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All right. Judge Mintz.

Good afternoon, Your Honor.

A VOICE: (Inaudible.)

REP. TONG: Sure. Welcome back.

DOUGLAS C. MINTZ: Is that on now?

A VOICE: (Inaudible.)

DOUGLAS C. MINTZ: Okay. Good afternoon, Senator Leone, Representative Tong, Senator Linares, Representative Alberts, and members of the committee. I want to thank you for the opportunity to appear before you today to testify on behalf of the Judicial Branch, in support of House Bill 6355, AN ACT CONCERNING HOMEOWNER PROTECTION RIGHTS.

My name is Douglas Mintz; I am a Judge of the Superior Court. With me is Roberta Palmer, who is the Deputy Director for Civil Matters for the branch.

I am currently sitting in Stamford where I presided over the foreclosure docket for the past several years. I also serve as chair of the Judicial Branch's Bench-Bar Foreclosure Committee.

I would be remiss if I did not begin my testimony by stating that the Judicial Branch's Foreclosure Mediation Program, which has been operating since July 1, 2008, has been a great success. As of December 31, 2012, 15,156 cases had completed mediation. Of those, 83 percent settled. And in 68 percent, the homeowners remained in the home. A copy of the chart illustrating this is attached to my testimony.

Turning to the bill before you, this past fall the Governor's staff invited me and others from the Judicial Branch to meet with them as they began working on this proposal. I am happy to report that we are very -- we had a very fruitful discussion and that the suggestions we made at that meeting have been included in this bill.

The replacement of the eight-month stay with a stay of pleadings during the time that mediation is ongoing, however long it lasts, would eliminate the inconsistencies and time frames that currently in the statutes. We also support the elimination of the 30-day limitation on the extension of mediation, as that limitation has not proved practicable.

In addition, the clarification of terms in Sections 1 and 3 and the expanded authority for judges to impose sanctions in Section 4 would address issues that have been ongoing since the inception of the foreclosure mediation program.

We also support the proposal to increase

judicial oversight over the mediation process. We recognize and share the concern that foreclosure mediation process takes too long. Indeed, we have engaged in repeated attempts over the years to address this issue with little success; however, I can tell you, based on information we recently pulled together, that the mediation process has not caused a delay in processing foreclosure cases.

I've attached to my testimony two charts that show that the mediation process has not substantially affected the processing time for foreclosure cases. In Calendar Year 2011, the average time for foreclosure cases with mediation to be disposed was 445 days while for cases without mediation, it was 475 days. In Calendar Year 2012, the average time for cases with mediation was 553 days. For cases without mediation, it was 622 days.

Although we support increased judicial oversight of the foreclosure mediation process, I should point out that we are concerned that the new requirements as drafted would overburden the court process. In order to alleviate this concern, we would respectfully suggest clarification that the term "on the record" on lines 132 and 279 contemplate the judge reviewing a file and signing an order in chambers and that the hearing that would be required following a third mediation session be allowed to follow the same processes.

Requiring all these proceedings to take place before a judge in the courtroom could -- could prove to be unmanageable. And I do not believe it is necessary to accomplish the purpose of increased judicial oversight over the mediation process.

Finally, in this interest of making a good bill

better, I would like to take this opportunity to bring your attention to some issues with the language of the bill that we have identified. It is unclear what is meant by the phrase, quote, completely delegated, unquote, in line 21. The language in lines 37 to 39 appears to need clarification. We would respectfully suggest that the phrase "reasonably complete the package of financial documentation" on lines 167 and 329 be replaced by "substantially complete the package of financial documentation."

Thank you, again, for the opportunity to testify before you and your consideration of these concerns.

And I would be happy to answer any questions you may have. Thank you.

REP. TONG: Thank you, Your Honor.

A couple of questions come to mind as I -- I hear you testify about your experience with the mediation program and foreclosures, generally. In the -- in the beginning of your testimony, you talked about two proposals in this bill, one that would -- would remove the 30-day limitation on -- can you refresh my recollection again as the -- the two things you talked about?

DOUGLAS C. MINTZ: Okay. In terms of the mediation period, what the law is now, there's a 68 -- 60-day mediation period.

REP. TONG: Yup.

DOUGLAS C. MINTZ: That can be extended up to 30 days. There's another part of the same statute that says there's a stay up to eight months.

REP. TONG: Right.

DOUGLAS C. MINTZ: But it talks about the stay is in effect until the mediation period is over. But if the mediation period only can go 90 days, then the eight-month stay was not really effective.

REP. TONG: Right.

DOUGLAS C. MINTZ: So that this bill takes care of those concerns in terms of -- and what we see on the ground -- in terms of how long the mediations take. I'm continuing mediations beyond the 90 days by agreement, a lot. So this takes care of that concern.

REP. TONG: So I guess my question, though, is: Does this have the net effect of actually elongating the mediation period, shortening it or doing nothing to the process?

DOUGLAS C. MINTZ: I -- I think what it's doing is reflecting what is happening on the ground. It -- it allows the mediation to go on as long as it needs to go on and not have to have the expense of -- of pleadings and court fights over the foreclosure case at the same time.

REP. TONG: Well, what we're hearing from advocates for the proposals in this bill and from people who have questions about it or oppose these proposals is that both constituencies want to shorten the time it takes to get through mediation and to wrap it up, to come to some resolution for the homeowner and the lender.

You cited, you know, statistics of 400-plus days and then 500 and 600-plus days. From your experience and your judgment, do -- do those seem like appropriate time periods or is 400 days or 500 days or 600 days just too long for

this process?

DOUGLAS C. MINTZ: Well, I can tell you, I -- in a -- in an ideal world, I would hope that the -- the 68 percent of the people that the mediation program gets to stay in their houses can be done a lot quicker. And the, you know, the 15 percent that gets graceful exits with short sales or -- or deed in lieu could be done quicker, because the stress on the owners is unbelievable. I mean, this is the -- the biggest investment people make in their lives, and to have to be doing it for over a year in terms of foreclosure is a long time. And on the other side of the coin, the banks haven't been paid in all that time and they deserve to get their, you know, investment back as much as they can, as quickly as possible.

I mean, that's why foreclosures are a -- a -- pursuant to the practice, but the privilege takes -- it's supposed to get done quickly. You know, in terms of 445 days compared to other kinds of cases, that is really quick. But that being said, you know, if only we could get the mediations done to the successful conclusions of 75 -- 73 percent settled within 90 days, we would love that. But, unfortunately, you know, the -- the what we see every day is that it's not really practical that that happen that quickly.

REP. TONG: Do you think that empowering the judiciary to assess penalties or fines for not coming to mediation prepared or not mediating in good faith, however good faith is defined, do you think that will enhance your ability to move a case along and to get it resolved?

DOUGLAS C. MINTZ: I think it would enhance our ability. I -- I can tell you, I'm -- having it on the books will probably be the most

effective way to do it. I -- I would hope that I would never have to use that tool against anybody.

REP. TONG: As a litigant now, if somebody were acting in -- in bad faith, and I think under -- I've done some of this work -- I think "bad faith" has a definition in our common law; you have to have a nefarious purpose and evil motive. If -- if you could prove bad faith, is there some mechanism by which a litigant could seek an order from you of contempt to fine a party using your equitable powers to do so?

DOUGLAS C. MINTZ: I -- I suppose somebody could make a motion for contempt and -- and it would have to be a civil contempt, so we'd have to have a whole hearing on it. I've never seen that happen.

I can tell you that when either side has brought somebody saying, okay, we need to go see the judge, it's amazing how quickly things get resolved. And -- and so it's -- it's the -- the teeth, itself, that may be able to make things quicker than actually imposing it. I would -- again -- I would hope I'd never have to do it. I've never in the -- in the five years with the success of the program as -- as successful as it is, I've never -- I don't think I've ever sanctioned anybody, I mean.

And some of the things you can talk about is, okay, you know, if a sanction might be that you can't impose -- you can't -- I'm not going to award interest for the period of time that you're not in compliance, things like that.

REP. TONG: I guess as we think about penalties and how they would operate, it would seem to me that one way we could do it is if you as a judge said to X party, you need to do these

five things in advance of our next court session. And if they don't, then they are nominally, at least, in contempt of your order.

DOUGLAS C. MINTZ: I've -- I've done that, not in a contempt sense but had, you know, the parties come down before me and say, okay, what's going on. And, you know, either we're missing this document from the owner or, you know, the bank has still or the plaintiff is still reviewing the documents, you know. And -- and it's amazing the response you get when a judge says, you know, you need to do this.

REP. TONG: Yeah.

DOUGLAS C. MINTZ: And, you know, I'd say the vast majority of the time it gets done by the next time. So --

REP. TONG: Well, thank you.

DOUGLAS C. MINTZ: -- I'm -- I'm -- okay.

REP. TONG: Yeah.

DOUGLAS C. MINTZ: I mean, as a witness you've been taught never to answer the question that's not asked.

REP. TONG: You're not on cross, Your Honor.

DOUGLAS C. MINTZ: Oh, is that right?

REP. TONG: We can go there, if you want.

DOUGLAS C. MINTZ: Then --

REP. TONG: Any other --

DOUGLAS C. MINTZ: Then I'll just answer yes or no.

REP. TONG: Any other questions?

Senator Leone.

SENATOR LEONE: Thank you, Mr. Chairman.

Good afternoon, Judge Mintz. I apologize; I wasn't here at the opening statements, running back and forth between committees.

DOUGLAS C. MINTZ: That's okay.

SENATOR LEONE: But I -- I did want to try and get some of your perspective on this proposal moving forward, because obviously, you being in the judicial system, that's very relevant.

In terms of -- you know, there's a metric that's been thrown about and been stated quite often since this bill has come out in terms of the length of time it takes for Connecticut to resolve in mediation, 600-plus days. We're at the top of the list in terms of the time frame.

And so I guess my question is: What is your perspective on the length of time, because you could read that as -- as a positive aspect or on the flip side you could reason out on a -- look at it as a negative aspect, depending on your point of view and what's actually going on. And I'd like to know, from your perspective, what then is the success rate, even though that we have 600-plus days or however many days it is. Are we actually coming to a conclusion and what's the rate of that conclusion; are they -- is it positive, negative, and so forth? So that's just the one question to start. I'd love to get your perspective.

DOUGLAS C. MINTZ: Okay. The -- the success of the program has been amazing, from my perspective.

Over 10,200 people have been able to have foreclosure actions brought and been able to either do a loan modification, a reinstatement or forbearance plan and been able to stay in the homes after they've, you know, hadn't been able to pay their mortgages and -- and had a foreclosure case started.

That being said, as I -- as I said before, you know, 90 days is too long for -- for both sides. I mean, from the -- the banks' perspective, to get a loan modification in place, get a -- a loan back in -- what's the word I'm looking -- no -- on the books, performing loan again, that's -- that's a great thing. And on the other side of the coin, having people be able to stay in their houses and -- and, you know, not have a foreclosed house in that neighborhood is also a great thing, so the -- the quicker that we can get the 68 percent done, the better.

You know, in the -- in the other 15 percent of the cases settled, which are either liens in lieu or -- or short sales of graceful exits, both sides deserve to get it done as quickly as possible. And, you know, the 442 days to settle a case, you know, seems like a long time. But in -- in with the people having to get all their financial documentation together and then the plaintiffs having to review it and being able to then mediate it to come to a successful conclusion does take -- take some time.

When we first did the bill, we thought 90 days would be enough. But what has -- what we've seen in the experience is that it -- it's not nearly enough. I would love it to be 90 days, because then the -- the property owners would be -- 68 percent would be successfully back in their homes and the remainder, the banks would

be able to, you know, try and recoup whatever they can from their investment. Because the -- the longer it goes, the more costs there are. I mean, you've got interest running on these -- on these debts that continue to accrue. And so from a perspective of -- of the branch and -- and of the mediators, the quicker that both sides can come to a conclusion, the -- the more successful it's going to be.

SENATOR LEONE: And do you have any examples of why some of these or can you share any examples of why some of these cases might take so long, 400, 600 days? Is it on the fault of the homeowner; is it on the fault of the banks changing the rules or not having documentation or a decision-making authority? I'm hearing all sorts of reasons why it's too lengthy. And -- and what I want to be able to do along with the committee is to make sure that we attack this from the proper perspective and not -- not listen to things that aren't based in fact.

DOUGLAS C. MINTZ: Well, what I've seen, we actually did a --

ROBERTA PALMER: (Inaudible.)

DOUGLAS C. MINTZ: Okay.

ROBERTA PALMER: Okay?

DOUGLAS C. MINTZ: We did a -- a quick analysis of all the reasons for motion for continuances in the mediation program, and the -- the biggest plurality, not a majority but the -- the reasons for the most three -- the reason most used on motion for continuance was because the file was under review by the plaintiff. Then there were other reasons, you know, the homeowners haven't gotten all their documentation in. There's all sorts of other

reasons, but the -- the reason that had the most number of -- of continuances, and this was throughout the state, was that the file was under review.

And it's -- it's, from my perspective, it's sort of understandable, because this -- Connecticut is a small state. These plaintiffs are -- are huge, out-of-state entities and have a lot to deal with, so it's understandable that it takes them a long time to review these things.

There are some cases where the -- the, you know, they need a profit and loss statement. There's other -- that hasn't come in -- there's cases -- my understanding is and correct me if I'm wrong -- that in order for some documentation, it goes stale after -- after 90 days. So if you got some documentation that's in and one piece is missing, then it goes beyond the 90 days, you have to resubmit the whole thing. So it those sort of technical, underwriting things that are, you know, beyond my understanding.

SENATOR LEONE: And in terms of how other states are doing, is it -- is it okay to say this is an apples-to-apples type of cart or is it an apples-to-oranges? Because other states mediation process -- so I'm being told -- are shorter and therefore they supposedly have a better track record. So is --

DOUGLAS C. MINTZ: Roberta --

SENATOR LEONE: Is --

DOUGLAS C. MINTZ: -- wants to answer that.

SENATOR LEONE: Is it --

REP. TONG: Roberta, you have a mic there.

DOUGLAS C. MINTZ: Oh, you could.

ROBERTA PALMER: Okay.

DOUGLAS C. MINTZ: Oh, just press that button.

ROBERTA PALMER: Okay.

SENATOR LEONE: Is -- is it an apples-to-apples discussion or -- or no?

ROBERTA PALMER: Is it on? Okay. Senator, I -- I would say not. We're the only state that has a full-time mediation program in the courts. Most other states are volunteer attorneys who are, you know, doing the mediation sessions and are not committed to the same extent that the full-time mediators are in sitting in the courts.

And so as we've gone around the country and talked and met with colleagues around the country, yes, the time frame may be shorter, but as you said earlier, what is the exchange or what is the tradeoff for that? We have much higher success rate here in Connecticut. The 68 percent of people who stay in their homes is significantly higher than a lot of entities around the country that have mediation programs. And that is, you know, the realistic reason is mediators act as a -- as you can see -- a case manager.

I mean, we thought that mediation extended the foreclosure process. What we saw when we pulled the numbers recently was that's not the case. They actually are a case manager, assigned from beginning to end in that foreclosure case, making sure the paperwork is filed appropriately and following through with

all of the parties to ensure that the process gets an adequate loss mitigation review.

And that's, with the federal programs, that's often the problem is that there may be discrepancies in the type of loss mitigation review that's done and whether or not it follows the federal guidelines. Our mediators ensure that that's the case and that a home -- homeowner who qualifies for a federal program gets the program that they qualify for.

SENATOR LEONE: Thank you. I appreciate that, because it's -- it's important to know, especially when we're trying to see what other states are doing. And if the numbers are being thrown around and it's being looked at as a negative, I always like to understand if we're on the right side of the argument or on the wrong side or somewhere between.

And -- and I think it's -- it's important to know whether, you know, the statements are true. So as we move forward and if you're able to share any information along those lines, that would be helpful, because, again, I want to make sure that we're using factual data.

ROBERTA PALMER: Thank -- thank --

DOUGLAS C. MINTZ: Our mediators are so well trained on all the federal program; I think they -- they know the programs better than anybody in the country. So that's what's also very helpful in terms of our success rate.

ROBERTA PALMER: I just wanted to add, Senator, that Judge Quinn was invited to the Department of Justice, about a year and a half ago, to be held out as a model for this program around the country. And I think that that, as Judge Mintz said, is the reason, is that we stick with the

program. It does maybe take a little longer, although not necessarily, maybe compared, but it's not apples and oranges [sic]; you can't compare them as the same.

SENATOR LEONE: Thank you. Apples-to-apples; I understand.

A VOICE: (Inaudible.)

SENATOR LEONE: Another question, Judge Mintz. I've heard the term "activist judges" being thrown about and -- and I've been, you know, I -- I want to make sure that that's not the case in terms of making these lengthy proceedings. So other than -- you mentioned that plaintiffs' issues are usually what is the key statistics that sometimes lengthen this, but in your experience, have you seen that definition ever occur?

DOUGLAS C. MINTZ: I -- well, no; I've never. I've never heard that in terms of this program. I've heard it, you know, other things but not this program. The --

SENATOR LEONE: I -- I think it's meant --

DOUGLAS C. MINTZ: Well --

SENATOR LEONE: -- in the sense that the -- the lengthening of some of these mediation settings are being arbitrarily lengthened without having the proper reason to do so.

DOUGLAS C. MINTZ: I've -- I think the statistics that we drew in terms of the reasons for the continuance show it. And -- and a vast majority of continuances of the mediation program are by agreement of the parties, not because I'm doing it.

I mean I -- we have a thing called the "workflow queue," and that would be filing things. And the caseload coordinator, foreclosure mediation caseload coordinator workflow queues all the motions for continuance, and the vast majority are by agreement. And, you know, I -- I believe in the adversary system, and so if both parties want to continue it, I'm not going to stand in their way to not continue it.

SENATOR LEONE: So it's usually the case of an agreement; it's not that one wants to continue and the other party does not?

DOUGLAS C. MINTZ: No. As a matter of -- I had a case today in which the -- the defendant made a motion for a continuance of the mediation program and the plaintiff objected. And there was no real reason to continue it, so I denied the motion. So, I mean --

SENATOR LEONE: Thank you.

DOUGLAS C. MINTZ: -- maybe --

SENATOR LEONE: I appreciate that.

DOUGLAS C. MINTZ: -- the defendant owner may think I'm an activist judge because I denied it, but that's, you know.

SENATOR LEONE: Thank you.

Thank you, Mr. Chairman.

REP. TONG: Representative Alberts.

REP. ALBERTS: Thank you, Mr. Chairman.

And thank you, Judge, for your testimony today.

DOUGLAS C. MINTZ: Thank you.

REP. ALBERTS: I had a couple of questions as it relates back to those numbers on the average time for foreclosures, because I was trying to make sure I was following your -- your thoughts accurately. And looking at Calendar Year 2011, if I understand this, the average time for -- for foreclosure cases with mediation was 445 days. For cases without mediation, it was 475; so it was about a 30-day savings. And then for this year or for 2012, the most recent year, the savings was almost 70 days. But the average length of time, you know, it seems like it -- it jumped up.

So I want to make sure I understand the reasons why. Was it because of those favorable situations or those types of situations where both parties were looking at coming together and lengthening the process? Because that's a -- that overall jump was over a hundred days.

DOUGLAS C. MINTZ: Can I defer to my expert?

REP. ALBERTS: Absolutely.

ROBERTA PALMER: (Inaudible) if you remember back in 2011, Public Act 201 put in the eight-month (inaudible) automatically (inaudible). And that probably went into effect late 2011. So that's what we were attributing that rise in (inaudible) a disposition rate to (inaudible). Because I -- I think that what Judge Mintz was saying early on, this legislation that you have before you probably is (inaudible) better than that for those cases that don't need to take (inaudible) eight months. There is no requirement (inaudible) for those people that might take longer (inaudible) that as well. So I think that that's probably the reason.

REP. ALBERTS: And your comment, I think you were talking about the file under review by plaintiff was one of the most common reasons why things were -- were lengthened, and I think you mentioned huge, out-of-state entities were -- I think that was the reference that you made. Are you -- do you categorize or do you have figures available by institution in terms of who the plaintiffs are that --

DOUGLAS C. MINTZ: We probably do.

ROBERTA PALMER: We could do it. We have not pulled those --

REP. ALBERTS: I think that --

ROBERTA PALMER: -- for you today.

REP. ALBERTS: I think --

ROBERTA PALMER: But we --

REP. ALBERTS: -- that would be interesting.

ROBERTA PALMER: -- certainly could.

REP. ALBERTS: Because the -- you know, we are working closely with many community banks in the state, smaller banks. And -- and, you know, I understand we're trying to address issues, you know, here that will be implemented across the state, but we want to make sure we have a good understanding of, as the Chairman said, we want to make sure we understand, you know, where the issues originate from and -- and how we can best address them on a go-forward --

DOUGLAS C. MINTZ: I think (inaudible) --

REP. ALBERTS: -- basis.

ROBERTA PALMER: The one problem we may have -- I'm -- I'm sorry -- with that is that our electronic filing system pulls the name of the plaintiff by the -- whatever is inserted in our electronic system. So it really depends greatly on the law firms who are entering these writs into the electronic --

REP. ALBERTS: Okay.

ROBERTA PALMER: -- system. So it may be difficult. I mean, we -- we can tweak it a bit. It may not be a hundred percent accurate because if they put in JPMorgan Chase five day -- times in one day and then they did it a different way --

REP. ALBERTS: I understand.

ROBERTA PALMER: If they entered it on the writ differently, that's what we'll have, you know, show up in our electronic system. So if you took that into account, we could pull something together that would give you, you know, somewhat of a good idea.

REP. ALBERTS: Yeah, that --

DOUGLAS C. MINTZ: And that --

REP. ALBERTS: Yeah. I'm sorry.

DOUGLAS C. MINTZ: I -- I think, anecdotally, I think you may be raising a legitimate point, that the local community banks, the process would be shorter because they -- they seem to be able to get what they need quicker and be able to make a decision quicker. And the -- the big servicers of the, you know, securitized mortgages, it's a little bit different.

REP. ALBERTS: Okay. Well, thank you, very much. I

appreciate the testimony.

Thank you, Mr. Chairman.

ROBERTA PALMER: Thank you.

REP. TONG: Representative Luxenberg.

REP. LUXENBERG: Thank you, Mr. Chairman.

A question for Roberta here: What do you, I mean, what do you think we can do as the Bank's Committee and more broadly as the General Assembly to make the mediation process easier?

ROBERTA PALMER: That's the $64,000 question.

REP. LUXENBERG: Uh-huh.

ROBERTA PALMER: If I had the answer to that four years ago, it would be more quick than it is now.

I think that what this bill does makes some good changes, giving more judicial input into the reasons why we're seeing multiple sessions. I can tell you from the mediator's perspective, the great majority of the mediation sessions that are occurring on lengthy cases occur because there's not a timely review of -- of the paperwork or there are requests for multiple paperwork to be resubmitted and resubmitted, even though a homeowner may have done that in the past; so even when the mediators intervene and try to -- to help in that process, it doesn't always work as well.

And -- and we've worked, you know, with a lot of the large banks and a lot of their representatives to try to get that done more quickly. Doesn't seem in four-and-a-half years to have -- have happened. I wish I could give

you a better answer.

REP. LUXENBERG: No; thank you. We appreciate it.

DOUGLAS C. MINTZ: I think what you're trying to do as the Banks Committee is to make a very successful program better, and -- and I commend you for that. Because, you know, a success rate of 73 percent, I keep harping on that -- that would -- 83 percent; she told me 83. Oh, my goodness, I -- my math is bad; that's why I'm a judge. Eighty-three percent is pretty phenomenal. You know, could it be shorter? Could it be? You know, sure, but let's work together to -- to keep this successful program going.

And -- and by the way, I'm hoping that someday this program won't be needed. And that's, you know, because -- I don't need to say more.

REP. TONG: Representative Moukawsher.

REP. MOUKAWSHER: Thank you, Mr. Chairman.

The length of time for a mediated case doesn't surprise me because I've been through the process, and -- and I think this bill addresses some of the reasons. But I -- I was actually startled to read, you know, the length of time for nonmediated cases. And I was trying to, you know, understand why or under what circumstances would cause a nonmediated case to go so long. And, you know, I could imagine a bankruptcy proceeding or maybe it's a commercial property. But can you -- do you have any explanation for that? Because that -- that startles me more than the length of a mediated.

DOUGLAS C. MINTZ: Well, I think -- I think you're right that the -- the cases that are not

eligible for mediation, like commercial property, tend to get more contentious litigation.

REP. MOUKAWSHER: Yeah.

DOUGLAS C. MINTZ: Because you're talking about, you know, lots of money.

ROBERTA PALMER: And we also have the loss mitigation affidavit.

REP. MOUKAWSHER: Oh, right.

ROBERTA PALMER: Judge Linda Lager, who's our Chief Administrative Judge for Civil Matters, about in 2010, we realized that with the HAMP programs, the federal loss mitigation programs, that a lot of the plaintiffs didn't seem to be reviewing adequately. And so Judge Lager believed that the judges at a short calendar hearing from judgment, where someone, a self-represented party may be there but had not gone through mediation, she wanted the judges to be sure that if this homeowner was intended to be eligible for one of the Federal Loss Mitigation Programs, that they have been reviewed, because the -- the requirement is that foreclosure not happen unless there's an adequate review.

So this loss mitigation affidavit was put into place in September 2010, by Judge Lager, and I think unintended consequences. I can tell you in the Civil Unit we never expected that the filing of that affidavit would be difficult, but I think that a lot of plaintiffs are having difficulty filing that loss mitigation affidavit and they can't move to judgment until they do. So all of those paperwork issues that you've heard about I think are -- are getting better as we've gone along, but that may be one reason.

DOUGLAS C. MINTZ: And -- and --

REP. MOUKAWSHER: Okay.

DOUGLAS C. MINTZ: -- along with that, on the Federal Loss Mitigation Program affidavit, the Bench-Bar Committee, probably eight months ago, nine months ago, we set up a subcommittee to look at it because the plaintiffs were having a real hard time filling it out. And it was -- the old form was this really simple, one-page form, and what came out of the Bench-Bar Committee was, it's probably three pages long, and it seems to be working better. But it -- it was -- the plaintiffs' bar really wanted to get it that complicated.

REP. MOUKAWSHER: Okay. So -- so the -- a number of the nonmediation cases are residential homeowners who, you know, have been sort of picked up at the moment of judgment and it's been determined that they -- they should get notice or -- or the plaintiffs should file, you know, some notice.

DOUGLAS C. MINTZ: Well, and then a lot of the nonmediation ones are -- are where the homeowner doesn't appear, so they don't go to mediation.

ROBERTA PALMER: And the plaintiffs having difficulty complying with the requirement of the affidavit --

REP. MOUKAWSHER: Oh.

ROBERTA PALMER: -- to move to judgment.

REP. MOUKAWSHER: All right. Thank you, I --

ROBERTA PALMER: There's a --

REP. MOUKAWSHER: That helped.

ROBERTA PALMER: -- standing order we could forward to you, if you would like, along with the affidavit.

REP. MOUKAWSHER: Actually, you know, if you'd send it to the committee, I'm think --

ROBERTA PALMER: Sure.

REP. MOUKAWSHER: -- all of us would benefit from that.

ROBERTA PALMER: Sure.

REP. MOUKAWSHER: Thank you.

REP. TONG: Representative Baram.

REP. BARAM: Thank you, Mr. Chairman.

Thank you, Your Honor, for being here.

DOUGLAS C. MINTZ: Thank you.

REP. BARAM: I have a few questions in connection with the requirement under the proposed legislation that somebody in authority be at every session. And I'm wondering in your experience whether or not sessions are delayed because one of the lending institutions doesn't have the authority to be present?

And I'm also wondering, some of the concerns that have been conveyed to me are banks that are out of state or banks that are in state but connected with a federal bank institution, either because they're an underwriter servicer or the mortgage has been assigned, whether you're finding that those create problems in --

in getting a settlement because you're having trouble finding the person who has the authority to make a decision.

DOUGLAS C. MINTZ: Can I defer that to Roberta?

ROBERTA PALMER: Yes, we are seeing that. That's why we thought that that might be a positive part of this statute, if it can be defined adequately and appropriately. But even under the federal AG settlement, there's a requirement that there be a single point of contact, a SPOC, and what we're seeing is difficulty; names and numbers are being given out to homeowners but yet never are they getting responses back from those people. So, yes, it's difficult.

REP. BARAM: I understand that perspective. I'm also wondering from the lending institutions' perspective if there's sometimes a difficulty that may arise that's beyond the control of -- of the lending institution because some other federal institution or out of state is required for the mediation but not attending.

And, also, when I read the legislation, it looks like there's three mediation sessions that are required. Is it absolutely necessary to have somebody in authority at each one? For instance, the first mediation session, from some experience, I'm -- I'm assuming is more an exchange of paperwork and explanation --

ROBERTA PALMER: May be.

REP. BARAM: -- of the program, and so on. So is that really, you know, more onerous than what needs to be to have an actual decision maker, if somebody is coming in from out of state or from a faraway place, to have them at every session?

ROBERTA PALMER: It sounds like a great idea, yes. And what we, the mediators, talk about the meet-and-greet, the first session. But what you're supposing is that those people, that is their very first contact with the bank is the first mediation session. And there's a lot of cases where there's not the case. They've already been, you know, working with some representative from the bank on their own, and they come into mediation midstream in that process. And so having someone on the phone with authority who knows exactly where that review stands at the first session would be helpful. So in -- in the circumstance where this is the very first time all the parties are getting together, yes, you're absolutely right, a meet-and-greet probably doesn't need someone with authority, but that isn't always the case.

REP. BARAM: Thanks, Roberta. Thank you, very much.

ROBERTA PALMER: And -- and to address your second -- your first concern, but I'll address it second is I think you're talking Fannie or Freddie possibility; yes, and that is difficult. How you would address that, I'm -- I'm really not quite sure, because as the investor, ultimately they may have the say as to whether or not this is an appropriate solution.

REP. BARAM: That -- that's actually my concern is if you have Fannie or Freddie involved and the local institution, you know, throws their arms up in exasperation, what do I do; they're not here? Does the local bank get penalized in some sense, and is there a way to perhaps make this more workable by perhaps not having, you know, some authority like that at every session, limiting when they have to be present so that they know by the third or fourth

session, whatever it is, that's when they really have to be there, prepared to settle, instead of coming in for three, separate sessions?

ROBERTA PALMER: I would expect there'd be lots of different ways; maybe, you could overcome that, yeah.

DOUGLAS C. MINTZ: And we --

REP. BARAM: Thank you.

DOUGLAS C. MINTZ: We'd be glad to work with you in terms of trying to figure that language out.

REP. TONG: Most of time, at least in the first few sessions as you begin the process of mediation, the representative of the lender is more often than not a lawyer; correct?

ROBERTA PALMER: Yes.

REP. TONG: And is that true through the entire process?

ROBERTA PALMER: I -- I guess it would depend on the particular lender. Some are better about having a representative available with some knowledge of the underwriting and -- and the modification process. Some are -- are not. Most -- I mean, those are the difficulties we're having, and --

REP. TONG: But I'm -- I'm -- so then most of the representatives, as lawyers and counsel, and are you hearing a lot of well, I got to check with my client or, you know, I -- I don't have that information because my client hasn't given it to me or, I mean, is -- is that what you're seeing out there?

ROBERTA PALMER: We -- we believe now, after four-and-a-half years, that a lot of the problem may be miscommunication between the law firms and the client, necessarily, because it doesn't seem to be a whole lot of preparation before each mediation session.

REP. TONG: So when I sign a pleading, I sign it as a commissioner of the superior court, and that has with it a great deal of responsibility and obligations to do my job. And as judges and mediators, but as judges, you have a lot of authority to enforce that responsibility and obligation. And I'm wondering what do we do with lawyers who show up and aren't ready to mediate in good faith?

DOUGLAS C. MINTZ: If it -- if it's brought to my attention, sir, again, it's amazing how quickly they --

REP. TONG: Yeah.

DOUGLAS C. MINTZ: -- start being prepared.

REP. TONG: I -- I just -- I throw that out there that -- that as we discuss this proposal that we look at every link in the chain here and every step in the process.

And, look, I -- I am as guilty as any other practicing lawyer who's come into short calendar and just said, we're marking it off; we're not ready today, Judge, or, you know, I talked to my adversary outside in the hallway and we've agreed to delay it for a month because it's more convenient for us. And we all do it but at the end of the day, we do respond to you, as practicing lawyers. And, you know, if Judge Mintz is not happy, that's not good for us. And so I just think --

DOUGLAS C. MINTZ: I wouldn't go that far.

ROBERTA PALMER: Just from the mediator's perspective, Representative, I -- I think that that happens so often that some of them feel as if they'd be going to the judge, you know, almost every day for -- so it -- it gets -- it gets difficult to do that. And what the burden is on a judge who's, you know, got a heavy docket to -- to deal with anyway could be a problem.

REP. TONG: Yeah. It just seems to me that you ought to come to court prepared to conduct the business at hand.

ROBERTA PALMER: I agree.

REP. TONG: Any other questions?

Thank you, both.

DOUGLAS C. MINTZ: Thank you. Thank you, for having us.

ROBERTA PALMER: Thank you.

REP. TONG: Commissioner Pitkin.

Good afternoon, Commissioner.

COMMISSIONER HOWARD F. PITKIN: Good afternoon, Mr. Chairman, Senator Leone, and members of the committee.

My name is Howard F. Pitkin, and I am the Commissioner of the Connecticut Department of Banking. I'm here to testify in favor of House Bill 6355, AN ACT CONCERNING HOMEOWNER PROTECTION RIGHTS.

This proposal is designed to implement certain

changes and new protections related to the foreclosure actions occurring in Connecticut's court system. I will outline the major aspects of the legislation. The bill would require plaintiffs to mediate in good faith or face judicial sanctions and fines -- and/or fines. Mediators will be empowered to recommend appropriate sanctions to the judge.

The bill would define the term "good faith" as the following: Compliance with federal and state laws; compliance with mortgage-related settlements; providing advanced notice if additional time or documentation is needed; and, filing accurate loss mitigation documents with the court.

The proposed bill would require the banks' representatives have full settlement authority to complete mediation. Sometimes it can take up to six or more meetings for a settlement to be reached. This is far too long and benefits neither the bank nor the homeowner. To that end, mediation cases will be referred to a judge after three sessions, unless a mediator or party with good cause ask that -- ask for the hearings to be postponed. If lenders request a delay, they will be required to treat the homeowner's most recently submitted, reasonably complete financial package as current. The bill would also require the bank to disclose the net present value calculation of the subject property.

The bill would require all lenders to notify the town and pay the recording fee, each time a mortgage is sold off. This action would result in a revenue gain for the municipality and state and will make it easier for homeowners to know who owns their mortgage.

The bill would also attempt to fast track

abandoned properties by shortening the foreclosure timelines in situations in which the property is abandoned or vacant.

I feel this bill, if enacted, will serve the Governor's intent to get to yes or no quicker in the mediation program. It's vital that Connecticut resolve the foreclosure issues for all parties. I hope it will encourage discussion of an important issue affecting all the citizens of Connecticut.

Thank you for your attention.

And I'd be happy to answer any questions you may have for me.

REP. TONG: Thank you, Commissioner.

Senator Leone.

SENATOR LEONE: Thank you, Mr. Chairman.

Good afternoon, Commissioner.

COMMISSIONER HOWARD F. PITKIN: Good afternoon --

SENATOR LEONE: I appreciate you --

COMMISSIONER HOWARD F. PITKIN: -- Senator.

SENATOR LEONE: -- being here to explain and put some fine points on the -- on the bill being proposed.

A quick question: Let me ask you the same question I asked Judge Mintz on terms of the length of time and the comparison to other states, whether it's an apples-to-apples, apple-to-oranges perspective, because I fear that that is going to be a key argument for those that may not --

COMMISSIONER HOWARD F. PITKIN: Uh-huh.

SENATOR LEONE: -- be in favor of this bill, and I want to make sure I get both perspectives before we make -- make any determinations.

COMMISSIONER HOWARD F. PITKIN: Well, I mean, it seems to me that there's two types of states. One would be a strict judicial process -- not strict; it'd be a judicial process, which Connecticut, I believe, is. And, by the way, I'm a layman, so please give me some flexibility here. And then there are strict foreclosure states which tend to bring foreclosures to a conclusion a lot quicker. So I think that certainly we are, in terms of other states, apples and oranges.

SENATOR LEONE: And -- and I just -- the reason of kind of why I asked that is because there was a letter submitted from Attorney Jepsen to the Federal Housing Finance Agency, Edward J. DeMarco, the acting director, as well as our federal delegation. I'm not sure if you're aware of it, but in terms of their proposal to increase the guarantee fees assessed by the Federal National Mortgages Agency. And I guess it infers it's because of our lengthy process.

COMMISSIONER HOWARD F. PITKIN: Right.

SENATOR LEONE: And the letter to the director states there's reasons why -- and it, they're actually laudable reasons -- why it's occurring and they shouldn't be looking negatively upon the State of Connecticut. So I'm not sure if you had that information but I just wanted to see if I could get your perspective on that.

COMMISSIONER HOWARD F. PITKIN: I -- I do not have that information, Senator. I'll take a look at

it and submit comments to the committee.

SENATOR LEONE: Okay. I'll make sure you get that, because I think it's important. And I think it's relevant to the -- the process that I think we're trying to get to the -- the common goal of making the process as best we can, as short as possible, with all the relevant reasons and as the Governor stated, to get to yes or to get to no so that we can help the homeowner.

Let me -- let me move on to a different question that's in the bill. The -- the MERS section.

COMMISSIONER HOWARD F. PITKIN: Yes.

SENATOR LEONE: I suspect we're going to hear a handful on that language. Could you elaborate on -- on the perspective?

COMMISSIONER HOWARD F. PITKIN: On what MERS is?

SENATOR LEONE: On what MERS is and what it does and how the language in this bill attempts to rectify the situation.

COMMISSIONER HOWARD F. PITKIN: I think it's -- it's a centralized, electronic registry for tracking interests in mortgage loans. They facilitate the transfer, acquisition, and ID of those interests of custodian, servicers, investors, and other participants in the mortgage industry.

I -- I have to admit, as a regulator, we don't often deal with MERS. It's a tool that participants in the mortgage industry use, but as a registry, it would try to disseminate between mortgages, where they're located, who owns them. That became a real problem after

the mortgage markets collapsed in -- in 2008, and I -- I know there's at least one representative from MERS here today; maybe that person would be better equipped to comment.

SENATOR LEONE: Okay. I -- I will definitely bring that up.

A final question: In terms of the mortgage crisis overall, I would suspect that those foreclosures that were attributed to the crisis, per se, meaning those that were lent mortgages or loans that they never should have gotten in the first place --

COMMISSIONER HOWARD F. PITKIN: Uh-huh.

SENATOR LEONE: -- is now starting to subside and -- and cycle out, as we're now a number of years beyond 2008, when it all started. So now we're -- I would suspect -- we're starting to see more that might be due to unemployment or other factors, maybe not necessarily to -- to the crisis, per se. Would you find that to be relevant or true?

COMMISSIONER HOWARD F. PITKIN: Yeah, I would find that to be very true. I think that the mortgages that were written between, let's say, 2004 and 2006, the -- the subprime prices, they -- they aren't gone but they're -- they're chugging along. They have an abnormally high delinquency rate and default rate. But the -- the mortgages that we're seeing default now, I -- I would call them the "economic group" which are due to unemployment and other issues that go to the economics of a family not -- not the way the loan was structured.

SENATOR LEONE: Great. Thank you.

Thank you, Mr. Chairman.

REP. TONG: Representative Larson.

REP. LARSON: Thank you, Mr. Chairman.

Good afternoon, Commissioner. I have a couple --

COMMISSIONER HOWARD F. PITKIN: Good afternoon --

REP. LARSON: -- of questions.

COMMISSIONER HOWARD F. PITKIN: -- sir.

REP. LARSON: I'm just following your -- your testimony. You define good faith with, you know, a list of provisos, I suspect; you don't define good cause, in the fourth paragraph, let's say. Is there a series of causes that -- like, what justifies a good cause?

COMMISSIONER HOWARD F. PITKIN: I -- I think it'll -- there are three mediation sessions allowed before you go to a judge. I would think that if the parties could agree that some reason has come up, incomplete financial statements, a document missing, some other vital piece of paper that's needed to make the good underwriting decision, that there could be an agreement that --

REP. LARSON: So those --

COMMISSIONER HOWARD F. PITKIN: -- would be (inaudible).

REP. LARSON: -- good causes would be factual information that is, for some reason, is not prepared; it wouldn't be an opportunity for an excuse? You know, my brother used to give some great reasons why he didn't have his homework assignment.

COMMISSIONER HOWARD F. PITKIN: Well, I --

REP. LARSON: Like the dog ate it or something but -- John.

COMMISSIONER HOWARD F. PITKIN: Well, that's quite a --

REP. LARSON: We never had --

COMMISSIONER HOWARD F. PITKIN: -- circumstance.

REP. LARSON: -- a dog.

COMMISSIONER HOWARD F. PITKIN: No, I --

REP. LARSON: So I'm just -- I'm just -- I don't know. And -- and then, I guess, just two -- two more questions in sort of that line.

COMMISSIONER HOWARD F. PITKIN: All right.

REP. LARSON: It says that if the lenders request the delay, they will be required to treat the homeowners, et cetera.

COMMISSIONER HOWARD F. PITKIN: Uh-huh.

REP. LARSON: Is it always the lenders or is there a separate set of rules for the mediator as well?

COMMISSIONER HOWARD F. PITKIN: I believe the mediators are the party that is impartial between the bank and the borrower.

REP. LARSON: So the -- the mediator represents the borrower. So if the borrower has --

COMMISSIONER HOWARD F. PITKIN: No. No, I --

REP. LARSON: -- that good cause --

COMMISSIONER HOWARD F. PITKIN: I don't think -- the mediator doesn't represent --

REP. LARSON: Okay.

COMMISSIONER HOWARD F. PITKIN: -- either party.

REP. LARSON: Okay. I'm sorry.

COMMISSIONER HOWARD F. PITKIN: He represents the court, I believe and it, you know, is meant to impartially negotiate between both parties.

Naturally there's -- there's -- if a bank asks for a delay, what they have to do is accept the latest submitted financial statements as being reasonably compliant under the -- the draft of the bill.

REP. LARSON: Okay. And then, finally, when the lenders notify the town and pay the recording fees each time, is -- does each town have a, their own fee or is it a flat fee? Is it -- is it a statutory fee that towns can collect or is it intermittent in each town, the $15 in East Hartford and probably $75 in Stamford?

COMMISSIONER HOWARD F. PITKIN: I -- I -- I'm -- I'm not really --

REP. LARSON: Okay.

COMMISSIONER HOWARD F. PITKIN: -- aware.

REP. LARSON: I just -- I didn't know. I didn't know if there was a fluctuation in fees. Because saying that there'd be an opportunity for revenue, and I didn't know if that was a flat revenue --

COMMISSIONER HOWARD F. PITKIN: No, I --

REP. LARSON: -- drive.

COMMISSIONER HOWARD F. PITKIN: I think it probably would vary --

REP. LARSON: Just trying to --

COMMISSIONER HOWARD F. PITKIN: -- per town.

REP. LARSON: -- get a -- wrap my head around, a little bit better understanding of how that whole process works.

COMMISSIONER HOWARD F. PITKIN: I -- I really don't know if Stamford would exceed East Hartford.

A VOICE: It's statutory throughout.

REP. LARSON: It's statutory. Okay; thank you.

Thank you for your -- for your comments.

A VOICE: (Inaudible.)

REP. LARSON: Good.

Thank you, Mr. Chairman.

REP. TONG: Representative Ritter.

REP. RITTER: Thank you, Mr. Chairman; I appreciate it.

And, Commissioner, how are you?

COMMISSIONER HOWARD F. PITKIN: Fine. I'm fine.

REP. RITTER: I'm sort of focusing on -- I'm looking at the Governor's bill -- lines 238 and 239, and -- and this is what I'm trying to understand. So one of the biggest frustrations

I've heard from some folks who will testify later is the documentation aspect, (a) what they get send and (b) what is requested. And obviously this bill addresses that and talks about one of the ways you could be fined or failing to negotiate or mediate in good faith would be unreasonably requesting additional or updated documentation.

So and sort of listening to Representative Baram's question, which I sort of understand that, you know, I don't know yet quite where we are in terms of how many mediations it takes or -- or how you work some of those problems out, but I do know that foreclosure by frustration has got to be a pretty common thing of who does give up.

So what -- what do you think is reasonable? When someone enters that first meeting, what should a bank be asking for from them and what should they be getting in return from the bank at that very first meeting? Because I think that that seems, to me, to be one of the major problems in the delay process -- and I'm glad it's in there -- is what happens for that -- that very first meeting when they're exchanging paperwork or supposed to talk about what they should be exchanging?

COMMISSIONER HOWARD F. PITKIN: Well, the bill before you, I -- I think the linchpin of the bill is that both parties act in good faith. That's two sided, that the bank with a decision maker and that the borrower come with complete documentation which gives a full financial picture of -- put yourself in the -- in -- in either position where there's not total disclosure of their financial position. The bank stands as much chance of making a sound underwriting decision as -- as the man in the moon. And it could be a decision that doesn't

benefit the borrower. If both parties come to that first meeting, it can be very impactful on the process.

REP. RITTER: Put it -- put it another way, through you, Mr. Chairman, if you don't mind. Could you have -- could you basically write out in statute what at a minimum should be produced by both the borrower and by the -- the lender at the very first meeting?

COMMISSIONER HOWARD F. PITKIN: I -- I probably could. I don't know if it's already there, Representative, but --

REP. RITTER: Right.

COMMISSIONER HOWARD F. PITKIN: -- I mean it would be the basic financial information you need to -- to make a decision. When we run these homeowner events that the department runs, we have a whole list of documentation that is needed, and it's quite lengthy.

REP. RITTER: Right.

COMMISSIONER HOWARD F. PITKIN: It's probably very similar to that.

REP. RITTER: Yeah. I guess I just wonder, through you, Mr. Chairman, to the extent that some of this stuff, because I think some people have asked questions about some of the definitions. I know there's one here that, you know, not good faith is a -- is a lawyer who without showing malice or things like that, it doesn't matter, they negotiate in bad faith.

There's some lawyers I know, they walk into a room; I know they're going to negotiate in bad faith because it's their -- their personally, quite frankly. It's their demeanor.

So I just think the more we can get really specific in some of this stuff, I just wonder, I really do wonder if we could even get more specific than we are here so that I hope that gets people with a little less questions about this, a little less uncertainty and really narrow it down, particularly on the document side. You can't -- this is what we need. So when you ask me for a hundred other things, the statute already says what we're required to give but also put -- puts some onus on the bar and that, in case they come up with certain documents they're going to need there. And I don't if that can be specified, but the more we could, it might be helpful.

Thank you, Mr. Chairman.

REP. TONG: Thank you.

Any other questions?

Thank you, Commissioner.

COMMISSIONER HOWARD F. PITKIN: Thank you.

REP. TONG: John Polleck, Farmington Bank. Good afternoon.

JOHN J. PATRICK, JR.: Good afternoon. Thank you.

My name is John Patrick; I'm the President and CEO of Farmington Bank, and I'm here --

REP. TONG: Some --

JOHN J. PATRICK, JR.: -- to -- to --

REP. TONG: I thought that was right but --

JOHN J. PATRICK, JR.: That's okay.

REP. TONG: -- the handwriting says John --

JOHN J. PATRICK, JR.: St. Patrick's Day is a month away.

REP. TONG: Yeah.

JOHN J. PATRICK, JR.: So, we're --

REP. TONG: It looks like --

JOHN J. PATRICK, JR.: -- early (inaudible).

REP. TONG: -- Polleck, but that's another holiday, St. Polleck's --

JOHN J. PATRICK, JR.: Yeah.

REP. TONG: -- Day.

JOHN J. PATRICK, JR.: That's -- that's --

A VOICE: -- Representative Larson's other neighbor.

JOHN J. PATRICK, JR.: The -- I'm President of Farmington Bank and I'm here as -- on behalf of the Connecticut Bankers Association of which I am Chairman.

Numerous industry, press, and governmental entities conservatively estimate that an average residential foreclosure in Connecticut takes almost two years. This judicial foreclosure process and the state's foreclosure mediation program are both clearly broken. We agree with the bill's proponents that the process is broken, however we completely oppose how the bill seeks to fix the foreclosure days. Indeed, the bill would create a system that would further delay foreclosures, increase the cost of mortgage loans to consumers, and damage

the economy, which is finally starting to make modest gains.

Since it started, most of the legislative and judicial changes to the mediation program have been at the request of the consumer advocates. Those changes have not -- only resulted in more delays in the foreclosure process and wound up making Connecticut's foreclosure process the third-slowest in the nation. The eight-month moratorium on any actions against the borrower is a perfect example.

FHFA, which regulates Fannie Mae, Freddie Mac, recognizes this delay after doing a careful and exhaustive study. Connecticut's average two-year delay will result in a 52 percent surcharge on guarantee fees that Fannie Mae and Freddie Mac charge on over 70 percent of mortgages originated in the state. This risk-based pricing, due to the two-year delay, increases costs, time, complexity, and ultimately the risks on -- of foreclosing -- foreclosing on a property in Connecticut.

That means new borrowers or customers who purchase or refinance homes will ultimately pay that increase because of Connecticut's broken system. The advocates will dismiss the FHFA study; that's because it's difficult to admit when you're wrong.

Since the beginning of the mediation program, they have pushed for moratoriums, delays, cram-downs, and eliminating lender rights. These costly delays hurt everyone in the state, including homeowners who are in foreclosure, the neighborhoods where properties are in foreclosure, housing values, the home-building industry, the state's overall economy, and the economic engine of Connecticut, the banking industry.

House Bill 3655 [sic], AN ACT CONCERNING HOMEOWNER PROTECTION RIGHTS appears to have been proposed in an effort to address concerns with the state's foreclosure process and the mediation program. As the title implies, this legislation is once again focusing on protecting homeowners in a foreclosure from perceived lender or servicer misconduct and expanding homeowner rights in the state's mediation program. Unfortunately, the bill totally ignores the fact that most often the homeowner in foreclosure, the mediators, and the courts slow the process to the crawl -- to a crawl. Whether a bank is small or large, the result is the same across the state.

We can only assume that the bill's drafters incorrectly believe that Connecticut's lengthy foreclosure process is due to lack of tools available to borrowers, mediators, and courts to fend off lenders. Furthermore, the bill assumes that the lenders do not want to foreclose quickly and they use ineffective laws to conduct themselves improperly in mediation, dragging out the process. Nothing could be further from reality.

Banks are in the business of making loans not owning properties. A foreclosure is an unfortunate last resort, usually caused by a life-changing event of the borrower that -- and that process needs to be fair to both the borrower and the lender. In the aftermath of the housing bust, the massive volume of new foreclosures brought on by the housing crisis and subsequent economic recession, it is understandable that some may believe the state's failing foreclosure process is the fault of the lender/servicer community.

We believe that is vastly oversimplistic and an

incorrect assumption. H.B. 6355 is based on this false assumption and enacting that in it -- in its current form would have a -- dire consequences on -- on homeowners, homebuyers, neighborhoods, the economy, and lenders. The state's community banks, which never participated in subprime lending, don't use large servicing law firms and are diligent about pursuing a fair and orderly foreclosure outcome. They also experience the same, devastating, long delays in mediation.

REP. TONG: If you just have a few more --

JOHN J. PATRICK, JR.: Sure.

REP. TONG: -- sentences.

JOHN J. PATRICK, JR.: Thank you.

REP. TONG: Please, just finish --

JOHN J. PATRICK, JR.: Yup.

REP. TONG: -- up.

JOHN J. PATRICK, JR.: The nation's five major servicers have foreclosures in all 50 states, yet when they compare the actual time it takes to come to a resolution on a foreclosure by state, Connecticut ranks as one of the three slowest. These servicers follow the same internal procedures across the country, yet Connecticut stays one of the slowest.

Connecticut's midsize regional banks, many whom receive high praise from the judicial mediation program administrators, experience the same long delays in Connecticut.

We can agree on one thing. Connecticut's foreclosure system and more specifically its

mediation program is broken and needs to be fixed. Unfortunately, this approach taken in H.B. 6355 is not the answer. We cannot start from the premise that the lender is always wrong and the borrower is already right.

The lending industry stands ready, willing, and able to work with all interested parties to find viable solutions to make the foreclosure system more effective while maintaining fairness to both borrowers and lenders.

Thank you.

REP. TONG: Thank you, John. Sorry for getting your name wrong in the beginning.

JOHN J. PATRICK, JR.: I've been --

REP. TONG: I knew your name --

JOHN J. PATRICK, JR.: -- called worse.

REP. TONG: -- and read it the wrong way.

And I thank you for your testimony. I think I speak for -- since I've been Chairman of this committee and for the Ranking Member, at least of the House side, when we put together the bill that ensued the eight-month moratorium, you know, we worked closely with advocates on both sides, with representatives of the community banks and also housing advocates in putting together that legislation. And I think this committee has a -- a strong record of not just bipartisan cooperation but working with community banks, because we recognize how vital you are to the state's economic mission and recovery.

That being said, we just heard 45 minutes of testimony from Judge Mintz --

JOHN J. PATRICK, JR.: Uh-huh.

REP. TONG: -- and Roberta Palmer. I don't practice in this area. Frankly, if you asked me to handle a foreclosure case, I -- I would be in danger of committing malpractice. It's just it's not something that I do every day, and you probably don't do it either.

JOHN J. PATRICK, JR.: That's correct.

REP. TONG: But we heard from one of the chief judges in this area in this state, and the head of our mediation program. And what we heard from them is that the mediation program is working; that it's helping people stay in their homes; that there are delays compared to other forms of litigation. The delays are not as severe as, say, normal, complex, civil litigation, but that the delays are more often not attributable to consent of the parties, so both the lender and the -- the homeowner agree to put something off for a while, and also what they term "plaintiff review," of a file, that it's taking time for the lender or their lawyer to figure out what's going on with this loan.

JOHN J. PATRICK, JR.: Right.

REP. TONG: So what do you say when we hear or what are we to do with testimony from the judges and the mediators on the ground who say it's working? It may not be as quick as you'd like it to be but it's producing good results, but we need help making it stronger. What do we do in the face of that very compelling testimony?

JOHN J. PATRICK, JR.: If it's working, why do we need to make that stride? I don't know why we need to make that stronger; and, in fact, when you start to take a look at the overall number

of foreclosures in the State of Connecticut, that only a portion of them are actually going through the mediation program, so when we take a look at the average days relative to what it causes for foreclosure in Connecticut, part of the reason -- for example, my company has eight foreclosures. Three of them are in the mediation process. Three of them defaulted during the mediation process, which further delayed the ability to foreclose on that property, not that anyone wants to foreclose on the property.

No bank makes a loan in anticipation on foreclosing a property. We had this discussion at my last testimony, and so that we need to make sure that we're not painting a broad brush across the entire spectrum, slowing down the entire process relative to foreclosure for those large percentage of -- of loans that, quite frankly, there has been some catastrophic event within the borrower's life that has affected them since they got the mortgage; that, in most cases, the bank has already reached out to those individuals, and whether it be a community bank -- and I'm here representing all banks.

And I can give you some statistics from Bank of America. They've reached out to 25,000 customers in Connecticut, their customers in Connecticut, to go through a process and resolve these issues. Of the 25,000 they reached out to, 800 responded; 800 responded. And they used all forms of communication to reach out to those customers.

So while the mediation, those that are going through mediation have had some positive results -- I won't deny that -- the great percentage of our foreclosures aren't going that route. And the process continues to slow

down.

And now, with the new penalties that are assessed for the process, which is risk base -- and if you talk to a regulator, they talk about risk-base pricing -- the riskier the transaction -- we've heard a lot of that, both in Washington and -- and across the regulatory specter -- the riskier a loan, the longer it may take through a process, the more the -- it's going to cost. And the fact of the matter is, is those costs are now being passed on to consumers in Connecticut -- not one set have defaulted -- but you, me, anybody who gets a loan in the state.

REP. TONG: Let me pick up a little bit on what you said. And I don't envy your position today testifying on this bill and representing all banks. And I recognize that it's a tough position to be in, because you run a community bank.

JOHN J. PATRICK, JR.: That's correct.

REP. TONG: And you made a reference to community banks in your testimony and how the community banks don't use, by and large, large servicing law firms.

JOHN J. PATRICK, JR.: Correct.

REP. TONG: Like the Hunt Leiberts of the world, for example.

JOHN J. PATRICK, JR.: Uh-huh.

REP. TONG: Our sense, I think, many of us as Legislators and anecdotally we hear both from constituents and from judges and mediators is that a lot of the problem is that people are not prepared to mediate; they're not decision

makers. They're often lawyers, and the identity of one lawyer from one session can change to the next, and there's just a lot of churn there. So this isn't really a question, because I -- I don't think you can answer it, but I -- I think that there's a huge question in our mind as to how we deal with this problem when there are community banks struggling to stay afloat in this state --

JOHN J. PATRICK, JR.: Uh-huh.

REP. TONG: -- and not get gobbled up by other big banks and try to make loans to small businesses in this state and the actions of your bigger brethren.

JOHN J. PATRICK, JR.: Uh-huh.

REP. TONG: And, you know, how we hold them accountable for abuses that we hear about, that actually happen every day in our court system, where people come to court and they're not ready to mediate. And, you know, when you hear about that associated with a larger bank, like a Bank of America --

JOHN J. PATRICK, JR.: Uh-huh.

REP. TONG: -- what are we supposed to do? That is a huge concern for us, because our constituents are asking for help and they're asking the Governor for help, and we need to respond to them.

JOHN J. PATRICK, JR.: I understand that. And I believe my testimony affect the community banks, regional banks, and the large banks. And, in fact, the mortgage banking business has changed dramatically since the events that happened in 2008 and beyond that, and it has created opportunities for other banks. And I

won't speak specifically -- some -- some other -- they'll be some other testimony that, and some people here that do a significant amount of servicing -- but it has created an opportunity for banks, in general, to get back in the mortgage banking business.

Connecticut had more mortgage originators, private mortgage originators per capita than any other state in the country, okay, not coming out of banks. In fact, the community banks did -- has very relatively small amounts of mortgage originations during that period of time. So it's created opportunities for all banks in the State of Connecticut to get back in that business.

And part of the business that's attractive today is to be able to service loans for others, for some of the mortgage-origination companies, the substantial ones that have been able to survive and comply with the rules and the new rules and the -- and the process that the commissioner has put in place and you've put into place through other legislation. It cleaned things out at that point in time.

So now, as a servicer, which my bank is, I'm going to be and -- and so we have to be careful, again, that we don't try to fix certain -- certain situations and make processes longer and not allow others to be involved in the business. Because, quite frankly, as I said before, even the larger banks -- and I have the statistics relative to the public and private information efforts that Bank of America put forth in the State of Connecticut -- there's -- just has not been a response by many of those customers.

And so we -- we need to make sure that maybe there's been abuses on both sides, but we have

to understand that going forward we can't, I don't believe, have legislation that just penalizes one piece of the industry. And when as much as there are law firms -- and I'm not defending the law firms -- that do the robo-signing and things like that, there's a long list of attorneys on the other side that you know and you see representing borrowers on the foreclosure process that it is delay, delay, delay. It just seems to be a tactic on both sides, not --

REP. TONG: Do you --

JOHN J. PATRICK, JR.: -- saying that it's correct.

REP. TONG: You -- you started your testimony with the statement that everyone could agree --

JOHN J. PATRICK, JR.: Uh-huh.

REP. TONG: -- that the process is broken; I'm not sure I agree with that. But -- but you made the statement, I think it was an inclusive statement, that --

JOHN J. PATRICK, JR.: Uh-huh.

REP. TONG: -- everybody perceived that the process is broken. So I would ask you as an alternative to this legislation do you have specific proposals or do you -- can -- can you provide specific ideas as to how you would fix the process?

JOHN J. PATRICK, JR.: I think we could provide specific ideas. I'm not prepared to do that immediately, but in getting back to Representative Ritter's comment, is there something that we could do at the -- that everybody can agree on relative to the first program, the first meeting? And that would be,

you know, possibly, and, again, possibly, putting the same financial package together that was initiated at the initial -- initial borrowing to understand clearly what that borrower's and that the bank's position is today at that point, point in time.

REP. TONG: I've also heard proposals, that appear to be getting some currency around here, that the first couple of sessions be primarily focused between borrower and mediator to make sure that the borrower provides all the information to the mediator that is necessary, so that when they finally sit with the lender, that the lender can't say, frankly, that the borrower is not ready. The mediator had certified that the borrower is ready, but then the lender also, you know, had the opportunity to sit with somebody who's ready to talk to them.

JOHN J. PATRICK, JR.: Uh-huh.

REP. TONG: So that's another proposal I've heard out there that might work.

JOHN J. PATRICK, JR.: As long as -- I think you have to have a specific time frame. And I think that's the process and the piece of it that's broken is the time frame tends to get stretched out and stretched out and stretched out. And as you had indicated, it's not unusual for attorneys and parties agree to delay, but sometimes these delays, you know, there's an economic impact of the delay on both sides.

REP. TONG: All right. Thank you.

Any other questions?

Senator Linares.

SENATOR LINARES: Thank you, John for --

JOHN J. PATRICK, JR.: Sure.

SENATOR LINARES: -- coming up again.

I just wanted to ask what -- what do you think this would do, this bill as it stands would do to the new borrower's market in Connecticut?

JOHN J. PATRICK, JR.: We know already that there is a surcharge that has been -- that -- that will be assessed. And I have -- it's in the testimony that has been submitted relative to all mortgages in Connecticut -- it's a 20-basis point or a surcharge for -- for Connecticut residents. And so for -- so, therefore, it would cost -- if I were to get a mortgage in Maryland and a mortgage in Connecticut on the exact same property, it would cost 20-basis points more in Connecticut than it would in Maryland.

SENATOR LINARES: Okay.

JOHN J. PATRICK, JR.: And while we're trying to make the state more competitive, obviously that's an effort to have this attractive place, and we know the cost of living here is more expensive.

SENATOR LINARES: And then --

JOHN J. PATRICK, JR.: That would be a negative.

SENATOR LINARES: And from your professional opinion, how do you think that would affect the housing market in Connecticut?

JOHN J. PATRICK, JR.: It would probably have a negative effect relative to the housing market

in Connecticut, where you may not see as much appreciation as -- as you would see. I mean, it's -- it's a -- the market is driven by supply and demand. And if -- and if Connecticut's not as affordable from a mortgage perspective as it is to someone else, someone's graduating from or coming, joining, looking, has opportunities to join a variety of companies and they're looking at different states, Connecticut might not be as attractive.

SENATOR LINARES: Thank you.

REP. TONG: All set?

SENATOR LINARES: Yup.

REP. TONG: Representative Alberts.

REP. ALBERTS: Thank you, Mr. Chairman.

And thank you, John, for your testimony.

You know when that 20-basis point surcharge is going to go into effect?

JOHN J. PATRICK, JR.: I don't have the direct information here. I believe one of my other -- one -- one of the people testifying could have that specific --

REP. ALBERTS: Okay.

JOHN J. PATRICK, JR.: -- information. As I said, I don't, you know, servicing every day.

REP. ALBERTS: Do we know what that will do in terms of any specifics, in terms of what threshold a borrower will be taken out of the market because they may not qualify or what the net effect of that -- of that 20 basis points is likely to be over the life of a -- of a

mortgage loan?

JOHN J. PATRICK, JR.: We could do that calculation out, but any -- and over a 30-year life of a loan, obviously we've seen this tremendous amount, both locally and nationally of refinance in the Federal Reserve with their quantitative easing and rates at historic, low levels. Most qualified borrowers have -- have gone through that refinancing process to save whatever they can. And the reason that the fed has kept rates relatively low is the fact that they're trying to spur economic growth and consumer spending by freeing up those dollars, and so the less that's freed up, then that wouldn't necessarily be plugged back into the economy for growth, so it does have an impact.

I could take out my HP and calculate it on a -- on a hundred-thousand dollar loan to give you a per-hundred-thousand-dollar amount, but that's what we'd have to do.

REP. ALBERTS: And going to the -- the point that the Chairman was asking, because I think he was trying to get us -- tried to steer the discussion in this direction. Looking at what as we have now before us, this -- this Bill 6355 is the proposed bill. Based on your experience, based on your knowledge of the mortgage market which I know is considerable -- I -- I think you've been, since you were a wee lad you've been doing banking.

JOHN J. PATRICK, JR.: Uh-huh.

REP. ALBERTS: What -- what suggestions would you have for us in terms of making this process a better process than what we're looking at today?

JOHN J. PATRICK, JR.: I think there's a variety of

things that the bill -- that we look at that give me a little angst, based upon my -- my experience; the decision making. The -- some of the mandates that are in here relative to having decision makers present, and those types of things.

