

CBA LPRC POSITION REQUEST FORM

The CBA Real Property Section **position request** is as follows:

1) Proposed legislative or regulatory concept:

To **OPPOSE** SB321, AAC Real Estate Closings and Mortgage Loan Transactions

2) Explanation and rationale for advancing this position:

Proposed Bill No. 321 would do two things:

- Permit non-attorneys to represent the legal interests of parties to real estate closings
- Permit mortgage lenders to induce or require borrowers to use preferred attorneys or law firms to represent such borrowers in proposed mortgage loan transactions

Non-Attorneys Conducting Closings. The Section opposes legislation that would allow non-attorneys to conduct real estate closings for the following reasons:

- Real estate regulations and closing can be complicated. The purchase of real estate is largest financial transaction of most people's lifetimes, and involves issues including complex title matters, lead paint, asbestos, buried oil tanks, land use restrictions, zoning law, etc. Only licensed attorneys have the training and resources necessary to address them. In addition, only a licensed attorney will work as an advocate for parties to these transactions, with a fiduciary duty to represent their interests.
- It has long been the law and practice in Connecticut that the representation of parties to real estate closings is the practice of law. First, it is the province of the courts to define what is and what is not the practice of law, and the courts have made it clear in Section 2-44a of the Practice Book that the representation of such interests, and the drafting of documents in connection with these transactions, is the practice of law. The legislature should not trample on this decision of the courts.
- The Connecticut legislature very recently reinforced the doctrine that the conduct of real estate closings, and the representation of parties thereto, is the practice of law with the passage of Public Act 19-88 less than two years ago. There is no compelling reason for the legislature to both (i) challenge the decision of the Connecticut court system by adopting legislation contrary to Practice Book section 2-44a, and (ii) undo its own legislation from 2019, which passed by large majorities in both chambers of the legislature.

Inducing or Requiring Representation. The Section also opposes legislation that would permit mortgage lenders to induce or require borrowers to use attorneys or law firms selected by the lender to represent such borrowers in mortgage loan transactions. Under current practice, lenders often require that borrowers pay for the cost of an attorney who represents the lender. This is commonplace. Proposed Bill No. 321 would allow a lender to either induce or require that a borrower be represented by an attorney of the lender's choosing. A society that believes in individual liberty should not countenance a law that would allow a lender to coerce or dictate a borrower's ability to engage counsel of their free choice. An attorney chosen by the lender would have a built-in conflict of interest. While supposedly representing the interests of the borrower in a transaction in which the borrower and lender may have competing interests, the attorney would rely on the lender for being included on its "preferred list" of attorneys.

3) Is draft regulation, legislation or proposed bill included?

Proposed Bill is in concept form only.

4) What is the date of any legislative hearing, if known? N/A

5) Was this position previously approved by the CBA? If so, when does/did it expire?

Yes. The position expires at the end of the 2021 legislative session.

6) Is the CBA section or committee seeking to join a previously approved CBA section or committee position? No

7) Potential or actual CBA opposition from another CBA section or committee? None expected

8) Strength of section position (including process and results of section vote taken on issue):

Pursuant to its bylaws, the Executive Committee was polled in between meetings of the Section. Support for this position was unanimous in those responding to the poll (thirteen responses).

9) Fiscal impact (on the state): None

10) Are you seeking "fast-track" approval? Yes (not sure if this is necessary considering the existing position is good through the end of the session)