

Legislative History for Connecticut Act

SB 990 P.A. 102 ^{fax -} 1995

Sen: 1270, 2196-2201, ~~2228-2229~~ (9)

House: 2780-2784 (5)

Jud: 1670-1676, 2001-2002 (9)

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S-374

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1995

VOL. 38

PART 4

1079-1432

SEN. FLEMING:

On page 7, Calendar 121, Substitute for SB990,
File 189, I move that that bill be referred to the
Committee on Banks.

THE CHAIR:

Question is on referral to the Committee on Banks.
Without objection, so ordered.

SEN. FLEMING:

Calendar 122, Substitute for SB1083 is pass
retained.

Calendar 123, Substitute for SB1112 is pass
retained.

Calendar 124, Substitute for SB28 is pass
retained.

Calendar 125, SB616 is pass retained.

Calendar 126, Substitute for SB337 is pass
retained.

On page 8, Calendar 128, Substitute for SB1123,
File No. 210, I would move that that be referred to the
Committee on Labor.

THE CHAIR:

The question is on referral to the Committee on
Labor. Without objection, so ordered.

SEN. FLEMING:

Calendar 129, Substitute for SB1115, File 208, I

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CONNECTICUT
GEN. ASSEMBLY
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PART 7
2175-2542

THE CLERK:

Page 18, Calendar 121, Substitute for SB990, An Act Concerning Release or Satisfaction of a Mortgage Lien. Favorable Report of the Committee on Judiciary and Banks, File 189.

THE CHAIR:

Senator Upson.

SEN. UPSON:

Thank you, Madam President. I move the Joint Acceptance of the Committee's Favorable Report and passage of this bill.

THE CHAIR:

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

SEN. UPSON:

I do have an amendment, so I would move adoption of the amendment.

THE CLERK:

What LCO?

SEN. UPSON:

LC07302.

THE CLERK:

Senate Amendment Schedule "A", LC07302 introduced by Senator Upson.

THE CHAIR:

Senator Upson, the amendment is in your possession.

SEN. UPSON:

Yes, Madam President. What this does is a cap of a \$5,000 penalty. In other words, under this bill, the penalties would be up \$5,000.

If there's no objection, I'd --

THE CHAIR:

Would you move adoption. Once the amendment is in our possession.

SEN. UPSON:

Oh, it's not in your possession.

THE CHAIR:

It is in possession now.

SEN. UPSON:

I move adoption.

THE CHAIR:

The question is on adoption of Senate "A". Will you remark? Will you remark? I'll try your minds.
All those in favor indicate by saying "aye".

ASSEMBLY:

Aye.

THE CHAIR:

Those opposed, "nay". Ayes have it. Senate "A"
is adopted.

SEN. UPSON:

Madam President, on the bill itself, this is a bill revision bill. What's happened in the State of Connecticut and many other places are when you have a closing, in the olden days, you used to get a release when you got a mortgage. You got a release right away.

Now, that doesn't happen because in many cases people have sold their mortgages out of state. It's very hard to get a release. And there is a penalty for that.

Well, this is going to increase the penalties one, but not more than \$5,000 or five years in imprisonment.

It's also going to give the mortgagee, in other words, the bank that's supposed to provide the release up to 60 days instead of 30 to give us a release or provide an affidavit. It's going to have a 40 year period for, where a mortgage shall be presumed to be invalid instead of 60.

It's going to allow the filing of an affidavit without receipt of a payoff letter. It increases the civil penalty for failures to provide the release including costs and attorneys fees.

It allows for a request to be made electronically and essentially will improve, and hopefully improve this area. The reason there's a cap though, is because

we are in the second mortgage business, that is the state banks sell these to secondary sources, we don't want to have an impediment so that people will not buy our mortgages.

If there's no objection, I'd place this on the Consent Calendar. Oh, there is a second amendment? I have another amendment which I didn't know about, Madam President. And I apologize.

THE CHAIR:

Would the Clerk please call.

SEN. UPSON:

And this is LCO4548..

THE CLERK:

Senate Amendment Schedule "B", LCO4548 introduced by Senator Upson.

THE CHAIR:

Senator Upson, the amendment is in your possession.

SEN. UPSON:

Yes, I move adoption, as I did before of this amendment.

THE CHAIR:

Thank you, Senator. The question is on adoption of Senate "B". Will you remark?

SEN. UPSON:

Yes, it's a technical amendment, Madam President.