In a variety of banks, you grant authority based upon experience, based upon risk of -- within a portfolio, based upon a variety of things. And, again, I am not going to get into the specifics regarding servicing because I don't do that on a day-to-day basis, but there -- in -- in some banks, loans at certain levels are approved by the board of directors. So if I have a bank that has a loan that's $600,000 that's in a mediation process, that has to be approved by their board of directors. Do we have the board of directors attend the mediation process to be the decision maker? And I -- so I look at some of the things in the legislation and I say there may be some unintended consequences; okay?

And the other thing is, is that as the commissioner had spoken about, we have worked through and I think the industry has worked through many of the abuses relative to many of the situations relative to the subprime prices. Foreclosures, many of the foreclosures that we're seeing today are driven by economic events. Banks are sitting down with their borrowers and going through that.

Remember, we don't start the foreclosure process until the loan is 60-to-90 days past due. The bank isn't silent during those 60-to-90 days. Letters, phone calls, reaching out to customers, seminars by Bank of America, Webster, others, focus groups are widely publicized to reach out to borrowers. You know, it gets to the 90-day period, the 60-to-

90 day period when unfortunately a foreclosure must be initiated. We're in that process because somebody isn't paying. That's the reason we're there, the inability to repay the debt.

REP. ALBERTS: Well, thank you, very much.

And thank you, Mr. Chairman.

REP. TONG: Representative Moukawsher.

REP. MOUKAWSHER: Thank you, Mr. Chairman.

You know, I -- I had one long experience with a mediation process, and I could probably say that there was a delay that -- that was occasioned by both sides. But one thing I found -- this was a, you know, a national lender; it wasn't no community bank -- when I attended mediation sessions, for instance the first one, the attorney for the firm dictated to us what in additional, like, say have-like documents, what they wanted for documents. I hand-wrote it, and I believe we -- we complied with that.

And then the next mediation, there was another attorney there, and we were told, oh, you don't have this and you don't have that. And -- and then it, you know, it -- it makes it difficult for the person being foreclosed to comply when the -- when the --

JOHN J. PATRICK, JR.: When the --

REP. MOUKAWSHER: When the --

JOHN J. PATRICK, JR.: -- rules change.

REP. MOUKAWSHER: -- obligations change.

And -- and I, you know, I -- I don't think we can do anything to national banks or national lenders but -- and I'm not saying we're doing anything to you, although you probably think we are -- but I thought it would be very useful if there was a -- a very clear list of items that were required; like, for instance, if the community banks in our state could get together and come up with like a standard list that, you know, would be available to people in mediation that was clear.

I mean, there were things, you know, that were found as mistakes that were, you know, the use of the wrong word or you didn't, you know, and it -- and I -- and I think there was some interest on the part of the lenders', you know, attorneys to prolong the process as well, because they were paid on a, you know, per-file, per-day basis for appearing in court. So it was difficult for the -- the client to comply with some of these requirements. And -- and there were delays sometimes, and that could be occasioned by the, you know, maybe not the expeditious nature of the response by the -- the person being foreclosed. But it was made -- it was made -- it was very difficult because of the lack of clarity of exactly the documents, were needed.

And then I don't know if this is true of community banks, but the national bank, but we were told, okay, it's stale; you're going to have to resubmit this.

JOHN J. PATRICK, JR.: Uh-huh.

REP. MOUKAWSHER: So I think a lot of the delay is occasioned by confusion about, you know, exactly what documents need to be submitted. I don't know if that's something that your organization could perhaps standardize in some

way. I mean, I --

JOHN J. PATRICK, JR.: I -- I --

REP. MOUKAWSHER: -- know we could --

JOHN J. PATRICK, JR.: -- think it would be best, probably, for -- to work with the, as Commissioner Pitkin testified earlier, to work with the parties to clarify those items within the legislation. It would take away the ambiguity.

REP. MOUKAWSHER: Well, if we -- if we could, perhaps we could do that, I'd -- I'd be all for it, because there wasn't any reference point I found in, you know, in statute or otherwise, regulations. It would be just -- it varied by attorney, by lender.

JOHN J. PATRICK, JR.: That, I understand. And the only caveat I would say is that the banking system, in general, due to the changes within the Dodd-Frank legislation and the Consumer Finance Protection Bureau, which I testified to this committee earlier, in the last couple of weeks, are -- the rules are changing every day.

There's over 2000 new pages of legislation, just around mortgage lending; okay? And so if we were to -- if we were to come to a conclusion today, relative what would be needed today, we still have to follow safety and soundness, compliance, community reinvestment guidelines, all the things from a legislative perspective that are required by the federal regulators and the state regulators or whoever you're regulated by.

REP. MOUKAWSHER: Uh-huh.

JOHN J. PATRICK, JR.: So we have to understand that

those things are constantly changing. And to -- and to carve something in stone through a legislative process or a bill that today that -- that may work today but a year from now may not work for -- it may work for mortgage brokers; it may work for community banks; it may work for the larger banks; it, to me, that doesn't make a lot of sense because you're going to cause further ambiguity in the program down the road.

REP. MOUKAWSHER: Yeah. And I --

JOHN J. PATRICK, JR.: So -- so I -- I just think as -- as someone had alluded to earlier, you know, what are all the links in the chain? Let's -- let's make sure. What are all the links in the chain? Let's make sure that we can work together as it relates to coming up with a -- something that has a solution that works for all interested parties.

REP. MOUKAWSHER: Well, that's what I want.

JOHN J. PATRICK, JR.: To me, this -- this delay, this can further delay; some of the mandates in here can further delay the process that's --

REP. MOUKAWSHER: Yeah.

JOHN J. PATRICK, JR.: -- (inaudible).

REP. MOUKAWSHER: And that's why, you know, one of the reasons I thought while we probably can't codify it in the statute.

JOHN J. PATRICK, JR.: Right.

REP. MOUKAWSHER: But, you know, I think it would certainly be helpful. I mean, we have an eight-month moratorium which, you know, I -- I don't know if any other state has that. It

seems like it should be adequate. And if you look at, you know, the days to obtain title foreclosure days, if we got -- if we were able to achieve this within 240 days or 245, we'd be at the bottom of the list in --

JOHN J. PATRICK, JR.: That's correct.

REP. MOUKAWSHER: -- those eight months. But the difficulty is in getting a clear picture of what the dockets. I mean, that's, to me, that's been, that was the big hurdle was ascertaining exactly what the lender wanted and getting it to them, getting it to them in a timely fashion. And I -- I think it would really help if there was some standardization of that.

JOHN J. PATRICK, JR.: Right.

REP. MOUKAWSHER: Perhaps that's --

JOHN J. PATRICK, JR.: I mean, I can't speak to other institutions, but I can tell you in my institution in the last three that went to mediation, the borrower failed to provide the information requested.

REP. MOUKAWSHER: Yeah. And I -- and I was getting at --

JOHN J. PATRICK, JR.: So that --

REP. MOUKAWSHER: -- I see delay on both sides.

JOHN J. PATRICK, JR.: Right.

REP. MOUKAWSHER: But it almost seemed purposeful in the case that I was in that, well, it just will require another mediation session and, you know, somebody will have to appear in court again and get paid again to be in court. And

it, you know, it was -- it was endless and -- and it was really -- it was quite aggravating and honestly, you know, to try to meet a moving target or requirements. So that was just a suggestion.

JOHN J. PATRICK, JR.: Sure. Thank you.

SENATOR LEONE: Any questions?

Representative Baram.

REP. BARAM: Thank you, Mr. Chairman.

Welcome, John.

JOHN J. PATRICK, JR.: Thank you.

REP. BARAM: It sounds to me from listening to your testimony that there are a couple of key issues that would be of benefit to both the borrower and the lender. One would be the definition of information that has to be provided --

JOHN J. PATRICK, JR.: Correct.

REP. BARAM: -- and having it on some kind of a uniform form that is understandable to a borrower but yet gives sufficient information to the bank to be able to assess the -- the situation.

Secondly --

JOHN J. PATRICK, JR.: Right.

REP. BARAM: -- it -- it also sounds -- and I -- I'm wondering if you agree -- that the first couple of sessions are most important to educating the -- the borrower as to what information needs to be provided to the process and how it -- it is designed.

But all through the process, it is correct that the bank is still assessing this information as it's given back and that by the third session, if that's the final session, do you feel that the bank, if it gets the adequate information, would be in a position to make a settlement proposal? Would -- would the bank be prepared to send somebody in authority at that point, if it was a third session, to be able to actually make a proposal?

JOHN J. PATRICK, JR.: It would depend upon the bank, the size of the bank, the structure of the bank, and how it was -- how it's regulated. In the United States, we have the dual banking system, so we have different charters relative to those. And as I said before, we have different levels of authority and risk within each bank. And so I would -- I would think that if all the information were available that were required for the servicer by the third and then for the -- by the third mediation, that conclusion about the ability to repay or settlement going forward would be -- would come to very quickly. And I think those are the results that they've seen in the mediation process, itself.

Again, I don't do loan servicing on a daily basis. I specifically, we specifically deal with our borrowers at our bank. Many others here do servicing for other institutions or other organizations and for Fannie and Freddie, and their requirements are different, may be different relative to that of information gathering. So I can't speak specifically to that -- that piece of it.

REP. BARAM: Do you --

JOHN J. PATRICK, JR.: But I think, in principle, if

everyone, if all the information was gathered together, then it -- then depending upon the length of time, which I wouldn't anticipate to stretch out, that someone could make a decision quickly.

REP. BARAM: With the Chair's permission, do you find it problematic to get an institution, a Freddie and Fannie to cooperate in this kind of a process? If you're servicing for them and you explain the process, do they involve themselves and would they be prepared at a certain time period to have somebody who can make a settlement (inaudible) --

JOHN J. PATRICK, JR.: I'd have to defer that answer to someone that does more servicing, that has a large servicing portfolio and deals more directly with Fannie or Freddie. I don't deal with them, as my position, on a daily basis.

REP. BARAM: And then just one last question: In the statistics about the length of time that it takes to undergo this process and of foreclosure, does that include when a borrower will -- will file bankruptcy which can extend the time tremendously --

JOHN J. PATRICK, JR.: Yes.

REP. BARAM: -- and is actually a frequent tactic, you know, by a borrower to give more time, even after going through the mediation process? It -- it can add, you know, three-to-six months to the -- to the time just by filing a petition for bankruptcy, where everything is stayed. I'm curious if -- if that is --

JOHN J. PATRICK, JR.: Yes.

REP. BARAM: -- part of the timing.

JOHN J. PATRICK, JR.: Yeah.

REP. BARAM: Thank you.

SENATOR LEONE: Yes. Representative Larson.

REP. LARSON: Thank you, Mr. Chairman.

Hi, John; how you doing?

Cheating off of your Bank of America chart here, and I was -- I was actually a little shocked to see that you've actually, you know, not shocked that you've reached out to this number, but in effect reaching out to some 20,000 customers and only having 800 people respond is not necessarily a good return on your outreach investment. And I'm curious to find out that of those people who do show up, they're probably more likely to solve their issues and are willing to work things out and stay in their homes.

JOHN J. PATRICK, JR.: Absolutely.

REP. LARSON: Seemed to me. I mean, I watch interest rates like a dog and want to get --

JOHN J. PATRICK, JR.: Uh-huh.

REP. LARSON: -- my rate as low as I possibly can and stay in my home.

And those other 19,000 customers in Connecticut --

JOHN J. PATRICK, JR.: In Connecticut.

REP. LARSON: -- that seems to be who our constituents are and why we're trying to resolve this issue.

JOHN J. PATRICK, JR.: Right.

REP. LARSON: And do you have any numbers on those 19,000; are those -- do a percentage of them refinance and stay back and get out of that process or do many of those just fall into --

JOHN J. PATRICK, JR.: I don't have specifics from Bank of America's numbers. There are some representatives from Bank of America here; I'm not sure if they have those statistics with them or not.

REP. LARSON: It just seems, you know, it seems as though the outreach that Bank of America is doing seems appropriate.

JOHN J. PATRICK, JR.: Right.

REP. LARSON: And the individuals who are actually showing up to these or not seem to find results.

JOHN J. PATRICK, JR.: Yes.

REP. LARSON: So maybe there's an opportunity for us to strengthen some of those consumer activity forums or thereabouts to reenergize that effort for you or thereabouts. So that was just my comment.

Thank you, Mr. Chairman.

SENATOR LEONE: Thank you.

Representative Rovero.

REP. ROVERO: Thank you, Mr. Chairman.

I think it's the attempt of everyone to try to keep every person that is in their home to stay in their home today.

JOHN J. PATRICK, JR.: Absolutely.

REP. ROVERO: Do you have any idea what the percentages are of people that are behind in their mortgages today and try to go through mediation and so forth, but mainly are behind in their mortgages today and no matter what kind of mediation you gave them, a year from now they would behind -- would be behind in their mortgages again? And what I'm trying to do is -- and I -- I want everybody that we can keep in their home to stay in their home, but I -- I don't like a process that we're going to go through only to, like, everybody says, kick the can down the road.

If we're doing, coming up with a process that is going to end up telling somebody, yes, you're going to live in that home another year but a year from now you're going to be behind in your mortgage again, and if that's the case, for the good of the person that owes the money or is trying to stay in that home and the good of everybody else, maybe we have to cut bait at one time or other and say, look it, this is the end of the story; there's no way you can afford this home; maybe you shouldn't have it to start with.

JOHN J. PATRICK, JR.: Uh-huh.

REP. ROVERO: And I don't want to -- to make it sound like I'm someone that wants to put people out of their homes --

JOHN J. PATRICK, JR.: I --

REP. ROVERO: -- because I --

JOHN J. PATRICK, JR.: -- certainly --

REP. ROVERO: I know --

JOHN J. PATRICK, JR.: -- understand that.

REP. ROVERO: -- what it's like to have a mortgage and have four children and try to pay your mortgage. And it's not easy at times.

But, on the other hand, maybe we'd be doing these people a favor to say, look it, it's time that we're going to help you, somehow or other, but you're going to have to go out and find a rent because there's no way under today's environment and over the next two or three or four years you're going to be able to afford this home.

Does it -- does it have any percentages or am I talking off --

JOHN J. PATRICK, JR.: What we can --

REP. ROVERO: -- the wall or --

JOHN J. PATRICK, JR.: What we could provide for the committee is we could determine, No. 1, what the overall delinquency rate in mortgages are in the State of Connecticut. My best guess right now, it's someplace in the 5 percent range of that information the bank commissioner probably could gather, or we could get it off federal call reports that are submitted quarterly.

So when you take a look at the overall delinquency rate in the state, and if you were to track that over time, you'd -- that's an early predictor or where we are economically, relative to a foreclosure, and so forth. So, you know, that would include people that are 30 days behind.

Well, some -- a lot of those people can catch up, and so we, in my organization, sometimes, we see spikes in delinquency in February -- January, February, and then July and August. Well, that's usually when taxes are due. That's usually, in many --

REP. ROVERO: Yeah.

JOHN J. PATRICK, JR.: There's a lot of ours who don't necessarily escrow for taxes and those types of things, so you tend to see spikes during times when personal cash flow for individuals and consumers is stressed.

So when someone -- getting back to your remarks and Representative Larson's -- you know, if someone gets behind 30 days, a lot of times that's rectifiable. But when you start to be -- get behind 60 and 90 days and further, it's very difficult to catch up. And that's where sometimes it's -- if there's some effect that mediation can play in that, in saying, you know, you could put, you know, that amount on the back end of the loan or something to that sort, then that's a -- that's a positive thing.

But in many cases, and I think that what we have seen, at least in my organization, and the commissioner alluded to in his testimony, is that the foreclosures that we're seeing today are economically driven, that there's economic stresses on that. But we could get you the overall delinquency numbers.

REP. ROVERO: Okay, because I'm -- I'm very interested. Because I want to, you know, under any circumstance try to keep people in their home.

JOHN J. PATRICK, JR.: Absolutely.

REP. ROVERO: And that's, I think, everybody's objective, but, you know, are we kicking it down the road; are we just delaying something that's going to happen? Because I believe in refinancing to help somebody stay there; you know, if we can refinance and bring their mortgage down to a reasonable amount, even if it's only for two or three years and then bring it back where it should be. But on the other hand, are we delaying something that's going to happen another year or two from now?

Thank you, very much. I'd like to know those percentages, though.

JOHN J. PATRICK, JR.: Sure.

REP. ROVERO: Thank you, Mr. Chairman.

SENATOR LEONE: Representative Alberts.

REP. ALBERTS: Thank you, Mr. Chairman, for the second time.

John, going back to the point that I think you were making about the decision-making process by types of organizations and the, you know, size of the organization, the size of the loan, and also understanding the perspective of the committee that, you know, we're trying to figure out a way to make sure that people that are attending the mediation sessions are empowered to the best, to the greatest extent possible --

JOHN J. PATRICK, JR.: Uh-huh.

REP. ALBERTS: -- should we, when we're drafting the language, come up with a carve-out or some type of special dollar limit, say, where perhaps understanding that banks under $250 million in asset size might have some unique approval

requirements, is there some dollar figure that we should put in there as a -- as a guideline?

JOHN J. PATRICK, JR.: I believe both on the state and federal level, bifurcation of legislation and -- and in the banking environment doesn't necessarily work. What we've seen, even with the Consumer Finance Protection Bureau that would affect banks $10 billion and above, that that trickles down from a regulatory process. So there might be some type of solution to be able to take a look at it, to answer that question. I'd be premature to answer that question today, but I would think that bifurcating the industry that way is not necessarily a good thing.

REP. ALBERTS: Okay. Thank you.

JOHN J. PATRICK, JR.: Yeah.

SENATOR LEONE: Thank you.

I got a couple questions. And I apologize, as I came in midstream --

JOHN J. PATRICK, JR.: That's --

SENATOR LEONE: -- so if I --

JOHN J. PATRICK, JR.: -- no problem.

SENATOR LEONE: -- cover a topic you already spoke about, feel free to elaborate.

Let me pick up on the point there and -- and your response. And earlier you said with the Dodd-Frank Act still being written there's regulations going to be proposed that may or may not supersede what we're trying to do. And -- and the -- then you talked about the size of the banks and not wanting the board of

directors to have to attend a mediation process. And -- and I understand that, and -- and I don't think that's what we're trying to do.

But at the same time, a lot of the feedback that I've gotten is the fact that if the homeowner is there and some of the -- and if there's not a decision-maker or somebody who can make a decision to move the process along, then the process stalls. And that's part of the reason why the time frame gets lengthened.

JOHN J. PATRICK, JR.: Uh-huh.

SENATOR LEONE: So I'd like to get your perspective on how we can move past that, because I don't believe doing nothing, waiting for a national standard to come down is the solution. We have --

JOHN J. PATRICK, JR.: I (inaudible).

SENATOR LEONE: -- to find a solution to get this process shorter than what it currently is, to a resolution, whether it's yes or no, and I think that's a key point. And -- and I believe that's the intent of the proposed legislation, so I don't think we're trying to make the -- the process longer, but we are trying to streamline it in a way that makes sense.

So what -- how -- how is it that we could get someone that can make a decision, where they're acting as an agent? I understand that you have to train individuals and so forth, but at the same time you can at least give an agent direction on how to move a process along. They don't have to settle for the full course and at least not in the first session.

JOHN J. PATRICK, JR.: Again, I can speak to my own

organization and how it would work in my organization. Every bank manages risk a little bit differently, and I think that it would be important to work with the industry, the banking, through the Banking Commissioner's Office, to come up with an answer that would be amenable to -- to all parties at that point in time, even the judicial system.

So, you know, that -- there is no particular answer that I have for you today, but I think that before the legislation were to go forward in its present state, those are good conversations that -- that I think we should have.

SENATOR LEONE: Thanks, and -- and I appreciate that input, because I think it's going to be necessary, because we do need to get to some sort of solution to make that happen. I -- I just can't see us not doing something, and especially on behalf of the consumers that want to, either want to save their home or need to get out of it so that the banks can --

JOHN J. PATRICK, JR.: Right.

SENATOR LEONE: -- get rid of the asset and not have to deal with all the problems that go along with it being extended.

One other question: Are you able to speak to this Bank of America document with the -- the statistics that are on here or no?

JOHN J. PATRICK, JR.: I -- I have it in front of me, as I had bank -- representatives from Bank of America here that are more attuned to speak if -- to the document. I think they're here -- if they're still here.

SENATOR LEONE: Okay. I guess my one question is:

The -- the customer is solicited by marketing and phone and e-mail. That number for Stamford, of which I'm -- where I'm from, that's a pretty high number, relative to the other ones, Hartford, and Hartford and Bridgeport in terms of an outreach. Why such a high outreach in Stamford but not in the other towns?

JOHN J. PATRICK, JR.: I can't speak specifically for Bank of America's outreach, at this point in time.

SENATOR LEONE: Okay.

JOHN J. PATRICK, JR.: You'd have to ask them directly.

SENATOR LEONE: I will -- thank you -- because that number does skew -- does raise other questions. It does seem to skew the statistics, and I just want to know the reason behind --

JOHN J. PATRICK, JR.: Sure.

SENATOR LEONE: -- that. So I appreciate your answer.

Thank you.

Thank you, Mr. Chair.

REP. TONG: Thank you, Mr. Chairman.

Any other questions?

JOHN J. PATRICK, JR.: Thanks.

REP. TONG: Thank you.

Renata Strause.

Good afternoon, soon to be evening.

RENATA STRAUSE: Good afternoon. Good afternoon, Chairs Leone and Tong, members of the committee; thank you for allowing me to speak today.

My name is Renata Strause and I'm a third-year student at Yale Law School. I've participated in the mortgage foreclosure clinic at the law school for the last five semesters, representing Ms. Migdalia Rey in her foreclosure.

Ms. Rey wanted to testify today but was unable to get time off from work. She asked me to bring her written testimony, which you all have, and to tell her story and how Governor's Bill 2055 would help her. HB6355

Ms. Rey bought her house in 1985 and made payments for over 22 years before a bad car accident caused her to lose work and fell behind. Her bank, CitiMortgage, offered her a forbearance agreement and mediation to solve -- to resolve the situation. Ms. Rey made the required payments, three higher ones followed by the return to her regular payments on her same mortgage from 1985. Nonetheless, the bank reopened the foreclosure, claiming she did not send updated financial information, but the bank never told her what financial information it wanted or sent her any forms to fill out.

Ms. Rey filed claims against the bank based on its wrongful foreclosure while she was making her payments. But her case was dismissed because of the often-used theory that borrowers' claims must relate to the making, validity or enforcement of the note or mortgage.

Now, there are two problems with this "making, validity or enforcement" test. The first is that it's not a clear test created by statute or by the Supreme Court but rather an interpretation used by some lower court judges to limit borrowers' claims against lenders. Without much appellate guidance, many judges ignore the plain meaning of the word "enforcement," allowing borrowers only to bring claims relating to the closing of their mortgage. For Ms. Rey, this meant that although the bank could claim that she breached the forbearance agreement in order to restart her foreclosure, she could not use the bank's breach of that very same agreement as the basis for her claims.

Now, second, courts can use this test to avoid reviewing the merits of a case. For instance, Citi argued in Ms. Rey's case that it is -- and I'm quoting -- not in the business of providing information to its customers. It -- it also claimed that its responsibilities should not include a duty to provide competent service. Because of the making, validity or enforcement test, the judge never looked at these arguments closely.

Ms. Rey should be given the opportunity to explain why she disagrees with Citi's argument, and then the judge can decide which view should prevail rather than striking the claim altogether.

Thank you, very much, for your time.

REP. TONG: Thank you. Sorry about the -- the clock.

RENATA STRAUSE: That's okay.

REP. TONG: We're going to be here all night, as it

is.

So tell you about your role in Ms. Rey's case.

RENATA STRAUSE: I came to Ms. Rey's case in my first semester in the clinic, which was --

REP. TONG: Okay.

RENATA STRAUSE: -- about two years ago. I essentially have represented her under the supervision of the attorney who's the professor at the clinic.

REP. TONG: So who -- who was on the other side of you, representing Citi?

RENATA STRAUSE: You mean what law firm was representing them?

REP. TONG: Yeah, just who are you dealing with at --

RENATA STRAUSE: Hunt Leibert --

REP. TONG: Okay.

RENATA STRAUSE: -- is the law firm.

REP. TONG: And is it the same lawyer every time? I -- I want to get a sense of your experience in this process, as somebody who has yet to take the bar. I mean, you're getting to know, you know, our judicial process here in Connecticut before actually practicing in it. So I want to understand from you and in sort of an unjaded perspective. What's it like, so far?

RENATA STRAUSE: Well, so my first experience with Ms. Rey's case -- this has actually been kind of unique to some of the cases, not perhaps in our clinic but maybe for others, in that we've

had both mediation going on and at the same time there was a -- a summary judgment motion filed by the opposing counsel, by the bank.

And so we were simultaneously attending some mediation sessions, and for that I dealt with one attorney at Hunt Leibert, for the most part. And then I dealt with another attorney for the litigation side of it, so e-mails about logistics, that sort of thing.

And then, actually, the case has followed an interesting path. Ms. Rey is actually now out of foreclosure because she was able to take advantage of the EHLP program that we found over the course of last summer and applied her for. But she's been pursuing her counterclaim against the bank, and we've now -- we're now dealing with a second law firm that CitiMortgage has hired, based here in Hartford. And so it's been -- we've -- we have gotten a little piece of everything, I -- I suppose.

REP. TONG: So I'm counting three lawyers.

RENATA STRAUSE: Three lawyers, two law firms.

REP. TONG: And when you're --

RENATA STRAUSE: Roughly.

REP. TONG: -- trying to deal with the foreclosure situation or when you're in mediation and there's a lawyer handling the summary judgment, were those two lawyers talking to each other? Was there coordination?

RENATA STRAUSE: I -- well, I should say I don't -- I'm not really sure. I mean, we oftentimes would copy, just to sort of I guess maybe (inaudible) centers on our part, would work by e-mail and would copy both of them on e-mails

about both the litigation and the -- and the mediation, I think out of a concern that maybe they weren't coordinating with each other.

I should say, actually, now that I think about it, the last mediation session we attended after Ms. Rey had paid off the -- the arrears through this EHLP program, we actually dealt with a third attorney -- who we hadn't met previously -- within this new mediation session, also from Hunt Leibert; so four attorneys.

REP. TONG: Okay; thank you.

RENATA STRAUSE: Sure.

REP. TONG: Any questions?

Representative Rovero.

REP. ROVERO: I don't really have a question but I have a wise comment.

A VOICE: A wise comment?

REP. ROVERO: Yeah. It almost sounds like you have a problem with attorneys and with judges but not with the system we have in Connecticut; am I right or am I just interpreting things wrong?

RENATA STRAUSE: I think -- now that's an interesting way to put it -- I -- I think insofar as, particularly as I was talking about this making, validity and enforcement requirement, yes, the problem is particularly with judges, I think misapplying even their own prior case law.

And -- and that's not true of all Superior Court judges; some of them have really gone through -- there's a -- a really great case

called "Liberty Bank" where a Superior Court judge went through in really great detail and looked at the history of this test and the way that it's been used to keep borrowers' claims out of court and showed that it's really been misapplied so many times and by most of the courts in the state. And so to the extent that there are some judges who are -- who are still misapplying this test, then, yes, I would say that that's where the problem lies.

But since it's not a creation of statute, it's something that Section 6 of this bill actually could fix and would fix system wide and sort of take the problem out of the hands of judges and out of the -- the hands of lawyers.

REP. ROVERO: Remember that when you pass the bar.

Thank you, very much, Mr. Chairman.

RENATA STRAUSE: Thank you. I appreciate your confidence that I'll pass the bar, sir.

REP. TONG: Thank you.

Any other questions?

All right. Thanks, so much.

Peter Gioia.

PETER M. GIOIA: Oh, I got two minutes to still say good afternoon rather than good evening to Chair and members of the committee.

My name is Pete Gioia; I'm Vice President and Economist for CBIA. And I'm here to testify in opposition to H.B. 6355, and on economic grounds. I know we've had a lot of discussion so far today as to, you know, whether the bill extends or collapses the amount of time, the

foreclosure; my reading of the bill and the analyses I've seen says it's going to increase the time. So certainly the first thing I would urge you folks to do is -- is talk with the people on both sides of this argument, see what you can do to reduce that time. Because, you know, Connecticut and in foreclosure days looks a lot more like New Jersey and New York rather than states like Ohio and Pennsylvania. In my 30 years of looking at the economy, whenever our statistics are leaning that way, it's usually not a good thing for our economy.

The other thing is that, you know, you're going to hear a lot from bankers, and they're going to tell you why they think this is a problem for their industry, and of course their industry is important to the economic vitality of the state. But I want to talk about how it affects the broader industry and it negatively affects consumers; okay?

The housing industry and the housing market is vitally important to any economy in this country, and our housing market is still depressed. You hear it in the news how the housing market is in recovery, you know, happy days are here again in the housing market; that's not true in Connecticut. It may be true for very small pockets. You know, if you're in Blue Back Square, you might be okay. But in large areas of Connecticut, that is not the case. Now I have -- I have personal, personal knowledge of this, because I'm trying to sell a home in East Haddam, and I can tell you the housing market is not back; okay?

So what does the, you know, delayed foreclosure process, what does that do to the market? Well, you know, I've got written testimony for you, but it does a -- a lot of things; it -- it slows the turn-around. It means there's fewer

new housing starts, which of course affects the construction trades' industry and home builders. There's continued price reductions and houses on the market, which of course hits their valuations.

Well, what does this do to someone who's not trying to sell a house? They're trying to get refinancing; they're trying to get a home equity line of credit, something to extend their economic capacity and to maybe have work done on the house, maybe buy a new car with that rather than going through financing for -- for that. Maybe they need this money to put their kid through school. Now --

REP. TONG: Mr. Gioia, well, you've hit your three minutes.

PETER M. GIOIA: Okay.

REP. TONG: If you could just briefly summarize the remainder of your testimony.

PETER M. GIOIA: Okay. I think that the -- the main thing is I think that this bill does slow the foreclosure process and because of that has widespread, negative effects on the economy, beyond the dealings of the banks with the people going through foreclosure. That's it.

Thank you.

REP. TONG: Thank you, so much.

Any questions?

Thank you.

Sarah Poriss.

SARAH PORISS: Good afternoon.

REP. TONG: Good afternoon.

SARAH PORISS: Thank you for the opportunity to testify. I'm here to support the Bill 6355.

I'm Sarah Poriss. I'm a local, fellow attorney. I'm also a member of the Bench-Bar Foreclosure Committee. I've had the privilege of serving on that committee for several years now. I represent homeowners in foreclosure; it's a large percentage of my practice, and I've been doing it since just before the mediation program began.

I went through my list of -- I did submit some testimony; I don't like to read from my testimony -- I went through my client list before coming in today, and I -- I realized I've helped about 30 homeowners through the foreclosure process to the -- to the result that they've sought -- I'm sorry -- through, in the mediation program. And I've achieved the -- the results that my homeowners are looking for, my homeowner clients, about 30 of them now. It feels like I've helped a lot more people; it is a lengthy process, but I feel like it should be.

Most of my homeowners, I've tried to keep in the mediation program until they can get back on their feet. If they should be modified, if they're ready to get their mortgage modified, I've pushed to get that achieved. I've actually moved to shorten mediation in at least one of my homeowners' cases.

I think there are changes in this bill to the current mediation statute that are very important, as some of the other people have testified. I agree that the -- the definition of good faith, the elimination of making

validity enforcement, that needs to be changed.

I also think mediators having the role of determining that a financial package is -- is appropriate or whatever the homeowner has submitted is -- is good enough is very important. You need to give the mediator that -- that power, because there are different standards from different servicers, and it is -- I think one of the members of the panel said -- it's a "moving target." It's very frustrating. And if a mediator says, Okay, the bank, it's ready, review it and they don't, that only helps the -- the homeowner.

One way, you know, one thing I am worried about is limiting it to three mediations, because sometimes we -- you need the time. The homeowner needs the time. I have a lot of people who are just starting back to work, and -- and, again, the requirements of the paperwork. I have clients who haven't filed their taxes in a few years; they have to go pay to get them done. And the time I can buy them by going to mediations and giving the bank a status of how their -- of -- of what, you know, when they will have all of their paperwork ready is very important to the homeowner.

And I think, ultimately, the bank benefits, because, like I said, the people I represent who we -- we go into mediation, the bank benefits because the -- either they get their foreclosure or we get the loan to perform again.

So does the committee have any questions (inaudible)?

REP. TONG: I do. Thank you, for your testimony and thanks for being here today and for waiting.

You know, I -- I think what we've heard from some of the community bankers in particular, which does resonate, is that they're not in the business of foreclosing and they're not in the business of owning homes. And they're certainly not in the business of carrying homes that they can't sell or have trouble selling. And at a basic and visceral level, that makes a lot of sense to me.

You just testified and commented, a couple of times, that in the mediation program that you can buy time for your clients that gives them an opportunity to get back on their feet. And I think that touches on a fundamental question about this process, which is: What is the purpose of this process? Is the purpose of the mediation process -- its overall purpose is, I think, to help homeowners who find themselves in a difficult position to negotiate with their lenders and try to find a way to continue to stay in their homes but in a way that works for both the homeowner the lender.

I'm not sure the purpose of the program is to buy time for the homeowner, which I think is an interesting question that you raise by your testimony. Because I think what we're hearing from people, again in -- in the bank community is that, you know, they initiate foreclosure because in their judgment, based on the performance of the loan, the homeowner is no longer capable of -- of making debt service payments alone and no longer able to sustain the loan, itself, and the ownership of that home.

SARAH PORISS: At that time.

REP. TONG: At that time, and --

SARAH PORISS: That's all.

REP. TONG: -- what I'm hearing from you is that the process provides you an opportunity to buy some time and to give them an opportunity to get back on their feet.

I guess my question to you is: Do you see that as a purpose of the program; should that be the purpose of the program? And, if so, maybe we should be more honest about it and say it should be a moratorium on foreclosure for some period of time. But that's a whole different kettle of fish, isn't it?

SARAH PORISS: Well, there is the eight-month stay, so I think to an extent that that's been written in. It's -- mediation is a tool to help the parties communicate.

I mean, I was in the meetings before the mediation program was developed, where people like Judge Mintz were exasperated at the number of homeowners who did not appear. And we figured and we rewrote the notices on how to get people to pay attention. And you're being, you know, you're -- you're being foreclosed on; you're at risk of losing your home; there are things you could do. And we created those notices. Those go on top of the summons and complaints. So we're -- we want more homeowner participation in the foreclosure process. So, to begin with, that's where the mediation program came from.

And so it's a tool for -- and the reason is so that the bank can say, you know, is this a home that's occupied? Why did these people fall behind? Is there a way it can be worked out? And it's developed into this large program mostly because of its success rate. If we were talking about a much lower percentage of success, we might not be continuing the

program.

I know there's a proposed bill to have it extend to 2016. If I don't -- if I'm not here the day it's in front of any committee, please extend the -- the program.

The -- it's -- it can be used as a tool. For example, sometimes clients come to me long after they've -- the foreclosure, like they have 2009 cases, 2011 cases, and they're just hiring me now, and they haven't even thought to go into mediation. I said, let's get you in mediation; let's find out what's going on. So we -- we get into mediation, and all of a sudden the flood gates open; oh, just need your tax returns from last year and then we'll put you back to underwriting.

Somehow getting the bank to answer to why they've dragged the homeowner through this and not given them an answer and required them to resubmit and resubmit the paperwork, when it's in front of a mediator, when they have to answer for all of that, things start moving.

I even had one example about a case where I moved to shorten mediation, was one where my client had been ready for months to be into a modified mortgage. She was back on her feet; her husband -- it was a married couple -- they were back on their feet. She had increased her employment. They had all the paperwork in, and the next mediation was, like, four-or-five weeks away, for some reason. So they had had the paperwork for two-or-three weeks. And I contacted the -- the lawyer for the bank, and the -- the response was, well, the mediation isn't until four-and-a-half weeks from now. They're not going to look at that stuff until a few days before the mediation. So my choice was I moved to shorten, to force them to look

at the paperwork a couple of days before the mediation.

So we can blame homeowners who try to use the system to -- to buy time, but the banks are pretty overwhelmed with modification application. And so if the bank's, the servicers procedure isn't to look at the package until just before the mediation because they have so many others to look at, then, you know, I'm ready. Well, I've got a lot of homeowners waiting for an answer; I'd take an answer yesterday. I'm not waiting for two more weeks because I want to wait; the banks are taking that kind of time.

I hope I answered the question. I might have gotten a little off track.

REP. TONG: You did; thank you.

Any other questions?

Representative Alberts.

REP. ALBERTS: Thank you, Sarah, for your testimony.

You mentioned in the written testimony, it suggests a change to the bill, the premediation meetings. Can you talk a little bit about that, what you would like to see if -- if we were to go down that path with something a little bit more formal than what's there now?

SARAH PORISS: If the program is going to strictly enforce, you know -- Oh, you're at your third mediation; now you have to get permission from a judge -- you know, as Roberta Palmer has testified, as others have stated, in mediation, the first mediation is basically a show-up. You have the other lawyer; he hands you a packet and says: Fill this stuff out. Here's

your reinstatement figures. Here's your 12-month payment history. What's been going on?

The person, the homeowner gets an opportunity to -- to discuss why they've fallen behind so the mediator can get to know the file. And it's basically a 20-minute meeting, sometimes.

If that's the first mediation of three, I don't think that's very productive. I think if the bank can get the homeowner or the mediator the -- the financial forms that are needed to be filled out and the mediator works with that homeowner one or two times to get to review -- because I'm telling you, very few homeowners can do these packets on their own. They just can't; my most sophisticated homeowners are stymied.

And I'm, you know, I don't have to trot out the forms, but I had one client who was required to complete the Bank of America's financial form, a Freddie Form 710, a Freddie or a, you know, the Fannie/Freddie 710, the -- the 1136 -- and I brought them all -- 1126 form, and the RMA, four of these financial forms where you have to put in your income, put in your expenses.

Why does Bank of America require four different ones? So she had sitting -- she sat in my office for two hours -- I think it was, like, one of the Monday holidays -- we were in my office for two hours going through and making sure all the -- you know. The average homeowner who works full time, who has kids, who's busy, can't get their package together.

So I think the mediators are in a great position to become experts at this. And I hate doing it; I would love for the mediators to be helping with it. I can't stand that part of my job. And they'd be paying me for that time,

and they shouldn't have to. It shouldn't be that complicated; you shouldn't need a lawyer, have to pay a lawyer to walk you through financial forms. And the mediators are already there. They already know what they're doing.

So if we could give the homeowners a couple of sessions with their mediator and then start the first of those three sessions, they're saving the fees of their own attorney and the bank's attorney, and then they're ready on their first, official mediation.

REP. ALBERTS: Okay. So the first meeting would be with a mediator, information gathering, just without the lender even needing to be there.

SARAH PORISS: Yeah, ideally, if -- if the -- if that's going to count against that, the total of three; then sure, let's figure out a way around that, because the reason why you need three mediations or more is because despite the best efforts, even when I review a package, sometimes we're missing something. You just can't -- you can't remember.

Because the -- the forms are designed in a way, almost, to -- to -- I wouldn't say dupe the homeowner, but they're this, a maze to be designed. We're on the top of page 2. Hidden at the top it said "number of members of the household," and everybody would overlook it, and they'd reject these applications because you didn't put the number of people in your household. But it's like hidden, the top of the page, and you don't even think it's something you need to complete.

So an expert, like a mediator, would get it right. That would speed the process up. That would get a full, complete package to the banks and the underwriters quickly. And I don't -- I

think we would see mediation and the case time shortened.

REP. ALBERTS: Great. Thank you, very much.

Thank you, Mr. Chairman.

REP. TONG: Representative Moukawsher.

REP. MOUKAWSHER: Thank you, Mr. Chairman.

You've got more experience in this than I do, and I'm not sure I'd want a lot more experience because it's so difficult. In -- in the case that you -- you mentioned -- I don't know if it was Bank America -- where you had these four different forms, were there any other requirements? Did the attorney for the lender, in addition, give you any suggestions about other material they needed?

SARAH PORISS: Oh, yeah. Again, and I only brought the forms. There's, you know -- you know the list -- 45062, the tax form; if the person is self-employed, profit and loss; the two years of tax returns; at least a month of pay stubs; two-or-three months of bank statements.

This client actually is in a three-family, so she needed to show her leases for the other two units, and in her bank statements, she needed to show rent deposits. So, you know, the homeowner or the -- the -- owner-occupied, multifamily -- so when the owner collects the rent, well, a lot of time they collect rent in cash. So the homeowner will say, yeah, I got to go to the grocery store; I got to fill my tank. They'll take that cash and they'll go use it. And they have every right to.

But you have to train the homeowners now to start depositing the cash. And if they've got

two units, they have to do the $800 for floor two and 750 for -- for floor three, separate deposits. There's all these little things. I mean, you have to learn how to -- how to rearrange your finances completely to cater to the underwriting standards.

So, you know, and my client might be ready with all her financials within 30 days, but if the bank is going to say, Well, where are the rent deposits, and she's used to depositing them with cash, we've got to train her and then get a couple of bank statements that show the deposits of cash. I mean, it's a real headache.

So there's, yes, in addition to the four forms, there was all the other stuff for her.

REP. MOUKAWSHER: Do the requirements vary from lender to lender?

SARAH PORISS: Sort of, I mean if -- if filling out between one-and-four different financial forms vary per servicer, yes.

And it can vary from case to case. If it's a Fannie, if it's an FHA, if it's CHFA; you know, there's -- it depends on who's making the decision what forms they want and how much.

And the best is when you get a servicer who doesn't need the tax returns. I had a client who hadn't done his taxes since '07, and I was -- I wanted to strangle him when I found this out. And it turns out, in the second mediation, the servicer showed up and made him not only a modification offer but a principal reduction on top of that. It was like a dream come true.

REP. MOUKAWSHER: Huh; wow.

SARAH PORISS: So you never know. You never know.

And I'm not saying it all should be totally standardized; it's -- it's just because there are no standards. You have to give everybody time to get to where that -- that particular -- because I don't think we're going to get all the different servicers to do it the way we want them to do it. I think --

REP. MOUKAWSHER: Would --

SARAH PORISS: -- that's reality.

REP. MOUKAWSHER: How did the four forms that you have there -- for instance, were they mailed to the -- your client directly or were they -- how were they provided?

SARAH PORISS: Well, when I represent someone and I'm in a mediation, they usually have them in a -- in a photocopied format and they hand them to me, or if they don't happen to have them all, they'll send me an e-mail. And I can either forward it by e-mail to my client or I print it out and mail it to the client.

REP. MOUKAWSHER: Uh-huh.

SARAH PORISS: That's not really, you know, an issue; usually the list is there. And you can find these on-line, too, if you mess one up and you need an extra copy.

REP. MOUKAWSHER: The reason I'm asking is, you know, it would -- I mean, outside of, say, standardizing, which I -- I think would be very difficult, there could be a requirement for -- and, you know, once mediation is started -- for the lender or the lender's representative to provide a list, you know, typed up, clear, you

know, hopefully, to the -- to the defendant so they know what they --

SARAH PORISS: That's --

REP. MOUKAWSHER: What they need to submit. And --

SARAH PORISS: That's being --

REP. MOUKAWSHER: -- then I think --

SARAH PORISS: -- done.

REP. MOUKAWSHER: -- that would speed it up.

SARAH PORISS: No, that's being done. That's, I don't think that's a problem; I mean, and it's all very similar. There's really no mystery.

The -- the factor is whether the client is self-employed. Then you're going to need different things if the client receives some kind of public benefits, if the homeowner has tenants, if there's a contributor in the home who's not necessarily a tenant, a boyfriend or an adult child or something like that. I mean, so they're very fact sensitive, these, you know, what you have to submit.

I think that they, you know, they do go a little above and beyond what they require. I mean, I -- I could go on and on about, say, tenants and versus contributors and -- and what -- homeowners have to put their boyfriend under a lease if that works best for -- for the financial paperwork purposes; you know, things like --

REP. MOUKAWSHER: Uh-huh.

SARAH PORISS: -- that. So it can be hard, but that's more of a delay.

And I just don't understand. I mean they put you through so much more scrutiny than when you borrowed the money in the first place. And I've been told, oh, it's because we want to treat all homeowners fairly. Well, you know, they're here, ready, willing, and able to pay; give them a shot. If they blow it, they blow it. Then you can't go back and say you didn't give me a, you know, a chance.

So I have a problem with the underwriting standards, but I think that this bill can help with that, with giving mediators more power and keeping, you know, and not criticizing the system or the homeowners or the banks for the length of time.

Foreclosure court is a court of equity. If this homeowner should stay in this home a little bit longer and that's fair, let fairness, you know, prevail. That's really what, I think, is the bottom line here.

REP. MOUKAWSHER: Uh-huh.

SARAH PORISS: Nobody wants to pay me to drag them through, you know, to -- I'm not there for my profit. I'm there to help, help these -- I want to brag about a success. I don't want to, you know, keep charging this poor person money when --

REP. MOUKAWSHER: Right.

SARAH PORISS: -- they could be in a performing mortgage.

REP. MOUKAWSHER: Okay.

SARAH PORISS: All they want is to pay their mortgage.

REP. MOUKAWSHER: The reason I was asking these questions, and my experience was that the -- the -- I mentioned this earlier -- the requirements seem to change depending on what attorney was there and they were given verbally or written out. And I -- I just wanted to know what your experience was and --

SARAH PORISS: Well, I think on the rare occasion I've been told, well, you needed to give us this, and I wasn't told that they were needed that. And then they either (inaudible) they're -- they're helpful; you know, they get it. That's not -- I don't think that's really the issue. The -- the checklist has pretty much become standardized.

REP. MOUKAWSHER: All right. Thanks.

SARAH PORISS: All right.

REP. MOUKAWSHER: Thank you, Mr. Chairman.

REP. TONG: Representative Rovero.

REP. ROVERO: Thank you, Mr. Chairman.

All I'd like to say is, Sarah, I want to thank you, very much, for your dedication to your clients. I mean, I'm not saying I didn't have a mother like you, but you're going to make a hell of a parent; and I can tell you that, if you give them all that advice. And thank you for your dedication.

SARAH PORISS: Thanks.

REP. TONG: Representative Larson.

REP. LARSON: Thank you, Mr. Chairman.

I'm not going to pronounce this right, but I need a definition: Kafkaesque?

SARAH PORISS: Kafkaesque?

REP. LARSON: Yeah.

SARAH PORISS: Franz Kafka.

REP. LARSON: What's that mean?

SARAH PORISS: Just -- just put him on your reading list and you'll -- you didn't have to read that stuff in high school?

REP. LARSON: I never went.

SARAH PORISS: We had to read that stuff in high school.

REP. LARSON: I never went to high school.

Thank you. That's all, Mr. Chair.

REP. TONG: Any other questions?

Thank you.

SARAH PORISS: Thanks.

REP. TONG: Erin Dorman.

ERIN DORMAN: Good evening -- good afternoon.

REP. TONG: Good evening.

ERIN DORMAN: I'm Erin Dorman, and I am the Director of Restructure and Recovery at Webster Bank. And I appreciate having the opportunity to speak in front of this committee on a very important bill, No. 6355.

We agree that the foreclosure process is -- is struck with too many delays. It doesn't help anyone. It doesn't help the borrower. It doesn't help the banks. It doesn't help the economy. And we are committed to working with this committee to -- to come up with some conclusions that address all the concerns. But in my opinion, the current bill as proposed may create additional delays as well as additional expenses for the homeowner.

Again, Webster Bank, in 2008, created its own consumer loss mitigation unit in response to economic deterioration in the region. Since that time, we've modified over 1300 loans, helping those homeowners keep their homes; 769 in Connecticut. The average monthly savings under our program is over $300, and our re-default rate, which you heard is very important, is 10 percentage points less than the industry standard.

Our normal servicing -- for servicing for others, as you have heard -- our normal turn-around time for our program is 30 days from a full financial package. We will get you a decision; it's 30 days.

So even with all those successes, we still have over a hundred customers on the foreclosure docket in Connecticut that have exceeded 300 days. So something is not working.

And -- and there are a few things in the bill that I -- you have heard from other folks that have testified, but I can't emphasize enough, as a servicer for the Fannie Mae, the Freddie, the CHFAs, our hands are tied. They have specific programs; they have specific criteria. We have to follow them.

And I agree with the previous testimony that

that first mediation session, it -- it doesn't work, because you have to go collect the information, the documentation for your servicer. You have to have full financial disclosure in order to determine what the true, you know, modification, the correct modification should be.

And it also doesn't address the fact that many of our borrowers are in dire straits, not just with one mortgage but multiple mortgages. They're past due with the real estate taxes. There are nonbank creditors all trying to get a piece of their dollar. So unless a mediation program addresses that in a holistic manner, it's not going to fix it. It'll kick the can down the street, as -- as a very smart person said -- that it doesn't address the long term.

So I have a couple of suggestions. I don't think it's fair to say it -- it doesn't work without giving some suggestions. And one of the suggestions is very similar to what Judge Mintz said. The Connecticut Practice Book, for years, has had motion pleading timelines. It also has the ability to have a court have standing orders that you impose on all parties, and you enforce it. And -- and that way, neither party can string the process along, for whatever reason.

You also may consider a complex foreclosure docket. Years ago the civil litigation docket was overwhelmed; they put it to complex. They had experts who helped multiple lien holders, in this case, come up with a holistic approach.

You may also consider more education for the homeowners as far as the foreclosure process, as well as continuing to do the homeowners' assistance events that the Attorney General and Commissioner Pitkin are doing.

And here's a plea for money. There are some homeowners, as Representative Rovero said, they are so financially damaged that there is no program available for them. But if there is a backstop, additional guarantee funds from an agency or some other source, the bank will be able to make a modification and not have to treat it as a nonbankable asset.

So there are some tools we already have. I do not believe that the imposition of a good-faith standard and full-settlement authority is going to solve this, because you've heard from other people, it -- it basically is not that workable.

There are some tweaks that are available that I would suggest we consider to solve this, so thank you for your attention.

REP. TONG: Thank you for your testimony. And thank you for offering suggestions; that's helpful and could be helpful if you could submit those in writing, afterwards, so we have them and we can -- and consider them as a committee.

You just said that this doesn't mean that we need to have good-faith standards. And I just sort of want to ask you why not. And -- and why shouldn't we have good-faith standards, and why shouldn't we empower our judges and mediators to sanction parties who -- who aren't acting in good faith?

ERIN DORMAN: As testified by several folks before, the foreclosure court is a wonderful tool; it's called equity. It's a court of equity. And over the years -- I've been practicing since 1984 in the Connecticut courts -- judges can do a lot to -- to enforce the right rulings. There is -- there -- there is built into it a

good-faith standing and I -- or a good-faith standard.

I think -- I don't remember which Representative or -- mentioned it, but the -- the attorneys who are motion pleading are held through their bar admission to certain standards of conduct. So any attorney in the court can be held to that standard, and I believe that the judges already have that available.

We have all seen judges call parties in -- you violated a standing order; it said be available with your client; you did not come -- therefore there are repercussions available already through the practice book and the -- the judicial side.

REP. TONG: So then there's some disconnect here; right? So -- and I asked this of Judge Mintz: If you have equitable powers and you retain powers as a judge of Superior Court to sanction parties for misconduct, and there's always the contempt process --

ERIN DORMAN: Uh-huh.

REP. TONG: -- then why isn't that, in your estimation, your experience, happening when we hear about Migdalia Rey? And what's --

ERIN DORMAN: What's missing.

REP. TONG: Who's dropping the ball here?

ERIN DORMAN: What's missing?

REP. TONG: Yeah. What am I missing?

ERIN DORMAN: Again, I've got to -- I've got to say my experience.

REP. TONG: Yeah.

ERIN DORMAN: My -- my --

REP. TONG: And let me very clear. You're speaking in your capacity as a representative --

ERIN DORMAN: Right.

REP. TONG: -- and practitioner --

ERIN DORMAN: Right.

REP. TONG: -- of Webster Bank. I'm not asking you to speak on behalf of any other institution.

ERIN DORMAN: My experience is that the judiciary is overwhelmed. Look at the docket; it -- it's -- it's overwhelming. The mediators are overwhelmed.

I -- I think that they need some cover, honestly, from the Legislature. If this is part of a bill to help the mediation program, then if you said use the standing orders, use the motion pleading, if -- if a plaintiff isn't moving a case along, those of us who have practiced in the state long enough remember the dormancy calendars that were imposed, that you ran the risk of your case being dismissed if you didn't have a good excuse in front of the judge. So that is a -- that is a tool.

I -- I don't want to speculate as to why the judges and the mediators are not. I'm sure they're doing it out of the best interest, but unfortunately by not imposing the already existing tools in the motion practice, you are potentially harming all the other people in the process.

REP. TONG: Relatedly, what's wrong with requiring somebody with full set of an authority to appear at mediation?

ERIN DORMAN: There's nothing wrong with that, as long as you have a full financial disclosure ahead of time. And you heard people say how difficult it is. Again, the forms are pretty standard. Everybody, you know, Fannie Mae has a standard form. There are circumstances where it's a little difficult to figure out how to fill it out, but you don't get that form filled out. You go to the first mediation, and that's the first time you're going to see a borrower, oftentimes, in that situation with a financial disclosure.

So the suggestion of the that 60-day premediation, I think is very helpful, because it'll allow the mediators, who are very good at filling out these forms, a chance to get that in front of them.

The problem that we have is that as a servicer, I don't have approval authority; I don't have it. If there is a program that my service, that my investor allows me to -- to use -- program or programs -- if the borrower needs to deviate from it because of a unique hardship or other lien issues or title issues, I don't have the authority to bind them. I have to go back and ask them for approval. So it's --

REP. TONG: So --

ERIN DORMAN: It doesn't address that.

REP. TONG: You can then understand our exasperation.

ERIN DORMAN: Uh-huh.

REP. TONG: What are we supposed to do with that? You know, if you as a servicer have front line responsibility for servicing this loan but you tell me you don't have the power to act without jumping through hoops, yourself --

ERIN DORMAN: Uh-huh.

REP. TONG: -- how as Legislators, how as a community can we change that without nolo -- without a stick, frankly, without --

ERIN DORMAN: Uh-huh.

REP. TONG: -- some incentive to force you and the people that you represent to do something to address a loan in front of you that may or may not be able to be worked out?

ERIN DORMAN: I understand the -- the response because we see it. You know, we're in court. We hear people. We go to the homeowners' assistance events, and they're exasperated, a lot of folks.

I think the 60-day premediation would truly allow for a thoughtful, holistic, first mediation session. And there's nothing wrong with using standing orders or the judge saying that you have to have -- you've got to get this done in three.

Now, we get ours done in 30 days, outside of court. We have a turn-around time at Webster; 30 days, we will get you a decision. From the time you give me the package to the -- to the 30-day mark, I will give you a decision. Sometimes borrowers don't like the decision, though; I -- I have to say that.

There are specific programs that don't help everyone, so if you have 60 days premediation,

that should give you a jump start where you could start saying you don't have an excuse that you didn't have the documentation. You did, lender, and you really need to get your servicer to tell you what this customer qualifies for.

REP. TONG: I -- I must tell you that I appreciate your efforts to answer the question, but it's not --

ERIN DORMAN: It's very troubling.

REP. TONG: -- satisfying that, you know, you're a servicer and you represent investors for a financial institution; you're not empowered to act. And when we're trying to deal with people who are trying to stay in their homes, I --

ERIN DORMAN: Uh-huh.

REP. TONG: -- mean what we are faced with are constituents who call us and say I am going to lose my home.

ERIN DORMAN: That's a horrible --

REP. TONG: And I am going --

ERIN DORMAN: -- (inaudible).

REP. TONG: -- to have nowhere to sleep.

ERIN DORMAN: Yup.

REP. TONG: And that is something that's very hard for us to deal with, because none of us want to turn our back on those people.

I'll ask one more question -- I'm sorry; I have a tickle in my throat. But you've heard this testimony from Sarah about the four forms that

she had to contend with from Bank of America. And then we heard Renata talk about her client, Migdalia Rey and --

ERIN DORMAN: Uh-huh.

REP. TONG: And the abuses, it -- it appears from -- from their testimony that she has suffered at the hands of another financial institution, Citi.

This is not meant to be a facetious question, but, again, we are sort of at a loss when we hear of these abuses. And what -- what can be done about this? What is the industry doing to self-police? What -- what do we do about Migdalia Rey? Because she lives in New Haven; she lives in this state, and she's trying to assert claims against Citi for what appears to be, you know, a pattern of misconduct here. So can you offer us any specific ideas on how we confront these issues and abuses?

ERIN DORMAN: Well, as to the documentation required -- and I -- I do have copies for everyone, if you want to look at what a standard package is -- it's not voluminous. It -- it's really not. And these are standard; these are Fannie Mae, and most banks follow the Fannie standard.

You might have something with your logo on it, but it's basically a financial disclosure; the tax returns; a form that goes to the IRS that says double -- I want you to -- to verify that they did file; pay stubs; and, a bank statement that verifies that what you have in savings and checking is -- is accurate. That's the package, and that's been the package for many years.

I believe that, as you heard the attorney testify, that doesn't seem to be the problem,

because most of them do understand what is asked for. They're having difficulty filling it out. And that's where I think the mediator doing the premediation would really help.

Now, as far as the abuses alleged, there are agencies, as you're well aware of the Consumer Finance Protection Bureau; it's starting to really ramp up. I know that the Attorney General and the banking commissioner have really tried to address these issues, and I would urge that we continue to work with them and if there is some other mechanism, like a watchdog or a policing unit, we consider it, because Webster Bank does not ever want to be held in -- in anyone's eyes as a bank that abuses its borrowers. We're here to help people stay in their homes and we're proven it.

But I'm still as frustrated as the next person about the foreclosure delays, and I am looking for answers, just as you are.

REP. TONG: I -- I guess, with all due respect, though, you know, whenever we hear about another regulator or what --

ERIN DORMAN: Uh-huh.

REP. TONG: -- the Department of Banking wants to do or the CFPB, there was -- there's -- there's resistance to those efforts, too, and to those regulators. And, I mean, there's broad resistance to the CFPB, itself. You know, we're not -- we're not the Federal Legislature here but, you know, I hear that from -- from people that I speak to in my capacity here as a State Legislator. So I, you know, I appreciate that you're trying to give us answers and that you see these issues on the front lines, on behalf of a Connecticut-based institution.

But what troubles me is that we just continue to hear these stories, though they're allegations. There are too many allegations, over and over again, about these abuses. And it's got to stop. I think that's where everybody is. We've got to do something so that this stops and we can move forward and this economy can grow again and you all can start making loans again, not that you're not right now, but that you can get back to the business of making loans and -- and helping people buy homes.

Any other questions?

Representative Rovero.

REP. ROVERO: Here I go again.

You say you're the Director of Restructure and Recovery at Webster Bank.

ERIN DORMAN: Yes.

REP. ROVERO: I would say you're pretty well up the line of command.

ERIN DORMAN: Well, I (inaudible) --

REP. ROVERO: And you tell me that you cannot make a decision.

ERIN DORMAN: Not for a servicer.

REP. ROVERO: Let me ask you this: Now you're in a mediation, right now with someone; you cannot make a decision. Is there someone on the phone that you can get an answer to immediately? Because it seemed like that is -- that is the problem. I mean, you're not the ordinary person; you're up the lane -- chain of command, I would say, and you still can't make a

decision.

Is that a delay tactic or is this just -- you know, I get it -- where does the buck stop, and that's --

ERIN DORMAN: Uh-huh.

REP. ROVERO: -- my question. Where does the buck stop?

ERIN DORMAN: Well, in reference to --

REP. ROVERO: And I -- and I stick up for banks; don't get me wrong.

ERIN DORMAN: No.

REP. ROVERO: But --

ERIN DORMAN: I appreciate --

REP. ROVERO: -- somewheres, we got --

ERIN DORMAN: -- the reference --

REP. ROVERO: -- to stop that buck.

ERIN DORMAN: -- to President Trumer -- Truman, a very great President.

I am, at Webster Bank, the decision maker for Webster-owned loans; I am. Very unusual that Webster has that type of credit approval, and we did it to be nimble and we did it to be flexible. So I make myself available; I often attend mediations, because I do want to make a decision for that homeowner.

What I keep getting back to is that when you service for others, you can only agree to the box. If the homeowner says here's my financial

disclosure and I'm okay with the box, we can go away happy. But oftentimes the homeowner isn't ready to make that decision or says, jeez, this doesn't fit what the -- what the investor, the Fannie Mae or Freddie is offering me doesn't work. Then we do need to get approval authority from the government, the federal agency, the GSEs; we do.

So for bank-owned, for someone like Webster, I don't think it's a problem. But we're unusual. Other banks, as you heard John Patrick testify, it's not that easy. And I -- I share the frustration. I -- I understand what a homeowner would feel.

REP. ROVERO: But how long does it take you to get this answer?

ERIN DORMAN: From a servicer or as a servicer? I'm going to say certainly by the next mediation session you absolutely should have any --

REP. ROVERO: Which is -- which is how long there?

ERIN DORMAN: I think 60 -- it's within 30 days? I mean 45 days? I'm not sure how the court is scheduling them, but the next mediation session, you should have an answer from your investor.

REP. ROVERO: To me, that's not quick enough, but that's just me. I mean I, you know, we've been through all this. We've been through mediation and so --

ERIN DORMAN: Uh-huh.

REP. ROVERO: -- forth and so on, and then we get down to what we think we have, things in order here, and nobody can give me an answer.

And I can understand everybody being frustrated. And to me, 30-to-60 days is too long. To me, somewheres we got to have someone on board that can give us an answer within a -- I'd like to have somebody at the other end of the phone say here's the circumstances. I mean, this day and age --

ERIN DORMAN: We all would.

REP. ROVERO: -- with all these computers and everything else.

ERIN DORMAN: Yeah.

REP. ROVERO: We send off the information; somebody should be able to give an answer, not 60 days later.

ERIN DORMAN: I didn't --

REP. ROVERO: I mean, that's just --

ERIN DORMAN: I didn't --

REP. ROVERO: -- my opinion.

ERIN DORMAN: -- say "60 days." I'm --

REP. ROVERO: But -- but 30 days.

ERIN DORMAN: I'm -- I'm saying the next mediation session. Again, the courts are backed up, so I don't want to speak on their behalf.

But you're absolutely right. I would say within 30 days, you should have an answer. We do at Webster, when we service for others; we do have an answer.

REP. ROVERO: But what I'm saying is 30 -- in my opinion, 30 days is too long.

ERIN DORMAN: Okay.

REP. ROVERO: Somehow we got to get something in the system where somebody is on the other end of the phone. We have somebody that's got this, somebody has got that; you want to accept it or don't you? End of story, not come back to 30 days or 60 days, some of these another 30 days or 60 days behind.

To me, in order to cure this problem, we got to have -- and I got to agree with the Governor on this, and I'm not saying it's always going to work -- but we got to have someone there that can make a decision. Yes, and even if they say no -- I have no problem with that -- but make a decision. That's my opinion.

Thank you, very much, Mr. Chairman.

REP. TONG: Thank you.

And I think you know the frustration that Representative Rovero is articulating is really this disconnect between the financial product; right?

ERIN DORMAN: Yeah.

REP. TONG: Financial innovation is a great thing for this country and the world economy; fine. But the financial product, where you have mortgages that have been packaged and sold and then are serviced by a servicer, that's a result of financial innovation, and that's a product. But this product, unlike your typical stock, bond, exchange-traded fund has consequences for people in their everyday lives, and that's the problem we're trying to solve. It's not a, you know, it's not a victimless product; it is a product that

relates to, you know, what people do every day, which is live in a home. And -- and that's one that I hope that you and your colleagues appreciate.

ERIN DORMAN: (Inaudible.)

REP. TONG: Representative Larson.

REP. LARSON: Thank you, much, Mr. Chairman.

Along the lines of my colleague from the quiet corner -- and I sympathize with you, as well. I didn't get my Hartford Courant this morning, ended up calling a call center in the Philippines to see if I could, you know, maybe get a Hartford Courant delivered to my house. But I think managing expectations with our people is also a very, very large part of the -- our responsibilities.

Is there some sort of widget that we can give you as a servicer in legislation? Back in the day, I ran an insurance agency with my brothers, and we would give someone a binder for 30 days for their insurance coverage. And so if you ran into a situation where you couldn't make a decision because it was not in your box, could you, if you had the ability to make, so some sort of accommodation with a binder or some type of resource that would move this along to the next step, subject to so that if, in fact, you did get the approval sooner than the 60 days or the next time, things would progress? Is there widgets along the way that we could make for you rather than a standard, what seems to be a cumbersome effect on a large group of small business owners that we call "banks" in the State of Connecticut?

ERIN DORMAN: Again, I keep going back to the -- the discussion about the premediation. Most of

these investors have the box. You know what the box is. You know if you fit in it, you're -- you're okay. So the sooner a borrower, a homeowner puts their financial package together -- and even we could give them what the terms and conditions are of the investor modification programs, down to a tee. Unfortunately, there's some computations that involve NPV and things like that, but -- but pretty much you could look at the income and determine.

I don't see the harm in -- in doing a -- like looking at it and saying this is a potential; if you wanted to pursue that, we will go to the servicer and say it's good to go. So, yes, the sooner they understand the process and the -- and the box that is available, and the sooner they get their financials in, the sooner they can feel that the problem is resolved.

