

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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City Hall

B E F O R E: ERIK MARTIN DILAN
Chairperson

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Tony Avella
Gale A. Brewer
Leroy G. Comrie, Jr.
Lewis A. Fidler
Rosie Mendez
James Vacca
Thomas White, Jr.
Elizabeth Crowley
James S. Oddo
Daniel R. Garodnick

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Queens Community House

CHAIRPERSON DILAN: Good afternoon.

My name is Erik Martin Dilan. I'm the Chair of the City Council's Housing and Buildings Committee. I'm just going to take a brief moment to introduce the members who are here. To my far right, we're joined by Council Member Lewis Fidler of Brooklyn. Next to him is Council Member James Vacca of the Bronx. I'd like to re-welcome Gale Brewer back to the Housing and Buildings Committee. Welcome. On the left side of the dais from where I'm sitting is Council Member Joel Rivera of the Bronx as well as Council Member Tony Avella of Queens. Today before the committee, the following items are to be considered. Intro 899 is a Local Law to amend the Administrative Code of the City of New York in relation to the responsibilities of entities commencing actions to recover real property through the foreclosure process. Intro 956 is a Local Law to amend the Administrative Code of the City of New York in relation to responsibilities to notifications to tenants by entities commencing actions to recover real property of the foreclosure proceedings. Intro 959 is another proposed law to amend the

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2 City's Administrative Code in relation to the
3 responsibilities of entities commencing actions to
4 recover real property via foreclosure actions as
5 well. This committee previously conducted an
6 oversight hearing on the issue of subprime lending
7 and the mortgage foreclosure crisis in New York
8 City in 2207. This committee is concerned that
9 renters living in foreclosed properties lacked
10 adequate notice of the foreclosure filing and the
11 legislation before the committee could ensure that
12 tenants receive adequate notice about possible
13 foreclosures of homes in which they reside. In
14 brief, Intro 956 would require anyone who begins a
15 foreclosure proceeding on a building with five or
16 fewer units to notify all tenants of such property
17 about the proceeding within ten days after the
18 filing. If the names of the names of the tenants
19 are not known, notice of the action must be posted
20 in a prominent place in the building. The notice
21 must also include at a minimum a statement of the
22 rights of affected tenants under the law and at
23 least one appropriate governmental agency who
24 tenants may contact with questions. Currently,
25 anyone who fails to provide the required notice

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2 will be subject to a civil penalty of up to \$1,000
3 for each day there is a failure to provide such
4 notice. Intro 959 is similar to Intro 956 except
5 that it applies to buildings with six dwelling
6 units or more. The final item on the agenda is
7 Intro 889 and that requires an entity that files a
8 foreclosure action with the courts to register
9 with HPD within a certain number of days of the
10 filing. HPD would be required to publish a list
11 of foreclosed on properties on its website. This
12 also would have a civil penalty for failure to
13 register. Registering is subject to a civil
14 penalty of \$1,000 each day that an entity fails to
15 register. During today's testimony the committee
16 expects to hear and receive testimony from HPD,
17 from housing advocates, from the real estate and
18 the banking industry. Again, I want to remind
19 everyone that wishes to testify on today's agenda,
20 whether in favor or opposed on any of three items
21 to please see the sergeant-at-arms and fill out an
22 appearance card and state your position on those
23 items. I see that we've been joined by Council
24 Member White who is a member of the committee and
25 also a sponsor of two of the items on today's

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2 agenda. Council Member White, do you want to add
3 anything to the opening?

4 COUNCIL MEMBER WHITE: Thank you
5 very much, Mr. Chairman. Briefly I would like to
6 add that given the impact on the foreclosure
7 crisis on renters in neighborhoods and communities
8 across the City of New York, especially on the
9 communities of color throughout Southeast Queens,
10 Brooklyn, Bronx and parts of Staten Island, each
11 of these pieces of legislation would help mitigate
12 the effects of foreclosures. In 2008 alone,
13 Southeast Queens, which is the epicenter of this
14 crisis, experienced over 3,000 foreclosure filings
15 and the city as a whole experienced over 13,000
16 foreclosure filings. In addition to these
17 filings, the Queens Supreme Court has been
18 scheduling roughly 100 foreclosure auctions each
19 week for most of 2008 and 2009. While these
20 numbers may not be as horrific as those from
21 Arizona, Florida or California, it is only a few
22 homes on a block or in a neighborhood to cause a
23 serious problem. With the hundreds, if not
24 thousands of vacant bank-owned foreclosed
25 properties and vacant, abandoned foreclosed

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2 properties throughout the hardest hit
3 neighborhoods, these properties have become
4 calling cards for criminal activity like
5 prostitution, drug dealing and squatting where
6 families and the law abiding citizens live
7 creating unsafe environments and destroying
8 property value for existing homeowners. I would
9 like to thank the Chair for having this hearing on
10 those two bills, 889 and 956, as well the other
11 bill dealing with the apartments, because this
12 really is a crisis. I just want to thank you on
13 behalf of all of those citizens who are deathly
14 afraid of those vacant abandoned buildings not
15 being shored up to make them feel safe. Thank you
16 very much.

17 CHAIRPERSON DILAN: Thank you,
18 Council Member White. Council Member Garodnick is
19 also a sponsor of one of the agenda items today.
20 Council Member Garodnick?