THE CHAIR:

Would you care to remark on this technical amendment?

SEN. UPSON:

No.

THE CHAIR:

Then I'll try your minds. All those in favor, excuse me, Senator Looney.

SEN. LOONEY:

Yes, thank you, Madam President. In comparing this admittedly technical amendment to the file copy of the bill, it looks as if lines 47 and 48 of the amendment, there may be some missing language when it's compared, addressing line 146 of the bill.

If you compare line 146 of the bill that the unpaid balance on a mortgage calculated in accordance and striking, if you strike with the requirements of, and insert the language that's substitute there, it does create an ellipsis with some missing language that there is, I think, a technical flaw to the amendment.

I just wanted to bring that to, flag that for Senator Upson. I don't know whether he wanted to redo the amendment or just flag it for the House when it goes there?

THE CHAIR:

Senator Upson.

SEN. UPSON:

I would, with your permission, I'd like to flag it for the House. It's a technical amendment done by LCO, through you, Madam President. I apologize.

THE CHAIR:

Thank you, Senator Upson and Senator Looney. Will you remark further on Senate "B". Will you remark further? If not, I'll try your minds. All those in favor indicate by saying "aye".

ASSEMBLY:

Aye.

THE CHAIR:

Those opposed "nay". Ayes have it. Senate "B" is adopted. Senator Upson.

SEN. UPSON:

Yes. If there's no objection, I'd ask this to be placed on the Consent Calendar.

THE CHAIR:

Motion is to refer this item to the Consent Calendar. Without objection, so ordered.

THE CLERK:

Page 19, Calendar 124, Substitute for SB28, An Act Concerning the Licensing of Locksmiths, as amended by

meeting tomorrow in Room 1B at 11:00 o'clock a.m.

THE CHAIR:

Thank you, Senator. Are there other announcements or points of personal privilege? If not, would the Clerk please call the Consent Calendar.

THE CLERK:

The Consent Calendar is about to be voted in the Senate. Will all Senators return to the Chamber.

The Consent Calendar is about to be voted in the Senate. Will all Senators please return to the Chamber.

Page 3, Calendar 166, SB1062.

Page 4, Calendar 187, HB6613.

Page 5, Calendar 234, Substitute for SB1113.

Page 9, Calendar 305, Substitute for HB5147.

Page 10, Calendar 308, Substitute for HB6721.

Page 10, Calendar 309, Substitute for HB6789.

Page 11, Calendar 315, Substitute for HB6851.

Page 12, Calendar 318, SB1080.

Page 12, Calendar 320, Substitute for SB30.

Page 13, Calendar 325, SB1043.

Page 18, Calendar 121, Substitute for SB990.

Page 20, Calendar 209, Substitute for SB895.

Page 20, Calendar 77, Substitute for SB843.

Page 20, Calendar 137, Substitute for SB890.

Page 21, Calendar 165, Substitute for SB1054.

Page 21, Calendar 201, SB882.

Page 21, Calendar 206, Substitute for SB1026.

Page 24, Calendar 301, HJR32.

THE CHAIR:

The machine will be open. Members please take your seats.

THE CHAIR:

Have all members voted? Senator Fleming. If all members have voted, the machine will be locked. The Clerk please take a tally. The Clerk please announce the tally.

THE CHAIR:

Total number voting, 36; necessary for passage, 19. Those voting "yea", 36; those voting "nay", 0.

THE CHAIR:

The Consent Calendar is adopted.

THE CLERK:

Page 3, Calendar 149, Substitute for SB44, An Act Concerning Emergency Room Insurance Coverage as amended by Senate Amendment Schedule "A". Favorable Report of the Committee on Insurance, File 249.

THE CHAIR:

Senator DeLuca.

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CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1995

VOL. 38
PART 8
2667-3039

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002780
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House of Representatives

May 18, 1995

(APPLAUSE)

DEPUTY SPEAKER HYSLOP:

Also to those students from St. Michael's of Pawcatuck, we do welcome you.

Other announcements, points of personal privilege?

If not, will the Clerk please call Calendar 425?

THE CLERK:

On page 15, Calendar 425, Substitute for SB990, An Act Concerning Release or Satisfaction of a Mortgage Lien, as amended by Senate Amendment Schedules A and B. Favorable report of the Committee on Banks.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker.

I move acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the Senate.