REP. LARSON: Is there some mechanism at the loan origination that -- it just seems to me, frankly, if you're an adult and you own property and you are getting a mortgage to begin with, that there are responsibilities, financial responsibilities.

ERIN DORMAN: Uh-huh.

REP. LARSON: So filling out four forms, to me, doesn't seem to be a hardship. When I hear about people not paying their taxes for three-or-four years, understanding if there were individual problems or circumstances, I'd be very sympathetic to that. But I'm not sympathetic to people who are gaining the system or are trying to avoid things, like paying their taxes, like paying and coming up with their responsibilities.

But is there any type of a, you know, a notification or piece going into homeownership

that would recognize what the steps would be if, in fact, we do have to foreclose?

ERIN DORMAN: I -- I think that's an excellent idea; that was the education piece. Just as we're trying to educate people before they enter into mortgage and homeownership, we're not really educating them about what happens if you don't pay. It's important because there are repercussions that go beyond losing your home, which is the worst thing somebody can go through. There's deficiencies that exist, and --

REP. LARSON: Right.

ERIN DORMAN: -- the deficiencies get worse and worse as the delay in the system continues, so absolutely.

And -- and I would imagine that as long as the investor programs stay the same, subject to change, you can absolutely put together a -- a program book that early in the process, here are the programs that you may be qualified for. Start people -- start people early thinking of it so that it's not a surprise, that they don't go through three mediation sessions and say, you know what, I -- I still don't understand what my options are. That should never happen.

REP. LARSON: Right.

ERIN DORMAN: That should never happen.

REP. LARSON: Okay.

Thank you, Mr. Chairman.

Thank you, very much.

REP. TONG: Representative Alberts.

REP. ALBERTS: Thank you, Mr. Chairman.

Thank you, Erin, for your testimony.

I think I have two questions: We heard testimony earlier today about Bank of America, and there was a pretty poor response, overall, in terms of the number of folks that responded to the effort for outreach. How was your turnout for those events?

ERIN DORMAN: Well, for the homeowners' assistance events?

REP. ALBERTS: Yes.

ERIN DORMAN: Well, as the commissioner can attest, the first homeowners' assistance event that happened in Hartford, we were the -- the lonely -- lonely person in the room. We hardly had anyone. We had sent a lot of notices to eligible -- all of us do.

But I attribute it to the fact that any one of our borrowers, at any time, can reach out to Webster. They don't need a homeowners' assistance event to get a hold of a single contact to talk to someone about options. So we had very few people respond. We sent -- we've done five, and it's the same thing; very few people respond.

REP. ALBERTS: Okay.

ERIN DORMAN: Don't know why.

REP. ALBERTS: And -- okay. And then I guess the second question: We've had some testimony that we've heard about documents and, you know, items being outdated. And is it a requirement of the investor to have the updated documents?

I guess that's the first part of it. And then the second part: If so, then are you running into situations where you obtain the documents and the investor is basically saying, you know, this isn't good enough, we -- we need more; can you talk to that?

ERIN DORMAN: I -- the financial disclosure that is requested has the list of what is required: Two pay stubs; a form for the IRS, signed; last two months of bank account statements; last two years of IRS taxes; hardship letter, and that's all that is needed, basically, in package. The problem is -- and I'm sure you're hearing it from -- from constituents -- you have to get the package done and then quickly get it into someone's hands and get a decision, because if one of these items goes over the 90-day mark, you have to start -- get -- to get a refreshment on that. For instance, a pay stub will be stale, and that should never happen.

So that is a problem that I would think if you move the system along, do a 60-day premediation session, that may address some of that issue with the documentation.

REP. ALBERTS: Great. Thank you.

Thank you, Mr. Chairman.

REP. TONG: Thank you.

Any more questions?

Thank you.

ERIN DORMAN: Thank you.

REP. TONG: Frances Kenneally.

Good evening.

FRANCES KENNEALLY: Hi.

REP. TONG: Thanks for waiting.

FRANCES KENNEALLY: Oh, that's okay, but the bell, he better put that away until I'm done.

REP. TONG: We'll see what we can do.

FRANCES KENNEALLY: Okay. I want to thank you all for giving me the opportunity to speak.

My name is Fran Kenneally. I'm here to support the Governor's bill of 6355.

I've lived in my home on 33 First Avenue, in Waterford, for over 43 years. I have a mentally disabled, adult son; his name is Danny. My friend Jeanne, who came to take care of Danny and I when I got sick, 27 years ago, became part of our family. I put her on the mortgage so the house would go immediately to her and Danny if anything happened to me. I've survived brain cancer, kidney cancer, had my kidney removed, forced into early retirement because of this cancer, and I live on a fixed income.

The mediation process stands out as one of the worst experiences of my life. Three years of constant fear, over three years, and uncertainty took a toll on both of us. Jeanne lost her teeth; the doctor attested it was stress. I lost all my hair; thank God it's come back. And the cancer never made me this upset and scared that I was over losing my home.

In 2009, we started the mediation process, in the beginning, like January. At the end of it, we began a trial payment plan, which is exactly

what we were supposed to do. We made the payments. After the third payment, we're supposed to get the permanent loan modification, but we didn't get it. Instead, we spent the next two-and-a-half years on a treadmill. We went to over 17 or 18 mediation sessions, and if the House Bill 6355 been around, we wouldn't have to have that problem.

Out of that, over the 17 mediations, we had 15 different lawyers from the same firm; 15 different lawyers. And when I asked the reason for having 15 different lawyers, I got for an answer, well, they get too emotional and get too close to the client and their problems, so we can't let them stay around; whatever. Okay? We planned our lives around this mediation. We did everything the bank, OneWest, and the court asked for.

We asked for two postponements: One, Jeanne's brother died unexpectedly. They would not let us postpone the mediation; she had to leave the funeral and go to the mediation. That was bull and nothing. They did nothing; okay? Then I had broke my leg, was in the hospital, they couldn't -- I got an infection and everything else. I was home with no cast; she had to take me in a wheelchair down to the courthouse because they would not break it. But they postponed at least, what, eight times? But they wouldn't let us. Okay.

Unlike a bank, we were very committed. Every mediation session, the bank's lawyer for the day would ask for financial documents reflecting the fixed income. We would give them to them. At the next session, they ask for another document or say that the documents that we had, were sent, became stale, because they sat on somebody's desk. Is that my fault? Then we would send documents we already sent;

for example, I sent proof of my structured settlement payments six times.

In 2010, the mediator wrote a motion stating that the bank told her they had everything they needed. But it didn't matter; the bank asked for more documents over the next three years.

The Governor's Bill 6355 would allow mediators to declare that a package is complete and stop this nonsense. We really deserve better during our nearly three years of mediation.

Thank you for your time. And you know what? I say God bless you.

And I want to take Mr. Rovero home with me. You have all the right answers and questions. I -- I really appreciate your --

REP. ROVERO: (Inaudible) tell you.

REP. TONG: Somebody --

FRANCES KENNEALLY: Yes you did.

REP. TONG: Shall I call Capital Police?

REP. ROVERO: It's all right.

FRANCES KENNEALLY: No, he really does. He asks the right questions. And I -- I really like your opinions.

REP. TONG: I want to thank you, both, for coming today and for giving that testimony.

What was the lender in your instance?

FRANCES KENNEALLY: Well, what happened was I had IndyMac Bank. They went under; OneWest Bank took it over. So OneWest Bank owns it, but

IndyMac services. I got both of them calling me. That's very confusing, one telling me it's foreclosed on, the other one telling me I -- I got the modification. And neither one happened.

REP. TONG: Yeah.

FRANCES KENNEALLY: It was just the most frustrating thing that I've ever been through.

JEANNE BRENNAN: And the bank (inaudible) didn't even know what was going on. He said that you don't have any lawyers. We don't have any lawyers.

FRANCES KENNEALLY: We don't have lawyers, they said. I mean, it was just -- it's pathetic how the bank has no idea what the left hand or the right hand it doing.

JEANNE BRENNAN: They're just terrible.

REP. TONG: Yeah.

JEANNE BRENNAN: They're just terrible.

REP. TONG: Well, thank you, again, both of you, for coming up here and sitting for hours and --

FRANCES KENNEALLY: Yes.

REP. TONG: -- waiting to give your testimony.

Do we have any questions from members of the committee?

You can pick up Representative Rovero at the door, on your way home.

FRANCES KENNEALLY: No. I just want to take him to bring down to the courts, because he needs to

be down there.

REP. ROVERO: You won't get (inaudible) --

REP. TONG: Thank you, both.

FRANCES KENNEALLY: God bless you all.

JEANNE BRENNAN: Thank you.

REP. TONG: Steve Lewis.

A VOICE: We sent him home.

REP. TONG: Chandler Howard.

Good evening, Mr. Howard.

CHANDLER J. HOWARD: Good evening, Chairman Tong and also to Chairman Leone.

I just want to start by saying to those folks that are -- are walking out, you were treated terribly by that financial institution.

FRANCES KENNEALLY: Thanks a lot.

CHANDLER J. HOWARD: And it sounds like you still are; hope --

FRANCES KENNEALLY: One thing I did not say, I think I'm (inaudible) --

JEANNE BRENNAN: (inaudible) and here we go.

FRANCES KENNEALLY: No. That my mortgage payment before I started went from 90,000 to 290,000 for late fees and all that other stuff.

CHANDLER J. HOWARD: Thank you.

FRANCES KENNEALLY: Thanks. Bye-bye, guys.

REP. TONG: Adam, would you please shut off the microphone --

A VOICE: No.

REP. TONG: -- please? Thank you.

CHANDLER J. HOWARD: My name is Chandler Howard and I'm Chairman -- I'm sorry -- I'm President and CEO of Liberty Bank, in Middletown, Connecticut, and I'm here to testify in opposition to this bill. I really do appreciate the opportunity to speak here.

I want to speak briefly to three reasons why I believe that this bill may have some unintended and negative consequences, not just for banks for also for borrowers.

First, Section 6 of the bill would require the mandated use of the FDIC model for determining whether an impaired borrower should go into foreclosure. What's the issue here? It really ties our hands as a financial institution. How does it do so? Currently, at Liberty Bank, we use more lenient policies to help our borrowers reach a workable modification. Mandating the FDIC model would mean that we no longer have that latitude to intercede. Even if we did so in good faith, we would potentially be violating fair-lending practices and open up the possibility that borrowers could raise claims in a foreclosure if we deviated from that FDIC model.

And so on that point, we recently, we took our most five -- our -- our most recent five mortgages, currently in hardship, and we applied the FDIC model versus the process that we currently use at the bank. All five of the borrowers that are in a hardship under the

process that we use at the bank were currently in some sort of a workout scenario. If we applied the FDIC model, four of those five borrowers would fail and our hands would be tied, and we would not be able to work with them to come up with a workable solution.

The second item is under the proposed bill. We believe that the time and cost of foreclosure will actually increase, as you've already heard here. What'll -- what'll that mean? It'll mean that lenders will have to respond, and when lenders are forced to respond, they typically do so by becoming more restrictive in their lending practices. In so doing, I think it would impact some of the -- unfairly impact first-time homebuyers and, more importantly, those that are under a financial -- financial stress.

REP TONG: Thank you for your testimony.

What you just said about the FDIC model, can you jump into that a little bit more and tell us members of the committee what the FDIC model is? And -- and give us a little flavor of how it -- it would not help the homeowners that -- that you are working with right now.

CHANDLER J. HOWARD: Okay. So each of the -- each of the investors that we use have their own models when someone faces a hardship. Under the FDIC model, if someone walked into the bank and said to me: Mr. Howard, I'm -- I'm 90 days delinquent; I can no longer afford this mortgage; I -- I'm unemployed; I'd like -- I'd like to work with the bank, under the FDIC model, that is a criteria. What is the income? What is the employment status? If the borrower fails than you are required to go immediately into the foreclosure process.

Currently, if the borrower comes in and is in a similar situation, because we maybe know the borrower a little bit more closely, because we may have some local knowledge that is helpful in understanding that borrower's situation, we would begin to work with that borrower, talk with that borrower.

And I have a couple of examples here to -- to help illustrate my point here. We have a property in Newington. The husband was a carpenter. The business was slow, due to the economy. The wife, in this example, worked for an auto body shop; she lost her job. Under the FDIC model, they would fail. Under our practice, we work with that borrower. We put them on a payment arrangement and then modified their loan until they were able to find employment and get back on their feet. That's the kind of restriction if it's mandated that we use a specific model in these hardship situations.

REP. TONG: Thank you.

Any questions?

Representative Alberts.

REP. ALBERTS: Thank you, Mr. Chairman.

And thank you, Chandler, for your testimony.

On page 2, under "Residential Lending Today," you -- you list the average foreclosure took 14 months. Your worst-case foreclosure is still in process; so far it's taken 38 months, including 10 mediation sessions and many delayed sessions. Can you talk a little bit about what -- what's happened there?

CHANDLER; J. HOWARD: Yeah. That is our worst. Let

me preface by saying we don't have many foreclosures; we have 12, in total, for our entire institution. In that particular case, every time we went into mediation, I think the borrower believed that they had a job prospect on the way. I think the mediator believed that the borrower had a job prospect on the way, and so the time line was extended. This occurred ten times, and we are still no closer to resolving this problem with the borrower than we were when we started.

And, again, I have to stress that this is not just an issue for the lending institution, this is an issue for the borrower. This borrower is accumulating additional debt and additional liabilities as -- as time goes on. So, you know, we are always trying to find ways to work these things out, but in this case, which again is our worst example, we're on Month 38. It's the same issue when we go to mediation, and we're no closer to resolving it than we were when we started.

REP. ALBERTS: And then looking -- and I understand you have your own portfolio loans and you also take care of loans, service loans for others -- how does it work for you in terms of the approval authority of the individuals for making decisions? Is -- is that -- you know we've heard testimony that sometimes that's an issue for, certainly for the servicing side; but do you have any issue at all with your staff being empowered to make a -- a loan decision?

CHANDLER J. HOWARD: No, not at all. For loans that we have direct ownership of, we can make decisions. We have people in power to make decisions on the spot.

REP. ALBERTS: Okay; thank you, very much.

Thank you, Mr. Chairman.

REP. DIMINICO: Thank you --

REP. TONG: Representative --

REP. DIMINICO: -- Mr. Chairman.

REP. TONG: -- Diminico.

REP. DIMINICO: I got a question on the FDIC model. I thought it would be if we didn't have an FDIC model in this bill, that it actually would probably just slow the process down, because you really would have no protocol to follow, particularly yours; it seems like it's much simpler and more discretionary. But on such a large matter, other -- there was much more banks involved, other than the personal bank. I would think that if you didn't have a model, it would basically slow the process down.

CHANDLER J. HOWARD: It -- it could. It possibly could slow the process down, however, what it really does, to the detriment of borrowers, is it removes any ability for the bank to use any sort of creativity or any local knowledge of the customer. It -- it handicaps the bank from doing so.

And the reason for that is because -- one of the reasons is that if we work with a borrower following that model, and then we don't use that model for a different borrower, the bank subjects itself to fair-housing issues.

REP. DIMINICO: Well, I think also the reverse could happen as well, that the bank could, if they had no protocol like an FDIC, that it could work against the consumer, because there really wouldn't be any guidelines.

CHANDLER J. HOWARD: Well, we -- we have a -- we have a foreclosure process right now, already in place. The -- again, the -- the model restricts the bank's ability to -- outside of whatever that model calls for, to come up with a solution that might be workable -- workable for the borrower.

REP. DIMINICO: So do you think that -- that the -- that the best interest will be to provide some latitude to the bank?

CHANDLER J. HOWARD: Absolutely.

REP. DIMINICO: As --

CHANDLER J. HOWARD: Absolutely.

REP. DIMINICO: As well as the FDIC model, to also provide an option for some latitude.

CHANDLER J. HOWARD: On my opinion, absolutely. Again, it's about -- it's about providing the institution with the ability to work with the borrower in a way that works for the borrower.

REP. DIMINICO: Thank you.

REP. TONG: Representative Rovero -- oh, no? Not this time.

Thanks, Chandler; appreciate it.

CHANDLER J. HOWARD: Thank you.

REP. TONG: Steve Lewis.

STEPHEN L. LEWIS: Thank you. I apologize; I wasn't here.

REP. TONG: No, that's fine. Good evening.

STEPHEN L. LEWIS: I was concerned about my car getting towed, so I had to take care of that.

REP. TONG: I can't help you with that.

STEPHEN L. LEWIS: I didn't think so, so I figured I'd take care of it myself.

My name is Stephen Lewis and I'm the CEO, President of Thomaston Savings Bank, a start -- state-chartered bank. We were founded in 1874; we're headquartered in Thomaston.

Prior to working at Thomaston Savings Bank, I worked for the FDIC for 15 years. I worked in the Division of Supervision, in the role of a safety and soundness examiner. During that time, I participated in hundreds of examinations of banks across the northeast.

My testimony reflects my own views, developed through the course of my career as a banker and as an examiner.

I'd like to clarify at the outset of the testimony that I agree with the Administration. The residential foreclosure and mediation process does need to be improved because it takes much too long to resolve this process. According to recent data, as has been presented by several other people, speakers today, Connecticut has the third-longest foreclosure process in the nation, with an average time frame of 690 days. I believe this proposal will not improve this process. To the contrary, I think the bill will lengthen the time frame and also make it more costly.

Looking back at my 15 years with the FDIC, I first looked at this from that perspective, and I think this bill would be reviewed unfavorably

by the FDIC as well. The bill will add more uncertainty and more risk to the foreclosure process. As such, I anticipate the FDIC would require banks to hold greater reserves and capitals for loans that are in the foreclosure process.

I'd like to go on and say that the proposed legislation would create sanctions available to judges that are alarming and unprecedented. The proposed bill states that if a judge determines the parties did not mediate in good faith, sanctions would be available. These sanctions are exclusively targeted at lenders and servicers.

The available sanctions include fines as well as complete dismissal of the foreclosure actions. Other sanctions include barring interest accrual on the underlying loans, awarding attorney fees, compensation for lost income and expenses arising out of failure to mediate in good faith, and forbidding the mortgagee from charging the mortgagor for the mortgage attorney fees.

In addition, the threshold for demonstrating a failure to mediate in good faith is very low. As such, the party or attorney could possibly be sanctioned for something as simple and accidental as an administrative error. Consequently, these types of actions -- these -- these types of sanctions, coupled with a broad definition of good faith, and low threshold, providing failure to act in good faith, will add significant cost and delay the mediation process.

Lenders and servicers will be very concerned about the additional risk for noncompliance with the bill and will need to develop additional levels of review and compliance to

ensure no errors occur in the mediation process. This will lengthen the time to complete the process and add cost.

I would hope that the Banking Committee will consider working with the financial industry to study the matter further and develop a more effective process for mediation that is fair for both the borrowers and their banks.

SENATOR LEONE: Thank you.

Any questions?

Representative Alberts.

REP. ALBERTS: Thank you, Steve, for waiting and to testify.

Do you -- I guess I've heard from several bankers that they're actually contemplating not providing mortgages, in the event that this legislation were to pass as it was originally -- you know, as originally envisioned in the Governor's bill. Is that something that would prevent you from engaging in the mortgage market or --

STEPHEN L. LEWIS: I'm going to tell you it would not; we would continue to be in the mortgage market. What would probably have to happen, we'd have to review the additional impact of this bill and what the costs would be. So we may have to adjust our rates accordingly, similar to what the FHA, FHFA is doing, and they're adding on an additional point, basis-point fee to bank -- to loans originated by banks in Connecticut.

REP. ALBERTS: Great; thank you, very much.

Thank you.

SENATOR LEONE: In response to that question, line of questioning, but -- but that would be going forward. That still wouldn't alleviate any ongoing mediation issues; correct?

STEPHEN L. LEWIS: Correct.

SENATOR LEONE: Okay. Thank you.

Any question?

REP. TONG: Anyone else?

Okay; Sandra Cenatiempo.

Good evening.

SANDRA CENATIEMPO: Hi. Good evening.

Thank you for listening to my experience; I appreciate it. I'm here, of course, to support Governor's Bill 6355.

So about myself and my experience, we've lived in our home for 20 years. Both my husband and I have supported our family through our two, small businesses. I've been a realtor for 25-plus years, and my husband owns a family deli, which the majority of our customers are builders, contractors, painters, landscapers, et cetera.

When the housing market collapsed in 2009, my business, of course, plummeted, as a real estate agent. And my husband's business, because of the --his customers' lack of work, of course his business suffered as well. We have three children.

Of course we went into foreclosure because of all of our losses. And even though we've had

the income to support a mediation, we've spent more than two years in mediation. We continue to send in financial packages to Bank of America. We repeatedly pay for profit and loss statements from our accountant and often, through our 18-or-so mediations, have paid for babysitters. We've attended all of our mediations, by the way.

After more than a year of these mediations with Bank of America, they announced to us that our investor would not allow a modification. After we sought some legal help, the investor problem disappeared, but we were back to our useless mediations.

Then last February, they withdrew the foreclosure, wrongfully claiming that it was based on discussions of the parties on their own. We were stunned. We had no idea what they were talking about. And we sat back and waited, gave more documentation to Bank of America, talked to so many different people, never heard back from anybody.

They did restart the new foreclosure and we were scheduled for two mediations, both of which we did not have because the attorneys were not ready or prepared.

I have to say that this has been the single, most life-altering experience of my life. We're at a loss every day. Our children our young; they're old enough now to understand what -- really what's going on. It's very upsetting. We have no direction. We can't do anything. We feel we can't move forward.

I have -- we have a child that has major special needs. She doesn't speak. She doesn't talk. She -- I feed her. I dress her. I bathe her every day. Our town pays for her to

go to the school that she's at right now. I've called Bank of America, pleading just for this point, to say let us stay in our home; work with us. You know, what -- what can we do? The school makes her happy. She's been there since she's 7 and she's 20 now. No response.

It was just, like I said, the most cruelest and most stressful thing in our lives, and we're still not done. We're at the beginning again. So I urge you to support some form of the Governor's Bill 6355. If I had this in place or some kind of form of this bill in place, this would have not been dragging on. This has been dragging on since 2009, and there's still no resolve. And I don't see a resolve.

So I urge you to support this and thank you for your time.

REP. TONG: Thank you, Sandra. I want to thank you for waiting --

SANDRA CENATIEMPO: (Inaudible.)

REP. TONG: -- all day for this opportunity and for coming up here and having the strength to testify about something very personal to you and your family. I know it's not easy to talk about these issues. And I just want to say that I -- I think you've done a tremendous service, not just for us but -- but you set a great example for your kids.

SANDRA CENATIEMPO: Oh, thank you --

REP. TONG: And --

SANDRA CENATIEMPO: -- so much.

REP. TONG: -- I -- I just want you to know, I'm sure they're very proud that you stood up here,

and not just for yourself but for other people in this state. So thank you for coming.

SANDRA CENATIEMPO: Thank you.

REP. TONG: Any questions?

Senator Leone.

SENATOR LEONE: Thank you, Sandra. I appreciate that. And I -- same comments from myself apply from what my Co-Chair said.

So you've been in this foreclosure process or mediation process now since 2009?

SANDRA CENATIEMPO: Correct.

SENATOR LEONE: And where -- and that's what I was -- that's a number of years, unfortunately. And I think yours is a test case on whether it's you stay in your home or not stay in your home is that we -- we come to a conclusion.

SANDRA CENATIEMPO: Correct.

SENATOR LEONE: Some kind of a --

SANDRA CENATIEMPO: Yeah.

SENATOR LEONE: -- conclusion that makes sense.

So what's the status right now between you and Bank of America? Where is the process, as we speak?

SANDRA CENATIEMPO: We had a mediation scheduled for December, which they weren't prepared for, so we didn't have it. We had a mediation scheduled for January, which they weren't prepared for, so we didn't have it. So we have one scheduled for February 25th.

SENATOR LEONE: Now, when you say "they weren't prepared" for that, for the -- the meetings, what does that mean? Did -- did they not have an attorney that had the decision-making authority; was paperwork not available; what -- what were some of the facts?

SANDRA CENATIEMPO: We -- I have a -- I currently, finally have a lawyer working through us -- for us right now. But they had not signed, did not review their financial paperwork, from what I understand, and did not have any kind of decision is what I've been told, at the same time getting phone calls from -- and letters from Bank of America saying -- from different people.

So people -- the mediation attorneys don't know that I'm still getting information from a different Bank of America spokesperson saying we want to help you. So it's all over the place. I get phone calls all the time. I get different letters from people all the time. There's no, just no -- not -- there's not one person that I can speak to that's ever been able to give me any kind of an answer.

SENATOR LEONE: And when the process got extended, was that a mutually agreed upon extension or was it a request from the banks or was it is request from you or --

SANDRA CENATIEMPO: No, not at all. We attended a mediation, and they -- they needed some more paperwork, and then at that point we hired a lawyer.

We sent in a financial package in November; January of 2011. And then my attorney called me one day and said your case has been withdrawn. And I had no -- we had no reason

why. I called Bank of America to ask them what happened, what went wrong, and it was like, oh, I believe -- I'm not sure if I can speak to you because you have a lawyer. Let me check with so-and-so to see if I can speak to you.

And I just -- it was like a -- and then there was just silence for, like, six months until we -- we were served again.

SENATOR LEONE: And so when you say they withdrew the case, what does that mean; you're not in --

SANDRA CENATIEMPO: Yeah, they --

SENATOR LEONE: -- foreclosure or you still --

SANDRA CENATIEMPO: No --

SENATOR LEONE: -- are in --

SANDRA CENATIEMPO: -- they withdrew it, and they put on the town records that the case was withdrawn.

SENATOR LEONE: But -- but what does that mean? You're still contesting --

SANDRA CENATIEMPO: Well, no; they --

SENATOR LEONE: -- for your home?

SANDRA CENATIEMPO: No. Well, they just -- they withdrew that present foreclosure. And then I called them to find out why they withdrew it, but they couldn't answer me as to why they withdrew it. And they said keep sending in financial packages, which we've always done. And then we just kind of sit a -- we had to sit around and wait until we were -- my lawyer said, well, wait until you get reserved.

SENATOR LEONE: And -- and that's where it stands today?

SANDRA CENATIEMPO: Yup; you're reserved, and over the summer. And, as I said, our first mediation was December, which didn't happen.

SENATOR LEONE: So January didn't happen. Now you're into February?

SANDRA CENATIEMPO: Right. December didn't happen. January didn't happen. Now we're into February.

SENATOR LEONE: Thank you.

I -- I can understand. I -- it's clear there's a frustration there, and I'm hopeful we can help you move it along. So, again, thank you for your very --

SANDRA CENATIEMPO: Thank you.

SENATOR LEONE: -- personal story and your testimony.

SANDRA CENATIEMPO: Thank you.

SENATOR LEONE: Thank you.

REP. TONG: Thank you, Mr. Chairman.

Representative Alberts.

REP. ALBERTS: Thank you.

Ma'am?

SANDRA CENATIEMPO: I thought (inaudible).

REP. ALBERTS: I'm sorry; just a quick question for you. Thank you.

Thank you, also, for coming up to testify.

Who was your original mortgage provider?

SANDRA CENATIEMPO: Our original was Wilshire.

REP. ALBERTS: Oh.

SANDRA CENATIEMPO: And then it went to Bank of America in two-thousand -- the middle of or maybe the first of three or four -- three or four months into 2009. But we had submitted packages to Wilshire, and then when Bank of America took over, they said we needed, of course, new documentation, and we submitted to them.

And then, you know, the mediations, the attorneys would show up and they didn't have an answer, so our paperwork would get stale. We'd have to resubmit the paperwork. I have a stack of paperwork; I was going to bring the box but I didn't want to bring it with me. I mean, I've resubmitted applications, and -- and they changed everything. They had new forms, and we'd give them new forms.

And then we'd go to mediation and we'd qualify, but then they would take out 25 percent because we were self-employed; so then we didn't qualify.

And in the summertime, where my husband makes more money than he does the rest of the year, we made too much money, so we didn't qualify.

And we never got an answer on HAMP. We've applied for HAMP so many times, because we were never given an answer on HAMP.

REP. ALBERTS: Yeah.

And not that I think we should have to have or you should have to have an attorney through the whole process, but you've had an attorney only recently; right?

SANDRA CENATIEMPO: Yes.

REP. ALBERTS: Okay. And -- okay.

Thank you, very much.

SANDRA CENATIEMPO: You're welcome.

REP. TONG: Any other questions?

Representative Rovero.

REP. ROVERO: A quick question: Were you ever in mediation and you were looking for an answer from someone, because you had an answer where they said I got to get back to you later?

SANDRA CENATIEMPO: It was always like that. Every time we went to mediation, we never got an answer.

REP. ROVERO: Was it because you didn't have the paperwork or because there was nobody there with the authority to give you --

SANDRA CENATIEMPO: There's no one --

REP. ROVERO: -- an answer?

SANDRA CENATIEMPO: -- there with the authority.

REP. ROVERO: Okay.

Thank you, very much, Mr. Chairman.

REP. TONG: Any more questions?

Thank you.

SANDRA CENATIEMPO: Okay. Thank you; have a nice night.

REP. TONG: Judy Stumpo.

Good evening.

JUDITH C. STUMPO: Good evening.

Thank you, Chairman Leone, Chairman Tong, and members of the Banks Committee.

My name is Judy Stumpo. I'm a Senior Vice President and Director of Risk Management at Chelsea Groton Bank. We have 14 branches, located in the south -- southeastern corner of the state.

Thank you for the opportunity to testify on this bill. I've worked with borrowers for over 25 years and have tried to work with them through financial difficulties, and we have had a lot of success doing that. I've been required to make the difficult decision to move forward with a foreclosure; I know that that will remove somebody from their home. Unfortunately, there's times when all of the other options have been exhausted.

We spend months of discussions, counseling, suggestions, and by that I don't mean delays; I mean interacting with our customers. Our customers can come in and work with us. We'll help them fill out the forms. We help them fill out the documentation for the EMAP program. We've had successes with the EMAP program with the State of Connecticut. We currently have eight borrowers receiving assistance from EMAP and EHLP. Unfortunately,

though, there comes a time that are no mother -- there are no other options. A foreclosure is the last resort.

We have very good mediators in New London County. I find that they're fair, both to the borrower and to the bank. They're very realistic. They look at the borrower's financials and the bank's request for payment, and they will come up with some fantastic options.

The issues that I have with this bill address the introduction of good faith and the broad definition of good faith; it's very open-ended. It is ambiguous. It requires mortgagors adhere to requirements of any applicable guidance or rule issued by the federal government or its agencies or GSE arising out of a mortgage-related settlement to which the Attorney General, Department of Banking, Consumer Protection is a party.

My concerns with that is that some of those items are servicing related that have nothing to do with payment processing. I agree that banks and servicers should be held to a high standard as far as processing customer's payments. I believe that we should be held to a high standard to work with a borrower through their foreclosure and preforeclosure.

What Erin was saying earlier about a premediation meeting I think would be a great idea. We request our borrowers many times prior to foreclosure to provide us with their financial information. It shouldn't take a court to require that.

And I would just like to say that I do find the good faith too open-ended, too ambiguous, and it can bring in things that are not

foreclosure-related at all.

Thank you.

REP. TONG: Thank you.

Do you see a possibility of instituting a good-faith standard but different from the one that you see there now?

JUDITH C. STUMPO: I do. I -- I absolutely agree that we need to negative in good faith, both sides do. But when you open it up to any issue from the time of application to the time the borrower is having trouble making payment to -- to any issue, I think that's an unfair standard. It should be held to payment issues, the affordability, and whether or not I've serviced the loan in good faith; by that I mean processing the payments, responding to requests for assistance, working on underwriting the loan to something that you can afford.

REP. TONG: I think it's also conduct in the mediation and the foreclosure process in good faith. Do you think that's something that's important?

JUDITH C. STUMPO: I do. I think that -- I think it's unfair that if -- if a bank goes to a mediation session and it's at the mediation is the first time that we're hearing about a proposed plan by a borrower that we've not had an opportunity to look at and figure out whether or not it is really something that they can do.

That's one of the things we also look at; can they sustain this; is it reasonable? If we're getting that information even seven days in advance of the mediation session, we would be able to go in there and make a knowledgeable

decision that is right for the borrower for a longer term than just getting through another three or six months.

REP. TONG: So I would encourage you, if you can, to submit to the committee and to the Chairman and the Ranking Members a, you know, proposal on language around good faith that you think would be strong enough to incent the right behavior but that would be workable. And if you can do that in the next week, I think that would make a difference to all of us, if we could see some language that you think would be workable around good faith.

JUDITH C. STUMPO: Thank you.

REP. TONG: Thank you.

Any more questions?

Thank -- yes, Representative Alberts.

REP. ALBERTS: Thank you.

Thank you, Judith, for your testimony.

When we were talking before about that premediation meeting, we were looking at about 60 days prior to the first mediation meeting. Is that about the right time frame that would work, you think, from what you've seen?

JUDITH C. STUMPO: Our institution can get you an answer in less time than that. I mean, I think 30 days is usually reasonable. Because there are, sometimes, a delay because you have other borrowers going through the same difficulties, so I think a 30-day window or 60-day window would be certainly enough time to analyze what the borrower, their capacity to pay is and what -- what kind of a program we can fit them into.

We offer -- we bend over backwards to help our customers. We have customers where we completely forbear their payment for three-to-six months. Some, we just require escrow; some are interest and escrow, for short-term solutions. But the foreclosure process at a time comes when there are no -- we have no more options.

REP. ALBERTS: You -- you mention in the -- on the last page here in your testimony that in 2013, you currently have eight foreclosure in process, six for the bank, two for investors, and one of which has been in process since 2011. Can you talk a little bit --

JUDITH C. STUMPO: I'm sorry.

REP. ALBERTS: -- about that?

JUDITH C. STUMPO: It -- that actually should be 2010.

REP. ALBERTS: Two-thousand-ten; okay.

JUDITH C. STUMPO: Yes.

REP. ALBERTS: Okay.

JUDITH C. STUMPO: It's a borrower that it's a brother and sister, and our mortgage balance is $35,000. We worked with them extensively. We did not put them into foreclosure until the mortgage was a year past due. And at that point, we put them into foreclosure because they completely refused to return our calls. They refused to make any payments. They had gotten in touch with an attorney who said, you know, you can stay in the house for an extended period of time; you have a lot of equity; they can't push it through the system. We finally

have a foreclosure sale date at the end of April --

REP. ALBERTS: Okay.

JUDITH C. STUMPO: -- but it's two years, plus on top of we were a year past due before we even started the foreclosure process.

It does hurt other institutions and other borrowers, because when you deal with a borrower like this, you anticipate potential problems with another borrower.

REP. ALBERTS: Well, thank you.

And I -- and I would echo the Chairman's comment about if you could do some thinking on that good-faith standard, what that would look like that would be something we could hold accountable for borrower and for the bank, that --

JUDITH C. STUMPO: Okay.

REP. ALBERTS: That would be much appreciated; thank you.

JUDITH C. STUMPO: All right. Thank you.

REP. TONG: Representative Moukawsher.

REP. MOUKAWSHER: Thank you.

You know, I've -- I've looked at your written testimony. I've heard, you know, your concerns about the good faith. A big issue, you know, that has been raised is whether or not any changes we make are going to lengthen the mediation process.

And first I just want to get a sense of, I

don't know, if you -- you could say an average amount of time that mediations that your bank has been involved with, how long they've taken, because we've heard, like, right now it's, I don't know, the average is, like, 500 or 600 days. I wonder if you could, well, you know, say anything about what your experience is and -- and then whether or not you feel this, the measures that we're proposing would make that even more lengthy.

JUDITH C. STUMPO: We've been very fortunate. Again, the foreclosures that we start are customers where there really are no other options, and when they go to mediation, the mediators also recognize that. We've had foreclosures that have ended mediation after three sessions, based on the mediator's recommendation. We've had some, in the early times, where they would go up to 12 mediations and end in foreclosure anyway. I think that three mediations is generally enough time, if everybody's working together to solve that.

As it's been stated before, we don't put anything into foreclosure until it's at least 120 days past due. So the borrowers have that four-month time frame to try and work out what their situation is. Additionally, you're looking at additional three months. I think that the mediation would probably extend the foreclosure time frame, as it's written right now.

REP. MOUKAWSHER: (Inaudible.)

JUDITH C. STUMPO: I have.

REP. MOUKAWSHER: (Inaudible.)

JUDITH C. STUMPO: Thank you.

REP. TONG: Any other questions?

Thank you.

JUDITH C. STUMPO: Thank you.

REP. TONG: Antoinette Spinelli.

Good evening.

ANTOINETTE C. SPINELLI: Good evening, Senator Leone, Representative Tong, and distinguished members of the Banks Committee.

I'm Antoinette Spinelli; I'm the Town Clerk in Waterbury, and I'm the Chair of the Legislative Committee for the Town Clerks Association.

The Town Clerks Association sincerely appreciates the opportunity to provide testimony and support of Governor Malloy's proposal, House Bill 6355. Specifically, the Town Clerks Association appreciates Governor Malloy's inclusion of Section 8 in this bill that requires mortgage assignments to be recorded with the town clerk in the municipality where the property is located.

Since the inception of MERS, the homeowner has had an increasingly difficult time identifying the owner of their mortgage. The homeowner should be able to identify who owns their loan by going to the land records in the municipality. Failure to record assignments has made it difficult for homeowners to identify the lender that owns the mortgage and has made it difficult to properly search and gain clear title of the property. The intention of Section 8 provides for accurate and complete land records and would be beneficial to homeowners, lenders, title searchers, attorneys, municipalities, and other

interested parties.

In addition, MERS Corporation recently made claims to holding title on roughly half of all home mortgages nationally. If that figure holds true in Connecticut, the state and municipalities are losing out on a substantial amount of revenue every time a mortgage assignment is not filed in a municipality. Each one-page document recorded in the Town Clerk's Office, there's a $53 charge, and I have broken down, you know, the distribution of that $53.

In conclusion, the Town Clerks Association recommends an amendment to Section 8 to ensure that the chain of title and the accuracy of land records is maintained. This clarification would ensure the public that they have important information regarding their mortgage and subsequent assignments available to them in the local municipality. As such, the association has attached an amendment to our testimony to address this needed clarification.

Finally, we support the penalties imposed for those who fail to properly record these documents.

Thank you for this opportunity, and I'd be happy to answer any questions.

REP. TONG: Any questions?

Representative Moukawsher.

REP. MOUKAWSHER: Good evening.

ANTOINETTE C. SPINELLI: Good evening.

REP. MOUKAWSHER: My sister-in-law happens to be a town clerk, so I'm --

ANTOINETTE C. SPINELLI: Oh.

REP. MOUKAWSHER: I'm listening to your proposals with interest. But I think we've had proposals like this in the past, standing alone, not connected to, you know, a mediation bill. And -- and, you know, I just thought I'd remark that whatever we do on this bill, I think it's important that, you know, we -- we make sure the land records are accurate as to who owns property.

And -- and I'm a -- I do title searches. I -- I do land transactions and, you know, it -- it's a big concern to me that, you know, this system has become so confused. So I -- I support your proposal.

ANTOINETTE C. SPINELLI: Thank you. I appreciate that.

REP. TONG: Any more questions?

Thank you.

ANTOINETTE C. SPINELLI: Thank you.

REP. TONG: Anita Mielert.

Good evening.

ANITA L. MIELERT: Good evening, Chairman, and members of the committee. I'm here in support of Governor's Bill 6355, especially Section 8, which was just discussed by the town clerk, regarding the recording of mortgages and payment of the fee.

CPA sincerely appreciates the opportunity to come here tonight and provide testimony, and we thank the Governor for bringing forward this

measure which will properly support a progressive program.

CPA is Connecticut Preservation Action, is an organization of organizations; we have a lot of preservation organizations, and we are a 501(c)(4) advocacy organization that operates statewide.

The Community Investment Act as originally written is an elegant measure because it levies a land use-based fee which, in turn, funds statewide programs which are land based. There's a symmetry and logic to its source of funds and their ultimate use.

I was supposed to come after Amy Paterson, and I saw her testimony and I thought she was going to explain some things here, but there have been huge success stories accomplished all across the state, saving historic buildings, farms, open space, and essential housing. Nearly every municipality, I believe 163 of the 169 towns, have received grants from these funds.

Please do not allow this end run around a measure which is so beneficial to our quality of life in Connecticut. There are serious consumer and legal issues raised by this loophole. Now is the time to hold the banks accountable and to bring an end to their failure to live up to the Legislature's intent. Please support the Governor's proposal to hold the banks accountable to the communities in which they make their business, to the homeowners they should be serving, and to the quality of life in those communities.

And I very much appreciate the comment about leaving this as a standalone if -- if it needs to go forward that way.

REP. TONG: Thank you, very much, for waiting to testify this evening.

Anybody else; any questions?

Thanks, so much.

ANITA L. MIELERT: Thank you.

REP. TONG: Fred Weinle. You're not Fred.

JEFF SANDIS: I'm not Fred Weinle, I'm Jeff Sandis; Fred is my client. He had to leave to pick up his wife, but his written testimony, a story about his 21 mediation is in the pack.

REP. TONG: Thank you.

Bill Hultman.

Good evening.

WILLIAM C. HULTMAN: Good evening, Chairman, Mr. Chairman, both Mr. Chairmans, and members of the committee.

I'm Bill Hultman. I'm the Legislative Affairs person for MERSCORP Holdings, Inc., which is the parent corporation of Mortgage Electronic Registration Systems, Inc., which -- commonly known as "MERS," -- which we've heard a little bit about here from some of the prior witnesses.

What MERS does -- and I think at one point, I think Senator Leone called this the "MERS Section," which is Section 8. It's really -- that's really a misnomer because, historically, since the beginning of the advent of the secondary market, either MERS or the servicer has served as the mortgagee in the land

records. So this doesn't apply strictly to MERS, it actually applies to anybody who acts as an agent for an investor or lender who owns the actual certificate of indebtedness on this loan. So what MERS does is we act as the mortgagee, at the request of the homeowner. They make us the mortgagee in the records, and then as the loan is sold in the secondary market, we represent the various parties in the land records, as their agent.

So in this section, the two public policy arguments that are usually made in support of this kind of position that we should record all assignments are really twofold. One, as you heard, is the revenue issue; however, the revenue issue could be done much more efficiently than the current way the bill is structured. So, in this case, if every time a note is sold or transferred (inaudible) has to pay into the land records or pay some new organization that's going to have to be created. Unfortunately, because the fact is that most transfers of notes are not recordable conveyances, they do not need to be recorded in the land records. So most of this will not be -- result in anything, this particular version won't record -- won't represent any difference in -- in terms of the number of documents that are actually recorded with the town clerks.

Actually, in most of the cases, in -- in almost state there is no obligation to record assignments of the mortgage lien, which is what we -- what we hold title to. We hear issues that there are title issues involved, yet the title insurance agency routinely, every day insures MERS mortgages. It actually insures sales of properties out of foreclosures.

There are no title problems. In fact, before MERS was created, there were title problems

because people didn't record assignments that would otherwise have been made. And at the point that that's done and somebody goes to foreclosure or refinance or sell their house, the chain of title was broken, and then the homeowner is the one who's obligated to fix the problem because he has the title and the loan. So we would argue that.

And the other thing, I think, you need to keep in mind is that nobody else in the United States today has any kind of requirement like this to record all assignments. That would put Connecticut in a disadvantaged position in the national market. It will raise costs in the State of Connecticut for homeowners. You've already seen some of the other provisions of the bill are going to raise costs; this would further raise costs.

It -- it -- when it sounds good that you're -- you think that the banks are going to pay these fees, but as a result of the -- these fees, they either get charged directly to the homeowner at closing -- because they know they're going to do an assignment, it'll go directly on the HUD-1 -- or you'll get higher cost in terms of fees and points that are assigned to a loan to cover these costs. So banks -- this is not a competitive process, you know, there's no competitive advantage -- the banks are just going to pass these fees onto the homeowners.

So I -- I hear my time is up, so I'll stop and try to answer any questions you might have. And I do have a sheet that we can turn into the committee with all these points that -- for your consideration.

REP. TONG: Yeah, that'd be very helpful; you haven't submitted that yet, that --

WILLIAM C. HULTMAN: I don't think we did. I think I -- I did it the other day and I don't -- I'm not sure that anybody has submitted on my behalf yet.

REP. TONG: Okay. Thank you.

Any questions?

Senator Leone.

SENATOR LEONE: Thank you.

A question on the MERS I want to understand the process. So when a -- when -- when a mortgage is sold or transacted through the MERS system, is it -- how's it recorded? I'm not really worried about so much the fee structure, in terms of the -- the language at the moment, but on -- from what I'm hearing, especially from previous testimonies, such as the town clerks' on the transactions and the mortgage, the person who owns the home sometimes doesn't know who owns -- who holds the note. And wouldn't MERS be responsible, if it's being transacted multiple times?

WILLIAM C. HULTMAN: There's two answers to your question. First of all, in today's world -- historically, there might have been an issue, four or five years ago, about trying -- for homeowners to not know who owns their loan. Federal law has taken care of that. There are two separate federal laws that provide the -- that information. The servicers must give that information and the purchasers of a loan must give that information to the homeowners at specific times; so federal law has dealt with that problem about homeownership. MERS will also, if it's registered on MERS.

And as you heard, we do hold a predominance of the mortgages. We hold the mortgage lien on behalf of the investors for practically 60 percent of loans. So you can come to the MERS for free and either by -- re telephone, get that.

So what happens in MERS is when the loan is closed, the homeowner, in its mortgage document, makes MERS the mortgagee as an agent for the original lender. So we hold title to the mortgage lien and the original lender gets his note. Now, that's a negotiable instrument; it's not a real estate conveyance.

And when that homeowner -- when that lender sells that note into the secondary market, usually to an aggregator who then sells it to the final investor, whether it's Freddie Mac or Fannie Mae or Ginnie Mae or some Wall Street trust, we became the agent of subsequent -- the purchasers of that loan. There is no break in chain of title because title is grounded in our name. So from the time the loan is closed to the time that the loan is satisfied and a lien release is filed, we hold title to the loan. So there are no title issues; that's a misnomer and a misunderstanding of how the MERS system operates.

SENATOR LEONE: Yeah, but -- well, it does sound a little complicated. I'm trying to make sure I follow. So but there's multiple -- there could be multiple transfers of the note; correct?

WILLIAM C. HULTMAN: That's correct.

SENATOR LEONE: And -- and I, and from what I'm hearing from the other side is that that makes it difficult to find out who actually owns the note if -- if it goes through the mediation --

WILLIAM C. HULTMAN: But --

SENATOR LEONE: -- process.

WILLIAM C. HULTMAN: -- historic, because for 35 years the investors have not been in the land records; it's either been the servicer or MERS. So I don't know what people did before the crisis, but they didn't seem to have a problem.

Today, because there were issues of that, Senator Boxer passed a law in 2009, saying that every time the loan is transferred, the purchaser is obligated under federal law to give notice to the homeowner of who owns that loan. And if he loses that piece of paper, then the -- he can ask the servicer. He or she could ask the servicer, and the servicer is obligated under federal law to tell them who owns the loan. So they don't need to go to the land records for that information; they've historically haven't been able to do this.

SENATOR LEONE: Okay. Thank you.

I'll -- I may have further questions down the road, but I'd --

WILLIAM C. HULTMAN: I'll be --

SENATOR LEONE: -- love to get that --

WILLIAM C. HULTMAN: -- happy to --

SENATOR LEONE: I'd love to get that documentation that you said you have so that we can dive --

WILLIAM C. HULTMAN: I'll be happy --

SENATOR LEONE: -- into it --

WILLIAM C. HULTMAN: -- to submit that.

SENATOR LEONE: -- a little bit further.

WILLIAM C. HULTMAN: And if you have any questions, please feel free to call me.

SENATOR LEONE: Thank you.

REP. TONG: Representative Moukawsher.

REP. MOUKAWSHER: Thank you.

You know, I -- I have sort of a -- a recollection of some problems that -- that were the result of the MERS system, and there's been, you know, legal challenges and to foreclosures. As a result, there was a -- as I understand it -- there was a suspension of foreclosures by some banks, because apparently there were assignments and affidavits and other documents that were, you know, created after, you know, subsequent to or -- or to -- to sort of document assignments that didn't happen.

And, I mean, it seems to me there are problems with -- with this system because people haven't known who, you know, their lender was. And there have been foreclosures that were initiated by -- by banks who didn't actually hold title. I'm not sure. I think you're -- well, maybe you can explain --

WILLIAM C. HULTMAN: Well --

REP. MOUKAWSHER: -- it to me better. I -- I'm not -- I'm not --

WILLIAM C. HULTMAN: Let me --

REP. MOUKAWSHER: -- an expert --

WILLIAM C. HULTMAN: -- say this.

REP. MOUKAWSHER: -- on this, by any means.

WILLIAM C. HULTMAN: First of all, there's not been a court in the United States that has held that a MERS mortgage is invalid. So from that standpoint, that's not been an issue.

Yes, there have been a lot of legal challenges, and for the most part, except for limited circumstances, once in court, there have been court decisions at a trial level that have gone against us. But when they've been appealed, in 98 percent of the cases, we have prevailed in those cases. And in the limited cases where we haven't prevailed, it's usually because there was some technical -- that somebody did not do what they were supposed to do during the course of the foreclosure proceeding; they didn't show up with the proper proof or they didn't have the right paperwork.

And those are reported in the papers as being a MERS loss, but they're not -- not that. It's not really a loss, it's really they just have to restart the foreclosure. So, yes, there's been a lot of publicity. There's been a lot of litigation. But none of it has changed the MERS business model in any -- any material respect.

REP. MOUKAWSHER: Yeah. Does MERS, you know, file foreclosures as themselves?

WILLIAM C. HULTMAN: We stopped. There was a period, up until July of 2011, where MERS would let the MERS members prosecute foreclosures in our name, but we stopped doing that and in July of 2011. So at this point, they actually have to create an assignment from MERS to the foreclosing party and record that, according to our rules and our processes.

REP. MOUKAWSHER: Okay. And that -- and that foreclosing party, who is that? I mean --

WILLIAM C. HULTMAN: Generally, in most cases, it's the servicer.

REP. MOUKAWSHER: Okay; so who actually owns the loan?

WILLIAM C. HULTMAN: Well, an investor owns the loan. But what they do is they can transfer the note, because these are negotiable instruments, and they make the servicer the holder of the instrument. And under UCC, it's the holder of the instrument that is -- that person is entitled to enforce the note.

REP. MOUKAWSHER: All right. Let -- let me say I'm a homeowner and, you know, all I know is there's a servicer that sends me a bill every month. And there's a problem, you know, in -- in crediting payment or I have some problem with, you know, who's actually, you know, they -- they're not -- they're not keeping track of what I paid; there's been some mistakes. How does the homeowner know who -- for instance, if they wanted to make a claim against that party, who do they --

WILLIAM C. HULTMAN: They can --

REP. MOUKAWSHER: How do they identify --

WILLIAM C. HULTMAN: -- ask the servicer, and the servicer will tell them who the owner is.

REP. MOUKAWSHER: And who is the owner? I mean, if --

WILLIAM C. HULTMAN: It --

REP. MOUKAWSHER: Is it MERS or --

WILLIAM C. HULTMAN: MERS holds legal title to the mortgage lien, which means we -- we are an agent of the investor. The investor is either one of the general, the GSEs, the government-sponsored entities, like Freddie Mac, Fannie Mae, Ginnie Mae; it could be a Wall Street trust; it could be a bank. So there's a -- parties that own these loans. They're -- they have delegated the authority to the servicer to collect payments and administer the loan on their behalf.

Because they're investors, they're not lenders, they don't have the loan files. They don't have the ability to make loans. They're investors; they sell interests in those loans to the worldwide community market that provide liquidity and capital in the mortgage market.

REP. MOUKAWSHER: Let's say if MERS didn't exist, you know, we didn't have this sort of surrogate or, you know -- I don't know how you characterize MERS but it's -- it's not party in interest. If we didn't have that system, would -- would the actual, you know, investor or owner have to record --

WILLIAM C. HULTMAN: No.

REP. MOUKAWSHER: -- a summons?

WILLIAM C. HULTMAN: Because before MERS, it was the servicer that generally was sitting in the land records on behalf of the investor. Freddie Mac and Fannie Mae and Ginnie Mae, expressly by their rules, do not permit the loan to be assigned to them when their loan is sold to them.

They don't want to be in the land records for

two reasons: One is they have delegated the authority to administer the loan to the servicer. They are not servicers. They cannot -- they don't -- they have a small staff; they don't have the -- the infrastructure to deal with homeowners. That's what they have delegated to the -- to the servicers.

Plus, they don't want to get the service of process, which is why -- what is another result of being in the land records. So if there's other foreclosure activities, there's tax liens, there's other paperwork that gets served on them because of them being in the land records, they deal with it. And Freddie Mac and Fannie Mae are not equipped to deal with those kinds of -- of legal process.

So it would increase the cost of homeownership. As I said before, in the old days when -- when assignments were done before, they wouldn't get done, because people would forget or people make mistakes or they don't do what they're supposed to do. And then when there's a break in the chain of title -- because then there is a break in the chain of title -- it's the homeowner who will pay the cost of clearing title, which is an expensive process. And they're bear the burden of it, particularly if the originating lender has gone some place and it has disappeared.

REP. MOUKAWSHER: That sounds very, you know, intricate and confusing to me. I mean, I -- I know. I've -- I've handled closings where MERS was sort of the -- it's an agent for whoever was actually lending the money. And if you're to do a title policy, it would identify the original lender. But I, you know, that could be sold, and then that original lender, as you're saying -- I guess you're saying that it could be anybody that owns it, and a Wall

Street trust, a -- so you don't really know who owns your mortgage, I guess.

WILLIAM C. HULTMAN: Well, with due, all due respect --

REP. MOUKAWSHER: Yeah. No, I --

WILLIAM C. HULTMAN: -- because I --

REP. MOUKAWSHER: Please.

WILLIAM C. HULTMAN: I talk to homeowners every week, because when they call and we can't get them to talk to a servicer, I get the call. Homeowners do know. Because of the changes in federal law, they do know who owns their loan today. Most of the time they're just checking to make sure that it's right on my system not that they don't know who it is.

And keep in mind, because the investors are not lenders, they don't have the loan file. They are limited in what they can do to help them. They're just going to send them back to the servicer anyway.

REP. MOUKAWSHER: Uh-huh. So if we -- if we enacted this Section 8 and, you know, required assignments, what would that -- what would the outcome of that be?

WILLIAM C. HULTMAN: Cost of housing in -- in your state will go up.

REP. MOUKAWSHER: But we'd, you know, it -- it would what, go up by, like, $53 every time you have to record one or --

WILLIAM C. HULTMAN: Well, it's a misnomer to think that just the filing fees are the fees that would cost. There has to be infrastructure for

even the -- even the limited amount of work that you would have to do to satisfy Section 8 today. The banks would have to create additional infrastructure to manage this process. This is not a -- it isn't just something you can do on the side. These, you need people and you need processes, and there's computer programming. All of those costs, together with the filing fees will be passed on to the homeowner. So the homeowners will pay more money to get loans in your state.

REP. MOUKAWSHER: And that was what the system was before we debarked on this MERS system, I guess. I mean a -- a bank would have to keep track of things.

WILLIAM C. HULTMAN: And it didn't work very well, and that's why MERS is here today. MERS was a fix to the problems in the system that existed prior to MERS becoming into place, because of breaks in the chain of title.

REP. MOUKAWSHER: Why? I'm -- I'm quizzing you a little bit but I'm not trying --

WILLIAM C. HULTMAN: People don't --

REP. MOUKAWSHER: -- to give you a hard time.

WILLIAM C. HULTMAN: People don't do what they're supposed to do.

REP. MOUKAWSHER: Yeah, well --

WILLIAM C. HULTMAN: They'd keep --

REP. MOUKAWSHER: -- that's --

WILLIAM C. HULTMAN: They -- they wouldn't -- they wouldn't record the assignment. They would forget or they would not want to pay the fee,

and they wouldn't record it. And then when the homeowner went to refinance, he had a problem.

REP. MOUKAWSHER: Okay. Well, I mean I -- I assume MERS can make a mistake, once in a while, as well. So, but I know you (inaudible) --

WILLIAM C. HULTMAN: There is less chance for MERS to make a mistake because we're in the title. The mortgage is recorded. The title is bound in our name. And it only gets out of the land records when the loan is satisfied and the lien release is filed. So there's -- there's less -- less chance for error.

REP. MOUKAWSHER: Well, I want to put you through your paces, just so I could learn something. I, you know, I appreciate --

WILLIAM C. HULTMAN: I'm --

REP. MOUKAWSHER: -- you know --

WILLIAM C. HULTMAN: -- happy to --

REP. MOUKAWSHER: -- your perspective (inaudible).

WILLIAM C. HULTMAN: I'm happy to answer all the questions. That's what I'm here for.

REP. MOUKAWSHER: All right. Well, I'll look into it more. And thank you.

WILLIAM C. HULTMAN: Okay; thank you.

REP. TONG: Any other questions?

Thank you.

WILLIAM C. HULTMAN: Okay. Thank you.

REP. TONG: Jessica Huppenbauer. Yes, Jessica.

JEFFREY GENTES: I'm also not Jessica Huppenbauer. For the record, I'm Jeff Gentes. Jessica had to leave to pick up her children, but her story is with your package.

REP. TONG: Okay.

Greg Shook.

Good evening, Mr. Shook.

GREGORY R. SHOOK: And good evening, Chairman Leone, and Chairman Tong.

I'm obviously Greg Shook from Essex Savings Bank, only have three in foreclosure; one is in the -- in the system that we're talking about tonight.

Overall, this bill does not meet the goal of speeding up and fairly alleviating the foreclosure conditions in this -- in the State of Connecticut. In fact, it does the opposite in multiple ways, in the extreme detriment of all the community banks and lenders in Connecticut whose primary concern is -- is to work -- work with the borrowers -- borrowers, as other bankers have -- have stated, particularly the community banks.

As proposed, this bill reduces values of all homes and constricts the ability to enforce contracts for loans assigned by both parties who entered the transaction with full legal representation. This bill also fails to recognize the added burdens carried solely by the lender when a borrower cannot afford to pay the carrying cost of interest, insurance cards -- costs, and it leads to disrepair of issues -- disrepair issues.

Loans range with down payments by borrowers on the financing from approximately the appropriate 20 percent to FHA loans of 3 percent down, yet there is no consideration given in the mediation process for the lender who has invested anywhere from 80 to 97 percent of the loan proceeds. And because of the market conditions, in many cases the borrower has little of their own equity to lose. This bill minimizes the standing of the lender, who has the lion's share of the funds at risk.

Appropriate, unbiased mediation requires both parties coming to the bargaining table with something to give up. How can that lender bear the potential burden that this bill proposes when the eight-month cap of mediation is removed, allowing the proceedings to revert to costly, continued litigation for perceived lack of good faith, when there is already appropriate bankruptcy protections for the borrower that could commence to forestall the foreclosure under current law for years?

The current process, 690 days based on an FHA study, is already very stringent and inefficient with the lender's perspective, with a minimum of eight months of mediation availability in a judicial state, but at least it attempts to cap the process. No judicial states that have streamlined their foreclosure procedures are reporting valuable recoveries. Housing prices cannot recover until lenders can take title on the back load of -- log of properties in foreclosure and prices stabilize enough to attract buyers who can afford the mortgage payments.

All homeowners have the right to challenge foreclosure in court. In a judicial state, the lender has to -- to file a lawsuit to initiate a foreclosure and banks have to stand still if

the borrower utilizes the eight-months-or-more mediation process.

The foreclosure inventory in judicial states is more than triple of nonjudicial states. According to the Wall Street Journal, the courts are struggling to keep up. This will elongate the process and spill over to good face [sic] litigation caused by the bill's provisions.

REP. TONG: Greg, could you summarize your testimony and wrap it up for us?

GREGORY R. SHOOK: Certainly.

REP. TONG: Yeah.

GREGORY R. SHOOK: One -- have one other thing. While the bank is -- the bill -- bill also includes a proposed mediation fee on state-chartered banks, which is unnecessary and -- and unfair. My understanding is the mediation program was funded last year through the Department of Banking funds through 2014, with the expectation that the volume of foreclosures will decrease by then; the program won't be necessary by that point.

Considering the pro-borrower borrower bias that lenders have experienced in the program to this point and extreme delays in causing -- I have to question if it's necessary now.

And in conclusion, I believe the mediation program is inefficient, and the CBA would welcome an opportunity to sit -- sit down and try to help so that it's better for the state's business and our customers and citizens, which we try to help each and every day.

There's the particular situation.

REP. TONG: Okay. Thank you, Mr. Shook.

Representative Alberts.

REP. ALBERTS: Thank you, Mr. Share -- Mr. Chairman.

And thank you, Mr. Shook.

I've got a question on your three loans right now in foreclosure. Are those all your loans or are those loans that --

GREGORY R. SHOOK: No, we're --

REP. ALBERTS: -- you're --

GREGORY R. SHOOK: We serve --

REP. ALBERTS: -- servicing?

GREGORY R. SHOOK: -- all of our loans. We -- we pretty much figure out within a week or two, if we can talk to the customer, where they are, how they -- the earlier the customer talks to us, the easier it is for us to look at their assets, look at their situation, help them get through. We've had very few foreclosure; we're fortunate. But we keep our entire loan portfolio and we do respond to any requests for information and -- and have the authority to make a decision, virtually on the spot.

REP. ALBERTS: Do you know what the range of dollar amounts of the loans that are in foreclosure are?

GREGORY R. SHOOK: We have one, jumbo loan that's probably a million-eight, and we have two smaller ones, three-hundreds and in that area.

REP. ALBERTS: Now, to the point that we were

talking about earlier, that jumbo loan, that million-eight loan that you're maintaining on your books, who would be empowered to make that decision to resolve something if it were in mediation?

GREGORY R. SHOOK: The loan officer would sit down with -- with me, and we'd make a -- a decision on what we'd have to write down on the account and what we have to do and -- and come up with the math and -- and make that decision ourselves. What we would do is report that to our board of directors, in that next meeting, that we made this decision and -- and --

REP. ALBERTS: So you would -- so you would create a solution and then report back to the board afterwards in terms of how you resolved it.

GREGORY R. SHOOK: Yes; we have that authority.

REP. ALBERTS: Okay. Thank you, very much.

Thank you, Mr. Chairman.

REP. TONG: Thank you.

Anybody else?

Thank you, sir.

GREGORY R. SHOOK: Thank you.

REP. TONG: Sparky Abraham. Sparky, you won the award for the best name today.

SPARTACUS ABRAHAM: Thank you. It's short for Spartacus.

REP. TONG: Spartacus?

SPARTACUS ABRAHAM: Yes.

REP. TONG: Ow, as a preview of your testimony, I'm sure.

SPARTACUS ABRAHAM: You take the namesake pretty seriously, Mr. Chairman?

REP. TONG: Yeah. You got -- you got three minutes, Spartacus.

SPARTACUS ABRAHAM: All right.

Chairmen, members of the committee, thank you for allowing me to speak today. My name is Sparky Abraham. With Renata, I'm a student in Yale Law School's Foreclosure Clinic. We serve homeowners facing foreclosure and we've mediated both in New Haven and in New London.

I'm here today on behalf of the clinic and our clients in strong support of the Governor Bill 6355. We, in the clinic, appreciate your great work in creating Connecticut's groundbreaking, foreclosure mediation program; however, as you've heard today from many, including our client, Ms. Kenneally, some homeowners feel that mediation in its current form has failed them.

Governor's Bill 6355 will help address the problems faced by Ms. Kenneally and others by requiring parties to mediate in good faith, defining what good faith means for foreclosure mediation, and making the consequences for failing to mediate in good faith clear.

Parties are already required to mediate in good faith by a -- a court rule, the Uniform Foreclosure Mediation Standing Order, but uncertainty over the rule's meaning have limited its effect; further, the definition of good faith in other context, as was noted

earlier, does not translate well to foreclosure mediation.

For instance, in order to show a lack of good faith under Connecticut contract law, you must show the other side has a dishonest purpose or an interested or sinister motive. The practices that make foreclosure mediation costly and burdensome, such as requesting the same documents over and over again, don't result from sinister motives so much as systemic negligence.

Governor's Bill 6355 makes it clear that mediating in good faith means large, national servicers must follow the rules that apply to them, and they must actually review the documents that are sent to them. The bill looks to results not intent, making it easier for parties to know and meet expectations.

The bill also makes it easier for courts to enforce the rules by listing penalties for failing to mediate in good faith, like prohibiting attorney fees and compensating people who had to miss work in order to attend a frivolous mediation session. These penalties reflect the fact that the delay usually hurts homeowners. Since each side will know what to expect and what could happen if they don't mediate in good faith, this bill will discourage practices that lead to needless delay and to our client's needless stress. It will help parties reach win-win results that are beneficial for everyone.

Thank you for your time, allowing me to speak today in support of this bill.

I'm happy to answer any questions.

REP. TONG: Thank you. I want to thank you for

waiting for several hours to testify and for dedicating yourself and your time in law school to these issues and helping the clients that you serve. There you go.

