

# Banking Committee JOINT FAVORABLE REPORT

**Bill No.:** HB-6369

AN ACT CONCERNING ISSUES RELATING TO MORTGAGES AND

**Title:** MECHANIC'S LIENS.

**Vote Date:** 2/23/2021

**Vote Action:** JOINT FAVORABLE Substitute

**PH Date:** 2/9/2021

**File No.:** 70

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## **SPONSORS OF BILL:**

Banking Committee

## **REASONS FOR BILL:**

There was a need to simplify and make more transparent the process of mortgage releases and to allow property owners to substitute bonds in place of mechanic's liens without a lengthy and sometimes expensive court process.

JFS language is basically some clarifying language requested by Judicial Dept re: the procedure for mechanic's liens. Passed on consent

## **RESPONSE FROM ADMINISTRATION/AGENCY:**

**Judicial Branch – External Affairs Division** – "This bill results in a change to existing processes surrounding mechanic's liens and creates confusion as drafted. Currently, a party seeking to dissolve a mechanic's lien upon substitution of bond must file an action in Superior Court, and if the lien is ordered dissolved upon substitution, the clerk holds the bond. Under the proposed bill, the cause of action in Superior Court is removed (lines 26-27) and an owner or interested party instead lodges the bond with the town clerk who records it on the land records. Although the bill eliminates the cause of action, it appears to retain the procedures that would have been applied to these actions (line 58 et seq.). Clarification on this new process would be helpful." **These are the changes we made in the JFS language**

## **NATURE AND SOURCES OF SUPPORT:**

**Bruce Adams, President & CEO – Credit Union League of Connecticut** – Support the section that simplifies the process for allowing property owners to substitute bonds for mechanic's liens without judicial intervention – do have some concerns that mandating a mortgagee to deliver the mortgage release to the town clerk and a certified copy of such release to the mortgagor may create unintended costs for filing and for certification of mailing releases.

**ABC Buildings and Contractors** – "It was never the intention of our mechanic's lien laws to prevent the free transfer of real property". Statute allows persons interested in improved property to substitute a surety bond for a mechanic's lien but the process is cumbersome and time consuming. This bill takes the lengthy court process out of the mix and is fair and necessary. This is consistent with laws in neighboring states. They also support that this bill solves a problem that exists with respect to making attorney fees recoverable by making clear that, when a bond is substituted for a mechanic's lien, the penal sum of the bond must cover the principal amount of the mechanic's lien, plus interest, attorneys' fees and costs.

## **NATURE AND SOURCES OF OPPOSITION:**

**Connecticut Bankers Association - Tom Mongellow, Art Corey, Fritz Conway** Concerns about Section 1 of this bill - The language does not say that the delivery to the town clerk would be for recording, but we assume that is the intent. Requiring a mortgagee to record a mortgage release and to send a certified copy of the release to the mortgagor will result in significant operational changes for banks and increase mortgage lending costs by requiring banks to incur recording fees and fees for obtaining certified copies. **Opposed** to Section 2 of this bill – "Mandating forms of payment a mortgage servicer must accept restricts a bank's ability to adapt their mortgage loan payoff process to changing business and risk factors. Fraud against financial institutions, including mortgage payoffs, is on the rise. Banks need flexibility in the methods they choose to combat ever changing types of fraud, by allowing them to choose the most secure forms of payment, consistent with their operational systems and requirements. Banks also need the flexibility to respond to rapidly evolving payment methods"

**Matt Gunter – RCN Capital** - RCN Capital is opposed to Section 1 (only) of HB 6369. "With respect to delivery of the mortgage release. While it is commonplace to deliver mortgage releases directly to the town clerk for recording, it is also relatively common for closing attorneys/title companies and/or the mortgagors to request the mortgage releases to be prepared prior to the transaction that pays off the mortgage note such that the attorney/title company/mortgagor may hold such release in escrow and record it themselves after closing the transaction. This section of the Bill would prohibit the mortgagee from complying with such a request. While it appears that clarification language is necessary to add to the existing text of Section 49-8(a), it should not require delivery directly to the town clerk when a request is made by the mortgagor or a title company to hold that mortgage release in escrow to later record themselves. Suggested replacement language is thus: "The mortgagee or a person authorized by law to release the mortgage shall, unless requested in writing by the mortgagor, his attorney, or other lawful representative to provide a release to the mortgagor, his attorney, or other lawful representative, execute and deliver, or cause to be delivered, to

the town clerk a release..." With respect to certified copies of the mortgage release. Obtaining certified copies of a release are not necessary since such a copy would have no impact on the validity or existence of the recording itself. Moreover, it would be just as easy, if not easier, for the mortgagor to make such a request to the town clerk themselves. To the extent anything should be provided by the mortgagor, a non-certified copy would suffice. It is RCN's view that the mortgagee should not have any obligation to provide a copy of the release as it would only be superfluous. To the extent a copy should be made available, it should be limited to "upon the written request of the mortgagor". It is worth noting that the existence of this section of the Bill is indicative of our serious need in Connecticut of a requirement for all town clerks to provide viewable, non-certified images of recorded documents on-line, free of charge. RCN Capital encourages the members of this Committee and the General Assembly at large to reject this section of the Bill, in this legislative session, or to amend its language consistent with the recommendations above."

**Houston Putnam Lowry – Attorney –** opposed with opinions

"First, this bill requires the releasing party to deliver a mortgage release to the town clerk (presumably instead of the mortgagee). This implies the releasing party pay the recording fee. Lenders will tend to escrow this fee for the life of the loan (unless they absorb it as part of the transaction). I am not aware of this being a problem. If a mortgage release is delivered to a borrower, the borrower can easily record the mortgage release. This bill requires the releasing party to deliver a "certified" copy of the mortgage release to the borrower. Who is to certify this copy? A certification requirement makes no sense in this context". As far as requiring a mortgagee to accept certain kinds of payment, he has no position except to say he was not aware this was a problem. The section allowing the substitution of a bond for the mechanic's lien should specify a commercial surety bond.

**Reported by: Dawn Marzik**

**Date: 3/24/2021**