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Government of the District of Columbia



Department of Insurance, Securities and Banking

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Testimony of  
**Gennet Purcell**  
Commissioner

*A Public Hearing*  
*On*

*Bill 18-691,*  
*Saving D.C. Homes from Foreclosure*  
*Act of 2010*

*and*

*Bill 18-720,*  
*Equal Access to Employment for All*  
*Act of 2010*

Committee on Public Services and Consumer Affairs  
Muriel Bowser, Chairperson  
Council of the District of Columbia

June 14, 2010  
1 PM

John A. Wilson Building  
1350 Pennsylvania Avenue, NW, Room 500  
Washington, DC 20004

Good afternoon Chairperson Bowser, Members of the Committee on Public Services and Consumer Affairs, and Committee staff. I am Gennet Purcell, Commissioner of the Department of Insurance, Securities and Banking (“DISB” or “Department”) and I appreciate the opportunity to present testimony today on Bill 18-691, the Saving D.C. Homes from Foreclosure Act of 2010 (“Bill”).

In summary, the Bill would require mortgage lenders to provide homeowners the opportunity for mediation prior to foreclosure. It also would, under certain conditions, provide a rental option, at market rate to the former homeowner of the foreclosed property.

It is clear from events of the last few years that the problems caused by foreclosures are serious and requires our full attention and effort to mitigate the consequences both on homeowners, and on the District economy as a whole. Currently, the District’s residential mortgage foreclosure procedure generally is limited to the filing of a 30-day notice with the borrower(s) and with the Office of the Recorder of Deeds.

Needless to say, there appears to be a huge void in the process that generally leaves the homeowner with very few options and little support in the face of a potential foreclosure of his or her home. To fill this void, concerted efforts have been made throughout the various agencies of the District Government, and other local community organizations, to provide guidance, assistance and direction to residents facing foreclosure. In fact, DISB is an active member of the Interagency Foreclosure Task Force spearheaded by the Department of Housing and Community Development (DHCD) that shares information

on relevant trends or emerging issues related to foreclosures in the District and explores options to address them and to assist homeowners with mortgage difficulties.

In addition, the Department, in its regulatory role, receives many consumer inquiries and complaints involving foreclosure issues. In many of those cases, DISB has been able help in terms of delaying foreclosure sales and providing housing resources to distressed homeowners.

### Foreclosure Mediation

The Department is supportive of further efforts to reduce foreclosures and the adverse impacts on borrowers who are unable to avoid foreclosure and Council's efforts to improve the District's foreclosure process through the introduction of the Bill. My experience has shown that communications, forced or otherwise, between homeowners and lenders result in an increased level of responsiveness by both parties and an overall better result. In the best case, it can work to require lenders to respond to homeowners' who want to work out an arrangement so they can keep their home. Where there is no communication and possibilities exist, there is simply no way of working it out. A best-practices approach to foreclosures in the District of Columbia that includes mandatory mediation will either help homeowners keep their homes or arrange for a "graceful exit." Best practices will also help servicers shortcut the foreclosure process, saving them and their investors time and expense and resulting in an economically superior outcome, help conserve struggling homeowner's resources, reduce homeowner's exposure to foreclosure rescue scams, and ultimately help communities reduce the tax and social costs of foreclosure.

Local government and law makers have an important role to play in expanding the implementation of mandatory mediation programs at the state and local level, as described below. Given the magnitude of the crisis and the degree to which the federal government is already invested in mortgages, it is appropriate that local government take a more direct role in providing opportunities for mediation and assistance, through modernization of the foreclosure statutes. DISB supports the Bill's establishment of a foreclosure mediation process with a third party mediator as an added protective layer to enhance consumers' rights.

The Department believes, however that there are certain provisions in the Bill that warrant further review and consideration. For example, definitions in the Bill should be modified to provide more clarity by reconciling the definition of terms in the Bill to those in other sections of the District of Columbia Banking Code, particularly, the Mortgage Lender and Broker Act of 1996. This will avoid any misinterpretation and ensure seamless implementation of the Bill's provisions. In doing so, we suggest some changes to the terms "lender" and "mortgage" and suggest a definition of "Notice of Foreclosure" be added. We also believe that the mediation process could be simplified.

