Testimony in Support of HB 5912,
"AN ACT CONCERNING ATTORNEYS' FEES AGREEMENTS BETWEEN MORTGAGE CREDITORS AND CONSUMER DEBTORS."

Tuesday, February 17, 2009

Before the General Assembly's Banks Committee

Good morning, Chairman Duff, Chairman Barry, and members of the Committee. I am testifying in support of HB 5912, "*AAC Attorney's Fees Agreements between Mortgage Creditors and Consumer Debtors.*"

Quite simply, this legislative proposal is a consumer-driven concept derived from the notion that a mortgage borrower should have the right to legal representation of the borrower's choosing at a residential mortgage closing, yet should not feel obligated or coerced to pay for the lender's legal representation.

Residential closings, whether home purchases or refinances, can be stressful transactions for borrowers. These are not transactions which occur with great frequency in most people's lives, and borrowers often need to rely on someone whom they know is looking out for their best interest. For many borrowers, that person can be an attorney of the borrower's choosing. Often, a single attorney is able to represent the mutual goals of both the borrower and lender without difficulty. Sometimes, however, a lender insists on using the lender's own attorney to represent the lender's interest at closing. A lender should have that right and any lender exercising that right should compensate its attorney. However, when a lender insists on using its own attorney, the borrower should not be required to compensate the lender's attorney for legal services rendered to the lender, rather than to the borrower.

When a borrower is required to pay for the legal services rendered to the lender, the borrower is faced with a Faustian choice of keeping down closing costs by using the lender's attorney for themselves, too, or of selecting their own attorney to vigorously represent the borrower's best interests. For some new homeowners, the decision is the difference between the deal coming together or falling apart.

This consumer-friendly legislation would prohibit a lender from compelling a borrower to compensate the lender's attorney, unless the borrower is actually represented by the lender's attorney. In a time when consumer confidence in the mortgage lending business is low, this legislation would provide borrowers confidence that their attorney is looking out for their best interest.

The legal profession is grounded in the principle that a client is represented zealously by an attorney of the client's choosing. This legislation reinforces that basic, legal principle. I urge your support of this legislation.

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