21 COUNCIL MEMBER GARODNICK: Thank
22 you, Chairman Dilan, for the opportunity to say a
23 few words and also for being able to participate
24 in the hearing today. I just wanted to add to the
25 comments that you made at the outset and those of

1 Council Member White by noting that New York is
2 unique in the nation in that our foreclosure
3 extends beyond homeowners and is affecting the
4 lives of tenants as well. The consequences of
5 foreclosure actions for tenants can be
6 significant. Tenants can find themselves facing
7 sudden eviction. In the scramble to find
8 somewhere else to live, they may not be able to
9 find affordable or available housing within their
10 budget. They may not be able to afford the high
11 costs associated with an unexpected move. They
12 may find themselves the victim of the tenant
13 blacklist and unable to secure other housing as a
14 result of that. They may decide that it's simpler
15 easier to move out of the City of New York than to
16 find alternative housing on short notice, given
17 the tight housing market here. So together with
18 Intro 956, which extends the same protections to
19 tenants in buildings with less than six units,
20 Intro 959 that I have introduced will guarantee
21 that tenants in buildings with six or more units
22 have the benefit of advanced warning in cases of
23 foreclosure and to ensure that they're informed of
24 their rights. The increasing rate of home
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2 foreclosures can be attributed to a range of
3 factors, including poor financial decisions, a
4 sour economy and a slowdown in the housing market.
5 Rarely, however, can we point to rental tenants as
6 the cause of a foreclosure. Yet tenants across
7 the city, through no fault of their own are
8 bearing the brunt of it. In the current climate
9 we need to ensure that all tenants have the
10 benefit of advanced warning when their buildings
11 enter foreclosure to allow them and their families
12 to make decisions that are right going forward.
13 Mr. Chairman, again thank you for the opportunity.

14 CHAIRPERSON DILAN: Thank you,
15 Council Member Garodnick. First we'll hear from
16 represent from the Department of Housing
17 Preservation and Development, Mr. Joseph Rosenberg
18 and Barbara Flynn. Welcome.

19 JOSEPH ROSENBERG: Thank you.

20 CHAIRPERSON DILAN: We're
21 interested to hear the administration's position
22 on the items before the committee today.

23 JOSEPH ROSENBERG: Good afternoon,
24 Chairman Dilan, members of the Housing and
25 Buildings Committee and other members who have

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2 joined them. My name is Joseph Rosenberg. I'm
3 the Deputy Commissioner of Intergovernmental
4 Relations for the Department of Housing
5 Preservation and Development. Seated next to me
6 is Barbara Flynn, Chief of Staff,
7 Intergovernmental Relations. We're pleased to be
8 here today to discuss the three foreclosure
9 notification bills that are on your agenda. As
10 you all know, HPD together with the Council is at
11 the forefront of the issue that these three bills
12 are trying to address; namely limiting the impact
13 of mortgage foreclosures. Before discussing the
14 specific bills, I would like to talk about the
15 current state of the mortgage foreclosure problem
16 in New York City and specific some programs that
17 have been created to mitigate the impact on
18 families and neighborhoods. The mortgage
19 foreclosure problem has grown substantially in New
20 York City over the past few years, as was
21 especially indicated by Councilman White. There
22 were 1,065 foreclosure auctions citywide in the
23 first quarter of 2009. This remains at about the
24 same level as for the same period in 2008 but is
25 about 35% higher than in 2006 and 2007. Although

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2 these figures indicate a growing problem in New
3 York City, the scale of the problem in our city
4 pales in comparison to other cities large and
5 small around the nation. Nevertheless,
6 foreclosures have had a real impact on homeowners
7 and renters by displacing families from their
8 homes while neighborhoods can face deterioration
9 and destabilization due to vacant properties and
10 declining home values. Foreclosures remain a
11 priority issue for HPD and the administration.
12 The solution to this problem, although still being
13 developed, requires cooperation between all levels
14 of government, the banking industry and our
15 nonprofit partners. To mitigate the impact of
16 foreclosures, HPD has developed two programmatic
17 approaches to address the dual effects of the
18 foreclosure problem. The first aims at keeping
19 families in their homes, the second addresses
20 stabilizing neighborhoods. Foreclosure prevention
21 counseling is the main tool for keeping families
22 in their homes. Together the administration and
23 the Council created the Center for New York City
24 Neighborhoods, CNYCN. CNYCN is a not-for-profit
25 entity that is funded with HPD and City Council

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2 money and private philanthropy. The core of CNYCN
3 programs is support for nonprofit service
4 providers offering free education, housing
5 counseling and legal services to anyone at risk of
6 losing their home to foreclosure. CNYCN provides
7 funding and technical assistance to community
8 groups who provide direct services to individual
9 homeowners. In February 2009, CNYCN started a
10 call center that serves as the primary point of
11 contact for all homeowners in distress in New York
12 City. Callers may reach them by calling 311.
13 Since the opening of the call center in February,
14 over 1,000 New Yorkers in need have called 311 and
15 have been referred to the CNYCN call center.
16 Another important aspect of CNYCN's work is
17 encouraging homeowners and lender participation in
18 new federal programs. Since the announcement of
19 President Obama's Making Home Affordable programs
20 in the beginning of March, CNYCN has provided its
21 network partners with extensive training regarding
22 the details of the loan modification and the
23 refinancing programs and their possible
24 implementation by lenders and services. It is
25 estimated that up to 500,000 New Yorkers may be

