

Legislative History for Connecticut Act

HB 5085 PA 359 1991

House 10009-10014 (6)

Senate 3364, 3464-3466 (4)

Judiciary 973, 1016-1048, 1161, 1193-1195
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CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1991

VOL. 34
PART 26
9700-10093

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House of Representatives

Tuesday, June 4, 1991

Necessary for passage	74
Those voting yea	147
Those voting nay	0
Those absent and not voting	4

DEPUTY SPEAKER POLINSKY:

The bill as amended is passed.

REP. FRANKEL: (121st)

Madam Speaker.

DEPUTY SPEAKER POLINSKY:

Representative Frankel.

REP. FRANKEL: (121st)

Madam Speaker, at this time I would move for the transmittal of all items of business previously acted upon which require further action by the Senate.

DEPUTY SPEAKER POLINSKY:

Motion is to send all items that need further action in the Senate up to the Senate. Is there objection? Without objection, so ordered.

The Clerk please return to the Call of the Calendar.

CLERK:

Page 3, Calendar 567, Substitute for House Bill Number 5085, AN ACT CONCERNING FORECLOSURE. Favorable Report of the Committee on Judiciary.

REP. MINTZ: (140th)

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Madam Speaker.

DEPUTY SPEAKER POLINSKY:

Representative Mintz.

REP. MINTZ: (140th)

Thank you, Madam Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

DEPUTY SPEAKER POLINSKY:

The question is on acceptance and passage. Will you remark?

REP. MINTZ: (140th)

Thank you, Mr. Speaker. I'll yield at this point to Representative Moukawsher.

DEPUTY SPEAKER POLINSKY:

Representative Moukawsher, do you accept the yield?

REP. MOUKAWSHER: (40th)

Yes, Madam Speaker, thank you. Would the Journal please note that I am absenting myself from the Chamber for a possible conflict of interest.

DEPUTY SPEAKER POLINSKY:

The Journal shall note.

REP. MOUKAWSHER: (40th)

Thank you.

DEPUTY SPEAKER POLINSKY:

Representative Mintz, you still have the floor.

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REP. MINTZ: (140th)

Thank you, Mr. Speaker. The Clerk has an amendment, LCO7836. I ask that he call and I be allowed to summarize.

DEPUTY SPEAKER POLINSKY:

Will the Clerk please call LCO Number 7836 which shall be designate House Amendment "A".

CLERK:

LCO Number 7836 designated House Amendment Schedule "A" offered by Representative Mintz.

DEPUTY SPEAKER POLINSKY:

The gentleman has asked leave to summarize. Without objection, please proceed, Representative Mintz.

REP. MINTZ: (140th)

Thank you, Madam Speaker. This bill corrects two mistakes that were made in a previous bill that we have approved unanimously. It was Substitute House Bill 5095. It changes back to the original law the propriety the condominium common charges would have from 12 months to 6 months and takes out the word court in referring to the association court costs.

I move adoption.

DEPUTY SPEAKER POLINSKY:

The question is on adoption of House "A". Will you

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remark? Will you remark further? Will you remark further on this amendment? If not, let us try your minds. All those in favor, please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER POLINSKY:

Opposed, nay. The ayes have it. The amendment is adopted.

House Amendment Schedule "A".

Strike out everything after the enacting clause and insert the following in lieu thereof:

"Section 1. Subsectin (b) of section 47-258 of the general statutes, as amended by section 15 of substitute house bill 5095 of the current session, is repealed and the following is substituted in lieu thereof:

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (1) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to, (2) a first or second security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, a first or second security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and (3) liens for real property taxes and other governmental assessments or charges against the unit or cooperative. The lien is also prior to all security interests described in subdivision (2) of this subsection to the extent of (A) an amount equal to the common expense assessments based on the periodic budget adopted by the association pursuant to subsection (a) of sectin 47-257

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which would have become due in the absence of acceleration during the [twelve] SIX months immediately preceding institution of an action to enforce either the association's lien or a security interest described in subdivision (2) of this subsection and (B) the association's [court] costs and attorney's fees in enforcing its lien. A lien for any assessment or fine specified in subsection (a) of this section shall have the priority provided for in this subsection in an amount not to exceed the amount specified in subparagraph (A) of this subsection. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

Sec. 2. This act shall take effect from its passage."

DEPUTY SPEAKER POLINSKY:

Will you remark further on this bill as amended?
Will you remark further? If not, will all members please take their seats. Staff and guests to the well of the House. The machine will be opened.

CLERK:

The House of Representatives is taking a roll call vote. Members to the Chamber. The House is voting by roll call. Members to the Chamber, please.

DEPUTY SPEAKER POLINSKY:

Have all members voted? Have all members voted and is your vote properly recorded? If all members have voted, the machine will be locked and the Clerk will take a tally. The Clerk will announce the tally.

CLERK:

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House Bill 5085 as amended by House Amendment
Schedule "A".

Total number voting	145
Necessary for passage	73
Those voting yea	145
Those voting nay	0
Those absent and not voting	6

DEPUTY SPEAKER POLINSKY:

The bill as amended is passed. The Clerk please
return to the Call of the Calendar.

CLERK:

Page 11, Calendar 577, Substitute for House Bill
Number 7367, AN ACT CONCERNING VEHICLES WRONGFULLY
PARKED OR ABANDONED ON PRIVATE PROPERTY, THE PARKING OF
ARMORED CARS AND THE TOWING OF VESSELS. Favorable
Report of the Committee on Transportation.

DEPUTY SPEAKER POLINSKY:

Representative Tulisano.

REP. TULISANO: (29th)

Madam Speaker, I move for acceptance of the Joint
Committee's Favorable Report and passage of the bill.

DEPUTY SPEAKER POLINSKY:

The question is on acceptance and passage.

REP. TULISANO: (29th)

Yes, Madam Speaker. The Clerk has an amendment,

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VOL. 34

PART 10

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Substitute HB5441, I move to the Consent Calendar.

THE CHAIR:

Is there any objection in moving Calendar 643, Substitute HB5441 to the Consent Calendar? Any objection? Hearing none, so ordered.

SENATOR O'LEARY:

I have reached items that are unstarred. I would ask for suspension of the rules to consider these items on Page 8.

THE CHAIR:

Is there any objection in considering the items that are not starred on Page 8? Any objection to Senator O'Leary's motion? If not, so ordered.

SENATOR O'LEARY:

Calendar 644, Substitute HB7367, Calendar 645, Substitute HB6620 and Calendar 646, Substitute HB5085 I move to the Consent Calendar.

THE CHAIR:

Is there any objection in placing Senate Calendar 644, Substitute HB7367, Calendar 645, Substitute HB6620 and Calendar 646, Substitute HB5085 to the Consent Calendar? Is there any objection to any one or all of those items being placed on the Consent Calendar? Any objection? Hearing none, so ordered.

SENATOR O'LEARY:

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THE CLERK:

Madam President, First Consent Calendar begins on
Calendar Page 2, Calendar #583, HB6716.

Calendar Page 3, Calendar #601, Substitute HB5682,
Calendar #619, Substitute HB7340.

Calendar Page 4, Calendar #621, Substitute HB7353,
Calendar #624, Substitute HB7100.

Calendar Page 5, Calendar #625, Substitute HB6999,
Calendar #626, Substitute HB7239, Calendar #632,
Substitute HB5624.

Calendar Page 6, Calendar #634, Substitute HB6022,
Calendar #638, Substitute HB7298.

Calendar Page 7, Calendar #639, Substitute HB7083,
Calendar #643, Substitute HB5441.

Calendar Page 8, Calendar #644, Substitute HB7367,
Calendar #645, Substitute HB6620, Calendar #646,
Substitute HB5085.

Calendar Page 9, Calendar #439, SB596.

Calendar Page 10, Calendar #463, Substitute HB6914,
Calendar #498, HB7335, Calendar #544, Substitute
HB6224, Calendar #551, Substitute HB5600.

Calendar Page 17, Calendar #596, Substitute HB5081.

Madam President, that completes the First Consent
Calendar.

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Thank you very much, Mr. Clerk.

