

PA 11-201

HB6351

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March 1, 2011
11:00 a.m.

RAPHAEL PODOLSKY: Good morning. Senator Duff, Representative Tong, members of the Committee, thank you. My name is Raphael Podolsky. I'm a lawyer with the Legal Assistance Resource Center in Hartford. I'm going to try to and testify very quickly on five bills. Those are Senate bills -- Senate Bill 957, House Bill 6351, Senate Bill 905, House Bill 6350, and Senate Bill 1077.

(HB5892)

(HB5437)

Senate Bill 957 is the bill that the previous witness spoke about, the Neighborhood Protection Act. That act was adopted two years ago. It's a very -- I think it's a very important act for municipalities. It's designed to give them contact information so as to be able to know who of a -- when a -- when a lender has foreclosed to know whom to get in touch with. And also, to allow towns to maintain a watch list on buildings that are potentially at risk of being abandoned or damaged or otherwise adversely affecting the neighborhood.

What this bill does is it strengthens that act. And what it does in some ways is makes it more like an ordinance that the City of New Haven had adopted prior to the passage of the act. In particular, it picks up occupied as well as vacant buildings. It requires the contact information be given at the beginning rather than the end of the foreclosure. And it allows the town to make sure all the information goes to a single location, so that it could create a watch list because we very much support the bill.

House Bill 6351 deals with the Foreclosure Mediation Program and fixes what I would say is one kind of awkwardness in the program. Under the existing statute, while the parties are in mediation, the pleadings for the case continue

to move forward, so that, particularly for a pro se litigant who is in good faith engaged in -- in the mediation process, if they don't know how to plead or what to do, they could end up -- defaults can -- can be entered and it makes a lot more sense to say that until the mediation is over that the -- that the foreclosure action should simply be on hold. So we're in favor of that bill.

We are in favor of Senate Bill 905 which calls for a study of CHFA Lost Mitigation Programs. I think it would be useful to take a good look at them from the legislative end and make sure that they are being used to the maximum extent possible. It's not to criticize anything about the program, that we want to maximize those -- the usage especially the Emergency Mortgage Assistance Program. And I think with -- with the review, it may be possible to promote a broader use and perhaps more liberal underwriting and maybe, if necessary, changes in the statute.

House Bill 6350 which the Attorney General spoke to which deals with the Attorney General's enforcement of the Dodd-Frank Bill -- the Dodd-Frank Act, I really view this as kind of a technical clarification bill. There is some case law in Connecticut that says the Attorney General can only do what the legislature has authorized them to do. And that's what creates the potential conflict between the federal statute that invites and, in fact, requests and depends on Attorney General enforcement in each of the states. And this really is sort of is -- is protective of that by making clear that, indeed, under Connecticut law, the Attorney General is authorized to do what the federal government is saying it should under -- he should under Dodd-Frank.

And, finally, Senate Bill Number 1077, which is similar to a bill you've had earlier, it would propose repealing the 1.5 percent minimum on more -- on mortgage escrow deposits. You had previously looked at a bill, which I testified against, that would eliminate the 1.5 percent minimum for tenants security deposits. This bill goes beyond that and to say the banks don't have to pay 1.5 percent to homeowners on their escrow deposits. And it seems to me there, even more than under the landlord tenant situation, you have kind of a captive audience.

(HB 5437)
(HB 5892)

And the bank -- the bank is really controlling what interest rate it's paying to its own client on -- on the mortgage. And it seems to me that that it's -- it is a valuable benefit and protection to homeowners to keep that 1.5 percent minimum in place.

We know that there are at least three statewide banks that pay 1.5 percent on tenant security deposit accounts. And we know there are other banks that do as well. So I would oppose Senate Bill Number 1077. Thank you.

REP. TONG: Thank you.

RAPHAEL PODOLSKY: I very much welcome the opportunity to answer questions if you have any.

REP. TONG: A couple questions about 6351, the Foreclosure Mediation Program Bill. In reading your testimony, you're saying that -- that the lender can move forward except to obtain judgment.

RAPHAEL PODOLSKY: They can't actually get the judgment. They can do -- my understanding --

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REP. TONG: They can -- sorry. But let me finish my question. So but they can -- they can file a motion for summary judgment, but they can't actually get a decision on that; is that right?

RAPHAEL PODOLSKY: That's my understanding.

REP. TONG: Okay.

RAPHAEL PODOLSKY: I know -- I know there's a witness coming, Jeff Gentes from the Fairhousing Senate, who knows this process better than I do. But my understanding of the statute is they can do anything short of obtaining judgment, so they could move for default for failure to plead. They can move for summary judgment. So that if mediation ends in effect, it can almost become an instant judgment. But that -- that process for -- for a litigant of being in a good faith mediation process, and meanwhile they're getting pleadings in the mail and if they don't respond to the pleadings, they're going to find themselves defaulted. It -- it's -- it's not the most reasonable way to do it.

REP. TONG: What do you say to the concern that mediation can take three months, six months, nine months, longer than a year and that -- that delays, you know, enforcement of legal rights against the borrower?

RAPHAEL PODOLSKY: If -- if you look at the statute, they are very tight time limits and maximum limits on -- on the mediation, so that -- that's simply not -- I don't think that's -- that's a concern. But the second thing is much of the delay and realty is not caused by the borrower, but is caused by the lender. And one of the problems in dealing with the whole modification process is that sometimes, I mean, the lenders have an attorney, but they also

have a loss mitigation division. There's not necessarily contact between the two. They have mediation sessions and there maybe nobody available.

Even though the statute says you're suppose to have a person available who can -- who has the authority to modify, that doesn't always happen, so you end up with continuances and new mediation session so that a lot of -- to the extent that there's, for example, more than one or more than two sessions, typically, that is not the fault of the borrower, it is really the other way around.

But -- but in any event, we're talking about such a tight timeframe in the scheme of things and -- and with the time limits that are posed, but I -- I guess I just don't see that as a problem of any real significance for the lenders.

REP. TONG: Any more questions? Representative Alberts.

REP. ALBERTS: Thank you, Mr. Chairman. I had a quick question as it related to your testimony on Raised Bill 905. And in the testimony it talks about the task force that would do the study. In looking at that, did you see if there was anyone that we were missing on that task force?

RAPHAEL PODOLSKY: I actually did not look that closely.

REP. ALBERTS: Okay.

RAPHAEL PODOLSKY: It's not our bill. But -- and I think it certainly would be worth taking a close look and making sure you've got the right -- the right players involved in the task

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force.

REP. ALBERTS: Okay. Thank you very much for your testimony. Thank you, Mr. Chairman.

REP. TONG: Chairman Duff.

SENATOR DUFF: Thank you, Mr. Chairman. Good morning.

RAPHAEL PODOLSKY: Good morning.

SENATOR DUFF: I think part of the -- when we did the mediation program a few years ago and banks and servicers and lenders were not thrilled with the process though they have since become some of the best cheerleaders for the mediation program was that part of the compromise was to make sure that things were running in a parallel universe. That the mediation program and any -- any actions, lenders were taking -- undertaking would run together, so that there wouldn't be delay after delay by whether it would borrowers or whether it be the servicers. So would -- I think the concern might be in this -- in this committee is to kind of change that agreement that we had that, you know, kept a parallel track at the same time when mediation was going and that somehow things aren't working because don't judges have their equitable powers to be able to kind of delay the process if they need to be regardless of the -- even the built-in timelines we have in statute?

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RAPHAEL PODOLSKY: Let me start with the second half of -- of what you said. The answer is -- the answer is yes. The -- the judges -- under the -- under the statutory program, the time -- there are very -- there are limits on those timeframes. The judge has equitable powers in a foreclosure action. And judges, some judges

and certainly not all judges, have used that power after the program time limits are up to an effect say we have foreclosure mediators who work for the judicial branch. I think we should continue the mediation longer, so I'm directing that the mediation continue because it seems to be productive essentially outside the structure of the statute because the statute says you can't do it after a certain amount of time. But the judge can fall back on his general equitable power.

The answer to that -- the answer is yes, there are ways the judges can do it. Not all judges do it. They do it, I think, fairly -- relatively sparingly. And they're going to want to know that there is a productive process that's being engaged in, instead it makes -- instead it makes sense to do that.

So -- and terms of the other part of your comment which is -- there was a sort of compromise worked out two years ago. At the time, I think there was tremendous amount of skepticism within the banking industry that this whole concept was a good idea. And one of the things -- and this has been a very successful program. And -- and this committee really was and, to a large extent, the initiator of that program.

That's my -- and I don't know what the bank's testimony is on this bill today. But it's -- it's my hope that as people have seen how effectively this program has worked, how it's become a national model, how other states have copied it, that as they've seen that, some of those initial concerns that led to some of the assistances as part of the package that you've described have sort of started to fade away some and that people have seen how well this works. And when I talk to people -- and there

are a number -- their loss mitigation programs at CHFA, there are a lot of programs around. My feeling is, the single most impactful program that we have to deal with the foreclosure with -- with the threats of loss of home and foreclosure has been the mediation program. This has been a great program.

But my hope at least is that we're now at a point we've extended. I mean, there was a compromise as to how long it will be in place for. We've already extended it once. It makes sense down the road at least to look at continuing it. I just think that maybe -- maybe times have changed a little bit and the committee should not somehow feel that it's bound by the parameters that were done originally because we now have a level of experience that we didn't have when this was initially adopted. And so we can -- we can draw on that experience.

And I think I don't -- I don't think that there would be a problem with any significance for lenders. I understand they may not agree with that, but -- but I don't -- I don't see that. I don't see anything in the way this program has been operating that would suggest that they would be, in any significant way, adversely effective by saying you need to put the -- you need to put the foreclosure on hold during the mediation.

I mean, this -- they've got a pretty hard rate working out deals for mediation. So, I mean, that's a good thing.

SENATOR DUFF: Right. Thank you very much. I appreciate that. Thank you, Mr. Chairman.

REP. TONG: Thank you. Further questions?
Representative Rovero.

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REP. ROVERO: Thank you, Mr. Chairman. As far as House Bill 6351, under the present system of foreclosure mediation, what is the average length it takes for foreclosure from the time someone misses their first payment, let's say, until the time that the lender has the property back in their name? What is the average time under the present system; six months, a year, two years?

RAPHAEL PODOLSKY: You know, I don't -- I don't know. And you're going to have another witness who's going to be able to give you a better answer than I can. And I guess I would rather let that person answer. The -- from -- from my -- my expectation is is that you're going to have -- I would expect that if you're measuring all the way from the first nonpayment, I would think you'd be talking at least six months. But I would rather -- I would rather let somebody who actually does litigation work answer that question.