1 eligible for the loan modification plan alone.
2 Additionally, CNYCN works with advocates to
3 improve access to the judicial system for
4 homeowners and a key aspect will be the
5 implementation of new state laws requiring
6 settlement conferences prior to foreclosure
7 judgments. CNYCN will also coordinate pro bono
8 legal work by developing a foreclosure prevention
9 practice area on probono.net which will serve as a
10 resource library and will provide other much
11 needed support to pro bono and legal services
12 attorneys working to improve the settlement
13 conferences. Overall, CNYCN is able to gather
14 best practices, coordinate access to counseling
15 and ensure that training and technical assistance
16 get into the hands of those who need them as fast
17 as possible. We are acutely aware of the
18 importance of this initiative to communities
19 threatened by foreclosure and are committed to
20 obtaining additional funds for the center in 2010.
21 We are confident that such funding will be
22 identified and earmarked quite soon. Now I will
23 shift focus to our latest initiatives in
24 stabilizing neighborhoods. We're utilizing
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2 federal Neighborhood Stabilization Program funding
3 in the Real Estate Owned program to stabilize home
4 prices and prevent blight and neighborhood decline
5 of greatest risk of foreclosure. The REO program
6 will be executed by Restored Homes Housing
7 Development Fund Corporation. This program will
8 revitalize neighborhoods by bringing vacant
9 buildings back in use and to create affordable
10 home ownership opportunities for low and moderate
11 income families in New York City. Using existing
12 HUD housing initiatives as a model, Restored Homes
13 will acquire, rehabilitate and sell one to four
14 family properties at affordable prices to
15 residents meeting specific income requirements.
16 In this program we will be working with not-for-
17 profit community groups to develop about 100 homes
18 in neighborhoods with the highest rates of
19 foreclosure in New York City. As HPD continues to
20 analyze mortgage foreclosure data and trends, we
21 are developing other programmatic solutions to the
22 current crisis and welcome the Council's proactive
23 approach to the issue and any opportunities for
24 working together over the next weeks and months.
25 HPD intends to develop a comprehensive

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2 neighborhood stabilization strategy as part of a
3 competitive bid for a portion of the \$2 billion in
4 HUD Neighborhood Stabilization Program funds in
5 the American Reinvestment and Recovery Act of 2009
6 to supplement the work that we do as an agency to
7 support keeping families in their homes and
8 stabilizing neighborhoods. We are working with
9 the DHS and CNYCN to explore ways to provide
10 housing counseling and legal services to renters
11 affected by the foreclosure crisis. We share the
12 Council's concern regarding the importance of
13 these issues and they are at the forefront of our
14 new programming plans. I would now like to
15 discuss the next three bills that are on today's
16 agenda. Intro 889 would require any mortgagee
17 except a governmental entity that has commenced a
18 foreclosure action regarding property located in
19 New York City to register with HPD within ten days
20 of filing the foreclosure action. The
21 registration would include such information as the
22 name of the entity bringing the action, the entity
23 against whom the action was brought, the relevant
24 block and lot number and the court and the date
25 where such action was commenced. The agency must

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2 also maintain an updated website of the
3 information and the mortgagee must notify HPD
4 within ten days of certain changes in status of
5 the action, including the foreclosure action being
6 discontinued so the information can be updated on
7 the website. A failure to register with HPD would
8 result in a civil penalty from Housing Court of
9 \$1,000 per day for each day that the action was
10 not registered with HPD. I would like to note
11 that there's no corresponding penalty for the
12 failure of a mortgagee to notify HPD of any
13 changes in the status of a case. The entity
14 bringing the foreclosure action would be
15 responsible for any penalty against the property
16 for violations of any laws and regulations. This
17 appears to be an attempt to ensure that the
18 property is maintained and that the mortgagee is
19 responsible for correcting violations of the
20 housing maintenance code. Although well
21 intentioned, this specific provisions creates a
22 troubling requirement since the mortgagee may not
23 have the legal right to enter the building let
24 alone repair any housing maintenance code
25 conditions. Nevertheless, it is important that

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2 properties be adequately maintained in order to
3 stem deterioration not only of the building itself
4 but also of the surrounding neighborhood. So we
5 therefore look forward to working with the Council
6 on legislative language that will ensure that the
7 properties will not be allowed to languish and
8 deteriorate. The other two bills, Intro 956 and
9 959 are directed at the entity bringing the
10 foreclosure action and require it to notify all
11 tenants of the property being foreclosed within
12 ten days of filing the action. HPD would be
13 required to write rules as to what information
14 should be included in the notice to tenants, where
15 in the building the copy of the notice should be
16 posted, which tenant rights relating to mortgage
17 foreclosure should be included in the notice, and
18 which governmental agency should be listed on the
19 notice so that tenants may call to ask questions.
20 While HPD supports the concept of notification we
21 must also take into account today's economic
22 climate and be realistic about what we can
23 accomplish. We all understand the anxiety that
24 tenants have about being evicted in foreclosure
25 actions. However, both Intro 956 and 959 could

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2 have the undesired effect about alarming tenants
3 about actions that may end up being resolved short
4 of foreclosure. It may also unintentionally speed
5 the eviction of tenants by making it less
6 burdensome for landlords to name and serve the
7 tenants in the initial action. We therefore look
8 forward to exploring language with the Council
9 that would assist tenants without exposing them to
10 these substantial risks. Lastly, the bill
11 requirements put HPD in the position of providing
12 legal advice to private tenants which we do not
13 feel is an appropriate role for a governmental
14 agency. While it is important that tenants be
15 aware of their rights and pending actions and many
16 of the initiatives that I previously described
17 work towards this purpose, these bills do not lay
18 out a clear process for either HPD or the
19 mortgagee. Most importantly, in their existing
20 form, they might not truly benefit the tenants in
21 properties facing foreclosure. The foreclosure
22 crisis is a challenge for all of us. It requires
23 an approach that can only be successful with the
24 cooperation and participation of government and
25 our partners in the private and not-for-profit

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2 sectors. Accordingly, we would like to continue
3 to work with the Council on programmatic and
4 legislative ideas that can provide some solutions
5 to these challenges that face all of us. Thank
6 you.

7 CHAIRPERSON DILAN: Thank you, Mr.
8 Rosenberg. I just want to acknowledge that these
9 bills are in their beginning stages and clearly
10 need some work. Conceptually I'm a supporter of
11 the items on today's agenda but I'm withholding my
12 support until we work through the committee
13 process to see how we can make them better.
14 Eventually I think we can get there and that's the
15 reason these items are before the committee today.
16 You stated in your testimony that there are a
17 little bit over 1,000 properties subject to
18 foreclosure actions in the city.

