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TESTIMONY OF SCOTT J. SANDLER, ESQ.
CONCERNING RAISED BILL NO. 5514
AN ACT CONCERNING AN OPTIONAL METHOD OF FORECLOSURE

I. SUMMARY OF TESTIMONY:

Raised Bill No. 5514 proposes to create a new method by which a mortgage holder may foreclose a mortgage on the borrower's primary residence if the borrower is in default.

For the reasons set forth below, the Connecticut General Assembly should not adopt Raised Bill No. 5514.

II. BIOGRAPHY OF SCOTT J. SANDLER:

Mr. Sandler is a graduate of the State University of New York at Albany (B.A., Economics, 1997) and Quinnipiac College School of Law (J.D., 2000). He was an Associate Editor of the Quinnipiac Law Review.

Mr. Sandler is a member of the American Bar Association, the Connecticut Bar Association and the Hartford County Bar Association. He is also a member of the Executive Committee of the Real Property Section of the Connecticut Bar Association.

Since 2001, Mr. Sandler has focused on representing condominium, community and homeowner associations.

Mr. Sandler is a past President of the Connecticut Chapter of the Community Associations Institute. He is presently the Chairman of the Chapter's Legislative Action Committee.

Mr. Sandler is a member of the College of Community Association Lawyers ("CCAL"). CCAL is a prestigious group of attorneys who have distinguished themselves through contributions to community association law and who have committed themselves to high standards of ethical conduct. Of the thousands of attorneys practicing community

association law in the United States, fewer than 150 have been granted membership in CCAL. Mr. Sandler is one of only three attorneys in Connecticut who are members of CCAL.

Mr. Sandler is a partner in the law firm of Perlstein, Sandler & McCracken, LLC, in Farmington, Connecticut, which currently provides legal services to approximately 450 condominium and homeowner associations throughout the State.

III. ANALYSIS:

The General Assembly SHOULD NOT adopt Raised Bill No. 5514.

Raised Bill No. 5514 proposes to create a new method of foreclosing a first mortgage on real estate owned by the borrower, referred to as a "foreclosure by market sale." A foreclosure by market sale may be requested if:

A. The property subject to the mortgage is the borrower's primary residence;

B. An appraisal establishes that the property is worth less than amount of unpaid liens or encumbrances of record; and

C. Both the mortgage holder and the borrower agree to a foreclosure by market sale.

If agreed to by both the mortgage holder and the borrower, the borrower may list the property for sale with a real estate broker. The purchase contract is subject to the approval of both the mortgage holder and the borrower. If both parties approve the contract, then the mortgage holder may initiate a foreclosure by service of a summons and complaint. Ten days after the return date, the mortgage holder may file a motion for judgement of foreclosure by market sale. The court, after a hearing for very limited purposes, may then grant the motion.

This bill is problematic for several reasons.

1. Raised Bill No. 5514 essentially permits a short sale to take place without any input from or approval of junior lien holders.

   Under current law, a mortgage holder and a borrower who is in default can agree to have the home sold at a short sale, thereby avoiding the foreclosure process entirely. In a short sale, however, the borrower must address the holders of other

liens on the property, particularly those that are junior to the mortgage. Junior lien holders typically negotiate to receive payment of at least a portion of their liens through the short sale, rather than having their liens completely foreclosed out through the foreclosure process.

Raised Bill No. 5514 essentially allows the mortgage holder and borrower to proceed with a short sale without having to address any junior lien holders. The junior lien holders may not be able to recover any portion of their liens through a foreclosure by market sale, where they otherwise would through a conventional short sale.

2. Raised Bill No. 5514 provides other lien holders with virtually no opportunity to contest priority of their liens as alleged by the foreclosing mortgage holder.

By allowing for a judgment of foreclosure by market sale to enter in 10 days from the return date, Raised Bill No. 5514 provides very little opportunity for other lien holders to challenge how their priorities vis-à-vis the first mortgage have been alleged by the mortgage holder. For example, suppose the foreclosing mortgage holder fails to properly assert the priority of a community association's lien or that of another lien holder. There is very little time for the other lien holders to challenge the assertions of the mortgage company. It is worth noting that the hearing on the motion for judgment of market sale is limited to, among other things, the determination of priorities for distribution of the sales proceeds. This makes no accommodation for lien holders who may claim that their liens have priority over the mortgage and would therefore survive the sale.

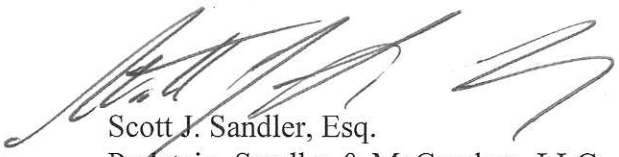
3. Raised Bill No. 5514 does not clearly protect the rights of other lien holders to foreclose their interests in the property.

Raised Bill No. 5514 should clearly state (but does not) that it has no impact on the priority of other liens or encumbrances on the property, nor on the ability of other lien holders to enforce their rights to the fullest extent possible, including by foreclosure.

For the reasons set forth above, the General Assembly should not adopt Raised Bill No. 5514.

If I can furnish the Committee with any further information or assistance, please do not hesitate to contact me.

Respectfully Submitted,



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