SENATOR MUNSTER:

Madam President.

THE CHAIR:

Senator Munster.

SENATOR MUNSTER:

Yes, Madam President, may I ask that Calendar #645 and #626 be pulled from the Consent Calendar?

THE CHAIR:

Say those again slowly.

SENATOR MUNSTER:

#645 and #626.

THE CHAIR:

#645 on Page 8 and #626 on Page 5?

SENATOR MUNSTER:

Yes.

THE CHAIR:

Mr. Clerk.

SENATOR MUNSTER:

Thank you.

THE CHAIR:

Did you know that?

Thank you very much. You have heard the items that have been placed on the Consent Calendar #1 for June 5, 1991 with the exception of items #626 and #645. The

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machine is on. You may cast your vote.

Senator Barrows, Senator Larson.

Senator Barrows.

Have all the Senators voted that wish to vote on the Consent Calendar? Have all the Senators voted that wish to vote on the Consent Calendar?

Thank you very much. The machine is closed.

The result of the vote.

35 Yea

0 Nay

1 Absent

The Consent Calendar is adopted.

Senator Larson.

SENATOR LARSON:

Madam President, I rise on a Point of Personal Privilege and would like to call your attention to the back of the Circle and introduce our distinguished Representative Joe Courtney, his lovely wife, Audrey and their son Robert who are here and please rise and give our traditional warm welcome to them.

As you can see, Madam President, Robert is a handsome kid. He looks an awful lot like his mother. Thank you, Madam President.

THE CHAIR:

Thank you very much, Senator Larson.

JOINT
STANDING
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PART 4
961-1299PP

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SB282, AN ACT CONCERNING TREATMENT OF SEXUAL OFFENDERS. The Judicial Department supports this bill, although it does have a substantial impact on the operations of adult probation. Basically, this bill would require the director of adult probation to establish an in-service sexual offender supervision training program for probation officers who supervise sexual offenders to attend.

We estimate that would cost approximately \$10,000 to establish this training program. In addition, this bill will require additional presentence investigation reports to be conducted by the adult probation officers, thereby again requiring additional staff.

Also the bill requires that the PSIs include clinical evaluations of such defendants. Last year, there were 365 individuals convicted of the sexual offenses listed in the statute. This would require a cost to the Department of \$87,000 to have these evaluations conducted at a cost of approximately \$250 per evaluation.

REP. TULISANO: (Inaudible)

FAITH MANDELL: And usually, they can't afford it. Anyway, we just ask, we do support it, but do ask that this is favorable considered that it be referred to the Appropriations Committee for further action.

The next bill, HB5085, AN ACT CONCERNING FORECLOSURES. I just, rather than going through my written testimony, just want to refer to it by indicating that the chief administrative judge of the civil division has raised several issues that he would ask the Committee to consider when deliberating this bill.

HB5085, the chief administrative judge, when I sent it to him, had raised some issues. For example, whether one of the sections should be amended to clarify that the court may move for foreclosure for sale if either of the parties do not. So I've listed it in my testimony some issues that we would ask you just to consider. Okay?

KATHRYN MURPHY: Senator Avallone, members of the Committee, good afternoon my name is Kathryn Murphy, I'm a Lawyer in the Legal Department at Connecticut National Bank assigned to the Real Estate Business Line, and I'm grateful for this opportunity to present views on behalf of CNB with respect to Committee Bill HB5085, an act concerning foreclosure. With me is Richard Messier, Senior Vice President of Shawmut Mortgage Company.

On my far left is Steven Basch of Conin and Burnbaum representing the Bank of Boston, Connecticut, on my immediate left. As you are well aware, both lenders and buyers in this State are facing difficult times. Banks have had more experience with the Connecticut Mortgage foreclosure act in recent months than they have ever wanted. And lenders have found the foreclosure process to be a slow, expensive, and frustrating one.

Committee Bill HB5085 contains several provisions, which, if enacted, will help lenders to realize on their collateral more expeditiously with less cost, by clarifying and simplifying certain existing procedures and providing additional guidance for judicial action. Specifically, we are generally in favor of Sections 6, 7, 8, 9, 10, 11, and 12 of the Act. However, some of the sections proposed in the Act will operate to further delay the acquisition of Title to and possession of collateral by lenders and add even more cost to the process.

Specifically, we feel that Section 1E and 1F and Section 3 of the Act, are not necessary to protect borrowers and will add significant delays in cost to the process of acquiring Title 2 and liquidating collateral. This will slow the recovery of the Banking Industry in the State, and will ultimately cost consumers and businesses more in the future. Contrary to many perceptions, banks are really not anxious to foreclose on collateral, so long as there exist reasonable options for repayment and a willing borrower.

Shawmut Mortgage Company has in fact set up a counseling procedure to help borrowers work out delinquencies, or sell their property in an orderly fashion. However, in cases where no reasonable options exist for repayment, banks must collect the loan. Once the decision to foreclose is made, it is important to acquire Title 2 and possession of the collateral quickly in order to preserve the value of the collateral in order to deter non performing assets into cash in order to get back into the business of lending money, and in order to keep costs for everybody as low as possible.

SEN. AVALLONE: Does, let me ask you a question, does this Bill not have Sections in it that would both would suggest to the bank strongly, that its workout plans be more expeditious and perhaps fairer so that we move the process along a lot quicker than by the bank using the powers that it has and the position that it has?

KATHRYN MURPHY: I'm not sure I understand your question, Senator. There is a provision

SEN. AVALLONE: My question is that, that, a lot of the things that you talk about are the result of problems within the Banking Industry itself, and now we are talking about creating a process that will get the collateral back quicker, and liquidate it quicker, and do a lot of things that are certainly in the interest of the Banking Industry.

But maybe there are sections of this Bill that will allow that procedure to go along but still protect the homeowner. And maybe in workout situations, make the Bank a little less official in trying to work out problems. Wonderful to set up a counseling center, and it's wonderful to talk about talk with the borrower.

KATHRYN MURPHY: Well in fact Senator, the Bank, Shawmut Mortgage Company is now in a, in a formal, but obviously not statutorily imposed procedure working with borrowers in a process that helps them restructure their loans and puts people on payment schedules that allows them to make up delinquencies. We are in fact forebearing from collections and in many cases, as Mr. Messier can

confirm, are granting periods of forbearance to borrowers who need that time to put their lives back together again and get back on track.

SEN. AVALLONE: I'm sure that's the motivation of the Bank. I'm sure that's the absolute policy of the Bank, to go right out there and make sure that those borrowers are protected and things are working right for you. You're getting me a little upset Counselor. Go ahead.

KATHRYN MURPHY: I'm sorry Senator, but, in fact, we, we do not want to foreclose on property.

SEN. AVALLONE: I didn't say that you did, but your comments are a little bit self serving.

KATHRYN MURPHY: We agree, I agree with you that banks in the current market can not afford to have non performing assets on their books for long periods of time.

SEN. AVALLONE: But the problem is that they got there as a result of some of the problems in the Banking Institution, and I don't hear that, Counselor. All I hear is, is and forgive me if I'm a little upset because a lot of my constituents are upset, and I don't appreciate quite frankly, that the self serving statements that counseling has been set up and we are not in the Real Estate Business, and we don't want to own property, that's correct, that's absolutely correct.

And if we had all worked better, under the rules, we wouldn't be in this position. And all I'm hearing is, let's make it, you know, we want to do these things. And then when you put something in a law that would tend to protect the owner of the equity, if there is any, we hear that slows the process up. And, liquidate the asset, and get the bank back into the lending business, a little balance into this process.

KATHRYN MURPHY: Well, I am not going to say that the Banking Industry has been blameless, but we are all faced with economic conditions here that I don't think anyone anticipated. And certainly in the case of the Mortgage, the Residential Mortgage

situation, I would say that underwriting issues are not the problem, the general economy is in fact, in fact, the problem.

We have requirements, most of the capital that our bank uses to make Residential Mortgage Loans, comes from secondary mortgage market investors, Fannie Mae, Freddy Mack, Ginny Mae and private investors. Those investors have requirements that we, as originating mortgage bankers, have to comply with.