19 JOSEPH ROSENBERG: There were 1,065
20 foreclosure actions citywide in the first quarter
21 of 2009.

22 CHAIRPERSON DILAN: That's just for
23 the first quarter?

24 JOSEPH ROSENBERG: Yes.

25 CHAIRPERSON DILAN: So we can

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2 safely project that out on an annual basis to say
3 it will come in somewhere around 4,000. Would
4 that be fair?

5 JOSEPH ROSENBERG: Yes. As I
6 indicated, it's about 35% higher than it was in
7 2006 and 2007. Although we don't suffer from the
8 problems as much as other cities, it clearly is a
9 crisis here as well.

10 CHAIRPERSON DILAN: These are the
11 ones that are currently at auction.

12 JOSEPH ROSENBERG: Yes, that's
13 correct.

14 CHAIRPERSON DILAN: How many
15 foreclosure actions are currently pending in the
16 courts? Do you have that data?

17 JOSEPH ROSENBERG: No, I don't but
18 I can certainly get that for you.

19 CHAIRPERSON DILAN: When you
20 provide that data if you could also add how many
21 of those actions are on properties of one to five
22 and how many are six units or more.

23 JOSEPH ROSENBERG: I think the vast
24 bulk is properties that are one to five units. If
25 you'd like, we can try to itemize it by the

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neighborhoods that they're in.

CHAIRPERSON DILAN: That would also be helpful. Currently on a foreclosure of a multiple dwelling or a rent stabilized building that exceeds five units, is there any provisions under state law that provides any notice or protection for the tenants?

JOSEPH ROSENBERG: You've got protections under the multiple dwelling and under the state laws, if they're rent regulated units, such as the ones you mentioned, there are notice requirements. I think that also under the Real Property Action and Proceedings law there are notice requirements as well.

CHAIRPERSON DILAN: If you don't know the answer, that's fine, you may not know the answer, but who then is responsible for providing notice under those state statutes?

JOSEPH ROSENBERG: I'll have to check but I think under the multiple dwelling law it might be the mortgagee in possession. But there are several state laws that govern this that vary from multiple dwelling to real property action proceedings as well as the emergency tenant

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protection acts when it comes to notification.

CHAIRPERSON DILAN: I know we may have gone over this at our last hearing on foreclosures in 2007. I think Commissioner Donovan, who is now HUD secretary did it at the time. Could you basically describe the foreclosure process for us and how long the proceedings generally take?

JOSEPH ROSENBERG: Lis pendens is filed, which is basically kind of a notice where there are lots of liens placed on the properties. The foreclosure process itself can take many, many months and that's actually one of the reasons why I indicated some concern with two of the bills here. The bills indicate that as the foreclosure process starts there's an interest in getting notice to the tenants right away. Very early in the process sometimes that can result in frankly alarm and confusion to the tenants, especially where they're in unregulated homes. So it can be quite a few months for the foreclosure process. Towards the very end, right now, currently, the law requires that for eviction it's a ten-day notice to quit. That is something that I'm aware

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2 that the state is looking at very carefully and
3 might be interested in extending to more than ten
4 days.

5 CHAIRPERSON DILAN: For unprotected
6 units, buildings below the six-family threshold,
7 what type of protection do the tenants currently
8 have in these dwellings?

9 JOSEPH ROSENBERG: Right now, under
10 the Real Property Actions and Proceedings Law
11 there is a notice to homeowners, not to the
12 tenants. My understanding and I think one of the
13 bills that was originally on as a resolution
14 before this committee until several days ago
15 attempts to address the notice issue and is being
16 worked on and might have some substantial changes
17 in Albany that deals with notice as well to
18 renters. That really is the crux of the issue.
19 As difficult as the problem is for tenants in
20 buildings that are covered by various state laws,
21 it's the one and two-unit homes where there is the
22 most vulnerability for tenants.

23 CHAIRPERSON DILAN: So you're
24 telling me essentially that any of the larger
25 buildings that are protected by the rent

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2 stabilization laws, should they go into and
3 complete the foreclosure process and they're up
4 for auction, the tenants are still protected by
5 the rent stabilization laws.

6 JOSEPH ROSENBERG: They're
7 protected also through the fact that they have
8 leases in place that are governed by state law.

9 CHAIRPERSON DILAN: So the next
10 owner by that building is still required to keep
11 those people in at the current rent levels.

12 JOSEPH ROSENBERG: That's correct.

13 CHAIRPERSON DILAN: Council Member
14 Garodnick? If any other members have questions
15 just please let me know and we'll get you on after
16 Council Member Garodnick.

17 COUNCIL MEMBER GARODNICK: Thank
18 you, Mr. Chairman, and thanks to HPD for their
19 testimony. I just wanted to go through a few
20 items if you don't mind. I appreciate your
21 thoughtfulness. The testimony seems like it was a
22 bit what I remember from issue spotting in law
23 school where you're identifying potential problems
24 that may or may not actually exist with the bills
25 but you wanted to flag them. We certainly do

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2 welcome the opportunity to work with you to make
3 these bills something that you will support
4 without any hesitation or question.

5 JOSEPH ROSENBERG: That's always a
6 great place to get to.

7 COUNCIL MEMBER GARODNICK: That's
8 certain where we're starting today. You mentioned
9 that Intro 956 and 959 could have the undesired
10 effect of alarming tenants about actions that end
11 being resolved short of foreclosure. What I
12 wanted to understand from you is once a
13 foreclosure proceeding is initiated, what is the
14 likelihood that the property will end up in
15 foreclosures?

