

Legislative History for Connecticut Act

PA 14-84

HB5514

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May 1, 2014

Mr. Speaker, Calendar for May --

SPEAKER SHARKEY:

I haven't called it yet, what the Calendar number would be. I was just saying hello, Mr. Clerk. We've got a busy day today, so let's get started.

And now, Mr. Clerk, if you could call Calendar Number 248.

THE CLERK:

On Thursday, May 1 Calendar, on page 38, House Calendar 248, favorable report of the joint standing committee on Judiciary, Substitute House Bill 5514, AN ACT CONCERNING AN OPTIONAL METHOD OF FORECLOSURE.

SPEAKER SHARKEY:

The distinguished Chairman of the Banking Committee, Representative Tong.

REP. TONG (147th):

Good morning again, Mr. Speaker.

SPEAKER SHARKEY:

Good morning, sir.

REP. TONG (147th):

I move acceptance of the joint committee's favorable report and passage of the bill.

SPEAKER SHARKEY:

The question is on acceptance of the joint committee's favorable report and passage of the bill.

Will you remark, sir?

REP. TONG (147th):

Yes, thank you, Mr. Speaker. This bill creates a new optional method of foreclosure. It creates an alternative whereby a mortgagor and the mortgagee, the homeowner and the lender can come together early in the process and decide that instead of entering the process of foreclosure, which can take a very long time, they can contract with a real estate broker and put the property up for sale and get a market price.

It's a foreclosure by market sale alternative to a strict foreclosure or a foreclosure by auction, which is what many of us are used to seeing.

The Clerk has an amendment, Mr. Speaker, LCO Number 4606. I ask that the Clerk please call the amendment and I be given leave of the Chamber to summarize.

SPEAKER SHARKEY:

Will the Clerk please call LCO 4606, which will be designated House Amendment "A".

THE CLERK:

House Amendment "A", LCO 4606 introduced by
Representative Tong et al.

SPEAKER SHARKEY:

The gentleman has sought leave of the Chamber to summarize. Is there objection? Seeing none, you may proceed with summarization, sir.

REP. TONG (147th):

Thank you, Mr. Speaker. This is a strike-all amendment and becomes the bill. It sets forth in detail the procedure to be followed in a foreclosure by market sale. It represents a couple years' long collaboration between our friends in the realtor community, the banking industry. The department sponsored these negotiations. The Judicial Branch played a big role, as you'll see from the amendment.

Representatives and Senators from all four Caucuses have signed on to this amendment and the leadership of our Committee, both the ranking members and the Chairs and I think it represents a very strong compromise between all the parties.

I want to thank Representative Joe Diminico for his excellent leadership on this issue. Also, I should mention the Connecticut Fair Housing Center,

again, a strong advocate for foreclosure relief and for helping homeowners in distress in this state.

Also, my ranking member, Mike Alberts who's been great on this issue and getting this to the floor.

I move adoption.

SPEAKER SHARKEY:

The question before the Chamber is adoption of House Amendment "A".

Will you remark?

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. Good morning.

SPEAKER SHARKEY:

Good morning, sir.

REP. ALBERTS (50th):

If I may, several questions to the proponent.

SPEAKER SHARKEY:

Please proceed, sir.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. As I understand the method of foreclosure that we're looking at right now again would augment the deed in lieu and foreclosure efforts that we have right now. I just want to go

through some of the points to make sure that they're clear for the Chamber.

In Section 3 beginning at line 46, as I read those lines it basically ensures that in any type of initial foreclosure action, there will have to be an effort by the mortgagee to notify the mortgagor that they may be eligible for this foreclosure methodology if we decide to go ahead with that.

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Yes. Through you, Mr. Speaker, that is correct. There are typically required under statute, several notices that must be given prior to the commencement of a foreclosure.

Now as part of those notices, a lender must notify the homeowner that the foreclosure by market sale process is available to them as an option with the consent of both the homeowner and the lender.

Through you.

SPEAKER SHARKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. And looking a little further beginning at line 75 there's contemplated the requirement that the mortgagor understands that if they proceed with foreclosure by market sale, they won't be eligible for foreclosure mediation in any type of foreclosure action, but as we'll see later in the bill, there is that availability under certain conditions for that to indeed happen.

Is that not correct? Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, Mr. Speaker. Yes, that's correct. Once you select the foreclosure by market sale process you are no longer eligible to participate in the foreclosure mediation program. However, if that market sale should fall apart and you meet certain strict requirements, your right to participate in foreclosure mediation could spring back to life.

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. And Section 5 as I read it details some of the requirements for an appraisal. The mortgagee shall furnish the mortgagor with a copy of the appraisal. That appraisal may be a trigger for the action to either go forward or not to, but as I understand in lines 133 through 135, the financial institution cannot steer the actual listing of the property to any particular realtor.

Is that not correct? Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, that is correct.

SPEAKER SHARKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. Then looking at Section 7, the language that the proponent referred to, I just want to make sure that I'm reading it correctly is in lines 202 through 220 in terms of the petitioning for entry back into the foreclosure mediation program if indeed the foreclosure by market sale is not feasible.

Is that correct? Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, that is correct.

SPEAKER SHARKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. Now, one of the things that we've been trying to do in this legislation is to make sure that there is protection for the junior lien holders.

In Section 8 there's a lot of language that refers to the law day methodology and the right of junior lien holders to have access to potentially buy out their interests.

Could the proponent explain how this would work?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, Mr. Speaker, yes. After the point at which the homeowner, mortgagor, has entered into a contract with a potential purchaser, the court is given an opportunity to review that contract and make some findings.

Within a period after the court has made its findings and approved the foreclosure by market sale, the secondary lien holders then have an opportunity in a manner of speaking, to redeem their liens and their interest by tendering the full purchase price set forth in the contract.

So a secondary lien holder can step forward and say, I'll buy the property. If they do that, they will do so through a law day process, which created a right of first refusal law day, so essentially they'll have a right of first refusal and they can exercise that on an appointed law day within 30 days of the judgment approving the market sale, and those law days will proceed in inverse order of priority and the secondary lien holders will have the opportunity to tender the full purchase price or not.

Through you.

SPEAKER SHARKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. And I understand that if there's a regular foreclosure action that's already started, this new process that we're contemplating today cannot be used for that. Is that not correct?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, that's correct.

SPEAKER SHARKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. Now, even though we're proceeding and creating a new option of foreclosure to add to strict foreclosure in deed in lieu, there are some elements as I read them that are very similar to the present methodology, so for example, in a typical real estate closing, there's some adjustment often by the parties for the purchase price for things such as real estate taxes, fuel oil, so those real estate contracts that are contemplated there, those would still have the same issues, the same resolution as a typical sale. Is that not correct?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, Mr. Speaker. Yes, this process and the bill contemplates that many of the processes that we're used to both in a real estate transaction, but also in the context of a foreclosure, pertain here.

A lot of the process will be addressed by standing orders of the court. There will be the participation of a committee that will handle the money at the outset and deposit that money into court, and as part of that process, there may be adjustments because of home heating oil or other adjustments that need to be made, and those will be governed by the contract and in accordance with the court's normal process. Through you.

SPEAKER SHARKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. And just to illustrate that, so for example, the buyer would pay any funds to that court appointed committee that you referenced just as they would do in a traditional foreclosure by sale. Is that correct, Mr. Speaker?

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, yes. Those funds come in, but they are then transported and deposited into court to the clerk of the court and the clerk will determine, based on the court's direction, how much of those proceeds are to be distributed to the seller of the property. In this instance it will be essentially distributed to the first position mortgagee at some point, and then if there are expenses of sale like real estate broker commissions, those will be given in one check back to the committee by the court. The court will issue a check to the committee and the committee will then distribute those funds accordingly. Through you.

SPEAKER SHARKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. And in looking at the fiscal note for LCO 4606 I'm seeing no state impact and no municipal impact. Is that correct?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

That is correct. Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. I rise in strong support of this amendment, which once we vote upon it if it's passed will become the bill.

I do want to thank our Chairman for his work on this. As he mentioned there has been strong work on this for the better part of two years really, and I also want to single out Representative Diminico for his efforts to help make this come to pass.

So I do urge my colleagues to support the amendment and then ultimately the bill.

Thank you, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, sir.

Would you care to remark further on House Amendment "A"?

Representative Sampson.

REP. SAMPSON (80th):

Thank you, Mr. Speaker. I just want to stand up briefly and offer my support for the amendment and ultimately what will become the bill as well.

I know that this is something that has been worked on for some time by all the parties concerned

and I think it will improve the situation for short sale transactions in the State of Connecticut and I think will be a benefit to property owners, banks, realtors and everyone concerned and I have my full support behind it and I urge my colleagues to as well.

Thank you very much, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, Representative.

Would you care to remark? Would you care to remark further on House Amendment "A"?

Representative Diminico.

REP. DIMINICO (13th):

Thank you, Mr. Chairman. I rise in support of this bill as well, having had the opportunity to work on this bill in a collaborative way with the Connecticut Bankers Association, the Connecticut Association of Realtors and the Housing Coalition, facilitated by the Commissioner of Banking, Howard Pitkin, who I'd like to thank publicly.

This is a bill that's a home run for all, for the mortgagor and the mortgagee. It will provide the mortgagor to stay in the home so it doesn't become blighted, provide the opportunity not to become

stigmatized in a foreclosure process, and somewhat preserve their credit scores.

It will also be a benefit to the neighborhood because the house won't become blighted, as well as to the community and it will be home run for all because it will be put on the open market, which will bring more money, which in turn will not impact values. As a matter of fact, it will increase the values in the long run for the real estate market, which will be a benefit to all.

So I strongly urge all my members of the Legislature here to support this bill.

Thank you very much, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, sir.

Would you care to remark? Would you care to remark further on House Amendment "A"?

Representative Smith.

REP. SMITH (108th):

Good morning, Mr. Speaker, thank you. Just a few questions to the proponent of the amendment, please.

SPEAKER SHARKEY:

Please proceed, sir.

REP. SMITH (108th):

I haven't had a chance to take a full look through the amendment, and I've been trying to listen to the exchange between the parties that have asked the questions already, and I had some interruptions, so I didn't hear all the answers. So I'm just going to ask a few questions, which may have been answered, but I apologize in advance.

I heard some reference to the committee process, which is normally applicable in a foreclosure by sale. Is that language, is that process still applicable here? I just want to get the feel of how this is all going to work.

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, yes, it is.

SPEAKER SHARKEY:

Representative Smith.

REP. SMITH (108th):

So when does the committee come into play? Do they actually conduct the sale once a contract is entered into? Is that how it works?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, they are in a manner of speaking, charged with conducting the sale, but I think in practical terms, their role is to manage the transfer of the proceeds from the sale to the clerk of the court, and then once the clerk of the court decides how the proceeds are to be distributed and what expenses are to be paid, and how the proceeds are to be paid out, then those funds will be paid back to the committee and the committee will distribute those with the authorization of the court. Through you.

SPEAKER SHARKEY:

Representative Smith.

REP. SMITH (108th):

Thank you, Mr. Speaker. So as I understand it then, once the sale is agreed upon and actually transpires, a check is issued. I suspect it's issued to the court. The committee would then transfer the check to the court. The judge makes the determination of who gets paid what. Are checks then issued back to the committee for disbursement purposes? Just to be sure, through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Yes, through you, that is correct.

SPEAKER SHARKEY:

Representative Smith.

REP. SMITH (108th):

And other than the conduit to disburse the checks, does the committee have any other role?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, Mr. Speaker, I believe that the committee's role will include preparing the deed and getting it approved. Through you.

SPEAKER SHARKEY:

Representative Smith.

REP. SMITH (108th):

Thank you, Mr. Speaker. And again, through you, does the committee have any role in preparing the contract and negotiating the sale?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, no, the committee has no role in that process.

SPEAKER SHARKEY:

Representative Smith.

REP. SMITH (108th):

I thank the gentleman for his answers and just to continue along. I noticed as I was listening, that it seems that this only applies to residential mortgages and not commercial transactions. Is that accurate?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, that is correct.

SPEAKER SHARKEY:

Representative Smith.

REP. SMITH (108th):

And I also thought I saw some language in the bill that it does not apply to reverse mortgages. Is that accurate? Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (108th):

Through you, that is correct.

SPEAKER SHARKEY:

Representative Smith.

REP. SMITH (108th):

And you discussed a junior lien holder's positions and how that all works, and that was one of my concerns with the bill when it came before the Judiciary Committee, which seems to have been resolved, and then I was interrupted so I didn't hear all your answers.

So if you could just again, explain how that works. I have some understanding of the inverse order but let's, I'm going to give you a scenario.

Let's assume there's just three junior lien holders. The one in second place decides to match the purchase price. What type of process has to take place? Do they have to actually issue a check? Do they have to just give notice of that desire? How does that work? Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, Mr. Speaker, just as a threshold matter, I should note that the amendment, the bill contemplates that these are properties that at the outset are under water with respect to the first position mortgagee.

It contemplates that we're already in a position where the homeowner owes more on the first mortgage than the house is worth.

That being said, and so against that backdrop, the secondary lien holders will likely not have much of an opportunity to recover anything in any event.

