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## H.B. 5410 -- AAC Modifications to the Foreclosure Mediation Program

Banks Committee public hearing -- March 11, 2010

Testimony of Raphael L. Podolsky

Recommended Committee action: APPROVAL OF SECTIONS 1  
THROUGH 4 OF THE BILL

H.B. 5410 contains four different proposals. We strongly support the first three of those proposals, which are contained in Sections 1 through 4 of the bill. We also support H.B. 5270 as an alternate vehicle if the Foreclosure Mediation Program is not made permanent, as proposed by Sections 1 and 2 of H.B. 5410.

### Section 4 -- Connecticut Cash for Keys Act

Section 4 closes a "donut hole" created -- unintentionally we believe -- when the General Assembly adopted the Connecticut Cash for Keys Act in 2008 (Sec. 47a-20f). Adoption will assure that the minimum cash for keys payment for tenants with security deposits of less than \$1,000 will not be less than the minimum \$2,000 payment for all other tenants, including those with no security deposit. As presently drafted, the act sets the minimum payment at double the security deposit if there is evidence of the deposit (presumably if the tenant has a receipt), or the higher of two months' rent or \$2,000 if there was no security deposit or if no evidence of one can be produced. In effect, this is a minimum \$2,000 relocation incentive to vacate early. The unintended result of the existing language is that a tenant with a receipt for a security deposit of less than \$1,000 is subject to a lower minimum than a tenant with no security deposit at all. He or she would be better off to lose the receipt. Section 4 applies the \$2,000 minimum to all tenants offered cash for keys payments.

### Section 3 -- Protecting Tenants at Foreclosure Act

Section 3 of the bill adopts as state law the substance of the federal Protecting Tenants at Foreclosure Act (PTFA) of 2009, Title VII of Public Law 111-22. A copy of this law is attached. PTFA recognizes the collateral harm caused to tenants when the landlord loses the building to foreclosure, commonly resulting in demands from the foreclosing party that tenants vacate very immediately. PTFA provides that the successor in interest in a foreclosure (i.e., the foreclosing lender) must give tenants at least 90 days after the foreclosure is completed, or until the end of their lease if that is longer, to vacate. This is a greater protection than under current state law (Section 47a-20e), which generally guarantees tenants only 30 days with an oral lease or 60 days with a written lease and does not allow tenants to complete a lease that extends beyond the 60 days. The federal act, however, will sunset at the end of 2012 unless extended. Even if the number of foreclosures goes down, however, the harm to renters in buildings that are foreclosed will

be continue to be great. In December, the State of New York adopted PTFA as its own statute, thus providing PTFA protections even if the federal law sunsets. This bill would do the same for Connecticut.<sup>1</sup>

### Sections 1 and 2 -- Foreclosure Mediation Program:

The Foreclosure Mediation Program has been the state's most effective foreclosure relief program, and it has become a model program for other states throughout the country. Sections 1 and 2 of H.B. 5410 (a) make the Foreclosure Mediation Program permanent and (b) codify and expand upon the existing Uniform Foreclosure Mediation Standing Orders issued by the Chief Court Administrator. They go beyond the Standing Orders primarily by spelling out in detail the documentation that the lender is expected to bring to mediation, by itemizing what is meant by a good faith effort to mediate, and by illustrating the types of sanctions that may be imposed for failure to mediate in good faith. These expanded provisions are important, because they address the very issues that have interfered with the mediation process.<sup>2</sup>

### H.B. 5270 -- AAC Foreclosure Mediation

This bill extends the Foreclosure Mediation Program for only one year. It would be preferable to adopt the portions of Sections 1 and 2 of H.B. 5410 that eliminate the sunset provision altogether. If that is not done, then the Foreclosure Mediation Program should be extended for at least two years. If even that is not done, then adoption of H.B. 5270 for only one year becomes necessary to prevent the Foreclosure Mediation Program from terminating on June 30, 2010. Preservation of the Foreclosure Mediation Program is critical, and the strongest action available to preserve it should be taken.

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<sup>1</sup>The bill as drafted does not include three parts of PTFA in an effort to keep the language simple and to follow the structure of the existing Connecticut statute as closely as possible. In particular, (1) it does not explicitly require the successor in interest to assume a Section 8 lease (we believe that failure to assume a Section 8 lease would in any event be source-of-income discrimination under the Connecticut Fair Housing Act); (2) it does not match the full definition of "bona fide tenant" (because the federal reference to fair market and subsidized rents is incorporated into the phrase "arms-length transaction" in line 325 of the existing Connecticut statute); and (3) it does not address the issue of a buyer who desires to move into the tenant's unit before the lease expires (because of the unlikelihood that this could happen before lease expiration). If, however, the Committee would like to conform these items to the federal statute, we see no objection to doing so.

<sup>2</sup>There appears to be an unintentional but significant drafting omission in subsection (c) of Section 2 of the bill (lines 246-318). Subsection 2(b) covers the pre-July 1, 2009, period (the first year of the Foreclosure Mediation Program) and Subsection 2(c) covers the program since participation was made mandatory in 2009. In H.B. 5410, the codification and expansion of the Standing Orders is included only in the pre-2009 portion of Section 2 and not in Subsection 2(c), which is the portion being made permanent. All new language in Subsection 2(b) needs to be incorporated into Subsection 2(c) as well.

**Public Law 111-22, Effective Date May 20, 2009**  
**TITLE VII--PROTECTING TENANTS AT FORECLOSURE ACT**  
**SEC. 701. SHORT TITLE.**

This title may be cited as the `Protecting Tenants at Foreclosure Act of 2009`.

**SEC. 702. EFFECT OF FORECLOSURE ON PREEXISTING TENANCY.**

(a) In General- In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to--

(1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and

(2) the rights of any bona fide tenant, as of the date of such notice of foreclosure--

(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1),

except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) Bona Fide Lease or Tenancy- For purposes of this section, a lease or tenancy shall be considered bona fide only if--

(1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

(2) the lease or tenancy was the result of an arms-length transaction; and

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy.

(c) Definition- For purposes of this section, the term `federally-related mortgage loan' has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602).

**SEC. 703. EFFECT OF FORECLOSURE ON SECTION 8 TENANCIES.**

Section 8(o)(7) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amended--

(1) by inserting before the semicolon in subparagraph (C) the following: 'and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner--

'(i) will occupy the unit as a primary residence; and

'(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.'; and

(2) by inserting at the end of subparagraph (F) the following: 'In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not shall not affect any State or local law that provides longer time periods or other additional protections for tenants.'

**SEC. 704. SUNSET.**

This title, and any amendments made by this title are repealed, and the requirements under this title shall terminate, on December 31, 2012.