16 JOSEPH ROSENBERG: I don't have
17 percentages on that. I think what I was really
18 trying to focus was that I think that everyone in
19 this room, even those of us who are attorneys, we
20 see legal notices that can often be quite
21 frightening and often not know what to do or
22 really what the magnitude or the effect of the
23 notice is. So what I was really doing her was
24 making the suggestion that although notice is
25 important, perhaps rather than have HPD or another

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2 agency determine what the form of something might
3 be, the language be spelled through an agreement
4 with the legislative body and the administration
5 of what might work. So it's kind of a plain
6 language notice. In response to your question as
7 well, right now one of the problems I think is
8 this ten-day notice to quit. Certainly, if the
9 time spans are so quick where someone could really
10 lose their apartment, that's something that should
11 be extended quite a bit. What I was trying to get
12 at was the combination of plain language in terms
13 of notice, maybe not at the outset, and also
14 increasing the timeframes. I don't know frankly
15 if this is something that is completely under
16 local jurisdiction or state.

17 COUNCIL MEMBER GARODNICK: I think
18 you make a correct point there in terms of
19 changing the number of days may be outside of our
20 realm. So you don't know how many properties end
21 up in foreclosure when a foreclosure proceeding is
22 initiated?

23 JOSEPH ROSENBERG: No. I think
24 there has been a lot of attention recently both
25 with the Office of Court Administration, banks

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2 making initiatives on their own attempting to have
3 settlement conferences, moratoriums on some
4 actions, so there has been a real shift, although
5 not wholly successful, but certain a step in the
6 right direction on trying to make sure that when
7 someone is faced with this that there are
8 settlement conferences and other manners to
9 protect them.

10 COUNCIL MEMBER GARODNICK: I
11 understand. The 1,065 foreclosures that you cited
12 in the first quarter of '09 were those
13 commencements of foreclosure actions or were those
14 foreclosures?

15 JOSEPH ROSENBERG: Those were
16 foreclosure auctions. They were auctions in
17 themselves.

18 COUNCIL MEMBER GARODNICK: So
19 that's the end of the line.

20 JOSEPH ROSENBERG: That's the end,
21 right.

22 COUNCIL MEMBER GARODNICK: Do we
23 know how many were commenced in the first quarter
24 alone?

25 JOSEPH ROSENBERG: We could try to

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find that out for you.

COUNCIL MEMBER GARODNICK: Because that's the answer to the question and that would be very useful.

JOSEPH ROSENBERG: Understood.

COUNCIL MEMBER GARODNICK: Going to your point about alarming tenants, we don't want to alarm tenants. We also want to make sure that they have all of the information that they need to be able to make constructive decisions. If there were a vast differential between the commencement of a foreclosure action and the ultimate auction, well that goes to your point, which would be a good one in that context. But if, in fact, when it's commenced it is most likely going to proceed to conclusion, then the concern about alarm fades in connection with the need to give useful information. You probably agree with that, right?

JOSEPH ROSENBERG: That's a good point and something that we'll pursue with you.

COUNCIL MEMBER GARODNICK: In terms of your next point that the notice might actually unintentionally speed the eviction of tenants by making it less burdensome for landlords to name

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2 and serve the tenants in the initial action. I go
3 back to the point about issue spotting. We don't
4 have any reason to think that landlords would
5 actually take that step of naming individual
6 tenants to satisfy their burden here do we?

7 JOSEPH ROSENBERG: Not here. But I
8 think it makes them more vulnerable to being named
9 as defendants for the purpose of not just getting
10 the homeowner out but the tenants as well. It was
11 just something that we thought might be a specific
12 problem. But we could certainly talk more about
13 it.

14 COUNCIL MEMBER GARODNICK: Let's
15 just understand that for a minute. Somebody who
16 is seeking to abrogate a lease term through a
17 foreclosure proceeding has to name the tenants in
18 residence. Correct?

19 JOSEPH ROSENBERG: That's right,
20 yes.

21 COUNCIL MEMBER GARODNICK: If they
22 have no intention of doing that, they don't need
23 to name the tenants in residence. And if they
24 name the tenants in residence it does not
25 necessarily mean that they will ultimately seek

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their eviction. Is that also right?

JOSEPH ROSENBERG: That's true,
yes.

COUNCIL MEMBER GARODNICK: So the
point about notice or burden or anything like that
it doesn't seem like we have any information which
would suggest that this would be less burdensome
or more burdensome or whether a lender or property
owner would take one step over the other in this
context. Is that fair?

JOSEPH ROSENBERG: That's true.
It's just a point that we were trying to make to
talk about the need to really tighten legislation
which we need to talk to you about and how we
proceed here.

COUNCIL MEMBER GARODNICK: We want
it to be tightened legislation for sure. The
other point that you raised was about HPD
providing legal advice to private citizens which
you don't feel is an appropriate role for a
government agency. HPD I'm sure gets phone calls
all the time from tenants saying, "Can you tell me
whether I have a right to a lease renewal as a
rent stabilized tenant?" I'm sure that HPD

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answers that question, right?

JOSEPH ROSENBERG: Actually we refer them to DHC.

COUNCIL MEMBER GARODNICK: You refer them? You don't answer that?

JOSEPH ROSENBERG: No, we don't.

COUNCIL MEMBER GARODNICK: What if they called and they said, "My building is undergoing the T SEP [phonetic] program."

BARBARA FLYNN: Call Gale Brewer.

COUNCIL MEMBER GARODNICK: You send them to Gale Brewer.

JOSEPH ROSENBERG: Let the record show we don't always send them to your colleague.

COUNCIL MEMBER GARODNICK: Would you explain to them what that means or could mean for them?

