



CT FAIR HOUSING CENTER

BANKING COMMITTEE

Forum on the Status of PA 08-176, "Responsible Lending and Economic Security Act"

TESTIMONY OF ERIN KEMPLE EXECUTIVE DIRECTOR, CONNECTICUT FAIR HOUSING CENTER

Good afternoon. My name is Erin Kemple. I am the Executive Director of the Connecticut Fair Housing Center. Thank you for inviting me to testify today and share with you our perspective on the status of Public Act 08-176 in the context of the current foreclosure crisis.

As you know, the Center was deeply involved in discussions last year that led to the passage of Public Act 08-176

We do have suggestions for additional action that could be taken to deal with the situation we face today. But first I would like to highlight a few of the many positive elements of the response to the foreclosure crisis we already have in place here in Connecticut.

First and foremost, of course, is the foreclosure mediation program. The Judicial Department deserves an enormous amount of credit for getting the program up and running in record speed after the law took effect. As you have heard, mediation has already allowed hundreds of Connecticut homeowners to remain in their homes. Without this program, we believe many, if not most, of these homes would have been lost by now. The lesson here – exactly what this Committee foresaw when it crafted this program last year – is that bringing homeowners and their lenders together in a supervised environment saves homes.

Our mediation program cuts through the red tape and bureaucratic confusion that exists at so many servicers. Based on our experience, we believe that homeowners have little chance of being able to work through a payment plan or loan modification on their own. They can't get through to the right department or get consistent answers to their questions. I know the staff in your offices confronts the same complaint from your constituents. A critically important feature of the mediation program is its requirement that the bank have someone with authority to enter into an agreement with the homeowner available by telephone or email during the mediation sessions. When we talk to homeowners who have just been served with a foreclosure complaint, we tell them "The bad news is you're in foreclosure. The good news is now you get to participate in foreclosure mediation and you can FINALLY GET THROUGH TO YOUR LENDER."

The second important feature we have in place in Connecticut is a coordinated network of state agencies and nonprofit housing counseling agencies that do everything in their power to help homeowners save their homes. They do this through counseling, negotiation with the lenders, and administration of assistance and refinancing programs, including those established by Public Act 08-176. And no one could be more dedicated to their mission. Employees of the Department of Banking, CHFA and the nonprofit HUD-approved counseling agencies regularly give up their evenings and weekends to attend outreach events and orientation sessions to make sure Connecticut homeowners facing foreclosure get the help that is available.

Everyone in the state who is battling the foreclosure crisis is trying to get out the message that a homeowner's best chance of saving their home from foreclosure is to work with a housing counselor. Because the counselors understand the system, they are better able to cut through the red tape than the homeowner working on their own. Unfortunately, however, the housing

counselors face some of the same challenges when dealing with servicers. They may never talk to the same person twice while working on a client's file, and they face arbitrary and unexplained decision making by the servicer, which wastes their valuable time and makes it difficult for them to do their job.

The other major challenge facing the housing counselors is that they are constantly in a race against time because the foreclosure process will move forward in court even if a homeowner working with a housing counselor is well on their way to a resolution with the lender. As a lawyer, I find it strangely surreal that a party can be negotiating a settlement while at the same time pushing the case to judgment and letting whichever process moves faster to be the one that wins. The shorthand we all share to describe this phenomenon is "The right hand doesn't know what the left hand is doing." It's entirely possible that a judge can be granting a final judgment of foreclosure without having any idea that at the very same moment a housing counselor is putting the finishing touches on a loan modification agreement according to the lender's specifications. In a case like that, the homeowner may send back the loan modification package and be told, "It's too late, because your house has already been foreclosed."

I can almost guarantee that this has already happened somewhere in the state this morning or may even be happening as we speak. Monday is short calendar day. Every Monday, the judges around the state decide hundreds of foreclosure cases. At the Fair Housing Center, we hate Mondays because that's the day people lose their homes.

