

CITY COUNCIL
CITY OF NEW YORK

-----X

TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON HOUSING AND BUILDINGS

-----X

April 14, 2011
Start: 1:04 pm
Recess: 4:38 pm

HELD AT: Council Chambers
City Hall

B E F O R E:
ERIK MARTIN DILAN
Chairperson

COUNCIL MEMBERS:
Gale Brewer
Leroy Comrie, Jr.
Elizabeth Crowley
Lewis A. Fidler
James F. Gennaro
Robert Jackson
Letitia James
Brad S. Lander
Melissa Mark-Viverito
James S. Oddo
Joel Rivera
Eric A. Ulrich
Jumaane D. Williams

A P P E A R A N C E S

COUNCIL MEMBERS:

Ruben Wills

A P P E A R A N C E S (CONTINUED)

Ruthanne Visnauskas
Deputy Commissioner
HPD

Michael Smith
President/CEO
New York Bankers Association

Bruce Bergman
Attorney
Berkman, Henoch, Peterson, Peddy and Fenchel

AnnMarie Santiago
Chief of Staff of Enforcement
HPD

Robert Edman
Assistant Commissioner
Department of Health and Mental Hygiene

Oda Friedheim
Staff Attorney
Legal Aid Society, Queens

Elizabeth Lynch
Staff Attorney, Foreclosure Prevention Project
MFY Legal Services

Michael Hickey
Executive Director
The Center for New York City Neighborhoods

Betty Harville
Concerned Citizen

Jean Andre Sassine
Board Member
New York Communities for Change

A P P E A R A N C E S (CONTINUED)

Skip Roseboro
New York Community Organizing Fund, Inc.

Moses Gates
Association for Neighborhood Housing Development

Steven A. Ludsin
Founder
Easy Escrow

2 COUNCIL MEMBER DILAN: Good

3 afternoon. My name is Erik Martin Dilan. I'm the
4 Chair of the City Council's Housing and Buildings
5 Committee. Today the Committee will hear for an
6 initial hearing of Intros 531, which is in
7 relation to the installation of window guards, and
8 three bills related to mortgage foreclosures,
9 Intros 494, Intros 500 and 501.

10 According to a report published
11 last month by the New York State Controller's
12 Office, between the years 2006 and 2009, the
13 number of foreclosure filings within the City of
14 New York rose approximately 32%, to 22,866.
15 Queens had the largest number of foreclosure
16 filings, approximately 9,000, followed by
17 Brooklyn, with approximately 7,000, the Bronx with
18 3,000, Staten Island with 2,600, and Manhattan
19 with close to 1,200.

20 In its 2010 State of the City's
21 Housing and Neighborhood Report, New York City's
22 Furman Center for Real Estate and Urban Policy
23 stated that foreclosures are associated with a
24 substantial uptick in housing code violations,
25 which indicates that tenants are likely to

1
2 experience deteriorating building maintenance and
3 physical conditions while a building's finances
4 are in distress. The foreclosure crisis has been
5 considered by this committee and this Council on
6 numerous occasions as well as the Committee on
7 Community Development, which has held foreclosure
8 related hearing, as well as--that Committee as
9 well has held hearings on topics such as the
10 effectiveness of foreclosure prevention programs
11 and the impacts of foreclosure on community
12 development.

13 This Committee has conducted
14 oversight in the past of subprime lending in the
15 foreclosure crisis, and in April of 2009, held a
16 hearing on legislation similar to the bills that
17 are part of today's hearing. The legislation
18 before the Committee today addresses the concerns
19 relating to the maintenance of buildings that are
20 in foreclosure proceedings.

21 Today the Committee expects to hear
22 testimony regarding this legislation from
23 representatives of HPD, housing advocates,
24 representatives of real estate and banking and any
25 other persons interested in these bills. At

1
2 approximately 3:00 p.m., the Committee will hear
3 Intro 531, which will amend the administrative
4 code of the City Of New York, adding the
5 installation of window guards, adding to the
6 enforcement of housing maintenance code.

7 Just very briefly, Intro 494 would
8 require anyone who begins a foreclosure proceeding
9 or already has begun a foreclosure proceeding, to
10 contain a compliance bond, which would be used to
11 reimburse the Department of Housing Preservation
12 and Development for repairs made and any fines or
13 civil penalties imposed during the time, the time
14 the foreclosure action is pending before the
15 court. And that bill is sponsored by council
16 member Brad Lander, who will be joining us
17 shortly. And I'll allow him to make a statement
18 on this item when he does arrive.

19 Intro 500 requires the bank or the
20 financial institutions under the mortgage
21 agreement to maintain the property, which is being
22 foreclosed upon, in accordance with multiple
23 dwelling law, the housing maintenance code and all
24 other relevant laws providing essential services
25 for tenants.

1
2 Intro 501 requires an entity that
3 files a foreclosure action with the courts to
4 register with HPDs within ten days of the filing.
5 HPD would be required to publish a list of
6 foreclosed upon properties on its website. This
7 bill also carries with it the failure to register
8 would be subject to a civil penalty for each week
9 that an entity fails to register.

10 In a different vein, intro 531,
11 which is the window guard bill would allow HPD to
12 become an enforcement arm that property owners who
13 are currently required to install and maintain
14 window guards in their rental apartments. This
15 ordinance is currently within the purview of the
16 City's health code and is enforced by the
17 Department of Health and Mental Hygiene. This
18 will now give HPD the authority to enforce this
19 ordinance as well.

20 During today's hearing, again, we
21 expect to hear testimony from representatives of
22 HPD, who I believe are here and ready to testify.
23 And I'll say again, if anyone wishes to testify on
24 any of the items before the committee today,
25 please see the Sergeant-at-Arms, and fill out an

1
2 appearance card. It looks kind of like this one,
3 if you're ready to testify. And indicate whether
4 you're interested in speaking out in favor of the
5 items on the calendar today or opposed.

6 We've been joined by Council Member
7 Brad Lander, who is a sponsor of an item on the
8 calendar today, the majority leader Joel Rivera,
9 as well as Council Member Ruben Wills, who is the
10 predecessor of the author of similar legislation
11 that this Committee considered. And I hope this
12 Committee today, in his honor, Council Member
13 Thomas White, whose commitment I gave to hearing
14 this bill, and was proud to see that the Speaker
15 of this body made this part of her State of the
16 City address.

17 So, if Council Member Lander is
18 ready, I'll allow him to make a brief statement on
19 the item that he has on today's agenda.

20 COUNCIL MEMBER LANDER: Thank you
21 very much, Chair Dilan and other members of the
22 Committee. And I also want to honor the memory of
23 our colleague, Tom White, who was a champion on
24 this issue and who we're thinking of today.

25 So, you know, all around us we

1
2 unfortunately see evidence that the lenders have
3 really failed to step up and take responsibility
4 for the mess that they've made. You know, and
5 that's whether you look around the country or
6 whether you look around our neighborhoods. In our
7 neighborhoods we continue to have a dramatic
8 number of foreclosed properties, whether single
9 family homes or into four-family homes, multi-
10 family buildings, where credit was extended on
11 completely unrealistic terms in a range of ways--
12 some predatory, some not predatory--and families
13 and communities all around this country, all
14 around this city, are continuing to feel the
15 impacts--home owners and borrowers themselves,
16 their tenants--where they have tenants--and their
17 neighbors who have to live with properties that no
18 one is maintaining.

19 At the same time, at the broader
20 federal and national level we see a real failure
21 to have held banks accountable. You know, many of
22 us saw a few weeks ago when Inside Job won the
23 Cannes Film Festival and we were reminded that not
24 one person has been held accountable for a crisis
25 that not only caused foreclosures but took the

1
2 economy off a cliff. And then more recently I was
3 interested to see just a couple of weeks ago in
4 the New York Times the very federal inspector who
5 oversaw the TARP program, Neil Barofsky, resigned
6 in protest saying, we have done little to nothing
7 to use even the money that we invested through the
8 TARP program to get the banks to modify loans to
9 help homeowners or to extend new credit to help
10 our communities.

11 And then we read today in the
12 newspaper that JP Morgan Chase, even though it had
13 the most profit--you know, record profit quarter--
14 is neither modifying mortgages, nor extending
15 credit or making home loans or multi-family loans
16 in our community. And we're deeply frustrated.
17 We're hopeful that the new Consumer Financial
18 Protection Bureau under the leadership of
19 Elizabeth Warren and the great work of our New
20 York State Attorney General will start to hold
21 people accountable, but we cannot wait. And
22 that's why I'm so honored to be a part of this
23 hearing. I think the two bills that Chairman
24 Dilan is sponsoring are smart bills for addressing
25 the challenge of foreclosed buildings in our

1 neighborhood. And I'm especially proud to have
2 worked with New York Communities for Change, ANHD
3 and NEDAP on Intro 494. That bill would require
4 that when a lender commences a foreclosure
5 proceeding they have to post a bond that would be
6 available to make sure that if fees, fines accrue
7 during that time, because the property was not
8 maintained--if an owner walks away or if it's a
9 multi-family building and they don't meet their
10 obligations--rather than the tax payer being
11 expected to bail out the lender in that case, the
12 lender's got a bond that the City can use to make
13 sure the tax payers are kept whole and have a
14 better chance of being sure that that property
15 will be maintained for its tenants and for its
16 neighbors. It will also, I believe, provide an
17 incentive for lenders to work things out with
18 homeowners who would like to achieve a workout and
19 get more modifications, rather than have the
20 expense of making sure that the taxpayers won't be
21 stuck with those fees and fines.
22

23 So, I'm honored to be the sponsor
24 to be working with advocates. And I'm especially
25 pleased that it dovetails so well with the

1
2 legislation sponsored by Chairman Dilan, who has
3 been a great champion on this issue, like on so
4 many housing issues around the City. And I thank
5 you for the time.

6 CHAIRPERSON DILAN: We've also been
7 joined by Council Member Tish James, and I just
8 would like to thank at this time the Committee
9 Staff, who has worked hard on putting this
10 legislative package together. Baaba Halm, the
11 Counsel to the Committee, to my right; Laura
12 Rogers, Legislative Attorney to the Committee, who
13 is sitting in the back; as well as Ben Goodman,
14 the Policy Analyst to the Committee, sitting
15 immediately to my left.

16 COUNCIL MEMBER LANDER: Mr.
17 Chairman, can I just add my thanks to them and
18 also to Michael Friedman-Schnapp on my staff, for
19 his work as well. Thank you.

20 CHAIRPERSON DILAN: We've also been
21 joined by Council Member Comrie. And at this
22 point we would like to call up Ruthanne Visnauskas
23 from HPD to testify on the foreclosure portion of
24 the hearing. And before you begin, just--did you
25 submit copies of your testimony to the Sergeant-

1
2 At-Arms? Okay, if you could give that to the
3 Sergeant-At-Arms so that the Committee Members can
4 follow along. And I'll just ask you to hold on a
5 moment. Thanks. We've also been joined by
6 Council Member Lewis Fidler, of Brooklyn. Okay,
7 why don't you begin?

8 RUTHANNE VISNAUSKAS: Great, thank
9 you. Good afternoon, Chairman Dilan and members
10 of the Housing and Buildings Committee. I'm
11 Ruthanne Visnauskas, Deputy Commissioner for
12 Development at the Department of Housing
13 Preservation and Development. Thank you for the
14 opportunity to discuss the merits of Intro 494
15 sponsored by Council Member Lander and Intro 500
16 and 501, sponsored by Chairman Dilan. All three
17 pieces of legislation focus on the important goal
18 of minimizing the impact on local communities when
19 a lender initiates foreclosure on a property in
20 New York City.

21 As you know, the foreclosure crisis
22 continues to have a significant impact on property
23 owners across the nation. In New York City and
24 other dense urban areas, the crisis has had a
25 distinct impact on distressed single-family homes

1
2 versus that of multi-family residences. To
3 address those specific issues in New York City,
4 HPD has worked with all levels of government,
5 including the banking industry and our non-profit
6 partners to evaluate the unique circumstances that
7 we have here in New York, and to try to find
8 effective ways to prevent the distress that often
9 times accompanies foreclosure or the threat
10 thereof.

11 As the local agency in charge of
12 housing maintenance and code enforcement, we have
13 strategically realigned our resources and
14 programming to assist in mitigating the distress
15 that often results in unsafe living conditions.
16 And although this effort provides assistance and
17 guidance for at-risk properties, the impact of our
18 enforcement efforts is seen more on a multi-family
19 level.

20 In January of this year, we
21 unveiled with Speaker Quinn and Chairman Dilan
22 HPD's Proactive Preservation Initiative, which is
23 set out on a mission to evaluate at-risk multi-
24 family residential buildings in an effort to
25 prevent further physical and financial distress.

1
2 So, through a variety of statutory and
3 programmatic means, the Proactive Preservation
4 provides both an incentive and also an enforcement
5 mechanism for landlords to keep their properties
6 financially sound and properly maintained.

7 Evaluation and maintenance of this at-risk
8 portfolio of multi-family buildings is of course
9 essential to protecting the families and the
10 communities that reside in them.

11 One of the bills before us today,
12 Intro 501, which would require any lender
13 commencing a foreclosure action regarding a
14 property located in New York City to register with
15 HPD within ten days of filing the action. This
16 registration would include such information as the
17 name and contact information of all the parties
18 and the relevant block and lot number in question.
19 Further, the agency would be required to post and
20 update this information on our website within ten
21 days of any changes in the action. Failure to
22 register with the agency would carry a maximum
23 liability of \$1,000 in civil penalties. And the
24 notice requirement in Intro 501 would allow HPD
25 the opportunity to examine the circumstances

1
2 surrounding the foreclosure action and then
3 intervene where appropriate.

4 As a local housing agency, HPD
5 doesn't have oversight over the terms of a
6 mortgage transaction. And although the notice
7 proposed in 501 would provide us with a basic
8 opportunity to examine the circumstances of a
9 particular foreclosure, in order to conduct a
10 thorough review of the transaction, we would
11 suggest taking the registration requirement even
12 further. In conjunction with the notice
13 requirement, we would suggest requesting
14 information from the lender, including information
15 on the principal balance owing on the mortgage,
16 interest and principal arrears, late fees, any
17 other sums due, the interest rate, the maturity
18 rate, any amount that would be required to
19 reinstate the mortgage. This other helpful
20 information, this other information would be
21 really helpful and importance to us in sort of
22 assessing the foreclosure.

23 In addition we would be interested
24 in requesting both a copy of the note and the
25 mortgage that's being foreclosed on, a copy of the

1
2 summons and complaint filed in the action, a copy
3 of any agreements encumbering the mortgage, a list
4 of all subordinate mortgages and liens of records,
5 and finally a copy of any audited financial
6 statement that would be required under the loan
7 agreement. We would also suggest focusing the
8 notice requirement on multiple-dwellings of ten
9 units or more, which is where HPD can have the
10 most significant impact.

11 This additional information would
12 allow for a more comprehensive review of the
13 foreclosure circumstances and will assist us in
14 finding the best possible solution, protecting the
15 tenants of the troubled asset, and then allowing
16 an opportunity to use the qualified purchaser list
17 as a resource.

18 So, in 2010, HPD released a request
19 for qualifications to preservation developers who
20 are looking to purchase at-risk properties.
21 Through the RQ process, we were able to review the
22 holdings of entities that showed an interest, and
23 we came up with a list of developers that are
24 qualified to purchase distressed property and
25 rehabilitate them for the benefit of the existing

1 and future tenants.

2
3 Although not a requirement, we've
4 offered this list as a resource to local banks who
5 are looking to foreclose on troubled assets. The
6 RFQ is rolling, so we continue to encourage
7 developers to submit qualifications in the hopes
8 of compiling as broad a list as possible.

9 Both Introductions 494 and 500
10 present a similar concept in addressing the
11 potential of magnified distress for property when
12 a foreclosure action has been commenced, although
13 they are distinct in their execution.

14 Intro 494 would require any lender
15 who commences a foreclosure on a New York City
16 property to post a compliance bond of a minimum of
17 \$10,000 to reimburse HPD for the cost of any
18 emergency repairs, fines or civil penalties
19 imposed as a result of violations of the housing
20 maintenance code.

21 Intro 500 proposes a similar
22 requirement for lenders commencing a foreclosure
23 action to assume all financial responsibility for
24 building maintenance and code compliance, although
25 it does not require the posting of the compliance

1
2 bond. The obvious intention of both of these
3 proposals is to ensure that the buildings are
4 maintained properly for the duration of the
5 foreclosure action and tenants are protected from
6 potential neglect and physical distress.

7 Although the intention of these
8 bills fits well within HPD's mission to protect
9 the quality of the housing stock in New York City.
10 Imposing financial requirements may deter lenders
11 from foreclosing altogether. Many overleveraged
12 properties begin to deteriorate because the owner,
13 with no hope of recouping its investment, has
14 neither the financial incentive to make the
15 necessary repairs, nor the ability to obtain
16 financing for those repairs. For such properties,
17 foreclosure is a necessary measure to put the
18 building back on a firm financial footing.

19 And policies which discourage banks
20 from foreclosing have the potential to harm such
21 properties and the tenants who live in them. If
22 we erect barriers that cause lenders to postpone
23 or forego foreclosure, the overleveraged property
24 is left in an extended state of limbo in which
25 deterioration becomes more and more likely. This

1 scenario not only becomes a safety hazard for
2 tenants in those properties, but also forces HPD
3 to make emergency repairs to maintain the
4 habitability of the property. The cost for these
5 emergency repairs are converted to a lien on the
6 property, as are the real estate taxes and water
7 sewage charge, that if left unpaid lead to further
8 financial distress.
9

10 Although foreclosure is an
11 unfortunate outcome for any owner, in the case of
12 multi-family buildings, it can be the best outcome
13 for the tenants who may be in an uncertain
14 financial climate.

15 In addition to potentially
16 discouraging foreclosures, the obligations imposed
17 by 494 and 500 may discourage lenders from
18 providing mortgages, so the bills imposed
19 significant obligations on lenders who commence
20 foreclosure actions, including obligations of
21 questionable legality.

22 So 494 and 500 also raise a few
23 legal concerns. One concern is whether a lender
24 or a lendeer has a legal authority to ender a
25 building, let alone repair any housing maintenance

1
2 conditions. Under existing law, the property
3 owner has the obligation to maintain the property
4 and the lender has no legal authority to enter
5 the property or perform repairs unless the
6 mortgage explicitly authorizes it to do so.

7 The bills raise a doubt as to the
8 owner's continuing responsibility regarding the
9 property, if the maintenance obligation is imposed
10 on the lender.

11 Second, both bills propose lender
12 responsibility for civil penalties incurred as a
13 result of housing maintenance code violations,
14 which according to law can only be enforced
15 against the owner of a property. Mortgagees do
16 not have title to the property unless and until a
17 foreclosure action is resolved in the mortgagee's
18 favor. Prior to that point it is questionable
19 whether a mortgagee can be responsible to the
20 property or civil penalties relating to the
21 property, which would typically be enforced
22 against the owner. Recent changes to state law
23 have imposed on a plaintiff in a mortgage
24 foreclosure action a duty to maintain the
25 foreclosed property. But this obligation exists

1
2 only after the plaintiff obtains a judgment of
3 foreclosure and sale. There is no obligation to
4 maintain the property prior to the judgment, so
5 even if a maintenance obligation could be imposed
6 on a mortgagee prior to the judgment as intended
7 by Intro 500, it's questionable whether this
8 obligation could be imposed by local law.

9 In addition, the City sometimes
10 acts as lender and brings actions to foreclose,
11 but insufficient distinctions are made in the bill
12 between the City and private lenders.

13 The foreclosure crisis presents a
14 challenge for all of us. It requires an approach
15 that can only be successful with the cooperation
16 and participation of all levels of government, and
17 our partners in the private and non-profit
18 sectors. We look forward to working with the
19 council to continue the effort to address the
20 crisis now and into the future. We thank you for
21 your time and are happy to respond to any
22 questions that you have.

23 CHAIRPERSON DILAN: Thank you for
24 your testimony. Just a little housekeeping.
25 We've been joined by Council Member Gale Brewer of

1
2 Manhattan. I saw the Republican Leader, Jimmy
3 Oddo, who was here, or still is here. There's a
4 seat available for you if you want. As well as
5 Council Member Eric Ulrich of Queens. I know
6 where he's from. All right. Well, let's get back
7 to focus, gentlemen.

8 So, I just want to--just some
9 general questions, and then we'll get into the
10 substance of the bills. Could you just please
11 just describe the foreclosure process and how long
12 such proceedings generally take to conclude?

13 RUTHANNE VISNAUSKAS: I'm certainly
14 not an expert on foreclosure, but my understanding
15 is in the state of New York foreclosures often can
16 take up to two years to complete.

17 CHAIRPERSON DILAN: Okay. And in
18 this city, how many residential properties are
19 currently involved in foreclosure actions, and how
20 many of these properties are one-and two-family
21 homes, and how many are multiple dwellings?

22 RUTHANNE VISNAUSKAS: So in 2010,
23 there were approximately, and this is information
24 largely from the Furman Center study, there were
25 approximately 14,250 mortgage related lis pendens

1
2 filings on one- to four-family homes. And in the
3 same period in 2010 there were about 629 mortgage
4 related lis pendens on multi-family buildings.

5 CHAIRPERSON DILAN: Okay.

6 Currently, how does the Department become aware of
7 foreclosure actions, and what method does the
8 Department use to find out about foreclosure
9 proceedings?

10 RUTHANNE VISNAUSKAS: So, we have
11 access to publicly available data regarding both
12 one- to four-family and multi-family foreclosures
13 filings, but we don't have any formal--we aren't
14 part of the sort of formal process as sort of
15 outlined in the introduction, that would allow us
16 to be sort of notified at the moment that a
17 foreclosure is filed.

18 CHAIRPERSON DILAN: Which is why
19 you would be more favorable towards the
20 registration bill.

21 RUTHANNE VISNAUSKAS: Yes, yes. So
22 we definitely would appreciate being notified and
23 having sort of a variety of information in--

24 CHAIRPERSON DILAN: [Interposing]
25 You asked for a lot more stuff.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RUTHANNE VISNAUSKAS: Yes, we did.

CHAIRPERSON DILAN: Okay. How often does HPD use the emergency repair vehicle on residential properties in foreclosure proceedings?

RUTHANNE VISNAUSKAS: I'd have to get back to you on how much of our ERP goes to properties that are subject to a foreclosure filing. I don't have that information.

CHAIRPERSON DILAN: We would like that information as soon as you can get it to us.

RUTHANNE VISNAUSKAS: Sure.

CHAIRPERSON DILAN: And then also, we want to know--I assume if you don't have the answer to that, just include on average what types of repairs are made and average cost of those repairs.

RUTHANNE VISNAUSKAS: Sure.

CHAIRPERSON DILAN: Okay. In your testimony you--as it related to intros 494 and 500 together, you raised some legal concerns about the Council's authority. I think the role of the City as a lender I think is correctly addressed in the bill. I think it clearly states that the City is exempt.

1
2 RUTHANNE VISNAUSKAS: Okay.

3 CHAIRPERSON DILAN: I believe it
4 does. And I just--could you just expound on that
5 and why you think--you know, philosophically I
6 agree in some regards. If the owner is still
7 responsible of the building, the owner at that
8 point should be responsible for the repairs. What
9 I'm trying to get at is at what point--and I know
10 the bill says something different, and right now
11 that's where I'm at. I just want to make it clear
12 that it's my bill, I'm 100% supportive. But am I
13 open to discussion and negotiation? Sure.

14 Philosophically, right, the owner
15 is in trouble and can't afford to make repairs.
16 And that part is clear because the foreclosure
17 action has commenced. Right? The bank has taken
18 over. Now at this point let's say the bank has
19 taken over. At this point, in your mind
20 philosophically, should the bank follow the City's
21 housing maintenance code?

22 RUTHANNE VISNAUSKAS: Well, I think
23 legally, right, they don't have the ability to
24 actually go in the building. I think there's a
25 question about whether they can legally go in and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

make repairs--

CHAIRPERSON DILAN: [Interposing]

Even if--

RUTHANNE VISNAUSKAS: [Interposing]

--and if that relieves the owner from that responsibility.

CHAIRPERSON DILAN: Even after the foreclosure proceeding is finished?

RUTHANNE VISNAUSKAS: Not after they have judgment and have executed the judgment? You mean sort of the tail end.

CHAIRPERSON DILAN: Sure.

RUTHANNE VISNAUSKAS: Certainly at the tail end of the foreclosure where they take title to a property.

CHAIRPERSON DILAN: Then yes.

RUTHANNE VISNAUSKAS: Then yes.

CHAIRPERSON DILAN: All right. So there's questions, in the opinion of the Agency, as to whether the bank should be responsible prior to that.

