

Statement of Patrick G. Alair
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before the
Banks Committee
Connecticut General Assembly
February 19, 2013
in Support of House Bill 6355
An Act Concerning Homeowner Protection Rights

Chairman Leone, Chairman Tong and members of the Banks Committee, thank you for the opportunity to offer you these comments on Bill 6355. My comments are submitted on behalf of the Town of West Hartford and also in support of the position being taken by the Connecticut Conference of Municipalities. Two aspects of the bill are particularly worthy of comment.

Section Five:

The bill addresses an increasing problem with foreclosure proceedings: the number of homes whose owners simply walk away from them during the protracted foreclosure process. In West Hartford we have seen a marked increase in the number of cases where our code enforcement officials discover that a property has been abandoned by piecing together complaints from neighbors that the lawn is overgrown or that the sidewalk and driveway have not been cleared of snow. In one case, we made such a discovery when the pipes froze and burst inside the home. Water filled the basement, flowed out the front door and out into the street where it froze and caused an icing problem. In another case, the owner of a rental property abandoned it and the tenants proceeded to cause serious damage before they also walked away, leaving garbage and abandoned belongings strewn about the yards. Obviously, in cases like these the lender loses value in its collateral, but the losses extend to the surrounding neighborhood as well.

In all of these cases the ordinary enforcement tools available to us are entirely ineffectual. Usually the homeowners cannot be found, let alone fined for the condition of their properties. If they can be found, they ignore citations issued to them and are frequently judgment-proof. Where a foreclosure is pending, obtaining judgment and liening the property for the outstanding citations is often a pointless exercise. The only effective solution is to resolve the foreclosure case as quickly as possible and return the property to the hands of a responsible property owner. Unfortunately, recent statutory changes intended to protect homeowners from precipitous foreclosure actions also serve to delay lenders from completing foreclosures in those relatively few cases where the property has been abandoned. In West Hartford we have one case in which a foreclosure proceeding has been pending since September, 2009. Throughout that time the house has been abandoned and surrounding property owners have suffered a blight upon their neighborhood.

Section five of Bill 6355 creates a mechanism which will allow foreclosing lenders to expedite proceedings where the property has been abandoned. This section is a reasonable and

measured response to the problem. It will help to curb a problem which does not just affect lenders. It affects neighborhoods and it should be addressed.

Section Eight:

Until relatively recently, mortgage assignments were recorded on the local land records. This afforded the public with immediate and accurate information regarding which lending institution owned the debt secured by a mortgage on real estate. Since the mid-1990s, however, many banks have used the Mortgage Electronic Registration Systems (MERS) to record mortgage assignments. The primary function of MERS has been to act as a private registry of assignments rather than recording assignments of mortgages on the public land records. This may be a convenient and money-saving practice for the banking industry, but that convenience comes at a price to the banks themselves and to the public at large.

Section 8 of the bill requires each assignor of mortgage debt to report its mortgage assignments to the Secretary of OPM on a biennial basis. If the assignment has not been recorded on the municipal land records, the assignor must pay the State Treasurer a \$40 fee of which \$36 goes to the State General Fund for the community investment account. The remaining \$4 is to be remitted to the host municipality as general revenue for capital improvement projects. In addition, a \$100 penalty fee will be applied for late recordings. While this provision reaches *one* of the municipal concerns with current practice, it certainly does not address all of them. Let me start by taking a moment to express my concerns about what this bill *does not* do.

1. This Bill Does Not Address The Legitimate Public Policy Reasons for Requiring Assignments to be Recorded

I have previously described the increasing problem of abandoned homes which section five of Bill 6355 addresses. When we find abandoned homes we make every effort to contact the mortgage holder so that it can preserve its security interest in the property. Banks cannot possibly be expected to have the local eyes and ears which municipalities have and it is in the best interest of everyone to ensure that property values are preserved. Unfortunately, our unique local knowledge is of no use to anyone when we cannot figure out who holds the mortgage. That hurts the lender. It hurts the entire neighborhood. It also hurts the municipality, which inevitably receives the frustrated complaints from unhappy neighbors. Section 8 does nothing to remedy this basic problem with the current practice in the industry. The public policy of this State should be to ensure that local land records accurately identify everyone with a current interest in the property, including the mortgagee.

Section 8 of the bill also does nothing to assure homeowners that the entities collecting their mortgage payments or foreclosing on their homes are actually their current lenders. If lenders choose to assign some or all of their mortgage portfolios, it should be incumbent upon them to make certain that their borrowers are promptly notified of those assignments. Recording the assignment historically satisfied this reasonable obligation. In recent years,

however, anecdotes about lenders who cannot actually determine who owns which debt have proliferated along with the use of MERS. While section 8 of Bill 6355 requires biennial reporting of assignments to the Secretary of OPM, it says nothing about what will become of that information in the Secretary's hands. Moreover, it does nothing to help the borrower who needs information before the biennial reporting period has arrived. Once again, the public policy of this State should be to ensure that local land records accurately identify everyone with a current interest in the property, including the mortgagee.

2. This Bill Encourages Lenders *Not* to Record Assignments by
Rewarding them for Declining To Do So

What section 8 of the bill does do is to offer municipalities *some* amount of potential revenue to make up for the recording-fee revenue lost as a result of the rise in unrecorded assignments. Unfortunately it does so by actually *discouraging* banks from recording assignments on the land records. That is flatly contrary to what *should* be the public policy objective at work. At the present time it costs \$53 for a bank to record a mortgage assignment on the land records. Under the proposed bill, a lender would pay the State only \$40 if it chose not to record an assignment. The lender will actually save \$13 for each assignment which it chooses not to record. The breakdown of how those fees are allocated is as follows:

<u>Party:</u>	<u>Recorded Assignment:</u>	<u>Bill 6355:</u>	<u>Net Gain/Loss:</u>
Lender pays:	\$53	\$40	+\$13
State receives: \$38		\$36	-\$2
Town receives:	\$15	\$4	-\$11

Clearly this calculus actually encourages lenders to file only with OPM at the financial expense of Connecticut's municipalities and to the detriment of Connecticut's land records.

It is respectfully submitted that the fee paid by lenders which do not record assignments should be cost-neutral to them. The fee paid to OPM should be equal to the fee paid to record a mortgage assignment. Moreover, the allocation of the fee disbursement should be revenue neutral to both the State and the municipalities.

3. The Bill Restricts Municipal Use of Fee Revenue

Finally, I urge you to amend the bill to remove restrictions on how the fees remitted to towns should be spent. Of the \$15 which municipalities receive from the recording of assignments, \$10 goes directly to the municipal general fund. Surely if municipalities are to suffer a nearly 75% reduction in the fee income generated from these transactions it is not too much to ask that the remaining \$4 to be received from the State under Bill 6355 should go into the general fund.