

Foreclosure (Mortgage) in Connecticut

A Guide to Resources in the Law Library

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

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

Table 1 Resources on the Internet: Homeowner’s options for avoiding foreclosure

Resources on the Internet	
http://www.cga.state.ct.us/2001/rpt/olr/htm/2001-r-0318.htm	<p><i>Veronica Rose, Homeowners Emergency Loan Program, CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH, Report No. 2001-R-0318 (March 21, 2001).</i></p>
http://www.hud.gov/foreclosure/index.cfm	<p>U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, <i>How to Avoid Foreclosure</i> (February 19, 2002).</p>
http://www.usdoj.gov/ust/fs06.htm	<p>U.S. DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES, <i>U.S. Trustee Program: Don't Get "Locked Out" of Your Home by a Bankruptcy Scam Operator</i> (October 16, 2000).</p>
http://www.larcc.org/pamphlets/housing/about_foreclosure.htm	<p>STATEWIDE LEGAL SERVICES, <i>About Foreclosure ... A Homeowners Guide to What It Is, How It Works, And Options You May Have.</i></p>

Strict Foreclosure in Connecticut

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to strict foreclosures in Connecticut

DEFINITION:

- **Connecticut is a title state:** “Both by common-law rule and by statute, a mortgagee in Connecticut is deemed to have taken legal title under the execution of a mortgage on real property. Conference Center, Ltd. v. TRC, 189 Conn. 212, 218, 455 A.2d 857 (1983); State v. Stonybrook, Inc., 149 Conn. 492, 496, 181 A.2d 601, cert. denied, 371 U.S. 185, 83 S.Ct. 265, 9 L.Ed.2d 227 (1962). Nonetheless, the mortgagee's legal title is a defeasible fee ‘subject to [an equitable] right of redemption which persists until it is extinguished by an action of foreclosure.’ State v. Stonybrook, Inc., supra, 496. Even after the initiation of a foreclosure action, the mortgagee's title does not become absolute until all eligible parties have failed to exercise their rights to redeem the property. City Lumber Co. of Bridgeport, Inc. v. Murphy, 120 Conn. 16, 19, 179 A. 339 (1935).” New Milford Savings Bank v. Jajer, 244 Conn. 251, 256 fn. 11, 708 A.2d 1378 (1998)
- **Strict foreclosure:** “Under our law, an action for strict foreclosure is brought by a mortgagee [creditor] who, holding legal title, seeks . . . to foreclose an equity of redemption unless the mortgagor [debtor] satisfies the debt *on or before his law day*. Cook v. Bartholomew, 60 Conn. 24, 27, 22 A. 444 (1891).” (Emphasis added.) Connecticut National Bank v. L & R Realty, 40 Conn. App. 492, 494, 671 A.2d 1315 (1996).
- **Law day:** “Where a foreclosure decree has become absolute by the passing of the law days, the outstanding rights of redemption have been cut off and the title has become unconditional in the [redeeming encumbrancer] . . . The mortgagor has no remaining title or interest which he may convey.” City Lumber Co. of Bridgeport, Inc. v. Murphy, 120 Conn. 16, 25, 179 A. 339 (1935).
- **Strict foreclosure vs. foreclosure by sale:** “All liens and mortgages affecting real property may, on the written motion of any party to any suit relating thereto, be foreclosed by a decree of sale instead of strict foreclosure at the discretion of the court before which the foreclosure proceedings are pending.” CONN. GEN. STAT. (2003)§ 49-24.
- **Substantial excess equity:** “It has been held, however, that when the value of the property substantially exceeds the value of the lien being foreclosed, the trial court abuses its discretion when it refuses to order a foreclosure by sale.” Voluntown v. Rytman, 27 Conn. App. 549, 555, 607 A.2d 896 (1992).

STATUTES:

- CONN. GEN. STAT. (2003)
Title 49. Mortgages and liens
Chapter 846. Mortgages
§ 49-19. Title to vest in encumbrancer paying debt and costs
§ 49-20. Redemption by holder of encumbrance on part of property foreclosed
§ 49-21. Defendant to receive and file certificate of satisfaction or certificate of judgment of strict foreclosure or foreclosure by sale
§ 49-24. Court may foreclose lien or mortgage on land by sale

FORMS:

- DENIS R. CARON, CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE (3rd ed. 1997).
Appendix of official forms
Form 707.1 Judgment of strict foreclosure, p. 629
Form 707.5 Judgment of strict foreclosure after opening of original judgment, p. 635
Appendix of unofficial forms
Form 9. Motion for judgment of strict foreclosure
Form 26. Judgment for deficiency after strict foreclosure

PAMPHLETS:

STATEWIDE LEGAL SERVICES, About Foreclosure ... A Homeowners *Guide to What It Is, How It Works, And Options You May Have*.

Telephone:

(860) 344-0380 (Central Conn. And Middletown)

(800) 453-3320 (All other regions)

URL:

http://www.larcc.org/pamphlets/housing/about_foreclosure.pdf

WEST KEY NUMBERS:

- *Mortgages* #384 Strict foreclosure

DIGESTS:

- DOWLING'S DIGEST: *Mortgages* §§ 20-24

COURT CASES

- New Milford Savings Bank v. Jajer, 244 Conn. 251, 256-257, 708 A.2d 1378 (1998). "The law governing strict foreclosure lies at the crossroads between equitable remedies provided by the judiciary and the statutory remedies provided by the legislature."
- New England Savings Bank v. Lopez, 227 Conn. 279, 284, 630 A.2d 1010 (1993). "whether to order a strict foreclosure or a foreclosure by sale is a matter committed to the sound discretion of the trial court, to be exercised with regard to all the facts and circumstances of the case."
- F.D.I.C. v. M.F.P. Associates, 870 F. Supp. 451, 454 (D. Conn. 1994). "In Connecticut, it is within the Court's discretion whether to order foreclosure by sale or by strict foreclosure."
- Farmers & Mechanics Savings Bank v. Sullivan, 216 Conn. 341, 352, 579 A.2d 1054 (1990). "Frequently strict foreclosures are ordered, despite a property appraisal substantially higher than the mortgage debt, because the owner believes he will be able to redeem and he seeks to avoid the additional expense involved in a foreclosure by sale."
- Fidelity Trust Co. v. Irick, 206 Conn. 484, 487-488, 538 A.2d 1027 (1988). "Because the total of all liens, taxes, costs and fees, plus the estimated expenses of a foreclosure by sale of \$7000, amounted to \$123,

580.22, and the appraiser valued the property at \$96,750, the trial court concluded, in the exercise of its discretion, and the Appellate Court agreed, that strict foreclosure was proper in his case. We disagree.”

- Constitution Bank and Trust Co. v. Robinson, 179 Conn. 232, 425 A.2d 1268 (1979).
- Bradford Realty Corporation v. Beetz, 108 Conn. 26, 31, 142 A. 395 (1928). “As no equity in the property over and above the first mortgage and the plaintiff’s mortgage was shown in defendant Cohen, the trial court wisely refused, in the exercise of its discretion, to impose upon the plaintiff the additional cost and expense of a foreclosure by sale.”

ENCYCLOPEDIAS:

- 55 AM. JUR. 2d *Mortgages* (1996).
§ 530 Strict foreclosure
- 59A C.J.S. *Mortgages* (1998).
§ 694 Strict foreclosure

TEXTS & TREATISES:

- DENIS R. CARON, CONNECTICUT FORECLOSURES: AN ATTORNEY’S MANUAL OF PRACTICE AND PROCEDURE (3rd ed. 1997).
§ 5.02D. Strict foreclosure or foreclosure by sale
§ 5.02D1. Judgment of strict foreclosure
- 3 JOEL M. KAYE ET AL. CONNECTICUT PRACTICE BOOK ANNOTATED (1996).
Authors' Comments following Form 704.31

COMPILER:

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Section **2**

Connecticut's Emergency Mortgage Assistance Act

A Guide to Resources in the Law Library

Funding has been exhausted for this program.

For Latest Information, contact:
Connecticut Housing Finance Authority
999 West Street
Rocky Hill, CT 06067-4005
860-721-9501

SCOPE:

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

AGENCY:

- Connecticut Housing Finance Authority, 999 West Street, Rocky Hill, CT 06067-4005. 860-721-9501. CONN. GEN. STAT. (2003)§8-244.

