

**TESTIMONY OF WILLIAM R. BREETZ  
ON TUESDAY, FEBRUARY 24, 2009 BEFORE THE BANKS COMMITTEE  
REGARDING  
HB 6484, AN ACT CONCERNING EMERGENCY MORTGAGE RELIEF**

Good day, members of the Banks Committee. I appreciate the opportunity to appear before you in support of HB 6484, An Act Concerning Emergency Mortgage Relief.

My name is William Breetz. I drafted the original language that the fine attorneys in the Legislative Commissioners Office subsequently molded into the bill you have before you.

**THE FORECLOSURE CRISIS AND ITS COSTS** As legislators faced with crafting the State budget, you know, better than most, the enormity of the economic crisis facing Connecticut and the nation.

There is a general consensus that this crisis began with the housing crisis, and it will not end without a solution to that crisis. Former Fed Chairman Alan Greenspan said just last week that “this crisis will not end until we are able to stabilize housing prices in this country.” And, as Nomura Securities noted on February 18, 2009, “reducing the number of preventable foreclosures is essential to restoring balance in the housing market.” [See attached article # 5).

To date, the federal government, the lending and investment communities, and this State, have relied on voluntary efforts to encourage mortgage modifications. Many of the materials attached to my testimony explain why those voluntary efforts have not worked. Efforts to change federal bankruptcy law – which would be one solution – have being vigorously resisted by the lending community.

Voluntary modification programs are, at best, incapable of working because of the total lack of capacity of the servicing community to respond to the magnitude of the crisis. At worst, they have not been permitted to work because of what might be called avaricious behavior on the part of those who own the notes.

As these materials make clear, unless this body demands rational behavior by those who own these mortgages, nothing will be done. That is certainly an accurate statement. We may all wring our hands, and wish for a better day. But that day will not occur before the communities in which these toxic mortgages exist are seriously damaged - because those who hold those mortgages cannot or will not change their behavior and the Administration’s proposals, alone, cannot accomplish the desired goal.

Meanwhile, the community damage caused by this behavior –the plummeting property values that preclude re-financings, discourage sales, discourage maintenance, and displace homeowners and tenants – goes unchecked. Aside from the human costs, the economic damage is measured in terms of dropping property values, lost municipal tax revenues, lost conveyance taxes. And it will drive up the costs of the State budget and municipal budgets as our social service system is called upon to aid those who are

displaced. To date, these costs are imposed on the taxpayers who will bear it – but the taxpayers' interests count for nothing in the calculus of the mortgage holders.

*The irony is that in many cases, by mandating a loan restructure, these costs to the taxpayer could be avoided, while the lender would simultaneously increase its profits!*

This bill represents a part – although I think an important part – of the means to achieve that goal.

## WHAT THIS BILL DOES

### Section 1 of the bill first defines a few simple terms:

The “Borrower” means an owner occupant of a 1 to 4 family home – called an “Eligible Home” - which is subject to an “Eligible Mortgage”. An Eligible Mortgage is any loan or extension of credit that meets 3 standards: –

**FIRST** - The original size of the loan: it must be a Fannie Mae Conforming loan at the time of foreclosure – today, that means below \$417,000 for a single family home (except in Fairfield County, where the limit is \$511,750).

**SECOND** – The date when the loan was made: The loan must have been originated between 2000 and 2008.

**THIRD** – Owner occupancy: The Borrower must occupy the house encumbered by the mortgage as her principal residence.

Section 2 is the heart of the Act. When an Eligible Mortgage is being foreclosed, the Act allow a state trial judge to restructure that mortgage in circumstances where the Borrower can afford to pay a mortgage that meets these standards

**FIRST** The existing debt would be divided into 2 parts: the first part would be in a principal amount of at least the home's current fair market value [and more if the borrower could afford more] – based on a current appraisal.

**SECOND** – 38% of the Borrower's income must be enough to pay at least that minimum principal amount over a 30 year term.

**THIRD** - The interest rate on the new mortgage would be at Fannie Mae's existing 30 year fixed interest rate for single family homes.

**FOURTH** - The balance between the present debt and the restructured 'first' note would be written as a non-interest bearing 'second' note due only at the time of sale or default on the first note.

**FIFTH** The existing mortgage would retain its priority and would secure both the FIRST and SECOND notes.

**SIXTH** – Other subordinate liens would not be extinguished [as they would be in foreclosure] but would be payable when the property is sold or the Borrower defaults on the restructured mortgage.

