

Legal Assistance Resource Center of Connecticut, Inc.

44 Capitol Avenue, Suite 301 ♦ Hartford, Connecticut 06106
(860) 278-5688 x203 ♦ FAX (860) 278-2957 ♦ Rpodolsky@LARCC.org

H.B. 6166 – Maintenance of property during foreclosure

Judiciary Committee public hearing -- March 19, 2009

Testimony of Raphael L. Podolsky

Recommended Committee action: APPROVAL OF THE BILL
WITH AMENDMENTS

This bill requires lenders that initiate foreclosure actions on residential property to notify the property owner (through a notice attached to the complaint) and the town (through a notice on the land records) of the name, telephone number, and mailing address of the mortgagee and of "any property management office of the mortgagee or other person responsible for the maintenance of the residential real property." The bill's statement of purpose says that it is "to help prevent and address blight in properties subject to foreclosure" by "identify[ing] the person responsible for property management."

The bill addresses a very real problem, which is that property owners may well abandon or cease to maintain a property during the course of a foreclosure action, leaving no one to maintain the building and, in some cases, effectively driving out the tenants. There are cases in which furnaces break down or roofs begin leaking during a foreclosure and the owner does not take care of the problem or cannot be found. The impact on neighboring properties and entire neighborhoods can be severe. Under Connecticut law, however, the foreclosing party does not become the owner and has no ownership responsibilities until the foreclosure action is completed. Thus, the problem with H.B. 6166 as presently drafted is that it requires disclosure of the mortgagee's "person responsible for property management" without creating any responsibility on the part of the mortgagee to manage the property.

The Judiciary Committee should amend the bill to fix this problem and should then approve the bill. In particular, in regard to residential properties, the Committee should require (1) that, if the owner fails to make repairs, the foreclosing mortgagee should be responsible at the very least for making emergency and necessary repairs to the property and (2) that, if a receiver of rents is appointed, the receiver should be responsible for the maintenance of the property up to the amount collected by the receiver in rent. Mortgagees commonly give themselves the power in mortgage documents to enter onto the property without the owner's consent in order to prevent the "waste" of the property. The failure to make necessary repairs is a form of waste. It is not unreasonable for the laws to demand that, at least in certain circumstances, the mortgagee must exercise the power that it has given itself through the mortgage.