

To: Sen. Cassano and Rep. Gentile and members of the Planning and Development Committee

From: Denis R. Caron

Re: SB 407 An Act Concerning the Assignment of Mortgage Debts

Date: March 16, 2012

I am a vice president of Commonwealth Land Title Insurance Company, a national title insurer doing business in the state of Connecticut. I am also chairman of the Standards of Title Committee of the Connecticut Bar Association. I am presenting this testimony, however, in my individual capacity, and not as a representative or spokesman for either my employer or said committee. I am here today to speak in opposition to SB 159 "An Act Concerning the Assignment of Mortgage Debt." The bill proposes to amend subsection (g) of Conn. Gen. Stat. §49-10 to require the recording of an assignment whenever a mortgage debt is transferred.

This bill is an obvious attack on the manner in which a large part of the national secondary mortgage market operates under a program known as Mortgage Electronic Registration Systems ("MERS"). The MERS model is to separate the mortgage note and the mortgage deed. The note is payable to the original lender, and the mortgage is given in favor of MERS as nominee for that lender. As the note is sold in the secondary market, the mortgage remains in the name of MERS, and when the loan is paid, the release of mortgage is given by MERS.

MERS has been under attack in a number of jurisdictions across the country. Testimony presented before the Banks Committee on March 6, 2012 with regard to SB 159, which seeks to repeal Conn. Gen. Stat. §49-17, clearly indicates that anti-MERS sentiment is present in Connecticut. MERS is criticized for having created a private mortgage data base that operates separately from the land records and thus denies the public their right to learn the true identity of the lender. MERS was characterized as an entity created by lenders for their exclusive benefit, and the public has suffered because of it.

I am not going to adopt a position regarding that particular issue, but I do want to point out that MERS serves a very valuable purpose that benefits a great number of property owners, and that it would be unfortunate if this bill were enacted and MERS was prevented from operating in Connecticut. In that regard, by the way, Connecticut would stand as the only state in the country to have expressly repudiated the MERS business model.

To appreciate the benefit homeowners receive from MERS, consider a situation that can and does arise when MERS is not in the picture: A homeowner purchases his home and obtains a mortgage from lender A. A sells the mortgage to lender B, and executes an assignment of the mortgage to B. B does the same, and assigns the mortgage to C. Later on, C sells and assigns the mortgage to D. At some point, homeowner pays off the mortgage, usually by way of refinance, and obtains a release of mortgage from D. Unfortunately, it turns out that B's assignment to C was never recorded, and this defect is discovered

Even if it turns out that the missing assignment can be obtained and no suit is necessary, the homeowner is nonetheless put to the inconvenience and sometimes hardship of having to post a security of several thousand dollars, and of being denied the use of those funds, usually for several months. This is hardly a rare situation. Even with the predominance of MERS, many non-MERS mortgages exist, and title companies enter into these types of indemnity arrangements several times a day across the state.

The great benefit of MERS is that this problem, and this potential expense and hardship, are completely eliminated because title to the mortgage remains in one place. There is never a concern about a break in the chain of title to the mortgage. When the mortgage is ultimately paid, the homeowner needs to look only to MERS for the release.

The passage of SB 407 would result in many more mortgages across the state becoming subject to the scenario I have outlined, and would impose unnecessary inconvenience on a substantial number of homeowners. For that reason, I urge you not to vote this bill out of your committee.