



The State Tree,
The White Oak

THE LUMBER DEALERS ASSOCIATION OF CONNECTICUT

Testimony of the
Lumber Dealers Association of Connecticut
Before the Legislature's Judiciary Committee
1:00 PM, Monday, March 5, 2007
Room 2C, Legislative Office Building
Hartford, Connecticut

Good afternoon. My name is Eric Miner. My family owns and operates Miner's Inc. Our family has been in the building material supply business for 5 generations. I am also here today representing the Lumber Dealers Association of Connecticut (LDAC), which is comprised of nearly 100 retail lumber dealers and associated businesses. Our membership is made up of independent, family owned businesses that have been operating in this state for nearly a century.

I am here today to express the Association's strong support for: House bill *Bill 7214*, "An Act Concerning Express Trusts for the Payment of Claims for Materials Furnished or Services Rendered in Building Projects."

Last year LDAC requested this legislation to allow Connecticut contractors and building material suppliers the ability to use the new Federal Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Since that time we have been working with numerous groups to reach consensus on the language of this bill. We are in discussions with the following:

- The CT Bar Association
- The Realtors Association
- The CT Banker's Association
- The Homebuilders' Association of CT
- The CT Construction Industry Association
- The Associated Builders & Contractors
- The Associated General Contractors of CT
- The Subcontractors' Association

We have incorporated their suggestions to improve the bill, and to date I am not aware of opposition to our proposal.



In our industry, more than 95% of the sales of building materials are made on credit. Our primary security on that credit extension is the mechanic's lien. When bankruptcy protection is sought, our ability to enforce that security interest is stayed. We need **HB 7214** to protect viability of our industry. We are small businesses and receipt of ten cents on the dollar on the extension of hundreds of thousands of dollars worth of building materials is devastating. Subcontractors are often in the same situation.

HB 7214 creates an express trust which is a relationship. That relationship occurs when the following takes place:

1. A homeowner pays a contractor funds that are intended for supplies or services regarding a particular job.
2. The contractor uses those funds for some other purpose and does not pay the subcontractor or the material supplier.
3. The contractor then seeks bankruptcy protection.

The express trust would be created **only** at the time that the contractor seeks bankruptcy protection.

Federal law created a new section (1328 of the Uniform Code) to give building material suppliers recourse when a contractor, "commits fraud or defalcation while acting in a fiduciary capacity." An example of this would be if a homeowner paid a contractor funds intended for supplies for a particular job, and the funds were used for another purpose. That is a violation of section 1328, which makes the debt owed non-dischargeable under bankruptcy.

Section 1328 must work with a state statute that creates an "express trust." Please note that under **HB 7214** such an "express trust" does not require that a separate bank or escrow account be established for each project and the simple act of commingling funds does not create a violation. Nor would it apply to public works projects.

The significance of the relationship is that whenever a contractor receives payment for materials, or services from a property owner intended to pay for supplies or services, the contractor has an obligation to transfer those funds to the building material supplier or the subcontractor.

Again, the express trust created under **HB 7214** is triggered **only** if the contractor commits three acts: misappropriation of funds, refusal to pay the supplier, **and** files for bankruptcy protection. Under those specific circumstances, the federal law makes debt owed to the building material supplier non-dischargeable under Chapter 7 (liquidation), Chapter 11 (adjustment of debt) or Chapter 13 (reorganization).

New York, Michigan, Texas, Oklahoma, Wisconsin, and New Jersey to a limited extent, have adopted this statutory protection. Similar legislation has been introduced in Vermont and Rhode Island among other states.

In closing, we are asking you to protect the viability of the building industry by allowing us to utilize the protections passed by Congress with the Bankruptcy Abuse and Protection Act. Please favorably report **HB 7214**.

This completes my testimony. Thank you for your consideration.