Any other questions?

Representative Alberts.

REP. ALBERTS: Thank you.

And thank you, also, for your testimony.

SPARTACUS ABRAHAM: Thank you.

REP. ALBERTS: Looking at Governor's Bill 6355, and based on your experience, was there anything that you can think of that isn't in the bill that should be there?

SPARTACUS ABRAHAM: Well, that's a great question, I guess. I could probably think of few things, if you -- if you gave me a little while, and send them to you.

I think the -- the good-faith requirement is -- is really kind of -- setting out standards for good faith is -- is really what I feel is most important about the bill, and I think the bill does a pretty good job of that. You know, when, I mean, we had -- there had been brought up earlier this issue of kind of where the gap is in terms of, you know, there are these requirements and they're not enforced. And having something as lawyers and as judges, and beyond just in the context of lawyers and judges, having something there as homeowners, having standards to point to and say this is what the law requires is -- is really valuable.

And, like I said, to more directly answer your question, I -- I don't have anything on the top

of my head, but I'd -- I'd be glad to get back to you.

REP. ALBERTS: Thank you, very much.

SPARTACUS ABRAHAM: Thank you.

REP. TONG: Any other questions?

Thank you.

SPARTACUS ABRAHAM: Thank you, very much.

REP. TONG: Dick La -- I don't have the -- I can't read this; Dime Bank. Dick from Dime Bank.

A VOICE: That's Nick.

REP. TONG: Nick.

A VOICE: Nick (inaudible).

REP. TONG: Nick.

A VOICE: (Inaudible.)

REP. TONG: It says -- is it -- is that -- that's an N not a D. Thanks, Nick.

NICHOLAS CAPLANSON: It's all right.

REP. TONG: Yeah, what's your --

NICHOLAS CAPLANSON: Thank you.

REP. TONG: Please -- please tell us your last name, Nick.

NICHOLAS CAPLANSON: Caplanson.

REP. TONG: Caplanson.

NICHOLAS CAPLANSON: Right.

REP. TONG: That's not what that says.

NICHOLAS CAPLANSON: Thank you, Chairman Tong, Chairman --

REP. TONG: Good evening.

NICHOLAS CAPLANSON: -- Chairman Leone, and members of the committee.

My name is Nicholas Caplanson. I'm President and CEO of Dime Bank, in Norwich, Connecticut. We have ten branches that serve southeastern Connecticut and one branch in Rhode Island.

I'm here tonight to testify in opposition of the Bill 6355, and I'm going to just briefly talk about just one component of the bill, and that it's really related to some of the special protections that are being offered to homeowners. Borrowers will be extended the power to file new defenses or counterclaims against lenders that have virtually nothing to do with the foreclosure process. These could include potential lending law violations, servicing law violations, and can include any one of a broad range of issues that could relate to the making of a mortgage or a note, the validity or enforcement of those documents.

As a community banker and a community bank, we enter -- enter into all of our transactions with customers because it makes sense for them and it makes sense for us, just balanced transactions with benefits to both parties. And complying with laws is really of paramount important -- importance to us, and we follow sound practices and approach every transaction in good faith.

Certainly a consumer should be treated fairly and have the ability to seek recourse if a mistake is made or a law is not followed; however, allowing this to be incorporated into this bill, which primarily deals with the foreclosure process and mediation, will certainly not create efficiency or speed the process up. The bill also provides a very wide menu of options, legal options to borrowers that are virtually limitless. And it opens the door for significant delays to occur if a borrower or their counsel chooses to file challenges or allegations that have no merit.

I (inaudible) --

REP. TONG: Do you want to -- if you want to wrap up.

NICHOLAS CAPLANSON: I'll try to wrap this --

REP. TONG: Sure.

NICHOLAS CAPLANSON: -- up quickly.

Bottom line is the -- as the bill is drafted, the special defenses are very ambiguous, very broad reaching. We talked here today, I heard several times, about people talking about specificity. This does not really bring that to the table at all. And due to the economics of mortgage lending in this state, which is becoming less and less profitable, this could potentially enter in some new financial risk into the equation and force lenders to really take a hard look at their business models. Potentially it could have a detrimental -- detrimental impact to consumers by limiting credit.

And I'll -- I'll leave it at that and offer it up for questions. Thank you.

REP. TONG: Thank you, Nick.

Any questions?

Representative Alberts.

REP. ALBERTS: Thank you.

And thank you for waiting patiently to testify.

What type of foreclosure level do you have?

NICHOLAS CAPLANSON: Well, currently we have sixteen loans in foreclosure, four of them in the mediation process; four are waiting for mediation dates right now.

REP. ALBERTS: And are those loans all loans within the bank's portfolio or --

NICHOLAS CAPLANSON: Yeah.

REP. ALBERTS: -- are some of them being serviced?

NICHOLAS CAPLANSON: Yes. Those are all bank, Dime Bank-owned loans. That's correct.

REP. ALBERTS: So the legislation which is contemplated to have someone with approval authority to finalize things, that wouldn't be an impediment for -- for Dime, if that were to move forward as is?

NICHOLAS CAPLANSON: That is not an issue for us, no.

REP. ALBERTS: And in terms of, you know, what you're seeing now is this is the -- are you seeing conditions improve or decline in terms of the local economy for you?

NICHOLAS CAPLANSON: I would say, unfortunately, eastern Connecticut, particularly southeastern Connecticut is one of the -- the tougher spots in the state right now. We do not see job growth or job stabilization. We're highly dependent on a few industries. The housing market is still extremely soft in our area. So I'd like to see light at the end of the tunnel, but I just don't see it yet in southeastern Connecticut.

REP. ALBERTS: If, you know -- we're charged with, the Chairs and all members of the committee, are charged with coming up with something that would hopefully be, you know, a bill that could get good support on both sides, that would help the process move, you know, potentially more swiftly, more equitably. Is there anything that you've seen in your experiences that you can offer up that perhaps this bill doesn't reflect or doesn't contemplate that we could -- we should incorporate?

NICHOLAS CAPLANSON: I -- I guess I'd probably have to think on that a little bit; more concern, quite honestly, with the potential delays that this bill could cause, for many reasons.

REP. ALBERTS: Well, thank you, very much.

Thank you, Mr. Chairman.

REP. TONG: Senator Leone.

SENATOR LEONE: Thank you, Mr. Chairman.

And good evening.

NICHOLAS CAPLANSON: Good evening.

SENATOR LEONE: Are you associated with the Dime

Bank out of New York that used to be in existence one time?

NICHOLAS CAPLANSON: No, we're -- we're not affiliated with Dime of New York at all.

SENATOR LEONE: Okay; that's --

NICHOLAS CAPLANSON: Dime --

SENATOR LEONE: That's a good thing.

NICHOLAS CAPLANSON: Yes, it is. The Dime in Norwich incorporated in 1869, mutual community bank for that whole period.

SENATOR LEONE: Okay. In terms of the type of foreclosure you're currently handling, are you -- are these still a holdover for the -- from the mortgage crisis or are these -- are those cycling out and now you're seeing new reasons for the foreclosure, such as unemployment or a divorce or things of that effect?

NICHOLAS CAPLANSON: Primarily we really didn't see a lot coming out of the -- of the financial crisis in 2008, because all of the loans that we originate are prime, A-paper, higher underwriting standards, so the reasons for default are primarily employment related, which kicked in a little bit later. So we've seen over the past 12-to-18 months the delinquency rates actually climb a little bit in our portfolio.

SENATOR LEONE: And I -- I think the goal is to try and help the smaller banks, like yourself, versus the -- the national ones in this whole scheme of things, so I think -- I think your perspective and your input, more importantly, would be beneficial so that as we try and craft the bill that we do take into consideration

some of your hurdles.

And in -- and in terms of if this were to proceed as is -- and you mentioned costs would exceed -- how much, what kind of costs would be added or would you even be in the business or how would it work?

NICHOLAS CAPLANSON: Well, I think we'd, you know, work as -- again, as a mutual community bank, we're committed to stay in the lending business in our area.

Could it impact underwriting criteria? Certainly it could. We could, you know, be forced to be more conservative in our lending, even more so than we currently are.

Costs to us, you know, any loan that goes into collection status or ultimately a foreclosure status is -- is not accruing interest. For a bank our size, you know, every loan is significant. So the longer the process takes, the longer we have to wait to ultimately find some resolution for that problem asset, the more difficult it's going to be; so obviously legal costs, costs to work with borrowers, which we do.

Like a lot of the community banks you've heard from today, we -- we work with our borrowers, offer them forbearance plans, modifications, workouts; we have to have staff available to do that and that adds additional cost as well. So --

SENATOR LEONE: And thank you for that.

Just in terms of the you being more conservative going forward, if this were to pass, and in -- from one point of view, wouldn't that be potentially a good thing, in

the sense that if you have to be more conservative -- especially at these lower interest rates that are set nationally, that you're really not making too much money on them, you -- if you're conservative and you get a -- a person that you can lend to, then that extra conservatism would pretty much ensure that they're going to be able to pay and not fall into foreclosure?

NICHOLAS CAPLANSON: That's certainly a point, but as everybody knows, an extended credit to first-time homebuyers and people who might not qualify for a standard secondary market loan is one of the things that we try to do. We try to -- to fill that niche in the marketplace. These are, you know, our friends, our neighbors, people we know, in a market we know. And we want to be able to continue to do that and not have to say to somebody you must have 20, 25, 30 percent down every time we make a loan. So, yeah, on one hand we could limit the number of delinquent loans, but on the other hand are we really doing the right thing for the consumer in our marketplace. And I could argue against that.

SENATOR LEONE: Fair enough.

Is the standard 20 percent right now for a down payment or is the -- I know before the crisis it -- you had no money down, 2 percent down, whatever, all those crazy things.

NICHOLAS CAPLANSON: Right.

SENATOR LEONE: But where are we back to now?

NICHOLAS CAPLANSON: Well, 20 percent down would not require private mortgage insurance. You can certainly go higher than that if you have PMI or private mortgage insurance on a loan.

SENATOR LEONE: Yeah.

NICHOLAS CAPLANSON: But, again, that is becoming more and more difficult, because some of the mortgage insurance companies are having financial difficulty and tightening up their requirements, so --

SENATOR LEONE: Thank you. I appreciate that.

NICHOLAS CAPLANSON: Yup.

SENATOR LEONE: Thank you, Mr. Chairman.

REP. TONG: Any other questions?

Thank you.

NICHOLAS CAPLANSON: Thank you.

REP. TONG: Jeff Gentes.

JEFFREY GENTES: Good evening.

REP. TONG: Good evening.

JEFFREY GENTES: I am Jeff Gentes.

Thank you, Chairman Tong, Chairman Leone, Representatives Moukawsher, Diminico, Larson, and Alberts. Thank you for taking the time to speak or for listening to me tonight.

My name is Jeff Gentes. I supervise the foreclosure prevention work at the Connecticut Fair Housing Center, and I co-supervise the foreclosure clinic at Yale Law School.

And I'm here tonight on behalf of the homeowners we represent but also the thousands of homeowners we've spoken with in the past

three years, from every single legislative district, who are facing foreclosure in strong support of the Governor's Bill 6355.

We've -- we all -- we are part of the group that does believe that mediation does take too long. We do think, though, that this bill addresses the Governor's concern, which is getting to yes or no more quickly. Sometimes homeowners are their worst, their own worst enemy, and sometimes they are delaying the inevitable. Sometimes local banks are the problem, but, by and large, the overwhelming majority of problems that we see are with large, national servicers. And right now, by statute, the primary remedy for any homeowner who has an unproductive mediation session or sessions or 18 of those sessions is to simply ask for another one.

It's very hard to get into court to get into the types of hearings that Judge Mintz was referring to earlier. The fact that this bill has a mechanism for getting to a hearing we think will help both those homeowners but also will help banks who are doing what they are supposed to do.

Going in front of a judge -- sometimes these things are just heard on the papers -- and being able for a bank to explain to a judge what's been happening should be helpful for them in those situations where there's truly nothing that they can do.

There are -- in term of the -- the -- there's a lot of different things in the -- the testimony we've heard already that I want to address; the biggest thing is this notion of time lines, because it's based on an extremely flawed survey that is really -- I -- I don't -- I don't know what else to call it besides

propaganda. And it's because they're only looking at foreclosures that go -- or a case that starts that goes all the way through to foreclosure.

It culls out all of the success stories. That 83 percent -- that Judge Mintz before -- is pulled out of the equation, so the mediation that's resolved after two sessions, a person keeps their home, doesn't go into the time line. A mediation that goes five or six sessions, where someone ends up doing a short sale, which nets more money for the bank than a foreclosure doesn't go into the time line. As a result, we're stuck with Connecticut looking like it has a long time line for something that only happens in really about 15 percent of foreclosures.

So, with that, thank you for your time, and I'm happy to answer any questions you may have.

REP. TONG: Thanks, Jeff; appreciate you providing that perspective and for all of your work for homeowners in this state. I know that you've got a full plate and -- and have done some excellent work for people here in Connecticut.

JEFFREY GENTES: Thank you.

REP. TONG: But I think a lot of the people that have testified before you -- and I'm actually happy that you are lower on the list tonight, because you've had a chance to listen to a host of different perspectives on this bill. And -- and people raised a lot of good questions, I think, about this legislation.

For example -- and I'm just going to run through it -- Chandler Howard of Liberty Bank raised a question about the FDIC model and how under the FDIC model it would be impossible for

him to do what he's doing now to help homeowners. How -- how do you think that cuts?

JEFFREY GENTES: Honestly, given that the way that the bill is drafted, that a bank would have to do the calculation, it doesn't have to adhere to it, doesn't have to use it in -- in crafting a solution, I don't quite understand that -- that observation. It's just a fact of do the calculation.

Some banks that don't do it, there's banks right now that just simply say we're only going to do a repayment plan; we're only going to do X, Y or Z. It'd be nice for some of them if they did this cost-benefit analysis of working with the homeowner versus not and if that was part of the mediation session.

Most of the banks that we've heard from tonight -- I mean mediation right now involves tens of thousands of cases -- and we're dealing with banks tonight that have 18, 12, 3, that represent a very small slice of -- of the larger pie.

And that FDIC thing is not a mandatory protocol but instead would be something that needs to be considered as part of the mediation process.

REP. TONG: What about -- what about the price of credit in this state.

JEFFREY GENTES: Uh-huh.

REP. TONG: On the Banks Committee, we're very concerned about the availability and the flow of credit. Credit and debt, despite what people might think about credit and debt is -- is the juice of -- of a modern economy. It's how you take risk. It's how you make investments. It's how you make money. And

part of our downturn in the Great Recession was the lack of credit for people that needed it and could power our recovery, and then on the flip side, of course, too much credit to people that couldn't handle their responsibility of repaying that debt.

So I think all of us on both sides, if there are sides to this issue, conservative, progressive, however you want to look at it, care deeply about the availability of credit to people that would make good use of it and that that credit be affordable. It -- it will not always be that quantitative easing leaves us with almost costless borrowing, and at some point, interest rates will rise, particularly, we hope, as we recover.

And I don't think anybody wants to pay more for credit than they have to, so have you thought about how this bill impacts the price of credit, this 20-basis point surcharge we're thinking about, and can you address that?

JEFFREY GENTES: Sure. So that 20 basis points is a good -- that's another -- it's a good place to start and to talk about. The Fannie and Freddie's regulator have only put forward that as a proposal. It is not yet in law, does not -- yet part of the -- it's not yet in place. And our federal delegation and the Attorney General put forward comment letters pointing out the problems with that study that led to the proposal.

But even if it were enacted, I mean, I -- I'm not -- I was a little befuddled by the calculation issues before. Two-basis-points-per-hundred-thousand means 200 bucks. On a $200,000 loan, which is about the rough average for, say, Hartford County and -- and many of the other counties -- Fairfield County and --

and it's going to be higher -- that's $400. So if someone then because they're in a state that has a robust mediation program has to pay $400 extra at closing, you know, frankly, I'm not too broken up over that. It's a relatively small cost.

I -- I'm of the opinion that if we had had more protections in place, I mean -- and keep in mind that some of the rules that are in place are relatively common sense and yet they weren't in place at all when the lending boom started in 2003 -- if we had some of these in place, even if it caused a 50 percent or 50-basis point increase in our overall cost of credit, we wouldn't be sitting here today. We wouldn't be talking about a foreclosure mediation program; there'd be none needed because we wouldn't have had -- we wouldn't have had the Great Recession and then the collapse of the -- the housing market that resulted from, frankly, unregulated lending.

And I think now, in 2013, the crisis has been going on for six years. And the big reason why it's been going on for six years, the real reason why you have people like Sandra Cenatiempo who still exists is because the servicing hasn't reacted appropriately to the crisis. And we've tried carrots; we've tried bringing banks to the table, and it hasn't been enough.

And one of the things that I think this bill does well is you've got a few different sticks. One is the stick that Judge Mintz mentioned, which is just going before Judge Mintz is a stick, in and of itself, but also making it clear to the judges who may be sitting on the bench the particular day -- not all of them are foreclosure experts. Some, I've had the distinct experience of being where someone just

told me straight out, I don't know a lot about foreclosure or someone just asking, What does unpaid principal balance mean. And they're hearing foreclosure cases for the day?

Having it spelled out in the statute, what they can and can't do will help it, make it a lot more easier for a judge to say, oh, dismissing this case won't help this person; maybe there's something else that would be more appropriate to punish the bank. Dismissing a case would be -- you saw what or from Ms. Cenatiempo just said, well, we were left in limbo. So having clear sanctions in the statute, I think, would be helpful.

REP. TONG: I -- I think I'm -- I can appreciate that; I understand your response about the 200 or the $400. I'm sure you understand that there are people on this committee and in this state who don't agree with that point of view.

JEFFREY GENTES: Uh-huh.

REP. TONG: That an extra $200, that extra $400 is real money and that increasing the cost of credit is a weight on the economy and on our recovery. And I encourage you, frankly, to think of another way to look at that and to address people's concerns about those costs.

If that's the cost of a mediation program, maybe we ought to charge at closing for the cost of a mediation program and not hide it in -- in a federally mandated congestion charge, as it -- as it were. And we pay these in -- in the energy market. We -- we pay federally mandated congestion charges, and it's almost like we're getting charged that in the banking industry. So part of me says I hear you, Jeff, but not everybody sees it that way.

JEFFREY GENTES: I understand the point and, I mean, I -- I do think that this bill will cut down -- I mean, if the complaint is our time line, I think this bill will cut down on the time lines that it takes to get to resolution. And I think that's the point of this bill more than anything else.

My -- my point is to simply say the -- the -- I don't think the lender industry will grind to a halt if even this proposal that Fannie and Freddie's regulator has put in place does actually go forward.

REP. TONG: Yeah. I mean, it won't grind to a halt because there'll be money being made.

But my concern is that any one of the chief executives who testified today about their community bank and the 15 or 20 foreclosures that they're dealing with in their relatively small loan portfolio, that one of these chief executives will be faced with a choice a year from now or two years from now or five years from now when they're having trouble managing these compliance responsibilities, when they're having trouble making money, that Bank of America comes in and says, I'm going to buy you out. I'm going to put you out of business and we'll take over; and, you know, we see a further consolidation in the industry. That is a real concern, I think, to everyone on this committee.

Let me -- let me move on to a couple of other --

JEFFREY GENTES: Sure.

REP. TONG: -- quick concerns I think you heard me ask, today, a bunch of people who testified. You and I are both lawyers. We're both trained

at big, New York City law firms. Don't we have a lawyer problem here, you know, and why hasn't that been addressed?

JEFFREY GENTES: I, well, I would put it this way: If I think the -- I -- I think when I hear complaints from local banks -- and I've said this to -- to them off-line -- some of the local banks are concerned about the way they've been treated. And some of the banks, including ones we'll hear from, are represented by the same banks -- or by the same law firms that represent Bank of America or Wells Fargo. And if that lawyer is the face of Bank of America and Wells Fargo, why would you also, given their reputation and given that they're not necessarily within mediation or in the court system viewed as having their act together, why would you want that same face to be your lawyer? And it's not because that lawyer is bad, it's because they're associated with not necessarily the most attractive clientele or -- or not the clientele with the best reputation.

We also see issues. I mean, there are banks -- I'll take, you know, just to take one -- for instance, when we get complaints about People's United, it is only when they're using certain lawyers and not others. And -- and I -- I realize that's -- it's not surprising, as a lawyer, for me to say your lawyer matters. But I would advise local banks -- and I can speak with some of them off-line, if there are particular issues about things I've heard and the things that -- that homeowners call us about, about the lawyers that they're using and whether or not they're getting the results.

I can see it when you're at a short calendar that some lawyers are treated in a certain way and -- and other lawyers are not. I think it's great that some of these banks send their

personal representatives, send, appear in-person at these mediations; that should make a big difference.

I -- I'm reluctant to blame the lawyers; I think it really, still more, is their clients.

REP. TONG: But I guess I'm not so reluctant. You know, Judge Mintz has at his disposal a panoply of sanctions and actions that he can take as a judge --

JEFFREY GENTES: Uh-huh.

REP. TONG: -- to get people to do their jobs. And I asked him why isn't that enough or -- or why couldn't we write a statute in cooperation with the Judiciary Committee that provides some kind of fast-track contempt process. Why isn't that an answer and why -- what can we do to get judges to take action against litigants and their counsel who aren't prepared to mediate or aren't prepared for court or aren't prepared or abuse the process by requesting something six months later when, you know, that information was provided five months previous, and all we're missing is a signature? I mean, if these horror stories are there, where is the judiciary?

JEFFREY GENTES: I think this bill, in creating a process where you have three mediations and then it goes to a judge hearing, I, in my own -- right now it takes an awful lot of heavy lifting to try to get before a judge with complaints about what's -- what's happening right now. And Judge Mintz's comments notwithstanding, it still takes quite a bit. And it's expensive because it takes a decent amount of time, and it's expensive for somebody who is paying their lawyer to try to go before a judge and complain about what a bank's been

doing.

And in my experience it's been it still takes judges a few hearings to get sufficiently mad. And this process, by putting them -- putting a hearing on after three sessions, as opposed to 16 or 17, might make it easier for a judge to become more mad.

I do think, in particular, that the mediation, that the notion of having a mediator/homeowner meeting beforehand is a good one, and then -- and for -- for a couple reasons. One is -- and -- and we've thought about the logistics. I've talked to Mr. Conway, for instance, about how -- how logistics would work around something like this. But I think the idea is to have -- you'd have the homeowner request mediation. Then when the bank's law firm learn that the request for mediation been made, they e-mail the -- the court assigns the mediator then -- they e-mail the list of documents that they need for, given whatever type of loan that is or whatever information they already have from the borrower to the mediator. The mediator sets up the meeting, and then you afford about five weeks or so, and the mediator and homeowner can meet as many times as they need to, to get the package together.

Then that way the mediator can take and see, all right, here's the list they asked for; here's the list you have; and I'm sending it off now. And it's ready for mediation. It'd also allow the mediator to say, you know, that this person couldn't get it together for me, and I'm -- I've seen hundreds if not thousands of these cases; I don't know if it should go to mediation. And that should save everyone's time. I mean, it's nice that they're also not paying the bank's lawyers for that time of just document exchange.

I can also say, I mean, just from, at least as my experience as a lawyer, sometimes people call you up and say they've been getting the runaround. And you ask them for documents. They -- and they send them to you right away, and they're organized and you know who the problem is. And then the bank tells you we've been trying to reach you, and you sit there with your phone and you know they haven't.

Other times -- and it happens, homeowners won't get me the documents I need. And I'm less invested; I'm less willing to do something for that person, if they can't get what they need for me. I think mediators will feel the same way and that mediators will be less likely to request that a mediation be extended over and over and over again, if they know that in working with that homeowner, that homeowner couldn't get them the documents that they needed. And I think that would be an attractive thing.

And then so if you had the document exchange, you have three hearings and you still can't get it done, well, then I think either, you know, I think a bank would be right to ask for termination at that point.

REP. TONG: Do -- do you -- I think you heard me ask this of another -- of another person, earlier -- do you think that one of the purposes of the mediation program is to provide -- is to help the homeowner buy time so they can get back on their feet?

JEFFREY GENTES: I can't say I love that phrasing. It -- it was --

REP. TONG: Me neither.

JEFFREY GENTES: Right. And I -- I think the point is if she's -- it does take time from the -- the time if you're -- if a bank decides to start a foreclosure when the person is three months behind, and -- and maybe they haven't heard from the person, that by the time that they reach a mediation and go through and talk about some of the options, probably six months has gone by. And at that point, you know, I think time has been bought.

She may have a couple specific instances in mind. I mean, sometimes I -- I've -- I've known when, you know, sometimes you have somebody apply for a program, not sure if it's going to work with the bank, and if it doesn't, then you've bought time so that they can then apply for the EMAP program, for instance, which is that backstop. But I -- I'm, I mean, that's my, how I conceive of "buy time."

I have -- I mean, it's to the point where it's in our retainer agreements that -- that my office has. We're not here to delay the process. We're here to get some kind of resolution done. And -- and people usually, at the point where they've reached us, have gone through a year or two years, three years of runaround and don't want any more delay.

REP. TONG: Thank you.

JEFFREY GENTES: Sure.

REP. TONG: Any questions?

Representative Alberts.

REP. ALBERTS: Thank you, Mr. Chairman.

And thank you, Jeff, for your testimony.

You've listened to a lot of discussion today about the process. You know, what do you say to -- let me come back to that.

I -- one of the items that you have here, as attached, is "Plain English" requirements.

JEFFREY GENTES: Uh-huh.

REP. ALBERTS: And you have eight pages, I think, that are attached here. What are we looking at?

JEFFREY GENTES: That, so back in 2011, coming with some of the same issues, the -- the idea was we should try to make the first mediation more productive and facilitate a document exchange prior to the first mediation. And the homeowner would send in financial documents, and the bank, in turn, would send a contact information for someone at the -- at the servicer bank who could handle information requests and the 12-month account history. This is the 12-month account history that one of my clients received, and the -- it's not technically illegal, because we just say send us an account history; we don't say -- there's nothing in the statute that says you have to, you know, that prescribes the format or even says be in plain English.

I think in under any definition, this is not comprehensible to -- to the average person. And I've been doing this work exclusively for the last five years, and I have a pretty good idea of what this means, but I'm not that sure either.

REP. ALBERTS: Okay. One of the issues that we heard the bank folks talk about was the way they hold -- the way they do mortgages -- some hold loans in their own portfolio and others

service them.

JEFFREY GENTES: Uh-huh.

REP. ALBERTS: And I -- I think one of the consistent themes was that those folks that hold their own loans seem to have more for flexibility, seem to -- the -- certainly empowered to make decisions on them without having to go forward with any coordination with any other agency. As you've listened to testimony, have you had any thoughts about how we could address that?

JEFFREY GENTES: Sure.

REP. ALBERTS: With this, with the folks that are in the services side, that are dealing with the servicing folks.

JEFFREY GENTES: I think it's a -- it sort of depends on the situation. I -- but one, there was one particular -- I'm forgetting -- forgetting the bank, but they have -- and I've heard it used -- but there's a board of directors charged with approving loan modifications, and applicability of getting somebody with settlement authority to a mediation might be kind of tough. So that might be something that's worth thinking about.

If it's something along the lines of -- of Fannie or Freddie and they're servicing a loan for Fannie or Freddie, and Fannie or Freddie, because they've voluntarily elected to make it their business practice that they'll retain approval authority but yet shield themselves from the borrower in every possible way, I don't think it's much of a -- an ask to say if you're going to retain the approval rights, at least participate by phone. We're not requiring they show up in person, where we'd

say at least participate by phone.

And if you're having questions about the documents going at a particular mediation session, then you may never need to get Fannie or Freddie on the phone. But when it's actually time to get them on the phone, the fact that they're at least can hold that half-hour slot available on their schedule and have somebody do that, I don't think is much to ask. I know mediations in Vermont, in some of the more contested situations, have involved having Fannie or Freddie on -- on the phone, and things were much more productive.

Something like for an FHA-backed loan, it's a little bit different, because those tend to be more by federal law prescribes what's available and what's not. And waivers are not necessarily possible, and so there might be -- there -- there could be a way to write that the settlement authority is to address those kinds of situations with the FHA so that they're not necessarily -- if the FHA is -- just says we don't have discretionary authority, we just tell our servicers do this. And if it doesn't work, then you're -- you've already been -- you've been given the from-soup-to-nuts, exactly what to do with this loan -- then maybe it's not a concern with FHA loans.

REP. ALBERTS: So you recognize that there is a -- the potential issue that we should figure out a way to address.

JEFFREY GENTES: I think it's worth looking at without taking it -- without -- at the same time taking into account that there are real issues with -- we heard from Ms. Cenatiempo earlier that her investor wouldn't allow a loan, and it turned out to be essentially a bogus excuse.

There, also, I mean, I think there is an issue when Fannie or Freddie are retaining the discretion to approve a particular type of modification and yet are refusing to participate in the program. Under anybody's definition, that's not good faith.

REP. ALBERTS: Right.

JEFFREY GENTES: I don't think it's much to ask for by-phone participation if those instances.

REP. ALBERTS: Thank you.

Thank you, Mr. Chairman.

REP. TONG: Senator Leone.

SENATOR LEONE: Thank you, Mr. Chairman.

Good evening, Jeff. I appreciate your testimony.

I don't want to go over too much; you've -- you've answered a lot of the questions. But I'm hearing on one side that we're trying to make the process shorter, but on the other side they're saying the -- the process is going to become longer if this proposal goes forward. So I'm -- I'm confused on -- I shouldn't say I'm confused. I'm just trying to see how we could read the documentation and have two points of view on the time line. Can you -- can you give us your input?

JEFFREY GENTES: Sure. I -- I mean I think that in bringing things to a head more quickly and making it easier and more cost efficient to do so, that you'll end up with a shorter time line for yes and for no situations.

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In terms of what the added delay could be, I don't -- you know, frankly, if you're a bank who's complying with the rules that you're supposed to comply with, you shouldn't have much to fear from definitions of good faith and the like.

I mean, you have to just -- and this goes back to Representative Tong's point about lawyers -- you have to think really hard if you were a lawyer and if you thought somehow the bank made some kind of administrative error that constituted a technical violation of the statute, if you really are going to take the time to bring a motion for sanctions and go before a judge and ask for sanctions on that basis. We, I mean, we generally, we wait until there's an awful lot to say about what a bank has been doing before we go to that level. I don't think lawyers would enjoy going to a judge and claiming about administrative errors, so I have a hard time. Frankly, I have a hard time understanding why this would extend the time line for some of those cases.

And we've been talking about the notion of having three sessions; there's no reason why someone couldn't be terminated earlier if it wasn't going to work out. I mentioned before the notion of if you have the mediator who decides that it's not going to go forward, if -- if we had a mediator/homeowner meeting set up. They still have the right under the statute to move to terminate.

And it's funny; just one last point. In -- in 2011, you wrote into the law that if someone doesn't have their documents ready for the first mediation, it's not grounds for termination; and that -- that's all the sentence says. By implication, at the second mediation if they don't have it, their

documents together, you could move to terminate at that point.

I talked to a lawyer who does exclusively plaintiff's side litigation -- plaintiff's side foreclosures for banks, on Friday, mentioned this to him because he was complaining that three or four mediation sessions go by and the person doesn't have the documents. Why aren't you -- why aren't you going into court? Why aren't you pushing this further along?

So I'm -- I'm a little at a loss to try to -- you know, I -- I guess you can put some of these tools into the statute, but I don't know if people will necessarily use them to -- to shorten up some of the time lines in these situations.

SENATOR LEONE: And that lawyer that you had that conversation with, what was his response when you said why didn't you do it?

JEFFREY GENTES: They acted as if they -- they just -- they hadn't thought of it, of using this tool before. And that they said, well, the judge is just going to say no anyway. Like, well, sometimes it -- you have to go before a judge a couple times. And instead of being told no after four mediations but yes on five, maybe you're told no at the second mediation but the judge says to the homeowner, you better have it together for No. 3.

And -- and so I -- I think it's if you had a situation, like I said -- not to belabor the point -- they meet with the mediator and then up to three shots. And if still nothing is done, I think, by and large, those are the kind of sessions that should be terminated, and we should be shortening those time lines.

SENATOR LEONE: Thank you for that.

You -- you brought up earlier and I had asked the question much earlier about the -- the letter from -- for the supplemental comments on the guarantee-fee pricing that the Attorney General sent and the delegation sent to postpone. What's the status of that, if -- do you know where we are in regards to that; is that only a proposal?

JEFFREY GENTES: It's -- it's only a proposal.

SENATOR LEONE: And --

JEFFREY GENTES: And it's --

SENATOR LEONE: -- when would that come into effect if it were to go forward; do you know?

JEFFREY GENTES: They did not post. There was -- the only -- the comment deadline was November 26th. There were about 20 comments submitted in opposition, mostly from elected officials. And it may have caused FHFA to reconsider.

There's also a notion that the FHFA may lose its current head sometime between now and the time that the proposal comes out. So it may never go forward. We just, we don't know.

SENATOR LEONE: Thank you.

Thank you, Mr. Chairman.

REP. TONG: Thank you.

Representative Larson.

REP. LARSON: Thank you, Mr. Chairman.

Do we have enough mediators?

JEFFREY GENTES: Excuse me; mediators?

REP. LARSON: Yeah, do we -- is there, you know, we're -- we're suggesting that we premeet with people that can mediate. Do we have enough of them? Should we be hiring more of them?

JEFFREY GENTES: I -- I would defer to Ms. Palmer on that. My -- my impression is that there are not as many mediations. She's, hopefully she won't hurt me if I say the wrong thing here, but my impression is there are fewer mediations than there used to be two or three years ago, for just the number of foreclosure. Legal actions have gone down. The number -- the number of delinquencies is as high, but the number of legal actions have gone down, meaning there's fewer mediations, which mean her mediators spend more time with borrowers right now in between mediation sessions, helping with some of the more difficult cases. And so they have been doing this work, in one way or another, and I think right now -- do you have -- there's 25 slots and 22 mediators? And I would leave it to -- to her and her budget chiefs to figure out whether or not they have enough mediators right now.

I don't think this would -- I think just as proposed, this wouldn't require an explosion of mediators. Think I can -- I can safely say that.

REP. LARSON: So it wouldn't be a staffing issue, it would just be a -- an organizational?

JEFFREY GENTES: Right. And presumably if there's fewer mediations happening, they'd have more time to do some of these packages with the homeowners.

REP. LARSON: Okay. Thank you, very much.

JEFFREY GENTES: Sure.

REP. TONG: Representative Moukawsher.

REP. MOUKAWSHER: Thank you, Mr. Chairman.

First of all, I -- I get -- I -- I get the impression you think that, you know, the -- the bill that we had proposed would, in fact, speed up the process. And I think that's the intent, obviously, I mean, that we'd like to do that, and there's a difference of opinion about whether it would. Could you just sort of give me a quick summary of why it will speed it up? I mean, I know that we have certain, you know, elements in there about three mediation --

JEFFREY GENTES: Right.

REP. MOUKAWSHER: -- (inaudible).

JEFFREY GENTES: I think, well, my -- I guess the notion is -- is the -- the delay. If the delay right now is largely the fault of large, national servicers, and you in the statute says that the national servicers now, for the first time need to, as part of mediation follow the rules as opposed to having just debate and mediation or whether or not they've reviewed the -- the right rules using the right numbers, if it's clear what is expected out of these national servicers and if the default is if they don't have an answer within three sessions that they'll go before a judge, instead of having these sessions that -- I mean, I think on average right now, mediations go five or six sessions per -- per homeowner? If you go to a judge much more quickly and you're put on the spot, the notion is that you would have a -- a decision much more quickly.

There are circumstances where an extended mediation is legitimate, and those are when people -- a lot of times people facing foreclosure have a volatile income situation or they're looking to pick up a new -- a new job or pick up extra income in some way, and they may need to start over again. And -- and those situations may not be appropriate to go before a judge.

But I don't think those are the problems cases. They're the ones where people are going and whose mediations are in the double digits, where if a judge were overseeing it and whose patience was being tested by the delay, I think -- I think that's the driver of shortening the time line more -- more than anything else.

REP. MOUKAWSHER: Okay. You know, the next one I -- in your -- you had five components of the bill that you wanted to remark on.

JEFFREY GENTES: Sure.

REP. MOUKAWSHER: And Section 6 -- and it was alluded to by some bank, you know, representatives who were here --

JEFFREY GENTES: Uh-huh.

REP. MOUKAWSHER: -- I guess one instance of not acting in good faith would be if there was a violation of the servicing standards contained in the Attorney General's settlement.

JEFFREY GENTES: Right.

REP. MOUKAWSHER: How is that relevant to a mediation in a foreclosure?

JEFFREY GENTES: Oh. There's -- so the servicing

standards contained in the Attorney General's settlement relate to all sorts of what exactly the big five banks -- and it's only for the big five -- have to do with respect to a borrower who's in default and is applying for a loan modification. So that includes every borrower who's in mediation. It includes, for instance, a requirement that they have to provide an acknowledgment of any documents they receive within three, a notice within five days explaining what information needs to be completed, and what information is yet to be received. And it requires a decision be made within 30 days. It requires things like the mediators and the attorneys at mediation need to have the up-to-date information so they can participate meaningfully.

So those kinds of things are all in the Attorney General's settlement. They're required by the settlement. If banks violate them in some way now, well, you could -- you can file a complaint through the Attorney General's settlement monitor, and perhaps if there's enough complaints filed, the -- the Attorneys General can -- can impose a fine or do something else.

It doesn't help an individual homeowner. In other words, if you're sitting in short calendar in front of Judge Cosgrove in New London, explaining that your servicer violated the AG settlement isn't going to translate. So if instead it's, in doing so, in violating the standards contained in the settlement they failed to mediate in good faith, I think that makes it more real to the homeowner but also translates it for our judges.

REP. MOUKAWSHER: Okay; thank you. And -- and I -- I wasn't familiar with the standards but --

JEFFREY GENTES: No problem.

REP. MOUKAWSHER: -- They do include, you know, mediation practices again. And -- and that would be one of the instances of not acting in good faith; I mean, would that be --

JEFFREY GENTES: Right.

REP. MOUKAWSHER: -- (inaudible)? Yeah. Yeah. So I heard that earlier, so.

Now, I -- and it's -- you also said that it would -- a homeowner could use the violations to bring mediation closer with resolution. Is that because there would be leverage, in other words --

JEFFREY GENTES: Right.

REP. MOUKAWSHER: -- if someone did -- if a lender didn't live up to the settlement standards, then there could be a sanction?

JEFFREY GENTES: Exactly. And -- and we do see that as -- the notion of sanctions, I -- I know I see it in my own cases I've had, using it as leverage to get results, to get a result more quickly. And if you have more tools at your disposal, that hopefully you don't have to use, but if in case that you do, this bill would give the homeowners the ability to -- to really make the Attorney General settlement real for them.

REP. MOUKAWSHER: Okay. The fourth section you talk about recording fees, and, you know, I'd spoken to -- there was a MERS representative here earlier. There was a couple of advocates for this section earlier, and do you -- have you, you know, in your practice found that MERS, the MERS recording system or registration system

has clouded, you know, ownership of who -- who owns a mortgage or has complicated the process of defending oneself in a foreclosure?

JEFFREY GENTES: I think it's less that it -- we do get calls from people who are confused about, they've been foreclosed on by one particular entity and that entity is not on their land records. And then they go to court and they hear that the investor won't allow them to do X, Y or Z, and they're not -- they're having a hard time figuring out who the investor is.

And -- and despite what the gentleman said earlier, even under Dodd-Frank, sometimes you can send those letters, ask who the investor is, and you get back a response that's -- that's relatively incomplete. So I think we -- it adds to the confusion. I think it's reflective of the homeowners' experience, though -- though it, itself, may not be causing somebody to lose their home, it might be reflective of the information that they're getting or the fact that they're not getting the information that they want.

I'm not sure if that answered your question.

REP. MOUKAWSHER: Yeah. I mean I'm, in the time that I've been here and I've asked those questions, I looked up some MERS things and Googled it. And, you know, there's been some litigation over whether -- well, one -- one thing I read was that the -- you can't separate a mortgage and a promissory note, that, you know, they're -- they're, you know, as MERS apparently does. They have an assignment of the debt, and the mortgage is somewhere else.

And, you know, so I -- I just wondered what your experience was with, you know, identifying the actual owner of the debt and mortgagee, if

that ever --

JEFFREY GENTES: It's been -- it's been better since there was a, in 2006, Supreme Court decision in Connecticut that -- that forbid foreclosure from being brought in MERS' name. And that's been -- that's been helpful, because now we have something closer to the actual owner foreclosing on people. But, anyway, so it's been -- that's -- it's been less of an issue in terms of the foreclosure world.

I think it's more of an issue if -- if you have somebody who, for instance, might be trying to clear title in order to record a loan modification; having to deal with an entity that's recorded as MERS on the land records that maybe wasn't ever satisfied can be somewhat difficult.

By and large, I think this is the issue, though, is that the intent is to have, when ownership changes, that regardless of what industry practice has been -- and the point being this bill would change the law. MERS has survived legal challenges before, but this would change the law, so perhaps they would not, that regardless of what industry practice is, the intent of the General Assembly in creating the recording statutes was that -- were that assignments be recorded every time it changes hands. And it's not being done right now.

REP. MOUKAWSHER: You know, other than this 2006 decision, have there been other rulings in Connecticut on, you know, the effect of the MERS registration or it hadn't --

JEFFREY GENTES: Yeah, there's the --

REP. MOUKAWSHER: -- been challenged?

JEFFREY GENTES: There was a December 2011 decision where the homeowners' attorney had made a few arguments, one of them being that the separation that you, you referenced, Representative, where the -- the notion of I'm signing a mortgage to MERS at closing but I'm getting a loan from some other entity, that that sort of creates a -- an unholy separation of debt and mortgage or note and mortgage. Is that somehow -- mortgage void at the -- at its inception? And the Court said, no, it's not. And so MERS continues to be a legal -- its practice continues to be legal in the state.

REP. MOUKAWSHER: Thank you.

JEFFREY GENTES: Sure. Thanks.

REP. TONG: Any other questions?

I -- I have one final question, Jeff, since --

JEFFREY GENTES: Sure.

REP. TONG: -- we've been waiting for you all day.

What about this notion of sanctions and the one-sidedness of it? I mean, as it's drafted, does the bill provide that the good-faith standard apply to both the lender and the borrower?

JEFFREY GENTES: I think it's the -- I mean, in the statute, you could put it into the statute if you felt -- I mean, I think that the -- the sanction for a borrower has always been obvious, it's just that they terminate mediation. And you can put it in if -- if you felt it was needed to be said that if some -- if a homeowner wasn't mediating in good faith, you terminate mediation. But that's -- that --

that power is in, exists and -- and of course exists with judges now; it's just in the statutes already.

But I'm not sure what else. I'm sure -- I'm sure some of the banks could come up with ideas of what else they would want to do with the homeowner, but given that they're charging for the cost of collection and their attorneys fees, and they're seldom waiving deficiency judgments and the like, that -- that that termination of mediation is a pretty robust sanction by itself.

REP. TONG: I would ask you to give some thought to that feedback. I've heard, you know, on the sanctions' issue that it's not symmetrical, it's not reciprocal. It's very hard for us to referee that fight, because we don't sit where Roberta Palmer sits or where Judge Mintz sits. And we don't see every day, you know, who's right, who's wrong, you know, who's responsible for the delay, and who's sanctionable. And, you know, I -- I think it would be meaningful to -- to see if there should be some incentive, punitive incentive for a borrower if they're engaging in misconduct during a mediation or foreclosure proceeding.

JEFFREY GENTES: Yeah. And I think that that early period, if you had one with a mediator and a homeowner, the mediator could use -- I mean, at this point they've all been there. Maybe two of them have been there less than a year, but they've all been there for -- for years now, have seen a lot of different cases. And if you had the mediator looking at the homeowner and saying is this -- is this somebody who's -- who's doing mediation for the right reasons, that it will make it more likely that -- that that homeowner will be less likely to rely on extended mediations going forward if they don't

have buy-in from the mediator. So it might be another way to think about when we put that, if you put something like that together, that might be another way to think about sanctioning a homeowner.

REP. TONG: Thanks, Jeff. Appreciate it.

JEFFREY GENTES: Thanks.

REP. TONG: Bill McCue. You were ready to go, Bill; you just jumped out of your chair.

WILLIAM J. McCUE: I -- indeed I was, Mr. Chairman. I've been waiting for almost five hours for this --

REP. TONG: Well --

WILLIAM J. McCUE: -- august opportunity.

REP. TONG: -- thank you.

WILLIAM J. McCUE: Thank you, both to you and to Chairman Leone and -- and the members of the committee.

The -- I would hope to have, when I'm done with reading some remarks, an opportunity to comment on that pricing issue that you raised. But let me begin.

My name is William J. McCue. I am the owner -- owner and operator of the McCue Mortgage Company. Our office is in New Britain. We are licensed by the Department of Banking to originate, sell, and service home loans throughout the State of Connecticut. I am a life-long resident of Connecticut and New Britain; I'm a member of the Connecticut Mortgage Bankers Association and a member and currently serve on the board of directors of

the Mortgage Bankers Association of America. I'm here to testify on Bill 6355.

McCue Mortgage Company was founded in -- by my father in 1949. The company was designated at that time as the first Loan Correspondent for the State of Connecticut, under a program administered by the Department of Public Works, established to make home loans for first home purchases for Veterans returning from the Second World War.

Since that time, we have participated in all state home-financing programs, including our current involvement in the Connecticut Housing Finance Authority's first-time homebuyer program. We have originated and serviced all of those loans.

Originating and selling and services loans places us in a position of being an intermediary between customers and investors. When we deal with our delinquent borrowers, we must do so in accordance with the requirements of our investors, because they own the loans. Further, virtually all of the loans, all of our loans are low down payment loans and therefore require mortgage insurance. In order to keep the insurance in place, to protect our investors from loss, we must also comply with the rules the mortgage insurers impose when dealing with delinquent loans.

The mortgage insurers we must frequently deal with are FHA, the Federal Housing Administration, VA, the Veterans Administration, and various private mortgage insurance companies. These insurers have very detailed rules on how delinquent loans will be administered. The effort, referred to as "loss mitigation," serves two purposes, to serve -- no -- to preserve the loan from foreclosure and

to prevent the insurer from having to pay a claim. Overwhelmingly, our loans are insured by FHA.

When an FHA loan goes into default, we are required before commencing foreclosure to use the following tools to attempt to end the default: First, a repayment plan. If that does not work, we are required to use a special forbearance plan. If that does not work, we are required to offer a loan-modification plan. If that does not work, we are required to offer a filing of a partial claim with the insurer, which may include a modification. If that does not work, we are required to call upon the Emergency Mortgage Assistance Program, a state program that brings the borrower current through a noninterest-accruing loan and may also include subsidies to their monthly payment. In the event that that does not work, we are required to offer short-sales.

All of these steps must be completed before the foreclosure begins. If a defaulted borrower is responding to our communication efforts, each of these plans will be evaluated and determined unworkable before the next plan is evaluated. When all of the other loss-mitigation options have been determined unworkable, we commence a foreclosure.

Current Connecticut law mandates mediation at the outset of the foreclosure process. The mediation sessions are primarily an effort on the part of the mediator to go through the process we have already been through with the borrower in an effort to keep the borrower in the house.

REP. TONG: Mr. McCue --

WILLIAM J. McCUE: This process generally --

REP. TONG: -- I -- I appreciate that you've waited five hours to testify today, and we do have your -- have you submitted your written testimony?

WILLIAM J. McCUE: I have.

REP. TONG: Okay. Could I ask you to tell us --

WILLIAM J. McCUE: -- a very brief -- very --

REP. TONG: Yeah.

WILLIAM J. McCUE: -- (inaudible) --

REP. TONG: About 6355, if you could focus your testimony on what you see as, you know, the good or the bad about the bill so we can focus in on that.

WILLIAM J. McCUE: The intent of the legislation is to reduce the length of time. The -- the legislation does not accomplish the intent because it gives authority to the mediator who is the prime cause of the delays. It gives authority to impose severe penalties on the lender, as you've just mentioned, and no penalty to be imposed on the other parties. Where there is such an imbalance, how can we reach a reasonable solution to anything? I don't believe it's possible.

This suggests that the delay is all on the lenders and the servicers; that's not so. The lopsidedness of the penalty suggests a different intent. The intent is to keep the borrower in the house longer, notwithstanding the continuation of the default of the loan. The real result of this legislation, of this bill if it becomes legislation is longer and more costly foreclosures; continued

deterioration of the homes that these borrowers occupy, as they neglect maintenance, knowing that they will eventually lose the home for failure to pay; continued growth in the cost of operating the judicial department, caused by unnecessary delays and unnecessary staff; delay of the defaulted borrower rebuilding his or her credit score and credit future; and, finally, loss of attractiveness of Connecticut as a place to make mortgage loans.

And I'd be happy to take any questions.

REP. TONG: Yeah, let's. At the beginning of your testimony, you mentioned the price of credit and the price of debt, and you saw my comments earlier on that issue. Can you speak to how this bill, in your view, would impact the price of credit?

WILLIAM J. McCUE: Well --

REP. TONG: And the availability, thereof.

WILLIAM J. McCUE: Well, let's first talk about the -- the Fannie Mae approach. The Fannie Mae requirement is that there be a guarantee fee paid. It becomes part of the interest rate. The 20-basis points that's being talked about is an increase to the guarantee fee; that is what I've learned through the Mortgage Bankers Association. This is not a one-time fee; this is something built into the interest rate.

What was characterized as a $400 expense is not a $400 expense; it's a $400-a-year expense, and that's a significant amount to impose on everyone else that owns a home and is making their payments.

Now, in addition to that, that's, again, Fannie Mae saying we want more because we are going to

risk more. We're going to -- and -- and everyone should understand clearly that why would they want more because these foreclosures are going to take longer? Because when they pay, if they guarantee and have to pay, they're going to pay the principal and the interest that would have been earned during the period of time, until such time as the property is transferred, so that by elongating it, they're going to pay more in -- in terms of guarantee, just the same as FHA would pay more in terms of interest. And that's what they're going to need to -- to cover that cost, understandably, I believe.

Now, don't for one moment think that that's going to cover what is going to be required by servicers who are going to have to extend the time that they have the file under their responsibility. And let me tell you one thing I've learned in this business, we serviced about 10,000 loans right now in the State of Connecticut, all of them in the State of Connecticut, and probably several hundred of which are in foreclosure. If they make a payment, I make money; if they don't make a payment, I don't make money. So I'm very concerned about the ones that don't make their payments. And as those continue to elongate, if they're in default, I have to raise that base servicing fee that I charge, that everyone's going to pay to cover the increased cost that an elongated process will -- will create; that's for sure.

Now, we can't -- if we look at national lending as a strategy, quickly, where would you have to lend to be a national lender in this country? Probably, very quickly, California, Texas, and Florida; you got to start there and then you're going to build around it. No model would say you got to lend in Connecticut. You just don't

need to; there aren't enough of us.

The ones that come here come here because of the size of the loans not the size of the state. But they're not going to come here when they're faced with the additional costs that are -- that are related to this type of approach of elongating this process and costing them more money; they're just not going to come here.

And remember, all of the banks that are selling loans, when you think of, well, you're selling your loans to Fannie Mae or you're selling your loans to investors, remember, we're selling the paper but we're importing the money. And when we're importing capital into Connecticut, we are creating a greater supply to meet a stable demand; that drives down interest rates.

The combination, Mr. Chairman, of the increased guarantee fee, the increased servicing fee that will be required, combined with the absence of our ability to attract additional capital to drive down interest rates, will make a significant difference over the life of my grandchildren when they go out to buy their homes.

REP. TONG: You raise an interesting point that I haven't thought of earlier. And when compared to other states and other communities across the country, does Connecticut have a higher-than-normal number of good credits as far as mortgage lenders are concerned? Do we have better borrowers, better home assets than other states --

WILLIAM J. McCUE: We have --

REP. TONG: -- because of our high per capita income, because of the quality of our housing

markets relative to other states?

WILLIAM J. McCUE: We have, historically. We have taken a pretty good beating in the last several years, as you know. It can't -- it can't be known better than -- than to you two Co-Chairmen about the impact of the Wall Street effect on Connecticut. It -- it's been staggering.

To think that Fairfield County would have foreclosures is unheard of in the 40 years that I've been in this business, and yet they're rampant. And -- and that's where the national lender comes to make loans, big-size loans, make the big money. That's where they all came to.

So, yeah, Connecticut is not as attractive as it was, but it's still -- the old Yankee approach of paying your bills is still something that is evidenced in the portfolios of Connecticut loans. We've got to make sure we don't destroy that in our effort to keep people in their homes.

REP. TONG: Thank you.

Representative Alberts.

REP. ALBERTS: Thank you, Mr. Chairman.

And thank you, Bill.

You mentioned you have several hundred loans in foreclosure right now.

WILLIAM J. McCUE: Yes, we do.

REP. ALBERTS: What would be -- what's your experience with those loans in terms of -- of the length of time some of those loans have

been, you know, gone through the process from the first stage of delinquency?

WILLIAM J. McCUE: Well, as I mentioned -- well, as -- as I started to mention, and I was interrupted in the -- and I -- I assume in -- in wanting to move this along, when -- when we are through with all of the steps of the loss-mitigation requirements imposed on us by the Federal Housing Administration, then we start through it in the foreclosure. And the first -- the first step will be the -- the borrower will come in and say, Well, my financial condition has changed. And the mediator will say, Well, then we better take a look at that change. And so now we'll have -- that's Session No. 1 -- and we'll have a delay to Session No. 2, where we'll start to get the documentation, which will be incomplete.

And incomplete, there's been a lot of talk about incomplete here today, and I think it's important. It has to be complete. It has to satisfy a determination of why we're doing what we're doing. And -- and, yeah, is that difficult for some homeowners? Yes, it is. But it doesn't change the criteria. It's still got to be done.

That will end up with a four-to-five session process before there's a clear determination that nothing has changed, because we've already taken them through all of the detail. And those are the people that have been responsive.

Now, I do have to tell you, there are those people that don't respond. And we make six-to-eight calls to them a month, and they can go for as much as five-to-seven months, and -- and no response; and then we start a foreclosure. And I suppose we're starting with them in the mediation process, but to be frank with you,

we're not starting with them.

You know, we -- we -- there's been an awful lot of talk about the length of foreclosures. There's, in most FHA loans, there's seven months before that foreclosure starts. And we have been after them all the time and working with them, in many cases, and proving that it isn't going to work and what the best thing for them to do is to sell the house.

Now, I understand that that's a great inconvenience, both financially and emotionally to do that, but it, if it's prudent, it's prudent. And we do this all day long, and we know the ones that are going to work and the ones that won't work. So the -- there -- there's a great amount of delay created by that process. Again, four-to-five sessions is what it averages, and -- and, frankly, we don't get very far with it.

REP. ALBERTS: You mention in your testimony that the legislation is going to give more authority to the mediator who is the prime cause of the delays, and I was just sort of surprised by the phrase "prime cause." So you don't see the mediator, necessarily, as -- as helping the process but hindering the process?

WILLIAM J. McCUE: Well, as a -- again, as I've said, Representative Alberts, the -- we've taken them through. Ninety-five percent of our loans are FHA insured; we've gone through that process. If we don't go through that process, we're going to be penalized by the Federal Housing Administration, and they're going to curtail interest at the time that we file our claim, so we've got to take them through that process.

So we're all through that and we've determined

that it doesn't work. If it worked, if any one of those work -- remember, again, selfishly -- if any one of them work, I could find a way to put them back to current. And if I can get them back to current, then I get my servicing fee.

REP. ALBERTS: Sure.

WILLIAM J. McCUE: I want them there; that's where I want them. I can't get them there.

Now we start the foreclosure and the dance starts all over again. And if there was some substantial changes, you know, that would make a difference, but there aren't any substantial changes. What's going on is a pattern. So now take the seven months of the delinquency, add it to five months of -- of the mediation four-to-five sessions, 30 days apart -- now you've got a year, no payments for a year.

No one who is a first-time homebuyer -- and most of our borrowers are first-time homebuyers -- most of them -- all of them, really -- is going to be able to get up off the floor after 12 months of not making any payments unless some outside force comes in and helps them. The one that is available today, that can address all of this, is the Emergency Mortgage Assistance Program. How do you get qualified for that? Let's get them all into that.

It's very simple to get in there. Show me that the delinquency that you have lived through and -- and are now faced with corresponds with a harsh hardship that you've suffered. If they don't correspond, you're not going to be approved. That's not our decision; that's a decision made by the Connecticut Housing Finance Authority --

REP. ALBERTS: Right.

WILLIAM J. McCUE: -- and acting as the administer of all this.

So if they correspond, then you say, Well, if the hardship is the cause of the default, then we can deal with it. But what you find out is that when you go through all that process and nothing has happened and you start a foreclosure, what you really have is someone that is unwilling to adjust their lifestyle. That's where we are today.

REP. ALBERTS: (Inaudible) --

WILLIAM J. McCUE: Now, I want -- I should make you aware that we never made any subprime loans. We make fully underwritten, in accordance with the Federal Housing Administration, the Veterans Administration, the Connecticut Housing Finance Authority, Fannie Mae, and Freddie Mac's rules, depending on to whom the loan is going to be sold. So you do it that way and -- and that's what those loans -- those loans are.

And, unfortunately, they are the first group; they're buying their first home. There's some risk. They are the younger ones. They're more likely to lose their jobs first, because they have the least seniority in the positions that they're in. There's no question about that; there's some great risk involved there. But you can't preserve it all, and so you have to move forward. And that's what, unfortunately, the crisis that we've been through has created for a lot of families.

REP. ALBERTS: Where are we in that crisis; what are you seeing? Are we coming --

WILLIAM J. McCUE: I think --

REP. ALBERTS: -- out of it?

WILLIAM J. McCUE: I think we're -- I think we're coming out of it, and I think that that's one of the reasons why that this is the wrong time to be doing this. To try to take this and add it to what's already there and then someday say, Well, we'll get rid of this because we don't need it, that's not going to happen. Connecticut will be labeled with this, and we'll have this for a long time. And it will affect all those homeowners that -- that go out and buy that don't -- shouldn't be paying as much as they do.

You know, one of the things that you have in the collection area that you have to deal with is someone to answer the phone all day long for the people that say, Why should I keep making my payments? If I get in, if I stop making them, you'll have to listen to me, and you'll give me one of those lower rates or -- or some kind of subsidy. Don't think that that's just, you know, a lender's manipulating to offset people who have suffered hardships; that's a reality. They're calling every day, looking for -- lower mine; the guy across the street is not working, and he just got his lowered from seven to three, and I'm sitting at six.

REP. ALBERTS: Got ya.

WILLIAM J. McCUE: We're all in this together.

REP. ALBERTS: Thank you, very much.

WILLIAM J. McCUE: Thank you.

SENATOR LEONE: Thank you, Mr. Chairman.

Thank you, Mr. McCue.

So I'm just trying to backtrack some of your comments. Are you suggesting that EMAP should be the one that handles all these cases and not the mediation process? Do you --

WILLIAM J. McCUE: Oh, no.

SENATOR LEONE: Do you see the mediation process as necessary?

WILLIAM J. McCUE: Oh, no. I think it's the responsibility of the servicers to take advantage of -- of the EMAP program. That's what -- it is open to the consumer; the consumer is urged to go. It's -- it's certainly made public, and they're invited to go there. I hope that their lenders, the servicers, are notifying them of the program; we certainly do. It's a great way out. It's a good deal for the lender and it's a good deal for the homeowner.

SENATOR LEONE: And -- and you mentioned how currently we have a very lengthy process before it even gets to mediation and that it's a -- but the problem is that we're trying to, as a committee, trying to rectify is that even with those processes in place, we have a foreclosure problem, which created the mediation process in the first place. And when we hear the stories of Sandra Cenatiempo, her case with going, ongoing for many months, and then being withdrawn and so forth, that's where we're -- we're hearing two different sides that are -- couldn't be further apart, 180 degrees. And we're trying to figure out where the facts are in the middle.

So I'm just trying to understand how not tightening up the mortgage crisis procedures

could be beneficial to both sides here.

WILLIAM J. McCUE: Well, I -- I would tell you two things. I've learned this the hard way. There's a minimum of two sides to every story, so that for every one of those tragic stories that came here today, there is another side of that story, at least one other side of that story.

I'm not suggesting for a moment that the one you heard wasn't the dead, accurate representation of the facts, but that has not been my experience in life. So I will tell you that that's -- that's one of the things that we got to -- we've got to get away from trying to solve problems using anecdotes and see if we can't get to a solution that -- that works for everybody.

Generally speaking, the people that get to foreclosure really don't have -- at least these are the borrowers that we have -- they don't have anywhere left to go. They've tried everything; we've tried it with them, and they just can't make it. And so they need -- what they really need to do is sell the house.

My father started the company in 1949, Senator, and in 1992, we had never taken a foreclosure to judgment. And the reason for that is that the properties were worth more than the debt; that's the only reason. Since then, with two, significant downturns in real estate values, we've done thousands of foreclosures. I'm not proud of that but we -- we've learned a lot from it.

Those people that lost those homes to the foreclosure process were just as well underwritten as those people in the sixties and the seventies and the fifties that didn't lose

theirs as a result of foreclosure. So real estate value is not the only answer, but we've got some difficult stuff here and we got to -- we got to get borrowers to address the realities of can you continue to own? And -- and the answer isn't always yes.

SENATOR LEONE: And -- and I think that's a key aspect of what we're going to try and do with this legislation is to get those homeowners that need to sell to sell, so that you're not holding that debt in ad infinitum, that you're losing money, waiting until someone tells you to do otherwise. So I would like to see that if they can't afford their home, they need to get out. And we need to come to a successful resolution to that fact.

So that's what I'm hoping to aim to, so I want to move in that direction. I don't want it to be any longer than it necessarily has to be. But, again, I don't think we can't not do something, given that there is still a problem out there.

WILLIAM J. McCUE: Senator, if there's a servicer that hasn't had a discussion, assuming they're having discussions -- and let's remember the human element here, for a moment. There's an awful lot of people that don't make their payments, and by the fact that they don't make their payments are very embarrassed and uncomfortable. That's a legitimate human response to a situation like that. You got to fight through that and get on the phone and talk to your lender.

And if you'll talk to your lender, you can start the process. Those people that we can start the process with, we're going to get to that point where we've tried everything and now say you really need to sell this house. You

need to sell it. But they don't want to hear that.

And then you have the others that you just can't get to talk to you, and it's only when the foreclosure is commenced that they make any response at all so that when they arrive at the court, that's the first contact they're having. That's not because we failed, it's because they've been unwilling to address the realities of their situation.

SENATOR LEONE: Your point is well made, but that's the time that you can then use a stick against a homeowner to actually address the concern. Whether there's shame involved or not, they have to pay their bills.

WILLIAM J. McCUE: And --

SENATOR LEONE: And if the -- and if that's what it takes to get them to come to the table, then that's the right thing to be doing.

WILLIAM J. McCUE: But if that's going to take another year to go through these mediations, then, to me, I've already gone through five-to-seven months before I began that foreclosure, trying to get them to be responsive and trying to meet the criteria of loss mitigation imposed upon me by investors and mortgage insurers. Now we're going to start all over again. It doesn't make any sense to start all over again. The -- only in this sense -- the result will be the same.

SENATOR LEONE: I -- I hear you, and at the same time we just got to make sure that we get to that result. So I don't want to make it any longer than it needs to be.

Thank you.

WILLIAM J. McCUE: Thank you.

SENATOR LEONE: Any questions?

REP. DIMINICO: Mr. Chairman.

SENATOR LEONE: Yes, Representative --

REP. DIMINICO: I have --

SENATOR LEONE: -- Diminico.

REP. DIMINICO: Mr. McCue, I have a question for you.

Thank you, Mr. Chairman.

I -- I know you alluded to the fact about the negotiators or mediators slowing the process down, but isn't the way the bill -- as proposed, there's going to be three, then to a hearing -- which is a lot more stringent than it was prior to that?

WILLIAM J. McCUE: I don't see that in there. I see the flexibility in there that allows this thing to continue, and -- and the primary purpose of it, just the fact of the assignment of the penalties. If the penalties are all on one side, how can there be intent to create a -- a level playing field to bring people together when only one side could be penalized? I -- I don't think it is.

I think it, the purpose of it is to continue to keep people in the home, and I -- that's not a bad thing to do. Except, remember, they're not just paying their principal and interest; that's not, you know, we didn't pay our principal and interest. They're not paying their real estate taxes; I'm paying that.

They're not paying their homeowners' insurance; I'm paying that. They're not paying their condominium fees; I'm paying that. They're not paying their water bill; I'm paying that. I'm paying the fire district tax. I'm paying the -- the school district tax; all that's being paid for them.