I have all of today's foreclosure short calendars with me. This is a list of the cases on the calendar for today. For the entire state, there are a total of 1,221 foreclosure matters on the calendar. Of these, 510 are motions for strict foreclosure, which is the last step in the process. Every one of these 510 homeowners faces the prospect of losing their home today. Of those 510,

approximately 60% of them do not have an attorney. And that's just today. Next Monday there will be the same number again.

We don't know how many of these homeowners are working with housing counselors or have potential alternatives to foreclosure, but we do know that many of them lack the knowledge or skill to present the relevant information to the judge. Much of our time at the Fair Housing Center is spent helping homeowners and their housing counselors avoid this situation. Although the housing counselors are constantly in racing against the foreclosure process in court, they do not have lawyers on staff or any regular source of legal help. We have limited staff and are struggling with our own funding crisis, but we make it a priority to provide guidance to the housing counselors, whenever they ask, about the status of their clients' foreclosure cases in court and when their clients need to go to court to explain to the judge what is happening.

We have also begun to hold a series of legal classes for the many homeowners who are trying to represent themselves. The goal is to give them enough information about the foreclosure process to allow them to participate in mediation and present the most relevant information about their situation to the judge. But we are certainly not reaching every homeowner who would stand a chance of saving their home if they had enough information, and our classes are no substitute for a full evaluation of each homeowner's circumstances.

We believe that the efforts of everyone working on behalf of homeowners would be more successful – and the foreclosure process would be better at identifying those homeowners who have a chance of saving their homes – if the process included a more user-friendly opportunity for this kind of evaluation. Some of this is already happening in mediation. We would suggest incorporating a couple of additional features into the mediation program that would make it an even more effective means of identifying alternatives to foreclosure.

First, while mediation does give the homeowner the ability to present a proposal to the lender and get a straight answer, the homeowner is still at the mercy of the lender's timeline. Servicers may take weeks or months to make decisions on loan modification proposals. The amendment of the statute adopted in the November special session – giving the mediator the authority to seek to extend the mediation period to 90 days – deals with this problem to some extent, but it would be avoided altogether if the mediator simply had the authority to allow mediation to continue so long as the process was productive.

Second, the mediation program can only facilitate agreements between homeowners and lenders. The law requires lenders to participate but it does not provide a way to deal with recalcitrant lenders who refuse to consider reasonable loan modifications. In many cases, the lender would recover just as much of the debt under a reasonable loan modification as by foreclosing and trying to sell the property in today's real estate market. The appraisal obtained by the lender for use in the foreclosure case is not necessarily an accurate measure of what the lender will recover in foreclosure. If the lender were required to provide information on the number of bank-owned properties in the surrounding neighborhood, how long they remained on the market, and the ultimate prices received, this would provide the mediators with a valuable tool for facilitating agreement. In cases that were not resolved in mediation, this information could also be provided to the judge to assist in determining whether foreclosure was equitable under the circumstances.

Third, while the statute prohibits final judgment from entering during the mediation period, the normal pleading deadlines remain in place. This means that during mediation the lender is incurring attorneys' fees for its attorneys to appear at mediation sessions – at least \$300 per session – and for the steps required to advance the case toward final judgment – often in the

thousands of dollars. These fees are charged to the homeowner and are often required to be paid up front in a lump sum as a condition of a loan modification, even though they turned out to be unnecessary. Staying the pleading deadlines during mediation would remove this obstacle to workable loan modifications.

Finally, Public Act 08-176 provides important protection against many of the predatory lending practices that have led to the crisis we face today. In particular, the law prohibits making subprime loans unless the lender has a reasonable belief that the borrower has the means to repay the loan, including taxes and insurance on the property. This law of course was not in effect at the time of the loans that are now in default or foreclosure. However, it does now stand as an expression of Connecticut's public policy and imposes reasonable underwriting standards lenders should have been following all along. We would encourage the Committee to consider whether the disregard of these underwriting standards should be incorporated into the decision of whether foreclosure is fair in a particular case. One possibility is allowing the homeowner to propose a payment arrangement that would provide a reasonable recovery for the lender while allowing the homeowners to remain in the home. There are certainly other possibilities. We welcome the Committee's continued focus on this crisis and stand ready to work with the Committee and provide any assistance we can.