DEFINITION:

CONN. GEN. STAT. (2003)

- § 8-265cc. Definitions.
- (1) "**Aggregate family income**" means the total income of persons residing in the same household as the mortgagor and any other resident of the household declared by the mortgagor as a dependent for federal tax purposes, from whatever source derived, including, but not limited to, pensions, annuities, retirement benefits and Social Security benefits, provided the authority may exclude from income (A) reasonable allowances for dependents, (B) reasonable allowances for medical expenses, (C) all or any part of the earnings of gainfully employed minors or family members other than the chief wage earner, (D) income not regularly received and (E) such other expenses as the authority may allow;
 - (2) "**Authority**" means the Connecticut Housing Finance Authority as created under section 8-244;
 - (3) "**Mortgage**" means a mortgage deed or other instrument which

- constitutes a first or second consensual lien on one or two-family owner-occupied residential real property, including single-family units in a common interest community, located in this state;
- (4) "**Mortgagee**" means the original lender under a mortgage, or its successors, who agrees to participate in the program established pursuant to sections 8-265cc to 8-265kk, inclusive, or an assignee of a mortgage who agrees to participate in the program;
 - (5) "**Mortgagor**" means the owner-occupant of one or two-family residential real property located in this state who is also the borrower under a mortgage encumbering such real property;
 - (6) "**Housing expense**" means the sum of the mortgagor's monthly maintenance expense in a common interest community, utility expense, heating expense, hazard insurance payment, taxes and required mortgage payment, including escrows;
 - (7) "**Financial hardship due to circumstances beyond the mortgagor's control**" means a significant curtailment of at least twenty-five per cent of aggregate family household income which cannot be or could not have been alleviated by the liquidation of assets by the mortgagor and is related to one or more of the following: (A) Unemployment or underemployment of one or more of the mortgagors; (B) a loss, reduction or delay in receipt of such federal, state or municipal benefits as Social Security, supplemental security income, public assistance and government pensions; (C) a loss, reduction or delay in receipt of such private benefits as pension, annuity or retirement benefits; (D) divorce or a loss of support payments; (E) disability, illness or death of a mortgagor; (F) uninsured damage to the mortgaged property which affects liveability and necessitates costly repairs; or (G) expenses related to the disability, illness or death of a member of the mortgagor's family, but is not related to accumulation of instalment debt incurred for recreational or nonessential items prior to the occurrence of the alleged circumstances beyond the mortgagor's control in an amount that would have caused the mortgagor's total debt service to exceed sixty per cent of aggregate family income at that time;
 - (8) "**Consumer credit counseling agency**" means a nonprofit corporation or governmental agency located in this state which has been designated by the authority to provide homeowners' emergency mortgage assistance program counseling. A qualified consumer credit counseling agency must either be certified as a housing counseling agency by the federal Department of Housing and Urban Development or otherwise determined accepted by the authority.

STATUTES:

- CONN. GEN. STAT. (2003)
 - 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. Face to face meeting
 - §8-265ff. Application for loan. Disclosure of assets by mortgagor.
 - Determination of eligibility by the authority
 - §8-265gg. Monthly payments. Calculation of amount. Procedures for

- review of mortgagor's financial circumstances.
- Modification to amount of payment
- §8-265hh. Repayment agreement
- §8-265ii. Written procedures
- §8-265jj. Filing of notice of agreement to participate in program with the authority
- §8-265kk. Notification by authority to participating mortgagees of unavailability of funds

FORMS:

- DENIS R. CARON, CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE (3rd ed. 1997).
 - ❑ Mortgagee's Emergency Mortgage Assistance Notice to Mortgagor, pp. 644-645.
 - ❑ Form 41 Mortgagee's affidavit of compliance with the Emergency Mortgage Assistance Program, pp. 726-727.
 - ❑ Form 42 Affidavit of non-applicability of the Emergency Mortgage Assistance Act, p. 728.
 - ❑ Form 43 Affidavit of mortgagor's default under the Emergency Mortgage Assistance Act, p. 729.

TEXTS & TREATISES:

- DENIS R. CARON, CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE (3rd ed. 1997).
 - Chapter 15 Protection from foreclosure for unemployed persons
 - §15.13 The Emergency Mortgage Assistance Act
 - §15.13A Act's scope ill-defined, then redefined
 - §15.13B "Eligible mortgage"
 - §15.13C "Mortgagor"
 - §15.13D The notice requirement
 - §15.13E The affidavit program
 - §15.13F Implementing the program
 - §15.13G Consequences of default
 - §15.13H Lender may limit period of participation
 - §15.13I Effect of unavailability of funding
 - §15.13J Mortgagor Assistance Agreement and open-end mortgage

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [Email: lawrence.cheeseman@jud.state.ct.us](mailto:lawrence.cheeseman@jud.state.ct.us).

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.

DEFINITION:

- CONN. GEN. STAT. (2003)
§ 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 [Unemployment Compensation].
 - (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. (2003)
Title 49. Mortgages and liens
§ 49-31d Definitions
§ 49-31e Notice to homeowner of protection from foreclosure

- (b) A homeowner who is given notice of the availability of the provisions of §§ 49-31d to 49-31i, inclusive, must make application for protection from foreclosure with twenty-five days of return day.
- § 49-31f Application for protection from foreclosure action. Qualifications. Court determination of eligibility. Stay of foreclosure action.
 - (g) No homeowner who files a defense to any action for foreclosure shall be eligible to make application for protection from such foreclosure pursuant to the provisions of this section.
- § 49-31g Restructuring of mortgage debt by the court
- § 49-31h Partial payment by homeowner mandated by court as condition for granting restructuring order
- §49-31i Determination of restructured mortgage debt. Limitation on amount of mortgage debt following restructuring. Computation of new mortgage debt.
- §49-31j Regulations: “The Banking Commissioner shall adopt regulations, in accordance with chapter 54, as the commissioner deems necessary specifying (1) the manner in which a composite interest rate shall be computed for the new mortgage debt pursuant to subsection (c) of section 49-31i, and (2) the method or standard by which prevailing market rates of interest are to be determined.” [As amended by 2004 CONN. ACTS 8 § 12]

REGULATIONS:

- CONN. AGENCIES REGS. §§ 49-31j-1 et seq. (2003)
 - § 49-31j-1 Definitions
 - § 49-31j-2 Notice
 - § 49-31j-3 Method used to compute restructured mortgage debt
 - § 49-31j-4 Limitation on amount
 - § 49-31j-5 Composite interest rate
 - § 49-31j-6 New mortgage payments
 - § 49-31j-7 Variable interest rate
 - § 49-31j-8 Composite interest rate adjustment
 - § 49-31j-9 Supplemental order

LEGISLATIVE:

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

FORMS:

- DENIS R. CARON, CONNECTICUT FORECLOSURES: AN ATTORNEY’S MANUAL OF PRACTICE AND PROCEDURE (3rd ed. 1997).
Form 34 Application for protection from foreclosure, p. 715

RECORDS & BRIEFS

- CONNECTICUT SUPREME COURT RECORDS AND BRIEFS, May/June 1998. *Shamut Mortgage Company v. Wheat*, 245 Conn. 744, 717 A.2d 664 (1998).
Figure 1: [Application for protection from foreclosure](#). Figure 1.
Figure 2: [Objection to application for protection from foreclosure action](#).

Figure 3: [Memorandum of decision \(Superior Court\)](#).

COURT CASES

- [Savings Bank Life Ins. Co. v. Linthicum](#), 43 Conn. App. 467, 469, 683 A.2d 737 (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 General Statutes § 49-31f (f).”
- [Citicorp Mortgage, Inc. v. Conant](#), 54 Conn. App. 529, 534, 736 A.2d 928 (1999). “Its [the trial court's] finding 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 was 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 (1998). “. . . we conclude that the defendant, as an individual who never previously has been employed, is not an ‘employed person’ within the meaning of §49-31d (1) and , therefore, may not qualify for protection from mortgage foreclosure under the mortgage act.”
- See also [Table 2: Unreported Connecticut decisions](#)

TEXTS & TREATISES:

- DENIS R. CARON, CONNECTICUT FORECLOSURES: AN ATTORNEY’S MANUAL OF PRACTICE AND PROCEDURE (3rd ed. 1997).
 - Chapter 15 Protection from foreclosure for unemployed persons
 - §15.01 Legislative history
 - §15.02 What mortgages are subject to the Act?
 - §15.03 Who qualifies to invoke the protection under the Act
 - §15.04 How is the Act’s protection invoked?
 - §15.05 What factors does the court consider?
 - §15.06 When is the debt restructured?
 - §15.07 How is the debt restructured?
 - §15.08 What takes place during the restructuring period?
 - §15.09 How is the interest handled?
 - §15.10 How is the prevailing rate computed?
 - §15.11 Notice requirement
 - §15.12 Time limitations for invoking protection

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [Email: lawrence.cheeseman@jud.state.ct.us](mailto:lawrence.cheeseman@jud.state.ct.us).