JOSEPH ROSENBERG: We are very, very careful when we get inquiries of this nature regardless of what the questions are. We're very aware that we often have to have a balance of what we do here. You're familiar with all of our programs. We like to think that we are being extremely fair and balanced and nuanced in how we

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2 deal with owners and tenants alike. So we're
3 actually very sensitive to this issue.

4 COUNCIL MEMBER GARODNICK: Do you
5 have the fact sheets that you put out on a variety
6 of issue? J51 tax abatement?

7 JOSEPH ROSENBERG: Fact sheets we
8 would. But the reason why I mentioned this in the
9 testimony is because we are very careful about
10 having symposiums or conferences where we indicate
11 what tenants' rights are, or owners' rights too
12 for that mater. Attorneys who work for the agency
13 are very important on making sure there's a
14 balance. We will often refer them to groups that
15 either owner reps or advocacy reps because this is
16 something we really are very careful of.

17 COUNCIL MEMBER GARODNICK: When you
18 say plain language it's because of this?

19 JOSEPH ROSENBERG: Yes.

20 COUNCIL MEMBER GARODNICK: When you
21 say you want HPD to give plain language it's
22 because of this concern of balance and fairness
23 and not getting on the wrong side of the law?

24 JOSEPH ROSENBERG: Right. But I
25 also note that there is an instance I believe in

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2 the RPAPL of plain language on notice to
3 homeowners. I don't know how long it's been on
4 the books.

5 COUNCIL MEMBER GARODNICK:

6 Understood. What we are adding here and what
7 we're trying to do and I will put this out there
8 so we're on the same page, is we're not looking
9 for a plain language notice to satisfy a formal
10 legal requirement. What we want is for tenants to
11 know what their options are or what their rights
12 are. Whether they're going to get pushed out of
13 their apartment? Whether at the end of the
14 foreclosure proceeding if they're a rent
15 stabilized tenant does that mean they're going to
16 have to leave? If they don't have a lease, does
17 that mean they have any rights?

18 JOSEPH ROSENBERG: From a factual
19 basis you're correct.

20 COUNCIL MEMBER GARODNICK: I'm
21 correct about what?

22 JOSEPH ROSENBERG: I'm being very
23 careful in saying in what we would advocate for or
24 not. But it is our job and this is something we
25 do in many instances to provide factual

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2 information as to what possibilities can occur and
3 what things might be done.

4 COUNCIL MEMBER GARODNICK: That's
5 really all we're looking to accomplish here. Not
6 to have HPD provide legal advice but rather to
7 provide basic factual information about what the
8 facts are, what the law is. So that would be
9 something which HPD could engage in.

10 JOSEPH ROSENBERG: Yes, that's
11 true.

12 COUNCIL MEMBER GARODNICK: Just a
13 couple more questions then I know there are others
14 here with questions. When a foreclosure action is
15 commenced and individual tenants are named, do you
16 know how frequently that happens where individual
17 tenants are named in a foreclosure action, either
18 as John or Jane Doe or by their own names? Do we
19 have any data or statistics on that?

20 JOSEPH ROSENBERG: It's probably
21 not something we would keep. We can check with
22 some of our sister agencies or perhaps other
23 groups that might look at this. We'll check on
24 that.

25 COUNCIL MEMBER GARODNICK: I think

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2 that would be important for us to know in this
3 context. I assume that it is in the discretion of
4 the bank or entity that's initiating the action to
5 determine whether individual tenants are named,
6 whether they're name as John or Jane Doe or
7 whether they're not named at all. Is that right?

8 JOSEPH ROSENBERG: Yes, it is.

9 COUNCIL MEMBER GARODNICK: In terms
10 of service, let's say there's a foreclosure action
11 and somebody wants to actually name tenants in my
12 building. How is a bank or other entity that's
13 commencing that procedure, how are they required
14 to communicate with me to tell me that I've been
15 named in a foreclosure action?

16 JOSEPH ROSENBERG: I'll have to
17 check that. I don't know what the existing method
18 of notice is. I mean in both of these bills there
19 are two separate ways of doing.

20 COUNCIL MEMBER GARODNICK: That's
21 under these bills. I'm not talking about the
22 bills. I'm talking today under existing law. Are
23 they required to do ordinary legal service rules
24 under the CPLR? That's the answer. It sounds
25 like the answer may be that.

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2 JOSEPH ROSENBERG: Yes, I think
3 it's under the CPLR.

4 COUNCIL MEMBER GARODNICK: I'd like
5 to double check that one and we can do that in a
6 more formal way. Once a foreclosure action has
7 been initiated by a bank or other entity, can the
8 landlord of the building, the existing owner of
9 the building, continue to offer renewals of leases
10 in the interim?

11 JOSEPH ROSENBERG: Yes. There's
12 not a stay on that. It can continue.

13 COUNCIL MEMBER GARODNICK: When
14 they do that do they have any obligations to
15 inform tenants in that context that the building
16 is under foreclosure?

17 JOSEPH ROSENBERG: I don't know if
18 that's mentioned in state law.

19 COUNCIL MEMBER GARODNICK: I think
20 they don't.

21 JOSEPH ROSENBERG: I think you're
22 right on that.

23 COUNCIL MEMBER GARODNICK: That
24 puts the tenants in a situation where some may be
25 renewing leases in buildings that are being

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2 foreclosed without knowledge of the fact that that
3 might have impact on maintenance and other things.
4 They might have leases whose terms end moments
5 before the ultimate conclusion of a foreclosure
6 action and any other number of scenarios including
7 a rent stabilized tenant who may be absolutely
8 protected but may hear about a foreclosure and
9 feel like they have to leave prematurely which
10 also would be an unfortunate result.

