



CONNECTICUT BANKERS ASSOCIATION

February 27, 2019

To: Members of the Insurance and Real Estate Committee

From: Connecticut Bankers Association
Contacts: Tom Mongellow (860-677-5060), Fritz Conway (860-229-0301)

Re: Senate Bill 320, An Act Concerning Real Estate Closings And Attorneys And Law Firms Preferred By Mortgage Lenders

Position: Oppose

Existing Connecticut law already requires mortgage lenders to give consumer-borrowers a disclosure stating that they have legal interests that differ from the lender's - *and that the borrower is not required to be represented by the lender's attorney*. This bill would go beyond that existing requirement and prohibit a lender from "inducing or requiring" the borrower to use a preferred attorney. If enacted, *this new provision would frustrate a lender's compliance with federal laws that are designed to control costs for consumers and lenders*. Allow us to explain.

Under the TILA-RESPA Integrated Disclosure Rule (or "TRID"), lenders are required to provide mortgage applicants with a "good faith estimate" of the closing costs, *including the legal costs associated with the representation of the lender and the legal costs associated with the representation of the borrower*. In this context, TRID also requires lenders to provide a "written list of service providers". If a lender does not include the name of one or more available attorneys on that list, the lender could be responsible for the entire cost of the attorneys involved in the transaction. On the other hand, if the lender includes the names of one or more available attorneys on that list, and the borrower selects one of those attorney, the lender would only be responsible for the cost of the attorney to the extent that if the *actual cost* exceeds the *estimated cost* by a certain percentage (when bundled together with certain other costs). *Borrowers are not required to choose an attorney named on the list*, but if they do so, they can be assured that the actual costs will not exceed the estimated costs by the specified tolerance. If they select an attorney not on that list, they are responsible for the entire cost, regardless of the estimate. We are concerned that S.B. 320 will prevent lenders from using the written list to control costs (because the list might be construed as an "inducement" to use a "preferred" attorney).

In addition, we are also concerned that Section 1 of the Bill *might be construed as preventing a lender from preparing its own real estate documents (such as a mortgage or release) without the assistance of a licensed attorney*. This would be bad public policy. To control costs (for both the borrower and the lender), lenders often prepare their own documents, particularly in subordinate lien transactions (such as with HELOC's).

For the above reasons, we respectfully oppose S.B. 320.