

# Connecticut Mortgage Bankers Association 2017 Legislative Session Report

Below you will find Gaffney, Bennett and Associates' 2017 End of Session Report for Connecticut Mortgage Bankers Association. This document highlights the issues of concern which we have engaged in on behalf of CMBA during the 2017 Connecticut Regular Session.

As always, please do not hesitate to contact us with any questions or concerns.

## **Report Contents:**

- Page 2 - *Special Session Budget Update*
- Page 2 - *Lead Generators*
- Page 3 - *Residential Assessed Clean Energy – RPACE*
- Page 4 - *Certified Mail Vs. E-Mail /Supervisory Requirements / Ability to Supervise*
- Page 5 - *Crumbling Foundations*
- Page 6 - *Mortgage Recording Tax / Costs*
- Page 7 - *Appraisals*
- Page 8 - *Blight*
- Page 9 - *Foreclosure Mediation*
- Page 9 - *Foreclosure / Mortgages / Liens /CIOA's / Reverse Annuity Mortgages*
- Page 10 - *Labor / Human Resources*

# Connecticut Mortgage Bankers Association 2017 Legislative Session Report

## *Special Session Budget Update*

Absent a budget agreement between Governor Malloy's administration and the four caucuses of the General Assembly, where Democrats control the House by seven votes and the Senate is tied 18-18, during the regular session, and now three weeks not into the new fiscal year, Connecticut continues on a path of brinkmanship—fiscally and politically.

On July 1<sup>st</sup>, when the House refused to consider a three-month "mini-budget" put forth by the Governor to buy more time to negotiate a solution to a yawning \$5 billion 2018-19 deficit, the process more or less came to a halt. The House Speaker had hoped to have a budget to vote on today, August 18<sup>th</sup>, but that has fallen through over deep divisions between Republicans and Democrats in the House and Senate regarding taxes (Republicans have opposed any increases) and union concessions negotiated by the Governor's office and anticipated to save \$1.5 billion. While all parties have relied upon the union savings in each of their budgets to help close the budget deficit, Democrats and Republicans differ greatly on how to achieve them, with Republicans pushing for input and legislative oversight of the state employee contracts and Democrats seeking to preserve workers' collective bargaining rights.

The State Employees Bargaining units have approved the Malloy concession package and the House Speaker has promised an up-or-down vote in his chamber on the agreement, despite misgivings about the deal even among members of his caucus who are not convinced the savings can be realized.

Finally, with no agreement in sight, the Governor continues to run the state by executive order, cutting deeply -- as much as 10-percent to 20-percent --in areas over which he has control in order to meet current spending demands. With each passing day, more people are feeling the pinch and rating agencies and bondholders are taking notice.

### **Lead Generators**

#### ***SB 906 - AN ACT CONCERNING LEAD GENERATORS OF RESIDENTIAL MORTGAGE LOANS***

#### ***Status: Public Act No. 17-38***

As introduced by the Banking Committee, this bill creates a new license category for "lead generators" (i.e., mortgage professionals who sell information identifying new customers for residential mortgage loans) administered by the Department of Banking. Starting January 1, 2018, the bill prohibits anyone from acting as a lead generator unless they obtain this license.

Among other things, the bill: establishes licensure requirements and sets fees for initial licenses and renewals; establishes related record keeping and notification requirements for licensees; requires lead generators to include a disclosure statement in their residential mortgage loan advertisements and lead solicitations; and gives the banking commissioner investigatory and enforcement authority over licensees, including allowing him to take certain disciplinary actions against licensees who fail to comply with the bill's requirements.

The bill's licensing requirement does not apply to: federally insured banks and credit unions, including their wholly-owned subsidiaries and operating subsidiaries; licensed mortgage lenders, mortgage correspondent lenders, and mortgage brokers, unless the person's license is suspended; consumer reporting agencies; and employees engaged in lead generator activities on behalf of a licensed lead generator or a person exempt from licensure.

Senate Amendment "A" eliminates the provision prohibiting other licensed mortgage professionals from using an unlicensed lead generator or helping someone conduct lead generator business without a license.

