

TESTIMONY
BEFORE THE COMMITTEE ON BANKS
ON
RAISED BILL NO. 5417 – AN ACT CONCERNING
BROKER PRICE OPINIONS

Presented by

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MARCH 15, 2012

March 15, 2012

Senator Bob Duff, co-chair
Representative William Tong co-chair
Committee on Banks
Legislative Office Building
Hartford, Connecticut

RE: Raised Bill #5417 An Act Concerning Broker Price Opinions

Good afternoon Chairman Duff, Vice Chairman Crisco and members of the Committee on Banks. I am Linda M. Sepso, certified residential appraiser. I have been an appraiser for over 25 years, I hold the SRA designation from the Appraisal Institute, I am one of five Connecticut Appraisers Certified by the Appraisal Foundation to teach the Uniform Standards of Professional Appraisal Practice, the ethics and practice guidelines for Appraisers, and a former member of the Appraisal Commission. I also own Valuesearch Educators, a Real Estate and Appraisal School, and LM Sepso Appraisal Associates, LLC, a statewide appraisal firm.

I am here today to speak against Raised Bill #5417. The requested change to allow real estate agents and brokers to complete BPO's – Broker Price Opinions, in the pre-foreclosure process could have serious repercussions on the foreclosure process and the recovery of the real estate market in Connecticut.

For the past 12 years, my company has completed appraisals for foreclosure in Connecticut. As an appraiser and educator, I have studied the foreclosure process, the standing orders of the Courts and have carefully trained the appraisers who are employees or contractors to my firm. I also teach classes on Appraising for Foreclosure to insure that other Appraisers understand to scope of work required for court.

The common process in Connecticut is to file for a Strict Foreclosure. This means the lender is suing to recover the equity in a property where the borrower is no longer able to pay the mortgage. In our state, the process is judicial and through the court system it is determined if the foreclosure will go forward, and if the property qualifies for Strict Foreclosure, where the property is given back to the lender, and a short time period, generally 30 days, is given to the borrower to redeem the property. The other option is a Foreclosure by Sale, where the property will be auctioned off on a specified date, usually 90 to 120 days from the judgment. The determination of Strict Foreclosure or Foreclosure by Sale is made by the Judge, on the opinion of market value developed by a Connecticut Certified Appraiser. Strict Foreclosure is the process if the opinion of value shows no equity exists in the property, Foreclosure by Sale is chosen if there is equity in the property, or an IRS Lien. In either case, the Standing Orders of the Court require a Connecticut Certified Appraiser, not a Real Estate Agent or Broker.

In addition to the court system requirement for the opinion of value to be determined by a Certified Appraiser, the Court also mandates the value to be fair Market Value. The definition of Market Value includes factors such as "the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer". (Source FNMA) The Appraiser has both the education and knowledge to determine an opinion of value

under that definition. In addition, the Appraiser is ethically bound by state law to develop that value using steps that have been given the test of time and require verification of third party sources on information used in the report. All of this takes hours of time, but it is the best method we have to protect real estate values. It is also initially more expensive than a BPO, but the requirements, education and training of an Appraiser is much more intense than a Sales Agent or a Broker who have minimal training in Appraisal. The greater difference is the Appraiser has no agenda, no future interest in obtaining a reward for the valuation as the Appraiser MUST by Law represent an unbiased opinion.

None of this can be said for the Real Estate Agent or Broker. Their task is to be an Advocate, to obtain the best price available for their client, whether that client is a homeowner looking for the highest price, or a lender looking for the least expensive way through the foreclosure process. The Appraiser never has that option; the Appraiser can never be the advocate of the client when determining the value of real property by law and generally is the ONLY person in any real estate transaction working without bias. The Appraiser's role is critical in any real estate transaction, but especially important in the foreclosure process where the judicial system is requiring an unbiased person, to help the Judge make the determination of Strict or Sale in the foreclosure process.

The appraisal education required for real estate licensing is at best minimal, about an hour or two out of 60 hours. The only time a 30 hour appraisal course is taken is when the Agent is in pursuit of a Broker's license, and that is truly an introductory course, offering an overview, rather than an in-depth analysis. The Appraiser meanwhile has taken 200 hours of Appraisal education for a Residential license and 300 hours of education for a General license, in addition to 2500 hours of experience which can not be completed in less than 24 months by law and 3000 hours of experience, which can not be completed in less than 30 months, respectively. In the addenda attached to this report is information on the differences in education.

