

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON HOUSING AND BUILDINGS

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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.

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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

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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-

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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

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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.

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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

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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

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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

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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

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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.

2 RUTHANNE VISNAUSKAS: Yes, we did.

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

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

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

12 RUTHANNE VISNAUSKAS: Sure.

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

18 RUTHANNE VISNAUSKAS: Sure.

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

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

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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

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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

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

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

COUNCIL MEMBER LANDER: No, no.

But so, I mean this is the thing--

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

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

RUTHANNE VISNAUSKAS: Correct.

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

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

COUNCIL MEMBER LANDER: Well, they 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

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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.

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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 housing maintenance code, that that would then  
2 sort of delay them from starting a foreclosure or  
3 prevent them from starting one at all. And  
4 foreclosure, you know, for many of these  
5 properties is actually a good thing to the extent  
6 that it signals that something is wrong and forces  
7 sort of a workout and also is often one of the  
8 only ways to sort of unwind these deals that are  
9 complicated and get rid of sort of an untenable  
10 amount of debt. So, our concern is largely just  
11 that, is making sure this something doesn't sort  
12 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  
3 And Local Law 15, which was recently passed by the  
4 Council, sponsored by Councilman Vann, but went  
5 through a long process, as I understand it gives  
6 HPD and the Department of Finance the ability to  
7 make liens of ERP and alternative enforcement and  
8 other things which did not have that lien position  
9 previously.

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

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Member James.

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

COUNCIL MEMBER JAMES: Council Member Williams, I would never ever refer to you as someone--you are of the utmost intelligence and you can even read questions really well. Going back to your receiver issue, receivers are restricted. Their powers are limited by Supreme Court judges. And oftentimes Supreme Court judges want to yield some control over their cases. And oftentimes, as you know, the caseloads of most Supreme Court judges and unfortunately in the judicial system are delayed and backlogged. Again, going back to the case that I was involved in and continue to be involved in, and based upon my knowledge of the system, receivers unfortunately cannot get bills pays. They have to run back to the judges. They have to get on their calendars and oftentimes it's delayed unless someone intervenes, it's a problem. So, saying that a receiver is somewhat responsible for the 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 in cooperative fashion with the state.

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

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

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.

1  
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 pendens 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

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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

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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

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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

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

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

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

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

3  
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.

1  
 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

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

18  
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

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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

1  
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

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.

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?

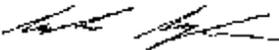
24 COUNCIL MEMBER LANDER: Thank you.  
25 I like the idea of exploring whether allowing the

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