Those requirements currently would not permit the two and three year delays that this statute, or that this Act is recommending. That could cause capital provided by this secondary mortgage market investors to dry up in the State.

SEN. AVALLONE: Yeah, maybe it would, maybe it would get banks in the State to go back to the way their capital was allocated to do more residential closing, instead of some of the commercial stuff, that got us all into a lot of trouble. So the argument that the money is outside, and so we have to go along with what other people say doesn't wash anymore Counselor.

That maybe if we got back to some principles in Banking, and said that more of that capital was going to be allocated right here in this State for residential mortgages, that maybe we would be a little bit better off than an argument that, oh, we're all gonna set up our mortgage company.

And we're all gonna take the points, and we're all gonna take the service fees, and we're gonna go out of state and let investors out of state make money off Connecticut borrowers, and we're gonna take some of that other capital that we used to spend in this area, we're gonna do this on more riskier ventures where we get a lot of points and we can make a lot more money in a hot market.

KATHRYN MURPHY: Senator, I don't, I don't disagree that there have been in fact problems in the Commercial Market. I am here today on behalf of The National Banking Association not a thrift. Our, our primary businesses is really not residential loans, it is to loan money to

businesses. We do have a Mortgage Company that is a very large, originator of Mortgage loans throughout New England.

SEN. AVALLONE: Right, it's an originator, it is an originator.

KATHRYN MURPHY: The banks

SEN. AVALLONE: It makes its money off of points and services and than selling those loans. Is that right?

KATHRYN MURPHY: We invest in a percentage of those loans, but we do not retain investments in all of them.

SEN. AVALLONE: That's right.

KATHRYN MURPHY: We would like to reduce the number of foreclosures. However, adding delays and costs to the burdensome process, will further negatively impact the State Banking System, and ultimately add to the cost of financing for consumers and for businesses. I appreciate this opportunity to share our views. I will turn the microphone over to Mr. Basch, and than Mr. Basch and Mr. Messier and I would be glad to answer any additional questions.

STEVEN BASCH: Good afternoon Senator Avallone, and other members of the Judiciary Committee. My name is Steven Basch, from Cronin and Burnham and I'm here commenting on Committee Bill HB5085 on behalf of Bank of Boston Connecticut, Connecticut Bankers Association and Connecticut National Bank, and I appreciate the opportunity of addressing you this morning, this is afternoon now.

I'm sure as, Senator Avallone's comments indicate, you've all heard horror stories about a residential foreclosures and I just wanted to spend my time in my oral presentation going through some of the horrors that, that banks have encountered in commercial settings when the intend to foreclose, and I'll do that by way of a hypothetical which is based on an amalgamation of cases, but is not entirely an unrealistic.

Let's say in 1987 (inaudible) Mr. Developer borrows ten million dollars from the Bank of Connecticut to purchase an existing office building and to construct additional office building right next door. He owns some other property in the State, and the Bank obtains a blanket mortgage on all of the property owned by the developer. The developer receives five hundred thousand dollars in rental income per year from the existing buildings.

In 1988, the developer starts building the second building. In 1989, the economy has started to sour a little bit, and Mr. Developer has some financial trouble, has a hard time getting new tenants for the proposed new building and some of his tenants in the existing building are defaulting on their rent or leaving and not renewing their leases. There is an actual event of default in September of 1989 and the bank, and Mr. Developer engage in workout discussions.

Unfortunately, those workout discussions are not successful, and in early 1990, the Bank institutes a foreclosure action. The, the developer in belief that he can stretch things out a little bit, that the value of the property will go up, rents will increase, and there will be no deficiency, the developer files a special defenses and counter claims alleging various theories of when the liability ranging from breach of fiduciary duty, negligence, cuts by misrepresentation.

And let's just assume for the purposes of this hypothetical, that these claims are without merit. The bank facing these defenses attempts to strike those defenses based on legal grounds, in the process, the court loses the file, which is not an unrealistic assumption, the court finds the files and hears the motion to strike, and denies the motion. The bank begins discovery because there are serious claims being made against it.

The banks takes depositions of Mr. Developer. Mr. Developer requests numerous documents, all of the banks files concerning loan, all of this takes a lot of time, attorney fees on both sides as well as court time. At the same time, there are four mechanics (inaudible) on the property who commence

their own foreclosures, because they faced with a one year deadline for foreclosing their mechanics (inaudible).

The bank thereafter, September 1990, which is probably is by that point, moves for some rejudgment on the special defenses and counter claims. The bank, the court denies those motions claiming that there are issues of

SEN. AVALLONE: If this hypothetical is any longer, you're gonna loose everybody on this Committee.

STEVEN BASCH: Okay. I'm almost done.

SEN. AVALLONE: Thank you.

STEVEN BASCH: Your impatience may reflect some of the impatience

SEN. AVALLONE: I'm trying to get out what's going on, and you're giving me a hypothetical, we have some non-lawyers here that, finish your hypothetical

STEVEN BASCH: I agree it's a long and tortured hypothetical, but, it basically is

SEN. AVALLONE: Long as tortured hypotheticals don't get us anywhere

STEVEN BASCH: Okay

SEN. AVALLONE: That's my problem

STEVEN BASCH: Okay

SEN. AVALLONE: Go ahead

STEVEN BASCH: All of this time, attorneys fees on both sides accruing, court time is being taken up and in the end, the bank is eventually going to get title, the value of the property has gone down, the bank has had to reserve significant funds for the bad losses and its unable to get the asset back in order to liquidate it and to get some capital back into the bank to make additional loans.

The provisions, Section 6 through 12, of Committee Bill HB5085 are addressed at removing some of those obstacles. And I've submitted written remarks, which I believe address more of the substance of the Bill, and I would be happy to answer questions.

REP. MINTZ: Do you want questions now or do you want to let

KATHRYN MURPHY: Mr. Messier is not going to testify, except he's here because he is an expert in residential mortgage operation at our bank, and we are opened to questions.

REP. MINTZ: On the limitation of defenses, what about a defense, you want to get rid of waiver accord dissatisfaction those defenses, right? So only full satisfaction is defense?

STEVEN BASCH: Oh, I think that waiver and accord and satisfaction would still be appropriate defenses, that is not the intent.

REP. MINTZ: Okay, so we would have to fix the language on that. What about, situation where the mortgagor claims that he's made a payment?

STEVEN BASCH: Well, that, that either will go to a claim that hasn't been a default in the loan, or if it's a payment that's made after default who would go to what the amount of the debt is at the time of judgment.

REP. MINTZ: What about a situation where, foreclosures are equitable actions right?

STEVEN BASCH: Yes they are.

REP. MINTZ: And, what about a situation where a mortgage is foreclosed at in an enormous loss of mortgagor because of some trivial mistake that could have been corrected by a payment was made a day late? That would no longer, they couldn't raise that in a

STEVEN BASCH: Well, I think that, that again goes to whether they're in actual default. And, if a payment was a day late, and that was raised in the

pleadings, I'm sure that that is a defense that would be allowed since it does go to the question of whether there's actually been a default. And as you say, it's, foreclosure is an equitable action.

And Representative Mintz, you know as well as I do, that you're in front of a judge and the issue is one day late, that the court would allow that type of defense to be made.

REP. MINTZ: On Section 11, when you're talking about perfecting assignment of rents, are you saying that would a receiver of rent would still have to appointed by a court?

STEVEN BASCH: No, in that circumstance, the bank would deem to have perfected in terms of its assignment of rents. Whether it would actually receive the rents, is another question. That Section is really geared toward the problem when there's a bankruptcy and whether the rents that are coming in from a project are cash collateral of the bank, or whether the borrower is free to use those funds for whatever purpose they want. It really is, as my written remarks say, it's not addressed to whether the rents are actually received or not, that is covered in Section 12.

REP. MINTZ: Okay, do you guys have any comments on the other part of the Bill, or are you just interested in six through twelve.

KATHRYN MURPHY: No, we're very much interested in Section 1E and 1F and Section 3, and we have submitted written remarks in respect for most of the Sections, actually, but

REP. MINTZ: Do you have any, I haven't seen your written testimony, I saw all of it

KATHRYN MURPHY: We're very much concerned about the time periods granted in Sections 1E and 1F and Sections 3.

