) The mediation period set forth in subsection (c) 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 (ii) the mediation program is not otherwise required or available.” Conn. Gen. Stat. § [49-31j](#) (c)(6)(B) (2021).
- **Reinstatement:** “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.” Conn. Gen. Stat. § [49-10a](#) (2021).
- **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. . . . 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.)” Farmers & Mechanics Bank v. Santangelo, Superior Court, Judicial District of Middlesex at Middletown, No. 67481, (Dec. 8, 1995).
- **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. 31 50 57 (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:

- **Program Description** - "The Chief Court Administrator shall establish . . . a foreclosure mediation program in actions to foreclose mortgages on residential real property . . . 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 . . . Such mediators may refer mortgagors who participate in the 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](#) (2021).
- **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: (i) The mediation period set forth in subsection (c) 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 (ii) the **mediation program is not otherwise required or available.**" Conn. Gen. Stat. § [49-31l](#) (c)(6)(B) (2021).
- **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](#) (b)(6) & (c)(6) (2021).
- **"Consent of mortgagee required for changes. Disclosure of information submitted to mediator.** (a) Nothing in sections 49-31k to 49-31n, inclusive, shall require a mortgagee to modify a mortgage or change the terms of payment of a mortgage without its consent.
(b) Information submitted by the mortgagor to a mediator, either orally or in writing, including financial documents, shall **not be subject to disclosure by the Judicial Branch.**" Conn. Gen. Stat. § [49-31o](#) (2021).

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. (2021)
 - [Title 49](#). Mortgages and Liens
 - [Chapter 846](#). Mortgages
 - § [49-31k](#). Definitions.
 - § [49-31l](#). Foreclosure Mediation: Notice of foreclosure mediation program. Forms. Procedure. Stay of litigation.
 - § [49-31m](#). Foreclosure mediation program.
 - § [49-31n](#). Mediation period. Information required. Termination of program.
 - § [49-31o](#). Consent of mortgagee required for changes. Disclosure of information submitted to mediator.
 - § [49-31r](#). Foreclosure mediation: Notice of community-based resources.
 - § [49-31t](#). Eligibility for foreclosure mediation program after consent to foreclosure by market sale. (Repealed by [PA 16-65, section 94](#), effective October 1, 2016)
 - § [49-31u](#). Foreclosure mediation program: Certificate of good standing. (Repealed by [PA 16-65, section 94](#), effective October 1, 2016)
 - § [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.

- [Foreclosure Mediation Program](#), by James Orlando, Associate Analyst, Connecticut General Assembly, Office of Legislative Research, Report No. 2011-R-0331, October 20, 2011.
- [Legislative Changes to the Foreclosure Mediation Program](#), by Kristen Miller, Senior Legislative Attorney, Connecticut General Assembly, Office of Legislative Research, Report No. 2020-R-0293, December 1, 2020.

COURT RULES:

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

- CT Practice Book (2021 ed.)
 - § [10-12](#). Service of the Pleading and Other Papers; Responsibility of Counsel or Pro Se Party: Documents and Persons to Be Served
 - § [17-20\(b\)](#). Motion for Default and Nonsuit for Failure to Appear

STANDING ORDERS:

- [Foreclosure Mediation Standing Orders](#)

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)

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

- [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. 5/18)
- [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 our foreclosure section on our Newslog at: <http://jud.ct.gov/LawLib/LawLibNews/Default.aspx?CatID=14>
- [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 § 49-31f is that the movant show good cause, and that the court properly determined that the defendant had not.
Section 49-31f (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 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 49-31f 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 (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). "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 § 49-31n(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, 596 & 609-610, 92 A.3d 278 (2014). "This appeal calls upon the court to decide whether, in a residential 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
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.**”

PAMPHLETS:

- [*Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners*](#), 11th ed., Connecticut Fair Housing Center.
Complaint and Foreclosure Mediation, p. 8
Court Proceedings and Mediation, p. 10
Successful Mediation or Judgment, p. 14
Be Effective in Mediation, p. 19
If Mediation Does Not Resolve Your Case, p. 23

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.

- *Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure*, Denis R. Caron & Geoffrey K. Milne, 11th ed., 2021.
Chapter 17 Connecticut Foreclosure Relief Programs
§ 17-2.5 Foreclosure Mediation
§ 17-2: 5.1 Limited Duration
§ 17-2: 5.2 New Pre-mediation Procedures
§ 17-2: 5.3 Court Can Refer Parties to Mediation
§ 17-2: 5.4 Responsive Pleadings Explicitly Permitted
§ 17-2: 5.5 Mediation Can Consider Short Sale and Deed-in-Lieu Options
§ 17-2: 5.6 Scope of Mediation Program Determined by Return Date
§ 17-2: 5.7 Cases Returned to Court Between July 1, 2008 and June 30, 2009
§ 17-2: 5.8 Cases Returned to Court Between July 1, 2009 and June 30, 2016
§ 17-2: 5.9 Scope of the Program
§ 17-2: 5.10 The Notice Requirement
§ 17-2: 5.10a The New Mediation Information Form
§ 17-2: 5.11 Program Commencement
§ 17-2: 5.12 The Stay
§ 17-2: 5.13 The Mediation Sessions
§ 17-2: 5.14 Additional Provisions
§ 17-2: 5.15 Good Cause Needed for Further Mediation
- *A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut*, Michelle L. Bibeau, MCLE, 2018. (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**

- ***Foreclosures and Mortgage Servicing Including Loan Modifications***, National Consumer Law Center, 5th ed., 2014.
 - Chapter 8. Legal Defenses to Home Foreclosures
 - § 8.8. State and Local Mediation Programs
 - § 8.8.1. State and Local Responses to the Current Foreclosure Crisis
 - § 8.8.2. State Statutes Requiring Foreclosure Conferences or Mediation
 - § 8.8.2.1. General
 - § 8.8.2.2. Connecticut
 - § 8.8.7. The Mortgage Holder/Servicer Obligations
 - § 8.8.8. Encouraging Homeowner Participation
- ***Mortgage Servicing and Loan Modifications***, National Consumer Law Center, 1st ed., 2019.
 - Chapter 3. Servicing Requirements Under the Real Estate Settlement Procedures Act
 - Chapter 5. State Law Servicing Claims

STATISTICS:

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

Section 2: Connecticut's Emergency Mortgage Assistance Act

A Guide to Resources in the Law Library

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](#) (2021).

