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## **OLR Bill Analysis**

**sSB 891 (File 248, as amended by Senate "A")\***

### ***AN ACT CONCERNING THE EZEQUIEL SANTIAGO FORECLOSURE MEDIATION PROGRAM AND OTHER ALTERNATIVES TO FORECLOSURE.***

#### **SUMMARY**

This bill extends the Ezequiel Santiago Foreclosure Mediation Program (see BACKGROUND) for six years until June 30, 2029. Current law sunsets the program on June 30, 2023. The bill also (1) requires mortgagees and mediators to include information about COVID-19-related foreclosure alternatives in certain existing reports; (2) repeals a requirement that the chief court administrator report on the program to the Banking Committee by March 1, 2023; and (3) repeals obsolete provisions related to the program. It also allows mediators to conduct pre-mediation meetings and mediation sessions virtually, using a virtual platform the mediator approves.

The bill also establishes an emergency lien assistance program, within the Connecticut Housing Finance Authority's (CHFA) Emergency Mortgage Assistance Program (EMAP), to provide loans to homeowners who are facing foreclosure due to liens from (1) municipal water or sewer charges, (2) municipal tax debt, or (3) condominium or common interest association assessments and fines.

It expands the existing EMAP program by allowing homeowners to apply for and receive emergency mortgage assistance payments if (1) their mortgage is in forbearance or (2) they are facing foreclosure or delinquency on a reverse mortgage or home equity conversion mortgage (HECM), under the same eligibility standards as under current law for the program. For both EMAP and the new emergency lien assistance payments program, the bill prohibits CHFA from disqualifying applicants solely because they previously discharged debt through bankruptcy and did not reaffirm it.

Lastly, the bill allows CHFA to establish a component loan program with Connecticut-based banks, which may include loan guarantees, if it determines additional funding is necessary for emergency payments under the above programs.

The bill also makes minor, technical, and conforming changes.

\*Senate Amendment "A" extends the foreclosure mediation program six years, instead of making it permanent; allows mediators to conduct virtual meetings and mediation sessions; and modifies reporting requirements for mortgagees and mediators. It also prohibits a judgment of foreclosure from being entered while CHFA considers a lien assistance application, limits lien assistance payments to the amount due and payable under the lien for the 36 months immediately after the lien became due, and makes minor changes to the lien assistance program's administration and requirements.

EFFECTIVE DATE: October 1, 2021

#### **§§ 6-14 — EMERGENCY LIEN ASSISTANCE PAYMENTS**

Beginning July 1, 2021, the bill requires CHFA to, within available funds, provide emergency lien assistance payments to homeowners. As under the EMAP program, a "homeowner" is the owner-occupant of one-to-four family residential real estate, including individual common interest association units. Under the bill, a "lien" is a lien on real property due to debt from municipal tax, water, or sewer charges or condominium or common interest association assessments and fines.

Under the bill, as under existing law for the EMAP program, any necessary and related administrative and operation expenses CHFA incurs implementing the program can be paid out from program funds.

The bill incorporates emergency lien assistance payments into CHFA's EMAP program, including by applying similar review and application procedures.

### ***Applications***

The bill allows homeowners to apply for emergency lien assistance payments if (1) they have received notice of a lienholder's intent to foreclose; or (2) they are 60 days or more delinquent on the debt secured by the lien, or they anticipate that they will be based on financial hardship beyond their control (i.e., a significant reduction of aggregate family household income or increase in expenses that could not be alleviated by liquidating assets), as CHFA determines.

Homeowners must apply for a loan on a form CHFA provides and complete and sign the application under penalty of false statement. (By law, false statement is a class A misdemeanor, punishable by up to one year in prison, a fine of up to \$2,000, or both (CGS § 53a-157b).)

Homeowners must also disclose all (1) assets and liabilities, whether singly or jointly held, and (2) household income from all sources, according to the same calculations and procedures as individuals applying for EMAP. Thus, assets include the sum of savings and checking accounts; stocks; bonds; securities; capital investments; pensions and retirement funds valued at more than \$100,000; personal property; real property equity (including the property subject to the lien); and lump sum additions, such as inheritances and insurance payments.

### ***Approval Process and Foreclosure Exception***

As with existing EMAP applications, CHFA must determine an individual's eligibility for emergency lien assistance payments within 30 days of receiving the application. As under existing law for EMAP applications, the bill prohibits a judgment of foreclosure from being entered during this 30-day period.

Presumably, as applicable to lien applications, the bill prohibits CHFA from providing emergency lien assistance payments unless it finds that the homeowner's principal residence is the real property securing the lien, and the homeowner:

1. is delinquent on the applicable fees or taxes, and the lienholder

- intends to foreclose;
2. is a Connecticut resident suffering financial hardship and unable to make payments on the debt;
  3. has a reasonable prospect of bringing the debt current and resuming regular payments to the lienholder after getting emergency lien assistance payments;
  4. applied for assistance and disclosed all necessary assets and liabilities, as described above;
  5. has insufficient income or net worth, based on their financial statement, to make regular payments to the lienholder;
  6. has a reasonable prospect of repaying the emergency lien assistance within a reasonable amount of time;
  7. has not mortgaged the real property for commercial or business purposes;
  8. has not previously received CHFA lien assistance unless the homeowner brought the underlying debt current and is not delinquent on regular payments to the lienholder for 18 consecutive months afterwards; and
  9. is not in default under their mortgage for reasons other than payment delinquency.

CHFA must also find that the (1) homeowner meets any other procedural requirements it establishes and (2) lienholder is not otherwise prevented by law from foreclosing.

***Notification to Lienholders***

The bill requires CHFA, within eight business days of receiving an application, to notify all lienholders listed on the application.

***Emergency Lien Payment Loans***

For approved applications, the bill requires CHFA to make

emergency lien assistance payments directly to the lienholder for the lesser of (1) the full amount due on each eligible lien secured by the homeowner's real property or (2) the amount due and payable under the lien for the 36 months immediately after it became due. The payment amount may include all arrearages and reasonable costs and attorney's fees incurred by the lienholder and related to any foreclosure action.

Any amount CHFA pays to a lienholder becomes a loan made by CHFA to the homeowner. It must be evidenced by any documents CHFA requires and is subject to repayment and interest under the same terms as EMAP loans (i.e., interest is based upon the cost of the funds to the state determined by the treasurer, in consultation with CHFA). Interest accrues when repayment is required to begin.

### ***Repayment***

The bill requires CHFA to enter into an agreement with an approved applicant for monthly loan repayments, including interest, after the emergency payments end. However, if a homeowner's total housing expenses, including projected repayments, is greater than 35% of their aggregate family income, the bill defers repayment until the ratio falls below that threshold.

The bill, presumably, requires homeowners to make monthly payments to the authority in at least the amount they would have paid towards liens. By law, EMAP requires homeowners to make monthly payments of at least the amount they would have paid towards the mortgage.

As with EMAP loans, the authority must establish written procedures to periodically review a homeowner's financial circumstances to determine repayment amounts.

### ***Loans Secured by Lien***

Repayment under the bill is secured by a mortgage on the homeowner's real property, but it does not take priority over any other mortgages or liens in effect when it is recorded. As with EMAP loans,

CHFA may subordinate a lien assistance loan if it is required for the homeowner to obtain a home improvement loan to preserve the property.

***Misrepresentation and Failure to Receive Funds***

As with existing EMAP procedures, any emergency lien assistance applicant that misrepresents financial or pertinent information may be denied assistance and required to immediately pay back the loan in full.

Additionally, a lienholder may foreclose after providing CHFA 15 days' notice if:

1. they do not receive the full amount of an emergency lien assistance payment from CHFA within 30 days of its scheduled due date or
2. the homeowner fails to observe the lien's terms, covenants, and conditions.

In both of these circumstances, a lienholder may proceed with enforcement or foreclosure actions, as applicable, without further restriction or requirement.

***Inadequate Funding***

As with EMAP, if there is inadequate funding for emergency lien assistance payments, the bill (1) requires CHFA to notify lienholders and stop accepting applications and (2) allows lien foreclosures to proceed normally.

**§ 14 — COMPONENT LOAN PROGRAM**

The bill allows CHFA to establish a component loan program in collaboration with Connecticut-based banks if it determines that additional funding is needed for emergency mortgage or lien payments under the EMAP or lien programs described above. It must do so in consultation with the treasurer, comptroller, representatives from Connecticut-based banks, and a state banking industry association.

The component program may include loan guarantees. Under the bill, loans issued through the component program must be used to provide emergency mortgage or lien assistance payments.

CHFA must notify the treasurer of its intent to establish this component program, and the treasurer must (1) advise CHFA on the state's ability to provide loan guarantees and (2) recommend loan guarantee guidelines.

Under the bill, a Connecticut-based bank is a bank or out-of-state bank that has deposit-taking branches in Connecticut.

## **§§ 1-5 — EZEQUIEL SANTIAGO FORECLOSURE MEDIATION PROGRAM**

### ***Virtual Mediation Sessions***

Under current law, mediation sessions are generally conducted in person. The bill allows the mediator to (1) hold sessions virtually or (2) allow a party or party's counsel to appear virtually at an in-person mediation session.

In deciding whether to hold a virtual mediation session or allow a party or counsel to appear virtually, the mediator may consider (1) what each party and their counsel wants and their technological and physical capabilities and (2) the mediation program's objectives. The bill also makes conforming changes, including allowing meeting participants to join by teleconference.

### ***Reporting Requirement Repealed***

The bill eliminates a requirement that the chief court administrator submit a report to the Banking Committee by March 1, 2023, summarizing mediation session details and outcomes.

### ***Mortgagee Reports***

Existing law requires the mortgagee to provide certain information to the mortgagor and mediator within a specified deadline prior to mediation. As part of this, current law gives the mortgagee the option to include a history of its foreclosure avoidance efforts with respect to the mortgagor.

The bill instead makes this mandatory, but it requires this disclosure only for actions the mortgagee has done voluntarily. For federally backed mortgages, it also requires mortgagees to provide their history of compliance with any requirement to notify mortgagors of loss mitigation options or foreclosure alternatives, including those required or made available by any federal authority in response to the COVID-19 public health and civil preparedness emergencies declared by the governor.

### ***Mediator Reports***

By law, a mediator must file a report with the court after each mediation session containing certain information, such as the extent to which the mortgagee and mortgagor are complying with the program's requirements and a general description of the foreclosure alternative the mortgagor is requesting.

The bill adds additional information that must be reported. Specifically, the report must include the following:

1. for federally backed mortgages, the mortgagee's history of compliance with any obligation to notify the mortgagor of loss mitigation or foreclosure alternatives, including any required or made available by federal authorities in response to COVID-19, and
2. the mortgagee's history of voluntary foreclosure avoidance efforts.

## **BACKGROUND**

### ***Ezequiel Santiago Foreclosure Mediation Program***

By law, this program brings together judicial branch mediators; lenders; and borrowers or owner-occupants, as applicable. If an eligible borrower or owner-occupant files an appearance and requests mediation, the lender must participate. It is available to (1) owner-occupants of one- to four-family residential real property who use it as their primary residence and (2) religious organizations. The property must be in Connecticut, and the owner-occupant must be either the

borrower under a mortgage on the property or a permitted successor-in-interest (i.e., someone who, among other things, has title to the property due to certain events such as divorce or the borrower's death).

**COMMITTEE ACTION**

Banking Committee

Joint Favorable Substitute

Yea 13 Nay 5 (03/17/2021)