Other issues that need to be addressed include expanding the pool of persons to serve as a mediator as the Department does not have authority over court personnel, staffing and resources necessary to support and the Mediation Administrator. Another issue that should be reviewed is the issue of inability to pay the mediation fee on the part of a borrower. Additionally, the Bill should contain some type of transition period to provide for rulemaking and implementation. Along those lines, the Committee might give some

thought to a general moratorium on foreclosures in the District as a whole, until this mediation process is formally established. Additional suggestions from the Department include: extending the District's foreclosure timetable, adding judicial review to further protect residents, empowering the Recorder of Deeds office to review and reject any improper notice filings, adding a consumer right of rescission, which gives the homeowner up to 10 days after the statement of audit account of the foreclosure sale to rescind an improper sale, allow for the appointment of a receiver in the case of a willful violation of the Foreclosure statutes.

### Rental Option

Turning now to section 4 of the Bill, the Department supports the Council's intent to assist homeowners with housing subsequent to the foreclosure of their home. However, as drafted, the Department cannot support the Rental Option for Former Homeowners section 4 of the Bill. DISB believes an unintended consequence of the current draft of the legislation would be the adverse impact upon our housing and mortgage market resulting in harm to some of the people the Bill is attempting to assist. For example, the Rental Option is not limited to any particular type of mortgage loans, such as those made during the housing bubble. Rather, the Rental Option would apply to all existing and all future loans. The U.S. House of Representatives and the Arizona State Legislature have both introduced similar legislation, but both of their bills only apply to loans originated before July 1, 2007. In the absence of a stated origination date, we believe that the legislation would encourage mortgage lenders to withdraw from the District's market, thus reducing the ability of consumers to obtain loans or refinance expensive loans.

The Department suggests that the Bill include provisions for the mortgage lender to regain possession at the end of the lease. As written, it would appear that mortgage lenders would have to go to Landlord Tenant Court to recover possession of the foreclosed house at the end of the proposed 12-month statutory lease term.

The Department suggests that final provisions of the Bill include enforcement provisions to ensure compliance with section 4. Further, the Bill in its current form does not address either the interest of the secondary lien holders of the foreclosed property, or the likelihood of the property being purchased by a third party at the foreclosure sale.

DISB appreciates the confidence the Council has shown in the Department but respectfully notes that there are certain areas that are clearly outside the Department's area of expertise or jurisdiction and would be more expertly served in other Agencies. Specifically, the Department suggests that the provision requiring DISB to license and certify independent appraisers be repealed since appraisers are currently licensed by the Real Estate Commission. Further, the Department believes that the area of the legislation which involves District of Columbia Superior Court personnel should be clearly stated in the law as a requirement of that body.

It is also important to note that presently, DISB is not administratively funded to enable it to significantly expand its foreclosure-related activities without additional FTE support. As you may recall, the Department derives none of its funding from local funds, rather all of its revenue is based on fees and assessments from the industry it supervises. And, as I have previous noted on other occasions; those revenues have fallen dramatically

with the rapid shrinkage in the number of firms engaged in mortgage activities. The point here is that the Bill will have budgetary consequences and that consideration needs to be given to an alternate source of funding to ensure successful implementation of the goals envisioned in the Bill.

The concept of a rental option in the Bill is similar to the recently introduced Deed to Lease Program by Fannie Mae, under which the homeowner executes a deed in lieu of foreclosure and is required to pay fair market rent to stay in the home for up to 12 months. While the concept could have the added advantage of promoting neighborhood stabilization and some relief for the homeowner, it is only temporary in that the homeowner would likely be in the same tenuous financial situation, and hence, facing eviction, after the expiration of the 12 months. Additionally, the issues of landlord responsibility and liability, for mortgage lenders who are traditionally in the business to make loans and not manage real estate property, could be a deterrent to mortgage lending in the District.

