

**STATEMENT OF MICHAEL P. SMITH
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BEFORE THE
ASSEMBLY STANDING COMMITTEE ON HOUSING
ASSEMBLY STANDING COMMITTEE ON JUDICIARY
ASSEMBLY STANDING COMMITTEE ON BANKS**

November 7, 2011
New York City

Good morning. My name is Michael P. Smith, President & CEO of the New York Bankers Association. NYBA is comprised of the community, regional and money center banks and thrifts doing business in New York State. Our members employ more than 200,000 New Yorkers.

Since the issue of predatory lending first came into public view almost a decade ago, NYBA has played a leading role in developing solutions to the problem, even though most of our member banks did not make subprime loans. Our members have consistently supported strong legislation which would establish meaningful and workable uniform national standards in the mortgage market designed to eradicate predatory practices, while not creating unnecessary impediments to homeownership, particularly for moderate- and low-income Americans. We have also worked tirelessly with State legislators to craft high-cost home loan, subprime lending and mortgage foreclosure laws which are among the most protective of homeowners and tenants in the nation.

Throughout the economic downturn of the last three years, NYBA has continued to work with State legislators on this important issue and New York homeowners and

tenants now are afforded even further protections in the foreclosure process. For example, Chapter 507 of the Laws of 2009 (Chapter 507) requires that all defaulting homeowners receive a 90-day pre-foreclosure notice and the opportunity to participate in a mandatory settlement conference 60 days after proof of service has been filed with the County Clerk. The already existing right of mortgagors of owner-occupied one-to-four family dwellings, to receive notice regarding the availability of help for homeowners in foreclosure, has also been extended to any tenant in a dwelling unit. Importantly, too, foreclosure proceeding judgment creditors are now subject to an array of maintenance obligations, once they have obtained a judgment of foreclosure and sale on property which is vacant, becomes vacant after the issuance of the judgment, or is abandoned by the mortgagor but is occupied by a tenant. Thus, New York State and City homeowners and tenants alike are afforded a comprehensive array of protections in excess of those in almost any other state in the union.

NYBA has also been at the forefront of financial literacy, bank access and mortgage workout initiatives. We believe that these initiatives, coupled with the strong legislative and regulatory actions already taken in New York State and in Washington will ultimately have a meaningful and positive impact on reviving the State's mortgage market.

Unfortunately, one of the biggest challenges to a meaningful housing recovery in New York remains the ever-growing logjam of foreclosures cases in the court

system. (Currently, that process takes over three years in parts of our State.) As early as 2008, NYBA supported a foreclosure mitigation initiative of the Office of Court Administration, spearheaded by then-Chief Judge Judith Kaye, which sought to make settlement conferences more productive for all parties – the homeowners, the lenders, and the court system. Despite these efforts, the number of foreclosure actions continued to increase and lenders and the courts found themselves more and more back-logged with cases. Many settlement conferences continued to be adjourned after the first meeting. A 2009 report of the Center for New York City Neighborhoods found that, after the first conference was adjourned, many homeowners wisely used the opportunity to seek counsel from legal aid services. Volunteer lawyers in Brooklyn said that, in that borough alone, half of all foreclosure cases require a *pro bono* attorney. The number of free legal aid providers expanded in response to this need in the community with many new volunteer initiatives springing up, resulting in more productive conferences. These services are now more often being used prior to the first settlement conference – with homeowners now less fearful of intimidating court environments and unfamiliar legal terminology. When distressed homeowners are able to find resolution in a timely manner, there is less chance of properties falling into disrepair and neighborhoods declining. The toll on a family of a long, drawn-out proceeding can also be avoided.

Legal aid services, however, have become overwhelmed by the caseload of foreclosure proceedings. In response, the Federal Reserve Bank of New York

and the New York City Bar Association, in 2009, launched a volunteer-effort called the Lawyers' Foreclosure Prevention Network to supplement, on a pro bono basis, the number of lawyers available to homeowners in foreclosure. To facilitate this worthwhile program, financial institutions have waived, to the extent possible, conflicts of interest that arise in the representation of distressed homeowners, allowing their own counsel to work on behalf of those facing foreclosure. This latest effort is in addition to the long-standing *requirement* that the interest from lawyers' IOLA accounts provide funding for free legal services. NYBA has also testified in support of Judge Lippmann's request for a budget increase to meet the additional demand for legal services.

NYBA has also formed a Judicial Foreclosure Task Force committed to working with the court system to develop constructive solutions to the current logjam of residential and commercial foreclosures in New York. As you know, New York has perhaps the longest foreclosure process in the nation, presenting great challenges to the courts, banking institutions and property owners alike. In this regard, the Task Force has developed the following key points:

1. although, in most New York jurisdictions, there are separate "tracks" for commercial and residential foreclosures, further delineation should be developed so that unoccupied houses, houses bought on speculation and apartment buildings are moved more directly/expeditiously through the system;

2. the residential foreclosure track should be further delineated, so that non-disputed foreclosures can be expedited;
3. guidelines should be developed for the residential foreclosure settlement process that contain, among other things, limits on the number of settlement conference postponements and the total number of conferences that are permitted;
4. motions should be decided no later than sixty (60) days after full submission;
5. appearances on foreclosure motions should be eliminated unless requested by one or both of the parties;
6. court rules and required forms should reflect all commercial foreclosure and residential foreclosure tracks;
7. periodic training of court personnel should be implemented to ensure consistent, non-discretionary application of the foreclosure rules and processes throughout the state and among the judiciary;
8. when a receiver is requested, he/she should be appointed no later than sixty (60) days after full submission by the plaintiff and receivers should receive training in order to better understand and carry out their responsibilities;
9. full implementation of State-wide electronic filing system for all foreclosure proceedings should be expedited; and
10. re-passage of non-judicial commercial foreclosure legislation should be urged as an important tool to expedite uncontested proceedings.

The industry is particularly concerned that the length of the current foreclosure process for commercial properties is severely hampering the economic recovery.

While it is true that New York's court system is burdened by more foreclosure cases than is usual, we should not lose sight of the fact that New York State has fared extremely well during the recession in terms of the number of foreclosures, when compared to other states, having the 45th lowest rate of foreclosures out of the 50 states. In New York State, one out of every 4,200 homeowners received a foreclosure filing in September. Compare that to California, where one out of every 260 homeowners received a foreclosure filing. We believe this is a direct result of strong safeguards that were enacted here in New York. The reforms were the result of lawmakers, community groups and the banking industry working together to achieve workable and meaningful reforms. Although we believe there is more work to do on this issue within the court system that would benefit both lenders *and* borrowers, we believe that additional legislation and regulation impacting the foreclosure process – other than to re-instate non-judicial foreclosure for commercial properties -- at this point could only prolong the suffering and increase the debt burden of homeowners and harm the housing market's struggle to recover.

The New York Bankers Association welcomes this opportunity to comment on New York's mortgage and foreclosure situation and we pledge to continue to work with

you, and other public policy makers on additional efforts to improve the homeownership environment in our State. Thank you for the opportunity to appear before you today.