---

**Residential Assessed Clean Energy - RPACE**

***SB 973 - AN ACT CONCERNING A RESIDENTIAL SUSTAINABLE ENERGY PROGRAM***

***Status: Dead***

This bill would establish a financing mechanism for residential energy improvement loans. The bill was voted out of the Energy & Technology Committee by a vote of 14 to 10 but ultimately died due to inaction by the Finance Committee. Similar legislation proposed in in 2015 and 2016 failed to pass.

The financing mechanism called for in the bill would create an unconventional super priority lien that jumps ahead of existing mortgage loans that were made with a good faith expectation of lien status. In the event of a foreclosure, unlike a conventional lien, the RPACE lien would survive the foreclosure judgement and would stay in place to secure all of the remaining payments that are owed after the date of the foreclosure.

## **E-Mail vs. Certified Mail / Supervisory Requirements**

### **HB 7141 - AN ACT CONCERNING SECURED AND UNSECURED LENDING**

**Status: Public Act No. 17-233**

#### **E-Mail vs. Certified Mail**

As introduced by the Department of Banking, this bill makes various changes to the banking laws. Including **Sections 3-6** which would allow the Department of Banking to send certain notices by email instead of certified mail.

Current law generally requires the commissioner to provide certain notices by registered or certified mail, return receipt requested, or by an express delivery carrier that provides a dated delivery receipt. The bill makes an exception by allowing the commissioner to provide notices to licensees by personal delivery. By law, "personal delivery" means delivery directly to the intended recipient or the recipient's designated representative and includes email to an email address identified by the recipient as an acceptable means of communication.

Under the bill, the commissioner may notify licensees by email of any:

1. violation, found as a result of an investigation, of Connecticut banking laws, including any banking law, regulation, rule, or orders issued pursuant to such laws (§ 3);
2. license suspension, revocation, or nonrenewal (§ 4); and
3. violation he suspects has occurred, is occurring, or is about to occur (§ 5).

Under the bill, notice sent by email is deemed received by the licensee on the date the individual to whom it was sent actually receives it or seven days after the notice was sent, whichever is earlier.

**Legal Entity.** For a licensee that is not a natural person, the email address of the individual designated as primary contact by the licensee in the contact employee field on the system constitutes an acceptable means of communication for personal delivery, and a notice sent by email to the primary contact at the designated email address constitutes notice.

**Natural Person.** For a licensee who is a natural person, the email address identified by the licensee on the system constitutes an acceptable means of communication for personal delivery, and a notice sent by email to the designated email address constitutes notice.

## **Supervisory Requirements**

In addition, **Sections 9, & 26 -28**, as proposed by the Department of Banking, would require any person, other than an individual, who is required to be licensed and is subject to the mortgage lender, correspondent lender, broker, loan originator and mortgage servicing laws, and any qualifying individual or branch manager must establish, enforce, and maintain policies and procedures reasonably designed to achieve compliance with the statutory list of prohibited actions for mortgage lenders, correspondent lenders, brokers, and loan originators and loan processors and underwriters.

The bill requires any individual who (1) is required to be licensed as a mortgage loan originator; (2) is subject to the mortgage lender, correspondent lender, broker, and loan originator laws; and (3) supervises loan processors or loan underwriters to enforce such policies and procedures.

Under the bill, failure to establish, enforce, and maintain the required policies and procedures is a violation if such failure resulted in conduct that violated (1) any federal or state mortgage lender-, correspondent lender-, broker-, or loan originator-related laws

The effective dates of Sections 9 and 28 of this legislation are July 1, 2018.

### ***HB 7019 - AN ACT CONCERNING THE DEPARTMENT OF BANKING'S ENFORCEMENT AUTHORITY, THE ISSUANCE OF CERTAIN REPORTS, REQUIRING THE RETURN OF CERTAIN PORTIONS OF SECURITY DEPOSITS AND MAKING MINOR REVISIONS TO THE BANKING STATUTES***

#### ***Status: Public Act No. 17-236***

This bill this bill makes various changes to many unrelated provisions in the banking statutes.

