



CONNECTICUT ASSOCIATION OF
REALTORS[®] INC.

Statement on

H.B. 5201 (Comm): AN ACT PROVIDING RELIEF TO HOMEOWNERS IN FORECLOSURE
Support with request for additions

Submitted to the Banks Committee
February 24, 2009

by
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To Senator Duff, Representative Barry and the members of the Banks Committee, I am writing on behalf of the 18,000 members of the Connecticut Association of REALTORS[®] (CAR) concerning HB 5201, An Act Providing Relief to Homeowners in Foreclosure. The Association supports the Bill and would ask in addition, that the Committee consider adding a proposal the Association has developed to add a third, more modern foreclosure option to the two 18th century foreclosure options.

The Association supports the concept set forth in this Bill since it would assist in keeping people in their homes and prevent those homes from being dumped into the inventory of unsold homes as bank-owned properties. It is the Association's experience that the flow of bank-owned properties into inventory acts as a depressant on the market. Many buyers believe that they will receive a bargain if they purchase a bank-owned property and are unwilling to pay market value for them. In addition, where subdivision or neighborhoods have several bank-owned properties for sale, sellers attempting to market their properties in the regular market have a difficult time competing unless they lower their asking prices. These lower prices eventually affect grand lists. Any alternative that would slow inventory growth and allow properties to be marketed in the normal manner would act to preserve property values, neighborhoods and grand lists.

At the same time, Connecticut continues to rely on 18th century methods of strict foreclosure and foreclosure by sale. The foreclosure by sale process does not and will not produce market value sales as it severely restricts the universe of buyers qualified to participate through high cash deposit requirements, extremely limited inspection periods (typically an hour or two before the auction), and refusal to recognize or allow for usual and customary contingencies for home inspection, lead inspection and financing. The universe of buyers capable of participating in such an auction is limited to deep-pocketed purchasers. An alternative is needed that recognizes 21st century financing options and due diligence.

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The Association has developed a proposal for a foreclosure by market sale that would permit a homeowner in a foreclosure a period of time to market the property and produce an offer under the supervision and approval of the Court. Members of the Committee will recognize that the Probate Courts have long-standing legal authority to review and approve sales contracts, including those containing financing and inspection contingencies by administrators, conservators, executors and trustees. There is no reason to pre-suppose that the judges of the Superior Court are less capable of reviewing and approving sales contracts obtained in the open market in foreclosure matters.

It is the Association's expectation that a foreclosure by market sale option would allow troubled properties to be marketed in a usual and customary manner to the entire universe of buyers to the benefit of the owners, the buyers and the lenders.

There is a more detailed description of this proposal attached to my written testimony. We have included suggested language which we urge that you add to Committee Bill 5201.

My thanks on behalf of the Association and its members to the Committee for its kind consideration.



PROPOSAL FOR FORECLOSURE BY MARKET SALE

PROBLEM:

Connecticut's foreclosure law has changed little in the last 300 years. Essentially, there are 2 types of foreclosures. There is a strict foreclosure in which the foreclosing party is awarded title after the foreclosed party has had an opportunity to redeem the property. There is also foreclosure by sale in which a committee is appointed who auctions the property. Although there is a redemption period in strict foreclosure, redemption is almost never used due to an inability to obtain financing when one is under a foreclosure.

Foreclosure by sale is conducted the same way it has been conducted for 3 centuries: there are no financing contingencies allowed, one must have a certified check for 10% of the appraisal price prior to bidding and typically, there is an hour or two time period prior to the auction during which the property may be examined. The net result of these restrictions is that one must have cash available for the purchase price in order to bid and the bidding does not come close to the fair market value since bidders must take into account unknown problems with the property and the lack of any meaningful right to examine the property prior to bidding.

The reliance on colonial-era foreclosure procedures has several undesirable affects. First, foreclosing lenders end up adding foreclosed properties to their portfolios and are forced to undertake the expenses of maintaining, insuring, and eventually selling those properties. Second, the process exacerbates market downturns by dumping large numbers of foreclosed properties on the market thus depressing prices. Third, the foreclosure by sale process shuts out first-time home buyers and those who would qualify for CHFA, FHA, VA, and other government backed mortgage loans since it is impossible to participate in the bidding without having cash available to complete the entire purchase. Fourth, foreclosed borrowers are deprived of any opportunity to generate a private sale at a higher price so as to either reduce any deficiency or preserve some portion their equity.

It is clear that a procedure that may have worked well when mortgages were uncommon, the utilities servicing the property had a bucket and rope, the mechanical systems consisted of a fireplace and candles and the foreclosure auction was a civic event may not work well in the 21st century. Another method is needed to reflect the complexities of purchasing real property in the 21st century.

SOLUTION:

What is needed is a foreclosure by private sale. Under such a proposal, either party could ask for foreclosure by private sale. If requested, the court must grant it. The court would set a date at least 120 days from the date the motion is granted for the presentation of an offer to the court.