REP. ROVERO: Okay.

RAPHAEL PODOLSKY: Mr. Gentes is the person I suggest you ask that question to.

REP. ALBERTS: I have a question, Mr. Chairman, on -
- on Bill Number 957. Is this something that could be done through a local ordinance?

RAPHAEL PODOLSKY: Well, not any more, no. The -- the statute at least -- let me say probably not. The statute was passed, I believe, two years ago. And at that time, New Haven had a very broad base ordinance. And when the legislature adopted the bill, it included a provision that said this -- this bill is the way you are suppose to do that because of concerns that the bill would preempt out the

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to address with dispatch those problems accompanying vacant and foreclosed residential structures. This bill will go to help the people in the communities. It will go to help insurance companies and also the banking industry. We must preserve our housing stock. We cannot let it go down the drain. We have to protect those houses before they just fall apart. We need housing. We need safe housing. We need good housing. And this is a tool that will help us. Thank you. Do you have any questions?

REP. TONG: Thank you. Any questions? Thanks for making the trip.

MICHAEL KRAYNAK: Thank you.

REP. TONG: Appreciate it. Jeff Gentes.

JEFF GENTES: Morning.

REP. TONG: Good morning.

JEFF GENTES: Good morning, Chairman Duff and all the members of the Committee. My name is Jeff Gentes, I'm the Foreclosure Prevention Attorney for the Connecticut Fair Housing Center. Part of my role as the Center's Foreclosure Prevention attorney is teaching homeowners how to represent themselves in foreclosure and mediation. I'm here today in strong support of House Bill 6351. This will eliminate a lot of confusion and costs for those homeowners.

Connecticut really has benefited greatly from the Foreclosure Mediation Program. Where in -- with foreclosure about 90 percent of the borrowers who appear unrepresented in the Mediation Program allows those borrowers a fighting chance to keep their homes. We're 5,000 homeowners since you passed the bill in

July -- since the program started in July of 2008 have been able to keep their homes as a result. And that's a real testament to Connecticut and to your efforts.

At the Fair Housing Center, we run legal clinics to teach people how to represent themselves. Last year we spoke to over 1,100 homeowners. We distributed over 6,000 copies of our manual on self representation that teaches people how, again, to represent themselves.

We also provide individualized advice and assistance to the HUD and CHA -- CHFA approved housing counselors. We work with the Department of Banking's mortgage foreclosure assistance hotline and we represent homeowners in foreclosure and mediation. And last -- and in the last year, I've appeared in nine judicial districts across the state. So we have a pretty good handle among what's happening in the state in terms of the mediation program.

When we're talking to homeowners, the one theme that's constant and -- and I really wish that even prior to coming today I could string together all the voicemails I get from people asking questions about well, what do I do when I'm responding to this? What is this default motion for failure to plead? What's this motion for summary judgment? Why are they moving for foreclosure judgment?

And it's because we have to explain to people that in addition to working with their lender, whether it's over the mail, the fax machine, and the phone, in addition to working in the Mediation Program, even if they're doing all those things in good faith, the bank is still litigating. And I have to explain to people

what the impact is, whether if they choose to fight and file an answer, that they still have to take those days off and show up at short calendar and fight that case.

Connecticut was first in putting this program together and there was a compromise in trying to let the two run along dual tracks. But I think we've also -- other states have used our program as a model. And many of the states have put mediation first. And I came from New York doing the same work. And I can tell you that the focus on -- on keeping people in their homes is much more enhanced when people aren't also worried about what ends up being moot litigation.

You have 78 percent of the people who are in foreclosure get a settlement through the Mediation Program. So all of this interim motion practice from the banks is just really added attorney's fees and added costs for our courts. So this House Bill 6351 would eliminate those costs again to our costs in addition to helping out the 90 percent of borrowers who are unrepresented.

I really think that this would improve the chances of success under mediation. Somebody who is in foreclosure is in usually a variety of stresses and not having to also contend with litigation especially when, again, 78 percent ultimately result in settlement is a big success.

Even if someone does go through mediation under the bill as drafted, it goes through mediation and it turns out they can't keep their home. Even a short sale isn't possible. This would add no more than a few weeks to the process. And I think that's important to remember. Also, if somebody doesn't appear, the timeline

stays the same. The bank could progress just as quickly to foreclosure as before.

So I want to thank you. Thank you for letting me speak today. And thank you for your past support in the mediation program. It's been absolutely critical in this crisis and for the homeowners who are going to be in mediation, unfortunately, as the years come. And I'm happy to answer any questions you have.

REP. TONG: Thank you. I want to unpack your testimony a little bit --

JEFF GENTES: Sure.

REP. TONG: -- and dig into this issue because many of us on this committee are not lawyers. Those of us who are lawyers don't practice in this area. So some of the procedural minutia can go over our head --

JEFF GENTES: Sure.

REP. TONG: -- particularly if we've never been in this situation. But I was interested to hear some of the statistics. You said that 78 percent of people who go through the mediation program come to some kind of settlement or resolution; is that right?

JEFF GENTES: That's right. And that's a resolution that does not involve going back into court and having to then fight the foreclosure or get a foreclosure judgment. So that could be, most instances, I think the latest stat was about 64 percent of the people keeping their homes usually through a loan modification or maybe a repayment plan. And then about 14 percent agree to some type of stipulated noncontested judgment or a short sale of some kind that allows them to sell the property, keep the

housing market up frankly from an occupied short sale as opposed to a vacant REO sale.

REP. TONG: Is that 64 percent of the entire potential foreclosure population?

JEFF GENTES: That's 64 percent -- no, that -- we could have fun with math if we really went down this line. But it's 64 percent of the people who have completed mediation. And that number is over 5,000. And it's actually that -- that's the most up-to-date numbers I have. I bet judicial has even more. They may have hit the 6,000 mark by now.

REP. TONG: And Raphael Podolsky testified that -- that a lender who's foreclosing can do everything but obtain judgment on the mortgagor. I got that term right, I think.

JEFF GENTES: You're right.

REP. TONG: But, you know, you've made reference to summary judgment. So is it possible to move for summary judgment, but not obtain a decision? How does that work?

JEFF GENTES: You can -- the summary judgment is one of the interim motions. The bank can move for summary judgment. It's an arguable motion that just -- that means for the sake of the homeowner who put an answer in -- let's say -- let's say the homeowner receives a summons and complaint, they file for mediation, but they also receive a complaint and there's a blank answer form in their package. And they say, well, I have to do something. And they usually answer, but they don't have a legal defense. They're putting something along the lines of I lost hours at work. My wife was out of work with a difficult pregnancy. The overtime I used to get is no longer there and then they

put that in.

The bank responds, even though the homeowner is in mediation with a motion for summary judgment, requires the homeowner to show up in court and say I'm -- I know I'm suppose to be here, but I'm not really sure what to do. The bank could still get that motion to summary judgment, move forward again. It's just a second tier, the final tier of judgment, the foreclosure judgment that the bank cannot obtain.

They can make the motion. And I can tell you just from -- from receiving a motion for judgment of foreclosure by sale or the other term is strict foreclosure which is just a simply no sale foreclosure process, even receiving that motion is stressful. And I can't -- I can't understate enough how -- how it's almost like I'm talking to trauma victims in a sense of when people are getting trying -- thinking that they're doing what they're suppose to do and they're still getting these interim motions. Yeah, technically, the bank isn't marking those motions ready and isn't proceeding with them, but they're still making all of these motions.

And I'm not really sure that it's to the ultimate benefit of -- of really our state given how -- how much we save in municipal costs that we've heard about in our overall housing market by preventing -- by preventing these foreclosures by having the status quo.

REP. TONG: And one more question. In that process, once that foreclosure starts and the mediation process starts, who represents the lender at that point? Is it -- is it an in-house lawyer at the lender and, you know, do they have the file ready to go or how does that process work?

I mean --

JEFF GENTES: It's -- it's --

REP. TONG: -- who are -- who is -- who is the person being foreclosed on working with in that process?

JEFF GENTES: The overwhelming majority and there may even be -- I'm not -- I can't even think of the local bank offhand that uses in-house counsel for this work, but otherwise it's outside counsel. The national servicers use, in fact, the vast majority of foreclosures are handled by two firms. A homeowner who is going through mediation can expect to see a different lawyer from that law firm every single time who's just learning the case that day and has a contact at not necessarily the plaintiff that's -- that brought the action, but the mortgage servicer who's -- who's the true actor in this.

The mortgage servicer is the one that's sending you mortgage statements. The one that you're calling and faxing even though a plaintiff that you've never heard of is bringing the foreclosure action. The contact that the attorney will have is that this mortgage servicer. And they're just calling and really relying on whatever information they have or don't have. And -- and you can imagine that that system leads to a lot of disconnect and a lot of the left hand doesn't know what the right is doing.

Homeowners doing these things with their counselor outside of mediation, the mediation process, the servicer is not necessarily connecting with it. There are attorneys who are bringing the litigation actions are necessarily plugged into what the homeowner is

or isn't doing in mediation which just adds to the confusion frankly.

REP. TONG: Thank you. More questions?
Representative Baram.

REP. BARAM: Thank you, Mr. Chairman. While you were talking, I was reading this letter from the Connecticut Banker's Association. And I don't know if you've seen it. They proposed an alternative to what you're proposing. And I'm just wondering what your reaction would be because the alternative does seem to address some of the issues that you have identified. The first would be to send a financial statement to the borrower when the mediation program application is received. Secondly, to create a mediation counselor position so that the borrower would have somebody there to guide them and explain the process which might also address the issue of pleadings being filed while the mediation is proceeding. And then the third is to provide 30 days instead of the current 15 days to allow for the preparation of the first mediation session. So I'm just wondering if you feel that -- that those suggestions would in any way address the concerns that you've articulated?

JEFF GENTES: I'm just seeing these now as well. I think each of these could be considered as -- as ways to enhance the mediation program. There's other -- there's all sorts of other suggestions that I would propose to the Mediation Program that, but we really feel that this -- I don't think any of them address the concurrent issues, the dual track nature of the current system that get to -- that -- that really -- other than create costs for the courts and increase the attorney's fees that are chargeable, I don't think benefit us ultimately.

I don't know that the financial statement to the borrower, I mean, that's -- that might be good, but there's often other documentation that's required, so I'm not really sure about this first proposal. There's usually a host of documentation that people are submitting. And I think it's also instructive in that this documentation that they submit via bank statements or pay stubs, it's very commonplace to be told we have to send fresh packages every 30 days, that your -- your old paperwork is stale.