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

<h2 style="margin: 0;">Unreported Connecticut Decisions: Application for Protection from Foreclosure</h2>	
In general	<p>“The court having reviewed the evidence and the statutory criteria found in General Statutes 49-31d through 49-31i finds the following:</p> <ol style="list-style-type: none"> 1. The mortgage being foreclosed is a residential first mortgage which has been the principal residence of the defendants for more than two years. 2. The homeowners have not had a prior foreclosure action commenced against them in the past seven years. 3. The defendants have not received emergency mortgage assistance. 4. The court finds the defendants to be underemployed and/or unemployed persons as defined by the statutes. 5. The court finds the value of the property to be \$240,000.00. 6. The court finds the new principal balance as of June 1, 2004 to be \$172,287.07, which is computed by adding 28 days of per diem interest at a rate of \$45.43 per day which equals \$1,262.04, to the balance of \$171,028.03 provided by the plaintiff. The court finds the monthly payment at a variable interest rate of 11.95% for a period of 318 months to be \$1,779.31. The first payment is due on June 1, 2004 and each month thereafter in arrears. The defendants shall in addition continue to pay any escrows previously collected under the terms of the mortgage. 7. The court finds the debt to be less than 90% of the property's value. 8. All other conditions of the mortgage and promissory note, including any escrows, shall remain in effect. 9. The court finds the defendants have sufficient income to make the new payments. <p>The court notes there are subsequent encumbrancers whose debt exclusive of accrued interest is in excess of \$55,000.00. None of these encumbrancers have objected to this application and in the court's opinion would benefit from the reinstatement of this mortgage.</p> <p>The defendants' application for relief is granted, further action on this mortgage is stayed for six months in accordance with General Statute § 49-31g, and the mortgage is ordered reinstated.” <u>Long Beach Mortgage Company v. Belmonte</u>, No. CV 04-0092102 (May 4, 2004)</p>
Homeowner	<p>“Thus, the court concludes that the term ‘homeowner,’ as defined in § 49-31d (2), is limited to one who has legal title, and, as Neola Wood is the sole record owner of the property in this foreclosure action, James E. Wood, a mortgagor, does not have the requisite ownership interest to qualify as a homeowner under the foreclosure moratorium act.” <u>Home Loan & Investment Bank v. Wood</u>, No. CV 03 0399404 S (Jul. 8, 2003).</p>

[cont'd]

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

<p>Untimely filing</p>	<p>“In this action the return date was September 30, 2003. General Statute § 49-31e(b) requires the homeowner to file for protection within 25 days of the return date which would have been October 26, 2003. The application here was not filed until February 20, 2004 long past the statutory period. Accordingly the court finds due to the untimely filing of the application for protection the Defendants' application is denied.” <u>Country Wide Home Loans, Inc. v. Barth</u>, No. CV03-0091545 (Conn. Super. Ct. Litchfield, Mar. 8, 2004)</p>
<p>Restructured debt</p>	<p>“The court finds that the defendant is ineligible for protection from foreclosure under the provisions of Conn. Gen. Stat. §§ 49-31j (b). Under that statute, assuming the applicant is otherwise eligible for the protection from foreclosure afforded by 49-31f, the court cannot grant the application if the amount of the restructured debt would be ninety per cent or less of the fair market value of the property. At present, through June 30, 2003, based on the unopposed submissions of the plaintiff, the debt stands at over \$87,000, and the fair market value of the property at 255 Oak Street, Waterbury, is \$80,000.” <u>National City Mortgage Co. v. Minnis</u>, No. CV 03 0176969 (Conn. Super. Ct., Waterbury, July 16, 2003).</p>
<p>Unemployed person</p>	<p>“Likewise, the foreclosure moratorium act ‘was designed as a temporary mortgage moratorium for unemployed <i>workers</i>; (emphasis in original; internal quotation marks omitted) <i>id.</i>, 752; and was intended’ only to help persons who are experiencing <i>temporary</i> economic difficulties.” (Emphasis in original.) <i>Id.</i>, 753. In fact, ‘the legislature had in mind only persons who are experiencing <i>temporary</i> employment-related losses or decreases in earned income as beneficiaries when it enacted the [foreclosure moratorium] act.’ (Emphasis added.) <i>Id.</i> In the present case, according to the defendants, Neola Wood ‘has not worked in many years, is of an age where she can collect Social Security Benefits, and . . . is too ill currently to work . . .’ (Defendants' Supplemental Memorandum, p. 4.) Like the plaintiff in <i>Shawmut Mortgage Co. v. Wheat supra</i>, 245 Conn. 753, Neola Wood ‘presently is not experiencing a temporary employment-related decrease in earned income,’ and she does not qualify, therefore, as an ‘unemployed person’ within the meaning of the foreclosure moratorium act.” <u>Home Loan & Investment Bank v. Wood</u>, No. CV 03 0399404 S (Jul. 8, 2003).</p>

Figure 1 Application for protection from foreclosure

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

Defenses to Foreclosure

A Guide to Resources in the Law Library

SCOPE:

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

DEFINITION:

- "At common law, the only defenses to an action of this character would have been payment, discharge, release or satisfaction; White v. Watkins, 23 Ill. 480; or, if there had never been a valid lien." Petterson v. Weinstock, 106 Conn. 436, 441, 138 A. 433 (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." *Id.*, 442.
- ". . . our courts have permitted several equitable defenses to a foreclosure action Other equitable defenses that our Supreme Court has recognized in foreclosure actions include unconscionability; Hamm v. Taylor, supra, 180 Conn. [491,]494-96; abandonment of security; Glotzer v. Keyes, 125 Conn. 227, 233, 5 A.2d 1 (1939); and usury. Atlas Realty Corp. v. House, 120 Conn. 661, 669-70, 83 A. 9 (1936), overruled in part on other grounds, Ferrigno v. Cromwell Development Associates, 244 Conn. 189, 202, 708 A.2d 1371 (1998)." Southbridge Assoc. v. Garofalo, 53 Conn. App. 11, 15-16, 728 A.2d 1114 (1999).
- "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 (1998).

FORMS:

- 2 CONN. PRACTICE BOOK Form 705.7 (1997).
Special defense and counterclaim to foreclosure: mistake, fraud or accident in failure to make payment. Figure 4.

WEST KEY NUMBERS:

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

DIGEST TOPICS:

- DOWLING'S DIGEST: Mortgages §§ 20-24
 - §20. Foreclosure
 - §21. —In general
 - §22. —Right to foreclose; Defenses
 - §23. ——In general
 - §24. ——Particular cases

COURT CASES

- Morgera v. Chiappardi, 74 Conn. App. 442, 459, 813 A.2d 89 (2003). “The judgment of strict foreclosure and the denial of the defendant’s counterclaim are reversed and the case is remanded for a new trial in which the plaintiff’s complaint and the defendant’s claim of setoff and her special defenses and counterclaim are to be tried together in the same trial.”
- Hooie v. Webster Bank, No. CV 000093117 (Conn. Super. Ct. Middletown, June 12, 2003), 35 CONN. L. RPTR. 91 (August 18, 2003), 2003 WL 21525116 (Conn. Super. 2003). *Unjust enrichment in a strict foreclosure action.*
- Franklin Credit Management Corp. v. Nicholas, 73 Conn. App. 830, 838, 812 A.2d 51 (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 (2002). “The defendant next claims that the court improperly granted the plaintiff’s summary judgment motions despite the special defenses that it had raised. Specifically, the defendant argues that summary judgment should not have been granted based on (1) the implied covenant of good faith and fair dealing, (2) the doctrine of unclean hands, (3) the common-law duty of good faith and fair dealing, (4) the doctrine of unconscionability and (5) the doctrine of equitable estoppel. We will address each special defense in turn.” See [Table 3](#).
- Webster Bank v. Oakley, 265 Conn. 539, 577, 830 A.2d 139 (2003). “In light of the 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.”
- Southbridge Associates, LLC v. Garofalo, 53 Conn. App. 11, 15-16, 728 A.2d 1114 (1999). “Other equitable defenses that our Supreme Court has recognized include unconscionability; Hamm v. Taylor, supra [180 Conn. 491, 429 A.2d 946 (1980)] 180 Conn. 494-496; abandonment of security; Glotzer v. Keyes, 125 Conn. 227, 233, 5 A.2d 1(1939); and usury.”
- F.D.I.C. v. Altholtz, 4 F. Supp.2d 80 (1998) (D. Conn.). Defense of unclean hands.
- New England Savings Bank v. Bedford Realty Corp., 246 Conn. 594, 607, 717 A.2d 664 (1998). “The problem of proving a debt that has been assigned several times is of great importance to mortgage lenders and

financial institutions.”

