



General Assembly

February Session, 2006

Raised Bill No. 549

LCO No. 2323



Referred to Committee on

Introduced by: **JUDICIARY**
(JUD)

AN ACT CONCERNING THE COMMON INTEREST FORM OF OWNERSHIP, MORTGAGES AND REAL ESTATE FINANCING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. Section 47-205 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2006*):
- 3 (a) No zoning, building code, subdivision or other real property use
4 law, ordinance, rule or regulation may prohibit the [conversion of any
5 building to the common interest ownership] common interest form of
6 ownership or impose any requirement upon a common interest
7 community that it would not impose upon a physically identical
8 building or development under a different form of ownership.
- 9 (b) Except as provided in subsection (a) of this section, the
10 provisions of this chapter do not invalidate or modify the provisions of
11 any zoning, building code, subdivision or other real property use law,
12 ordinance, rule or regulation.
- 13 Sec. 2. Subsection (c) of section 49-2 of the general statutes is
14 repealed and the following is substituted in lieu thereof (*Effective*

15 *October 1, 2006*):

16 (c) Advancements may also be made by a mortgagee, or the
17 assignee of any mortgagee, under an open-end mortgage to the
18 original mortgagor, or to the assign or assigns of the original
19 mortgagor who assume the existing mortgage, or any of them, and any
20 such mortgage debt and future advances shall, from the time such
21 mortgage deed is recorded, without regard to whether the terms and
22 conditions upon which such advances will be made are contained in
23 the mortgage deed and, in the case of an open-end mortgage securing
24 a commercial revolving loan, a consumer revolving loan or a letter of
25 credit, without regard to whether the authorized amount of
26 indebtedness shall at that time or any time have been fully advanced,
27 be a part of the debt due such mortgagee and be secured by such
28 mortgage equally with the debts and obligations secured thereby at the
29 time of recording the mortgage deed and have the same priority over
30 the rights of others who may acquire any rights in, or liens upon, the
31 mortgaged real estate subsequent to the recording of such mortgage
32 deed, provided: (1) The heading of any such mortgage deed shall be
33 clearly entitled "Open-End Mortgage"; (2) the mortgage deed shall
34 contain specific provisions permitting such advancements and, if
35 applicable, shall specify that such advancements are made pursuant to
36 a commercial revolving loan agreement, a consumer revolving loan
37 agreement or a letter of credit; (3) the mortgage deed shall state the full
38 amount of the loan therein authorized; (4) the terms of repayment of
39 such advancements shall not extend the time of repayment beyond the
40 maturity of the original mortgage debt, provided this subdivision shall
41 not be applicable where such advancements are made or would be
42 made pursuant to a commercial revolving loan agreement, a consumer
43 revolving loan agreement or a letter of credit, and the mortgage deed
44 specifies that such advancements are repayable upon demand or by a
45 date which shall not be later than thirty years from the date of the
46 mortgage; (5) such advancements shall be secured or evidenced by a
47 note or notes signed by the original mortgagor or mortgagors or any
48 assign or assigns of the original mortgagor or mortgagors who assume

(106)

Raised Bill No. 549

49 the existing mortgage, or any of them, but no note shall be required
50 with respect to any advancements made pursuant to a commercial
51 revolving loan agreement, a consumer revolving loan agreement or a
52 letter of credit as long as such advancements are recorded in the books
53 and records of the original mortgagee or its assignee; (6) the original
54 mortgage shall be executed and recorded after October 1, 1955; (7) the
55 original mortgagor or mortgagors, or any assign or assigns of the
56 original mortgagor or mortgagors who assume the existing mortgage,
57 or any of them, are hereby authorized to record a written notice
58 terminating the right to make such optional future advances secured
59 by such mortgage or limiting such advances to not more than the
60 amount actually advanced at the time of the recording of such notice,
61 provided a copy of such written notice shall also be sent by registered
62 or certified mail, postage prepaid and return receipt requested, to the
63 mortgagee, or a copy of such written notice shall be delivered to the
64 mortgagee by a proper officer or an indifferent person and a receipt for
65 the same received from the mortgagee, and such notice, unless a later
66 date is recorded or specified in the notice, shall be effective from the
67 time it is received by the mortgagee; (8) except that if any such
68 optional future advance or advances are made by the mortgagee, or
69 the assignee of any mortgagee, to the original mortgagor or
70 mortgagors, or any assign or assigns who assume the existing
71 mortgage, or any of them, after receipt of written notice of any
72 subsequent mortgage, lien, attachment, lis pendens, legal proceeding
73 or adjudication against such real property, then the amount of any
74 such advance, other than an advance made pursuant to a commercial
75 revolving loan agreement or a letter of credit, shall not be a priority as
76 against any such mortgage, lien, attachment, lis pendens or
77 adjudication of which such written notice was given; (9) any notice
78 given to the mortgagee under the terms of subdivision (8) of this
79 subsection shall be deemed valid and binding upon the original
80 mortgagee or any assignee of the original mortgagee, in the case of a
81 mortgagee other than a banking institution, on the next business day
82 following receipt by such mortgagee of such notice sent by registered

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SECTION

83 or certified mail, postage prepaid and return receipt requested, or by
84 hand delivery with a signed receipt, and in the case of a mortgagee
85 which is a banking institution, on the next business day following
86 receipt at the main office of such banking institution of such notice sent
87 by registered or certified mail, postage prepaid and return receipt
88 requested, or by hand delivery with a signed receipt. For the purposes
89 of this subsection: (A) "Banking institution" means a bank and trust
90 company, a national banking association having its main office in this
91 state, a savings bank, a federal savings bank having its main office in
92 this state, a savings and loan association, a federal savings and loan
93 association having its main office in this state, a credit union having
94 assets of two million dollars or more, or a federal credit union having
95 its main office in this state and having assets of two million dollars or
96 more; (B) "commercial revolving loan" means a loan to a foreign or
97 domestic corporation, partnership, limited liability company, sole
98 proprietorship, association or entity, or any combination thereof,
99 [organized for profit and engaged primarily in commercial,
100 manufacturing or industrial pursuits] the proceeds of which are not
101 intended primarily for personal, family or household purposes, which
102 loan entails advances of all or part of the loan proceeds and
103 repayments of all or part of the outstanding balance of the loan from
104 time to time; and (C) "consumer revolving loan" means a loan to one or
105 more individuals, the proceeds of which are intended primarily for
106 personal, family or household purposes, which is secured by a
107 mortgage on residential real property, and is made pursuant to an
108 agreement between the mortgagor and mortgagee which (i) provides
109 for advancements of all or part of the loan proceeds during a period of
110 time which shall not exceed ten years from the date of such agreement
111 and for repayments of the loan from time to time, (ii) provides for
112 payments to be applied at least in part to the unpaid principal balance
113 not later than ten years from the date of the loan, (iii) does not
114 authorize access to the loan proceeds by a credit card or any similar
115 instrument or device, whether known as a credit card, credit plate, or
116 by any other name, issued with or without a fee by an issuer for the