And they're probably not paying their credit card bills, unless they have to, to keep the interest rate from going up. So -- but they're making their stops every day at Dunkin Donuts on their way, to get the coffee, expensive coffee. And every-other weekend they're at the casinos; we see that when we see their bank statements. And -- and they certainly have them, the -- the complete package from the cable companies, where they have their Internet, telephone, and -- and their cable package put together; and that's being kept current. That's -- those are the people that you're dealing with at that point in time, and it -- it really -- it's -- it's -- there's more to it than just them not making a principal and interest payment; I can assure you that.

REP. DIMINICO: I'm very familiar of what you just said. As you know, I do sell real estate and I've --

WILLIAM J. McCUE: Uh-huh.

REP. DIMINICO: -- seen quite a bit of foreclosure and short-sales. And people have been in their home for two-to-three years without making payments. So I think there probably is some validity to -- to -- on a penalty side, as you say, that maybe it should be looked at from both perspectives, not just the lender, not just the lenders being penalized but also from, perhaps some of the borrowers or the homeowners, so it's level playing field. So I

-- I totally empathize with you there.

But I still think that the fact that the mediators will be required, now will be required for three and out, so to speak, where it would go before the judge and the hearing, I think will act in an expeditious way.

Thank you.

WILLIAM J. McCUE: We do know that -- we do know one thing. To impose a financial penalty on the borrower will be feeding oats to a dead horse. And if they're not paying the mortgage, they're not paying the taxes and the insurance, they're certainly not going to pay a court fine.

REP. DIMINICO: Well, the penalty, in regards, would be the foreclosure would take place.

WILLIAM J. McCUE: Which is something that probably should be going on already, in -- in my opinion. It should never have been -- you know what? We've delayed it, so we're now going to penalize you by no longer delaying it. That's real -- that really doesn't make an awful lot of sense to me.

REP. DIMINICO: Okay. Thank you.

SENATOR LEONE: Thank you, Mr. McCue.

REP. DIMINICO: Thank you.

SENATOR LEONE: Appreciate that.

Next, Raphe Podolsky. I'm never sure if I get that right; you can correct me, please.

RAPHAEL L. PODOLSKY: Oh, well, the -- the -- Raphael Podolsky is my name. I'm a lawyer with the Legal Assistance Resource Center in

Hartford; we're part of legal aid programs. We -- we do some representation of homeowners -- (inaudible) we're much more likely to represent tenants -- in a foreclosure situation, but I came today because I really do want to speak about this bill. We're strongly in favor of it.

I'm a member of the Bench-Bar Foreclosure Committee and have been on it, I believe, since it was created and have been part of a number of meetings that have talked about how the program works. The foreclosure mediation program has been very effective. It's been very successful. It has a national reputation; we were national leader in developing this program.

Mediation is a win-win approach, and I'm actually very disappointed to hear some of the witnesses from the lending industry speak of it as if it was almost a kind of poison. I'm concerned that some of the arguments that are being made against this bill are actually not arguments against the bill at all but arguments against the entire mediation program, going back to its very beginning.

One of the things we have in Connecticut is judicial foreclosure. There are states that, indeed, move foreclosure cases faster, because foreclosure is treated like a form of repossession of a car. You don't have to go to court to get the foreclosure. We use -- we have judicial foreclosure. Those are the states that tend to be a little bit slower, because we don't take people's homes away from them without a judge going -- we're going through a process by which a judge determines that is the proper solution.

So to the extent that there's an implication

here that we ought to go all the way back to the beginning, let's not have a mediation program because we've already done all the mediation on our own, let's, for that matter, not have judicial foreclosure because, after all, that would be faster. I think that sends us on the wrong track and does not help us understand or analyze what we ought to do. And I guess I just feel that needs to be said.

I think that this bill is reasonable. It is targeted specifically to the problems that have occurred. The suggestion that it creates an unlevel playing field, I think, is simply incorrect. As has been pointed out, the penalty for a homeowner who does not make good-faith effort in -- in mediation is that mediation will be terminated. That is by -- that is a very effective sanction, because it's a kind of nuclear sanction. It's going to accelerate the -- it's going to move them right into foreclosure. That's not the -- the equivalent sanction with equivalent force for the lender has to be some form of penalty sanctions for having failed to bargain in good faith. So I don't see that as nothing against the borrower but everything against the lender. I don't think that's true at all.

I wanted to make comments on two parts of the bill, that are not sort of the core parts of the bill, but I wanted to say something on, and that's Section 6 and Section 8. And I'll be very quick on those.

SENATOR LEONE: If you could summer up, that would be great.

RAPHAEL L. PODOLSKY: Section 6 is the one that's -- makes -- that makes clear that there are wider range of defenses available in foreclosure, which is, in fact, an equitable proceeding.

And the -- the homeowner can raise equitable defenses. I think that's very good and very important.

And the Section 8, which deals with making sure the land records are transparent, that -- that assignments of the mortgage dead need to be filed on the land records, we -- I support that as well.

I'm happy to answer questions on anything that I've submitted testimony on, but that's the essence of the testimony.

SENATOR LEONE: Alberts.

REP. ALBERTS: Thank you, Mr. Chairman.

And thank you for your testimony.

Section 8, you -- you support it; why?

RAPHAEL L. PODOLSKY: Well, it's -- it -- it accomplishes a number of things. It -- one of the reasons that this was never an issue until, maybe 15 to 20 years ago, when -- when MERS kind of spread as a -- as an entity is that typically the mortgage and the note moved together, so that when the mortgage was assigned, the note was assigned with it.

The Connecticut Supreme Court has said -- and this is long-standing law in Connecticut -- that it's -- it's actually the note that's predominant. Then the mortgage follows the note; it secures the note. And so, for example in order to be able to bring a foreclosure action, you need to have the note. Having the -- the mortgage is not good enough because that -- that's just security; it's not what -- it's not the actual debt. But that didn't used to be an issue because they moved together, so it

didn't matter if you -- if you separately recorded both on the land records.

The MERS system works on the assumption that you will separate the mortgage from the note. The person who owns the note, who has the right to foreclose is not necessarily the person who has the mortgage. And, well, so you -- and what you can do is you file the mortgage transfer on the land records and then move the note from -- from entity to entity to entity to entity so that it becomes very difficult to figure out who -- who is the actual entity to which the homeowner owes the debt.

So what -- what Section 8 does is, in part, it restores that level of transparency and integrity to land records. And that -- that's been a national issue about what are the -- what are the consequences of having separated these things. It's -- it then has a collateral effect of applying the recordation fees that both municipalities and states always thought were being applied.

The reason you had somebody testifying about the Community Investment Act, because that's money that doesn't come in, because the mortgage, and since the mortgage is not being retransferred but only the -- the mortgage dead, nobody's, you know, it's not being recorded. It's being recorded with MERS, which is a private recording system, but it's not being recorded on land records. And so, I mean, I guess those are the reasons. You asked me why we take that position; that's -- that's why I take that position.

A part of the money that goes to the Community Investment Fund, for example, goes to CHFA for affordable housing. That money doesn't come in when -- if -- if a way has been devised to

avoid recordation fees.

And, in fact, a bill like this came up last year, and I -- and I kind of did some research on it then, the history of MERS. At the time it was being created, there are open statements from the organizers that a prime purpose of creating MERS is to avoid recordation fees. It's not merely sort of an incidental consequence of the system; it's one of the reasons for having the system in the first place. And -- and I think a number of states are at least looking at ways to -- is to get the fees back, frankly.

SENATOR LEONE: Thanks, Raphe.

And in terms of the MERS system, earlier we heard from the representative from MERS how they made it seem like the records were easily available. But from what I've seen, that doesn't always seem to be the case. And has it been a problem with obtaining the records when you say that, you know, they no longer match from the land records and that -- and the -- the subsequent transfer of the notes, and sometimes two, three, four, however many parties the note gets monetized and sold off?

RAPHAEL L. PODOLSKY: I -- I think -- I'm not -- let me put it this way: My understanding is that if you -- if you know how to get information from MERS, I think you're -- that -- that the accessibility has improved. I think that the people to whom you really need to ask that question will be town attorneys and town clerks who deal much more directly with MERS so that I think it -- I think it is possible.

There was a time at which I think only the home -- the actual property owner could -- could find out information from MERS. I think it's

broader than that now, and so I -- so I think there are ways that that can be done.

I think most people don't know about that, and I have never put that to any kind of a direct test. But I think that -- I think it's a fair question, and -- and I -- and I think that you probably need to direct it to someone else to get a -- a more confident answer.

SENATOR LEONE: Thank you.

And in terms of how they -- how the opponents of the legislation say that there'll be extra credit risk and cost, do you see that happening with this legislation, that it's going to increase their credit risk or increase their costs in order to serve potential borrowers in the future?

RAPHAEL L. PODOLSKY: I don't see it. It's -- part of it, I come to that argument with a certain skepticism, and that's because I believe that at the time the foreclosure mediation program was started in the first place, that was an industry argument against the -- against the whole program, not against this adjustment to the program but against the program as a whole.

I've done a lot of consumer protection advocacy over the years, in virtually every industry in -- in response to any kind of community consumer protection proposal claims, that it will damage the consumer and that the consumers advocate it and yet the industry says that it's going to hurt consumers. The -- I'm also skeptical about it, though, because I don't see this as something that is adding -- I refer to it as win-win, that the -- there are parts of this bill, that by moving the mediation forward, it actually in the end works to the interest of the industry.

The -- the process of mediation allows a separation out of those cases in which there's no hope of success and those in which there is some hope. To me -- one of the interesting things -- what it says, well, all this is already taken care of in the -- in the preforeclosure process. At least according to the Judicial Branch, they have a very high success rate, including a success rate of people who get to keep their homes. And to me that says that for reason. Those successes did not happen in the preforeclosure process.

And I know that the Judicial Branch keeps very detailed data on what those -- what -- what those dispositions of mediated cases are, and it just seems to me that every time a case is resolved, whether it's by a short-sale or by a retention of the property, that is actually cost savings to the lending industry. And those things have to be balanced against anything, against any other costs.

I thought, also, when Mr. Gentes testified and he said that, in talking about the length of cases, that that -- that those data are actually excluding, so it's kind of the success stories and then looking at the worst-case scenarios. And so I think when you take -- if you take a step back, look at the whole process and -- and assess what impact this had, it seems to me there are no cost increases and so that if the industry is threatening that -- that they will not lend or will raise costs or will raise interest rates, that's not necessarily a rational response, either to the existing mediation program or to the proposal that's -- that's here.

It's not in anyone's interest to drag the mediation out, unless there is some real

purpose for doing it. And certainly the experience of attorneys who represent homeowners in foreclosure has been that a very significant part of delay has been the lender not being ready to move the foreclosure -- the -- the -- to move the negotiation discussion forward; and it's really the lender that -- that is a significant source of -- of any delays that exist.

SENATOR LEONE: Thank you, Raphe; I appreciate that.

Any questions?

Thank you. I appreciate it.

RAPHAEL L. PODOLSKY: Okay. Thank you, very much.

SENATOR LEONE: Next on the list, Martin Geitz.

MARTIN J. GEITZ:

Good evening, Representative Tong, Senator Leone. Thank you, very much, for this opportunity, Ranking Member Alberts and other Legislators.

In light of the late hour, I'm going to forgo reading my testimony. I believe you have a copy of it; I hope you do find an opportunity to read it. And I'll just summarize the key points that I make in my testimony.

I'm very concerned about the proposal and would join and agree with the points of view that you heard from other members of the banking community and -- and Mr. McCue, earlier. I would agree with their analysis of the impact of the legislation on consumers, and notwithstanding the comment just made by the prior speaker, I do believe this would have an adverse effect on consumers in Connecticut at a

time when we need to be helping consumers in Connecticut.

Second thing is I feel that this proposal will have an adverse effect on the economic competitiveness of the state, the State of Connecticut. And, again, with all that the state is trying to do to boost the economy, I think that our housing policy, our mortgage policy should be aligned with our economic stimulation policies.

And, finally, just want to note that the -- as you know, I'm -- I am -- am the Immediate Past Chairman of the Connecticut Bankers Association and in addition to being President of Simsbury Bank. And as others have said before, the -- the industry is very interested in working collaborative -- collaboratively with the committee and all other interested parties to try to find a -- a good, workable solution here.

Little detail -- I think the vast majority of foreclosures that we're talking about that are being dealt with through the mediation process were from aggressive, and -- and unwise lending, and -- and products that are no longer available on the marketplace that were done during those terrible years in the mid-2000s. The -- there has been a massive change since 2008, on the mortgage market. Virtually all parts of the mortgage market have been reengineered through legislative and -- and regulatory changes.

Dodd-Frank Act, the Consumer Financial Protection Bureau have made great changes to the -- to the way the mortgage business is run today. Unfortunately, this proposal will apply to all mortgages and will put the consumers in the State of Connecticut at a competitive -- at

a disadvantage relative to what they could achieve in other states, if it goes forward.

Second thing is housing policy and the real estate market is a very important part of our economy. The Governor and this Legislature has done a great deal to stimulate the economy through the fast -- the First-Five program, the Small Business Lending program, technical assistance, and so forth, and to -- that I believe that the -- our housing and our mortgage policy should be aligned with all the great efforts we're making to boost the economy.

Thank you for this opportunity.

SENATOR LEONE: Thank you.

Mr. Chairman.

REP. TONG: Thank you, Mr. Chairman.

Thanks, Martin, for spending all day here. You have a quicker commute home then I do, though.

You know, I -- I guess all I would say is you have been here for now, it's whatever, the six hours that we've done this, and you heard a lot of discussion about this bill, some good ideas, I think, that people have thrown on the table.

Your last offer to work collaboratively -- collaboratively with the committee, we take very seriously. I would encourage you, personally, because I know that you have a lot of standing with your members and colleagues, to sit down with a pencil and paper and come up with some ideas on how to answer the many concerns that were raised today by advocates for this bill, by members of this committee, by the people you heard testify about the abuses

they've suffered in this system. So I would -- that's No. 1.

I would also encourage you to speak with your brethren who have larger balance sheets than you do and talk to them about their practices and come up with ideas about how we get at some of these abuses that seem to be tied to the bigger institutions. I know that's not an easy thing to do. I know that you're all here together, as far as the CBA is concerned, speaking with one voice. The fact is I've said many times and you've nodded many times when I have said that your business models are fundamentally different.

MARTIN J. GEITZ: Uh-huh.

REP. TONG: And you run different businesses. That's true; we can't escape that fact. And so I'd ask you to talk with some of the bigger institutions and -- and press upon them that they've got to come to this process not empty handed but willing to work with us and with advocates to help people in this state.

MARTIN J. GEITZ: No, I appreciate -- I appreciate the admonition, Representative Tong, and certainly we'll do that. And -- and I would note, however, that I'm not being disingenuous when I say that from the position -- from the perspective of -- of my bank and -- and other, smaller community banks, we -- we are -- we do view this proposal the same way as the larger institutions do.

It is a little ironic that many of the largest lenders in the State of Connecticut, in 2006 and 2007, are no longer here; Lehman Brothers, Federated Mortgage, you go down the list, Wachovia Bank, IndyMac, they're not here because they were -- they had bad business

practices. They were offering bad mortgages, poorly designed mortgages, with poor underwriting; and, unfortunately, many of the people we heard from earlier today were, in fact, victims of -- of first bad lending and then when they -- those institutions failed, the -- the acquiring institutions often at the -- at the -- with the pressure of -- of the federal government have -- have been saddled with a workout challenge that is -- has been enormous. And -- and they have been oftentimes very ham-handed in -- in stepping up to that process.

So I hear you loud and clear and I -- I know that the entire industry is committed to continuing to improve the experience of folks who were caught in this terrible situation and also do things much better in the future.

SENATOR LEONE: Any questions?

Thank you. We appreciate it.

REP. TONG: And we'll look forward to those comments, because they're going to be necessary.

MARTIN J. GEITZ: Great.

REP. TONG: Thank you.

MARTIN J. GEITZ: Thank you, very much.

SENATOR LEONE: Next up on the list, Mike Muszynski. I think he gave up.

Cynthia Gilbert.

A VOICE: She left. She's one of my clients and she had a work issue, so --

SENATOR LEONE: Okay.

Tony Emerson.

REP. TONG: Tony, you get the free hot fudge sundae for being the last one.

ANTHONY L. EMERSON: Actually, I was just back there thinking I get the opportunity to say good afternoon, good evening, and good night, so --

REP. TONG: Okay, Tony.

ANTHONY L. EMERSON: Senator Leone, Representative Tong, and members of the Banks Committee, I appreciate this opportunity to testify. I'm here representing Connecticut's 125 credit unions in opposition to H.B. 6355.

In the interest of time, I'll go ahead and dispense -- you all have a written copy -- I'll dispense with the first paragraph and just get to the crux of the point.

The credit union industry supports proactively assisting their members in holding onto their homes and goes to great lengths to work with our members to make sure that is possible. However, in the rare occasion when this is not possible, we work toward a fair resolution for all involved parties. Credit unions' motto is "people helping people," and when there's an issue with one of our members' ability to pay, we assist them in any way that we can.

We did not create the housing crisis and did not participate in subprime lending, which has affected so many. In our opinion, this bill adds unnecessary levels of mandated bureaucracy and prescribes certain actions that may hinder the processes already used by credit unions as they diligently work to help their members

remain in their homes.

In addition, there may be unintended consequences in the form of added expenses, resulting in unnecessary, incurred expenses that would further deteriorate the bottom lines of a fragile but slowly recovering industry. Speaking for the credit union industry, this would adversely affect all of our members, as they are beneficiaries and active participants in the ownership and support of their respective credit unions.

Thank you, very much, for your time and consideration, and I'll entertain any questions you may have.

SENATOR LEONE: Thank you, Tony; duly noted.

Do you have any comments that you would suggest could make the bill better or are you against the whole proposal?

ANTHONY L. EMERSON: Personally, you know, I was talking to Kelly earlier, I hear, you know, I heard several witnesses that laud the current mediation system. I hear people go toward administrative fixes rather than legislative fixes. Just from my personal standpoint, listening to all the testimony over the many hours I've been standing there, I would -- I would focus in on administrative, enhancing administrative functions and trying to get judges to, you know, be more proactive about issuing certain statements to get people to act.

SENATOR LEONE: Any comments?

Mr. Chairman, good?

Thank you, Mr. Emerson. I appreciate the

comments.

You are the last one, unless if -- is there anyone here that wanted to testify that didn't get a chance to do so?

REP. TONG: Martin, you want to go again?

MARTIN J. GEITZ: No, I think I (inaudible).

SENATOR LEONE: Okay.

With that, we will adjourn the meeting.

Thank you for your time.

TESTIMONY SUBMITTED TO THE BANKS COMMITTEE
February 19, 2013

Commissioner Howard F. Pitkin
Department of Banking

HB 6355, An Act Concerning Homeowner Protection Rights

Good afternoon Chairman Leone, Chairman Tong 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 ***House Bill 6355, An Act Concerning Homeowner Protection Rights***.

This proposal is designed to implement certain changes and new protections related to the foreclosure actions occurring in Connecticut's court system. I will outline the major aspects of the legislation. The bill would require plaintiffs to mediate in good faith or face certain judicial sanctions or fines. Mediators will be empowered to recommend appropriate sanctions to the judge.

The bill would define the term "good faith" as the following: compliance with federal and state laws; compliance with mortgage related settlements; providing advance notice if additional time or documentation is needed; and filing accurate loss mitigation documents with the court.

The proposed bill would require that banks' representatives have full settlement authority to complete the mediation. Sometimes it can take up to six or more meetings for a settlement to be reached. This is far too long and benefits neither the bank nor the homeowner. To that end, mediation cases will be referred to a judge after three sessions, unless the mediator or party, with good cause, asks for the hearing to be postponed. If lenders request a delay, they will be required treat the homeowner's most recently submitted, reasonably compliant financial package as current. The bill would also require the bank to disclose the net present value (NPV) calculation of the subject property.

The bill would require all lenders to notify the town and pay the recording fee each time a mortgage is sold off. This action would result in a revenue gain for the municipality and state and will make it easier for homeowners to know who owns their mortgage. The bill would also attempt to fast track abandoned properties by shortening the foreclosure timeline in situations in which a property is abandoned and vacant.

I feel this bill, if enacted, will serve the Governor's intent to "get to yes or no quicker" in the mediation program. It is vital that Connecticut resolve the foreclosure issue for ALL parties. I hope it will encourage discussion of an important issue affecting all the citizens of Connecticut. Thank you for your attention to this matter and I am happy to answer any questions you may have.

STATEMENT OF ATTORNEY JEFFREY GENTES
In Support of Governor's Bill 6355

Co-chairs Leone and Tong, Members of the Committee, thank you for allowing me to speak today. My name is Jeff Gentes. I manage the foreclosure prevention work at Connecticut Fair Housing Center and co-supervise the foreclosure clinic at Yale Law School. I am here today in strong support of Governor's Bill 6355. I am here on behalf of the homeowners we represent in court, and the thousands of Connecticut homeowners facing foreclosure, from every single legislative district, with whom we have spoken.

The foreclosure mediation program has been great for Connecticut and, now, more than 10,000 households can say they kept their home, thanks to the program. The Bill reflects one thing, though, that all sides can agree upon: mediation often takes too long. This Bill recognizes that delay is a problem for both sides. Delay is a problem for a community bank with a legitimate reason to foreclose, and can honestly and accurately say that nothing can be done for the homeowner. Delay is also a problem for homeowners who desperately want resolution.

From what we see every day, delay is principally the fault of large national mortgage servicers. Sometimes homeowners can be their own worst enemy, or be delaying the inevitable, and sometimes local banks or their attorneys can pose problems. But the overwhelming majority of problems are caused by large national servicers who lack the incentive to comply with the law. By forcing these banks to send someone with settlement authority to mediation rather than a mere document collector, by forcing banks to comply with federal modification programs and the rules put in place by Fannie and Freddie, by refusing to allow endless requests for documents, and by enforcing their compliance with the Attorney General state-federal mortgage settlement, we can give homeowners a hand in getting the right result more quickly. Right now, the only remedy that homeowners or even mediators have by statute for an unproductive session are to waive the day's attorney's fees or ask for another mediation. Clearly more is needed when banks fail to mediate in good faith.

Both sides should see a benefit to the judicial hearing component of the bill. If a homeowner can't submit the documents in time, or if it's plain that no program can help the homeowner after 3 sessions – which by then should be obvious to the bank – then a bank will have its request to terminate mediation being heard in court. If more than six months have passed, a judge does decide to extend mediation, he or she will be required to state the reasons for the extension rather than a mere "GRANTED." Likewise, especially for homeowners with large national banks, having the chance to explain what's happening to a judge could increase the chances the judge will pressure the bank to come to a decision either by merely having the hearing or through the menu of penalties available to a judge. This bill also sends a message

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from the legislature to the courts: delay is bad for all sides, and these cases must be processed more quickly in order for our housing market to recover.

Five components of the bill merit additional explanation.

1. Settlement Authority

Right now, the statute requires a bank to either mediate in person or participate by phone if its in-person attorney has "authority to agree to a proposed settlement." In practice, the attorney can only have that authority with the consent of her client, and so the bank rep must have that settlement authority. This practically never happens with large banks. Instead there's a mediation representative on the phone, who usually isn't in charge of the file and instead relies on someone else's work and notes, and that "underwriter" or "negotiator" is relying on rules they didn't draft or can't change, waive, or negotiate. So homeowners make proposed settlements by requesting loan modifications under certain programs, and bank representatives are unable to respond in any meaningful way. The bill as drafted makes it clear that the bank must have a representative with actual settlement authority, and provides that the mediator must track whether the representative had settlement authority. Of course, settlement authority has not been an issue with homeowners – they can settle their own case. This bill ensures they'll have a reasonable opportunity to consult with a non-borrower spouse, an attorney, or a housing counselor if the bank makes an offer during mediation.

2. Section 6

Right now, there is hardly any way for a borrower to hold one of the "big 5" banks accountable for violating the servicing standards contained in the AG settlement, standards which are in place for the next two-and-a-half years. This bill would allow homeowners to use violations to bring mediation closer to resolution, and to defend against wrongful foreclosures, at least for those five banks. Without the bill, all that's possible is that the banks pay penalties to the states under the terms of the agreement. That doesn't help homeowners with their individual cases.

This section also would bring Connecticut up to the level of its peers in judicial foreclosure states. While it has a great mediation program, Connecticut's foreclosure law is unusually slanted against homeowners. Connecticut and Delaware are the only judicial foreclosure states (out of about 23) in which homeowners are not allowed, or at least not without great difficulty and a considerable uphill battle in the courts, to challenge servicing practices in their cases. Connecticut homeowners should be treated like homeowners in other judicial foreclosure states, and Section 6 would allow that to happen.

3. Section 5 – Vacant and Abandoned Properties

Right now, banks handle foreclosures on vacant and abandoned properties in a variety of ways. Local banks tend to move quickly, and the courts meet their desire for an expeditious process – as fast as 70 days under the law. Larger banks take wildly different paths, often taking several months or even years to move forward with foreclosures. For instance, after a client of the Center moved out of his house to an apartment in March 2011, he stipulated to a foreclosure date in June. The bank still had to move forward and finish the foreclosure in order to complete the deal. Nearly two years have gone by, and the bank still hasn't done anything. The property remains vacant.

For the banks who do want to move forward on a foreclosure, the bill provides two things. One, it allows the process to move even more quickly: 56 days. Two, it contemplates an affidavit that confirms to a judge that the foreclosure judgment should be granted as quickly as possible and confirms that the legislature has prioritized expeditious foreclosures of vacant and abandoned properties before they deteriorate and become a source of blight to their neighborhoods.

4. Recording Fees

Out of recognition of the lost revenue that the mortgage industry's practices have yielded, thanks largely to the creation of "MERS," this bill includes a practice that would ensure the industry would pay each time a mortgage is transferred. This would conform the letter of the law to its intent. We often receive calls from homeowners who are confused when they learn of their loan's investor, either through the court papers or during mediation. They often research their town's land records and see nothing that makes sense – the loan investor isn't on the land records, especially before a foreclosure starts. Requiring recording would help put the public, and the homeowners, on notice of a change of their mortgage's ownership.

5. "Plain English" requirement for account histories

In 2011 the mediation statute was amended to require that the parties exchange documents prior to the first mediation session. Homeowners send their financial information, and banks are supposed to send contact information for a particular individual at the bank and a 12-month account history.

I've attached a sample account history that one of my clients received. It is worthless as presented, though technically not illegal. While it was certainly intended, apparently banks need to be told that the account history needs to be comprehensible. The bill would fix this problem going forward.

Thank you for considering this important bill, and please do not hesitate to let me know if I can be of assistance as you consider it. We sincerely hope that you support the strongest possible version of this bill.

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DATE	TRAN	PDTO	TRAN AMT	PRIN	INT	ESC	L/C	OT-AMT
010912	FEI	0501	-13.50	46-BIE-BATCH INSP EXP		INVO-INSPECTION-VERIFY		
010312	E91	0501	-2133.42	PAYEE = NORWICH CI		-2133.42	CHK# 00121969663	
123111	YTD	0501	.00	.00	.00	4206.90	.00	.00
121411	FEI	0501	-13.50	46-BIE-BATCH INSP EXP		INVO-INSPECTION-VERIFY		
121011	E20	0501	-1217.00	PAYEE = N L C INSU		-1217.00	.00	.00
110911	FEI	0501	-13.50	46-BIE-BATCH INSP EXP		INVO-INSPECTION-VERIFY		
101011	FEI	0501	-13.50	46-BIE-BATCH INSP EXP		INVO-INSPECTION-VERIFY		
090711	FEI	0501	-13.50	46-BIE-BATCH INSP EXP		INVO-INSPECTION-VERIFY		
080811	FEI	0501	-13.50	46-BIE-BATCH INSP EXP		INVO-INSPECTION-VERIFY		
071511	E91	0501	-2133.42	PAYEE = NORWICH CI		-2133.42	CHK# 00121910270	
070611	FEI	0501	-13.50	46-BIE-BATCH INSP EXP		INVO-INSPECTION-VERIFY		
060311	FEI	0501	-13.50	46-BIE-BATCH INSP EXP		INVO-INSPECTION-VERIFY		
050611	FEI	0501	-13.50	46-BIE-BATCH INSP EXP		INVO-INSPECTION-VERIFY		
040511	AA	0501	.00	.00	.00	.00	.00	.00
040411	FEI	0501	-13.50	46-BIE-BATCH INSP EXP		INVO-INSPECTION-VERIFY		
030711	FEI	0501	-13.50	46-BIE-BATCH INSP EXP		INVO-INSPECTION-VERIFY		
020111	FEI	0501	-13.50	46-BIE-BATCH INSP EXP		INVO-INSPECTION-VERIFY		
010311	FEI	0501	-13.50	46-BIE-BATCH INSP EXP		INVO-INSPECTION-VERIFY		

010311 E91 0501 -2073.48 PAYEE = NORWICH CI -2073.48 CHK# 00121847637

123110 YTD 0501 .00 .00 1760.88 4079.62 .00 .00

123110 EI 0501 1.16 .00 .00 1.16 .00 .00

121010 E20 0501 -1218.00 PAYEE = N L C INSU -1218.00 .00 .00

120110 FEI 0501 -13.50 46-BIE-BATCH INSP EXP INVO-INSPECTION-VERI

110210 FEI 0501 -13.50 46-BIE-BATCH INSP EXP INVO-INSPECTION-VERI

093010 FEI 0501 -13.50 46-BIE-BATCH INSP EXP INVO-INSPECTION-VERI

083010 FEI 0501 -13.50 46-BIE-BATCH INSP EXP INNC-INSPECTION NO C

081910 SR 0501 1101.14 .00 00 .00 .00 .

UNAPPL 1101.14

081910 SR 0501 -1101.14 .00 .00 .00 .00 .

UNAPPL -1101.14

081810 DEB 155.00 400001794 HUNT LEIBE 235709 100818

39-FRCLSR ATTY FEE FATT-FORECLOSURE ATTY FEE

081810 DEB 35.00 400001794 HUNT LEIBE 235709 100818

52-FORECLOSURE COSTS CERT-CERTIFIED COPIES

PF1-DETAIL PF3-RETURN PF4-ADD NOTE PF5-CHG PRTY

081210 PA 0501 .00 388.64 297.12 469.42 .00 .

UNAPPL -1155.18

081210 PA 0401 .00 388.00 297.76 469.42 .00 .

UNAPPL -1155.18

081210 PA 0301 .00 387.35 298.41 469.42 .00 .

UNAPPL -1155.18

081210 AA3 0201 PDT FROM 1100812 TO 1100201

081210 AA4 0812 ESC-FROM 370.11 TO 469.42

081210 AA1 0812 PI-FROM 1072.68 TO 685.76

081210 AA2 0812 INT FROM 6.24000 TO 2.00000

081210 FER 0812 .00 44-REINSTMNT TO EXPENSE MISC-MISCELLANEOUS

UNAPPL 178.50

081210 FEP 0812 .00 46-BIE-BATCH INSP EXP MISC-MISCELLANEOUS

UNAPPL -178.50

081210 FEP 0812 .00 44-REINSTMNT TO EXPENSE MISC-MISCELLANEOUS

UNAPPL -178.50

081210 SRZ 0812 3397.65 .00 .00 3397.65 .00 .00

081210 UI .00 .00 -3397.65 .00 .00

081210 MDZ 0812 .00 -12404.81 9007.16 .00 .00 .00

081210 UI 12404.81 -9007.16 .00 .00 .00

081210 SR 0812 .00 .00 .00 408.12 .00 .00

UNAPPL -408.12

081210 AA5 0812 LST PYT FROM 1100428 TO 1100201

081210 AA3 0812 PDT FROM 1090320 TO 1100812

081210 AA9 0320 TERM FROM 360 TO 343

081210 AA8 0320 MAT DATE FROM 13509 TO 13903

081110 SR 0320 1442.79 .00 .00 .00 .00 .00

UNAPPL 1442.79

081110 PR8 0320 -1442.79 -206.15 -866 53 -370.11 .00 .00

081110 SR 0420 1442.79 .00 .00 .00 .00 .00

UNAPPL 1442.79

081110 PR8 0420 -1442.79 -207.22 -865.46 -370.11 .00 .00

080510 SR 0520 1133.86 .00 .00 .00 .00 .00

UNAPPL 1133.86

073010 FEI 0520 -13.50 46-BIE-BATCH INSP EXP INVO-INSPECTION-VERIFY

071610 E91 0520 -2073.48 PAYEE = NORWICH CI -2073.48 CHK# 00121776393

063010 FEI 0520 -13.50 46-BIE-BATCH INSP EXP INVO-INSPECTION-VERIFY

060110 FEI 0520 -13.50 46-BIE-BATCH INSP EXP INVO-INSPECTION-VERIFY

051910 SR 0520 1133.86 .00 .00 .00 .00 .00

UNAPPL 1133.86

043010 SR 0520 .00 .00 .00 .00 .00 .00

042910 FEI 0520 -13.50 46-BIE-BATCH INSP EXP INVO-INSPECTION-VERIFY

042810 PA 0520 .00 207.22 865.46 370.11 .00 .00

UNAPPL -1442.79

042810 UI .00 .00 .00 -53.63 .00

042810 PA 0420 .00 206.15 866.53 370.11 .00 .00

UNAPPL -1442.79

042810 UI .00 .00 .00 -53.63 .00

042610 AA3 0320 PDT FROM 1100201 TO 1090320

042610 AA5 0201 LST PYT FROM 1100409 TO 1100114

042610 SR 0201 178.50 .00 .00 -408.12 .00 .00

UNAPPL 586.62

042610 FER 0201 -178.50 46-BIE-BATCH INSP EXP MISC-MISCELLANEOUS

042610 AA 0201 .00 12404 81 .00 .00 .00 .00

042610 SR9 0201 -3397.65 .00 .00 -3397.65 .00 .00

042610 AA4 0201 ESC-FROM 448.10 TO 370.11

042610 SR 0201 1133.86 .00 .00 .00 .00 .00

UNAPPL 1133.86

042610 PR9 0201 -1133.86 -387.35 -298.41 -448.10 .00 .00

042610 SR 0301 1133.86 -36.50 .00 .00 .00 .00

UNAPPL 1170.36

042610 PR9 0301 -1133.86 -388.06 -297.70 -448.10 .00 .00

040910 RP 0401 1133.86 388.06 297.70 448.10 .00 .00

033010 FEP 0301 1000.00 192-HAM SRVCR UPFRONT HAMI-HAM INCENTIVES

031210 FER 0301 -13.50 44-REINSTMNT TO EXPENSE

031210 FEP 0301 13.50 46-BIE-BATCH INSP EXP

031210 FEP 0301 13.50 44-REINSTMNT TO EXPENSE

031210 SR 0301 36.50 36.50 .00 .00 .00 .00

031210 RP 0301 1133.86 387.35 298.41 448.10 .00 .00

021610 AA9 0201 TERM FROM 360 TO 343

021610 AA8 0201 MAT DATE FROM 13509 TO 13809

021610 AA4 0201 ESC-FROM 370.11 TO 469.42

021610 AA1 0201 PI-FROM 1072.68 TO 685.76

021610 AA2 0201 INT FROM 6.24000 TO 2.00000

021610 SRZ 0201 3397.65 .00 .00 3397.65 .00 .00

021610 UI .00 .00 -3397.65 .00 .00

021610 MDZ 0201 .00 -12404.81 9007 16 .00 .00 .00

021610 UI 12404.81 -9007.16 .00 .00 .00

021610 FER 0201 .00 44-REINSTMNT TO EXPENSE MISC-MISCELLANEOUS

UNAPPL 178.50

021610 FEP 0201 .00 46-BIE-BATCH INSP EXP MISC-MISCELLANEOUS

UNAPPL -178.50

021610 FEP 0201 .00 44-REINSTMNT TO EXPENSE MISC-MISCELLANEOUS

UNAPPL -178.50

021610 SR 0201 .00 .00 .00 408.12 .00 .00

UNAPPL -408.12

021610 AA5 0201 LST PYT FROM 1100114 TO 1100201

021610 AA3 0201 PDT FROM 1090320 TO 1100201

021010 FEI 0320 -13.50 46-BIE-BATCH INSP EXP INVO-INSPECTION-VERIFY

011410 FEI 0320 -13.50 46-BIE-BATCH INSP EXP INVO-INSPECTION-VERIFY

011410 PA 0320 .00 205.09 867.59 370.11 .00 .00

UNAPPL -1442.79

011310 SR 0220 1059.63 .00 .00 .00 00 .00

UNAPPL 1059.63

011110 E91 0220 -2006.14 PAYEE = NORWICH CI -2006.14 CHK# 00121706887

123109 YTD 0220 .00 .00 2609.12 3830.49 .00 .00

123109 PA 0220 .00 204.03 868.65 370.11 .00 .00

UNAPPL -1442.79

123109 EI 0120 .55 .00 .00 .55 .00 .00

123009 SR 0120 1059.63 .00 .00 .00 .00 .00

UNAPPL 1059.63

123009 SR 0120 -1059.63 .00 .00 .00 .00 .00

UNAPPL -1059.63

121709 SR 0120 1059.63 .00 .00 .00 .00 .00

UNAPPL 1059.63

121409 FEI 0120 -15.00 46-BIE-BATCH INSP EXP INVO-INSPECTION-VERIFY

121409 SR 0120 383.16 .00 .00 .00 .00 .00

UNAPPL 383.16

061509	FEI	1120	-15.00	46-BIE-BATCH INSP EXP		INVO-INSPECTION-VERIFY		
051409	FEI	1120	-15.00	46-BIE-BATCH INSP EXP		INVO-INSPECTION-VERIFY		
041409	FEI	1120	-15.00	46-BIE-BATCH INSP EXP		INVO-INSPECTION-VERIFY		
030909	FEI	1120	-15.00	46-BIE-BATCH INSP EXP		INNC-INSPECTION NO CON		
021109	FEI	1120	-15.00	46-BIE-BATCH INSP EXP		INNC-INSPECTION NO CON		
010909	E91	1120	-1824.35	PAYEE = NORWICH CI	-1824.35	CHK# 00121537729		
123108	YTD	1120	.00	.00	9646.14	3606.96	.00	.00
123108	EI	1120	19.59	.00	.00	19.59	.00	.00
123008	AA	1120	.00	.00	-882.94	.00	.00	.00
121008	E20	1120	-922.00	PAYEE = N L C INSU	-922.00	.00	.00	
120108	RP	1120	1442.79	200.88	871.80	370.11	.00	.00
110108	RP	1020	1442.79	199.84	872.84	370.11	.00	.00
100308	RP	0920	1472.43	198.80	873.88	399.75	.00	.00
090108	RP	0820	1472.43	197.77	874.91	399.75	.00	.00
072908	RP	0720	1472.43	196.75	875.93	399.75	.00	.00
071008	E91	0620	-1824.35	PAYEE = NORWICH CI	-1824.35	CHK# 00120044783		
070108	RP	0620	1472.43	195.73	876.95	399.75	.00	.00
053008	RP	0520	1472.43	194.72	877.96	399.75	.00	.00
050108	RP	0420	1472.43	193.71	878.97	399.75	.00	.00
032908	RP	0320	1472.43	192.71	879.97	399.75	.00	.00
022908	RP	0220	1433.99	191.71	880.97	361.31	.00	.00
013108	RP	0120	1433.99	190.72	881.96	361.31	.00	.00
010808	E91	1220	-1782.61	PAYEE = NORWICH CI	-1782.61	CHK# 00120001652		
010308	RP	1220	1433.99	189.74	882.94	361.31	.00	.00
123107	YTD	1120	.00	.00	883.93	.00	.00	.00

122907 EI 1120 1.96 .00 .00 1.96 .00 .00

122007 PT 1120 1543.88 .00 .00 1543.88 .00 .00

122007 ITR 1120 OLD 125 45 NEW 30000 29 PBAL 169796.99 EBAL

PERCENT 100.0000

122007 RT 1120 -1543.88 .00 .00 -1543.88 .00 .00

121707 RP 1120 1433.99 188.75 883.93 361.31 .00 .00

121307 AA 1020 .00 .00 .00 .00 .00 .00

121307 SR 1020 1182.57 .00 .00 1182.57 .00 .00

STATEMENT OF JOE TROISI
IN SUPPORT OF GOVERNOR'S BILL 6355

Members of the Committee, thank for your allowing me to provide these comments today. My name is Joe Troisi. I am a disabled Army veteran and a married father of 3. Our family lives in Norwalk. Because my wife has a job interview today, I must stay home with my kids and cannot provide these comments in person. But please accept them and know that I submit them in strong support of Governor's Bill 6355.

After making ten years' mortgage payments on time, I fell on hard times after losing my job in the building industry in November 2008. While I was current, I asked Bank of America for a loan modification. A representative told me I needed to be 90 days past due for them to consider me. Not wanting to ruin my near perfect credit score, I borrowed money from relatives to make the payments until borrowing was no longer an option. I couldn't pay my mortgage. As soon as I was at 90 days late, I started my efforts again with Bank of America.

I was luckily enough to get a new job in the meantime. But Bank of America started a foreclosure anyway. So I requested mediation. In mediation, Bank of America kept losing my paperwork, showing up unprepared with different lawyers, and the representatives on the phone never knew what was happening on my account. My balance kept growing with legal fees and other costs. Finally, after about 7 mediations, Bank of America made me an offer I could afford, at a lower interest rate. Even though my balance had grown considerably in the meantime, and we were now underwater on the house, I accepted it. The representative told me the offer would be sent to me in writing in a couple weeks.

I never received it. The next time I went to mediation, the new representative had no information about the offer, and demanded another set of financial documents. Having nothing but my word against Bank of America's, and an uphill battle to make Bank of America follow through, I submitted another set of documents. After several more months and a few more mediations – now Spring, 2011, two and half years after I had initially lost my job – Bank of America made me a new offer that was hardly affordable, and much higher than the verbal offer I accepted. My interest rate wasn't even lowered. All I had to show for at least 10 mediations was a loan that was more than 20 years longer, an extension that hardly reduced the payments.

I had no choice to accept it and struggle along, getting as much extra work as I could, and pay as much as I could. But the economy remains stuck, and it's been hard to keep up.

I don't think I'd be in this position if Bank of America had reviewed my first set of documents, and sent people who knew something and could do something to mediation. I would have also liked to go in front of a judge and tell him my story after 3 mostly useless mediation sessions, so that he could see what Bank of America was doing.

I wish Governor's Bill 6355 had been in place when I was in mediation. I hope you can support it, and I thank you for your time.

February 19, 2013

The Honorable Senator Leone
The Honorable Representative Tong
Co-Chairmen, Joint Committee on Banks
Legislative Office Building, Room 2400
Capitol Avenue
Hartford, Connecticut 06106

HB 6355 AN ACT CONCERNING HOMEOWNER PROTECTION RIGHTS

Senator Leone, Representative Tong and Members of the Banks Committee:

Thank you for this opportunity to testify, I am here representing Connecticut's 125 credit unions in opposition to HB 6355.

First let me tell you a little about credit unions. Credit unions are not-for-profit financial cooperatives; we are owned by and exist to serve our members, and we are not for profit financial cooperatives. Credit unions do not issue stock or pay dividends to outside stockholders. Instead, earnings are generally returned to our members in the form of lower loan rates, higher deposit rates, and lower or no fees. Credit unions are democratically controlled; every member is also an equal owner. We have volunteer boards of directors elected from the membership. In addition to providing a full suite of financial products & services to our members, we also believe we have a fiduciary duty to educate our members and participate directly in the communities in which we provide services.

The credit union industry supports proactively assisting their members in holding on to their homes and goes to great lengths to work with our members to make sure that is possible. However, in the rare occasion when that is not possible, we work towards a fair resolution for all involved parties. Credit unions' motto is, "people helping people" and when there is an issue with one of our member's ability to pay, we assist them in any possible way we can. We did not create the housing crises and did not participate in sub-prime lending which has affected so many.

This bill adds unnecessary levels of mandated bureaucracy and prescribes certain actions that may hinder the processes already used by credit unions as they diligently work to help their members remain in their homes. In addition, there may be "unintended consequences" in the form of added provision expenses, resulting in unnecessary incurred expenses that would further deteriorate the bottom lines of a fragile, but slowly recovering industry. Speaking for the credit union industry, this would adversely affect ALL of our members, as they are the beneficiaries and active participants in the ownership and support of their respective credit unions.

Thank you very much for your time and consideration.

Dr. Anthony L. Emerson, DBA, CCUE, C.P.M.
President & CEO
The Credit Union League of Connecticut

Bank of America

Bank of America Home Retention Efforts in Connecticut

Overview

Bank of America is committed to helping our customers stay in their home or otherwise avoid foreclosure whenever possib A critical element of reaching our customers is through the National Mortgage Outreach team's proactive efforts to meet wit customers face-to-face through events, mobile tours, Customer Assistance Centers and partnerships with third-party organizations.

Bank of America Customer Outreach Event Results

Since January 2009, Bank of America has participated in more than 1,200 events in 45 states and Washington, D.C. assisting more than 164,000 homeowners. That includes more than 250 bank sponsored events and mobile tours where we met witl more than 51,000 homeowners, 162 bank sponsored events were in 2012 alone. Through our bank sponsored events we have created a unique customer experience in which we bring the full loan modification process – including underwriting a financial counseling – under one roof, giving us the ability to review our customers for all home retention or transition options.

In Connecticut, we have participated in 26 events since 2009, meeting with more than 2,800 homeowners, four have been bank sponsored events.

	Hartford July 14-16, 2011	Stamford July 14-16, 2011	Hartford Jan. 19-21	Bridgeport Jan. 19-21
Customers Solicited with Direct Marketing, Phone, Email	5,000	20,000	6,100	
Customers Who Attended the Event	324	502	123	116

Previous Connecticut Events:

- Nov. 28, 2012: Event sponsored by Gov. Dannel P. Malloy, Attorney General George Jepsen and the CT Department of Banking in Waterbury

Connecticut Home Retention Results

Bank of America services more than 128,200 customer loans in Connecticut – 16,000 (12%) of which are delinquent.

	2008-2011	2012 Total	Total Results
Proprietary Modifications[1]	9,853	1,742	11,595
Making Home Affordable[2]	3,032	639	3,671
Total	12,885	2,381	**15,266**

[1]Non-government modification programs for 1st and 2nd l
[2]1st & 2nd liens through all Making Home Affordable progr

Customer Assistance Centers (CAC)

Bank of America has opened 50 CACs, including one in Connecticut, in some of the metropolitan areas that have been the hardest hit by the downturn in the economy and housing market. The centers allow trained associates to counsel customers follow their file through the entire loan modification process, make decisions in many cases, and assist with other foreclosur prevention solutions if a modification is not possible. Since the first CAC opened in 2009, Bank of America has met with more than 123,000 customers at our CACs, including nearly 2,000 customers in Connecticut. Appointments are available M-Th fro 9 a.m. to 8 p.m., F from 9 a.m. to 6 p.m. and Sat from 9 a.m. to 1 p.m. Meetings with a Customer Assistance Specialist are by appointment only.

Southington
738 West Street
860.385.9259 or 855.848.9052

Additional Resources for Customers

- **In Person:** Visit bankofamerica.com/homeowner event or call toll-free to 1.855.201.7426 to register for a Bank of Ameri outreach event, or the Customer Assistance Center number above to schedule an appointment.
- **Over the Phone:** Call 1.800.846.2222, M – F 8 a.m. – 12 a.m., Saturday 8 a.m. – 8 p.m., Sunday, 3 p.m. – 12 a.m. ET.
- **Online:** Visit bankofamerica.com/homeloanhelp for checklists to help you prepare, more information about your options and all the ways Bank of America can help.

000402
31 Pratt Street
Hartfori
tel (8
fax (8(

Testimony of Oz Griebel
President and CEO of the MetroHartford Alliance
on
House Bill 6355
An Act Concerning Homeowner Protection Rights
2/19/2013

Chairman Leone, Chairman Tong, and members of the Committee, I thank you for the opportunity to provide testimony on House Bill 6355. My name is Oz Griebel, and I am the President and CEO of the MetroHartford Alliance. The Alliance, an organization of the Region's leading businesses, education and health care institutions, and municipalities, works to ensure that the Hartford Region competes aggressively for jobs, capital and talent.

With respect to House Bill 6355, we agree with the Administration that the residential foreclosure and mediation process needs to be tightened. As previously stated, Connecticut has the third longest foreclosure process in the nation with an average timeframe of 690 days. As you've heard from John Patrick and others, the proposed Bil will not improve this process and is likely to lengthen the time frame and thereby make it more costly.

Any increased delay and cost clearly exacerbates the negative effect on other properties in a neighborhood. In addition, such delay and cost also undermine the predictability needed by real estate investors and the building trades related to decisions concerning renovation and new start initiatives and the employment opportunities that accompany such projects.

While we recognize that the foreclosure process must provide appropriate protections tc homeowners, we oppose House Bill 6355 for the reasons noted above. More importantly, we look forward to working with the Administration, the Legislature, the Connecticut Bankers Association, and other interested parties to pass legislation that also ensures the predictability and speed necessary for increased investment in our current and additional housing stock and for the employment opportunities that come with such investment.

Testimony of Abraham Scarr, Director

Connecticut Public Interest Research Group (ConnPIRG)

in support of

Governor's House Bill 6355:

An Act Concerning the Homeowner Protection Rights

Chairperson Tong, Chairperson Leone and Members of the Committee: My name is Abe Scarr and I am the Director of the Connecticut Public Interest Research Group (ConnPIRG). Thank you for the opportunity to testify today in support of House Bill No. 6355: An Act Concerning Homeowner Protection Rights.

In the wake of the foreclosure crisis, Connecticut has led the nation with its foreclosure prevention mediation program, launched in 2008 and updated in 2011. The further reforms included in H.B. 6355 strengthen the program, strengthen homeowner protections, and should be passed. Homeowners facing foreclosure deserve a fair opportunity to refinance or otherwise come to a mediated agreement with their lender in a timely manner. They should also not have to worry about being foreclosed upon while participating in the mediation process.

H.B. 6355 provides incentives to reach agreements in a timely fashion by calling for a court hearing if no resolution is met after a third mediation. The bill also requires that all parties negotiate in good faith and with full authority to approve settlements. These are common sense reforms that will improve the mediation program, prevent unnecessary foreclosures, and further position Connecticut as a national leader in foreclosure prevention.

While we believe these are the most important reforms of the bill, we also support the provisions strengthening enforcement of the servicing standards of the February 2012 Attorney General Settlement, as well as requiring banks to pay municipal recording fees for mortgage transfers.

Again, thank you for the opportunity to testify in support of H.B. 6355, An Act Concerning Homeowner Protection Rights.

abe@connpirg.org
860-233-7554

HOME BUILDERS & REMODELERS ASSOCIATION OF CONNECTICUT, INC.
3 Regency Drive, Suite 204, Bloomfield, CT 06002
Tel: 860-216-5858 Fax: 860-206-8954 Web: www.hbact.org

Your Home Is Our Business

February 19, 2013

To: Senator Carlo Leone, Co-Chairman
Representative William Tong, Co-Chairman
Members of the Banking Committee

From: Bill Ethier, CAE, Chief Executive Officer

Re: **HB 6355, AAC Homeowner Protection Rights**

The HBRA of Connecticut is a professional trade association with about nine hundred (900) member firms statewide employing tens of thousands of CT's citizens. Our members, all small businesses, are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to our diverse industry and to consumers. While our membership has declined over the course of our seven-year Great Recession from its high of 1,500 members, we build between 70% to 80% of all new homes and apartments in the state each year and engage in countless home remodeling projects.

We have serious concerns about HB 6355 because of the threats it creates to the availability of credit that is critically necessary to restore a healthy housing market.

Admittedly, we are not competent to talk about the details of the foreclosure mediation process itself because, as new housing developers and builders, our clients (home buyers) are not generally in the group of people struggling with foreclosures. Therefore, our experience with the process is very limited. However, we do understand and depend on credit markets and we know all too well the critically important role that available credit plays in a healthy housing market.

The new home market, which must recover if Connecticut is to enjoy a healthier economy, is being depressed, in part, by larger than normal inventories of unsold and foreclosed homes in the existing market. While the existing home inventory is slowly improving as the number of existing sales increases in the state, the large inventory of foreclosed homes, which we understand to be greater than 7% of all homeowners, becomes more of a drag on the struggling rebound of a new home market. Anything you do regarding foreclosures should be to help speed up Connecticut's notoriously slow process to move foreclosed homes out of the system. We do not see how HB 6355 accomplishes this necessary task; in fact, the new out of balance burdens on lenders appear to be counterproductive by placing more potholes in the road to foreclosure resolutions.

Concerns over the availability of credit, both end mortgages and for ADC (acquisition, development and construction) financing, have been at or near the top of our list for the duration of our seven-year housing depression. Many of the

concerns we expressed to you back in 2009 (see attached) are as relevant today as they were then. In particular, the continued lack of availability of ADC financing is a significant strain on our industry's ability to produce new homes. If the committee desires, I can share with you a more up to date quarterly national ADC financing survey of builders that is referenced in our 2009 memo.

Please do not be fooled by the positive national housing news. The healthy rebound of housing markets in the United Stated has not yet reached the northeast. Our national economists at NAHB (Nat'l Assoc of Home Builders) recently predicted that the northeast, being burdened by a number of impediments, is one to two years behind the national recovery and any number of economic disruptions could mean we will not recover prior to the next recession. We are teetering on the edge here of another drop in new housing activity. While we work hard to try and improve the heavy burden of regulations on our industry in Connecticut, and our national organization works hard to improve the federal rules and structures that govern housing finance, any further disruption to lending here will be destructive to our industry's hopes for a better future and a better Connecticut economy.

In particular, the vague and seemingly one-sided "good faith" requirements in HB 6355 as well as the litigation advantages provided to homeowners are very likely to slow down the foreclosure process or make the foreclosure process otherwise more expensive for lenders. This will lead lenders to be more reluctant to provide mortgage lending here in the first place. Why would you do this?

We are not banks, but we are business people. We understand making investments, taking risks and facing uncertainties. In any business, the higher risk one has to take or the more uncertainty looming in front of business prospects, the higher return on investments one demands. The lenders who choose to stay in Connecticut and be willing to lend if HB 6355 is adopted will tighten their credit underwriting even further – as confounding as that may be since getting a loan today is as difficult as it has ever been. They will do this to try to reduce risks and uncertainties. And, mortgage rates will be higher for everyone and fees could be charged to offset the higher risks lenders will face. It will likely also disrupt and make more costly ADC financing for new home developments because lenders will know any new development will be less viable if end mortgaging financing for the new home buyers is more costly to those buyers.

We strongly urge you to remove from the bill any provision that could disrupt the availability of credit for future mortgages or for ADC financing. We urge you to review what other states have done to speed up their foreclosure processes to help lift Connecticut off the bottom as a place to finance, build and sell homes.

Thank you for the opportunity to express our views on this important topic.

Attachment

HOME BUILDERS ASSOCIATION OF CONNECTICUT, INC.
1245 FARMINGTON AVENUE, 2nd Floor, WEST HARTFORD, CT 06107
Tel: 860-521-1905 Fax: 860-521-3107 Web: www.hbact.org

Your Home Is Our Business

December 9, 2009

To: Senator Gary LeBeau and Representative Jeffrey Berger, Co-Chairs, and members of the Commerce Committee
Senator Bob Duff and Representative Ryan Barry, Co-Chairs, and members of the Banks Committee

From: Bill Ethier, CAE, Chief Executive Officer

Re: Invitational Forum on the Credit Crisis

I apologize for not being able to attend today's forum due to prior meeting commitments that cannot be resolved. On behalf of the HBA of CT, we very much appreciate the invitation to highlight how credit issues are hurting the production of new homes and apartments and would welcome the opportunity to work with you on solutions.

The HBA of Connecticut is a professional trade association with 1,100 member firms statewide, employing tens of thousands of Connecticut citizens. Our members are residential and commercial builders, land developers, remodelers, trade contractors, suppliers and those businesses and professionals that provide services to our diverse industry. Despite a membership drop from 1,500 firms over the past 18 months, we remain strong and committed to rebuilding our industry and Connecticut's economy. To understand the economic and jobs engine of housing and the taxes produced for all levels of government, please see our Housing & Economic Development web page (attached).

HBACT members are alarmed at the current lending environment. Members are struggling to find lending sources for acquisition, development and construction (AD&C) loans, have problems with appraisals due (we think) to the new Home Valuation Code of Conduct (HVCC) regulations, and face stringent FHA pre-sale requirements on condos.

In meetings over the summer with the state's congressional delegation, builders from across the state repeated the same problem: a lending environment that has made bankers reluctant to fund any projects, even viable projects by borrowers with good credit. Builders spoke of long-standing banking relationships strained and even severed over the lack of credit – even for approved projects that were selling well. It's perplexing.

Our strong anecdotal evidence is backed by the Nat'l Assoc. of Home Builder's (NAHB's) Quarterly Finance Survey. The survey includes builders nationwide and the problems are identical to what builders in Connecticut are experiencing. Our summary of the latest NAHB survey, with a few of the report's charts, is attached for your review. The full report is posted on our website at www.hbact.org.

Some of the most relevant results of NAHB's survey explain the worsening conditions for all categories of lending in Quarter 2 2009 versus Q1. Builders' reasons for the worsening conditions are ranked, as are the reasons given by lenders to builders for

restricting new loans. Finally, the survey reveals that an overwhelming majority of builders are putting projects on hold until financing conditions improve.

The home building industry has led the country out of past economic downturns by building homes and creating jobs. But this recession is burdened by the lack of lending to finance a recovery. In addition, in this recession the price of land has remained high so builders and developers are not buying land in preparation for the recovery. Not building new homes keeps the economy idling in neutral, rather than moving forward. In Connecticut, this trend is evident in the lack of building permits issued by towns. In an average year, 9,000 to 10,000 permits would be issued. In 2009, the number might not even reach 3,000, the lowest number of building permits since records were kept.

We do not necessarily blame the banks for the difficult lending environment. Their reluctance to lend due to possible over-reaching regulatory changes and uncertain liability for loan officers and other lending managers can be equated to our reluctance to invest our capital in brownfields or in other places where regulatory burdens and uncertain liability counsel against taking such risks.

In addition to difficult or non-existent AD&C loans, new rules for appraisals are also causing extensive problems with home sales. NAHB's November numbers show that builders are reporting one-third of new home sales are lost due to appraisal issues, higher than the reported one-fourth of sales lost due to appraisal problems last summer.

The Home Valuation Code of Conduct (HVCC) regulations passed in 2009 were designed to shore up lapses in the appraisal process that may have allowed inflated appraisals on properties. However, the new regulations go too far in the opposite direction. By trying to create even greater separation between the lending and appraisal process, the HVCC rules have resulted in the use of appraisal management firms and appraisals not consistent with the market (e.g., ignoring signed contracts between a willing seller and buyer), use of foreclosed or short sales as comparables, and automated valuation models. All of these are now driving appraised property values down and cancelling sales. At the very least, appraisers should be familiar with the community and prevented from using distressed sales as comps.

Finally, in the current lending environment, more buyers are turning to **FHA-backed mortgages, which create road blocks for members with condominium projects**. For a condo project to receive FHA approval, the builder can not own more than 50% of the units (was 70% until recently). These pre-sale requirements leave many sales in limbo until enough buyers are lined up to overcome the 50% hurdle – a new kind of "Catch 22" for the industry. One real estate agent reported having to tell a buyer their condo purchase would have to wait until several other buyers were also ready to buy before they would be able to get a mortgage. This has brought condo projects to a halt.

To the extent legal and regulatory changes can be made in CT, we urge you to do so. At the federal level, we need to all jointly pressure our Congressional delegation to make better rules to facilitate lending. Thank you for the opportunity to comment on these issues.

Web page (from 2-15-13): At www.hbact.org, under the Knowledge Center menu, click on "Housing & Economic Development" then click on "Homes Do Pay for Themselves":
http://www.hbact.org/displaycommon.cfm?an=1&subarticlenbr=226#HomesPay

Homes Do Pay for Themselves!

When considering the impact of new homes on a community, fully consider both sides of the equation. To accurately answer the age-old question of whether homes pay for themselves, towns and cities must consider all the taxes and fees paid by or from new homes, including from the new economic activity and job creation resulting from new homes, plus the true costs to service those homes. In particular, let facts dissolve the myth that homes produce too many public school children. The links below to articles and research reports reveal a factual truth: **New Housing More Than Pays for Itself and Are Economic Engines for Our Communities and the State!**

The Connecticut Economic Digest - State of CT extensively references the housing impact study that NAHB's Elliot Eisenberg did for us in the spring 2012; see lead housing article on pg 1 (7-20-12)

Housing's Impact on CT's Economy (1 pg summary), presentation by NAHB's Senior Economist, Elliot Eisenberg, to CT's legislature; Presentation Slides; backup REPORT; COSTS (March 8, 2012)

See how the **Cost of Community Services ("COCS")** "studies," usually cited for the proposition that homes are economic losers for local governments, are economically flawed.

Residential Demographic Multipliers from Rutgers University - New Home Occupant Estimates for Connecticut - See how many public school children really come from new housing. Rutgers University, Center for Urban Policy Research, demonstrates that one or two bedroom apartments bring a community small numbers of school age children. Even three, four and five bedroom homes bring much fewer public school children to a community than most people assume.

University of Massachusetts, Donahue Institute - Fiscal Impact of Mixed-Income Housing on MA Communities - This study demonstrates that school costs in Massachusetts rose independently of school enrollment. Increased costs on local school systems were usually due to rises in health care costs and pensions expenses.

Deconstructing the Myths: Housing Development Versus School Costs - Federal Reserve Bank of Boston confirms what numerous studies prove: Housing Pays Its Own Way!

Massachusetts Institute of Technology, Center for Real Estate, Effects of Multi-Family Housing on Single Family Home Values - This MIT study found that mixed-income rental developments did not negatively impact the sale prices of houses in the neighborhoods surrounding the rental developments.

From the Partnership for Strong Communities - see **Housing and Municipal Budgets: Figures, Facts and Phenomena**

Legal Assistance Resource Center ❖ of Connecticut, Inc. ❖

44 Capitol Avenue, Suite 301 ❖ Hartford, Connecticut 06106
(860) 278-5688 x203 ❖ cell (860) 836-6355 ❖ fax (860) 278-2957 ❖ RPodolsky@LARCC.org

H.B. 6355 -- Homeowner protection rights

Banks Committee public hearing -- February 19, 2013

Testimony of Raphael L. Podolsky

Recommended Committee action: **JOINT FAVORABLE**

This bill, which is part of the Governor's legislative recommendations, makes numerous important improvements in the way in which foreclosure cases are handled in Connecticut. It clearly recognizes ways in which lenders have imposed unnecessary hindrances to the mediation process and addresses them. We strongly support this bill. Its improvements include:

- Assuring that lenders make available in mediation sessions a person with full authority to settle the debt. The failure of lenders to be ready to mediate has been a major source of delay in mediation.
- Easing burdens on the homeowner for repeat mediation sessions by allowing counsel to appear on behalf of the homeowner after the first mediation session and requiring lenders to use information provided by the homeowner in the settlement process if the mediator determines it is current and reasonably complete. Some lenders, having required the homeowner to produce extensive financial materials, are themselves not ready and then, when finally ready, demand new documentation from the homeowner on the ground that the filed information has become stale.
- Incorporating compliance with federal guidance standards and litigation agreements into the concept of good faith bargaining.
- Requiring greater court review of the mediation process if no settlement is reached within three mediation sessions.
- Strengthening sanctions for bad faith bargaining.
- Permitting accelerated procedures in cases in which the property being foreclosed is blighted and abandoned.
- Allowing the homeowner to raise a broader range of defenses.
- Preventing evasion of state and municipal recordation fees by the failure to record assignments of mortgage debt on the land records.
- Requiring foreclosure data filings with the Banking Commissioner.

Sarah Poriss, Attorney at Law, LLC
Hartford, CT
860-593-1758

Testimony in support
Governor's Bill No. 63
February 19, 20

My name is Sarah Poriss and I am here to testify today in support of Governor's Bill No. 6355, A Act Concerning Homeowner Protection Rights.

I am a solo attorney and I work almost exclusively with clients who are in debt or who are in foreclosure. Since the commencement of the Foreclosure Mediation Program in 2008, I have assisted dozens of clients through the mediation program. These are homeowners whose only hope of staying their homes is a combination of assistance from their lenders to modify the terms of their mortgages and buying homeowners time to get back on their feet financially to be able to afford the modified payments on their mortgages. My job is to strike a balance between keeping my clients in their home during the modification process and keeping their attorney's fees low—the fees I have to charge and th fees the attorneys for the lenders charge the longer the mediation and modification process takes.

The changes proposed to the foreclosure procedures in this Bill will assist both homeowners an lenders. I say that because I believe it is always better for the lender to turn a non-performing mortgag into a performing mortgage. This in turn keeps families in their homes and in their communities, theret preserving home values and neighborhood stability. Many of my clients remain successfully in their homes after participating in the foreclosure mediation program: I started working with one family, a couple with three children, in September, 2010, who would certainly have had their case go to judgme and have lost their home, but thanks to my ability to get them into the mediation program they have just this month been approved for a permanent modification of their mortgage. The statutory requirement of mediation in good faith- and this Bill's narrowing of the definition of good faith- will result in lenders focusing more closely on foreclosure mediation and modification of mortgages, or else be at risk of strict and meaningful sanctions.