It is also important to note that the Bill does not draw any distinction between those who are unable to pay their loans because of previous predatory practices by a mortgage lender from those who unable to pay because of loss of employment. Without such a distinction, the Bill in some cases may have the unintended effect of turning troubled borrowers into troubled renters. We suggest that bill be amended to require that the homeowner demonstrate their ability to pay the market rate rent. Generally speaking, HUD defines housing as affordable if a household is not spending more than 30% of their gross income on their housing expense. The Council could consider adopting this

standard or developing another standard that is believes is more acceptable for the D.C. market.

As I mentioned earlier, the U.S. House of Representatives has introduced H.R. 5028 and the Arizona State legislature has introduced H.B. 2740. Both of these Bills have “right to rent” provisions, however, there are some key differences between these Bills and the Bill we are considering today. The federal Bill and the Arizona Bill require that the rental period be for a period of 5 years. This 5 year period, provides a great incentive for lenders to honestly negotiate with borrowers since most lenders have no desire to be landlords. However, a 1 year rental period may not be sufficient motivation to negotiate. In a market with a large supply of foreclosure housing, some lenders may be willing to wait one year rather than negotiate with the homeowner. We would recommend that the legislation be amended to mirror the 5 year rental period in the federal Bill.

The federal Bill also limits the right to rent to 1) single family homes that have been your principal residence for at least two years 2) and were purchased for less than the median purchase price. This last provision, we believe is designed to limit the right to rent to low and moderate income households. The Bill before us today is silent on the purchase price and thus would apply to luxury homes as well.

In sum, the Department supports the Council’s intent to assist homeowners with housing subsequent to the foreclosure of their home. However, while we seek to be at the forefront of this effort to address the foreclosure crisis, an initiative such as this has not yet been passed neither at the Federal, nor state level. As such, we recommend the



amendments suggested in this testimony and that the Council remain poised to act but prudent in its consideration of the discussions occurring currently on this very issue, at the Federal level. As the regulator of mortgage lenders and brokers in the District of Columbia I am concerned with the impact of this provision on the market and would suggest that an impact study be considered prior to passage of this provision.

### Equal Access to Employment for All Act of 2010

Regarding the Equal Access to Employment for All Act of 2010. This Bill seeks to prohibit the use of consumer credit checks against current and prospective employees for the purposes of making adverse employment decisions. An employer is generally permitted to do so, primarily because there is no Federal discrimination law that specifically prohibits employment discrimination on the basis of a bad credit report.

Provisions in the Federal Fair Credit Reporting Act (FCRA) and state credit-check laws at least somewhat regulate how employers obtain and use the information. Because the recessionary high unemployment rate inevitably damaged the credit reports of many responsible job seekers, the goals of this bill are well intentioned. Additionally, Federal legislation is also in the works to tighten the related FCRA restrictions nationwide.

The use of credit scores in employment does not fall under the regulatory authority of the Department of Insurance Securities and Banking. This is an area that is probably more appropriately addressed by the Department of Employment Services (DOES), since they have the proper expertise in employment issues. However, DISB is in the process of evaluating the fair use of credit scores in underwriting insurance. In the current recessionary environment, it has become even more critical to be sure that state

regulators have the tools to prevent the economic crisis from unfairly impacting all consumers. In some cases, rising unemployment combined with falling homes prices may be causing late payments, collections and bankruptcies by people who would not have these problems in a stable economy. DISB supports any efforts to ensure that consumers are not further impacted with resulting increased premiums. In general, in depth reviews and other relevant studies should be considered when examining the correlations between credit behaviors and insurance losses and whether those correlations have changed since the financial crisis began. Likewise, in the employment context I would imagine that the Council would want to look for any correlations between credit scores and how responsible a person might be as an employee, especially regarding positions that involve finances, confidentiality, and handling of money. In short, DISB believes careful analysis must be done on this issue and this analysis should involve experts in the field of employment and human resources.

Thank you again for providing the opportunity for me to testify on this important subject. I will be happy to answer any questions you may have.