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. (2021)
[Chapter 134](#). Connecticut Housing Finance Authority Act
 - § [8-265cc](#). Definitions.
 - § [8-265dd](#). Emergency mortgage assistance payment program. Foreclosure of eligible mortgage.
 - § [8-265ee](#). Notice to mortgagee of foreclosure. Meeting or conference with mortgagee or consumer credit counseling agency.
 - § [8-265ff](#). Application for loan. Disclosure of assets by mortgagor. Determination of eligibility by the authority.
 - § [8-265gg](#). Monthly payments. Calculation of amount. **Procedures for review of mortgagor's financial circumstances.** Modification to amount of payment.
 - § [8-265hh](#). Repayment agreement.
 - § [8-265ij](#). Written procedures.
 - § [8-265kk](#). Notification by authority to participating mortgagees of unavailability of funds.

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.

- *Mortgage Modification Programs in Connecticut*, By Michelle Kirby, Connecticut General Assembly, Office of Legislative Research, [2013-R-0075](#), (February 5, 2013).
- *Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure*, Denis R. Caron & Geoffrey K. Milne, 11th ed., 2021.
 - **Mortgagee's Emergency Mortgage Assistance Notice to Mortgagor**, pp. 1032-1033
 - **Mortgagee's Affidavit of Compliance with the Emergency Mortgage Assistance Program**, pp. 1034-1035
 - **Affidavit of Non-Applicability of the Emergency Mortgage Assistance Act**, pp. 1035-1036
 - **Affidavit of Mortgagor's Default under the Emergency Mortgage Assistance Program**, pp. 1040-1041

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 our foreclosure section on our Newslog at: <http://jud.ct.gov/LawLib/LawLibNews/Default.aspx?CatID=14>
- M&T Bank v. Wolterstorff, et. al., Superior Court, Judicial District of Stamford, No. FST-CV-16-6029152-S (September **10, 2018**). **"Compliance with the requirement of the Emergency Mortgage Assistance Program Act that prior to the commencement of a mortgage foreclosure action...the mortgagee be given written notification of the right to participate in the Program, CGS sec. 8-265ee(a), is a subject-matter jurisdictional requirement"**.
- Aurora Loan Services, LLC v. Bracey, Superior Court, Judicial District of Torrington, No. LLI-CV-11-6005113-S (October 16, 2017). **"The provision of the federal 2005 Bankruptcy Abuse Prevention & Consumer Protection Act eliminating the normal automatic bankruptcy stay for a debtor's third petition filed within a one-year period prevents the stay from even coming into existence...no action by a mortgagee is necessary to eliminate the stay for a mortgagor's third petition within one year."**
- Washington Mutual Bank v. Coughlin, 168 Conn. App. 278, 287, 145 A3d 408 (2016). **"The defendants' sole claim on appeal is that the court improperly denied their motion to dismiss the foreclosure action by concluding that 'compliance with [EMAP] is not a jurisdictional matter which requires the granting of the motion.'** They allege that, because the original plaintiff failed to provide them with proper notice in accordance with § 8-265ee, which they maintain was a statutory prerequisite to filing the present foreclosure action, the trial court lacked subject matter jurisdiction over the action and should have granted their motion to dismiss. The plaintiff's principal response is that it is unnecessary in the present case to consider whether the defendants received proper notice or whether compliance with § 8-265ee is a jurisdictional prerequisite to the filing of a foreclosure action because it is apparent from the record that the defendants were not entitled to the EMAP notice. 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."
- People's United Bank v. Wright, Superior Court, Judicial District of Stamford/Norwalk at Stamford, No. FST-CV10-6004126-S (Mar. 30, 2015). **"This mortgage foreclosure case requires the court to determine whether the notice provisions contained in G.S. §§ 8-265dd(b) and 8-265ee(a) are subject matter jurisdictional and if so, whether the**

plaintiff in this action has proved compliance with those requirements. These issues arose on the first day of trial as a result of the defendants filing a motion to dismiss asserting noncompliance with these provisions. . . . At the outset, the court notes the difference in the prohibitory language between §§ 8-265dd(b) and 8-265ee(a). In the former, a foreclosure judgment is only forbidden *unless* an § 8-265ee(a) notice has been given whereas in the latter, 'no ... mortgage may *commence* a foreclosure of a mortgage prior to mailing such notice.' (Emphasis added.) Thus, the legislature has not only forestalled a foreclosure judgment *unless* there has been compliance but in a subsequent section it has prohibited even the *commencement* of the action. It is well established that an action is commenced by service of process. [Rios v. CCMC Corp.](#), 106 Conn.App. 810, 820 (2008). Thus, any foreclosure writ of summons and complaint served on a mortgagor before or without compliance with the notice requirement would be a nullity. . . . this court concludes that the notice requirement is subject matter jurisdictional and therefore strict compliance is required. The court must now proceed to determine whether the notice requirement of Sec. 8-265ee(a) has been satisfied. . . . Based upon the foregoing analysis the court finds that the plaintiff has failed to meet its burden of proof that it complied with the notice requirement contained in §§ 8-265dd and 8-265ee by sending to the defendants by certified or registered mail their mandated notice. Accordingly, this action is dismissed for lack of subject matter jurisdiction."

- [Thomaston Savings Bank v. Hardisty](#), Superior Court, Judicial District of Litchfield at Litchfield, No. CV-09-5006672S (Sep. 13, 2010). "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."

TEXTS & TREATISES:

- *Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure*, Denis R. Caron & Geoffrey K. Milne, 11th ed., 2021
 Chapter 17. Connecticut Foreclosure Relief Programs
 17-2. An Act Concerning Responsible Lending and Economic Security

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

§ 17-2: 4. Changes to the Emergency Mortgage Assistance Program ("EMAP")

§ 17-2: 4.1. Which Mortgages Fall Within the Scope of the Act?

§ 17-2: 4.2. The Notice Requirement

§ 17-2: 4.3. The Affidavit Requirement

§ 17-2: 4.4. What Happens if the Homeowner Applies for Assistance?