RUTHANNE VISNAUSKAS: Right. As to whether they legally have access to go in and make repairs. And if the responsibility for them was

1
2 to do that, whether then that would prevent them
3 from actually initiating a foreclosure, which we
4 see in many cases is actually a useful tool.

5 CHAIRPERSON DILAN: Okay. Well, I
6 think that part, at least in my mind and in the
7 Speaker's also, is heavily interested in these
8 bills. In my mind it's up for discussion. I'll
9 have to consult with her. And I can see how that,
10 you know, could be a problem. But I think it's
11 clear that this institution and this committee,
12 you know, wants somebody to be accountable for
13 these properties, because of the potential for
14 blight, and in many cases the actual blight that
15 happens and the affects that it has on the
16 surrounding areas.

17 So, I'll end with that statement,
18 and I'd like to go to my colleague, Brad Lander,
19 if he has any questions?

20 COUNCIL MEMBER LANDER: Thank you,
21 Mr. Chairman.

22 CHAIRPERSON DILAN: Sorry. After
23 that, the list is open, so if any other members
24 have--just to get the attention of Council. So
25 we've got Council Member Lander followed by James.

1
2 COUNCIL MEMBER LANDER: Thank you,
3 Mr. Chairman and thanks, Ms. Visnauskas for your
4 testimony and also for HPD's work on the
5 foreclosure issue. Let me start with the legal
6 questions. I think I understand the legal
7 concerns you raised related to 500. But I don't
8 see at all how they apply to my bill, the 494.
9 The whole idea of requiring the posting of a
10 compliance bond is that while the responsibility
11 remains with the owner during the period between
12 lis pendens and judgment, if fees and fines are
13 growing on those buildings--some of which may
14 attach to the property and some of which may not--
15 but if they do at judgment, the taxpayers don't
16 want to be left holding the bag. And this would
17 protect the taxpayers against that, but it
18 wouldn't give the lender responsibility for
19 repairs, a requirement to enter the building. So
20 I'm just not--I at least understand that as a
21 legal objection to 500, but I don't understand it
22 as a legal objection to 494.

23 RUTHANNE VISNAUSKAS: So, I think
24 on 494 the issue--well, I think there's two. I
25 think one is the violations related to the housing

1
2 maintenance code can only be filed against the
3 owner and not against the mortgagee. So, I think
4 that may be the legal issue. And then I think
5 sort of the policy concern is if the banks feel
6 that they are going to be subject to all the fines
7 and violations, then that may sort of prevent them
8 for actually initiating the--

9 COUNCIL MEMBER LANDER:

10 [Interposing] So I'll get to the policy concern in
11 a minute. But I guess at least your first issue
12 is this concern. So, there's no issue of entering
13 the building created by 494.

14 RUTHANNE VISNAUSKAS: That would be
15 for--right.

16 COUNCIL MEMBER LANDER: And I mean,
17 I guess we can go take a look back at the civil
18 penalties. Obviously anything which winds up as a
19 lien on the building--right? I mean, that's what
20 I really want to go to in a minute. It's true
21 that's an obligation of the owner, while they own
22 the building. But at foreclosure judgment, when
23 the bank is going to step in, wipe the liens, I
24 mean what happens to the ERP liens at that point?

25 RUTHANNE VISNAUSKAS: So, I think--

1
2 addressing the earlier part of what you're saying-
3 -I think, yeah, the civil penalties can't go
4 against the mortgagee. I believe, according to
5 the Housing Maintenance Code, they would have to
6 go against the owner. But I think you're right.
7 In the end, when the foreclosure judgment is
8 eventually paid in the end, City liens are
9 priority and would end up being paid.

10 COUNCIL MEMBER LANDER: Okay. So
11 that legally at least a compliance bond could be
12 posted against the payment of those liens.

13 RUTHANNE VISNAUSKAS: Uh-huh.
14 Because they do get paid at the end of the
15 foreclosure.

16 COUNCIL MEMBER LANDER: Hopefully.
17 I'm not sure we're clear whether they do or don't,
18 but I mean, if you have information that suggests
19 they do, great. I think one thing that I'm
20 concerned about, my sense is that there are plenty
21 of times when the City winds up with unpaid liens
22 in these situations. But in any case, what the
23 bond would do is help make sure that we were going
24 to get paid.

25 RUTHANNE VISNAUSKAS: Uh-huh.

1
2 COUNCIL MEMBER LANDER: So now I
3 want to go to this question of trying to figure
4 out what the right incentives are. Because
5 obviously when and whether to foreclose is a
6 complex decision that a lender is making, and
7 we've seen that. Right? There's a whole set of
8 questions. Are they afraid of marking down to
9 market? Do they have the paperwork that enables
10 them to? How are they judging the timing? How
11 are they judging how long it's going to take?
12 What do they think the upside is? I think in most
13 cases we're assuming that if they believe that the
14 asset has value, eventually they're going to want
15 to complete the foreclosure action. I mean, there
16 may be some situations where they believe the
17 property has so little value relative to their
18 loan that they would just walk away from it
19 forever. But in most cases I think we believe
20 that there's some residual value in the building
21 given what was lent. And at some point they
22 cannot get to that value without either reaching
23 some arrangement with the owner to modify the
24 mortgage and enable them to continue paying or to
25 foreclose, right?

1
2 RUTHANNE VISNAUSKAS: Or to sell
3 the loan.

4 COUNCIL MEMBER LANDER: Correct.
5 Okay. Then some other lender is going to have the
6 same decision; presumably that lender is only
7 going to buy the loan if they believe there's some
8 value there. Again, either through modification
9 or through foreclosure. Right?

10 RUTHANNE VISNAUSKAS: Uh-huh. Yes.

11 COUNCIL MEMBER LANDER: So, I mean
12 I guess it seems to me then we're asking a series
13 of questions about who is on the hook when and
14 what the risks are. So, you just said that this
15 period of foreclosure can be on average a two-
16 year--

17 RUTHANNE VISNAUSKAS: [Interposing]
18 Up to a two-year, I believe.

19 COUNCIL MEMBER LANDER: And
20 especially in the multi-families. I wanted to
21 come back and distinguish multi-families from one-
22 to fours, as I understand from HPD's point of view
23 why the multi-families are the ones that you sort
24 of wind up dealing with the tenants in. So, right
25 now, is it fair to say that that two-year period

1
2 between lis pendens and judgment is the time in
3 the multi-families anyway where we face the most
4 problem?

5 RUTHANNE VISNAUSKAS: Right.

6 COUNCIL MEMBER LANDER: Where
7 there's the least responsibility being taken for a
8 building when HPD or the City's most on the hook
9 for ERP when tenants and neighbors are most
10 without any recourse to any--to getting, you know,
11 getting repairs done or getting the building
12 maintained.

13 RUTHANNE VISNAUSKAS: Uh-huh. Yes,
14 certainly.

15 COUNCIL MEMBER LANDER: So, I guess
16 I want to understand how--there's no doubt if you
17 put--and we'll come back to how much it would
18 really cost--but if you put a compliance bond
19 requirement in place, I mean, you might be able to
20 persuade me there would be a few cases where
21 foreclosure would be delayed or where they might
22 not do it and they might look to sell the loan to
23 a new lender who would make the judgment. But,
24 against the possibility that during the two-year
25 foreclosure period we would have a little better

1
2 likelihood of getting satisfaction, are you saying
3 that you've kind of done that analysis and
4 concluded that the harm done in the pre-
5 foreclosure, the pre lis pendens period is so
6 great that it offsets the need to do something
7 about the period between lis pendens and judgment?

8 RUTHANNE VISNAUSKAS: I think we
9 have seen in the buildings that we've been looking
10 at, that when the foreclosure is initiated, that's
11 often one of the triggers that we find out that
12 there is a financial situation in the building.
13 And also, I think probably from a regulatory
14 perspective is also sort of the signal to, you
15 know, people's varying levels of regulatory, that
16 there's a problem. So, I think without the
17 foreclosure, oftentimes we wouldn't necessarily be
18 aware of a level of distress. You know, as folks
19 are aware of, when we went to look at the Milbank
20 Buildings, this is a portfolio of buildings that
21 did not have a huge amount of 311 calls, because
22 they were not a series of tenants that were sort
23 of used to calling 311, and when we went out and
24 looked at the buildings we issued 1,000 violations
25 in about a week of roof to cellars. So, I think

1
2 we don't always know where--to the extent of the
3 physical and the financial are linked, we don't
4 always see them. And something like a foreclosure
5 filing is one thing that triggers for us. So, I
6 think we are worried about ever sort of impeding a
7 bank's desire to foreclose, because that's sort of
8 an important way that we get information about
9 what's going on in the multi-family stock. And
10 then I think second to that is that we haven't
11 seen banks on multi-family buildings take a lot of
12 them REO. So I think your question about the
13 timeframe, that timeframe is long. But a lot of
14 what we've seen is note selling prior to judgment
15 and that banks don't necessarily want to take the
16 properties' REO and be responsible for the
17 maintenance of multi-family occupied buildings in
18 the city.

19 COUNCIL MEMBER LANDER: Right.

20 RUTHANNE VISNAUSKAS: So, things
21 trade.

22 COUNCIL MEMBER LANDER: But isn't
23 that a good--that can be a good outcome.

24 RUTHANNE VISNAUSKAS: Absolutely.
25 But I think also they trade subject to--what we've

1
2 seen is that they're trading subject to a
3 foreclosure. We haven't seen as many or we don't
4 know about them that trade prior where there may
5 be distress. So again, I think it's just getting
6 to this issue that--

7 COUNCIL MEMBER LANDER:

8 [Interposing] Right.

9 RUTHANNE VISNAUSKAS: --the
10 foreclosure for us is a trigger, and we don't want
11 banks to feel that if they foreclose that then
12 they're taking on a whole series of
13 responsibilities, and for that to inhibit them
14 from foreclosing.

15 COUNCIL MEMBER LANDER: Okay. But
16 it seems to me in the case you just said where the
17 note would get traded, that it's just as likely
18 that the--you know, you need to foreclose to do
19 it. I mean, you don't need to foreclose to do it,
20 but your likelihood of being able to--the value of
21 what you have increases when you do.

22 RUTHANNE VISNAUSKAS: Uh-huh.

23 COUNCIL MEMBER LANDER: So you've
24 increased the value. Now you're looking to trade
25 it. And your incentive to move to judgment to

1
2 sell the note or to work something out where the
3 owner in the case where that's viable all would be
4 increased in the case where you had a bond in
5 place that would be released when you did one of
6 those things, right?

7 RUTHANNE VISNAUSKAS: As long as
8 the bond being in place doesn't inhibit them from
9 starting a foreclosure, yeah.

10 COUNCIL MEMBER LANDER: No, no.
11 But so, I mean this is the thing--

12 RUTHANNE VISNAUSKAS: [Interposing]
13 But I don't know how you know--

14 COUNCIL MEMBER LANDER:
15 [Interposing] --there's incentives on both sides.

16 RUTHANNE VISNAUSKAS: Correct.

17 COUNCIL MEMBER LANDER: I mean, if
18 it's a modest disincentive to foreclose, then it
19 has to be equally a modest incentive to move to
20 work out judgment or note sale post foreclosure.

21 RUTHANNE VISNAUSKAS: Right, right
22 to the extent that they don't want to have the
23 bond be drawn down or have it increased.

24 COUNCIL MEMBER LANDER: Well, they
25 would be released from--yes, I mean, to the extent

1
2 that it's--I mean, yes. I mean, right, it doesn't
3 have to be an equally good incentive to achieve a
4 good work out, or to achieve a work out, as you're
5 arguing it is a disincentive to begin the
6 foreclosure proceeding at all.

7 RUTHANNE VISNAUSKAS: Right. As
8 long as it doesn't do that, then I think it
9 wouldn't have a negative impact.

10 COUNCIL MEMBER LANDER: Okay.

11 RUTHANNE VISNAUSKAS: But I think
12 it's hard to know. Right?

13 COUNCIL MEMBER LANDER: Well, at
14 one level it's hard to know. At another level it
15 seems to me that the--I mean, I get that you're
16 saying that it's not a fair--it seems to me that
17 most of the problems we see are in the post-
18 filing, post lis pendens pre judgment or sale
19 period. That's the period of time in which the
20 owner no longer essentially feels responsibility
21 for the building. They may be, you know,
22 distressed and start to be walking away prior to
23 that, but prior to that they haven't had a lis
24 pendens filed. So in my experience the bigger
25 problem is in that post notice, post lis pendens

1
2 time period. So, if we agree that the bond, that
3 having the bond in place is a modest disincentive,
4 it would therefore be exactly the same as a
5 positive incentive in the post lis pendens period.
6 And so, I'd rather have it then, and we might have
7 a chance to achieve a workout. I guess I'm
8 skeptical, to be honest, relative to all the other
9 factors, let me just ask you about its cost.

10 Because I'm skeptical relative to all the other
11 factors that we've talked about, that it would be
12 much of a disincentive to foreclose. I mean, the
13 bank still can't move toward the value in that
14 property without doing it. So, as long as it's a
15 relatively modest cost, I find it hard to believe
16 that the banks would just choose to let that
17 property float out there--

18 RUTHANNE VISNAUSKAS: [Interposing]
19 Right.

20 COUNCIL MEMBER LANDER: --for the
21 small cost. So, I mean, let me just ask that. Do
22 you have a sense of what a compliance bond would
23 cost at the level that we're talking about?

24 RUTHANNE VISNAUSKAS: I don't
25 really.

2 COUNCIL MEMBER LANDER: Because we
3 leave it to HPD to set the amount.

4 RUTHANNE VISNAUSKAS: Right.

5 COUNCIL MEMBER LANDER: We say it's
6 got to be a minimum of \$10,000, but then related
7 to the value of the building. I think the goal
8 here is to find an amount that protects the
9 taxpayers against those ERP--getting stuck with
10 the ERP liens, maybe provide this modest incentive
11 to achieve modification and workout--

12 RUTHANNE VISNAUSKAS: [Interposing]
13 Right.

14 COUNCIL MEMBER LANDER: But isn't
15 so great that it would, you know, stop the market
16 from functioning. And, I don't know, we assigned
17 that responsibility to you because we have
18 confidence that you could help us find the right
19 amount that would achieve that goal.

20 RUTHANNE VISNAUSKAS: Yeah, we
21 don't have experience doing it, so I think we
22 don't really have a sense yet as to what the
23 number would be on a compliance bond cost.

24 COUNCIL MEMBER LANDER: Okay. And
25 then my last questions relate to the difference

1
2 between single families or one- to four- or multi-
3 families. Or maybe I should say buildings with
4 tenants and buildings without tenants, since
5 obviously some of those one- to fours might have
6 and might not have. The vast majority of the lis
7 pendens actions in 2010 are from one- to four-
8 family buildings. So, we don't have the tenant
9 concern in that situation, right?

10 RUTHANNE VISNAUSKAS: Primarily. I
11 mean, again, let's just talk about, well all
12 right. We may have a few tenants in the one- to
13 fours, but by and large we're talking about
14 homeowners. There it seems to me that the
15 argument that this would function as a
16 disincentive and that that would be bad for the
17 City is even weaker. You know, what you have is--
18 it's true, I guess the bank could just not
19 foreclose, but then you've got a homeowner by and
20 large living in the home. So there's somebody to
21 maintain the building, and do their best. Yes,
22 they're struggling, but I don't think they're
23 going to let the building entirely deteriorate as
24 it would when it's vacant. So, if they don't
25 bring the lis pendens action, I don't see the

1
2 harm. Let the homeowner continue. When they
3 bring the lis pendens action, that's the moment at
4 which the homeowner, you know, often decides, you
5 know, it's time to walk away. And now the
6 neighbors are stuck with the problem. So, in this
7 instance, I don't really see it as a small
8 problem; I see it as a good. If it serves as an
9 incentive to work something out with a borrower in
10 place, but then post this bond backstop once you
11 have the foreclosure--I'm just not sure why that
12 would be bad for us.

13 RUTHANNE VISNAUSKAS: Yeah. I
14 think our testimony was focused primarily on the
15 larger multi-family buildings. I think on the
16 one- to fours we wouldn't necessarily disagree
17 with the caveat that, and I don't think the bill
18 says this, but to make sure that the charges don't
19 sort of get passed to the homeowner would be our
20 concern.

21 COUNCIL MEMBER LANDER: Absolutely.
22 No, that I--that's an amendment that I actually
23 would like to see to the bill, so I completely
24 agree that we need to amend it to say that the
25 charge related to this can't be passed on--

2 RUTHANNE VISNAUSKAS: [Interposing]

3 To the homeowner.

4 COUNCIL MEMBER LANDER: --to the
5 homeowner. So, I think a subsequent version of
6 the bill needs to address that. But as long as we
7 put that in, if they want to delay foreclosure and
8 let the owner keep living there, that's their
9 choice. And if they want to foreclose, then they
10 protect the taxpayers of the city with the bond
11 and hopefully it still functions at some point as
12 an incentive for them to do something that
13 achieves a workout, maybe make some modification,
14 or if not, moves forward relatively quickly to
15 foreclosure or sell the note and achieve something
16 that moves the bill. Everyone's goal is to get a
17 workout in a resolution and not leave these
18 buildings in limbo for sure.

19 RUTHANNE VISNAUSKAS: Right.

20 COUNCIL MEMBER LANDER: Thank you
21 very much. Thank you, Mr. Chairman.

22 CHAIRPERSON DILAN: Thank you,
23 Council Member Lander. We have Council Member
24 James.

25 COUNCIL MEMBER JAMES: Thank you.

2 CHAIRPERSON DILAN: Followed by
3 Wills.

4 COUNCIL MEMBER JAMES: Thank you.
5 Ms.--am I pronouncing your name correctly, Ms.
6 Visnauskas?

7 RUTHANNE VISNAUSKAS: Visnauskas.

8 COUNCIL MEMBER JAMES: Visnauskas.
9 Can I just call you Ruthanne?

10 RUTHANNE VISNAUSKAS: Sure.

11 COUNCIL MEMBER JAMES: Thank you.
12 Thank you, Ms. Ruthanne. So, you know, in New
13 York City the number of, unfortunately, the number
14 of foreclosures have increased, particularly in
15 the borough of Queens and in the borough of
16 Brooklyn. I argue that all over the city of New
17 York. And they've had a deleterious effect on the
18 conditions not only in the neighboring
19 communities, but overall in the city of New York,
20 particularly as it relates to one- to four- where
21 there's tenants. I am in the midst of dealing
22 with a judge on a one- to four- where you have an
23 absentee landlord and tenants just recently, just
24 last week in fact, were given notices with regard
25 to shutting off their water and their gas and

1
2 their lights. And I also know that in the law in
3 the City of New York and the state of New York
4 there's all types of bonds; there's performance
5 bonds, there's bonds to guarantee payment. It's
6 all written in either case law or in statute. And
7 so I am at odds with the position of the
8 administration and the position of HPD, since
9 there's all these types of bonds that are already
10 in place to perform.

11 It took me literally a week and a
12 half to get to the judge. And at that time, the
13 order to have the lights turned on was basically
14 sitting on our desk. And we averted the lights
15 being shut off in this particular building and the
16 gas being shut off, and that really should not be
17 the case. So, I guess legally I really don't
18 understand the objection. I don't think that--and
19 I want to join the comments of Council Member
20 Lander. I do not believe that this is going to be
21 a disincentive. And also, and in the case, and in
22 my case and other cases in the City of New York,
23 you have absentee landlords and or individuals who
24 have basically walked away from the property
25 because it's under water. And so, invariably the

1
2 case goes to judgment. After lis pendens has been
3 filed, usually a judgment. They get the judgment
4 and then at that point in time under the law
5 they're legally obligated. I don't understand why
6 they can't be legally obligated prior to that
7 judgment, particularly since most of the
8 foreclosures that are filed usually go to judgment
9 and the banks usually end up with the property. I
10 don't understand why we can't impose the
11 obligation upon them in advance.

12 RUTHANNE VISNAUSKAS: Well, I think
13 that we've found that in most of the mortgage
14 documents that we've seen, that the banks don't
15 have the right to go in and make the repairs, so
16 that's obviously one issue. And then as I was
17 saying to Councilman Lander, I think the--where we
18 issue fines and civil penalties, those also I
19 believe only can go to the owner, not to the bank.

20 COUNCIL MEMBER JAMES: But they go
21 on the property sometimes.

22 RUTHANNE VISNAUSKAS: Exactly.
23 They do. And we have not seen in the multi-family
24 that the banks have really taken the properties
25 back, so I think it impacts them in a slightly

1
2 different way, but you're correct. And again, I
3 think our main concern is just not putting
4 something in the way of preventing folks from
5 doing the foreclosure, because it is a really
6 important step to resolving buildings that where
7 there isn't an owner that has any sort of
8 resources or willingness to make repairs, and it's
9 sort of the only way that they can get out in some
10 cases, even though foreclosure isn't really a
11 pleasant process for anybody.

12 COUNCIL MEMBER JAMES: But I guess
13 why should HPD, the City of New York taxpayers,
14 take on their responsibility as opposed to the
15 banks, who in some cases were responsible, you
16 know, for this condition?

17 RUTHANNE VISNAUSKAS: Right.

18 COUNCIL MEMBER JAMES: And in all
19 likelihood, given the numbers, invariably these
20 cases go to judgment and they get these properties
21 back. And so, I mean, I don't understand the
22 legal objection. And I recognize that you think
23 that this is going to be a disincentive, but
24 that's really a philosophical objection. Other
25 than that, I believe that those concerns can be

1
2 overcome just based on what is happening in the
3 market, and just based on what is happening in the
4 courts.

5 RUTHANNE VISNAUSKAS: You know,
6 again, I think we also want to make sure that
7 folks are still lending too, right. So I think
8 it's always a--it's a balance between making sure
9 people are responsible and the banks are doing the
10 right things, which is certainly something we all
11 want, and then also making sure that they're still
12 providing capital.

13 COUNCIL MEMBER JAMES: And though I
14 recognize that, particularly since we find
15 ourselves in a recession and banks are not
16 lending, but I also am concerned about individuals
17 living in the dark.

18 RUTHANNE VISNAUSKAS: Yes. I
19 agree.

20 COUNCIL MEMBER JAMES: And having
21 water and very serious violations pending. To me
22 that's more of a priority in the immediate, even
23 though I recognize the big picture. So I think
24 HPD, and I know you share our concerns, because
25 HPD has been ally to me and to my office and to my

1
2 district. And I am confident and hopeful that HPD
3 will do the right thing, particularly since the
4 objections that you have put forth are not very
5 serious legal objections and they can be overcome.
6 And I would hope that the administration would
7 join us in support of these bills. And I thank
8 you, Ruthanne, for your comments today.

9 RUTHANNE VISNAUSKAS: Thanks,
10 Council Member.

11 CHAIRPERSON DILAN: Just some
12 housekeeping that I forgot to do. We've been
13 joined by Council Member Mark-Viverito, who was
14 here. I'm not sure if she still is. Council
15 Member Jackson, of Manhattan, as well as Council
16 Member Williams of Brooklyn. Council Member
17 Wills?

18 COUNCIL MEMBER WILLS: Good
19 afternoon. May I address you as Ruthanne also?

20 RUTHANNE VISNAUSKAS: Sure.

21 COUNCIL MEMBER WILLS: Okay, thank
22 you. I do want to also--I just want to put on the
23 record that I appreciate the Chair and Brad Lander
24 for giving the respect to Councilman Thomas White,
25 who really did a lot of work to this cause.

1
2 You've shown not only respect to him but to me and
3 the people in our district that are mostly
4 impacted. And I appreciate HPD's work to this
5 point in my district. You worked with us in joint
6 with Council Member Comrie and DOB last summer to
7 close down two homes that had fell into vacant
8 absentee landlords, and there was prostitution and
9 drugs. And some people were just homeless, we
10 understand that, but there were those elements in
11 the house, which brought down a lot of the
12 community. But, saying that, I know that you had
13 made a comment that foreclosure is a necessary
14 step in many of these cases. And you said that
15 you wanted to make sure that we need to make sure
16 that banks are still lending. But in the district
17 that I represent, banks are not lending. Banks
18 are holding up credit; they're not lending to
19 homeowners and they are discontinuing an egregious
20 action, or actions, that they have started when
21 they started doing these predatory loans.

22 I have a lot of issues with JP
23 Morgan Chase and other banks like them. I think
24 that the City needs to pull our money out of
25 Chase, as did the town of Hempstead recently. But

1
2 to go toward this, you know, I don't understand
3 how we can worry about the banks and them being in
4 good standing or helping them when they got a
5 bailout of billions of dollars of taxpayer money.
6 They actually made profits. And the people who
7 are here and the people who are in my district
8 have to deal with homes that are in disrepair,
9 multi-families that are--I want to know what--not
10 you, but the agency and the administration says to
11 those people who have to live with that every day,
12 to those people who the homes are fallen in
13 disrepair, those people who have to walk by these
14 homes and have other elements moving into the
15 homes. What does the agency or the administration
16 say to those people in the community, the people
17 who have to deal with the peripheral negative
18 impact?

