

TESTIMONY IN SUPPORT OF RAISED BILL 549

AN ACT CONCERNING THE COMMON INTEREST FORM OF OWNERSHIP, MORTGAGES AND REAL ESTATE FINANCING

My name is Jonathan Anderson and I am submitting this testimony on behalf of CATIC, a title insurance company with its headquarters in Rocky Hill, Connecticut.

The bill makes changes to several existing statutes. Section 1 amends Section 47-205 of the Common Interest Ownership Act. Section 2 changes Subsection (c) of Section 49-2 of the Connecticut General Statutes regarding mortgages securing commercial and consumer revolving loans. Section 3 amends Section 49-9 of the Connecticut General Statutes regarding mortgage releases. Section 4 amends Section 49-10 of the Connecticut General Statutes regarding mortgage assignments. Finally, Section 5 of the bill amends Conn. Gen. Stat. § 49-13a regarding the discharge by operation of law of an old, unreleased mortgage. This bill addresses several recurring problems that can affect real estate transactions. All of the changes should benefit those involved in conveyancing, and some of the changes should benefit certain borrowers and lenders.

In its present form, Subsection (a) of Conn. Gen. Stat. § 47-205 prevents a town from using its zoning, subdivision or other use laws to prohibit the conversion of an existing building to the common interest form of ownership. Section 1 of this bill broadens the applicability of the statute to prevent the town from utilizing its laws regulating the use of property to prohibit any common interest form of ownership (not just the conversion of existing buildings). In essence, the revision prohibits the town from discriminating against the common interest form of ownership by providing that the town cannot impose any requirement on a common interest community that it would not otherwise impose upon an identical building or development that was not going to be a condominium, planned community or a cooperative. This amendment prohibits unequal treatment based solely upon the form of ownership.

Subsection (c) of Conn. Gen. Stat. § 49-2 creates a safe harbor for mortgages securing certain revolving loans. So long as the mortgages and the underlying loans comply with the requirements contained in this subsection, the mortgage will secure the advances made according to the terms of the loan, and the mortgage will have priority over subsequently recorded liens or claims. Within this subsection, the loans that can be secured by these mortgages are identified as commercial revolving loans, consumer revolving loans, and letters of credit. The consumer revolving loan is defined as a loan to one or more individuals, the proceeds of which are intended primarily for personal, family or household purposes, which is secured by a mortgage on residential property. A commercial revolving loan, by contrast, is defined as a loan to a foreign or domestic corporation, partnership, sole proprietorship, association or entity organized for profit and engaged primarily in commercial, manufacturing or industrial pursuits.

This statute was amended in 1988 to include provisions regarding consumer revolving loans. Prior to that time, there was a great deal of uncertainty about the validity and priority of mortgages securing revolving loans to individuals.

That same uncertainty exists today regarding mortgages securing revolving loans made to non-profit organizations. Section 2 of this bill amends the definition of commercial revolving loan to remove the requirement that the borrower be organized for profit. The new language defines a commercial revolving loan as one where the proceeds of the loan are not intended primarily for personal, family or household purposes. This change will allow the safe harbor provisions to extend to mortgages securing revolving loans made to non-profit organizations, thereby removing the uncertainty now surrounding such mortgages. The net effect of the change should be to make financing more available to non-profit organizations by giving borrowers and lenders more flexibility in structuring loans.

The addition of limited liability companies to the list of borrower entities in the subsection is also a favorable change. Limited liability companies are clearly involved in commercial transactions and mortgages securing revolving loans made to such entities deserve the same protection as mortgages made to the other entities listed in the present statute.

Unreleased mortgages continue to constitute a significant problem for sellers and purchasers of real estate, as well as title insurance companies and lending institutions. The next three sections of the bill address this issue.

Section 3 of the bill adds a Subsection (d) to the statute regarding mortgage releases, Conn. Gen. Stat. § 49-9. The new subsection provides that a release executed in accordance with the section will operate as a valid release of the releasor's interest in the mortgage, even if the interest appears to have been acquired by the releasor after the execution of the release. In other words, if a party executes a release in June but the mortgagee of record does not assign the interest to the releasing party until July, a question may arise as to whether there is a valid release. This amendment makes it clear that the release is valid, notwithstanding the fact that the releasor does not become the holder of the mortgage until some time after the date when the party actually executes the release.

Section 4 of the bill has language similar to Section 3, but it amends Conn. Gen. Stat. § 49-10 regarding assignments. This new subsection states that an assignment executed in accordance with this statute will operate to assign the interest of the assignor of the mortgage, even though the interest is acquired by the assignor after the execution of the assignment. For example, if a party executes an assignment of a mortgage in May, but does not actually acquire an interest in the mortgage until August, the assignment executed prior to the time the assignor actually acquires an interest in the mortgage is valid. Passage of this bill may help eliminate some mortgages that appear to be released by the wrong party, because either an assignment or a release is recorded out of order.