§ 17-2: 4.5. Implementing EMAP

§ 17-2: 4.6. **Consequences of Borrower's Default**

§ 17-2: 4.7. Coordination with Other Aspects of the Act

- *A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut*, Michelle L. Bibeau, MCLE, 2018. (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. State § 49-10a. "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. (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. (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. (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. (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>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

- *Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure*, Denis R. Caron & Geoffrey K. Milne, 11th ed., 2021.
 - 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*, Dennis P. Anderson, Denis R. Caron & Geoffrey K. Milne, 3d ed., 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
 - § 392. Persons subject to action
 - § 393. Laches and limitations
 - § 394. Discharge without authority
 - § 395. Mistake of fact or law
 - § 396. Inadvertent, accidental, or unintentional release
 - § 397. Ignorance of intervening rights
 - § 398. Fraud

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

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

Deed in Lieu of Foreclosure	
SEE ALSO:	<ul style="list-style-type: none"> • Foreclosure of Mortgages in Connecticut section 4: Judgment of Loss Mitigation
TREATISES:	<ul style="list-style-type: none"> • <i>Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure</i>, Denis R. Caron & Geoffrey K. Milne, 11th ed., 2021 <ul style="list-style-type: none"> Chapter 17. Connecticut Foreclosure Relief Programs <ul style="list-style-type: none"> § 17-2:5.5. Mediation Can Consider Short Sale and Deed-in-Lieu Options Chapter 18. Federal Foreclosure Relief Programs <ul style="list-style-type: none"> § 18-2:3. Deeds in Lieu of Foreclosure <ul style="list-style-type: none"> § 18-2:3.1. Conveyance Tax Exemption Chapter 26. Connecticut Deeds in Lieu of Foreclosure: Lender Concerns and Title Issues <ul style="list-style-type: none"> § 26-1. Introduction § 26-2. Lenders' Concerns <ul style="list-style-type: none"> § 26-2:1. Consideration § 26-2:2. Effect of Unaccepted Tender of Deed § 26-2:3. "Clogging" the Equity of Redemption § 26-2:4. Merger of Title § 26-2.5. Deed Absolute § 26-2:6. Bankruptcy <ul style="list-style-type: none"> § 26-2:6.1. Preference § 26-2:6.2. Fraudulent Transfers § 26-2:7. Effect of the Uniform Fraudulent Transfer Act § 26-2.8. Conveyance Tax <ul style="list-style-type: none"> § 26-2:8.1. New Exemption for Principal Residence § 26-2:8.2. Calculating the Tax on Non-Exempt Deeds in Lieu of Foreclosure § 26-3. Title Issues <ul style="list-style-type: none"> § 26-3:1. Lender Title Issues <ul style="list-style-type: none"> § 26-3:1.1. Consideration § 26-3:1.2. "Clogging" § 26-3:1.3. Merger § 26-3:1.4. Deed Absolute § 26-3:2. Insuring Good-Faith Purchasers <ul style="list-style-type: none"> § 26-3:2.1. Common Law Issues § 26-3:2.2. Bankruptcy Issues § 26-4. Conclusion Chapter 38. Judgment of Loss Mitigation <ul style="list-style-type: none"> § 38-4. Types of Relief Afforded <ul style="list-style-type: none"> § 38-4:2. Deed in Lieu of Foreclosure § 38-5. Statutory Scheme – Modifications and Deeds in Lieu • <i>A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut</i>, Michelle L. Bibeau, MCLE, 2018 (Also available on Westlaw) <ul style="list-style-type: none"> Chapter 10. Title Issues in Foreclosure Practice <ul style="list-style-type: none"> § 10-9. Deeds in Lieu of Foreclosure
<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>	

	<ul style="list-style-type: none"> • <i>Connecticut Standards of Title</i> Chapter XVIII. Release of Mortgages, Assignment of Rents, Lis Pendens and Financing Statements Standard 8.1. Effect of Deed In Lieu of Foreclosure from Mortgagor to Mortgagee – The Doctrine of Merger • 4 <i>Powell on Real Property</i>, by Richard R. Powell, Matthew Bender, 1989, with 2020 supplement (Also available on Lexis) Chapter 37. Mortgages and Mortgage Foreclosures § 37.44. Deed in Lieu of Foreclosure <ul style="list-style-type: none"> [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 <ul style="list-style-type: none"> [1]—In general [2]—The Mortgagee Creditor <ul style="list-style-type: none"> [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 <ul style="list-style-type: none"> [a] Foreclosure and Purchase by Creditor or Independent Third Party [b] Deed in Lieu of Foreclosure • <i>The Foreclosure Survival Guide</i>, Amy Loftsgordon, 7th ed., 2019. Chapter 8. If You Decide to Leave Your House Offer the Lender a Deed in Lieu of Foreclosure Will the Lender Accept a Deed in Lieu? Fannie Mae and Freddie Mac Deeds in Lieu of Foreclosure
<u>LAW REVIEWS:</u>	<ul style="list-style-type: none"> • Dennis R. Caron, <i>Connecticut Deeds in Lieu of Foreclosure: Lender Concerns and Title Issues</i>, 64 <u>Connecticut Bar Journal</u> 433, (1990)

Table 3: Short Sales - Texts & Treatises

Short Sales
<p>SEE ALSO: Foreclosure of Mortgages in Connecticut, section 4: Judgment of Loss Mitigation</p>
<ul style="list-style-type: none"> • Short Sales, by Michelle Kirby, Connecticut General Assembly, Office of Legislative Research, 2013-R-0400 (November 25, 2013). • State Requirements For Debt Negotiators in Short Sale Negotiations, by Michelle Kirby, Office of Legislative Research, 2013-R-0083 (February 5, 2013). • Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure, Denis R. Caron & Geoffrey K. Milne, 11th ed., 2021 <ul style="list-style-type: none"> Chapter 17. Connecticut Foreclosure Relief Programs <ul style="list-style-type: none"> § 17-2:5.5. Mediation Can Consider Short Sale and Deed-in-Lieu as Options Chapter 18. Federal Foreclosure Relief Programs <ul style="list-style-type: none"> § 18.2. Home Affordable Foreclosure Alternatives Program (“HAFA”) <ul style="list-style-type: none"> § 18-2:2. Short Sales <ul style="list-style-type: none"> § 18-2:2.1. Short Sale Approval § 18-2:2.2. Conveyance Tax Exemption Chapter 38. Judgment of Loss Mitigation <ul style="list-style-type: none"> § 38-4. Types of Relief Afforded <ul style="list-style-type: none"> § 38-4:3. Short Sale § 38-6. Statutory Scheme – Short Sales • 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 • The Foreclosure Survival Guide, Amy Loftsgordon, 7th ed., 2019 <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 <ul style="list-style-type: none"> Advantages of a Short Sale Disadvantages of a Short Sale Will You Be Able to Negotiate a Short Sale?
<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>