117 use of the cardholder in obtaining money, goods, services, or anything
118 else of value on credit, and (iv) does not provide that such a revolving
119 loan to more than one mortgagor will be immediately due and payable
120 upon the death of fewer than all the mortgagors who signed the
121 revolving loan agreement. Nothing in this subsection shall affect the
122 validity or enforceability of any loan agreement which provides for
123 future advancements by a lender to a borrower as between such
124 parties or their heirs, successors or assigns, or shall affect the validity
125 or enforceability of any mortgage securing any such loan that would
126 be valid and enforceable without the provisions of this subsection.

127 Sec. 3. Section 49-9 of the general statutes is amended by adding
128 subsection (d) as follows (*Effective October 1, 2006*):

129 (NEW) (d) A release of mortgage executed in accordance with this
130 section shall operate to release the interest of the releasor in the
131 mortgage which is the subject of the release, even if such interest is, in
132 fact, acquired by the releasor after executing such release or does not
133 appear of record until after the execution of such release.

134 Sec. 4. Section 49-10 of the general statutes is amended by adding
135 subsection (h) as follows (*Effective October 1, 2006*):

136 (NEW) (h) An assignment executed in accordance with this section
137 shall operate to assign the interest of the assignor in the mortgage
138 which is the subject of the assignment, even if such interest is, in fact,
139 acquired by the assignor after executing such assignment or does not
140 appear of record until after the execution of such assignment.

141 Sec. 5. Section 49-13a of the general statutes is repealed and the
142 following is substituted in lieu thereof (*Effective October 1, 2006*):

143 When record title to real property remains encumbered by any
144 undischarged mortgage, and the mortgagor or those owning [his] the
145 mortgagor's interest therein have been in undisturbed possession of
146 the property for at least [forty] thirty years after the expiration of the

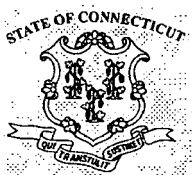
147 time limited in the mortgage for the full performance of the conditions
 148 thereof, or for at least thirty years from the recording of the mortgage
 149 when the mortgage does not disclose the time when the note or
 150 indebtedness is payable or disclose the time for full performance of the
 151 conditions of the mortgage, the mortgage shall be invalid as a further
 152 lien against the real estate. [provided an affidavit, subscribed and
 153 sworn to by the party in possession, stating the fact of such possession,
 154 is recorded on the land records of the town wherein the property is
 155 situated.]

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2006</i>	47-205
Sec. 2	<i>October 1, 2006</i>	49-2(c)
Sec. 3	<i>October 1, 2006</i>	49-9
Sec. 4	<i>October 1, 2006</i>	49-10
Sec. 5	<i>October 1, 2006</i>	49-13a

Statement of Purpose:

To specify that local zoning ordinances, building codes or other real property use laws may not prohibit or discriminate against the common interest form of ownership, to redefine "commercial revolving loan" for purposes of open-end mortgages to include loans made to nonprofit entities, to facilitate the clearing of real estate titles by providing that a release or assignment of mortgage operates to release or assign after-acquired title to the mortgage, to reduce the time period for invalidating undischarged mortgages, where the mortgagor or those who owned the land had been in undisturbed possession, from forty years to thirty years after the mortgage should have been paid off, to allow undischarged mortgages that have no stated maturity date to be released automatically thirty years after the recording of the mortgage and to eliminate the requirement that an affidavit be recorded on the land records in the case of an undischarged mortgage.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]



Senate

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General Assembly

File No. 478

February Session, 2006

Substitute Senate Bill No. 549

Senate, April 11, 2006

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING MORTGAGES AND REAL ESTATE FINANCING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (c) of section 49-2 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2006*):

4 (c) Advancements may also be made by a mortgagee, or the
5 assignee of any mortgagee, under an open-end mortgage to the
6 original mortgagor, or to the assign or assigns of the original
7 mortgagor who assume the existing mortgage, or any of them, and any
8 such mortgage debt and future advances shall, from the time such
9 mortgage deed is recorded, without regard to whether the terms and
10 conditions upon which such advances will be made are contained in
11 the mortgage deed and, in the case of an open-end mortgage securing
12 a commercial revolving loan, a consumer revolving loan or a letter of
13 credit, without regard to whether the authorized amount of
14 indebtedness shall at that time or any time have been fully advanced,

