

Memorandum

TO: Senator Osten and Representative Miller and Members of the Planning and Development Committee

FROM: Jonathan Anderson, VP and Senior Underwriting Counsel, CATIC

RE: Raised Bill 5480, An Act Concerning the Application of Liens Resulting from Unpaid Blight Fines

DATE: March 4, 2016

This is testimony in opposition to Section 1 of Raised Bill No. 5480, An Act Concerning the Application of Liens Resulting from Unpaid Blight Fines. The proposal turns the existing language in Section 7-148aa of the General Statutes into a subsection (a), and then adds a new subsection (b) that allows the unpaid penalty referred to in subsection (a) to be secured by a lien placed upon any real estate in the state "owned by the same person that owns the real estate on which the lien is placed." This language is unclear, but the new subsection (b) appears to be expanding the scope of the super-priority blight lien, now authorized by the existing Section 7-148aa but presently limited to being a lien on the blighted property, to potentially encumber any other real estate that the owner of the blighted property owns in Connecticut.

What this proposal needs is clarification. Unless it is clarified to confirm first that the lien referred to in subsection (b) is effective against the other real estate owned by the "same person" only when it is recorded in the town where the other real estate is located; and unless the language is also clarified to confirm that the lien referred to in subsection (b) will not have priority over any previously recorded interest in the real estate, CATIC will continue to oppose this proposal.

A necessary part of performing due diligence whenever someone is buying, leasing or mortgaging real property is examining the land records of the town where the real estate is located. People and businesses understand the importance of a reliable land record system in Connecticut, where, with very limited exceptions, the order of recording an instrument determines the rights of the party claiming an interest by virtue of that recorded instrument. Liens with true super-priority, that is, those having priority over any previously recorded lien or encumbrance, are generally limited to tax liens and to liens for the recovery of public expenditures. The liens of this nature are also always limited to specific property on which the

taxes have been assessed or on which the expenditures have been made or may be made in the future.

The existing Section 7-148aa reflects the public policy in securing the interest of the municipality with a super-priority lien that can exist from the date the penalty is imposed; but the lien under the existing statute is clearly limited to being a lien on the blighted property.

Extending this super-priority lien to any other real estate in Connecticut owned by the title holder of the blighted property will cause extensive damage to the reliability of the land records and place the risk of loss on those who have prior interests in, or who may be interested in placing a mortgage on or obtaining another interest in, this other land.

For example, a lien such as the one presently authorized by Section 7-148aa that can take precedence over all other liens and encumbrances except taxes can jump ahead of a previously recorded mortgage. While there is already some risk to a previously recorded mortgage under the existing Section 7-148aa, a lender with a mortgage on any given property has the capacity to monitor the condition of the mortgaged property and may even be able to prevent or remediate property in danger of violating a blight ordinance. Expecting the holder of a mortgage on a well-maintained building in West Hartford to monitor the condition of other property the mortgagor owns in *any other town in Connecticut* is unreasonable and unrealistic. Yet, this proposal, absent the clarification referred to earlier, could be interpreted to allow such a lien to jump over mortgages recorded previously in other towns so long as the owner of the blighted property owned real estate in any of those other towns.

Apart from affecting previously recorded interests, the lien proposed in Section 1 of Raised Bill 5480 also impairs the reliability of the land records for future or pending transactions. While an attorney performing due diligence for the mortgaging of property in a town where the blighted property is located can inquire with that municipality about any possible enforcement actions or violations involving a subject parcel, it is unreasonable and unrealistic to expect an attorney to check all of the towns in Connecticut where that seller or mortgagor might own an interest in blighted property.

For all of the reasons stated in this testimony, CATIC opposes the proposed Section 1 of Raised Bill 5480 in its present form.

Respectfully Submitted,



Jonathan Anderson
Vice President and Senior Underwriting Counsel
CATIC