The reason it's stale is because the banks haven't looked at in within the first 30 days. And so that's -- it's a little bit, I guess, the process is very -- it's -- the concerns about that this would add delay to me just -- they strike me as odd from -- from having seen a lot of mediations and talking to a lot of people because the delay is really driven from the banks right now.

And the reason is because if the homeowner is contributing to the delay, there's a simple remedy. That's ending the -- ending mediation, kick them out of the house. And so the delay that -- that exists right now, I would scrap all of these. And the most effective would be to have the banks staff up their loan modification departments in a way that reflected the fact that it's now 2011, the crisis has been going on for four years. We can discuss and debate how we got here. But the reason that it's going to be for at least another four years is because the servicers aren't staffing and equipping their -- their own loan modification capabilities the way they can. And that's really been the cause of our delay. Just to address your specifics.

On the second one, the mediation counselor, my only thought was if you're going to have somebody within the judicial branch, I'd want - the housing counselor can really been an advocate. But the housing counselors that are available now can really be an advocate for the borrower with the servicer. So I don't know if funding that within the position -- within the judicial program or within the Mediation Program would be -- would allow for that needed advocacy that's taking place. And I don't know if that's in place of housing counselors.

And I'm not sure -- I don't know if the third bullet jives with my experience on this. I -- I don't know that -- I don't know that the -- the additional 15 days would be a huge help to the borrowers. It's not something I would push hard for myself. I think once you get into this program and you learn what's expected and you meet the mediator and you see it's a real person, after that the mediation could go much more smoothly. So I'm not quite sure about, I guess, not any one of these three.

REP. BARAM: Just one other question. You -- you alluded to housing counselors. How does a housing counselor get involved in this process? Does it require the borrower who's the defendant in the action to search out and -- and find a housing counselor or is one made available to them as part of the Mediation Program?

JEFF GENTES: There's a few different ways that we can -- housing -- housing counselors are -- so they're members of nonprofit agencies. They're certified by HUD. And a borrower will find a housing counselor through a variety of ways.

You have a required notice under -- before foreclosure starts and it could be the day

before, but the borrower is suppose to receive a list of CHFA approved housing counselors which is more of a select group of HUD approved housing counselors along with a notification that the assistance program EMAP is available. So that -- that's one way. It's one of the letters in the mail that they'll get from their lender saying that here are some housing counselors.

The Federal Reserve requires that creditors send a list of HUD approved housing counselors as well. They might hear about it through my clinic or through some of the publicity that we do that HUD approved housing counselors are available or they may hear about it from their mediators.

In the statute itself, I believe there's language saying that the mediator can refer someone to a housing counselor. And after that process, the housing counselor can often inform the mediator of progress or inform counsel -- especially counsel for the borrower of whatever process is happening and use leverage -- the counselor's training and resources that they have with the mortgage servicer to reach a solution.

REP. BARAM: Okay, thanks.

JEFF GENTES: Does that answer your question?

REP. BARAM: It does, thank you.

JEFF GENTES: Okay, sure.

REP. TONG: Quick question.

JEFF GENTES: Sure.

REP. TONG: To what extent is there legal aid other

than you in your organization? Is there -- are there legal resources available to pro se litigants who are in foreclosure?

JEFF GENTES: It's, honestly, it's really just me.

REP. TONG: Okay.

JEFF GENTES: And I cover the state. We have -- we do work with state-wide legal services. We'll -- if people are eligible for state-wide legal services, state-wide legal services can then hook people up with pro bono attorneys. But I will then support those attorneys. But it's very limited. And we're trying -- we're looking elsewhere for money because it is -- it is a lot to do. But we really rely -- and so we end up relying on the clinics.

We had just two weeks ago we started a clinic in Fairfield County. We had our first clinic with homeowners. And it was homeowners with -- I do a presentation. Department of Banking does a presentation. Local mediator does a presentation. And then there's volunteer attorneys that I've recruited and trained from the -- the area who will attend and will meet with homeowners one on one. We had 31 homeowners show up. And that was on the basis of a single newspaper article that appeared a week before. And we think now with lead time, now that they're going to be in Bridgeport, in Stamford and rotate among each one, we expect that type of attendance at -- going forward.

And -- and so we're really relying on teaching people how to represent themselves in both tracks. And it's -- the first slide that I use at these clinics is you have to deal with all these things at once. And so just taking out -- taking the litigation track and sliding it to the tail end of mediation instead would do a

lot -- a lot to alleviate their concern. So I'm going to focus on -- on the mediation process.

REP. TONG: Representative Kupchick.

REP. KUPCHICK: Thank you, Chairman. Can I ask you to comment on the testimony submitted by the Banks Committee that says they are opposition. They say here I would like -- they would like to add that the agency is currently working with the Judicial Department in the mortgage industry to see how we can facilitate changes to the process to make it work better for all parties involved. But they don't say how or what.

JEFF GENTES: Right.

REP. KUPCHICK: Do you happen to know?

JEFF GENTES: No. I don't -- I mean, I saw similar language last year in opposition to a bill that -- that I had supported. I don't know. I could give them my card and we can talk.

REP. KUPCHICK: I'm only asking and, you know, it's -- this is obviously a controversial issue. But I have a lot -- I actually have a lot of experience in this. I worked in a Congressional Office for seven years. And for the time that I worked there when the housing crisis hit, we were doing our office. And every single person in the office, whether you were involved in banking or not, were helping people with foreclosure. And we were partnering later on with Department of Banking organizations like yours.

And, yes, it's very confusing. Even people who can afford who just, you know, had a little issue, but can afford their mortgage, it is --

it's unbelievable how complicated it is. And, you're right, they fill out all the forms, get everything ready, fax it over and then they're told a month later, send it all again. And it just goes on and on. It's like a full-time job. And these are people who need to go to their full-time jobs.

And then like you say, right when they're in the middle of mediation, they're getting judgments that they have to go to court and it's very confusing. And, you're right, there's different attorneys showing up who literally just got the case 10 minutes before they walked in the door. And people think they're still getting foreclosed on even though they're in the middle of mediation.

And it's, you know, it's -- on one side of it, you don't want, in my opinion, you don't want to have people participate in the mediation process who have no chance of actually paying their mortgage. But the people who actually can, is -- are the people who should be helped. And unless, I think, the Department of Banking can say how they improve the process because the process is very -- it's not a good process. And I spent literally, I think I worked myself probably over 1,000 cases. And it was just mind numbing. I don't know how people stood it. And the federal program, you know, not to be disrespectful, was a complete disaster. It didn't help anyone. So our state program really did reach out and help people who could actually pay their mortgages.

So I would be wanting to see from the Department of Banking what exactly they are talking about as far as making the process better. I'm not saying try to cheat the bank out of their money, just so that this -- if there is a way to mediate and -- and these

people are actually be able to afford to pay their mortgages, that everybody should sort of be on the same page because you're right, they're not.

JEFF GENTES: I'm actually -- I spoke with someone from the Department of Banking right before the hearing. We're going to meet and with Commissioner Pitkin, as well, to discuss some of the -- some of the issues that he's raised and -- and at least on that front, we'll be able to meet with him. From a banking industry standpoint, I can only guess. And it's -- it's, I mean, I was talking yesterday to a -- it was an auto mechanic left me a message. And I called him back. It was the same issue. I've got failure to disclose -- I've got a motion for failure to plead. What is this about? And we're going through it. And I'm telling him, you know, we've got you on mediation, you'll be all right. You don't have to be concerned about this motion. And he goes, "It's just about the attorney's fees, right?" What are you doing tomorrow -- tomorrow at noon. Can you come down to Hartford and tell everybody because I don't know what else -- I don't know what else it is.

If the concern is delay, the simple issue is devote people to borrower's accounts. Devote people to loan modification workout. The current system is -- is crazy. God bless you for doing 1,000 of them.

REP. KUPCHICK: Well, I actually recently went to a legislative breakfast in the Judicial Branch. And I was invited to come and sit in on the judges who handles the housing cases. So I took them up on the opportunity. And you're right, they're calling one after another. People aren't there even though they're in mediation. The lawyer is there. They say

we're in mediation. The process is -- the process needs to be cleaned up dramatically.

I'd be interested to see what the Department of Banking through the Chairman if we could get some additional input or information about what they're -- if they do actually have something that they can talk about to improve the process for everyone involved. I'd like to see it. Thank you, Mr. Chairman.

JEFF GENTES: Thanks.

REP. TONG: Thank you, Representative.
Representative Rovero.

REP. ROVERO: Sorry, Mr. Chair. We have a very good success rate, you know, if you're talking about 64 to 78 percent stay in their homes from the present Mediation Program. Of that 64 to 78 percent, do you have any idea of what percentage of the people that did stay in their homes are up to date with their payments of say a year later or are we chasing something that - - and not to take a home away from anybody. But are we chasing something that it's going to end up in foreclosure eventually or are we doing some good out there? It's -- I don't know.

JEFF GENTES: Yeah. No. I'll take it -- take it in steps. The Mediation Program itself is trying to track this type of information to really figure out -- because they believe that they can do better than what in-house modifications were doing which, I mean, beforehand, you get people's loan modifications that increased payments or just simply rolled -- in other words, taking the money that was owed, just stick it back into the balance and you'd end up with an increased payment. And not surprisingly, those would default.

You have HAMP coming along. And the Department of Treasure forecasts that 40 percent of the people who get a HAMP permanent modification will end up redefaulting. And then you have what our mediators believe which is that they make sure that whatever workout that someone obtains, that that is -- that that is ultimately sustainable.

One of the problems is that in order to give someone any type of workout, really required to draw people down to bare bones less than three months worth of savings. So that if something goes wrong, God forbid your boiler broke in the middle of this winter, you'd have to replace the boiler. And given that you essentially weren't allowed to have savings before getting a workout, that could lead to a redefault.

I'm also dealing with -- and I deal with this now. It's -- it's every single day. Somebody who received a modification agreement is being told by their bank, even though they're making all the payments that they agreed upon, and they're current on their payment, they're being told they're in default and in some cases they're stuck back into foreclosure. And that -- that I'm sure will reflect on the statistics as a redefault. But what it is that the mortgage industry has been unable to simply modernize its systems.

When given that their sole -- their number one job is collecting payments and if they can't collect payments correctly and attribute it -- people are sitting there saying it took two years to get this modification, now I'm back in foreclosure. And it's not good for any of us.

I talked to one guy who just said, "I've had it. That's it. I'm filing bankruptcy." And

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he had been -- he had gone through this process. I can't blame him.