That being said, we as a committee and as a group of collaborators working on this bill, wanted to make sure that the rights of secondary lien holders were acknowledged and to the extent that we could, provide them an opportunity to participate in this process and so what happens now is, there will be set right of first refusal law days.

Within 30 days of the judgment of foreclosure by market sale, the court must set law days in reverse order of priority for each secondary lien holder. So let's assume in your paradigm that are four, three additional secondary lien holders, they would go in reverse order of priority and so the last in priority

would go first, and they would have the opportunity to tender the full purchase price set forth in the contract. They have to do that on that day by tendering a check, which will be paid into court.

SPEAKER SHARKEY:

Representative Smith.

REP. SMITH (108th):

And I thank the Chairman for his clarification on that. I understand the concept here that this probably will mostly apply to those who are under water, those properties who are under water.

Does it have to be a situation where the properties are under water for this to apply?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, yes.

SPEAKER SHARKEY:

Representative Smith.

REP. SMITH (108th):

So there's language in the amendment that talks about doing an appraisal and the appraisal, I guess, would be given to the court and then a determination

would have to be made that the property is, in fact,
under water before this process could be, they could
proceed with this process? Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, yes.

SPEAKER SHARKEY:

Representative Smith.

REP. SMITH (108th):

And this may be in the bill and it may not be.
I'm just wondering. As I'm sure the Representative
knows, many of these foreclosure sales, the conveyance
taxes are exempted, transfer taxes. Is there language
in this bill that would also exempt the conveyance
taxes? Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

That is correct. Through you.

SPEAKER SHARKEY:

Representative Smith.

REP. SMITH (108th):

And for this procedure to apply, based on what I've heard so far, I suspect the property, the foreclosure has to have been commenced for this to apply. I'm assuming. Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, Mr. Speaker, I want to clarify the good Representative's questions. It's very clear under the bill that notice must be given at the outset of the option to pursue foreclosure by market sale. It is a process that can be undertaken by consent of both the mortgagor and the first position mortgagee.

That process must be commenced at the outset and then the commencement of foreclosure reflects that agreement.

What this bill does not provide for is if you are already in foreclosure, you cannot somewhere down the line choose a foreclosure by market sale according to the language in this bill.

Through you.

SPEAKER SHARKEY:

Representative Smith.

REP. SMITH (108th):

That's interesting. I wasn't aware of that. So if there's a pending action already, once this bill becomes law and the parties for whatever reason did not take advantage of the opportunity to do a market by sale foreclosure, they no longer have that option?

Just to be clear. Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, Mr. Speaker, that is correct.

SPEAKER SHARKEY:

Representative Smith.

REP. SMITH (108th):

And then just lastly, and I'll continue to listen to the debate. The conditions by which one can get back into mediation, I know they're set forth in the bill. I just didn't have a chance to peer through those. If the Chairman could just explain those.

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, Mr. Speaker, if you will give me one second. I ask the Chamber's indulgence.

SPEAKER SHARKEY:

But only for one second, Representative Tong.

REP. TONG (147th):

I'm ready. It's set forth in Section 7, starting at line 208 and it provides that there may be testimony or affidavits in support or opposition to such petition that the petitioner cannot be motivated by, primarily by a desire to delay the entry of judgment of foreclosure.

The court must find at line 216, 217, that it is highly probable that the parties will reach an agreement through mediation and in line 218 the mortgagee shall have the right to request the entry of a judgment of foreclosure in accordance with the other provisions of the law.

SPEAKER SHARKEY:

Representative Smith.

REP. TONG (147th):

Through you.

REP. SMITH (108th):

Thank you, Mr. Speaker, and thank the Chairman again for his answers. And I just thought of one other question, if I may, through you, Mr. Speaker.

Assuming the foreclosure by market sale goes through, there is no judgment then against the mortgagor. Is that accurate?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, Mr. Speaker, would the good Representative please repeat his question? I didn't hear it.

SPEAKER SHARKEY:

Representative Smith.

REP. SMITH (108th):

Sure. Assuming the market sale goes through and the sale actually takes place and the bank has issued a check, I'm assuming there is no judgment that is actually entered against the mortgagor. Is that accurate?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, Mr. Speaker, it is a judgment of foreclosure by market sale. It is unlike a judgment

of foreclosure. I think you're referring to a, you know, a judgment of foreclosure in the normal course under our current statutes. No, it is not the same judgment.

SPEAKER SHARKEY:

Representative Smith.

REP. SMITH (108th):

Thank you, Mr. Chairman and Mr. Speaker, for those clarifications. You know, this is, ladies and gentlemen, the foreclosures in Connecticut are still rampant and this is an effort, and I give the Chairman and the ranking member and Representative Diminico, who have worked on this bill a lot of credit. I know they've been working on this for the past few years and it looks like they put together a fine bill here that will help, hopefully, a lot of people in Connecticut.

It's not unusual for those properties that are underwater for the people to just throw up their hands and kind of walk away and then do a foreclosure by sale. A foreclosure by sales generally do not render very much money, if at all to the bank, so then the bank has to take title and sell it again.

This, hopefully, will bring more money to the parties so there's less of a deficiency, if one at all and actually make for a fair and marketable sale, so I stand in support of the bill and the amendment, or in support of the amendment and the bill as it becomes law. Thank you, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, sir.

Would you care to remark? Would you care to remark further on House Amendment "A"?

Representative Berger.

REP. BERGER (73rd):

Thank you, Mr. Speaker, and good morning. On the amendment, which will now become the bill, and Mr. Speaker, not oftentimes do I stand and get excited about a Banking bill, as many members in the Chamber probably are with me on, but this particular bill is something to be excited about and to be proud of, and again, I want to thank the Chairman, the co-sponsors, the work of Representative Diminico and others, ranking members on this bill and to mirror Representative Smith's comments.

The delays in moving property that are foreclosed on has a chilling effect on the real estate market,

deflates the entire market, both in the residential and commercial sector, devalues the market and ultimately devalues the properties in all of our communities throughout the State of Connecticut.

So the work that has been done on this strike-all amendment will help alleviate that, bring back stability, Mr. Speaker, to our neighborhoods and to our real estate market ultimately then helping the economy of the State of Connecticut.

So I stand in strong support of this amendment that will now become the bill.

Thank you, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, sir.

Would you care to remark further on House Amendment "A"?

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker, if I may, two questions of the proponent of the amendment.

SPEAKER SHARKEY:

Please proceed, sir.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. In Section 5 there's a reference to an appraisal that's mutually agreed upon between the mortgagee and mortgagor.

My first question is, can those appraisals be done by a realtor or are we envisioning the full license appraisal of the house that you typically see when somebody's going out to get a mortgage?

Through you.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, Mr. Speaker, it would be conducted in accordance with current law, which I believe would be a full licensed appraiser.

SPEAKER SHARKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. And then under the mortgage documents, typically when there's expenses associated with a foreclosure, the mortgagor would be responsible for any expenses that are incurred through the foreclosure.

So if this appraisal is agreed upon and the mortgagee would be the one contracting it, would they then be able to charge the mortgagor for that cost?

Through you.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, Mr. Speaker, I apologize. I don't quite understand the question as it's been posed, but I will say that this bill does not change the normal course in terms of expenses and who's responsible for those expenses. It simply provides a procedure whereby the court can participate and manage and oversee a normal real estate transaction in the context of a foreclosure by market sale, and those funds are then disbursed in accordance with the court standing orders in a typical procedure in a foreclosure matter.

Through you.

SPEAKER SHARKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you. Thank you, Mr. Speaker. So just to be clear then, there's no language in this bill that

apportions the cost of the appraisal to either party.

It's whatever current law is? Through you.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, that is correct.

SPEAKER SHARKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. I appreciate the answers.

SPEAKER SHARKEY:

Thank you, sir.

Would you care to remark? Would you care to remark further on House Amendment "A"?

If not, let me try your minds. All those in favor of House Amendment "A" please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER SHARKEY:

Those opposed, nay? The ayes have it. The amendment is adopted.

Would you care to remark further on the bill as amended? Would you care to remark further on the bill as amended?

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

THE CLERK:

The House of Representatives is voting by roll. The House of Representatives is voting by roll. Will members please return to the chamber immediately.

SPEAKER SHARKEY:

Have all the members voted? Have all the members voted? Will members please check the board to make sure your vote is properly cast.

If all the members have voted, the machine will be locked and the Clerk will take a tally.

Will the Clerk please announce the tally.

THE CLERK:

House Bill 5514 as amended by House "A".

Total number voting	133
Necessary for passage	67
Those voting Yea	133
Those voting Nay	0
Those absent and not voting	18

SPEAKER SHARKEY:

The bill as amended passes.

Will the Clerk please call Calendar Number 80.

THE CLERK:

On page 33, House Calendar 80, favorable report of the joint standing committee on Insurance and Real Estate, House Bill 5061, AN ACT CONCERNING UNINSURED MOTORIST COVERAGE FOR BODILY INJURY TO A NAMED INSURED OR RELATIVE DURING THE THEFT OF A MOTOR VEHICLE.

SPEAKER SHARKEY:

The distinguished Chairman of the Judiciary Committee, Representative Fox.

REP. FOX (146th):

Thank you, Mr. Speaker. I move for the acceptance of the joint committee's favorable report and passage of the bill in concurrence with the Senate. It's a House bill, I'm sorry.

SPEAKER SHARKEY:

The question is on acceptance of the joint committee's favorable report and passage of the bill.

Will you remark, sir?

REP. FOX (146th):

Thank you, Mr. Speaker, I think the reason I said in concurrence with the Senate is that this is a bill

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THE CHAIR:

The Senate will stand at ease.

(Chamber at ease).

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Yes, thank you, Madam President. Madam President, some additional items to mark at this point. They may -- may be skipping around the Calendar a little bit.

But Calendar page 10, Calendar 415, House Bill 5518,
move to place on the Consent Calendar.

THE CHAIR:

Yup.

SENATOR LOONEY:

And also, Madam President, Calendar page 18, Calendar 489, House Bill 5227,
move to place on the Consent Calendar.

Madam President, Calendar page 19, Calendar 494, House Bill Number 5573,
move to place on the Consent Calendar.

Calendar page 22, Calendar 513, House Bill 5353,
move to place on the Consent Calendar.

Calendar page 28, Calendar 550, that's 5-5-0, House Bill 5514,
move to place on the Consent Calendar.

Madam President, also moving back, Calendar page 20, Calendar 499, House Bill 5419,
move to place on the Consent Calendar.

Back under Favorable Reports, Madam President, Calendar page 11, Calendar 419, House Bill 5477,
move to place on the Consent Calendar.

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And on page 22 Calendar 513, House Bill 5353.
Calendar 515, House Bill 5361.

And on page 24, Calendar 526, House Bill 5556.
Calendar 524, House Bill 5219.

Page 25, Calendar 4 -- sorry, Calendar 530, House Bill 5368,
page 27, Calendar 546, House Bill 5061.
Calendar 543, House Bill 5037.

On page 28, Calendar 550, House Bill 5514.

Page 29, Calendar 554, House Bill 5148.

Page 30, Calendar 563, House Bill 5554.

Page 31, Calendar 567, House Bill 5229. Calendar 565,
House Bill 5028.

And on page 42, Calendar 384, Senate Bill 442.

THE CHAIR:

Senator Looney, do you have any more good news for us?

SENATOR LOONEY:

Yes, thank you, Madam President. One additional item
to add before we call for the actual vote on the
Consent Calendar, and that is item an Calendar page
33, Calendar 575, House Bill 5359. With that one
addition it would call for a vote on the Consent
Calendar.

THE CHAIR:

Mr. Clerk, please call for a vote on the Consent
Calendar, and the machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate.
Immediate roll call on the second Consent Calendar
today has been ordered in the Senate.

THE CHAIR:

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If all members have voted? All membered voted, the machine will be closed. Mr. Clerk, will you please call the tally.

THE CLERK:

On the second Consent Calendar for today.

Total number voting	35
Those voting Yea	35
Those voting Nay	0
Absent not voting	1

THE CHAIR:

Consent Calendar passes. Senator Looney.

SENATOR LOONEY:

Thank you, Madam President. If the Clerk would call the first item marked go to follow the Consent Calendar.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On page 33, Calendar 579, Substitute for House Bill Number 5348, AN ACT CONCERNING THE PAYMENT OF DELINQUENT PROPERTY TAXES. Favorable Report of the Committee on Planning and Development.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Thank you. Thank you, Madam President. Pursuant to Rule 15 of the Joint Rules, I am recusing myself from consideration of this bill.

THE CHAIR:

Thank you, sir. Please leave the Chamber.

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Thank you, Mr. Chair.

REP. TONG: Senator Linares.

SENATOR LINARES: I just wanted to thank the Senator. I think it's a good bill to help people refinance their homes, and I like the direction it's headed. And I just wanted to lend my support behind the bill. Thank you.

Thank you, Senator.

SENATOR WITKOS: Thank you.

REP. TONG: Thank you.

Commissioner Pitkin. Good afternoon,
Commissioner.

COMMISSIONER PITKIN: Good afternoon.