DEPUTY SPEAKER HYSLOP:

Questions on passage and -- excuse me, acceptance and passage. Will you remark further?

REP. LAWLOR: (99th)

Thank you, Mr. Speaker.

This bill seeks to both increase penalties and

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House of Representatives

May 18, 1995

provide more flexibility for mortgagees who withhold a release of a mortgage lien when people are buying homes.

Basically Connecticut has a law which requires a release to be forwarded -- a release of a mortgage to be forwarded to a seller of a home or the buyer of a home within 30 days so that that can be recorded on the land records so that the conveyance can be finalized. We have penalties that attach to the failure to provide that release in due time.

This bill extends the period of time to 60 days instead of 30 days and provides additional penalties for people who fail to meet that guideline.

Mr. Speaker, the Clerk has LC07302, previously designated as Senate Amendment A. I'd ask the Clerk to call and I be permitted to summarize.

DEPUTY SPEAKER HYSLOP:

Will the Clerk please call LC07302 as previously designated Senate Amendment A and the Representative has asked leave to summarize.

THE CLERK:

LC07302, designated Senate A, offered by Senator Upson.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker.

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House of Representatives

May 18, 1995

This amendment simply sets a cap of \$5,000 on the total penalty, which is provided for in this bill. The bill provides for a \$200 per week civil penalty for failure to provide a release within the designated time period and this would cap that at \$5,000.

I would urge adoption, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Questions on adoption. Will you remark further?

Questions on adoption. Will you remark further?

If not, we'll try your minds. All those in favor, signify by saying aye.

ASSEMBLY:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed, nay.

The amendment passes and rule technical.

REP. LAWLOR: (99th)

Mr. Speaker?

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99th)

The Clerk has LCO4548 previously designated as Senate Amendment B. I'd ask that the Clerk call and be permitted to summarize?

DEPUTY SPEAKER HYSLOP:

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House of Representatives

May 18, 1995

Will the Clerk please call LCO4548, previously designated Senate Amendment B?

THE CLERK:

LCO4548, Senate B, offered by Senator Upson.

DEPUTY SPEAKER HYSLOP:

Representative has asked leave to summarize. Seeing no objection, proceed.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker.

This amendment accomplishes several things. First of all, eliminating the potential civil liability of a attorney representing a party who has not provided a release in time; it reestablishes the civil liability provided for in statute for failure to release a commercial mortgage or a mortgage on a home and makes several other technical changes.

Mr. Speaker, I'd urge adoption.

DEPUTY SPEAKER HYSLOP:

Questions on adoption. Will you remark further? Will you remark further on Senate Amendment B?

If not, we'll try your minds. All those in favor, signify by saying, aye.

ASSEMBLY:

Aye.

DEPUTY SPEAKER HYSLOP:

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House of Representatives

May 18, 1995

Opposed, nay.

Senate Amendment passes, rule technical.

Will you remark further on the bill as amended?

Will you remark further on the bill as amended?

If not, staff and guests to the well of the House,
the machine will be open.

THE CLERK:

The House of Representatives is voting by roll
call. Members to the Chamber.

The House is voting by roll call. Members to the
Chamber, please.

DEPUTY SPEAKER HYSLOP:

Have all members voted? Have all members voted?

If all members have voted, please check the
machine, make sure your vote is properly recorded.
Machine will be locked; Clerk will take a tally.

Clerk will announce the tally.

THE CLERK:

SB990 as amended by Senate A and B in concurrence
with the Senate. Total number voting, 145; necessary
for passage, 73. Those voting yea, 145; those voting
nay, zero. Absent, not voting, 6.

DEPUTY SPEAKER HYSLOP:

Bill as amended is passed.

Clerk, please call Calendar 463.

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 5
1503-1856

1995

CARLENE KULISCH: Before the --

SEN. UPSON: The change?

CARLENE KULISCH: -- the law -- I really don't know as far as the Water Authority properties was concerned. That was -- well before 1980 it was under the investor owned New Haven Water Company and again there it was a situation that costs could be incurred by the investors and now we don't have investors --

SEN. UPSON: And that's why they put a fence up, is that correct?

CARLENE KULISCH: Pardon me?

SEN. UPSON: That's why the private water facilities put fences up?

CARLENE KULISCH: Um-hmm. And as a non-profit political subdivision, we try to open up as much of the land as we can get approval for for the members of the public.

