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MEMORANDUM IN OPPOSITION

March 8, 2011

S.1520 Klein (ON SENATE HOUSING COMMITTEE AGENDA)

AN ACT to amend the real property actions and proceedings law, in relation to notice to tenants upon foreclosure of the leased residential real property

This memorandum in *opposition* is written on behalf of our client, the New York Bankers Association (NYBA). NYBA is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. In aggregate, their members employ over 200,000 New Yorkers and hold more than \$9 trillion in assets.

The New York Bankers Association is **opposed** to this legislation that would inappropriately broaden an already burdensome requirement for “successors in interest” (which include any “person or entity who or which acquires title in a residential real property as a result of a judgment of foreclosure and sale.....”) to notify all tenants – no matter when they become tenants - of their continued applicable rights of occupancy and to provide to them the name and address of the new owner. As a financial institution as “successor in interest” is likely to have no way of knowing when tenants move in and out, such a requirement places a new burden on lenders which may be difficult or impossible to comply with. The expansion of this definition also will inappropriately require successors in interest to honor oral and implied leases to a whole new and unknown category of tenants.

This legislation seeks to amend paragraph (c) of subdivision 1 of section 1305 of the real property actions and proceedings law, as added by chapter 507 of the laws of 2009, which currently limits the definition of a “tenant” entitled to notice regarding the foreclosure process to anyone who is a tenant at the time such notice is required pursuant to subdivision four of section 1303 of the real property actions and proceedings law – that is, a tenant at the time when the summons and complaint in the foreclosure action are delivered. S.1520 would inappropriately expand this notice requirement further – even to tenants who move in subsequent to delivery of the summons and complaint. It is unclear how financial institutions would, in most instances, obtain this information, and would once again unfairly transfer a burden of ownership to a mortgagee.

NYBA also continues to have concerns (as it did when chapter 507 of the laws of 2009 were enacted) that these additional tenants’ rights notification provisions are inconsistent in several respects with the federal Protecting Tenants at Foreclosure Act, and thus will inhibit the purchase by potential successors in interest of properties in foreclosure. This is particularly true, insofar as S.1520 would require successors in interest, to expand the category of tenants for whom they would be required to honor oral and implied leases – even to those who take occupancy after a foreclosure action has

begun. 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 these reasons, the New York Bankers Association **opposes** this legislation and urges that it **not be enacted**.

Respectfully Submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP