

**TESTIMONY OF ERIN BOGGS, ESQ. OF THE  
CONNECTICUT FAIR HOUSING CENTER BEFORE THE  
HOUSING COMMITTEE OF THE CONNECTICUT STATE LEGISLATURE**

**February 19, 2009**

Good afternoon, my name is Erin Boggs. I am an attorney with the Connecticut Fair Housing Center. I would like to focus my comments today on just a few of the foreclosure-related proposals before the Committee.

In addition to working to promote our core mission of preventing housing discrimination, the Connecticut Fair Housing Center has been deeply involved with efforts to assist homeowners in danger of losing their homes to foreclosure. First, I would like to take a moment to thank members of the legislature and the Governor for having the foresight to develop innovative programs to help imperiled homeowners. Clearly, the more foreclosures we can prevent, the better Connecticut will fare in this period of economic downturn.

***H.B. 6378: AN ACT CONCERNING RELIEF FOR FAMILIES FACING FORECLOSURE***

We strongly support H.B. 6378: An Act Concerning Relief for Families Facing Foreclosure, which broadens the eligibility requirements of the Emergency Mortgage Assistance Program (E-MAP). The program would be expanded to include borrowers (1) who have suffered a loss of income that is *less* than 25% of their original income and (2) who are 60 days delinquent on their mortgage but not yet in foreclosure. Originally, the program required that the foreclosure process already be initiated and the applicant suffer a loss of 25% or more of their income in order to be eligible.

Allowing homeowners to apply for E-MAP assistance at an early stage is critical. The foreclosure process often moves at a dizzying speed, and it does not stop until a judgment has

been entered or the lender and homeowner reach an alternative solution such as a loan modification, a short sale or a deed in lieu of foreclosure. Too often the judicial proceedings outpace homeowners' efforts to get legal or financial assistance or negotiate a non-foreclosure solution with the lender. Allowing homeowners to apply for assistance earlier in the process, before foreclosure papers have been filed, increases the likelihood that homeowners can be approved for the program before a foreclosure judgment has been entered against them.

Thousands of dollars of attorneys' fees and other costs begin to accrue the moment a foreclosure action is filed. Lenders add these costs to the homeowner's arrearage, actually putting the borrower further into debt. Giving homeowners tools to avoid foreclosure earlier in the process can spare some homeowners the burden of this significant addition to their debt.

The Fair Housing Center supports relaxing the 25% threshold because the existing rigidity in EMAP's eligibility requirements has unfortunately excluded some otherwise deserving borrowers simply because the borrowers did not lose *enough* income. On February 22, 2009, Timothy F. Bannon, the President and Executive Director of CHFA, testified before the Banks Committee that 12% of EMAP applications processed through December 31, 2008 were ineligible because they did not meet the existing 25% threshold—even though all of the applicants clearly needed help to avoid foreclosure. Ten of those borrowers were ineligible *solely* for that reason.

This is unfortunate because a loss of 20, 15, or even just 10 percent of a household's income can easily push a family into foreclosure, especially for families of moderate means, who typically must devote a higher portion of income to housing to begin with. Changing these requirements now is especially pressing: when the current housing crisis began, many of the

foreclosures were caused by adjustable rate and hybrid mortgages resetting to higher payment levels. As the housing crisis has spread to the economy as a whole, an increasing number of homeowners are going into foreclosure because of unemployment or other economic hardship. E-MAP is an important safety net for homeowners who, through no fault of their loan, fell behind on their mortgage payments.

The Fair Housing Center has one minor suggestion for clarifying an ambiguous portion of this bill. Section 2, subsection 7(B) amends the definition of “financial hardship for circumstances beyond the mortgagor’s control,” to add a category for “a loss of income below twenty-five percent *accompanied by* evidence of an unanticipated rise in housing or other expenses that can be documented as unrelated to the accumulation of credit or installment debt incurred for recreational or nonessential items” (emphasis added). This implies that a borrower who has suffered a loss of income that does not exceed 25% can only qualify if the homeowner shows both a decrease in income *and* a documented increase in expenses. Either by itself is frequently enough to drive a family into foreclosure, so it is unclear why a seemingly conjunctive test would be used. We would recommend as an alternative that the statute simply vest discretion with CHFA to develop eligibility criteria for families that have lost less than 25% of income. Even with this ambiguity, however, the CT Fair Housing Center considers H.B. 6278 to be a marked improvement in the eligibility requirements.

***S.B. 705 (RAISED) AN ACT CONCERNING DEBT REDUCTION SERVICES***

The CT Fair Housing Center supports S.B. 705 (Raised) An Act Concerning Debt Reduction Services, which proposes to regulate debt reduction services, but we do have two suggestions. Currently, there are too many individuals and organizations that prey on people in distress by taking their money in return for false hope of relief from debt burdens. This bill should sharply curtail that problem.

We do have two suggestions. First, the definition of debt reduction services does not except Connecticut licensed attorneys representing debtors within the scope of a traditional attorney-client relationship. Debtors often seek legal advice from attorneys who can negotiate payment plans and debt reduction agreements with creditors. This is a valid service that is already highly regulated by the rules of professional responsibility, the Statewide Grievance Committee, and other existing laws to protect clients from attorney misconduct. Therefore, we recommend adding an exemption to this proposal for licensed attorneys.

