



CT FAIR HOUSING CENTER

**TESTIMONY OF ANN PARRENT OF THE CONNECTICUT FAIR HOUSING
CENTER BEFORE THE BANKING COMMITTEE
FEBRUARY 24, 2009**

My name is Ann Parrent. I am a Senior Staff Attorney for Foreclosure Prevention at the Connecticut Fair Housing Center. I am here this morning to testify in support of H.B. 6484, An Act Concerning Emergency Mortgage Relief. My written testimony also includes comments on several other bills before the Committee today.

**H.B. 6484
AN ACT CONCERNING EMERGENCY MORTGAGE RELIEF**

H.B. 6484 is a refreshingly sensible proposal that protects the interests of the lender while at the same time safeguarding Connecticut homeowners and our communities against the devastating consequences of foreclosure and at no cost to the taxpayer. My work with the Connecticut Fair Housing Center's foreclosure prevention project puts me in daily contact with homeowners and the HUD-approved housing agencies around the state who attempt to negotiate loan modifications on their behalf. Many of the homeowners I talk with have experienced some financial setbacks that caused them to fall behind on their mortgages, but what is notable to me was that they have income and can make reasonable monthly payments. These are preventable foreclosures.

Yet, with disturbing regularity, I hear of cases in which lenders refuse to discuss alternatives to foreclosure with homeowners who have the financial ability to make monthly payments in an amount that would be equivalent to a 30 year mortgage at a market rate on the

current value of the home. I simply do not understand why a lender would pursue foreclosure – or why our courts should allow it – in such cases, when it is clear that the lender would recover less through foreclosure than by allowing the homeowner to remain in the home and make payments based on the current appraised value of the home. H.B. 6484 would address this situation by giving the courts the authority to refuse foreclosure in such cases. At the same time, it would protect the lender’s interests in recovery of the original debt in the event the homeowner sells the home at some point in the future after housing values recover.

H.B. 6484 would also do much to even the playing field between lenders and borrowers in foreclosure cases. As many of you on this Committee know, the majority of homeowners in foreclosure cannot afford legal representation and have a great deal of difficulty understanding the court process sufficiently to argue effectively for a fair result. The foreclosure mediation program has provided an effective forum for assisting these homeowners to explore alternatives to foreclosure, but they still remain very much at the mercy of the often inexplicable policies of their servicers. H.B. 6484 would provide a substantive, structured approach that would bring consistency to the process and achieve fair results across the board for homeowners, lenders and our communities.

As all of you are aware, the courts around the state currently have over 1000 foreclosure cases on the short calendars every single Monday. I regularly review the foreclosure short calendars and see hundreds of cases scheduled for final judgment, many involving homeowners without legal representation. Based on my daily contact with homeowners and housing counselors throughout the state, I am convinced that many of the cases decided every Monday at short calendar are preventable foreclosures. H.B. 6484 would give our courts a much-needed tool to turn back this tide of foreclosures that threatens to overwhelm our State.

In closing, I would like to remind the Committee of one particularly troubling aspect of this crisis that too often goes unmentioned in public debate. I recently spent a Saturday at the Hartford Convention Center at a foreclosure prevention program sponsored by the Federal Reserve Bank of Boston. Hundreds of homeowners sought help and patiently waited for hours to meet with their servicers and with housing counselors. The Federal Reserve had kindly provided a playroom for the many children who accompanied their parents to the event. I also see children coming with their parents to the foreclosure clinics I hold for homeowners each week. In fact, I rarely talk with a homeowner in foreclosure who does not have children living in the home. In discussing the various policy responses to the foreclosure crisis, we often talk about the devastating impact of abandoned homes, blight, increased crime and reduced property taxes to our towns. But what I am increasingly concerned about, because I am seeing so many of them, is what is happening to all these children if their parents lose their homes to foreclosure.

We must get this crisis under control. H.B. 6484 gives our courts the ability to do so. I urge the Committee to support this very important and very sensible proposal.

