

**Testimony of Edward Rosenblatt
Banks Committee - Governor's Bill No. 6367
February 24, 2009**

Senator Duff, Representative Barry, committee members, good day and thank you for the opportunity to address the Banks Committee today.

My name is Edward Rosenblatt, I am Vice President and Counsel for Fidelity National Title Insurance Company and I am here to speak to you on behalf of the Connecticut Title Association, which is the trade association of title insurance companies in Connecticut.

My comments pertain to Governor's Bill No. 6367, An Act Concerning Mortgage Practices. While the Connecticut Title Association has no objection to most of the bill, and in fact is supportive of those provisions which define and criminalize mortgage fraud, we think that Section 2 of the bill is very problematic. That section would make any property "used or intended for use in the course of, derived from or realized through an act of residential mortgage fraud" subject to forfeiture to the state. The Connecticut Title Association opposes this section because if enacted, it would wreak havoc on real estate titles in Connecticut.

This section of the Act would permit forfeiture with almost no time limitations and without requiring any document to be recorded on the land records. The commencement of a forfeiture action would be likely to commence years after the mortgage fraud had been committed, and make title interests in residential real property unpredictable.

The forfeiture provision of the act does make an attempt to protect innocent mortgagees by stating that any forfeiture would be subordinate to the mortgage of a good faith lender. But there are two problems with this attempt at

protection. First, while an innocent mortgagee's mortgage would survive the process forfeiture, the value of the property would not, thus putting the lender's equity position in jeopardy, and, with today's real estate market, perhaps under water.

Secondly, the forfeiture provision of the act does not protect the innocent assignee of a non-innocent mortgagee. This is a serious risk not only for secondary market mortgage purchasers, but also for successors to lenders' interests by merger, takeover or other methods.

In addition, despite the innocent buyer and innocent lender protections in Section 2 of the Act, the possibility of forfeiture is likely to have a chilling effect on all real estate transactions taking place after its enactment. On whom does the burden of proving good faith and lack of knowledge fall? Must every lender and purchaser perform additional due diligence prior to the closing to make sure there is no knowledge that might be imputed to them? How far back in time must one go? A title search will never be sufficient to answer these questions.

The legislature does have available to it an alternative to forfeiture. The act could be revised to provide a lien against the property in favor of the state to secure any fine levied against a person convicted of mortgage fraud. Such a lien, if its priority was determined by the date of its recordation on the land records, would provide a remedy without reducing value to any innocent party while providing notice which could be detected by searching the title.

For these reasons, the Connecticut Title Association opposes the forfeiture provisions set forth in Section 2 of the Act.