15 be a part of the debt due such mortgagee and be secured by such
16 mortgage equally with the debts and obligations secured thereby at the
17 time of recording the mortgage deed and have the same priority over
18 the rights of others who may acquire any rights in, or liens upon, the
19 mortgaged real estate subsequent to the recording of such mortgage
20 deed, provided: (1) The heading of any such mortgage deed shall be
21 clearly entitled "Open-End Mortgage"; (2) the mortgage deed shall
22 contain specific provisions permitting such advancements and, if
23 applicable, shall specify that such advancements are made pursuant to
24 a commercial revolving loan agreement, a consumer revolving loan
25 agreement or a letter of credit; (3) the mortgage deed shall state the full
26 amount of the loan therein authorized; (4) the terms of repayment of
27 such advancements shall not extend the time of repayment beyond the
28 maturity of the original mortgage debt, provided this subdivision shall
29 not be applicable where such advancements are made or would be
30 made pursuant to a commercial revolving loan agreement, a consumer
31 revolving loan agreement or a letter of credit, and the mortgage deed
32 specifies that such advancements are repayable upon demand or by a
33 date which shall not be later than thirty years from the date of the
34 mortgage; (5) such advancements shall be secured or evidenced by a
35 note or notes signed by the original mortgagor or mortgagors or any
36 assign or assigns of the original mortgagor or mortgagors who assume
37 the existing mortgage, or any of them, but no note shall be required
38 with respect to any advancements made pursuant to a commercial
39 revolving loan agreement, a consumer revolving loan agreement or a
40 letter of credit as long as such advancements are recorded in the books
41 and records of the original mortgagee or its assignee; (6) the original
42 mortgage shall be executed and recorded after October 1, 1955; (7) the
43 original mortgagor or mortgagors, or any assign or assigns of the
44 original mortgagor or mortgagors who assume the existing mortgage,
45 or any of them, are hereby authorized to record a written notice
46 terminating the right to make such optional future advances secured
47 by such mortgage or limiting such advances to not more than the
48 amount actually advanced at the time of the recording of such notice,
49 provided a copy of such written notice shall also be sent by registered

50 or certified mail, postage prepaid and return receipt requested, to the
51 mortgagee, or a copy of such written notice shall be delivered to the
52 mortgagee by a proper officer or an indifferent person and a receipt for
53 the same received from the mortgagee, and such notice, unless a later
54 date is recorded or specified in the notice, shall be effective from the
55 time it is received by the mortgagee; (8) except that if any such
56 optional future advance or advances are made by the mortgagee, or
57 the assignee of any mortgagee, to the original mortgagee or
58 mortgagors, or any assign or assigns who assume the existing
59 mortgage, or any of them, after receipt of written notice of any
60 subsequent mortgage, lien, attachment, lis pendens, legal proceeding
61 or adjudication against such real property, then the amount of any
62 such advance, other than an advance made pursuant to a commercial
63 revolving loan agreement or a letter of credit, shall not be a priority as
64 against any such mortgage, lien, attachment, lis pendens or
65 adjudication of which such written notice was given; (9) any notice
66 given to the mortgagee under the terms of subdivision (8) of this
67 subsection shall be deemed valid and binding upon the original
68 mortgagee or any assignee of the original mortgagee, in the case of a
69 mortgagee other than a banking institution, on the next business day
70 following receipt by such mortgagee of such notice sent by registered
71 or certified mail, postage prepaid and return receipt requested, or by
72 hand delivery with a signed receipt, and in the case of a mortgagee
73 which is a banking institution, on the next business day following
74 receipt at the main office of such banking institution of such notice sent
75 by registered or certified mail, postage prepaid and return receipt
76 requested, or by hand delivery with a signed receipt. For the purposes
77 of this subsection: (A) "Banking institution" means a bank and trust
78 company, a national banking association having its main office in this
79 state, a savings bank, a federal savings bank having its main office in
80 this state, a savings and loan association, a federal savings and loan
81 association having its main office in this state, a credit union having
82 assets of two million dollars or more, or a federal credit union having
83 its main office in this state and having assets of two million dollars or
84 more; (B) "commercial revolving loan" means a loan to a foreign or

85 domestic corporation, partnership, limited liability company, sole
86 proprietorship, association or entity, or any combination thereof,
87 [organized for profit and engaged primarily in commercial,
88 manufacturing or industrial pursuits] the proceeds of which are not
89 intended primarily for personal, family or household purposes, which
90 loan entails advances of all or part of the loan proceeds and
91 repayments of all or part of the outstanding balance of the loan from
92 time to time; and (C) "consumer revolving loan" means a loan to one or
93 more individuals, the proceeds of which are intended primarily for
94 personal, family or household purposes, which is secured by a
95 mortgage on residential real property, and is made pursuant to an
96 agreement between the mortgagor and mortgagee which (i) provides
97 for advancements of all or part of the loan proceeds during a period of
98 time which shall not exceed ten years from the date of such agreement
99 and for repayments of the loan from time to time, (ii) provides for
100 payments to be applied at least in part to the unpaid principal balance
101 not later than ten years from the date of the loan, (iii) does not
102 authorize access to the loan proceeds by a credit card or any similar
103 instrument or device, whether known as a credit card, credit plate, or
104 by any other name, issued with or without a fee by an issuer for the
105 use of the cardholder in obtaining money, goods, services, or anything
106 else of value on credit, and (iv) does not provide that such a revolving
107 loan to more than one mortgagor will be immediately due and payable
108 upon the death of fewer than all the mortgagors who signed the
109 revolving loan agreement. Nothing in this subsection shall affect the
110 validity or enforceability of any loan agreement which provides for
111 future advancements by a lender to a borrower as between such
112 parties or their heirs, successors or assigns, or shall affect the validity
113 or enforceability of any mortgage securing any such loan that would
114 be valid and enforceable without the provisions of this subsection.

115 Sec. 2. Section 49-9 of the general statutes is amended by adding
116 subsection (d) as follows (*Effective October 1, 2006*):

117 (NEW) (d) A release of mortgage executed in accordance with this
118 section shall operate to release the interest of the releasor in the

706

119 mortgage which is the subject of the release, even if such interest is, in
120 fact, acquired by the releasor after executing such release or does not
121 appear of record until after the execution of such release. Nothing in
122 this subsection shall be construed to limit the effect of any release of
123 mortgage recorded before, on or after the effective date of this section.

124 Sec. 3. Section 49-10 of the general statutes is amended by adding
125 subsection (h) as follows (*Effective October 1, 2006*):

126 (NEW) (h) An assignment executed in accordance with this section
127 shall operate to assign the interest of the assignor in the mortgage
128 which is the subject of the assignment, even if such interest is, in fact,
129 acquired by the assignor after executing such assignment or does not
130 appear of record until after the execution of such assignment. Nothing
131 in this subsection shall be construed to limit the effect of any
132 assignment of mortgage debt recorded before, on or after the effective
133 date of this section.