Most importantly, it delays, by nine months (July 1, 2018), the effective date of a provision in HB 7141, that requires mortgage lenders, correspondent lenders, brokers, loan originators, and loan processors and underwriters to establish, enforce, and maintain policies and procedures reasonably designed to achieve compliance with the statutory list of prohibited acts for such licensees. The effective date for these same requirements that are to be applied to mortgage servicers is also July 1, 2018.

In addition, it establishes an eight-member task force to study methods to prevent the issuance of mortgages to persons with excessive blight fines or who have violated nuisance abatement laws.

## **Crumbling Foundations**

### ***HB 5134 - AN ACT CONCERNING HOMEOWNERS INSURANCE POLICIES AND COVERAGE FOR THE PERIL OF COLLAPSE***

#### ***Status: Dead***

This bill would have required insurance companies that deliver, issue for delivery, renew, amend or endorse home owners insurance policies in this state to provide coverage for the peril of collapse and any mitigation undertaken to prevent all or part of a covered dwelling from falling down or caving in.

### ***HB 5137 - AN ACT AUTHORIZING CATASTROPHE SAVINGS ACCOUNTS FOR HOMEOWNERS INSURANCE POLICYHOLDERS AND ESTABLISHING AN INCOME TAX DEDUCTION FOR HOMEOWNERS SUFFERING CERTAIN UNINSURED PROPERTY LOSSES***

#### ***Status: Dead***

This bill would have authorized the establishment of Catastrophe Savings Accounts for homeowners insurance policyholders, provide for contributions to such accounts to be tax deductible for purposes of the personal income tax, and establish a tax deduction for expenses paid to reconstruct or repair the taxpayer's dwelling unit where such dwelling is substantially impaired by a faulty foundation, the impairment threatens the structural integrity of such dwelling and such expenses are not covered under a homeowners insurance policy.

### ***HB 6738 - AN ACT CONCERNING DEFICIENCY JUDGMENTS AND CRUMBLING FOUNDATIONS***

#### ***Status: Dead***

This bill would have provided that no deficiency judgment may be sought or enforced against any one or more individual mortgagors, mortgage borrowers or guarantors, where the deficiency arises from an impairment to the fair market value of real estate due to the presence of a failed or failing residential foundation associated with the presence of pyrrhotite.

### ***HB 6945 - AN ACT CONCERNING QUALITY CONTROL PLANS FOR COMPANIES THAT SELL CONCRETE AGGREGATE***

#### ***Status: Dead***

This bill would have required a company that sells concrete aggregate to establish and make available for inspection a quality control plan that requires such concrete

aggregate to comply with relevant State Building Code requirements and ASTM C-33, Standard Specification for Concrete Aggregates.

***HB 7175 - AN ACT CONCERNING THE TESTING OF NATURAL GRAVEL AGGREGATES FOR THE PRESENCE OF PYRRHOTITE***

***Status: Dead***

As introduced by the Planning and Development Committee, this bill would have prohibited anyone from installing a residential concrete foundation made in whole or in part of material (including recycled material) known to contain 0.23% or more pyrrhotite, by volume. The bill also establishes several requirements related to testing natural gravel aggregates (hereinafter “aggregates”).

(b) Not later than January 1, 2018, the Commissioner of Consumer Protection shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, establishing requirements for the testing and sale of natural gravel aggregates, including, but not limited to, a requirement that natural gravel aggregates that test positive for the presence of the mineral pyrrhotite in an amount equal to or greater than .23 per cent by volume shall not knowingly be used or sold for use in residential concrete foundations.

***SB 806 - AN ACT ESTABLISHING THE CRUMBLING FOUNDATION ASSISTANCE PROGRAM AND ASSISTING HOMEOWNERS WITH CRUMBLING FOUNDATIONS***

***Status: Dead (Some version may still be alive in budget negotiations.)***

As introduced by the Public Safety and Security Committee, this bill would have provided a framework within which municipalities, state government and others could establish initiatives to assist owners of residential properties with concrete foundations damaged by the presence of pyrrhotite (“crumbling foundations”).