REP. TONG: I see you were moving without your crutches just now.

COMMISSIONER PITKIN: Thank you for your concern,
Chairman Tong.

REP. TONG: Hope you're feeling better.

COMMISSIONER PITKIN: Thank you very much.

Good afternoon, Chairman Leone, Chairman Tong and members of the Committee. My name is Howard Pitkin. I am the Commissioner of the Department of Banking and I am here to offer testimony regarding three bills on today's Agenda: House Bill 5470, AN ACT REQUIRING A SALES AND USE TAX EXEMPTION FOR SALES TO CONNECTICUT CREDIT UNIONS, House Bill 5513, AN ACT CONCERNING THE MODERNIZATION OF CONNECTICUT CORPORATION LAW, and House Bill 5514, AN ACT CONCERNING AN OPTIONAL METHOD OF FORECLOSURE.

First, House Bill 5514, AN ACT CONCERNING THE OPTIONAL METHOD OF FORECLOSURE is a thoughtful bill that represents an agreement between the banking industry and the realtors. That said, the negotiations that led to this agreement were not limited to these two interests alone. Following the last Legislative Session, I convened a working group to begin a conversation about how Connecticut may continue its good work, the level of power and balance between lenders and borrowers and the foreclosure process, while simultaneously stepping up our efforts to bring these cases to resolution as fast as possible.

Due to the fact that I and the Department of Banking served as a neutral facilitator for these negotiations, I will not take a specific position on the substance of this bill. I will only -- I will not -- I only offer the following contextual comments to provide the Committee with a clear picture of how this bill came into existence.

House Bill 5514 began as the working group. In addition to the representatives from the banking industry and realtor communities, this working group involves stakeholders and advocates from both sides of the foreclosure bar, from title insurance companies and, of course, from both the Office of the Governor and the Office of Policy and Management. In total, approximately 15 individuals attended each of the four monthly meetings we convened between September and December 2013. I drew the working group to a close after the December meeting because both -- both because an agreement appeared imminent and because the stakeholders had a full and fair opportunity to continue to the negotiations.

This process proved fruitful. The realtors and the banks resolved their disagreements and did eventually come to an agreement, which is reflected in the bill before you today. House Bill 5514 represents a lot of hard work among the stakeholders to, perhaps more importantly, provide a venue for the dissenting voice to be heard.

Second, House Bill 5513, AN ACT CONCERNING THE MODERNIZATION OF CONNECTICUT CORPORATION LAW, represents a critical step towards transforming Connecticut into one of the best states in which to organize or locate a business entity. In order to get there, Connecticut must become a desirable venue for business to have their financial disputes adjudicated here, whether under local regulation or in the courts. The Commission established by this bill would develop and recommend policies to attract, encourage and retain business entities, including banks and other financial service entities to organize under Connecticut law.

As the Chief banking regulator, I can tell you that as the financial service entities in this state get more and more sophisticated each year, so do the regulatory and adjudicative needs. The Department of Banking stands ready to explore ways in which it may play a role in helping to attract more financial businesses to choose and come under local regulation and locate in Connecticut. I applaud the Committee for this forward-thinking proposal and look forward to contributing more in the future.

Third, I will spend the remainder of my testimony lending unequivocal support to House Bill 5470, AN ACT REQUIRING SALES AND USE TAX EXEMPTION FOR CONNECTICUT CREDIT UNIONS. The last time this bill came before the Committee was 2008 when it passed out of the Banks and

Banking also collects assessments from credit unions as well as banks, and we calculate that we could recapture that amount of money within two years with the credit unions that migrate over to a State charter and, you know, have a chance for expansion within Connecticut.

REP. TONG: Thank you.

Any further questions? Representative Alberts.

REP. ALBERTS: Thank you, Mr. Chairman. Thank you, Commissioner.

I had a question or more a statement on 5514, and I will attest that I was a participant in the first working group meeting and I appreciate what you did to bring all parties together. And I can also bear witness that you didn't beat anyone up and, so, I thank that -- but you got everybody together and you got everyone talking, which is a good thing.

Very recently we learned that there may be one interested party that may not have had a seat at the table that is going to testify a little later this afternoon, and as it pertains to the impact of what this proposed legislation may mean for homeowners associations, condominium associations in particular.

COMMISSIONER PITKIN: Uh-huh.

REP. ALBERTS: So, if you are able to hear that and can weigh in with any thoughts afterwards to the Chairs and to myself, I know we would appreciate it because I think there are going to be some things that are brought to light that we perhaps hadn't considered. But I do thank you for your testimony and I thank you for coming today and for not beating me up. Thank you.

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COMMISSIONER PITKIN: Representative Alberts, I wouldn't do that. I'm a condominium owner myself, and if the condo owners associations did not have a place at the table, I take responsibility and regret that they didn't. However, we will listen to them and meet with them and consider whatever they, they provide to us.

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

COMMISSIONER PITKIN: You're welcome.

REP. ALBERTS: Thank you, Mr. Chairman.

REP. TONG: Further questions? Representative Diminico.

REP. DIMINICO: Thank you, Mr. Chairman.

I'm just curious why this never went forward in 2008. (Inaudible) was it the fiscal note or some other matter?

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COMMISSIONER PITKIN: Um, I, I can't put myself in the shoes of those who, who didn't let it get out of the Senate. It looked pretty promising at different points, but I think that we're hopeful that this year that the consideration will go to the possibilities for growth in the credit union industry and, and a better playing field that's level for all the participants. It's not level now. We don't have a chance. As attractive as we may make our charter, as attractive as the General Assembly has made it, the tax issue continues to be the virus in the State charter that won't give up.

So, I hope this year it will, it will pass.

REP. DIMINICO: Well, (inaudible) think it's big.

The four-letter word out there is jobs and trying to promote within, and certainly a level playing field makes perfectly good sense to really seriously consider this. It sounds like we lost credit unions and the aim is to bring it back and have a level playing field. In the meantime, perhaps create some new jobs and some additional credit unions. Thank you.

Thank you, Mr. Chairman.

COMMISSIONER PITKIN: Thank you, Representative Diminico. I just want to say that while as in industry the credit unions are much smaller than the banks, they are an equal part in the financial chain that provides services to Connecticut residents. And they are as important to the group of people they serve as the bank -- banks are to the group they serve. So, I hope that this year the General Assembly will support this bill.

REP. DIMINICO: Let's hope our friends in the Senate are able to make that happen.

REP. TONG: Any further questions?

Okay. Senator Leone, since I just took a shot.

SENATOR LEONE: Yes, I have to give my support now that I think the Senate would be looking a little bit more favorably on these bills that you're presenting to us, at least from my perspective. I don't want to speak for all the members. But I want to thank you, Commissioner, for all your help and assistance, especially getting the parties together for the optional method of foreclosure. It's, it's not always an easy task trying to get everyone to the table, and even trying to remember everyone that should be at the table. And sometimes that's just a matter of people indicating that

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they have an interest in it.

So, I think your leadership and your input as head of the banking community has been tremendous service to us as the Committee as we try and move some of these forward. So, I wanted to thank you for that.

COMMISSIONER PITKIN: Thank you, Senator.

REP. TONG: Any further questions?

Thank you, Commissioner.

COMMISSIONER PITKIN: Thank you very much.

REP. TONG: Eugene Macori. Did I read that right?
Good afternoon.

EUGENE MARCONI: You were close, Marconi.

REP. TONG: Marconi. Gene, I thought it was Gene Marconi. I was like --

Good afternoon.

EUGENE MARCONI: Good afternoon, Senator Leone, Representative Tong, members of the Committee. Before the Commissioner leaves, I just wanted to say a thank you to the Commissioner. He has talents as a mediator that have apparently gone unexplored previously and, no joke. I mean, there are, there are some world trouble spots that could probably use him. So, thank you, Commissioner, and I mean that sincerely.

REP. TONG: Well, there is an issue over in Ukraine. So, maybe we could get his assistance over there.

EUGENE MARCONI: Send him. He's ready. He's ready. We worked him out pretty good and he did very

well. And as the Commissioner stated, getting all of the stakeholders together for this bill and for this effort was a very big task, and the product of his efforts and his good offices are before you.

What we tried to do -- and those of you who were on the Committee last year may recall the, the hearing in Stamford where we had a parade of my members come before you with horror stories concerning the current foreclosure mix, strict versus our foreclosure by sale options and, really, the need for, for another way. So, that -- what this bill tries to do is leverage the fact that we have a judicial foreclosure process in Connecticut with the fact that we have some 20,000 real estate licensees who have the tools to sell these properties on the private market to people who will use them for their homes. And that's what the bill tries to do, while at the same time not creating an entire whole host of new procedures for the court system.

So, what we tried to do was integrate the current laws that we have on foreclosure with this process. So, under this process the, the lender would have to notify the borrower that this option exists -- my three minutes up already?

REP. TONG: No. Please proceed.

EUGENE MARCONI: Okay, thank you.

REP. TONG: Your time is up, but we want to hear what you have to say.

EUGENE MARCONI: Thank you very much.

The lender would have to notify the borrower that this option exists. The borrower would

have the ability to say, "Yes, I'm interested in this," at which point the borrower and the lender would negotiate on the terms of the sale. The lender would have the opportunity to send an appraiser to the property and the borrower would allow the appraiser access to the property. That has always been a sticking point, even with our current short sale procedures where there is no good interior appraisal of the property. So, everybody is sort of shooting in the dark with regard to a purchase price.

If the lender and the borrower agree to continue, the property is listed with an agent who attempts to sell the property. Whatever offers come in have to be submitted to both the borrower and the lender. If the lender and the borrower find a offer that they like then the borrower would sign a contract with the purchaser. We would go to phase two of the process, which is the actual foreclosure proceeding in the court. Part of that foreclosure proceeding -- and there may be some, some confusion about this.

The, the foreclosing lender and the borrower would make the motion to the Court for the foreclosure. Once that motion has been consented to by the borrower, they wouldn't have any mediation rights at that point. And what we're trying to do there is make these, these properties attractive to purchasers. And obviously you don't want a situation where a purchaser is committed to a purchase. Maybe they've spent, you know, a thousand, \$2,000 on tests and inspections only to be told, "Oh, no, no, don't worry, this is going into mediation. So, you know, thanks for your interest, but no thanks."

So, at that point we've got another party here

that we want to try and take care of, who is the purchaser. The Court would have some functions here. They'd have to find the amount of the debt. . That's part of our current foreclosure proceedings. They'd have to determine the priorities. Again, that's part of our current foreclosure proceedings. They would appoint a Committee who would actually conduct the closing. That's part of our current foreclosure proceedings. And would also approve the expenses of the sale. Once the sale took place -- and that would be part of a court judgment. So, once the sale took place, the purchaser would have the same title that they would receive out of a -- out of any other foreclosure by sale and the matter would be concluded.

So, that's the, that's the brief rundown of the process involved. So, the Realtors Association and the bankers have done a lot of heavy lifting on this. This is not to say that we didn't listen to other parties. You will note that there is a lot of negotiating room in here that was to respond to concerns expressed by the Foreclosure Defense Bar that they wanted an opportunity to negotiate deficiencies and that sort of thing. So, there is room in here for that. So, I don't want anybody to think that, that this was a, a product solely in the interests of the bankers and the realtors and we didn't care about anybody else. We wanted this to work for everybody. And I think that the product before you does, does do that.

So, I'm asking you to support Raised Bill 5514, and thank you for your time. Be happy to answer any questions you might have. And thank you for your indulgence concerning the time of my testimony.

SENATOR LEONE: Thank you, Gene. A couple of

questions. I'm speaking for the Chair as we greatly appreciate you coming down to Stamford last year, and I hope the members notice we didn't do that again this year. But we did -- we do remember well the parade of horrors that we heard about from your members and the difficulties you see in the marketplace and the need for an optional method of foreclosure. And we also commend the Commissioner for, for filling that role as a mediator and a leader and bringing people together and, and, and ensuring a productive negotiation.

And we support, generally, the development of, of the optional method of foreclosure as a goal. I guess my concern is -- and I think we're going to hear some of this testimony shortly -- is there remains some opposition, particularly from housing advocates. And I think one big sticking point is taking people out of the mediation program. And it appears to me that if they agree to a foreclosure by market sale and then step out of the mediation program that -- should that process, foreclosure by market sale, not result in a sale that they would be permanently barred from mediation. Is that the case?

EUGENE MARCONI: As drafted, no. If you take a look at the last section of the bill, it states that if the mortgagor consents to a foreclosure by market sale then they would not have the right to mediation in any -- in a subsequent proceeding. But that consent refers to the consent set forth in Section 7 of the bill where it states, "Upon motion of the mortgagee and with the consent of the mortgagor, The Court, after noticing hearing, shall render a judgment of foreclosure." So, it's at that point that, that they no longer can ask for, for mediation.

So, if the, if the sale doesn't -- if the borrower and the lender can't agree on a sale and the lender starts a, what I'm going to call a conventional foreclosure, the borrower still has the right to file for mediation. So, it's not merely saying, yes, I'm interested in mediation that triggers -- interested in foreclosure by market sale that triggers the waiver of mediation. It's, we've got an agreement on everything. We've signed a contract with a purchaser. We started phase two, which is the court proceeding. And it's at that point that, that there wouldn't be any mediation right.