134 Sec. 4. Section 49-13a of the general statutes is repealed and the
135 following is substituted in lieu thereof (*Effective October 1, 2006*):

136 (a) When record title to real property remains encumbered by any
137 undischarged mortgage, and the mortgagor or those owning [his] the
138 mortgagor's interest therein have been in undisturbed possession of
139 the property for at least [forty] twenty years after the expiration of the
140 time limited in the mortgage for the full performance of the conditions
141 thereof, or for at least forty years from the recording of the mortgage if
142 the mortgage does not disclose the time when the note or indebtedness
143 is payable or the time for full performance of the conditions of the
144 mortgage, unless a notice is recorded pursuant to subsection (b) of this
145 section, the mortgage shall be invalid as a further lien against the real
146 [estate] property, provided an affidavit, subscribed and sworn to by
147 the party in possession, stating the fact of such possession, is recorded
148 on the land records of the town [wherein] in which the property is
149 situated.

150 (b) The record holder of an undischarged mortgage on real property

151 may, prior to the expiration of the applicable time period specified in
 152 subsection (a) of this section, record a notice, on the land records of the
 153 town in which the property is situated, that contains: (1) The name or
 154 names of the mortgagors; (2) the recording information for the
 155 mortgage and any assignment of the mortgage; and (3) a statement of
 156 the reasons why the mortgage is valid and effective. Upon the
 157 recording of such notice in accordance with this subsection, the
 158 applicable time period after which the mortgage shall be invalid as a
 159 further lien against the real property as provided in subsection (a) of
 160 this section shall be tolled for a period of ten years from the recording
 161 of such notice. Any such notice shall be indexed in the grantor's index
 162 under the name or names of the mortgagors and in the grantee's index
 163 under the name of the record holder of the mortgage.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2006	49-2(c)
Sec. 2	October 1, 2006	49-9
Sec. 3	October 1, 2006	49-10
Sec. 4	October 1, 2006	49-13a

JUD *Joint Favorable Subst.*

1067

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes various statutory changes concerning the conveyance of real estate. These changes have no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 549*****AN ACT CONCERNING MORTGAGES AND REAL ESTATE FINANCING.*****SUMMARY:**

This bill expands the type of entities that can secure a commercial revolving loan with an open-end mortgage to include non-profit organizations and limited liability companies.

It makes mortgage releases and assignments executed according to law, effective to release or assign the mortgagee's interest in the property even if the mortgagee acquires the interest, or does not record the interest, until after the release or assignment is executed. The bill specifies that it may not be interpreted to limit the effect of any release or assignment recorded before, on, or after October 1, 2006.

Also, the bill reduces, from 40 to 20 years after full performance was due, the time after which an unreleased mortgage is invalid under certain circumstances. The bill makes a mortgage invalid, under these same circumstances, 40 years after it was recorded on the land records if the mortgage does not disclose the time when the note or indebtedness is payable or the time for full performance of the mortgage conditions.

But the bill authorizes a record holder of an undischarged mortgage, before the applicable 20 or 40 year period expires, to record a notice, on the land records of the town in which the property is situated, that contains certain information. Under the bill, recording the notice tolls the applicable time period for 10 years. The bill requires that the notice be indexed in the grantor's index under the mortgagor's name or names and in the grantee's index under the name of the record mortgage holder's name.

1067

EFFECTIVE DATE: October 1, 2006

COMMERCIAL REVOLVING LOANS

Under current law, a "commercial revolving loan," for purposes of the open-end mortgage law, involves advances of all or part of the loan proceeds and repayments of all or part of the outstanding balance of the loan from time to time. As long as the mortgage and underlying note comply with certain statutory requirements, the mortgage and the advances made under it will have priority over other claims recorded after the mortgage was recorded.

The bill expands the scope of such loans by requiring that the proceeds may not be intended primarily for personal, family, or household purposes, instead of requiring that the proceeds be to an entity organized for profit and engaged primarily in commercial, manufacturing, or industrial pursuits. Thus, it includes such loans made to non-profit entities. The bill also specifies such loans may be made to a limited liability company.

MORTGAGE RELEASE

The bill applies to mortgage releases that are executed according to existing law. The release must identify the mortgagor (borrower) and mortgagee (lender), the date the mortgage was executed, the town where it was recorded, and the volume and page of the land records where it appears. It must be signed by the releaser, acknowledged to be his free act and deed, and witnessed by two people.

MORTGAGE ASSIGNMENT

The bill applies to mortgage assignments that:

1. contain a sufficient description to identify the mortgage, assignment of rent, or assignment of interest in a lease given as security for a mortgage debt and
2. have been executed, attested, and acknowledged in the manner prescribed by law for deeds.

Whenever an assignment of any residential mortgage loan (1) made by a lending institution organized under the laws of or having its principal office in another state and (2) secured by mortgage on residential real estate located in this state is made in writing, the instrument must also contain the name and business or mailing address of all parties to the assignment.

INVALIDITY OF OLD MORTGAGES

Under current law, when the land records have a mortgage that has not been released and the mortgagor or those who own the land has been in undisputed possession for at least 40 years after the mortgage should have been paid off, the mortgage is invalid if the person in possession of the land files an affidavit that satisfies certain conditions in the land records. The bill reduces the time from 40 to 20 years.

The bill makes a mortgage invalid, under these same circumstances, 40 years after it was recorded on the land records if the mortgage does not disclose the time when the note or indebtedness is payable or the time for full performance of the mortgage conditions.

Notice from Mortgage Holder

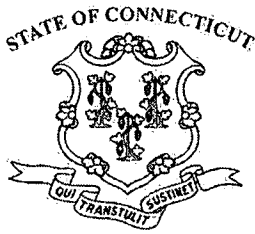
Under the bill, the notice a record holder of an undischarged mortgage may file on the land records must contain: (1) the mortgagor's name or names; (2) the recording information for the mortgage and any mortgage assignment; and (3) a statement of the reasons why the mortgage is valid and effective.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0 (03/27/2006)



General Assembly

February Session, 2006

[SENATE] Amendment [A.]

LCO No. 4287



Offered by:
SEN. MCDONALD, 27th Dist.

