

PA10-181

HB5270

Banks	124, 128-134, 188-189, 203, 206-212, 252-255, 260, 292- 293, 314	26
House	3771-3785	15
Senate	4118, 4126-4127	3
		44

H – 1084

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2010**

**VOL.53
PART 12
3573– 3922**

pat/mb/gbr
HOUSE OF REPRESENTATIVES

196
May 3, 2010

And will the Clerk please announce the tally.

THE CLERK:

House Bill 5349 as amended by House "A."

Total number Voting 147

Necessary for Passage 74

Those voting Yea 147

Those voting Nay 0

Those absent and not voting 4

DEPUTY SPEAKER ORANGE:

The bill passes as amended.

Will the Clerk please call Calendar Number

148.

THE CLERK:

On Page 146, Calendar 148, Substitute for
House Bill Number 5270, AN ACT CONCERNING
FORECLOSURE MEDIATION, favorable report of the
Committee on Judiciary.

DEPUTY SPEAKER ORANGE:

Representative Barry, you have the floor, sir.

REP. BARRY (12th):

Thank you, Madam Speaker. I move for
acceptance of the joint committee's favorable
report and passage of the bill.

DEPUTY SPEAKER ORANGE:

pat/mb/gbr
HOUSE OF REPRESENTATIVES

197
May 3, 2010

The question is acceptance of the joint committee's favorable report and passage of the bill. Will you remark? Representative Barry.

REP. BARRY (12th):

Thank you very much, Madam Speaker. The Clerk is in possession of a strike-all Amendment, LCO 5088. I would ask the Clerk to please call the amendment and that I be given leave of the Chamber to summarize.

DEPUTY SPEAKER ORANGE:

Will the Clerk please call LCO 5088 designated as House Amendment Schedule "A." ¶

THE CLERK:

LCO Number 5088, House "A," offered by Representative Barry and Senator Duff.

DEPUTY SPEAKER ORANGE:

The Representative seeks leave of the Chamber to summarize. Is there objection? Is there objection? Seeing none, Representative Barry.

REP. BARRY (12th):

Thank you very much, Madam Speaker. This Bill came out of the Banks Committee 17 to 1 and it extends the foreclosure mediation program that we established back in 2008. It extends it for two

more years, through 2012.

Under current law, the program will terminate on July 1st of this year. The Bill makes a couple of slight modifications to the mediation program and requires that attorneys fees not be granted to a mortgagee if they are not ready prepared at all mediation sessions, not just the ones that are referenced in current statute.

And it also makes a couple of changes on Lines 156 and 224 requiring that mortgagees be available during the mediation sessions, not just that, not that they have to be required to participate in the mediation sessions, but be available during them in case they're out of state. It makes it easier for the mortgagees to participate in the mediation so they can go forward just in case there's some kind of ambiguity as to what to participate in means.

The Bill also modifies the cash for keys provisions, regarding the minimum amount that mortgagees or other successors in interest may offer to tenants to vacate a residential, foreclosed residential property, and it establishes that the amount must be at least \$2,000 regardless of whether there is evidence of the amount of the

pat/mb/gbr
HOUSE OF REPRESENTATIVES

199
May 3, 2010

tenant's security deposit.

And finally, in this bill, there's another technical part of this bill that just gives it a homestead exemption in this state, Madam Speaker, and it just adds co-ops to the definition of what a homestead is.

I urge adoption of this amendment.

DEPUTY SPEAKER ORANGE:

The question before the Chamber is adoption of House "A". Will you remark further on House "A"? Representative John Stripp. You have the floor, sir. Good afternoon.

REP. STRIPP (135th):

Good afternoon, Madam Speaker. Madam Speaker, just for the record, Representative Barry mentioned that there was one negative vote. That was my negative vote, Madam Speaker.

At that time we were going in a direction that I really thought was inappropriate. However, since then, we have had some modifications and some discussions, and I think the bill is actually a fairly moderate one now that generally speaking I think both sides can accept.

But I do have a few questions for the

pat/mb/gbr
HOUSE OF REPRESENTATIVES

200
May 3, 2010

proponent of the bill if I might, Madam Speaker,
through you.

DEPUTY SPEAKER ORANGE:

We're on the amendment, Representative Stripp.

REP. STRIPP (135th):

In terms of the negotiations, the mediation
negotiations, are these interminable or is there a
limit to how long they can go on so that if
necessary foreclosure proceedings can move forward?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Barry.

REP. BARRY (12th):

I'm sorry, Madam Speaker. Could he just
please repeat the question?

DEPUTY SPEAKER ORANGE:

Representative Stripp.

REP. STRIPP (135th):

I've forgotten. No, Madam Speaker. How long
do these mediation sessions go on? Is it
interminable or can we get on with the business of
the foreclosure if in fact there is no agreement
between the parties? Does it go on forever or is
there a limit to the period of time that these

pat/mb/gbr
HOUSE OF REPRESENTATIVES

201
May 3, 2010

mediation sessions can go on?

DEPUTY SPEAKER ORANGE:

Representative Barry.

REP. BARRY (12th):

You get 60 days beyond the return date on the initial foreclosure complaint. That can be extended by the judge for a reasonable cause.

DEPUTY SPEAKER ORANGE:

Representative Stripp.

REP. STRIPP (135th):

There's another issue, and that is the one of the budget. Through you, Madam Speaker to the proponent, where's the money coming from and approximately, I don't need to the last dollar, approximately how many dollars are we talking about for this program in Fiscal Year 11, 12 and 13, and where are we going to find it?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Barry.

REP. BARRY (12th):

Through you, Madam Speaker, in Fiscal Year 11, we have the, in the fiscal note, you'll see that there's about \$3.4, \$4.9 million or so and that is

pat/mb/gbr
HOUSE OF REPRESENTATIVES

202
May 3, 2010

for three-quarters of the year. About one-quarter of the coming year is already paid for. And the following year it's like \$4 million and change and that has not been allocated, and in the next year, in FY13, the fiscal note says it's a little bit over a million dollars, which is one-quarter of the first quarter of the Fiscal Year 13 because there may be foreclosures that are required under statute to be into the foreclosure mediation program because they had a return date of a certain time.

The first batch of money in Fiscal Year 11 was approved back a couple of weeks ago when we did the budget mitigation bill and it came out of the banking fund. The rest of the money has not been allocated.

DEPUTY SPEAKER ORANGE:

Representative Stripp.