REP. ROVERO: You know, I've got to agree with you. But I'm trying to put things in order.

JEFF GENTES: Sure.

REP. ROVERO: And I don't want anybody to lose their home. You know, I've had children, I have four children.

JEFF GENTES: Yeah.

REP. ROVERO: And every now and then each one of them get in trouble. But I'm wondering if the entire country and the State of Connecticut wouldn't be better off to say, look it, you've purchased a home that you cannot afford.

JEFF GENTES: Yeah.

REP. ROVERO: We're going to give you a voucher for a year or 18 months or something find to rent someplace, something like that because you're never going to be able to make the payments on this home. And would we better off to going that route. And I'm not trying to take anybody's home away. I'm wondering if we're going upstream here.

JEFF GENTES: I would have thought -- if you asked me this three years ago, I would have thought that could -- that could -- that might be able to work. But now that we're seeing people who are -- seeing people who then go out and look at the rental market and looking for housing, there's no more rental housing than there was a few years ago even though you now have a huge increase in the number of people with bad credit. There's not a real increase in landlords who are willing to rent to people

with bad credit.

And when I'm talking to people, I end up talking to especially families, especially people who came from -- met the Fairhousing Center. We do work with people seeking apartments who have been historically discriminated again. The people who have been the most scared of the rental market have been the people who cannot find housing for a variety of means. Maybe they have a couple of factors against them and they're looking for a three bedroom. And now they have bad credit on top of it, they can't find it. And their house, with the workout that they could afford, ends up being even cheaper than the rent that they would pay out in the open market.

So in the absence of a huge increase in available rental housing, that -- I don't -- I don't know that that's coming. I don't know if that would work. And I think it still makes sense to try to keep people in their homes.

The system is still very -- still very bank friendly. Even after this bill, we would still be very bank friendly. Banks are allowed to charge higher interest rates, higher fees. And they take a security interest in property to account for the risks involved in lending. That still is the case. And -- and this would just help really reduce the confusion, I think take that 64 percent and kick it a little bit higher. It also would kick the people who are -- who haven't yet participated and pull them more -- more of them into the -- into the program as well. Because we're only talking about the 64 and the 78, the people who sign up for mediation and not -- not those who are still on the sidelines.

REP. ROVERO: Thank you, Mr. Chairman.

REP. TONG: Thank you, Representative. Further questions? Representative O'Brien.

REP. O'BRIEN: Thank you. Just some of the things that bothers me about what's been happening right now in our country is that up until a couple years ago, people were told that part of -- not just -- it wasn't homeowners, it wasn't just part of the American dream, but it was part and parcel to responsible citizenship and something that you should strive to and there's these tracks for getting into home ownership. And then we had this massive housing bubble. And, you know, and everything comes crashing down. And suddenly people who followed what they were told they were suppose to do that are the ones that are blamed and at fault and, you know, you shouldn't have bought that house when they were just doing the thing that was understood as -- was part of the responsible -- responsible citizenship. And that -- it really bothers me that we're in that place right now.

But the point that you had raised and since you also do with the rental market, the same dynamics that drove up housing prices during the housing bubble have caused rents to go up as well; haven't they?

JEFF GENTES: That's a very good question. There's certainly more demand for rent and fewer and not a commensurate increase in supply. So I would -- I don't follow the rental market in terms of the pricing as closely. But I would think that -- that it is becoming housing that we've just had a shift in demand. We've had had -- there are some households who people lose their homes, they do leave the state or they move in with relatives for sure. But I wouldn't be surprised to see, again, I'm not as familiar with those statistics on the increase

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in rental price, but I wouldn't be surprised to see if there was one.

REP. O'BRIEN: Right. And I see it in my community with people doubling and tripling up in -- in existing apartments because they can't afford the rents that are -- that are out there now.

JEFF GENTES: Yeah.

REP. O'BRIEN: So thank you very much. Thank you, Mr. Chairman.

REP. TONG: Thank you. Further questions? Senator Frantz.

SENATOR FRANTZ: Thank you. Just one final comment from a macro point of view is that if you get more of the housing stock into the rental market which in theory is possible, then rents will come down. And that's maybe something to keep in mind here. We tend to focus and, certainly, this bill is focusing on the process, the length of time that it takes to go through the -- the mediation process, the appeal process, the court process, and all of the processes involved.

It's within the banking industry, the mortgage industries' interest to move this along as quickly as possible. So I'm curious why they keep coming back and saying your 30-day information is stale, you know, give it to us a day. Maybe the theory is that the market is recovering and, you know, a year down the road it's going to be fine and they're not going to take a 20 percent haircut. But maybe the way to approach this separate from this -- this bill is to encourage things to move forward on the foreclosure front. And this gives those families that are, unfortunately, in a very bad way because they've been foreclosed out of

their homes, they have a much better shot at being able to afford the rent on a similar sized home, particularly in the larger municipalities in the state. Thank you.

REP. TONG: Any further questions? Thank you.

JEFF GENTES: Thanks.

REP. TONG: Rafael Ramos. Good morning.

RAFAEL RAMOS: Good afternoon.

REP. TONG: Good afternoon.

RAFAEL RAMOS: I'm late for my energy hearing. Good afternoon, Senator Duff, Representative Tong, and members of the Committee. My name is Rafael Ramos. I am the Deputy Director of Code Enforcement for the City of New Haven, the Office of the Livable City Initiative which is really the Office of Urban and Housing Development for the City of New Haven.

I've been involved in neighborhoods for over 20 years and I've been doing the code enforcement for over 15 years and as Deputy Director over 10 years now. In my capacity, I'm in charge of most things dealing with housing 24 hours a day. I'm the one -- I get the calls 3 o'clock in the morning, 5 o'clock in the morning either from police, fire or some other either city or state agency looking for assistance with properties at night.

I am here to -- and I want to thank you for allowing me to speak in support of the passage of the Senate Bill 957. New Haven is a unique -- is in a unique position statewide with respect to foreclosure registration because our local ordinances grandfathered in PA09144. We were permitted to maintain our distinct, and in

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Legal Assistance Resource Center**of Connecticut, Inc.**44 Capitol Avenue, Suite 301 ♦ Hartford, Connecticut 06106
(860) 278-5688 x203 ♦ cell (860) 836-6355 ♦ fax (860) 278-2957 ♦ RPodolsky@LARCC.org**Testimony of Raphael L. Podolsky****Foreclosure bills**

Banks Committee public hearing -- March 1, 2011

SB905 HB6350SB1077 HB5892HB5437**S.B. 957 -- Neighborhood Protection Act****SUPPORT**

In 2009, the General Assembly adopted the Neighborhood Protection Act to make it easier for towns to identify a contact person in charge of foreclosed properties and to maintain an on-going watch list of foreclosed properties so as to monitor them more effectively and prevent them from becoming a source of neighborhood deterioration. At the time, New Haven had a strong and effective ordinance already in place. The 2009 act, however, was less comprehensive than the New Haven ordinance and it arguably prevents other towns from adopting the New Haven approach (it grandfathered the New Haven ordinance so as not to affect New Haven). In particular, unlike the New Haven ordinance, the state act does not require registration of occupied foreclosed buildings, does not require registration at the start of the foreclosure action so as to permit monitoring during the action's pendency, and does not allow the town to require the contact information to be submitted to a single location (thereby making it nearly impossible to maintain a watch list). This bill makes changes to the state statute so as to make its requirements more similar to the New Haven ordinance. We believe that these changes will significantly improve the ability of towns to benefit from the two core goals of the original statute and thus make it a better statute: (1) To assure that towns have the contact information they need to deal with neighborhood preservation during and after foreclosure and (2) to maintain a watch list of buildings at risk as the result of foreclosure activity so as to more effectively monitor those buildings and prevent the neighborhood deterioration that sometimes arises from foreclosure.

H.B. 6351 -- Foreclosure Mediation Program**SUPPORT**

Under the existing Foreclosure Mediation Program, the foreclosing lender is allowed to continue to move the foreclosure forward while court-based mediation is in progress. The only thing it cannot do is actually obtain judgment, but it can do everything short of judgment. This means that the lender will file motions for default for failure to plead, disclosure of defense, or summary judgment, even though mediation is actively in progress. This creates an extremely difficult situation for the homeowner, and especially for a homeowner without a lawyer (which is usually the case), who does not know how to respond to this pressure. In addition, it is fundamentally contrary to the commitment to mediation, which assumes that people are trying to work out an acceptable solution. The problem is compounded by the fact that most delays in the mediation process are caused by the lender's failure to complete internal reviews or have an appropriate person available for mediation, rather than by the borrower. The borrower thus often finds himself waiting for the lender to pull information together at the same time that the lender is threatening the homeowner with default for failure to plead. This bill says that, once mediation is

(continued on reverse side)

requested, pleading will stop until 15 days after mediation is completed. This makes much more sense as a way to maximize the parties' mutual ability to reach a successful conclusion.

S.B. 905 -- Study of CHFA Loss Mitigation Programs

SUPPORT

One key element of Connecticut's response to the foreclosure crisis has been to greatly expand the Emergency Mortgage Assistance Program (EMAP) and to create several new programs, including CT FAMILIES and HERO, that are operated by the Connecticut Housing Finance Authority (CHFA). Through the past two years, concerns have been expressed that overly restrictive underwriting standards, or in some cases unnecessary restrictions built into the program statute itself, have resulted in far too few families receiving help. This bill creates a task force to review and evaluate these programs and to report back to the 2012 session of the General Assembly. We believe that such a task force would be helpful and is worth creating.

H.B. 6350 -- Attorney General enforcement of Dodd-Frank

SUPPORT

This act makes clear that the state Attorney General can enforce the provisions of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 1042 of Dodd-Frank provides that state attorneys general "may bring a civil action...to enforce provisions of this title or regulations issued under this title, and to secure remedies under provisions of this title or remedies otherwise provided under other law." Section 1042 is a key element that was included in Dodd-Frank to assure that its consumer protection sections would be enforced. In Connecticut, however, there has been some dispute in the past as to the scope of the Attorney General's authority to initiate litigation without explicit statutory authority. H.B. 6350 makes clear that the Attorney General can act to enforce Dodd-Frank to the extent that Dodd-Frank permits such state action.

