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Judiciary Committee Public Hearing

March 29, 2012

RE: OPPOSITION TO Raised Bill No. 5549, *An Act Concerning The Filing of a Motion to Open Judgment of Foreclosure*

The Honorable Eric D. Coleman, Gerald M. Fox, Co-Chairs and members of the committee, thank you for the opportunity to submit written testimony in opposition to Raised Bill No.5549 *An Act Concerning the Filing of a Motion to Open Judgment of Foreclosure*

I apologize for not being able to attend the hearing. I have practiced real estate law in Connecticut for almost 30 years. I have been involved in all aspects of foreclosure litigation and have handled many mortgage modifications and short sales, both during the current mortgage crisis as well as during the "Savings and Loan" problem of the late 1980's. (History does repeat itself.)

There are many reasons to reject this bill. First, it does nothing reasonably useful for the plaintiff. Merely setting an arbitrary 30 day date prior to the judicially set date saves the plaintiff merely 30 days, which in the large picture is not significant. On the other hand, that 30 days can be extraordinarily important to the distressed home owner who is about to lose their home. I have handled many cases where the last minute opportunity to request the court grant an extension of the sale or law day has resulted in the foreclosure being ultimately avoided. Without this sometimes last minute opportunity the home owner loses all chance of resolving the matter short of having a foreclosure on their record or of saving their home. More often than you would expect, a last minute offer to purchase the property is received and accepted by the bank's short sale department, but time is needed to complete that actual closing. And also more often than you might think, a modification of the existing mortgage comes through at the last minute but the mortgage workout department and the foreclosing attorney are not communicating and the last minute motion slows the process down enough to get the modification completed. This proposed amendment would prevent all of that, to the loss of both the bank and the home owner.

The apparent basis for this amendment may be a sense that the last minute motion is simply a frivolous delaying tactic. If one were to believe that, then you must also believe that the courts sanction mere delays. In my experience, the opposite is true. The judges take such motions seriously and demand sound argument and a reasonable expectation of successfully avoiding foreclosure before granting the motion to open judgment. Without that, they frequently deny the motion. This proposed amendment would take that opportunity to look at the matter in a just and equitable manner away from the judges of the State of Connecticut, something I do not think the legislature really wishes to do.

I could give you many examples where the opportunity to file a motion to open judgment in foreclosure up to the time of sale or the law day has helped the home owner, as well as prevented the lending institution (or other debtor) from unnecessarily taking the property. However, as your time is limited, suffice it to say that adoption of this amendment would serve no useful purpose and simply add to the burden of the courts, the home owners, the lending institutions, and make it more likely that distressed Connecticut home owners will unnecessarily lose their home to foreclosure.

I hope that these comments are useful. I thank you for careful consideration of this matter.

Thank you,
Richard D. Dixon, Esq.