In the course of developing courses for the 2 year cycle of Continuing Education for the 28 hours Appraisers need (as opposed to the 12 hours Agents need), I have talked with both Appraisers and Agents about their approach to valuing property. Only the Appraiser has the obligation to be unbiased. The occupation of the Agent or Broker dictates the advocacy that is required for their task. Maintaining an unbiased opinion is not easy, but Appraisers are trained to handle the weight of this responsibility as Agents and Brokers are trained to work FOR their client's interest.

The past few years have shown that Agents and Brokers have opportunity to use their bias to taint the valuation process. Though the use of BPO's has been restricted to the pursuit of a Listing, Sale or Lease for over 15 years, Agents and Brokers continually break the law. Many brag about it – as did one Agent who continually brags to an Appraiser in her family that she completes 25 BPO's a week for lenders, "it's easy, they only take 10-15 minutes each to complete." She's hoping for the listing, a potential sale, a healthy commission. And also gets paid for the BPO's. The Appraiser has none of these options, thus can be totally unbiased. I spoke to a member of the Real Estate Commission who is frustrated with the "rampant" BPO's that are done against the law, yet unable to censure these Agents as they are generally requested by Lenders, the proof gets buried in the lenders files, and really why would the lender complain? A low value brings them closer to a judgment of Strict Foreclosure which is generally at least \$5000 to \$10,000 cheaper for the lender than a Foreclosure by Sale. Remember, the determination for the method of foreclosure is made by the Judge based on the valuation presented to the court by the required unbiased, Certified Appraiser.

Developing a value on a property that you generally don't have full access to is challenging. Trained Appraisers research not just the MLS, but Town records, Building departments, Health departments, Flood Maps, deeds, declarations, restrictions and covenants, all in search of the best knowledge of the property they are appraising. These tasks are not researched and verified in a BPO – whether it takes 10 minutes or up to an hour. The result is not an appraisal but an opinion by a real estate

agent or broker on what the approximate selling price might be based on minimal knowledge of the property and the process.

The problem becomes even worse when the BPO is used as a basis for the Lender to approach a client in foreclosure to suggest a Short Sale. If the BPO is used there is an excellent chance the value may cause the homeowner to have a deficiency in the difference between the sale price and the mortgage owed and they may then be taken back to court by the Lender who will try to recoup the losses through a Deficiency Judgment. The other option would be to have the BPO so under price the property, it gets sold off quickly and the homeowner and lender both lose money.

Throughout the US and in Connecticut, there has been an increase in Short Sale Fraud. Two Norwalk Agents pulled off a Short Sale Fraud in 2008, and finally, in January of 2012, were sentenced to prison. The report of their fraud is also attached.

Testifying in court on a foreclosure case happens infrequently these days. Now the Appraiser signs an Affidavit in front of a Notary which goes to court along with the appraisal. But occasionally, we are still called into court, and testifying while the family losing their home sits there, distraught, is heartbreaking. But for Appraisers we have the knowledge and skills to know that the hopes of the lender or the homeowner have no place in our analysis. Our task is simply to develop an unbiased opinion of value, as the result of a credible, defensible report developed through diligence, verification of facts and a thorough analysis of the market. This is possible because of the higher level of education and the large number of experience hours required by law for Appraisers. Our experience is not counted in how many hours we have had our Initial Provisional license – but in how many hours we have actually spent appraising. This often takes four to six years of work to achieve.

I would ask the members of this committee to consider the knowledge required to determine the value of real property and to submit a vote that supports the established precedent within the legislature and find that Raised Bill 5417 is without merit and should not move forward.

Thank you for allowing me to present this testimony. I would be happy to answer any questions from the Committee.



Linda M Sepso, SRA, CDEI

Certified USPAP Instructor

Attachments 7

CONNECTICUT REAL ESTATE APPRAISAL CERTIFICATION/LICENSES REQUIREMENTS SUMMARY

NOTE: This is a summary intended to give an overview. For specific questions consult statutes and regulations.

