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Testimony of the Honorable Douglas C. Mintz
Banking Committee Public Hearing
February 25, 2016

S.B. 170, An Act Concerning the Foreclosure Mediation Program

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 **S.B. 170,** ***An Act Concerning the Foreclosure Mediation Program***. The Judicial Branch has several concerns with this bill.

The Branch opposes Section 1 of the bill. Currently, lenders are required to provide homeowners in foreclosure actions notice of the right to apply for protection from foreclosure under sections 49-31d to 49-31i, which apply to unemployed and underemployed homeowners. Many homeowners are self-represented parties, and they should continue to receive notice of these provisions.

We are unclear of the intent of Section 2 of the bill. As written, the bill requires the marshal to eject a person in possession of a foreclosed property within five business days after service of an execution of ejectment, rather than allowing the homeowner five days before they could be ejected. Similarly, we were uncertain whether lines 51 to 52 should be changed to, "At least four business days before giving notice…".

Section 3 of the bill would require the mortgagee to file an affidavit of foreclosure by market sale prior to a hearing on a motion for judgment of foreclosure by market sale. The Branch would like to clarify that affidavits of foreclosure by market sale are only filed in cases that do ***not*** proceed by foreclosure by market sale. In other words,

this document is filed in cases of strict foreclosure and foreclosure by sale. As such, we would respectfully suggest the following alternative language for lines 86 to 88: "… provided that the mortgagee files an affidavit with the court before any motion for judgment of strict foreclosure or foreclosure by sale is heard."

The Branch opposes Section 4 of the bill. There is no requirement under statute, court rule or other applicable law to file an affidavit of loss mitigation as referenced on lines 110 to 111. The filing of the federal loss mitigation affidavit (FLMA) is required by standing order of the court to ensure compliance with federal guidelines and rules. The court should be able to ensure such compliance as a condition to the action moving forward. This affidavit provides important information to the mediator. As such, we also oppose the provision on line 156 in Section 5 eliminating the requirement that the mortgagee must provide the loss mitigation affidavit in the premediation package

The Branch supports the language in Section 5 that would give the mediator the ability to determine which mortgagors need to be present at premediation meetings and mediation sessions. However, we would respectfully suggest that the language on lines 180 to 184, which begins "provided the mortgagor shows cause for nonattendance" be changed to "if the mediator finds cause that the presence of such mortgagor is not required. Such cause may include, but is not limited to, the mortgagor no longer owning the home pursuant to a judgment of marital dissolution." We suggest that the same change be made on lines 231 to 235.

Finally, in Section 6 of the bill, changes are made to sections 49-31n(b)(2), for cases with return dates between July 1, 2008 and June 30, 2009. Comparable changes should also be made to section 49-31n(c)(2), which deals with cases with return dates on or after July 1, 2009. We also suggest that the language on lines 268 to 271 be changed to read "…if the mediator finds cause that the presence of such mortgagor is not required. Such cause may include, but is not limited to, the mortgagor no longer owning the home pursuant to a judgment of marital dissolution."

Thank you for the opportunity to testify on this bill.