Of particular note was a provision that would imposes, for seven years starting March 2019, an annual \$12 surcharge on certain residential property insurance policies, the proceeds of which must be deposited in the assistance fund.

---

***Mortgage Recording Tax / Costs***

***HB 6139 - AN ACT ESTABLISHING A MORTGAGE RECORDING TAX***

***Status: Dead***

This bill would have imposed a tax of twenty-five cents per one hundred dollars of mortgage debt or obligation secured for the privilege of recording a mortgage on real

property located within the state, such tax to be payable at the time of recording and remitted to the state for distribution to municipalities.

***SB 508 - AN ACT AUTHORIZING AN ADDITIONAL CONVEYANCE TAX FOR THE PURPOSE OF FUNDING OPEN SPACE PURCHASES***

***Status: Dead***

This bill would have authorized towns to impose an additional one per cent conveyance tax on land transfers and have proceeds from such conveyance tax fund the purchase of open space by such municipalities.

SB 508 was referred to the committee on Environment, and died in the committee process when no further action was taken.

***Governor's Budget Proposal***

Included in the Governor's budget proposal, which did not pass, is an increase in the real estate conveyance tax from 1.25 percent to 2 percent on real estate valued over \$800,000. While this proposal did not pass in the regular session, it could still be considered as part of the Fiscal Year 2018-19 state budget that will ultimately be adopted in the current special session.

---

***Appraisals***

***SB 780 - AN ACT CONCERNING BROKER PRICE OPINIONS***

***Status: Dead***

As introduced by the Banking Committee, this bill would have allowed a licensed real estate broker or salesperson who is not a certified appraiser or a licensed provisional appraiser to estimate the probable selling or leasing price of real estate for a fee or other valuable consideration under specified circumstances. Under the bill, the broker or salesperson may do so if: he or she does not hold himself or herself out as an appraiser; in the ordinary course of business, he or she (a) performs comparative market analysis or (b) provides price opinions or estimates of the probable selling or leasing price of real estate; and the analysis, opinion, or estimate is not referred to or construed as an appraisal.

***HB 5432 - AN ACT CONCERNING PAYMENT FOR A COMPLETED APPRAISAL OR VALUATION ASSIGNMENT***

***Status: Dead***

This bill would have established procedures for payment of an appraiser by an appraisal management company for a completed appraisal or valuation assignment, including the submission of invoices by appraisers and determination of reasonable fees for the services provided, and would have shortened the time frame for such payment from forty-five days to fourteen days.

---

***Blight***

***HB 5223 - AN ACT ESTABLISHING A TASK FORCE TO STUDY METHODS TO PREVENT THE ISSUANCE OF MORTGAGES TO PERSONS WITH EXCESSIVE BLIGHT FINES OR PERSONS WHO HAVE VIOLATED NUISANCE ABATEMENT LAWS***

***Status: Dead***

As introduced by the Banking Committee, this bill would have established a task force to study methods to prevent the issuance of mortgages to persons with excessive blight fines or who have violated nuisance abatement laws. Not later than July 1, 2018, the task force shall submit a report on its findings and recommendations to the joint standing committee on Banking.

The contents of this proposal was included in HB 7019, which was enacted into law.

***HB 7028 - AN ACT CONCERNING RESPONSIBILITY FOR MAINTENANCE OF AN ABANDONED PROPERTY DURING A FORECLOSURE ACTION***

***Status: Dead***

As introduced by the Banking Committee, this bill would have plaintiff in a foreclosure action responsible for maintenance of the property being foreclosed if such property is abandoned. HB 7028 clarifies existing statute. This bill was featured in a public hearing by the Banking Committee, and died in the committee process when no further action was taken.

***SB 1033 - AN ACT CONCERNING MUNICIPAL FORECLOSURE ACTIONS ON TAX LIENS AND LIENS ON BLIGHTED REAL ESTATE***

***Status: Public Act No. 17-126***

As introduced by the Planning and Development Committee, this bill makes privileged, with respect to assignment for trial, actions to foreclose a municipal tax or blight lien. The bill applies to cases commenced on or after January 1, 2018. Existing law qualifies cases in a number of categories for privileged assignment, including cases related to municipal sewer assessments, franchise agreements, or involving a party age 65 or over (see also § 14-9 of the Connecticut Practice Book).

