

Testimony of Alfred J. Garofolo,
President of the Connecticut Title Association
**House Bill 5352 AN ACT PROHIBITING THE ASSESSMENT OF TITLE INSURANCE
FEES UPON THE REFINANCING A MORTGAGE LOAN.**
**House Bill 5813 AN ACT PROHIBITING THE ASSESSMENT OF TITLE INSURANCE
FEES UPON REFINANCING A MORTGAGE LOAN.**
Banks Committee
February 10, 2011

Senator Duff, Representative Tong and members of the Banks Committee, thank you for the opportunity to appear before the committee to comment in opposition to House Bill 5352 and House Bill 5813.

I am Alfred J. Garofolo, and I am speaking on behalf of the Connecticut Title Association (CTA) as its President. CTA is a nonstock corporation organized under the laws of the State of Connecticut. It is operated as a "business league" within the meaning of Section 501(c)(6) of the Internal Revenue Code of 1986. CTA's primary purposes are to promote the common business interests of title insurance companies licensed in the State of Connecticut and the science and skill of underwriting, to educate its members, lenders and other entities about the nature, uses and benefits of title insurance. CTA **opposes** House Bill 5352 and House Bill 5813.

Title insurance is a monoline form of insurance based upon the principle of risk elimination rather than risk assumption. It is a policy of indemnity under which the insured is indemnified for actual loss suffered by reason of a title defect, the existence of which is insured against in the policy. Expenses, claims and costs of the industry can be "covered" by a one-time premium paid at closing by or on behalf of the insured because, theoretically, the insurer can "eliminate" or reduce the possibility of loss for the insured by a proper review of the land records and analysis/review of potential nonrecord issues such as matters of survey and mechanic's liens.

The amount of the premiums, including those for refinance transactions where there is a discount up to 40% of the premium amount, are set by rate filings with the Department of Insurance. Each licensed insurer has filed its own rate structures which must be approved by the Department. Historically, the premium rate filing is based upon the claims loss experience of the insurer and the costs incurred in the risk elimination process as well as the administrative expenses of the insurer.

House Bill 5352 would eliminate the requirement for the payment of any premium on a refinance transaction presumably relying upon the assumption that the premium originally paid would be sufficient to cover all of the cost factors noted above. There are several weaknesses underlying this assumption.

First, there are expenses generated in processing the title insurance for the refinance. Additional title work and review must be performed. Commitments and, quite often, Closing Protection Letters (CPL) must be issued by the insurer before a closing can even be scheduled. (A CPL is a separate undertaking by the insurer under which the insurer provides indemnification against loss suffered by the insured lender because of the fraud or defalcation of the title agent or the title agent's failure to follow the insured's closing instructions.) Any underwriting issues arising since the original closing must be resolved. Frequently, the assistance of underwriters is required for matters of title or simply to address the demands of the lender, e.g., demands for particular types of coverage provided by way of endorsements which mandate additional scrutiny. It should be noted that CPLs are issued to a lender prior to and in conjunction with the title policy. Since there is no separate charge for the CPL, the consideration for its issuance and effect is the payment of the premium on the "new" policy. In other words, the issuance of the CPL, alone, would justify the premium on the refinance.

Second and contrary to much misconception, there are claims paid under the refinance policy the cause or creation of which claims arose subsequent to the prior loan policy. For example, many times claims involving mechanic's liens for work performed subsequent to the initial policy cause losses covered by the policy. Similarly, certain encroachment and other survey related issues can originate after the original policy date. Finally, the refinance lender often looks to the insurer post foreclosure to simply clear the record of unreleased liens and mortgages. Even in situations where there is no amount due the unreleased encumbrancer, the insurer has to pay the recording costs thereof. A simple release costs \$53.00 to record. Finally, it must be remembered that the new policy insures the enforceability and priority of the lien of the new mortgage not the old mortgage. This is clearly a new undertaking on the part of the title insurer. Even if the status of title has not changed from the initial transaction, attention must be given to the new mortgage documents.

Another significant reason for opposing these bills are the practical obstacles placed in the closing process, itself. In Connecticut, with rare exception, all title agents are attorneys. Many of the attorneys write for only one or two insurers. What happens when the original policy was written through an insurer for which the attorney is not an agent? Should the attorney's insurer have to absorb the penalty of not being able to charge any premium for the refinance? Must the attorney request the original company to issue the policy directly to the lender and does this not improperly interfere with relationship between the attorney agent and the client? If the attorney agent must look to a company with whom there is no relationship, this can create difficulties in the closing process and also result in additional costs to the lender/borrower.

For a number of years, title insurers in Connecticut have recognized the benefit to the consumer of providing a discount on the amount of the premium for loan policies in refinance

transactions. The amount of the discount and the number of situations where it can be utilized have expanded over the years resulting in less money coming to the insurers. These rates have been subject to review and approval of the Department of Insurance. Any perceived inequities have been and should be addressed within that forum rather than by legislative enactment.

The premium structure for the title industry is predicated on the projected total of the income, expenses and claims of all policies to be issued. In other words, the rate structure for owner policies is based, in part, upon an assumption of certain income and expenses related to refinance transactions. If the premium income is altered for refinance transactions while the other factors remain the same, i.e., claims and expenses, then the rate structure for the remaining transactions will have to be modified (increased) to account for the change.

For the foregoing reasons, the CTA opposes House Bill 5352 and House Bill 5813.

Accordingly, on behalf of the Connecticut Title Association, I respectfully request that the Banks Committee reject House Bill 5352 and House Bill 5813 and not vote them out of committee.

Thank you for giving me the opportunity to appear before the Committee. At this time, I would be pleased to answer any questions you may have.