

Legal Assistance Resource Center of Connecticut, Inc.

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S.B. 666 -- PRIORITY MUNICIPAL LIENS

Judiciary Committee public hearing -- March 17, 2006
Testimony of Raphael L. Podolsky

Recommended Committee action: **SUPPORT IN CONCEPT**

This bill gives towns an additional remedy to force compliance with zoning and housing codes. We support the underlying concept of the bill. In cities like Hartford, we have seen abandoned and semi-abandoned buildings in which there is in practice no way to enforce even the most minimal code requirements against property owners. The owner cannot be located or refuses to respond to notices. In contrast, the mortgagee (i.e., the lender) wipes its hands of the problem, stating that it is not the owner of the property. In fact, under Connecticut law the mortgagee is the "legal" owner, while the mortgagor (who is commonly called "the owner") is technically only the "equitable" owner until the mortgage is paid off. In addition, most mortgages prohibit the mortgagor from committing or permitting "waste" of the property and allow the mortgagee to act to correct such "waste" if the mortgagor fails to do so. In reality, it is usually in the lender's long-term interest to take such action, because failure to do so can result in significant loss in value of the property, ultimately forcing the lender to write-off most of the debt by the time the property is sold. It makes much more sense for the lender to intervene quickly if it learns of problems early. It is difficult for lenders to see that long-term benefit, however, and they will rarely involve themselves.

This bill, through the use of a priority lien, promotes such early involvement by the lender to protect the property, and in doing so it helps both the town and the neighborhood to minimize the kind of deterioration that throws neighborhoods into decline.

In regard to the specifics of the bill, there may be need for some reworking. First, for the bill to be effective, it is important that there be notice to lienors and an opportunity for them to act, either by pressuring the mortgagor or by acting on their own to protect their collateral. Second, it might be helpful to codify the mortgagor's ability to make repairs, at least in some circumstances. Third, it is important that the role of housing prosecutors not be preempted. The meaning of Sections 6 and 7 is not entirely clear. Housing code prosecution is criminal, and it is not clear if the bill intends to convert it to a civil fine. The importance of housing prosecutor enforcement is that it is applied, as a matter of state policy, in a way which is designed to leverage repairs, so that a defendant cannot merely pay a fine and not make repairs. In this connection, it is not clear who is to assess the fine under the bill. Under existing practice, housing code fines are assessed by a court rather than by the town. If the fines are not assessed by the court, then for constitutional reasons it needs to be clear how a property owner challenges a fine. Fourth, we do not think it is necessary to prohibit the purchase of insurance against liens such as those established by this bill. Finally, if the lien system proposed by the bill is adopted, we believe that increasing the amount of fines themselves is not necessary, since each day's violation will already add to the fine.