



CONNECTICUT BANKERS ASSOCIATION

March 11, 2010

TO: THE BANKS COMMITTEE

FROM: THE CONNECTICUT BANKERS ASSOCIATION
CONTACTS: Tom Mongellow, Fritz Conway

RE: H.B. NO. 5410: AN ACT CONCERNING MODIFICATIONS TO THE FORECLOSURE MEDIATION PROGRAM

We applaud the Chairs and the members of this Committee for their leadership role in the development of the mediation program. The program has helped thousands of homeowners to stay in their homes and avoid foreclosure. Indeed, we understand that the program has become a model for other states attempting to deal with similar issues. We very much appreciate the willingness of the Committee to work with the CBA, the Judicial branch and consumer advocates over the past two years to establish a workable system for all the stakeholders. We recognize that as we all gain experience with the system and the mounting foreclosure docket, some problems have surfaced and certain adjustments may be warranted. We look forward to working with this Committee, other legislators, the Judicial Branch and other interested parties to help address those problems and implement thoughtful and effective adjustments.

As drafted, this bill would, among other things, remove the current sunset date and make the mediation program a permanent part of Connecticut foreclosure law. As you know, this program was designed to address the fall-out from a unique and unprecedented national financial emergency. Unfortunately, we have not yet seen the end of the emergency situation. As a result, the CBA has expressed support for another Committee bill (H.B. 5270) which extends the sunset date for an additional one year period. We would not, however, support a provision that would make the program a permanent part of Connecticut law.

This bill also contains a number of new compliance obligations that are directed at lenders and servicers involved in the mediation process. While we recognize that some of the new provisions are consistent with existing standing orders adopted by the Judicial Branch, several of the provisions contain requirements that we respectfully view as counterproductive, burdensome and/or unnecessary. By way of example, a lender would be required, in all cases, to

bring a wide range of documentation to the first mediation session (including a “certified copy” of the original note and mortgage, detailed payment records, all agreements with investors, assignment documentation, etc.).

In most mediation sessions, the issues addressed by these documents are not in dispute. Instead, the parties are looking to engage in a constructive dialogue concerning a possible loan modification or forbearance. Requiring these documents in all cases will create unnecessary burdens, delays and expense. It will also distract attention from the core goal of the mediation process. The CBA would like the opportunity to meet with interested parties to discuss ways to improve the process. In particular, we would like to increase the likelihood that both the lender and borrower will be better prepared for constructive discussions at this first mediation, whenever reasonably possible.

We do not believe that the provisions of this bill, as presently drafted, achieve that result.

Finally, the bill would attempt to codify, as a matter of state law, certain tenant protection provisions currently imposed by federal law. Those federal law provisions were enacted by Congress in 2009 under the Helping Families Save Their Homes Act. The federal provisions are designed to address the unique circumstances that are present today and the provisions are scheduled to sunset in 2012. While the CBA is not opposed to the incorporation of existing federal law into state law, we *do* wish to emphasize the need for complete uniformity between the two statutory schemes.

As drafted, this bill does not contain a mirror image of the federal provisions. Rather than trying to incorporate select piecemeal provisions from the federal statute (which could lead to uncertainty, inconsistency and confusion), we would recommend incorporation of the federal law by reference, including the important sunset provisions. We would be happy to supply the Committee with suggested, revised language.