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. (2021)
§ [49-31d](#). **Definitions.** For the purposes of sections 49-31d to 49-31i, inclusive:
 - (1) **“Unemployed person”** means a person who is unemployed for purposes of chapter 567.
 - (2) **“Homeowner”** means a person who has an ownership interest in residential real property secured by a mortgage which is the subject of a foreclosure action, and who has owned and occupied such property as his principal residence for a continuous period of not less than two years immediately preceding the commencement of such foreclosure action.
 - (3) **“Restructured mortgage debt”** means the adjustment by a court of a mortgage debt to give protection from a foreclosure action.
 - (4) **“Protection from foreclosure”** means a court-ordered restructuring of a mortgage debt designed to eliminate an arrearage in payments on such debt and to provide a period not to exceed six months during which foreclosure is stayed.
 - (5) **“Lender”** means any person who makes or holds mortgage loans in the ordinary course of business and who is the holder of any first mortgage on residential real estate which is the subject of a foreclosure action.
 - (6) **“Underemployed person”** means a person whose earned income during the twelve-month period immediately preceding the commencement of the foreclosure action is (A) less than fifty thousand dollars and (B) less than seventy-five per cent of his average annual earned income during the two years immediately preceding such twelve-month period.

STATUTES:

- Conn. Gen. Stat. (2021)
[Title 49](#). Mortgages and Liens
§ [49-31d](#). Definitions.
§ [49-31e](#). Notice to homeowner of protections from foreclosure.

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.

- § [49-31f](#). 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.

- *Mortgage Foreclosure-Unemployed Homeowners*, by George Coppolo, Connecticut General Assembly, Office of Legislative Research, [2002-R-0363](#) (March 22, 2002).

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.

- 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

FORMS:

- *Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure*, Denis R. Caron & Geoffrey K. Milne, 7th ed., 2017 (CD only)
 - Unofficial Forms
 - Form 6-028. Application for Protection from Foreclosure

RECORDS & BRIEFS:

- 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](#)

CASES:

- For summaries of recent CT Supreme and Appellate Court foreclosure cases, see our foreclosure section on our Newslog at:
<http://jud.ct.gov/LawLib/LawLibNews/Default.aspx?CatID=14>

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.

- [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....**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.'** "
- [Savings Bank Life Ins. Co. v. Linthicum](#), 43 Conn. App. 467, 469, 683 A.2d 737, 739 (1996). "The purpose of an application for protection from foreclosure under § 49-31f is to grant the defendant an opportunity for the restructuring of the mortgage debt. General Statutes § 49-31g. If the application is approved, the foreclosure action is stayed for the restructuring period, pursuant to § 49-31f (f)."
- [Savings Bank Life Ins. Co. v. Linthicum](#), 43 Conn. App. 467, 469, 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."
- [Citicorp Mortgage, Inc. v. Conant](#), 54 Conn. App. 529, 534, 736 A.2d 928, 931 (1999). "We agree, in this case, that the trial court did not abuse its discretion when it denied the defendants' application. Its findings that the defendants' visions of their future earnings were speculative, that they had no equity in the mortgaged property, that their financial situation would make it unlikely that they would be able to make timely payments on the restructured mortgage and that the plaintiff would be prejudiced by a restructuring of the mortgage were based on the evidence before it. We conclude, therefore, that the trial court properly denied the defendants' application for protection from foreclosure."
- [Shawmut Mortgage Co. v. Wheat](#), 245 Conn. 744, 754-755, 717 A.2d 664, 670 (1998). "...we conclude that the defendant, as an individual who never previously has been employed, is not an 'unemployed person' within the meaning of §49-31d (1) and, therefore, may not qualify for

protection from mortgage foreclosure under the mortgage act.”

- See also [Table 4: Unreported Connecticut decisions](#)
- *Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure*, Denis R. Caron & Geoffrey K. Milne, 11th ed., 2021.

**TEXTS &
TREATISES:**

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

Chapter 17. Connecticut Foreclosure Relief Programs

§ 17-1. Foreclosure Moratorium Act

§ 17-1:1. Legislative History

§ 17-1:2. What Mortgages are Subject to the Act?

§ 17-1:3. Who Qualifies to Invoke Protection Under the Act?

§ 17-1:4. How is the Act’s Protection Invoked?

§ 17-1:5. What Factors Does the Court Consider?

§ 17-1:6. When is the Debt Restructured?

§ 17-1:7. How is the Debt Restructured?

§ 17-1:7.1. The Role of Projected Interest

§ 17-1:7.2. The Role of Real Property Taxes

§ 17-1:7.3. The Role of Court Costs, Legal Fees and Other Sums

§ 17-1:8. What Takes Place During the Restructuring Period?

§ 17-1:9. How is Interest Handled?

§ 17-1:10. How is the Prevailing Rate Computed?

§ 17-1:11. Notice Requirement Eliminated

§ 17-1:12. 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). • “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 style="margin-left: 20px;">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).</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).
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). • "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).
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 eligible for the protection from foreclosure afforded by 49-31f,

	<p>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).</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 week, 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 08 5002921 S (Jul. 30, 2008).</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 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>,</p>

	<p>Superior Court, Judicial District of Fairfield at Bridgeport, No. CV 03-0399404 S (Jul. 8, 2003) (35 Conn. L. Rptr. 108).</p>
Filing Defenses	<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, <i>Satter, S.T.R., 8 CSCR 257</i>) ... 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. CV94 031 79 57 S (Jan. 24, 1996).</p>
Filing Requirements	<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). • "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 <i>Bednarz, supra</i>, the court denied the application for relief

	<p>'without prejudice,' giving the applicants fifteen days 'to refile with proper financial background.' Also, in <i>US Bank National Ass'n v. Bozzi</i>, 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.) <i>Id.</i> Fn.2.</p> <p>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." <i>Virtual Bank v. Cassidy</i>, Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. CV08-5007288S (Apr. 15, 2009) (47 Conn. L. Rptr. 560).</p>
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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).
- "...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).