S.B. 1077 -- Repeal of 1.5% minimum interest rate on mortgage escrow deposits and tenant security deposits

OPPOSE

Connecticut law requires lenders to pay interest on mortgage escrow deposits and landlords to pay interest on tenant security deposits at an index rate set annually by the Banking Commissioner. That rate cannot, however, be set at less than 1.5%. The Banks Committee has already heard H.B. 5892, which I testified against, which would repeal the 1.5% floor for tenant security deposits. My testimony on that bill documented the fact that at least five Connecticut banks, including at least three statewide banks, offer tenant security deposit accounts at the 1.5% rate, including TD Bank which offers a comprehensive account with free collateral services for landlords with at least ten security deposits.¹ S.B. 1077 goes even farther by taking the 1.5% minimum rate away from homeowners on their escrow deposits. This change is especially undesirable, because the deposit of tax and insurance escrows is controlled by the bank itself. In effect, it allows the bank to use its lowest rates for the payment of this interest to its own mortgagors. The homeowner is often not free to look for better rates elsewhere. The 1.5% minimum should be retained.

¹The Insurance Committee has already JF'd H B 5437, a bill that is the same as H B 5892.



CONNECTICUT BANKERS ASSOCIATION

March 1, 2011

To: Members of the Banks Committee

Fr: Connecticut Bankers Association
Contact: Tom Mongellow, Fritz Conway

Re: House Bill 6351, AAC Foreclosure Mediation

Position: Oppose

This bill would create a moratorium on any motions or pleadings associated with a foreclosure, while a borrower is enrolled in the Judicial Department's Foreclosure Mediation Program.

As the law currently stands, no judgment of foreclosure can be entered into, prior to the mediation being completed. However, the program was specifically designed to allow for motions and pleadings to continue during the mediation on behalf of *both* the borrower and lender. This was to allow the foreclosure to proceed in an orderly fashion in the event that the borrower was unable to financially afford staying in the property.

There are several public policy concerns surrounding delays in the foreclosure process including, protection of the existing housing stock; anti-bligh issues surrounding vacant or abandoned properties, depreciation of housing prices which prolong negative equity situations for existing homeowners and reduced home sales due to market uncertainty. These were carefully taken into consideration when the Mediation program was developed, resulting in the allowance of motions and pleadings during the duration of the mediation

While the Mediations are suppose to be conducted within a 90 day window. sometimes, borrowers or lenders may need more time for the mediation, such as when a borrower enters into a trial mortgage modification under the Federal HAMP program

The Courts, depending on the circumstances, frequently exercise their equitable powers to extend the mediation timeframe, where necessary. With these issues in mind, we feel that H.B. 6351 would cause an unnecessary and negative modification to the Mediation Program.

State Mediation Program a National Model

Since the inception of the Mediation Program, the banking industry has worked with Committee leadership, the Judicial Department, consumer advocates and leading foreclosure attorneys to design a program that is now a national model for foreclosure mediation programs. The success rate of the program results in over 60% of borrowers staying in their homes and another 15% of borrowers reaching a resolution to the foreclosure. We continue to work with interested parties to improve the results and effectiveness of the program.

Making Mediations More Effective

Rather than delaying the foreclosure process, as this bill would do, we would suggest enhancing the Mediation program to make each mediation session as productive as possible, and make the program results even more successful.

First would be to make the *first* mediation session as effective as possible by providing a financial statement to the borrower when the mediation program application is received.

Second would be to create a "Mediation Counselor" position within the program, who would be able to independently guide and prepare the borrower for their mediation sessions, especially the first session. Funding for these additional employees could be provided by the Department of Banking Fund, which was and continues to be, the primary source of funding for the mediation program.

Third, would be to change to statute to allow the borrower, and the mediation counselor, a full 30 days to prepare for and schedule the first mediation session. Currently, there is only 15 days to prepare and schedule a mediation, which has proven problematic for many borrowers.

We look forward to working with the Committee, the Judicial Department and other interest parties to enhance the ability of the Mediation Program to keep borrowers in their homes, without unduly slowing down the foreclosure process.



**TESTIMONY OF ATTORNEY JEFF GENTES
IN SUPPORT OF H.B. 6351**

Co-Chairs Duff and Tong, Members of the Committee, thank you for the opportunity to speak today. My name is Jeff Gentes, and I'm the Foreclosure Prevention Attorney for the Connecticut Fair Housing Center. I am here today to strongly support House Bill 6351. As an attorney who teaches homeowners how to represent themselves in foreclosure litigation and foreclosure mediation, I can assure you that House Bill 6351 would greatly help homeowners navigate the confusing world of foreclosure.

Connecticut has benefited greatly from the Foreclosure Mediation Program you created in 2008: more than 5,000 homeowners who've completed mediation have been able to keep their homes. At the Connecticut Fair Housing Center we run legal clinics for homeowners where we teach people how to use the Mediation Program to prevent foreclosure. Last year we taught over 1100 homeowners how to use the Program, and we distributed more than 6,000 copies of our manual on self-representation. We also provide individualized advice and assistance to homeowners referred by HUD/CHFA-approved housing counselors and the Department of Banking's Mortgage Foreclosure Assistance Hotline. We also represent homeowners in foreclosure and mediation, and in the past year appeared in nine judicial districts across the state.

About 90 percent of homeowners who participate in the Program are unrepresented. When speaking to these homeowners, one theme is constant – we must explain that, in addition to dealing with their mortgage servicer over the phone, mail, and fax machine, sometimes while working with a housing counselor, and in addition to participating in the Foreclosure Mediation

Program, homeowners must also deal with foreclosure litigation. Banks file interim motions and foreclosure motions during mediation, which only add confusion and costs, in the form of banks' attorneys' fees and homeowners' missed time from work, that hurt mediation's chances of success. Putting mediation first would allow homeowners to focus on mediation alone.

Connecticut's courts would benefit if we put mediation first. The Program you created not only saves homes – it also makes litigation unnecessary, as about 78% of mediation cases settle. By passing House Bill 6351, and by putting mediation first, we'd eliminate needless costs.

As proposed, House Bill 6351 would not delay cases in which the homeowner does not appear. It would only add a few weeks to cases in which a homeowner had participated in ultimately unsuccessful mediation. More importantly, it would improve the chances of success in mediation and allow both sides to reach a settlement that was mutually beneficial.

Over the past two years, we've learned from other states that used Connecticut's Foreclosure Mediation Program as a model for their own programs. Based on their experience, and my prior experience representing homeowners in New York, putting mediation first would reflect "best practices" in foreclosure cases, and increase the chances that a homeowner could save their home.

Thank you for your time and for your past support of the Foreclosure Mediation Program. On behalf of the unrepresented homeowners in mediation and those who will enter mediation as the crisis continues, I ask that you support House Bill 6351. I'm happy to answer any questions you may have.



State of Connecticut
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CHAIRMAN
 GENERAL LAW COMMITTEE

MEMBER
 JUDICIARY COMMITTEE
 PUBLIC HEALTH COMMITTEE

March 1, 2011

HB 6351: AN ACT CONCERNING FORECLOSURE MEDICATION

Dear Chairman Duff, Chairman Tong, and honorable Members of the Banks Committee:

Thank you for raising HB 6351, An Act Concerning Foreclosure Medication. This legislation would substantially make the foreclosure and foreclosure mediation processes fairer for Connecticut homeowners that find themselves in this sad situation.

HB 6351 corrects an inequity in the mediation process that occurs when a person facing foreclosure enters mediation in good faith and then becomes aware that a motion has been filed by the opposing party seeking to advance the litigation or obtain some final judgment in their favor. As you could imagine, this mixed message can be quite traumatic for the homeowner who is under the impression that the opposing party is in mediation in good faith. The situation is made worse by the fact that many of these homeowners in distress do not have sufficient resources to hire attorneys and are thus unable to protect their rights during this period of time- a period which is supposed to be focused on all parties working toward an amicable solution or settlement. I do not think it is too much to ask that these families are allowed the piece of mind that their rights are not being lost during mediation. This legislation goes a long way toward reaching that goal.

In sum, HB 6351 substantially improves the current status of the law which allows foreclosures to continue during mediation. This predicament undermines the public policy of the Foreclosure Mediation Program and is unfair to Connecticut homeowners. Thank you for considering this legislation to address this problem and please support a joint favorable report of this fair measure going forward.

Sincerely,

Joe Taborsak
 State Representative, 109th

Testimony of Attorney Keith K. Fuller Concerning H.B. 6351

Co-Chairs Duff and Tong, Members of the Committee, thank you for allowing me to speak today. I am Attorney Keith K. Fuller, and I am here today in support of House Bill 6351, An Act Concerning Foreclosure Mediation.

I am an attorney in private practice with a principal office in Enfield. I represent many homeowners facing foreclosure on both a paying and *pro bono* basis. I have been honored to be named co-chair of the Connecticut Bar Association's Foreclosure Prevention Subcommittee and a member of the Bench-Bar Foreclosure Committee. I can speak about H.B. 6351 from the perspective both of a private practitioner and an attorney who trains and supports efforts to recruit *pro bono* attorneys for homeowners.

About 90% of homeowners in foreclosure represent themselves, and it's not surprising that these homeowners fare worse as a group than those who have counsel. The current system is one reason this figure is so high. Homeowners in foreclosure must contend with ongoing foreclosure litigation even if they are participating in good faith in the Foreclosure Mediation Program. Addressing both simultaneously is a high burden for any homeowner unfamiliar with the court system.

If the homeowners seek counsel, attorneys must decide how to handle both litigation and mediation, and price their services accordingly. The cost of fighting foreclosure on both fronts cost forces many homeowners to represent themselves. Similarly, attorneys on the Bar Association's Pro Bono Panel cannot accept very many cases because the cases often entail dual-track litigation and mediation, increasing the time necessary to resolve each case and prevent foreclosures. As a result, homeowners who could benefit from pro bono counsel must appear by themselves.

House Bill 6351 would alleviate this problem. Foreclosure litigation often proves to be unnecessary, since more than 75% of the cases in mediation settle without continued litigation. House Bill 6351 would leverage the success of the mediation program and lower the costs to our courts of the status quo. House Bill 6351 would also make it easier for attorneys to represent homeowners on both a paying and a *pro bono* basis, as the attorneys would not need to engage in needless litigation in connection with representing the homeowner. With more attorneys helping homeowners, more homeowners would be able to keep their homes, and our state could benefit from the resulting stabilization of the housing market, tax base, and our neighborhoods.

I strongly urge you to support House Bill 6351, and thank you all for your time. I am happy to answer any questions you may have.

- Keith K. Fuller

TESTIMONY SUBMITTED TO THE BANKS COMMITTEE
March 1, 2011

Commissioner Howard F. Pitkin
Department of Banking

HB 6382, AAC THE BANKING FUND,
HB 6351, AAC FORECLOSURE MEDIATION.

