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2017 LEGISLATIVE UPDATE

It is that time of year again! The 2017 Connecticut General Assembly legislative session ended at the stroke of midnight on June 7. Despite the “elephant in the room” for the vast majority of the municipalities, citizens and the business community of Connecticut (also known as the biennial budget) not having been enacted, the legislature has passed and Governor Malloy has signed new legislation that should be noted by the Banking and Financial Services Industry in Connecticut. While there is the possibility of additional legislation resulting from the upcoming special session, which will likely revolve almost exclusively around the budget, below are some of the already enacted Public Acts which may affect Banking and Financial Services from the 2017 session.

Public Act 17-8: An Act Raising the Asset Limitation for Community Banks and Community Credit Unions.

This Act raises the asset limits of community banks and credit unions chartered and domiciled within the State of Connecticut from Five Hundred Million Dollars (\$500,000,000.00) to One Billion Dollars (\$1,000,000,000.00). The Act amends the definitions set forth within Connecticut General Statutes section 3-24j.

Public Act 17-26: An Act Concerning Debit Card Fraud and Penalties for Collection of Rental Payments on Foreclosed Property.

This Act, which amends Connecticut General Statutes section 53-128a, *et seq.*, includes a new section, effective October 1, 2017 which provides for penalties under Connecticut’s penal law for a mortgagor’s continued collection of rental payments from tenants in properties which have been foreclosed. Section 7 of the Act states, “[a]ny previous mortgagor of real property against whom a final judgment of foreclosure has been entered, who continues to collect rental payments on such property after passage of such mortgagor’s law day, and who has no legal right to do so, shall be subject to the penalties for larceny under sections 53a-122 to 53a-125b, inclusive, of the general statutes depending on the amount involved.”

The intent of the Act is to provide recourse to a mortgagee in the event a former mortgagor continues to collect rental payments notwithstanding the foreclosure of the property where the tenants reside and continue to pay. However, there appear to be a few potential issues with the verbiage and mortgagee’s election to seek enforcement of this new section.



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First, the Act specifically references that it is applicable only after “...passage of such mortgagor’s law day...” which would most likely be interpreted by a court as applicable only in instances of a judgment of strict foreclosure and not in cases of a judgment of foreclosure by sale where the mortgagee is the successful bidder and takes title by operation of a committee deed.

Secondly, the Act does not provide a private civil right of action for the mortgagee to pursue the former mortgagor for damages but rather is codified within the penal code itself. It appears that, to pursue a mortgagee’s rights, a complaint must be filed with a local law enforcement agency for investigation and pursuit of potential criminal charges.

WHAT DIDN'T PASS?

So, now that we have looked at a few pieces of legislation that were passed and enacted (there are additional matters pending signature by Governor Malloy so stay tuned for further updates), let’s shift focus and take a look at some proposed bills that were not passed during the regular session. Some of these bills were undoubtedly on the radar of the Banking and Financial Services industry for obvious reasons while others may not have been but are definitely worth noting.

SB 162: An Act Extending the Foreclosure Mediation Program.

This Act would have extended the sunset date of the foreclosure mediation program to December 31, 2019. The foreclosure mediation program is currently scheduled to sunset on June 30, 2019.

HB6296: An Act Concerning Foreclosure by Commercial Power of Sale.

This Act would have permitted foreclosure of properties other than owner-occupied residential property or property owned by a religious organization to be foreclosed by statutory power of sale (non-judicial process).

HB 6139: An Act Establishing a Mortgage Recording Tax.

This Act would have created a new tax on the recording of mortgage deeds in the state of Connecticut (separate from conveyance taxes and recording fees already in place) of 0.25 per \$100.00 of mortgage debt evidenced by the deed.



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HB 6738: An Act Concerning Deficiency Judgments and Crumbling Foundations.

This Act would have precluded a foreclosing party's right to seek a deficiency judgment after foreclosure of a property which is affected by a diminution in value as a result of a "crumbling foundation" caused by the presence of pyrrhotite in the concrete foundation provided the mortgagee was a named insured under any policy of homeowner's insurance covering the property.

HB 7028: An Act Concerning Responsibility for Maintenance of an Abandoned Property During a Foreclosure Action.

This Act would have amended the foreclosure registration requirements to provide that a foreclosing plaintiff would receive notice of blight or other municipal code violations of abandoned property subject to a foreclosure proceeding. The Act also would have imposed a requirement for a foreclosing plaintiff to remedy the condition of the property or be subject to imposition of the statutory remedies in favor of a municipality to remedy or pursue action for remedy of the blight or code violations against the foreclosing plaintiff.

HB 7142: An Act Concerning the Assignment of Certain Liens and Relief for Homeowners Under the Emergency Mortgage Assistance Program.

This Act would have imposed limitations on municipal tax, water and/or sewer liens that could be transferred to a third party assignee including a minimum accrued amount due of Three Thousand Dollars (\$3,000.00) in most instances as well as substantially expanding the notice requirements for assignees to taxpayers and parties of record (i.e. mortgagees). The original Act also proposed expanding the provisions of the Emergency Mortgage Assistance Program ("EMAP") to permit applications by parties facing delinquent municipal tax, water and/or sewer liens for assistance (this provision was removed from the bill at the committee level).

Additional information and the text of any of the referenced Public Acts can be obtained at: <https://www.cga.ct.gov/asp/CGATodayFileCopies/CGAIIIPA.asp> or by contacting any of the members of SGL's Banking and Financial Industry practice group whose bios and contact information can be found at www.sglawgroup.com.