REP. MINTZ: What about the Section that deals with the forty five day law day and the possibility of an extension?

KATHRYN MURPHY: The forty five law day, we think, we think is intended to be a good idea but we think it has some drafting issues that need to be looked at. Because the two exception clauses in the introductory lines of that Section, seem to take away with one hand what you're granting in the other.

REP. MINTZ: Okay, we'll talk about that later.

SEN. AVALLONE: Representative Wollenberg.

REP. WOLLENBERG: I'd like to go to Section 10. I haven't read your material, even though I have it, but I will read it. Do you have, (inaudible) do you have a lot of objections to that? It seems though we stated some things here that probably are new and doesn't that help out the situation because I

KATHRYN MURPHY: Ten we're in favor of

REP. WOLLENBERG: Okay, okay (inaudible)

STEVEN BASCH: Yes

REP. WOLLENBERG: Eleven, twelve of the procedure (inaudible)

KATHRYN MURPHY: We're very much in favor of those as well

REP. WOLLENBERG: Okay, I'll read the remarks and get back to you.

STEVEN BASCH: Thank you. We look forward to the opportunity to working with the Committee informally, if that is requested or required.

SEN. AVALLONE: Senator.

SEN. GENUARIO: If Section 10 were adopted, how would a mortgage (inaudible) rightfully (inaudible) defense (inaudible)?

STEVEN BASCH: In a separate action and that would rise or fall on its own merit.

SEN. GENUARIO: In your, in your hypothetical, you asked us to assume one thing, and that was that the merits, that the defenses raised had no merits. If in your hypothetical, we assume the opposite, that the defense, defenses and counter claims do have merit, isn't the victim in the story the borrower and not the lender?

STEVEN BASCH: Well, in those circumstances, the borrower, I would imagine, would commence a separate action

SEN. GENUARIO: But won't the borrower have already lost his property pursuant to the expedited foreclosure process while he is entrapped in a secure jury trial proceedings?

STEVEN BASCH: Well, I, I don't know that it would be that long, but it could be

SEN. GENUARIO: Five year jury trial proceeding?

STEVEN BASCH: The, the, the answer to that is, if there was a matatorious claim and eventually money judgment was covered, that you used to be able to say very, you know, surely, that the bank will be there and it will have money. I know it's a little more difficult to say today, but, there is the right to money damages.

And I would, I would just say that when the bank is in the process of evaluating the merits of a claim when they find a claim that they believe has some merit, they would be more than likely to try to work something out to prevent a large jury verdict down the line. It could be avoided simply holding up on the foreclosure, if that's, if that's what's required.

SEN. GENUARIO: Thank you.

SEN. AVALLONE: Any other questions. Representative Caruso.

REP. CARUSO: Thank you Mr. Chairman. I'm concerned with this change in light, it seems to me that the FDIC keeps changing the rules and that creates, created most of the problems in the Banking

Industry today. What, if anything, or could you supply us with your comments in light of any new proposed FDIC changes, which we should be considering, would that be possible or do you have any comments on that right now?

KATHRYN MURPHY: Well, I can only comment on the most general of terms. I think with respect to the Foreclosure Act in Connecticut itself, any proposals currently pending by both the FDIC and the OCC really don't impact loans once the decision is made to foreclose.

What those decisions will impact depending on how they ultimately turn out, is the foreclosure decision. When will be able to work out loans and when will we have to collect loans? Those internal decision in the Bank may be, may be changing, depending on where the FDIC, the OCC, and the Federal Reserve come out with their and the SEC come out with their proposals.

REP. CARUSO: Well, isn't that something we should be considering, when we look at our timetables here?

KATHRYN MURPHY: Well it won't, well it will not impact the foreclosure process in anyway, it will just impact, or it may impact the decision internally in the bank, whether to workout whether to foreclose. It will not, once that decision is made to foreclose, the federal actions won't have any further affect.

(Gap in cassette switching 2a to 2b)

-- what we're trying to do here which is once we've made the decision to foreclose, the delay that can be caused under current scenarios can cause collateral to to deteriorate significantly before the bank can actually get possession, and that causes higher deficiencies and causes problems for bank loan loss reserves and all kinds of other things. Those would not be impacted by the Federal Regulatory Agencies.

REP. CARUSO: With, with regard to some other comments you made, as to, if this act is passed, will reduce the number of, the availability of or the increase, the percentage of rates with regard to new

mortgages in this State, isn't it a fact that Connecticut being one of the only two strict foreclosure States, that in spite of that, it really hasn't had an impact on the secondary mortgage market, where many of our mortgages are sold.

KATHRYN MURPHY: I'll let Mr. Messier address that question.

RICHARD MESSIER: Can you just rephrase that please?

REP. CARUSO: Certainly. By passing this Bill, making this Act, will we truly be jeopardizing the availability of mortgage credit, both commercial and residential within this State or is that just taken and worked out throughout the whole secondary mortgage system which takes into account all the various forms of mortgage foreclosures throughout the other fifty states?

RICHARD MESSIER: No, I think it would restrict the amount of funds available. The Fannie Mae and Freddie Mac would be reluctant to invest in mortgages that might theoretically take two or three years to take title.

REP. CARUSO: So, essentially, what you're saying is this would be the strictest in the nation, or one of the strictest? How does it compare to other states?

KATHRYN MURPHY: I don't have an actual survey, but, we're already in a State that I would say takes, is one of the longer states in terms of acquiring title and a foreclosure, and this would make it even longer.

REP. WOLLENBERG: But don't you think that's a result of, it hasn't been until this time, isn't that true?

KATHRYN MURPHY: Well

REP. WOLLENBERG: I mean, it could be, but we didn't have that many, now we're feeling

KATHRYN MURPHY: That's right

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REP. WOLLENBERG: we're feeling it because we're doing it.

KATHRYN MURPHY: We've got so much (inaudible)

REP. WOLLENBERG: You've got a lot more people involved in it, and they're looking at it, and they're taking appeals, and the appeals are bogged down because the court can't handle them, so many things, and you folks have got more than you need to do, and your attorneys do, and you've got plenty of work to do in this area these days. To much as a matter of fact. I'm sure everybody's concerned.

KATHRYN MURPHY: Way, way to much.

REP. WOLLENBERG: But, isn't it true that it all came about because the FEDS did come in and said, you know, prices have dropped in New England folks, and you just aren't covered anymore, do something about it. And you call people in and they can't do anything about it so you have to foreclose. Is there really a problem in the residential foreclosure area? You kind of have your own way there, don't you? I mean, occasionally, somebody

KATHRYN MURPHY: Currently, I mean, currently there are problems from time to time under the current act

REP. WOLLENBERG: Yeah

KATHRYN MURPHY: We're not objecting to to the current act, what we're objecting to are the two proposals in the, in the new Bill that would provide the twenty four and thirty six month periods

REP. WOLLENBERG: But those are specific, though. I mean, everybody isn't going to have twenty four, thirty six months, are they?

KATHRYN MURPHY: Well, that's that's probably true.

REP. WOLLENBERG: Probably isn't even the potential of everyone having that.

KATHRYN MURPHY: It's unclear how many people, those time periods would affect. Right now, the judges have a great deal of individual discretion, because

these are equitable proceedings to set law days and sale dates and one, you know, the experiences are all over the ballpark. We have foreclosures that can take four or five months, and we have foreclosures that can take two years, that have taken two years. So, it's

REP. WOLLENBERG: Yes I understand that, but you're going to have that, you know, I hope that you're not just gonna bring the suit and everybody rolls over and plays dead, and says

KATHRYN MURPHY: Right

REP. WOLLENBERG: okay, take my house, in the residential area, and that's what we're looking at, and we're being asked to look at is, there are some of those where it may justify that they should be given some time and you know, we find or we've been told, that some of those people aren't given that time, so, it results in us developing something to give them that time. But, I'm wondering, just how many we're talking about here that would affect you? Other than this, the perception that we might be affected so greatly.

