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To: Committee on Banks
Re: Raised Bill No. 428
February 28, 2008

This letter shall serve as support for the above-referenced bill concerning Mortgage Closing Funds Availability. As attorneys practicing Real Estate Law in Connecticut, we have experienced situations where funds are not available in time to make payment to the seller. As a result, the buyer, who has typically arranged to move in on the day of closing, is not permitted to do so until the funds are good. This can impose significant additional cost on the buyer in terms of moving company expenses, alternative overnight arrangements and the like.

While General Statutes §36a-758 currently imposes a duty on the mortgagee bank to have the funds available "at the time of consummation of such loan," there is no penalty provision in the current statute and thus no lever to enforce compliance. Unless the funds are available at a minimum on or before 3:00 p.m. on the date of closing, but preferably on or before the time set for closing, the buyer's attorney cannot make timely payment to the seller, which often must be by bank or certified check.

The proposed revision to the statute will give some teeth to the provision. I would recommend, however, that some thought be given to who is responsible for enforcing the penalty provision and where the penalty would go if it were assessed. Perhaps the committee could reference General Statutes §49-8 (c), which imposes a penalty for a mortgagee's failure to provide a release of mortgage in a timely manner after payment in full of the mortgage.

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