



## **Testimony in Opposition to House Bill 5514 An Act Concerning an Optional Method of Foreclosure**

Co-Chairs Leone and Tong, other members of the Committee, thank you for the opportunity to address you today. My name is Jeff Gentes, and I manage the Connecticut Fair Housing Center's fair lending and foreclosure work.<sup>1</sup> I am here to express the Center's opposition to House Bill 5514, An Act Concerning an Optional Method of Foreclosure, at least in its current form.

We agree with the bill's proponents: short sales are critical for helping the housing market recover and avoiding unnecessary foreclosures. They preserve dignity for the homeowner, reduce blight, and preserve property values for neighbors and municipalities alike.

Like other mortgage workouts, completing short sales since the foreclosure crisis began in 2007 has often been difficult. While the servicers' advancement up the learning curve and your enhancements to the foreclosure mediation program have helped, additional improvements could be made.

The solution proposed by this bill, however, is a new process with needless complexities and burdens for judges. Based on our experience in seeing how proposals like this have been implemented on the ground, and in the court system – such as the attempt in 2011 to create a financial worksheet that all lenders would use – we would strongly discourage anyone from trying to fashion a government dictated short sale process. This is especially so because federal agencies like the Consumer Financial Protection Bureau and the Department of the Treasury, and investors like Fannie Mae and Freddie Mac, have already issued extensive guidance in this area.

Further, this bill's anti-mediation approach would be a step backwards. Nearly 1,000 short sales have closed through the Foreclosure Mediation Program since its inception in 2008. This bill would undermine the Program by treating people in mediation worse than those outside of it and closing an avenue through which homeowners often negotiate deficiency waivers and payment of moving expenses. And if a short sale fails to close, homeowners would be barred from ever participating in mediation.

We could accomplish our shared goals of preventing unnecessary foreclosures, and increasing the number of successful short sale transactions. We can improve short sales by addressing elements of state law that make short sales more difficult than they should be. Rather than trying to reinvent the short sale process, we should work with the framework we already have and go after a specific problem.

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<sup>1</sup> The Connecticut Fair Housing Center is the only statewide nonprofit providing representation and advocacy for homeowners facing foreclosure. We have reached homeowners in at least 164 towns since 2010. In 2013, we provided individual advice, representation, and/or in-person education to about 2000 homeowners.

Commissioner Pitkin's creation and oversight of a working group were instrumental in identifying junior liens as a major problem that slowed or stopped productive, value-preserving short sales. We recommend taking the best part of the current bill – eliminating the hurdles created by underwater junior lien holders – and providing this as a tool parties can use to reach resolution more frequently with short sales, deeds-in-lieu of foreclosure, and, via lien subordination rather than lien stripping, loan modifications. Junior liens could still pursue the debt owed to them, but could not stop an economically sensible and efficient short sale. More short sales and other kinds of workouts would be completedgo through, and be completed more quickly, and hundreds of foreclosures could be avoided.

We also identified several flaws in the bill's current draft, such as:

- It does not account for federal tax liens;
- It inexplicably limits the eligible homeowners to those eligible for mediation;
  - Why prohibit people who have moved out of the home they are short-selling from using this process?
  - Why prohibit people who are trying to sell their parents' reverse-mortgaged homes from using this process?
- The term “encumbrance” in section 1 should more appropriately be “mortgage”;
- The reference to “deed of trust” in section 2 should be eliminated – there is no such concept in Connecticut; and
- In section 7, (1) the notice provisions for junior lienholders should be clarified (e.g., the motion should be served by mail to non-appearing parties), and (2) we do not understand why a court should review a purchase & sale contract.

We do think that further collaboration and discussion could produce a bill that builds on past success and prevents more preventable foreclosures through short sales and other kinds of workouts. We are happy to be part of those discussions.

Thank you for your time.