KATHRYN MURPHY: Can I introduce Georgia Butner whose with our Mortgage Company

REP. WOLLENBERG: That's up to the Chairman

KATHRYN MURPHY: No? Okay. Maybe Mr. Messier can

RICHARD MESSIER: We have a fear actually, that the length of time might diminish by some provisions of this Bill. Right now, at Shawmut Mortgage Company, we have two point two billion dollars invested in residential mortgages, and that's the affiliate, not the things that we've sold off.

REP. WOLLENBERG: I read in the paper we're the worst in the country with ten percent of the mortgages bad loans of something, in Connecticut,

RICHARD MESSIER: Yes

REP. WOLLENBERG: by far, the national average is three point something and we're ten, you know, we're not doing a very good job. Yeah, I understand.

RICHARD MESSIER: It is, it is gotten drastically worse in the past year.

REP. WOLLENBERG: Yeah

RICHARD MESSIER: But our average length of time before we initiate foreclosure is approximately five months now, and we're trying to work with these borrowers in every way possible. And we've hired people to go in and go over their budgets with them, for example, try to get them on track, we've put in forbearance agreements, allow them to get caught up and we're afraid with this twelve month provision that we have to initiate foreclosure actually within twelve months, it's actually gonna speed up the process by which most lenders will try to initiate the action.

REP. WOLLENBERG: Well one of the things, that, that's been a complaint to me from residential homeowners is, that after the four or five months they do get it together, and the bank is said, now, we've got to go forward with it, you know, we did the appraisal and you got a two hundred thousand dollar mortgage (inaudible) when out there, you know, we found your property is only worth a hundred and eighty, we've got to go through with it.

You may be able to bring it current and keep paying it, but now, you know we're this far we've got to keep going with it. Isn't that true?

RICHARD MESSIER: In some cases but we are trying to work toward not doing that.

REP. WOLLENBERG: Well how do you justify in not doing it? I'm backing you into a corner. How do you justify in not doing it? Say you got a two hundred thousand dollar mortgage, and there's, and you sent your appraiser out, it was three hundred when you left the money, now it's a hundred and eighty, which is common these days. How do you not do it?

RICHARD MESSIER: How do you not restructure the loan?

REP. WOLLENBERG: Yeah

RICHARD MESSIER: How do you not restructure the loan?

REP. WOLLENBERG: Yeah, what do you do, I mean, he's only got a hundred and eighty thousand dollar piece of property to give you

RICHARD MESSIER: Right, in most cases, he doesn't want to stay on the property but if he does, we would certainly work with him to try to restructure that loan.

REP. WOLLENBERG: Well, we, we have heard that there are people who have said, let me keep paying and let me keep doing it, and the bank has said no, we have to go on it because you're under.

RICHARD MESSIER: I can't speak for all banks, but certainly in our case, we work with that (inaudible).

REP. WOLLENBERG: Okay. Don't speak Bank of Boston. People are telling me, I've offered the money, even, you know, and they've said, no we've gone this far, and it's under water now, they never, we don't feel that as though they come back. Maybe in five months they'd be in the same position, but they could bring it current at the time.

KATHRYN MURPHY: If they, in a residential situation, if the borrower reinstates the mortgage, they can go forward. We have no requirement that we have to foreclose.

REP. WOLLENBERG: Oh, there are mortgages without reinstatement clauses in them.

KATHRYN MURPHY: In residential?

REP. WOLLENBERG: Sure. Not Fannie Mae.

KATHRYN MURPHY: But, the Shawmut Mortgage Company

REP. WOLLENBERG: Oh, I don't know about Shawmut, but you know, we've got mortgage companies on every street corner around here who have their own, you know, I've written them, don't shake your head no. You can't, Fannie Mae

KATHRYN MURPHY: All I can do is talk about the Shawmut Mortgage Company

REP. WOLLENBERG: Fed Mortgage, well, this Bill is gonna affect all mortgage companies. Somebody is shaking their head no, I'm gonna disagree with you, I write the mortgages, and they take the clause to reinstate out, so that it's not a right.

REP. MINTZ: And don't they have, don't they have documents that say, if we sell this to Fannie Mae then this paragraph goes in but if we don't than this one goes in. I see those all the time.

KATHRYN MURPHY: That may be but

REP. WOLLENBERG: That is

KATHRYN MURPHY: I mean there is sometimes more flexibility if banks retain the ownership, but in terms of your question about declining values

REP. MINTZ: flexibility

KATHRYN MURPHY: in our case, if the borrower reinstates despite the declining value, they can continue to own the property and go forward as the owner.

REP. WOLLENBERG: Okay, even though you don't have your equity there.

KATHRYN MURPHY: Right, in the residential situation

REP. WOLLENBERG: Not in commercial?

KATHRYN MURPHY: We have different issues in commercial because

REP. WOLLENBERG: How about that issue?

KATHRYN MURPHY: We're much more regulated by the OCC in that regard, and if our appraised value is below our debt, we have to, we have to classify that loan and treat it in a certain way.

REP. WOLLENBERG: I understand that. But, do you have to foreclose it?

KATHRYN MURPHY: If we, if we can not come up with a plan to collect it than yes, we have to

REP. WOLLENBERG: Suppose the payments are being made and their current?

KATHRYN MURPHY: Than we, than we do not necessarily have to foreclose that loan

REP. WOLLENBERG: Which you do

KATHRYN MURPHY: it gets to be considered a, it can be considered a performing, non performing loan.

REP. WOLLENBERG: But, maybe things have changed in the last three or four months. But when this thing first hit, let's say, last there, there was a race to foreclose those loans, isn't that true?

KATHRYN MURPHY: It would, it would depend on each situation in that case. If there is, if there is no hope of of collecting that loan, I mean if there's

REP. WOLLENBERG: Loan current

KATHRYN MURPHY: If when you look at, if when you look at the facts, we have a problem with an uncooperative borrower or a borrower who has abandoned the property, or a situation where there is no other source of income to pay the loan

REP. WOLLENBERG: But the loan is current, but it's just, it's a million dollar loan on a property that's appraised at eight hundred thousand

KATHRYN MURPHY: If the borrower is present, and there is income available to keep paying, we would not foreclose that loan.

REP. WOLLENBERG: No, what's the income available? Why, why if he's not keeping the loan current, why are you, are you questioning him as to whether he can keep it current?

KATHRYN MURPHY: Keep it going, right.

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REP. WOLLENBERG: And he says I can't, I'm working everyday, or I have my business is gone

KATHRYN MURPHY: If he has sources of fund, right, to do that.

REP. WOLLENBERG: Well, but that, you know, you can't give anymore collateral.

KATHRYN MURPHY: No, but if he has income from other properties or from other sources, or if the property itself is generating income, we would keep that property, we would let

REP. WOLLENBERG: Vacant land, vacant land you've got a million dollar loan on.

KATHRYN MURPHY: Okay, well tell me where the money is coming to pay the million dollar loan.

REP. WOLLENBERG: He has a business

KATHRYN MURPHY: Fine

REP. WOLLENBERG: He's an Executive somewhere

KATHRYN MURPHY: That's fine

SEN. AVALLONE: We are being told just the opposite, we are being told that because of FDIC regulations, if even the loan is current, and even though the perspective for payment is excellent, that if the security has been reduced below the principal amount of the loan, that that loan is in default.

KATHRYN MURPHY: It is in default, it is in default

SEN. AVALLONE: And, that, that you must proceed either to get it collateralized or proceed with the foreclosure. That's what we're told. You're telling me something different.

KATHRYN MURPHY: I'm telling you that it is, it is a classified loan, we have to reserve against it

SEN. AVALLONE: Right

KATHRYN MURPHY: We may, we may or may not have to start foreclosure proceedings, it depends on sources of income to pay the current payments, and the borrowers other assets, and income

REP. MINTZ: That's different, that other, the borrower other assets

KATHRYN MURPHY: And income

REP. MINTZ: Well let's say he has no other assets but enough income to make the payments?

KATHRYN MURPHY: From a job or something?

