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Testimony of the Honorable Douglas C. Mintz
Banking Committee Public Hearing
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H.B. 5567, An Act Concerning Alternatives to Foreclosures

Good morning Senator Winfield, Representative Lesser and distinguished members of the Banking Committee. I am Judge Douglas Mintz, and I am pleased to appear before you today on behalf of the Judicial Branch regarding **H.B. 5567, *An Act Concerning Alternatives to Foreclosures***. The Branch has several concerns with the bill as written.

Section 2 of the bill provides for a new “judgment of loss mitigation” under which a mortgage loan may be modified without the consent of junior lienholders. It is unclear whether a motion for this new type of judgment would be filed in an existing foreclosure case, or if the bill contemplates the creation of a new type of foreclosure action to be filed after a modification is reached. We believe having the former option is more appropriate, since most modification agreements are reached through the Foreclosure Mediation Program (FMP). Furthermore, as provided in Section 5 of the bill, if a judgment of loss mitigation is not entered, the mortgagor is allowed to petition for inclusion in FMP. Since FMP is only available in mortgage foreclosure cases, if “judgment of loss mitigation cases” were a separate case type, a new case would have to be initiated before the mortgagor could enter FMP.

We would also suggest that, on line 25, the language “value increased” should be clarified, and changed to read “principal balance increased by the amount of accrued interest, fees and costs allowed by law.”

We do not take a policy position on the means by which a “judgment of loss mitigation” would eliminate the need for subsequent lienholders to subordinate to a modified mortgage loan. However, we would point out that under the bill as drafted, even with an agreement to modify the mortgage, the result would be a “judgment,” as opposed to a withdrawal of the action by agreement of the parties.

Section 3 would allow the mortgagee and the mortgagor to enter into an agreement to transfer the property “in satisfaction of the mortgagor’s obligation to the mortgagee.” It is unclear whether this transfer is intended to mean in full satisfaction of the debt, or if the mortgagee would be able to seek a deficiency judgement.

In Section 4, on line 51, we would respectfully point out that it would not be possible to determine the “fair market value” of priority liens, and would suggest that this language be changed to “the amount of any priority liens.” In line 52, while it appears it is intended that the court make a finding of the mortgagor’s debt to the mortgagee, we would request that language be added to clarify that. We would also note with regard to lines 64 to 67, that both the mortgagor and mortgagee need not submit the judgment to the town clerk for recording, because it only needs to be recorded once.

Sections 7 and 8 raise questions about the foreclosure by market sale process. Under Section 7, parties would be able to enter into a contract for foreclosure by market sale even after a foreclosure action had been filed. It is not clear if this means the mortgagee would be permitted to convert the case to a foreclosure by market sale, or if a new action would have to be filed. We are also concerned that this section may conflict with the mortgagor’s right to pursue a short sale under federal programs.

Under Section 8, it is not clear if line 174 is intended to read “a foreclosure by market sale action.”

Finally, we would request that the bill’s effective date be changed to January 1, 2017 to allow us time to comply with these changes.

Thank you for the opportunity to provide testimony on this bill. I would be happy to answer any questions that you may have.