H. B. 6367
AN ACT CONCERNING MORTGAGE PRACTICES

H.B. 6367¹ fine tunes Connecticut's regulation of residential mortgages. Overall, we support those provisions of the bill that ban abusive lending practices, such as the explicit ban on negative amortization loans, the ban on default interest rates, and the ban on other default charges exceeding 5%. Negative amortization loans are those mortgages in which the monthly payments are not even sufficient to cover the interest accruing each month. This means the balance due gets bigger, rather than declining as expected in a traditional mortgage. The terms of most negative amortization mortgages require the monthly payments to increase sharply when

¹ H.B. 6367 is similar to S.B. 949, however, we believe H.B. 6367 includes greater protections for consumers and we encourage the Committee to support H.B. 6367 over S.B. 949.

the balance reaches a certain percentage in excess of the original balance. That forces the borrower to either default or refinance. Essentially, negative amortization loans are only viable when real estate values go up because the borrower must refinance a larger amount than he originally borrowed. Now that values have steeply declined, the nation is suffering the consequences of this abusive loan product. A borrower with a negative amortization loan does not own his home—he is simply living on borrowed time.

While we support H.B. 6367, **we wish to bring the Committee’s attention to one serious defect that can be easily corrected.**

H.B. 6367 changes the original nonprime loan trigger, set in P.A. 08-176, to match the recently enacted federal “higher cost loan” trigger. We agree with this change because it will reduce the regulatory burden on lenders and will make compliance easier. However, making this change inadvertently creates a loophole that will prevent borrowers from protecting themselves and will make enforcement of the law very difficult.

The original nonprime loan trigger was based, in part, on a comparison of the Annual Percentage Rate (APR) on the loan with the published rate for U.S. Treasury securities as of the 15th day of the month prior to the loan application.² Since all borrowers know when they submitted their loan application, the original trigger allowed any borrower or housing counselor with internet access to look-up the U.S. treasury rate for the preceding month and to decide whether they were looking at a nonprime loan. The new trigger in H.B. 6367 is based not on a specific date (like the 15th day of the month preceding the application) but, instead is based solely on the date the lender decides to set the interest rate. Nobody will know what that date is,

² Public Act 08-176 included two triggers for nonprime loans. One was based on the rate for U.S. Treasuries as of the 15th of the month prior to the loan application, and the other was based on the conventional mortgage rate during the week in which the interest rate for the loan is set.

except the lender. That means it will be impossible for anyone to independently verify that the lender has calculated the trigger correctly.

There is a very easy solution to this problem: require the lender to disclose the date on which it sets the interest rate. Such a disclosure can simply be added to one of the documents already given to borrowers with the phrase "Date Your Interest Rate Was Set:." Without this disclosure, disreputable lenders will be able to routinely evade the statute because nobody will be able to double-check the interest rate trigger.

S. B. 948
AN ACT CONCERNING THE DEPARTMENT OF BANKING'S PROPOSAL TO
IMPLEMENT THE S. A. F. E. MORTGAGE LICENSING ACT

We support this bill with one recommended improvement. We especially support section 9, which requires licensees to be educated on federal and state mortgage lending laws including fair lending standards, and section 19, which gives the Department of Banking clear authority to investigate licensees for violations.

We recommend one improvement to section 20(13). This section sets the maximum amount of property insurance that a lender can require at the replacement value of the improvements on the borrower's property. This is a valuable provision that prevents lenders from over-reaching. Nevertheless, subparagraph 13 would better achieve that goal if the maximum amount of insurance was set at the lesser of (a) the value of the lender's lien plus all existing higher priority liens OR (b) the replacement value of the improvements.

The importance of this change is best illustrated by an example: Imagine an elderly couple who purchased a home many years ago and who has paid-off the mortgage. If the house is now worth \$200,000 but they need to borrow \$15,000 to repair the roof, the lender should

not be allowed to require \$200,000 of insurance to protect a lien worth substantially less. Such homeowners often live on fixed-incomes and allowing the lender to require insurance exceeding the value of the lien is just as inappropriate as requiring insurance exceeding the replacement value of the improvements. For this reason, we recommend that the Committee amend section 20(13) prior to approving this bill.