The changes proposed by this Bill will reduce and hopefully eliminate the Kafka-esque pattern submitting financial documentation and proof of income to the lender over and over that usually force the less sophisticated or disabled homeowners to drop out of the process. Empowering the mediators to determine when a financial package is complete will standardize what mortgage servicers can requir homeowners to submit so they will no longer be able to hold back a modification application based on arbitrary criteria, which will give every homeowner the same shot at saving their home.

A suggested change to the Bill would be to permit homeowners to participate in 'pre-mediatior meetings with the foreclosure mediators, who will help homeowners assemble their financial packages prior to engaging in formal mediation with the lender—this change will make the formal mediations more productive for all participants and using pre-mediation sessions to assemble the financial information will prevent homeowners from using up the three mediation sessions working on this preliminary stage of the process.

In addition, the Bill will require that the lenders' attorneys come to mediation with authority to work out a payment plan to repay a mortgage. Currently homeowners are required to attend mediatio but when they make reasonable offers that would resolve their situation, the lender's lawyer is rarely i ever in a position to agree to the homeowner's offer. This is an important and necessary change to the process of keeping families in their homes and keeping the process fair. Thank you.

Statement of Migdalia Rey

IN SUPPORT OF GOVERNOR'S BILL 6355

My name is Migdalia Rey and I am a New Haven homeowner. I would like to talk about my experiences with CitiMortgage and a wrongful foreclosure that was brought against me.

I bought my home in 1985, and for more than 22 years made all of my payments on time, on the same mortgage. In 2007 I was injured in a car accident, and as a result missed some work. The resulting loss of income caused me to miss several mortgage payments, and in June 2008 Citi foreclosed on me. During that initial foreclosure, I successfully entered the foreclosure mediation program. In October 2008, Citi offered me a forbearance agreement that they said would cure my delinquency and default. I was told that if I made three higher payments, I could then resume my regular monthly payments.

As agreed, I made the three higher monthly payments and then returned to making my regular monthly payments. Throughout Citi representatives told me that I would receive my official documents shortly. In June 2009, after I had made several regular payments, Citi rejected my payment, told me I was in default, and immediately owed $15,700 -- the entire balance left on my mortgage. I was worried and confused, and called many times to try to get an answer as to what had happened, but Citi agents would not tell me. In October of 2009, the foreclosure action against me was renewed, even though I had done everything I was asked to.

Citi admitted in court that I had made all the payments required under the agreement. But it said it restarted the foreclosure because I hadn't submitted documents, even though its representatives never asked me for documents. We tried to fix the problem in mediation, but after several mediations – but no court hearing – we ended up in court.

Ultimately, I received a loan from CHFA that helped me bring my account with Citi current and they withdrew the foreclosure. However, in order to reinstate, I had to pay thousands of dollars in foreclosure costs and attorneys' fees to Citi. Those dollars included all the fees and costs charged to my account after I was foreclosed upon.

I tried pursuing counterclaims to recoup those improper fees, based on Citi breaking our agreement. But the judge struck them – not because they weren't valid, but because they didn't relate to the "making, validity or enforcement" of my underlying mortgage. This apparently let the judge toss me out of court without even listening to my claims because they related to the servicing of my loan, rather than the origination.

Even now, with the foreclosure action withdrawn, I do not feel secure. Three months ago, Citi stopped sending me statements, even though I was *still* making my payments on time. When I called to ask what was going on, I was told that I was listed as being in foreclosure again. It took multiple communications with Citi's attorneys and several months to get Citi to acknowledge that they had made yet another mistake and to get my statements sent again.

I support the mediation process. I do not think Citi intentionally foreclosed on me wrongfully. But I do think that in my case, mediation failed to do what it was supposed to. I had a

forbearance agreement with Citi to resolve my delinquency, but I was foreclosed on even when I complied. I took years before I was in front of a judge to discuss the issue. When I did, the judge decided he didn't need to listen to my claims.

Governor's Bill 6355 could have helped me in both instances. Better guarantees and clarity during mediation could have resolved my case, and the change proposed to the "making, validity or enforcement" requirement would allow me to pursue the counterclaims for the fees I was improperly charged.

Thank you for considering my story, and I hope you support Governor's Bill 6355.

TESTIMONY OF FRANCES KENNEALLY

In Support of HB 6355: An Act Concerning Homeowner Protection Rights

Personal Background

Members of the Committee, thank for your time and the opportunity to speak to you today. My name is Frances Kenneally, and I am here to speak in support of House Bill 6355, an Act Concerning Homeowner Protection Rights. I have lived in my home on 33 First Avenue in Waterford, Connecticut for over 43 years. I live with my son, Danny, who is 45 years old and mentally disabled. He can do many daily activities on his own, but he needs help shaving anc cooking, and he cannot stay home alone. I also live with Jeanne Brennan, who originally cam to us to take care of my son and me. She's been with us for 27 years, and is now a part of ou family. After 40 years in this house, I still love it. It is our home.

I've faced my share of difficulties throughout my 66 years of life. I've survived brain cancer an the removal of my kidney during my battle with kidney cancer. For a while in 2011, I had trout walking after slipping on ice and breaking my leg. I worked at a Northeast Utilities Nuclear Power Plant for 22 years, but I was forced into early retirement because of my cancer. Since early retirement, I have lived on a fixed monthly income.

Among all the troubles I've endured, the mediation process stands out as one of the most painful and unsettling experiences of my life. The constant fear and uncertainty took a toll on Jeanne and me. Jeanne's doctor told her that stress was causing her teeth to fall out. She no has false teeth. During that time, Jeanne's blood pressure got worse, and she needed a high dose of medication. I had lost my hair from the stress. I had to start wearing a wig. I had canc twice, and it never made me this upset or scared.

The stress continued for a very long time. We went to at least 17 mediation sessions over the course of three years. This was a dark time for us.

Early Days of Our Mediation Process

The threat of foreclosure has been a part of our lives for over three years, as we endured a disorganized and seemingly endless mediation process. But no matter what, I won't give up keeping us in our home.

We first started having trouble making our mortgage payments in early 2009. At that time I w recovering from the brain cancer and the removal of my kidney. Even with my prescription plans, my drugs alone were very expensive.

Jeanne had lost her job, which spread our fixed income even thinner. We had trouble paying even our most basic needs like electricity. It was a horrible time for our family, but we all stuc together. There was nothing else we could do. As hard as we tried, we realized that we had t do something about our mortgage payments. In April of 2009, OneWest initiated a foreclosur on our home and we were soon referred to the mediation process.

After our first two mediation sessions, we began a Home Affordable Mortgage Program (HAM loan modification. We entered into a Trial Payment Plan. At first, everything seemed fine.

The Trial Payment Plan contract said that we were supposed to make three monthly payme of $849.09. Once we had made the payments, the contract said we would be given a perma loan modification. We made each of our three payments, in September, October, and Nove of 2009, just as OneWest told us to in our Trial Payment Plan. We also provided them with sorts of paperwork that they requested.

After our third payment, we were supposed to get a permanent loan modification, but we di We didn't hear anything.

Troubles with the Mediation Process Begin

Not knowing what to do, we sent a fourth payment to OneWest in December of 2009. OneV rejected our check. We talked to a representative of OneWest, who told us to send the four payment to one of OneWest's lawyers. OneWest's lawyer also rejected the check, and told stop sending checks. We never got any explanation for this.

When the bank wouldn't let us send payments or give us a permanent modification, I was hysterical. I didn't know what was going to happen with our house. This was just the beginn of what has been three years of living in a constant state of fear and confusion—fear that w might lose our home of 40 years, even when we complied with every request OneWest had us.

On the Treadmill of Mediation: Two Years of Commitment Gets Us Nowhere

In January 2010, the mediation process went down a rabbit's hole that lasted over two year

Virtually every month it was the same routine:

- We would attend mediation, and each time the bank would have a new lawyer.
- The bank would say that they needed financial documents from us.
- Before the next session, we would send the documents they had asked for to the ba They would tell us that if we sent the documents, we would be all set to receive a permanent modification.
- When we arrived at the next mediation session, they would tell us they needed anotl document. Or they would tell us the documents we had already sent had become "sl because no one at the bank had looked at them for a long time.
- Then we would have to resend the same documents we had already sent.

This went on month after month after month. Eventually months turned into years: January through July 2012.

We made a list of what the bank asked for and when they asked for it. This list shows just h repetitive and broken the mediation process was:

- I sent proof of my monthly long-term disability payments at least four times.
- I sent proof of my monthly social security benefits at least three times.
- I sent proof of my structured settlement payments at least six times.
- I sent proof of my bank statements or transcripts at least four times.

- I sent my tax returns three times.

Every time I was told to submit a document, I did. We never knew why we had to resend tl documents. My monthly income barely changed over the course of those two years. Often documents we would send were virtually identical to documents we had sent in previous months. I could start a library with the number of documents I've had to send to OneWest would be a very depressing and repetitive library.

Some of the provisions in the proposed homeowner protection rights law would help a homeowner like me. For instance, after one of our mediation sessions, our mediator, Donr Salemi, filed a motion to extend the mediation period. In it, she wrote that on September 2 2010, OneWest informed her during mediation that "they had everything they needed." Bu didn't matter – OneWest could turn around and ask for more documents. And it did.

Ms. Salemi was an excellent mediator. She understood what was going on in our case, ar seemed to deal with both us and the bank fairly and with genuine concern for a mutually beneficial outcome. House Bill 6355 would give competent mediators like Ms. Salemi mor authority to positively influence the mediation process.

OneWest demanded that we submit more documents on at least 5 separate occasions aft mediator was told that our package was complete. House Bill 6355 would help stop this runaround by giving the mediator the ability to declare a package complete.

Mediation Became a Way of Life

We planned our lives around attending mediation sessions and complying with all of One\ demands.

When Jeanne's brother died, the funeral was scheduled on the same day as one of our mediation sessions. We asked to change the date so that we wouldn't have to leave the f early, but the bank and the court denied our request.

So, we left Jeanne's brother's funeral early to attend the mediation session. Jeanne could with her family on that day. Instead she was in a mediation session, and the same thing happened: the bank said they needed us to send more documents.

In 2011, we asked to delay our mediation session because I had broken my leg and coul walk. Again, the bank and court denied our request. Jeanne pushed me in a wheelchair t mediation session, after OneWest was able to postpone mediation sessions on three sep occasions.

It was the same song and dance every single time. We were told, "do this, and next time work out a permanent modification." We heard the same promise countless times. But wh would show up at the mediation session and see a new lawyer who asked for the same documents we had already sent, we knew that OneWest was not making a good faith eff work with us. We complied with their every whim, and they couldn't even keep our docur straight.

In my mind, promises are more than just words, especially promises about whether or not someone will get to continue living in their home of 40 years. To OneWest, dealing with us ' just a job. Every mediation session we met a new lawyer.

One of their lawyers seemed to realize that that we were discussing the future of our home, just some asset worth X amount of dollars. He was soon taken off the case, because he wa getting "too close" to us, and that was preventing him from doing what they wanted him to c

One particularly bewildering and frightening incident occurred on January 29, 2011. After w had been on this mediation roller coaster for nearly two years, we received a call from One' The OneWest representative told us that our home was in "active foreclosure." The representative on the phone said that there are "no lawyers involved anymore" and asked, ' you going to keep your house or not?" I was shocked and extremely emotional. The bank h told us that we would be all set; the bank told us that we were in the process of making a de

We felt like we were on a treadmill going nowhere. If House Bill 6355 had been in effect, we could have had a hearing with a judge after three mediation sessions passed without resolu We could have ended this process three years ago. We could have moved on with our lives started making monthly payments we could afford.

After Three Long, Dark Years...

In May of 2012, we finally got a permanent modification on our loan. We had to fight tooth a nail to get this permanent modification. Only after we began receiving free legal representa from the Yale Mortgage Foreclosure Litigation Clinic did OneWest slowly start to pay more attention to our case.

But our troubles are not over. The delays in the mediation process cost us a lot of money. T new monthly payment is higher than the payments we had to make during our first Trial Payment Plan in 2009.

During our three year roller coaster ride with the modification process, OneWest wouldn't le pay them what we could afford, which means we've accumulated a lot of fees and interest t we have to find a way to pay now.

This experience was truly a nightmare. From one day to the next, we never knew what migl happen. We never knew if we could trust what OneWest told us, so we lived in a constant s of fear and uncertainty.

The fight to keep our home isn't over for us. I'm not trying to say "poor me." This kind of hardship happens to people. We understand that our medical bills, my son's challenges, ar Jeanne's misfortune with her job aren't the bank's responsibility to fix.

But when we invested so much of our lives in saving our home and following the proper procedures for modifying our loan, we merely expected to deal with people who knew what going on in our case. We expected that when they promised us something, they would kee promise, or at least explain to us why they hadn't kept their promise. At the very least, we deserved to mediate with a bank that was actually paying attention to our case and looking the documents that we sent them. We deserved to mediate with a party that was making gc

faith effort in our case. Over the course of these three horrible years, we did not receive that kind of respect.

Thank you for your time and attention. I hope you will support Governor's Bill No. 6355 as proposed. After talking to the Yale Mortgage Foreclosure Litigation team about the bill, I believ it will prevent some of the same fear and uncertainty people like me have to face in the loan modification process.

Statement of Sandra Cenatiempo
IN SUPPORT OF GOVERNOR'S BILL 6355

Members of the Committee, thank you for listening to me today. My name is Sandra Cenatiempo and I live in Weston with my husband and 3 kids. I've driven up here today to support Governor's Bill 6355.

Together we own a small business, a deli in town, and I work in the real estate field. When the housing market crashed and our incomes dropped, we found ourselves in foreclosure. We started in the mediation program in fall 2009. After a couple mediation sessions, thanks to a recovery in our income, we were told that a modification was imminent.

Then our loan was transferred to Bank of America. Even though our loan had the same investor, Bank of America said it didn't have any of the paperwork we had sent to our prior servicer. So we started again. We spent almost all of 2010 sending Bank of America paperwork before it claimed it couldn't do anything because the "investor" wouldn't allow it. That investor was never on the phone – it sounded like the reps were just reading from a script.

We got legal help and soon the investor "problem" disappeared. But we were back to "normal" mediation, submitting documents and expensive profit & loss statements for another year, and Bank of America's excuses kept changing. We must have gone to 18 mediations. Finally, as we neared a resolution, Bank of America pulled the rug out from under us by ending the case and ending mediation, claiming we had "discussions" with Bank of America about its "withdrawal." We never did, and don't know why Bank of America told the court otherwise.

Instead Bank of America just restarted another foreclosure action against us a few months later. We've had two mediation sessions so far, and Bank of America wasn't prepared for either one.

We needed Governor's Bill 6355 three years ago, and we need it now. We could have gone to a judge, stopped the document runaround, and not faced a bogus "investor" problem. We know we're not alone, even in our Fairfield County suburb. Passing this people will help so many other Connecticut homeowners. Please support this bill. Thank you.

Sparky Abraham
Mortgage Foreclosure Litigation Clinic
Jerome N. Frank Legal Services Organization
Yale Law School
Speaking in Support of Governor's Bill 6355

Introduction

Members of the committee, thank you for allowing me to speak today. My name is Sparky Abraham and I am speaking in support of Governor's Bill 6355. I am a second year student at Yale Law School, and a law student intern in the Mortgage Foreclosure Litigation Clinic. The clinic represents homeowners facing foreclosure, including Ms. Kenneally who is also testifying today. We strongly support Governor's Bill 6355.

Connecticut has been a national leader in developing court-annexed mediation as a response to the national foreclosure crisis. We have represented clients in every stage of the foreclosure process. We have attended mediation sessions with clients, and some of our clients have come from referrals by the mediators themselves. Though the mediation program has saved thousands of homes in Connecticut from foreclosure, the mediation process as it exists now can be long and painful. We have seen first hand the financial and emotional harm it can cause to homeowners.

My purpose in testifying today is to focus on the legal challenges that homeowners and their representatives face in trying to ensure an efficient and successful mediation program, and to talk about how Governor's Bill 6355 will help.

Mediating in Good Faith

Both parties to any foreclosure are already required to mediate in "good faith."[1] Unfortunately this requirement is diluted by two types of uncertainty. First, "good faith" has not been defined in the foreclosure mediation context. And, second, the remedies available to homeowners when servicers violate the "good faith" requirement are so far undefined. Lawmakers need to provide more content to this requirement in order to ensure that servicers participate effectively in mediation.

For homeowners, there is a self-enforcing standard. If you don't appear in person, if you don't come ready to make a deal, if you don't bring the required documentation, then the mediation will be terminated and the foreclosure will move forward. Simply put, you will lose your home. Nobody wants to endure that trauma.

There is no similar impetus encouraging servicers to take the mediation process seriously. Though the plaintiffs in foreclosure actions are typically loan servicers, these servicers don't normally own the mortgage or debt. They simply collect fees for handling homeowners' payments and dealing with defaults. Therefore, servicers

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[1] *Uniform Foreclosure Mediation Standing Order A*

don't even have the direct incentive to fashion a modification that the owner of the debt would have, because, unlike the owner of the debt, the servicer will not be directly harmed by foreclosing on a severely under water home. Where the owner of the debt might derive an economic benefit from a modification, the servicers' only direct incentives are the fees they receive. And these fee incentives don't necessarily favor modification over foreclosure.

So, if mediation fails, servicers will simply foreclose. The borrower's home is just an item on a spreadsheet. Without a definition for "good faith," servicers have an incentive to just race to the bottom. Servicers are only incentivized to dedicate the bare minimum resources to the mediation. This can mean not sending representatives with settlement authority, or not even having such a representative available on the phone during mediation. This can also mean losing homeowners' financial documents, or failing to act on the documents provided until they become "stale." The result is that homeowners are faced with months of frustration and uncertainty, and often don't end up with a modification even when they can afford one. Due to the lack of definitions and lack of clarity in available remedies, homeowners and their attorneys are dissuaded from moving for sanctions, and courts are hesitant to approve them.

What Good Faith Means Now

The absence of a clear definition for "good faith" in the foreclosure context is exacerbated by the fact that "good faith" has too narrow of a definition in other contexts. For example, in breach of contract actions, a breach of the duty of good faith has required showing that the breaching party acted in "bad faith." Connecticut courts have held that "bad faith" involves a "dishonest purpose" or an "interested or sinister motive."[2]

The problem with this definition in the foreclosure mediation context is that servicers' failures in mediation often aren't "dishonest," "interested," or "sinister." Rather, they simply lack the incentives to take the process seriously, and so dedicate few resources and little attention to making mediation effective. The results of this systemic negligence are mediation periods that extend far beyond three sessions, a steady stream of different servicer representatives in each mediation period, and a process that is wasteful for all parties involved, including the courts.

How the Homeowner Protection Rights Bill Will Help

Governor's Bill 6355 will help remedy this situation. The bill defines good faith in terms of those practices that tend to make the mediation process more efficient and effective for all parties involved. Also, the bill defines failure to mediate in good faith in terms of the practices that tend to clog, frustrate, and delay the mediation

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[2] *Liberty Bank v. New London Ltd. P'ship*, CV064005236, 2006 WL 2556207 (Conn. Super. Ct. Aug. 7, 2006) (Quoting *Hudson United Bank v. Cinnamon Ridge Corp*, 81 Conn.App. 557, 576-577 (Conn. App. Ct. 2004)).

process most. Servicers and their representatives will have a clear indication of what is expected of them, and homeowners and their representatives will have clear standards to point to when alleging that servicers have failed to mediate in good faith. Finally, parties, their representatives, and the courts will all have a clear idea of what remedies are available when a party fails to meet its mediation obligations, and so will be able to adjust their behavior accordingly.

By authorizing mediators to deem homeowners' financial document submissions "reasonably complete," the bill will prevent borrowers from being asked to submit the same documentation over and over again due to the documents being lost or going "stale." By requiring that the court become involved after the third mediation session, the bill will actually conserve judicial resources that might otherwise be wasted in protracted and unsuccessful mediation.

Conclusion

As a free legal clinic serving homeowners in need in the state of Connecticut, our primary concern is making sure that homeowners who can afford a modification are able to stay in their homes. Too often, troubled homeowners who can afford a modification are bogged down in the mediation process, incurring fees that could have been avoided. We believe that by making the mediation process more effective and efficient, Governor's Bill 6355 will help homeowners avoid these catastrophic outcomes. We also believe that the bill will ultimately benefit mortgagees and servicers by clarifying what the mediation process requires and making the process less prone to burdensome delays. Finally, we believe that this bill will benefit the courts by helping cases move more quickly through the mediation process and on to universally beneficial solutions.

Thank you for your time, and for allowing me to comment on this important issue.

TESTIMONY OF JESSICA HUPPENBAUER IN SUPPORT OF GOVERNOR'S BILL 6355: AN ACT CONCERNING HOMEOWNER PROTECTION RIGHTS

I would like to thank the members of the Committee for allowing me to speak today. My name is Jessica Huppenbauer, and I am here in support of GOVERNOR'S BILL 6355: AN ACT CONCERNING HOMEOWNER PROTECTION RIGHTS.

I have lived in my home in Terryville since 2004. I began having difficulty paying my mortgage after my husband and I got divorced and the household income was reduced. I began asking for a modification, and my bank eventually offered me a trial plan. Although I paid on that trial plan, it never became permanent and I was sued for foreclosure.

I entered the court mediation program in September, 2011. Since that time, I attended approximately ten mediation sessions. I provided the bank with all documents that they requested. Instead of responding to my offers to settle, the bank continually requested new documents. When they did finally offer a modification, it involved an enormous down payment that did not make sense given the financial information that I had provided them with.

Eventually, the bank told me that they could not offer me a modification due to my mortgage insurance company forbidding it. When I contacted the insurance company, however, they told me that the bank had never reached out to them with a proposal. I am still waiting to get a straight answer from the bank on my offer to settle by accepting a loan modification, and the court has ordered that the bank send a representative to appear in person.

Governor's Bill 6355 would be a tremendous help to homeowners like me. Instead of going through ten mediation sessions, this bill would allow the court to ensure that the bank is complying with its duty to mediate in good faith much earlier in a case. The uncertainty and frustration that I have experienced over the last year and a half would be far less common that it is today. Banks, like homeowners, would need to follow the mediation rules and come prepared to respond to settlement offers.

I am grateful that I had the opportunity to participate in the mediation program, because it is often the only time that banks start listening to homeowners. I just ask that the Committee pass this bill to improve the program to ensure that cases get resolved more quickly and that banks, like mine, that refuse to answer my numerous requests would face greater accountability and oversight by the court. Thank you very much for your time.

Statement of Frederick J. Weinle
In support of Governor's Bill 6355

Members of the Committee, thank you for listening to me today. My name is Fred Weinle, I live in Enfield with my wife, and I am speaking today in support of the Governor's Bill 6355.

We've lived in our home for 22 years. We run a small refinishing business, and our business took a huge hit after the housing market collapsed. We struggled to make our mortgage payments till we had no choice but to miss them. We started applying for a modification but got nowhere.

Bank of America started a foreclosure against us in May 2010. By that point, we were back to making enough money to afford a modification. But we got nowhere in mediation. Bank of America kept asking for new documents, kept sending new lawyers to mediation, and only our mediator knew everything that had happened in our case. Bank of America then began to say that it couldn't do anything because the investor wouldn't let it modify our loan.

But the investor never got on the phone. We managed to get the mediation to last a bit longer when our mediator pointed out the problems with all of Bank of America's conflicting statements. But after 21 mediations – yes, 21 – Bank of America managed to terminate mediation.

We managed to get help and now Bank of America is playing a different tune outside of mediation, claiming the investor just need to approve its proposal. We're hopeful it will work.

But mediation didn't work for us. We wish we could have gone before a judge. We wish we could have talked to the investor in mediation rather than clueless Bank of America representatives.

We understand that Governor's Bill 6355 could have changed so much for us. We believe this would have been done at least two years ago if this bill had been law.

Thank you for your time. I hope you support Governor's Bill 6355 for homeowners like me.

Statement of Cynthia Gilbert
IN SUPPORT OF GOVERNOR'S BILL 6355

Members of the Committee, thank you for listening to my testimony today. My name is Cindi Gilbert, and I live in Enfield with my husband and children. I am here today to support Governor's Bill 6355.

We've lived in our home for 12 years. Starting in 2008, following a series of illnesses ai deaths of my mother in law and grandmother, and in turn increased expenses and decreased income, we fell behind on our mortgage. After a number of document exchanges and a trial plai with Bank of America, we thought we had resolved the matter with a loan modification. We ha the documents signed and properly notarized, and mailed them back a few days before the January 27, 2010 deadline. But on January 26, 2010, one day BEFORE the documents were du at Bank of America, we were served with foreclosure papers.

This seemed like a simple matter to resolve through mediation. But, more than 3 years later, it still hasn't been resolved. We went through at least eight mediations over more than a year, more document exchanges, and more trial plans. No Bank of America representative was able to say anything other than "send us more documents." We couldn't get anywhere through mediation.

But then mediation ended – Bank of America withdrew our case and lied to the court, saying it was based on "discussion between the parties on their own" when no discussions outside of mediation had taken place. Mediation stopped. We were left with no resolution, and everyone at the bank still said we were "in foreclosure," and it was as if nothing had happened during the year-and-a-half of mediation.

With legal help, we were able to get back on track and closer to resolution. We are agai in a trial payment arrangement and have made our third trial payment this month, out of three, and have our fingers crossed that this will be over soon, after nearly five years. Although recently, Bank of America's lawyers started mailing us letters again, and we worry that we'll be "surprised" with another package from the marshal even though we've made all the payments w were supposed to make.

Had the Governor's Bill 6355 been the law when we were in mediation, we wouldn't have had to deal with useless mediations. We could have gone to a judge and explained what ha happened – all that was needed to resolve our case, was for Bank of America to honor its agreement. We could have done something about all the know-nothing representatives and held Bank of America accountable for wasting our time and our money through the foreclosure costs for so long.

Please support Governor's Bill 6355. I know it will help people like me, so that they wil not have to go through what I did.

CONNECTICUT BANKE
ASSOCIATION

Testimony by John Patrick

Chairman, President & CEO, Farmington Bank

On Behalf of the Connecticut Bankers Association

In opposition to: House Bill 6355,

An Act Concerning Homeowner Protection Rights

Numerous industry, press and governmental entities *conservatively* estimate that an average residential foreclosure in Connecticut takes almost two years. This judicial foreclosure process, and the State's foreclosure mediation program, are both clearly broken. We agree with the Bill's proponents that the process is broken, *however* we completely oppose how the bill seeks to "fix" the foreclosure delays. Indeed the bill would create a system that would further delay foreclosures, increase the cost of mortgage loans to consumers, and damage the economy – which is finally starting to make modest gains.

Since it started, most of the legislative and judicial changes to the mediation program have been at the request of the consumer advocates. Those changes have only resulte in more delays in the foreclosure process and wound up making Connecticut's foreclosure process the third slowest in the nation. The eight month moratorium on an actions against the borrower is a perfect example.

FHFA which regulates Fannie Mae and Freddie Mac recognizes this delay, after doing a careful and exhaustive study. Connecticut's average two year delay will result in a 52% surcharge on guarantee fees that Fannie Mae and Freddie Mac charge on over 70% of

(860) 677-5060 10 Waterside Drive Farmington, Connecticut 06032-3083 FAX (860) 677-5066

mortgages originated in the State. This "risk based" pricing due to the two year delay, increases costs, time, complexity and the ultimately the risks of foreclosing on a property in Connecticut.

That means new borrowers or customers who purchase or refinance homes will ultimately pay that increase, because of Connecticut's broken system.

The advocates will "dismiss" the FHFA study. That's because it's difficult to admit whe you're wrong. Since the beginning of the mediation program they have pushed for moratoriums, delays, cram downs and eliminating lender rights. These costly delays h everyone in the State including homeowners who are in foreclosure; the neighborhoo where properties are in foreclosure; housing values; the home building industry; the State's overall economy and the economic engine of Connecticut, the Banking Industr

House Bill 6355, *An Act Concerning Homeowner Protection Rights,* appears to have be proposed in an effort to address concerns with the state's foreclosure process and mediation program. As the title implies, this legislation is once again focusing on "protecting" homeowners in foreclosure from *perceived* lender or servicer misconduct *and* expanding homeowner's rights in the State's mediation program.

Unfortunately, the bill totally ignores the fact that most often, the homeowner in foreclosure, the mediators and the courts - slow the process to a crawl. Whether a ba is small or large, the result is the same across the state.

We can only assume that bill's drafters incorrectly believe that Connecticut's lengthy foreclosure process is due to a lack of tools available to borrowers, mediators and cou to fend off lenders. Furthermore, the bill assumes that lenders do not want to foreclos

quickly and that they use ineffective laws to conduct themselves improperly in mediation, dragging out the process. Nothing could be further from reality.

Banks are in the business of making loans, not owning property. A foreclosure is an unfortunate last resort, usually caused by a life changing event of the borrower and tha process needs to be fair to both the borrower and the lender.

In the aftermath of the housing bust, and the massive volume of new foreclosures brought on by the housing crisis and subsequent economic recession, it is understandable (though false) that some may believe that the State's failing foreclosur process is the fault of the lender/servicer community.

We believe that this is a vastly over simplistic and incorrect assumption. HB 6355, is based on this false assumption and enacting it in its current form would have a dire consequences for homeowners, home buyers, neighborhoods, the economy and lenders.

The Facts

- the State's Community Banks, which never participated in sub-prime lending, don't us large servicing law firms and are diligent about pursuing a fair and orderly foreclosure outcome *also experience the same devastatingly long delays in mediation.*

- the Nation's five major servicers have foreclosures in all 50 States yet when they compare the actual time it takes to come to a resolution on a foreclosure by State, Connecticut ranks as one of three slowest. *These servicers follow the same internal procedures across the country, yet Connecticut stays as one of the slowest.*

- Connecticut's mid-size regional banks, *many of whom receive high praise from the judicial mediation program administrators*, experience the same long delays in Connecticut.

We can agree on one thing, Connecticut's foreclosure system and more specifically it mediation program is broken and it needs to be fixed. Unfortunately, the approach taken in HB 6355 is not the answer. We cannot start from the premise that the lende always wrong and the borrower is always right.

The lending industry stands ready willing and able to work with the all interested par to find viable solutions to make the foreclosure system more effective, while maintaining fairness to both borrowers and lenders.

STATES WITH MEDIATION/JUDIC FORECLOSURE	FORECLOSURE DAYS	DAYS TO OBTAIN TITLE	FHFA TARGET	NOTES
New York	820	820	YES 30 bps	
New Jersey	750	750	YES 20 bps	
Connecticut	690	690	YES 20 bps	
Florida	660	660	YES 20 bps	
Maryland	485	605		
Hawaii	500	590		
Maine	570	570		
Illinois	480	540	YES 15 bps	
Vermont	510	540		
New Mexico	450	510		
Delaware	480	480		
Ohio	450	480		
Pennsylvania	480	480		
Kentucky	420	450		
Michigan	270	450		
Indiana	440	440		
Nevada	360	360		
Maine	350	350		
Washington	330	330		

and multiple dwelling units upon the termination of a contract for cable service by the home owner or MDU owner. Section 76.613(d) requires that when Multichannel Video Programming Distributors (MVPDs) cause harmful signal interference MVPDs may be required by the District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director

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BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2012–N–13]

State-Level Guarantee Fee Pricing

AGENCY: Federal Housing Finance Agency.

ACTION: Notice; input accepted.

The Federal Housing Finance Agency (FHFA) oversees the operations of Fannie Mae and Freddie Mac ("the Enterprises"). The Enterprises are in conservatorships, and, as Conservator, FHFA has statutory obligations in its conduct of the conservatorships, including preserving and conserving assets. Though the Enterprises are congressionally chartered and federally supervised and regulated, state laws and practices can have a significant impact on their loan default costs.

This Notice sets forth an approach to adjust the guarantee fees ("g-fees") that the Enterprises charge for mortgages that finance properties with one to four units ("single-family mortgages") in certain states to recover a portion of the exceptionally high costs that the Enterprises incur in cases of mortgage default in those states.

Background

The Enterprises charge g-fees to compensate for the credit risks they undertake when they own or guarantee mortgages. The g-fees the Enterprises currently charge on single-family mortgages vary with the type of loan product and with loan and borrower attributes that affect credit risk. FHFA has a responsibility to ensure that those fees are proper and adequate. The single-family g-fees that the Enterprises charged prior to conservatorship proved inadequate to compensate for the level of actual credit losses they experienced. This contributed directly to substantial financial support being provided to the two companies by taxpayers.

G-fee payments to Fannie Mae and Freddie Mac generally include both ongoing monthly payments and an upfront payment at the time of Enterprise loan acquisition. Current Enterprise schedules for upfront g-fees may be found at *https://www.efanniemae.com/sf/refmaterials/llpa/pdf/llpamatrix.pdf* and *http://www.freddiemac.com/singlefamily/pdf/ex19.pdf*.

Recent experience has shown a wide variation among states in the costs that the Enterprises incur from mortgage defaults. This is due, in large part, to differences among the states and territories in the requirements for lenders or other investors to manage a default, foreclose, and obtain marketable title to the property backing a single-family mortgage. Foreclosure takes longer than average in some states as a result of regulatory or judicial actions. Further, in some states the investor cannot market a property for a period after foreclosure is complete. There is also variation among the states in the per-day carrying costs that investors incur during the periods when a defaulted loan is non-performing and, in some states, when a foreclosed property cannot be marketed. Those variations in time periods and per-day carrying costs interact to contribute to state-level differences in the average total carrying cost to investors of addressing a loan default. Because the Enterprises currently set their g-fees nationally, accounting for expected default costs only in the aggregate, borrowers in states with lower default-related carrying costs are effectively subsidizing borrowers in states with higher costs.

The principal drivers of differences across states in the average total carrying costs to the Enterprises of a defaulted single-family mortgage are, in order of importance—

1. The length of time needed to secure marketable title to the property;
2. Property taxes that must be paid until marketable title is secured; and
3. Legal and operational expenses during that period.

There is a wide variation among states in all three of those variables.

In light of these cost differentials, FHFA's March 2012 Conservatorship Scorecard set forth the objective for Fannie Mae and Freddie Mac of developing appropriate risk-based guarantee fee pricing by state. FHFA's proposal described here would adjust the upfront fees that the Enterprises charge when they acquire single-fam mortgages in states where Enterprise costs that are related to state foreclos practices are statistically higher than national average. The size of the adjustments would reflect difference costs in those states from the average.

FHFA recognizes that the data the Enterprises have used to calculate st level cost differences in this proposa are based on a combination of Enterprise experience and estimatior Actual costs incurred by the Enterpri in the future may vary over time and among individual defaults within a state. Because of this variability, FHF planned approach focuses on five sta that are clear outliers among states in terms of their default-related costs.

This document outlines the approa that FHFA is considering and discus: potential additions and changes to th calculation of such fees in the future. Through this Notice, FHFA is provid an opportunity for public input on th subjects. After reviewing the public input and determining a final state-le guarantee fee pricing method, FHFA expects to direct the Enterprises to implement the pricing adjustments in 2013.

Approach to State-Level G-Fee Adjustments

The approach set forth in this Notic is based on Enterprise experience and does not include the forward-looking impact of recently-enacted state and local laws that may increase the Enterprises' costs. FHFA intends to periodically reassess state-level pricin based on updated Enterprise data. Th agency may include the impact of newly-enacted laws if they clearly aff foreclosure timelines or costs, where such costs may be reasonably estimate based on relevant experience.

FHFA's approach would focus on th small number of states that have avera total carrying costs that significantly exceed the national average and, therefore, impose the greatest costs on Fannie Mae, Freddie Mac, and taxpayers. Mortgages originated in the highest-cost states would have an upfront fee of between 15 and 40 basis points, which would be charged to lenders as a one-time upfront payment on each loan acquired by the Enterpris after implementation. Based on curren data as described below, those five states are Connecticut, Florida, Illinois New Jersey, and New York.

Lenders may pass an upfront fee through to a borrower as an adjustment to the interest rate on the borrower's loan. Because the upfront fee is paid only once, its impact on the annual interest rate is much smaller than the

upfront fee itself. Dividing the upfront fee by five provides an approximation of the potential impact on the interest rate. To illustrate, a 15 basis point upfront fee, if fully passed through by the lender, would be roughly equivalent to an increase in the annual interest rate of three basis points. Under FHFA's planned approach, a homeowner in an affected state obtaining a 30-year, fixed-rate mortgage of $200,000 could see an increase of approximately $3.50 to $7.00 in his or her monthly mortgage payment, reflecting a range of upfront fee adjustments of 15 to 30 basis points.

The methodology used by the agency to develop the planned approach addresses only differences in the expected cost of defaults associated with single-family mortgages that will be acquired by the Enterprises in the future and are underwritten according to current standards. If FHFA had developed an approach using information on the realized default losses on loans the Enterprises acquired in the past decade, which were originated under less stringent underwriting guidelines, the increases in upfront fees in the states affected would be significantly greater, because recently acquired mortgages are expected to default at lower rates due to strengthened underwriting standards.

Methodology

The methodology used to develop the planned approach to state-level g-fee pricing relies on three key factors. The first is the expected number of days that it takes an Enterprise to foreclose and obtain marketable title to the collateral backing a mortgage in a particular state. The second is the average per-day carrying cost that the Enterprises incur in that state. The third is the expected national average default rate on single-family mortgages acquired by the Enterprises. To estimate the magnitude of the state-level differences in average total carrying cost, the estimation assumes that loans originated in each state will default at the national average default rate.

The table below, titled "Estimated Time to Obtain Marketable Title and Cost per Day Relative to the National Average," provides information on the time periods and costs used to develop the proposed fees. The column titled "Foreclosure Timeline in Days" shows, for each state, the target number of days after the last paid installment on a mortgage for a loan servicer to complete the foreclosure sales process. Those timelines are published in each Enterprise's servicing guide and are reviewed and updated as necessary every six months. The timelines shown in the column were published in June 2012 at *https://www.efanniemae.com/sf/guides/ssg/relatedservicinginfo/pdf/foreclosuretimeframes.pdf* and *http://www.freddiemac.com/learn/pdfs/service/exhibit83.pdf*.

The timelines are periods within which Enterprise servicers are expected to complete the foreclosure process for mortgages that did not qualify for loan modification or other loss mitigation alternatives. The timelines are derived from an analysis of the Enterprises' actual experience with foreclosure processing in each state, adjusted for existing statutory requirements and certain changes in law or practice during the historical period. The published timelines also take into account the effects that foreclosure moratoriums or other extenuating circumstances and lender-specific delays outside the expected norms for that state may have had on actual foreclosure timelines.

ESTIMATED TIME TO OBTAIN MARKETABLE TITLE AND COST PER DAY RELATIVE TO THE NATIONAL AVERAGE

State [1]	Foreclosure timeline in days [2]	Estimated average "unable-to-market" time in days	Total time to obtain marketable title in days	Cost per day relative to the national average [3] (%)	Rank (tota time * cost,
AK	300	0	300	93	
AL	270	0	270	93	
AR	280	0	280	102	
AZ	300	0	300	84	
CA	300	0	300	90	
CO	330	0	330	85	
CT	690	0	690	109	
DC	300	0	300	86	
DE	480	0	480	83	
FL	660	0	660	111	
GA	270	0	270	101	
GU	500	0	500	100	
HI	500	90	590	79	
IA	480	0	480	110	
ID	440	0	440	88	
IL	480	60	540	118	
IN	480	0	480	107	
KS	330	90	420	108	
KY	120	30	150	97	
LA	390	0	390	106	
MA	350	0	350	97	
MD	485	120	605	97	
ME	570	0	570	95	
MI	270	180	450	118	
MN	270	180	450	96	
MO	270	0	270	109	
MS	270	0	270	107	
MT	360	0	360	88	
NC	300	0	300	91	
ND	405	60	465	109	
NE	330	0	330	114	
NH	270	0	270	110	

ESTIMATED TIME TO OBTAIN MARKETABLE TITLE AND COST PER DAY RELATIVE TO THE NATIONAL AVERAGE—Continu

State [1]	Foreclosure timeline in days [2]	Estimated average "unable-to-market" time in days	Total time to obtain marketable title in days	Cost per day relative to the national average [3] (%)	Rank (tot time * cos
NJ	750	0	750	113	
NM	450	60	510	91	
NV	360	0	360	83	
NY	820	0	820	112	
OH	450	30	480	114	
OK	420	0	420	104	
OR	330	0	330	38	
PA	480	0	480	108	
PR	720	0	720	68	
RI	330	0	330	107	
SC	420	0	420	95	
SD	360	180	540	105	
TN	270	0	270	96	
TX	270	0	270	132	
UT	330	0	330	82	
VA	270	0	270	87	
VI	510	0	510	93	
VT	510	30	540	105	
WA	330	0	330	88	
WI	480	30	510	113	
WV	290	0	290	87	
WY	270	120	390	86	
National Average (UPB Weighted)	396	17	413	100	

[1] Includes the District of Columbia and certain U.S. territories. The Enterprises do not currently acquire loans in the Northern Mariana Islar or American Samoa.

[2] Foreclosure time frames are available online at: *https://www.efanniemae.com/sf/guides/ssg/relatedservicinginfo/pdf/foreclosuretimeframes* and *http://www.freddiemac.com/learn/pdfs/service/exhibit83.pdf*.

[3] Cost per day is expressed as an index relative to the UPB-weighted national average, where 100% represents the average cost. It exclu HARP loans.

[4] Rank is a function of the total time to obtain marketable title multiplied by the indexed cost. The product for each state is indicative of the ative total carrying cost upon which FHFA would base its adjustments to upfront fees. "1" represents the lowest-cost area and "54" the highe cost area.

The column titled "Estimated Average 'Unable-to-Market' Time in Days" shows Enterprise estimates of the additional time after the foreclosure sale date in certain states before an Enterprise can begin to market and sell the property. These additional periods of time are often due to a statutorily set post-foreclosure "redemption period" that allows a borrower to redeem or recover the property by paying off the defaulted loan, or are due to other court-mandated procedures that otherwise prevent an Enterprise from marketing and selling the foreclosed property. These time estimates were based on recent Enterprise experience and state law.

The column titled "Total Time to Obtain Marketable Title in Days" provides the sum of the number of days shown in the two preceding columns, which equals the estimated average length of time from the date of the last mortgage payment to the date on which the foreclosed property is eligible to be marketed for sale. Although these times are based on recent data, they do not reflect changes to state laws that have not been in effect long enough to influence the foreclosure timelines published by the Enterprises.

The second factor used in the estimation is the per-day carrying cost incurred by the Enterprises on non-performing loans, which varies across the states. That cost includes property taxes, legal expenses, hazard insurance, costs related to maintenance and property repairs, and the Enterprises' costs of financing a non-performing mortgage. These costs were estimated using recent data. State and local government decisions can significantly affect the carrying cost per day, especially with respect to property taxes.

The column titled "Cost per Day Relative to the National Average" shows a state-by-state index of estimated per-day carrying costs per dollar of unpaid principal balance, where the national average equals 100 percent. Those index values were derived from separate estimates from each Enterprise, which FHFA weighted on the basis of the Enterprises' respective market shares in recent years.

The column titled "Rank" shows the total time to obtain marketable title multiplied by the indexed per-day carrying cost. For each state, this product is indicative of the relative tot carrying costs upon which the agency would base its adjustments to upfront fees under the planned approach. The states, District of Columbia, and territories are ranked, with "1" representing the lowest-cost area and "54" the highest-cost area.

The first two factors—days to obtain marketable title and per-day carrying costs—provide estimates of the total carrying cost of a defaulted mortgage, b state. The third factor used in the methodology is the expected national average default rate on single-family mortgages acquired by the Enterprises. This was estimated using the national book of business acquired by Fannie Mae and Freddie Mac in the first half c 2012. Since the national average defau rate is used in the estimation, the upfront fees that the Enterprises would impose on loans originated in certain states, under FHFA's planned approacl are not affected by any variation that may exist at the state level in the credit quality of loans acquired by the Enterprises, expected future house pric movements, or other factors that may affect the likelihood of loan default

The methodology combines the three factors with appropriate rates of discount to produce present-value estimates of expected total default-related carrying costs for a new mortgage in each state. Those state-level estimates were produced separately by Fannie Mae and Freddie Mac. FHFA weighted each Enterprise's estimates by its respective market share in recent years to produce a single set of estimates. FHFA then calculated the standard deviation from the mean of the state-level estimates of expected total default-related carrying costs, which was found to be 10 basis points.

The planned approach focuses on the small number of states that have expected total default-related carrying costs that significantly exceed the national average and, thus, cause the greatest increase in average loss given default. Based on current data, loans in five states would be assessed upfront fees. The state between one and one half and two standard deviations from the mean, Illinois, would have an upfront fee of 15 basis points. The states between two and three standard deviations from the mean, Florida, Connecticut, and New Jersey, would have an upfront fee of 20 basis points. The state more than three standard deviations from the mean, New York, would have an upfront fee of 30 basis points.

This approach would allow for variation in practice among the states and impose upfront fees only on those states that are statistical outliers from the rest of the country. If those states were to adjust their laws and requirements sufficiently to move their foreclosure timelines and costs more in line with the national average, the state-level, risk-based fees imposed under the planned approach would be lowered or eliminated. The approach recognizes that each state establishes legal requirements governing foreclosure processing that it judges to be appropriate for its residents. It also recognizes that unusual costs associated with practices outside of the norm in the rest of the country should be borne by the citizens of that particular state rather than absorbed by borrowers in other states or by taxpayers.

Future Changes to State-Level G-Fee Adjustments

The planned approach bases state-level adjustments to upfront fees on past experience and a limited range of cost variables. FHFA would consider, in the future, changes to its methodology to address additional variables. For example, these could include estimates of the impact of recently-enacted laws and ordinances. Such calculations would be based on experience with similar laws and ordinances and their effects on per-day carrying costs. FHFA could also include a wider range of state actions in its methodology. For example, FHFA could consider state laws and ordinances affecting the disposition of acquired real estate following a default, commonly referred to as real estate owned (REO), and address attendant costs created by state and local rules that impose charges above a certain amount or impose duties that add to the costs of the Enterprises. The Enterprises, therefore, could undertake revisions to their state-level g-fees based on experience gained with additional measurement devices.

Input

FHFA invites input from any person with views on the planned approach and on potential future changes to state-level g-fee adjustments. In particular, FHFA is interested in the following three questions:

1. Is standard deviation a reasonable basis for identifying those states that are significantly more costly than the national average?
2. Should finer distinctions be made between states than the approach described here?
3. Should an upfront fee or an upfront credit be assessed on every state based on its relationship to the national average total carrying cost, such that the net revenue effect on the Enterprises is zero?

FHFA will accept public input through its Office of Policy Analysis and Research (OPAR), no later than November 26, 2012, as the agency moves forward with its deliberations on appropriate action. Communications may be addressed to FHFA OPAR, 400 Seventh Street SW., Ninth Floor, Washington, DC 20024, or emailed to *gfeeinput@fhfa.gov*. Communications to FHFA may be made public and would include any personal information provided.

Dated: September 19, 2012.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2012–23511 Filed 9–24–12; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget ("OMB") to extend through November 30, 2015, the current Paperwork Reduction Act ("PRA") clearance for information collection requirements in the FTC Red Flags/Card Issuers/Address Discrepancies Rules[1] ("Rules"). The clearance expires on November 30, 2012.

DATES: Comments must be submitted by October 25, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Red Flags Rule, PRA2 Comment, Project No. P095406" on the comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/RedFlagsPRA2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Steven Toporoff, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., NJ–3158, Washington, DC 20580. Telephone: (202) 326–2252.

SUPPLEMENTARY INFORMATION:

Title: Red Flags Rule, 16 CFR 681.1; Card Issuers Rule, 16 CFR 681.2; Address Discrepancy Rule, 16 CFR Part 641.

OMB Control Number: 3084–0137.

Type of Review: Extension of currently approved collection.

Abstract: The Red Flags Rule requires financial institutions and certain creditors to develop and implement written Identity Theft Prevention Programs. The Card Issuers Rule requires credit and debit card issuers to assess the validity of notifications of address changes under certain circumstances. The Address Discrepancy Rule provides guidance on what users of consumer reports must do when they receive a notice of address discrepancy from a nationwide consumer reporting agency. Collectively, these three anti-identity theft provisions are intended to prevent impostures from misusing another

[1] 16 CFR 681.1; 16 CFR 681.2; 16 CFR Part 6

The New York Times

Mortgages – Upshot of the Foreclosure Backlog – NYTimes.com - Excerpt

December 6, 2012

Upshot of the Foreclosure Backlog

By LISA PREVOST

FORECLOSURES are taking significantly longer in states where lenders must go through the co and the delay may or may not be good for borrowers, depending on their circumstances. But sor researchers say that dragging the process out hurts society at large.

About half of the 50 states have judicial foreclosure systems. The housing market crash so bogg down the systems in New York and New Jersey that foreclosures there have routinely dragged o two or three years; their timelines are among the longest in the country. The national average, w factors in nonjudicial states, is about one year, according to RealtyTrac, which monitors foreclo nationwide.

The sluggish process has caused a backlog of loans in foreclosure and is slowing the housing ma recovery in judicial states, says Michael Fratantoni, the vice president for research and economi the Mortgage Bankers Association. As of the end of the third quarter, according to the associatic percent of all loans were in foreclosure in judicial states, compared with 2.4 percent in nonjudic states.

A study released last summer by researchers at the Federal Reserve Banks in Boston and Atlant found that the longer properties languish in delinquency or under a bank's ownership, the great negative effect on the value of surrounding properties.

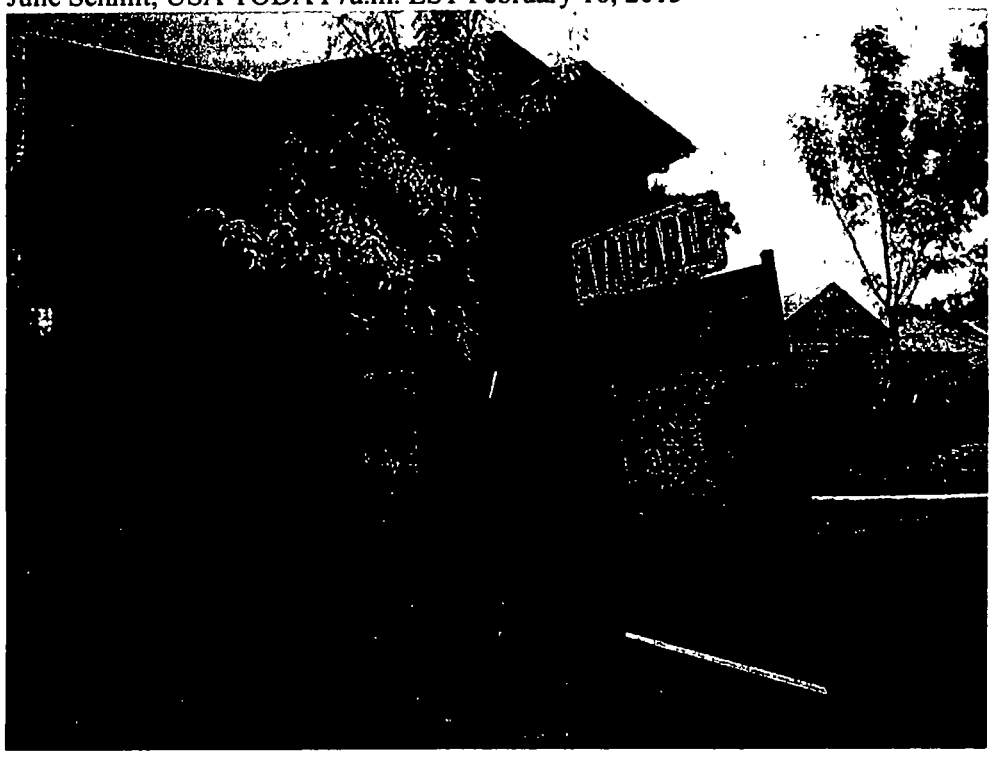
"The best outcome is to prevent the foreclosure," said Paul S. Willen, an economist and policy a at the Boston Fed. "But if it's clear that can't be done, it's in society's interest to get the foreclos done as soon as possible."

In a separate study last year, Mr. Willen and his colleagues question the basis for giving borrow more time to try to fix mortgage problems. The study found that avoiding foreclosure was no m likely for borrowers subject to either judicial foreclosure, or laws forcing lenders to wait 90 days before beginning foreclosure proceedings, than it was for other borrowers.

Consumer advocates agree that foreclosures are taking too long in some states. High concentrat vacant properties have taken a heavy toll on certain neighborhoods, said Michael D. Calhoun, tl president of the Center for Responsible Lending in Washington. "We agree that borrowers shou considered quickly for loan modifications," he said. "They're more successful if they're done ear

States' foreclosure pace affects home prices

Julie Schmit, USA TODAY7a.m. EST February 16, 2013



A home for sale in the Denver area.(Photo: David Zalubowski, AP file)

Story Highlights

- Home prices are up more in states with faster foreclosure processes
- Bloated supplies of foreclosed homes may hold down price gains
- Job growth and other factors affect prices too, experts say

Many states with faster foreclosure processes are seeing sharper increases in home prices than states whe foreclosures take longer to get done.

There are exceptions, and other factors — such as job growth — are likely stronger drivers of home price trends, economists say.

But home price data generally show stronger price increases in states where courts don't have to approve foreclosures than in states where they do. Foreclosures are completed faster where court approval isn't necessary.

Last year, home values tracked by Zillow, a web-based real estate tracker, rose an average 5.4% in the 24 where foreclosures don't go through the courts, according to Zillow. Where they do, the average increase 3.2%.

Asking prices, a leading indicator of price trends, show a similar pattern.

In January, asking prices in non-judicial states were up an average of 7.3% year-over-year vs. 3.1% for judi foreclosure states, show data from real estate website Trulia.

Non-judicial foreclosure states have tended to clear out distressed home inventory quicker, which is helpin prices, says John Burns, CEO of John Burns Real Estate Consulting. Its home price analysis shows that the major metropolitan areas that have seen the most rapid appreciation in the past year are in non-judicial foreclosure states.

Job growth and how far prices dropped during the housing bust are probably stronger drivers of home price trends, says Trulia economist Jed Kolko. But foreclosure speeds are a contributing factor, he and others say

In Florida, New York and New Jersey — all judicial foreclosure states — the average loan in foreclosure w past due for more than 31 months before the process was completed, according to December data from Len Processing Services.

In California, Arizona and Nevada — all non-judicial foreclosure states — that average was fewer than 22 months, LPS data show.

Those three states were among the top seven in terms of home value gains last year, Zillow's data show.

Homes lingering in foreclosure "creates real uncertainty," which hurts prices, and inhibits investor buyers, Stan Humphries, Zillow's chief economist.

Investors have played a big role in driving prices higher in Arizona, Nevada and California, he adds.

As of December, 10% of Florida's home loans were still in some stage of foreclosure, the highest percentag the nation. Behind it were New Jersey, at 7%, and New York, at 5%, according to CoreLogic.

The overhang of distressed homes in the market "is absolutely contributing" to smaller price gains in judici foreclosure states, says Mike Fratantoni, economist with the Mortgage Bankers Association.

Florida home values, up 6.4% last year, bested the national rise of 5.9%, Zillow's data show. But values ros less than 1% last year in New York and New Jersey, Zillow says.

Florida values would probably have risen more last year if more of its foreclosures were behind it, says Ko

That's because Florida, like Arizona, California and Nevada, saw home prices fall more than 40% from its before the housing bust. It's also a market that attracts investor and second-home buyers.

Exceptions to the trends in price gains between judicial and non-judicial foreclosure states underscore that factors influence home values, Kolko says.

For instance, Zillow's data show strong price gains last year in Indiana, a judicial state. On the other hand, Rhode Island had the greatest price depreciation last year, the data show, and it's a non-judicial state.

Burns' data show that five of the top 20 housing markets for price gains were cities with full or partial coun oversight of foreclosures, including Washington, D.C., New York and Miami.

Wall Street Journal Article

THE STREET
Shanthi Bharatway 11/30/2012
NEW YORK (TheStreet) --A large and growing backlog of foreclosures threaten the housing recovery in Ne York and New Jersey, according to economists at the New York Federal Reserve.
While home prices have recovered and other measures of housing activity have stabilized, the share mortgages in foreclosure in the two states exceed the national average.
In Northern New Jersey the share of homeowners in foreclosure rose to nearly 8% in 2012, while at tl national level the rate has dropped to about 4%. In downstate New York, which includes New York City met area, Long Island and Fairfield County, Connecticut, the rate hovered above 7%.
The increasing rate of foreclosures "creates challenges in sustaining and broadening the recovery we have the region," said Jaison Abel, senior economist at the New York Fed. He said downward pressure on t market is likely as these foreclosures work their way through the courts.
New York and New Jersey are among the 26 states that have adopted a judicial foreclosure process, where t bank is required to prove in court that the borrower is in default in order to foreclose.
In the aftermath of the housing bust, the flood of foreclosures overwhelmed the courts in these states. N foreclosure cases in New York, for instance, are projected to reach roughly 24,000 by the end of 2012, a 4 increase from 2011, according to a recent report on foreclosures submitted to lawmakers, as reported *Reuters*.
That is still well short of the peak in 2009 and 2010, before the robo-signing scandal, when officials at l banks including Bank of America, JPMorgan Chase, Citigroup and Wells Fargo signed off on a huge number foreclosures without verifying documents and following required procedures.
Post the scandal, the number of foreclosures across the country have reduced, but courts have heighten their scrutiny of foreclosure cases, while states have toughened laws to protect borrowers from impro foreclosure practices.
New York now requires banks that initiate a foreclosure action to file an affirmation certifying the accuracy supporting court documents, something that some banks have had difficulty complying with, according to annual report on foreclosures submitted to lawmakers

More borrowers now challenge foreclosures, adding to the caseload. Mediation agreements further prolc the process.
The average number of days a mortgage is in foreclosure from the notice of default to completion stood 1072 days in New York and more than 900 days in Jersey in the third quarter, according to *RealtyTrac*.
While the record timelines give borrowers more options in seeking out an alternative to foreclosure, strong borrower protection laws have become somewhat of a double-edged sword for home buyers in th states.
The longer a home stays in the foreclosure process, the greater the chances of the property deteriorating the homeowners lose the incentive to maintain it. So not only does a foreclosed home sell at distressed pric it drags down neighborhood prices as well.
The inventory of homes yet to hit the market also casts a shadow on the housing outlook in the region.
Recent data already points to big differences in the performance of markets where foreclosures are proces quickly and those that are processed through courts.

In Arizona for instance, home prices are up 20% year over year, according to the FHFA Home Price In
While overall foreclosure levels in Arizona are still high, foreclosure activity is on the decline. In contras
New York and New Jersey, prices are down 0.4% and 1.7% respectively over the same period.
There are also concerns that foreclosure delays may raise the cost of mortgage credit in the region.
One impact of the foreclosure delays that is yet to be studied is whether it causes underwater borrowe
default. "Delays can influence how long someone chooses to stay in their home," according to Joseph Ti
senior adviser to NY Fed President William Dudley. "You could see an increase in delinquencies. It is a real
But it[the excessive foreclosure delays] is such a novel experience that we don't have data to quantify
risk."
That perceived risk could be why housing giants **Fannie Mae** (FNMA) and **Freddie Mac** (FMCC)
proposing to raise guarantee fees in five states which the agencies believe have higher foreclosure costs
to their legal process, including New York and New Jersey. The proposal, if implemented, could lead to a ri
mortgage rates.
Recent academic research have faulted the judicial foreclosure laws for the lengthy timelines and the adv
impact on the housing market.
"The laws across states use different legal theories as the basis for mortgages, and they balance the righ
creditors and borrowers very differently," explains Assistant Professor of Real Estate Andra Ghent of the \
Carey School of Business in a recent papercalling for a unified regime. "The variations started ear
America's history, and they're not really based on economic reasons, but they're still having a major influ
on what's happening now with the housing market."
An earlier research paper in December 2011 by Federal Reserve Officials found that these borrower-frie
laws delay but do not prevent foreclosures.
More recently, however, research at Federal Reserve of Boston has found that foreclosure mediation ef
adopted by a handful of states including New York and New Jersey have seen some success.
"For homeowners, the home is the biggest investment they have. It is not surprising that states want to r
sure that all steps are taken to ensure that they remain in their homes," said the Fed's Tracy.
"Many systems work well under normal circumstances when they are not stressed. But it is difficult to sca
in rare situations when there is a huge demand on resources and this is a resource-intensive process," he
in response to critics of the process.
Todd Soloway, a real estate attorney with Pryor Cashman, says that while the majority of the borrowei
end up losing their home to foreclosures anyway, the courts ensure a sounder financial system. "The jui
process puts the onus on bankers to make sure everything is in order. Ultimately it would benefit both
borrower and the lender. It will not only keep the borrower in their homes, but also force lenders to be r
responsible in their lending."
Others argue that the delays in foreclosure process have actually helped the housing market by slowing
foreclosure frenzy on the part of banks. "Banks were competing to foreclose the fastest. Now the mark
more resilient,"says Peter Ticktin, of Ticktin Law Group that uncovered the robosigning scandal in Flo
"Maybe we have greater costs and time, but there are more people in their homes, less inventory to dep
the markets and the law is sacrosanct."

Fed Reserve
Action

5 Policy Implications

Do judicial intervention and the interposition of a right-to-cure period in the foreclosure process produce better outcomes? The answer to this question depends on how one defines outcomes. To analyze this, we first focus on the narrow goals of the laws — prevention of unjust or unnecessary foreclosures — and then consider the broader effect on the housing market and affected communities.

On their narrow goals, one has to conclude that both judicial foreclosure and right-to-cure statutes are policy failures. We have shown that neither approach has any effect on the number of borrowers who cure their delinquencies. If the laws allowed borrowers to escape from unjust or unnecessary foreclosures, we would see more cures and more modifications, neither of which occurs. Of course, a finding that borrowers *were* more likely to cure would not necessarily imply that either law was effective policy, because both laws exact high costs in terms of delayed foreclosures, the lack of any appreciable benefit saves us the trouble of conducting such a cost-benefit analysis.

In a sense, the failure of judicial foreclosure to affect outcomes is not so surprising. Legal scholars have long argued that the power-of-sale procedure can replicate the protections of the judicial process at much lower cost. Nelson and Whitman (1985, 536), for example, write that

> The underlying theory of power of sale foreclosure is simple. It is that by complying with the above type statutory requirements the [lender] accomplishes the same purposes achieved by judicial foreclosure without the substantial additional burdens that the latter type of foreclosure entails. Those purposes are to terminate all interests junior to the mortgage being foreclosed and to provide the sale purchaser with a title identical to that of the mortgagor as of the time the mortgage being foreclosed was executed.

It is important to understand that, despite the absence of direct supervision by the courts, the lender in a power-of-sale foreclosure has a strong incentive to follow the rules of law because any failure to do so clouds the title and reduces the value of the property. *U.S. Bank v. Ibanez*, *supra*, illustrates this point: a title insurer raised questions about whether the lender had followed proper procedures, which led the lender to go to land court to get a judicial stamp of approval. Some even argue that, in some cases, the fact that the courts have rendered a final judgment when a judicial foreclosure occurs precludes the borrower from raising issues that he or she might be able to after a power-of-sale foreclosure.

Our results show that lenders already do exactly what the lawmakers want them to do. In Section 3.2, we argued that the hazard rates implied that lenders foreclose more intensively

on the borrowers least likely to cure. In other words, borrowers who stand to benefit the most from additional time already get it. In Section 1, we showed that implementing a 90-day right-to-cure period had a big effect on the timing of foreclosure petitions but not on the timing of foreclosure sales, meaning, effectively, that borrowers already got a 90-day period to cure default.

But the laws obviously have broader effects and judging those effects is a far more nuanced task. At the crudest level, delaying the foreclosure process causes a wealth transfer from lender to borrower. The borrower lives rent-free while the lender loses interest income from the capital in the property and cannot get reimbursed for the depreciation. But there are other potential effects for the community as a whole.

Mian, Sufi, and Trebbi (2011) have argued that foreclosures depress house prices so therefore the judicial foreclosure process, which slows the pace of foreclosures, benefits the economy. Our results show that one must interpret any such claim with great caution. We have shown that the judicial procedure alters the timing but not the number of foreclosures. Thus, any test of the effect of different legal regimes on house prices is a joint test of the hypothesis that foreclosures drive down prices *and* that market participants are myopic and do not realize that there is a glut of foreclosed properties looming in judicial states. In fact, market commentators are equally as likely to attribute the weakness in the housing market to foreclosures as they are to "foreclosure overhang," the mass of what we call "persistently delinquent" borrowers for whom foreclosure is more or less inevitable.

Taking Mian, Sufi, and Trebbi's argument at face value, one might think that legal protections indirectly prevent foreclosures by slowing price declines and thus preventing delinquencies—that is, even if the laws do not prevent delinquencies from turning into foreclosures, they might prevent delinquencies from occurring in the first place. However, Mian, Sufi, and Trebbi (2011, 3) argue against this hypothesis, finding that "the rate at which homeowners default on their homes is almost identical in states that do and do not require judicial foreclosure. But the rate at which delinquencies progress into foreclosures is substantially lower in judicial requirement states."

