

Legal Assistance Resource Center

❖ of Connecticut, Inc. ❖

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Testimony of Raphael L. Podolsky Foreclosure bills

Banks Committee public hearing -- March 1, 2011

S.B. 957 -- Neighborhood Protection Act

SUPPORT

In 2009, the General Assembly adopted the Neighborhood Protection Act to make it easier for towns to identify a contact person in charge of foreclosed properties and to maintain an on-going watch list of foreclosed properties so as to monitor them more effectively and prevent them from becoming a source of neighborhood deterioration. At the time, New Haven had a strong and effective ordinance already in place. The 2009 act, however, was less comprehensive than the New Haven ordinance and it arguably prevents other towns from adopting the New Haven approach (it grandfathered the New Haven ordinance so as not to affect New Haven). In particular, unlike the New Haven ordinance, the state act does not require registration of occupied foreclosed buildings, does not require registration at the start of the foreclosure action so as to permit monitoring during the action's pendency, and does not allow the town to require the contact information to be submitted to a single location (thereby making it nearly impossible to maintain a watch list). This bill makes changes to the state statute so as to make its requirements more similar to the New Haven ordinance. We believe that these changes will significantly improve the ability of towns to benefit from the two core goals of the original statute and thus make it a better statute: (1) To assure that towns have the contact information they need to deal with neighborhood preservation during and after foreclosure and (2) to maintain a watch list of buildings at risk as the result of foreclosure activity so as to more effectively monitor those buildings and prevent the neighborhood deterioration that sometimes arises from foreclosure.

H.B. 6351 -- Foreclosure Mediation Program

SUPPORT

Under the existing Foreclosure Mediation Program, the foreclosing lender is allowed to continue to move the foreclosure forward while court-based mediation is in progress. The only thing it cannot do is actually obtain judgment, but it can do everything short of judgment. This means that the lender will file motions for default for failure to plead, disclosure of defense, or summary judgment, even though mediation is actively in progress. This creates an extremely difficult situation for the homeowner, and especially for a homeowner without a lawyer (which is usually the case), who does not know how to respond to this pressure. In addition, it is fundamentally contrary to the commitment to mediation, which assumes that people are trying to work out an acceptable solution. The problem is compounded by the fact that most delays in the mediation process are caused by the lender's failure to complete internal reviews or have an appropriate person available for mediation, rather than by the borrower. The borrower thus often finds himself waiting for the lender to pull information together at the same time that the lender is threatening the homeowner with default for failure to plead. This bill says that, once mediation is

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requested, pleading will stop until 15 days after mediation is completed. This makes much more sense as a way to maximize the parties' mutual ability to reach a successful conclusion.

S.B. 905 -- Study of CHFA Loss Mitigation Programs

SUPPORT

One key element of Connecticut's response to the foreclosure crisis has been to greatly expand the Emergency Mortgage Assistance Program (EMAP) and to create several new programs, including CT FAMLIES and HERO, that are operated by the Connecticut Housing Finance Authority (CHFA). Through the past two years, concerns have been expressed that overly restrictive underwriting standards, or in some cases unnecessary restrictions built into the program statute itself, have resulted in far too few families receiving help. This bill creates a task force to review and evaluate these programs and to report back to the 2012 session of the General Assembly. We believe that such a task force would be helpful and is worth creating.

H.B. 6350 -- Attorney General enforcement of Dodd-Frank

SUPPORT

This act makes clear that the state Attorney General can enforce the provisions of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 1042 of Dodd-Frank provides that state attorneys general "may bring a civil action...to enforce provisions of this title or regulations issued under this title, and to secure remedies under provisions of this title or remedies otherwise provided under other law." Section 1042 is a key element that was included in Dodd-Frank to assure that its consumer protection sections would be enforced. In Connecticut, however, there has been some dispute in the past as to the scope of the Attorney General's authority to initiate litigation without explicit statutory authority. H.B. 6350 makes clear that the Attorney General can act to enforce Dodd-Frank to the extent that Dodd-Frank permits such state action.

S.B. 1077 -- Repeal of 1.5% minimum interest rate on mortgage escrow deposits and tenant security deposits

OPPOSE

Connecticut law requires lenders to pay interest on mortgage escrow deposits and landlords to pay interest on tenant security deposits at an index rate set annually by the Banking Commissioner. That rate cannot, however, be set at less than 1.5%. The Banks Committee has already heard H.B. 5892, which I testified against, which would repeal the 1.5% floor for tenant security deposits. My testimony on that bill documented the fact that at least five Connecticut banks, including at least three statewide banks, offer tenant security deposit accounts at the 1.5% rate, including TD Bank which offers a comprehensive account with free collateral services for landlords with at least ten security deposits.¹ S.B. 1077 goes even farther by taking the 1.5% minimum rate away from homeowners on their escrow deposits. This change is especially undesirable, because the deposit of tax and insurance escrows is controlled by the bank itself. In effect, it allows the bank to use its lowest rates for the payment of this interest to its own mortgagors. The homeowner is often not free to look for better rates elsewhere. The 1.5% minimum should be retained.

¹The Insurance Committee has already JF'd H.B. 5437, a bill that is the same as H.B. 5892.