- “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. (2021)
 - [Chapter 668](#). Nondepository Financial Institutions
 - § [36a-486](#). Licenses required. Exemptions. Prohibited advertisements. Violations.
 - § [36a-488](#). Mortgage lender, mortgage correspondent lender, mortgage broker, mortgage loan originator and loan processor or underwriter licenses. Requirements.
 - [Chapter 669](#). Regulated activities
 - § [36a-746](#) et seq. 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, 11th ed., pp. 23-24

FORMS:

4 Connecticut Practice Series, *Civil Practice Forms*, 4th ed., by Joel M. Kaye and Wayne D. Effron, Thomson West, 2008, with 2020-2021 supplement (Also available on Westlaw)

Form 705.7. Special defense and counterclaim to foreclosure: 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 our foreclosure section on our Newslog at: <http://jud.ct.gov/LawLib/LawLibNews/Default.aspx?CatID=14>*
- [Deutsche Bank National Trust Company, Trustee v. Bliss et al.](#), 159 Conn. App. 483, 497-498, 124 A3d 890, 899-900 (2015). "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.'**"

- [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

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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). **“In a mortgage foreclosure action, ‘[t]o make out its prima facie case, [the foreclosing party] had to prove by a preponderance of the evidence that it was the owner of the note and mortgage and that [the mortgagee] had defaulted on the note.’** [Webster Bank v. Flanagan](#), 51 Conn. App. 733, 750-51, 725 A.2d 975 (1999) . . .
Franklin Credit alleged, among other things, that it is the owner of the note and that the note was in default. In response, the defendant asserted the special defense that **‘[t]he debt subject of the lawsuit was discharged and released, including as evidenced by Form 1099 issued by [Franklin Credit’s] predecessor to the right, title and interest in the debt instruments.’”**
- [LaSalle National Bank v. Freshfield Meadows, LLC](#), 69 Conn. App. 824, 832-833, 798 A.2d 445, 450 (2002). **“The defendant next claims that the court improperly granted the plaintiff’s summary judgment motions despite the special defenses that it had raised. Specifically, the defendant argues that summary judgment should not have been granted based on (1) the implied covenant of good faith and fair dealing, (2) the doctrine of unclean hands, (3) the common-law duty of good faith and fair dealing, (4) the doctrine of unconscionability and (5) the doctrine of equitable estoppel. We will address each special defense in turn.”** See [Table 5](#).

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- [Webster Bank v. Oakley](#), 265 Conn. 539, 577, 830 A2d 139, 163 (2003). "In light of these well reasoned opinions in the closely analogous factual context of insurance policies, we **conclude that Title III of the ADA regulates a lender's** provision of access to its mortgage loans, which are the goods and services that it offers, but does not regulate the content of those loan agreements. Thus, although a lender like the plaintiff may not refuse to provide equal access to its mortgage policies on the basis of the disabilities of potential mortgagors, it was not required to alter the otherwise universally applicable terms or conditions of its mortgage policies to accommodate the disabilities of borrowers such as **the defendant.**"
- [F.D.I.C. v. Altholtz](#), 4 F. Supp.2d 80 (1998) (D. Conn.). Discussion of statute of frauds, breach of covenant of good faith and fair dealing. Defense of unclean hands.
- [New England Savings Bank v. Bedford Realty Corp.](#), 246 Conn. 594, 607, 717 A.2d 713, 720 (1998). "The problem of proving a debt that has been assigned several times is of great **importance to mortgage lenders and financial institutions.**"
- [Mechanics & Farmers Savings Bank, FSB v. Delco Development Co.](#), 43 Conn. Supp. 408, 414, 656 A.2d 1075, 1080 (1993). "The principle that a bank's violation of regulatory provisions in making a loan neither precludes recovery on the loan nor provides a defense, unless specifically provided by statute, has been well established for **well over 100 years.**" affirmed at [232 Conn. 594 \(1995\)](#)
- [Petterson v. Weinstock](#), 106 Conn. 436, 441, 138 A. 433, 435 (1927). "At common law, the only defenses to an action of this character would have been payment, discharge, release or satisfaction . . . or, **if there had never been a valid lien.**" "So, if the mortgagor is prevented by accident, mistake or fraud, from fulfilling a condition of the mortgage, foreclosure cannot be had." *p. 442*

Superior Court:

- [Spectrum Stamford, LLC v 400 Atlantic Title, LLC](#), Superior Court, Judicial District of Stamford, No. FST-CV-18-6034655-S (October 18, 2018). "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 Enter's. LLC v. Lin Mare, LLC*, Superior Court, Judicial District of Hartford, No. HHD-CV-15-6060522S (February 5, 2018). "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). "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). "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). "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 Trust Co. v. Pinto**, Superior Court of Waterbury, No. UWY-CV-13-6017507-S (August 31, 2017). 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). “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) (63 CLR 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**, 278 Conn. 557, 573 (2006) the motion to strike the third count is denied.”

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- ***Nationstar Mortgage, LLC v. Marcio Demelo***, Superior Court, Judicial District of Fairfield at Bridgeport, No. FBT-CV15-6050091-S (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 avoidance such obligation ought equitably to affect the **enforcement of the note.”**

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- ***Bank of America, N.A. v. Voog***, Superior Court, Judicial District of Danbury, No. DBDCV126008819S (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 special defenses, and he did not specifically deny the authenticity of Sjolander's signature or her authority to make

