

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

677 Broadway - 9th Floor, Albany, New York 12207-2996 Tel: (518) 449-8893 Fax: (518) 449-8927

Albany • Baltimore • Boston • Chicago • Dallas • Garden City • Houston • Las Vegas • London • Los Angeles • McLean
Miami • Newark • New York • Orlando • Philadelphia • San Diego • San Francisco • Stamford • Washington, DC • White Plains
Affiliates: Berlin • Cologne • Frankfurt • Munich • Paris

www.wilsonelser.com

MEMORANDUM IN OPPOSITION

February 8, 2010

**S1221 Thompson (ON SENATE JUDICIARY COMMITTEE AGENDA)
A2096 Schroeder (Assembly Judiciary Committee)**

AN ACT to amend the real property law, in relation to prohibiting mortgagees from requiring mortgagors of certain real property to purchase flood insurance exceeding the amount required by federal law

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.

This legislation would reduce the ability of lenders to encourage their borrowers to protect themselves against foreseeable hazards, increase the risk that a lender would not be repaid and reduce competition among lenders in the types of loan terms and conditions they could offer in the State. It would also apply only to State-chartered lenders.

This legislation would prohibit lenders from requiring loan applicants whose loans will be secured by property located in a special flood hazard area to purchase flood insurance policies in excess of the amount necessary to extinguish the loan or in excess of the maximum coverage available under the National Flood Insurance Program, whichever is less. It would also prohibit mortgagees from denying a loan because the mortgagor did not obtain such coverage. The regulations of the federal bank and thrift regulatory agencies currently require that loans made on the security of property located in special flood hazard areas must be secured by flood insurance in at least an amount sufficient to extinguish the loan or in the maximum amount available under the Program, whichever is less. This legislation would therefore cap the amount of flood insurance a bank could require at the minimum level required under federal regulation.

Lenders compete on a range of terms and conditions. They also protect themselves from inappropriate risks using a range of terms and conditions. A lender in the business of making mortgage loans in areas having special flood hazards which chooses not to make a loan that is not fully secured by flood insurance would be making a perfectly rational business judgment that a customer who does not see the need to protect his or her property from the risk of flooding could present an unacceptable credit risk. Moreover, loans in such areas in excess of the maximum limits of the Program's coverage could expose lenders to the risk of being left without

security in the event of a major flood. When a lender risks the funds of its depositors, shareholders and investors, it should have the discretion of setting the appropriate terms and conditions regarding the insurance coverage needed to protect its investment.

Moreover, this legislation would apply only to State-chartered lenders, allowing national banks and federal thrifts to continue to compete on the terms and conditions and using the underwriting standards of their choosing. The State of New York should not be in the business of dictating the underwriting of loan terms and conditions, nor should it dictate risks that lenders are required to take.

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