REP. TONG: So, are you saying at that point the sale has closed or that it's on a track to close?

EUGENE MARCONI: It's on a track to close.

REP. TONG: Okay. What if it ultimately doesn't --

EUGENE MARCONI: And the reason for that, Representative Tong, is, again, we've got a purchaser in here who is committed to purchase and, you know, we want to attract purchasers to these sales. And we're not going to attract them if they think, "Well, I could get all the way through this," in your market area do all their tests and inspections before they even sign a contract and layout the funds for them and then say, "Oh, no, no, no, this is going in mediation, so --".

REP. TONG: So, is your understanding that if the purchaser ultimately does not close and withdraws from the transaction that the, the mortgagor's rights would -- into mediation would spring back?

EUGENE MARCONI: No.

REP. TONG: No?

EUGENE MARCONI: Once, once they've asked for the -- once the, the foreclosing party and the mortgagor have asked The Court for a motion -- for a judgment of foreclosure, that's at the point where the mediation results -- where the mediation program can't be taken again.

REP. TONG: I guess I don't understand why that should have to be. Could you imagine, you know, a bill that provides that if the sale falls apart that -- and then we revert back to a foreclosure posture, that the mortgagor reacquires or continues to have their rights to mediation?

EUGENE MARCONI: I understand, I understand what you're saying, but this is a delicate balancing act between the lender who has got the right to foreclose, the lender who doesn't have to offer any sort of loss mitigation options, the borrower who would like to maybe try and reduce the potential deficiency by having a market sale as opposed to some other type of foreclosure, the agent who has invested time and money and effort in trying to produce a sale, and a purchaser who has also spent time and money and effort to try and buy the property.

So, again, this is -- it's a -- there is a lot of moving parts to this and it's a delicate balancing act. So, if we -- if we boost this one, this one might drop. Do you see what I mean? So, what I would say is, is, I'm going to express caution in trying to change the balance of power around here -- around what's here for fear that we're going to upset the whole thing.

Yeah, you can have -- you can have a situation where -- where the, the borrower's mediation rights spring back if the sale tanks after the, the motion. But, you know, why would the sale tank? Well, the sale tanked because of some actions on the part of the borrower. So, now that we start adding exceptions to say, well, your mediation rights would spring back except if the sale tanked as a result of some activities of the borrower. For example, the borrower took all the appliances out, or the borrower damaged the property, or the borrower refused to move.

So, that's why I say -- I mean, when we started -- when we start talking about some of this stuff and different possibilities that could happen, some of these seemingly simple questions are not that simple to answer:

REP. TONG: Thank you.

Further questions? Representative Widlitz.

REP. WIDLITZ: Thank you, Mr. Chairman.

Just a comment. Thank you so much for reminding us about that hearing in Stamford where we left this building and drove through rush-hour traffic.

REP. TONG: You loved it.

REP. WIDLITZ: Of course we love visiting our Co-Chairs in Stamford. But I do remember all of the issues brought up, and it was rather a surprise to me to find out that there were so many problems with that process. But I think the, the Chairman has asked my question about what happens in the event that the sale falls through. And obviously it's a very delicate negotiation that you've done and it's, I guess,

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up to this Committee to, to figure out what is in the best interests overall and that's sometimes very difficult. But I think --

EUGENE MARCONI: Yes. And all I would remind the Committee is don't forget about the purchaser. Those are the people that we want. And part of their challenge right now, for example, in short sales is just the complete and total uncertainty in the whole thing. And what we're trying to do is bring a little bit more certainty to them and give them a little more confidence when they put an offer in on those properties.

REP. WIDLITZ: Thank you very much.

REP. TONG: Further questions?

Thank you, Gene. Sorry for mangling your last name earlier.

EUGENE MARCONI: Thank you very kindly.

REP. TONG: Jeff Gentes. Good afternoon.

JEFF GENTES: Good afternoon. Senator Leone, Representative --

REP. TONG: You're done. Thanks. Thanks so much.

JEFF GENTES: I was faster than I thought I would be.

-- the other members of the Committee, thank you for having me today. My name is Jeff Gentes. I'm the Managing Attorney for Foreclosure Prevention at the Connecticut Fair Housing Center. I'm here today to talk about House Bill 5514.

We're opposed to the bill in its current form.

We do support and recognize that short sales are an important part of the -- of keeping our housing market alive. It helps preserve dignity for homeowners. It helps reduce blight. And we agree that even though it's been several years that the parties have had to develop -- improve their short sales processes, and even though we've seen improvement in short sales, that more can be done. We don't think the approach under this bill, though, goes as far as you could, does as much good as you hope, and it has some drawbacks that we can talk about.

In general, I think what the State Legislature has had the most success with, for instance, in creating the Foreclosure Mediation Program was, well, we have -- you're going to come into our court system to foreclose on a homeowner. At least sit down and talk, and then we added some -- some more language talking about you need to mediate in good faith. You need to do so quickly. You need to reach that determination with reasonable speed, but you've never dictated the type and the format and never gotten too into the particulars about exactly what they need to do in order to reach a particular result. We think this bill would create sort of a government-approved short sale process that likely will not be as easy to implement across the industry as we might hope and also leave some people out of mediation like we've already discussed here. We don't see reasons for that.

We've closed -- nearly a thousand short sales have closed through -- as a result of being in the Foreclosure Mediation Program. We think it would be a step backwards to prohibit those folks from participating in mediation. In terms of the purchasers that Attorney Marconi raised before, we would say that the purchase

and sale contract should account for potential contingencies. And we understand that the Connecticut Bar Association is undergoing a review of the types of purchase and sale contracts that we typically see. And if there's an issue that purchasers may have and are concerned that they may lose out on time and money, you could build that into the contract so that if for some reason the closing falls through, or if the homeowner manages to get a job that -- where they end up with enough income to support a modified mortgage instead of pursuing with a short sale, that you can simply workout whatever remedies the purchaser may have through that contract rather than simply barring the homeowner from mediation.

We would instead advise taking a path where you take the best part of this bill, which is recognizing underwater junior liens as being an impediment to a lot of short sales, but also other kinds of workouts, like deeds in lieu of foreclosure and loan modifications. You take that best part of the bill, which is addressing those junior liens, saying, you cannot hold up a transaction that is good for everyone, good for a neighborhood, and using that to prevent more preventable foreclosures.

REP. TONG: Please proceed.

JEFF GENTES: Thank you.

So, my testimony also just references some flaws in the bill's current draft, including junior lienholders that the Condo Association has referenced in their testimony. We also mention Federal tax liens. We do think that the bill can be improved. We do think that further collaboration and discussion like the discussion that Commissioner Pitkin led could improve the bill. And we're happy to be part

of those discussions.

Thank you.

REP.. TONG: Thank you. Have you had a chance to speak with Mr. Marconi about your concerns, your specific line item issues that you outlined here in your testimony?

JEFF GENTES: I know we've certainly had E-mails. We were part of the -- the working group that Commissioner Pitkin outlined before. I don't know that we've discussed that purchaser issue in detail.

REP. TONG: What I would suggest is, Representative Diminico has taken the lead on this Committee in shepherding this bill, and I think of all the Committee members has the deepest knowledge about how we got from A to B and about its impact on the marketplace. I would suggest, if Representative Diminico is amenable, that, that you, Jeff, and Mr. Marconi meet with Representative Diminico and put your concerns on the table and that you two attempt to come to some agreement and draft around these issues.

JEFF GENTES: Thank you.

REP. TONG: Is that agreeable to you, Representative Diminico?

REP. DIMINICO: Thank you, Mr. Chairman. Yes, I'd be happy to do that. I've had discussions with all parties, so -- since early Fall. I just might add, I was wondering if we should get the CVA involved as well. On that discussion, I think it would be amenable to sitting down and trying to work this out. And I do understand the concern of, more so, on the junior lienholder property, particularly to condos.

I will make mention of the fact that I know the logic of this bill is really to kind of take the burden off the court system and try to make a process that's more expeditious. The only concern I think was brought out was that if, if the option was made available to mediate that it might bog the process down and be more burdensome to the court system. But I do understand how short sales go, and I do understand the risk that a seller may have with a mortgagor.

But the other thought is this. I would assume -- and, Jeff, you may be able to answer this question. My thought is that there probably -- a very vast majority of the mortgagors that would come up for this option would have no intention of mediation. Their intent would be to avoid the stigma of foreclosure, to be able to stay in the home for a longer period of time so it doesn't become blighted, and perhaps in the long run bring -- since they get sold on the open market, that it would bring a better price for the home and have less of a deficiency which in the end would be less of a burden if any deal was cut with the banks on a deficiency payment. And that's really in the best interest of the seller. But it's never easy. I think you can all sit down and try to work this out, it will be in the best interest of (inaudible).

So, I'll be happy to do that, Mr. Chairman.
Thank you.

REP. TONG: Thank you, Representative.

Did you want to respond to that, Jeff?

JEFF GENTES: Sure. I would just say that the -- I think mediation offers a forum that's not

always available for negotiating both the deficiency waivers that you spoke about, Representative, and the thing like moving expenses as well, and just -- I don't know how many people going into a short sale necessarily want to mediate versus don't. I just know that, that many do, that many have, and with some success. And that having a forum to work out some of the difficulties that arise during the course of a short sale has been helpful for hundreds, if not a thousand borrowers.

REP. TONG: Any further questions? Representative Carter.

REP. CARTER: Thank you, Mr. Chairman.

So, your concern is that you'll have fewer people seeking mediation, in your estimation? Because this seems to be like a really nice choice for a consumer to have, as Representative mentioned, to avoid the stigma of foreclosure when you're in financial difficulty. Are you afraid fewer people will choose mediation?

JEFF GENTES: I don't -- I suppose that -- it's not so much that fewer people would choose mediation so much that we wouldn't achieve the results that -- we wouldn't achieve the highest potential results if we prohibited people from doing mediation. We're able to have -- we have a process now where people can negotiate short sales through a mediation. They're successful at doing so. This bill creates a process for dealing with junior lienholders which is a nice way to increase the number of short sales that go through. I don't understand why we're also, then, taking away the mediation piece. It seems like we're undercutting some of the gains they can make -- we could make through this

bill.

REP. CARTER: So, my understanding, then, if we -- if somehow the last section were gone and said that, you know, somehow it was equivocally put in there that if you went through and you chose to do a foreclosure by market sale and that sale failed, that you would still be eligible for some sort of mediation following that. Is that the big thing that's the hang up is? Otherwise, people can choose to do this or not, the way I understand the bill.

JEFF GENTES: Well, I'd also -- I'd also make it available for people who are already in mediation. In other words, this contemplates a scenario where somebody is not yet in mediation and then they negotiate a short sale and then sort of hand in hand with their lender go to court to make this -- to proceed with the foreclosure action. Somebody who is already in foreclosure would want the option to be available to them because they're likely -- frequently people pursue short sales after initially pursuing home retention through mediation. And then they say, "Okay, well, now it's time for Plan B. Here's my listing agreement. You know, 30 days later I'm back in mediation. Here's my contract of sale. Here's my financials," and then negotiate a short sale through that process.

Let's keep that in place. But also given how many -- and I hear this from lenders as well as what I see in my own practice. These issues with junior liens prevent modifications and they prevent deeds in lieu from going forward, sort of cash for keys. Like, "Hey, we tried a short sale, it didn't work out. Turn over the deed to your house and we'll give you a few thousand dollars to move, to move on." So, I mean in terms a deed in lieu. And if you had

this kind of tool available for those, well, then, we're also preventing those properties from hitting the market as a foreclosure where we've avoided foreclosure, we've preserved value across the board. Why not -- I think this is a bill with a lot of potential. While we're focusing on it, let's do as much as we can and do as much good as we can and do it as soon as possible because the market still needs it.

REP. CARTER: I'll agree with you 100 percent there. This bill has a ton of potential and I certainly am very happy to hear that you're going to work with Representative because the time is now. I mean, we can't -- we can't afford to keep waiting while we have folks out there under water and we have a real estate to market taking hit it is. So, I hope we can do something with this.

Thank you, Mr. Chairman.

REP. TONG: Thank you.

Further questions? Senator Leone.

SENATOR LEONE: Thank you, Mr. Chairman. Thank you, Jeff.

I would urge that you do speak with the other two members in the crafting of this bill. As you know, we attempted to do this last session. But given the complexity more time was required and that's why we it had to get the parties to come together in the off session. And that's where some of the kudos came for the Commissioner to make sure everybody was at the table. So, we need to make sure that your input is gathered. At the same time, we do want to produce a bill that is workable. So, I think if you could do that, that will be

beneficial to us as a Committee to make sure that we can address your concerns, but at the same time make sure we have a vehicle for those in need of this service.

So, I wanted to thank you for that, but at least stress making sure that you -- if you haven't been asked, we want to make -- on my behalf make sure you are at the table.

JEFF GENTES: Thank you.

SENATOR LEONE: Thank you, Mr. Chairman.