This bill also deals with only half of the problem, foreclosure scams that involve debt repair “consultants.” It does not necessarily reach scams where homeowners are induced to sign over their ownership rights with the erroneous understanding that they will eventually get their homes back. We suggest that the Committee consider adopting something similar to a law passed in Maryland last year. The Maryland act, found at Md. Code Ann. Real Property Sec. 7-301 et seq., would be much more effective at protecting Connecticut residents.” It may also be useful to consider a model rule on foreclosure scams put forth by the National Consumer Law Center which is available on their website at <http://www.nclc.org/issues/foreclosure/index.shtml>.

***H.B. 6143: AN ACT CONCERNING PROTECTIONS FOR A TENANT WHOSE LANDLORD IS SUBJECT TO A FORECLOSURE ACTION.***

H.B. 6143: An Act Concerning Protections for a Tenant whose Landlord is Subject to a Foreclosure Action, is intended to protect tenants who want to stay in their buildings after a foreclosure and are ready and willing to remain as rent-paying tenants. We believe this bill will somewhat mitigate the housing crisis by enabling tenants to stay in foreclosed housing (at least temporarily). This will preserve the already limited supply of rental housing on the market and will reduce the negative impact of the social instability that can be expected from wide-scale evictions resulting from the ongoing wave of foreclosures. The bill also protects municipalities and property owners in neighboring foreclosed properties by requiring the lender to maintain properties in foreclosure. The bill's major components are:

(1) Reverse the common law doctrine that leases are terminated by foreclosure. Massachusetts has already successfully done so for subsidized leases. In addition to protecting law-abiding tenants, this will help avoid the problem of vacant properties which attract squatters and criminals.

(2) Provide that tenants not protected by just cause eviction in foreclosed buildings may continue to rent their units at least until a new buyer for the building is found (tenants over age 62 or physically disabled in buildings with 5 or more units are protected by just cause eviction and cannot be evicted at all after a foreclosure).

(3) Require that post-foreclosure eviction be through a summary process action and not as part of the foreclosure. This would codify the usual practice by most, but not all, lenders. Use of the eviction procedure puts the case in the housing courts, where it properly belongs and where mediation by housing specialists is available.

(4) Make mortgagees responsible for emergency repairs during foreclosure if the owner fails to make such repairs. Most mortgage deeds already give mortgagees the power to protect the condition of their collateral by performing necessary maintenance. This will simply codify a routinely used contract clause and will significantly protect neighborhoods and municipalities from blight. In doing so, this will benefit mortgagees too by preserving the value of the foreclosed property and neighboring properties that are too often depressed by the presence of vacant houses neglected by mortgage companies.

We encourage the Committee to support this bill to protect tenants and our communities.

***H.B. No. 6144: AN ACT CONCERNING A MORATORIUM ON MORTGAGE FORECLOSURE***

We strongly support H.B. No. 6144: An Act Concerning a Moratorium on Mortgage Foreclosure. As Committee members have probably heard from constituents, the nation's mortgage servicers and Connecticut's housing counselors are overwhelmed with requests to consider loan modifications, short sales, and deeds in lieu of foreclosure. The CT Fair Housing Center has seen countless instances in which a mortgage servicer agrees to work with a homeowner to save their home from foreclosure, but simultaneously works to obtain a foreclosure judgment. Foreclosure suits routinely proceed to judgment much faster than negotiations – which sometimes continue even after a foreclosure judgment has entered. This bill will prevent that problem by giving servicers and housing counselors time to catch-up on the backlog of loans they are working on. In doing so, they will almost certainly save hundreds, if not thousands of homes from foreclosure.

While opponents of the bill will highlight the cost to mortgage lenders of delaying foreclosure, it is important to realize that such arguments ignore evidence that foreclosure costs the mortgage company far more than an affordable loan modification. An upcoming article in

Connecticut Law Review reveals that mortgage companies lose an average of \$145,000 (or 55% of the amount due) when they foreclose on a first mortgage, but only about \$24,000 when they give the borrower an affordable loan modification.<sup>1</sup> A moratorium will give lenders and borrowers time to modify loans and save houses. Any delay in foreclosures will not hurt mortgage holders because property values are likely to increase as the country emerges from recession. This means holders will have the chance to collect payments on modified loans during the moratorium but, if a borrower re-defaults, the mortgage company will still have the right to foreclose with a greater chance of recouping its losses.

In evaluating this bill, the Committee should also consider the impact of the federal financial stimulus plans, which include programs to help distressed borrowers. These programs will need time to take affect and the moratorium will provide the required time. It is important to remember that the moratorium will not take away the mortgage industry's right to foreclose – it will only delay it temporarily to give Connecticut residents a reasonable time to get back on their feet. In the long run, that will be better for both lenders and borrowers.

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<sup>1</sup> White, Alan M., *Deleveraging the American Homeowner: The Failure of 2008 Voluntary Mortgage Contract Modifications* 14 (Jan. 9, 2009). Connecticut Law Review, Forthcoming. Available at SSRN: <http://ssrn.com/abstract=1325534>