Good morning Chairman Duff, Chairman Tong, members of the committee. My name is Howard F. Pitkin and I am the Commissioner of the Connecticut Department of Banking. I am submitting testimony on two pieces of legislation.

The agency is in support of **HB 6382, AAC THE BANKING FUND**. The agency is in support of the Governor's budget. This bill would move to implement the Governor's recommendations and require that fines are placed directly in the General Fund.

The Department of Banking is in opposition to **HB 6351, AAC FORECLOSURE MEDIATION**. The act removes the limitation that foreclosure mediation not be limited to thirty days. I would like to add that the agency is currently working with the judicial department and the mortgage industry to see how we can facilitate changes to the process to make it work better for all parties involved.

Thank you for your attention to these matters and please contact me to answer any questions you may have on these or any other bills.

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support. You know, I've talked to her, and I've talked to you, and we're encouraged that she's working with us in the General Assembly on -- on jobs and on bills like this that are pro growth, pro business formation, pro business, and we look forward to working with you in the future on these bills and others that -- that serve that goal. Thanks.

DEPUTY SECRETARY JAMES SPALLONE: Thank you, Mr. Chairman. Likewise. We enjoy being part of the team in trying to get all this done.

SENATOR DUFF: Thank you, Representative. Any other questions or comments? Seeing none, thank you very much.

Next is Commissioner Howard Pitkin. Commissioner. Commissioner, thanks for coming today. We appreciate it. And at our initial organizing meeting, I don't think we had the opportunity to introduce you, so I want to thank you for your service to the State, and we are very, very pleased that -- I'll speak for myself -- that Governor Malloy has reappointed you as Commissioner of the Banking Department.

You've held a steady hand in a very difficult time for the banking industry, in general, and we appreciate that and thought he made a great choice by reappointing you.

COMMISSIONER HOWARD PITKIN: Thanks.

SENATOR DUFF: So I want to welcome you and thank you again for all that you've done in the past, and especially working with this committee as well. So please proceed with your testimony.

SB 1109
SB 1110
HB 6285
(HB 6351)

COMMISSIONER HOWARD PITKIN: Thank you for your -- for your kind comments, and thanks to the members of the committee in total. This has

been a -- a very easy committee to work with during difficult times.

Good morning, Chairman Duff, Chairman Tong, members of the committee. My name is Howard Pitkin. And I am the Commissioner of the Connecticut Department of Banking. I'm here to testify in favor of three pieces of legislation.

Senate Bill 1109, AN ACT CONCERNING BANKS is the first bill I wish to speak on. The proposal is necessary to clarify the fees for out-of-state branch locations and to delete a redundant and confusing provision.

The bill would allow the agency to grant investors conditional -- another provision of the bill would allow the agency to grant investors conditional preliminary approval to organize more than one bank to acquire failed banks. This is the overnight charter that we enacted two years ago.

It is unnecessary and unduly burdensome to have investors file another application for preliminary conditional approval in order to organize additional banks to acquire failed banks. The department already will have checked the resources and suitability of the investors prior to issuing the preliminary approval.

Moreover, the agency has the ability to impose conditions in the preliminary approval process with respect to the organization of subsequent banks to ensure that all capital and other requirements continue to be met.

Another part of the bill provides for a new provision authorizing Connecticut banks to merge with their nonbank affiliates. This

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and I will answer any questions that you may have on this or any other topic.

SENATOR DUFF: Thank you, Commissioner.

Are there any questions or comments for the Commissioner? No? Okay.

Commissioner -- Representative Alberts? Okay. Thank you.

On another topic, I just want to ask you about foreclosures and, you know, we -- we spend a lot of time on subprime issue and foreclosure issue in Connecticut, and do you see an end to the subprime problem, and what is the status of foreclosures right now?

(HB 6351)

COMMISSIONER HOWARD PITKIN: Well, foreclosures continue to -- to increase, largely as a result of unemployment. And it's a far different type of foreclosure that as subprime -- the subprime structure of a loan. More often than not, with a subprime loan, if you conform it to some sort of a workable standard with the borrower, there's cash flow, and -- and it can continue paying; not so, with -- with a loan where there's no cash flow, and that's -- that's the current problem.

Unfortunately, our economy is not growing significantly. And -- and, you know, it's going to take a lot of time for our unemployed persons to -- to be absorbed into the workforce. So it's -- it's very different right now than it was prior, when we considered the subprime problem.

SENATOR DUFF: All right. Thank you. And how do you think the Foreclosure Mediation Program is working at the moment?

COMMISSIONER HOWARD PITKIN: Well, it's working. I -- I -- you know, we met with the mediation staff a couple of times this year. And one troubling part of this, they've got a 12,000 case backlog. And I, you know -- I think that some things can be done with that program that might -- might make it work a little faster.

They do have over a 70 percent success rate, and that would include either -- either the people continuing to live in the home or, ultimately, making the decision to move off to a better -- better life somewhere without that house. And I -- I -- it takes six meetings, on average, to bring to a head the -- the whole mediation process and get some sort of resolution with the bank.

I think that steps can be taken, I hope they can be taken, to make the first and second meeting more meaningful and have more of an impact on the process, and we continue to want to work with Judicial in order to make that happen. I would hope that maybe when the foreclosure papers go out to an individual, along with them, can go the papers that you need for the first mediation session.

There also is a problem with, well, the larger banks in our country. They're so overwhelmed with foreclosures that their administration of cases is not -- is not really very good. I think that we've got to work with those banks that are involved in -- in -- in -- there's probably three or four banks that account for most of the mortgages in Connecticut that are being foreclosed on. They're large national banks. And I think that some -- some pressure's got to be brought to bear to help them improve their handling of -- of foreclosures.

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SENATOR DUFF: Great. Thank you. Thanks for the explanation. We appreciate that.

Representative Kupchick.

REP. KUPCHICK: Thank you, Chairman. I actually am glad you asked those questions because I had asked them at our last meeting, based on the testimony from the Commissioner about what they wanted to do or how they were going to work to make the -- to facilitate changes in the process.

And I spoke to the Commissioner before the meeting, and I was excited that the Department of Banks was going to look to try to streamline the process from six meetings to two because what I think might be happening is that, like you say -- like the Commissioner said, the banks are overwhelmed. And if they could make the first two meetings, as the Commissioner mentioned, more meaningful and in -- in -- in what I believe is meaningful in a -- in a sense where they come with all their information and it -- there's a decision made if they should proceed or not.

Some people are having just a slight difficulty and can get back on track, and there's people who -- and -- and, unfortunately, there are people who simply can't. And if we can come around to a point where the resources are more dedicated to those who can, then we are really truly helping instead of it being such a spread out affair, where the people who can actually get back on track can't because they're so overwhelmed with all of those mortgages -- all those mortgage mods.

So I -- I would ask for the Chair if we could get information from the commissioner when you do have a meeting with the Connecticut Banks

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Association, Department of Justice, on the mediation process? But if we could help maybe amend this bill, 6351, to make it an actual -- something that could actually be helpful to people who need the -- who can be helped. So I'm -- I'm -- I don't know if the committee is interested in that. I -- I would -- would like to see if we could do something.

SENATOR DUFF: Thank you.

Representative Tong?

REP. TONG: Thank you, Representative Kupchick, and thank you, Commissioner. The Chairs, the Committee, have been engaged in extensive discussions with people on all sides of the foreclosure process and the foreclosure mediation process. And we're -- we're now talking about ways to improve those first two meetings, or first few meetings, and reduce it from six meetings, reduce it from several months, and make that process more meaningful.

I've asked the banks. I've asked the fair housing advocates to put their thinking caps on and really try to find a way to streamline the process but make sure that everybody is there, at the outset, ready to talk in good faith. And I welcome your participation in those meetings if you want to be a part of that, so we can try to find a solution to this problem. Okay. Thank you.

SENATOR DUFF: Great. Thank you. I think that's one of the -- going to be one of the priorities of this Committee going forward. This session will be trying to find some meaningful solutions to these issues that you have brought up, and I think everybody acknowledges needs to be addressed in some way, shape, or form.

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And we're -- we're in much better shape, I think, than many other states. I think we're light years ahead of other places, but that doesn't mean that we can't make some meaningful changes that help homeowners, help lenders, and time is money in making sure that the time that we're spend -- is spent is very useful.

So, thank you, Commissioner. Any other questions or comments for the Commissioner? Thank you, sir.

COMMISSIONER HOWARD PITKIN: Thank you very much.

SENATOR DUFF: Okay. Mark Sklarz from CBA.

MARK SKLARZ: Good morning.

SENATOR DUFF: Okay. Thank you very much for your testimony.

Representative Tong.

REP. TONG: Thank you, Mr. Chairman. Thank you for your testimony and for working so hard on getting this all together and -- before us in this Legislature. Can you just try to help us make this a little more real and take it away from the -- the legal realm, and -- and talk about -- let's take, for example, there's a startup in East Hartford, and it has developed a proprietary technology to advance the production of aircraft engines.

(HB 6285)

So there's a startup in East Hartford, and it begins, let's say, as an LLC. As it grows through the lifecycle of its business, can you tell us how this statute will -- will help that business grow and keep it here in Connecticut?

MARK SKLARZ: There's no -- instead of being an

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HOUSE**

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Is it too early for a transcript notation?

DEPUTY SPEAKER RYAN:

By a few hours, yes.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker.

You never cease from amusing me.

DEPUTY SPEAKER RYAN:

Will the Clerk please call Calendar Number 184.

THE CLERK:

On page 37, Calendar Number 184, substitute for
House Bill Number 6351, AN ACT CONCERNING FORECLOSURE
MEDIATION, favorable report of the Committee on
Judiciary.

DEPUTY SPEAKER RYAN:

Representative Tong of the 147, Chairman of the
Banks Committee.

REP. TONG (147th):

Good morning, Mr. Speaker.

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

DEPUTY SPEAKER RYAN:

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

Will you remark?

Representative Tong.

REP. TONG (147th):

Yes, Mr. Speaker. Thank you.

This bill represents the efforts of several committees, the Banks Committee, the Housing Committee, the Judiciary Committee and advocates from the banks community, as well as our fair housing advocates. It is a collaborative effort to improve what is a national model for helping citizens in our state address the financial crisis and the foreclosure crisis that we're still digging our way out of.

Because of the action that this body took over the last few years and because of the foreclosure mediation process, we have been able to create a program that helps 75 -- 75 percent of people who find themselves in the foreclosure mediation process on the path to a resolution, and more than 60 percent of those people are able to stay in their homes. So what we are doing here is taking it yet another step further and improving what is already a great program.

