Connecticut Mortgage
Bankers Association, Inc.
Opening Doors

March 14, 2006

TO: The Committee on Judiciary

FROM: The Connecticut Mortgage Bankers Association, Inc.

RE: Statement Regarding An Act Concerning Protection from Foreclosure for Unemployed and Underemployed Persons (Raised Bill No. 551 (LCO No. 2585))

The Connecticut Mortgage Bankers Association ("CMBA"), which numbers more than two hundred individual and corporate 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.

CMBA lauds the efforts to help homeowners facing foreclosure but <u>opposes</u> Raised Bill No. 551, An Act Concerning Protection from Foreclosure for Unemployed and Underemployed Persons (the "Bill"), for the reasons set forth below:

1. <u>The Bill Will Work a Disservice to Both Homeowners Facing Foreclosure and Prospective Borrowers</u>.

1.1 <u>The Bill May be Unconstitutional as Regards Existing Borrowers</u>. For existing borrowers who are homeowners, this Bill might be unconstitutional by impairing borrowers' existing loan contracts with their lenders. In that case, the Bill would not be enforceable but might hurt some borrowers by giving them false hope that the Bill would nevertheless provide them with some relief.

1.2 <u>The Bill Would Be a Disincentive for Lenders to Attempt to Help Existing Borrowers Work Out Their Credit Problems</u>. Even if the Bill were constitutional as to existing homeowners, the Bill would create a disincentive for lenders to: (1) initially offer a loan modification or other type of forbearance or "workout arrangement" in order to enable borrowers to cure their loan defaults and avoid the continuation of foreclosure proceedings, or (2) offer new loans that would refinance and pay off the defaulted loans that borrowers now have. Because the Bill could effectively cause the foreclosure process to be lengthened, lenders will be more reluctant to extend credit to borrowers, particularly to risky borrowers who have lower down payments or those who have little equity in their properties.

As a result of the foregoing, this Bill, instead of helping borrowers, would ultimately prove to be a disservice to many borrowers.

1.3 Prospective Borrowers May Be Adversely Affected by this Bill Because Lenders Would be Reluctant to Extend Credit. Those borrowers with low credit worthiness might be further disadvantaged by this Bill if lenders anticipate greater difficulty in enforcing their rights in the event of a loan default. For those borrowers who initially make significant down payments or who build up significant equity in their homes, such borrowers are at risk in foreclosures but are protected by the courts. The Connecticut courts protect such borrowers by exercising their equitable power to set a "long law day" and thereby delay the deadline for delinquent borrowers to cure defaults in a loan. Those protections provide a workable mechanism and provide protection to many deserving borrowers on a case by case basis. Those protections should continue to be provided in lieu of the protections which this Bill on its face would purport to provide.

2. Bill Would Counteract Other Efforts Designed to Increase the Rate of Homeownership. For the reasons stated above, this Bill would provide a disincentive to lenders and reduce the amount of credit extended. As a result, this Bill would also be a disservice to borrowers by counteracting the other state and federally-supported efforts to increase the rate of homeownership (especially the rate of homeownership amongst borrowers who lack traditional creditworthiness and/or who are riskier than other borrowers).

3. Additional Time Periods for Requesting Relief or for Restructuring Debt is Not Reasonable. The Bill would, among other things: (1) lengthen the deadline for borrowers to file an application for relief to a period that would not expire until 25 days after the date of the borrower's "appearance" in court, which itself could be 30 days after the return day; (2) eliminate the condition that borrowers applying for relief must not assert a defense to the foreclosure action; and (3) extend the restructuring period to 24 months from the existing 6 months. All of these changes would serve to unnecessarily lengthen the foreclosure process (not only in cases where borrowers might have equity in the property and could be protected by a court's granting of a "long law day" but also in cases where borrowers lack equity in the property and do not have a realistic basis for ultimately curing their loan defaults). Such a lengthening of the foreclosure process would, however, have a negative impact on all borrowers ultimately due to the unwillingness of many lenders to make loans to Connecticut borrowers (particularly to risky borrowers).