MINIMUM REQUIREMENTS

FEES

QUALIFIED FOR APPRAISAL OF	EDUCATION	EXPERIENCE	TESTING	CONTINUING EDUCATION	APPLICATION	TESTING	INITIAL YEAR	RENEWAL	CONTINUING EDUCATION
STATE CERTIFIED GENERAL APPRAISER All property types for all types of transactions. (1)	300 hours, including 15 hours USPAP (2) (3) Bachelors Degree or higher, or 30 semester hours -- see list	3,000 hours over at least 30 months with 50% minimum spent on appraising income properties	General Appraiser Examination (7)	28 hrs every 2 yrs, including 3 hrs on Appraisal Law, & 7 hrs National USPAP (5) (6) (10)	\$45.00	\$52.00 (7)	\$375.00 plus \$ 40.00 annual registry fee (9)	\$285.00 plus \$ 40.00 annual registry fee	\$16.00
STATE CERTIFIED RESIDENTIAL APPRAISER All 1-4 family properties for all types of transactions. (1)	200 hours, including 15 hours USPAP (2) (3) Associates Degree or higher, or 21 semester hours -- see list	2,500 hours over at least 24 months	Residential Appraiser Examination (7)	28 hrs every 2 yrs, including 3 hrs on Appraisal Law, & 7 hrs National USPAP (5) (6) (10)	\$45.00	\$52.00 (7)	\$375.00 plus \$ 40.00 annual registry fee (9)	\$285.00 plus \$ 40.00 annual registry fee	\$16.00
STATE PROVISIONAL LICENSED APPRAISER Must be under supervision of a certified appraiser. Practice limited to types of props & transactions for which supervising appraiser is qualified. (4)	75 hours, including 15 hours of USPAP (2) (3)	None, but time spent as a provisional licensed appraiser is limited to 6 years from date of initial license	None	28 hrs every 2 yrs, including 3 hrs on Appraisal Law, & 7 hrs National USPAP (5) (6) (8) (10)	\$40.00	N/A	\$100.00	\$100.00	\$16.00

KEEP SUMMARY SHEET FOR FUTURE REFERENCE

- (1) Shall not sponsor more than three Provisionals unless by waiver of the Connecticut Real Estate Appraisal Commission
- (2) Courses must be a minimum of 15 hours including an examination. No time limit on education, except USPAP. Principles & Practices of R.E. taken after 9/1/00 does not qualify for Qualifying Education, License Upgrade, or Continuing Education. Effective January 1, 2011, All Provisionals must meet AQB 2008 Qualification Criteria Requirements. Education & Testing allowances under the "Segmented Approach" have expired.
- (3) The 15 hour USPAP course with exam must have been successfully completed within the six (6) year period preceding the date of application.
- (4) May have more than one sponsor
- (5) Continuing education offerings must be at least 2 hours in length.
- (6) Submission for continuing education credit is in even-numbered years.
- (7) The applicant may take exam up to four times in a one-year period.
- (8) No continuing education requirement for first renewal of provisional license.
- (9) Initial (first license only) license fee is prorated on a quarterly basis.
- (10) Effective January 1, 2003, the 7 hour National USPAP course must be taken every 2 years and taught by an AQB Certified Instructor.

Rev. 09/2011 ValueSearch Educators

THIS SUMMARY IS UPDATED REGULARLY. KEEP FOR REFERENCE.

January 2012

THE REAL PROPERTY APPRAISER QUALIFICATION CRITERIA AND INTERPRETATIONS OF THE CRITERIA



REAL PROPERTY APPRAISER QUALIFICATION CRITERIA
EFFECTIVE JANUARY 1, 2008

APPENDIX
APPRAISER QUALIFICATIONS BOARD Q&A



THE APPRAISAL FOUNDATION

*Authorized by Congress as the Source of Appraisal
Standards and Appraiser Qualifications*