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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). “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).”
- ***People’s United Bank v. Estate of Jones***, Superior Court, Judicial District of Waterbury at Waterbury, No. CV12-6014130S (May 28, 2013). “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.) *Liberty Bank v. New London Limited Partnership*, Superior Court, judicial district of New London, Docket No. CV 06 4005236 (May 1, 2007, Devine, J.) (43 Conn. L. Rptr. 326, 328); see *Connecticut Community Bank, N.A. v. Six Hundred Twenty-Three Steamboat, LLC*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV 12 6013283 (February 15, 2013, Mintz, J.).”
- ***Thomaston Savings Bank v. Hardisty***, Superior Court, Judicial District of Litchfield at Litchfield, No. CV-09-5006672S (Sep. 13, 2010). “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 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.) Eastern Savings Bank FSB v. Mara, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV 05 4006305 (June 5, 2006, Dooley, J.); see also [Southbridge Associates, LLC v. Garofalo](#), 53 Conn. App. 11, 16, 728 A.2d 1114, cert. denied, 249 Conn. 919, 733 A.2d 229 (1999) (upholding the **decision of the trial court that the 'special defense . . . did not attack the making, validity or enforcement of the note and mortgage and thus raised no issue of material fact that would warrant a trial'.**)"

- ***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). "...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

ENCYCLOPEDIAS:

- 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, generally
 - § 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
 - § 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)
 - 5. Defenses; Limitations and Laches; Setoff and Counterclaim
 - a. In General
 - § 611. Defenses, generally
 - § 612. Usurious interest rate
 - § 613. Tender during foreclosure; necessity of **including costs and attorney's fees**
 - b. Limitations and Laches
 - § 614. Generally; right to interpose defense
 - § 615. Limitation statute applicable
 - § 616. Installment mortgages
 - § 617. Effect of acceleration provision
 - § 618. Bar of debt as barring mortgage
 - § 619. Bar of debt as barring mortgage – Deed absolute intended as mortgage
 - c. Extension or Revival of Limitation Period
 - § 620. Generally
 - § 621. Mortgagor's nonresidence or absence from state**
 - § 622. Part payment, new promise, or acknowledgment
 - § 623. Sufficiency; proof
 - § 624. Where there is an acceleration clause
 - § 625. Effect upon junior encumbrancers
 - § 626. Extension of time for payment; giving new obligation
 - § 627. Effect of act of person other than mortgagor
 - § 628. Effect of statutes requiring memorandum of payment, or renewal or extension agreement, to be placed on record
 - § 629. Persons protected
 - § 630. Effect of knowledge or recognition of mortgage
 - d. Setoff, Recoupment, and Counterclaim

- § 631. Generally
- § 632. In suits to foreclose purchase-money mortgages
- § 633. Barred claims

- 59 *CJS* Mortgages, Thomson West, 2019 (Also available on Westlaw)

IX. Validity of Mortgages

- § 175. Generally
- § 176. Mental capacity
- § 177. Mistake
- § 178. Fraud
- § 179. Fraud – Fraud practice 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

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.

- *Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure*, Denis R. Caron & Geoffrey K. Milne, 11th ed., 2021.

Chapter 1. Preliminary Considerations

§ 1.6 Reinstatement

- § 1-6:1 Reinstatement Letters Not a Basis for a Defense to Foreclosure

Chapter 32. Defenses to foreclosure

§ 32-1. Introduction

§ 32-2. Common Law Defenses

- § 32-2: 1. Payment
- § 32-2: 2. Duress
- § 32-2: 3. Release
- § 32-2: 4. Lack of consideration
- § 32-2: 5. Fraud in factum
- § 32-2: 6. Fraud
- § 32-2: 7. Negligent Misrepresentation
- § 32-2: 8. Accord and Satisfaction
- § 32-2: 9. Abandonment of Security
- § 32-2: 10. Breach of Loan Modification Agreement
 - § 32-2: 10.1. Oral Modification Agreements
- § 32-2: 11. State Law Defenses not Pre-empted by Federal Law Due to HAMP

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§ 32-2: 12. No Fiduciary Duty between Lender and a Borrower

§ 32-2: 13. Res Judicata and Collateral Estoppel

§ 32-2: 14. Failure to Pay Rent as a Defense to a Commercial Mortgage Foreclosure

§ 32-2: 15. Robo-Signing

§ 32-3. State Statutory Law Defenses

§ 32-3: 1. Usury

§ 32-3: 2. Connecticut Unfair Trade Practices Act (CUTPA)

§ 32-3: 3. Connecticut Abusive Home Loan Lending Practices Act

§ 32-3: 4. Defective Mortgage Instrument

§ 32-3: 5. Unlicensed Lender

§ 32-3: 6. Connecticut Protection from Foreclosure Act

§ 32-3: 7. Payoff Letter

§ 32-3: 8. Loan to Person only Secondarily Liable – Connecticut General Statutes § 49-4a)

§ 32-3: 9. The Marshalling Statute – Connecticut General Statutes § 52-380i

§ 32-3: 10. Payment to Contractor – **re Mechanic's Lien Foreclosure**

§ 32-3: 11. Conditions Precedent Under the Loan Documents

§ 32-3: 12. Failure to Release Mortgage

§ 32-3: 13. Sovereign Immunity

§ 32-3: 14. Statute of Limitations

§ 32-3: 14.1 Limitation on Suit Against Guarantor

§ 32-3: 15. Homestead Exemption

§ 32-3: 16. Conn. Gen. Stat. § 52-588 as a Defense

§ 32-3: 17. Death of a Party and § 52-600

§ 32-4. Federal Law Defenses

§ 32-4: 1. Fair Debt Collection Practices Act

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§ 32-4: 3. RESPA

§ 32-4: 4. The Dodd-Frank Wall Street Reform and Consumer Protection Act

§ 32-5. Equitable Defenses

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§ 32-5: 6. Equitable Subrogation

§ 32-5: 7. Bad Faith Settlement Practices

§ 32-5: 8. Laches

§ 32-6. **Counterclaims**

§ 32-7. **Jury Verdicts**

- *Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators*, by Jeanine M. Dumont, 1998.

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.

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***, Dennis P. Anderson, Denis R. Caron and Geoffrey K. Milne, 3d ed., 2008.

Chapter 17, Real Property Foreclosure in Connecticut
"Contested Matters," pp. 418-419

- ***Foreclosures and Mortgage Servicing Including Loan Modifications***, National Consumer Law Center, 5th ed., 2014.