REP. STRIPP (135th):

Thank you, Madam Speaker. I thank the gentleman for the answer. It sounds like we're spending a lot of money. Can the gentleman, through you, Madam Speaker, give us an idea of how many people are involved in this particular program?

pat/mb/gbr
HOUSE OF REPRESENTATIVES

203
May 3, 2010

DEPUTY SPEAKER ORANGE:

Representative Barry.

REP. BARRY (12th):

Through you, Madam Speaker, yes. We have a number of foreclosure courts throughout the State of Connecticut. In 2008 we assigned one foreclosure mediator to each of the foreclosure courts and as the numbers of foreclosures continue to rise, we see that number continue to rise every month when the realty track comes out with their numbers.

We decided in '09 last year to double the amount of foreclosure mediators at certain of the civil courthouses that handle foreclosures. So a decent amount of the money is going to pay those mediators, and also the support staff, the foreclosure case coordinators and so forth in the judicial system. We didn't put any additional marshals in there, interpreters or anyone else.

This is all focused on the foreclosure mediation program, and it has achieved a great deal of success. Currently, it's about a 75 percent success rate for those mortgagors who do go into the foreclosure mediation program, and they're

pat/mb/gbr
HOUSE OF REPRESENTATIVES

204
May 3, 2010

either able to be, get into a situation where they have their mortgage modified or some other result that leaves them in their home with a sustainable home, with a sustainable mortgage going forward.

So it's very much supported by the Judicial Department and by the Banking Department and also I thought the Banking Committee with the exception of my distinguished Ranking Member.

DEPUTY SPEAKER ORANGE:

Representative Stripp.

REP. STRIPP (135th):

Yes, Madam Speaker. Madam Speaker, I am pleased that we are doing this for a limited period of time, namely Fiscal Year 11 and Fiscal Year 12, and there seems to be a little piece that moves over until Fiscal Year 13.

I think by that time, hopefully, we all hope, that we'll be beyond the mortgage crisis and we won't need the program any more. But through you, Madam Speaker, why does it go to 13? There's a little piece of 13 in there. Why do we put that in the bill and it didn't end at Fiscal Year 12? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

pat/mb/gbr
HOUSE OF REPRESENTATIVES

205
May 3, 2010

Representative Barry.

REP. BARRY (12th):

Through you, Madam Speaker, I tried to touch on that earlier. The fiscal note mentions that there's a little bit over, I don't have it in front of me, but a little bit over a million dollars in FY13, and the purpose of that money is to get it through the first quarter so July, August and September of that year because the statute requires that foreclosures that have a return date prior to July, you know, of 2013, for instance, will still be able to get a mediation, into the mediation program. So we extended it out 90 days. That's current law.

DEPUTY SPEAKER ORANGE:

Representative Stripp.

REP. STRIPP (135th):

Madam Speaker, I thank the gentleman for the answer. I have another question. I noticed a little change that doesn't seem to have much consequence, but the original Bill as proposed did cover condominiums.

But I notice in the bill here we included co-ops, which is kind of unusual and unique form of

ownership in the State of Connecticut, and I always get a little confused to what the difference is between condominiums and co-ops.

Through you, Madam Speaker, could the gentleman explain the difference between an ownership of condominium ownership and a co-op ownership?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Barry.

REP. BARRY (12th):

Thank you very much, Madam Speaker. This is a, this is language that was offered up by one of your colleagues, perhaps your boss, Bill Hamzy, Representative Hamzy and I might let Mr. Hamzy, Representative Hamzy address that portion of the bill as it is so significant in this legislation.

DEPUTY SPEAKER ORANGE:

Representative Stripp.

REP. STRIPP (135th):

Through you, Madam Speaker, then I'm sure it's a good thing to include in this bill, and I am sure it will do a lot of good for the two or three people that own apartments that are in co-op form

pat/mb/gbr
HOUSE OF REPRESENTATIVES

207
May 3, 2010

that's used extensively in New York State but very seldom in our state. But we want to treat everybody fairly, particularly people that may have come across the state line in the last several years.

So I'm sure that will be a good amendment to add to this particular Bill.

Madam Speaker, this bill is a long way from where I thought it was going when I voted against it in Committee, and there's been a great deal of discussion and I think it's now going in the right direction. I think it's fair to everyone. It's limited in the period of time that it actually will be functioning, and we all hope and pray that that will be beyond the period of having the mortgage problems that we're dealing with right now.

So, Madam Speaker, I will on the floor here, unlike in Committee, I plan to vote in favor of this bill.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir. Will you care to remark further on the amendment before us? Representative Hamzy.

pat/mb/gbr
HOUSE OF REPRESENTATIVES

208
May 3, 2010

REP. HAMZY (78th):

Thank you, Madam Speaker. I also rise in support of this amendment, which will become the bill. I can attest firsthand of the success that the mediation program has been in this state to many residents.

I think extending it makes perfect sense. The part where we clarify the homestead exemption applies to people who own co-ops as their primary or principal residence, I think will affect a small number of homeowners in Connecticut but it does make an important clarification that they're treated equally with condominiums and other types of residences and would urge this Chamber to pass this amendment, which will become the bill.

Thank you.

DEPUTY SPEAKER ORANGE:

Thank you, sir. Will you care to remark further on the amendment before us? Will you care to remark further on the amendment?

If not, let me try your minds. All those in favor please signify by saying aye.

REPRESENTATIVES:

Aye.

pat/mb/gbr
HOUSE OF REPRESENTATIVES

209
May 3, 2010

DEPUTY SPEAKER ORANGE:

Opposed, nay. The Ayes have it. The
Amendment is adopted. Will you care to remark
further on the bill as amended? Will you care to
remark further on the bill as amended?

If not, staff and guests please come to the
well of the House. Members take your seats. The
machine will be opened.

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 ORANGE:

Have all Members voted? Have all Members
voted? If all the Members have voted, please check
the board to determine that your vote has been
properly cast.

And if so, the machine will be locked, and
will the Clerk please take a tally.

And will the Clerk please announce the tally.

THE CLERK:

House Bill 5270 as amended by House "A."

Total number Voting 147

pat/mb/gbr
HOUSE OF REPRESENTATIVES

210
May 3, 2010

Necessary for Passage	74
Those voting Yea	147
Those voting Nay	0
Those absent and not voting	4

DEPUTY SPEAKER ORANGE:

The bill as amended passes.

Representative Olson, good afternoon.

REP. OLSON (46th):

Good afternoon, Madam Speaker.