There are lots of other details, but that is the core of the bill.

**THESE ADDITIONAL POINTS ARE ALSO IMPORTANT-**

**1. WE BELIEVE THE ACT IS CONSTITUTIONAL** - Constitutional law is complex, and lawyers are trained to argue both sides of a case. Nevertheless, it is clear that the Courts would not simply invalidate this Act as an ‘impairment of contract’-courts have held many statutes valid even though they ‘impair’ contracts, because States have the constitutional police power to protect the health, safety and welfare of its citizens.

Based on our research to date, we believe it is more likely than not that a Court would find this bill constitutional because, **first**, the restructured mortgage is worth more than the lender and the investors would receive in a forced sale and, **second**, the lender that wants cash now will be able to sell that restructured mortgage in a secondary market.

I and one of my students, Alyssa Norwood, are preparing a detailed memorandum of law on this subject and will provide it within 10 days to the Committee.

**2. THE ACT WILL NOT DISRUPT MORTGAGE MARKETS OR FORCE INCREASED INTEREST RATES** - By design, the Act isolates mortgages written before 2009 – it will not apply to mortgages written after the Act passes, and therefore would not cause current lenders to re-price new debt in contemplation of new remedies. Further, the Act has a sunset provision of less than 3 years; **see** Section 2 (a), when, hopefully, the current economic crisis will have ended and the need for such extraordinary remedies will have diminished. Third, the lender need not be concerned that a borrower will seek this extraordinary relief more than once; Section 4 of the Act precludes relief a second time. And, finally, nothing in this Act impairs the right of the Lender to sue the Borrower on the note itself – so the Lender is left with all the remedies it had before the loan was re-structured, except the right to complete a foreclosure which, in all instances today, will yield less than the value of the restructured mortgage itself.

**3. THIS ACT DOES NOT GRANT GREAT DISCRETION TO A JUDGE** – Instead, the Act directs the judge to do four (4) things: (1) order an independent appraisal; (2) require the borrower to file certified income statements for her entire family living in the home; (3) require the lender to provide a loan balance and a history of all payments and charges; and (4) require the lender to notify any party whose interest might be affected of the pendency of the proceeding. On the basis of that data, the court makes a straightforward calculation, to determine if the Borrower can or cannot

afford a restructured mortgage. There is no discretion in the court to vary from this process.

**4. THE ACT WILL NOT RESCUE EVERY BORROWER** – Sadly, there are many homeowners whose loss of employment or unanticipated and uninsured health crises precipitates a default in mortgage payments. They will be unable to meet the income threshold, even in the reduced debt service environment that this Act contemplates. Hopefully, the federal subsidy programs being rolled out can work in combination with voluntary mortgage modification efforts to save those families’ homes. But this Act alone will not accomplish that goal.

**5. THE ACT SHOULD ENCOURAGE MORE VOLUNTARY MODIFICATIONS** - The prospect of mandatory re-structuring by a Court will encourage lenders and investors to extend their efforts to restructure debt in a way that reduces monthly payments and keeps people in their homes without judicial intervention.

**6. THE ACT COULD BENEFIT FROM LENDER INPUT** – There are certain to be many legal issues that this Act has not yet addressed. I would welcome the opportunity to meet with representatives of the lending and asset-based security communities to identify those issues and provide the General Assembly an enhanced Act that addresses the legitimate concerns those stakeholders may have in this Act.

**BACKGROUND** I'm a lawyer. I have practiced in Connecticut for 41 years, and I have taught real estate law at the University of Connecticut School of Law on 2 separate occasions, most recently for the last 11 years. I've lived in Hartford with my wife since 1968.

Successive Governors, starting with Ella Grasso, have given me the high privilege of serving our State as a member of the Connecticut Law Revision Commission since 1977 – I chaired it in the early 1980s – and as a member of the Uniform Laws Commission since 1991. I hold the seat in the Uniform Laws Commission once held by my now deceased mentor, Harold E. Read Jr., who represented the Connecticut Bankers Association before this body for many years. Ted served as a Uniform Laws Commissioner for more than 30 years, and once chaired the Conference. He served in the Conference with John Bailey, who chaired the Democratic National Committee and David Neiditz, a brilliant State senator. In my earlier years, I had the honor of serving as a legal counsel to various committees here in the General Assembly.