---

**Foreclosure Mediation**

***SB 162 ANACT EXTENDING THE FORECLOSURE MEDIATION PROGRAM***

***Status: Dead***

This bill was proposed in an effort to bring about an end to the foreclosure mediation program, which is currently scheduled to sunset on June 30, 2019. Housing advocates are expected to try and make this a permanent program in the 2018 legislative session.

---

**Foreclosure / Mortgages / Liens / CIOA's / Reverse Annuity Mortgages**

***HB 6296 - AN ACT CONCERNING FORECLOSURE BY COMMERCIAL POWER OF SALE***

***Status: Dead***

This bill would have authorized foreclosure of a mortgage by statutory power of sale, other than a mortgage of owner-occupied residential real property or a mortgage granted by a religious corporation.

***HB 6918 - AN ACT CONCERNING LIENS FOR UNPAID EMPLOYEE WAGES***

***Status: Dead***

This bill would have allowed an employee or the Labor Commissioner to place a lien on any property of an employer who fails to pay wages to an employee in accordance with the provisions of sections 31-58 to 31-60, inclusive, of the general statutes or section 31-71a or 31-71i of the general statutes, or fails to compensate such employee in accordance with section 31-76k of the general statutes, in the amount that the Labor Commissioner or employee will be entitled to recover from the employer in a civil action for such failure.

***HB 6989 - AN ACT PROVIDING PROTECTIONS FOR CONSUMERS APPLYING FOR REVERSE MORTGAGES***

***Status: Dead***

As introduced by the Aging Committee, this bill would have expanded the requirements for reverse annuity mortgages, a type of mortgage that allows elderly homeowners to convert accumulated home equity into liquid assets. The bill establishes counseling requirements that must be met before any entity, including a state or federally

chartered bank or credit union, may accept a final and complete reverse annuity mortgage loan application or assess any fees for such a mortgage. It also required reverse mortgage lenders to receive and store a signed certification from the borrower or his or her authorized representative that the counseling requirements were met.

***HB 7305 - AN ACT CONCERNING REVISIONS TO VARIOUS PROVISIONS OF THE GENERAL STATUTES***

(Common Interest Ownership Act - CIOA)

***Status: Public Act No. 17-224***

As introduced by the Judiciary Committee, this bill, The Common Interest Ownership Act (CIOA) allows unit owner associations of common interest communities to adopt rules apart from their declarations and bylaws. This bill narrows CIOA's definition of "rule" and clarifies the permissible scope of such rules.

Current law provides that such rules govern the conduct of individuals or entities or the use or appearance of property. The bill instead specifies that such rules regulate (1) conduct occurring within the common interest community or (2) the use, maintenance, repair, replacement, modification, or appearance of the common interest community.

Under existing law, unchanged by the bill: common interest communities must follow certain procedural requirements when adopting rules; there are certain limits on matters that may be adopted as rules; and an association's internal business operating procedures need not be adopted as rules

***SB 121 - AN ACT CONCERNING THE AVAILABILITY OF ELECTRONIC FUNDS AT THE TIME OF CLOSING ON A MORTGAGE LOAN***

***Status: Dead***

This bill would have provided that any electronic funds required in connection with obtaining a mortgage loan be payable and available to the parties at the time of closing on such loan.

---

***Labor / Human Resources***

***HB 5210 - AN ACT CONCERNING VARIOUS PAY EQUITY AND FAIRNESS MATTERS***

***Status: Dead***

This bill would have prohibited employers from asking about a prospective employee's wage and salary history before negotiating his or her job offer and compensation, unless the prospective employee has already voluntarily disclosed the

history. It also makes several changes to the defenses available to employers in a gender wage discrimination lawsuit. It would have prohibited an employer from using an employee's prior wage and salary history as a defense in the suit; prohibits an employer from using a seniority system to defend its pay differentials if the employer reduces an employee's seniority for time spent on leave due to a pregnancy-related condition or protected family and medical leave; and provides an employer with an affirmative defense if, during the three years prior to the suit, the employer (a) completed a self-evaluation of its pay practices in good faith and (b) can demonstrate that it has made reasonable progress to eliminate gender-based wage differentials for equal work.