Madam Speaker, I rise to move for the immediate transmittal of items acted on today that require further action in the Senate.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

The motion is on immediate transmittal on items acted on in the House to the Senate.

Is there objection? Is there objection?

Seeing none, so ordered.

Are there any announcements or points of personal privilege? Announcements or points?

Representative Toni Walker of the 93rd. You have the floor, ma'am.

REP. WALKER (93rd):

Thank you. I rise for a personal

S - 610

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2010**

**VOL. 53
PART 13
3842 - 4128**

cd
SENATE

564
May 5, 2010

Next, Mr. President, calendar page 19, Calendar 553,
House Bill 5159, move to place the item on the consent
calendar.

THE CHAIR:

Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Calendar page 19, Calendar 554, House Bill 5164,
move to place on the consent calendar.

THE CHAIR:

Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Calendar page 20, Calendar 556, House Bill 5498,
move to place on the consent calendar.

THE CHAIR:

Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Calendar page 20, Calendar 557, House Bill 5270,
move to place on the consent calendar.

THE CHAIR:

Seeing no objection, so ordered.

SENATOR LOONEY:

cd
SENATE

572
May 5, 2010

Calendar page 20, Calendar 556, House Bill 5498;
Calendar 557, House Bill 5270; 559, House Bill 5407; 562,
House Bill 5253; and House Bill -- Calendar 563, House
Bill 5340; Calendar 567, House Bill 5371; and Calendar
573, House Bill 5371.

Mr. President, I believe that completes the items

THE CHAIR:

Mr. Clerk, could you please give me on Calendar 567,
do you have 5516, sir?

THE CLERK:

What -- what calendar?

THE CHAIR:

567 on page 22.

THE CLERK:

It's 5516.

THE CHAIR:

Yes, sir. Okay.

Machine's open.

THE CLERK:

An immediate roll call vote has been ordered in the
Senate on the consent calendar. Will all Senators please
return to the chamber. Immediate roll call has been ordered in the Senate on the
consent calendar. Will all Senators please return to the chamber.

cd
SENATE

573
May 5, 2010

THE CHAIR:

Have all Senators voted? Please check your vote. The machine will be locked. The Clerk will call the tally.

THE CLERK:

Motion is on adoption of Consent Calendar Number 2.

Total number voting	35
Necessary for Adoption	18
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	1

THE CHAIR:

Consent Calendar Number 2 passes.

Senator Looney.

SENATOR LOONEY:

Yes, Mr. President.

Mr. President -- Mr. President, before moving to adjourn, I would like to ensure the entire chamber will wish Laura Stefon, Senator McDonald's aide, my former intern, a happy birthday.

And with that -- and with that, Mr. President, I would move the Senate stand adjourn

**JOINT
STANDING
COMMITTEE
HEARINGS**

**BANKS
1 – 319**

2010

1
kj/gdm/gbr BANKS COMMITTEE

March 11, 2010
11:30 A.M.

CHAIRMAN: Senator Duff
Representative Barry

VICE CHAIRMAN: Representative Crisco
Representative E. Wright

MEMBERS PRESENT:

SENATORS: Kane

REPRESENTATIVES: Stripp, Baram, Graziani,
Guerrera, Kirkley-Bey,
Larson, Moukawsher,
O'Connor, Schofield,
Widlitz, Frey, Hamzy,
Hoydick

REP. BARRY: -- Banks Committee public hearing right now. Sorry we are a little bit late today. And we have to be out of this room at 2:30 because the Appropriations is in the room at 3 o'clock. And Senator Duff was in traffic coming down here from Norwalk and I was in court, so we're starting a little bit late today but we'll be able to make it through. And I'll just go right ahead and -- and call on the first person signed up on the elected municipal and official department heads list, who is Commissioner Pitkin if he's here. Oh, there he is.

COMMISSIONER HOWARD F. PITKIN: Can you hear me?

Good morning, Chairman Duff, Chairman Barry, and members of the Committee. My name is Howard F. Pitkin and I am the Commissioner of the Connecticut Department of Banking. I am here to testify in favor of Senate Bill 361, AN ACT CONCERNING IMPLEMENTATION OF THE S.A.F.E. MORTGAGE LICENSING ACT.

HB5409

and -- and find the right structure for consumers.

You -- you know, Connecticut right now, as -- as all of you know, is, you know, high unemployment. And we no sooner got out of the subprime problem and now we're in the unemployment problem. And it's a very distressed population when it comes to, not only secured debt of homes, but the unsecured debt they have in -- in credit cards. And while I -- I do expect that companies like Bank of America are taking steps to curtail abusive credit by -- by stopping, you know, a transaction at the -- at the point of sale, and -- and to cut down on the fees customers are paying, I think this is another part of the equation that -- that has to evolve. And -- and we're working very hard to try to make it do that.

REP. STRIPP: Well thank you, Commissioner. It sounds like we have a little bit of work in progress --

COMMISSIONER HOWARD F. PITKIN: We do

REP. STRIPP: -- still bringing parties together, so, thank you very much. Anything we can do from this side, please let us know.

COMMISSIONER HOWARD F. PITKIN: Thank you, Representative Stripp.

REP. Barry: Thank you, Representative Stripp.

Does anyone else have any questions for the commissioner?

Just one quick question, that we have another bill dealing with -- it's House Bill 5270, AN ACT CONCERNING FORECLOSURE MEDIATION.

COMMISSIONER HOWARD F. PITKIN: Yes.

REP. BARRY: And the -- the Governor submitted test -- I don't -- I didn't see testimony from you on that. But the governor did submit testimony on it, the executive branch has. And, basically, in favor of it citing that it's been -- it's -- it's staved off so many foreclosures and been very successful. The success here has been incredible. And just looking through testimony and -- that -- you know, the Governor's office is, obviously, very supportive of -- of this program. Do you have -- do you have any, I guess, recommendations as to how we might make the proposed mediation program any better?

COMMISSIONER HOWARD F. PITKIN: Well, like you, I'm -- I'm very supportive of that program. I think we regulate three groups of industries, the banking industry, the mortgage industry and the securities industry. And I think the success of the mediation program helps all three.

So I'm -- I'm an ardent supporter of -- of the program. And we've had some discussions about it and I -- I would do anything within my authority to try to help that along. I haven't looked at any definite proposal yet but, you know, we are -- we are talking about it.

REP. BARRY: Any the -- with respect to -- because we're in a really difficult budgetary time right now --

COMMISSIONER HOWARD F. PITKIN: Yeah.