To: Subst. Senate Bill No. 549

File No. 478

Cal. No. 342

"AN ACT CONCERNING MORTGAGES AND REAL ESTATE FINANCING."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Subsection (b) of section 52-257 of the general statutes is
4 repealed and the following is substituted in lieu thereof (*Effective from*
5 *passage*):

6 (b) Parties shall also receive: (1) For each witness attending court,
7 the witness' legal fee and mileage; (2) for each deposition taken out of
8 the state, forty dollars, and for each deposition within the state, thirty
9 dollars; (3) on an application for the sale of property attached, the
10 expenses incurred; (4) in any civil action affecting the title to real
11 property situated in this state, or affecting any mortgage or lien
12 thereon, the actual expense, not exceeding the sum of [one hundred
13 fifty] three hundred dollars, of an examination of the land records
14 concerning the title to the real property in question and such amount
15 as the court or judge determines to be reasonable for the services of an

LCO No. 4287

16 expert on the value of the land when such value is in dispute; (5) for
17 maps, plans, mechanical drawings and photographs, necessary or
18 convenient in the trial of any action, a reasonable sum; (6) for copies of
19 records used in evidence, bonds, recognizances and subpoenas, court
20 and clerk's fees; (7) for the signing and service of process, the legal fees
21 payable therefor, except that a fee shall not be allowed for the return of
22 a subpoena to court; (8) the actual expense incurred in publishing
23 orders of notice under direction of the court; (9) for each interpreter
24 necessarily employed in the trial of any civil action, twenty dollars per
25 diem; (10) for premiums upon all bonds or undertakings provided
26 pursuant to statute, rule of court, order of court or stipulation of
27 parties, including bonds in lieu of or in release or dissolution of
28 attachment, the actual amount paid, not exceeding a reasonable
29 amount; (11) documented investigative costs and expenses, not
30 exceeding the sum of two hundred dollars; and (12) for the recording,
31 videotaping, transcribing and presentation of the deposition of a
32 practitioner of the healing arts, as defined in section 20-1, dentist,
33 registered nurse, advanced practice registered nurse or licensed
34 practical nurse, as defined in section 20-87a, or real estate appraiser
35 that is used in lieu of live testimony in the civil action, the reasonable
36 expenses incurred."

SENATE AMENDMENT

Calendar: 342

LCO: 4287

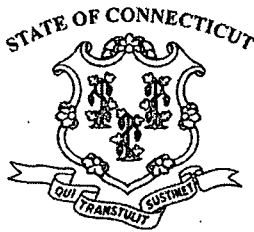
Bill: 549

A

ADOPTED voice REJECTED voice

ADOPTED roll REJECTED roll

342



General Assembly

[SEN.] **Amendment**

February Session, 2006

LCO No. 5146



Offered by:

REP. SPALLONE, 36th Dist.

REP. CARUSO, 126th Dist.

To: Subst. Senate Bill No. 549

File No. 478

Cal. No. 453

(As Amended by Senate Amendment Schedule "A")

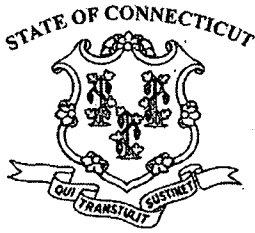
"AN ACT CONCERNING MORTGAGES AND REAL ESTATE FINANCING."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 7-29 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective January 1, 2007*):

5 When any town clerk has recorded any instrument that the town
6 clerk knows to be a release, partial release or assignment of a mortgage
7 or lien recorded on the records of such town, the town clerk shall make
8 a notation on the first page where such mortgage or lien is recorded,
9 stating the book and page where such release, partial release or
10 assignment is recorded. If the land records are not maintained in a
11 paper form, the town clerk shall make the notation on the digitized
12 image of the first page of such mortgage or lien in a form or manner

13 approved by the Public Records Administrator. Nothing in this section
14 shall require the town clerk with whom such release, partial release or
15 assignment was recorded to note such release, partial release or
16 assignment whenever such town clerk maintains a computerized
17 searchable grantor and grantee index covering the period in which
18 such mortgage or lien was recorded."



General Assembly

[SEN.] Amendment

February Session, 2006

LCO No. 5184



Offered by:
REP. WARD, 86th Dist.

To: Subst. Senate Bill No. 549

File No. 478

Cal. No. 453

(As Amended by Senate Amendment Schedule "A")

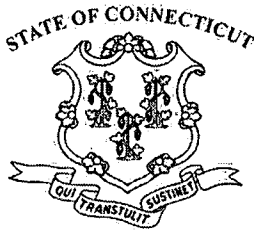
"AN ACT CONCERNING MORTGAGES AND REAL ESTATE FINANCING."

1 Strike section 501 of senate amendment schedule "A" in its entirety
2 and insert the following in lieu thereof:

3 "Sec. 501. Subsection (b) of section 52-257 of the general statutes is
4 repealed and the following is substituted in lieu thereof (*Effective from*
5 *passage*):

6 (b) Parties shall also receive: (1) For each witness attending court,
7 the witness' legal fee and mileage; (2) for each deposition taken out of
8 the state, forty dollars, and for each deposition within the state, thirty
9 dollars; (3) on an application for the sale of property attached, the
10 expenses incurred; (4) in any civil action affecting the title to real
11 property situated in this state, or affecting any mortgage or lien
12 thereon, the actual expense, not exceeding the sum of [one hundred
13 fifty] two hundred twenty-five dollars, of an examination of the land

14 records concerning the title to the real property in question and such
15 amount as the court or judge determines to be reasonable for the
16 services of an expert on the value of the land when such value is in
17 dispute; (5) for maps, plans, mechanical drawings and photographs,
18 necessary or convenient in the trial of any action, a reasonable sum; (6)
19 for copies of records used in evidence, bonds, recognizances and
20 subpoenas, court and clerk's fees; (7) for the signing and service of
21 process, the legal fees payable therefor, except that a fee shall not be
22 allowed for the return of a subpoena to court; (8) the actual expense
23 incurred in publishing orders of notice under direction of the court; (9)
24 for each interpreter necessarily employed in the trial of any civil action,
25 twenty dollars per diem; (10) for premiums upon all bonds or
26 undertakings provided pursuant to statute, rule of court, order of court
27 or stipulation of parties, including bonds in lieu of or in release or
28 dissolution of attachment, the actual amount paid, not exceeding a
29 reasonable amount; (11) documented investigative costs and expenses,
30 not exceeding the sum of two hundred dollars; and (12) for the
31 recording, videotaping, transcribing and presentation of the deposition
32 of a practitioner of the healing arts, as defined in section 20-1, dentist,
33 registered nurse, advanced practice registered nurse or licensed
34 practical nurse, as defined in section 20-87a, or real estate appraiser
35 that is used in lieu of live testimony in the civil action, the reasonable
36 expenses incurred."