19 RUTHANNE VISNAUSKAS: I mean, I
20 think we have two primary sort of activities in
21 the neighborhoods on that. One is obviously we
22 have a huge housing and maintenance code inspector
23 unit that's out in the neighborhoods every day,
24 walking through buildings, responding to 311
25 calls, writing violations for everything that they

1
2 see when they go in those buildings. And so
3 that's a really, you know, sort of large force
4 that's out in the neighborhoods responding to
5 issues and making sure that there's a record of
6 the violations in the building and that the owner
7 corrects them. And if the owner doesn't correct
8 them when they're hazardous, then we step in and
9 do it instead of the owner and lien the building
10 for that amount. So, we spend an enormous amount
11 of staff and resources doing that.

12 And the other effort that we have,
13 which was announced a couple of months ago, which
14 I referred to in my testimony is the proactive
15 preservation initiative, which is sort of another
16 smaller kind of SWAT team within our code
17 enforcement unit, that is going out and
18 proactively doing roof to cellar inspections on
19 buildings that we believe are sort of trending
20 towards distress. So, we have the AEP program,
21 which has been tremendous at identifying the worst
22 of the worst, and now we're trying to make a large
23 scale effort to look at buildings that are heading
24 that way, and going out and doing roof to cellars
25 and documenting all those conditions, so that they

1
2 can be, if not corrected by the owner, corrected
3 by us.

4 COUNCIL MEMBER WILLS: But wouldn't
5 the bonds or the actions from this bill help you
6 and the staff and resources that the city is
7 allocating are totally responsible for in these
8 actions?

9 RUTHANNE VISNAUSKAS: If the idea,
10 I think, is that the bond would be posted and then
11 we would perform the same ERP work that we do now,
12 and then that would then, we would draw down on
13 that to pay for those.

14 COUNCIL MEMBER WILLS: Right. So
15 then the answer would be yes.

16 RUTHANNE VISNAUSKAS: Yes.

17 COUNCIL MEMBER WILLS: All right.
18 Thank you very much.

19 CHAIRPERSON DILAN: Council Member
20 Comrie, and then after that the list is open if
21 anybody wants to ask questions, get the attention
22 of the Council Member. Okay.

23 COUNCIL MEMBER COMRIE: Thank you.
24 You don't mind if I address you as Commissioner as
25 opposed to...

1
2 RUTHANNE VISNAUSKAS: I might not,
3 but someone else might.

4 COUNCIL MEMBER COMRIE: All right.
5 I'd rather call you Assistant Commissioner than
6 your name, because I think that while you have
7 articulated the administration's point of view in
8 a concise way, I just want to appeal to you that
9 dealing with the one- and four-family homes are
10 key. We have so many that are open and vacant and
11 are attracting negative elements. You know, in
12 Queens especially and in other parts of the
13 borough where we have so many children that are
14 without resources, without after school
15 programming, we are already getting reports of
16 them squatting in these vacant properties. And so
17 the need to get them sealed up and safe is
18 critical. I know that HPD is using its emergency
19 repair program on these properties now. Can you
20 give us a breakdown or do you have a breakdown
21 with you on what types of repairs were made to do
22 the seal ups for the homes in the one- to four-
23 family homes? Because I would appeal that that is
24 a critical part of making sure that the
25 communities are safe as well.

1
2 RUTHANNE VISNAUSKAS: I don't have
3 that data with me, but I can follow up on that in
4 addition to I previously was asked how much ERP
5 we're spending on properties subject to
6 foreclosure citywide. So we can provide that
7 broken down by one- to fours, multi-family and as
8 well as one- to fours not in foreclosure.

9 COUNCIL MEMBER COMRIE: And if the
10 presidential budget stays as is, we're going to
11 lose even more money for youth programs and after
12 school programmings, leaving them more loitering.
13 So, we don't want to have any vacant buildings for
14 them. And I know it's going to be a major setback
15 to HPD also, because the community block
16 development program I believe has been cut by over
17 \$600 million so far. Hopefully we get that
18 restored before we get to June. And it's going to
19 be a major impact.

20 I think that it's even more
21 important therefore that we get the banks to step
22 up and claim these properties and do what they
23 need to do to protect the property. Because on
24 the other hand, the real estate market is starting
25 to become stronger. And if they can protect and

1
2 preserve the property so that it's not stripped,
3 so the properties are not ripped out of its
4 plumbing and supplies and whatever's of value in a
5 property, I think is critical. So, I would just
6 want to say that we need to make sure that these
7 compliance bonds and opportunities for the banks
8 to step up early to protect their own property I
9 think is critical. And I would hope that HPD does
10 whatever they can to reconsider that. And I'm
11 sure, Commissioner, or Deputy. I'll call you
12 Commissioner, because I want you to influence the
13 decision-making to make sure that that happens. I
14 think that all three pieces of legislation need to
15 be considered as vital to the mission of HPD,
16 especially if you're going to lose over \$500
17 million in your budget and not be able to do the
18 repair programs that you're doing now.

19 So with that, Mr. Chair, I'm going
20 to be concise and brief, because I have Cultural
21 Affairs Committee that also started at 1:00, so I
22 have to split myself. So, thank you very much.

23 CHAIRPERSON DILAN: Thank you,
24 Council Member Comrie. Council Member Williams?

25 COUNCIL MEMBER WILLIAMS: Thank

1
2 you, Mr. Chair and Ms. Visnauskas. Did I get it
3 right?

4 RUTHANNE VISNAUSKAS: Yes, very
5 well, yes. Thank you.

6 COUNCIL MEMBER WILLIAMS: Thank
7 you, thank you. I did try to show you up, not
8 people. Oh, lord. Sorry. Thank you for your
9 testimony. I just read it. I'm sorry I came
10 late. I was disappointed in a few things I saw.
11 I just want to say I have--well, BCU is here, they
12 probably got acknowledged--Brooklyn College
13 United. They do wonderful work in my district,
14 together with Fern, I don't know if Fern is here
15 as well. But we had an abandoned property on the
16 block I believe that actually some of these bills
17 would have assisted in. It's still pretty
18 abandoned now. It took a long time to get it
19 cleaned up. There were squatters in there.
20 Nobody was taking responsibility. No one--we're
21 not even quite sure who still owns the building.

22 And some of the things you said, it
23 may deter landlords from foreclosing altogether,
24 or postpone the foreclosure, discourage lenders
25 from providing mortgages--these things are

1
2 happening anyway. That's one. And two, I get
3 frustrated when we keep trying to worry about
4 what's happening with the banks and not the
5 people. And we take a lot of risks when it comes
6 to the banks, when it comes to the wealthy people,
7 but we don't take the risks when it comes to the
8 people who are living on the block.

9 So, I see one of the legal things
10 is it's questionable whether a mortgagee can be
11 held responsible for the property or civil
12 penalties. I think we should push the envelope
13 and see for this, because we need to take a risk
14 on the people who are out here, because they're
15 the ones that are going to be suffering.

16 So, I'm sorry I missed it, but why
17 exactly would it deter lenders from foreclosing
18 altogether?

19 RUTHANNE VISNAUSKAS: So, we're
20 concerned that if lenders feel that they would be-
21 -have a significant responsibility during a
22 foreclosure of process for maintenance, whether
23 that be going into a building that they may or may
24 not legally have the right to do, or financially
25 be on the hook for civil penalties related to

1
2 housing maintenance code, that that would then
3 sort of delay them from starting a foreclosure or
4 prevent them from starting one at all. And
5 foreclosure, you know, for many of these
6 properties is actually a good thing to the extent
7 that it signals that something is wrong and forces
8 sort of a workout and also is often one of the
9 only ways to sort of unwind these deals that are
10 complicated and get rid of sort of an untenable
11 amount of debt. So, our concern is largely just
12 that, is making sure this something doesn't sort
13 of prevent them from starting a foreclosure.

14 COUNCIL MEMBER WILLIAMS: Well one,
15 I think that, you know, they've been foreclosing
16 too fast, and banks like Chase are not helping
17 people work things out and they'd rather go to
18 foreclosure. So I'm not worried about slowing it
19 down. But two, I feel if you go into foreclosure
20 that you have a lot of financial difficulty to
21 begin with; I'm not sure that the \$10,000 bond
22 would be the thing that stops, that gives you the
23 biggest headache if you have a 3, 4, 5, \$700,000
24 problem, another \$10,000 I don't think is going to
25 be what triggers you into oh, no, all of a sudden.

2 RUTHANNE VISNAUSKAS: Right.

3 COUNCIL MEMBER WILLIAMS: And
4 discouraging lenders from providing mortgages,
5 why--well, one, they're not providing the
6 mortgages now. Why would this further prevent
7 them?

8 RUTHANNE VISNAUSKAS: I think for
9 the same reasons, just making sure that if they
10 feel that the sort of responsibilities related to
11 being a mortgagee have changed, then we wouldn't
12 want them to sort of pull back on capital to the
13 extent that they've pulled back already.
14 Obviously it's already an issue, but we don't want
15 it to be further sort of exacerbated by this.

16 COUNCIL MEMBER WILLIAMS: So we
17 think that a \$10,000 bond on a half a million or a
18 million dollar or more mortgage would prevent them
19 from wanting to provide a mortgage?

20 RUTHANNE VISNAUSKAS: So we haven't
21 looked at how much the compliance bond would cost.
22 Council Member Lander had asked us also in terms
23 of we haven't done that sort of work yet to figure
24 out how you price the compliance bond and how big
25 it would be relative to the value of the building,

1
2 so I think we'd need to further understand that to
3 know whether it's \$10,000 on a \$100,000 mortgage
4 or is it, you know, is it going to be \$100,000 on
5 a--you know, what sort of the ratio is from the
6 bond to the mortgage. So, I think we have to
7 understand that a little better.

8 COUNCIL MEMBER WILLIAMS: So, and
9 then I saw the legal part of it as well. I know
10 that most mortgages, the mortgagee tells the
11 property owner that they have to keep it up. We
12 need to have somebody responsible for keeping this
13 property up. If we identify it as the mortgagee
14 because they're the ones with the money should be
15 it, I believe that we should push the envelope as
16 hard as we can. And if that doesn't work, we'll
17 try something else. But doing nothing I don't
18 think is the answer, based on the experience that
19 I had in my district and the experiences that are
20 happening, I'm sure, all over. Foreclosure is a
21 big issue in some census tracks in my district.
22 But it was a blight for many years on a beautiful
23 Victorian block. And I believe that these bills
24 would have at least given us some more tools to
25 work with. But thankfully BCU and Fern are

1
2 phenomenal people. And they did a lot of good
3 work. Thank you.

4 RUTHANNE VISNAUSKAS: Thanks.

5 COUNCIL MEMBER WILLIAMS: Oh, I'm
6 sorry. I just thought of another question.

7 CHAIRPERSON DILAN: That's the way
8 you do it.

9 COUNCIL MEMBER WILLIAMS: What
10 happens when people leave a home vacated because
11 of fair tactics from banks? If the owner leave
12 within four months and the average foreclosure is
13 two years, what happens within that 16 months?

14 RUTHANNE VISNAUSKAS: I'm sorry.
15 I'm trying to understand the question. So you're
16 asking if--

17 CHAIRPERSON DILAN: [Interposing]
18 So if there's an abandonment basically before the
19 completion of the foreclosure, what happens?

20 RUTHANNE VISNAUSKAS: So, in the
21 early moments a foreclosure is filed, right, then
22 there will be a proceeding in the court to appoint
23 a receiver, so during the term of the foreclosure,
24 if there's no owner there would be a--well,
25 always, there would be--rather if there's an owner

1
2 or not active there would be a receiver appointed
3 by the Court who would be responsible for taking
4 all the proceeds from the rental income of the
5 building and putting it toward the building, not
6 paying the mortgage.

7 [off mic]

8 CHAIRPERSON DILAN: Council Member
9 Williams has the floor.

10 [off mic]

11 COUNCIL MEMBER WILLIAMS: Are you
12 calling me stupid in front of all these people?

13 [laughter]

14 CHAIRPERSON DILAN: All right. All
15 right, guys. Let's, let's bring this back to a
16 level of--Council Member Williams.

17 COUNCIL MEMBER WILLIAMS: Yes. Can
18 I yield the rest of my time to Council Member
19 James?

20 CHAIRPERSON DILAN: No. If Council
21 Member James wants to ask a question, she can get
22 the Chair's attention and we'll allow her to ask a
23 question. Council Member Lander is on the list
24 followed by Council Member Wills.

25 COUNCIL MEMBER LANDER: We've been

1 talking a little bit about lienability of the ERP.
2 And Local Law 15, which was recently passed by the
3 Council, sponsored by Councilman Vann, but went
4 through a long process, as I understand it gives
5 HPD and the Department of Finance the ability to
6 make liens of ERP and alternative enforcement and
7 other things which did not have that lien position
8 previously.
9

10 RUTHANNE VISNAUSKAS: Correct.

11 COUNCIL MEMBER LANDER: Can you
12 tell me--are you doing that? Has it--I mean
13 obviously we only just passed that law.

14 RUTHANNE VISNAUSKAS: Yes.

15 COUNCIL MEMBER LANDER: Can you
16 tell me the path to getting that done?

17 RUTHANNE VISNAUSKAS: So, in short
18 order, the Department of Finance and the
19 Department of--NDEP will run a tax arrears list
20 related to the ERP and can do a tax liens now that
21 the ERP can be a standalone for a tax lien.
22 They'll run a list that will be part of the tax
23 lien sale. So, I don't know the timing on when
24 the next one is coming out, but.

25 COUNCIL MEMBER LANDER: All right.

1
2 So I guess I would ask, and I mean this is long
3 term, but when that starts to happen, to the
4 extent that you have the ability to figure out as
5 you sort of said you would do, you're going to go
6 back and look at ERP and how much of that is on
7 foreclosed properties. I think it would behoove
8 us to figure out, you know, as part of this
9 question of enforcement. Part of the goal is to
10 recover the money that the city is spending to
11 repair properties, and part of the goal is to in
12 appropriate places use that lien as leverage so
13 that the agency can play a role in getting a good
14 workout instead of a bad workout, so we use one of
15 our preservation purposes like you were able to do
16 at Ocelot rather than a bottom feeder--

17 RUTHANNE VISNAUSKAS: [Interposing]
18 Right.

19 COUNCIL MEMBER LANDER: --come along
20 and, you know, not do right by the tenants and
21 also not do right by the city. So, if you can,
22 you know, it would be great as that process moves
23 into place if we can capture the information in a
24 way that helps us attend to--

25 RUTHANNE VISNAUSKAS: [Interposing]

1
2 And the information being how many of the
3 standalone ERP liens are on properties that are
4 subject to a foreclosure?

5 COUNCIL MEMBER LANDER: Yes, I
6 guess both in the general and then also having a
7 process for doing that in the specific, so that
8 you guys are able to sort of figure out on
9 properties that are multi-family properties in
10 distress where we're trying to have more influence
11 on getting the good workout that we have some way
12 of watching for those--

13 RUTHANNE VISNAUSKAS: [Interposing]
14 Right.

15 COUNCIL MEMBER LANDER: --that
16 we're finding them and then we're using the ERP
17 authority as effectively as we can to get good
18 things to happen.

19 RUTHANNE VISNAUSKAS: Okay.

20 COUNCIL MEMBER LANDER: Or less bad
21 things to happen. Thank you.

22 RUTHANNE VISNAUSKAS: Uh-huh.

23 CHAIRPERSON DILAN: Thank you.

24 Council Member Wills, followed by James, and then
25 we'll--the list will be closed after Council

1
2 Member James.

3 COUNCIL MEMBER WILLS: I yield my
4 time to Council Member James. Thank you, Mr.
5 Chair.

6 COUNCIL MEMBER JAMES: Council
7 Member Williams, I would never ever refer to you
8 as someone--you are of the utmost intelligence and
9 you can even read questions really well. Going
10 back to your receiver issue, receivers are
11 restricted. Their powers are limited by Supreme
12 Court judges. And oftentimes Supreme Court judges
13 want to yield some control over their cases. And
14 oftentimes, as you know, the caseloads of most
15 Supreme Court judges and unfortunately in the
16 judicial system are delayed and backlogged.
17 Again, going back to the case that I was involved
18 in and continue to be involved in, and based upon
19 my knowledge of the system, receivers
20 unfortunately cannot get bills pays. They have to
21 run back to the judges. They have to get on their
22 calendars and oftentimes it's delayed unless
23 someone intervenes, it's a problem. So, saying
24 that a receiver is somewhat responsible for the
25 building is sort of disingenuous, because they're

1
2 really not. I mean, they are responsible to a
3 certain point, but it's really subject to the
4 approval of a judge.

5 RUTHANNE VISNAUSKAS: True,
6 although we spend a lot of time on portfolios that
7 we're working on that are in distress. We're
8 working with receivers to make sure repairs are
9 getting made, so certainly in lots of buildings
10 they are doing meaningful work and making
11 meaningful repairs.

12 COUNCIL MEMBER JAMES: And Deputy
13 Commissioner, Council Member Comrie was absolutely
14 correct, I should refer to you as Deputy
15 Commissioner, and I apologize. We want to take
16 that responsibility away from you, because you
17 obviously have enough in your portfolio, and we
18 believe that banks should be given the
19 responsibility to make sure that there are no
20 violations in the buildings and that bills are
21 being paid and that tenants are living in
22 buildings that are habitable based upon the
23 warranty of habitability, which is obviously the
24 law in the state of New York. So, again, I just
25 think that we should move these bills and we

1
2 should require that Chase either modify these
3 loans, restructure these loans, forgive these
4 loans, and lend some money so that one, overall
5 our economy can get back on track, and two, people
6 can stay in their homes and they can live with
7 dignity. And I thank you for all of these
8 questions, Madam Deputy Commissioner.

9 RUTHANNE VISNAUSKAS: Thank you.

10 CHAIRPERSON DILAN: Okay. Thank
11 you, Council Member James and thank you, Deputy
12 Commissioner Visnauskas.

13 Okay, so next we'll call up Mr.
14 Michael Smith and Mr. Bruce Bergman. And if you
15 have copies of your testimony, please give it to
16 the sergeant.

17 Okay, and we will begin with Mr.
18 Smith. And you can introduce yourself in your own
19 voice, and then you can give us your testimony.

20 MICHAEL SMITH: Okay. Thank you,
21 Mr. Chairman and members of the Council and this
22 committee. I appreciate the opportunity today to
23 appear before you to testify on intro numbers 494,
24 500 and 501, all of which, as you have already
25 noted, seek to add new responsibilities to

1
2 financial institutions who are commencing
3 foreclosure actions in the City of New York.

4 I am Mike Smith. I am the
5 President and CEO of the Association, which is
6 comprised of commercial banks--state chartered and
7 national--and thrift institutions, state and
8 national, operating throughout the state of New
9 York. I think it's important to make a
10 distinction that banks is a generic term. We
11 specifically represent banks that are chartered by
12 the United States of America, or by the state of
13 New York.

14 We understand that the goals of
15 these proposals are to ensure that properties are
16 maintained during the foreclosure process and to
17 ensure that the HPD is aware of the property, that
18 the property is in foreclosure. The duties and
19 rights of borrowers, lenders, homeowners and
20 tenants are clearly and appropriately addressed,
21 we believe, an existing and potentially
22 conflicting state and federal law. And I might
23 add the state has enacted at least three, if not
24 four, statutes since 2003 in the mortgage area.
25 And we've worked with the state on all of this and

1
2 in cooperative fashion with the state.

3 The additional actions contemplated
4 today will place local rules and standards at odds
5 with these state laws and beyond. This will
6 confuse, we believe, consumers, make compliance
7 unduly and unnecessarily burdensome for lenders
8 and servicers and result in fewer mortgages being
9 made by reputable financial institutions in New
10 York City. I would just like to highlight, since
11 we went through the subprime crisis, that most of
12 the subprime loans made in the United States were
13 not made by banks, and that also there is a
14 mortgage brokerage industry and there's a mortgage
15 banking industry. And at every hearing, I think,
16 most of the hearings I've been through for seven
17 years, there are some absentees testifying. But
18 we're here because our industry is directly
19 affected by this.

20 Ultimately, we believe that the
21 current legislation before you will aggravate the
22 fragile housing market and the general economic
23 recovery. Our member banks of the New York
24 Bankers Association--I'd like to highlight this--
25 have a long history of supporting efforts to

1
2 encourage responsible home ownership and offering
3 assistance when borrowers get into trouble. We do
4 this daily through a variety of voluntary
5 programs, financial support for non-profits in the
6 community, and partnerships with concerned public
7 officials. For example, Senator Schumer worked
8 with us in 2003 and 4 going into various
9 neighborhoods to identify what were the problems
10 related to predatory lending.

11 My written testimony details many
12 of these activities, but I would just like to
13 highlight that the banks, our banks, our members,
14 are the underwriters of the Community Preservation
15 Corporation, which has made over \$7 billion in
16 affordable housing over the last two or three
17 decades. We're part of the mortgage coalition.
18 We are a part, a leading sponsor of Operation
19 Hope, Financial Literacy--an advisory group, and
20 the NHS. Due in part to these initiatives and
21 these works, New Yorkers--and I know and I can
22 definitely identify with the comments that have
23 been made by the panel today, we live it every day
24 and I'm a representative of the banks--but quite
25 frankly, New Yorkers have fared better than

1
2 citizens of many other states. In fact, while New
3 York is the fourth most populous state in the
4 nation, we were ranked 43rd last quarter among all
5 states in the rate of foreclosure filings and our
6 statistics continue to improve against the rest of
7 the nation. Indeed, New York's foreclosure
8 filings last quarter were more than 21% lower than
9 the year before. These statistics--and the word
10 foreclosure is a bit misleading as I'm sure that
11 everyone is aware, because the foreclosure starts--
12 -there's a start and an endpoint, and we're going
13 to get into that in a minute, where you get to
14 final judgment. And it's quite frankly even
15 longer and our witness, expert witness sitting
16 next to me, can comment on this--Bruce Bergman,
17 since it's his business--on how long it does take.

18 But when we look at foreclosure
19 statistics, we would like you to consider the
20 following; one, almost all 82% of the foreclosure
21 filings in New York State this past February were
22 lis pendens. Lis pendens is only the first filing
23 in the foreclosure process, which can last a
24 minimum--as was said before--of two. But what
25 we're hearing now is up to three years in New

1
2 York. Nationwide, only 1 out of 75 households
3 that receives a foreclosure filing actually
4 results in a completed foreclosure. All this is
5 meant to provide enough time for borrowers and
6 lenders to work out the loan with a mutual goal of
7 avoiding foreclosure. And on the current market,
8 it should be noted that over 40% of the mortgages,
9 subprime mortgages made in the United States, they
10 were made by a firm named Countrywide; another
11 firm that was from the west coast, Washington
12 Mutual. Some of our members, Bank of America in
13 the case of Countrywide, and Chase, acquired in
14 basically a very difficult situation with the FDIC
15 and acquired these institutions. They originated
16 and they were a source of some of the problems
17 we're talking about. But we, as institutions are
18 some 150 banks, our mutual goal is--with the
19 borrower--is to avoid foreclosure.

20 In addition to the banking
21 industry's voluntary efforts, we've long supported
22 legislation to establish uniform national
23 standards--and we've been frustrated in this--in
24 the subprime market designed to eradicate
25 predatory practice. We also have worked

1
2 tirelessly with the state to craft high cost home
3 loan, subprime lending, and mortgage foreclosure
4 laws. Because of these efforts, New York
5 borrowers and tenants enjoy some of the strongest,
6 if not the strongest consumer protection laws in
7 the nation. For example, about half the states in
8 the United States don't even have judicial
9 foreclosure proceedings. Foreclosure takes place
10 in about 90 days in a non-judicial foreclosure.

11 One of the chapter laws that was
12 passed in 2009 that was alluded to earlier
13 requires that all defaulting homeowners receive a
14 90-day pre-foreclosure notice--this is state law--
15 and have the opportunity to participate in a
16 mandatory settlement conference 60 days after
17 proof of service has been filed with the county
18 clerk. We've worked with the Office of Court
19 Administration and the Chief Judge of the State of
20 New York on this practice and support these
21 conferences.

