OLR Bill Analysis
SB 320

AN ACT CONCERNING REAL ESTATE CLOSINGS AND ATTORNEYS AND LAW FIRMS PREFERRED BY MORTGAGE LENDERS.

SUMMARY

This bill:

1. requires anyone representing the legal interests of a party in a real estate transaction closing to be a Connecticut-admitted attorney in good standing, and

2. prohibits a mortgage lender from inducing or requiring a prospective mortgagor (i.e., borrower) to use an attorney or law firm the lender prefers (e.g., preferred attorney lists).

EFFECTIVE DATE: October 1, 2019

REAL ESTATE CLOSINGS

Under the bill, regardless of any other state law, a person who represents the legal interests of a buyer, seller, mortgagor, mortgagee, or any other party in a real estate transaction closing must be an attorney admitted in Connecticut. The attorney cannot be disqualified from practicing law due to resignation, disbarment, being placed on inactive status, or suspended. (Presumably, the bill does not prevent an individual from representing him or herself.)

(Existing law requires an attorney’s participation in certain real estate transactions, see BACKGROUND.)

Under the bill a “real estate transaction” is any transaction affecting the title to, or interest in, real property in Connecticut, including a mortgage refinance transaction. The bill specifically applies to both in-person and electronic closings.
The bill makes a violation of this provision the unauthorized practice of law. Under existing law, the unauthorized practice of law is generally a (1) Class D felony or (2) if the person is admitted in another jurisdiction, a Class C misdemeanor. (By law, a Class C misdemeanor is punishable by up to three months imprisonment, up to a $500 fine, or both; a Class D felony is punishable by up to five years imprisonment, a fine of up to $5,000, or both.)

Under the Connecticut Practice Book, giving advice or representing the interest of any person in a real estate transaction constitutes the practice of law (Connecticut Practice Book §§ 2-44(a)(3) & (5), see BACKGROUND).

PREFERRED ATTORNEY LISTS

The bill prohibits mortgage lenders from including in any document they provide to a prospective mortgagor a provision that induces or requires the person to use an attorney or law firm the lender prefers to represent him or her in the mortgage loan transaction. Under the bill, a mortgage lender is anyone engaged in the business of making mortgage loans in their own name and using their own funds, or by funding loans through a warehouse, table funding, or other agreement.

BACKGROUND

Attorney Participation in Real Estate Transactions

Existing law requires almost all closings involving title insurance to involve an attorney, because a title insurance agent must be a practicing attorney unless he or she held a valid title insurance license on or before June 12, 1984 (CGS § 38a-402(13)).

Practice of Law

Under the Connecticut Practice Book, drafting legal documents involving the rights of a person and giving advice or counsel to any person in a real estate transaction both constitute the practice of law (Connecticut Practice Book §§ 2-44(a)(3) & (5)).

COMMITTEE ACTION

Insurance and Real Estate Committee
Joint Favorable
Yea 20 Nay 0 (03/14/2019)