REP. BARRY: -- and there are some bills out there talking about just removing the sunset on it

March 11, 2010

kj/gdm/gbr BANKS COMMITTEE

11:30 A.M.

and others that just talking about moving it out to another year, or, maybe, one more -- two years, say. And then, in light of the fact that, I guess, some of the numbers I see that the mortgage -- I think the Mortgage Bankers Association -- with the number that I saw where foreclosures are going to be on the rise through the end of 2000 and -- or through the end of this year, easily --

COMMISSIONER HOWARD F. PITKIN: Yes.

REP. BARRY: -- and into next year. And do -- do you think it would be prudent to just do a one-year extension of the program or a two-year extension of the program or just lift the sunset all together? Do you have any opinion on that?

COMMISSIONER HOWARD F. PITKIN: Yeah, I do. I think, rather than come back and revisit the issue next year, I -- I think a two-year period should be given. It's only my opinion. I have no -- no evidence with me to offer you. But I think that the foreclosure issue is going to run concurrent with the unemployment problem. And -- and there are more people going into default today because of unemployment than, you know, from price triggers on subprime loans anymore. It's going to take time to -- to work through this. And I know the program itself is staffed with 25 people, and it's a big charge. You know, it's -- it's a lot for the banks to -- it's a lot for the larger banks to bring decision makers at that point in time, right into the mediation process, because they're, you know, nationally located and -- and they're moving all over trying to get modifications done. So it -- it takes time and it takes coordination. And I think that the modifications are going along faster now than they ever have.

It -- it took time to, sort of, refit the industry -- pardon me -- refit the structure of the industry, the servicing industry, into a me -- mediation process and -- and, ultimately, modifications. But they have done it pretty quickly, the larger banks. The smaller banks are -- are more flexible. They are easier, probably, from a bureaucratic point of view to deal with. But I would -- I would give that program at least two years to -- to work on this problem.

REP. BARRY: All right. This is the last question with respect to the Department of Banking's efforts to help people because I know you have. I have had constituents call me who are losing their homes --

COMMISSIONER HOWARD F. PITKIN: Right.

REP. BARRY: -- and I refer them to the Department of Banking sometimes. And I believe you have a hotline.

COMMISSIONER HOWARD F. PITKIN: We do.

REP. BARRY: Maybe if -- since this is being televised, maybe you could just give the hotline number and also explain what you do -- if you have it. If you don't have it, I'd be happy to -- I could always give it out later

COMMISSIONER HOWARD F. PITKIN: Right. I -- I should have it, Representative Barry, and I don't. I'm sorry.

REP. BARRY: That's fine. Then the question -- the question I had about that is just, what happens when people -- if people were to call that hotline, do they get taken care of by the Department of Banking or do they -- do you

typically size them up and refer them to other places, such as, I guess, CHFA, and other -- other places or do you handle them in house, a lot of these --

COMMISSIONER HOWARD F. PITKIN: We have gotten over 11,000 calls on that hotline and we have one person dedicated to it. That's her job. And for the public, her name is Mary Stagis. And if anybody calls the Department of Banking's main number, just ask for Mary Stagis. She does a wonderful job.

Some cases can be resolved within the department if it's -- if it's a problem with the consumer getting in touch with the right person at the bank and -- and we can make that happen. We can make the person -- get the person in touch with the right official at the bank.

If there's a foreclosure issue, then -- then we look to advise the consumer of all the alternatives that are available to them. And in -- in a great many cases, we have turned to the Connecticut Housing Finance Authority. And you'll recall a Connecticut Families Program and Hero and EMAP, that you're instrumental in establishing, you and Senator Duff. And there is -- is a lot of work going on to bring people to the point of resolution with their mortgage, whether it's modification or facing the fact that, you know, you move on in life.

But, in terms of -- in terms of the success of our program, the hotline, I think it's been very good. We -- we coordinate with the housing authorities and -- and the housing advocacy agencies. I know I was just speaking to someone from the Connecticut Fair Housing Group and we put on different seminars for the

public there, to inform them of what the process is. And -- and one of the keystones of it is to advise them of the mediation. And, you know, it's optional. But the more people that exercise the option of doing it are better. By the way, the hotline, and I thank you for that, is 877-472-8313, and the person's name is Mary Stagis.

REP. BARRY: Great. Yeah. Thank you very much and thanks for all that you --

COMMISSIONER HOWARD F. PITKIN: Thank you.

REP. BARRY: -- part is doing to help -- help people out there in the state of Connecticut who are experiencing difficulties losing their home.

Does anyone else have any questions?

Yes, Senator Duff.

SENATOR DUFF: Thank you.

Good morning, Commissioner.

COMMISSIONER HOWARD F. PITKIN: Good morning.

SENATOR DUFF: Good afternoon, sorry. First of all, I just want to apologize to the members of the committee and those who are testifying today for the delay in starting the hearing. There was unforeseen circumstances. But we know everybody's time is very valuable and I do apologize for -- for being tardy today.

I do want to just also mention the foreclosure hotline. I think Mary -- have had -- recently had a constituent in touch with Mary and she has done an outstanding job, of not only corralling her resources but other departments

in the state as well. So for those who need the help, I would certainly say that -- to give Mary a call. And -- and -- I think you've all been working well together with CHAFA mediation and other types of areas so that we're all not working (inaudible) but working together. So I appreciate your leadership on this, and I want to thank you for your testimony and for your patience this morning.

COMMISSIONER HOWARD F. PITKIN: Thank you, Senator.

REP. BARRY: Any other remarks from the committee members?

Okay. Thanks very much, Commissioner.

COMMISSIONER HOWARD F. PITKIN: Thank you.

REP. BARRY: Have a good day.

COMMISSIONER HOWARD F. PITKIN: Thank you very much.

REP. BARRY: Next is the State Treasurers Office. We have Larry Wilson, assistant treasurer, representing Denise Nappier.

Good morning.

LAWRENCE WILSON: Good morning. Senator Duff, Representative Barry, members of the Banks Committee, my name is Larry Wilson, assistant treasurer for cash management, with the Office of the State Treasurer. I am pleased to be here today on behalf of state treasurer, Denise Nappier, and we thank you for the opportunity to offer testimony concerning Raised Bill 5396, AN ACT INCREASING INVESTMENT IN COMMUNITY BANKS AND CREDIT UNIONS.

REP. BARRY: Oh, good. You're quite welcome.

Okay. Gene Marconi.

EUGENE MARCONI: Good afternoon, Representative Barry. Thank you for having me at the Banks Committee.

