



**Connecticut Mortgage
Bankers Association, Inc.**

March 17, 2006

TO: The Committee on Judiciary

FROM: The Connecticut Mortgage Bankers Association, Inc.

RE: Statement Regarding An Act Concerning Municipal Liens for Accrued Fines and Certain Code Violations (Raised Bill No. 666 (LCO No. 3213))

The Connecticut Mortgage Bankers Association ("CMBA"), which numbers almost two hundred members, is a non-profit association formed in 1984 for the principal purpose of promoting the welfare of the mortgage lending industry in Connecticut and to improve its service to the citizens of Connecticut. The Connecticut Mortgage Bankers Association is Connecticut's only trade association dedicated exclusively to the mortgage banking industry in the State of Connecticut.

The CMBA applauds the objective of helping municipalities combat the problems arising from properties that do not comply with building, land use, zoning, housing and safety codes. The CMBA, however, opposes Raised Bill No. 666 for the following reasons:

1. Super-priority of Accrued Fines Will Discourage Lenders from Extending Financing on Residential Property in Distressed Municipalities and Will Only Serve to Accelerate Urban Blight. Sections 1(b), 2(d), 3(c), and 4(e) of Raised Bill No. 666 would afford municipalities a lien on real estate for accrued fines and certain code violations that would take precedence over all other liens and encumbrances (such as mortgages) except for taxes. This lien would thus take precedence over existing and future mortgages on such property. As to existing mortgages, such a provision may be unconstitutional and therefore unenforceable as an attempt to impair existing contractual obligations of borrowers to lenders. As to future mortgages, such a provision would have to be taken into account by lenders in their underwriting. This provision would: (a) result in many lenders reducing the maximum amounts which they would lend against any particular property that for whatever reason was not in compliance with local ordinances and rules, and (b) discourage some lenders from lending at all in Connecticut. As a result, borrowers would be able to obtain less financing for such property, which would only serve to reduce the property values and limit the opportunity for responsible persons to finance property in a distressed municipality. As a result, while the objective of the bill is to be applauded, Bill No. 666 would only serve to hasten and accelerate the problems of urban blight.

2. Revenues From Accrued Fines On Specific Properties Would Not be Dedicated to Improving the Condition of the Specific Property on Which Fines Are Imposed. The proposed Bill does not indicate that the fines collected from violations of local rules, ordinances, bylaws or regulations would be used to address or alleviate the violations for which they are assessed. As a result, the fines derived from any particular property would not be dedicated to eradicating the particular violations that are the basis for the fines.

3. Existing Rights of Lenders to Advance Funds to Protect Properties Provides A Better Means for Combating Violations of Regulations. The terms of most mortgages permit the lender (the mortgagee), in the absence of an owner/borrower taking appropriate care of property, to make advances to protect the lender's security interest and to avoid "waste". "Waste" would include deterioration in mortgaged property due to a borrower's neglect (for example, the failure to repair a roof) that leads to violations of rule and regulations. Lenders can add such amounts (subject to certain statutory limits) to their mortgages and can ultimately recoup such expenses when borrowers repay them or the lenders foreclose and sell the foreclosed property. Such a right provides lenders with an incentive to see to the maintenance of properties and provides a better means for combating violations of rules and regulations than the proposed fines.

4. Passage of Bill May Result in Purchasing of Fewer Connecticut Loans by Some Secondary Market Investors. Some secondary market investors might become reluctant to purchase Connecticut loans if the Bill passes because of the superpriority of the fines over mortgages. In that regard, the Fannie Mae servicing guide (applicable to lenders that sell and service loans for Fannie Mae, a leading provider of home financing) addresses the special problems posed by special assessments that may be imposed in some states. Servicers are required to keep records on the status of any special assessments. If a borrower fails to pay such special assessments, the servicer must advance its own funds to pay those special assessments to protect the priority of the lien of the mortgage sold to Fannie Mae. For that reason, this bill would create a disincentive for lenders to make loans to consumers.

In addition, primary lenders, aware of the shrinking secondary market for such loans, may offer loans to consumers on less favorable terms or may even reject more loan applications based on their expectation that secondary market investors will not purchase such loans. Therefore, the Bill could ultimately impede consumers' ability to obtain loans with favorable terms.