SEN. UPSON: Are there any questions? Thank you for coming so early.

CARLENE KULISCH: Okay, thank you.

SEN. UPSON: Now you can get out early. Law Revision, David and Milton -- David Hem -- I can't read the -
- David and Milton Widem -- I'm sorry, David. 990
-- SB990, 991, and 6741.

SB1017

MILTON WIDEM: Mr. Chairman, Senator Upson, members of the Judiciary Committee of the General Assembly, I'm Milton Widem and I serve as Vice Chairman of the Law Revision Commission of the State of Connecticut and with me is our Chief Attorney David L. Hemond, who's the principal draftsman of most of the bills that we'll be considering here today.

The first one we'd like to take up with the committee is Raised Bill --

SEN. UPSON: 990?

MILTON WIDEM: 990, which has to do with the ACT
CONCERNING RELEASE OR SATISFACTION OF A MORTGAGE
LIEN.

This is the second time that we've presented this particular piece of legislation to the -- to both the Banking Committee, Senator Looney has been involved with it before as -- and what we've done, Chairmen and members of the committee, is we've revised the bill somewhat so that -- there was some concern that there was involvement prior to -- in the last bill where there the title companies got into the situation. We have eliminated that situation completely.

What gives rise to this type of legislation, Mr. Chairman, is the fact that years -- for many years Connecticut lenders would retain their residential mortgages in their own portfolio and due to liquidity problems what they've been doing in recent years is they've been marketing these mortgages in blocks and they're being sold to out-of-state lenders or mortgage brokers and sold and resold many many times.

And what you have a problem is many times is that contrary to 49-8 of our statute which requires that the assignments be recorded, many times these assignments are not recorded. They may be serviced -- the mortgages may continue to be serviced by the Connecticut lender, who retains a servicing fee, but the mortgages are held, notes are endorsed over to these out-of-state lenders.

The problem arises that when these -- when he seeks -- when the mortgagor seeks to secure a release of that mortgage and whether to refinance his property or to sell the property and that gives rise to the problem, because what happens, and it's fairly universal at this point, is that out-of-state lenders do not understand our strict recording requirements. Connecticut is a strict recording state. And many of these states do not understand the requirement that the mortgage is an encumbrance against the property and must be released.

What happens in many states is that when the note

itself is simply marked paid, that satisfies the obligation and the mortgage is then released as of course. It doesn't follow in Connecticut that we require that the release of that mortgage be executed by the mortgagee and recorded on the land records to finally terminate the interests of the mortgagee into the property itself.

We have present statutes, 49-8 covers that situation. David Hemond has put together a memorandum which sets for the essential elements of the bill, SB990. And what we have done in essence is to increase the time within which an out-of-state lender must secure -- must provide the release of the mortgage. We've increased that from 30 days to 60 days.

But on the other hand, what we've done also to provide further impetus for the out-of-state lenders to provide that release, we've increased the penalty for failure to provide a release upon due request from \$200.00 per week to \$400.00 per week.

And we've also allowed for attorney's fees, so the mortgagor's attorney in seeking to secure -- who's going to spend consider time and effort to secure that release, should be entitled to get attorney's fees and cost, and then if he has to bring an action to recover in that situation, he has the remedy for that situation as well.

What we've also done is to increase the opportunity where the mortgagee fails to provide even a payoff letter sometimes, so that the mortgagor would know the amount of the debt. The mortgagor under the statute would then have the right to make a good faith estimate as to the amount of that particular -- the unpaid principal balance and accrued interests. And the mortgagor's attorney would then be able to be in a position to file a statutory gap affidavit.

And I know the last time there was some concern raised by members of the Judiciary Committee as to whether or not we're affording too many affidavits, the opportunity for affidavits. But what we've

done in this situation is provide in effect that if you file an affidavit and it is a fraudulent affidavit, there are certain penalties involved. We provide certain criminal penalties, but more importantly where the attorney files an affidavit, there are obvious sanctions, disciplinary proceedings which are now in effect. The Grievance Committee has that power to discipline attorneys who fail to honor the obligation to file a good faith affidavit in that sort of a situation.

We also have reduced the time. There is a -- the statutes with respect to unreleased mortgages, under 49-13, reducing that from 17 years to 6 years, and also the undischarged mortgages also -- what we've done, Mr. Chairman and members of the committee is attempted to facilitate the situation. If the out-of-state lender simply provides within the 60 days the release of the mortgage, that ends the matter completely, there's no problem, the debt is paid.