- Shawmut Mortgage Co. v. Wheat, 245 Conn. 744, 754-755, 717 A.2d 664 (1998). “. . . we conclude that the defendant, as an individual who never previously has been employed, is not an ‘employed person’ within the meaning of §49-31d (1) and , therefore, may not qualify for protection from mortgage foreclosure under the mortgage act.”
- Mechanics & Farmers Savings Bank, FSB v. Delco Development Co., 43 Conn. Supp. 408, 414, 656 A.2d 1075 (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.”
- Petterson v. Weinstock, 106 Conn. 436, 441, 138 A. 433 (1927). “At common law, the only defense to an action of this character would have been payment, discharge, release or satisfaction . . . or, if there had never been a valid lien.”
“So, if the mortgagor is prevented by accident, mistake or fraud, from fulfilling a condition of the mortgage, foreclosure cannot be had.” *Id.* at 442.
- D’Oench, Duhme & Co. v. Federal Deposit Ins. Corp., 315 U.S. 460

ENCYCLOPEDIAS:

- 59 C.J.S. *Mortgages* §§531-538
“Defenses to foreclosure in general”
 - §531 In general
 - §532 Collateral rights and agreements
 - §533 Invalidity of mortgage
 - §534 Payment or discharge
 - §535 Waiver or estoppel
 - §536 Effect of possession of additional or cumulative security“Limitations and laches”
 - §537 Limitations
 - §538 Laches
- 59 CJS *Mortgages* §700 “Defenses”

TEXTS & TREATISES:

- Dennis P. Anderson, *Real Property Foreclosure In Connecticut*, CONNECTICUT LAWYERS’ DESKBOOK: A REFERENCE MANUAL (2d ed. 2000).
“Contested Matters,” pp. XIV-14-16.
- 3 JOEL M. KAYE ET AL., CONNECTICUT PRACTICE BOOK ANNOTATED (1996).
Authors’ Comment following Form 705.7
- CAROLYN L. CARTER ET AL. REPOSSESSIONS AND FORECLOSURES (5th ed. 2002).
Chapter 16. Legal Defenses to Home Foreclosures
 - § 16.1 Introduction
 - § 16.2. Introduction to the foreclosure process
 - § 16.2.5. Right to cure a default
 - § 16.2.6. Redemption
 - § 16.3. Procedural defenses
 - § 16.4. Enforceability of due on sale contract provision
 - § 16.6. Protection from foreclosure available under the Soldiers’ and Sailors’ Civil Relief Act
 - § 16.7. Substantive defenses

- § 16.7.1. Introduction
- § 16.7.2. Lender liability for loans which are disadvantageous to the borrower
- § 16.7.3. Truth in lending
- § 16.7.4. Usury
- § 16.7.5. Credit disability insurance: Obtaining benefits
- § 16.7.6. Home equity scams and foreclosure fraud
- § 16.7.7. Raising claims and defenses against the FDIC and RTC
- § 16.7.8. Challenging the amount of the claimed default: Unauthorized fees and overcharges
- § 16.8. Due Process Challenges to Foreclosure by Power of Sale
- § 16.9. Using Equitable Grounds to Prevent a Foreclosure
- § 16.10. Elderly Homeowners: Special Consideration
- § 16.12. Mobile Home Foreclosures
- Chapter 17. Negotiating Pre-Foreclosure Workout Agreements
- Chapter 20. Using Bankruptcy to Prevent Foreclosure
- 4 RICHARD R. POWELL, POWELL ON REAL PROPERTY (2003).
 - Chapter 37. Mortgages and Mortgage Foreclosure
 - § 37.43. Strict foreclosure

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [Email: lawrence.cheeseman@jud.state.ct.us](mailto:lawrence.cheeseman@jud.state.ct.us).

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 3 LaSalle National Bank v. Freshfield Meadows, LLC

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

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

<p>Doctrine of equitable estoppel</p>	<p>“Our Supreme Court . . . stated, in the context of an equitable estoppel claim, that [t]here are two essential elements to an estoppel: the party must do or say something which is intended or calculated to induce another to believe in the existence of certain facts and to act upon that belief; and the other party, influenced thereby, must actually change his position or do something to his injury which he otherwise would not have done. Estoppel rests on the misleading conduct of one party to the prejudice of the other. In the absence of prejudice, estoppel does not exist.’ (Internal quotation marks omitted.) <i>SKW Real Estate Ltd. Partnership v. Mitsubishi Motor Sales of America, Inc.</i>, 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, <i>Connecticut Evidence</i> (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>
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Table 4 Disclosure of Defense

Disclosure of Defense	
DEFINITIONS:	<p>“In order for foreclosure cases to move as swiftly as possible through our court system, it is imperative that a defendant disclose any defenses to the mortgage debt prior to the hearing. In the present case, the defendants' failure to disclose a defense in a timely manner barred them from later contesting liability at the foreclosure hearing. Accordingly, we conclude that the trial court properly refused to allow the defendants to present evidence of any defense to liability.” <u>Suffield Bank v. Berman</u>, 25 Conn. App. 369, 373, 594 A.2d 493 (1991).</p>
COURT RULE:	<p>“In any action to foreclose or discharge any mortgage or lien . . . in which there is an appearance by an attorney for any defendant, the plaintiff may at any time file and serve in accordance with Sections 10-12 through 10-17 a written demand that such attorney present to the court, to become a part of the file in such case, a writing signed by the attorney stating whether he or she has reason to believe and does believe that there exists a bona fide defense to the plaintiff's action and whether such defense will be made, together with a general statement of the nature or substance of such defense. If the defendant fails to disclose a defense within five days of the filing of such demand, 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.” CONN. PRACTICE BOOK § 13-19 (2004 ed.).</p>
FORMS: :	<ul style="list-style-type: none"> • <i>Demand for Disclosure of Defense</i>, 3A JOEL M. KAYE AND WAYNE D. EFFRON, CONNECTICUT PRACTICE SERIES, CIVIL PRACTICE FORMS (4th ed. 2004). • <i>Motion for Default for Failure to Disclose Defense</i>, Ibid.
CASES:	<ul style="list-style-type: none"> • <u>First New Haven National Bank v. Rowan</u>, 2 Conn. App. 114, 116, 476 A.2d 1079 (1984). “Since these defendants were not represented by an attorney, the disclosure of defense was correctly expunged. Practice Book 236 [now 13-19].”
TEXTS AND TREATISES	
<ul style="list-style-type: none"> • DENIS R. CARON, CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE (3d ed. 1997). § 5.01E. Disclosure of defense • I WESLEY W. HORTON AND KIMBERLY A. KNOX, CONNECTICUT PRACTICE SERIES, CONNECTICUT SUPERIOR COURT RULES (2004 edition). Authors' Comments following § 13-19 	

Section 5

Motion for Foreclosure by Sale

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to motion for foreclosure by sale

DEFINITION:

- "Connecticut provides for foreclosure of a mortgage of real property by either public sale or by strict foreclosure. The property is foreclosed by strict foreclosure unless the court orders foreclosure by sale." In Re Fitzgald, 237 B.R. 252 (Bkrcty.D.Conn.)
- "All liens and mortgages affecting real property may, on the written motion of any party to any suit relating thereto, be foreclosed by a decree of sale instead of a strict foreclosure at the discretion of the court before which the foreclosure proceedings are pending." CONN. GEN. STAT. § 49-24 (2003).
- **Termination of the equity or redemption in foreclosure by sale:** "The court finds that in Connecticut, the law is that the right of a mortgagor [debtor] in mortgaged property are terminated by confirmation of a foreclosure sale, any interest the mortgagor may claim is in proceeds of the sale solely and not in the property. The delivery of a deed is a ministerial act only and does not constitute the event which terminates the equity of redemption." Matter of Loubier, 6 B.R. 298 (1980).
- **Appraisal of property:** "When the court in any such proceeding is of the opinion that a foreclosure by sale should be decreed, it shall, in its decree, appoint a person to make the sale and fix a day therefor, and shall direct whether the property shall be sold as a whole or in parcels, and how the sale shall be made and advertised; but, in all cases in which such sale is ordered, the court shall appoint one disinterested appraiser who shall, under oath, appraise the property to be sold and make return of the appraisal to the clerk of the court.

Upon motion of the owner of the equity of redemption, the court shall appoint a second appraiser in its decree. If the plaintiff is the purchaser at sale, or if the property is redeemed at any time prior to the approval of the sale, or if for any reason the sale does not take place, the expense of the sale and appraisal or appraisals shall be paid by the plaintiff and be taxed with the costs of the case. If, after judgment has been rendered, the amount found to be due and for which foreclosure is decreed, together with the interest and the costs, is paid to the plaintiff before the sale, all further proceedings in the suit shall be stayed."

STATUTES:

- CONN. GEN. STAT. (2003)
Title 49. Mortgages and liens
Chapter 846. Mortgages
§ 49-22. Execution of ejectment on foreclosure judgment.
Disposition of property
§ 49-23. Ejectment by mortgagee barred by tender of debt and costs
§ 49-24. Court may foreclose lien or mortgage on land by sale
§ 49-25. Appraisal of property
§ 49-26. Conveyance; title to purchaser
§ 49-27. Disposal of proceeds of sale
§ 49-28. When proceeds of sale will not pay in full
§ 49-29. Expenses of sale and costs

FORMS:

- 2 CONN. PRACTICE BOOK (1997).
Form 706.3. [Motion for foreclosure by sale](#). Figure 5.
- DENIS R. CARON, CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE (3rd ed. 1997).
Form 706.3. Motion for foreclosure by sale, p. 628

RECORDS & BRIEFS

- [Motion for Foreclosure by Sale](#), CONNECTICUT APPELLATE COURT RECORDS AND BRIEFS, [Ameresco New England II, L.P. v. Colossale, et al.](#), 63 Conn. App. 49, 774 A.2d 1083 (2001). Term of November/December 2001. Figure 6.

COURT CASES

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

WEST KEY NUMBERS:

- *Mortgage*
Foreclosure by the exercise of power by sale # 329-590.

