



**Connecticut Mortgage
Bankers Association, Inc.**

March 10, 2006

TO: The Joint Committee on Judiciary

FROM: The Connecticut Mortgage Bankers Association, Inc.

RE: Statement Regarding An Act Concerning the Common Interest Form of Ownership, Mortgages and Real Estate Financing (Raised Bill No. 549 (LCO No. 2323))

The Connecticut Mortgage Bankers Association ("CMBA"), which numbers over 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 opposes Raised Bill No. 549 for the following reasons:

1. Invalidation of Undischarged Mortgages Where Maturity is Not Specified or Where No Affidavit as to Owner's Undisturbed Possession Has Been Recorded Would Unreasonably Jeopardize the Interests of Mortgage Lenders.

Section 5 of Raised Bill No. 549 would amend Connecticut General Statutes Section 49-13a by, among other things:

(1) reducing from 40 years to 30 years the minimum period of time after which a person's undisturbed possession of a property following the conditions for performance of the mortgage (such as the final payment on the mortgage) would entitle the owner to have the mortgage treated as invalid;

(2) provide that a mortgage which does not specify the time for satisfaction of the conditions for the performance of the mortgage (such as the final payment date) would be invalid 30 years after the recording of the mortgage; and

(3) eliminate in all cases the requirement that the person in possession of the property execute and record a sworn affidavit stating that the person has been in undisturbed possession of the property for the requisite period of time.

The proposed reduction in the 40 year requirement to 30 years runs counter to the recent mortgage industry trend to offer mortgages with terms of 40 years and even 50 years. The proposed reduction from 40 years to 30 years and the proposed addition of the new provision to the effect that a mortgage could be invalid after 30 years would work a disservice on borrowers

who are seeking longer term mortgages by providing a risk that many mortgage lenders would be unwilling to take (that is, the risk that a mortgage could become automatically invalid after just 30 years). Moreover, the proposed elimination of the affidavit requirement would put the integrity of the land records at risk by having mortgages be deemed invalid without any recorded documentation to substantiate the basis for a claim that a mortgage is invalid. Accordingly, the CMBA opposes Section 5 of Raised Bill No. 549.

2. Need for Addition of Restriction to Right to Statutory Damages to Persons Who Have Been Damaged by Release of Mortgage.

Connecticut General Statutes Section 49-8(c) affords persons who may be aggrieved by the failure of the mortgagee to execute and deliver a release within sixty (60) days of the payoff of a mortgage to statutory damages at the rate of \$200 per week until the release of mortgage is provided (subject to a \$5,000) maximum, or the actual amount of loss sustained by the aggrieved person, whichever is greater, plus legal fees. Presently, the statute affords the statutory damages to a person regardless of whether the person has suffered any actual loss. As a result, many persons pursue such claims even when no damage has been incurred and some attorneys are reaping a windfall in making claims for liability under the statute on behalf of clients have not incurred any loss or other damage. To avoid this inequitable result, the CMBA requests that Raised Bill No. 549 be revised to amend Connecticut General Statutes Section 49-8(c) to provide that the right to damages under this statute is limited to aggrieved persons who have suffered a loss as a result of the failure of the mortgagee or plaintiff or the plaintiff's attorney to execute and deliver a release in a timely manner.