Mr. Speaker, the Clerk has an amendment, LCO Number 8179. I would ask that the Clerk please call

the amendment and I be allowed to summarize.

DEPUTY SPEAKER RYAN:

Will the Clerk please call LCO 8179 which will be designated House Amendment Schedule "A."

THE CLERK:

LCO Number 8179, House "A", offered by
Representative Tong and Senators Duff and Frantz.

DEPUTY SPEAKER RYAN:

Representative seeks leave of the Chamber for summarization. Is there objection to summarization? Is there objection? Hearing none, Representative Tong.

REP. TONG (147th):

Thank you, Mr. Speaker.

This amendment is a strike all amendment. It becomes the bill. There are several components to it. I will go through them quickly.

The biggest change we see in this amendment and in this bill will be an effort to help homeowners who find themselves in mediation and give them space to try to work things out with their lender. What we found is that when people enter mediation, they are still finding themselves subject to litigation, to

lawsuit, to the foreclosure process.

And people who find themselves in foreclosure, it is usually the most traumatic financial event of their lifetime. They really don't -- they're usually not lawyers. They don't understand the process. If they had -- if they the money to afford counsel, they probably wouldn't be in foreclosure. So they're often self-represented individuals and homeowners and they get documents that are served upon them, and documents from their lender, and litigation pleadings and process that they are ill equipped to address.

What this does is it says, look, we are going to keep the mediation process in place the way it is. But to the extent the mediation process continues, there will be a moratorium on the litigation side of the process. There will be a moratorium on the foreclosure action for up to eight months, but no longer than eight months.

It also creates a single point of contact at the bank for potential workout or refinancing in the foreclosure process and the mediation process. It also provides for neighborhood protection, so that if a bank or lender starts the foreclosure process and

then takes control of the property, that they register with the local municipality to let them know who to contact. That's an effort to address possible blight of a foreclosed property.

It also provides for a 90-day period which reflects movement in federal law. If you -- if somebody were to take a house after a foreclosure, the -- the person who was foreclosed upon would be given at least 90-days notice before they're asked to leave their home.

There are a few other parts of this bill that are part of the bill in an effort to make our community banks more competitive. One is to permit our community banks to sell gift cards so that they are on a level playing field with the national banks. Also is an effort to make community banks more competitive by making sure that highly compensated mortgage loan originators are treated as executives and who are exempt from -- from overtime.

It also creates a task force to study loss mitigation programs that the state offers to understand how we can make those programs more effective.

I move adoption.

DEPUTY SPEAKER RYAN:

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

Would you like to remark further on the amendment? Remark further on the amendment? Representative Alberts of the 50th.

REP. ALBERTS (50th):

Good morning, Mr. Speaker.

If I may, questions to the proponent of the amendment?

DEPUTY SPEAKER RYAN:

Please proceed, sir.

REP. ALBERTS (50th):

Thank you, Mr. Speaker.

I think the chairman of the Banks Committee has done an excellent job in outlining the major pieces of the amendment that's before us. To clarify some of the items that have been negotiated between the public interests groups and the banking community, I do want to explore a little further some of the language.

Looking at Section 2 of the bill, beginning on line 171, this amends subsection C-6 of Section 49-31,

to provide a litigation standstill during the mediation process. As I understand it, the standstill will last for the duration of the mediation, but not more than eight months.

Am I correct in reading, that if a borrower, during mediation, chooses to make a motion, request or demand with respect to the mortgagee, except for a motion to dismiss on jurisdictional grounds, the standstill will automatically end?

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Tong.

REP. TONG (147th):

Yes. Through you.

DEPUTY SPEAKER RYAN:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker.

And continuing the language on line 182, that -- 182 that says the eight-month limit shall no longer apply to either party, what is meant by that language? Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Tong.

REP. TONG (147th):

As you just -- as the good gentleman just said -- the ranking member just said, the borrower will be permitted to contest the court's jurisdiction by filing a motion to dismiss, but by filing any other motion, that will have the effect of terminating the moratorium.

Through you.

DEPUTY SPEAKER RYAN:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker.

And if the borrower or the lender asked for an extension of the mediation period, could that request also include a request to extend the standstill period beyond the eight-month limit? Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Tong.

REP. TONG (147th):

No. The eight-month period is the limit.

Through you.

DEPUTY SPEAKER RYAN:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker.

Going to the remainder of the bill -- or the amendment that's before us, and again, looking at Section 9, which deals with the prepaid cards, it's my understanding that this provision will allow community banks to issue these cards in conjunction with the national provider, like Visa, and there will be no expiration date on the underlying funds that are in those gift cards; is that correct?

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Tong.

REP. TONG (147th):

That is correct.

Through you.

DEPUTY SPEAKER RYAN:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker.

But there will be, depicted on the card,

information so that someone who has been the recipient of this card, whether it's a gift or whether they purchase it for themselves, will have a toll-free number on that card, potentially a website, but they'll have information so that when the initial expiration date on the card expires, they'll be able to get a reissued card, and so their underlying value captured in that card will be there. Is that not correct?

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Tong.

REP. TONG (147th):

Yes.

Through you, a telephone number and a website, if one is maintained.

Through you.

DEPUTY SPEAKER RYAN:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker.

I think that just about concludes this. I do have some concerns with the initial section of the

foreclosure mediation piece. Because, as I understand it, we are expanding the coverage to not only deal with the mediation issues on one to four families, but also with churches.

And I understand there is a need that many people feel to provide additional protection to churches. However, typically, church financing is done as a commercial lending transaction. And adoption of this amendment, while worthy overall, it may hamper the lending environment for churches going forward. So I just want to put that cautionary note.

Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative Alberts.

Representative Smith of the 108th.

REP. SMITH (108th):

Thank you, Mr. Speaker.

Just, if I may, a couple questions for the proponent of the bill?

DEPUTY SPEAKER RYAN:

Please proceed, sir.

REP. SMITH (108th):

Thank you.

I'm just wondering if this particular change in the law applies to all foreclosures regardless -- and all mortgages, regardless of whether it's a Fannie Mae or Freddie Mac loan.

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Tong.

REP. TONG (147th):

One moment, Mr. Speaker.

Through you, Mr. Speaker, I believe it does apply to all residential foreclosures.

DEPUTY SPEAKER RYAN:

Representative Smith.

REP. SMITH (108th):

Thank you, Mr. Speaker.

And just a -- just a comment going forward. You know, having been involved in representing some clients through these -- on both sides, for lenders and for borrowers, one thing I have noticed is during the mediation process is that, typically, what happens, the lender will request certain documentation from the borrower, the case is continued 30 days, or thereabouts, during which time the information is

provided to the lender. Upon going back to court, even though the information was provided, the lender, for some reason, doesn't have it or is still reviewing it, and the case continues on and on and on. And I can tell you from experience that it has gone on and on and on for over two years while this process is going on.

So my recommendation -- and certainly not part of this bill, but perhaps for another session -- is to -- if you have an eighth month stay right now, you may want to consider that if -- if the lender is found to act on the information given to it, that that eight-month period be extended correspondingly to the delay caused by the lender. Just a thought that you may want to consider going forward.

So thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative.

Representative Butler of the 72nd.

REP. BUTLER (72nd):

Thank you, Mr. Speaker.

I rise to support this bill. I'd like to commend my good friend, Representative William Tong, on his

leadership in banks.

We, too, in housing had a foreclosure mediation bill. And through our collaboration and with the cooperation of Representative Tong, we have actually had the language in this banking bill that will help a lot of people in need.

This bill is probably, in my -- in my opinion, one of the most important bills that we could pass in this session. There are thousands -- thousands of people who are facing losing their homes. That process is very, very daunting. And this program, this part of the bill as amended, will provide the support and the guidance to help people save their homes.

Many people will save their homes going through this process. I don't know of how many other things that we do with in this General Assembly can be as meaningful as helping people save their homes in this economy.

So I'd also like to commend the people on the Housing Committee that put in a lot of time and effort on this initiative, as well as our own Speaker of the House, Representative Donovan. We've gone out on the

road and shared this initiative with communities all around the state and actually got a lot of input which helped us craft this bill so that it could be everything that we thought it could be to help these people.

And as I just heard Representative Smith allude to, about the -- the area, about the staying period of time, I, too, would have liked that period of time to be longer. But seeing that we're looking at probably a two-year extension of this program, I think that will give us enough information to see, in retrospect, if we should extend that period of time. And after we see how successful this program is, we could, hopefully -- in two years the economy will turn around and -- and this won't be as big as a problem -- but the information we collect as a result of this bill's passage would help us going forward.

So, again, I'd like to thank Representative William Tong for his leadership, the members of the Housing Committee, the Speaker of the House, with all of his support. And I urge all my colleagues to support this initiative and do something really meaningful and help the people in this state that are

facing dire economic times to actually save their homes.

Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative.

Representative Rebimbas of the 140th.

REP. REBIMBAS (70th):

Good evening, Mr. Speaker.

Mr. Speaker, I rise in very strong support to the foreclosure mediation program. And I, too, believe that it has saved and provided many different options for people who are being foreclosed. But I also rise in serious concern for the eight-month limitation that's being placed through this legislation that's being passed.

What Representative Smith had testified to earlier is so very correct. I have had the privilege of defending many people in foreclosure actions. And I can ensure you, Mr. Speaker, that eight months is far from adequate time for any meaningful representation and mediation on behalf of these people.

So through you, Mr. Speaker, a question to the

proponent of the bill.

DEPUTY SPEAKER RYAN:

Please proceed.

REP. REBIMBAS (70th):

If you could please tell me how the eight months was determined.

DEPUTY SPEAKER RYAN:

This is the amendment. Okay. Just --

REP. REBIMBAS (70th):

On the amendment. My apologies.

DEPUTY SPEAKER RYAN:

Representative Tong.

REP. TONG (147th):

Through you, Mr. Speaker.

Just a word of clarification. The current foreclosure process -- the current foreclosure mediation process runs a maximum of 90 days. It is being extended beyond the statutory maximum by judicial action and the exercise of judicial discretion, which is not -- which is not comport with the statutory mandate. But judges are doing it. And they're extending foreclosure mediation -- on an average, foreclosure mediations last six to eight

months. And so there were very serious negotiations between the -- the housing advocates and the banks. And the thought was, well, if we know that these mediations do tend to last between the six and eight months, if they are extended that long by -- by our judges, then we want to make sure that people have a chance to try to work it out without the burden of litigation. And that's how we ended up with an eight-month maximum for the moratorium, not the process itself. The process presumably could continue beyond that eight months by judicial action, but the moratorium would end at eight months.