Finally, Section 5 of the bill amends Conn. Gen. Stat. § 49-13a. The statute in its present form provides that a mortgage remaining unreleased of record for at least 40 years after the stated maturity date will be invalid as a lien on the property so long as an affidavit, executed by the party in possession and "stating the fact of such possession", is recorded in the appropriate land records. The amendment reduces the time period required to invalidate the unreleased mortgage from 40 years to 30 years after the stated maturity date. In addition, this bill changes the statute

to provide that if the mortgage does not have a stated maturity date, the mortgage will be invalid as a lien if the mortgage remains unreleased for at least thirty years after the mortgage recording date. Finally, the bill amends the statute by removing the affidavit requirement.

There is no question that unreleased mortgages cause problems for anyone involved in real estate transactions. Sellers experience delay, inconvenience and sometimes incur additional costs when old mortgages appear on title searches conducted for purchase transactions. These may represent mortgages given by the sellers themselves that have since been paid off but not released of record, or they may represent mortgages from prior owners in the chain that were previously satisfied but remain unreleased. Many buyers have had closings delayed because of the appearance of an unreleased mortgage in a buyer's title search. Lenders get hit with the problem from both perspectives. As the source of financing for purchases, a lender needs to know that its loans will be in first position and not subject to any unreleased mortgages. As the holder of or the successor in interest to the holder of, an old, unreleased mortgage, a lender may be forced to spend valuable time and money researching its records and preparing a release when it is ultimately responsible for discharging the mortgage. In addition, attorneys for all of these parties, together with their administrative staff, spend many hours searching for and communicating with the holders of these old mortgages.

The reasons that the mortgages remain unreleased are varied. The holder of the mortgage may have failed to provide the release, or the holder may have sent the release to the wrong place. The release may have been sent to the mortgagor who sold the property, and the mortgagor never recorded the release. The release may have come from the wrong party.

The legislature has responded with efforts to resolve this continuing problem. Conn. Gen. Stat. § 49-8a authorizes the recording of an affidavit with proof of satisfaction of the mortgage loan as an alternative to a release. Conn. Gen. Stat. § 49-9a validates mortgage releases that appear to have been executed by someone other than the record holder of the mortgage if the release has been recorded for at least 5 years and the property owner records an affidavit. Notwithstanding the existence of these important statutes, more help is needed.

Conn. Gen. Stat. § 49-13a is an important part of the solution to the problem of unreleased mortgages. Unfortunately, in its present form, the statute has a very limited application. The proposed changes will improve the utility of the statute, first by reducing the time period required to invalidate an unreleased mortgage, and second by allowing the statute to apply to situations where the maturity date is not disclosed in the mortgage. These changes are unlikely to lead to the wrongful discharges of unreleased mortgages that secure continuing obligations. For a mortgage with a stated maturity date, the revised statute will not invalidate the mortgage until thirty years have passed from the maturity date of the underlying loan. This leaves plenty of time for enforcement. The use of the statute to invalidate mortgages that fail to disclose a maturity date should also be non-controversial. Conn. Gen. Stat. § 49-31b provides that a mortgage deed will be deemed to give sufficient notice of the nature and extent of the underlying obligation when the mortgage provides, among other things, the maximum term of the note. Most institutional mortgages contain this information.

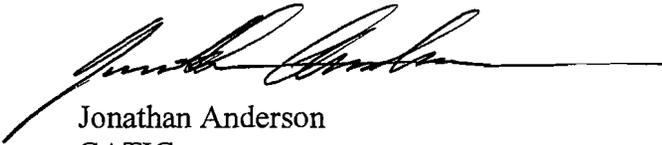
The removal of the affidavit requirement is also an improvement to the present statute. The invalidation of an unreleased mortgage should be automatic if it remains unreleased for such a long period of time. The elimination of the mortgage should not be dependent upon the recording of an affidavit, especially when the affiant is likely to be unrelated to the original mortgagor, and may not have been in possession of the property for an extended duration. As a practical matter, this requirement is now often ignored.

In conclusion, CATIC supports the passage of this bill. These amendments will benefit numerous parties involved in real estate conveyancing.

Although CATIC supports the passage of the bill in its present form, it does recognize that the bill's provisions change a number of existing statutes.

CATIC requests that if one of the bill's provisions is objectionable, then the bill should be amended to remove that provision.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jonathan Anderson", written over a horizontal line.

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