22 Borrows with owner-occupied one- to
23 four-family dwellings already have the right to
24 receive a notice regarding the availability of
25 help for distressed borrowers. And that right has

1
2 also now been extended to any tenant in a dwelling
3 unit. Lenders are subject to an array of new
4 maintenance obligations once they have obtained a
5 judgment of foreclosure and a sale on property
6 which is vacant, becomes vacant after the issuance
7 of the judgment, or is abandoned by the borrower
8 but is occupied by a tenant. The key word that
9 you'll hear in my commentary is after the
10 judgment. Because our view is the owner should be
11 responsible.

12 Introductory number 501 would
13 require any lender commencing a foreclosure action
14 on residential property to register with the
15 Department within ten days of commencing the
16 action. Because of existing reporting
17 requirements, much of the information sought is
18 already available today at county clerk's offices,
19 or can be obtained from lis pendens filings, which
20 I know Mr. Bergman can comment on.

21 Moreover, this filing requirement
22 would be in addition to the filing which the new
23 Superintendent of the Department of Financial
24 Services--it used to be the Banking Department,
25 now it's got a new name--currently requires of

1
2 lenders statewide who are foreclosing on home
3 loans. Existing law requires lenders to provide
4 to the superintendent all relevant information
5 about the borrower in order to determine whether
6 the borrower, quote, might benefit from counseling
7 or other services, end quote. Requiring that city
8 lenders recreate, and I might say in our instance
9 banks, recreate in yet a third format information
10 already available will just impose another costly-
11 -in our view--and time-consuming burden on the
12 banking institutions. The additional cost of
13 compliance will inevitably lead to fewer mortgage
14 loans, in our belief, being made in New York City,
15 and greater borrowing costs for those consumers
16 who do get mortgages, because the bottom line, is
17 someone ultimately--and whether it be government
18 or private institutions--have to pay for these
19 services.

20 We believe that a far more
21 efficient--and would urge that you consider this--
22 reasonable solution, would be for the Department
23 to get the information directly from the court
24 system. And we would support that. We work with
25 the court system. Or the superintendent of what

1
2 used to be the Banking Department and now the
3 Department of Financial Services, both of which
4 collect this data.

5 We also strongly object to the
6 provision in the introduction requiring the
7 posting of lender-employee contact information on
8 a public website. This could actually place
9 employees at risk. In fact, the OCA, the Office
10 of Court Administration, does not collect this
11 information, as they deem it to be unnecessary to
12 the process and a violation of individual privacy
13 rights. We believe therefore that any possible
14 benefit of collecting and posting such private
15 information would be far outweighed by the
16 potential damage to employees.

17 Introduction number 494 and 500
18 raise even more serious concerns, as they seek to
19 reassign the obligations of property ownership
20 from home and building owners to the lender. Even
21 though the lenders neither own, nor have
22 possession of the properties. Lenders are of
23 course concerned about the neglect of properties
24 in the foreclosure process and are troubled by the
25 negative impact these properties have on

1
2 neighborhoods. However, we believe that the
3 maintenance obligations set forth in the state
4 law, which was passed in 2009, are not only
5 comprehensive, but take to the outer limits the
6 legal authority and obligation of lenders to
7 maintain property which they do not own. The
8 burden should fall on the owners. We also note
9 that many affordable housing units carry state or
10 federal guarantees. It is not even clear how this
11 provision would apply in such cases.

12 Current law already imposes
13 substantial maintenance obligations on lenders who
14 have obtained a judgment of foreclosure in a sale
15 on property vacant or abandoned. In these
16 circumstances, the lender has--this is current
17 law--has the duty to maintain that property until
18 ownership has been officially transferred and the
19 deed has been duly recorded. The maintenance
20 obligations quite appropriately do not apply when
21 a receiver is serving, or during the pendency of a
22 bankruptcy proceeding, which, as I said earlier,
23 can exceed three years. That timeframe is the
24 period in which I think is the focus of your
25 attention today.

1
2 The burden being placed on the
3 lenders by Introduction 500 goes well beyond these
4 legal parameters. Imposing maintenance burden on
5 lenders from the moment the foreclosure proceeding
6 is filed until the conclusion of this lengthy
7 proceeding, despite the fact that the lender has
8 no legal ownership to the property, and even where
9 the property remains occupied by tenants. Even to
10 say lenders who seek to enter occupied homes that
11 they do not own, to make repairs that are not
12 authorized are not only trespassers under the law,
13 but also place themselves in potential danger if
14 confronted by a fearful occupant.

15 The cost of maintenance
16 requirements and the extent of the obligation to
17 maintain properties appear to be unlimited in this
18 legislation. Essentially these proposals impose
19 on the lender all the obligations of a full owner
20 at a time when the lender at best has limited
21 rights of access and is not recognized as the
22 lawful owner.

23 Although we understand the desire
24 to see properties maintained, this proposal does
25 not achieve this goal without creating a conflict

1
2 with the fundamental tenets of law. This
3 ordinance can only discourage regulated financial
4 institutions from extending mortgages in the city.
5 The maintenance expenses could be wildly
6 disproportionate to the mortgage investment. The
7 unpredictable, unquantifiable financial
8 obligations that this bill would create certainly
9 would send a chill through the mortgage market in
10 the city. And we have yet to understand how state
11 and federal regulatory authorities would treat
12 these loans under current supervisory guidelines.

13 Introduction 494 also seeks to
14 impose maintenance obligations on foreclosing
15 lenders by requiring them to obtain compliance
16 bonds. The bonds, which would be used to
17 reimburse the Department for repairs made as a
18 result of violations issued during the pendency of
19 the foreclosure. The minimum bond is \$10,000.
20 The minimum is \$10,000. The bonds would be for
21 amounts yet to be determined, but which will be
22 assessed using a formula based on a percentage of
23 the assessed valuation of the property. In other
24 words, you have this variable. And pricing a
25 product, even though we are not--we don't

1
2 represent the insurance industry--it's very
3 difficult. Once again, the financial burden of
4 maintaining properties not owned by the lenders
5 will therefore, without legal authority in our
6 view, be shifted from the property owner to the
7 lender, at an unknown cost and a burden to the
8 lender. When you price--as I understand and just,
9 you know preliminarily--we'd be more than happy to
10 work with you all. The pricing of this product,
11 which would probably be provided by an insurance
12 company or agent, typically you don't buy the
13 product in a distress situation. You don't buy
14 insurance. You might have to just buy insurance
15 for all real estate in New York or New York City
16 as a pricing matter, in order to build up a risk
17 pool to take this into account. But these are
18 only preliminary comments that we have in terms of
19 the pricing.

20 We believe these measures will
21 reduce the ability of New York City consumers to
22 obtain mortgages from credible institutions, and
23 will simply add to the borrower's costs, or to
24 someone else's cost if the borrower, if the lender
25 is prohibited from passing these fees along. That

1
2 means the price of product has to go up throughout
3 the entire marketplace.

4 Finally, a significant number of
5 lenders in New York City are national banks or
6 national federal thrift institutions, which may
7 not be even covered by these mandates. Therefore,
8 it is possible that different New York City
9 properties would operate under different
10 maintenance obligations, causing confusion and
11 perhaps false expectations. These measures would
12 place more stress on the state banking charters,
13 an outcome which the state of New York most
14 recently in Governor Cuomo's passage of this
15 budget and the new Department of Financial
16 Services wants to avoid.

17 In summary, the New York Bankers
18 Association appreciates this opportunity to
19 comment on these proposals, the foreclosure
20 situation. We pledge to work with you on
21 additional efforts. We should have a mutual goal
22 of encouraging reputable lenders to provide
23 mortgages to credit worthy New Yorkers and not to
24 discourage them if unnecessarily by obligations
25 that will affect the mortgage market.

2 Thank you for allowing me to appear
3 today. And with me is a practitioner, one of the
4 foremost mortgage lawyers in New York, and I might
5 say the nation, Bruce Bergman, who we have
6 consulted with over time but has many clients.
7 He's with the firm of Berkman, Henoch, Peterson,
8 Peddy and Fenchel. And I turn to Bruce just so
9 you have some introductory comments, and then
10 we'll take whatever questions that you might have.

11 BRUCE BERGMAN: I want to add some
12 thoughts as to--

13 CHAIRPERSON DILAN: [Interposing]
14 Mr. Bergman?

15 BRUCE BERGMAN: Yes.

16 CHAIRPERSON DILAN: You just have
17 to introduce yourself in your own voice, and then
18 you can continue.

19 BRUCE BERGMAN: My name is Bruce J.
20 Bergman, and I have been invited as an expert
21 witness on behalf of the Bankers Association. I
22 wanted to add some technical comments which I
23 think are quite relevant to the statute.

24 I mean I can begin by noting that
25 while I find the statute to be unfortunate in many

1
2 respects--so if I comment on what the statute
3 might need to contain, it's not a suggestion that
4 I would otherwise approve of it. But, if it were
5 to pass, the definition of the property
6 encompassed by the statute is quite unclear.
7 There is a reference in the three separate
8 statutes--there is a reference in one to any real
9 property, in another it says residential real
10 property, which is not really a defined term
11 anywhere. And although there is a mention of one-
12 to four-family houses in its relationship to owner
13 occupied, when you mix all those together in the
14 three states of notice, bond, and maintenance, it
15 is truly unclear. So, if a statute like this were
16 to pass, you would create confusion and
17 litigation, which will help no one in the absence
18 of a clear definition of the precise property
19 being covered by the statute. I suggest that for
20 consideration.

21 In talking about who the lenders
22 are--and obviously in listening we hear about the
23 sentiment, and the sentiment towards lenders is
24 generally, well, we could call it unkind or
25 ungenerous--but without commenting on that one way

1
2 or the other, I think the concept of who lenders
3 are is to some significant extent misplaced. If
4 you think in terms of behemoth lenders--and while
5 they have a significant number of loans--there are
6 many other lenders. There are small mortgage
7 companies, there are casual lenders, there are
8 individuals. And to make the point most strongly,
9 take an example of Mr. and Ms. Jones, who live in
10 Brooklyn and own a home, maybe a two- or three-
11 family home. And they retire, and in order to
12 sell the home, they have to take back a purchase
13 money mortgage. Their buyer cannot get all the
14 financing or doesn't have all the money or the
15 value may not be there. So, they take back a
16 mortgage and they retire to a rental apartment in
17 Queens. If there is a default on their mortgage,
18 they need to foreclose. Now they would be treated
19 just as any other lender would, and they would
20 need to give the notice--I assure you they won't
21 know about it and unless they engage a mortgage
22 expert they won't know it, and will be subject to
23 a fine of \$1,000 per week. They will not have the
24 ability to obtain a bond, and that leads me to a
25 comment on bonding.

1
2 There is a concept of bonding
3 capacity. While a very large institution will
4 have bonding capacity, which doesn't comment on
5 what the cost is, a relatively small or even
6 modestly sized mortgage lender or mortgage company
7 or an individual will not have bonding capacity.
8 The overwhelming likelihood is that the only way
9 such a person or company can get a bond is to post
10 the full amount of the liability. So, if the bond
11 were \$50,000, and we don't know what the numbers
12 are--remember, 10 is the minimum--if that number
13 were \$50,000, Mr. and Ms. Jones, who sold their
14 home in Brooklyn, would be required to come up
15 with \$50,000, which would make it impossible for
16 them. So, they are living in retirement on the
17 sum they get from their purchase money mortgage,
18 and are now unable to protect themselves. So, one
19 should bear in mind the nature of the lender who
20 is being affected by the statute. Not every
21 lender is the behemoth that some quarters find to
22 be distasteful.

23 There was a discussion earlier of
24 delays in foreclosures, and I heard one comment
25 that perhaps lenders delay them. I'm not sure

1 whether that was viewed favorably or unfavorably.

2 I suggest for your consideration that lenders have
3 a very strong incentive to prosecute foreclosures
4 as quickly as they can. Now, that happens to be
5 exceptionally difficult not only in the state of
6 New York but in New York City in particular. New
7 York City is the slowest venue to prosecute a
8 foreclosure in the state, and I suspect the
9 slowest venue in the nation. In Kings County for
10 example, which is the slowest even of the five
11 boroughs, I don't comment on Richmond, because I'm
12 not sure of the statistics there, but in Kings
13 County, I can tell you that today an order
14 unopposed that was sent in in January of 2010 is
15 only now in April of 2011 being looked at by the
16 clerks of the court. When the clerks are done, it
17 will go to the judge. When it goes to the judge
18 and the judges are very busy, it is likely to take
19 a month or two or three more for that order to be
20 signed.
21

22 There are two stages of
23 foreclosure, generally, not to bore you, where
24 orders are obtained--the referee's appointment and
25 the judgment. If each one of those is going to

1
2 consume 18 months, which is what it looks like now
3 in Brooklyn, that's three years in duration for
4 those two orders only, counting nothing else in
5 the case. So, foreclosures take a long time.

6 For every day consumed by a
7 foreclosure, the interest accrues. Taxes have to
8 be paid, the debt get greater. Every day portends
9 a greater loss for the lender. The lender has an
10 incentive to move as quickly as possible,
11 virtually an impossibility in the City of New
12 York, but they are not looking to delay actions;
13 it can only hurt them. So, I wanted to make that
14 point.

15 On the level of the three
16 proposals, there is notice and bond and
17 maintenance, the notice being the least offensive--
18 --although unpalatable, I think, to any lender,
19 bond in the middle and maintenance--exceptionally
20 unfortunate. I want to comment very briefly on
21 them. As to notice, and as Mr. Smith mentioned,
22 when lis pendenses are filed with the court, that
23 is information that is public record and could be
24 obtainable from the court; you wouldn't need a
25 separate list. If it were inconvenient to get

1
2 that from the court, there are commercial
3 listings. For a modest sum you get a subscription
4 and it's a printed book and it's in front of you,
5 and it tells you ever lis pendens filed and the
6 type of property and the address and the section
7 block and lot. And as Mr. Smith also mentioned,
8 very detailed information is filed with the state
9 of New York. So, the sources of this information
10 are readily obtainable. To impose yet another
11 layer on lenders, including Mr. and Ms. Smith, to
12 provide information that can be obtained
13 otherwise, I think is worthy of reconsideration.

14 As far as the bond is concerned,
15 and I heard also a mention that perhaps the cost
16 of the bond should not be compensable to a lender,
17 if in addition to the cost that a lender incurs,
18 it will have a bond premium of untold sums, and it
19 could be very, very expensive. If this is not
20 recoupable in a foreclosure, what a lender has to
21 continue is, if we get a default upon a loan, we
22 may incur tens of thousands of dollars of
23 additional fees, which will guarantee that we can
24 never get that back. How would anyone look at an
25 investment knowing they will be guaranteed a loss

1
2 in every case where a bond has to be purchased?
3 It's a difficult situation to impose, and I think
4 it would certainly chill lending. Now, there was
5 a comment that in a particular district lenders
6 may not be making very many loans. I can't
7 comment as to that, but lenders want to loan, and
8 loans are being made. But if it gets so expensive
9 for them that they cannot loan, this is not a good
10 thing for the city of New York.

11 When you turn to the maintenance,
12 and this is truly the most offensive, let me
13 mention very briefly in lay terms what a mortgage
14 is. A borrower borrows money and pledges, as
15 security for the debt, the real estate they own.
16 But what they say in a legal way is, Mr. Lender, I
17 am giving to you the right--if I default--to begin
18 a legal action and ask the Court to allow the sale
19 of the property under its direction, and the sale
20 will be through a court officer, a referee. That
21 means that the lender has never been an owner,
22 never. Only that the moment that a foreclosure
23 auction is conducted. When a referee in the
24 courthouse says sold, that is the moment the title
25 is divested. So, the lender has a lien interest,

1
2 not an ownership interest, not a possessory
3 interest. I understand very well your concerns--I
4 happen to agree with them, although that's
5 irrelevant--as to what happens in neighborhood
6 when properties deteriorate, and what happens to
7 tenants when they are abused by owners who do not
8 supply services. By the way, I also defend
9 foreclosure actions. So, I am fully aware, it is
10 the owners who are the ones who are doing this.

11 Now, I don't know that there's a
12 ready answer to making the owners do what they
13 should do. But saying to a lender, whether it's
14 Mr. and Ms. Jones or anyone else, that you who
15 took a lien interest in property shall now be
16 responsible to maintain that property for the
17 duration of the foreclosure in an amount that's
18 unstated so that you take a risk that can never be
19 protected--how does someone make a loan of that
20 nature?

21 And if, by the way, a foreclosure
22 consumes a minimum of three years, and sometimes
23 three and a half or four or more, and there is
24 maintenance to be paid for over that period of
25 time, what is that number? It can't be predicted.

1
2 It suggests that the accumulation of debt will
3 definitely be greater than the loan that was made.
4 So you tell a lender you will now lose money if
5 you make a loan in the city of New York unless you
6 can be so certain that these things can't be
7 happening. If a private lender came to me and
8 this bill had passed and said, I'm thinking of
9 making this loan, what kind of risks am I taking
10 on, and I told him and he said should I do that, I
11 would say no. You cannot predict the costs to
12 you. I suggest that this will chill lending. And
13 again, while the purpose is a very good one, I
14 suggest this is not the way to do it.

15 Turning again to the mechanical,
16 less important but relevant. If you were to
17 impose this maintenance, opposed though I may be
18 to it, bear in mind that if a receiver is
19 appointed in a case, which is something that can
20 be sought, the moment a receiver is appointed by a
21 court, a lender would have no authority whatsoever
22 to have anything to do with the physical control
23 of a property; they are barred. So, if you have a
24 statute that says a lender has to maintain, it
25 will clash immediately and create ambiguities if a

1 receiver has been appointed. Likewise, if a
2 bankruptcy has been filed, which is common by the
3 way in mortgage foreclosure actions, and depending
4 upon the chapter it is; if it's a Chapter 7, then
5 a trustee is appointed. The trustee is the one in
6 control of the bankrupt estate. A lender has no
7 authority by virtue of federal preemption to go
8 anywhere near that property. They didn't have the
9 authority anyway, but here you have a clear clash.
10 If a Chapter 11 is filed, then the owner becomes a
11 debtor in possession to the exclusion of the
12 lender. The lender has no right whatsoever to go
13 on the property. Again, it's a matter of federal
14 preemption. So, if the statute does not take
15 those into account, you create more litigation.

17 The final thought is that if the
18 lender has only a lien interest, and they do as a
19 matter of law, and it is not possessory, then you
20 are telling a lender that the contract that they
21 entered into, the mortgage document--and it is a
22 contract--and all applicable law in history, with
23 the sole exception of that state statute--which I
24 can comment upon if asked--that we are now going
25 to change that and reverse this and impose upon

1
2 you a burden that you never expected, that you
3 could not have bargained for, that you did not
4 agree to, and is against the history of law going
5 back to the Common Law in England. That's what
6 you would be doing. And I think that that is
7 rather unfortunate. It is worthy of
8 consideration.

9 Last thought on the mechanics of
10 it. If you impose that you will require a lender
11 to go to the property, and if it is locked, break
12 down the door or change the locks, go in, spend
13 money that it would not otherwise have to spend as
14 a matter of law. And just as an additional aside,
15 to show you how unpalatable that would be, what
16 happens when someone walking into the house trips
17 and falls on the steps? They will sue, I assure
18 you. They will sue everyone. Because the lender
19 now has what's called care, custody and control of
20 the property, they will be liable, when they never
21 would have been, for this lawsuit. How will a
22 lender obtain insurance and cost out the liability
23 for every trip and fall in every building in the
24 city of New York upon which it holds a mortgage?
25 Need I tell you how many suits there are of that

1
2 nature? And don't they sue everyone? Even people
3 not liable. But here a bank would be liable, or
4 any lender--again, Mr. and Ms. Jones.

5 So, I despair for what would happen
6 to lenders if this goes into effect. And it's one
7 thing--may I say that enough--to impose this in
8 futuro. What do you do with a lender who made a
9 loan previously, knowing what the law was and
10 knowing they had no such responsibilities, and now
11 the law says, but we will impose this upon you
12 now? I suggest that that one's unconstitutional.
13 I suggest your consideration that imposing
14 maintenance even after you know about it is
15 unconstitutional, I think clearly so for someone
16 who previously made a loan. Those are my
17 thoughts. And if there are questions as to
18 mechanics, we're open to...

19 CHAIRPERSON DILAN: There
20 absolutely are questions. And I didn't mean that
21 in a sarcastic way. I believe that there
22 absolutely are questions. I'm going to give
23 Council Member Fidler the prerogative of going
24 first since he didn't ask questions in the opening
25 round. And I'll defer until later. Council

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Member Fidler?

COUNCIL MEMBER FIDLER: Thank you, Chairman Dilan. And Mr. Bergman, I'm just a humble country lawyer from Kings County, and it's been some 30 some-odd years since I've been in law school, so I'm going to ask you some questions and maybe you can enlighten me. But I first want to say a couple of things about your testimony.

I find the reference to Mr. and Ms. Jones to be offensive. I can tell you that Mr. and Ms. Jones, first of all, would not be charged with the knowledge of the provisions of this law, because if Mr. and Ms. Jones were foreclosing on their lifelong savings household residence that they had sold, if they hadn't gone to a competent foreclosure attorney to do that, they've got a problem to begin with, so that's number one. Number two, you know, I've been practicing for about 30 years, and the number of purchase money mortgages that are being held back because they can't sell their house when they need to, to someone other than a family member, are de minimis. All right? Usually under the table second mortgages that the bank didn't know about.

1
2 All right? So it would be a second mortgage that
3 would be under water, and it would be a first
4 mortgagee who would likely be more primarily
5 liable. And you know, quite frankly, to run past
6 this committee the notion that we're going to be
7 burdening Mr. and Ms. Jones or Smith or whatever,
8 in their foreclosure action in Brooklyn is a red
9 herring.

10 You know, I know that not every
11 bank is Countrywide, but quite frankly, I'm
12 willing to bet just by hazarding a guess that
13 about 98% of the mortgages in the city of New York
14 are given by a lending institution and not by Mr.
15 and Ms. Joneses. Okay? And probably about 98% of
16 the foreclosure actions in the city of New York
17 are in that same category. So, let's not let the
18 tail wag the dog. Okay? That would be my first
19 comment to you. You can respond to that if you
20 like.

21 BRUCE BERGMAN: I would like to
22 respond. I'm sorry that you're offended. It was
23 not made to be offensive. It was made to present
24 a valid point, and that is that the statute
25 assumes that all lenders are of a commercial and

1 behemoth nature. That's false. There are
2 purchase money mortgages. I'm out of law school
3 ten years more than you. I'm involved with real
4 estate, have been all those years. I can assure
5 you there are purchase money mortgages. And if
6 there were only a handful, and if you are correct-
7 -whatever the number is--even if there were, this
8 statute does apply to those people. I point out
9 that this statute would affect them. And if Mr.
10 and Ms. Jones came before you and said, what has
11 this statute done to us, you might then be
12 sympathetic. So I point out that you want to be
13 careful in who you define as those who are liable.
14 This is not offensive; it's just its affect.

16 COUNCIL MEMBER FIDLER: I'll just
17 merely repeat, tail, dog. Okay? I mean this is
18 not--you know, I can't tell you that all the
19 points you've made here are inapposite, many are.
20 This is relevant. But to parade it before the
21 Committee as if we are going to place this
22 enormous burden on the little folks is really kind
23 of ridiculous--

24 [Crosstalk]

25 COUNCIL MEMBER FIDLER: Could we

1
2 carve out, could we find a way to carve that out
3 here? Maybe we could. But I'm telling you--

4 BRUCE BERGMAN: [Interposing] That
5 was my point.

6 COUNCIL MEMBER FIDLER: It is tail
7 and dog for you to repeatedly go back and say look
8 at what we're doing, how are we--how are Mr. and
9 Ms. Jones going to deal with this--all right, to
10 me it's absolutely a red herring. So let's get
11 past it--

12 BRUCE BERGMAN: [Interposing] I
13 have full confidence--

14 COUNCIL MEMBER FIDLER: --let's get
15 past it--

16 BRUCE BERGMAN: [Interposing] No, I
17 have full confidence that the Council Members will
18 be able to weight that as they want, your offense
19 notwithstanding--

20 COUNCIL MEMBER FIDLER:
21 [Interposing] Actually I used the term offensive
22 because you used it about 40 times in the ten
23 minutes of your testimony because I just wanted
24 to--I hope you're not offended by this Council's
25 attempt to try and preserve communities, to try

1
2 and save tenants and property neighbors whose
3 homes are falling into arrears, or taxpayers from
4 having to pick up the cost during that period of
5 time.

6 I'd also like to point out while
7 we're on the subject of things that are kind of
8 offensive, you know, you complain about the length
9 of time that it takes for foreclosures to go
10 through in Kings County as a primary example.

11 Maybe if banks weren't busy robo-signing, maybe if
12 banks could find their original documents a little
13 faster, maybe if banks were actually showing up at
14 compliance conferences with people who are able
15 and willing to discuss modifications in a timely
16 fashion it wouldn't take three years.