The way we came up with this -- this, I should have mentioned this earlier, if it wasn't clear -- this was -- this is the product of a long negotiation. It is a deal between the banks and the housing advocates and the good chairman of housing, Chairman Taborsak was also part of this, Chairman Fox. I want to thank the ranking members as well for their participation.

So this was, someone said earlier, the art of compromise. And that's how we got here. Through you.

DEPUTY SPEAKER RYAN:

Thank you, Representative.

Representative Rebimbas.

REP. REBIMBAS (70th):

Thank you, Mr. Speaker.

And I want to thank the gentleman for his response. And I guess it just follows up that I need a little bit more clarification.

Because the courts had 90 days, and based on whether it was a recommendation from the housing specialist, or whatever the case may be, the court has taken upon themselves to be able to extend those 90 days.

With this law, if passed, if the court deems necessary, can they extend more time beyond the eight months?

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Tong.

REP. TONG (147th):

Through you, the statutory mandate is eight months. Through you.

DEPUTY SPEAKER RYAN:

Representative Rebimbas.

REP. REBIMBAS (70th):

Thank you, Mr. Speaker.

And just a further clarification, if the statutory mandate on the foreclosure mediation program is eight months -- actually, let me rephrase that.

I believe it was represented that the foreclosure action can continue after eight months. I'm confused as to how any foreclosure mediation could be productive if, in fact, you have a bank moving forward with the foreclosure.

So, through you, Mr. Speaker, if I can have clarification as to how you can have a productive mediation program if the court, after eight months, is allowing a bank to continue the foreclosure action? Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Tong.

REP. TONG (147th):

Through you, Mr. Speaker.

A good question. That's the point of the legislation. That there's a concern, right now, as the law exists without this legislation, that you have dual tracks. You have a foreclosure mediation process

created by statute and you have a litigation process that happens on its normal course.

Clients such as yours who find themselves in that process are hard pressed to deal with both, and that makes it a difficult process, and -- and, in my view, a less productive one. The idea, frankly, is to give them some space, some breathing room, to give both sides a chance to mediate, to work it out, and to give them eight months to do that.

After that, the bank, of course, like any party to litigation, has legal rights. Those legal rights would commence again after the eight-month period.

Through you.

DEPUTY SPEAKER RYAN:

Thank you, Representative.

Representative Rebimbas.

REP. REBIMBAS (70th):

Thank you, Mr. Speaker.

And I want to thank the gentleman for his responses. I could not disagree more in that regard. I mean, I have been one in advocating for, you know, business rights, et cetera, et cetera, and I would expect myself to stand here and also be able to

advocate for the business rights of banks.

But the practicality of what we're passing right now and the effects that it's going to have on these people in the foreclosure mediation program is absolutely devastating. And I'm going to actually provide specific and detailed examples of that.

What happens is when someone petitions for a foreclosure mediation, and you have a bank then that has to engage in that mediation, you have the person having to provide a variety of different documents. And as earlier, even Representative -- Representative Smith had indicated, once you provide all of those documents -- and we're very fortunate to have a variety of different programs to be considered for, one of which is the Making Home Affordable, which is a federal program.

So you submit those documents in to -- to the bank, to the person who is representing the bank, and you're lucky enough if you can actually get them to admit that they have all of the documents to actually get them to review it. Because what happens is, more often than not, they come back with, you didn't cross the T, you didn't cross an I. Therefore, we're unable

to review your packet. It's not complete. Please resubmit.

Once you find this out, it's already several months into the process. And this is, by all means, us calling on a regular basis to the bank until we can actually get a response. So then you resubmit stuff. And if you're over three months and everything is outdated, you need to get new, updated documents, new bank statements, new signatures from the clients, all the dates have to be changed. You're clearly far beyond or close to the eight-month period.

But then, it doesn't stop there. If the bank actually comes back and says, we're lucky enough to have all of our documents submitted, but now you've been denied for the federal program. What you have to do next is reapply whole new documents, whole new packet, just to be considered for an internal review of the bank if you didn't qualify for the federal program. Let me assure you that you are beyond the eight months thereafter.

So what happens is then you have to go through the same hurdles, Mr. Speaker. And again, you have to provide all of the documents. And you'll be fortunate

enough if they'll say that your -- your application is complete.

It's a very frustrating process for any attorney. It's ten times, if not worse, for someone who has to represent themselves. We're very fortunate in the State of Connecticut to have the mediation program. We're very fortunate to have these housing specialists that are also very patient when it comes to dealing with the banks and the attorneys and these pro se parties.

We are completely, for this one item, as much as this bill might be good in every other aspect, but to set a deadline of eight months and not allow a housing specialist that we entrust with this job, or a judge to make an objective decision as to whether or not they need more time, because no fault of the person who's being foreclosed upon, that the process is being delayed by a bank, is an injustice, and, unfortunately, I think a negative impact on a wonderful program that we had.

For that reason alone, I will not support this, and I would hope that people seriously consider this when they do vote on this bill.

Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative. Will you remark further on the amendment before us? Will you remark further? If not, I will try your minds. All those in favor, signify by saying, aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER RYAN:

Opposed, nay.

REPRESENTATIVES:

Nay.

DEPUTY SPEAKER RYAN:

The ayes have it and the amendment is adopted.

Will you remark further on the bill as amended?
Will you remark further on the bill as amended? If not, will staff and guests please come to the Well of the House. Will the members please take your seats. The machine will be open.

THE CLERK:

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

(Speaker Donovan in the Chair.)

SPEAKER DONOVAN:

Have all the members voted? Have of the members voted? Please check the wrong call board to make sure your vote has been properly cast. If all the members have voted, the machine will be locked, and the Clerk will please take a tally. The Clerk please announce the tally.

THE CLERK:

House Bill 6351 as amended by House "A".

Total number voting	139
Necessary for passage	70
Those voting Yea	122
Those voting Nay	17
Those absent and not voting	12

SPEAKER DONOVAN:

The bill as amended is passed. Are there any announcements or introductions? Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. Is it time now, Mr.

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PART 22
6915-7208**

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So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Also Calendar page 19, Calendar 635, House Bill
6351; Madam President, move to place the item on the
Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Moving to Calendar page 20, Calendar 642, House
Bill 6592 -- I believe --

A VOICE:

It's 65 --

SENATOR LOONEY:

-- that might be --

A VOICE:

-- 95.

SENATOR LOONEY:

-- 6595 --

THE CHAIR:

Five.

SENATOR LOONEY:

Immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber. Immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

Madam President, the items placed on the first Consent Calendar begin on Calendar page 10, Calendar Number 478, House Bill 6488; Calendar 480, House Bill 5256.

Calendar page 11, Calendar 513, substitute for House Bill 6557.

Calendar page 12, Calendar Number 535, substitute for House Bill 6226; Calendar 555, House Bill 6259.

Calendar page 13, Calendar 560, substitute for House Bill 5368; Calendar 567, substitute for House Bill 6157.

Calendar page 14, Calendar 574, substitute for House Bill 6410; Calendar 578, House Bill 6156.

Calendar page 15, Calendar 591, House Bill 6263; Calendar 594, substitute for House Bill 5508; Calendar 595, substitute for House Bill 62 -- 5263.

Calendar page 16, Calendar Number 606, substitute for House Bill 6581; Calendar 609, substitute for House Bill 6501.

Calendar page 17, Calendar 610, substitute for House Bill 6224; Calendar 613, substitute for House Bill 6453.

Calendar page 18, Calendar 614, substitute for House Bill 5068; Calendar 628, substitute for House Bill 5008; Calendars 633, House Bill 6489.

Calendar page 19, Calendar 635, substitute for House Bill 6351; Calendar 640, House Bills, 6559.

Calendar page 20, Calendar 642; House Bill 6595.

Calendar page 21, Calendar 645, substitute for House Bill 6267; Calendar 648, substitute for House Bill 5326; Calendar 650, substitute for House Bill 6344.

Calendar page 22, Calendar 651, substitute for House Bill 6540.

Calendar page 23, Calendar Number 655, substitute for House Bill 6497; Calendar 657, substitute for House Bill 6262; Calendar 658, House Bill 6364; Calendar 659, House Bill 5489.

Calendar page 24, Calendar 660, substitute for House Bill 6449.

Calendar page 36 -- correction -- Calendar page 33, Calendar Number 390, substitute for Senate Bill 1181.

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Calendar page 36, Calendar Number 481, House Bill
5472.

Calendar page 37, Calendar Number 584, substitute
for House Joint Resolution Number 34; Calendar 585,
substitute for House Joint Resolution Number 54;
Calendar 586, House Joint Resolution Number 65,
Calendar 587, House Joint Resolution Number 66.

Calendar page 38, Calendar 588, House Joint
Resolution Number 80; Calendar 589, House Joint
Resolution Number 63; Calendar 590, House Joint
Resolution Number 35; Calendar 620, substitute for
House Joint Resolution Number 45.

Calendar page 39, Calendar Number 621, substitute
for House Joint Resolution Number 47; Calendar 622,
House Joint Resolution Number 68; Calendar 623,
substitute for House Joint Resolution Number 69;
Calendar 624, substitute for House Joint Resolution
Number 73.

Calendar page 40, Calendar 625, substitute for
House Joint Resolution Number 81; Calendar 626, House
Joint Resolution Number 84.

Madam President, I believe that completes the
items placed on Consent Calendar Number 1.

THE CHAIR:

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Thank you.

SENATOR LOONEY:

Thank you, Madam President.

THE CHAIR:

Mr. Clerk, please call for a roll call vote, and the machine will be open.

THE CLERK:

The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber. The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Senator Gomes?

If all members have voted; all members have voted? The machine shall be locked.

And, Mr. Clerk, will you please call the tally.

THE CLERK:

Motion is on adoption of Consent Calendar
Number 1.

Total number voting	36
Those voting Yea	36
Those voting Nay	0

Those absent and not voting 0

THE CHAIR:

Consent Calendar passes.

The Senate will stand at ease for a moment.

(Chamber at ease.)

SENATOR LOONEY:

Madam President?

THE CHAIR:

Yes, Senator.

The Senate will come to order.

SENATOR LOONEY:

Yes. Madam President, the Clerk is in possession of Senate Agenda Number 5 for today's session.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Madam President, the Clerk is in possession of Senate Agenda Number 5, dated Wednesday, June 8, 2011.

Copies have been made available.

THE CHAIR:

Senator Looney.