The court would direct that the property be listed with a real estate licensee for sale at a commission to be determined by the court. This would permit the party to be foreclosed to list the property and market it by normal means. If an offer is generated, that offer would be presented to the court for approval. That offer

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could include all of the normal and usual contingencies for financing, inspections, and other contingencies requested by the offer or and acceptable to the party being foreclosed. This is not an unusual procedure. Probate and bankruptcy courts routinely oversee the marketing and selling of real estate by private sale. If the court approves the sale, the court would set a date within 60 days for the completion of the sale.

This would allow a borrower to obtain a mortgage commitment, and set up and complete a closing.

A foreclosure by private sale has several advantages over current procedures. It permits a party being foreclosed to decide whether it is worthwhile to attempt to market the property privately. It provides for normal and usual marketing effort and exposes the property to the broadest possible market. It is certainly faster than going through even a strict foreclosure when the foreclosing party must take back the property, repair it, prepare it for the market, and market the property. It is less expensive to the lender since the lender need not pay and arrange for appraisals, committees to auction the property or marketing expenses and sometimes damages from houses that have remained empty until they are sold. For the party being foreclosed, that party has an opportunity to sell the property for something that nearly approaches its market value without having to be under the gun of an imminent foreclosure. For the buying public, they have an opportunity to purchase properties in what is for all intentions and purposes a normal manner allowing the potential buyer to perform due diligence and obtain the financing which is necessary for selling any property in the 21st century. For the real estate market in general, this procedure allows the market to function normally without having to suddenly absorb large numbers of foreclosed properties and will assist the market in rebounding quickly since large numbers of foreclosed properties will not act as a depressant on the market.

Thank you for your kind consideration of this proposal.



PROPOSAL FOR FORECLOSURE BY MARKET SALE ... SUGGESTED LANGUAGE (add to Committee Bill 5201)

Section 1. Section 49-24 of the Connecticut General Statutes is repealed and the following substituted therefore: All liens and mortgages affecting real property may, on the written motion of any party to any suit relating thereto, be foreclosed by a decree of sale instead of a strict foreclosure at the discretion of the court before which the foreclosure proceedings are pending OR, IF THE PROPERTY AFFECTED IS A ONE TO FOUR FAMILY PROPERTY, A DECREE OF MARKET SALE IN ACCORDANCE WITH THIS ACT.

Section 2. (New) (a) Upon the written motion for foreclosure by market sale of any party to an action for foreclosure, the Court shall grant such motion and issue a decree fixing a date, not earlier than 120 days from the grant of such motion, for the receipt of an offer or offers to purchase the property being foreclosed. Such decree shall also approve the moving party's plan to market the property, which plan may include listing the property with a person or persons licensed under Chapter 392 of the general statutes, direct that all offers received be provided to the Court prior to the date fixed for the presentation of and offeror offers and that all offers be received subject to the approval of the Court.

(b) Upon the receipt of an offer or offers, the Court, after hearing, shall determine whether it is in the best interests of the parties to the foreclosure to approve such offer. The Court shall not reject an offer solely on the basis that the offer contains contingencies for mortgage financing or building and other physical inspections of the property but may consider the absence of contingencies to an offer in deciding which of several competing offers is in the best interests of the parties. The Court in its discretion may extend the deadline for the receipt of offers set in accordance with Section 2(a) upon good cause shown which includes, but is not limited to, allowing an offeror a reasonable time to meet contingencies set forth in an offer.

(c) If no offers are received or no offers are received acceptable to the Court by the deadline set in accordance with Section 2(a), the Court may either extend that deadline or may issue a decree of sale in accordance with Section 1 above or a decree of strict foreclosure.

(d) If the Court approves of an offer, it shall issue a further decree ordering a sale date not earlier than sixty days from the date of such decree within which the offeror must complete the sale, which date may be extended for good cause shown upon the order of the Court. The Court shall also determine and approve the payment of conveyance taxes, marketing expenses, including compensation to persons licensed pursuant to Chapter 392 of the general statutes, recording fees, and reasonable attorney's fees to be paid from the closing proceeds on the date of closing.

Section 3. Section 49-27 is repealed and the following substituted therefore. The proceeds of each sale, LESS THE EXPENSES OF MARKETING AND SALE PREVIOUSLY APPROVED PURSUANT TO SECTION 2 ABOVE, shall be brought into court, there to be applied if the sale is ratified, in accordance with the provisions of a supplemental judgment then to be rendered in the cause, specifying the parties who are entitled to the same and the amount to which each is entitled. If any part of the debt or obligation secured by the mortgage or lien foreclosed or by any subsequent mortgage or lien was not payable at the date of the

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**PROPOSAL FOR FORECLOSURE BY MARKET SALE ... SUGGESTED LANGUAGE (add to
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judgment of foreclosure, it shall nevertheless be paid as far as may be out of the proceeds of the sale as if due and payable, with rebate of interest where the debt was payable without interest, provided, if the plaintiff is the purchaser at any such sale, he shall be required to bring into court only so much of the proceeds as exceed the amount due upon his judgment debt, interest and costs.



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