11 JOSEPH ROSENBERG: I think the CPLR
12 is on that.

13 COUNCIL MEMBER GARODNICK: Those
14 are the issues that we want to get to. It's not
15 about plain vanilla, it's about giving the facts
16 and the rights. If I hear you correctly, it
17 sounds like you are supportive of this concept but
18 you want the obligations on HPD to be clear and
19 within your expertise and not going beyond that
20 balance that you have to maintain for both renters
21 and owners in the city. Is that fair?

22 JOSEPH ROSENBERG: That's exactly
23 it.

24 COUNCIL MEMBER GARODNICK: Thank
25 you very much.

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JOSEPH ROSENBERG: Thank you.

CHAIRPERSON DILAN: Thank you,
Council Member Garodnick. Council Member Brewer
and before we get to Council Member Brewer, I
failed to mention that Council Member Mendez was
here at the outset of the hearing. She was
sitting directly behind me so I didn't see her.
Council Member Brewer?

COUNCIL MEMBER BREWER: Thank you
very much. Maybe I should know this, but I
certainly use CNYCN for people who have mortgage
issues. Can tenants in foreclosed buildings call
them also or just owners?

JOSEPH ROSENBERG: I think it's
both. They're an excellent group that's done a
lot of work since they've been recently created.
There's several reps here too I believe.

COUNCIL MEMBER BREWER: I don't
know if it's clear. Maybe it is to everybody but
me. But that might be something to think about as
you are thinking about people's rights.

JOSEPH ROSENBERG: We can get you
some more information on the work they do.

COUNCIL MEMBER BREWER: That might

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2 be another place for information sheets to be
3 available. Because I think people think, even
4 incorrectly, that it's just for those who hold the
5 mortgage.

6 JOSEPH ROSENBERG: That's a good
7 point. I think one of the most important things
8 here is disseminating information so people are
9 aware of what options are out there.

10 COUNCIL MEMBER BREWER: Because if
11 we're in the interim period and trying to figure
12 out how to notify people, one thing to do would be
13 to think of posting information that CNYCN is
14 available to everybody. I hate this term of
15 blackballing tenants. I hit it for the first
16 time, as you know, at the Sheffield where
17 overnight 700 people left because they could not
18 have a mark on their bond when they worked on Wall
19 Street. So they were afraid to put their rent in
20 escrow. They were afraid of everything. So that
21 whole issue of renters not being able to
22 participate in any kind of a rent strike or
23 problems with rent I think impacts perhaps their
24 livelihood sometimes. It's the tenant blacklist
25 in reverse. I guess my question is that would be

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2 another place that tenants need information
3 because if you're in a rent stabilization and you
4 call DHCR and it's clear what your rights are.
5 But for those free market residents it's not so
6 clear. So I guess that's another reason just so
7 you know so that people are clear on what their
8 rights are. We've never experienced this kind of
9 wholesale perhaps evictions. Again, it's not just
10 in the foreclosure; it's in other things too. But
11 that whole issue of getting blackballed and then
12 your job being impacted is just another aspect of
13 this mess. I also have a question about repairs.
14 I've only had one building in this situation but
15 Council Member White has many. The issue is
16 tenants panic about maintenance. All of the
17 sudden who's going to take out the garbage, et
18 cetera? Who's the super? The super disappears.
19 The super may not have been paid. That happened
20 in this situation. When tenants call 311 can that
21 be matched with buildings that are somehow
22 undergoing auction mortgage issues? Is there some
23 way that that can be triggered so that there's a
24 knowledge that there's a tenant situation that is
25 also matched with foreclosure issues?

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2 JOSEPH ROSENBERG: That's a good
3 question. We can check on that because it would
4 make sense. We pride ourselves on knowing as much
5 about a building as possible. That would be
6 something that would be helpful, not just to the
7 tenants and the elected officials, but to us as
8 well. I'll check that. But as you know, if there
9 are maintenance problems there's still many other
10 options, such as code enforcement, 311, the RP
11 program, seven day administrators if it's a
12 multiple dwelling.

13 COUNCIL MEMBER BREWER: But I think
14 people do not understand that if the landlord has
15 issues that are beyond their control who is in
16 charge of the building. Is it the bank? Is it
17 somebody else? In this particular case it wasn't
18 clear that I know of. You mentioned DHCR, I
19 mentioned DHCR in terms of the time issues. Are
20 there any other roles in this discussion that DHCR
21 is playing or maybe should play in terms of
22 notification? They're obviously going to be
23 focused only on the rent regulated.

24 JOSEPH ROSENBERG: I frankly don't
25 know whether the DHCR has been a part of

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2 discussions with the drafting that's been
3 occurring up in Albany. I can't really mention
4 that or not.

5 COUNCIL MEMBER BREWER: Thank you,
6 Mr. Chair.

7 CHAIRPERSON DILAN: Thank you,
8 Council Member Brewer. I just want to follow up
9 on that line of questioning because that's
10 something that I'm concerned about. I think the
11 maintenance of these buildings is a concern. It's
12 a concern in my neighborhood. I've called
13 yourself or Barbara Flynn several times about
14 maintenance of a building that was held by a bank
15 after foreclosure proceedings. I think the key
16 here for me is at what point should the bank be
17 responsible for the general maintenance of it?
18 That's excluding any capital improvements that are
19 done to the building. That's the tricky part for
20 me because at a certain point in the foreclosure
21 proceedings the owner may still be responsible for
22 the building. In my opinion, if the owner is
23 still residing or still responsible or potentially
24 still collecting rent, the owner should still be
25 responsible at that point. That's something that

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2 I need clarified for myself. I'd like to see it
3 clearly delineated what entity is responsible for
4 maintenance and when. The several examples that I
5 cited to you the city ended up picking up the cost
6 for a lot of the maintenance and I think that's
7 certainly something we want to avoid. We want to
8 avoid the city picking up these charges.