I just wanted to amplify on one question that Linda Fercodini and Norm Krayem was -- was asked concerning, you know, who pays the conveyance tax, whether it's really the lender whose paying it. And there's this feeling that the Wall Street types cut the check and then sort of shrug their shoulders and walk away, and that is not necessarily the case.

Short sales, sometimes, are conditioned on the sellers signing a promissory note for the deficiency. There are deficiency judgments that can be rendered even in foreclosure situations, even when there's a foreclosure by sale. So -- the -- the -- the debt still remains and the debt is increased by the amount of expenses that the lender has and the amount of money that the lender advances for expenses. And there is no assurance that their simply just going to shrug their shoulders and walk away from that.

They -- they have the right to continue to pursue their debt even in the short sale situation. And we certainly have a right to a deficiency judgment in a foreclosure, which will last for 15 years. So I just wanted to -- that's a reminder that -- that, no, it's not necessarily the lender whose paying these things and simply walking away from them. They can come back and revisit the -- the seller and the homeowner. That was just on the side.

[HB5279]

HB5410
HB5270

I'm here to speak in favor of Raised Bill 5410, which has three important components. The first component is -- is, by far, the most important, and that's the extension of the court mandated Mediation Program.

There -- I think someone mentioned earlier, there's another Bill, 5270, which also looks to extend the -- the deadline for the Mediation Program. If that's the vehicle the committee chooses to extend the deadline, the only thing we would ask is that the -- the, sort of, documents and information in 5410, which are part of the definition of good faith, especially the pooling and servicing agreements, also continue to be required of -- of lenders in the foreclosure process. That sort of information, especially the pooling and servicing agreement which fixes what the servicers authorization is to deal with that mortgage and modify is -- modify it, is critical to the mediation process. And -- and no matter which bill is used to extend the Mediation Program, and we certainly do hope that it -- that it be extended, the -- the -- the protections for good faith should be appropriated in that bill.

The second part of 5410 provides for protections for tenants who are in properties that are being foreclosed. There are currently federal protections. There is a -- there is some state protections, as far as cash for keys type payments but these -- these protections are also important, and the 17,000 members of the association would support those protections also.

The third part of the bill seeks to add a option to the menu of foreclosure options. Currently, we have strict foreclosures. We have foreclosures by sale, which are, in

program. So it's absolutely true that there's a different cost structure, but the fee component you have included in this bill is absolutely appropriate and absolutely adequate.

And I'd be glad to answer any questions that you may have.

REP. BARRY: Thanks very much.

Representative Wright.

REP. E. WRIGHT: One very brief question, if I understand your testimony correctly, what you're saying is the distinction is not so much whether the debt is secured or unsecured but whether the principal amount of the debt is being negotiated down on behalf of the consumer; is that correct?

MICHAEL CROXSON: In the context of every debt that you -- that's being negotiated on a debt management plan or in a settlement program is always unsecured. It's never a secured debt, and in that context, yes. A debt management plan is a full repayment of principal and interest and a settlement program is always less than principal.

REP. E. WRIGHT: Okay, thank you for that clarification.

MICHAEL CROXSON: Uh-huh.

REP. BARRY: Thanks very much. Thank you very much for coming up.

Gentleman named Rafie Podolsky.

RAPHAEL PODOLSKY: Thank you, Mr. Chairman. Thank you to the committee for permitting me to

SB235
HB5410
HB5270

and the practical impact of Section -- Section 3 is to make that law part of Connecticut law and therefore not be subject to the -- to the federal, sunset date of the federal statute.

We support Sections 1 and 2 two of this bill and House Bill Number 5270, which extend the foreclosure mediation program. Our -- we would -- our position is the longer you extend it the better and it ought to be made permanent. We're not going to stop having foreclosures, the numbers are likely to keep going up but even if they went down, you would still want to have a mediation program, you adjust -- adjust the number of people needed to handle the mediation.

And we also support the provisions that are in Sections 1 and 2 of the bill that -- that address the kinds of things -- the kinds of sanctioning that the courts can be encouraged to use if necessary.

Those are the bills I am prepared to address now, and I'd be happy to answer any questions I could, and appreciate the opportunity to testify. Thank you.

REP. BARRY: Thanks, Rafie. The -- quick question about the general (inaudible) mediation program, the -- the -- some of the sanction issues, the way the bill is written right now, one part of it just says that the court shall not award attorneys fees to mortgagees that -- for a scheduled mediation session if they don't, you know, if they're not prepared to mediate. Does that -- do you think that's a -- an incentive for them to mediate?

RAPHAEL PODOLSKY: I think so, yes.

REP. BARRY: And -- and, I guess the question, -- these other sanctions that are already -- some of these -- some of the language in here that's -- that would be taken from the standing orders, what is your, I guess -- we talked about how -- how -- how the foreclosure courts are courts of equity and that judgments, at least that's by before judiciary, I've been through there, that -- you said that in like 1400 cases these reports the judges had referred cases to the mediation program, these are their equitable powers, and they also routinely extend law dates, and do all kinds of stuff, order sales (inaudible). All using their equitable powers.

Do you think that it's absolutely necessary to codify those standing orders or do you think judges are -- I guess, do -- do -- do you have this certain -- a certain amount of trust in judges to be able to use their equitable powers to make sure that the process is fair for the homeowners especially?

RAPHAEL PODOLSKY: I -- I don't think -- I don't think -- you're doing it as an either/or and I don't think that's the right way to say it. I think that -- I think that it's really helpful to codify, and that's not inconsistent with having faith in judges to use good judgment as to how they apply sanctions. They can -- that they can use their equitable powers to exercise.

It's -- I -- I guess I've said this to you at a different -- in front of a different committee, but I think it is helpful when judges see what the Legislature thinks is appropriate, and by putting that into the bill, you're conveying a message, but you're not making any judge do anything, because all you're doing is you're saying we want to make

sure that you know that this is in the arsenal that you have, and that it's -- it's -- we consider it, as a Legislature, appropriate if you chose to use these sanctions -- sanctions.

Presumably the inherent message is in appropriate cases. I mean you're not saying to -- that you want to use an inappropriate sanction, so based on the circumstances of the individual case, I think it's really helpful.

There are some judges that are clearly doing this kind of thing, and they're doing it anyway, and they're doing it whether you do or don't put them into the statute.