17 [applause]

18 COUNCIL MEMBER FIDLER: So. Let's,
19 you know, let's be fair. All right? I know the
20 courts aren't always quick, but it ain't all their
21 fault. All right, so my questions.

22 BRUCE BERGMAN: Ah.

23 COUNCIL MEMBER FIDLER: An
24 emergency repair lien, all right? The city of New
25 York is forking out money, the taxpayers, everyone

1 sitting in this room--even you if you live in the
2 city of New York--are paying for that. When a
3 property is foreclosed, you know, the referee says
4 sold and they go to a closing. A third party
5 acquiring the property is acquiring it subject to
6 the lien. Am I correct?
7

8 BRUCE BERGMAN: If it's a super
9 lien, yes.

10 COUNCIL MEMBER FIDLER: Well,
11 enlighten me, because I've never heard that term.

12 BRUCE BERGMAN: Certain liens prime
13 a mortgage and are senior to a mortgage and do
14 indeed survive a foreclosure.

15 COUNCIL MEMBER FIDLER: How about
16 an emergency repair lien?

17 BRUCE BERGMAN: You know, I forget.
18 I should know. I think it is a super lien that
19 does survive and would have to be paid by the
20 purchaser at the sale.

21 COUNCIL MEMBER FIDLER: So then--

22 BRUCE BERGMAN: [Interposing] I'll
23 double-check my lists, but that...

24 COUNCIL MEMBER FIDLER: --the
25 person who is going to wind up in the possessory

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

interest in the property--

BRUCE BERGMAN: [Interposing] Yes.

COUNCIL MEMBER FIDLER: Who had
nothing to do--

BRUCE BERGMAN: [Interposing] Yes.

COUNCIL MEMBER FIDLER:
[Interposing] With creating the condition, will
benefit from the repair that was done because now
they're going to own the property, they're going
to wind up paying for it in the end, right?

BRUCE BERGMAN: For that kind of
lien they would, but they know that when they buy
the property.

COUNCIL MEMBER FIDLER: Yeah, okay.
I get that. I'm just--I'm being enlightened. All
right?

BRUCE BERGMAN: Yes.

COUNCIL MEMBER FIDLER: And if you
go to the sale and there is no purchaser and title
reverts to the bank, is the bank going to be
liable for it?

BRUCE BERGMAN: Yes.

COUNCIL MEMBER FIDLER: And they
know that already when they give you the mortgage

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

too, am I correct?

BRUCE BERGMAN: Yes. There are certain liens that can come on that they might have to do, yes.

COUNCIL MEMBER FIDLER: So, why is it any more of a burden to have them file a bond to secure that payment?

BRUCE BERGMAN: Because the bond premium would have to be paid even if no such violation is ever attached to the property.

COUNCIL MEMBER FIDLER: Well, you know, now I understand that. But then, if the violation did attach to the property, the bank got the property back, they'd actually be saving money now, wouldn't they, because they paid the premium instead of the cost.

BRUCE BERGMAN: No, the premium--

COUNCIL MEMBER FIDLER:
[Interposing] But the premium is going to be less than the cost, right?

BRUCE BERGMAN: Not at all. How can you say that?

COUNCIL MEMBER FIDLER: The bond, the cost of the bond is going to exceed the payout

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

from the bond?

BRUCE BERGMAN: It depends on the circumstances.

COUNCIL MEMBER FIDLER: That would be new.

BRUCE BERGMAN: It depends how big the bond is and it depends what the emergency repair lien was. An emergency repair lien could be a minor item or it could be a large item. If it's a very big bond premium and a small lien, then the math is different.

COUNCIL MEMBER FIDLER: Oh, okay. And if it's not a huge bond premium and it's a big lien, would the bank save money?

BRUCE BERGMAN: In theory if it came out--well no--

COUNCIL MEMBER FIDLER: [Interposing] Well not in theory, if in fact.

BRUCE BERGMAN: Yes. If that's the circumstance, they would.

COUNCIL MEMBER FIDLER: Okay. And so you don't, you couldn't--and I'm going to be fair to you, you wouldn't be sitting here right now knowing what the math of all that would be.

1
2 And I don't imagine that you set the bond
3 premiums.

4 BRUCE BERGMAN: In part.

5 COUNCIL MEMBER FIDLER: But it's a
6 legitimate point to make, and it's a question to
7 raise, whether or not this really is as costly as
8 the testimony that you guys have given today as
9 actually given. You may find out on balance it
10 pays for itself, that the banks getting stuck with
11 all these properties are actually saving money
12 because they're insuring their own interests. And
13 at the same time it's going to be a hell of a lot
14 cheaper to the taxpayers of the city of New York.

15 BRUCE BERGMAN: I disagree with all
16 the first part, but I'll let Mr. Smith answer it.

17 MICHAEL SMITH: I just want to
18 comment on a couple of things. Number one,
19 obviously, our association represents the
20 incorporated lending institutions state and
21 federal, so leaving aside individual lending. And
22 standing on our testimony as to our concerns about
23 this legislation, as to insurance, I think it
24 would be important and ask that the Council
25 consider this, the Committee consider this, that

1
2 the pricing--because I have not heard yet what the
3 right pricing is. We do have an insurance section
4 within our group, and we did do some inquiry. And
5 what I said in my statement was basically without
6 getting into exactly dollar amounts--because I
7 think that would not be right because I don't
8 think anyone has had time to do that--there are
9 such things as compliance bonds. And we're aware
10 of that. Number two is that this is typically an
11 insurance product and it would be regulated as
12 such, and that typically as I said, insurance--
13 property and casualty insurance--you would want to
14 price it in such a way if you were going to
15 provide this feature, it would probably be
16 applicable to all mortgages made in the city of
17 New York so that you would have what they call a
18 pool, a risk pool, an assignment pool. And that
19 means that every mortgage made, not knowing what
20 it was going to cost would be subject to this.
21 But number two is, if it were to apply as the bill
22 contemplates, at the time a notice is filed, a
23 foreclosure, that this bond is purchased from what
24 I understand--and we want to get back to you on
25 this--but from what I understand, we understand,

1
2 is that that is, when you have a distress
3 situation is when you least want to purchase
4 insurance, especially if you don't know what the
5 amount is. It's been--we've talked about \$10,000,
6 but if it's a building, multi-family--I mean large
7 residential building, you know, it's not clear.
8 And it could be a residential home. It's not
9 clear how much that bond is going to cost, because
10 the costs are variable. And obviously there are
11 those who are in the risk business who probably
12 would look at this.

13 But the pricing mechanism which
14 we've talked about is--in our view would create a
15 major problem in terms of this legislation, and
16 will affect the mortgage market because it's going
17 to affect every lender.

18 COUNCIL MEMBER FIDLER: Look, I get
19 it. Honestly I'm not so humble and I'm not such a
20 country lawyer either. I understand the idea of
21 the risk pool. I understand the notion that when
22 you do that you are spreading out the risk over a
23 much larger pool than the property that's being
24 foreclosed upon. And as a result, even the
25 innocent are going to pay a cost to that. All

1
2 right? But theoretically the cost will be
3 minimized because you are spreading it out over a
4 large pool. All right? That would be a good
5 thing.

6 I will say, Mr. Chairman, that we
7 really, we probably need to hear from the
8 insurance industry to see what their view of the
9 pricing of a compliance bond here would be. And
10 they probably would have to analyze the number and
11 the amounts of emergency repair liens that have
12 gone to foreclosure in order to be able to do the
13 math, to figure out what a bond would cost. But I
14 don't think that we can dismiss the notion based
15 upon an idea that it's going to be too costly
16 without looking at it and analyzing it and having
17 the people who do that for a living come in and
18 tell us what the pricing would be. So, and quite
19 frankly I think at the end of the game, I think
20 perhaps the bankers might be pleasantly surprised
21 to find out that when you collateralize it over an
22 entire large risk pool the cost would not be that
23 much and it would in fact protect you on the
24 properties that you are increasingly seeing going
25 back to the banks--all right--with emergency

2 repair liens that you're going to have to pay
3 anyway. So, maybe, maybe you will not lose money
4 on it. So, I thank you for deferring to me, Mr.
5 Chairman, I appreciate it.

6 CHAIRPERSON DILAN: Thank you. And
7 I'll do, just do a little bit of announcement.
8 We're running a little bit behind schedule. So
9 what we're going to do is we're going to finish
10 the line of questioning with this panel. And
11 Council Member Williams will be next. He'll be
12 followed by Council Member Lander. And I'll have
13 a question or two. Then at that point we'll pause
14 the proceeding on the foreclosure bills. We'll
15 take up the window guard legislation, which I
16 believe has only one or two people slated to
17 testify, and then at that point we'll adjourn that
18 part and continue taking public testimony on the
19 foreclosure bills. Just because I perceive it to
20 be only a few minutes in nature on the window
21 guard legislation, then we can hear from the
22 public in full on the foreclosure bills.

23 So, we have Council Member
24 Williams.

25 COUNCIL MEMBER WILLIAMS: Thank

2 you, Mr. Chair. Thank you for the testimony. Can
3 I just get the names again?

4 MICHAEL SMITH: It's Michael Smith.

5 COUNCIL MEMBER WILLIAMS: Mr.
6 Smith.

7 BRUCE BERGMAN: And Bruce Bergman.

8 COUNCIL MEMBER WILLIAMS: Bruce
9 Bergman?

10 BRUCE BERGMAN: Yes. Bergman.

11 COUNCIL MEMBER WILLIAMS: Mr.
12 Bergman, I was impressed that you had all that in
13 your head and not on a piece of paper; I do have
14 to say that. Although there was a lot of stuff
15 that--I was trying to cull out what I thought
16 actually made sense and stuff that didn't that
17 seemed to be disconnected from what's actually
18 happening on the ground.

19 My first question, I think it was
20 Mr. Smith actually that started off saying there's
21 different bankings.

22 MICHAEL SMITH: Yes.

23 COUNCIL MEMBER WILLIAMS: So can
24 you just clarify that a little bit, really quick,
25 not to confuse all the banking?

2 MICHAEL SMITH: Absolutely. And it
3 can be confusing and is confusing certainly for
4 the public. There are about 7,000 banks in the
5 United States and some are fully chartered
6 depositories, the legal definition of a bank--
7 takes deposits, makes loans. There is in the
8 United States either licensed--primarily licensed
9 at the state level in all 50 states--licensed
10 lenders, mortgage brokers and other types of non-
11 bank entities. And what we have seen as a result
12 of what has happened in the marketplace--and I've
13 seen this and I've been doing this for 30 years--
14 is total intertwining of what actually is a bank
15 into everyone who makes a loan is a bank or
16 everyone who is involved in the securities market
17 is a bank. And that is not true for the
18 institutions that I represent. I represent what
19 is considered to be the traditional banking
20 sector.

21 COUNCIL MEMBER WILLIAMS: So Chase.
22 You represent people like Chase.

23 MICHAEL SMITH: I represent Chase.

24 COUNCIL MEMBER WILLIAMS: Okay. So
25 definitely disconnected what's going on the ground

1
2 when it comes to people like that. I do have one
3 question--I mean I have a few questions.

4 MICHAEL SMITH: Sure.

5 COUNCIL MEMBER WILLIAMS: First I
6 wanted to ask, I think it was Mr. Bergen
7 [phonetic].

8 BRUCE BERGMAN: Bergman.

9 COUNCIL MEMBER WILLIAMS: Bergman.
10 Sorry, I can't read my own handwriting. Bergman.
11 A few problems. It sounded like one was the Mr.
12 and Ms. Jones issue. Another one seemed to be the
13 receiver and bankruptcy issue. And another one
14 seemed to be a language issue. So my question, my
15 first question is, if we found unified language,
16 exempted Mr. and Ms. Jones, exempted the receiver
17 and the bankruptcy issue, would you support the
18 bill?

19 BRUCE BERGMAN: No.

20 COUNCIL MEMBER WILLIAMS: I thought
21 so.

22 BRUCE BERGMAN: I said so.

23 COUNCIL MEMBER WILLIAMS: So even
24 though you spend an inordinate amount of time
25 speaking on those issues, those are not the

1
2 primary issues that are the problem.

3 BRUCE BERGMAN: No, but I did want
4 to point out that if the bill were to pass there
5 would be ways to make it better and I gave some
6 suggestions as to those.

7 COUNCIL MEMBER WILLIAMS: No, you
8 didn't really give suggestions, just to be clear.
9 You pointed out some things that would be
10 problematic, so they weren't quite in the form of
11 suggestions. If you were trying to make
12 suggestions, I guess it's what you're saying now,
13 of how to make the bill better.

14 BRUCE BERGMAN: Those things would
15 make the bill better. It doesn't change the fact
16 that I believe that the bill is ill advised, but..

17 COUNCIL MEMBER WILLIAMS:
18 Understood. Thank you. And I asked the same
19 questions of HPD. Can you explain to me again how
20 it deters the foreclosure process from going
21 quicker, and how it deters banks from making
22 loans? Also, you commented that you can't comment
23 on the fact that they're not lending now, which I
24 found very strange for you to mention.

25 MICHAEL SMITH: Well, I'd like to

1
2 comment on a couple things. First of all I know--
3 and we've testified on this in previous forms and
4 committee hearings--that the facts that we've
5 presented, and I think have been verified most
6 recently in congressional testimony by the
7 regulatory agencies, that quite frankly the number
8 one deterrent in this current situation has been
9 there is a lack of demand, and the demand very
10 often is a lack of credit worthiness, along with a
11 tremendous amount of concern throughout the entire
12 community--whether it be the lending institution
13 or the consumer--as to the economy and have we
14 reached bottom. And we would argue, and we've
15 worked by the way--I might mention in terms of
16 credit, I mentioned at the outset, which I know
17 doesn't receive a lot of attention, but we are--
18 all of our members--I should say most of them--

19 COUNCIL MEMBER WILLIAMS:

20 [Interposing] So, just excuse me one second--one,
21 I want to say I'm thankful that you guys came and
22 gave testimony. Two, I'm not very sympathetic
23 with the banks right now, whatever the definition
24 is. And I also know that I don't have too much
25 time, so I want to push the conversation a little

1
2 bit. My question was specifically how does it
3 make the foreclosure process quicker and how does
4 it deter the banks from making loans?

5 MICHAEL SMITH: In terms of the
6 foreclosure process, the point that we would make
7 and have made in our written testimony is it's
8 going to deter the extension of the credit at the
9 front end. If you do not have--one, rate is a
10 reflection of risk. If you have variables that
11 are not quantifiable you have a very serious
12 situation in terms of how you can justify--I know
13 the word bank, I know how it is viewed. But banks
14 are either owned by shareholders or by depositors
15 and their customers. And they have to have
16 certainty, and they want to have certainty. And
17 what we've seen and we would have commented on
18 throughout this hearing today is that because of
19 the fact that it takes so long to foreclose, which
20 is not in the interest of the lender or the
21 neighborhood in the state of New York, which is a
22 virtue of our law, that you have these situations
23 where you could have this maintenance for example,
24 or the cost of the bond for example--and I think
25 the notice piece is another one altogether--would

1
2 detract at the front end from making the extension
3 of credit.

4 COUNCIL MEMBER WILLIAMS: So, it's
5 more, you answered more of extending the mortgage,
6 not extending the foreclosure.

7 MICHAEL SMITH: That's correct.

8 COUNCIL MEMBER WILLIAMS: Okay.

9 MICHAEL SMITH: That's correct.
10 Because banks really don't--you know, foreclosure
11 is the point that you don't want to be at if
12 you're making a loan. So.

13 COUNCIL MEMBER WILLIAMS: So, any--
14 I know you didn't want to comment before, but the
15 banks aren't making loans now.

16 MICHAEL SMITH: The banks are
17 making loans.

18 COUNCIL MEMBER WILLIAMS:
19 Particularly Chase is not remodifying loans now.

20 MICHAEL SMITH: My--we have 150
21 member banks, and I believe certain institutions,
22 one in particular that has been referenced in this
23 hearing has commented on their lending at this
24 point. I do not represent any specific
25 institution. But I can say that banks are lending

1
2 and we're working cooperatively. The fact is,
3 we're working with the Speaker, and the Small
4 Business Committee in the small business area on a
5 great program here in New York, on a second look
6 program on small business loans. And we are
7 working with the organizations I mentioned. And
8 the issue is having a market. You know, there are
9 no subprime loans basically in the United States.
10 These are loans that basically came out about ten
11 years ago. And you could sell them into the
12 secondary market. And what we have now is
13 basically the traditional loan product.

14 COUNCIL MEMBER WILLIAMS: I don't
15 think banks are making loans, particularly in--
16 especially in certain neighborhoods. First of
17 all, they weren't making enough before and now
18 they're not making it with the expediency that
19 they should be.

20 Now, with the bond issue, I was
21 very confused. Because from what I understand any
22 insurance and bond that you pay for, you don't get
23 that money back if something--if nothing happens.

24 MICHAEL SMITH: That's right.

25 COUNCIL MEMBER WILLIAMS: The money

1
2 you paid for was in case something happens. When
3 I pay my car insurance, it's in case something
4 happens. I would love to get that money back,
5 because it's very, very expensive. If nothing
6 happens that doesn't mean I get it back.

7 BRUCE BERGMAN: That's right, no
8 you don't. You pay the premium and that's it.
9 It's just paid and it's not--

10 COUNCIL MEMBER WILLIAMS:
11 [Interposing] So no, you shouldn't. You shouldn't
12 get it back.

13 BRUCE BERGMAN: Or else insurance
14 companies wouldn't be in existence--

15 [crosstalk]

16 COUNCIL MEMBER WILLIAMS: That
17 seemed to be one of the issues you asked though,
18 if nothing happens. That seemed to be an exchange
19 I heard about if nothing happens, what would
20 happen to the money if the banks didn't have to
21 pay for anything.

22 MICHAEL SMITH: It's very similar
23 to the auto. You mentioned the auto insurance
24 situation. It's paying for the insurance. But
25 the way the--as I understand it--the bill is

1
2 contemplated, it would be at the time of
3 foreclosure, which would be, which--and I'm not an
4 insurance person and we would be happy to provide
5 more information to the Committee on this, but
6 your risk is much greater, obviously, if you're in
7 a foreclosed property situation than it would be
8 under the normal.

9 COUNCIL MEMBER WILLIAMS: Okay.

10 All right. I'm going--the issue I guess that I
11 have, one, there was a lot of statistics about New
12 York and being where it's ranked. There are a few
13 zip codes in New York that do rival what's going
14 on in the nature.

15 MICHAEL SMITH: That's right.

16 COUNCIL MEMBER WILLIAMS: So that
17 was disingenuous because there are some very bad
18 zip codes in Brooklyn, Queens, in New York in
19 general.

20 MICHAEL SMITH: We are aware of
21 that. In fact it's--the predatory lending issue
22 was first raised in the state of New York in about
23 2002 and 3. And mentioned Senator Schumer. We
24 went into Queens and we went into--and we know
25 that they are targeted areas. And it was our

1
2 findings and they came out in 2004 or 5 that the
3 community predominantly was using mortgage
4 brokers, and they were using firms that were not
5 necessarily New York firms. And new laws were
6 passed in the state of New York, but there were no
7 new laws passed in the United States of America.
8 they were not applicable across the board in the
9 nation. Some of these lenders are no longer in
10 the market, by the way.

11 COUNCIL MEMBER WILLIAMS: Now, two
12 more things and two statements more. For the
13 information piece, on the ground it's very
14 difficult to find this information. You gave a
15 slew of places where you could find it. We find
16 it very hard to find owners, up to date owners,
17 who owns it. The property I discussed, we thought
18 it was Deutsche Bank. Bank of America has a piece
19 of it. So there's a lot of confusing information
20 out there. So how--

21 MICHAEL SMITH: [Interposing] In
22 terms of the, as we stated, we would urge that the
23 HPD talk and consult as governmental agencies
24 where you can share certain information that a
25 banking institution that's subject to privacy laws

1 cannot, that the governmental, the role of
2 government here is you've got this information in
3 the County Clerk's office, the OCA or in the HPD,
4 and that information can be posted on a website,
5 and it's there today.

6
7 BRUCE BERGMAN: And so the
8 information, by the way, is specifically
9 available. I know what you're talking about with
10 banks, because when I have to plead that in a
11 case, we have to describe who the bank is and
12 sometimes one bank succeeds another or is the SNE
13 or there's a merger and so on and so forth. That
14 information is specifically given to the state in
15 each case. It has to be.

16 COUNCIL MEMBER WILLIAMS: There's
17 a--2013, I think, Glenwood Road in South Midwood.
18 I've been dealing with that property since before
19 I was a council member. For about ten years
20 people were searching to try to find just who the
21 owner of that property is--so not just banks.
22 It's difficult to find who owners are of property.
23 But, I'm going to wrap up.

24 The last thing I want to say is,
25 this whole thing is about money. Greed. That's

1
2 it, period. I think it is appropriate to have
3 banks take ownership of keeping the property up to
4 date. They can share that with the owner if the
5 owner is unavailable. We tend to pass the buck a
6 lot, and we have to stop doing that. So you're
7 going to pass it to people who don't exist, and
8 then the owner is going to pass it around and
9 around. We have decided that we are identifying
10 who we think the most responsible should be, and
11 that is the bank, the mortgagee at this current
12 time.

13 Where I get frustrated is the Mayor
14 Bloomberg approach, everybody is going to run from
15 the city. People want to make money. I do not
16 think these laws are prohibitive to the fact that
17 no one is going to lend. That doesn't make any
18 sense. This is New York City; people want to make
19 money. People will lend in New York City. They
20 will have to adapt to the new laws that are here,
21 just like we adapt every time that new laws are
22 passed. Thank you.

23 CHAIRPERSON DILAN: Thank you,
24 Council Member Williams. Just as a reminder, I
25 want to ask everyone to have their cell phones

2 either turned off or set to vibrate. And if there
3 is a need for a phone conversation, if that
4 conversation can happen outside of the chambers.
5 We have Council Member Lander followed by James.

6 COUNCIL MEMBER LANDER: Mr.

7 Bergman, Mr. Smith, thank you very much for being
8 here. I do want to say that I welcome your
9 suggestions to make the bill that I've introduced,
10 494, better, irrespective of your opposition to
11 it. I think it will be helpful to more clearly
12 define the property that we're speaking to, and to
13 exempt Mr. and Ms. Jones, whether they're 2% or
14 .2% of the pool that we're talking about here.
15 There's no harm in doing that, so I thank you for
16 those suggestions.

17 I also want to say that in my prior
18 life as director of a community development
19 corporation, the Fifth Avenue community did a lot
20 of work with your members, borrowed a lot of loans
21 from them, developed a lot of affordable housing.
22 They served on my board, a not-for-profit I was an
23 executive director of. A lot of friends there.

24 All that said, I have to say that
25 from both of you I really do find today's

1 testimony an example of the shirking of
2 responsibility that I believe has typified the
3 banking industry before, during and after the
4 subprime and foreclosure crises. To say that your
5 members were not deeply involved in this crisis is
6 a shirking of responsibility. Some of your
7 members indeed were slower to subprime than
8 others, whether they bought it on the back end
9 through securitization or whether they originate
10 on the front end. But Washington Mutual was a
11 member of your association. Washington Mutual
12 executives were officers of your association.
13 Many of the--at least I know, but I'm not going to
14 give his name, but I'm looking at a press release
15 when he was appointed.

17 BRUCE BERGMAN: Oh, the Alan
18 Fishman--okay. So that's about 12 days.

19 [crosstalk]

20 COUNCIL MEMBER LANDER: I wasn't
21 even talking about Mr. Fishman.

22 MICHAEL SMITH: Kerry Killinger.

23 COUNCIL MEMBER LANDER: No, I don't
24 want to--I was talking about Michael Hurley. But
25 in any case, you know, your members were involved

1
2 whether slower or later thoroughly in the
3 origination and securitization of subprime and
4 non-prime mortgages that helped take us in this
5 direction, then they would up holding these pools,
6 you know, whether because the fed encouraged them
7 to buy them. So, we're in the situation today,
8 and what I guess I feel like is on the one hand,
9 you know, there's a request--we've provided as
10 taxpayers a substantial bailout, you know, the
11 Neil Barofsky piece last week made clear that from
12 his point of view as the inspector overseeing
13 TARP, as tax payers we got a raw deal. We put
14 that money up and we didn't get the lending that
15 we were expected to get. And then on the other
16 side, and I think this is where you focused in
17 today's testimony, any effort to seek to hold the
18 banks accountable in any way is simply met with
19 the argument anything you do will freeze lending.
20 Right? We haven't really analyzed it. We can't
21 tell you what the price is. There's a reasonable
22 belief that it will be a de minimis cost. We
23 haven't figured out how it's spread around the
24 risk pool, but what we can tell you is banks will
25 stop lending, the credit markets will freeze and

1
2 no lending will take place in the City of New York
3 if you do this. So, I feel like we've heard this.
4 We've heard it time and time again. We've heard
5 it on Capitol Hill. There's a lot of it reflected
6 in Senator Levin's report today. So, you know,
7 that's where we start.