The unambiguous effect of delaying foreclosure is that it lengthens the period for separation of ownership and control of residential property. As prominent housing economist Edward Glaeser writes:

> Delinquent homeowners want to inhabit and to control their homes. Lenders want to get them out and to limit the damage done to the property. During the foreclosure process, home occupants have no reason to invest in their homes. Indeed, spite sometimes pushes them to abuse the property. [This] logic suggests that such periods ensure an abuse of the housing stock, which is one reason why

References

Adelino, Manuel, Kristopher Gerardi, and Paul S. Willen. 2009. "Why Don't Lenders Renegotiate More Home Mortgages? Redefaults, Self-Cures, and Securitization." NBER Working Paper 15159. Cambridge, MA: National Bureau of Economic Research.

Collins, J. Michael, Ken Lam, and Christopher E. Herbert. 2011. "State Mortgage Foreclosure Policies and Lender Interventions: Impacts on Borrower Behavior in Default." *Journal of Policy Analysis and Management* 30(2): 216–232.

Cordell, Larry, and Vidya Shenoy. 2011. "The Cost of Delay." Manuscript. Philadelphia, PA: Federal Reserve Bank of Philadelphia.

Foote, Christopher, Kristopher Gerardi, Lorenz Goette, and Paul Willen. 2010. "Reducing Foreclosures: No Easy Answers." In *NBER Macroeconomics Annual 2009*, eds. Daron Acemoglu, Kenneth Rogoff, and Michael Woodford, vol. 24, chap. 2, 89–138. Chicago, IL: University of Chicago Press.

Mian, Atif, Amir Sufi, and Francesco Trebbi. 2011. "Foreclosures, House Prices, and the Real Economy." NBER Working Paper 16685. Cambridge, MA: National Bureau of Economic Research.

National Consumer Law Center. 2010. *Foreclosures*. The Consumer Credit and Sales Legal Practice Series, third edition. National Consumer Law Center.

Nelson, Grant S., and Dale A. Whitman. 1985. *Real Estate Finance Law*. Hornbook Series, Student Edition, second edition. St. Paul, MN: West Publishing.

Nelson, Grant S., and Dale A. Whitman. 2007. *Real Estate Finance Law*. Hornbook Series, Student Edition, fifth edition. St. Paul, MN: Thomson/West.

Osborne, George E. 1951. *Handbook on the Law of Mortgages*. Hornbook Series. St. Paul, MN: West Publishing.

Pennington-Cross, Anthony. 2010. "The Duration of Foreclosures in the Subprime Mortgage Market: A Competing Risks Model with Mixing." *Journal of Real Estate Finance and Economics* 40(2): 109–129.

Phillips, Richard A., and Eric M. Rosenblatt. 1997. "The Legal Environment and the Choice of Default Resolution Alternatives: An Empirical Analysis." *Journal of Real Estate Research* 13(2): 115–151.

homes often lose close to half of their value when they go through foreclosure.[57]

Indeed, of the 200 properties New York City cited in 2008 as the worst maintained, 77 were in the foreclosure process.[58] Policies designed to protect borrowers from foreclosure may have the unintended consequence of aggravating the externalities—crime, vandalism, and inhumane living conditions for tenants among them—associated with failed home ownerships.

[57] Edward Glaeser, "Foreclosing the Crisis," *The New Republic*, February 4, 2009.

[58] Manny Fernandez and Jennifer Lee, "Struggling Landlords Leaving Repairs Undone," *New York Times*, July 11, 2009.

February 19, 2013

Testimony Before the Banks Committee
On
House Bill 6355
An Act Concerning Homeowner Protection Rights

From: Chandler J. Howard, President & CEO
Liberty Bank, Middletown, CT

Chairman Leone, Chairman Tong and members of the Banks Committee, good afternoon.

My name is Chandler J. Howard and I am the President and CEO of Liberty Bank of Middletown, Connecticut.

I'm here to testify on House Bill 6355, An Act Concerning Homeowner Protection Rights.

LIBERTY BANK BACKGROUND

Liberty Bank is the third-largest Connecticut-based bank, with $3.5 billion in assets. We are the ninth largest residential lender in the state, last year writing 2,000 first mortgages (for a total of $401 million) – the second-highest level in our history.

We are an active and growing residential lender, committed to the Connecticut market. We have been awarded an outstanding CRA rating since 2001, and we also have a long-standing track record of serving first-time homebuyers.

Liberty Bank is dedicated to ensuring that all our homebuyers can afford their mortgages and that they will be successful homeowners. Our adherence to prudent underwriting standards allows us to keep our foreclosure rate at a minimum.

As a community bank, we prefer, whenever possible, to work personally and in good faith with homeowners in hardship to resolve their mortgage payment issues.

We also pride ourselves on making available local loan servicing representatives. In fact, we commonly read in our customer evaluations that local servicing is why a customer chose us.

RESIDENTIAL LENDING TODAY

In 2012, Liberty Bank sold approximately 80 percent of its residential first mortgages in the secondary market while retaining the servicing on most of those loans. Twenty percent of first mortgages were retained in our portfolio.

Our existing (1 to 4 family) property forecloses stand at just eight (or $1.9 million) as of December 31, 2012; investor-held mortgage foreclosures number four (or $750,000).

We are required to use Workout Prospector, an automated system (developed by Freddie Mac) for all of our loans serviced for Freddie Mac when determining if a homeowner qualifies for a loan modification. For our portfolio loans, we do not currently use an automated system, but follow our own internal policies and procedures.

We prefer to work personally and in good faith with homeowners having hardships to resolve their mortgage payment issues at the earliest stages of delinquency to try to prevent their entering mediation or foreclosure. We begin making calls at 16 days past due to ascertain the situation and can have an arrangement with the customer before the account reaches delinquency status.

In 2012, our average foreclosure took 14 months; our worst-case foreclosure is still in process, so far taking 38 months, including 10 mediation sessions and many delayed sessions.

We comply with current Connecticut laws governing foreclosures and mediation; however this puts us at risk of fines and penalties assessed by Freddie Mac and Fannie Mae for tardy foreclosure resolution.

We agree with the prevailing opinion that the mediation/foreclosure process in the state of Connecticut is broken.

OBSERVATIONS ON PROPOSED BILL 6355

We believe that, far from ameliorating the current mediation/foreclosure process, Bill 6355 will make the situation worse. Potentially, it can further lengthen the now-onerous foreclosure process for homeowners in hardship, while causing unintended financial and employment problems for lenders.

Virtually all of the proposed changes anticipate potential lender/servicer misconduct with nothing explicitly acknowledging the potential for homeowners who fail to cooperate.

While mediation sessions would theoretically be held to three, the bill gives judges sweeping latitude to prolong the mediation process indefinitely. In addition, the elimination of the eight-month deadline for the standstill period would render the lender unable to respond while the homeowner has unlimited time to make new assertions.

New requirements for mediation participants to have "full settlement authority" do not take into account the vast majority of mortgages that are tied to a second party – Freddie Mac/Fannie Mae, FHA, private mortgage insurers, or second lien holders. Ignoring the rights of these parties would expose first mortgage lenders to excessive risk.

The Bill would require lenders to use the FDIC model to determine qualification for a loan modification. While this tool may be useful, mandating its use may lead to unintended results.

Borrowers will have new special defenses and counterclaims to use against lenders in a foreclosure action that are related to an endless range of issues (including those outside the foreclosure process and out of the control of the lender). This will undoubtedly increase the time and cost of foreclosure.

New proposed good faith standards are complex, encompass "any" applicable rule or guidance (which can be contradictory), and are simply unattainable. Yet, a finding that a party did not act in good faith does not require proof of malice, intent to injure, or bad faith, and may result in fines or sanctions.

UNINTENDED CONSEQUENCES

With nearly five years passed since the financial crisis, it is safe to say that the vast majority of dishonest lenders are out of business. What remain are conscientious banks that have money to lend, want to lend, and that want to stimulate their local housing markets.

Yet, Bill 6355 imposes numerous one-sided, short-sighted provisions that clearly disincent banks from lending in their communities.

While we prefer to work one-on-one with homeowners in hardship for loans in our portfolio, mandated use of the FDIC model, as required by the bill, would clearly mean that those who fail would need to immediately enter the mediation/foreclosure process. Because a "regulation," as the bill states, would also include "guidelines" that the FDIC has issued on loan modifications, this would create a black-and-white proposition and tie our hands for working with borrowers on loans held in our own portfolio.

As an experiment, Liberty Bank tested five of our mortgages currently in hardship. While in all cases, we modified their loans resulting in reduced payments, four of the five failed the FDIC test as required by the bill. Under the test, we would not have been able to offer a modification and, overall, this would limit the number of borrowers we could help.

Mandating the FDIC model would mean that we would no longer have any latitude to intercede, and that if we did, even in good faith, we would potentially be violating Fair Lending practices and open up the possibility that borrowers could raise claims in foreclosure if we deviated from the FDIC model.

Further delays in the mediation/foreclosure process will mean more fines, fees and penalties for lenders. Banks, already facing the thinnest profit margins in history (due to unprecedented low interest rates), will need to pass the cost onto the customer in the form of higher interest rates.

Connecticut home prices are already among the highest in the nation, while our housing market remains stagnant. Higher mortgage interest rates will be one more roadblock to stimulating home sales in the state.

In addition, higher interest rates would negatively impact first-time homebuyers and a portion of current refinance customers. They will not be able to afford loans.

Fear of resorting to a foreclosure – because the process is so onerous and one-sided – could also cause banks to re-price their products accordingly to offset the risk and to raise their underwriting standards to a level that only the most affluent or creditworthy could meet.

Many banks, including Liberty Bank, continue to service most of their loans so that our customers can contact someone locally if they have questions, need help, or have a hardship and get immediate answers or action.

When Liberty sells loans in the secondary market, a significant portion of our gain on sale comes from the present value of the loan servicing. Accounting rules require us to record this value on our balance sheet as an asset. We believe that this proposed legislation will result in Connecticut servicing rights being less valuable in the market and with regulators. If the value of those assets declines, we must write them down. Not an attractive outcome from a safety and soundness standpoint.

The consequence is an immediate hit to our earnings and to our capital. Every dollar of that capital equals ten dollars of loans to our customers. Less capital reduces the number of loans we can originate.

In addition, the depressed value of servicing will reduce our gain on sale for future originations requiring a higher interest rate to attain adequate profitability.

An additional unintended consequence may be for lenders to change their business models to sell their loans as "service released" to out-of-state companies to mitigate the risk to their balance sheets. While Liberty's intention is to retain servicing, we expect that others may see this as a viable alternative.

This will result in a loss of jobs in Connecticut as banks outsource this important service in order to reduce risk and control costs. One more blow for an already too high unemployment rate.

CONCLUSION

Liberty Bank is a community bank and, as such, a proponent of strong healthy communities. Homeownership and employment are the first building blocks of prosperous cities and towns.

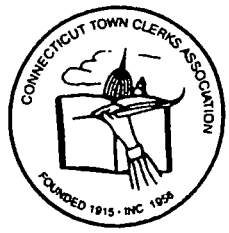
We do not want to foreclosure on a property – except as a last resort – and we do not want to own property. A lengthy mediation and foreclosure process benefits no one, the banks, homeowners, neighborhoods, home values, or home sales.

We agree with the Bill's proponents that the efficiency of the foreclosure process needs to be increased. However, the bill as drafted would only cause more delays and costs.

We are committed to working with the Banks Committee through the Connecticut Bankers Association to accomplish the objective of speeding the mediation and foreclosure process while protecting the interest of all parties.

Thank you for the opportunity to testify today and I'd be happy to answer any questions you may have.

Connecticut Town Clerks Association, Inc.



TESTIMONY

Banks Committee
Tuesday, February 19, 2013

HB No. 6355 (Section 8), An Act Concerning Homeowner Protection Rights

Good afternoon Senator Leone, Representative Tong, Senator Linares, Representative Alberts ar distinguished members of the Banks Committee. My name is Antoinette C. Spinelli and I am the Town in Waterbury and the Chair of the Legislative Committee for the Connecticut Town Clerks Associatio Town Clerks Association sincerely appreciates the opportunity to provide testimony in support of Go Malloy's proposal, House Bill 6355, An Act Concerning Homeowner Protection Rights.

Specifically, the Town Clerks Association appreciates Governor Malloy's inclusion of section 8 in Hou 6355 that requires mortgages assignments to be recorded with the Town Clerk in the municipality whe property is located. Since the inception of the Mortgage Electronic Registration System or MER homeowner has had an increasing difficult time identifying the owner of their mortgage. The home should be able to identify who owns their loan by going to the land records in a municipality. Under c law, if the mortgage assignment is filed with MERS the assignor is not required to record the mortgage w town clerk's office. The failure to record assignments has made it difficult for homeowners to identi lender that owns the mortgage and has made it difficult to properly search and gain clear title to the prc The intention of Section 8 of House Bill 6355 provides for accurate and complete land records and wo beneficial to homeowners, lenders, title searchers, attorneys, municipalities and other interested parties wh on accurate land records.

In addition, MERS Corporation recently made claims to holding title on roughly half of all home mor nationally (*New York Times 3/2/11*). If that figure holds true for Connecticut, the state and municipaliti losing out on a substantial amount of revenue every time a mortgage assignment is filed with MERS. mortgage assignment recorded with a town clerk generates revenue ($53) for the state and municipality following manner:

- $36 – to the State Treasurer to fund the Community Investment Act
- $2 – to the State Library for historic preservation of documents
- $3 – to municipalities for capitol improvements
- $2 – to town clerks for document preservation
- $10 – to the general fund of a municipality

In conclusion the Town Clerks Association recommends an amendment to section 8 to ensure that the chai title and accuracy of land records is maintained. This clarification would ensure the public that they h important information regarding their mortgage and subsequent assignments available to them at every Tc Clerks' office in the state. As such, the Association has attached an amendment to our testimony to address needed clarification.

Finally, we support the penalties imposed for those who fail to properly record these documents.

Thank you for this opportunity to testify. I would be happy to answer any questions that you may have.

Respectfully submitted,

Antoinette Chick Spinelli, CMC, CCTC
Waterbury Town Clerk
Chair, CTCA Legislative Committee

Amendment Request to:

Governor's Bill No. 6355, An Act Concerning Homeowner Protection Rights

February 19, 2013

Sec. 8. Subsection (g) of section 49-10 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(g) Any assignor of mortgage debt shall record the assignment in the town clerk's office in the municipality where the property is located. [report biannually to the Secretary of the Office of Policy and Management regarding every mortgage assignment involving property located in this state.] If such an assignment is not recorded in the municipal land records, the assignor [shall pay to the State Treasurer for each such assignment a fee of forty dollars. Thirty-six dollars of such fee shall be deposited into the General Fund and credited to the community investment account established pursuant to section 4-66aa The State Treasurer shall remit four dollars of such fee to the municipality in which the property is located to become part of the general revenue of such municipality and be used to pay for local capital improvement projects, as defined in section 7-536. The report shall contain (1) the name, address, telephone number and electronic mail address of the registrant, (2) a list containing the street address and municipality in which security for such assigned mortgage debt exists, and (3) the date of execution of such assignment Any person who violates any provision of this subsection] shall be subject to a civil penalty of one hundred dollars for each day of such violation. Each failure to [report] record any single assignment shall constitute an independent violation. The Attorney General may institute a civil action in Superior Court to collect such penalty, which shall be payable to the state Recordation of an assignment of mortgage debt is not sufficient notice of the assignment to the party obliged to pay for purposes of subsection (d) or (e) of this section.

CONNECTICUT Land Conservation Council

Testimony in Support of H.B. No. 6355 (Section 8)
Banks Committee
Submitted by: Amy Blaymore Paterson, Esq., Executive Director
February 19, 2013

STEERING COMMITTEE

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Litchfield Hills Greenprint

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Trust for Public Land

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Jim Goodn
CT Farmland Trust

Ginny Gwynn
Greenwich Land Trust

Eric Hammerling
Connecticut Forest & Park Association

Mary Michelle Hirschoff
New Haven Garden Club

Elaine Labella
Housatonic Valley Association

Charles Leach
Farmington Land Trust

Connie Manes
Kent Land Trust

Tom ODell
CT Association of Conservation and Inland Wetland Commissions

David Sutherland
The Nature Conservancy

Humphrey Tyler
Lyme Land ConservationTrust

STAFF
Amy B. Paterson, Esq.
Executive Director

Senator Leone, Representative Tong, Senator Linares, Representative Alberts and membe the Banks Committee:

Please accept this testimony on behalf of the Connecticut Land Conservation Council in su of **Section 8** of Governor Malloy's proposal, **H. B. No. 6355: An Act Concerning Homeowr Protection Rights**, that requires the recording of mortgage assignments with the Town Cl the municipality in which the property is located, with a portion of the recording fees gen being returned to the state to fund the Community Investment Act (CIA).

The Connecticut Land Conservation Council (CLCC) works with land trusts, other conserva and advocacy organizations, government entities and landowners to increase the pace, q and scale of land conservation in Connecticut while assuring the perpetual, high quality stewardship of conserved lands in the state. As Connecticut's umbrella organization for t conservation community, CLCC focuses on building land trust capacity and sustainability, a unified land conservation voice for public policies that support land conservation, and engaging broad constituencies to foster a deep understanding of the benefits and need fc conservation. CLCC is guided by a Steering Committee with statewide representation.

The CIA was enacted to fund four specific land use programs which support the econon create jobs. Enacted with tremendous bipartisan support in 2005 to address the social a environmental impacts of suburban sprawl, the CIA provides increased funding for state programs for **open space, farmland/dairy production, historic properties and affordable housing.** Funded by a surcharge on recording fees, the impact of the CIA on the economi being and overall quality of life in our communities has exceeded all expectations. Virtua every town in Connecticut has benefited from the CIA

For the conservation community, CIA funding is the only *consistent* source of funding for Department of Energy and Environmental Protection's Open Space & Watershed Land Acquisition (OSWLA) grant program – the state's ***only*** matching grant program for land tr towns and water companies seeking to conserve open space. Yet the funds generated b program fall far short of the needs existing in not only the OSWLA program but in the prc under the other three CIA funded sectors as well.

According to information submitted by the Connecticut Town Clerks Association, requirin recording of all mortgage assignments in all municipalities would generate a substantial a of well-needed revenue for all four of the Community Investment Act programs, includin OSWLA. CLCC therefore supports Governor Malloy's proposal to close this apparent loop in document recording practices as a measure to bring revenue back to the state and the municipalities.

Thank you again for your consideration and for this opportunity to submit testimony.

Connecticut Preservation Action

Testimony for the Banks Committee public hearing
on February 19, 2013

Rep. Tong, Senator Leone, and members of the Committee:

In Support of Governor's Bill No. 6355, AAC Homeowner Protection Rights; specifically Section 8, regarding the recording of mortgages and payment of the fee to the Town Clerk.

CPA sincerely appreciates the opportunity to provide testimony in support of Governor Malloy's proposal, House Bill 6355, and we thank the Governor for bringing forward this measure which will properly support a progressive program.

My name is Anita Mielert, and I am a former First Selectman in Simsbury and a long-time volunteer for historic preservation in our state. I am here today officially representing Connecticut Preservation Action, a non-profit which advocates for historic preservation in the state legislature and in Congress. We represent individuals and other organizations, such as the CT Trust for Historic Preservation, CT Main Street Center, Hartford Preservation Alliance, New Haven Preservation Trust, and New Canaan Preservation Alliance.

The Community Investment Act (CIA) as originally written is an elegant measure because it levies a land use-based fee, which in turn funds statewide programs which are land use-based. There is a symmetry and logic to its source of funds and their ultimate use. Other speakers here today will tell you about the huge success stories accomplished all across the state, saving historic buildings, farms, open space, providing essential housing. Nearly every municipality in CT has benefitted from matching grants for community enhancements.

Please do not allow this "end run" around a measure which is so beneficial to our quality of life in Connecticut. There are serious consumer and legal issues raised by this loophole; now is the time to hold the banks accountable and bring to an end their failure to live up to the legislature's intent.

Please support the Governor's proposal to hold the banks accountable, to the communities in which they make their business, to the homeowners they should be serving, and to the quality of life in those communities.

Anita L. Mielert, President •57 East Weatogue St., Simsbury, CT 06070 • 860-658-1190
Charles Janson VP. • Jack Shannahan, Treas. • Rachel Pattison, Sec.

Testimony

Submitted to

The Banks Committee

February 19, 2013

By Peter M. Gioia

Vice President and Economist

Connecticut Business and Industry Association

Good day. My name is Peter M. Gioia and I am VP & Economist for CBIA. CBIA is a statewide business association representing about 10,000 businesses, most of which are small businesses of fewer than 50 employees.

CBIA wishes to testify on and oppose **HB 6355 An Act Concerning Homeowner Protection Rights**. We feel this bill is well intentioned and we fully sympathize with fellow citizens struggling with our economic malaise, but we feel that adoption of this bill will ultimately do more harm than good to our economy and to the wealth and welfare of more of our citizens in Connecticut.

Reports clearly show that slowing the foreclosure process, which HB 6355 ultimately will do, is not beneficial to the economy, the universe of area homeowners, property values and the housing market in general. US News *Money* on 10/20/10 was prophetic when it stated, "It might seem like a respite for struggling homeowners, but the sudden snags and slowdowns in thousands of foreclosure proceedings could prolong the housing bust well beyond its fifth year—and spell deep trouble for the broader economy."

Recent study from last July from the Boston Fed, *Foreclosure Externalities: Some New Evidence,* by Gerardi et al in particular shows the negative impacts of Massachusetts' slow process, "We find that while properties in virtually all stages of distress have statistically significant, negative effects on nearby home values, the magnitudes are economically small, peak *before* the distressed properties complete the foreclosure process, and go to zero about a year after the bank sells the property to a new homeowner. The estimates are very sensitive to the condition of the distressed property, with a positive correlation existing between house price growth and foreclosed properties identified as being in "above average" condition. We argue that the most plausible explanation for these results is an externality resulting from reduced investment by owners of distressed property. **Our analysis shows that policies that slow the transition from delinquency to foreclosure likely exacerbate the negative effect of mortgage distress on house prices "**

The Connecticut economy is still slowly emerging from the toughest recession since the Great Depression. Our economy actually *lost* -100 net jobs year over year in December 2012 compa to December 2011 according to the Connecticut Department of Labor's monthly jobs report. Over 90,000 citizens who lost jobs during this past recession have yet to obtain jobs. The construction subsector, which is closely related to housing, also shed -100 net jobs over the ye We do see some signs of brighter times ahead in various local and national surveys of confidence, credit, production and sales activity, but we have a long way to go to full employment.

A critical item to building economic success and getting our people back to work is returning housing markets to normalcy. Like many other aspects of economic recovery this is not accomplished without pain. A key element is to conduct as rapid a closure and workout of distressed properties as is humanly and humanely possible. Connecticut already has a program launched by Attorney General Jepsen which has been lauded as a model for mediation to its credit. In fact Connecticut judicial records show that successful settlements are reached 82% o the time with two thirds of borrowers reaching an agreement to remain in the home.

NY Federal Reserve First Vice President Christine Cumming emphasized the importance of housing to economic recovery at an economic summit in Hartford in early January. She lamen the negative consequences of the "foreclosure overhang" impacting "how households feel abo their financial position" and on the overall economy as housing usually leads a recovery.

Connecticut has had an unusually slow foreclosure resolution situation. Other states got clobbered much more than us with massive overbuilding in the housing crisis. Connecticut wa not overbuilt this time (compared to late 1980's) but has been slower in recovery because it's been slower working through the foreclosure issues.

Connecticut lags the US in its efforts to resolve foreclosure issues. In particular, FHFA has proposed a Connecticut specific mortgage surcharge because our process is so slow and costly for Freddie Mac and Fannie Mae. It would be borne by all Connecticut homeowners. The Bos Fed's economist and policy advisor Paul Willen says while it's best to avoid foreclosure but if it's unavoidable, "it's in society's interest to get the foreclosure done as soon as possible."

An increasing rate of foreclosure "creates challenges in sustaining and broadening the recover we have in the region," according to the NY Fed's senior economist Jason Abel. In states that rapidly process foreclosures like Arizona, home prices are up 20% versus markets like NY or and much of CT which are seeing declining prices.

What does lagging efforts on resolving foreclosures mean to housing markets and the econom The situation results in –

1. Slower housing turnaround
2. Fewer new housing starts
3. Continued price reductions of many houses on the market
4. Continued destruction of housing valuations
5. *Delay or discouragement of potential buyers*
6. Deterioration in the actual condition of the home the longer it's in foreclosure affecting the unit and the neighborhood

Point 2 is reflected in our poor rate of housing starts. According to DECD in 2004 we had 10,435 permits, in 2005 11,837 and in 2006 9,236. Year 2012 finished at 4,140 up from 3,173 in 2011 but only 35% of the 2006 tally. US wide housing has begun a recovery but our recovery in Connecticut lags. This is keeping our building trades industries in a weak state and resulting in poor job creation in construction.

Points 3, 4 and 6 create added problems. People selling houses continue to have to reduce their asking price resulting in loss of sales gains, even to the point of becoming a "short sale." The valuation hit might mean a homeowner can't get refinancing or a HELOC further hurting their financial situation and leading to other lost economic activity.

Point 5 results when buyers think that if they "just wait a bit longer" prices will come down. Other buyers fret that if they buy now the home they buy may be worth less than what they paid a year from now, so they don't make the purchase. It's a vicious downward spiral!

Please don't add to the *overall* misery in housing by attempting to further complicate resolution for those in the foreclosure process. We urge the committee to defeat HB 6355. Thank you for the opportunity to present this testimony.

BANKS COMMITTEE

February 19, 2013

The Connecticut Conference of Municipalities (CCM) is Connecticut's statewide association towns and cities and the voice of local government - your partners in governing Connecticut. (members represent over 92% of Connecticut's population. We appreciate the opportunity to tes on bills of interest to towns and cities.

H.B. 6355 AN ACT CONCERNING HOMEOWNER PROTECTION RIGHTS

CCM urges the Committee to amend this bill, then favorably report it.

CCM supports the intent of the proposal, in particular Section 8 which would require each assig of mortgage debt to report biannually to the Secretary of OPM every mortgage assignm involving property in the state. If the assignment is not recorded in municipal land records, assignor shall pay the State Treasurer a $40 recording fee. Of that amount, $36 shall be depos into the State General Fund for the community investment account. The remaining $4 shall remitted to the host municipality as general revenue for capital improvement projects. In addit a $100 penalty fee will be applied for late recordings.

We urge you to amend the bill to remove restrictions on how the $4 remitted to towns shc be spent. Funds should go into municipalities' General Fund period. We urge the Committe place a period after "municipality" in line 526, and delete the phrase "and be used to pay for l capital improvement projects, as defined in Section 7-536". In addition, **provide a mechan that would allow the chain of title information to be shared with the local town clerk wl the property is located to ensure accuracy of land records.**

Traditionally, mortgage assignments have been recorded in land records -- as a benefit to l municipalities as well as homeowners -- offering clear ownership and title of a particular piec property. In recent years, however, changes in bank practices have left homeowners municipalities unaware of who owns a particular mortgage or property.

Since the mid-1990's many banks have used the Mortgage Electronic Registration Syst (MERS) to record mortgage assignments. The primary function of MERS has been to act document custodian, to simplify the process of transferring mortgages by avoiding the need tc record liens – thereby paying municipal recording filing fees – each time a loan is assigned. W the banking industry has argued that it has streamlined the process, it has also displaced the mo

- OVE

transparent public system for maintaining records. The results has been municipalities' inability turn to public records to learn the identity of a property owner, and for the homeowner the inabil to determine the mortgage owner, who is escrowing for their taxes and insurance and who c foreclose on them.

CCM urges the committee to **amend** and **favorably report HB 6355.**

★ ★ ★ ★ ★

If you have any questions, please contact Mike Muszynski, Legislative Associate of CCM via email mmuszynski@ccm-ct.org or via phone (203) 500-7556.

February 19, 2013

To: The Banks Committee

Fr: Judith C. Stumpo, Sr. VP & Director of Risk Management, Chelsea Groton Bank, Groton

Re: **H.B. 6355, An Act Concerning Homeowners Protection Rights**

Position: **Oppose as Drafted**

Chairman Leone, Chairman Tong and members of the Banks Committee, my name is Judith C. Stumpo and I am Sr. VP & Director of Risk Management, Chelsea Groton Bank, Groton. We currently have 14 branches serving the southeastern corner of the state. Our mortgage serviced portfolio is just under 5,000 loans.

Thank you for the opportunity to testify on Governor's Bill # 6355, Homeowner Protection Rights. For over 25 years, I have been working with homeowners who have difficulty making mortgage payments, and I have been required to make that difficult decision to move forward with foreclosure after exhausting all other remedies. It is never a decision made quickly, taken lightly or absent concern for the homeowner. Unfortunately, there are times when all other options have been exhausted after months of discussions, counseling, suggestions, recommendations, referrals for EMAP, and negotiations surrounding the borrower's ability to begin to make payments that are reasonable. Speaking for Chelsea Groton Bank, we enter into modifications, forbearances, trouble debt restructures, payment arrangements, short sales, and deeds in lieu of foreclosure as preference over foreclosure, however there are situations where those options fail and foreclosure is necessary.

A foreclosure is the last resort.

We have very good mediators in New London County, and thank them for their hard work and dedication to best serve both the homeowner and the lender. We have had three successes through mediation, and three failures – the failures being the inability of the borrower to maintain their agreement.

I would like to specifically address the introduction of "good faith" as presented in Section 49-31n. It is quite ambiguous in that it requires mortgagees (A) to adhere to requirements of "(i) any applicable guidance or rule issued by the federal government and its agencies, or a government- sponsored enterprise; or (ii) arising out of a mortgage-related settlement to which the Attorney General, Department of Banking or Department of Consumer Protection is a party". This is a very open-ended statement, which I fear, will have unintended consequences. Will mediators be trained to identify which lenders and which loans fall under which "guidance or rules or settlements?" This should be limited to laws and regulations, not guidance and rules, surrounding the foreclosure process, not the entire

universe of servicing rules. Mortgagees are currently subject to compliance with a host of consumer protection regulations and laws issued by the federal government and agencies, as well as those by the State of Connecticut, and borrowers are afforded other measures to remedy any failures in those areas To introduce servicing issues (outside of payment processing issues) into a foreclosure hearing is ludicrous, and may be used as a method to gain additional time in the home. The mediation process is designed and intended to create an alternative to foreclosure, not introduce other stumbling blocks that will muddy the facts of the situation, which is the borrower's inability to pay their mortgage.

The recent announcement of the changes to Regulation Z, Truth In Lending, Mortgage Servicing Rules, is an example of such consumer protections. Is it necessary to bring them into the foreclosure process? The FDIC, OCC, FRB and the CFPB are monitoring the performance of banks with these regulations, and there are already stringent civil money penalties and consumer protections for violations.

When the Bill is so broad about what constitutes good faith for the lender, and there is no requirement to show evidence of bad faith, how will a mediator or the court decide what is "good faith" and what is not. While on the surface, the goal of "an efficient and expeditious process" is desirable, this Bill not only addresses those items that may be pertinent to the foreclosure action, but also opens the door to many other unrelated issues that can be brought as stalling tactics, and further slow down an already slow process as compared to the rest of the nation's judiciary states (we are the third slowest).

We should not lose sight of the fact that the mortgage is in foreclosure due to the borrower's inability to make contracted payments, and generally the mediation has failed because there continues to be financial hurdles that the borrower can not overcome, regardless of a restructure. The sanctions agains the lender are punitive and unfair without understanding what constitutes not mediating in good faith What are the sanctions for a borrower who does not act in good faith? A blatant disregard on behalf of the mortgagee of the general statutes governing foreclosure mediation is understandable; but the bill, as written, can be applied very broadly with egregious results and an unnecessary delay in the foreclosure process, . An unintended consequence of this ambiguity may be that lenders decide that mortgages to Connecticut homeowners have too much risks, their rights too diminished, and they choose to shy away from mortgage lending in Connecticut. Already, the GSE's are introducing higher rates for mortgages in CT – this will have a negative impact on our citizens. The result of this would be devastating to our economy and the housing market in Connecticut.

As to the requirement that a bank adhere to guidance or rules issued by a GSE for a non-GSE loan, it is overstepping the bounds of law as these guidelines are not law – they are investor requirements. This definition of good faith does not limit the exposure of banks to loss mitigation guidelines or rules, it is open-ended, and the sanctions are one-sided.

With regard to advance notice to the opposing party if additional documentation or time is needed for a party to be prepared for an upcoming mediation session – we will know what we need from the borrower, and have generally expressed that at the last mediation session – how will we know if they are not prepared to present the information? When we are presented with information at a mediation,

we need the courtesy of a reasonable amount of time to review and analyze that data before making a final decision – just as is being afforded the homeowner.

The Bill also references the FDIC calculations, forms as published in the FDIC loan modification guide – unfortunately, these rarely result in a favorable option for borrowers; a proprietary solution for each individual is favorable, and what we do at Chelsea Groton Bank.

Thank you for your time. Are there any questions?

Additional data on Chelsea Groton Bank foreclosure activity and alternatives

In 2011, CGB initiated 24 foreclosures (17 for the Bank, and 7 for investors); 9 were mediated with mixed results. Additionally, we entered into 8 forbearances and 10 troubled debt restructures In 2012 we initiated 23 foreclosures (20 for the Bank, 3 for investors); 7 entered mediation, again, to mixed results. We entered into 10 forbearances and 6 troubled debt restructures. In 2013, we currently have 8 foreclosures in process (6 for the Bank, and 2 for investors – one of which is in process since 2011); 1 i in mediation; we have entered into 2 forbearances and one trouble debt restructure so far this year.

Webster Bank, N A
145 Bank Street
Waterbury, CT 06720

WebsterOnline com

WEBSTER BANK
TESTIMONY TO BE DELIVERED TO LEGISLATIVE COMMITTEE
HOUSE BILL #6355

Good afternoon. My name is Erin Dorman, and I am the Director of Restructure & Recovery at Webster Bank, National Association. I would like to thank this committee for the opportunity to testify on Bill #6355. In my opinion, the current foreclosure process in Connecticut is hampered by extensive delays, and I share your concern. Given Webster Bank's demonstrated commitment to work with borrowers so they can remain in their homes and avoid foreclosure, Webster agrees with the Administration that the foreclosure process in our state takes far too long and must be improved for the benefit of all parties. We are committed to working with this committee and the Administration on solutions; however, the bill as drafted will only add to delays and do nothing to keep families in their homes.

For those who aren't familiar with us, Webster Bank was founded in 1935 by Harold Webster Smith during the Great Depression. Our mission is to help individuals, families, and businesses achieve their financial goals. Webster's 3,000 employees, 2,300 of whom reside in Connecticut, believe in the values embodied in what we call The Webster Way:

We take personal responsibility for meeting our customers' needs.
We respect the dignity of every individual.
We earn trust through ethical behavior.
We give of ourselves in the communities we serve.
We work together to achieve outstanding results.

Today, Connecticut-based Webster Bank has assets totaling more than $20 billion and is one of the largest mortgage lenders in the state. In 2012, we originated $1.9 billion in first and second residential loans. The portfolio of loans that we own and service totals $7.9 billion, including $1.7 billion in investor mortgages for Fannie Mae and Freddie Mac.

The overriding goal at Webster Bank is to help the customer who has encountered financial setbacks stay in his or her home and address the hardship that prevents the borrower from making mortgage payments. This mission is ingrained in every Webster banker including branch representatives, collection staff members, loss mitigation specialists as well as foreclosure staff. Our standard is to have a single point of contact during the loss mitigation process. At any time in the foreclosure process, Webster will consider a borrower's request for Loss Mitigation, up to the foreclosure sale date. In order to meet the needs of our borrowers, Webster Bank established a Consumer Loss Mitigation Department in 2008 due to deteriorating economic conditions that led to increased delinquency and foreclosure litigation. Our efforts to work with our borrowers to keep them in their homes have been recognized by The Wall Street Journal, ABC News, Hartford Courant, and Waterbury Republican-American.

From 2008 through the end of 2012, the Webster Bank Loss Mitigation Unit modified 1,322 loans representing a net balance of $143.8 million. The typical modification reduced payments by an average of $302 per month. The average re-default rate for Webster's modified residential mortgages was 9.17 % at year-end 2012, compared to 18.63% industry wide. (source: OCC/OTS reports)

As successful as we have been in keeping many borrowers in their homes, not every foreclosure is avoidable. A snapshot of Webster Bank loans as of February 5, 2013 indicates that there are 120 loans in active foreclosure status in Connecticut that have been in litigation for a period of time greater than 300 days. Reasons for delay include:

1. Repeated requests for Loss Mitigation - 22 loans:
    - Multiple short sale offers where offer is denied, buyer backs out or can't get financing, etc.;
    - Multiple liens on property where borrowers have to clear liens, other liens in process of foreclosing;
    - Borrowers continue to send new packages after denial of modification or packages are not complete.
2. Bankruptcies - 20 loans:
    - Bankruptcy filing stays the foreclosure and mediation activity
3. Mediation delays - 17 loans:
    - Mediation period often takes over one year.
4. Court Delays - 8 loans:
    - Indicative of an overburdened docket.

Thus, based on the loan portfolio owned by Webster or serviced for investors and insurers, the fact that a total of 56% of the loans in active foreclosure status have been in process for longer than 300 days seems to indicate the delay is not driven by Webster.

Before a solution can be found to the current state of foreclosure litigation in Connecticut, it would be prudent to identify possible root causes of the problem. The root cause analysis must start with a question of who has the most to gain from delay in the foreclosure process. The answer is clearly **not** the lender for the following reasons:

- Foreclosures do not generate income for the bank.
- Foreclosures increase the overall cost of capital.
- Foreclosures force the bank to incur loan workout expenses (legal, property management, and appraisal expenses) that are not always reimbursable.
- Foreclosures exceeding 300 days often require additional approvals from the individual investor, guarantor, or insurer.
- Foreclosures often are accompanied by non-payment of real estate taxes and junior lienholders that may impact the net value of the underlying collateral as interest continues to accrue.

From my own experience working with borrowers in foreclosure, there are two major reasons for delays the foreclosure process: Either borrowers don't want to face the

situation, or often borrowers receive erroneous advice concerning the process. Foreclosure and the risk of losing a home is one of the worst situations that a person can face. Although it seems contradictory, there are homeowners who want to keep their homes but cannot bring themselves to participate in the loss mitigation process. The proposed bill will not assist this type of borrower. The other group consists of homeowners who receive advice from family, friends, and "debt negotiators" who advise them to delay the process in order to achieve debt forgiveness or to demand unrealistic terms in mortgage modification. Again, the proposed bill will not assist these homeowners.

An informal survey of attorneys in Connecticut who have extensive experience in consumer foreclosure practice similarly found that the two main reasons for delay in the foreclosure process are borrower-driven delays (multiple bankruptcy filings, multiple requests for loss mitigation, and requesting extension of the mediation program) as well as court-driven delays (overburdened dockets, overwhelmed mediators, and the judiciary not enforcing standard timelines contained in the Connecticut Practice Book.) There is little incentive for an attorney representing a plaintiff in foreclosure to seek to extend the process, since many of the fee agreements are based on an expedited timeline and are not hourly. If the foreclosure is not progressing according to a timeline established by the GSE's, it falls on the attorney to seek approval for additional fees.

Based on a root cause analysis, the proposed bill does not set forth solutions that will address the foreclosure delays and instead may exacerbate them. Specific items contained in the bill would allow parties to increase the delays and place an increased burden on an already overburdened judicial system. Of particular concern are the following sections:

- Creation of a "Good Faith" standard in the mediation process does not take into consideration that financial institutions as servicers for the federal government, its agencies, the GSE's, and Private Mortgage Insurers are required to adhere to applicable guidance or rules for loss mitigation modifications. The servicer is not allowed to deviate from the applicable modification programs without approval from the investor/insurer. Under current guidelines, in order to consider modification, the borrower must provide a complete financial package prior to the mediation. The proposed bill will allow a borrower to submit a financial package that is "reasonably complete" which may not meet the standard for the majority of investors/insurers. The proposed bill will impose new sanctions, primarily targeted at lenders/servicers for failure to mediate in "good faith." This determination of "good faith" would be within the sole discretion of the judicial mediator, and a finding of lack of "good faith" would trigger an additional hearing in front of the Superior Court judge to determine if sanctions are warranted or mediation should be extended.

- Requirement of Full Settlement Authority by all parties attending mediation sessions fails to recognize what transpires in many mediation sessions. Often information crucial to the loss mitigation process surfaces at the mediation

session. In such situations, a requirement that the servicer or lender has the immediate ability to accept a party's offer at the session is not reasonable nor is it necessarily in the best interest of the borrower. The goal should be to have full financial disclosure prior to the session, to encourage borrowers to attend the mediation session, and to have a comprehensive discussion regarding all factors that create the hardship. If this is done, the odds are greatly improved for a loan modification that addresses each borrower's specific problem. The borrower, the lender, and the court must take steps to find the best solution for each borrower so that the borrower doesn't re-default in the future. Unless the lender is given adequate time to review a full financial package and ask questions that identify the specific hardship, the mediation may result in a modification that is ineffective in addressing affordability.

Instead of reducing delays, the proposed bill more likely will increase foreclosure delays and escalate costs associated with additional staffing (mediators and Superior Court judges.) In addition, the bill has the potential to increase the cost of a mortgage for all borrowers in Connecticut due to the perceived heightened risk of foreclosure delay and servicing risk. The best way to address the problem of prolonged delays is to strengthen the existing tools available within the judicial system. Such remedies should include:

- Encourage stricter adherence to existing sections of the Connecticut Superior Court Practice Book that apply to foreclosure pleading timelines, default pleadings, dormancy calendars, and mediation timelines in order to achieve a fair and streamlined litigation process.
- Create a complex foreclosure docket for cases that involve multiple lienholders.
- Continue to work with the State of Connecticut Attorney General and the Banking Commissioner on programs such as the Homeowners Assistance events that encourage borrowers to have face-to-face meetings with their lenders in order to achieve successful loss mitigation.
- Support initiatives through state or quasi-state agencies to fund modification programs for homeowners who do not qualify for loss mitigation under standard underwriting terms.
- Increase efforts to inform and educate homeowners about the foreclosure process in order to combat the misinformation that exists.

Webster Bank is committed to working with homeowners who are experiencing hardships, as demonstrated by the fact that more than 1,300 families today have been able to remain in their homes under our mortgage modification program. Webster will work with this committee on ways to improve the foreclosure process and keep people in their homes. However, as I said, HB6355 in its present form is misguided. It will not help borrowers or banks and will have unintended consequences that could harm the nascent recovery in our state's housing market.

Thank you for your time and consideration.

THE WALL STREET JOURNAL.

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For Lender, Foreclosure Has Become Dirty Word

By RUTH SIMON

After Annalea Mace's employer reduced her hours two years ago, Ms. Mace and her husband pared their spending, sold jewelry on eBay and cashed in savings bonds she received at age two. That still wasn't enough, so the couple went to the bank in hopes of saving their house from foreclosure.

In June, Webster Financial Corp.'s Webster Bank shrank the monthly payments on their $295,000 mortgage by 17% to $1,585, lowered the interest rate and lengthened the loan's term. "It brought tears to my and my wife's eyes," says James Mace.

Such praise is rare for the nation's mortgage companies, which have struggled to work with delinquent borrowers. The largest servicers were forced earlier this year by the U.S. government to beef up their operations. Banks and government officials continue to meet in their effort to negotiate a settlement to the state and federal investigation of questionable foreclosure practices, which is likely to result in further changes.

In contrast, Webster, a regional bank based in Waterbury, Conn., with 176 branches in four states, has been the subject of just 16 complaints about loan workouts and foreclosures since 2006, based on the Connecticut Department of Banking, which calls that "a very small number."

"Overall, Webster is doing a good job at servicing its loans," says Connecticut Attorney General George Jepsen. The 76-year-old bank was "ahead of the industry" in creating a single point of contact for financially troubled borrowers, he adds.

Webster Bank's Alice Otano, right, helped James and Annalea Mace to keep their home.

At Webster, "you can actually reach a person," says Martha Ross, a housing counselor with Neighborhood Housing Services of Waterbury, Conn.

Webster's small size makes it more nimble than bigger competitors. But its track record shows how focusing on customer service can pay off for banks and borrowers. Webster services $8 billion in mortgages and home-equity loans, a tiny fraction of Bank of America Corp.'s $2 trillion portfolio. Webster also owns 75% of the loans that it services, helping the bank call the shots. Just 1.84% of the mortgages serviced by Webster were at least 30 days past due but not in foreclosure as of June 30. The U.S. average is 8.15%, according to Lender Processing Services.

When it restructures a loan, Webster usually waives late fees, penalties and unpaid interest instead of adding them to the loan balance—and putting homeowners deeper in the hole. Borrowers don't have to make months of trial payments before the modification is made permanent.

A dozen employees in

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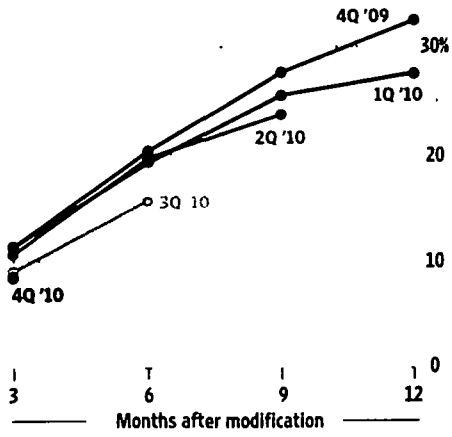
DOWJONES

Back in Trouble

Re-default rates for mortgage loans that have been modified, and are 60 or more days delinquent.



Source Office of the Comptroller of the Currency

Webster's collection unit staff the front lines, prodding borrowers with hardships to apply for help and then send in required documents. Seven loan-modification specialists sit nearby. Employee bonuses are tied partly to the number of modifications. About 80% of the agreements hammered out with borrowers are approved by Webster's management without any changes.

"We try to figure out what can a customer afford [in order] to stay in the home—and are willing to make it happen," says Webster Chief Executive James C. Smith, whose father started the bank in 1935. Mr. Smith considers the loan-modification program an investment in Webster's reputation and a way for the bank to differentiate itself from rivals.

Webster's consumer-finance segment, which includes mortgages, posted net income of $9.5 million in 2011's first half, compared with a loss of $21.1 million in the first half of 2010. Webster Financial had net income of $66.8 million on revenue of $355.9 million, after a provision for loan losses, in the first half of 2011, compared with net of $6.6 million on revenue of $301.2 million a year earlier.

Webster has completed 1,184 modifications, boosting reserves by $20 million to cover possible losses. As of March 31, 9.6% of borrowers whose loans were reworked in 2010 were at least 60 days past due on their payments nine months later. The re-default rate was 24.7% for modifications completed by the largest U.S. banks and thrifts in 2010, says the Office of the Comptroller of the Currency.

There were some early kinks at Webster. The first loan modifications left borrowers with higher payments, an approach that quickly proved unsuccessful because it didn't address borrowers' underlying problems. The Maces first applied for a loan workout in 2009. They were rejected a year later.

"Our turnaround time was not as good in 2009 as it is now," a Webster spokesman says.

For loans its owns, Webster typically extends the term of the mortgage and reduces the interest rate for two years, after which the rate begins to increase to the market rate at the time the loan was modified.

Webster follows federal guidelines for loans owned by Fannie Mae and Freddie Mac, but decided against signing up for the Obama administration's troubled Home Affordable Modification Program. The government's rules "were too restrictive," Mr. Smith says.

More than 120 mortgage servicers, representing over 90% of the market, have signed up for the HAMP program, a Treasury Department spokeswom

Webster won't modi more than once in a yea borrowers can receive t fications in five year. provide evidence of a r ship. Two years ago, W the monthly payment Glenzer's $60,180 hom loan by $123 to $366 aft as a learning and dev specialist was eliminate

Webster recently payment to $206 a Glenzer and her hus schoolteacher, exhaus savings. Both times, Ms worked with Natalie C joined Webster four y as a debt collector sympathetic," says Ms. "She didn't make me f failure." Second mortg the Glenzers' account f loans Webster owns or s

While many mo servicing shops are high turnover, the seve modification speciali been on the job since 2008, when the company its program.

When Webster appro leen Smerglio for a loa in July 2009, Ms. Clark 5:30 p.m. on a Friday t the good news. "I tol she should be drinking itas," recalls Ms. Smer hasn't missed any pay her reworked loan. "It weekend."

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Corporate Office 35 Plains Road • Essex, Connecticut 06426 • Telephone (860) 767-4414
Mailing Address PO Box 950 • Essex, Connecticut 06426

TO the Honorable State Banking Committee Members:

BILL no. 6355

Thank you for allowing me to comment on the "Homeowner Protection Rights" legislation (Bill No. 6355).

Overall, this bill does not meet the goal of speeding up and fairly alleviating the foreclosure conditions in the State of Connecticut in fact does the opposite in multiple ways to the extreme detriment of all of the community banks and others in CT whose primary concern it is to try to work with borrowers. As proposed this bill will reduce values of all homes. It constricts the ability to enforce contracts for loans signed by both parties who entered the transaction with full legal representation. The current process today is already very stringent and inefficient from the lenders' perspective with eight months of mediation availability in a judicial state which at least attempts to cap the process. This bill fails to recognize the added burdens carried solely by a lender when a borrower cannot pay--the carrying cost of interest, insurance costs; and leads to disrepair issues. Loans range with down payments by borrowers on the financing from an appropriate 20% to FHA loans of 3%. Yet, there is no consideration given in the mediation process for the lender who has invested anywhere from 80 – 97% of the loan proceeds and because of market conditions in many cases the borrower has little of their own equity to lose. This bill minimizes the standing of the lender who has the lion's share of the funds at risk. Appropriate mediation requires both parties coming to the bargaining table with something to give up. How can a lender bear the potential burden that this bill proposes when the 8 month cap of mediation is removed allowing the proceedings to revert to costly continued litigation where bankruptcy protections for the borrower could commence to forestall the foreclosure under current laws for years.

Lenders seek to discuss loan delinquencies and resolve issues early once an issue presents itself. A sample cash flow analysis, financial statement review and debt to income review will make it clear whether there is a chance of resolution. Under the current rules, many banks try to do a deed in lieu and waive the forgiven amount due to avoid the current protracted process in Connecticut. Further, the cost of foreclosure and the time it takes to bring the property back to market is expensive. If the lender or servicer is unable to fix up the potentially blighted property, there are negative impacts to the neighborhood's home values. This bill requires banks to bear the brunt of an open-ended, unlimited, mediation cost. If you couple this along with the other costs incurred and the potential of taking losses on the loan, this bill is harshly punitive to the lenders, saddling lenders with an inefficient mediation process that in most cases will be endless. Not only does the lender pay when the judge allows the borrower extra time when they fail to

bring a financial statement in a timely manner, perhaps look for a job after six months of already looking for a job and numerous other reasons that fail to bring the mediation to a conclusion. The information the judge seeks was asked for by the lender months ahead of the mediation process.

Mediation puts all litigation in a standstill position. The provisions in this bill to allow for "Good Faith Standards" are unfairly lopsided and targeted against lenders and servicer's of loans. The bills potential sanctions are with malice and destroy the good faith of a borrower for taking money and promising to pay it back to a lender over the terms of contract. Further litigation doors will fly open and overwhelm the courts, placing further burden on the foreclosure system creating an indefinite standstill that would take many years to even get rid of the most obvious frivolous cases. This bill multiplies the defenses to what Plato would say – "to the excess." If passed, lending will be more expensive in CT and many may abandon the business. It was recently announced that the Federal regulator of Fannie Mae and Freddie Mac is looking at judicial states such as Connecticut with a plan to add extra fees where foreclosures take the longest. This will affect all borrowers who wish to finance loans in our state due to the protracted time with our current program. It is clear that this bill will extend the process and once Fannie and Freddie learn of this initiative and do the math, it is expected that they could abandon the State of CT altogether or add on massive costs which would further stifle recovery and values on all real estate with dire consequences to all.

Full settlement authority is vague and extremely problematical in the language of this bill. While the homeowner has reasonable time to review the offer, the lender cannot enter the mediation with pre-determined parameters. Ranges of authority to make a deal usually mean how much loss is the lender is willing to take on the principal, let alone providing property insurance during this period and other expenses and losses incurred. This is not always concrete and the lenders should be allowed equal time to review that is equal to the borrower - which is not provided as written. There needs to be time for a financial institution to seek outside counsel - particularly since they have the lion's share of the investment.

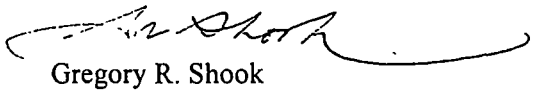
The proposed mediation fee on state chartered banks is unnecessary and unfair. My understanding is that the Mediation program was funded last year through surplus DOB funds through 2014, with the expectation that the volume of foreclosures will decrease so that the program won't be necessary by that point. While the banking industry has always supported the goal of the mediation program, considering the delays and statewide negative consequences that just you've heard about from other groups - maybe it needs to significantly revamped with truly unbiased arbiters that aren't one-sided borrower advocates. But back to the state chartered bank fee issue. From a public policy perspective I would hope that this Committee would not single out any subgroup of an industry for mandatory fees and I and the entire industry strongly oppose the concept of a mediation fee.

Banks currently report to their board the foreclosed and delinquent properties; place that information in our quarterly call reports which get posted on the FDIC web site for all to see. We also review our allowance for loan losses to determine based on current market conditions and the collateral of the loan whether we need to provide more money to cover the losses on these foreclosed properties. This process includes the cost to sell. Realtor's commissions, taxes, insurance, maintenance, upkeep; utilities all are included in a specific reserve calculation. All of

these reports are reviewed by the Connecticut Banking Department currently. We do not feel the bill needs to have the Banking Commissioner adopt new regulations and require additional reporting as the information is readily available. We do not need the State adding additional burdens to already an onerous process. These reports could be garnered by a banking department analyst from current information and are completely unnecessary as a regulation. As an alternative, workable solution, loans sold to Fannie and Freddie could be targeted thus leaving community banks exempted from this legislation if the loans remain in their portfolios. This is an unfortunate attempt to drag in portfolio lenders who have avoided selling their loans to the government sponsored enterprises.

In conclusion, while I think the mediation program is slow and inefficient it is infinitely better than this bill. This is unworkable and should be voted down.

Respectfully Submitted,



Gregory R. Shook
Essex Savings Bank
President & CEO
Connecticut Citizen

Testimony Regarding Governor's Bill No. 6355
"An Act Concerning Homeowner Protection Rights"
Before the Connecticut House of Representatives' Banks Committee

Martin J. Geitz
President & Chief Executive Officer, Simsbury Bank
Immediate Past Chairman, Connecticut Bankers Association
February 19, 2013

Co-chairmen Tong and Leone, Vice Chairmen Crisco and Luxenberg, Ranking Members Alberts and Linares, and Committee members, thank you very much for this opportunity to provide testimony to you on this important legislative proposal.

Earlier this year when this proposed legislation was announced, the following objectives were stated: "protect homeowners facing mortgage delinquency or who are in foreclosure, and streamline the process for addressing abandoned and blighted properties."[1] Further, the proposal seeks to offer "protections to homeowners engaged in the mediation process, and ensuring that process is efficient and fair."[2]

This afternoon, you heard testimony from homeowners who were victims of unscrupulous lenders and then suffered from insensitive collection practices. You heard from housing advocates who illustrated difficulties many encounter in their search for decent housing. You heard from economists and business leaders who described how Connecticut's economy and resulting job opportunities for the State's workers are held back by laws that make our state unattractive, relative to most others in the country, to start or grow a business. And, you heard from mortgage servicers and bankers who described the cost to our economic vitality imposed by a judicial foreclosure process that already results in Connecticut having the third longest process in the country.

The proposed legislation comes five years after the onset of one of the most traumatic periods in American economic history. Beginning in late 2007, the mortgage lending excesses – fueled by lax underwriting and unproven product designs of some lenders, and Wall Street securitization – began to unravel. When the availability of subprime and other exotic mortgages dropped, fewer potential home buyers qualified for mortgage financing. With the decline in demand for homes, the housing price bubble that had been fueled by reckless mortgage lending popped. The result was a financial market crisis in the fall of 2008 requiring extraordinary intervention by the Federal Reserve and other regulators to keep the financial system from collapsing. This financial shock led to the Great Recession, a period of economic contraction not seen in the United States since the 1930's. While the economy is no longer in recession, economic growth in recent years has been slow and unemployment remains high, particularly in Connecticut.

The financial market crisis forced many of the most egregious players in the mortgage origination and Wall Street securitization markets into bankruptcy or forced marriages with stronger financial institutions. Many of

[1] Press Release dated January 30, 2013 entitled: GOV MALLOY. HOMEOWNER PROTECTION ACT HOLDS BANKS ACCOUNTABLE AND STREAMLINES PROCESS FOR ADDRESSING ABANDONED PROPERTIES
[2] Press Release dated January 30, 2013 entitled. GOV MALLOY: HOMEOWNER PROTECTION ACT HOLDS BANKS ACCOUNTABLE AND STREAMLINES PROCESS FOR ADDRESSING ABANDONED PROPERTIES

those now failed egregious players were among the top mortgage originators in Connecticut in 2006 and 2007 They included Lehman Brothers; GMAC Mortgage; Wachovia Bank; IndyMac Bank; Fremont Investment; Taylor, Bean &Whitaker; World Savings; and Connecticut's own MLN. Our capitalist economic system forced the failure of hundreds of mortgage companies and investment banks that lacked the capital to support the risk they took.

However, many borrowers whose mortgages ended up in Wall Street securitizations have suffered through difficult years with far away mortgage servicers. One Connecticut response to this situation has been the successful mortgage assistance events sponsored by the Department of Banking and Attorney General, held throughout the State to connect borrowers to servicers. As noted by Governor Malloy, "through the mortgage assistance events we've held across the state, we've been able to help connect thousands of homeowners with their lenders."[3]

While the aftermath of the mortgage and Wall Street excesses continues to directly impact the lives of too many borrowers, our elected leaders and financial market regulators have taken dramatic steps to reign in the excesses and protect consumers. The "Dodd-Frank Wall Street Reform and Consumer Protection Act" was signed into law by President Obama in July 2010. The approximately 2500 page law is on the way to becoming 25,000 pages of regulations that have already begun to change virtually all elements of the mortgage market from origination to underwriting to closing to servicing and to collection. The Dodd-Frank Act included the creation of new federal government agency to oversee and regulate consumer financial markets. This agency is called the Consumer Financial Protection Bureau ("CFPB"). In January alone, the CFPB issued new regulations that addressed a borrower's ability to repay, loan underwriting guidelines that define what constitutes a "qualified mortgage", protections for high-cost mortgages, and a variety of mortgage servicing rules.

The practices that led to the financial market crisis and the disruption of so many lives largely ended in 2008. The failure of many of the mortgage companies and investment banks that profited from the excesses cleared the decks of bad actors. State and federal legislative and regulatory changes since 2009 continue to transform the mortgage business for the benefit of consumer protection.

It is now time for the State's housing related policies to intersect with its economic development policies. The legislature has supported the Governor's strong steps to boost the economy, including the "First Five" and "Small Business Express" programs, tax incentives, and technical assistance. As others testified today, the State's economy would benefit from continued recovery of the housing industry to complement the economic development efforts already underway. Unfortunately, the proposed legislation will serve to dampen rather than promote recovery of Connecticut's housing markets and its economy. Consumers will suffer as mortgage lenders deal with the increased cost associated with the changes.

The fact is that Connecticut's foreclosure process already provides the average borrower with 690 days before resolution. This time period is among the longest time periods before resolution in the country. We need to keep in mind that the reason a mortgage loan enters the foreclosure process is because the borrower has failed to live up to his or her side of the agreement with the lender. The borrower willingly entered into a contract

[3] Press Release dated January 30, 2013 entitled GOV MALLOY: HOMEOWNER PROTECTION ACT HOLDS BANKS ACCOUNTABLE AND STREAMLINES PROCESS FOR ADDRESSING ABANDONED PROPERTIES

with the lender to borrow money to purchase or refinance their home and in return promised to make payments over time.

Perhaps this last statement is part of the impetus for this proposed legislation. Perhaps too many borrowers were misled by their mortgage originator in the years prior to the 2008 market crisis. However, as I noted earlier, we are now in a very different mortgage market. The regulated banks, lightly regulated mortgage companies, and Wall Street securities packagers (along with securities rating agencies and credit default swa insurers, among others) who gave us the financial market and housing crises are, for the most part, gone. Th survivors who assumed the assets and liabilities of the failed institutions have entered into multiple settleme agreements that fund programs for the homeowner victims of the wrongdoing. The federal government has funded several programs to help victims of unscrupulous lenders. In other words, victims of this debacle hav many avenues available that will keep them in their homes.

So, the question is whether the proposed legislation is necessary to protect borrowers today and in the futur With all of the market changes that have been codified into law and regulations, are borrowers today expose to abusive practices from unscrupulous lenders like the years prior to the 2008 market crisis? Are the propo enhancements to a borrower's legal rights in a foreclosure situation that are contained the proposed legislat appropriate given the fundamental changes in the mortgage business? I believe that they are not. The Dodc Frank Act's comprehensive legislative overhaul of financial market risk taking, the Consumer Financial Protec Bureau's comprehensive redesign of the mortgage origination process, and the private market's return to sa and sound lending practices provide enormous protections to today's and tomorrow's mortgage borrower. proposed legislation is unnecessary today because today's borrowers have many more protections at the origination of their mortgage than they had five or six years ago. The proposed legislation will simply make Connecticut a less competitive state in which to start or build a business. It will hurt this legislature's and thi governor's extraordinary efforts to improve Connecticut's economy. And, it will hurt Connecticut's consume ability to obtain a mortgage.

The banking industry would be delighted to work with this Committee, the governor's office and other interested parties to modify the proposed legislation to make it amenable to all parties interested in improvi the mortgage foreclosure process in Connecticut.

Thank you for this opportunity to address you today on this important legislative proposal.

February 19,

Testimony of William J. McCue
McCue Mortgage Company, New Britain, Ct

Concerning: Opposition to House Bill 6355,
An Act Concerning Homeowner Protection Rights

My name is William J. McCue. I own and operate the McCue Mortgage Company. Our Office is in New Brit: We are licensed by the Department of Banking to originate, sell, and service home loans throughout the State of Connecticut. I am a lifelong resident of Connecticut and New Britain. I am a Member of the Connecticut Mortgage Bankers Association and am a member and currently serve on the Board of Director The Mortgage Bankers Association of America. I am h to testify on Bill 6355.

The McCue Mortgage Co. was founded by my father i 1949. The company was designated at that time as th first Loan Correspondent for the State of Connecticut under a program run by Dept. of Public Works establi to make home loans to finance first home purchases veterans who had returned from WWII. Since that tin

we have participated in all State home financing progra including our current involvement in the Connecticut Housing Finance Authority first time home buyer program. We have originated and serviced all of these loans.

Originating, selling and servicing loans places us in the position of being an intermediary between customers a investors. When we deal with our delinquent borrower we must do so in accordance with the requirements of our investors, because, they own the loans.

Further, virtually all of our loans are low downpayment loans and therefore require mortgage insurance. In or to keep the insurance in place to protect our investors from loss we must also comply with the rules the mortgage insurers impose when dealing with delinque loans. The mortgage insurers we use most frequently a FHA (Federal Housing Administration), VA (Veterans Administration) and various PMIs (private mortgage insurance companies).

These insurers have very detailed rules on how delinqu loans will be administered. This effort, referred to as "I

Mitigation" serve two purposes, to preserve the home form foreclosure and to prevent the insurer from havi to pay a claim.

Overwhelmingly, our loans are insured by FHA. When FHA loan goes into default we are required *before* commencing foreclosure to use the following tools to attempt to end the default:

1. Repayment Plan
2. Special Forbearance
3. Loan Modification plan
4. Filing a Partial Claim with the Insurer which m also include a modification
5. EMAP State Program that brings the borrower current through a non-interest accruing loan an may also include subsidizing the monthly paym
6. SHORT SALE.

All of these steps must be completed before the foreclosure begins. If the defaulted borrower is responding to our communication efforts each of the

plans will be evaluated and determined unworkable before the next possible plan is evaluated.

When there are no other Loss Mitigation options that a workable, we commence foreclosure. Current Connect law mandates Mediation at the outset of the foreclosu process. The Mediation sessions are primarily an effor on the part of the *mediator* to go through the process have already been through with the borrower in an eff to keep the borrower in the home. This process gener entails a borrower claim that his or her financial condit has changed and they should be reconsidered. The mediator delays the process while the new documentation is gathered. This includes additional Mediation sessions, where *almost always no new information is received which would bring the borrowe to Loss Mitigation eligibility*. Mediation then usually continues for 4-5 sessions with the sessions occurring i thirty day intervals. That means four to five more mon - with no payments made - added to the five to seven months of no payments that precedes the commencement of foreclosure. That means

approximately one year of no mortgage, insurance or property tax payments before the foreclosure begins.