There are, however, I think plenty of judges that I think are being very, very cautious, perhaps excessively cautious. And if putting it in the statute says it's fine. It's well within what we can do. Even with the kind of things you describe, for example, judges using their equitable powers to refer cases to remediation that were beyond the scope of the statute the way it was originally written, there were some judges, like Judge Mintz, that were doing that. There were other judges that felt they didn't have the power to do it, even though they did have the power to do it. And when you made amendments last year, I think it was helpful that you clarified that.

The other thing that's interesting about the statute is this is a statute from the very beginning that includes a lot of detail about how the program is to be administered. Things that one could argue could have been left entirely to judicial from the beginning, you know, including the number of days before a notice has to go out or something of that sort. But I think it was a good thing that the Legislature chose to put those things into

kj/gdm/gbr BANKS COMMITTEE

11:30 A.M.

the statute. It helps assure that the statute runs well.

REP. BARRY: Do you think it'd be helpful to put in some less stringent language than the mortgagee shall bring in to the mediation session; and it looks like there's seven things in this bill, something less absolute that -- that they're, you know, expected to bring then?

I mean, obviously I understand that the sanction part of it is something that's permissive, the judge can or cannot go to (inaudible) if -- if parties fail to, you know, show reasonable cause for not doing certain things. Can you touch upon that.

RAPHAEL PODOLSKY: I don't think there's any magical way that a bill has to be written, so I don't want to say that there's only one way that you can write the bill. I think -- I think the stronger you make it the better.

One of the advantages of making it a shall is that it actually becomes clear to the lender what's expected of them as you -- as you soften the language or reduce the mandatory nature of it, then you'll have more and more circumstances where the lender does not, in fact, provide these documents because the statute doesn't say you have to. And then you may then end up sort of part way back where you started with -- with necessary things not being there.

So, I would say it's better the stronger you make it. It's not that it's the only possible way it could be written -- it could be written.

REP. BARRY: Okay. Thanks.

Any other questions?

Thanks a lot, Rafie.

RAPHAEL PODOLSKY: Thank you very much.

REP. BARRY: Yvonne Pabon.

JEFFREY GENTES: Chairman Barry, Yvonne is -- is a client of the Connecticut Fair Housing Center.

REP. BARRY: Okay.

JEFFREY GENTES: She actually had to return home to Manchester.

REP. BARRY: I saw her testimony, written testimony.

JEFFREY GENTES: Exactly, so I'm not going to read her testimony into the record --

REP. BARRY: Thanks.

JEFFREY GENTES: -- but it's included with your package and available.

REP. BARRY: You got it, thank you.

JEFFREY GENTES: Thanks.

REP. BARRY: Attorney Dave Wiese.

DAVID WIESE: Good afternoon, Chairman Barry, Chairman Duff, members of the Committee. My name is Dave Wiese. I am outside counsel for the Connecticut Banker's Association. I'm here to offer some thoughts a couple of different bills that are before you.

HB5270 HB5410

I guess I'd like to start with ones we were

just listening to Rafie talk about, the -- the mediation bills. Let me start, though, before I launch into specific comments on the bills by applauding the leadership of this committee and the members of the committee for their foresight in putting together the mediation program. It really has helped to keep thousands of people in their homes and out of the foreclosure courts, and that is a good thing, not only for the distressed homeowners, which is a terrible situation being in in foreclosure, but it's helped, you know, Connecticut communities, Connecticut's real estate values, Connecticut's tax base. There are a whole host of trickle -- trickle-down effects that -- that have come from this mediation program.

I also want to thank the committee and -- and -- and in particular the leadership of the committee for inviting the Connecticut Banking Industry along with the judicial branch and the -- the housing advocates to -- to sit down and -- and talk about the different issues that exist with respect to this type of a program.

It's a complex program. It was put together not knowing precisely what the crisis would bring to the state of Connecticut, and, you know, over time, you know, as we experienced the system firsthand, and -- and we've done so in an environment where the foreclosure instances have -- have mounted to unprecedented levels, we -- I think we all realize that certain problems have developed that may need some adjustments to the -- to the system.

And -- and what we'd like to do is offer our assistance and hope that we can be back in the room with judicial branch with the leaders of

this committee and other Legislators and with advocates and talk about some of those problems and effective ways to deal with those things, balanced ways, things that aren't just about, you know, penalties and sanctions but ways that we can bring both the borrower and the -- the servicer or the lender to the mediation session armed with the information to -- to make those sessions more meaningful and proceed more rapidly and hopefully result in -- in a higher percentage of successful solutions. So, that we would very much like to see happening with this.

With respect to the two bills that are -- that we've raised -- the -- the first one being -- 5270, that one would extend the Sunset date on the mediation program by an additional year. We're very much in support of that.

As you all know, this program was put in place being in response to an emergency situation that was very hard to figure out how long it would last and what it would bring to us. Unfortunately the emergency is not over. We -- we have far too many foreclosures still on our docket, and predictions are that we'll have them for some time. So I think it makes a lot of sense to -- to extend the mediation program Sunset date for another year, and then see what happens with it then.

The other bill that you've raised which is 5410, AN ACT CONCERNING MODIFICATIONS TO THE FORECLOSURE MEDIATION PROGRAM is a bit more extensive.

I think there, some of the issues are, there is a provision in there that would remove the Sunset date all together and make it a permanent part of the Connecticut foreclosure law. We're -- we're not in support of that.



M. JODI RELL
GOVERNOR

STATE OF CONNECTICUT
EXECUTIVE CHAMBERS

Testimony of Governor M. Jodi Rell

Presented to the Banks Committee

March 11, 2010

Regarding HB 5270: AA CONCERNING FORECLOSURE MEDIATION

Chairmen Duff and Barry, Ranking Members Kane and Stripp and distinguished members of the Banks Committee:

Thank you for the opportunity to provide testimony on – and express my strong personal support for – House Bill 5270, An Act Concerning Foreclosure Mediation, which extends the expiration of Connecticut's Foreclosure Mediation Program through June 30, 2011.

I would like to start by thanking Chairmen Duff and Barry, who worked with me so tirelessly over the last few years to establish this mediation program and secure its funding. Through our partnership, Connecticut has established and refined a premier foreclosure mediation program – a program that has already effectively staved off numerous foreclosures.

Indeed, the success of Connecticut's Foreclosure Mediation Program has been incredible. Late last year Judicial Branch officials announced that the mediation program was running a settlement rate in excess of 70 percent, meaning thousands of Connecticut families were being helped to keep their homes during these exceedingly difficult economic times.