But what they find now, and I hear this time and again -- I spoke before our Real Property Section of the Bar Association and I asked the question how many lawyers are still facing the problem, and particularly the residential mortgage, we don't find it quite as prevalent in the commercial mortgage area because more often than not the commercial loans are retained by the Connecticut lender, it's the residential loans which are causing the problems.

And what we're hoping for in this type of legislation is to provide sufficient deterrents so that the out-of-state lender understands that if they fail to respond in a reasonable fashion with a normal request for the payoff of that mortgage and for the release of that mortgage upon tender of the proper proceeds, that they suffer penalties. And there are -- several attorneys have told me now that they have brought action and have recovered.

And what we're suggesting is that this is -- what this does is tighten up the existing statutes so that the out-of-state lender will understand that if they fail to respond to the customary request in

a reasonable and prompt fashion, they would suffer these penalties which are --

SEN. UPSON: Senator Looney is going to ask you a question on this one.

MILTON WIDEM: Yes, Senator Looney.

SEN. LOONEY: Thank you, Mr. Chairman. Good morning.

MILTON WIDEM: How are you, sir.

SEN. LOONEY: Just one question. We have, of course, worked on this in the past, both in the Banks Committee and here.

In looking at the proposed bill, the definition - the changes in the definition of mortgage, lines 59 and thereafter in Section 2, Subsection (1), on page 2 of the bill, why were those changes made?

MILTON WIDEM: I think to be a little more specific in terms of just what we're dealing with, and it's the residential mortgage what we're concerned with.

SEN. LOONEY: Okay.

MILTON WIDEM: And we just want to be certain it doesn't confuse itself with the commercial mortgage. Was there any other reason, David, you can think of?

DAVID HEMOND: No. I think it was primarily technical.

MILTON WIDEM: Yeah.

SEN. LOONEY: Okay. And also there is -- as you said, the major issue last year was the proposal to expand the role of the title companies in granting releases or in becoming a broker or agent basically in the handling of these cases. And this removes that entirely, so that what remains is the initiative on the attorney being able to have greater clout in seeking the release by increasing the damages to be collected and also providing for attorney's fees and cost of collection.

MILTON WIDEM: That's correct.

SEN. LOONEY: That's been -- that's the focus of this without the further expansion that was in the proposal last year in the Banks Committee, is that correct?

MILTON WIDEM: Yes.

SEN. LOONEY: Alright.

MILTON WIDEM: We've eliminated the role of the title company so that the attorney for the mortgagor now has the responsibility to -- when -- either whether there's no payoff letter or in the case where the release is not forthcoming, he then has the right to provide the gap -- the statutory affidavit which would serve in lieu of the release itself.

SEN. LOONEY: Right. Now, only the -- is it only the attorney who can then execute that affidavit?

MILTON WIDEM: We feel it should be rested with the attorney --

SEN. LOONEY: Right.

MILTON WIDEM: The theory is that he'd be the responsible party because I don't think it's -- I think an effort to maintain the integrity of our land records, it should be the attorney who does that, because otherwise you're going to find affidavits being filed by lay-people who do not quite understand the ramifications --

SEN. LOONEY: Yes.

MILTON WIDEM: -- and there's no control over them.

SEN. LOONEY: I agree.

MILTON WIDEM: And the attorney would be subject to --

SEN. LOONEY: I asked that because this proposed bill does not authorize anyone other than the attorney for the mortgagor to do that, does it?

MILTON WIDEM: That's -- as far as I know, yes.

SEN. LOONEY: Okay. Thank you.

SEN. UPSON: Any other questions on 990? Did you want to say something, Dave, on 990?

DAVID HEMOND: No, I'm actually deferring to Mr. Widem on everything here.

SEN. UPSON: How about 991?

MILTON WIDEM: Alright. 991 is an interesting statute. What we're dealing with here is Connecticut General Statute 49-28. As you -- those of you who practice in this area understand that where you have a strict foreclosure, we operate under 49-14 which was adopted after Mydaboccal and Society for Savings versus Chestnut Estates which happens to be my -- I'm doing it in the 19 -- and the case was decided and I furnished a memorandum to that effect.