General Assembly

[House] Amendment [A.]

February Session, 2006

LCO No. 5249



Offered by:

REP. DOYLE, 28th Dist.

REP. HEAGNEY, 16th Dist.

To: Subst. Senate Bill No. 549

File No. 478

Cal. No. 453

(As Amended)

"AN ACT CONCERNING MORTGAGES AND REAL ESTATE FINANCING."

1 Strike subsection (b) of section 501 in its entirety and substitute the
2 following in lieu thereof:

3 "(b) Parties shall also receive: (1) For each witness attending court,
4 the witness' legal fee and mileage; (2) for each deposition taken out of
5 the state, forty dollars, and for each deposition within the state, thirty
6 dollars; (3) on an application for the sale of property attached, the
7 expenses incurred; (4) in any civil action affecting the title to real
8 property situated in this state, or affecting any mortgage or lien
9 thereon, the actual expense, not exceeding the sum of [one hundred
10 fifty] two hundred twenty-five dollars, of an examination of the land
11 records concerning the title to the real property in question and such
12 amount as the court or judge determines to be reasonable for the
13 services of an expert on the value of the land when such value is in

14 dispute; (5) for maps, plans, mechanical drawings and photographs,
15 necessary or convenient in the trial of any action, a reasonable sum; (6)
16 for copies of records used in evidence, bonds, recognizances and
17 subpoenas, court and clerk's fees; (7) for the signing and service of
18 process, the legal fees payable therefor, except that a fee shall not be
19 allowed for the return of a subpoena to court; (8) the actual expense
20 incurred in publishing orders of notice under direction of the court; (9)
21 for each interpreter necessarily employed in the trial of any civil action,
22 twenty dollars per diem; (10) for premiums upon all bonds or
23 undertakings provided pursuant to statute, rule of court, order of court
24 or stipulation of parties, including bonds in lieu of or in release or
25 dissolution of attachment, the actual amount paid, not exceeding a
26 reasonable amount; (11) documented investigative costs and expenses,
27 not exceeding the sum of two hundred dollars; and (12) for the
28 recording, videotaping, transcribing and presentation of the deposition
29 of a practitioner of the healing arts, as defined in section 20-1, dentist,
30 registered nurse, advanced practice registered nurse or licensed
31 practical nurse, as defined in section 20-87a, or real estate appraiser
32 that is used in lieu of live testimony in the civil action, the reasonable
33 expenses incurred."

SRB 549
HDA

STATE OF CONNECTICUT
HOUSE OF REPRESENTATIVES

MAY 02 2006

ADOPTED

Joseph A. Quinn

REPORT ON BILLS FAVORABLY REPORTED BY COMMITTEE

COMMITTEE: Judiciary Committee

File No.:

Bill No.: SB-549

PH Date: 3/10/2006

Action/Date: JFS 3/27/06

Reference Change:

TITLE OF BILL:

AN ACT CONCERNING THE COMMON INTEREST FORM OF OWNERSHIP, MORTGAGES AND REAL ESTATE FINANCING.

SPONSORS OF BILL:

Connecticut Bar Association

REASONS FOR BILL:

To specify that local zoning ordinances, building codes or other real property use laws may not prohibit or discriminate against the common interest form of ownership, to redefine "commercial revolving loan" for purposes of open-end mortgages to include loans made to nonprofit entities, to facilitate the clearing of real estate titles by providing that a release or assignment of mortgage operates to release or assign after-acquired title to the mortgage, to reduce the time period for invalidating undischarged mortgages, where the mortgagor or those who owned the land had been in undisturbed possession, from forty years to thirty years after the mortgage should have been paid off, to allow undischarged mortgages that have no stated maturity date to be released automatically thirty years after the recording of the mortgage and to eliminate the requirement that an affidavit be recorded on the land records in the case of an undischarged mortgage.

SUBSTITUTE LANGUAGE:

Deleted section 1 of the original bill. The new section 4 changed the applicable number of years of undisturbed possession from forty to twenty and number of years from time of recording from thirty to forty unless a notice is recorded. Also, this section reinserts the language requiring parties to subscribe a sworn affidavit about the possession.

RESPONSE FROM ADMINISTRATION/AGENCY:

Nothing Submitted

NATURE AND SOURCES OF SUPPORT:

Matthew Cholewa, Chairman, Legislative Committee, Real Property Section, Connecticut Bar Association – With regard to the Common Interest Ownership Act, the bill specifies that local zoning ordinances, building codes, and the like may not prohibit or discriminate against the common interest form of ownership by stating that they cannot impose any requirement that they would not impose upon a physically identical building under a different form of ownership.

With respect to revolving loans in section 49-2, currently there's a safe harbor in there for certain types of mortgages securing future advances like commercial revolving loans and home equity lines of credit. These safe harbors provide the future advances with priority over other liens that arise between the time of the initial mortgage and the future advance. Without these safe harbor provisions, borrowers would be required to pay for title searches and title insurance endorsements at the time of each future advance to ensure that no intervening liens were recorded. This reduces the cost to the borrower by enabling the priority of those mortgages, including the future advances, to be determined and insured at the time of financing.

Currently the statute does not include nonprofit organizations among the type of entities that can take advantage of this safe harbor provision. The change removes the requirement that a business entity be organized for-profit and allow nonprofits to be treated like any other form of business entity which would enable future advances under a commercial revolving loan or home equity loan. It makes sense for the state, as a public policy matter.

