



CONNECTICUT REALTORS®

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**Statement on
H.B. No. 5514 (RAISED)
'AN ACT CONCERNING AN OPTIONAL METHOD OF FORECLOSURE'**

SUPPORT

Submitted to the Banks Committee

March 11, 2014

By Eugene A. Marconi, General Counsel
Connecticut Association of REALTORS®, Inc

Good afternoon Senator Leone, Representative Tong and members of the committee. My name is Eugene Marconi and I am the General Counsel for the Connecticut Association of REALTORS®. I have the privilege of speaking on behalf of over 15,000 members of the Association in support of HB 5514 (Raised) An Act Concerning an Optional Method of Foreclosure.

The bill seeks to add an item to the menu of foreclosure options: a foreclosure by market sale. The current foreclosure by sale procedure has changed little in over a century. This process does not and will not produce market value sales as it severely restricts the universe of buyers qualified to participate extremely limited inspection periods (typically an hour or two before the auction) and refusal to recognize or allow usual and customary contingencies for home inspection, lead paint inspection and financing. This process effectively shuts out purchasers who require financing or simply do not have the money to risk on a property that they cannot adequately inspect in order to apprise themselves of the risks of ownership. Those of you who attended the public hearing last year in Stamford may recall the testimony from Realtors® concerning the challenges sellers, buyers and agents face in selling these properties under the current regime. This bill leverages Connecticut's judicial foreclosure process and its 20,000 real estate licensees to move these properties at a price that more nearly approximates their market value.

The strict foreclosure process has led to unfortunate consequences when lenders are unequipped to manage foreclosed properties. These properties often sit empty for long periods of time while they deteriorate for lack of basic maintenance, serve as a target for vandalism and theft and become a source of adverse comparable sale information that drives down appraisals on surrounding properties. It would certainly serve our towns, cities and the public to have these properties come directly out of the foreclosure process to their ultimate purchasers.

I am pleased to report this bill is the product of an agreement between Connecticut Realtors® and the Connecticut Bankers Association. The bill would require a lender to inform the delinquent borrower of the

availability of this option and direct the borrower to an agent to determine the feasibility of marketing the property. If the borrower elects to proceed, the property would be appraised, and the lender and borrower would then negotiate on mutually agreeable terms of sale. The agent would be obligated to share all offers with the lender. Those offers could include the usual and customary contingencies for financing and inspection in order to make these properties available to the widest universe of potential purchasers. If the lender and borrower agree to accept a particular offer, the lender would proceed with the foreclosure process. The court would make a formal finding as to the amount of the debt, determine if there are junior lienholders and their priority, approve the expenses of sale including the agent's commission and appoint a committee to conduct the closing. The committee would conduct the closing, pay the approved expenses and turn the balance over to the foreclosing party.

There is nothing unusual or novel in court-approved sales on the open market. Probate courts have been doing them for years. Our courts routinely approve such sales in divorce proceedings. Bankruptcy courts also do the same, and the federal courts use a similar procedure in selling properties.

I would be remiss in not thanking Representative Aresimowicz for his support and his assistance in arranging for Commissioner Pitkin of the Department of Banking to act as a mediator between various stakeholders and to Commissioner Pitkin for his invaluable service as mediator in keeping the process moving forward. Finally, I would like to thank Attorney Denis Caron, author of the treatise *Connecticut Foreclosure*, for his encyclopedic knowledge of the foreclosure process and Attorney Lawrence Garfinkel for the benefit of his practical experience in foreclosure law practice.

The current foreclosure auction sale serves no one but well-heeled purchasers who have the wherewithal to purchase for cash and assume unknown risks. It certainly does not benefit mortgagors nor does it benefit mortgagees who more often than not assume ownership of these properties and spend money on asset managers, insurance, upkeep and the cost of disposition. This bill not only benefits those parties but benefits purchasers also since they can offer on these properties with confidence that there is a court procedure to bring the certainty to purchasing distressed properties that is missing in short sale purchases. It is time to bring foreclosure sales out of the horse and buggy days and into some semblance of a modern real estate transaction.

Thank you for your time, and I will be happy to answer any of your questions.