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# MEMORANDUM IN OPPOSITION

**May 13, 2011**

**A636 Weinstein (ON ASSEMBLY CODES AGENDA)**
**S696 Klein (Senate Judiciary Committee)**

***An act to amend the real property actions and proceedings law, in relation to title to an abandoned multiple dwelling in a city, town or village***

This memorandum in ***opposition*** is written on behalf of our client, the New York Bankers Association. The Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. In aggregate, members of the Association employ approximately 250,000 New Yorkers and hold more than $9 trillion in assets.

The New York Bankers Association (NYBA) opposes this legislation that would require a mortgagee of an abandoned multiple dwelling to either (a) commence proceedings to foreclose the mortgage or lien and move for the appointment of a receiver, in which application the mortgagee must request that a receiver be ordered by the court appointing him or her to enter into an agreement with the appropriate agency to bring the building into compliance with applicable provisions of law, or (b) take possession of the premises and enter into an agreement with the applicable agency to bring the building into compliance with applicable provisions of the law. The bill would create yet another level of burdensome, expensive – and perhaps unachievable – requirements on mortgagees which will only result in fewer credit-worthy loans being made and additional costs being imposed on New York's mortgage lending market.

Additionally, we believe this legislation is unnecessarily duplicative and liable to cause confusion as to the obligations of mortgagees in New York, in light of the recent enactment of Chapter 507 of the Laws of 2009. Chapter 507 specifically includes mandates – which only went into effect last year – which require lenders, during the foreclosure process, to maintain vacant properties as well as those dwellings abandoned by the owner in which tenants still reside. This proposed legislation, appears to overlap, and perhaps to some degree conflict with, the Chapter 507 maintenance mandates. Thus, NYBA urges that the bill be held.

This proposed legislation would impose substantial new burdens on mortgagees of abandoned properties - at threat of otherwise losing their interests in such properties. The bill would require mortgagees to proceed with a foreclosure action and have a receiver appointed who would be required to reach a repair agreement with the appropriate agency, or alternatively require the mortgagee to formally take possession and enter into such an agreement with the

agency. The underlying requirement that a receiver be obtained by a mortgagee in a foreclosure action, may impose a requirement outside the control of the mortgagee, as it is the judge, and not the mortgagee, who ultimately appoints a receiver in a foreclosure action. Even if a receiver is appointed, it will be done at potentially significant cost and expense, which undoubtedly will be expected to be borne by the mortgagee – along with the costs of bringing the building into "compliance with the applicable provisions of law".

The alternative requirement, that the mortgagee "take possession" of the property "as provided in the mortgage", while not clearly defined, would seem to turn a potential remedy for the mortgagee into a new legal mandate regarding the care for the property – despite the fact that the mortgagee is a lender only, and not the actual owner of the property. These additional new costs and liabilities (none of which have been factored into the pricing of existing mortgages) would add significant risks for lenders and clearly result in fewer loans and higher priced lending in the New York market. This would seem to be a particularly unfortunate outcome at a time when New York is struggling to improve its economic outlook, and revitalize its housing market.

The obligations imposed in this legislation, we believe, would also create duplicative and perhaps conflicting maintenance obligations with those established in Chapter 507 of the Laws of 2009, which obligations only became effective last month. We believe, therefore, that it is, at the very least, premature to impose any additional maintenance requirements on lenders at this time. The new Chapter 507 maintenance requirements should be given an adequate time to be implemented and assessed, before adding yet another level of obligations for lenders. To do otherwise, can only result in confusion and additional, unnecessary costs for lenders and borrowers alike, as well as a less than effective implementation of either new law.

For these reasons, the New York Bankers Association ***opposes*** this legislation and urges that it be held.

**Respectfully Submitted,**

**WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**