REP. MINTZ: Yeah

KATHRYN MURPHY: I mean, I can't tell you in that in every situation we wouldn't foreclose, but we would not generally foreclose in that situation

REP. MINTZ: You're being for (inaudible) foreclose?

KATHRYN MURPHY: No

REP. WOLLENBERG: Okay, loan is due, it's a two year loan. Can he extend the loan or rewrite it?

KATHRYN MURPHY: Again, if there are sources of repayment, and the borrower is willing to work with the Bank, we would continue to work

REP. WOLLENBERG: What does work the bank mean?

KATHRYN MURPHY: We have borrowers who literally disappear on us.

REP. WOLLENBERG: Oh, I, don't give me, this guy's

KATHRYN MURPHY: You know, they walk away

REP. WOLLENBERG: This guy has done business with you for the last thirty years

KATHRYN MURPHY: He's there

REP. WOLLENBERG: He's in town, he's still doing business, his loan is up on December 31st, 1990.

KATHRYN MURPHY: We'll work on it, we're working with those kinds of borrowers.

REP. WOLLENBERG: So January 1st he's in default.

KATHRYN MURPHY: Right.

REP. WOLLENBERG: And you're telling me that you would rewrite that loan, same way, doesn't have any more assets, all he does is he has a little income from someplace, he can pay the loan, and now, you've got property worth eight hundred thousand and the loan is a million, you would rewrite that loan?

KATHRYN MURPHY: We would probably rewrite that loan. Again, we would have to reserve against it

REP. WOLLENBERG: I understand

KATHRYN MURPHY: It would be classified. If we had real, you know, if a bank was having real, huge problems with their loan lost reserves, they might not have that kind of flexibility. But where at this point working with those kind of borrowers.

REP. WOLLENBERG: Well, but, if the bank has problems with its loan lost reserves, if you have to many of those loans, you're gonna have problems with your loan lost reserves.

KATHRYN MURPHY: Eventually, that's right. I mean, if you get to many of them, you're gonna run into problems.

SEN. AVALLONE: Wait a minute. Representative Bolster. I know, but let Representative Bolster, she's had her hand up. Let her, let her talk.

REP. BOLSTER: It's nice that once in a while somebody's not a lawyer talk

REP. WOLLENBERG: I agree

: Put your mike on.

REP. BOLSTER: I don't need

REP. MINTZ: That's true

REP. BOLSTER: I think that probably one of our problems is, that in some cases our financial institutions are being leaned very heavily by the FEDS. Now, if you got a piece of property on which you have a million dollar mortgage, is now only worth seven hundred and fifty thousand dollars, if somebody's being leaned on it's going to be very difficult, is that correct?

KATHRYN MURPHY: Yes, we, the Federal Regulators want to know that the bank is accounting for that loan as a non performing loan.

REP. BOLSTER: Can the FEDS tell financial institution that you can not renew John Jones's loan, because he can not make the payments? I mean, you gave him a million dollars on that property two years ago, and it's now only worth seven hundred and fifty thousand dollars. So you can't even write it really for that much. That's number one. Can they tell you, that you're gonna have to foreclose on that?

KATHRYN MURPHY: Yes, in certain circumstances, they can.

REP. BOLSTER: So that in some

KATHRYN MURPHY: Than they can basically tell you that you have to classify a loan in such a way that you have no alternative but to foreclose. Yes.

REP. BOLSTER: So that in some respects, no matter what we do, and some of our changes, we are not gonna be able to supercede the FEDS?

KATHRYN MURPHY: No, not with respect to national banks.

REP. BOLSTER: Thank you.

REP. MINTZ: Going back to what Representative Wollenberg was talking about, in terms of working with borrowers. But if your loan ratio is at such a point, that the regulators come in and say, we don't care if he's making payments every day, you have to foreclose. Yeah, that's what

KATHRYN MURPHY: Well ultimately, ultimately, yes, you get there, because ultimately, you know, you end up like some of our sister banks.

REP. MINTZ: So that perception Senator Avallone and Representative Wollenberg was saying that some banks are telling us that we have to foreclose is not untrue.

KATHRYN MURPHY: It may not be untrue. I can't, I mean, I can't

REP. MINTZ: Okay

KATHRYN MURPHY: tell you first hand about that.

REP. MINTZ: I want to get back to the twelve month for a second, and I forget your name and I apologize. What you stated was, that, your working now up to five months before you go into foreclosure.

RICHARD MESSIER: On average.

REP. MINTZ: So you may go a little bit farther, it may be a little bit less.

RICHARD MESSIER: We sometimes go a lot farther actually, depending on the situation on the borrower.

REP. MINTZ: But, twelve months, what we're trying to prevent and let me ask you this if you haven't heard a scenario like this. Borrower has a piece of property, there in default. There's no way to bring it current. The market's falling, so the property isn't collateralized up till the loan anymore. The borrower, says, hey, I can't do it, take the property back please. Bank says nope, we're not gonna do it. And it goes on for years that way. Have you ever heard of a situation like that?

RICHARD MESSIER: No I can't think of a specific situation like that. We would try

REP. MINTZ: I'll show you the case

RICHARD MESSIER: Okay

REP. MINTZ: Because I was the lawyer

RICHARD MESSIER: Okay, we would try to encourage the person to have a, to sell the asset if he wants to sign a deficiency

REP. MINTZ: What if they couldn't sell the asset? That it's been on the market for three years, and no buyers.

RICHARD MESSIER: We would ultimately foreclose.

REP. MINTZ: Ultimately, how many years out will it take before you foreclose?

RICHARD MESSIER: We would do in normal course, I would say, on average, start the process in five months, and the process can take nine months.

REP. MINTZ: Okay, how do we resolve the situation, you must be a responsible bank, but where the banks don't start the action, and the deficiency just keeps building up and building up and building up, and these other people, they have other assets that are becoming in jeopardy because this bank won't foreclose on that loan. I know.

RICHARD MESSIER: If I can just respond to that, I think that that is really irresponsible banking and it sounds like it's a rare case that that happens, and I think what would jeopardized by putting in a provision that requires foreclosure within twelve months is for those responsible banks that are trying to workout loans with borrowers that you'd be forcing them into doing something

REP. MINTZ: What if the law said it could be waived by both parties?

KATHRYN MURPHY: That would help a lot.

RICHARD MESSIER: Yes, that would help.

REP. MINTZ: That's the kind of constructive testimony I like.

SEN. AVALLONE: We hear so many times from many industries, not just the Banking Industry, but many industries, that they make decisions based on worst case scenarios, yes, Senator, we know that this only happens two percent of the time, but we have to protect ourselves against those two percent of the time. Does that happen? Is that the way Fannie Mae works, or these other secondary markets, does that how it works?

RICHARD MESSIER: No, I don't think so. And maybe it used to work that way, and I think we're all getting an education including the investor and the agencies. We put on a seminar recently, to try to talk to other banks as to how we can work better with borrowers and I invited Fannie Mae to attend and they were happy to come out and speak about modification programs that they are putting in place.

Because the reality is, nobody wants to take somebody's home away from them, including the agencies, and I think the rules are changing in that regard.

SEN. AVALLONE: Well I'm interested in how those rules change as they affect your argument for availability of money in the State, because if there are circumstances under current Connecticut law, where foreclosures can take substantially longer than are set forth in this Bill, and what I have heard in the past, is that, you know, we, those people make decisions on the worst case scenario centers, so even though this would happen only a couple of times, you know you really affect being the availability of credit in the State of Connecticut. And it seems to me that your testimony flies in face of that, and I'm a little bit confused.

STEVE BASCH: Well, if I could respond.

SEN. AVALLONE: Sure

STEVE BASCH: Part of that may be due to the fact that this would be, the delays that you are talking about that exist already, are due to almost habitstance sometimes. The delays that would be

consequence of for example, the three year mortgage restructure provision, would be delays that were built into a statute that are provided there, and laid out there in black and white and if you qualify for it and that Representative Mintz, that's one constructive criticism of the Statute, there is no, there is no qualifications of who would be entitled to, to get the benefits of that three year proposal.