Chapter 8. Legal Defenses to Home Foreclosures

§ 8.1. Introduction

§ 8.2. Introduction to the Foreclosure Process

§ 8.3. Procedural Defenses

§ 8.4. Due Process Challenges to Foreclosure by Power of Sale

§ 8.5. Foreclosure of a Deed of Trust

§ 8.6. Enforceability of Due on Sale Contract Provisions

§ 8.7. Using Equitable Grounds to Prevent a Foreclosure

§ 8.8. State and Local Mediation Programs

§ 8.9. Judicial Enforcement of Conference and Mediation Statutes

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

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

Chapter 9. Defending Foreclosures by Challenging Unfair Lending Practices

§ 9.1. Introduction

§ 9.2. Common Types of Misconduct

§ 9.3. Raising Origination Misconduct to Stop a Foreclosure - Substantive Claims and Defenses

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§ 9.5. Truth in Lending Act Claims

§ 9.6. Real Estate Settlement Procedures Act (RESPA)

§ 9.7. Fair Lending Statutes

§ 9.8. Civil RICO

§ 9.9. SAFE Act Licensing

§ 9.10. State High-Cost Mortgage Statutes

§ 9.11. Fraud or Misrepresentation

§ 9.12. Fiduciary Duty

§ 9.13. Unconscionability

§ 9.14. Usury

§ 9.15. Other Defenses

§ 9.16. Raising Origination-Related Claims and Defenses Against Assignees

- *Foreclosure Defense: A Practical Litigation Guide*, Rebecca A. Taylor, American Bar Association, 2011.
 - 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*, National Consumer Law Center, 1st ed., 2019.
 - Chapter 3. Servicing Requirements Under the Real Estate Settlement Procedures Act
 - Chapter 5. State Law Servicing Claims

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	
<u>DEFINITIONS:</u>	<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).
<u>COURT RULE:</u>	<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 (2021).
<u>FORMS:</u>	<ul style="list-style-type: none"> • <i>Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure</i>, Denis R. Caron & Geoffrey K. Milne, 11th ed., 2021 CD only Unofficial forms 6-007. Demand for Disclosure of Defense • 3A Connecticut Practice Series, <i>Civil Practice Forms</i>, 4th ed., by Joel M. Kaye and Wayne D. Efron, Thomson West, 2008, with 2020-2021 supplement (Also available on Westlaw) Demand for Disclosure of Defense – Form S-1, pp. 196-197 (see also pocket part)

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

	<p>Motion for Default for Failure to Disclose Defense – Form S-2, pp. 197-198 (see also pocket part) Motion for Judgment upon Default for Failure to Disclose Defense – Form S-2-A, p. 198</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”
<u>CASES:</u>	<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].”

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.

TEXTS AND TREATISES

- *Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure*, Denis R. Caron & Geoffrey K. Milne, 11th ed., 2021.
§ 6-1:3.3. Disclosure of defense
- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, 2021 ed.
Chapter 10. Discovery
§ 10.14. Disclosure of Defense
- Connecticut Practice Series, *Superior Court Civil Rules*, Wesley W. Horton (2020-2021 edition) (Also available on Westlaw)
Authors’ Comments following § 13-19
- *A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut*, Michelle L. Bibeau, MCLE (2018). (also available on Westlaw)
Chapter 9. Foreclosure Procedure From Complaint Through Sale
§ 9.2.2. Disclosure of Defense
- *West’s Connecticut Rules of Court Annotated*, 2021 ed.
Notes of Decisions following § 13-19
- *A Practical Guide to Discovery and Depositions in Connecticut*, Susan Kim and Donald J. Marchesseault, 2011
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><u>HSBC Bank USA, National Association Trustee v. Leckey et al.</u>, 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><u>Deutsche Bank National Trust Co. v. Thompson</u>, Superior Court, Judicial District of Hartford, No. HDD-CV09-5027964S (August 29, 2016) (63 Conn. L. Rptr. 15).</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. Bialobrzewski, 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>Chase Home Finance, LLC v. Feguiere, 119 Conn. App. 570, 575, 989 A2d 606 (2010).</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 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.’ . . . Fleet National Bank v. Nazareth, 75 Conn. App. 791, 793-94, 818 A.2d 69 (2003).”
<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).</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 Dime Savings Bank of Wallingford v. Arpaia, 55 Conn. App. 180, 738 A.2d 715 (1999), is dispositive of the defendant’s claim. In that case,

	<p>this court held that an assignee has the option to pursue litigation in its own name or in the name of its assignor. <i>Id.</i>, 184. Accordingly, the defendant’s claim must fail.”</p>
<p>Kennedy Funding, Inc. v. Greenwich Landing, LLC, 135 Conn. App. 58, 59-60, 43 A3d 664 (2012).</p>	<ul style="list-style-type: none"> • “In RMS Residential Properties, LLC v. Miller, 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 promissory note as an agent for a number of identified principals. We affirm the judgment of the court.”
<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.” • “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

	<p>a mortgage is not void, ab initio, by virtue of the naming of a nominee of the disclosed lender as mortgagee.”</p> <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 Properties, LLC, et al., 309 Conn. 307, 325 – footnote 18, 71 A3d 492 (2013).
<p><u>LAW REVIEWS:</u></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\(b\)](#) (2021).
- **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. 31 50 57 (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, [search the most recent U.S. Code](#) on the U.S. Code website.

- 11 United States Code (2021)
 - § [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](#) (2021 ed.)

FORMS:

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

- *Collier on Bankruptcy*, Alan N. Resnick and Henry J. Sommer, 4th ed, Matthew Bender, with 2021 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 our foreclosure section on our Newslog at:
<http://jud.ct.gov/LawLib/LawLibNews/Default.aspx?CatID=14>
- [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. 31 50 57 (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:

- 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

- 9A *Am Jur 2d* Bankruptcy, Thomson West, 2016 (Also available on Westlaw)
 - § 1801 Foreclosure and sale
 - § 1845 Commencement of HUD foreclosure actions
- 9A *Am Jur 2d* Bankruptcy, Thomson West, 2016 (Also available on Westlaw)
 - § 2212 Foreclosure sales – involuntary transfers
 - § 2213 Foreclosure sales – Reasonably equivalent value
 - § 2214 Foreclosure sales – Effect of redemption period
 - § 2250 Mortgage foreclosure sales – price at foreclosure
 - § 2856 Cure and revival through deacceleration of foreclosure judgment

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.

