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The Honorable David A. Paterson
Governor
State of New York
State Capitol
Albany, New York 12224

RE: AN ACT to amend the real property actions and proceedings law, the uniform commercial code, the civil practice law and rules, the banking law and Chapter 472 of the laws of 2008 amending the real property actions and proceedings law and other laws relating to foreclosure actions on home mortgage loans, in relation to home mortgage loans; to amend the penal law, in relation to the crime of mortgage fraud; and to amend chapter 57 of the laws of 2008 relating to authorizing the New York State mortgage agency to transfer certain moneys, in relation to the appropriations to the New York state housing trust fund corporation; and providing for the repeal of certain provisions upon expiration thereof

Dear Governor Paterson:

The New York Bankers Association (NYBA) has worked in concert with State legislators, regulators and the administration for many years to find ways (including the development of two significant pieces of mortgage legislation) to help eliminate predatory lending practices and reduce the foreclosure rate in New York. These efforts have borne fruit, as, despite the State's large population, we consistently report far fewer foreclosures than the vast majority of other states in the nation. However, we believe that A.40007(Weinstein)/S.66007(Klein) would impose significant new and unreasonable responsibilities and liabilities upon mortgage lenders (including new notice and reporting requirements, as well as a duty for lenders to maintain property which they do not own), leading to higher loan costs for consumers and restraining housing credit. Therefore, we urge that the bill be **disapproved**. In the alternative, we believe the legislation must be amended in various sections and we look forward to further discussions. Our Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. In

aggregate, our members employ over 250,000 New Yorkers and hold more than \$9 trillion in assets.

Regrettably, despite its laudable intentions to protect homeowners and consumers involved in foreclosure proceedings, this legislation contains several provisions which impose unreasonable burdens on the banking industry, and will have significant unintended negative consequences for New York's economy. In this regard, we would like to express deep concern that the legislation's expansion of the pre-foreclosure notice and right to a mandatory settlement conference from high cost, subprime and nontraditional mortgage holders to all homeowners will further clog the courts and extend New York's foreclosure process - already the longest in the nation at over 600 days in some jurisdictions. This can only lead to more home abandonment, and increased liability for customers and mortgage lenders alike.

The most troubling provisions in the legislation, we believe, pertain to new maintenance requirements which would inappropriately impose the maintenance burden of homeowners and landlords onto plaintiffs who obtain a judgment of foreclosure and sale on property which is vacant, becomes vacant after the "issuance" of the judgment (not defined in the legislation), or is abandoned by the mortgagor but is occupied by a tenant. In such circumstances, the lender will have significant maintenance obligations pertaining to that property until ownership has been transferred AND the deed has been duly recorded. (There is a significant length of time between these two occurrences and it appears that the intent of this provision is for plaintiffs to continue maintenance even after the deed has been transferred.)

Moreover, the lender will not be indemnified against potential liability which may accrue to the lender for living up to these statutory requirements. In fact, to the contrary, governmental entities, homeowners associations and even tenants would be entitled to enforce the maintenance provisions and recoup their costs from plaintiffs for maintaining such property. However, if a governmental entity holds a mortgage subordinate to another mortgage on the property, that entity would not be subject to the maintenance obligations being imposed on other mortgagees, thus creating two classes of properties in foreclosure. We believe that, as a result, these new obligations will significantly discourage mortgage lending in the State, an outcome that can only hurt the economic recovery and revitalization of the State.

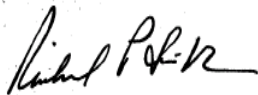
NYBA also opposes the provisions in the legislation which would require lenders to provide information about its borrowers to the Banking Department, to facilitate the Department's review of whether a borrower might benefit from counseling. We believe that this requirement raises a number of privacy concerns, most notably that it may require lenders to breach their privacy obligations to their customers, as set forth in Gramm Leach Bliley and other privacy statutes. (Unfortunately, however, there is no exemption from liability for banks which are

being compelled to turn over what otherwise would be the confidential information of their customers.) These provisions also would compel national banks to provide a state regulatory agency with data, which we believe is completely contrary to preemption principles, recently clarified and re-affirmed by the United States Supreme Court in *Cuomo v. Clearing House LLC*. This information flow, which we believe should more appropriately emanate from the courts, also cannot be automated, because the Banking Department can ask for whatever information it deems "reasonably necessary". This clearly will lead to higher borrowing costs and even greater foreclosure delays particularly as, according to statements made by Banking Department personnel at their December 2009 Board meeting, Department resources are stretched thin and are likely to become more so.

NYBA also has concerns that the new tenants' rights notification provisions which are inconsistent in several respects from the new federal Protecting Tenants at Foreclosure Act, will also inhibit the purchase by successors in interest from buying properties in foreclosure. This is particularly true, insofar as the new legislation would require successors in interest, in most instances, to honor oral and implied leases, and where there are tenants on the premises, to limit a successor in interest's ability to occupy the acquired premises to a single unit on such premises until any other leases have expired. Clearly, faced with such obstacles and obligations, buyers will be discouraged from acquiring foreclosed properties, once again slowing down New York's economic recovery.

For all these reasons NYBA opposes this legislation and asks that it be disapproved. Should this legislation be enacted, however, we urge that its effective dates - which now range from a mere 30 days to a maximum of only 120 days - be extended, to allow lenders at least a reasonable amount of time to ensure their compliance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael P. Smith". The signature is fluid and cursive, with the first name being the most prominent.

Michael P. Smith