***HB 5591 - AN ACT CONCERNING PAY EQUITY IN THE WORKFORCE***

***Status: Dead***

As introduced this bill would have limited the defenses available to employers in a gender wage discrimination lawsuit brought under the state's labor law and would have prohibited employers from using an employee's prior wage and salary history as a bona fide factor defense, and prohibited employers from using a seniority system to defend its pay differentials, if the employer reduces an employee's seniority for time spent on leave due to a pregnancy-related condition or protected family and medical leave.

***HB 6208 - AN ACT INCREASING THE MINIMUM WAGE***

***Status: Dead***

As introduced by Labor and Public Employees Committee, this bill would have increased the state's minimum hourly wage from \$10.10 to \$11 on January 1, 2018; \$12 on January 1, 2019; \$13 on January 1, 2020; \$14 on January 1, 2021; and \$15 on January 1, 2022.

Once the minimum wage reached \$15 in 2022, the bill indexed any future increases to annual increases in the consumer price index (CPI). It required the labor commissioner to announce, by July 15 each year, an adjustment to the minimum wage equal to the previous year's percentage increase in the CPI for urban wage earners and clerical workers in the northeast urban area of New York-Northern New Jersey-Long Island, NY-NJ-CT-PA.

***HB 6212 - AN ACT CONCERNING EARNED FAMILY AND MEDICAL LEAVE***

***Status: Dead***

As introduced by the Labor and Public Employees Committee, this bill would have created the Family and Medical Leave Compensation (FMLC) program to provide wage replacement benefits to certain employees taking leave under the state's Family and Medical Leave Act (FMLA) or the family violence leave law, as amended by the bill.

It provided them with up to 12 weeks of FMLC benefits over a 12-month period in an amount equal to the employee's average weekly net earnings during their highest earning

quarter within the five most recently completed calendar quarters, up to a maximum of \$1,000 per week (or an inflation adjusted equivalent).

The program is funded by employee contributions. It does not cover the state or state employees and any references to “employers” or “employees” below do not include them. Under the bill, employees eligible for benefits (“covered employees”) are: people who earned at least \$2,325 (or an inflation adjusted equivalent) from one or more employers during their highest earning quarter within the five most recently completed calendar quarters and are employed by an employer with at least two employees or unemployed and sole practitioners and self-employed people who enroll in the program.

The bill required the Department of Labor (DOL) to administer the FMLC program and, among other things, determine the amount that employees must contribute to the program to ensure its solvency and that total employee contributions are at least \$4 million per month.

The bill also changes various provisions of the state's existing FMLA and family violence leave law, which generally require certain employers to provide unpaid leave to employees for various reasons related to their health or their family members' health.

Among other things it: expands the FMLA's coverage from private-sector employers with at least 75 employees to all employers with at least two employees, , but not the state; eliminates an employer's ability to require an employee taking FMLA leave to use his or her employer-provided paid sick time or other employer-provided paid leave; and adds to the family members for whom an employee can take FMLA leave to include the employee's siblings, grandparents, and grandchildren (including those related by marriage).

### ***HB 6461 - AN ACT CONCERNING UNEMPLOYMENT COMPENSATION***

#### ***Status: Dead***

As introduced by the Labor and Public Relations Committee, HB 6461 would have made several changes to unemployment benefits and how they are calculated. It: requires benefits to be based on a claimant's average quarterly wages over their three highest earning quarters (which potentially decreases benefits for some claimants); increases the minimum weekly benefit from \$15 to \$50; increases the minimum base period earnings required to qualify for the minimum benefit from \$600 to \$2,000; and prohibits annual increases in the maximum weekly benefit if the unemployment trust fund holds less than 70% of the amount needed to provide one year of benefits at a recession level payout rate.