REP. TONG: Further questions?

Thank you.

Deb Chamberlain. Good afternoon.

DEB CHAMBERLAIN: Good afternoon, and thank you and welcome. I'm Deb Chamberlain. I am the 2014 President for the Connecticut Realtors, and I'd like to bring a little on-the-street perspective to this particular bill this afternoon, which is our foreclosure by market sale bill.

HB 5514

I work primarily in southeastern Connecticut and I do just residential properties. I'm not a commercial broker. And the story that I have to tell you is not a happy one. Connecticut nationwide is lagging behind, as I know all of you know, in terms of our recovery. And I think had you asked all of us selling real estate two years ago whether we had hit bottom and we were coming back, we probably at that time might have told you yes. We were just kidding. We didn't mean to, but we were.

The reality is that I do 75 percent of my business now in the short sale arena, and

typically and mostly I am racing the bank to the finish table with a foreclosure in process. And, so, I unfortunately have a lot of experience with how the process is actually playing out now, and I thought I'd share that with you. I think it's very relevant and it certainly speaks to the need for this bill.

As it stands now we have very few banks doing a very -- well, doing a decent job of the mediation thing. I have -- most of the folks that I speak to find it the most frustrating thing in the world. They'd rather go to the dentist. They just simply cannot get the banks to talk to them, return their phone calls, explain information to them. It is not a fun process for them. So, the mediation process, in my opinion, is not currently all that functional.

The other thing that's happening is sometimes people are led down a primrose path. I see this more with the large banks. I won't name names, and I do the local banks. But the reality is they're led down a path and told, "Don't make your payments. Don't worry about that. You don't need to make those payments because you're in mediation." And then, lo and behold, at the tail end of a nine-month painful scenario they get a loan back that looks terrible. It has the same interest rate and they've tacked on interest and penalties at the tail end. I don't know how that's a mediation, but that is what's happening out there.

And, so, the reality is by the time an agent is called, these folks have gone through every penny they have trying to keep their heads above water and do the diligent thing, mediating with the bank. What they really should have done was sell that house quickly and get out from under it. And we could have

navigated them through a short sale in less time, and everybody would have had more money at the end of it. And, so, I'd like to speak a little bit about the notion that we give up our rights to mediation.

Everybody that I speak to in a short sale gets counseling from me. I laugh, because I have a B.A. in psychology and I never thought I used it much until about four years ago. Now I'm a full-time counselor. And the reality is the discussion that we have with these homeowners is, you know, "Here are your options. You can ignore the bank. You're going to be foreclosed upon. We can execute a short sale. Here's the process. You can do mediation if the bank will play ball with you." And at the end of the day, those borrowers very early on in that process know what their finances are. They know whether they can pay that mortgage payment. And the harsh reality is no adjustment in the interest rate for many of these people is going to make any difference in the end result of that house. They have to get out of it. They have to go. They can't afford the mortgage. They've lost jobs, don't have jobs, have half a job. So, for them, mediation isn't going to solve their dilemma.

So, I would suggest to you that, more than not, we are the ones there that are doing that good counseling and thereby moving those properties. And unless we can streamline this process, which currently is, frankly, a nightmare still, I think we're not going to move -- we're not going to move houses in Connecticut and we're never going to get out from under the economic mess that we currently find ourselves in.

And one final thought. I just want to say that from the perspective of the borrower, it's much better to have a realtor sign on your front

lawn than it is that big white foreclosure sign. So, if we can give these folks an option to have the right sign on the front lawn, let's do it.

Thank you.

REP. TONG: Thank you.

Any questions?

Ms. Chamberlain, if you would please.

DEB CHAMBERLAIN: I thought Gene covered everything well. Any questions?

REP. TONG: Representative Diminico.

REP. DIMINICO: Thank you, Mr. Chair.

Just one simple question. In your professional opinion, do you think there is a better value if a property sold as a short sale or if a property sold at an auction?

DEB CHAMBERLAIN: Oh, God, no question about it. Absolutely short sell it. Absolutely, all day.

REP. DIMINICO: Thank you very much.

Thank you, Mr. Chairman.

REP. TONG: And with that softball, I'll move to --

DEB CHAMBERLAIN: And thank you for that compelling question.

REP. TONG: Representative Rovero, can you top that?

REP. ROVERO: I'm a softy, yes.

A quick question and then your opinion. Who

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is -- benefits most if this bill would pass like it's written, the lender, the borrower, or the agents?

DEB CHAMBERLAIN: Homeowners.

REP. ROVERO: Homeowners.

DEB CHAMBERLAIN: Homeowners.

REP. ROVERO: Okay. Could you explain to me why?

DEB CHAMBERLAIN: Yeah. I think, I think there's nothing less dignified than losing your home. I just don't think there is, really. It's an awful, awful process. And I think that unless we pass this legislation, we are going to subject these folks to what they've already been through, which is just hell, frankly. And the reality is we are now starting to see buyers who are afraid of short sales because of the nightmare that has existed in the process. So, I think we really need to get this -- this train back on the track. And I think the only way we can do it is passing a bill like this. I think this bill was thoughtfully crafted. We included everybody who was willing to talk with us. And I think it really represents the interests as best you possibly can of all the parties.

REP. ROVERO: When it comes to short sales, would you say that bottom feeders are the ones that are looking for these short sales more than anybody else?

DEB CHAMBERLAIN: Who do you mean by "bottom feeders"?

REP. ROVERO: Well, someone that comes in looking at a sale and tries to get it for next to nothing.

DEB CHAMBERLAIN: Well, that's why we have a realtor because the realtor negotiates for those people and prevents the bottom feeder from taking advantage of them.

REP. ROVERO: Okay. And the realtor is not interested in the commission, they're really only --

DEB CHAMBERLAIN: Realtors -- we --

REP. ROVERO: -- they're really only concerned with the --

DEB CHAMBERLAIN: Well, you know, should realtors get paid to do a job? Yeah, absolutely.

REP. ROVERO: Okay.

DEB CHAMBERLAIN: We all, we all get paid to do our jobs and, so, I don't have any problem with the fact that this bill preserves their paycheck. I think it should. I work, God knows, probably 40 hours sometimes on one file, one week, and that's just the reality of these sales. So, the notion that I shouldn't be paid for it I think is flawed. I think we deserve to be paid for it. We deserve to, to preserve the dignity of the, the homeowner. I think this bill does that.

REP. ROVERO: Okay.

Thank you, Mr. Chairman.

DEB CHAMBERLAIN: Anybody else?

REP. TONG: Thank you, Ms. Chairwoman.

DEB CHAMBERLAIN: Thank you.

REP. TONG: Martin Geitz. Good afternoon.

MARTIN GEITZ: Good afternoon, Chairman Leone and Chairman Tong and other members of the Committee. Thank you very much for this opportunity and certainly it is a pleasure to be testifying before the Committee again.

You may recall that I testified on the Mortgage Servicing Bill last week. My name is Martin Geitz and I'm President and CEO of Simsbury Bank. I'm here today in my role, however, as the Co-Chair of the CBA's Legislative Committee and will talk briefly about several bills that are on today's agenda.

HB 5514

As you know, the CBA represents all the banks in the state, and I'd like to direct you to our written testimony which presents comments and positions on many of the proposed bills. While I'm not going to directly comment on all the bills, I encourage you to speak with Tom Mongellow of the CBA and Fritz Conway of Gaffney Bennett should you have any questions or comments on that testimony or the legislation before you.

The first bill I'd like to talk about is the Senate Bill 399, AN ACT CONCERNING BANKERS' BANKS, which would allow the market expansion and increased capital raising abilities for the Glastonbury-based Bankers' Bank Northeast. You will be hearing this afternoon testimony from Peter Garland of Bankers' Bank about the bill, and we urge you to support it.

The next bill I'd like to comment on is House Bill 5470, AN ACT REQUIRING A SALES AND USE TAX EXEMPTION FOR SALES TO CONNECTICUT CREDIT UNIONS. This bill would expand a Connecticut chartered credit union's existing state and federal income tax exemptions to include a State sales tax exemption and we oppose this

Finally, I'd like to refer to House Bill 5514, AN ACT CONCERNING AN OPTIONAL METHOD OF FORECLOSURE. As you may recall, this bill was raised last year by the Realtors Association, and in that previous forum it would have increased foreclosure delays and created a potential loss of value on a bank's collateral. However, since then industry representatives have met with the proponents of the bill over many months to produce a compromise proposal before you today. House Bill 5514 creates a pre-foreclosure sales solution that will provide homeowners with no equity in their properties the ability to quickly and efficiently sell their properties without the stigma of foreclosure.

This process should reduce a borrower's deficiency versus the existing foreclosure process which can result in tens of thousands of dollars of insurmountable and unpayable deficiencies on their mortgage. It also has the potential to reduce blight and produce better sales prices for homeowners using this new approach.

We'd like to thank the Department of Banking for facilitating the negotiation process that led to this bill and appreciate the proponents' willingness to work with the banking industry on this proposal.

Thank you very much for this opportunity to testify today.

REP. TONG: Thank you, Martin.

Any questions? Senator Leone.

SENATOR LEONE: Thank you, Mr. Chairman.

Good afternoon. Two quick questions. In your

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testimony for 5470 for the credit unions, you mentioned that you're suggesting a phase in if this bill were to pass. Is that correct?

MARTIN GEITZ: Well, I was suggesting actually a phase out over time of the tax exemption that credit unions nationally enjoy of Federal and State taxes. Was not suggesting a phase in of the proposal.

HB5514 SENATOR LEONE: Okay, all right. So, I just had that upside down. Okay, thank you for that. And then do you have any comments on the optional method of foreclosure on the previous testimony and the concerns that were being raised by the housing advocates and whether they should be taken out of pre-mediation?

MARTIN GEITZ: Well, I think I agree primarily with the comments that were made about trying to create an additional process that may be right for certain borrowers who find themselves with no equity in their homes. May not be right for others, but may be right for certain borrowers who are motivated to find a solution without having to go through the foreclosure process. And I would agree with the comments of the testimony that was delivered to you just before me as well as some of the comments from Legislators here that, in our view, this just creates another option and could work very well to the benefit of a certain group of homeowners who are in difficult situations.

SENATOR LEONE: Thank you.

Thank you, Mr. Chairman.

REP. TONG: Thank you.

Any further questions?

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bills and it came to just over \$24,000 for us. This didn't include -- they didn't separate out taxes it paid on large purchases where it was turned into a fixed asset and depreciated. So, I don't have an idea. Certainly I would say it would be around 30,000 or more for us.

I was looking to quantify this, and I have searched into what it would take to go back to a Federal Charter because, quite honestly, we're -- we are looking at tightening our belts. And I have one person that handles marketing and is certainly getting overloaded with the work load, and this could be a way for me to basically pay for another full-time position, which our credit union certainly could need. So, that's what I'm here. I hope you can support the bill.

REP. TONG: Thank you very much.

And any other questions?

Thanks so much.

Scott Sandler. Good afternoon.

SCOTT SANDLER: Good afternoon, Chairman Tong, Senator Leone, esteemed members of the Committee.

HB 5514

I am a Farmington attorney whose is focused on representing condominiums and homeowner associations in our state. At present we represent approximately 450 associations. I also serve as Chair of the Legislative Action Committee for the Community Associations Institute. The Institute's membership is made up of associations, individual homeowners and professionals like myself who provide services to associations.

I am here before you to speak against the passage of Raised Bill 5514, creating an alternative method of foreclosure. The comments I have submitted in my written testimony can apply generally to any holder of the lien subsequent to the first mortgage on the property. But I also look at it from the unique perspective of the Condominium or Homeowners Association. We operate just a little bit differently from other kinds of lienholders in that, first, our liens enjoy a split priority partially prior to the first and second mortgage and the balance subsequent to the mortgage. And as a result of that split priority, we are one of the few subsequent lienholders that are likely to proceed with a foreclosure in our own right.

Additionally, unlike other lienholders, our association did not consciously enter into a decision that we want to engage in some kind of business relationship with the homeowner or borrower who is now unable to pay their mortgage or other debt. And, so, we're, we're in a position where we have a community of people where those who can pay are making up the difference for those who cannot pay. And, so, our ability to protect our lien is of great importance to the other members of the communities.

Our first concern with the proposal is that it, it provides what is essentially for a short sale of the unit -- of the home without any opportunity for subsequent lienors to engage in a negotiation process to at least receive payment of some of what is owed to them through the sale proceeds. Now, if there's a short sale, the homeowner still has to address the other liens on the property. And through the negotiation process, of course, they won't receive full payment of what's owed, but they

may at least receive some -- a portion of the sale proceeds towards the outstanding debt. Under this process there is no opportunity for the subsequent lienors to engage in negotiations or collect any portion of the sale proceeds and that, at least in terms of a condominium or a Homeowners Association, means anything beyond what we have over the first mortgage, anything beyond that priority gets completely wiped out and is uncollectible.