S. B. 952
AN ACT SETTING A PRESUMPTIVE HOURLY RATE FOR COMMITTEE FEES IN FORECLOSURE MATTERS

This bill sets the hourly rate paid to foreclosure-by-sale committees to a standard \$100 per hour. Currently the hourly rate varies by courthouse. We support this bill because standardization of foreclosure procedures across the state will increase transparency for homeowners without legal representation and will facilitate the production of informational materials explaining the foreclosure process to homeowners.

H. B. 6485
AN ACT REGULATING SHORT SALES

We support this proposal to regulate and requiring licensing for anyone arranging short sales. However, we believe mortgage brokers should not be exempt from this statute. Unlike attorneys, real estate agents, and 501(c)(3) non-profit agencies, mortgage brokers are for-profit entities lacking any training or skills relevant to conducting short sales. Eliminating the exemption for mortgage brokers would still allow them to arrange short sales but would subject them to regulation by the Department of Banking for this activity. While mortgage brokers are already regulated regarding their mortgage-related activities, those regulations include no protections relevant to short sales. It is well-known that mortgage brokers do not always act in

the borrower's best interest. That is why the legislature agreed to subject them to increased regulation by enacting P.A. 08-176 last year and by helping the Department of Banking implement the S.A.F.E. Act establishing a national licensing system. It would be ironic to acknowledge that brokers may have helped drive some borrowers into unaffordable loans, but then to allow them to arrange short sales for borrowers without any supervision or regulation.

H.B. 617
AN ACT CONCERNING BRANCHING AND AUTHORITY TO IMPLEMENT THE
NATIONAL DEFENSE AUTHORIZATION ACT

The Center opposes Raised Bill 617 because it includes an amendment that would allow federally chartered, out-of-state banks to ignore state Fair Lending laws with impunity. We strongly urge the Committee not to pass this bill. As this Committee is likely aware, the subprime lending crisis finds its roots in our country's long history of discrimination, including the denial of credit on the basis of race. As a result, the subprime crisis and the accompanying foreclosure crisis has had a disparate impact on minority areas. Now is the time to hold banks more accountable, not less. Our state fair housing laws are stronger than federal laws in a number of ways, such as including protections against discrimination based on age, gender orientation, and source of income. Banks lending in Connecticut must be held to our state standard of lending discrimination. It is also premature for the legislature to make the proposed amendment at this time. A key issue underlying this proposal, the extent of state authority over federally chartered out-of-state banks, is before the U.S. Supreme Court in *Cuomo v. The Clearing House*, Docket No. 08-453. It does not make sense to pass a law that could well be overturned by an imminent Supreme Court decision.

H. B. 6481

AN ACT CONCERNING THE EMERGENCY MORTGAGE ASSISTANCE PROGRAM

H.B. 6481 is a proposal to modify the existing EMAP program to address the fact that it offers great potential to save homes from foreclosures but has failed to do so thus far because of unduly restrictive eligibility criteria. To properly evaluate this bill, it must be considered along with H.B. 6378, which was before this Committee during its last public hearing on February 19th. The CT Fair Housing Center has already submitted testimony supporting H.B. 6378 and continues to do so, but the Center also supports H.B. 6481 as well. That is because each bill contains important improvements to EMAP. We recommend adopting a combination of the best parts of the two bills. Specifically:

- Both bills would allow distressed borrowers to apply for EMAP when they are 60 days delinquent. We strongly support this change. Under current law, borrowers may not apply until they receive a notice of intent to foreclose, which is normally provided immediately before the lender files a foreclosure suit and which is often too late to save the borrower's home.
- Both bills also broaden the eligibility requirements for EMAP. While both proposals are improvements, we believe the changes in H.B. 6481 will have a greater chance of success because it eliminates the current requirement for a 25% loss of income in favor of giving CHFA more discretion. According to CHFA, the 25% requirement has posed a significant impediment to helping homeowners.
- H.B. 6481 also includes a provision that prevents the lender from commencing a foreclosure action until CHFA has had an opportunity to evaluate the borrower's EMAP application. This provision is important because the borrower will owe additional legal fees once the foreclosure action is filed. A short delay to give

CHFA time to evaluate the EMAP application will not prejudice the lender and will save EMAP funds that would otherwise be wasted on legal fees where the application is approved after the foreclosure has commenced.