If you, if you qualify for that proposal, it's clear that there's gonna be a three year restructuring and I'm not that knowledgeable about this issue, but I do recall in some discussions with Mr. McQue, or someone from McQue Mortgage Company, and Mortgage Bankers Association, that if the loan were restructured like that, that they would basically put it back to the bank that originated and force the bank to buy that loan back. And if that's something that's gonna happen as a result of this, they may just want to avoid the hassle in the first place.

SEN. AVALLONE: But you see, that's that's my point, when you say they just may want to avoid the hassle in the first place, and that comes out in testimony as Senator and Representative, we're gonna do this drastic thing to people who want to buy houses in the State of Connecticut.

Who after a while you get a little tired of people looking for both ends of the candle, and so the arguments get a little confusing, that people want expedited foreclosure proceedings, which this Bill does, and cleans up things and allows people who are risk takers to take the risk of losing the property, that when they went into that business. I don't have any problem with that.

But when bankers want to get both ends of it, alright, when they want to conduct themselves in a way that contributes to the mess that we are in, I'll refrain from saying causes, but contributes, and then when we try to put something in that may help some of the people cough in that funnel, not because they did anything wrong. We hear this argument all the time, all.

If you do that, we're gonna, we're gonna hurt them more because they aren't going to be able to get money. Somewhere in the middle lies the truth, and that's why my comments to you were rather abrupt, because I've heard that kind of testimony before, particular, one occasion, when I reviewed the transcripts in Congress, when we got rid of the regulations for the S&L's.

So very sensitive about those kinds of statements being very broad. And I don't apologize for them, I apologize perhaps for the tone of the voice, but not for the content of the question, and that's why we ask the questions. What does effect the availability of credit? And I would respectfully suggest that maybe these statutes, if they do, for these proposals, do, for the balance of the public policy in this State ought to say, that we go in favor of one way or another. But that's for us to decide.

REP. MINTZ: On the waiver, would you object to a provision in this statute saying that this waiver can not be included in the original mortgage documents?

STEVE BASCH: Well, I guess the problem is how long after you sign the mortgage document, would the borrower be able to waive that? I mean, I understand that when

REP. MINTZ: Or it's not a requirement of the loan or to get the loan that they sign a waiver like this. I mean, because all I can see is that, tons of mortgage documents waived all sorts of rights people get under the laws, you know, if they're allowed to waive it. So we put the statute in and every mortgage document will have a boiler plate clause that Section 49-14 Section B is hereby weighed. So, I mean, how do we address that problem?

KATHY MURPHY: I mean I basically -- it's an additional procedure, but I don't ultimately have any objection to it. I mean it's no different than any other agreement to hold a Statute of Limitations while you're working on a settlement. I mean it's --

REP. MINTZ: Yes, I mean that's the point. Maybe it can only be waived after default. Thank you.

REP. WOLLENBERG: Just to get back to what Representative Mintz was saying a minute ago. When -- in most mortgages it's a default if the bank is deemed that the security does not cover the loan and so on. Would something -- if an appraisal by either the mortgagor or mortgagee disclosed that the value of the property was less than the mortgage if within three months of that appraisal it would give people time to get another appraisal or something that the bank was required or something to bring the foreclosure action which could not be defended or something.

I'm talking about the ones we're getting are the bank won't foreclose. I'm just going further and further under and a year and a half later the banks starts foreclosure procedure and now instead of being under \$20,000 and a deficiency of \$20,000, I have a deficiency of \$30,000 or \$40,000. Just to hasten that process, whereas we realize the bank has no obligation to foreclose. I understand that and they can keep going and maybe it's just a rush of business we've had in the last couple of years, but there have been a number of instances that we've heard about of this, that the bank hasn't gotten around to it and people have just built up a bigger deficiency by the time they're done with prices dropping and so on.

I know the bank doesn't want it either, but that's the whole point, you know, with homeowners. Should the bank be able to share some of this burden or should the homeowner? The alternative, I suppose, is bankruptcy. You folks don't want that after you've paid attorneys \$30,000 or \$40,000 either in some of these cases. You'd rather have a shorter period of time and not spend so much doing it, but something like that, to kind of jog people into getting this process going, it seems to me in what we've done here is we've said give people more and more time.

Maybe we're not helping them always by giving them more and more time, so we better be a little more careful with that and we ought to tinker with that

a little bit, if we're going to do this, so that we don't give them too much time so they really hang themselves, you know, the water is up to here and we let it go above their eyes. Maybe we should watch -- we have to watch that too, but I think get the bank into the act there too and making it some kind of an obligation jointly agreed upon if the thing goes forward.

KATHY MURPHY: As long as there's a way to -- if both parties agree and are working things out to weigh that requirement as Representative Mintz has suggested.

REP. WOLLENBERG: Just bring about the inevitable a little sooner, maybe that's what we're talking about here. Okay, thank you.

REP. MINTZ: Representative Caruso. Representative O'Neill.

REP. O'NEILL: I was just reading through your testimony, Mr. Basche?

STEVE BASCHE: Yes.

REP. O'NEILL: I just want to make sure you're the right one, and maybe I'm just naive about these things. As you say, it is very easy to raise a dubious special defense or a groundless counterclaim. It seems almost a matter of course and somewhere else you talk about ingenious attorneys who are making this complex litigation and so on. I mean I thought that there were disciplinary procedures for attorneys -- I mean if it truly is groundless, meritless, intended only to delay -- to defeat the creditors, is there some sort of disciplinary action required against the attorneys if they are the source of all of this trouble in delaying these actions?

STEVE BASCHE: Well, there are some provisions that are available, but state court, unlike federal court, doesn't have what's called Rule 11 which is the allowance of sanctions and attorney's fees against an attorney who files a frivolous motion and complaint. I mean there are mechanisms. You could file a suit for malicious prosecution or abuse of process or you could file a grievance, but -- and

in fact, in looking at the legislative agenda and trying to figure out what sort of provisions we would like to see changed, we talked about the idea of enacting some sort of a Rule 11 statute in the state that would act as a serious deterrent to filing claims of this type and I think it was our perception that there would be substantial opposition from the Trial Bar to something like that and it was our judgment not to put forward something like that, but if you think it's got a chance, I'd like to see it.

(cass 3)

REP. O'NEILL: Well, thinking in terms of the existing procedures that, I guess my impression is a lot of times we keep passing laws up here and we send them out there and no one seems to take advantage of them or they never get enforced or they never get used, somebody comes back, and we do this through child support. It's sort of a classic revolving door syndrome where people keep coming back and forth asking for more and more laws to do more and more things, and yet nothing ever seems to change.

And I was just wondering if you tried any of those procedures. I mean, if you've got lawyers that are filing totally frivolous actions, or defenses and so forth. What you're saying here is fairly, it jumps up off the page at me as being a fairly serious accusation. Have you, or do you know of counsel for banks that have filed grievances or other things to try to get them to knock it off.

STEVE BOSCHE: I don't know that grievances have been filed, and one of the problems with some of the remedies that I discussed, for example, malicious prosecution is, you have to have the initial prosecution has to be terminated already and that's unfortunately, these things have taken so much time that we haven't reached that point, where we have had a frivolous claim, determined to be frivolous, have the action terminated and then have the ability to commence a suit.

I'd be happy to get back to you with a more detailed response in terms of the procedures that are available today in terms of disciplinary types

of actions, you know, or what the specific provisions of the practice book are concerning the filing of a frivolous motion or defense.

REP. O'NEILL: Oh, because you do say it's frivolous, but you're telling me now since you haven't terminated many of these actions, so that you don't know for sure that they really are frivolous.

STEVE BOSCHE: Well, I guess it really always depends on what side of the case you're on, but there are occasions where let's say, the attorney for the other side will sort of say, you know, between you and me, I don't think this is a great claim. I'm trying to buy some time, and --

REP. O'NEILL: It's usually the tryor of fact who says that the claim is without merit and puts that in their decision or makes a comment like that from the bench when they're issuing a judgment of something, that determines in a final sort of way that it was a frivolous claim. Okay, thanks.

REP. CARUSO: A final set of questions, I think. One of the things I've seen, and quite recently, one person will be classified for nonpayment because a project went down. Everything that person has gets classified.