Next, the time frame involved in this foreclosure by market sale process is so truncated that there is very little opportunity for a lienor to challenge the priority of their lien as alleged in the foreclosure complaint followed by the mortgage holder. So, for example, in associations where we have a split priority, it's not uncommon -- it does happen from time to time where the priority is not correctly set out in the foreclosure complaint and there is very little opportunity in this process, this truncated time frame, for us to raise an objection or a challenge to ensure that at least the priority portion is well protected when the case is heard before a judge. Their file -- the mortgagee can file a motion for judgment ten days after a return date -- if I may.

REP. TONG: Please.

SCOTT SANDLER: -- which provides very little time for an association to file any kind of defense. And the hearing on the motion is so limited in scope as to what can be brought before The Court. When it talks about -- when the bill talks about determination of priorities, it speaks for determination of the distribution of sale proceeds and the association's priority portion of the lien wouldn't be paid through the sale proceeds. So, if we were challenging

how our priority is alleged in the complaint, query whether that can be brought up at the hearing on the motion for judgment. So, we do have some concerns with a rather truncated time frame.

Lastly, I would like to see something added to the bill that says in no uncertain terms that it does not impair the ability of other lienholders to take action to enforce their legal rights, including but not limited to foreclosing their liens. Again, we're -- associations are one of the few lienors that actually would proceed with a separate foreclosure, but we don't want to be told at some point that doing so would somehow violate the spirit of this process and that we cannot foreclose to protect our interests because there is this hope for a market sale. And there's really no end date on how long a home can be on the market, for how long it takes to try to find a buyer and who will present a contract that is acceptable to both buyer -- to both the seller and the mortgage holder.

With that, I thank you, and I'm happy to answer any questions you may have.

REP. TONG: Thank you. A couple questions.

I don't, don't live in a condominium, have never lived in a condominium setting. But just as a layperson, it would seem to me that there are a bunch of issues that are specific to the condominium context when somebody is in financial distress and facing foreclosure. And it would seem to me that in a community setting where there are a bunch of other landowners, property owners in a building, for example, that having somebody in financial distress who is unable to make their payments, not just of their mortgage but presumably their common

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charges and their maintenance charges, is not a good situation.

SCOTT SANDLER: Agreed.

REP. TONG: And that the best thing to do is to find a way for that person to get out of or under -- out from under a financial obligation that they have no ability to meet. Would you agree with that statement?

SCOTT SANDLER: Thus far.

REP. TONG: Okay. So, so, and also I presume that if I live in a condo association, that if a bank forecloses upon a condominium and they take possession of the unit, and then the unit goes up for auction and it sold in a fire sale, that that's not a good thing for the condo association generally that a unit went for far below market price. Would you agree with that?

SCOTT SANDLER: Yes, I would.

REP. TONG: Okay. The reason why I ask that is because it seems to me that, that there are benefits to this legislation, particularly for condo livers and condo owners and association members because it provides a vehicle to help people move on from a financial obligation they can't afford, number one. And number two, it avoids the stigma of a auction or a, you know, quote-unquote fire sale on a piece of property that would very seriously impact the property value of the remaining association owners.

Can you respond to that thought? I'm just -- this is just on the fly.

SCOTT SANDLER: Well, Chairman Tong, we, of course, would like to see a faster process by which a solvent unit owner who can pay his or her

common charges and contribute to the community takes ownership of the unit, absolutely. But doing so -- right now we have the ability to conduct short sales. The short sales do require the seller to address the other holders of liens on the property, including the association. We have the opportunity to negotiate, knowing full well what the implications of a foreclosure would be. And, so, an association that might be owed a year's worth of common charges may simply say, "All right, pay us our priority lien plus a month or two, and we'll call it done." They can and frequently do take a position such as that. But now we're taking away from them through this process the ability to, to collect anything beyond that, that limited priority.

REP. TONG: So, is it your position to be more specific and exact that it ought to be the condo association's decision or a call on whether to accept particular terms with respect to a negotiation over common charges and, you know, the extinguishment of claims --

SCOTT SANDLER: Well, yes, I would --

REP. TONG: -- and not taking that prerogative away from the association, is that what you're saying? It's up to them whether they want to cut a deal with the homeowner or not?

SCOTT SANDLER: Absolutely.

REP. TONG: Okay. Representative Alberts.

REP. ALBERTS: Thank you, Mr. Chairman.

Thank you, Scott, for testifying. What, what is the number of, to the best of your knowledge, of condo units in the state of Connecticut? What do you think we're looking

at for a universe?

SCOTT SANDLER: Boy, I wish I knew. I've heard somewhere there's around 5,000 units, but it is very hard to say. Connecticut is the land of small condos. The smaller associations are frequently self-managed, so, they don't often know where to turn to for resources. They don't, they don't come to the Community Associations Institute simply because they don't know we're there. They're not using knowledgeable attorneys, so, it's very hard to find them. The largest community in Connecticut would be Heritage Village in Southbury, which consists of about 2300 units. And by national standards, that is incredibly small.

But we have a lot of very small or much smaller associations and large number of smaller associations under a hundred, even a hundred -- under 50 units and, so, it's very hard to locate them and pin them down. I can only begin to guess that the number is somewhere around the \$5,000 -- 5000-unit level and probably higher.

REP. ALBERTS: The Chairman mentioned that, um, that at times if a unit owner is not paying their association fees, that it could put the condo association in distress. And from your experience, have you seen where one or two or three situations like that have done that?

SCOTT SANDLER: Yes, particularly in the smaller communities. It can have this domino effect because if, if we're not able to collect what's owed from one owner then it's up to the remaining owners to make up the difference, which puts greater strain on them. And maybe they would have been able to, to meet their own burdens, but to then have the exponentially

applied burdens of having to pay not just for themselves but what their neighbors aren't paying, you have this ripple effect where more and more people are unable to meet the obligation. And, so, we see greater foreclosures. We see more bankruptcies. And, unfortunately, we see more people moving out of the community.

REP. ALBERTS: Is there a moral hazard as well that if some people aren't paying, others may just jump at that opportunity?

SCOTT SANDLER: Well, it certainly invites investors to come in and purchase units at lowball prices and then bring in tenants who may not be anywhere near as caring about the health of the community, the welfare of the community. And, of course, the more tenants you have, that can cause the premium under the master insurance policy to rise. It will cause the mortgage rates to rise. So, it just creates this nightmare effect for the people who are living in the community itself.

REP. ALBERTS: It seems that, you know, the unique nature of condominium associations is something that may not have been fully considered when the working group was put together. Would you be open to working with Representative Diminico if the Chairs agreed to kind of ensure that the interests were heard?

SCOTT SANDLER: Absolutely. I'd be more than happy to donate my time to the cause.

REP. ALBERTS: Again, thank you, Scott, for your testimony.

Thank you, Mr. Chairman.

REP. TONG: Senator Leone.

SENATOR LEONE: Thank you, Mr. Chair.

As I'm listening to the testimony, I'm just trying to think through some of the process. And I believe the whole intent is to try and help these folks that are in the situation that obviously they can't afford. On the secondary and third liens or however many liens on there, those liens relative to the first mortgage can sometimes be not of equal value and sometimes substantially less. And what I've been told is sometimes those second or third liens are the reason why the short sale or the market sale can't continue because there is no flexibility or those second and third lienholders won't negotiate a lower value.

So, there seems to me that there has to be some -- seems like a little bit more work might need to be done, but there needs to be also some agreement because we don't want to hold up someone that just can't afford wherever they are, whether it's a condo or a home, and then be at the mercy of a secondary or third lien if -- because someone doesn't want to negotiate. And in my mind, if it's already in foreclosure or heading towards foreclosure, you know, most likely the ability to get something or nothing is quite high. So, to draw out an event in the hopes that you're going to get your full value doesn't strike me as the best way we should approach it -- approach trying to help the consumer, the person who needs to get out from under this asset.

So, I would just add those comments and be mindful of that, but I understand your position. You're trying to protect your, your, your interests and your financial obligations, but at the same time I don't want to stall the process because there might not seem to be an

alternative elsewhere. So, I really do hope that there is some negotiation that can be done here. Otherwise, we may be forced into a decision that not all parties would like.

SCOTT SANDLER: Senator, I understand your point completely and, in large part, I don't disagree. But this is where condos are a little more -- are different or somewhat unique when it -- than are -- from the other lienholders. If Discover Bank has a judgment lien on a property or there is a second or third mortgage, these are lienholders that are in business to make money and loan money and they know what sort of risk they're taking as part of that, that business practice and how it gets incorporated into their profits. With an association, we don't voluntarily enter into the transaction with the homeowner, nor do the individual unit owners living in the community.

So, they -- I'm sure when a unit owner bought into a condominium, he wasn't thinking about whether or not his neighbor can afford to live there or if he's going to have to pay more in common charges because the neighbor declares bankruptcy after being unable to manage his financial affairs or just falling under hard times. So, there's a bit of a difference there between the business that is in the business of lending money and taking the risk on the borrower versus the people living within the community who have no control over who moves in.

SENATOR LEONE: Thank you. I do appreciate that, that thought process. Do we have any kind of figures as to how many condo associations may be affected by this legislation if it were to proceed?

SCOTT SANDLER: The potential is (inaudible) every

condo association being affected.

SENATOR LEONE: No, I mean in the sense that we're assuming that every condo owner is in extreme duress with their -- the ownership of their property. And from that regard, you know, your association would falter. But if it's only one or two people per condo association or is it more substantial? So, I'm just wondering -- not that you have to answer now, but if -- maybe if you could find out what some of the figures are that we would be dealing with if -- whether this proceeds or not.

SCOTT SANDLER: If those figures are available, I would love to have them, but I'm not aware of anyone who is collecting them. Of course, we can ask around. Thank you.

SENATOR LEONE: That's the best we could ask for.

Thank you.

SCOTT SANDLER: Thank you.

REP. TONG: Just curious. Are there insurance products that a condo association can buy to protect themselves against the bankruptcy or financial distress of a owner member?

SCOTT SANDLER: None that I'm aware of.

REP. TONG: Okay.

SCOTT SANDLER: And I would think if that was available on the market they'd be selling like hot cakes, you know, in today's economic climate. But I've not seen it nor heard of it, and I honestly don't know how it would work, Mr. Chairman.

REP. TONG: I think the Insurance Committee is done

raising their bills for this session.

Representative Alberts?

REP. ALBERTS: Yeah, and thank you, Mr. Chair, for indulging me.

Would it be fair to say, too, that what differentiates a condo association is that in spite of whatever the legal action that's taking place against a homeowner, the condo association itself still is honor bound to maintain that property and provide all the common services, to make sure that the building is in good maintenance, make sure it's in good repair, for whatever that association has responsibility for?

SCOTT SANDLER: That's absolutely correct. Just as the owner's obligation to pay common charges is not contingent on whether the association is providing adequate maintenance. The association's obligation to maintain the property is not contingent on an owner's collecting the charges. So, the association still has to maintain insurance and keep the roofs from leaking and keep the snow -- the snow off the roads regardless of whether an owner is paying the charges.

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

SCOTT SANDLER: Thank you for making that point.

REP. ALBERTS: Thank you, Mr. Chairman.

REP. TONG: I'm just reminded by the money pit of a house I own, all the things I have to fix when I get home tonight.

Any other questions? Representative Diminico.

REP. DIMINICO: Thank you, Mr. Chairman.

Just a few questions. In regards to a condo association while it's in foreclosure, would you be the first entity to file for the foreclosure? If that being the case, kind of curious how the bank would respond. I kind of have an idea from experience.

SCOTT SANDLER: Whether we foreclose or the lender forecloses first often depends on what sort of brave face the homeowner is putting on. Sometimes they continue to pay the common charges, which is great for us because they don't want people in the community to know they're facing financial distress. Other times they're just drowning and they're not paying either one of us. And it is a swifter process for an association to foreclose than it is for a mortgage company. We're not subject to the Foreclosure Mediation Program, thankfully.

REP. DIMINICO: Right.

SCOTT SANDLER: Um, we are now required, based on a bill that passed during last year's session, to provide the mortgage holder of record with 50 days' notice of the Association's intention to foreclose. And frequently mortgage holders are now contacting the Association, arranging for payment, so that the Association doesn't have to proceed with a foreclosure. That said, it's only happening maybe half the time, and it's hard to predict how this bill would impact that kind of response.

REP. DIMINICO: Would it not be safe to make the statement that it's in the best interests of the association to file a foreclosure first because it brings the bank to the table? And my experience is that a lot of times the bank

is going to protect its interests and the bank is going to go to the association and either cut a deal with the association or take responsibility for the lien of the association and work with the, work with the mortgagor. Is that a correct statement?

SCOTT SANDLER: Yes, it's correct for the association to proceed as aggressively as possible. And if that means being the first to file the foreclosure, so be it.

REP. DIMINICO: Second, in regards to your experience as far as foreclosures, is there any times ever where it's -- the condo fees are separated out, in essence, with the condo fee and the assessment? I know a lot of condos have come with some pretty hefty assessments, particularly roofs or drive -- or roadways and stuff, and that's really where the, where the homeowner gets bogged down. They're used to paying their condo fee, but then when they get a 5 or \$8,000 assessment spread out over a short period of time, that's when they have a difficulty. So, is that ever separated out?