TEXTS & TREATISES:

- Dennis P. Anderson, *Real Property Foreclosure In Connecticut*, CONNECTICUT LAWYERS' DESKBOOK: A REFERENCE MANUAL (2d ed. 2000).
"Foreclosure by sale procedures," pp. XIV-23-24.
- DENIS R. CARON, CONNECTICUT FORECLOSURES: AN ATTORNEY'S

MANUAL OF PRACTICE AND PROCEDURE (3rd ed. 1997).

Chapter 5. Motions, the hearing on judgment, and the bill of costs

§ 5.01H. Foreclosure by sale

§ 5.02D. Strict foreclosure or foreclosure by sale

§ 5.02H. Judgment of foreclosure by sale

Chapter 6. The Committee

- NATIONAL CONSUMER LAW CENTER, REPOSSESSIONS AND FORECLOSURES (4th ed. 1999).

Chapter 17. Issues arising after a foreclosure sale

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [Email: lawrence.cheeseman@jud.state.ct.us](mailto:lawrence.cheeseman@jud.state.ct.us).

Figure 4 Motion for foreclosure by sale

706.3

Motion for Foreclosure by Sale

(Caption of Case)

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

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

Figure 5 Motion for judgment of foreclosure by sale

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

MOTION FOR JUDGMENT OF FORECLOSURE BY SALE

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

BANK UNITED

BY: _____

Name
Firm
Address
Telephone number
Its Attorneys

NO ORAL ARGUMENT IS REQUESTED,
NO TESTIMONY IS REQUIRED.

ORDER

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

BY THE COURT (_____, J.)

Judge/Clerk/Assistant Clerk

Dated:

Motion to Open Judgment of Foreclosure

A Guide to Resources in the Law Library

SCOPE:

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

DEFINITION:

STRICT FORECLOSURE

- **Opening of judgment of foreclosure:** “Any judgment foreclosing the title to real estate by strict foreclosure may, at the discretion of the court rendering the same, upon the written motion of any person having an interest therein, and for cause shown, be opened and modified, notwithstanding the limitation imposed by section 52-212a, upon such terms as to costs as the court deems reasonable; but no such judgment shall be opened after the title has become absolute in any encumbrancer.” Conn. Gen. Stat. § 49-159(a) (2003).
- **Purpose:** “Section 49-15 [CONN. GEN. STAT. (2003)] has the remedial purpose of providing relief to property owners and their creditors when this can be done without jeopardizing the security interest of the foreclosing mortgagee. It has often been utilized in the trial courts to extend law days or to convert a strict foreclosure to a foreclosure by sale when, at the time of the decision upon the motion to open, it appeared that a modification of the terms of the original judgment would produce a more equitable result.” *Farmers & Mechanics Savings Bank v. Sullivan*, 216 Conn. 341, 352, 579 A.2d 1054 (1990).
- **Conditions:** “Unlike General Statutes 52-212, which provides for Opening default judgments generally and requires a defaulted defendant to show that he had a good defense that he was prevented from making by ‘mistake, accident or other reasonable cause,’ [CONN. GEN. STAT. (2003)] 49-15 prescribes only four conditions for opening a judgment of strict foreclosure: (1) that the motion be in writing; (2) that the movant be a person having an interest in the property; (3) that the motion be acted upon before an encumbrancer has acquired title; and (4) that ‘cause,’ obviously good cause, be shown for opening the judgment.” *Ibid.*, 352-353.
- “We conclude that the legislature intended the language in § 49-15, ‘after the title has become absolute in any encumbrancer,’ to contemplate a period commencing immediately after the cessation of the last day on which another party may redeem, not a full business day

later. In other words, **a court may not open a judgment of foreclosure after the close of business on the final law day.**” First National Bank Of Chicago v. Luecken, 66 Conn. App. 606, 614, 785 A.2d 1148 (2001). [Emphasis added].

- **Bankruptcy:** “Upon the filing of a bankruptcy petition by a mortgagor under Chapter 13 of 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; but 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) (2003) AS AMENDED by 2004 Conn. Acts 127 § 6 and 2004 Conn. Acts 257 § 76.

FORECLOSURE BY SALE

- Washington Trust Company v. Smith, 241 Conn. 734, 742, 699 A.2d 73 (1997). “. . . the duration of rights of redemption. Under our cases, such rights survive the auction of the foreclosed property and may be exercised until such time as the judicial authority approves the foreclosure sale.”
- “The court finds that in Connecticut, the law is that the right of a mortgagor [debtor] in mortgaged property are terminated by confirmation of a foreclosure sale, any interest the mortgagor may claim is in proceeds of the sale solely and not in the property. The delivery of a deed is a ministerial act only and does not constitute the event which terminates the equity of redemption. ” Matter of Loubier, 6 B.R. 298 (1980).
- “The sale is not absolute until confirmed. The order of confirmation gives the judicial sanction of the court, and when made it relates back to the time of the sale and cures all defects and irregularities except those founded in want of jurisdiction or fraud. The court has power to confirm the sale, although the terms of the decree may not have been strictly followed.” Raymond v. Gilman, 111 Conn. 605, 613-614, 151 A. 248 (1930). *Citing Nevada Nickel Syndicate v. National Nickel Co.*, 103 F. 391.

STATUTES:

- CONN. GEN. STAT. (2003)
 - § 49-15. Opening of judgment of strict foreclosure.
 - § 49-25. [Foreclosure by sale] “. . . Upon motion of the owner of the equity of redemption, the court shall appoint a second appraiser in its decree. If the plaintiff is the purchaser at sale, or if the property is redeemed at any time prior to the approval of the sale, or if for any reason the sale does not take place, the expense of the sale and appraisal or appraisals shall be paid by the plaintiff and be taxed with the costs of the case. If, after judgment has been rendered, the amount found to be due and for which foreclosure is decreed, together with the interest and the costs, is paid to the plaintiff before the sale, all further proceedings in the suit shall be

stayed.”

COURT RULES:

- CONNECTICUT PRACTICE BOOK (2004 ed.)
Chapter 61. Remedy by appeal
§ 61-11. Stay of execution in noncriminal cases
Chapter 63. Filing the appeal; Withdrawals
§ 63-1. Time to appeal

FORMS:

- DENIS R. CARON, CONNECTICUT FORECLOSURES: AN ATTORNEY’S MANUAL OF PRACTICE AND PROCEDURE (3rd ed. 1997).
Appendix of Unofficial Forms
Form 29. *Motion to open judgment and extend law day*, p. 710.
- 2 CONN. PRACTICE BOOK Form 707.5 (1997). *Judgment of strict foreclosure after opening of original judgment*.
- CONNECTICUT STATEWIDE LEGAL SERVICES, ABOUT FORECLOSURE . . .
Sample Motion to Reopen, available at :
http://www.larcc.org/pamphlets/housing/about_foreclosure.htm

RECORDS & BRIEFS:

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

CASES

- Chase Manhattan Mortgage Corporation v. Burton, 81 Conn. App. 662, 667-668, 841 A.2d 248 (2004). “Because there was no procedural error, as the defendant claims there was, which would have resulted in an improper rendering of the judgment of strict foreclosure and the denial of the motion to open the judgment, we conclude that title vested properly and absolutely in the plaintiff following the law day on October 15, 2002, because the automatic stay had expired. As a result, there is no practical relief that this court can grant the defendant. We therefore conclude that the defendant's claims are moot and dismiss this appeal.”
- Continental Capital Corp. v. Lazarte, 57 Conn. App. 271, 273-274, 749 A.2d 646 (2000). “Law days in a strict foreclosure cannot run if a motion to open is filed during the appeal period but is yet to be ruled on Law days are ineffective while the appeal period is pending. To conclude otherwise would be tantamount to depriving a party of judicial review and, therefore, of due process of law.”
- Farmers & Mechanics Savings Bank v. Sullivan, 216 Conn. 341, 354, 579 A.2d 1054 (1990). “Since a mortgage foreclosure is an equitable proceeding, either a forfeiture or a windfall should be avoided if possible.”
- Melillo v. Spiro, 187 Conn. 333, 333-334, 445 A.2d 921 (1982). “In this action for strict foreclosure, the named defendant has appealed from the trial court's denial of his second ‘motion to reopen judgment and extend law day.’ By way of this motion, the named defendant sought to obtain a six month extension in the law day set for March 1, 1980. A motion to open a judgment of strict foreclosure is addressed to the discretion of the trial court; see General Statutes 49-15”
- In re Maiorino, 15 B.R. 254, 256 (Bkrcty. Conn. 1981). “Although a judgment of strict foreclosure may be opened for cause shown, pursuant to the General Statutes of Connecticut § 49-15, there is no authority for

opening a judgment of strict foreclosure merely on the ground that the debtor desires to cure the default and renew mortgage payments.”