What happened in 49-14 is that now we provide for an evidentiary hearing, so that you -- each party then has an opportunity to present testimony and the court then makes an independent determination as to the -- as to whether or not the fair market value of the property as the day title vests and, therefore, the mortgagee is then entitled to the differential between the fair market value of the property and the amount of the debt as then established. It's a full hearing, each party then presents testimony through appraisers, engineers or whoever else they want to establish the fair market value of the property and then the court makes a determination as to the differential in that situation.

Unfortunately, we don't have the same provisions in 49-28, which is our foreclosure by sale. Under the present state of the statute and our law, the Connecticut Supreme Court has upheld the constitutionality of that statute in New England Savings Bank versus Lopez cited in my memorandum. But in 49-28 what you're faced with now is if there is a sale and that sale is approved by the court under 49-26, then the deficiency judgment is predicated on the differential between the net sale

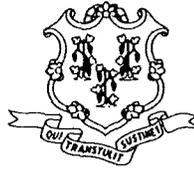
JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 6
1857-2202

1995

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Connecticut General Assembly



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Testimony of David L. Hemond Chief Attorney, Connecticut Law Revision Commission

to the Judiciary Committee

in favor of S.B. No. 990

An Act Concerning
 Release or Satisfaction of a Mortgage Lien

March 3, 1995

Working through an advisory committee of real estate practitioners, the Law Revision Commission has studied problems that continue to exist with obtaining pay-off statements and releases of paid-off mortgages from out-of-state holders of mortgage loans. These problems have proliferated in recent years with the shift of many loans into the secondary market. The inability to obtain timely releases threatens to undermine the integrity of Connecticut's system of land title recordations. The failure of lenders to provide timely releases also directly increases the risks and costs attendant in real estate transactions. An Act Concerning Release or Satisfaction of a Mortgage Lien is intended to address these difficulties by increasing the incentives to assure that lenders comply with laws requiring releases and by enhancing the remedies and options available to mortgagors and attorneys when lenders fail to comply. A version of this bill was submitted to the 1994 legislative session. The 1995 version of the proposal contains the core provisions of the 1994 bill but removes an innovative provision, apparently of concern to some lawyer-legislators in 1994, that would have created an alternative escrow system, using title insurance companies, for use with respect to certain recalcitrant lenders.

Specifically, section 1 of the bill would increase the minimum lender liability from two hundred to four hundred dollars for each week that the lender fails to deliver a timely release, and, perhaps more importantly, allows the complainant to recover costs, litigation expenses, and attorneys fees. (The lender remains liable for actual damages if greater, as under current law.) The bill extends the time that the lender has to provide the release from thirty days to sixty days, as more realistic in light of current practice. Practitioners report that actually receiving the release within sixty days is sufficient. Their problem is the lenders who ignore the request or delay for periods of a year or longer. With respect to this provision, however, I would like to request that the language, at lines 46 and 51, inserting reference to "the plaintiff's attorney", be deleted. Although, as noted earlier in the section, the plaintiff's attorney is a proper person to execute a release, that attorney's failure to execute a release should not be grounds for liability since any such action the attorney takes is only as agent for the mortgagee.

Section 2 of the bill provides a remedy for lenders who fail to provide a payoff statement. Current law, which has attempted to address the release problem, allows recording of an affidavit, in lieu of the release, if the affiant satisfies certain requirements. Some lenders, however, have refused to provide even a payoff statement, rendering compliance with the affidavit requirements impossible. If a lender ignores or refuses requests for a payoff statement, the bill allows the mortgagor to payoff the mortgage in accordance with an outstanding balance notice as of a date certain, together with the mortgagor's good faith estimate of the total amount due based on a "reasonable estimate of the per diem interest and other charges due". The bill further allows the applicable affidavit to be requested by the "current owner of the interest encumbered by the mortgage" as well as by the mortgagor.

The bill revises section 49-13 by reducing the time period, from seventeen years to six years after the expiration time for performance in an unreleased mortgage, after which an owner may petition the Superior Court for a judgment that the mortgage has been satisfied. That change reflects the judgment of the advisory committee that the current seventeen year period after the time within which performance was due is simply too long a period to deny the owner access to court to obtain release of such an encumbrance. Six years was deemed an adequate period to preclude misuse of the process.

Finally, the bill changes, from sixty to forty years after full performance was due, the period of time after which an undischarged mortgage is invalid. That change reflects the current marketable record title act, sections 47-33b to 47-331, which uses the forty year standard for determining marketable title.

A number of technical revisions have also been made for style and consistency.