

March 17, 2006

**To: MEMBERS OF THE JUDICIARY COMMITTEE**  
**From: CONNECTICUT BANKERS ASSOCIATION**  
**Contacts: Tom Mongellow or Fritz Conway**  
**Re: SENATE BILL 666, AAC MUNICIPAL LIENS FOR ACCRUED FINES AND CERTAIN CODE VIOLATIONS**  
**Position: OPPOSE**

**S. B. 666 would create a “super lien” status for any fine against a property owner for a municipal code violation, such as the use of a single family home as a multifamily.** These fines, many of which are *per diem*, could easily be in the thousands of dollars, and in egregious situations, tens of thousands. By having a “super priority” status, these code fines would be would paid in front of all existing mortgages and liens no matter when the encumbrance was filed. The proposed creation of the super lien is of great concern to lenders throughout the state for a variety of reasons and we urge your opposition to this proposal.

The lending industry is desirous of working with the legislature and interested groups to create a more effective system of code enforcement that does not have the negative ramifications of a super lien. **Concepts such as a Stronger Judicial Solution, a Standard Date Priority Lien for the fines, and Notice Provisions so lenders and other interested parties are aware of code violations, are all worthy of exploration.**

#### ***ISSUES OF CONCERN***

**The enforcement of municipal code violations does, and should, rest with the courts and municipalities.** However, this bill will unfairly place the lender in the position of being both the code enforcer and in many cases the payer of the fine. The payment of these fines should rest with the owner who created the code violation to begin with, **not the lender who has no standing in court to dispute the fine.**

**Banks dramatically facilitate a municipality’s prompt and efficient collection of real estate property taxes by setting up escrow accounts.** The escrowing of taxes creates timely payments allowing the municipalities to create an even and enhanced flow of revenues. **These escrow accounts are how lenders manage the risk of non-payment of property taxes,** which are currently a super priority lien in Connecticut. However, in S.B. 666, **there is no way for a bank to manage the risk of a potential municipal code fine.** This bill would effectively make banks the collection agency for, or the payer of, municipal code violation fines.

**The bill prohibits title insurance coverage, which would normally allow lenders to lessen the risk of these super priority liens.** Currently, title insurance pays any liens that were filed on the land records, but missed in a title search, prior to the recording of a mortgage. This language appears to be indicating that these liens would be too risky for Title Insurance carriers to offer coverage. **We agree that it is unsafe for the title insurance industry to underwrite that risk, and would ask that the banking industry not be mandated to absorb that exact same risk.**

Many mortgage documents contain provisions that would create a default if a super priority lien were to jump ahead of the mortgage. If the lien were not promptly paid, **the lender in many cases would be forced to begin a foreclosure action due to that default.** This bill will potentially increase the number of foreclosure actions, and clog the court system, and is not the way to enforce municipal code violations.

**Banks cannot fix a property owners code violation prior to foreclosing and taking possession of a property.** In the majority of Connecticut foreclosure cases (strict foreclosures), there is little or no equity in the property. A code fine against the property will quickly exceed any equity in the property and result in the bank not only having to fix the problem that the municipality did not fix, but also pay the code fine which it had no part in creating. **This amounts to a tax for lending in municipalities that would actively use the provisions in this bill.**

**By the time a property is subject to a foreclosure action, the lender has already lost significant monies,** including months of mortgage payments, court costs, attorney's fees, and property insurance. Foreclosures average from six months to over a year to complete, and during that time, the code fines would continue to accrue. **S. B. 666 would create additional risks and potential costs that could lessen a bank's ability to make low down payment or no down payment mortgages.**

**The group most likely to suffer the effects of this legislation is the average homeowner.** Many homeowners if faced with potential foreclosure on their property as a result of this legislation will not have the resources to fix the code violation or to defend themselves before municipalities, courts and foreclosure actions.

**If enacted, S.B. 666 may lead code enforcement officers to become overzealous with this powerful municipal lien.** Code officers will quickly learn that with the proposed super lien, the bank will ultimately be the code enforcer and may have to pay the fine. **A complaint from a disgruntled neighbor, or disagreeing with the code enforcer, could lead to thousands of dollars in fines and a potential foreclosure action, in a series of events that could cost the homeowner his house.**