



**New York Bankers Association**

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Submitted to the  
Assembly Standing Committee on Banks  
Assembly Standing Committee of Housing  
Assembly Standing Committee on Judiciary

November 17, 2010  
New York, New York

Thank you for the opportunity to comment on the current state of the foreclosure situation in our State and on the value of legal services for New Yorkers facing foreclosure. We also appreciate the opportunity to provide more detailed information on the latest initiatives and data from our member banks at a future date, as that information is made available.

Our Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State, employing over 200,000 New Yorkers.

Throughout this period of increased foreclosures nationally, the New York Bankers Association has supported various programs and initiatives aimed at helping homeowners avoid foreclosure. NYBA was first in the nation to create high cost home loans best practices. Additionally, as early as 2002, NYBA, along with U.S. Senator Schumer, began a dialogue with local community leaders and banks on the causes for many citizens choosing to enter into high-cost mortgages with non-banks, and created the HELP program. HELP was designed to bridge the communications gap between traditional banks and low- to moderate- income households and to break the grip of predatory lenders in certain neighborhoods. Since that time, NYBA has consistently worked with State and federal legislators and regulators to develop meaningful high-cost and subprime lending legislation, designed to protect consumers while not limiting

credit availability in the State. As a result of these efforts, high-cost home loan legislation was enacted as far back as 2003, which we believe helped to significantly reduce the number of foreclosures in New York. Additional legislation enacted in 2008 and 2009 further extended protections under the law to homeowners with subprime, nontraditional, and ultimately traditional mortgages.

More recently, NYBA member banks have participated in large public forums where distressed borrowers could come to meet directly with lenders to discuss loan modifications and other foreclosure prevention strategies. These forums, organized by various public officials, were held around the State of New York. In addition, NYBA and its member banks devote significant human and financial resources to non-profit foreclosure prevention programs, such as Operation HOPE, which depends on banker volunteers to help borrowers remain in their homes.

NYBA's efforts, in concert with State legislators, regulators, and the Administration have been successful as evidenced by the fact that, despite our State's large population, we consistently suffer far fewer foreclosures than the vast majority of other states in the nation. **In fact, New York State currently ranks 43<sup>rd</sup> out of 50 states in the rate of foreclosures.**

In other parts of the country, however, the pace and volume of foreclosures have

overwhelmed certain components of the process – resulting, reportedly, in cases where documents were not appropriately reviewed before advancing to the court system. In response to this development, and despite the myriad protections already afforded to New York’s homeowners, many New York banks, over the last few weeks, halted temporarily foreclosures in this State until a thorough review of the documents could be performed.

Additionally, and again leading the nation in an aggressive response to any potential irregularities, the Chief Judge of the State of New York has now amended its court rules, requiring lenders to submit an affirmation that they have taken reasonable steps to verify the accuracy of papers they file to support residential foreclosures. New York is one of 23 states that require judicial approval of foreclosures. Attorneys must now certify, "under the penalties of perjury," that they have communicated with a representative of the plaintiff bank or lender and that they have personally reviewed all documents and records filed with the court. After making this review and "other diligent inquiry," they must certify that "to the best of my knowledge, information and belief, the Summons and Complaint and all other documents filed in support of this action for foreclosure are complete and accurate in all relevant respects." **As a result, New Yorkers facing the foreclosure process are afforded better protections than citizens of virtually any other state in the country.**

Of course, clarifications could be made to the process to make it more efficient

for all parties. For example, mortgage servicers report that there appear to be no specific guidelines for the court to use when determining whether a foreclosure should be referred back for mediation. A single case may be referred back for mediation multiple times since the determination criteria are somewhat subjective. This is just one example of why the New York Bankers Association has been calling for national standards in this area for many years. We believe that a bi-partisan national response to the foreclosure situation that provides a fair outcome for all parties – lenders and borrowers – is the key to the housing market recovery.

Notwithstanding the many safeguards in New York's foreclosure process, the banking industry fully supports the increased availability of legal aid services to New Yorkers in need, and has a long history of meaningful support.

