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Testimony of the Honorable Douglas C. Mintz
Banking Committee Public Hearing
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House Bill 6752, An Act Concerning the Continued Operation
Of The Foreclosure Mediation Program

House Bill 6751, An Act Concerning The Efficient Conclusion Of The
Foreclosure Mediation Program

Good afternoon, Senator Leone, Representative Lesser, Senator Martin, Representative Simanski, Senator Crisco, and Representative Stallworth, I am Judge Douglas Mintz, and I am pleased to appear before you today on behalf of the Judicial Branch, in support of House Bill 6752, *An Act Concerning the Continued Operation of the Foreclosure Mediation Program*. This bill would eliminate the sunset provision and allow the Foreclosure Mediation Program to continue beyond July 1, 2016. I am also here to testify in opposition to House Bill 6751, *An Act Concerning the Efficient Conclusion of the Foreclosure Mediation Program*.

By way of background, the Foreclosure Mediation Program, the nation's first statewide mediation program, was established by the General Assembly in 2008, in response to the record number of foreclosure cases filed in our courts. The goal of the program was, and still is, to help homeowners and lenders achieve a mutually agreeable resolution to a mortgage foreclosure action through mediation. Specifically, mediators help the parties (the homeowner and the lender) determine whether they can reach an agreement that will avoid foreclosure or whether they can reach an agreement that expedites the foreclosure in a manner acceptable to both parties. Since the inception of the program, homeowners in more than 31,000 cases have participated.

Also since 2008, the Program has been extended and expanded by legislation, but never more substantially than in 2013 with the enactment of Public Act 13-136. Specifically, a new premediation process was put into place where mediators work with homeowners to assemble and submit complete and accurate financial packages to their loan servicers for loss mitigation review. I cannot stress enough the positive effect that premediation has had on streamlining the review process for homeowners and banks alike, and I commend the Legislature for enacting these and other important changes.

In addition, Public Act 13-136 also required the Chief Court Administrator to report certain Foreclosure Mediation Program data to the Banking Committee. The second of two reports was recently submitted, and it contains important data that highlights the program's continuing importance to Connecticut residents and its overall effectiveness. The report is available to the public on the Judicial Branch's website, along with an independent evaluation of the Foreclosure Mediation Program that was commissioned by the Judicial Branch pursuant to a grant from the State Justice Institute. That evaluation concluded, among other things, that participation in the Foreclosure Mediation Program correlated with lower rates of foreclosure.

Data from both of these sources indicates that there is a compelling need for the Foreclosure Mediation Program to continue beyond July 1, 2016. Although initially established to address the surging foreclosure crisis in 2008, the need for the program has never abated. In fact, while the number of eligible homeowners placed in the program decreased between 2008 and 2011, we have seen a resurgence in the 2012 and 2013 calendar years. As such, we believe that while foreclosure cases may ebb and flow, a permanent mechanism, such as the Foreclosure Mediation Program is needed to effectively address these cases.

The program has been successful, by many measures. First, the program has been highly successful with 85% of those who completed mediation from July 1, 2008 through December 31, 2014, ending with a settlement. Mediators work diligently and fairly to make this possible. In some instances, the settlement may be home retention with a loan modification, in other instances; the settlement may be a non-home retention option, such as short sales, deeds-in-lieu of foreclosure, and stipulated timetables for judgment. While foreclosure in some cases is unavoidable, in cases that are settled by foreclosure program mediators, 69% of program

participants were able to stay in their homes. In terms of lives directly affected, this translates to approximately 15,000 families who were able to stay in their homes without being displaced by foreclosure. Aside from the obvious benefit to these families, lenders benefitted from the settlements by retaining a performing loan rather than acquiring unwanted properties. These settlements also helped our communities by not contributing further to declining home values and blight.

As important, the program enhances access to justice and ensures procedural fairness, which is crucial to the integrity of our courts. The legal structure of the foreclosure process makes it difficult for homeowners to navigate on their own. The mediators ensure that an appropriate and accurate loss mitigation review is completed in each case and that all parties understand the process, available community-based resources, and the outcome. Even when a case does not settle, the parties have a full understanding of their options and the next steps in the foreclosure process. This is particularly critical when you consider that there was at least one self-represented party in 74% of cases in the program, from its inception through December 31, 2014. For comparison purposes, 25% of all civil cases have at least one self-represented party.

I should also note that the need for the program has not abated. Thousands of parties have benefitted from the program, and we believe its continuation would provide a benefit for many more in the future.

We would be remiss if we did not mention our concern with lines 201 to 204 of HB 6752, which would eliminate the requirement that plaintiffs supply certain information to the mortgagor, while still requiring them to provide this information to the mediator. The proposed information to be eliminated includes an account history, copy of the note and mortgage, as well as other information outlined in CGS §49-311(c)(4). We believe that it is imperative that the mortgagor receive a copy of all documents that will be supplied to the mediator by the plaintiff, since they are often the subject of discussion at the mediation sessions.

In summary, the need for the Foreclosure Mediation Program still exists and we believe that the program should become permanent. To this end, the Judicial Branch submitted as part of its legislative package a bill that would also eliminate the sunset provision. The bill – House

Bill 6782, *An Act Eliminating the Sunset Date for the Foreclosure Mediation Program* - was recently raised by the Judiciary Committee and will be heard tomorrow at the Judiciary Committee's public hearing.

Given our strong belief that the program should continue, we obviously oppose House Bill 6751, which would result in its termination.

Again, thank you for the opportunity to provide testimony in support of House Bill 6752. We look forward to working with this bill's proponents, the proponents of a similar bill recently JF'd by the Housing Committee, as well as members of the Judiciary Committee, to ensure the continuity of the Foreclosure Mediation Program.