8 And I guess, to get to my first
9 question, I think we actually agree on a big piece
10 of the problem, right? It takes a long time to
11 foreclose in New York, and so for this period,
12 whether it's one, two, three, four years, when as
13 a result of a loan being in default--whether
14 because it was underwritten poorly or because
15 someone took it when they shouldn't have, whether
16 it's a single-family, whether it's a multi-family,
17 it's going to take a long time to work its way
18 through.

19 COUNCIL MEMBER LANDER: I think we
20 believe we don't have good incentives to get other
21 workouts. I'll come back to that in a minute.
22 But in any case, during that period of time there
23 are some real risks, especially to tenants and
24 neighbors. Right? If one of your members has
25 brought the lis pendens action and the owner

1
2 believes they're less likely to be able to hold
3 that property, their incentive to keep that
4 property up, to maintain it for its tenants,
5 especially if it's a multi-family building, but
6 also if it's a one to four with tenants, and for
7 neighbors, they're much less likely to maintain
8 their buildings.

9 So, one of the questions we're
10 asking here is, who should be on the hook to help
11 guard against that problem?

12 BRUCE BERGMAN: Okay.

13 COUNCIL MEMBER LANDER: Who should
14 be responsible? There are couple of
15 possibilities. The owner of course should be
16 responsible. It's nice to say, but it's small
17 comfort to tenants or neighbors if the owner is
18 not present, has flown the coop, isn't there,
19 isn't paying your members and isn't taking care of
20 the building. So the tenants are without heat or
21 hot water and the neighbors have a terrible
22 eyesore. So, the owner doesn't seem to be a good
23 answer.

24 The current answer seems to be the
25 taxpayers. The taxpayers will take care of it.

1
2 One, we're not equipped to do a great job, and
3 two, I don't really think that that's the right
4 answer either, that the taxpayers essentially
5 should pay the ERP liens and take care of it. So,
6 it does seem to me actually that building that
7 into the pricing of the loan--and I guess this
8 distinguishes the 500 from 494. I'm not asking
9 you guys to step in and do the repair work. I'm
10 asking you to provide a backstop that guarantees
11 that on a property where you've brought a
12 foreclosure judgment, where you know it's pretty
13 likely that some things are going to happen on
14 that property that have to be taken care of, and
15 that for the most part are likely to wind up as
16 liens against the property anyway--so in fact it's
17 already going to be a responsibility to be
18 discharged at judgment--why it's not reasonable to
19 ask your members to participate in helping
20 safeguard tenants and neighbors against something
21 that you're participating in causing both with the
22 origination of the loan in the first place and
23 from the bringing of the lis pendens.

24 MICHAEL SMITH: Okay. Can I just
25 make a comment on your earlier comment, which is,

1
2 the TARP program, the banks paid--the government
3 received that and that is us, the taxpayer's 14%
4 interest and most of that money from the large
5 institutions is--

6 COUNCIL MEMBER LANDER:

7 [Interposing] Maybe we should go into the
8 businesses of making the direct loans.

9 MICHAEL SMITH: Well, and number
10 two is, unfortunately because we were--I mean I
11 was a witness to what was going on at the time.
12 But the original purpose of that program was, as
13 you say, to get into the lending side. And it was
14 actually, as I believe Mr. Barofsky said in his
15 report, at least the summaries that I read, was
16 directed more at how it was changed by the
17 treasury department during the phases of
18 implementation. And also too, it's as to who our
19 members are, I believe I said it, that most of our
20 members, a vast majority, but most, and those that
21 really--some of the most egregious are not in the
22 business at all anymore, and in some cases have
23 been bought. In terms of who is responsible which
24 I know is--that's the purpose--I mean that's the
25 sort of the theme of the hearing, if the bank is

1
2 going to be--I mean our view as is in the
3 testimony--the short answer is we believe firmly
4 the owner should. And the owner--and if a
5 responsibility now is going to be transferred
6 either to the private sector firm or to the
7 government, then obviously that affects how you
8 evaluate that risk and what happens. If it's
9 going to go to the private sector, to the bank,
10 that means that everybody who goes to seek a loan,
11 someone has to pay for it. I mean it's not some
12 giant mystery as to these institutions who are
13 accountable, and they're accountable to regulatory
14 institutions, as to their risk. That's the number
15 one supervisory thing going on in the regulatory
16 agency. So, I think, one, you increase the price
17 of the product throughout the marketplace if it's
18 on the private sector. We all are familiar with
19 the constraints on government today. And in our
20 view, the responsibility going forward should be--
21 and they should be made accountable--is on the
22 owner. And how you, how a private sector firm, or
23 how government does that, that's where the focus
24 in our view should be.

25 COUNCIL MEMBER LANDER: So I think

1
2 maybe what we should do, I'd like to invite you
3 out to see some of the buildings in some of the
4 neighborhoods that we're talking about, because I
5 don't think there's a disagreement that the
6 tenants in the buildings that we're talking about
7 would like to see their owner held accountable.
8 And I don't think there's a disagreement in some
9 of these situations that neighbors would like to
10 see defaulted neighbors held accountable. But
11 it's not going so well. And I don't think we're
12 going to be able to, like, change criminal law or
13 put people in debtor's prisons. That is going to
14 change what's going on in our neighborhoods today.
15 So, we're here because we have a very real problem
16 on the ground in our city, and your solution is
17 one we already have in place and it's not working.

18 MICHAEL SMITH: But there are laws
19 on the books that say that that person is
20 responsible--

21 COUNCIL MEMBER LANDER:

22 [Interposing] Cold comfort--

23 MICHAEL SMITH: And they signed a
24 piece of paper--

25 COUNCIL MEMBER LANDER: --to

1
2 tenants without heat or hot water, or neighbors
3 where a building is being squatted next door.

4 MICHAEL SMITH: Okay. Okay. I
5 know that's as to, you know, as was pointed out
6 earlier. We're talking existing, and obviously
7 there's a prospective nature to the law also,
8 which is what's its effect on lending down the
9 road.

10 COUNCIL MEMBER LANDER: So, let's
11 get to that. I mean, I guess I feel like the
12 ways, and Council Member Fidler really talked
13 about this well, I mean, I think the ways you
14 talked about the uncertainty about price are in
15 part disingenuous. The bill is written to ask HPD
16 to set a clear amount. So, the bill says \$10,000
17 would be the minimum. But the amount that needs
18 to be bonded--there's a different question about
19 how the insurance industry will price the bond
20 premium, but on what the amount will be, the law
21 won't go into effect until the agencies set the
22 amount. Our bill would designate HPD to come up
23 with a framework, based on a percentage of
24 assessed value. So, you would know of certain how
25 much the bond was going to be. And in most of

1
2 these cases, the likely ERP lien amounts are small
3 relative to the value of the building. There's no
4 doubt.

5 Now, there's some multi-family
6 buildings where those ERP liens have been large,
7 but they're still small relative to the value of
8 the building. So, I think when we look together,
9 and I hope after this bill passes and HPD has the
10 responsibility to set the amount, that you'll work
11 with us. I think we'll get a pricing structure,
12 which at the very least is predictable. So first
13 it will be predictable. So there will be no
14 uncertainty about what it will be after HPD sets
15 it in before it goes into effect. And second, I
16 think we will work to make sure that it is--it
17 doesn't start to come close to the value of the
18 property that we're being protected against are
19 those ERP liens and comparable issues, and not the
20 value of the property. And then once you do those
21 two things--and I'd even be willing to have some
22 flexibility and think about what we could do,
23 whether we could do it with something like a
24 letter of credit, if your members are lending
25 institutions and have cash and would rather not

1
2 buy insurance but would rather put up a letter of
3 credit against that amount, they would be in a
4 great position--this gets to some of what Mr.
5 Bergman and Mr. Fidler were talking about--they
6 could decide how to price the risk, and they could
7 figure out is it worth it for them to put some
8 reserves aside against what the likely ERP amounts
9 would be, or buy a bond which might actually they
10 would do better on because somebody else would
11 backstop that risk, which again, as we said, they
12 essentially have now anyway. I think that's what
13 you said, that at the end of the day that value is
14 going to come out of the property at judgment.
15 And if they're the most likely purchaser of it at
16 auction.

17 So, I just--I think you've
18 overstated the--I think this idea that the
19 relatively small amount here that we're talking
20 about on foreclosure properties spread out against
21 a broader risk pool is going to freeze lending is
22 the Chicken Little thinking. And I hope when we
23 get a chance after the bill passes to figure out
24 how to set the amount, you'll join us in making
25 sure it works.

2 And I see the Chairman is eager to
3 move on. So, I just want to make one final point
4 on the--

5 CHAIRPERSON DILAN: [Interposing]
6 Please make it.

7 COUNCIL MEMBER LANDER: --
8 registration side. Well, all right. Let me make
9 two final points, but I'll only make one of them a
10 question.

11 One is, look, part of the goal here
12 is to provide some incentives to get better
13 workouts in that period of time. That two, three,
14 four-year period, not going well for people. And
15 some of that is because I believe not enough of
16 the lending institutions are coming to those
17 compliance conferences and doing modifications in
18 good faith on the one to four side. And we're
19 looking for some incentives to have the
20 institutions work with us, whether with HPD on the
21 multi-family side, or with borrowers and their
22 counselors on the one to four family side, to make
23 good things happen. It's not happening enough.
24 We're looking for some ways to get incentives to
25 do it, and I believe this is a good one.

2 Finally, on the registration bill,
3 I now from the Center for New York City
4 neighborhoods, who get the information from the
5 banking department and the court data, that it's
6 full of errors and omissions, it's difficult to
7 acquire and there's a whole bunch of important
8 information that is not going to be obtained
9 simply from HPD trying to get the information from
10 the court. The folks who have it are the
11 mortgagees who are filing the actions. And we
12 need it from them. And I guess I feel like your
13 testimony, which simultaneously says, well, it's
14 already available but also would put our employees
15 at risk if people had it, it's hard to see how
16 it's both ways. So, I do hope you'll take another
17 look at the registration bill, because again, it's
18 something that we need, and after we pass it we'd
19 love to work with your members to make sure that
20 it is implemented in a way that works for them.
21 So, I apologize for going on, Mr. Chairman.

22 CHAIRPERSON DILAN: I just wanted a
23 question. But we'll move on to Council Member
24 James.

25 COUNCIL MEMBER JAMES: I'll be

1
2 brief, because I--

3 CHAIRPERSON DILAN: [Interposing] I
4 don't mind.

5 COUNCIL MEMBER JAMES: --can read
6 your body language.

7 CHAIRPERSON DILAN: As long as
8 you're asking questions I don't mind.

9 COUNCIL MEMBER JAMES: No, I'll be
10 brief. I know, because one, I want to get to the
11 public and two, let me just to the panelists, one,
12 say you've been peppered with questions from two
13 housing advocates in their former lives and from
14 two lawyers, one who practiced civil, and I who
15 all practice criminal, civil to a lesser extent,
16 but know a lot about--unfortunately--foreclosures
17 based upon what is happening in my district and in
18 Central Brooklyn overall.

19 So, a couple of issues. One, I do
20 not believe that the sky is falling and or will
21 fall as a result of these pieces of legislation.
22 All it does is, I believe, shift obligations to
23 borrowers. I believe borrowers have a proprietary
24 interest, so they do not have a lien interest and
25 or possessory interest. I also believe that this

1
2 will not have a chilling effect and would not
3 discourage regulated financial institutions from
4 extending mortgages. In fact, this is really an
5 incentive to keep families in their homes and to
6 engage in more modifications and workouts with
7 people on the ground. I do not believe that this
8 is in violation of the preemption law. I believe
9 it's certainly within our police powers to impose
10 certain conditions on buildings within the city of
11 New York. In 2009 there were over 23,000
12 foreclosures in the city of New York. Hardly any
13 of them were filed by Mr. and Ms. Smith. As was
14 indicated earlier, the amount was de minimis if
15 any. And I think to argue that in fact most of
16 your members were not involved in this practice
17 belies the facts and does not speak to the truth
18 and is not truthful.

19 That notwithstanding, I recognize
20 that the definitions need to be clarified. We
21 need to impose some exemptions. There is some
22 question with respect to the cost involved. I
23 think those are all valid concerns. I look
24 forward to working with each and every one of you
25 as we move forward. And I am confident that there

1
2 will be litigation, but I'm also very confident
3 that we will win. Thank you.

4 CHAIRPERSON DILAN: Okay. I have
5 one question, and it relates to the registration
6 bill. You guys mentioned in your testimony and in
7 your statements that, I guess sources for the
8 information that we are looking to seek and have
9 the city create some sort of database, are readily
10 available in sources. You mentioned the county
11 clerk's office and potentially the former--what
12 was called the State Department of Banking, now
13 it's titled the new agency. How do those sources
14 receive that information? Are you required, are
15 the banks required to provide this information as
16 a requirement of some other statute?

17 BRUCE BERGMAN: Yeah, it is a
18 matter of statute and it's required to be
19 submitted to--I still call it the Banking
20 Department--and they set up a website and it is
21 done electronically. So it is--it has to be done,
22 I forget whether it's three or five day, an
23 initial filing after the action has begun. But it
24 automatically goes to them and it's quite
25 extensive. I think it's longer than you asked

1
2 for. And it's done as a matter of course.

3 CHAIRPERSON DILAN: The banks are
4 asked to provide this information?

5 BRUCE BERGMAN: Yes.

6 CHAIRPERSON DILAN: So why couldn't
7 this information also be copied to HPD?

8 BRUCE BERGMAN: I'm not saying that
9 it couldn't be. I mean, the point I didn't want
10 to make--because I know it will not be well
11 received, it won't be well received--is that each
12 time there is still yet another layer of you have
13 to send it here, you have to do it there, it makes
14 it harder and harder. And in the aggregate it
15 becomes awfully difficult. And I was not planning
16 to say that, but I had to say it anyway. They do
17 it now electronically. If there was an equal
18 website--

19 CHAIRPERSON DILAN: [Interposing]
20 The reason why is because it's one thing if we
21 were asking you to come up with this data and
22 create this data and you had no other requirement
23 to file it. But it's clear that you do, so--

24 BRUCE BERGMAN: [Interposing] The
25 data exists.

2 CHAIRPERSON DILAN: --since it's
3 already there, it exists, you're required to file
4 it, why not share it with another city agency so
5 that we can stay on top of the housing
6 maintenance.

7 MICHAEL SMITH: Our view would be
8 that you have governmental agencies today, and of
9 course we haven't gotten into the nature of the
10 disclosure because you're talking about employees.
11 You're talking about confidentiality and privacy.

12 CHAIRPERSON DILAN: Sure.

13 MICHAEL SMITH: But it would be
14 better in a private sector setting to have a
15 governmental, have an intergovernmental agreement
16 so that the affected agencies, the agencies who do
17 have the information, decide what is going to be
18 disclosed and to do it as a cooperative thing
19 rather than having four different--because the
20 Department of Financial Services is doing this
21 today. I mean, in the initial stage that's our
22 view, that rather than having the banks giving
23 this to HPD that HPD can get it from those
24 sources. It's, quite frankly just what we
25 consider, as I said, a reasonable and efficient

1
2 way to do it. And we would urge that it be looked
3 at.

4 CHAIRPERSON DILAN: Okay. So, I
5 want to move on and I'll move on to--and it will
6 be my final question and we'll move on to the
7 second part of the hearing then come back to hear
8 the public on this. You state that banks very
9 rarely take possession of buildings that the
10 mortgage by nature is just paper. Right?

11 MICHAEL SMITH: Well, it's a lien
12 interest.

13 CHAIRPERSON DILAN: A lien
14 interest, sure. I got that. So, I guess how
15 many--at what point if ever does a bank ever take
16 title to a building and for what purpose?

17 BRUCE BERGMAN: Well, title, and I
18 think you're confusing the title and the
19 possession. When a foreclosure ends, a bank or
20 any other foreclosing lender might be the
21 successful bidder. If no one paid the price they
22 needed, they might have to be the bidder and take
23 over the property. And then they have an
24 ownership interest and obviously a possessory
25 interest as well. But during the course of the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

action--

CHAIRPERSON DILAN: [Interposing]

Sure.

BRUCE BERGMAN: They have--

CHAIRPERSON DILAN: [Interposing]

So just in that instance, would you agree that when they have the ownership interest and they have the title they should be responsible for the maintenance.

BRUCE BERGMAN: It's not a matter of debate or what I think; they are. They are the owner, they bought it, that's their responsibility.

CHAIRPERSON DILAN: Okay.

BRUCE BERGMAN: They made a business decision to be the bidder at the sale, if they make that business decision.

CHAIRPERSON DILAN: So it goes back to your point of then owner responsibility.

BRUCE BERGMAN: No question about it. They're the owner, they're responsible.

CHAIRPERSON DILAN: Great, thanks.
Thanks, gentlemen. Thanks for your time.

COUNCIL MEMBER LANDER: End on a

1 point of consent.

2
3 CHAIRPERSON DILAN: What? I didn't
4 try to. It just happened that way. Okay, so,
5 we're going to at this point move on and just take
6 brief testimony from HPD and some brief questions
7 about window guards. I don't have any testimony
8 from the public on the window guard issue. If
9 anybody is here to testify on the window guard
10 issue, from the public, now is the time. If not,
11 we'll hear from HPD and then move on, back with
12 the public portion of the foreclosure hearings.

13 So, we have on Intro 531, which is
14 the window guards, AnnMarie Santiago, Chief of
15 Staff of Enforcement from HPD as well as Robert
16 Edman, Assistant Commissioner from Department of
17 Health and Mental Hygiene. Come forward now. You
18 can introduce yourself in your own voice, and then
19 you can begin your testimony. And again, I want
20 to ask that all cell phones be silenced or shut
21 off. Okay, you can begin in the order that you'd
22 like. Just introduce yourself in your own voice.

23 ANNMARIE SANTIAGO: My name is
24 AnnMarie Santiago. I am Chief of Staff to the
25 Deputy Commissioner for the Office of Enforcement

2 and Neighborhood Services at HPD.

3 ROBERT EDMAN: Good afternoon. My
4 name is Robert Edman. I am the Assistant
5 Commissioner in Bureau of Food Safety and
6 Community Sanitation within the Department of
7 Health. I actually will not be presenting
8 testimony. Testimony is presented by HPD.

9 ANNMARIE SANTIAGO: Good afternoon,
10 Chairman Dilan and members of the Housing and
11 Buildings Committee. I am AnnMarie Santiago,
12 Chief of Staff to the Deputy Commissioner of
13 Enforcement Neighborhood Services for the New York
14 City Department of Housing Preservation and
15 Development. Thank you for the opportunity to
16 offer testimony and support of Introduction 531,
17 sponsored by Chairman Dilan.

18 The bill before us today proposes a
19 codification of the existing statutory
20 requirements for placement of window guards in
21 multiple dwellings in the housing maintenance
22 code. The enforcement of window guard
23 requirements in multiple dwellings in New York
24 City has contributed to a significant decrease in
25 the number of window falls, almost a 94% decrease

1
2 in gross reported falls since the law passed in
3 1973. Intro 531 enhances the City's ability
4 respond to complaints about window guards by
5 bringing the enforcement of what is really a
6 housing maintenance condition into the same
7 enforcement structure as other housing maintenance
8 conditions. This legislation proposal does not
9 change any of the requirements for window guard
10 installation.

11 Currently enforcement regarding
12 window guards is primarily the responsibility of
13 the New York City Department of Health and Mental
14 Hygiene. The New York City Health Code requires
15 that a property owner seek to obtain information
16 about the presence of a child ten years of age or
17 younger annually. Based on this information,
18 property owners are required to install an
19 approved window guard if there is a child ten
20 years of age or younger, or when requested by a
21 tenant in all apartment windows, except fire
22 escape windows and public area windows.

23 Complaints to 311 regarding a lack
24 of or improperly installed window guards are
25 routed to the Department of Health for inspection.

1 Failure to comply with the requirements of the
2 code currently results in the issuance of a
3 commissioner's order to abate. And if there is no
4 compliance the issuance of a violation returnable
5 to an administrative body for fines, and a
6 referral to HPD's emergency repair program for the
7 installation of the guards.
8

9 In September 2007, in recognition
10 that HPD conducts inspections in thousands of
11 apartments each year where window guards might be
12 required, the Health Code was amended to authorize
13 HPD to also issue Commissioner's Orders to abate
14 for window guards on behalf of the Department of
15 Health, providing notice to the owner of the
16 condition and providing the same process as
17 outlined above for compliance verification.

18 Since that time, HPD has issued
19 over 36,500 Commissioner's Orders for window guard
20 conditions based on observations during
21 inspections in response to other conditions.

22 During 2010, all agencies were requested to review
23 their operations to identify areas where greater
24 efficiencies could be achieved, without losing
25 effectiveness, by consolidating functions. Both

1
2 DOHMH and HPD identified window guard inspections
3 as one such area. On April 1st, 2011, HPD began
4 receiving all complaints for window guard
5 conditions. Whereas DOHMH has seven inspectors
6 assigned for this function, HPD can leverage its
7 full resource of housing inspectors, which is over
8 300 field inspectors, to respond to these
9 complaints.

10 The majority of HPD work currently
11 occurs during the winter, as the Committee knows.
12 HPD responds to hundreds of thousands of heat and
13 hot water complaints each heat season. Utilizing
14 HPD's inspection force to respond to window guard
15 complaints, which are primarily received during
16 the spring and summer months when people want to
17 open their windows for relief from the heat,
18 maximizes the use of the city's inspection
19 resources without compromising response time or
20 effectiveness.

21 Intro 531, introduced by Council
22 Member Dilan, enhances the City's response and
23 recognizes the efficiencies to be gained by this
24 change. Most significantly, the legislation
25 amends the Housing Maintenance Code to authorize

1
2 HPD to issue HMC violations for missing or
3 defective window guards when there is a child ten
4 years of age or younger, or when requested by a
5 tenant. This simplifies the process for both
6 tenant and property owners by bringing an issue
7 clearly related to housing maintenance into the
8 existing enforcement process for other housing
9 maintenance conditions. Tenants will be able to
10 file a complaint with one agency and inspect only
11 one inspection for all conditions in their
12 apartment. Property owners will no longer have to
13 follow a separate enforcement process for window
14 guards, which can lead to confusion and
15 duplicative effort.

16 Already familiar with HPD's
17 process, since the vast majority of housing-
18 related violations are issued by HPD, property
19 owners will be able to certify the condition as
20 corrected using the existing process. Tenants, as
21 they do now for all other housing maintenance
22 conditions, will receive a notice once a violation
23 is certified and have the opportunity to challenge
24 that certification. HPD will audit certifications
25 for window guards as it does now for other class C

1
2 violations, and will follow through with emergency
3 repairs if the owner fails to comply.

4 HPD's mission is to enforce the
5 housing maintenance code to ensure that New
6 Yorkers live in safe conditions. The enforcement
7 of window guard regulations is certainly within
8 that mission, and intro 531 brings the code in
9 step with this reality. This legislation
10 accomplishes several beneficial goals: simplifying
11 the enforcement process for customers, both
12 tenants and property owners; consolidating the
13 provision of services among city agencies
14 currently providing the same service; and
15 maximizing existing resources by reallocating them
16 when available to appropriate tasks.

17 HPD is fully in support of Intro
18 531. I thank you for your time and I'm happy to
19 respond to any questions you might have.

20 CHAIRPERSON DILAN: Okay. And I'll
21 just get right to the point on my questions. The
22 first one is, why is it necessary to have it? And
23 I believe it should be in the housing maintenance
24 code. Why is it necessary to have it both in the
25 housing maintenance code as well as in the health

code?

ANNMARIE SANTIAGO: Responsibility for window falls will remain with the Department of Health, as are several other responsibilities that are currently in the code. And to that end, it's important that the Department of Health also be able to issue violations in those instances where there's a window fall.

CHAIRPERSON DILAN: Okay. And then so why would HPD also be happy to have this within the purview of the Housing Maintenance Code?

ANNMARIE SANTIAGO: Because in most instances--window falls there's only probably a handful, I think there were five to ten window falls in 2010, fiscal year 2010. In all of the other instances where they received complaints from the public or where another city agency, especially HPD observes the condition, we would like to be able to issue our own violation and follow the Housing Maintenance Code process.