- Carrington v. Muhlfeld, 122 Conn. 334, 337, 189 A. 184 (1937). “The trial court evidently believed that under the circumstances Muhlfeld would not be able to, or would not, pay the debt before the expiration of the time he sought to have fixed for redemption and that the right of the plaintiff to have the debt paid or secure title to the property should not be postponed for some months beyond the time fixed in the judgment. Whether or not it should open the judgment was a matter resting within its discretion and, unless that discretion was abused or was based upon some error in law, the denial of the motion must stand.”
- Raymond v. Gilman, 111 Conn. 605, 613, 151 A. 248 (1930). “While we have indulged in discussion of the several objections raised by the appellants, the effect of the judgment confirming the sale, being final and unappealed from, is ample, of itself, to dispose of these contentions.”

WEST KEY NUMBERS:

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

TEXTS & TREATISES:

- Dennis P. Anderson, *Real Property Foreclosure In Connecticut*, CONNECTICUT LAWYERS’ DESKBOOK: A REFERENCE MANUAL (2d ed. 2000).
“Proceeding subsequent to judgment”
1. Reopening judgments, pp. XIV-26 to 27.
- DENIS R. CARON, *CONNECTICUT FORECLOSURES: AN ATTORNEY’S MANUAL OF PRACTICE AND PROCEDURE* (3rd ed. 1997).
Chapter 9. Post Judgment Proceedings
§ 9.01c. Extension of law day

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [Email: lawrence.cheeseman@jud.state.ct.us](mailto:lawrence.cheeseman@jud.state.ct.us).

Table 5 Unreported decisions: motion to open judgment of foreclosure

<h2 style="margin: 0;">Unreported Decisions</h2>	
<p><u>Bank United v. Blacato</u>, No. CV-00-0553756 S (Aug. 14, 2001), 2001 Ct. Sup. 11186, 11187-11188, 2001 WL 1043184, 2001 Conn. Super. LEXIS 2427.</p>	<p>The defendant moves to open the judgment of strict foreclosure on the ground that the court should use its equitable powers to open the judgment because (1) the defendant never received notice of the foreclosure proceedings "[d]ue to the fact that defendant's mail has been consistently tampered with and his home burglarized on numerous occasions," and (2) the defendant "was misled into believing that he had until 2/15/2001 to file for bankruptcy protection." (Defendant's motion to reopen judgment, ¶ 3.)"</p> <p>The court does not have the authority to open a judgment of strict foreclosure after the law day has passed and title has vested. <u>New Milford Saving Bank v. Jager</u>, 244 Conn. 251, 708 Conn. App. 1378 (1998). See also <u>GMAC Mortgage Corporation v. Barclay</u>, Superior Court, judicial district of Hartford, Docket No. 5937115 (June 15, 2000, Stengel, J.) (judgment of strict foreclosure could not be opened once title had vested); <u>Bridgeport v. Voll</u>, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. 318563 (March 30, 2000, Mottolese, J.) (denying motion to open where title had vested months before motion to open was filed.)</p> <p>Title vested in the plaintiff on February 9, 2001. Further, the defendant did not move to open the judgment within four months as required by General Statutes 52-212a. The court does not have the authority to open the judgment. Therefore, the motion to reopen is denied.</p>
<p><u>First National Bank v. Luecken</u>, No. CV99 036 74 43 (Feb. 28, 2001), 2001 Ct. Sup. 3132-ex, 2001 WL 254324, 2001 Conn. Super. LEXIS 578.</p>	<p>The plaintiff has asked that the court vacate its prior orders opening and reopening the judgment and extending the law day on the grounds that the court had no jurisdiction to do so pursuant to § 49-15 of the General Statutes. The defendant argues that title does not vest until the close of business on the first day court is open following the last day set for a defendant to redeem (the last law day). There is no rational support for this argument because there is no need for any party to avail itself of the court's power because by that time all law days would have expired. The defendant reads into the word "after" in the last line of § 49-15 a period of time consisting of the first business day after the expiration of the last law day. Such a construction is untenable and unwarranted.</p> <p style="text-align: right;">[Cont'd]</p>

<p><u>Washington Mutual Bank v. Turner</u>, No. CV98 0263975 (Jul. 19, 1999), 1999 Ct. Sup. 9424, 2000 WL 1405596, 1999 Conn. Super. LEXIS 1919.</p>	<p>The bank claims that this court has no jurisdiction of the motion for the stay because, pursuant to § 49-15 of the General Statutes, the judgment, having resulted in title vesting in the bank, may not be reopened. This is so, but the defendants are not asking for the judgment to be opened. Rather, they are asking for an equitable stay.</p> <p>Similarly, this is not a writ of audita querela, which is a remedy granted to one against whom execution has issued, the enforcement of which would be contrary to justice because of (1) matters arising subsequent to the rendition of the judgment; (2) previously existing defenses which were not available at the time of the original judgment, or (3) fraud on the part of the judgment creditor, or circumstances over which the judgment debtor had no control. <u>Oakland Heights Mobile Park, Inc. v. Simon</u>, 40 Conn. App. 30, 32 (1995); see also <u>Anthony Julian RR Construction Co. v. Mary Ellen Drive Assoc.</u>, 50 Conn. App. 289, 294 (1998); <u>Ames v. Sears Roebuck & Co.</u>, 206 Conn. 16, 20-22 (1988). If there is no defense so affecting the judgment, and no fraud by the creditor nor circumstances beyond the control of the defendant affecting the judgment, then the writ may not be granted. <u>Ellington Ridge Condominium Ass'n. v. Surrells</u>, CV97-63402 (J.D. Tolland, September 24, 1997) (Zarella, J.).</p> <p>Even if a writ is not appropriate and the judgment may not be opened, the court has equitable jurisdiction to grant a stay, if the circumstances are appropriate. See, e.g., <u>Pleasant Valley Mobile Home Park v. Harl</u>, CV10-96-12806 (May 14, 1997) (Purtill, J.). Such an inquiry involves a balancing of the hardships between the parties. Cf. <u>Fellows v. Martin</u>, 217 Conn. 57, 63 n. 9 (1991).</p>
<p><u>People's Bank v. Lemdon</u>, No. CV 97 034 0634 (Jan. 5, 1999), 1999 Ct. Sup. 135, 1999 WL 27170, 1999 Conn. Super. LEXIS 25.</p>	<p>It is well-established that the "power of the court to vacate a judgment for fraud is regarded as inherent and independent of statutory provisions authorizing the opening of judgments; [and] hence judgments obtained by fraud may be attacked at any time." <u>Kenworthy v. Kenworthy</u>, 180 Conn. 129, 131, 429 A.2d 837 (1980). "Our courts have made clear, however, that while fraud may be grounds for collateral attack on a judgment of strict foreclosure by an independent action in equity, fraud is not ground for opening a judgment after title has become absolute in an encumbrancer." <u>Merry-Go-Round Enterprises, Inc. v. Molnar</u>, supra, 10 Conn. App. [160,]162 n.1[521 A.2d 1065 (1987)]. See also <u>Hoey v. Investors' Mortgage & Guaranty Co.</u>, 118 Conn. 226, 230-31, 171 A. 438 (1934); <u>City Savings Bank of Bridgeport v. Miko</u>, 1 Conn. App. 30, 34 n.2, 467 A.2d 929 (1983). Thus, even when the encumbrancer's conduct is "outrageous and unconscionable" it is "sad to relate, [that] the only relief that can be obtained by the plaintiffs . . . is through the medium of an independent action . . ." <u>East Hartford v. Miller</u>, 27 Conn. Sup. 503, 507, 245 A.2d 396 (1968).</p> <p>The motion to reopen the strict foreclosure must therefore be denied.</p>
<p><u>FDIC v. Boston Post LTD. Partnership</u>, No. 515294 (June 16, 1998), 1998 Ct. Sup. 7028, 1998 WL 345330.</p>	<p>Further, General Statutes § 49-15 does not require consent from the parties before the court can modify a judgment. To hold otherwise would thwart the court's discretionary power to open and modify judgments.</p>

Figure 6 Motion to open and modify judgment of strict foreclosure

NO. CV-87-0050014S

FARMERS & MECHANICS SAVINGS

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

MOTION TO OPEN AND MODIFY JUDGMENT

OF STRICT FORECLOSURE

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

SULLIVAN respectfully represent:

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

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

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

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

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

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

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

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

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

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

DEFENDANTS

MARTIN F. SULLIVAN
and PATRICIA M.
SULLIVAN

BY _____

Name
Firm
Address
Telephone
Juris No.

ORDER

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

GRANTED/DENIED

BY THE COURT

_____ CLERK

CERTIFICATION

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

Name

Figure 7 Motion to set new law day

NO. CV-87-00500145

FARMERS & MECHANICS SAVINGS	:	SUPERIOR COURT BANK
BANK	:	JUDICIAL DISTRICT OF
MIDDLESEX		
VS.		AT MIDDLETOWN
MARTIN F. SULLIVAN, ET AL	:	MAY 19, 1788

MOTION TO SET NEW LAW DAYS

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

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

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

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

SULLIVAN

DEFENDANTS,
MARTIN F. SULLIVAN and PATRICIA M.