Sadly, our economy remains threatened by significant job losses and a recovery that – so far – is sluggish at best. Record numbers of homeowners are still facing foreclosure. Statewide, there have been 43,556 foreclosure cases filed between July 1, 2008 and February 28, 2010 – a staggering and immensely sobering statistic.

More time is needed to ensure that homeowners are protected while the recovery gains speed. Few things are as important to one's sense of security as one's home.

Many times we have called home ownership the American dream. For the vast majority of us, it is the single most important financial transaction we will ever undertake. And – as I have observed before – no one wins when that transaction sours. The borrower loses the home they have worked to purchase and struggled – sometimes desperately – to keep, the lender is saddled with a property they do not want and neighbors see their property values fall.

We, as a state, must do all that we can to preserve this American Dream. So far, through this mediation program and other assistance programs we have created, we have been able to do so. Among them are the creation of a foreclosure hotline at the Department of Banking and the Emergency Mortgage Assistance Program.

However, the expansion of the Foreclosure Mediation Program and the decision to make it a mandatory part of residential foreclosures has, I believe, been one of the most successful steps we have taken to date.

Thousands of families have been allowed to stay in their homes longer, court costs have been reduced and property values have been supported – all serving to safeguard the economic well-being of entire communities, especially Connecticut's largest cities.

Our work is not done. The crisis has not subsided. This is why I urge the Banks Committee to act favorably on this bill and pass this extension.

Thank you for your consideration of this critical amendment to Connecticut's Foreclosure Mediation Program.



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**Written Testimony of the Connecticut Bar Association Pro Bono Committee
 In Support of House Bill 5270, An Act Concerning Foreclosure Mediation
 Banks Committee
 March 11, 2010**

The Pro Bono Committee of the Connecticut Bar Association ("Bar") respectfully submits this written testimony in support of House Bill 5270, An Act Concerning Foreclosure Mediation, as well as any other forthcoming legislation that will operate to extend the Judicial Branch Foreclosure Mediation Program ("Mediation Program") beyond one year from its current termination date of June 30, 2010, such as House Bill 5369. Specifically, House Bill 5270 would amend Connecticut General Statutes §49-31n and extend from June 30, 2010 the termination date of the Judicial Branch Foreclosure Mediation Program to June 30, 2011.

In the Fall of 2007, the leadership of the Bar was alerted to the rapid increase in the number of foreclosure cases filed in Connecticut's Superior Courts, with a correspondingly large number of homeowners forced to proceed pro se because they could not afford to hire counsel. Recognizing that the provision of attorneys to these defendants could help many save their homes either through loan workouts or legal defenses, the Bar's Pro Bono Committee has worked since then with Statewide Legal Services and the CT Fair Housing Center to recruit and train the Foreclosure Prevention Pro Bono Panel ("Panel"). In addition to representing eligible homeowners¹ on a pro bono basis in foreclosure proceedings, Panel attorneys work with staff counsel from the CT Fair Housing Center and Statewide Legal Services, in cooperation with the University of Hartford, to conduct clinics across the state to educate homeowners, many of whom are unable to afford lawyers of their own, about how best to navigate the foreclosure process, including participation in the Mediation Program.

In addition to its salutary effects with respect to alleviating the courts' increasingly congested foreclosure calendars, the Mediation Program has been strikingly successful during its relatively short existence. Because the Mediation Program requires the mortgage company to have a representative present during the session with the authority to agree to a proposed settlement, it has given homeowners and their children the opportunity to accomplish a loan workout that otherwise might not have been possible. The numbers speak for themselves. As of August, 2009, the Mediation Program had handled more than 4000 cases, 75 percent of which were settled. Of that 75 percent, 62 percent of the cases resulted in a settlement under which the homeowner remained in their home; the other 13 percent resulted in settlements under which the homeowner was able to leave the home via a negotiated short sale, or extended law day or sale date.

The success of the Bar's pro bono efforts, both in providing direct representation and reaching out to a larger population of distressed homeowners through the foreclosure clinics, is directly correlated to the existence of the Mediation Program. In this time of great economic crisis, we respectfully urge you to continue this vital resource by approving House Bill 5270.

¹Because of the Panel's limited resources, including the need for intake assistance from Statewide Legal Services, direct representation on a pro bono basis is available only to homeowners with incomes less than 200 percent of the federal poverty level, which is \$22,050 for a family of four in 2010.



**STATE OF CONNECTICUT
JUDICIAL BRANCH**

EXTERNAL AFFAIRS DIVISION

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**Testimony of Deborah J. Fuller
Banks Committee Public Hearing
March 11, 2010**

Raised Bill 5270, An Act Concerning Foreclosure Mediation

**Raised Bill 5410, An Act Concerning Modifications to the Foreclosure
Mediation Program**

Good afternoon Senator Duff, Representative Barry and members of the Banks Committee. I would like to thank you for the opportunity to testify, on behalf of the Judicial Branch, on two of the proposals before you today - Raised Bill 5270, An Act Concerning Foreclosure Mediation and Raised Bill 5410, An Act Concerning Modification to the Foreclosure Mediation Program.

Both of these proposals would extend the Judicial Branch's Foreclosure Mediation Program, which is due to expire at the end of this fiscal year. House Bill 5270 would extend it for one additional year; House Bill 5410 would eliminate the sunset date entirely. The Judicial Branch supports extending this valuable program. We would respectfully suggest that a 1-year extension will not be enough, since all signs indicate that the mortgage foreclosure crisis is far from over. In fact, the number of foreclosure cases filed in court continues to rise. A comparison of the 3-month period from October 1 through December 31 in 2008 to the same period in 2009 shows that there was an 18.7% increase in the number of foreclosure cases added. Based on this information, we believe that the critical need for the program will continue for at least another two years. We recognize that in our current fiscal climate it may be difficult to identify funding for this program, but believe that it makes a valuable contribution to stabilizing the state's real estate market.

Legal Assistance Resource Center ♦ of Connecticut, Inc. ♦

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H.B. 5410 -- AAC Modifications to the Foreclosure Mediation Program

Banks Committee public hearing – March 11, 2010
Testimony of Raphael L. Podolsky

**Recommended Committee action: APPROVAL OF SECTIONS 1
THROUGH 4 OF THE BILL**

H.B. 5410 contains four different proposals. We strongly support the first three of those proposals, which are contained in Sections 1 through 4 of the bill. We also support H.B. 5270 as an alternate vehicle if the Foreclosure Mediation Program is not made permanent, as proposed by Sections 1 and 2 of H.B. 5410.