The bank then goes out and attaches, to secure its position, even though it has a mortgage, it will secure its position on everything that person owns including all the partnership assets and therefore involving a lot more people who likewise then become classified.

Why is it, or should we, or must we, or why should we not include a provision, a specific provision preventing those kinds of attachments when the property is already secured.

KATHY MURPHY: Well, in many cases the property may be valued at less than the amount of the debt.

REP. CARUSO: Assuming the value is still there, it's an income producing property.

KATHY MURPHY: And, in fact, that the income is being paid to the bank. I mean, the other problem that we frequently have is that borrowers take income out of buildings and send that income out of the country or out of the state.

REP. CARUSO: But you do then have the assignment of rents.

KATHY MURPHY: But in this State at the moment, it's very hard to get receivers appointed to insure that those rents come to the lender. That's one of the reasons for the receiver provision in the proposed act.

REP. CARUSO: But don't you have an assignment of rents in leases, in the mortgage?

KATHY MURPHY: The only way of truly enforcing that is either, when you go to court you ask the court to compel the borrower to pay the rent. If the borrower doesn't ultimately pay the rent, you have two choices. You can ask for a receiver to be appointed or you can, I guess, move for contempt, ultimately. And meanwhile, the rents have disappeared into, you know, I mean we have recent headline articles about where they might go.

STEVE BORSCHÉ: If I could just respond, also, that in a situation like that, if the property is adequately secured, there's no basis for making an attachment and a motion to dissolve that attachment would presumably be granted and those attachments would disappear.

I understand that there may be harm done in the meantime, but you know, there is currently provisions in the statutes to get rid of those types of attachments.

SEN. AVALLONE: Thank you very much.

KATHY MURPHY: Thank you.

SEN. AVALLONE: Senator Barrows.

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ATTY. HOUSTON LOWRY: I'd be happy to answer any questions you have.

REP. TULISANO: No, it's okay. Anything that long is okay.

SEN. AVALLONE: It better be after I finish reading it.

ATTY. HOUSTON LOWRY: The two personal comments that I have that are outside of my various hats as I wear as a Bar Association member, on HB5085, you reference on line 27 that you can get a judgment -- a deficiency judgment if an action -- a foreclosure action was commenced more than 12 months under the last uncured default.

I just want to let you know the last uncured default if someone stops paying and they never start paying again, there is no last uncured default that's more than 12 months out. If you mean the oldest uncured default, and I kind of guess that's what you mean, you might want to change that language to reflect that.

REP. MINTZ: Thank you.

ATTY. HOUSTON LOWRY: The other one was just a brief comment on HB7373. We testified in support of the Hague Conference on -- a convention on the recognition of trusts that's implemented in Connecticut and I just wanted to say that we approve of the bill and urge your support and I'm sorry I've taken so much time.

REP. TULISANO: No, you didn't the last time. We've got to learn all this stuff.

ATTY. HOUSTON LOWRY: I will be happy if any committee members has questions or if I can meet with anyone individually, I'd be happy to go over anything that needs going over.

REP. TULISANO: And the brief you've submitted deals with just the international obligations and --

ATTY. HOUSTON LOWRY: I've submitted a separate bit of testimony on Articles 3 and 4 that I trimmed down to five pages that talked about 29 changes in

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\$900 and in fact I think one of the reasons you went from \$1,500 to \$2,000 was because in the Housing Court there were maybe 20 percent of the cases pushing the maximum. I bet you if you go back and check now, there's going to be nothing pushing the maximum of \$2,000.

ATTY. RAPHAEL PODOLSKY: The second bill I want to mention is HB7341 which is the one that deals with Article 3 and Article 4 and there I just want to make one comment. I did no written testimony on this. That's the one that changes -- modifies the law of negotiable instruments. I don't understand the bill. I assume that there are a small number of people who do understand it.

There's one issue that I hope you will make sure if you do pass the bill, that it comes out the way I think it should and that is from the consumer perspective, in terms of consumer protection, when you pay bills you will sometimes put on the bill what it's for and the general rule is if the check and taken and cashed it binds you. I cannot figure out whether that is or is not the rule in this bill. It's possible it's not addressed, but in any event, I would hope if you do pass the bill you would just make sure that that's -- that that doesn't change that underlying principle.

SEN. AVALLONE: Rick, have you got that?

ATTY. RAPHAEL PODOLSKY: HB5085 is the one that deals with mortgage foreclosure protections. I've submitted some written testimony in which I suggest a number of changes. There are three or four brief points I want to make on it. Number one, two months ago you had a hearing on HB5089 which is a much better bill because it deals more effectively with the interim period when someone is trying to restructure a mortgage. That's the one that includes the Mortgage Assistance Fund which happens to be funded and allows you to pay on an interim basis 35 percent of your income.

It really makes it possible for the mortgagor in distress to survive that period and get back on his feet. This bill says you must pay, to get more than 45 days you must pay the full payment. That is going to be tremendously burdensome. Forty-five

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days is very little time, it's a short period to get back on your feet. We've had cases where people who were essentially indigent were simply trying to sell the house and 45 days isn't enough time to sell the house either which means their ability to sell the house is pulled out from under them and it means it's going to end up with the bank taking it back and selling it at a foreclosure sale which is likely to generate less revenue.

So that that restrictiveness of what you have to do get beyond the 45 days is a cause of significant concern for us. We are also concerned about the provisions dealing with attorney's fees that seem to say you can get attorney's fees -- the general rule in Connecticut is you get at judgment and you get attorney's fees. In a mortgage foreclosure it's easy to get a judgment because even under this extended law date period, you've got your judgment, so you don't need that section to make sure you can include attorney's fees in that kind of a judgment. This seems to open it up for attorney's fees at earlier stages or possibly even if the foreclosing party loses the case. We've had problems with home improvement contractors who have done foreclosures on home or tried to unsuccessfully.

REP. WOLLENBERG: Mr. Chairman. Yes, well, I understand here that there are some courts that have said if the bank hires an attorney and they reach a point and then there's a deed in lieu of or something, Raphie, but some courts have said because there isn't a judgment, the attorney's fees for the bank are not paid.

ATTY. RAPHAEL PODOLSKY: Well, I think that --.

REP. WOLLENBERG: That's the reason for this, I think.

(cass 7)

ATTY. RAPHAEL PODOLSKY: I mean the concern that went into the statute which is a 1979 statute that contains the provision about you need to go to judgment is because -- I mean I guess there's a wide disparity of work that might be done in a case that never gets to judgment. It could be -- I suppose you could have a lot of work. With no judgment, you can have almost no work and a quick

settlement because the practice is to do a percentage, very commonly to just do a percentage and there's actually case law that says --.

REP. WOLLENBERG: A percentage of what?

ATTY. RAPHAEL PODOLSKY: A percentage of the amount owed.

REP. WOLLENBERG: Not so, Raphie, that's not what they're doing now.

ATTY. RAPHAEL PODOLSKY: Well, okay, I guess I'm not sure what the most common practice is.

REP. WOLLENBERG: They're billing by the hour.

ATTY. RAPHAEL PODOLSKY: I know there is case law in Connecticut where an attorney's fee award was challenged on the basis that there was no evidence of reasonable value of services.

REP. WOLLENBERG: No question.

ATTY. RAPHAEL PODOLSKY: That only a percentage claim and the court said that's okay as long as you're under 15 percent which is the statutory maximum, you don't have to show hours. Now it wasn't a foreclosure case, but because the numbers are often very big in foreclosure cases, you're going to end up with potentially some pretty large fees.

REP. WOLLENBERG: Well, your credit unions have the percentage right in the note. If they hire an attorney, you're going to pay 15 percent, you agree to pay them in two weeks. I just had one, Raphie. So I think that's something we've got to talk about.

ATTY. RAPHAEL PODOLSKY: I don't want to get bogged down on this, but I just want to express that as a concern.

HB7353 is a bill that deals with mobile home parks. I think that seems to be at a point now -- I've been involved in negotiations with that for the last six months with the mobile home park owners. It appears that we now have, as of this morning, an agreement I think on everything in there. The