By _____
Name
Firm
Address
Telephone number
Juris No.

ORDER

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

GRANTED/DENIED

BY THE COURT

_____ CLERK

Section 7

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

DEFINITION:

- “Upon the filing of a bankruptcy petition by a mortgagor under Chapter 13 of 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; but 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 ~~determination~~ 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) (2003) AS AMENDED by 2004 Conn. Acts 127 § 6 [Effective October 1, 2004] and 2004 Conn. Acts 257 § 76 [Effective upon passage].
- **Automatic stay:** “is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all *foreclosure actions*.” H.R. Rep. No. 595, 95th Cong., 2d Sess. 340-42 (1977), 1978 U.S. Code Cong. & Admin. News 5787, 5963, 6296-97, (emphasis added).
- “The filing of a petition under any chapter of the Bankruptcy Code automatically stays all actions against the debtor, including foreclosure actions. 11 U.S.C § 362 (a) (5).” Roy v. Beilin, No. 31 50 57 (Sep. 8, 1997), 1997 Ct. Sup. 9042, 1997 WL 583838.
- **Stay continues:** “The stay of any other act under subsection (a) of this section continues until the earliest of—
 - (A) the time the case is closed
 - (B) the time the case is dismissed; or
 - (C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied.” 11 U.S.C § 362 (c)

(2) (2001).

STATUTES:

- 11 UNITED STATES CODE (2002).
 - § 362. Automatic stay
 - § 522. Exemptions
 - § 541. Property of the estate

COURT CASES

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

TEXTS & TREATISES:

- NATIONAL CONSUMER LAW CENTER, REPOSSESSIONS AND FORECLOSURES (5th ed. 2002). [2003 Supplement].
 - Chapter 8. Using bankruptcy to prevent repossessions
 - § 8.2. Obtaining the automatic stay
 - § 8.2.3. Duration of the stay
 - § 8.2.4. Stay of the automatic stay
 - § 8.2.5. Notice of automatic stay
 - Chapter 20. Using bankruptcy to prevent foreclosure
 - § 20.1. Introduction
 - § 20.2. Curing defaults on home loans
 - § 20.3. Paying secured claims in full
 - § 20.4. Using consumer defenses in response to a motion for relief from stay in Chapter 13
 - § 20.5. Stripping down residential mortgages to the value of the collateral
 - § 20.6. Avoiding judicial liens—Section 522(f)(1)
 - § 20.7. Sale of property
 - § 20.8. Impact of bankruptcy on later foreclosure prevention efforts
- DENIS R. CARON, CONNECTICUT FORECLOSURES: AN ATTORNEY’S MANUAL OF PRACTICE AND PROCEDURE (3rd ed. 1997).
 - Chapter 20. Bankruptcy
 - § 20.1. Introduction

- § 20.2. The petition
- § 20.3. The proceeding
- § 20.4. The stay of the proceedings
- § 20.5. Relief from stay
- § 20.6. Chapter 11, Chapter 12, Chapter 13
- § 20.7. Selected problems

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [Email: lawrence.cheeseman@jud.state.ct.us](mailto:lawrence.cheeseman@jud.state.ct.us).

Redemption in Foreclosure

A Guide to Resources in the Law Library

SCOPE:

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

DEFINITION:

- “The equity of redemption gives the mortgagor the right to redeem the legal title previously conveyed by performing whatever conditions are specified in the mortgage, the most important of which is usually the payment of money.” New Milford Savings Bank v. Jajer, 44 Conn. App. 588, 593, 691 A.2d 598 (1997).
- **Debt, Interest and costs:** “In any action brought by a mortgagee of real estate, or any person holding title under him, against the mortgagor, or any person holding title to the estate under him, to obtain possession of the estate by virtue of title derived by mortgage, a tender by the defendant of the amount of the debt, with interest and the costs of the suit, is a bar to its further prosecution.” Conn. Gen. Stats. § 49-23 (2003).
- **Law Day (strict foreclosure):** “In other words, a court may not open a judgment of foreclosure after the close of business on the final law day.” First National Bank Of Chicago v. Luecken, 66 Conn. App. 606, 614, 785 A.2d 1148 (2001).
- **Termination of equity of redemption in foreclosure by sale:** “The court finds that in Connecticut, the law is that the right of a mortgagor [debtor] in mortgaged property are terminated by confirmation of a foreclosure sale, any interest the mortgagor may claim is in proceeds of the sale solely and not in the property. The delivery of a deed is a ministerial act only and does not constitute the event which terminates the equity of redemption. This finding leads me to conclude that in the case at bar, the court can have no jurisdiction over the property. When the foreclosure sale of June 7, 1980 was confirmed by superior court on July 7, 1980, at that moment, Loubier’s equity of redemption in the property was terminated, and his interest, if any, thereafter was in the proceeds of the sale.” Matter of Loubier, 6 B.R. 298 (1980).
- **Time to Appeal:** “A party may not effectively be deprived of the right to appeal within the twenty days by having the law day pass within that time, thereby causing a loss of the right of redemption. The defendant’s motion, therefore, cannot be deemed to be untimely filed under these circumstances; she must be afforded due process in the form of a hearing and a determination on the merits of her motion to open.” Continental Capital Corp. v. Lazarte, 57 Conn. App. 271, 274, 749 A.2d 646 (2000).

STATUTES:

- CONN. GEN. STAT. (2003)
 - Title 49. Mortgages and liens
 - Chapter 846. Mortgages
 - § 49-19. Title to vest in encumbrancer paying debt and costs
 - § 49-20. Redemption by holder of encumbrance on part of property foreclosed
 - § 49-21. Defendant to receive and file certificate of satisfaction or certificates of judgment of strict foreclosure or foreclosure by sale
 - § 49-23. Ejectment by mortgagee barred by tender of debt and costs.
 - § 49-25. Appraisal of property [Foreclosure by sale].

FORMS:

- *Satisfaction Of Judgment*, DENIS R. CARON, CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE (3d ed. 1997). Form 30, p. 711.

TEXTS & TREATISES:

- Dennis P. Anderson, *Real Property Foreclosure In Connecticut*, CONNECTICUT LAWYERS' DESKBOOK: A REFERENCE MANUAL (2d ed. 2000).
 - Redemption, pp. XIV-27 to 28.
- DENIS R. CARON, CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE (3d ed. 1997).
 - § 9.02. Redemption
 - § 9.02A. In strict foreclosure
 - § 9.02A1. Satisfaction of judgment
 - § 9.02B. Redemption by one cotenant
 - § 9.02B. In foreclosure by sale
 - § 9.02C. Effect of redemption on post-lis pendens attaching creditor

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Deficiency Judgment

A Guide to Resources in the Law Library

SCOPE:

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

DEFINITION:

IN GENERAL

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

STRICT FORECLOSURE

- **Deficiency judgment:** “At any time within thirty days after the time limited for redemption has expired, any party to a mortgage foreclosure may file a motion seeking a deficiency judgment.” CONN. GEN. STAT. § 49-14(a) (2003).
- **Evidentiary hearing:** “Such motion shall be placed on the short calendar for an evidentiary hearing. Such hearing shall be held not less than fifteen days following the filing of the motion, except as the court may otherwise order. At such hearing the court shall hear the evidence, establish a valuation for the mortgaged property and shall render judgment for the plaintiff for the difference, if any, between such valuation and the plaintiff's claim. The plaintiff in any further action upon the debt, note or obligation, shall recover only the amount of such judgment.” *Ibid.*
- **State Referee:** “Upon the motion of any party and for good cause

shown, the court may refer such motion to a state referee, who shall have and exercise the powers of the court with respect to trial, judgment and appeal in such case.” CONN. GEN. STAT. § 49-14(b) (2003).

- “Any party to a mortgage foreclosure who has moved for an appraisal of property for the purpose of obtaining a deficiency judgment, but has not been granted a deficiency judgment, or has not received full satisfaction of any deficiency judgment obtained subsequent to the filing of such motion, may make a motion to the court for a deficiency judgment as set forth in subsection (a) of this section. If such motion is made on or before November 1, 1979, such moving party shall be deemed to have complied with all of the requirements of subsection (a) of this section and shall be entitled to the benefit of any deficiency judgment rendered pursuant to said subsection (a).” CONN. GEN. STAT. § 49-14(c) (2003).
- Appeal: “Any appeal pending in the Supreme Court with regard to any deficiency judgment or proceedings relating thereto shall be stayed until a hearing is held pursuant to subsection (a) of this section. Any appellant in such an appeal shall have the right for a period of thirty days after the rendering of judgment pursuant to subsection (a) of this section to amend his appeal. There shall be no stay of such an appeal if no motion has been filed pursuant to this section on or before November 1, 1979.” CONN. GEN. STAT. § 49-14(d) (2003)

FORECLOSURE BY SALE

- “If the proceeds of the sale are not sufficient to pay in full the amount secured by any mortgage or lien thereby foreclosed, the deficiency shall be determined, and thereupon judgment may be rendered in the cause for the deficiency against any party liable to pay the same who is a party to the cause and has been served with process or has appeared therein, and all persons liable to pay the debt secured by the mortgage or lien may be made parties; but all other proceedings for the collection of the debt shall be stayed during the pendency of the foreclosure suit, and, if a deficiency judgment is finally rendered therein, the other proceedings shall forthwith abate.” CONN. GEN. STAT. § 49-28 (2003).
- “If the property has sold for less than the appraisal provided for in section 49-25, no judgment shall be rendered in the suit or in any other for the unpaid portion of the debt or debts of the party or parties upon whose motion the sale was ordered, nor shall the same be collected by any other means than from the proceeds of the sale until one-half of the difference between the appraised value and the selling price has been credited upon the debt or debts as of the date of sale; and, when there are two or more debts to which it is to be applied, it shall be apportioned between them.” Ibid.