We also add limited liability companies to the list of specifically enumerated entities in that section that fall within the safe harbor for commercial revolving loans. As the statute includes the generic phrase entity, which would include limited liability corporations, we feel that expressly enumerating them is not a change in existing law. That is just simply to clarify existing law.

Section 3 provides that a release of mortgage operates to release after-acquired title to the mortgage, which would help facilitate the clearing of real estate titles in the state. For example, a common situation in the land records occurs when someone is trying to sell or refinance a property: a mortgage to Bank A followed by a release by Bank B (but no assignment of record from Bank A to Bank B). The parties scramble to fix the gap in the chain of title and are sent an assignment from Bank A to Bank B. Because the assignment is dated and recorded after the release signed by Bank B, under current law the release from Bank B may be considered ineffective to release the mortgage, when in actuality, the lenders simply neglected to previously record the assignment. There is little doubt that the mortgage was paid and Bank B intended to release it. This change would fix that problem.

Section 4, same concept for assignments of mortgage.

Section 5 - Finally, we make some amendments to General Statute 49-13a, which governs when undischarged mortgages become invalid. It would reduce the time period for invalidating undischarged mortgages from 40 years to 30 years after the maturity date.

It would allow undischarged mortgages that failed to state the maturity date to be automatically released 30 years after the recording. And it would eliminate the requirement that an affidavit be recorded in the land records testifying to the possession of the landowner.

Jonathan Anderson, Connecticut Attorneys Title Insurance Company (CATIC) – CATIC favors Section 1 because it prohibits unequal treatment based solely upon form of ownership, in this case solely because it's a common interest form of ownership. And to the extent that Sections 3 and 4 will eliminate some of the mortgages that are on the record now that appear to be out of the record or off the record or outside of the record, because an assignment or release is recorded out of order, this is a very useful bill.

Connecticut Bankers Association – Supports bill with following revisions: Section 5 reduces the time after which a mortgage may be discharged. We are concerned that newer mortgage products which may last to 40 years, and may be of an unspecified term, would be prematurely discharged. (Addressed in substitute language)

The affidavit requirement was removed. This requirement is important since you have a significant event in the discharging of a mortgage. The person in possession of the property should at the very least have to swear in an affidavit that they have met the terms of the law, necessary to invoke Section 5 of this bill. This would also constitute a record of the event, for recording on the land records. (Addressed in substitute language)

NATURE AND SOURCES OF OPPOSITION:

Connecticut Mortgage Bankers Association, Inc. – Bill would: (1) invalidate undischarged mortgages where maturity is not specified or where no affidavit as to owner's undisturbed possession has been recorded would unreasonably jeopardize interests of mortgage lenders and (2) provides no restriction of right to statutory damages to persons who have been damaged by release of mortgage.

The proposed reduction in the 40-year requirement to 30 runs counter to the recent mortgage industry trend to offer mortgages with terms of 40 years and even 50 years. The proposed reduction and the proposed addition of the new provision to the effect that a mortgage could be invalid after 30 years would work a disservice on borrowers who are seeking longer term mortgages by providing a risk that many mortgage lenders would be unwilling to take.

Moreover, the proposed elimination of the affidavit requirement would put the integrity of the land records at risk by having mortgages be deemed invalid without any recorded documentation to substantiate the basis for a claim that a mortgage is invalid. (Addressed in substitute language)

There is a need for an addition of restriction to right to statutory damages to persons who have been damaged by release of mortgage. Presently the statutes afford the statutory damages to a person regardless of whether the person has suffered any actual loss. As a result, many persons pursue such claims even when no damage has been incurred. To avoid this inequitable result, we request that this bill be revised to amend CGS 49-8(c) to provide that the right to damages under this statute is limited to aggrieved persons who have suffered a loss as a result of the failure of the mortgagee or plaintiff or the plaintiff's attorney to execute and deliver a release in a timely manner,

Reported by: Date: 4/4/06
Diana Caliendo
Gregg G. Cogswell

**JUDICIARY COMMITTEE
VOTE TALLY SHEET**

Bill No.: SB-549 Amendment Letter:

AN ACT CONCERNING THE COMMON INTEREST FORM OF OWNERSHIP, MORTGAGES
AND REAL ESTATE FINANCING.

Chair: MCDONALD, A. Motion: DYSON, W. Second: MCMAHON, F.

Action: Joint Favorable Substitute

Language Proposed Substitute
Change:

TOTALS	Voting	Yea	Nay	Abstain	Absent and Not Voting	Voice Vote
	38	38	0	0	3	

	yea	nay	abstain	absent		yea	nay	abstain	absent
Sen. McDonald, A. S27	X				Rep. McMahon, F. 015	X			
Rep. Lawlor, M. 099	X				Sen. Meyer, E. S12	X			
Sen. Handley, M. S04	X				Rep. Michele, R. 077	X			
Rep. Spallone, J. 036	X				Rep. Olson, M. 046	X			
Sen. Kissel, J. S07	X				Rep. O'Neill, A. 069	X			
Rep. Farr, R. 019	X				Rep. Powers, C. 151	X			
Rep. Barry, R. 012	X				Sen. Roraback, A. S30	X			
Rep. Berger, J. 073	X				Rep. Rowe, T. 123	X			
Rep. Cafero, L. 142	X				Rep. Serra, J. 033	X			
Rep. Candelaria, J. 095	X				Rep. Staples, C. 096	X			
Sen. Cappiello, D. S24	X				Rep. Stone, C. 009	X			
Sen. Coleman, E. S02	X				Rep. Walker, T. 093	X			
Rep. Dillon, P. 092	X				Rep. Winkler, L. 041	X			
Rep. Doyle, P. 028	X								
Rep. Dyson, W. 094	X								
Rep. Fox, G. 146	X								
Rep. Fritz, M. 090				X					
Rep. Geragosian, J. 025	X								
Rep. Giegler, J. 138	X								
Rep. Godfrey, B. 110	X								
Sen. Gomes, E. S23	X								
Rep. Gonzalez, M. 003				X					
Rep. Green, K. 001				X					
Rep. Hamm, G. 034	X								
Rep. Hamzy, W. 078	X								
Rep. Hovey, D. 112	X								
Rep. Klarides, T. 114	X								
Rep. Labriola, D. 131	X								

Vote date: 3/27/2006 4:30:00 PM

Correction date:

OFFICE OF FISCAL ANALYSIS

Legislative Office Building, Room 5200

Hartford, CT 06106 ◊ (860) 240-0200

<http://www.cga.ct.gov/ofa>

sSB-549

AN ACT CONCERNING MORTGAGES AND REAL ESTATE FINANCING.