- *Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure*, Denis R. Caron & Geoffrey K. Milne, 11th ed., 2021
 - Chapter 7. The Committee
 - § 7-11. Conducting the Sale
 - § 7-11:2.1. Disregarding the Automatic Bankruptcy Stay
 - § 7-15. The Hearing on Approval
 - § 7-15:2. Bankruptcy Filing Stay Approval of Committee Fees and Expenses
 - Chapter 23. Bankruptcy
 - § 23-1. Introduction
 - § 23-2. The Petition
 - § 23-3. The Proceeding
 - § 23-4. The Stay of the Proceedings
 - § 23-4:1. Timing Rule on Hearings to Vacate Automatic Stay
 - § 23-4:2. Time for Filing Petition to Halt Foreclosure
 - § 23-4:3. Effect of Petition by Guarantor upon a Pending Foreclosure Proceeding
 - § 23-4:5. Joint Tenancy Compels Another Result
 - § 23-4:6. Looking Beyond the Cases
 - § 23-4:7. The Automatic Stay May Not Be as **“Automatic” as We Once Thought – Canney** and BAPCPA
 - § 23-4:8. **The State Court’s Interpretation of a Bankruptcy Court’s Order Lifting the Automatic Stay**
 - § 23-5. Relief from Stay
 - § 23-6. Chapter 11, Chapter 12, or Chapter 13
 - § 23-7. Selected Problems
 - § 23-8 **“Waterfall” Analysis of the New Automatic Stay Provisions**
 - Chapter 24. Bankruptcy Litigation
 - § 24-1. Introduction
 - § 24-2. Jurisdiction and Venue
 - § 24-2:1. Jurisdiction
 - § 24-2:1.1. Core vs. Non-Core Proceedings
 - § 24-2:1.2. Non-Final v Final Judgments
 - § 24-2:2. Venue

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

- § 24-3. Contested Matters
 - § 24-3:1. Defining a Contested Matter
 - § 24-3:2. Adversary Proceedings
 - § 24-3:2.1. Defining an Adversary Proceeding
 - § 24-3:2.2. Bankruptcy Rules That Apply to Adversary Proceedings
 - § 24-3:2.3. Overview of Bankruptcy Rules
 - § 24-3:2.3a Scope of Rules and Forms
- § 24-4. The Filing of a Petition
 - § 24-4:1. Litigation
 - § 24-4:1.1. Applicability of the Automatic Stay: Effect of Automatic Stay as to Guarantors
 - § 24-4:1.2. Proof of Claims
 - § 24-4:1.3. Effect of Chapter 13 Conversion Upon Creditor Claims
 - § 24-4:1.4. Rule 3001
 - § 24-4:1.5. Rule 3002.1
 - § 24-4:2. Determination of Secured Claims
 - § 24-4:2.1. Section 544 and Determination of the Validity, Priority, or Extent of a Lien
 - § 24-4:2.2. Defenses to Avoidance
 - § 24-4:2.3. Preference Avoidance
 - § 24-4:3. Fraudulent Conveyances
 - § 24-4:4. Objections to Discharge Under Sections 523 and 727
 - § 24-4:4.1. Dischargeability of a Debt Under Section 523
 - § 24-4:4.2. **Objection to Debtor's Discharge Under Section 727**
 - § 24-4:4.3. Revocation of Discharge under § 727
 - § 24-4:4.3.1. Statement of Intention to Surrender and its Effect on a Foreclosure Action
 - § 24-4:5. Objections to Confirmation
 - § 24-4:5.1. Due on Sale Clauses within Mortgage
 - § 24-4:5.2. Absolute Priority Rule

- ***Mortgage Servicing Including Loan Modifications***, National Consumer Law Center, 1st ed., 2019
 - Chapter 11. Using Bankruptcy to Prevent Foreclosure
 - § 11.1. Introduction
 - § 11.2. Bankruptcy Basics
 - § 11.3. Obtaining the Automatic Stay
 - § 11.4. Curing Defaults on Home Loans
 - § 11.5. Paying Secured Claims in Full
 - § 11.6. Stripping Down Residential Mortgages to the Value of the Collateral
 - § 11.7. Avoiding Judicial Liens – Section 522(f)(1)
 - § 11.8. **Debtor's Statement of Intention Regarding Secured Property**
 - § 11.9. Sale of Property
 - § 11.10. Impact of Bankruptcy on Later Foreclosure Prevention Efforts
 - Chapter 12. Issues Arising after a Foreclosure Sale

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§ 12.2.4. Setting Aside a Foreclosure Sale in Bankruptcy

§ 12.2.4.1. Sales That Violate the Automatic Stay

§ 12.2.4.2. Fraudulent Transfers – 11 U.S.C. § 548

§ 12.2.4.3. Using State Law Invalidity to Set Aside a Sale in Bankruptcy Court

§ 12.2.4.4. Preferences – 11 U.S.C. § 547

§ 12.2.4.5. Sales That Are Not Complete Under State Law

- ***A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut***, Michelle L. Bibeau, MCLE, 2018 (Also available on Westlaw)
 - Chapter 8, Preforeclosure Issues
 - § 8.2. Initial Determinations and Considerations
 - § 8.2.1. Has the Borrower Filed for Bankruptcy?
- ***4 Powell on Real Property***, by Richard R. Powell, Matthew Bender, 1989, with 2020 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***, Rebecca A. Taylor, American Bar Association, 2011
 - Chapter 23. Bankruptcy
- ***Collier on Bankruptcy***, Alan N. Resnick and Henry J. Sommer, 4th ed, with 2021 supplement
 - HUD foreclosures
 - Volume 3: 362 (b)(8), 362.05[8]
 - Extension of time for redemption – Volume 2: 108.03[3]
 - Deacceleration of foreclosure judgment – Volume 7: 1124.04[6]
- ***The Foreclosure Survival Guide***, Amy Loftsgordon, 7th ed., 2019
 - Chapter 5. How Chapter 13 Bankruptcy Can Delay or Stop Foreclosure
 - Chapter 6. How Chapter 7 Bankruptcy Can Delay or Stop Foreclosure
- ***Mortgage Servicing and Loan Modifications***, National Consumer Law Center, 1st ed., 2019
 - Chapter 3. Servicing Requirements Under the Real Estate

Settlement Procedures Act
Chapter 5. State Law Servicing Claims