CHAIRPERSON DILAN: All right. So, will there be instances then when a building owner would be subject from inspections and fines from both the Department of Health and HPD as it's

1 related to failure to install window guards?

2
3 ANNMARIE SANTIAGO: It would be
4 extremely, extremely rare, because in all cases of
5 window falls, the Department of Health will
6 respond. In all other cases it will only be HPD.

7 CHAIRPERSON DILAN: All right. So,
8 since it's rare, could you maybe highlight some
9 instances where it is possible?

10 ANNMARIE SANTIAGO: That's the only
11 instance in which it's possible, in which there's
12 a fall.

13 CHAIRPERSON DILAN: When there's a
14 fall.

15 ANNMARIE SANTIAGO: And HPD for
16 some reason also responds. And that's unlikely,
17 because DOH will take responsibility for those
18 cases.

19 CHAIRPERSON DILAN: Okay. You've
20 stated in your testimony a number of violations.
21 Maybe if you could just restate it. And I'm not
22 sure for how many years it was, but I guess the
23 question is for the past three fiscal years, how
24 many violations have been written for failure to
25 comply with window guard installation

1 requirements? How much in penalties has been
2 assessed and collected?
3

4 ANNMARIE SANTIAGO: Do you want to
5 speak to that? So we have received--you want
6 violations, complaints? You want violations,
7 right?

8 CHAIRPERSON DILAN: Violations and
9 then penalties.

10 ANNMARIE SANTIAGO: And costs.

11 CHAIRPERSON DILAN: Penalties
12 assessed and penalties collected.

13 ANNMARIE SANTIAGO: Okay. I'll
14 speak to violations and then you can speak to
15 penalties collected and I'll talk back about ERP.
16 In fiscal year 2009 HPD issued 17,000 violations
17 and we received about 19,000 violations from the
18 Department of Health for enforcement. I believe
19 you issued more violations than that however.

20 ROBERT EDMAN: Yes. It might be
21 more.

22 ANNMARIE SANTIAGO: In fiscal year
23 '10, HPD issued 15,800 violations, and in fiscal
24 year '11 to date, we issued about 11,000
25 violations.

2 CHAIRPERSON DILAN: Okay. And
3 penalties?

4 ROBERT EDMAN: Over the past few
5 fiscal years, I go as far back as FY '07, we the
6 Department of Health Tribunal levied over \$4
7 million in fines. In FY '08 \$5 million plus. FY
8 '09, 3. In FY '10, 3.3, and collected each of
9 those years just under \$1 million for each year.

10 ANNMARIE SANTIAGO: And for
11 Emergency Repair, in Fiscal Year '09 HPD spent
12 about \$700,000. And for Fiscal Year '10 about
13 \$500,000. I'm sorry, I don't have Fiscal Year '11
14 to date, but I can get that to you.

15 CHAIRPERSON DILAN: Okay, and what
16 are the penalties under the--what would be, excuse
17 me, the penalties under the Housing Maintenance
18 Code for violation of the installation
19 requirement?

20 ANNMARIE SANTIAGO: Under the
21 Housing Maintenance Code there are existing
22 penalties for Class C violations. I believe--give
23 me one second. Right how if the building have
24 five units or fewer, the penalty is \$50 per
25 violation per day. If the building has more than

1
2 five units, the current penalty is \$50 to \$150 per
3 violation plus \$125 per violation per day, and
4 that's assuming that the agency brought the
5 building to Housing Court.

6 CHAIRPERSON DILAN: All right. I
7 have nothing more. Since none of my colleagues
8 are here because of the duration of the other
9 hearing, I'd like to thank you for your time and
10 for your testimony.

11 At this point, is there any public
12 testimony on window guards? If not, we'll
13 conclude this portion of the hearing and go back
14 to the public portion on the foreclosure bills.
15 And I'd like to thank you all for your time and
16 for your testimony.

17 Okay, so we have on foreclosures
18 we'll hear from Oda Friedheim, Elizabeth Lynch and
19 Mike Hickey.

20 Okay, and I guess you can proceed
21 in the order that you were called up. And just
22 state your name for the record and then you can
23 get into your testimony.

24 ODA FRIEDHEIM: Okay. My name is
25 Oda Friedheim. I'm appearing here on behalf of

1
2 the Legal Aid Society. And we want to thank the
3 Committee on Housing and Buildings and the
4 Chairperson Dilan for giving the Legal Aid Society
5 the opportunity to testify today.

6 The Legal Aid Society is generally
7 in favor of the intros 494, 500 and 501, and we
8 want to thank the sponsors for introducing this
9 much-needed legislation. Mortgage lenders have
10 continually neglected their obligation as
11 caretakers and owners of properties in
12 foreclosure, leaving communities to suffer.
13 Private equity lenders in particular have walked
14 away from their investment properties when the
15 return no longer met their expectation. It is the
16 right time to put some reasonable safeguards on
17 this conduct so lenders cannot operate unchecked
18 while properties fall into disrepair.

19 Part of our civil practice is to
20 represent homeowners in foreclosure proceedings,
21 as well as tenants of larger multi-family
22 buildings that are evicted as a result of
23 foreclosures. And we realize that nothing
24 destabilizes a neighborhood like block upon block
25 for sale signs and obvious neglect. But even in

1
2 places where the foreclosure crisis is not as
3 evident, tenants suffer from hazardous conditions
4 and lack of everyday maintenance. When no one
5 appears to be in control of the property,
6 vandalism can also occur. That is why the
7 requirement to register and provide contact
8 information is so critical for tenant occupants.
9 And we think Intro 501 would be an important step
10 to ensure that lenders take responsibility for
11 their real estate portfolios.

12 We also believe that a bond
13 requirement would allow the courts and the
14 Department of Housing Preservation and
15 Development, HPD, to enforce habitability
16 standards and reimburse HPD for any emergency
17 repairs or expenses advanced for these properties.

18 However, we suggest that the
19 applicability of Intro 494, the bonding
20 requirement, to five-unit buildings and up to that
21 it be limited to avoid the imposition of the cost
22 of the bond on struggling homeowners of one- to
23 four-family homes. Our experience is that every
24 fee and cost that the lender charges or expects to
25 charge is passed on to the borrower in the

1
2 foreclosure litigation. That's even if the
3 homeowner is maintaining the property. We fear
4 that the bond costs will be built into the
5 foreclosure, making it that more difficulty for
6 homeowners to preserve their homes.

7 Intro 500 should likewise be
8 limited to five-unit buildings and up, and to
9 lessen the potential for the added cost and
10 intrusion of the lender into homeowner's
11 jurisdiction, unless the premises are abandoned.

12 The City Council can make a
13 critical contribution toward curtailing lender
14 neglect by enacting these bills as amended. We
15 also urge the City Council to continue its long
16 record of support for providing more resources for
17 legal representation and advocacy, so we do not
18 have to turn away so many clients--both homeowners
19 and tenants--whose economic situation is
20 threatened by a foreclosure. In addition, we urge
21 that the city agencies, along with the city
22 officials and the advocacy community, coordinate
23 resources so that together we may better serve
24 distressed neighborhoods.

25 I just want to add one quick thing

1
2 in terms of we are very concerned with the passing
3 through of any fees and costs to homeowners. And
4 I know it has earlier been suggested that the bill
5 could exactly address that by carving it out. One
6 of the problems is that unless a foreclosure goes
7 to judgment of foreclosure, prior to that it's
8 pretty much, crassly said, a holdup operation.
9 You know, here, we modified your mortgage, be
10 grateful. And now we're going to tack on all the
11 fees without any kind of breakdown whatsoever. So
12 it is in fact not so easy to just say don't pass
13 it on. Because unfortunately the process of
14 passing through fees and costs, many, many of them
15 completely inflated, and not even based on
16 anything. There is no transparency in that. So I
17 just want to put that out as I hope we're going to
18 all collaborate further on how to make these
19 various bills actually into law and workable.
20 Thank you.

21 CHAIRPERSON DILAN: Thank you.

22 ELIZABETH LYNCH: Hi. My name is
23 Elizabeth Lynch and I'm a staff attorney for MFY
24 Legal Services in the Foreclosure Prevention
25 Project. And thank you for inviting me to testify

2 today about intro numbers 494, 500 and 501.

3 MFY Legal Services provides legal
4 services to more than 7,500 low income clients in
5 New York City. We are the largest legal services
6 provider for mental health services consumers,
7 many of whom come to us with housing problems.

8 In September 2008, as more of our
9 clients began to face foreclosure issues, we
10 launched the Foreclosure Prevention Project. To
11 date we have served nearly 200 homeowners in
12 Brooklyn, Queens, Staten Island and Manhattan.
13 Most of the foreclosure defense work in New York
14 City focuses on homeowners, attending court
15 mandated settlement conferences, obtaining
16 modifications, and defending homeowners from
17 unjust foreclosures. But one frequently
18 overlooked group in this foreclosure crisis has
19 been tenants whose landlords are in foreclosure.
20 Tenants have no defenses to the foreclosure action
21 and have limited options to force an absentee
22 landlord to maintain the safety of the building
23 while the ban is trying to take it.

24 For this reason, MFY commends the
25 Council for continuing to shine a spotlight on the

1
2 issue and to provide better protection for tenants
3 whose landlords are in foreclosure. While we have
4 certain reservations about particular language in
5 each of the foreclosure related bills presented
6 today, we continue to support and very much
7 appreciate the Council's concerted efforts to stop
8 unjust foreclosures in New York City and to keep
9 hardworking families, be them homeowners or
10 tenants, in their homes.

11 It is a fact that some owners
12 abandon their property once a foreclosure action
13 is commenced. Without a landlord to maintain the
14 building, the property falls into disrepair,
15 depressing neighborhood property values, hurting
16 local businesses and eroding the state and local
17 tax base. More urgently in the case of foreclosed
18 properties that are occupied by tenants, failure
19 to maintain the property may create serious risks
20 to public health and safety. Intro number 494
21 seeks to address the problem associated with the
22 failure to maintain the property during
23 foreclosure.

24 We agree that it is important that
25 tenants are not left in dilapidated housing, but

1
2 we have several suggestions that we believe could
3 strengthen and clarify the bill. First, in order
4 to achieve the stated goal, we believe the
5 following issues should be addressed. Shouldn't
6 there be an obligation on the part of HPD to
7 maintain property that has been abandoned by an
8 owner and by the foreclosing entity? To that end,
9 doesn't there need to be a mechanism by which
10 tenants in such abandoned property obtain HPD's
11 assistance. And three, doesn't the scope of the
12 term maintenance need to be defined in terms of
13 what HPD service tenants might expect to receive?

14 Second, as Legal Aid just pointed
15 out, we believe language must be added that
16 prevents the banks from passing the cost of the
17 compliance bond on to homeowners. In our
18 experience homeowners, again in one- to four-
19 family houses, rarely abandon their homes. They
20 usually maintain the property and try to work with
21 the bank to get a modification. This modification
22 process, unfortunately, drags out for more than a
23 year, usually because of the banks' hoops that
24 homeowners have to jump through. Lenders in
25 inevitably add to the course of the loan fees in a

1
2 foreclosure action by including attorney fees and
3 foreclosure fees to the price of a modification or
4 the price at foreclosure. We believe that a
5 provision prohibiting banks from doing this could
6 help stop that.

7 Third, MFY is concerned that the
8 proposed statute is limited to any mortgagee that
9 commences an action. It is MFY's experience in
10 defending such actions that often the person or
11 entity that commences the action is not the
12 mortgagee, but rather a mortgage loan servicer.
13 Hence, MFY proposes that the statutory language be
14 modified to apply to any entity or individual
15 which initiates an action for foreclosure. This
16 change in language is also suggested for proposed
17 intros number 500 and 501.

18 Fourth, if the action is not
19 dismissed or discontinued, the bond requirement
20 only applies until there is an issuance of
21 judgment. Again, there's a difference between
22 judgment and the actual auction sale, where the
23 time in between the two can last more than a year.
24 And it's that time in which the bond's purpose
25 would probably be best served. MFY thus suggests

1
2 that issuance of a judgment be replaced with
3 foreclosure auction sale.

4 Finally, given the demonstrated
5 propensity of the banks to flaunt many
6 requirements relating to foreclosure actions, MFY
7 suggests that some kind of compliance mechanism be
8 added to the current bill. As it stands, there
9 appears to be no penalty for failing to comply.

10 MFY also supports placing an
11 affirmative duty on the foreclosing entity to
12 maintain the property it has chosen to foreclose
13 upon, as set forth in intro number 500. However,
14 in order to avoid the imposition of unnecessary
15 fees, again, MFY recommends that the language in
16 the bill be amended to exempt one- to four-family
17 homes. As stated above, homeowners in one- to
18 four-family buildings most often remain in the
19 property and will diligently with the bank to try
20 to secure a modification. As the bill is
21 currently written, foreclosing entities are
22 required to make sure that the property is being
23 properly maintained. Banks will use this
24 requirement as an excuse for bank employees to
25 make, and in the case of one- to four-family

1
2 homes, unnecessary trips to the property to quote
3 unquote inspect it. Unless there is an exception,
4 these costs will ultimately be transferred to the
5 homeowner.

6 Transparency and accountability
7 have been largely lacking during this foreclosure
8 crisis, and as a result, MFY supports intro number
9 501's efforts to require foreclosing entities to
10 submit a registration statement. In addition to
11 the reservations stated above regarding the narrow
12 use and frequently inaccurate term, mortgagee, MFY
13 has grave concerns about subsection ii, which
14 makes the block and lot number of the properties
15 in the foreclosure publicly available on the
16 internet. Most homeowners in foreclosure are
17 already the target of various foreclosure rescue
18 scams by fly-by-night companies. Currently these
19 companies must buy lists of the homes in
20 foreclosure. By freely providing this
21 information, there is a risk that the bill could
22 lead to an increase in the number of foreclosure
23 scams preying upon already vulnerable homeowners.
24 Thus, MFY suggests that subsection ii be revised
25 to require that access to the list of properties

2 being foreclosed upon be by application whereby an
3 applicant must supply some form of state issued ID
4 and state his purpose for obtaining the
5 information.

6 MFY thanks the Council for
7 addressing the very real problems encountered by
8 the residents of property in foreclosure and
9 encourages the council to continue to address the
10 problems arising out of and related to
11 foreclosures in New York City. MFY is committed
12 to working with the City Council to better protect
13 both tenants and homeowners in New York City.
14 Thank you for holding today's hearing and for
15 considering these important bills.

16 MICHAEL HICKEY: Great. Thank you,
17 Chairman Dilan, for hosting this meeting today.
18 I'd like to also thank the other members of the
19 Council who have been instrumental in developing
20 this legislation, particular commendation to
21 Council Member Lander, but also Council Members
22 Wills, Comrie, Council Member Fidler, who have all
23 been incredible advocates in terms of fighting
24 foreclosures in New York City.

25 I'm Michael Hickey, Executive

1
2 Director of the Center for New York City
3 Neighborhoods. We are the primary non-profit
4 responsible for coordinating foreclosure
5 prevention services citywide. Very briefly, we
6 fund 28 non-profits around the city who've already
7 conducted more than 12,000 interventions with
8 homeowners who are at risk of foreclosure,
9 providing free housing, counseling and legal
10 services as well as strengthening those
11 organizations through training and coordination to
12 better perform their work.

13 Many of the comments that are in my
14 written testimony have already been covered by my
15 peers, so I will not read my testimony. I just
16 want to summarize a few points and make one or two
17 comments. I think that Council Member Lander was
18 very articulate earlier today in stating that
19 obviously we have direct concerns with the way
20 that properties are at risk and not properly
21 protected from a blight and abandonment. The
22 three pieces of proposed legislation working in
23 tandem could strengthen those things. But,
24 they're also, we hope, important incentives to
25 bring servicers and lenders to the table to

1 negotiate with advocates to actually avoid
2 foreclosure. We feel that that aspect of the
3 pieces of proposed legislation is just as powerful
4 as the direct result of the legislation itself.
5 And it may be just as powerful whether or not the
6 legislation is ultimately concluded.

8 You saw the reaction earlier today
9 from representatives from New York's Bankers
10 Association. I think they're taking this very
11 seriously. You know, it does require negotiating
12 with the banks, requires not just strong
13 incentives but disincentives to foreclose. We've
14 provided tremendous incentives. I think New York
15 City can be extremely proud of the coalition of
16 non-profit providers. It's really, I think,
17 frankly the strongest network in the country.
18 It's the best trained, the best coordinated. It's
19 got tremendous capacity. And we provide that
20 capacity to banking partners in the form of
21 providing them with good applications for
22 modifications and other loss mitigation
23 strategies, but unfortunately that's not enough to
24 get efficient and consistent responses from them
25 when we're trying to negotiate. So, we need

1 reasons why they would be compelled to come to the
2 table and communicate with us and work with us.

3 And I think, again, these bills provide that.

4
5 I want to mention briefly, there's
6 a number of folks who were commenting particularly
7 on Intro 501, this idea that registration is
8 overly cumbersome. It is true that a significant
9 amount of data about people heading into mortgage
10 distress is available. The Center for New York
11 City Neighborhoods itself is the primary
12 contractor for the New York State--well, formally
13 the New York State Banking Department--to receive
14 data supplied to them from lenders and services.
15 We use that information to reach out to homeowners
16 who are in distress. Council Member Lander is
17 correct that while it's very helpful to have that
18 information, it is full of errors and omissions,
19 frequently difficult to acquire. The courts
20 themselves also do have information about, you
21 know, when there are filings for foreclosures.
22 They actually send to us copies of every request
23 for judicial intervention, which is the initiation
24 of the lis pendens process. So that, again, we
25 can do outreach to those homeowners. It's a

1
2 cumbersome, complicated process and it actually
3 doesn't disclose a lot of very important
4 information to help us identify the level of
5 distress of the homeowner. So we think that these
6 additional disclosures are incredibly relevant and
7 very valuable to the City. HPD in its testimony
8 provided a very exhaustive list of things that it
9 would like to know about when a foreclosure action
10 is preceded. We support that 100%. With that,
11 I'll conclude my comments. And we welcome any
12 questions.

13 CHAIRPERSON DILAN: I want to thank
14 you all for your comments and suggestions to
15 legislative changes. I want to say that they were
16 very thoughtful and well put together,
17 particularly regarding the protection of one-
18 through four-family home owners, which I certainly
19 care about and have done a lot on this committee
20 to provide protection for so that I'm very
21 sensitive to that, I'll say at the outset. And
22 also the protection of the information that will
23 be made public by this bill, I agree should be a
24 little bit more secure. HPD certainly should have
25 it, but I think we do have to safeguard who is

1
2 asking for that information and not make it so
3 readily available. So I agree with those in
4 concept and look forward to working out the
5 details.

6 So that was just a brief statement.
7 I really have no questions. We've been joined, I
8 see, by Council Member Jim Gennaro, who is here
9 and that I've failed to acknowledge. And I see
10 Brad Lander chomping at the bit. And I'm not sure
11 if you noticed, but I think we just received via
12 email about potential loss of state funding for
13 foreclosure purposes that we are particularly
14 saddened by, but certainly understand the reasons
15 why it may have had to have been done in Albany in
16 light of their fiscal crisis there. Council
17 Member Lander?

18 COUNCIL MEMBER LANDER: Thanks, Mr.
19 Chairman, and I hope that we can join together to
20 do everything we can at the City level to make
21 sure that there continue to be resources for
22 foreclosure counseling, which is dramatically
23 necessary, but sadly not included in the
24 administrations preliminary budget. So, I plan to
25 keep fighting on that. Thank you for your

1
2 testimony, which I think provides a lot of very
3 helpful ways to strengthen and improve all the
4 bills. But I really appreciate the feedback on
5 494. I guess, Ms. Lynch and Ms. Friedheim, you
6 have slightly different--so I agree. We
7 absolutely want to take action to make sure that
8 the costs can't get passed on to borrowers. I'm
9 reticent though to say just don't include one to
10 fours in the bill for two reasons.

11 First, I think this idea that Mr.
12 Hickey talks about that we want this to actually
13 function as an incentive to lenders to do workouts
14 and modifications and to, you know, take maybe a
15 little breath before foreclosing and have an
16 opportunity. And second, in a lot of cases when
17 an owner does walk away it is neighbors who are
18 left holding the bag. So I guess I prefer the
19 idea if we can work it out by simply prohibiting
20 the passing on of the cost rather than not having
21 this apply to one- to four-family homes. And, you
22 know, I wonder what your thoughts are there.

23 ODA FRIEDHEIM: I mean, it would
24 make sense to have that in the bill. The problem-

2 CHAIRPERSON DILAN: [Interposing]

3 If you could speak directly into the mic.

4 ODA FRIEDHEIM: I'm sorry. The
5 problem is the implementation. And again, as I
6 said before, the process of fee shifting, during
7 the foreclosure, prior to judgment, is lacking
8 completely transparency. And in fact as I said
9 before, it's really a holdup operation. And it's
10 only, and only when the foreclosure reaches the
11 point of a judgment that the court in fact gets
12 involved in even looking at the legal fees or any
13 other fees. And then, yes, there are limits. In
14 fact they are statutorily defined. But, if you
15 are trying now to negotiate for modification, the
16 bank simply piles whatever fees they like without
17 any kind of breakdown onto the end. And there is
18 no way to detect what fees may have resulted from,
19 you know, the bond or repairs or whatever. Or you
20 know, what Ms. Lynch also pointed out, the
21 frequent drive-bys. You know, we constantly get
22 these monthly inspections, even when meanwhile the
23 borrower is in court, is negotiating in good faith
24 for modification, clearly lives there, clearly
25 wants to save their home, and yet they have

1
2 monthly drive-bys. And it piles up and it piles
3 up, because you know what? Servicers actually
4 profit from this process.

5 And maybe we don't have a readymade
6 solution right this moment, but I think we would
7 be very open to struggle with that because in
8 principle we like the way, the thrust of the bill.
9 There's no question about it. We just have
10 particular concerns that come from our experience
11 of representing struggling homeowners. And I
12 think as Ms. Lynch had also said and it's our
13 experience as well, that the vast majority of
14 small homeowners, including those who have tenants
15 and in fact take good care at times of their
16 tenants. They want to save the home and they're
17 struggling very hard. And to put any kind of
18 impediments in their way it would be problematic.
19 So, we are very open to figure out ways to address
20 our concerns while keeping the balance you know,
21 with the--especially the multi-family buildings.

22 COUNCIL MEMBER LANDER: That sounds
23 very--I mean, the goal on my end as well is to
24 help those exact same folks have a little more
25 leverage. And I think maybe we can look--probably

1
2 it has to be done in state law, but if there's
3 anything that we can do to address the broader
4 concern of just all this fee applications, apropos
5 of nothing, we should look at that as well.

6 ELIZABETH LYNCH: Just to follow
7 up. I mean, we are also willing to work with it.
8 I mean, the substance of the law is, I think, very
9 necessary. And to use it as a tool to try to get
10 the banks to the table--I mean, everything we do
11 is just a tool to get the banks to modify a loan
12 that they should be modifying. And we would be
13 very eager to work. I think what's been pointed
14 out is really a problem that it could be lumped
15 into just general foreclosure fees. I don't know
16 if the bill could be written in a way where it
17 says where it's broken out, where it has to be by
18 law broken out. But that's something that maybe
19 we--instead of being lumped into foreclosure fees.
20 But I don't know if state law then would preempt
21 that.

22 COUNCIL MEMBER LANDER: Thank you.

23 CHAIRPERSON DILAN: Okay. I'd like
24 to thank you all for your time and your testimony.

25 ELIZABETH LYNCH: Okay.

2 CHAIRPERSON DILAN: And your
3 patience.

4 ELIZABETH LYNCH: Thank you.

5 ODA FRIEDHEIM: Thank you.

6 CHAIRPERSON DILAN: Okay. So next
7 I have Skip Roseboro, Jean Sassine and Betty
8 Harville.

9 [off mic]

10 CHAIRPERSON DILAN: Okay. Why
11 don't you begin in the order that you were called?
12 And just start by introducing yourself, and then
13 you can go right into your testimony.

14 BETTY HARVILLE: Okay. My name is
15 Betty Harville. I live at West Brighton in West
16 Brighton Staten Island, and I'm glad to speak to
17 Mr. Lauder (phonetic), and introducing their
18 problems to the legislation, thank you so very
19 much. Okay. I can continue speaking? Okay.

20 I have lived at my house since
21 1974. Okay. For the last seven years I've been
22 fighting with--my whole life--this is my home.
23 This is not a, a what do you call it, an
24 investment property. This is my home. I was
25 raised here. My children were raised here, my

1
2 grandchildren were raised here.