STATUTES:

- CONN. GEN. STAT. (2003)
 - Title 49. Mortgages and liens
 - Chapter 846. Mortgages
 - § 49-14. Deficiency judgment
 - § 49-28. When proceeds of sale will not pay in full

FORMS:

- DENIS R. CARON, CONNECTICUT FORECLOSURES: AN ATTORNEY’S MANUAL OF PRACTICE AND PROCEDURE (3d ed. 1997).
 - *Motion for Deficiency Judgment*, Form 25, p. 703
 - *Objection to Motion for Deficiency Judgment*, Form 25B, p.

706

■ *Judgment for Deficiency after strict foreclosure*, Form 26, p. 707

■ *Motion for Deficiency Judgment*, Form 27, p. 708

■ *Judgment for Deficiency after Foreclosure by Sale*, Form 28, p. 709

- Dennis P. Anderson, *Real Property Foreclosure In Connecticut*, CONNECTICUT LAWYERS' DESKBOOK: A REFERENCE MANUAL, FORMS INDEX (2d ed. 2000). Chapter XIV. "Motion for Deficiency Judgment"

CASES:

- First Federal Bank, FSB v. Gallup, 51 Conn. App. 39, 42, 719 A.2d 923 (1998). "A deficiency proceeding has a very limited purpose. 'In the hearing contemplated under § 49-14 to obtain a deficiency judgment, the court, after hearing the party's appraisers, determines the value of the property and calculates any deficiency. This deficiency judgment procedure presumes the amount of the debt as established by the foreclosure judgment and merely provides for a hearing on the value of the property. *First Bank v. Simpson*, 199 Conn. 368, 373, 507 A.2d 997 (1986).' (Internal quotation marks omitted.) *Ferrigno v. Cromwell Development Associates*, 44 Conn. App. 439, 444, 689 A.2d 1150 (1997), *aff'd*, 244 Conn. 189, 708 A.2d 1371 (1998). The deficiency hearing concerns the fair market value of the subject property as of the date title vests in the foreclosing plaintiff under § 49-14. *Eichman v. J & J Building Co.*, 216 Conn. 443, 449, 582 A.2d 182 (1990)."
- Factor v. Fallbrook, Inc., 25 Conn. App. 159, 163, 593 A.2d 520 (1991) "The trial court relied on *Simpson* [*First Bank v. Simpson*, 199 Conn. 368, 370-72, 507 A.2d 997 (1986)] in ruling that the 49-1 bar applies only to a foreclosing mortgagee and that it does not affect the rights of a subsequent encumbrancer to pursue its remedies on the underlying obligation. *Id.*, 377. This is a correct statement of the law but the proposition is inapposite to the facts of the present case."

TEXTS & TREATISES:

- Dennis P. Anderson, *Real Property Foreclosure In Connecticut*, CONNECTICUT LAWYERS' DESKBOOK: A REFERENCE MANUAL (2d ed. 2000).
 - Deficiency judgments after strict foreclosure, pp. XIV-24 to 25
 - Deficiency judgments after foreclosure by sale, pp. XIV-25-26
- DENIS R. CARON, *CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE* (3d ed. 1997).
 - § 9.05. The deficiency judgment
 - § 9.05A. After strict foreclosure
 - § 9.05A(1). PJR to secure deficiency judgment
 - § 9.05A(2). Time for filing motion for deficiency judgment
 - § 9.05A(3). Technical defects in motion for deficiency judgment
 - § 9.05A(4). Substituting plaintiff prior to deficiency judgment
 - § 9.05A(5). Time for filing defenses to deficiency judgment
 - § 9.05A(6). Section 49-1 as a defense
 - § 9.05A(7). Appraisals
 - § 9.05A(8). Blanket or multiple mortgages
 - § 9.05A1. Calculating the deficiency
 - § 9.05B. After foreclosure by sale

§ 9.05B1. Difference as to subsequent encumbrancers

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Table 6 Defenses to a deficiency

<h2 style="margin: 0;">Defenses to a Deficiency Liability</h2>	
<ul style="list-style-type: none"> Dennis P. Anderson, <i>Real Property Foreclosure In Connecticut</i>, CONNECTICUT LAWYERS' DESKBOOK: A REFERENCE MANUAL (2d ed. 2000), "Deficiency Judgments after Strict Foreclosure," p. XIV-25. 	
<p><u>Vignot v. Bank Of Mystic</u>, 32 Conn. App. 309, 314, 628 A.2d 1339 (1993).</p>	<p>"While the hearing is a part of the foreclosure action, it is intended to decide only the limited issue of the defendants' liability beyond the amount secured by the property. We conclude that, because the Kushmans failed to raise their defense in the course of the foreclosure proceeding, the deficiency judgment is valid."</p>
<p><u>Bank of Stamford v. Alaimo</u>, 31 Conn. App. 1, 622 A.2d 1057 (1993).</p>	<ul style="list-style-type: none"> "A defendant in a foreclosure action, against whom there appears in the complaint allegations sufficient to impose liability in personam based on the mortgage note, must interpose a defense to such complaint in the same manner as though he were served in a separate action to enforce such liability." p. 6 "Some defenses may be raised to a motion for deficiency judgment, but not those that were or could have been raised in the foreclosure hearing. <i>Maresca v. DeMatteo</i>, 6 Conn. App. 691, 506 A.2d 1096 (1986) (defense of usury) (timeliness of the filing of a motion for deficiency judgment in a strict foreclosure); see also <i>Baybank Connecticut, N.A. v. Thumlert</i>, 222 Conn. 784, 610 A.2d 658 (1992) (the defense of laches as to the issue of timeliness in filing the motion for deficiency in a foreclosure by sale proceeding under General Statutes 49-28); <i>Society for Savings v. Chestnut Estates, Inc.</i>, 176 Conn. 563, 409 A.2d 1020 (1979) (the constitutionality of 49-14). The Court of Appeals of Maryland in <i>McKenna v. Sachse</i>, 225 Md. 595, 602, 171 A.2d 732 (Md. 1961), discussing which defenses may be raised to a deficiency application, said '[t]he mortgagor, when pressed for a deficiency decree, may raise any `defense that could be made in an action at law on the covenants in the mortgage,' . . . that is, any defense such as payment or release, or any other defense to the claim which has arisen since confirmation of the sale.' (Citation omitted.)", pp. 9-10
<p><u>Federal Deposit Ins. Co. v. Voll</u>, 38 Conn. App. 198, 660 A.2d 358 (1995).</p>	<ul style="list-style-type: none"> "We conclude that because a deficiency proceeding is not substantially similar to any common law claim triable to a jury in 1818, Guttman's claim that § 49-14 violates article first, § 19, fails."p. 210 Moreover, at no time during the foreclosure proceedings did Guttman claim that he had been prejudiced by any of the delays. At a minimum, Guttman could have filed an answer asserting the doctrine of laches, or asserted the doctrine when New CBT moved that the defendants disclose a defense, or objected to the calculation of debt at the time the FDIC moved for a judgment of foreclosure. Defenses that could have been raised during the foreclosure proceedings may not be raised at the deficiency hearing." p. 211

Table 7 Deed in Lieu of Foreclosure

Deed in Lieu of Foreclosure

Texts & Treatises

- DENIS R. CARON, *CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE* (3rd ed. 1997).
 - Chapter 22. Connecticut deeds in lieu of foreclosure: Lender concerns and title issues
 - § 22.01. Introduction
 - § 22.02. Lender's Concerns
 - § 22.03. Title issues
 - § 22.04. Conclusion
- 4 RICHARD R. POWELL, *POWELL ON REAL PROPERTY* (2003).
 - Chapter 37. Mortgages and Mortgage Foreclosure
 - § 37.44. Deed in Lieu of Foreclosure
 - [1]—Introduction
 - [2]—Factors considered in determining whether an absolute conveyance is to be a mortgage
 - [3]—Effect of a decree that an absolute conveyance is a mortgage
 - [4]—Possible disadvantages of a deed in lieu of foreclosure
 - [5]—Procedures
 - § 37.45. Foreclosure—Deed in lieu of foreclosure—Federal Income Tax Effects
 - [1]—In general
 - [2]—The Mortgagee Creditor
 - [3]—The Mortgagor Debtor