APPRAISER QUALIFICATIONS BOARD

REQUIRED CORE CURRICULUM EFFECTIVE JANUARY 1, 2008

TRAINEE

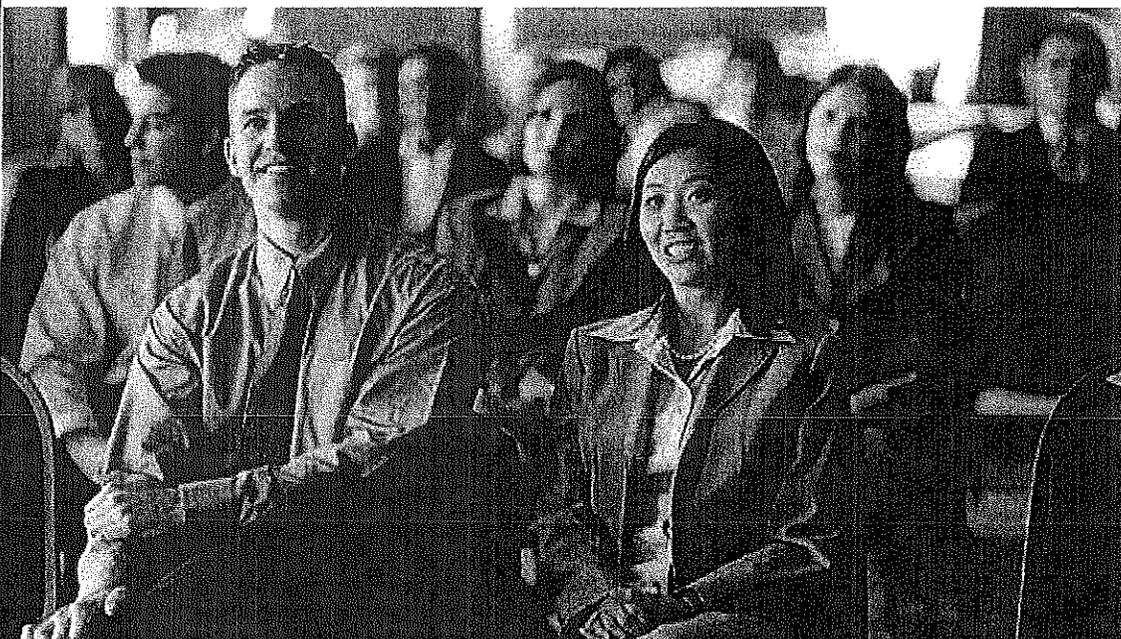
BASIC APPRAISAL PRINCIPLES	30 HOURS
BASIC APPRAISAL PROCEDURES	30 HOURS
THE 15-HOUR NATIONAL USPAP COURSE OR ITS EQUIVALENT.	15 HOURS

TRAINEE EDUCATION REQUIREMENTS 75 HOURS

LICENSED

BASIC APPRAISAL PRINCIPLES	30 HOURS
BASIC APPRAISAL PROCEDURES	30 HOURS
THE 15-HOUR NATIONAL USPAP COURSE OR ITS EQUIVALENT.	15 HOURS
RESIDENTIAL MARKET ANALYSIS AND HIGHEST AND BEST USE	15 HOURS
RESIDENTIAL APPRAISER SITE VALUATION AND COST APPROACH	15 HOURS
RESIDENTIAL SALES COMPARISON AND INCOME APPROACHES	30 HOURS
RESIDENTIAL REPORT WRITING AND CASE STUDIES	15 HOURS

LICENSED EDUCATION REQUIREMENTS 150 HOURS



CERTIFIED RESIDENTIAL

BASIC APPRAISAL PRINCIPLES	30 HOURS
BASIC APPRAISAL PROCEDURES	30 HOURS
THE 15-HOUR NATIONAL USPAP COURSE OR ITS EQUIVALENT.	15 HOURS
RESIDENTIAL MARKET ANALYSIS AND HIGHEST AND BEST USE	15 HOURS
RESIDENTIAL APPRAISER SITE VALUATION AND COST APPROACH	15 HOURS
RESIDENTIAL SALES COMPARISON AND INCOME APPROACHES	30 HOURS
RESIDENTIAL REPORT WRITING AND CASE STUDIES	15 HOURS
STATISTICS, MODELING AND FINANCE	15 HOURS
ADVANCED RESIDENTIAL APPLICATIONS AND CASE STUDIES	15 HOURS
APPRAISAL SUBJECT MATTER ELECTIVES.	20 HOURS
<i>(May include hours over minimum shown above in other modules)</i>	

CERTIFIED RESIDENTIAL

CERTIFIED RESIDENTIAL

200 HOURS

CERTIFIED GENERAL

BASIC APPRAISAL PRINCIPLES	30 HOURS
BASIC APPRAISAL PROCEDURES	30 HOURS
THE 15-HOUR NATIONAL USPAP COURSE OR ITS EQUIVALENT.	15 HOURS
GENERAL APPRAISER MARKET ANALYSIS AND HIGHEST AND BEST USE	30 HOURS
STATISTICS, MODELING AND FINANCE	15 HOURS
GENERAL APPRAISER SALES COMPARISON APPROACH	30 HOURS
GENERAL APPRAISER SITE VALUATION AND COST APPROACH	30 HOURS
GENERAL APPRAISER INCOME APPROACH	60 HOURS
GENERAL APPRAISER REPORT WRITING AND CASE STUDIES	30 HOURS
APPRAISAL SUBJECT MATTER ELECTIVES.	30 HOURS
<i>(May include hours over minimum shown above in other modules)</i>	