As Amended by Senate "A" (LCO 4287), House "A" (LCO 5249)

House Calendar No.: 453

Senate Calendar No.: 342

OFA Fiscal Note

State Impact: See Below

Municipal Impact: See Below

Explanation

The bill increases, from \$150 to \$225, the maximum fee the court may award parties in any civil action affecting the title to real property, or affecting any mortgage or lien on it, for a title search. Any governmental entity engaging in such a proceeding could have its costs increase or decrease as a result of this provision.

The bill also makes various statutory changes concerning the conveyance of real estate. These changes have no fiscal impact.

Senate Amendment "A" increased the maximum fee for title searches from \$150 to \$300.

House Amendment "A" decreased the maximum fee from \$300 to \$225, which reduced the minimal fiscal impact.

The Out Years

State and Municipal Impact: The fiscal impact of the bill would remain constant unless and until the statutory fee is modified.

Primary Analyst: MM
Contributing Analyst(s):

5/2/06

CONNECTICUT STATE LIBRARY
LAW/LEGISLATIVE REFERENCE UNIT

[OIA]

The preceding Fiscal Impact statement is prepared for the benefit of the members of the General Assembly, solely for the purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either House thereof for any purpose.

CONNECTICUT
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LEGISLATIVE REFERENCE
SECTION

OLR Bill Analysis**sSB 549 (as amended by House "A" and Senate "A")****AN ACT CONCERNING MORTGAGES AND REAL ESTATE FINANCING.****SUMMARY:**

This bill expands the type of entities that can secure a commercial revolving loan with an open-end mortgage to include non-profit organizations and limited liability companies.

It makes mortgage releases and assignments executed according to law, effective to release or assign the mortgagee's interest in the property even if the mortgagee acquires the interest, or does not record the interest, until after the release or assignment is executed. The bill specifies that it may not be interpreted to limit the effect of any release or assignment recorded before, on, or after October 1, 2006.

Also, the bill reduces, from 40 to 20 years after full performance was due, the time after which an unreleased mortgage is invalid under certain circumstances. The bill makes a mortgage invalid, under these same circumstances, 40 years after it was recorded on the land records if the mortgage does not disclose the time when the note or indebtedness is payable or the time for full performance of the mortgage conditions.

But the bill authorizes a record holder of an undischarged mortgage, before the applicable 20 or 40 year period expires, to record a notice, on the land records of the town in which the property is situated, that contains certain information. Under the bill, recording the notice tolls the applicable time period for 10 years. The bill requires that the notice be indexed in the grantor's index under the mortgagor's name or names and in the grantee's index under the name of the record mortgage holder's name.

Finally the bill increases, from \$ 150 to \$ 225, the maximum fee the court may award parties in any civil action affecting the title to real property, or affecting any mortgage or lien on it, for a title search.

*Senate Amendment "A" increased the maximum fee for title searches from \$ 150 to \$ 300.

*House Amendment "A" decreased the maximum fee from \$ 300 to \$ 225.

EFFECTIVE DATE: October 1, 2006

COMMERCIAL REVOLVING LOANS

Under current law, a "commercial revolving loan," for purposes of the open-end mortgage law, involves advances of all or part of the loan proceeds and repayments of all or part of the outstanding balance of the loan from time to time. As long as the mortgage and underlying

note comply with certain statutory requirements, the mortgage and the advances made under it will have priority over other claims recorded after the mortgage was recorded.

The bill expands the scope of such loans by requiring that the proceeds may not be intended primarily for personal, family, or household purposes, instead of requiring that the proceeds be to an entity organized for profit and engaged primarily in commercial, manufacturing, or industrial pursuits. Thus, it includes such loans made to non-profit entities. The bill also specifies such loans may be made to a limited liability company.

MORTGAGE RELEASE

The bill applies to mortgage releases that are executed according to existing law. The release must identify the mortgagor (borrower) and mortgagee (lender), the date the mortgage was executed, the town where it was recorded, and the volume and page of the land records where it appears. It must be signed by the releaser, acknowledged to be his free act and deed, and witnessed by two people.

MORTGAGE ASSIGNMENT

The bill applies to mortgage assignments that:

1. contain a sufficient description to identify the mortgage, assignment of rent, or assignment of interest in a lease given as security for a mortgage debt and
2. have been executed, attested, and acknowledged in the manner prescribed by law for deeds.

Whenever an assignment of any residential mortgage loan (1) made by a lending institution organized under the laws of or having its principal office in another state and (2) secured by mortgage on residential real estate located in this state is made in writing, the instrument must also contain the name and business or mailing address of all parties to the assignment.

INVALIDITY OF OLD MORTGAGES

Under current law, when the land records have a mortgage that has not been released and the mortgagor or those who own the land has been in undisputed possession for at least 40 years after the mortgage should have been paid off, the mortgage is invalid if the person in possession of the land files an affidavit that satisfies certain conditions in the land records. The bill reduces the time from 40 to 20 years.

The bill makes a mortgage invalid, under these same circumstances, 40 years after it was recorded on the land records if the mortgage does not disclose the time when the note or indebtedness is payable or the time for full performance of the mortgage conditions.

Notice from Mortgage Holder

CONNECTICUT
STATE LIBRARY
LEGISLATIVE REFERENCE
SECTION

Under the bill, the notice a record holder of an undischarged mortgage may file on the land records must contain: (1) the mortgagor's name or names; (2) the recording information for the mortgage and any mortgage assignment; and (3) a statement of the reasons why the mortgage is valid and effective.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0 (03/27/2006)

Insurance and Real Estate Committee

Joint Favorable

Yea 15 Nay 0 (04/18/2006)

Banks Committee

Joint Favorable

Yea 18 Nay 0 (05/01/2006)

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SECTION