In June 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. Unfortunately, as you know, despite these efforts, as the number of foreclosure actions increased, lenders and the courts found themselves more and more back-logged with cases. Many settlement conferences continued to be adjourned after the first meeting, citing inadequate preparation. Volunteer lawyers in Brooklyn say that in that borough alone, half of all foreclosure cases require a *pro bono* attorney. 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. 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.

To help finance the cost of these important free legal services, Section 497(6)(b) of New York’s Judicial Law requires attorneys to deposit certain client funds into IOLA accounts for which participating banking institutions pay an interest rate not less than the rate paid on “similar accounts” and which do not impose charges or fees greater than those imposed on such similar accounts. IOLA earns the interest income net of any fees on these accounts and awards that money to civil legal aid organizations throughout New York State. Although banks are not mandated to offer IOLA accounts and despite the significant constraints placed on such accounts – including mandated interest rates and fee limitations – approximately 200 New York banking institutions (more than 90% of the banks in

New York) do offer them. **We believe this is strong evidence of the banking industry's commitment to supporting access to legal services for all.**

However, in the hopes of increasing IOLA revenues, the IOLA Board has twice in the last few years amended its rules. In this regard, in 2007, the Board effectively increased the interest rates paid on IOLA accounts by broadly interpreting the statutory requirement that the interest rate payable on IOLA accounts be not less than the rate paid by the bank on "similar accounts." This interpretation resulted in banks being required to deem accounts they do not believe to be similar (such as money market accounts with or tied to check writing capability and many open-end money market funds) to inappropriately be deemed "similar" for interest-setting purposes.

Additionally, among other things, the 2007 amendments to the Board's rules added a "best customer" standard for the interest paid on such accounts, thereby requiring that the interest rate paid on an IOLA account must be at least as great as the rate the bank offers its best customers on similar accounts at that bank – a requirement for which there is no basis in the governing statute. The rule further established a requirement for attorneys that they establish IOLA accounts only in "eligible banks" although there is no such mandate in the underlying law. In fact the governing law specifically states that an attorney may establish an IOLA account "in a banking institution, of the choice of the attorney." Thus, the rule,

without ostensible legal authority, limited the choices that an attorney has when selecting a financial institution for IOLA account purposes.

In 2010, the Board further revised its interest rate options to establish a 1% interest rate floor as one of the options banks may utilize when setting IOLA account interest rates – specifically, the option that ties IOLA rates to the Federal Funds Target Rate. Any further restrictions placed on IOLA accounts could, no doubt, result in limiting the number of banks offering this service, creating inconvenience and a lack of choice for attorneys required to set up IOLA accounts and ultimately undermining the success of a program in which the vast majority of banking institutions today voluntarily participate.

I wish to emphasize the banking industry's commitment to legal aid services for New Yorkers in need. The industry will continue to provide meaningful support for such programs. In addition, the banking industry will continue to play a leading role in financial literacy initiatives in New York, as a way of mitigating future needs for legal aid in many consumer service areas. Nevertheless, the financial challenges associated with the IOLA funding mechanism at this time should not result in additional burdens for the more than 90% of financial institutions in our State that offer IOLA accounts. We believe that to do so could discourage and even jeopardize the participation of banks in this critical and worthwhile cause. The Association pledges to expand efforts to enhance our membership's activity in support of legal aid services through direct grants or volunteer and in-kind

services. We believe this is the best and most effective approach in these difficult economic times.

The member banks of the New York Bankers Association have demonstrated their willingness to not only work toward the prevention of foreclosures, but also to support New Yorkers who find themselves in the foreclosure process. NYBA has assembled a long list of initiatives, supported by banks, designed to ease the impact of foreclosure on families and communities. Important among these initiatives are those NYBA has undertaken with the Office of Court Administration and with legal aid providers across the State. As our nation's economic recovery takes hold, we are hopeful that the number of foreclosures in New York will continue to decline. As stated, New York is already in a much better position than almost every other state. NYBA remains committed to doing all it can to aid in that recovery.