CERTIFIED GENERAL

CERTIFIED GENERAL

300 HOURS

RESIDENTIAL APPRAISER SITE VALUATION AND COST APPROACH

15 HOURS

- A. Site Valuation
 - 1. Methods
 - 2. Case Studies
- B. Cost Approach
 - 1. Concepts and Definitions
 - 2. Replacement/Reproduction Cost New
 - 3. Accrued Depreciation
 - 4. Methods of Estimating Accrued Depreciation
 - 5. Case Studies

RESIDENTIAL SALES COMPARISON AND INCOME APPROACHES

30 HOURS

- A. Valuation Principles & Procedures - Sales Comparison Approach
- B. Valuation Principles & Procedures - Income Approach
- C. Finance and Cash Equivalency
- D. Financial Calculator Introduction
- E. Identification, Derivation and Measurement of Adjustments
- F. Gross Rent Multipliers
- G. Partial Interests
- H. Reconciliation
- I. Case Studies and Applications

RESIDENTIAL REPORT WRITING AND CASE STUDIES

15 HOURS

- A. Writing and Reasoning Skills
- B. Common Writing Problems
- C. Form Reports
- D. Report Options and USPAP Compliance
- E. Case Studies

STATISTICS, MODELING AND FINANCE

15 HOURS

- A. Statistics
- B. Valuation Models (AVM's and Mass Appraisal)
- C. Real Estate Finance

ADVANCED RESIDENTIAL APPLICATIONS AND CASE STUDIES

15 HOURS

- A. Complex Property, Ownership and Market Conditions
- B. Deriving and Supporting Adjustments
- C. Residential Market Analysis
- D. Advanced Case Studies

GENERAL APPRAISER MARKET ANALYSIS AND HIGHEST AND BEST USE

30 HOURS

- A. Real Estate Markets and Analysis
 - 1. Market Fundamentals, Characteristics and Definitions
 - 2. Supply Analysis
 - 3. Demand Analysis
 - 4. Use of Market Analysis

B. Highest and Best Use

- 1. Test Constraints
- 2. Application of Highest and Best Use
- 3. Special Considerations
- 4. Market Analysis
- 5. Case Studies

GENERAL APPRAISER SALES COMPARISON APPROACH

30 HOURS

- A. Value Principles
- B. Procedures
- C. Identification and Measurement of Adjustments
- D. Reconciliation
- E. Case Studies

GENERAL APPRAISER SITE VALUATION AND COST APPROACH

30 HOURS

- A. Site Valuation
 - 1. Methods
 - 2. Case Studies
- B. Cost Approach
 - 1. Concepts and Definitions
 - 2. Replacement/Reproduction Cost New
 - 3. Accrued Depreciation
 - 4. Methods of Estimating Accrued Depreciation
 - 5. Case Studies

GENERAL APPRAISER INCOME APPROACH

60 HOURS

- A. Overview
- B. Compound Interest
- C. Lease Analysis
- D. Income Analysis
- E. Vacancy and Collection Loss
- F. Estimating Operating Expenses and Reserves
- G. Reconstructed Income and Expense Statement
- H. Stabilized Net Operating Income Estimate
- I. Direct Capitalization
- J. Discounted Cash Flow
- K. Yield Capitalization
- L. Partial Interests
- M. Case Studies

GENERAL APPRAISER REPORT WRITING AND CASE STUDIES

30 HOURS

- A. Writing and Reasoning Skills
- B. Common Writing Problems
- C. Report Options and USPAP Compliance
- D. Case Studies

Taken from Chapter 392 Real Estate Brokers and Salespersons

Real Estate Law and Regulations Concerning the Conduct of Real Estate Brokers and Salespersons

Section 20-314

(d) (1) Each applicant for a real estate broker's license shall, before being admitted to such examination, prove to the satisfaction of the commission: (A) (i) That the applicant has been actively engaged for at least two years as a licensed real estate salesperson under the supervision of a licensed real estate broker in this state, (ii) **that the applicant has successfully completed a course approved by the commission in real estate principles and practices of at least sixty classroom hours of study, (iii) that the applicant has successfully completed a course approved by the commission in real estate appraisal consisting of at least thirty classroom hours of study, and (iv) that the applicant has successfully completed a course approved by the commission consisting of at least thirty classroom hours as prescribed by the commission, or (B) that the applicant has equivalent experience or education as determined by the commission.**

