

March 25, 2013

To: Judiciary Committee

Fr: Connecticut Bankers Association
Contacts: Tom Mongellow, Fritz Conway

Re: H.B. No. 6662 An Act Concerning The Recoupment Of Moneys Owed To A Unit Owners' Association Due To Nonpayment Of Assessments.

Position: Oppose As Drafted

This bill would double the priority lien for condominium fees from 6 months to 12 months and potentially allow for an additional "evergreen" priority liens for those fees.

The CBA and the banks it represents around the State clearly understand the need for Condominium Owners Associations (COA's) to collect regular payments from their unit owners. **Banks are stakeholders in that process** too, as the underlying viability and value of the complex is dependent upon the COA's upkeep of the facilities.

That underlying viability is also greatly enhanced by the ability of owners to secure mortgage financing for the purchase of individual condominium units. That **financing ability continues to be available in large part due to the secondary mortgage market** which provides guarantees for up to 70 percent of state's condominium mortgages, through Fannie Mae and Freddie Mac underwritten loans. This process works because **investors are willing to buy these Connecticut mortgages due to prudent underwriting standards that create an acceptable level of lending risk.**

When a **condominium mortgage is delinquent or in foreclosure, banks and servicers must still pay the investor, taxes and insurance** - which means additional and until a resolution is obtained - continued and real losses on the property sustained by the bank.

The reality is that bank's provide the financing and financial stability that allows many complexes to thrive and should not be viewed as the "deep pockets" to recoup Association fees just because they hold or service the mortgage.

While the Committee may hear complaints from COA's due to borrowers not paying fees, the banking industry receives complaints **that mortgages are sometimes not available on complexes that don't have the secondary market approval.** Those Fannie Mae and Freddie Mac approvals (and subsequent availability of loans) may be more difficult to achieve if the provisions of this bill are enacted.

Existing law provides for a priority lien of 6 months of COA fees. **Lenders, to protect the underlying asset for the investors, wind up paying those six months of fees** (and many times, the association's legal fees and additional arrearages) in the event of a foreclosure. This is yet an **additional cost the lender has to cover and cannot be recouped as part of the borrower's debt**, in a deficiency judgment.

The provisions of the bill would double that time frame **which will increase the costs and risks of making condo mortgages throughout the state.**

Over ten years ago, the **legislature enacted a 12 month priority condo lien and Fannie Mae communicated that they would stop accepting condominium mortgages from Connecticut** due to increased costs and risk. The **legislature correctly reversed its action and repealed the 12 month priority lien provision** leaving it at 6 months to this day.

Judicial Foreclosure System in Connecticut is the third slowest in the country. This complex system with its many moving parts is in need of repair. Delays can be caused by mandatory state and federal foreclosure assistance programs, borrower's defenses, lenders complying with those mandatory assistance programs,

mediation and judicial actions. *The banking industry is working with the Legislature, the Administration and all stakeholders in the foreclosure process to make positive changes to that system and significantly reduce those delays.*

Because the Connecticut system is so slow, *Fannie Mae and Freddie Mac are currently proposing a 52% increase in guarantee fees for all mortgages they guarantee in the State (70%).*

The provisions of S.B. 6662 will be viewed as increasing the risks and costs of the State's Condominium mortgages. Based on recent actions, we can only surmise that there will be a negative reaction from the secondary market. If that is the case, *the ability to get consistent and affordable condominium mortgages in Connecticut may be reduced.*

The CBA has entered into discussions with Committee members and the statewide COA representatives and we look forward to developing a workable solution.