Section 4 – Connecticut Cash for Keys Act

Section 4 closes a "donut hole" created – unintentionally we believe – when the General Assembly adopted the Connecticut Cash for Keys Act in 2008 (Sec. 47a-20f). Adoption will assure that the minimum cash for keys payment for tenants with security deposits of less than \$1,000 will not be less than the minimum \$2,000 payment for all other tenants, including those with no security deposit. As presently drafted, the act sets the minimum payment at double the security deposit if there is evidence of the deposit (presumably if the tenant has a receipt), or the higher of two months' rent or \$2,000 if there was no security deposit or if no evidence of one can be produced. In effect, this is a minimum \$2,000 relocation incentive to vacate early. The unintended result of the existing language is that a tenant with a receipt for a security deposit of less than \$1,000 is subject to a lower minimum than a tenant with no security deposit at all. He or she would be better off to lose the receipt. Section 4 applies the \$2,000 minimum to all tenants offered cash for keys payments.

Section 3 – Protecting Tenants at Foreclosure Act

Section 3 of the bill adopts as state law the substance of the federal Protecting Tenants at Foreclosure Act (PTFA) of 2009, Title VII of Public Law 111-22. A copy of this law is attached. PTFA recognizes the collateral harm caused to tenants when the landlord loses the building to foreclosure, commonly resulting in demands from the foreclosing party that tenants vacate very immediately. PTFA provides that the successor in interest in a foreclosure (i.e., the foreclosing lender) must give tenants at least 90 days after the foreclosure is completed, or until the end of their lease if that is longer, to vacate. This is a greater protection than under current state law (Section 47a-20e), which generally guarantees tenants only 30 days with an oral lease or 60 days with a written lease and does not allow tenants to complete a lease that extends beyond the 60 days. The federal act, however, will sunset at the end of 2012 unless extended. Even if the number of foreclosures goes down, however, the harm to renters in buildings that are foreclosed will

be continue to be great. In December, the State of New York adopted PTFA as its own statute, thus providing PTFA protections even if the federal law sunsets. This bill would do the same for Connecticut.¹

Sections 1 and 2 – Foreclosure Mediation Program:

The Foreclosure Mediation Program has been the state's most effective foreclosure relief program, and it has become a model program for other states throughout the country. Sections 1 and 2 of H.B. 5410 (a) make the Foreclosure Mediation Program permanent and (b) codify and expand upon the existing Uniform Foreclosure Mediation Standing Orders issued by the Chief Court Administrator. They go beyond the Standing Orders primarily by spelling out in detail the documentation that the lender is expected to bring to mediation, by itemizing what is meant by a good faith effort to mediate, and by illustrating the types of sanctions that may be imposed for failure to mediate in good faith. These expanded provisions are important, because they address the very issues that have interfered with the mediation process.²

H.B. 5270 – AAC Foreclosure Mediation

This bill extends the Foreclosure Mediation Program for only one year. It would be preferable to adopt the portions of Sections 1 and 2 of H.B. 5410 that eliminate the sunset provision altogether. If that is not done, then the Foreclosure Mediation Program should be extended for at least two years. If even that is not done, then adoption of H.B. 5270 for only one year becomes necessary to prevent the Foreclosure Mediation Program from terminating on June 30, 2010. Preservation of the Foreclosure Mediation Program is critical, and the strongest action available to preserve it should be taken.

¹The bill as drafted does not include three parts of PTFA in an effort to keep the language simple and to follow the structure of the existing Connecticut statute as closely as possible. In particular, (1) it does not explicitly require the successor in interest to assume a Section 8 lease (we believe that failure to assume a Section 8 lease would in any event be source-of-income discrimination under the Connecticut Fair Housing Act); (2) it does not match the full definition of "bona fide tenant" (because the federal reference to fair market and subsidized rents is incorporated into the phrase "arms-length transaction" in line 325 of the existing Connecticut statute); and (3) it does not address the issue of a buyer who desires to move into the tenant's unit before the lease expires (because of the unlikelihood that this could happen before lease expiration). If, however, the Committee would like to conform these items to the federal statute, we see no objection to doing so.

²There appears to be an unintentional but significant drafting omission in subsection (c) of Section 2 of the bill (lines 246-318). Subsection 2(b) covers the pre-July 1, 2009, period (the first year of the Foreclosure Mediation Program) and Subsection 2(c) covers the program since participation was made mandatory in 2009. In H.B. 5410, the codification and expansion of the Standing Orders is included only in the pre-2009 portion of Section 2 and not in Subsection 2(c), which is the portion being made permanent. All new language in Subsection 2(b) needs to be incorporated into Subsection 2(c) as well.



CONNECTICUT BANKERS ASSOCIATION

March 11, 2010

TO: THE BANKS COMMITTEE

FROM: THE CONNECTICUT BANKERS ASSOCIATION
CONTACTS: Tom Mongellow, Fritz Conway

RE: H.B. NO. 5410: AN ACT CONCERNING MODIFICATIONS TO THE FORECLOSURE MEDIATION PROGRAM

We applaud the Chairs and the members of this Committee for their leadership role in the development of the mediation program. The program has helped thousands of homeowners to stay in their homes and avoid foreclosure. Indeed, we understand that the program has become a model for other states attempting to deal with similar issues. We very much appreciate the willingness of the Committee to work with the CBA, the Judicial branch and consumer advocates over the past two years to establish a workable system for all the stakeholders. We recognize that as we all gain experience with the system and the mounting foreclosure docket, some problems have surfaced and certain adjustments may be warranted. We look forward to working with this Committee, other legislators, the Judicial Branch and other interested parties to help address those problems and implement thoughtful and effective adjustments.

As drafted, this bill would, among other things, remove the current sunset date and make the mediation program a permanent part of Connecticut foreclosure law. As you know, this program was designed to address the fall-out from a unique and unprecedented national financial emergency. Unfortunately, we have not yet seen the end of the emergency situation. As a result, the CBA has expressed support for another Committee bill (H.B. 5270) which extends the sunset date for an additional one year period. We would not, however, support a provision that would make the program a permanent part of Connecticut law.

This bill also contains a number of new compliance obligations that are directed at lenders and servicers involved in the mediation process. While we recognize that some of the new provisions are consistent with existing standing orders adopted by the Judicial Branch, several of the provisions contain requirements that we respectfully view as counterproductive, burdensome and/or unnecessary. By way of example, a lender would be required, in all cases, to