3 CHAIRPERSON DILAN: If you could
4 speak more directly into the mic.

5 BETTY HARVILLE: Oh, I'm sorry.

6 CHAIRPERSON DILAN: Don't be sorry,
7 just...

8 BETTY HARVILLE: I was doing a lot
9 of talking on the side. It wasn't--okay. I'm
10 here to say today that JP Morgan Chase is not very
11 fair. I'm one of those members in one- to four-
12 family homes, and I've been fighting. I've been
13 going to the conferencing for 18 separate times.
14 I get the modification and I had it for ten months
15 and they took it away. I set up--I'm working on
16 it, I'm trying to get the house fixed, and yes,
17 it's true. I've got the houses all around me that
18 are being broken into, pipes bursting, you've got
19 the crack heads moving into it, you've got the
20 fires coming, you've got the police coming. And
21 I'm disabled, as you can see, and I'm hearing
22 people in my back yard. And I'm calling the
23 police on a continuous basis, and it's not fair,
24 because the properties are going--the waters and
25 pipes are busting and people are just coming into

1
2 the house. And if JP Morgan Chase or the other
3 banks would come around and would understand that
4 you're taking people out of homes that I knew were
5 there from my childhood. And they got into
6 difficult situations and had to leave. They left
7 the property. And as a result of that, you get
8 anything and everything moving into it, and it's
9 not fair. I grew up with their kids, you know?
10 And it's just not right.

11 The bank refuses to maintain the
12 properties. Okay? But, they will send over these
13 companies that are supposedly to keep the upkeep
14 of the property, supposedly. But they'll break
15 into the house. I've had them break into mine
16 three times. Three times. I've called and I said
17 what are you doing? Well, we own the property.
18 No, I'm going for modification, I'm trying--and
19 the modifications, oh, how many times do they get
20 you to go for modification? Send in the
21 documents, you send in the documents and you send
22 in the documents, and then they turn around and
23 say, oh, we need more documents. Okay, what else
24 do you need? Let me give you everything that you--
25 -I have made modification payments. They stopped

1
2 accepting my payments in May of last year. I'm
3 still making the payments. I still--I put it in
4 the bank. Okay? Now it came along--that tornado
5 that came along in September, it took my roof.
6 Oh, I'm sorry. It took my roof. I called the
7 bank. They sent me a check for \$8,000. I said
8 \$8,000 isn't going to do me anything. But the
9 trick with the \$8,000, you have to sign it and
10 give it back to the bank. Then they take that
11 check and they apply it to what you owe. What
12 about my roof? What am I supposed to do about my
13 roof?

14 Then, oh, the sweet part about it,
15 they took your escrow. Well, how can you take my
16 escrow? Well, you know you owe it. But how--one
17 minute you tell me it's \$8,000, next minute you
18 tell me \$18,000. And as recently as of Monday
19 it's up to \$20,000. I said, can you send me this
20 in writing? Can you give me something? I'm
21 fighting. Like I said, 18 times I have been to
22 court. And, yes, then you get the predators. Oh,
23 my, Delta Funding was my favorite. I thought this
24 was my sweetheart. I'm up against the wall.
25 Okay? I'm like I'm working--I was working then.

1
2 Okay? I'm working seven days a week, three
3 different agencies. Okay. I'm a home healthcare
4 aide, healthcare worker. Don't you know this - -
5 where you got to pay Delta funding and they took
6 me to the bank for everything but the - - you're
7 not supposed to refinance more than once a year.
8 Did I know this? Nope. Was I tricked into
9 refinancing again? Yes, I was. Now where am I
10 stuck at now? Can I pay \$3,200 a month? No. I
11 can't. I can't.

12 Then we've got, oh, wonderful, I
13 love this. The Advantage Program. I have a
14 tenant, a beautiful tenant. I loved him.
15 Advantage Program came in and all of a sudden
16 they're not paying. Section 8 isn't paying, but
17 guess what? I'm still making my mortgage payment.
18 Now what does that mean now? Am I scraping
19 together my pennies? Yes, I am. Why? Because I
20 need to fix my roof. Okay?

21 So, does Chase care? No. They
22 send me a letter. I never got the letter, but I
23 got the phone call. Guess what the phone call
24 was? Well, we're encouraging you \$25,000. We're
25 going to give you \$25,000 if you agree to a short-

1
2 sell. Why do I want to short-sell my house? Do
3 you realize what--this is not an investment, this
4 is my home. This is my foundation. This is where
5 my children were born. This is where my
6 grandchildren--I had my grandbaby over there last
7 night. He's a sweet little thing. He drives me
8 crazy. He put - - three times. But this is where
9 they came from. Okay? My mother, never went--she
10 went to school eight days in her life. Okay? She
11 cleaned bathrooms in people's houses. Okay? She
12 worked. Okay? My mom left this. On her deathbed
13 my mom asked me, Betty, get the property up and
14 running and this is what I did. This is what I'm
15 trying to do. Okay?

16 Citibank does not care. Chase does
17 not care. JP Morgan does not care. The banks do
18 not care if this is your life. They tell you,
19 move on, it's just a house. It may be just a
20 house to you, but to me this is my mother. This
21 is my children. The good, the bad, this is what
22 this is to me. Do not take this--if I'm working
23 with you and I'm trying my best to give you what I
24 have and I keep telling you, listen, I moved from
25 the first floor to the second floor, from the

1 second floor to the attic. Okay? I'm - -
2 apartments. I'm going to get the income to come
3 in and pay the bills. I'm not trying to say I
4 don't want you to--take it off. No. If I
5 borrowed it, I owe it. I will pay it. But give
6 me that opportunity. Don't take it away from me.
7 That's what I got to say. Thank you. I'm sorry
8 I'm so passionate.

10 CHAIRPERSON DILAN: Thank you.

11 BETTY HARVILLE: But I was biting
12 at the--I was sitting in my chair, ooh, I would--
13 ooh, Lord. Thank you. Thank you so much for
14 giving me the opportunity to speak.

15 CHAIRPERSON DILAN: It's a good
16 thing you held on to your cane.

17 [laughter]

18 BETTY HARVILLE: Oh, lord. Did you
19 see me? Did you see? Oh, I could just--you don't
20 know. I want a piece of--ooh. And they were just
21 sitting there, just--ooh. I wanted to take this
22 wig off and tell them, let me get this down there,
23 okay? I'm trying--ooh, no, honey. But thank you
24 so much, God bless all of you.

25 CHAIRPERSON DILAN: It would have

1
2 added to your liability, but it would have let a
3 whole lot of frustration.

4 BETTY HARVILLE: And you know it
5 too, yes you do. Thank you so much. God Bless
6 you.

7 CHAIRPERSON DILAN: Who wants to
8 proceed next? Just start by stating your name for
9 the record, and then you may continue with your
10 testimony.

11 JEAN ANDRE SASSINE: Good
12 afternoon. My name is Jean Andre Sassine. And I
13 would like to thank the Council. I would like to
14 thank Council Members Dilan, Council Member Lander
15 and James and all the Council Members for allowing
16 me the opportunity to address the Committee today
17 on this vitally important issue.

18 I'm a board member of New York
19 Communities for Change, and I am also a homeowner
20 in Queens Village, as the New York Baking
21 Association defined, it's a home that people live
22 in. I am here today to testify in support of
23 intro 494, and I also like 501. I know firsthand
24 how difficult the banks can be when homeowners
25 attempt to work with them to modify their

1
2 mortgages. When my wife got sick almost three
3 years ago, we faced a choice every family dreads
4 and too many families make--do we pay for
5 healthcare and surgery or do we pay for the
6 mortgage. Well, we went for the healthcare.
7 Thank god my wife is fine now. But since then,
8 it's been downhill ever since.

9 Thinking that Chase, my servicer,
10 would want to work with me when I was unable to
11 make my monthly mortgage payment, I reached out to
12 them to try to work something out. For years now
13 I've been jumping through hoops, doing everything
14 I can to stay in my home. Chase has not made this
15 easy for me. Every month I am asked for the same
16 documents over and over again, W2s, IT405s,
17 reauthorizing tax returns, more W2s, 1099s, the
18 DOD form that testifies that you haven't been
19 prosecuted for a felony in the last ten years.
20 That's right. All right. They've kept me in
21 limbo for nearly three years now. It seems to be
22 some kind of game to them, but it's no game to me,
23 nor to my family, or to my neighborhood.

24 It took me years and countless
25 interviews with the news media just to get them to

1
2 offer me a temporary forbearance, that they just
3 offered me. But it's just more limbo. I get to
4 make three, small, temporary payments and then
5 we're supposed to take another look at my
6 situation and reapply for a modification. But
7 I've been in the system now for three years now.

8 What about--and I'm a best case
9 scenario--so what about all the other New York
10 homeowners who aren't on TV or in the newspapers,
11 right? Explaining how they can't get attention
12 from abusive banks like Chase. Where do they go?
13 Who hears them?

14 The effects of the banks'
15 reluctance to work with homeowners are very
16 evident on my block alone. On my block there are
17 two vacant homes that once had families in them.
18 There's another home that's been turned over twice
19 by foreclosure, auctioned, and then foreclosed on
20 again. This brings down the value of my property
21 and the properties around us. It brings crime
22 into my neighborhood and it brings infestation or
23 squatters. In short, it leads to even more
24 foreclosures.

25 Councilman Lander's bill tackles

1
2 this problem. It ensures that property, once in
3 foreclosure, will be maintained. For the
4 homeowners of New York City, especially those of
5 us in hard hit neighborhoods like Southeast
6 Queens, this is vital. If banks are more willing
7 to foreclose on a property than they are willing
8 to work with a homeowner, it must be their
9 responsibility to the community that there is
10 property--that it's proper to upkeep the property.

11 We'd love for banks like Chase to
12 actually work with homeowners in the first place
13 rather than foreclose on them. Chase has a
14 horrendous record at modifying loans. A recent
15 study done by New York Communities for Change has
16 detailed how only six percent of New York City
17 homeowners with a Chase Mortgage, who sought help
18 actually received any kind of help or permanent
19 modification, six percent. That's 94% that didn't
20 get anything. That is unacceptable. Anything we
21 can do to keep the banks responsible is essential.

22 New York City homeowners fighting
23 to keep their American dreams alive urge the City
24 Council to pass these bills. Thank you.

25 CHAIRPERSON DILAN: Thank you.

1
2 SKIP ROSEBORO: Good afternoon. My
3 name is Elliott Skip Roseboro. And before I start
4 my testimony I just wanted to specifically thank
5 Councilman Fidler for taking the Banking
6 Association's CEO and his witness to task in
7 clarifying questionable statements in their
8 testimony. I was very impressed with that. And I
9 think we need to recognize that it's very easy to
10 make statements that sound good until someone
11 drills down and makes you realize that they're
12 really out of question. So, okay.

13 So, I'd like to extend my gratitude
14 to the Committee for giving me a chance to speak
15 on an issue that affects all New Yorkers, and I'd
16 especially like to thank Chairman Dilan and
17 Council Member Lander. The scourge of foreclosure
18 can be seen in every borough and by every New York
19 family, whether you're a homeowner or not. I
20 reside in Bed Stuy Brooklyn, and vacant buildings
21 are becoming more of a problem each day. Often
22 because banks like JP Morgan Chase make it so
23 difficult to work with them, homeowners feel there
24 is no hope, and simply abandon their homes to the
25 bank when they are in foreclosure.

1
2 One would think that banks would
3 want to protect what soon will become their
4 assets. But these financial institutions don't
5 take care of their new properties. They don't
6 seem to care what conditions the buildings
7 deteriorate into. Instead, they leave them to
8 fester, to rot, and to become eyesores and black
9 holes in the community.

10 We all know how vacant homes lead
11 to crime and infestation. The problem, however,
12 is multiplied when banks refuse to live up to its
13 responsibility to care for those properties. And
14 it sure seems to me that many of those empty
15 buildings in my community have become, have been
16 foreclosed on by banks that simply do not care
17 what happens to the buildings or subsequently how
18 that affects my neighborhood and our quality of
19 life. Excuse me.

20 I don't want to live in a community
21 where I and my neighbors fear walking late at
22 night or have to worry that drug dealers are
23 taking over in a house that my neighbors used to
24 live in. I love my neighborhood. I've been there
25 most of my life. I want to make sure that our

1
2 community stakeholders care about and respect it
3 in the way that I do. That's why I applaud Brad
4 Lander's effort to pass a bill that would hold
5 banks accountable for how the properties they
6 foreclose on are maintained. I thank the 30
7 other-co sponsors for taking a stand against these
8 financial giants that care more about making
9 record profits than about working with families to
10 keep them in their homes. I know I'm sick and
11 tired of abandoned buildings destroying my
12 neighborhood. And we will continue to look to our
13 elected officials to ensure that banks are
14 responsible for their actions until they change
15 these practices.

16 Finally, I feel that it's important
17 to add the missing pieces as to how and why banks
18 are able to sit on foreclosed properties for
19 years, along with allowing them to deteriorate,
20 yet still not lose money. The predatory and
21 artificially inflated loan amounts are guaranteed
22 in full by the federal government. So, along with
23 speculative greed, there is no timely incentive to
24 return to normal and fair business practices.
25 Even worse, these federal guarantees and lax

1
2 regulations allow banks to sit on foreclosures and
3 sometimes illegally stolen properties, with
4 assumed plans to make a financial killing once the
5 housing market recovers. Councilman Lander's bill
6 is an important first step in removing these
7 greed-driven incentives that are destroying
8 homeowners and communities, while inhibiting both
9 housing and economic recovery. Thank you.

10 CHAIRPERSON DILAN: And I think the
11 last paragraph is it in a nutshell as to why the
12 workouts by certain institutions are not
13 happening.

14 SKIP ROSEBORO: Exactly.

15 CHAIRPERSON DILAN: Because they
16 can afford to wait for the paper to reach its
17 original value, because the asset is guaranteed.
18 So, that is somewhat of an issue. Council Member
19 Lander, do you have anything that you want to..?
20 If not...

21 COUNCIL MEMBER LANDER: I'll say
22 thank you.

23 CHAIRPERSON DILAN: Thank you all
24 for your time and your testimony, your patience
25 and your restraint.

2 Okay, last panel. Mr. Steven A.
3 Ludsin and Mr. Moses Gates.

4 MOSES GATES: I thank you for the
5 opportunity to testify. My name is Moses Gates.
6 I represent the Association for Neighborhood
7 Housing Development, actually it's lobbying arm,
8 ANHD, Inc. here. I'd also like to thank the
9 previous folks who have testified here. And here
10 at ANHD, we represent about 100 community
11 development corporations that engage in a lot of
12 foreclosure prevention. In addition, we're
13 neighbors with the New York Mortgage Coalition.
14 We hear a lot more of these stories. You know,
15 these are not just three folks who came to
16 testify; these are a bunch of people and I think
17 it's really obvious to the Council and everyone in
18 this room that the difference in perspective
19 between the banks who have testified here and the
20 homeowners who have testified here is just really
21 glaring. And I think that's something that the
22 Council can note.

23 In lieu of all of the lawyers and
24 all of the technical expertise that has been
25 demonstrated on this panel earlier, I do not have

1
2 much to add in that regard. I will keep my
3 remarks short. I would like to say that all three
4 intros ANHD fully supports. We believe that they
5 work together in a very effective mechanism, that
6 all three are really necessary to effect a strong
7 and comprehensive new foreclosure process here in
8 New York City.

9 We do think that the bond mechanism
10 for prevention of ERP liens is very good. It
11 should not be a very large burden on the banks, as
12 I think Councilman Lander pointed out, those ERP
13 liens are now City superior liens to the first
14 mortgage and would be recovered upon sale of the
15 property anyway and should not be terribly onerous
16 for the banks to post a bond in order for those
17 ERP liens to not be effected in the first place.

18 So, in short, thank you for the
19 opportunity to testify, and we do believe that all
20 three of these bills are necessary in order to
21 have the full imposition of a new foreclosure--

22 CHAIRPERSON DILAN: [Interposing] I
23 have to say I did enjoy the exchange between
24 Council Member Fidler and Mr. Bergman. It was
25 quite entertaining. Mr. Ludsin?

2 STEVEN A. LUDSIN: Good afternoon.

3 CHAIRPERSON DILAN: Good afternoon.

4 This is one that's right up your alley.

5 STEVEN A. LUDSIN: Gee, thank you.

6 Thank you. Let me identify myself. That's rule
7 number one. I'm playing by the rules. I'm Steven
8 Ludsin, and I'm the founder of Easy Escrow, and
9 thanks to your patience, and becoming a more
10 vociferous advocate. And frankly this hearing, as
11 you said, this is exactly what I'm talking about.

12 And what's really ironic is, as I
13 told you before, I was talking more in terms of
14 sound bites, but I just want to lay the foundation
15 that, ironically, I bought a home out of
16 foreclosure 26 years ago. And I had an article,
17 which I'm happy to share and we can put it on the
18 record about how I walked into this house that
19 was, you know, a nice home--it was in the
20 Hamptons, I'm not complaining--but the grass was
21 about, I want to say hip high. There was no hot
22 water. The whole place was literally shut down
23 and I was just lucky enough to besiege a local
24 handyman. He said, it's my day off, but I'll help
25 you out. You know, and that was so, if you will,

1 a micro version of what happens in that world.

2 And if I may, I'll just talk about a macro

3 version. Because as I told some of you, and I

4 think this is the first time, Councilman Lander,

5 that we've had a chance to interact, I had a

6 federal contract about--ooh boy--16 years ago, to

7 sell foreclosures in the Small Business

8 Administration by putting them on the Bloomberg,

9 of all things. And that contract did not turn out

10 to be as successful as I wanted it to be, but what

11 I did do is, as you all are learning, I believe

12 80% of life is showing up, and I saw these

13 properties. And I saw a property that literally

14 nobody watched. And there it was--it was called

15 Marvin Gardens because we all played Monopoly--

16 Vero Beach, Florida. Not exactly a bad place. It

17 was burned down. Not a real enhancement to the

18 value of that collateral, okay? Similarly, there

19 was a place in Brooklyn. I took a train out. And

20 it was called Dreams Warehouse or something like

21 that. And in between Thanksgiving and Christmas

22 they had a barbeque inside the building. No one

23 bothered to lock the door.

24 So, I say this because I talk about

1
2 not leaning on a lien. And let me, if I could--so
3 I don't get too far afield, and I thought the
4 testimony this afternoon of Deputy Commissioner
5 Visnauskas--I can pronounce it because my family
6 was from Latvia, her family is from Lithuania--I
7 guessed it. And I can only tell you that it is
8 clear that when you have this twilight zone where
9 no one in theory or in practice is legally
10 obligated during this foreclosure period, it's
11 really a recipe for disaster. That's obvious.
12 That's why we're here.

13 Number two, you want to mitigate
14 the distress. You don't want people living in the
15 dark. You don't want unsafe living conditions.
16 It takes a long time to foreclose. So as you
17 know, I believe that what you have to do is take
18 proactive measures to set up the Easy Escrow fund.
19 Basically, if the tenants have to put up a
20 security deposit, why shouldn't the landlords?
21 Why shouldn't the banks? And why shouldn't the
22 owners? And if they're good actors, since they're
23 moaning and groaning about the cost of a
24 compliance fund--which I'll get to--then my answer
25 is, this is refundable. And it's going to earn

1
2 interest. So if you haven't gone against, you
3 haven't violated your responsibility, I'll give
4 you your money back. And I say I, because I
5 envision a third-party escrow agent so that the
6 government isn't going to be able to always grab
7 all the money and there's going to be due process.
8 And this is a case of alternative dispute
9 resolution, which, you know, is becoming of age if
10 you will.

11 If I may go on, clearly, we are in
12 an area where you're talking about information.
13 And we have an information mayor, a high tech
14 mayor, so that to me is--that's what it's all
15 about. I like the idea of having all the
16 information at our disposal, and the technology is
17 there. So we can link up who owes money, how much
18 they owe, and you're going to be able to sweep
19 that account right away. Because if you don't
20 have skin in the game, then you're just not going
21 to respond. It's that. And I think the examples
22 are just--you know many more than I do. You hear
23 this every day.

24 To continue, the program of
25 identifying responsible developers to in effect--

1
2 what's the word--eliminate blighted areas is in a
3 way a precedent. Because if you can make a
4 decision, if you call it objective or subjective,
5 as to who is responsible, I believe that the
6 responsibility fee fund fits with that, because
7 effectively we're identifying those responsible
8 owners and builders. And you already have
9 movements trying to do that.

10 Conversely, as we talked about the
11 bad actor bill some time ago, it's the same thing
12 what I said before. It's just identifying a bad
13 actor, trying to ostracize him by publically
14 embarrassing him with a worst landlords list is
15 not enough. And I guess what I'm saying is I
16 support your bills, all your ideas here. It just
17 doesn't go far enough.

18 And if I may continue, again, we
19 talk about--what I talk about is not trying to
20 preempt the process. I got some feedback from
21 some people saying to me, well, you're trying to
22 preempt the way we do things. And the answer is,
23 no, I'm not. I believe the compliance bond makes
24 sense. And I see that Intro 494 incorporates
25 that, but Intro 500 doesn't. And I guess I'll

1
2 leave that to you as to which one should. I think
3 they both should be there. But I like the idea
4 of, again, my recoupable--if you will--security
5 deposit with interest to be administered
6 electronically, because it provides collateral
7 liquidity. And that's what you need, especially
8 in an environment like today, where you need
9 revenue. You have receivables, and I heard the
10 numbers today--the previous testimony, 17,000
11 violations, 19,000 violations. The numbers are
12 pretty severe. And the idea that you are in an
13 area where in effect you could be deterring
14 lenders from foreclosing, which then means just
15 more abandonment, more delay, which again does not
16 enhance the value of the property. I mentioned
17 alternative dispute. I also want to mention, if
18 you will, this whole idea of a disincentive, that
19 you might even discourage bank foreclosure, which
20 we know means it's still in the hands of the
21 owner, which means you're going to have abuse.
22 The issue of the emergency repair program, where
23 the \$17 million was spent but only four and half
24 million was recovered--I like to think, again, the
25 responsibility fee fund will help increase that

1
2 recoverability and the emergency repairs will be
3 done and you'll have the money to pay for it near
4 term, not down the road.

5 I just became aware at the last
6 hearing where Commissioner Salkin talked about the
7 fact they take these liens and put them into a
8 trust and then they're sold to investors. Again,
9 a two to four-year program. That's not liquid.
10 I'm not saying that you shouldn't do that, but I
11 suggest to you this might be another means to get
12 that cash flow. Let's see here, I talked about
13 skirting lenders.

14 The legal concerns as to whether
15 somebody should enter the building, I guess that
16 has to be sorted out. But this notion that the
17 bank is saying, look, we don't have any interest
18 until we actually foreclose and even then they're
19 not the owner, and they're running the clock.
20 It's just--it's absurd because they have a very
21 vested interest in it, otherwise, why was the bank
22 so concerned when I have my home to make sure that
23 I have property insurance and that my tax payments
24 are escrowed. They're concerned. They have a
25 stake in this. And this idea that somehow they're

1
2 just merely in effect distant lenders is foolish.
3 They're stakeholders. They need to have skin in
4 the game. You can enforce it, and they're not in
5 a weak position.

6 Now, if I may, I guess I can wrap
7 it up by simply saying that effectively what I'm
8 really talking about is a private bailout. You
9 mentioned TARP, and I don't think there's any
10 shame in asking the private sector to take
11 responsibility. And I can also say that I don't
12 believe it's the tail wagging the dog here. And
13 as I also mentioned finally, that if you look at
14 the way the system works today, it is not allowing
15 the society to be protected. And at the end of
16 the day, that's what it's about. And I believe
17 that my responsibility fee fund will achieve that.
18 It's refundable and it earns interest, just like
19 the tenant. And I want to make it electronic,
20 because frankly, it's faster, cheaper, and we'll
21 get some revenues for the city. Thank you.

22 CHAIRPERSON DILAN: Okay. Thank
23 you, Mr. Ludsin. Council Member Lander?

24 COUNCIL MEMBER LANDER: Thank you.
25 I like the idea of exploring whether allowing the

1
2 foreclosing lender to do it through a letter of
3 credit or a refundable deposit, and I look forward
4 to learning more in addition to offering the bond
5 option. So, thank you. And thank you, Mr.
6 Chairman, for the hearing.

7 CHAIRPERSON DILAN: Thank you. And
8 thank you all for your time and testimony. At
9 this point we've received testimony for the record
10 by Dan Margulies, who is the Executive Director
11 for the Associated Builders and Owners of Greater
12 New York. The testimony is in opposition to all
13 three items on the agenda, as well as from Fern
14 and Brooklyn Congregations United, which are in
15 support of the items on today's agenda. At this
16 point all four bills before the Committee will be
17 laid aside, and that will conclude this hearing.

C E R T I F I C A T E

I, Erika Swyler, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature 

Date April 29, 2011