SCOTT SANDLER: Well, yes and no. The lien for common charges in favor of the association is for any unpaid assessment, regardless of whether we call it a common charge, an assessment, a special assessment. Even late fees or fines are part of a lien, but not all of that is entitled to priority over the mortgage.

REP. DIMINICO: Correct.

SCOTT SANDLER: So, that's where the separation is. As between the homeowner and the association, the homeowner is obligated to pay everything, including the lien. But as between the association and the first or second mortgage,

we only have priority for the basic assessments, not for the late fees nor the fines.

REP. DIMINICO: Okay. So, I understand that. I just want to make a comment regarding tenants and stuff. I'm sure you're aware of -- it's in the best interest of the association, and most associations have in their bylaws the amount to investor owned as opposed to owner occupieds, only because -- not only because the type of people that may lend it, but more importantly the type of financing that becomes available.

SCOTT SANDLER: Funny you should mention that. There is a bill pending right now -- unfortunately I didn't bring -- well, maybe I do have the number -- that would make it more difficult for associations to adopt restrictions on the leasing of units, make it more difficult for them to control the number of investors within the community.

It's Raised Bill 393, which is up for public hearing on Thursday, and to which we are opposed. And the associations have limited ability to adopt -- now to adopt restrictions on leasing by rule, otherwise it would require an amendment to the governing documents. And it's one that requires a very large super majority of the owners to do, 80 percent or more.

So, our ability to regulate leasing is already somewhat limited, and this proposed bill, Raised Bill 393, would make it even more difficult to do so.

REP. DIMINICO: Back on the foreclosure, this is my last question. I'd be very curious to really find out when an association forecloses how many times the bank steps up to the plate. My

HB 5514

guess is probably very good portion of the time, which in essence really would protect (inaudible).

SCOTT SANDLER: I would have to say it's more often than not. It still happens --

REP. DIMINICO: Is there any way you could provide that through your, through your membership of what's transpired in the last year? I'd be very curious to see that.

SCOTT SANDLER: I don't know if anyone is keeping track of those numbers. That's the problem. Nobody -- like the question Senator Leone had asked, I don't know that there is an entity out there that's keeping this data and publishing it. I'd love to find it if I could if it's out there, but -- and I can certainly ask.

REP. DIMINICO: If you could do that because I think it's really important to what you're -- your concerns are. I mean, if it's very small then, you know, that might be something to take a look at if it's only such a small percentage where condo associations are really affected as opposed to where they, they are made whole.

SCOTT SANDLER: One challenge to obtaining that data is it would have to be done more or less at a State level, not a national one, because the laws governing association liens do vary state to state. We're lucky in Connecticut to have a priority, a limited priority with the mortgages, but not every state has that priority for associations. So, performing a national search would not provide --

REP. DIMINICO: I'm only concerned about the state of Connecticut.

SCOTT SANDLER: I understand. I just don't know of

any entity in the state that does keep track of those numbers. I'd like to have them, at least as much as you would because, if anything, I think it would support our position even more.

REP. DIMINICO: Or vice versa. Thank you very much.

SCOTT SANDLER: Thank you.

REP. TONG: Thank you.

Further questions?

Thank you, Scott.

SCOTT SANDLER: Thank you very much for your time.

REP. TONG: Tom Welsh. Good afternoon.

TOM WELSH: Good afternoon. Senator Leone, Representative Tong and members of the Banks Committee, my name is Tom -- Thomas Welsh. I am a practicing attorney with the firm of Brown and Welsh in Meriden, and I am the Chair of the Commercial Finance Section of the Connecticut Bar Association as well as a member of the Executive Committee of the Commercial Law and Bankruptcy Section.

I am testifying today in support, with Bar Association support, of Senate Bill 373, AN ACT CONCERNING THE UNIFORM COMMERCIAL CODE AND THE ELECTRONIC FUND TRANSFER ACT. I have also been advised by the Representative of the Connecticut Banking Association present that the Connecticut Banking Association is firmly in support of this as well and has submitted written testimony in support. This Article 4A of the Uniform Commercial Code deals with funds transfers, and that's a series of transactions beginning with a payment order that -- to a receiving bank for the purposes of making a

Testimony Before
The Banks Committee of the Connecticut General Assembly

By
Martin J. Geitz
President and Chief Executive Officer
Simsbury Bank
March 11, 2014

HB5470

HB5514

Chairman Leone and Chairman Tong, members of the Committee Members, It's a pleasure to be testifying before the Committee again and thank you for this opportunity to comment on various bills on the agenda.

You may recall I testified on the Mortgage Servicing Bill at last week's public hearing. My name is Martin Geitz and I'm the President and CEO of Simsbury Bank. I'm here today in my role as Co-Chair of the CBA's Legislative Committee and will briefly to talk about the bills on today's agenda. The CBA represents all the banks in the State and I'd like to direct you to our written testimony, which presents comments and positions on many of the proposed bills. While, I'm not going to directly comment on all of those bills, I encourage you to speak with Tom Mongellow of the CBA or Fritz Conway of Gaffney Bennett should you have any questions or comments on that testimony or the legislation before you.

The first bill I'd like to refer you to is Senate Bill 399, AN ACT CONCERNING BANKERS' BANKS, which would allow the market expansion and increased capital raising abilities for the Glastonbury based Bankers Bank Northeast. You should be hearing testimony from Peter Garland of the Bankers Bank about that bill and we urge your support of it.

well capitalized and providing important banking services to their communities. We urge the Committee to thoughtfully consider the negative ramifications of House Bill 5470.

Lastly, I'd like to refer to House Bill, 5514 AN ACT CONCERNING AN OPTIONAL METHOD OF FORECLOSURE. As you may recall, this bill was raised last year by the Realtors Association, and in that previous form it would have increased foreclosure delays and created a potential loss of value on a banks collateral. Since then, industry representatives have met with the proponents of the bill over many months to produce the compromise proposal before you today. House Bill 5514 bill creates a "pre-foreclosure" sales solution that will provide homeowners with no equity in their properties the ability to quickly and efficiently sell their properties without the stigma of foreclosure. This process should reduce a borrower's deficiency versus the existing foreclosure process which can result in tens of thousands of dollars of insurmountable and unpayable deficiencies on their mortgage. It also has the potential to reduce blight and produce better sales prices for homeowners using this new approach. We'd like to thank the Department of Banking for facilitating the negotiation process and appreciate the proponent's willingness to work with the banking industry on this proposal. Thank you again for allowing me to testify today.



STATE OF CONNECTICUT
 DEPARTMENT OF BANKING
 260 CONSTITUTION PLAZA – HARTFORD, CT 06103-1800



TESTIMONY SUBMITTED TO THE BANKS COMMITTEE
 Commissioner Howard F. Pitkin
 March 11, 2014

Good afternoon Chairman Leone, Chairman Tong, and members of the committee. My name is Howard Pitkin and I am the Commissioner of the Department of Banking. I am here to offer testimony regarding three bills on today's agenda:

H.B. No. 5470 AN ACT REQUIRING A SALES AND USE TAX EXEMPTION FOR SALES TO CONNECTICUT CREDIT UNIONS;

H.B. No. 5513 AN ACT CONCERNING THE MODERNIZATION OF CONNECTICUT CORPORATION LAW

H.B. No. 5514 AN ACT CONCERNING AN OPTIONAL METHOD OF FORECLOSURE.

First, H.B. 5514 An Act Concerning an Optional Method of Foreclosure is a thoughtful bill that represents an agreement between the banking industry and the Realtors. That said, the negotiations that led to this agreement were not limited to these two interests alone. Following the last legislative session, I convened a working group to begin the conversation about how Connecticut may continue its good work to level the power imbalance between lenders and borrowers in the foreclosure process while simultaneously stepping up our efforts to bring these cases to resolution as fast as prudently possible. Due to the fact that I and the Department of Banking served as a neutral facilitator for these negotiations, I will not take a specific position on the substance of this bill. I only offer the following contextual comments to provide the committee with a clear picture of how this bill came into existence.

H.B. 5514 began as a working group. In addition to the representatives from the banking and Realtor communities, this working group involved stakeholders and advocates from both sides of the foreclosure bar, from title insurance companies and, of course, from both the Office of the Governor and the Office of Policy and Management. In total, approximately 15 individuals attended each of the four monthly meetings I convened between September and December 2013. I drew the working group to a close after the December meeting both because an agreement appeared imminent and because the stakeholders had a full and fair opportunity to contribute to the negotiations. This process proved fruitful –the Realtors and the banks resolved their disagreements and did eventually come to an agreement, which is reflected in the bill before you today. H.B. 5514 represents a lot of hard work among the stakeholders and, perhaps more importantly, provided a venue for the dissenting voice to be heard.



March 11, 2014

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 5514 AN ACT CONCERNING AN OPTIONAL METHOD OF FORECLOSURE.

Senator Leone, Representative Tong and Members of the Banks Committee:

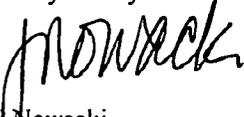
Thank you for this opportunity to testify on behalf of Connecticut's 119 credit unions, providing comments on HB 5514.

Credit unions are not-for-profit financial cooperatives, owned by and in existence only to serve our members. Credit unions do not issue stock or pay dividends to outside stockholders. Instead, earnings are returned to our members, generally in the form of lower loan rates, higher deposit rates, and lower or no fees. Credit unions are democratically controlled, with every member having equal voting rights and volunteer boards of directors elected from the membership providing leadership. In addition to providing a full suite of financial products and services to members, operating principles compel us to educate our members and participate directly in the communities we serve.

The credit union industry supports proactively assisting members in holding on to their homes and goes to great lengths to work with members to ensure that is possible. Credit unions' motto is, "people helping people," and credit unions live this by first providing only affordable (not sub-prime) mortgages, then working alongside any member experiencing difficulty making payments to find a solution. On the rare occasion when foreclosure becomes inevitable, credit unions work toward a fair resolution for all involved parties.

This bill looks to expedite the foreclosure process by providing for an additional option for both the mortgagor and mortgagee. Credit unions support the idea of helping all parties involved in the foreclosure process to come to a timely and fair resolution. We would oppose any measures that would add unnecessary levels of mandated bureaucracy or prescribe certain actions that may hinder the processes already used by credit unions as they diligently work to help members stay in their homes and follow a path to long-term financial stability.

Thank you very much for your time and consideration.


Jill Nowacki
President & CEO
The Credit Union League of Connecticut

Providing exceptional value through cooperative support



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111 Founders Plaza, Suite 1101 • East Hartford, CT 06108
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**Statement on
H.B. No. 5514 (RAISED)
'AN ACT CONCERNING AN OPTIONAL METHOD OF FORECLOSURE'**

SUPPORT

Submitted to the Banks Committee

March 11, 2014

By Eugene A. Marconi, General Counsel
Connecticut Association of REALTORS®, Inc

Good afternoon Senator Leone, Representative Tong and members of the committee. My name is Eugene Marconi and I am the General Counsel for the Connecticut Association of REALTORS®. I have the privilege of speaking on behalf of over 15,000 members of the Association in support of HB 5514 (Raised) An Act Concerning an Optional Method of Foreclosure.

The bill seeks to add an item to the menu of foreclosure options: a foreclosure by market sale. The current foreclosure by sale procedure has changed little in over a century. This process does not and will not produce market value sales as it severely restricts the universe of buyers qualified to participate extremely limited inspection periods (typically an hour or two before the auction) and refusal to recognize or allow usual and customary contingencies for home inspection, lead paint inspection and financing. This process effectively shuts out purchasers who require financing or simply do not have the money to risk on a property that they cannot adequately inspect in order to apprise themselves of the risks of ownership. Those of you who attended the public hearing last year in Stamford may recall the testimony from Realtors® concerning the challenges sellers, buyers and agents face in selling these properties under the current regime. This bill leverages Connecticut's judicial foreclosure process and its 20,000 real estate licensees to move these properties at a price that more nearly approximates their market value.

The strict foreclosure process has led to unfortunate consequences when lenders are unequipped to manage foreclosed properties. These properties often sit empty for long periods of time while they deteriorate for lack of basic maintenance, serve as a target for vandalism and theft and become a source of adverse comparable sale information that drives down appraisals on surrounding properties. It would certainly serve our towns, cities and the public to have these properties come directly out of the foreclosure process to their ultimate purchasers.

I am pleased to report this bill is the product of an agreement between Connecticut Realtors® and the Connecticut Bankers Association. The bill would require a lender to inform the delinquent borrower of the

availability of this option and direct the borrower to an agent to determine the feasibility of marketing the property. If the borrower elects to proceed, the property would be appraised, and the lender and borrower would then negotiate on mutually agreeable terms of sale. The agent would be obligated to share all offers with the lender. Those offers could include the usual and customary contingencies for financing and inspection in order to make these properties available to the widest universe of potential purchasers. If the lender and borrower agree to accept a particular offer, the lender would proceed with the foreclosure process. The court would make a formal finding as to the amount of the debt, determine if there are junior lienholders and their priority, approve the expenses of sale including the agent's commission and appoint a committee to conduct the closing. The committee would conduct the closing, pay the approved expenses and turn the balance over to the foreclosing party.