Almost No borrower can recover from a 12 month delinquency without the help of outside sources - all o which have been reviewed and the borrower determir unqualified in the first 4-5 months.

Now the process returns to the courts for several mor months before judgment is entered on our behalf.

The best part of two years will pass before we can rec our investor's losses though the filing of insurance clai or sale of the property.

The intent of this legislation is to shorten this process. are in favor of the intent.

This legislation does not accomplish the intent becaus

1. It gives more authority to the Mediator who is t prime cause of the delays
2. It gives authority to impose severe penalties on lender and no penalty can be imposed on other parties. This suggests that the cause for the de is the lenders and servicers. This is not so.

3. The lopsidedness of the penalties suggests a different intent. That intent is to keep the borrower in the house longer notwithstanding t continuation of the default in the loan.

The real result will be:

1. Longer and more costly foreclosures
2. Continued deterioration of the homes that the borrowers occupy as they neglect maintenance knowing that they will eventually lose the home failure to pay.
3. Continued growth in the cost of operating the Judicial Dept. caused by unnecessary delays anc unnecessary staff.
4. Delay of the defaulted borrower rebuilding his c her credit score and financial future.
5. Loss of attractiveness of Connecticut as a place make mortgage loans.

I urge the Committees opposition to this legislation as drafted and would be happy to answer any questions may have.

STATE OF CONNECTICUT
JUDICIAL BRANCH

EXTERNAL AFFAIRS DIVISION

231 Capitol Avenue
Hartford, Connecticut 06106
(860) 757-2270 Fax (860) 757-2215

Testimony of the Honorable Douglas C. Mintz
Banks Committee Public Hearing
February 19, 2013

H.B. 6355, An Act Concerning Homeowner Protection Rights

Senator Leone, Representative Tong, Senator Linares, Representative Alberts, and members of the Committee, I want to thank you for the opportunity to appear before you today to testify, on behalf of the Judicial Branch, in support of **H.B. 6355, *An Act Concerning Homeowner Protection Rights***. My name is Douglas Mintz and I am a judge of the Superior Court. I am currently sitting in Stamford, where I have presided over the foreclosure docket for the past several years. I also serve as chair of the Judicial Branch's Bench-Bar Foreclosure Committee.

I would be remiss if I did not begin my testimony by stating that the Judicial Branch's Foreclosure Mediation Program, which has been operating since July 1, 2008, has been a great success. As of December 31, 2012, 15,156 cases had completed mediation; of those, 83% were settled, and in 68% the homeowners remained in the home. A copy of the chart illustrating this is attached to my testimony.

Turning to the bill before you, this past fall the Governor's staff invited me and others from the Judicial Branch to meet with them as they began working on this proposal. I am happy to report that we had a very fruitful discussion, and that the suggestions we made at that meeting have been included in this bill The replacement of the 8-month stay with a stay on pleadings during the time that mediation is ongoing, however long it lasts, would eliminate the inconsistency in timeframes that currently exists in the statutes. We also support the elimination of the 30-day limitation on the extension of mediation, as that limitation has not proved practicable. In addition, the clarification of terms in sections 1 and 3, and the expanded authority

for judges to impose sanctions, in section 4, would address issues that have been ongoing since the inception of the foreclosure mediation program.

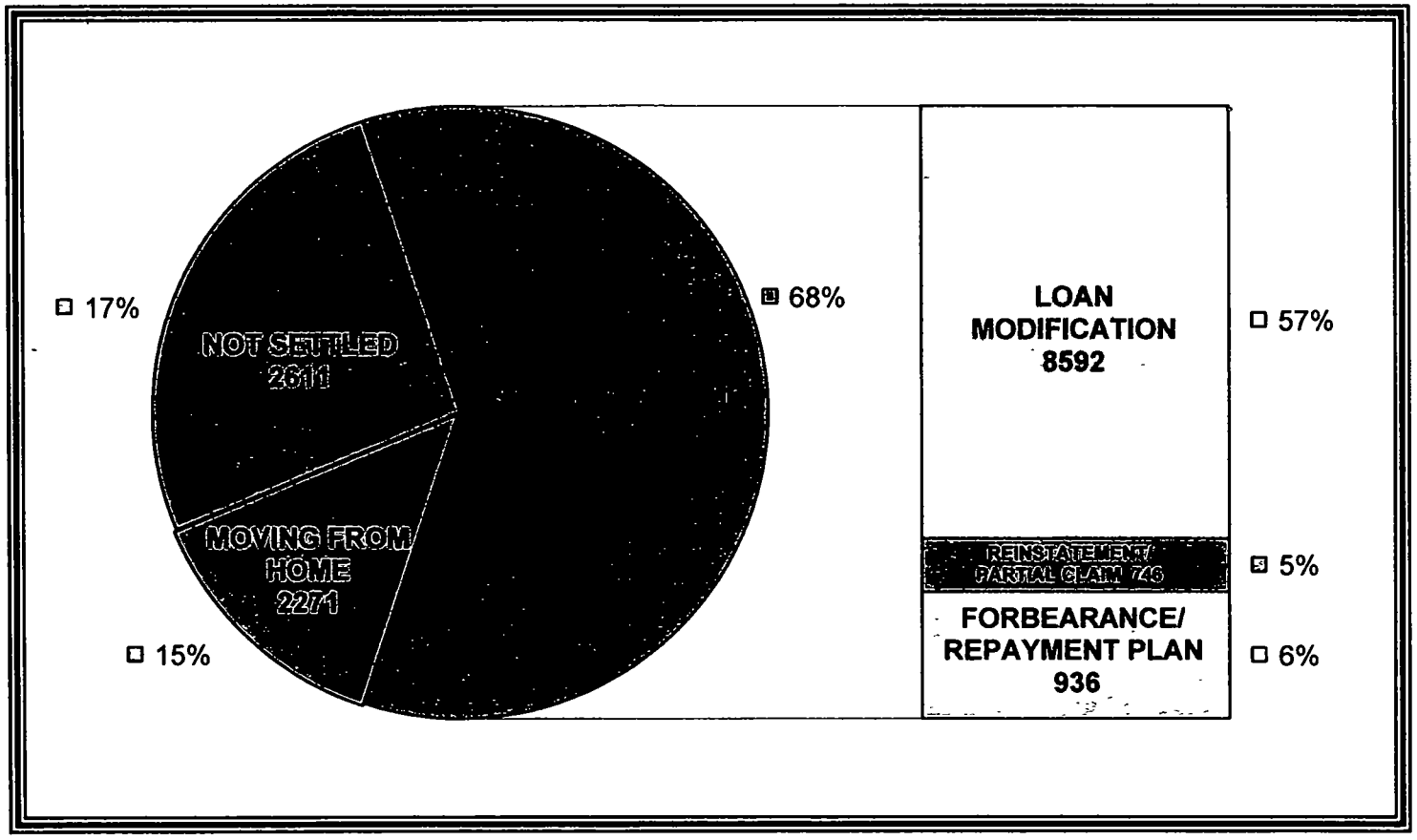
We also support the proposal to increase judicial oversight over the mediation process. We recognize, and share, the concern that the foreclosure mediation process takes too long Indeed, we have engaged in repeated attempts over the years to address this issue, with little success. However, I can tell you, based on information we recently pulled together, that the mediation process has not caused a delay in processing foreclosure cases. I have attached to my testimony two charts that show that the mediation process has not substantially affected the processing time for foreclosure cases. In calendar year 2011, the average time for foreclosure cases with mediation to be disposed was 445 days, while for cases without mediation it was 475 days. In calendar year 2012, the average time for cases with mediation was 553 days; for cases without mediation it was 622 days.

Although we support increased judicial oversight of the foreclosure mediation process, I should point out that we are concerned that the new requirements, as drafted, would overburden the court process. In order to alleviate this concern, we would respectfully suggest clarification that the term "on the record," on lines 132 and 279, contemplates a judge reviewing the file and signing an order in chambers, and that the hearing that would be required following a third mediation session be allowed to follow the same process. Requiring all of these proceedings to take place before a judge in the courtroom could prove to be unmanageable, and I do not believe it is necessary to accomplish the purpose of increased judicial oversight over the mediation process.

Finally, in the interest of making a good bill better, I would like to take this opportunity to bring to your attention some issues with the language of the bill that we have identified:

- It is unclear what is meant by the phrase "completely delegated", in line 21;
- The language in lines 37-39 appears to need clarification,
- We would respectfully suggest that the phrase "**reasonably** complete package of financial documentation" on lines 167 and 329 be replaced by "**substantially** complete package of financial documentation."

Thank you again for the opportunity to testify, and for your consideration of these concerns. I would be happy to answer any questions you may have.



STATEWIDE, 15,156 CASES HAVE COMPLETED MEDIATION FROM JULY 1, 2008 THROUGH DECEMBER 31, 2012. THIS CHART ILLUSTRATES THE OUTCOME OF THESE CASES.

THE CATEGORY "MOVING FROM HOME" INCLUDES AGREEMENTS FOR A SALE, SHORT SALE, A DEED IN LIEU, OR AN EXTENSION OF THE LAW DAY OR SALE DATE

THE CATEGORIES "MOVING FROM HOME" AND "STAYING IN HOME" WHEN ADDED TOGETHER RESULT IN A **SETTLEMENT RATE OF 83%.**

FORECLOSURE DISPOSITIONS – 2011

Breakdown of Foreclosure Cases Disposed in 2011

	No Mediation	Mediation	TOTAL	% Of Total Cases In Study
***Not* Plaintiff Judgment (ex. Withdrawn, Dismissed)**	7,726 (68.1%)	4,903 (78.4%)	**12,629**	71.7%
Plaintiff Judgment (ex. Strict, Sale)	3,601 (31.7%)	1,351 (21.6%)	**4,952**	28.1%
Uncertain	26 (00.2%)	3 (00.0%)	**29**	0.2%
TOTAL	**11,353**	**6,257**	**17,610**	
% Of Total Cases In Study	64.5%	35.5%		

Average Time to Disposition for Foreclosure Cases Disposed in 2011...

	No Mediation	Mediation
***Not* Plaintiff Judgment (ex. Withdrawn, Dismissed)**	508 Days	442 Days
Plaintiff Judgment (ex. Strict, Sale)	401 Days	455 Days
Uncertain	935 Days	733 Days
Overall Average	***475*** Days	***445*** Days

Average Number of Court Events Scheduled per Case for Foreclosure Cases Disposed in 2011. .

	No Mediation	Mediation
***Not* Plaintiff Judgment (ex. Withdrawn, Dismissed)**	2.3 Events	7.5 Events
Plaintiff Judgment (ex. Strict, Sale)	5.3 Events	9.7 Events
Uncertain	15.8 Events	8.3 Events
Overall Average	***3.3*** Events	***8.0*** Events

FORECLOSURE DISPOSITIONS – 2012

Breakdown of Foreclosure Cases Disposed in 2012...

	No Mediation	Mediation	TOTAL	% Of Total Cases In Study
Not Plaintiff Judgment (ex. Withdrawn, Dismissed)	7,163 (58.5%)	3,513 (62.0%)	**10,676**	59.6%
Plaintiff Judgment (ex. Strict, Sale)	5,054 (41 3%)	2,149 (37.9%)	**7,203**	40.2%
Uncertain	23 (00.2%)	2 (00.0%)	**2**	00.1%
TOTAL	**12,240**	**5,664**	**17,904**	
% Of Total Cases In Study	68.4%	31.6%		

Average Time to Disposition for Foreclosure Cases Disposed in 2012...

	No Mediation	Mediation
Not Plaintiff Judgment (ex. Withdrawn, Dismissed)	572 Days	522 Days
Plaintiff Judgment (ex. Strict, Sale)	691 Days	604 Days
Uncertain	860 Days	592 Days
Overall Average	***622 Days***	***553 Days***

Average Number of Court Events Scheduled per Case for Foreclosure Cases Disposed in 2012. .

	No Mediation	Mediation
Not Plaintiff Judgment (ex. Withdrawn, Dismissed)	2.2 Events	8.6 Events
Plaintiff Judgment (ex. Strict, Sale)	5.1 Events	10.5 Events
Uncertain	14.7 Events	16.5 Events
Overall Average	***3.4 Events***	***9.4 Events***

Testimony of Stephen Lewis
CEO and President of Thomaston Savings Bank
on
House Bill 6355
An Act Concerning Homeowner Protection Rights
2/19/2013

Chairman Leone, Chairman Tong, and members of the Committee I'd like to thank you for this opportunity to provide testimony. My name is Stephen Lewis and I am the CEO and President of Thomaston Savings Bank, a state chartered community bank founded in 1874 and headquartered in Thomaston, CT. We have $740 Million in total assets with 10 branches located in Thomaston, Watertown, Terryville, Waterbury, Harwinton, Bristol, Middlebury, and Bethlehem CT.

Prior to working at Thomaston Savings Bank, I worked for 15 years at the FDIC (Federal Deposit Insurance Corporation) Division of Supervision as a *safety and soundness examiner* in the Connecticut Field office, for the New York/Boston Region. During that time, I participated in 100's of examination banks across the northeast.

My testimony reflects my own views developed through the course of my career as a banker and an examiner.

I would like to clarify at the outset of this testimony that I agree with the Administration that the residential foreclosure/mediation process does need to be improved, because it takes much too long this process. According to recent data, CT has the third longest foreclosure process in the nation with average timeframe of 690 days. I believe the proposed Bill will not improve this process. To the contrary, I think this Bill will lengthen the time frame and make it more costly.

And based on my 15 years with the FDIC as a safety and soundness examiner, this bill will be viewed unfavorably by the FDIC as well. The bill will add more uncertainty and risk to the foreclosure process As such, I anticipate that the FDIC will require Banks to hold more reserves and capital for loans that a in foreclosure.

Today, many experts in the business and banking industry will or have testified to various aspects of th Bill that will adversely impact the foreclosure and mediation process. And will also adversely impact th housing market and our local economy. I would like to discuss one specific section of the Bill that I believe is unfair and punitive.

The proposed legislation would create sanctions available to judges that are alarming and unprecedented. The proposed bill states that if the judge determines the "parties" did not mediate in good faith - sanctions would be available. These sanctions are exclusively targeted at the lender/services. The available sanctions (as detailed under lines 420 to 428) include fines as well as complete dismissal of the foreclosure action. Other sanctions include barring interest accrual on underlying loan, awarding attorney fees, compensation for lost income and expenses arising out of a failure to mediate in good faith, and forbidding the mortgagee from charging the mortgagor for the mortgagee's attorney fees.

In addition, the threshold for demonstrating failure to mediate in good faith is very low. The Bill sta under Lines 417 to 420, demonstrating that a party or attorney failed to mediate in good faith does require the standard and accepted tests, showing that such party or attorney acted with malice, inte to injure or an otherwise affirmative showing of bad faith. As such, the party or attorney could poss be sanctioned for something as simple and accidental as administrative errors. And the definition fc good faith is extremely broad as detailed under lines 393 to 417.

Consequently, these types of sanctions coupled with the broad definition of good faith and the low threshold for proving failure to act in good faith - will add significant cost and delay to the mediatior process. Lenders/Servicers will be very concerned about the additional risk/cost for non-complianc with this Bill and will need to develop additional levels of review and compliance to ensure no error occur in the mediation process. This will adversely lengthen the time to complete the process and further increase the cost.

I would anticipate the FHFA will increase their guarantee fees beyond the 52% increase in surcharge already proposed for Connecticut loans because of this "proposed" lengthy and costly foreclosure process And I also expect that local lenders will need to raise their mortgage rates to cover the higl cost associated with the new mediation process. And many banks may tighten their credit underwr standards to reduce the likelihood of future foreclosures. These actions will further delay a recover the housing market and the general economy.

In closing, I hope the Banks Committee will consider working with the Financial Industry to study the matter further and develop a more effective process for mediation that is fair for both borrowers ar their banks.

Dime Bank

Nicholas Caplanson
PRESIDENT & CHIEF EXECUTIVE OFFICER

February 19, 2013

To: The Banks Committee

Fr: Nicholas Caplanson, President & CEO, Dime Bank, Norwich

Re: **H.B. 6355, An Act Concerning Homeowners Protection Act**

Position: **Oppose as Drafted**

Chairman Leone, Chairman Tong and members of the Banks Committee, my name is Nicholas Caplanson and I am President & CEO of the Dime Bank, located in Norwich, CT. We currently have 10 branches serving the southeastern corner of the state.

The Governor's "homeowner protection rights" bill 6355 is intended to make the mediation and foreclosure process more efficient, but from a lender's perspective I see the proposed bill as reaching far beyond the foreclosure process. It addresses many issues that have *nothing* to do with whether a borrower can afford to pay a loan or continue to own a property.

In particular, as the Bill is drafted, borrowers will be extended the power to file new defenses or counterclaims against lenders that have nothing to do with the foreclosure process. These include potential lending law or servicing law violations that can include any one of a broad range of issues relating to the making, validity or enforcement of a note and mortgage.

As a community bank, we enter into a transaction with a customer because it makes sense for them ***and*** for the bank. Complying with laws is of paramount importance to us and we follow sound practices and approach every transaction in good faith.

Certainly consumers should be treated fairly and have the ability to seek recourse if

a mistake is made or a law is not followed, however, allowing this to be incorporated into a foreclosure bill will certainly not create efficiency or speed the process up.

This Bill also provides a wide open menu of legal options to a borrower that is virtually endless and leaves the door open for significant delays to occur in the foreclosure process if a borrower or their counsel chooses to file challenges or allegations that have no merit.

Both the time and cost to foreclosure a mortgage in the state of Connecticut could increase substantially as a result of this Bill with the provisions as drafted.

Lenders will certainly question their current approach to extending credit in the state because the risks of winding up in costly litigation when a loan defaults could be greatly increased.

The very ambiguous and broad reaching "special defenses" outlined in the Bill could be so challenging for a lender to defend against that a decision to not do business in the state might be a realistic option.

The economics of mortgage lending and servicing have changed dramatically in recent years and the profit derived from this business simply will not justify taking on more potential financial risk.

I see this proposal as introducing significant new financial risk for a lender into a business that is already seeing profits decline and losses increase as the economy in our state continues to struggle.

I encourage everyone to consider making significant modifications to the provisions dealing with potential new defenses and counterclaims. Borrower's rights are important but the bill should also consider the additional risk being placed on lenders and servicers. What needs to occur is a balanced approach that works for both borrowers and lenders while addressing the timeliness and efficiency of the process. Unfortunately, the current proposal lacks this balance and, if this Bill is not modified, mortgage lenders will be put in an extremely difficult position where they will be forced to re-evaluate the financial risk of extending credit in the State of Connecticut.

Thank you.

JONATHAN HOFFMAN: Since I'm on the record, I -- I'm not going to comment on that, but -- but I also don't think 971 is the vehicle for that. I think possibly the mediation statute could serve a good role. And, again, whether it's implied or explicit, the mediation statute is doing a good job, at least in my mind, in helping facilitate some of the short-sale process, at least opening up the lines of communication.

But in this bill, and in this law as it stands now, if you change that word "foreclosed," you're going to have more problems than just how it's written now, because then you change the rest of the language, you change the ability to foreclose by sale, you change a lot more items.

SENATOR LEONE: Okay. Thank you.

REP. TONG: Any other questions?

REP. DIMINICO: Mr. Chairman.

REP. TONG: Yes, Representative Diminico.

REP. DIMINICO: Thank you, Mr. Chairman.

I just want to be clear. Foreclosure is a process. And I look at foreclosed on as the beginning of the foreclosure process. When the judge enters his decision, that's when the property becomes foreclosed on and the bank takes possession and takes title. But the beginning of the foreclosure process is the beginning when you get to be foreclosed on, and that's the way I read

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this -- this language.

It's not when the bank takes title or when the bank takes possession or when the judge enters a strict foreclosure. It's -- it's when the process begins. And you know as well as I do, that there's a mediation process, and you most -- also know as well as I do, 6355 is the Governor's bill, which really is kind of in concert with this. It's really to expedite the -- the foreclosure process, to alleviate the burdens on the court system, and to -- to avoid blighted properties. So I take issue with the concern of the terms being -- of being -- I would say being foreclosed on as opposed to foreclosed on.

Now, you brought up the issue about credit. And I -- I don't think anybody's brought up the word credit. And you know as well as I do, on short sales, people's credit can be compromised.

JONATHAN HOFFMAN: Sure.

REP. DIMINICO: And -- and so it's -- so I don't think credit is really the issue here. The issue is what's in the best interest of -- of the borrower, because if a deficiency claim is laid out by the judge, ultimately the borrower, unless there's a release, the borrower could become responsible for it.

It's also in the best interest of the community in hopes that the property will not become blighted because it's being occupied. And it's really probably in the best interest of the banks, because it not only will probably bring a better

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CONNECTICUT
GENERAL ASSEMBLY
HOUSE

PROCEEDINGS
2013

VOL.56
PART 19
6233 – 6539

DEPUTY SPEAKER SAYERS:

Without objection so ordered. Will the Clerk please call Calendar 196.

THE CLERK:

On page 41, Calendar 196, favorable report of the joint standing Committee on Planning and Development, substitute House Bill 6355, AN ACT CONCERNING HOMEOWNER PROTECTION RIGHTS.

DEPUTY SPEAKER SAYERS:

Representative Tong.

REP. TONG (147th):

Good evening, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Good evening.

REP. TONG (147th):

I move acceptance of the joint committee's favorable report and passage of the bill.

DEPUTY SPEAKER SAYERS:

The question is on acceptance of the joint committee's favorable report and passage of the bill. Representative Tong, you have the floor, Sir.

REP. TONG (147th):

Thank you, Madam Speaker. This bill is a bill to strengthen our State's Foreclosure Mediation Program.

After the financial crisis of 2007, 2008 Connecticut was particularly hard hit and Connecticut homeowners found themselves you know in -- in a difficult place in the foreclosure crisis. Many of our neighbors across the State found themselves in considerable distress with for many of them their most important financial asset their home.

In response we created the Foreclosure Mediation Program here in Connecticut that's become a national model for helping homeowners stay in their homes. Over the last several years we've helped 15,000 people through our Foreclosure Mediation Program. More than 80 percent of people in this program have been able to work something out with their lenders and more than 68 percent of those folks have been able to stay in their homes.

Although we've seen great success with this program we've also learned that there have been considerable abuses in the program as well. Foreclosures and our Foreclosure Mediation Program can take quite a long time in the process. We've seen foreclosures in this State take sometimes as high 300, 400, 500 days.

We have homeowners and lenders in the mediation

program for multiple sessions, sometimes five, ten, 15, even 20 sessions. We've also heard horror stories from our constituents about attending mediation programs where the lenders are unprepared or requesting additional information over and over again when that information and financial has already been provided several times.

We've also heard stories of situations where a lender's been unresponsive to requests from homeowners for help and alternatives to foreclosure. So what we've done here is we've tried to come together and strengthen our mediation program and to make it a much more efficient and effective program to help people hold on to that all important asset in their home.

Madam Speaker, the Clerk has an amendment, LCO 7552. I ask the Clerk please call the amendment and I be given leave to provide a summary.

DEPUTY SPEAKER SAYERS:

Will the Clerk please call LCO number 7552 which will be designated House Amendment Schedule A.

THE CLERK:

House Amendment A, LCO 7552 represented by -- or offered by Representative Tong et al.

DEPUTY SPEAKER SAYERS:

The Representative seeks leave of the Chamber to summarize the amendment. Is there any objection to summarization? Is there any objection? Hearing none, Representative Tong, you may proceed with summarization.

REP. TONG (147th):

Thank you, Madam Speaker. This is a strike all amendment that becomes the bill. In short it has several key sections chief among them we create a section that redefines the objectives of the mediation program and basically sets forth a good faith standard that holds banks and lenders and homeowners to you know a standard of a conduct in the mediation program that ensures that everybody is working on working out a loan and pursuing an expeditious resolution of the dispute.

It also provides for sanctions if parties engage in conduct that is not consistent with the objectives of the mediation program. This amendment also creates a premeditation process that helps homeowners get prepared for the mediation process before it begins. And it also provides for a much more efficient mediation process and involves the court a lot more so that the court can hold the parties accountable and

ensure that the mediation process happens quickly and we can come to a resolution between the parties.

I want to thank the Ranking Member, Representative Alberts for his help on this and getting this amendment and this bill in a good place. I appreciate his assistance in us getting there. Also the community banks in this State, the housing advocates and I also particularly want to thank the Governor for his strong leadership and putting forth his proposal that started the process going and brought us ultimately to this place. I move adoption.

DEPUTY SPEAKER SAYERS:

The question before the Chamber is adoption of House Amendment Schedule A. Will you remark on the amendment? Representative Alberts of the 50th.

REP. ALBERTS (50th):

Thank you, Madam Speaker. I too share the Chairman's feeling of elation that one that we're at this point today because this has been something that we've been working on for a number of months. I also would like to give much credit to the Chairman -- both Chairmen of the committee, the Governor's Office for providing leadership on this and advocates for both the banking community and for the housing advocates as

well.

As the Chairman brought out the amendment which is before us he was very accurate in terms of his assessment of what the market had looked like in the State. And although we're seeing a turnaround in the real estate market and situation is improving there is still additional work to go and I believe the amendment that's before us is going to accomplish much. So with that spirit in mind, Madam Speaker, I would like to ask the proponent of the amendment some questions if I may.

DEPUTY SPEAKER SAYERS:

Please frame your question, Sir.

REP. ALBERTS (50th):

Thank you, Madam Speaker. In terms of the amendment that's before us as I understand it the amendment is going to address residential properties and church owned properties only, not other commercial type properties. Is that not correct? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tong.

REP. TONG (147th):

Yes. Through you, Madam Speaker. that's

correct.

REP. ALBERTS (50th):

Thank you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Madam Speaker. And there was some discussion about some of the various elements of the amendment. I want to touch upon them briefly. One of the things that I think is one of the admirable goals that we've set out in the bill that's -- the amendment that's before us is to outline the objectives of the mediation program.

And if the proponent could touch upon some of those objectives in terms of what the key goals are that we're looking to achieve I would be very appreciative. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tong.

REP. TONG (147th):

Through you, Madam Speaker. The objectives of the mediation program are to consider avoiding foreclosure that includes consideration of loss mitigation options available either through the lender

or borrower or through other programs that can help a homeowner stay in their home. It also -- the objectives also include an overall objective to conclude the mediation process and hopefully the foreclosure process with reasonable speed and efficiency without unreasonable and unnecessary delays.

But in particular as I said earlier we've all heard stories of what can only be characterized as potentially misconduct and negotiating not in good faith in the foreclosure and mediation program. And this will hold the parties to a standard of good faith to ensure that everybody's working towards the same goal and that is to resolve the outstanding foreclosure dispute and if we can to help people hold onto their homes. Through you.

DEPUTY SPEAKER SAYERS:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Madam Speaker. And I thank the proponent for his answer. I think one of the things we also heard in terms of the testimony from many advocates -- housing advocates was that in some situations not necessarily involving community banks

in Connecticut but perhaps in some of our larger brethren that often they did not come to the table -- the banks did not come to table with an ability to negotiate on their institution's behalf. And so toward that goal of becoming more productive we developed a standard that required the lenders to achieve or have an ability to mediate.

And I was hoping that the proponent could address the ability to mediate in terms of what that different standard met in terms of what the requirement was from the financial institutions. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

representative Tong.

REP. TONG (147th):

Through you, Madam Speaker. Yes. This was an important initial component of the Governor's proposal several months ago that we make sure that both parties, both the mortgager and the mortgagee but particularly we wanted to make sure that the lender, the borrower who is -- sorry, the lender or the mortgagee who is often represented by council come to each mediation session prepared to talk and with information at their disposal that encourages a

productive conversation.

So the ability to mediate ensures that the parties have a reasonable familiarity with the loan file, reasonable familiarity with any loss mitigation options that are available and the material issues raised in prior mediation sessions.

This reasonable familiarity can also be based on the becoming familiar with the mediator reports, the report cards that we now require in this bill that the mediator fill out and present to the court every time there's a mediation session. Through you.

DEPUTY SPEAKER SAYERS:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Madam Speaker. And I'm glad the proponent touched upon the so-called report card. As I understand it under the amendment that's before us after each mediation session the mediator who has a higher standard that's outlined in the bill in line 359 to be unbiased will basically annotate and mark down the progress that both parties are making during the foreclosure mediation process.

And if the proponent could speak to the flexibility that the mediator still has in hand to

address issues where one party is strained from the objectives of the mediation program I would appreciate it. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tong.

REP. TONG (147th):

Through you, Madam Speaker. Yes. In this strengthened mediation program we give the media the ability and require the media to frankly first to sit down with the mortgagor, the borrower and get them prepared for mediation before it commences. But once mediation commences after every session the mediator is to fill out a report card that details the progress the parties have made and whether they've been prepared to mediate and have mediated in good faith.

And there's several key indicators of the guilty of the mediation that -- that the mediator must cover in the report card. If the mediator finds frankly before mediation starts or during the pendency of the mediation that the parties aren't ready to mediate or that they're not mediating in good faith and they're not pursing the mediation in line with the objectives of the mediation program they're -- the mediator can -- can so note in the report card and recommend that

that mediation be terminated. Through you.

DEPUTY SPEAKER SAYERS:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Madam Speaker. And in looking at lines 519 through 523 there's reference in those lines that if the mediator reports to the court that the parties will not benefit from further mediation the mediation period shall terminate automatically. And if the mediator to the court after the first or second mediation session that the parties may benefit from further mediation, the mediation period shall continue.

So I appreciate the proponent's clarification of that. As I understand it the amendment that's before us is still going to empower the court to have the ability to levy sanctions in the event that there is a type of intentional pattern or practice of conduct during the mediation program. And perhaps the proponent could address that. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tong.

REP. TONG (147th):

Through you, Madam Speaker. Yes. Again this was very significant part of the impetus for this bill and the Governor's proposal. We wanted to make sure that our mediators that are judiciary had the ability to hold parties accountable both the borrower, mortgagor and the lender, mortgagee to make sure that they mediate and attempt to work this out and participate in the foreclosure process in good faith.

If we find that the parties don't participate in good faith the court now has at its disposal a series of sanctions that it can impose on the parties if it finds that they aren't pursuing the objectives of the mediation program in particular in cases of egregious misconduct those sanctions shall be heightened.

So that's a very specific instruction now that will be in our law should this piece of legislation pass and become law. There will be very clear direction to the -- to the Judicial Branch and our judges that they should take violations of the objectives of the mediation program seriously and they should impose sanctions where warranted. Through you.

DEPUTY SPEAKER SAYERS:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Madam Speaker. And my understanding of the amendment that's before us is that the guidance that's provided in this amendment it basically stipulates that there shall be three mediation sessions or seven months whichever comes first as the milestone but there is flexibility, through you, Madam Speaker, for the mediator to extend the mediation session in certain conditions.

One would be if both parties agree to that but also there may be some other opportunities for that session to be -- or mediation opportunity to be expanded. If the proponent could touch upon that, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tong.

REP. TONG (147th):

Through you, Madam Speaker. Yes. The way that this legislation is drafted and this is part of our attempt to make the mediation program more efficient and productive. It contemplates three basic mediation sessions after which -- after every mediation session the mediator writes a report in a report card form and submits it to the court.

After the third mediation session the parties can

agree to have a fourth mediation session on consent but after that either party must by motion seek permission to continue the mediation program.

It can do that if the court finds that it's highly probable that mediation will help the parties and they'll reach an agreement but also again in line with holding the parties accountable by motion a party can ask the court to extend the mediation program because the other party isn't acting in good faith and is not acting in accordance with the objectives of the mediation program. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Madam Speaker. And there's an additional section in here, section five of the bill which begins at line 879 that I think we've dubbed the fast track for abandoned and vacant property that addresses an issue that is really of concern for many of our urban areas and I would ask the proponent to outline that. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tong.

REP. TONG (147th):

Through you, Madam Speaker. Yes. What we've also found out in our neighborhoods and our cities is that blighted properties, abandoned properties are also significant drag on our housing market and particularly in our urban centers.

And this is an ability -- this is a -- this provision is an effort to enable mortgage lenders to foreclose on the property and move for judgment of foreclosure along with a default for failure to appear if a property has been abandoned and it's blighted and a series of other conditions that are set forth in the bill. Through you.

DEPUTY SPEAKER SAYERS:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Madam Speaker. And one of the items that we've talked about in the past but I don't see in the amendment and I believe is no longer in it is a potential increase in our recording fees. And I just wanted to clarify for the assembly's sake that there is no increase in recording fees contemplated as part of this amendment. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tong.

REP. TONG (147th):

Through you, that is correct.

DEPUTY SPEAKER SAYERS:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Madam Speaker. And -- and I do thank the proponent for his responses. One of the challenges that we've been facing is that as a result of the extended foreclosure process the federal regulators of Fannie Mae and Freddie Mac have looked at assessing increased fees on the mortgage industry in Connecticut.

And our belief -- our fervent belief and hope is that passage of this amendment and then subsequently the bill tonight will allow for much speedier recovery, the foreclosure process will be accelerated without giving up rights because it's extremely important that both the homeowners' rights and the financial intuitions' rights are protected.

So this amendment that's before us will accomplish that and in conclusion I urge all of my colleagues to support it. And again I thank the Chairs, I thank the Governor's Office for exercising leadership in this as well. Thank you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Thank you, Representative. Representative Smith of the 108th.

REP. SMITH (108th):

Thank you, Madam Speaker. I'd just like to stand and commend both the Chairman and the Ranking Member on this bill. This is a -- a bill that's taken a great deal of effort, a great deal of time, a great deal of thought to address a serious deed in the State of Connecticut. There are still many foreclosures out there in the State.

We see them continue to file into the courts and hopefully this bill will help address some of the needs that still need attended to. And not only did they address the foreclosure process itself, they had to deal with many different entities such as the lenders, protect the mortgagers, protect the mortgagees, the homeowners, et cetera.

So a great deal of thanks need to go out to both Representative Alberts and Representative Tong on this -- this great deal of work. I had one question only on this. I was listening to the dialogue. I'm glad to hear about the -- the fact that it's a good faith requirement and there are sanctions available to

either party if they felt it exercised good faith in the negotiations.

I did notice the heightened sanctions in line 510 and just one question through you to the proponent is what type of heightened sanctions might they be? Madam Speaker, through you.

DEPUTY SPEAKER SAYERS:

Representative Tong.

REP. TONG (147th):

Through you, Madam Speaker. if you look at lines 505 on there are -- there's a list there of possible sanctions that includes terminating mediation, ordering the mortgager or mortgagee to mediate in person, forbidding the mortgagee from charging the mortgagor for attorney's fees, awarding attorney's fees and imposing fines.

The language you mentioned 509 and 510 about heightening those sanctions I think is a statement about degree. And encouraging our courts and our judges when they find egregious misconduct to consider this panoply of sanctions and if necessary to -- to strengthen them or heighten them by degree. Through you.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108th):

Thank you, Madam Speaker. And thank you for that answer. And just a follow up on that then one other question. The possibility of a dismissal of the foreclosure proceeding because of the bad faith is not anticipated under the heightened section -- heightened sanction section of this bill. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tong.

REP. TONG (147th):

Through you, Madam Speaker. That is not listed here in the list of available sanctions. Through you.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108th):

Thank you, Madam Speaker. And again, thank both Gentlemen for a great effort here.

DEPUTY SPEAKER SAYERS:

Representative Butler of the 72nd.

REP. BUTLER (72nd):

Thank you, Madam Speaker. I have a couple questions for the proponent of the amendment.

DEPUTY SPEAKER SAYERS:

Please frame your question, Sir.

REP. BUTLER (72nd):

Thank you. Through you, Madam Speaker. I'd like to congratulate good Chairman of the Banks Committee for your good work on this. of course I also am very concerned about the foreclosure issue that we're facing and our constituents all over Connecticut and really glad that you the -- the Governor's Office and the folks on this amendment are putting this forward.

But I just want to ask a couple of questions for points of clarity. I want to -- my first question is does this program supplement what we currently have in place? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tong.

REP. TONG (147th):

Through you, Madam Speaker, to the good Chairman of the Housing Committee, and thank you, Sir, for your excellent work on your committee on these issues. It strengthens what we have in place.

So what it does is it -- it takes a program we have now and it makes it more efficient and more productive and the good faith standard makes the

parties more accountable. Through you.

DEPUTY SPEAKER SAYERS:

Representative Butler.

REP. BUTLER (72nd):

Thank you. And through you, Madam Speaker. And just because I really didn't get to see all the language until I actually saw the amendment I just want to understand what's here because I -- on the underlying bill it mentioned running this through the Judiciary Department but on the fiscal note on this amendment it doesn't mention the Judiciary Department. Is this still running through the Judiciary Department? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tong.

REP. TONG (147th):

Through you, Madam Speaker. Yes.

DEPUTY SPEAKER SAYERS:

Representative Butler.

REP. BUTLER (72nd):

Okay. And I just was a little curious because there's no fiscal note. Is the Judiciary Department running this through available funds? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tong.

REP. TONG (147th):

Through you, Madam Speaker. Yes.

DEPUTY SPEAKER SAYERS:

Representative Butler.

REP. BUTLER (72nd):

Thank you. And I see that the start date is July 2013. Does this have a sunset date? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tong.

REP. TONG (147th):

Through you, Madam Speaker. The mediation program will go only as long as it's funded and provided for in our statutes. I believe that it is scheduled to terminate in 2014 unless we take action to extend it. Through you.

DEPUTY SPEAKER SAYERS:

Representative Butler.

REP. BUTLER (72nd):

All right. Thank you. And thank the good Chair for your answers. I just wanted to get some clarity about this. I think it's a great initiative, enjoy

the work you've done on the committee on this and it's a great amendment. It ought to pass. Thank you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Will you remark? Will you remark further on the amendment that is before us? If not, I will try your minds. All those in favor please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER SAYERS:

Those opposed, nay. The aye -- the ayes have it. The amendment is adopted. Will you remark further on the bill as amended? Will you remark further on the bill as amended? Representative Alberts of the 50th.

REP. ALBERTS (50th):

Thank you, Madam Speaker. Again this is a great bill that is before us now in its amended fashion. And it deserves our support. Thank you.

DEPUTY SPEAKER SAYERS:

Thank you, Sir. Will you remark further? Will you remark further on the bill as amended? If not, will staff and guests please come to the well of the House. Will members take their seats and the machine

will be opened.

THE CLERK:

The House of Representatives is voting by roll. The House of Representatives is voting by roll. Will members please return to the Chamber immediately.

DEPUTY SPEAKER SAYERS:

Have all the members voted? Have all the members voted? Please check the board to see that your vote has been properly cast. If all the members have voted then the machine will be locked and the Clerk will take a tally. The Clerk will announce the tally.

THE CLERK:

Substitute House Bill 6355 as amended by House A.

Total Number Voting	135
Necessary for Adoption	68
Those voting aye	135
Those voting nay	0
Absent and not voting	15

DEPUTY SPEAKER SAYERS:

The bill as amended passes. Will the Clerk please call Calendar 194.

THE CLERK:

On page seven, House Calendar 194, report of the standing -- of the joint standing Committee on Banks,

HB6339

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have just not been accepted and the banks have actually lost money many months later when it's gone to an auction sale, so we think this is -- is a way to move things forward and get to yes faster or get to no faster, but the Governor's own bill I think intervenes in the lending process far more than the realtors proposal does in this bill.

(HB 6355)

And I thank you for your time.

SENATOR COLEMAN: Thank you.

I applaud you for the effort in attempting to reach common ground.

Are -- are there questions for Mr. Calnen?

Seeing none, thank you for your testimony.

A VOICE: Senator McLachlan.

SENATOR COLEMAN: Oh, I'm sorry. Right in front of my -- Senator McLachlan.

REP. MCLACHLAN: Thank you, Mr. Chairman.

And thank you for your testimony today.

Looking at written testimony there's a statement probate courts have doing this process for years. Could you just clarify what's the difference between what's being proposed in this bill and what probate courts currently do?

TIM CALNEN: I'm going to be very frank with you, Senator McLachlan, I'm not an attorney, and actually Attorney Eugene Marconi was supposed to be here. I -- I will get that answer for you and -- and for the Chairman in the next day or so, but as -- as he points out this is not a

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April 1, 2012

To: **Members of the Judiciary Committee**

Fr: **Connecticut Bankers Association**
Contacts: Tom Mongellow, Fritz Conway

Re: **Senate Bill 1102: AN ACT CONCERNING FORECLOSURE WHEN LEGAL TITLE HAS NOT BEEN CONVEYED.**

POSITION: **Oppose**

This bill would repeal Section 49-17 of the General Statutes. That existing section codifies a long-standing principle of common law. It confirms that the security (i.e., the mortgage deed) follows the debt. The statute allows the rightful holder of the note (i.e., the document which evidences the delinquent debt) to commence a foreclosure action in cases where the actual assignment of the mortgage document might take place at a later point in time.

Connecticut has a *judicial* foreclosure system that provides all parties with court oversight, protections and opportunity to resolve legitimate disputes. (The majority of states nationwide do not). The repeal of Section 49-17 would not add anything beneficial to that process. It would simply add confusion, delays and costs to what was intended by the legislature's long standing codification of these common law principles.

The CBA believes CGS 49-17 provides a key ability for investors in the national secondary mortgage market, who buy Connecticut mortgages, to count on a predictable foreclosure process. That process allows them to ultimately recoup the underlying value of the collateral (property) which backed that investment. The bill would add unnecessary uncertainty to those investors by hindering their ability to foreclose, and resell the property to another homeowner.

This new uncertainty will invite additional disputes and potential frivolous law suits and introduce further delays into an already lengthy, and many would argue burdensome, foreclosure process. (Connecticut has the 3rd slowest foreclosure process in the nation based on the recent Federal Housing Finance Agency study).

The CBA has been working diligently throughout the current General Assembly Session with the Administration and all stakeholders in the State's foreclosure process to develop legislation which reduces those delays (Governor's Bill H.B. 6355). We have significant concerns that the repeal of this important of statute would undermine those efforts.

For all these reasons, we strongly encourage Committee members to oppose this legislation.

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Thank you.

Will you remark?

Senator Linares.

SENATOR LINARES:

Thank you, Madam President.

I too support this bill. I have many marinas in my district, Pilot's Point Marina is one of the largest marinas actually in the east coast. Brewer's Dauntless Marina, the Essex Yacht Club, just to name a few, and I think that this is going to do an excellent job in helping them with their economic activity.

Great promoting for economic activity within the area, I'm a huge supporter of this bill. Thank you.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

Senator Fonfara.

SENATOR FONFARA:

Thank you, Madam President.

Unless there is objection, I request that this be moved to the Consent Calendar.

THE CHAIR:

Seeing - - is there an objection? Is there an objection? Seeing none, so ordered.

Mr. Clerk

THE CLERK:

On page 31, Calendar 665, substitute for House Bill Number 6355, AN ACT CONCERNING HOME OWNER PROTECTION RIGHTS. Favorable report of the Committee on Banks.

THE CHAIR:

Good afternoon.

Senator Leone, how are you?

SENATOR LEONE:

Good afternoon, Madam President.

It's a pleasure to see you today.

THE CHAIR:

And here, sir.

SENATOR LEONE:

I move acceptance of the joint committee's favorable report and passage of the bill in concurrence with the House.

THE CHAIR:

Motion is on acceptance and passage in concurrence with the House.

Will you remark, sir?

SENATOR LEONE:

Thank you, Madam President.

And Madam President and colleagues, this bill is a culmination of a lot of hard work between all the relevant parties, being the Department of Banking, the banking industry, judiciary and all those working on behalf of our consumers affected by the recent and past financial crisis.

As many know, in 2008 we had a very severe financial crisis that was international in scope, and it affected many, many people and many in the housing industry. As a result of that, there was a huge increase in the foreclosure process.

And Connecticut's reaction not that was to create a model program that has become a model across the United States, in how to address and assist home owners that were faced with foreclosure process, having their houses under water, not having the ability to pay during to all sorts of reasons why they fell into that situation.

And I'm proud to say that we worked on that legislation, but as a result of the continuing ongoing crisis, we strive to make it even better, because I'm sure if not all of us, many of us have still received phone calls from our constituents asking for help, asking how to maneuver through the process, asking what can be done and sharing with us some of their horror stories, things where they can't get the documentation or the documentation was being asked for over and over.

And those are only a few of the tidbits that we had learned throughout the committee process. So the goal of this legislation is actually to tighten and strengthen the existing process, make it more efficient, finding a way to streamline the effectiveness of the foreclosure process.

And even though we've assisted over 45,000 people through the current program, kept 80 percent to work through something, through the process, and keeping 68 percent in their home, the process is still lengthy.

And because it's lengthy, that can sometimes have negative consequences. So again our goal is to shorten the process and get the two parties to - - to agreement, to a yes or to a no for that matter, if - - if they no longer can be in the home.

And so this bill is the culmination of that. And there are several sections here that I just want to elaborate on quickly, just to walk it through.

And in section one, what we do is we establish our definitions and the objectives of the mediation program and for the ability to mediate, bringing the parties together, making sure that there's decision-

making from both sides, the ability to talk through what needs to happen.

In section two there's an initiation and eligibility process. What it does is it allows the parties to exchange limited information and negotiate in person. It brings the mediator the ability to report on benefits of further mediation and how to complete the report.

It also establishes pre-existing cases that subject to the new disclosures, but they can be referred into the mediation program.

Section three allows addressing all issues of foreclosure, including reinstatement, short sales, deeds in lieu, loan modifications, and graceful exits. It can also deal with aspects of litigation, such as assignment of new law days.

In section four, it's really the crux of it. It goes through the different sections that they need to do. It establishes a timeline, it allows for 15 days before session, the plaintiffs can provide the account history, the period can last up to 60 days, 30 day extensions are available.

It allows the mediator the gatekeeper report. It allows after the first session whether parties will benefit from further mediation but no reporting guidelines.

And the court can continue mediation despite this report. It gives them the ability to have three sessions plus one, and even another one if so needed.

Section five is an important piece as well. It's a fast track for abandoned - - for abandoned and vacant properties. So as we know some of these properties people have walked away. They become blight upon our neighborhoods, and then there's no ability to correctly address that situation. This bill attempts to establish a process for that.

And I want to thank my committee members and especially my Ranking Member, and - - and all members of the parties working on this. It was - - it was

difficult because there were a lot of details to work out, but quite frankly everyone did not walk away. We all worked towards a resolution, and I'm very proud of the fact that I think what we have here is an efficient model, that again, not just streamlines what we're trying to do, but it will make sure that we continue to be the model that the rest of the the nation has - - has taken this as their cue.

And with that, I would urge support.

THE CHAIR:

Will you remark?

Senator Linares.

SENATOR LINARES:

Thank you, Madam President.

And I'd like to thank Senator Leone for his effort on this bill. I too support this bill. I believe that it will solve issues in the housing market in Connecticut after a financial and housing crisis that have left people, quite frankly, in - - in tough situations.

The overall goal of this legislation, as I said, is to help hard working people keep their homes, to stay in their homes, to live in Connecticut, to raise families here in Connecticut. And this bill will streamline the foreclosure mediation process through efficiencies and organization.

In Connecticut, unfortunately, as of now, we're among the - - the five slowest states in the country regarding our foreclosure process. So this bill extends the foreclosure mediation program until July 1st, 2014, and requires that prior to mediation the parties enter pre-mediation.

The bill specifies the objectives of mediation, which include an expectation that all parties shall endeavor to reach such determination with reasonable speed and efficiency. By participating in the mediation process

in good faith without unreasonable and unnecessary delays.

And we here in the Senate chamber understand that we - - no one here likes unreasonable and unnecessary delays.

So pre-mediation plays a huge role in this process, and in streamlining the process. The purpose is to allow both the lender and the borrower time to compile documents that will deliver, that will be delivered to the mediator, including the borrower's account history in plain language.

Once the mediator receives all the documents, the borrower and the lender will meet with the mediator to determine if there is any information that is needed by either party and once pre-mediation has ended, the mediator will determine if mediation should occur.

I - - I think that this is an excellent step that - - that needs to be taken, and if I can, Madam President, I'd like to ask just a few questions about pre-mediation and some other steps in particular throughout this bill for legislative intent.

THE CHAIR:

Please proceed, sir.

SENATOR LINARES:

Through you, Madam President.

How long would - - how long under this bill would pre-mediation take?

Through you.

THE CHAIR:

Senator Leone.

SENATOR LEONE:

Through you, Madam President.

The total time frame, if I understand the question, is either seven months or the number of sessions prior to that.

SENATOR LINARES:

Okay.

THE CHAIR:

Senator Linares.

SENATOR LINARES:

And is there currently - - are there currently steps to take through pre-mediation, or is this an improvement in this new law?

Through you, Madam President.

THE CHAIR:

Senator Leone.

SENATOR LEONE:

Through you, Madam President.

With the - - with the pre-mediation, what will happen is the program must determine whether parties can reach an agreement, and it will make sure that they all must attend mediation sessions with the ability to mediate, a willingness and a reasonable ability to participate in the process in good faith without unreasonable and unnecessary delays.

It will require the lender to provide the homeowner with a complete account history of their mortgage, along with related information, and it also requires the homeowner to provide a complete financial package to the lender in connection with the request for a foreclosure alternative.

So these calls for the mediators to be - - will be unbiased and would prohibit their providing legal advice to any party.

Through you, Madam President.

THE CHAIR:

Senator Linares.

SENATOR LINARES:

Thank you, Madam President.

Thank you, Senator.

I think that this is a - - a brilliant idea. Part of the reason why the foreclosure process has taken so long is that either the banker or the person whose house is unfortunately being foreclosed on did not have the proper information available, so it extended the process.

So I think the pre-mediation concept here will certainly help everyone - - everyone prepare the necessary information for the mediation process.

Another idea in this bill is the mediation report card. The bill requires that mediation report card be delivered to court - - to the court after each mediation session. The report card will detail the activities and behavior of the parties during mediation, which will allow a judge to, if necessary, impose sanctions - - sanctions on individuals for misconduct, through unnecessary details.

And if I may, Madam President, I just have a few questions to the proponent of the bill about this mediation report card.

THE CHAIR:

Please proceed, sir.

SENATOR LINARES:

Senator Leone, what type of activities typically take place during mediation that may lead to a delay?

Through you, Madam President.

THE CHAIR:

Senator Leone.

SENATOR LEONE:

Through you, Madam President.

It could be a number of things. One, you may have the improper documentation or the documentation was submitted but wasn't brought forth a second time. Or it was a request for duplication.

Another instance could be that at each session it could be a different party that again may be asking for all the similar documents solely for the fact that they were not at the previous mediation if the banks didn't have a consistent person to maintain through each and every step of the way.

So it's situations such as those that we're trying to rectify so that the two parties are there at the pre-mediation all the way through each and every step to final resolution.

Through you, Madam President.

THE CHAIR:

Senator Linares.

SENATOR LINARES:

Thank you, Madam President.

Thank you, Senator.

And I - - I just had another question. The - - in - - in the mediation report card section, there is a mention - - there is a mention to the fact that there can be sanctions are placed upon individuals should they - - should they break behavior or activities or any rule in the mediation process.

And I just have a question about the word sanction. Are they fees, are they fines? What is a sanction that - - that may be imposed?

Through you, Madam President.

THE CHAIR:

Senator Leone.

SENATOR LEONE:

Through you, Madam President.

If you just give me one moment.

THE CHAIR:

The Senate will stand at ease, sir.

(Chamber at ease.)

THE CHAIR:

Senator Leone, the Senate will come back to order.

SENATOR LEONE:

Thank you, Madam President.

Under the bill, any sanctions that would be imposed would be proportional to the conduct and consistent with the objectives of the mediation of the program, and some of these sanctions could include terminating mediation, ordering the mortgager or the mortgagee to mediate in person.

It could forbid the mortgagee from charging the mortgager for the mortgagee's attorney's fees. Or awarding attorney's fees and imposing fines in any egregious situations where the sanctions must be more severe.

So these sanctions, the intent is to not impose sanctions, but to more effectively make sure that the two parties understand what's at stake, that they show up on time, that they have all their documentation, and the goal would be not to have these sanctions take effect.

But if they were needed, for whatever reason that one party or the other were not acting in good faith, these sanctions would be used in order to spur movement.

Through you, Madam President.

THE CHAIR:

Senator Linares.

SENATOR LINARES:

Thank you.

Yeah, I think - - I think it's a good idea. We'll keep everyone moving in a positive direction and I think the report card is an excellent component of this bill because what can be measured can be managed.

Also, an important section in this bill is the mediation time frame. The bill limits mediation to either seven months or three mediation sessions, as the good Senator has mentioned, whichever is sooner.

The bill allows any party, the borrower, the lender, or mediation - - or the mediator to request that mediation be extended. And I just had a few questions for the proponent of the bill about that extension.

Through you, Madam President, how difficult will it be to extend mediation should - - should that need occur?

Through you.

THE CHAIR:

Senator Leone.

SENATOR LEONE:

Thank you, Madam President. Through you.

As long as one party feels that they're not moving in the right direction they can file the motion to extend.

Through you.

THE CHAIR:

Senator Linares.

SENATOR LINARES:

Okay. And - - and through this bill, through the mediation timeframe of seven months or three mediation sessions, how do you feel that this will compare to what the - - is currently happening out there in the State of Connecticut?

Through you, Madam President.

THE CHAIR:

Senator Leone.

SENATOR LEONE:

Thank you, Madam President.

This process - - and again, the intent is to get to these resolutions quickly. And we - - we set this up so that it could go through these three mediations or the extending of the motion, where the judiciary courts will then impose or mandate the final action.

That does not mean that the process could not start again, if it were so necessary. But that would be highly unusual. Again, this is to shorten the time frame that currently exists by tightening these procedures, and I believe that with the way the bill is written that will be accomplished.

Through you, Madam President.

THE CHAIR:

Senator Linares.

SENATOR LINARES:

Thank you, Senator.

Also, lastly, actually, out of the four steps that - - the three steps that we've talked about, the fourth is the foreclosure fast track for abandoned properties. This bill - - that would allow an expedited foreclosure action by allowing a bank to file a motion for judgment of foreclosure simultaneously with a motion for default for failure to appear if they cannot prove that the property is abandoned.

Senator, through you, Madam President, how - - how do you feel this will improve some of the issues that we are seeing right now with foreclosures in the state?

Through you.

THE CHAIR:

Senator Leone.

SENATOR LEONE:

Thank you, Madam President.

The - - the blighted section of the bill is important for all our municipalities because for all the foreclosures that are out there that are not being resolved, and sometimes these can remain in the courts for a number of years - - to the detriment of the municipality and the neighborhoods.

And when there's not a homeowner in the home or it's left vacant, it's not long before those houses become vandalized, become victims, per se, of having materials stolen from the homes, and it just brings down the value of not just that home but all those in the neighborhood.

And - - and there have been - - it's been proven that crime will rise, and the situation becomes untenable. And there were no alternatives on how to address that situation for the municipalities, and there's many ideas that are out there, some that may be working and others that may not.

This is an attempt to give the municipalities a tool on how to foreclose quickly on those blighted homes, where there is not a homeowner, find a way to get it

sold, or - - or auctioned off, and to allow and prevent a blighted opportunity from taking place in the first place.

And - - and if this does happen, this can go a long way towards preventing those kind of circumstances from arising in the first place.

Through you, Madam President.

THE CHAIR:

Senator Linares.

SENATOR LINARES:

Thank you, Madam President.

And thank you, Senator Leone.

I have no further questions, but I did want to say was excellent working with you, Representative Tong, Representative Alberts on this bill. It's amazing what can happen when everyone has a seat at the table. You - - you see a balanced policy like this one.

I do support this bill, and I urge my colleagues to do the same.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

Senator Markley.

SENATOR MARKLEY:

Thank you, Madam President.

The - - the bulk of this bill lays outside the area of my expertise. So I will trust my friend, Senator Linares to have examined that on my behalf.

But let me ask about one thing that was brought up at the public hearing, which is the Chairwoman of the Town Clerks Association pointed out the need to make sure that mortgage transfers were filed in the towns in which the property was held as long - - as well as through the electronic system.

And that's something that has been something of a concern of mine, to make sure that with the large number of - - of alterations being made on mortgages, the way mortgages are passed on from one party to another, that the actual holding of the - - of the mortgage and the responsibility for the property is not lost sight of.

And I was not able in reviewing the legislation to see whether that was addressed or not, and I wondered through if I might ask the Senator if advocating for the bill - - if in fact that suggestion had been taken, had been incorporated into the bill as it stands before us.

THE CHAIR:

Senator Leone.

SENATOR LEONE:

Thank you, Madam President.

And I thank the good Senator for that question.

The - - the simple answer is yes, but the more difficult answer is is very much an issue that we heard, that we need to address and - - and want to address. We did not want to address it in this particular bill for the simple fact that it was the one section that we still needed more time to get to further agreement.

I do believe it is something that the Banks Committee does want to address. We just didn't want to risk all the good things that we have in this bill. So the entity of MERS and the whole mortgage electronic repository system and how those records are - - are quantified.

And through the town clerks is an issue that I know that needs to be addressed, but we did not include it simply for the fact that all the parties were - - needed United States a little bit more time.

And so we didn't want to put this bill at risk. But it is something that I believe does need to be addressed. I would love to hear the Senator's comments on how we can do that moving forward because again with this bill it's been a bipartisan effort and I would hope to do the same with that particular topic.

Through you, Madam President.

THE CHAIR:

Senator Markley.

SENATOR MARKLEY:

Thank you very much, Madam President.

I thank - - I thank the good Senator for his confidence in the value of my comments on such a subject. I - - I'm afraid it's one of those things that I'm hoping you'll take care of without me having to tell you how to do it.

But I appreciate your - - your attention to it and I thank you very much.

THE CHAIR:

Will you remark?

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President.

I just stand not - - no questions, just to commend Senator Leone, Senator Linares on - - on this effort. And it - - it wasn't easy. Clearly some things had to be weeded out from the thicket, but when we are dealing with foreclosures, it can really be a double-

edged sword. And depending on how the - - the underlying debt is interpreted, there can be dilatory actions on either side.

For example, despite the fact that for the last I guess perhaps even six years that we've been trying to lead the nation with the mediation process in this foreclosure matters, if you're a homeowner, and you know how to game the system, you can draw this process out for a considerable period of time.

And ultimately that hurts the holder of the debt, and those costs ultimately are borne by all of us that have to go out and borrow.

Conversely, though, depending on whom one is dealing with, we've had hearings in - - in past years where it was abundantly clear that there were certain entities that were making money off the fact that the debt was escalating, because the individuals were in arrears and so the homeowner was trying to scramble to try to finalize the process, and yet the large institutions, not necessarily the banks themselves, but the entities charged with making sure that everything was being complied with, the underlying terms of the debt did not give them any incentive to wrap up the case.

And so the lawyers would go into court and they wouldn't get permission to offer something to try to resolve it.

So what I'm saying is that through a number of hearings that I've been involved in over the last several years, we have seen that despite our very best efforts, on several occasions homeowners have done everything they can to just remain in their - - in their homes, even though it's at the great sufferance of the debt holder.

And at the - - and we've also seen hundreds of occasions where the large financial institutions and the entities that they've contracted with are dilatory because they're cranking up the fees against the homeowner such that they could just go and do a strict foreclosure so there's nothing even left there as far as equity.

That's not a good system, and the system that we're moving with with this underlying bill is - - is going to make it much better.

And the fundamental process is is that people are going to be held accountable, they are going to have to go into this process both sides. I think that this bill is excellent in that it's evenly balanced, and that if there is the unfortunate circumstance where one of the parties is not complying with the mediation efforts, that the judge will be alerted.

And the judge will have at his or her disposal the ability to exact - - I wouldn't say punishment - - but to command the respect of the system by imposing whatever orders are necessary to get entities to comply.

So not - - not every home owner is innocent. Not every bank is innocent, but we need to have a process where this - - these cases get cleared out of our court system in a rational manner, so that all the rights of the home owners are respected and at the same time understanding that financial institutions have to be able to recoup their investments at some reasonable point in time.

And so again, I have had occasion to be involved in a number of foreclosure matters in my capacity as an attorney. I've observed this, having served on the Judiciary Committee for many years.

I think our state has taken a leadership role when it comes to these things, but again when we're dealing with these massive institutions and this huge economic situation that got exacerbated in the last four years, then these efforts are yeoman efforts.

And I highly commend both, again, Senator Linares for plowing through with this and working very difficult issues, and Senator Leone, very difficult issues with some - - some mega financial institutions that sort of, you know, they're - - they're tough.

And I think that the end product is not only speaks very well for your committee, but for this legislature and will be a very good thing for the people of the

State of Connecticut moving forward, and will again put us at the forefront. And I think this is one of those things where I would be in agreement, that I would like to see us first in the nation in resolving these issues.

So kudos to you all, and I'm very happy and pleased to support this legislation.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

Senator Leone.

SENATOR LEONE:

Thank you, Madam President.

And I want to thank you, Senator Kissel, for your comments, because I think you summed it up quite nicely, how some of the issues that we've heard from our constituents have occurred on both sides from the consumers as well as the lenders, some of the situations.

And obviously when we hear those as legislators, we - - we want to help, we want to find the solution to the problem and sometimes we can't do it as well as we would like. But this legislation furthers that goal and gets us to the point where we need to be.

And I hope that sometime in the very near future this - - this program actually becomes antiquated. It would be nice to not have to have a foreclosure mediation program, where everybody gets to stay in their home, or - - or - - and the lenders can come to a solution where everyone is happy.

But until that time, we have this new program. And I want to thank again everyone who has worked on this, all the way from the governor, who has - - from the governor, who has spurred us to act, to make sure that

we have to protect our consumers. But at the same time protect our financial industry, Senator Linares, the - - the Ranking Member downstairs and my co-Chairman.

We could not have done this without the work of everyone who came to the table. And it was - - it was a lot of work. It was a lot of details. The issues are complex and - - and we're not always the experts but we've got the experts to the table and said you need to find common ground. And then that's what this bill is.

This bill is common ground, and it's a tighter, efficient, sleeker version of the one that we currently have. And I believe this will only help the industry and all those that do need to go it - - go through it.

So with that, Madam President, if there are no objections, I would urge to put this on Consent.

THE CHAIR:

Seeing no objections, Seeing no objection, so ordered, sir.

Mr. Clerk.

THE CLERK:

On page 29, Calendar 655, substitute for House Bill Number 6339, AN ACT CONCERNING BANKS, LOAN PROTECTION OFFICES, EXCHANGE FACILITATORS, PUBLIC DEPOSITS AND REAL PROPERTY TAX LIENS. Favorable report of the Committee on Banks.

THE CHAIR:

Senator Leone.

SENATOR LEONE:

Thank you, Madam President.

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Calendar page 29, Calendar 653, substitute for House Bill Number 6699. And, finally, Madam President, on Calendar page 31, Calendar 664, substitute for House Bill Number 6689.

I would like to add those items to our Consent Calendar and, and now call for a, I would ask the Clerk to list all of the items on the Consent Calendar and then proceed to a vote on that first Consent Calendar.

Thank you, Madam President.

THE CHAIR:

Thank you.

Mr. Clerk.

THE CLERK:

Today's first Consent Calendar, on page 5, Calendar 341, House Bill 6364; Calendar 343, House Bill 5425; Calendar 346, House Bill 6322; Calendar 347, House Bill 6547; and on page 6, Calendar 349, House Bill 5513; page 9, Calendar 450, Senate Bill 921; on page 13, Calendar 506, House Bill 6491; Calendar 515, House Bill 6235.

On page 14, Calendar 524, House Bill 6380; on page 16, Calendar 559, House Bill 6508; page 17, Calendar 563, House Bill 5617; Calendar 569, House Bill 6485; and on page 19, Calendar 588, House Bill 6549; on page 23, Calendar 614, House Bill 6587; Calendar 616, House Bill 6678; page 25, Calendar 629, House Bill 6662; on page 26, Calendar 633, House Bill 6576; and on page 27, Calendar 640, House Bill 6550; on page 28, Calendar 650, House Bill 6659.

And on Page 29, Calendar 653, House Bill 6699; Calendar 655, House Bill 6339; page 31, Calendar 664, House Bill 6689; Calendar 665, House Bill 6355; page 34, Calendar 201, Senate Bill 911; and on page 40, Calendar 514, House Bill 5725.

THE CHAIR:

Mr. Clerk, will you call for a roll call vote on the first Consent Calendar. And the machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate. Senators please return to the Chamber. Immediate roll call in the Senate on the first Consent Calendar of the day.

THE CHAIR:

Yeah, thank you. Good. There we go.

If all members have voted, all members have voted, the machine will be closed.

Mr. Clerk, will you please call the tally.

THE CLERK:

On the first Consent Calendar,

Total Number Voting 34

Necessary for Adoption 18

Those voting Yea 34

Those voting Nay 0

Those absent and not voting 2

THE CHAIR:

Consent Calendar passes.

Senator Looney.

SENATOR LOONEY:

Madam President.

THE CHAIR:

Senator Looney.