

The Jerome N. Frank Legal Services Organization

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Testimony Supporting

H.B. No. 6484, An Act Concerning Emergency Mortgage Relief

Testimony of Robin S. Golden

To the Banks Committee

February 24, 2009

Senator Duff, Representative Ryan, and distinguished members of the Banks Committee: I appreciate the opportunity to speak to you today in support of the passage of Bill 6484.

My name is Robin Golden, and I am the Selma M. Levine Clinical Lecturer in law at the Yale Law School. I live and vote in New Haven, in the districts of Senator Toni Harp and Representative Patricia Dillon. I am one of the faculty members for the Community and Economic Development Clinic at the Law School. Together we currently supervise 15 students working to help address various aspects of the mortgage foreclosure crisis in New Haven.

In our work we have seen firsthand the devastation that this crisis is bringing to cities like New Haven. We must find creative solutions and implement those solutions quickly to save what is left of our neighborhoods.

Connecticut has already shown its leadership in addressing the mortgage foreclosure crisis by creating the court ordered mediation program. That program has made an enormous difference to large numbers of borrowers by requiring that lender/servicers meet with borrowers to negotiate a modification and avoid foreclosure. The program does not, however, provide any objective assessment of appropriate modifications against which these negotiations can be measured. The result is that homeowners who could afford to keep their homes, given an appropriate modification, as measured by what is reasonable in the marketplace; end up losing their homes unnecessarily. In our work tracking modifications in New Haven, we have seen that the mediation program is essential, but not sufficient, to stem the tide of unnecessary foreclosures in Connecticut.

Bill number 6484 provides the missing piece to ensure that unnecessary foreclosures do not occur. This well-crafted piece of legislation includes two essential elements:

1. **Requires Initial Affordability Assessment:** It provides for a triage process that assesses which borrowers, given actual information on income and expenses, can afford an appropriately restructured mortgage. Homeowners with insufficient incomes are not eligible for this relief. This minimizes the delay for mortgages that cannot be successfully restructured (which would not be true with, say, a straight moratorium on foreclosures).

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2. **Creates a Transparent Process for Mortgage Restructuring by Judges:** It sets out a step by step process to be followed by the court with clear guidelines about how each mortgage will be restructured. The process that is outlined is very similar to what foreclosure court judges are already doing when choosing foreclosure by sale over strict foreclosure, therefore foreclosure judges have the competency to oversee the proposed restructuring process.¹ There is almost no discretion involved in the restructuring and the process is completely transparent.

I would like to suggest one potential minor amendment to this excellent bill. Section 2 (c) (1) has the court ordering the borrower to submit an affidavit with evidence of income and expenses. I would suggest a reference to the excellent work of HUD certified counselors in this section. HUD certified counselors are experts at collecting and analyzing data to assess the ability of borrowers to afford mortgages. The section might even require that the borrower meet with a HUD certified counselor to assist them in preparing the required affidavit.

I want to end my testimony by reemphasizing the importance of taking a proactive approach to this crisis. Connecticut has already done that with the mediation program. Bill 6484 provides for the necessary next step to ensure that all homeowners who can keep their homes will keep their homes, and the decline of our neighborhoods will be halted.

¹ Currently, Connecticut foreclosure judges evaluate the amount of debt owed and the appraised value of the property before entering a judgment of foreclosure. The judge must compare the amount of debt owed to the amount of equity a homeowner has in their house. If the homeowner has sufficient equity to cover the debt, a judge enters a judgment of foreclosure by sale. If the equity is not sufficient to cover the debt, the judge enters a judgment of strict foreclosure. Therefore, foreclosure court judges regularly evaluate and compare the appraised value of the property with the debt owed by the borrower. This legislation only adds one additional component—the borrower making a showing of ability to pay. As foreclosure is an equitable process, judges regularly hear testimony on ability to pay. Furthermore, the Connecticut foreclosure mediation process has exposed judges to an ability to pay analysis, as mediators currently collect such information from borrowers.