(2) Each applicant for a real estate salesperson's license shall, before being admitted to such examination, prove to the satisfaction of the commission (A) **that the applicant has successfully completed a course approved by the commission in real estate principles and practices consisting of at least sixty classroom hours of study, or (B) that the applicant has equivalent experience or education as determined by the commission.**

Requirements: Real Estate Salespersons

Education

60 hour class in real estate principles and practices

OR equivalent experience and education as determined by the commission

Continuing Ed 12 hours every 2 years

Requirements: Real Estate Brokers

Education

60 hour class in real estate principles and practices

30 hour class in real estate appraisal

30 hours in any other approved topic

OR equivalent experience and education as determined by the commission

Continuing Ed 12 hours every 2 years



New Haven Division

Home • New Haven • Press Releases • 2011 • Real Estate Agent Sentenced to Federal Prison for Defrauding Bank in Short Sale Mortgage Fraud Scheme

Real Estate Agent Sentenced to Federal Prison for Defrauding Bank in Short Sale Mortgage Fraud Scheme

U.S. Attorney's Office
July 25, 2011

District of Connecticut
(203) 821-3700

David B. Fein, United States Attorney for the District of Connecticut, announced that ANNA McELANEY, 40, of Norwalk, was sentenced today by United States District Judge Janet C. Hall in Bridgeport to eight months of imprisonment, followed by three years of supervised release, the first six months of which McELANEY must spend in home confinement, for her involvement in a "short sale" mortgage fraud scheme.

A short sale transaction involves a mortgage holder or lender entering into an agreement to release its mortgage or lien on real property in exchange for payment of less than the total amount owed on the underlying debt. Many short sale transactions are legitimate.

According to court documents and statements made in court, McELANEY, a real estate agent, and Sergio Natera, also a real estate agent, defrauded Regions Bank, which held two mortgages on a residential property in Bridgeport. On December 5, 2007, McELANEY, who was a listing agent for the property, received an offer to purchase the property for a price of \$132,500. However, McELANEY and Natera informed Regions Bank that the highest offer to purchase the property was for \$102,375 and that it was made by BOS Asset Management, LLC. McELANEY and Natera concealed from Regions Bank that there was a higher offer by another bidder, that Natera owned BOS Asset Management, LLC, and that McELANEY and Natera planned to keep the difference between the two prices. Based on the false and incomplete information provided to it, Regions Bank agreed to the short sale for the lower price, and released its mortgages on the property.

On June 9, 2008, McELANEY and Natera arranged for two sales of the property to occur on the same day. The first sale was from the owner of the property to BOS Asset Management, LLC for \$102,375; the second sale was from BOS Asset Management, LLC to the original bidder on the property for \$132,500. McELANEY and Natera retained the difference between the two sale prices.

"This prosecution should serve as a warning to real estate agents and others who seek to take advantage of the current financial crisis by defrauding lenders through short sale fraud schemes," stated U.S. Attorney Fein.

On February 19, 2010, McELANEY pleaded guilty to one count of bank fraud. Natera pleaded guilty to the same charge on February 11, 2010. He awaits sentencing.

This matter was investigated by the Federal Bureau of Investigation and is being prosecuted by Assistant United States Attorney Ann M. Nevins.

In July 2009, the U.S. Attorney's Office and the Federal Bureau of Investigation announced the formation of the Connecticut Mortgage Fraud Task Force to investigate and prosecute mortgage fraud cases and related financial crimes occurring in Connecticut. Citizens are encouraged to report any suspected mortgage fraud activity by calling 203-323-3512 and requesting the Connecticut Mortgage Fraud Task Force, or by sending an e-mail to ctmortgagefraud@ic.fbi.gov.

The Connecticut Mortgage Fraud Task Force includes representatives from the U.S. Attorney's Office; Federal Bureau of Investigation; Internal Revenue Service - Criminal Investigation; U.S. Postal Inspection Service; U.S. Department of Housing and Urban Development, Office of Inspector General; Federal Deposit Insurance Corporation, Office of Inspector General, and State of Connecticut Department of Banking.

To report financial fraud crimes, and to learn more about the President's Financial Fraud Enforcement Task Force, please visit www.stopfraud.gov.

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