There is nothing unusual or novel in court-approved sales on the open market. Probate courts have been doing them for years. Our courts routinely approve such sales in divorce proceedings. Bankruptcy courts also do the same, and the federal courts use a similar procedure in selling properties.

I would be remiss in not thanking Representative Aresimowicz for his support and his assistance in arranging for Commissioner Pitkin of the Department of Banking to act as a mediator between various stakeholders and to Commissioner Pitkin for his invaluable service as mediator in keeping the process moving forward. Finally, I would like to thank Attorney Denis Caron, author of the treatise *Connecticut Foreclosure*, for his encyclopedic knowledge of the foreclosure process and Attorney Lawrence Garfinkel for the benefit of his practical experience in foreclosure law practice.

The current foreclosure auction sale serves no one but well-heeled purchasers who have the wherewithal to purchase for cash and assume unknown risks. It certainly does not benefit mortgagors nor does it benefit mortgagees who more often than not assume ownership of these properties and spend money on asset managers, insurance, upkeep and the cost of disposition. This bill not only benefits those parties but benefits purchasers also since they can offer on these properties with confidence that there is a court procedure to bring the certainty to purchasing distressed properties that is missing in short sale purchases. It is time to bring foreclosure sales out of the horse and buggy days and into some semblance of a modern real estate transaction.

Thank you for your time, and I will be happy to answer any of your questions.

CONNECTICUT GENERAL ASSEMBLY
Tuesday, March 11, 2014

TESTIMONY OF Kim K. V. McClain
TO THE INSURANCE AND REAL ESTATE COMMITTEE
ON PROPOSED HOUSE BILL 5514, "AN ACT CONCERNING AN OPTIONAL
METHOD OF FORECLOSURE."

I currently serve as the Executive Director of the Connecticut Chapter of the Community Associations Institute (CAI-CT). The Community Associations Institute (CAI), is a national member supported, not-for-profit educational and resource organization dedicated to fostering vibrant, competent, harmonious community associations for the 1 in 6 Americans who live in common interest communities.

I am submitting testimony to present my insights about how the proposed bill will affect the more than 5,000 common interest communities in Connecticut, and the hundreds of thousands of people who live in them.

CAI-CT opposes HB 5514.

1. The bill essentially permits a short sale to take place without any input from or approval of junior lienors;
2. By allowing for judgment to enter in 10 days from the return date, the bill gives very little opportunity to permit other lienors to challenge how their priorities vis-à-vis the first mortgage have been alleged by the mortgagee. For example, suppose the foreclosing mortgage holder fails to properly assert the priority of the association's lien or that of another lien holder. There is very little time for the other lien holders to challenge the assertions of the mortgage company. I note that the hearing on the motion for judgment is limited to, among other things, the determination of priorities for distribution of the sales proceeds. But this makes no accommodation to lienors who may claim that their liens have priority over the mortgage and therefore survive the sale.
3. The bill should clearly state that it has no impact on the priority of other liens or encumbrances on the real estate, nor on the lien holders to enforce their rights.

It is imperative that this bill not undo the many months of work on the parts of a multitude of interest groups who, last year, successfully negotiated a solid bill (now Public Act 13-156) which protects the financial stability of common interest communities and their owners. Public Act 13-156 includes the following:

- a. Extension of the period covered by the lien from six to nine months and applies in each action the mortgage holder brings to foreclose its mortgage on the unit as well as all actions the association brings to foreclose its lien for unpaid common charges; and

b. Requires an association, before bringing an action to foreclose its lien, to provide mortgage holders with (a) 60 days' notice setting forth specified information and (b) a copy of the demand for payment it must already send to the unit owner.

Given that community associations have an obligation to notify mortgage holders prior to any foreclosure action, it is reasonable to require similar consideration to lien holders with respect to HB 5514. Common interest communities depend upon the collection of common charges from all unit owners in order to provide maintenance and services. A foreclosure process as proposed by this bill would potentially serve to destabilize many condominium communities in Connecticut.

We would be happy to further discuss with you this issue, or any other issues affecting common interest communities in Connecticut. Please do not hesitate to contact us with any questions or concerns. I can be reached at 860-633-5692 or email: caictkmclain@sbcglobal.net.

Thank you for your consideration.

Respectfully submitted,

Kim McClain



Connecticut Fair Housing Center

Testimony in Opposition to House Bill 5514 An Act Concerning an Optional Method of Foreclosure

Co-Chairs Leone and Tong, other members of the Committee, thank you for the opportunity to address you today. My name is Jeff Gentes, and I manage the Connecticut Fair Housing Center's fair lending and foreclosure work.¹ I am here to express the Center's opposition to House Bill 5514, An Act Concerning an Optional Method of Foreclosure, at least in its current form.

We agree with the bill's proponents: short sales are critical for helping the housing market recover and avoiding unnecessary foreclosures. They preserve dignity for the homeowner, reduce blight, and preserve property values for neighbors and municipalities alike.

Like other mortgage workouts, completing short sales since the foreclosure crisis began in 2007 has often been difficult. While the servicers' advancement up the learning curve and your enhancements to the foreclosure mediation program have helped, additional improvements could be made.

The solution proposed by this bill, however, is a new process with needless complexities and burdens for judges. Based on our experience in seeing how proposals like this have been implemented on the ground, and in the court system – such as the attempt in 2011 to create a financial worksheet that all lenders would use – we would strongly discourage anyone from trying to fashion a government dictated short sale process. This is especially so because federal agencies like the Consumer Financial Protection Bureau and the Department of the Treasury, and investors like Fannie Mae and Freddie Mac, have already issued extensive guidance in this area.

Further, this bill's anti-mediation approach would be a step backwards. Nearly 1,000 short sales have closed through the Foreclosure Mediation Program since its inception in 2008. This bill would undermine the Program by treating people in mediation worse than those outside of it and closing an avenue through which homeowners often negotiate deficiency waivers and payment of moving expenses. And if a short sale fails to close, homeowners would be barred // ✓ from ever participating in mediation.

We could accomplish our shared goals of preventing unnecessary foreclosures, and increasing the number of successful short sale transactions. We can improve short sales by addressing elements of state law that make short sales more difficult than they should be. Rather than trying to reinvent the short sale process, we should work with the framework we already have and go after a specific problem.

¹ The Connecticut Fair Housing Center is the only statewide nonprofit providing representation and advocacy for homeowners facing foreclosure. We have reached homeowners in at least 164 towns since 2010. In 2013, we provided individual advice, representation, and/or in-person education to about 2000 homeowners.

Commissioner Pitkin's creation and oversight of a working group were instrumental in identifying junior liens as a major problem that slowed or stopped productive, value-preserving short sales. We recommend taking the best part of the current bill – eliminating the hurdles created by underwater junior lien holders – and providing this as a tool parties can use to reach resolution more frequently with short sales, deeds-in-lieu of foreclosure, and, via lien subordination rather than lien stripping, loan modifications. Junior liens could still pursue the debt owed to them, but could not stop an economically sensible and efficient short sale. More short sales and other kinds of workouts would be completedgo through, and be completed more quickly, and hundreds of foreclosures could be avoided.

We also identified several flaws in the bill's current draft, such as:

- It does not account for federal tax liens;
- It inexplicably limits the eligible homeowners to those eligible for mediation;
 - Why prohibit people who have moved out of the home they are short-selling from using this process?
 - Why prohibit people who are trying to sell their parents' reverse-mortgaged homes from using this process?
- The term “encumbrance” in section 1 should more appropriately be “mortgage”;
- The reference to “deed of trust” in section 2 should be eliminated – there is no such concept in Connecticut; and
- In section 7, (1) the notice provisions for junior lienholders should be clarified (e.g., the motion should be served by mail to non-appearing parties), and (2) we do not understand why a court should review a purchase & sale contract.

We do think that further collaboration and discussion could produce a bill that builds on past success and prevents more preventable foreclosures through short sales and other kinds of workouts. We are happy to be part of those discussions.

Thank you for your time.

PERLSTEIN, SANDLER & McCracken, LLC

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**TESTIMONY OF SCOTT J. SANDLER, ESQ.
CONCERNING RAISED BILL NO. 5514
AN ACT CONCERNING AN OPTIONAL METHOD OF FORECLOSURE**

I. SUMMARY OF TESTIMONY:

Raised Bill No. 5514 proposes to create a new method by which a mortgage holder may foreclose a mortgage on the borrower's primary residence if the borrower is in default.

For the reasons set forth below, the Connecticut General Assembly should not adopt Raised Bill No. 5514.

II. BIOGRAPHY OF SCOTT J. SANDLER:

Mr. Sandler is a graduate of the State University of New York at Albany (B.A., Economics, 1997) and Quinnipiac College School of Law (J.D., 2000). He was an Associate Editor of the Quinnipiac Law Review.

Mr. Sandler is a member of the American Bar Association, the Connecticut Bar Association and the Hartford County Bar Association. He is also a member of the Executive Committee of the Real Property Section of the Connecticut Bar Association.

Since 2001, Mr. Sandler has focused on representing condominium, community and homeowner associations.

Mr. Sandler is a past President of the Connecticut Chapter of the Community Associations Institute. He is presently the Chairman of the Chapter's Legislative Action Committee.

Mr. Sandler is a member of the College of Community Association Lawyers ("CCAL"). CCAL is a prestigious group of attorneys who have distinguished themselves through contributions to community association law and who have committed themselves to high standards of ethical conduct. Of the thousands of attorneys practicing community

PERLSTEIN, SANDLER & McCracken, LLC

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association law in the United States, fewer than 150 have been granted membership in CCAL. Mr. Sandler is one of only three attorneys in Connecticut who are members of CCAL.

Mr. Sandler is a partner in the law firm of Perlstein, Sandler & McCracken, LLC, in Farmington, Connecticut, which currently provides legal services to approximately 450 condominium and homeowner associations throughout the State.

III. ANALYSIS:

The General Assembly SHOULD NOT adopt Raised Bill No. 5514.

Raised Bill No. 5514 proposes to create a new method of foreclosing a first mortgage on real estate owned by the borrower, referred to as a "foreclosure by market sale." A foreclosure by market sale may be requested if:

- A. The property subject to the mortgage is the borrower's primary residence;
- B. An appraisal establishes that the property is worth less than amount of unpaid liens or encumbrances of record; and
- C. Both the mortgage holder and the borrower agree to a foreclosure by market sale

If agreed to by both the mortgage holder and the borrower, the borrower may list the property for sale with a real estate broker. The purchase contract is subject to the approval of both the mortgage holder and the borrower. If both parties approve the contract, then the mortgage holder may initiate a foreclosure by service of a summons and complaint. Ten days after the return date, the mortgage holder may file a motion for judgement of foreclosure by market sale. The court, after a hearing for very limited purposes, may then grant the motion

This bill is problematic for several reasons.

1. Raised Bill No. 5514 essentially permits a short sale to take place without any input from or approval of junior lien holders.

Under current law, a mortgage holder and a borrower who is in default can agree to have the home sold at a short sale, thereby avoiding the foreclosure process entirely. In a short sale, however, the borrower must address the holders of other

PERLSTEIN, SANDLER & McCracken, LLC

Page 3

liens on the property, particularly those that are junior to the mortgage. Junior lien holders typically negotiate to receive payment of at least a portion of their liens through the short sale, rather than having their liens completely foreclosed out through the foreclosure process.

Raised Bill No. 5514 essentially allows the mortgage holder and borrower to proceed with a short sale without having to address any junior lien holders. The junior lien holders may not be able to recover any portion of their liens through a foreclosure by market sale, where they otherwise would through a conventional short sale.

2. Raised Bill No. 5514 provides other lien holders with virtually no opportunity to contest priority of their liens as alleged by the foreclosing mortgage holder.

By allowing for a judgment of foreclosure by market sale to enter in 10 days from the return date, Raised Bill No. 5514 provides very little opportunity for other lien holders to challenge how their priorities vis-à-vis the first mortgage have been alleged by the mortgage holder. For example, suppose the foreclosing mortgage holder fails to properly assert the priority of a community association's lien or that of another lien holder. There is very little time for the other lien holders to challenge the assertions of the mortgage company. It is worth noting that the hearing on the motion for judgment of market sale is limited to, among other things, the determination of priorities for distribution of the sales proceeds. This makes no accommodation for lien holders who may claim that their liens have priority over the mortgage and would therefore survive the sale.

3. Raised Bill No. 5514 does not clearly protect the rights of other lien holders to foreclose their interests in the property.

Raised Bill No. 5514 should clearly state (but does not) that it has no impact on the priority of other liens or encumbrances on the property, nor on the ability of other lien holders to enforce their rights to the fullest extent possible, including by foreclosure.

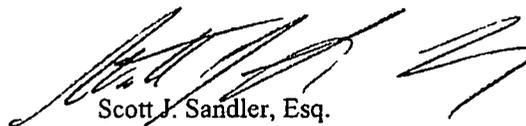
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For the reasons set forth above, the General Assembly should not adopt Raised Bill No. 5514.

If I can furnish the Committee with any further information or assistance, please do not hesitate to contact me.

Respectfully Submitted,



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