9 JOSEPH ROSENBERG: As you know,
10 that ends up putting liens on the property as well
11 and that heads it in the direction which I think
12 none of us want to see.

13 CHAIRPERSON DILAN: I didn't hear
14 you say anything in your testimony as it relates
15 to registration. The agency's position in terms
16 of having the banks register, is that something
17 that you have a position on yet?

18 JOSEPH ROSENBERG: We certainly
19 have a very sophisticated website. But I think
20 one of the things here is that it seems to be a
21 little burdensome. We don't know what effect it
22 will have or how much good it will ultimately do.
23 It requires a monthly update and it requires I
24 think the mortgagee's cooperation to update it on
25 a constant basis. So there's a penalty in the

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2 legislation if it's not updated but it's not clear
3 how to enforce it or really what to do with it. I
4 think that we're going to take a closer look at
5 what's required in the bill for us to put on the
6 website and talk to some other sister agencies and
7 to see to what extent they have information like
8 that already.

9 CHAIRPERSON DILAN: I just want to
10 note that we've been joined by Council Member
11 James Oddo of Staten Island who is the minority
12 leader. I believe that's all the questions I
13 have. I certainly think that before disposition
14 of these items there needs to be further
15 conversation so that we can tighten these up.
16 There are plenty of loose ends on these agenda
17 items but I certainly think the intent and
18 direction is worthy of this committee exploring.
19 Short of any questions from Council Member Oddo,
20 you're free to go.

21 JOSEPH ROSENBERG: Thank you very
22 much.

23 CHAIRPERSON DILAN: Thank you. The
24 first person I want to call up to provide
25 testimony is Vicki Been from the Furman Center and

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2 it'll be followed by Michael Smith of the New York
3 Banker's Association. So it'll be Been and then
4 Michael Smith. Before you begin I just want to
5 acknowledge that we've been joined by the newest
6 member of the Housing and Buildings Committee,
7 Elizabeth Crowley. You can begin. Just start by
8 introducing yourself in your own voice for the
9 record and then you can get directly into your
10 testimony.

11 VICKI BEEN: Chairman Dilan and
12 other members of the committee, my name is Vicki
13 Been and I'm the Elihu Root Professor of Law at
14 NYU Law School and the Director of the Furman
15 Center for Real Estate and Urban Policy. The
16 Furman Center, for those of you who don't know, is
17 a joint research center between the Law School at
18 NYU and the Wagner School of Public Service. We
19 were founded in 1995 and we try to bring the
20 expertise of our law faculty and the faculty of
21 our public policy school along with the talents
22 and energy of our phenomenal students from all
23 over parts of the University at NYU to bear on
24 urban problems. We are an academic research
25 center that's devoted to the public policy aspects

1 of land use, real estate development and housing.
2 Let me start by thanking the committee for
3 tackling this very important issue. Tenants are
4 innocent victims of the nation's foreclosure
5 crisis and often are overlooked in the public
6 policy debates about responses to the crisis.
7 Thousands of tenants in New York and millions
8 across the country have put down security
9 deposits, secured leases, paid their rent on time
10 many times for many years, believing that they
11 were protected from sudden dislocations or
12 upheaval and considered themselves lucky to have
13 avoided the subprime loans that helped to
14 precipitate the mortgage crisis. Then
15 unfortunately they wake up to find themselves
16 without any utilities because they've been shut
17 off or wake up to find an eviction notice or a
18 "for sale" sign on their door, often with very
19 little warning and learn that they are among the
20 countless victims of the foreclosure crisis.
21 While tenants in rent regulated or Section 8
22 apartments are statutorily protected from
23 foreclosure related evictions, as you heard
24 earlier, other tenants in New York City and around
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2 the country are not. To aid the committee as it
3 evaluates the bills today, I want to just provide
4 an overview of the available data on the scope of
5 the tenant foreclosure crisis in New York City and
6 discuss very briefly the range of solutions that
7 are being adopted or considered across the United
8 States. In 2007, we found that well over half of
9 all of the foreclosure filings in New York City
10 were on two to four-family or five plus unit
11 dwellings. That affected an estimated 15,000
12 renter households. In 2008 we saw an increase in
13 the number of foreclosure filings on five plus
14 buildings, which drove the total number of
15 affected renter households in New York City up to
16 about 16,000. Data for the first quarter of 2009
17 show an even more dramatic increase in the
18 foreclosure filings affecting tenants in five plus
19 buildings. In all of 2007 about 4,000 units that
20 were affected by foreclosures were in five plus
21 buildings. In the first quarter of 2009 alone,
22 more than 4,500 units in five plus buildings were
23 receiving foreclosure filings. So we're seeing an
24 explosion of the units at issue in five plus
25 buildings in 2009. This very stark increase in

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2 the number of tenant households affected is very
3 troubling, obviously, and makes the committee's
4 attention to this issue all the more important.

5 The tenants who are affected by the foreclosure
6 filings can suffer many negative consequences. As
7 we talked about in New York City, many tenants are
8 protected by rent regulation laws. But only about
9 half of the tenants in New York City are protected
10 by those rent regulations, so about half of the
11 rental units in the city do not have those
12 protections. If they do not have those
13 protections they can be forced to deal with
14 utility shutoffs. They can be forced to deal with
15 declines in repair and maintenance, as you flagged
16 earlier. After eviction their lives can be very
17 severely disrupted. They have to find another
18 apartment in a tight market very quickly. They
19 often have to move their kids from one school to
20 the other in the middle of the school year, some
21 of the worst possible times for kids. They're
22 likely to be unable to recover their security
23 deposit. If they go all the way through eviction,
24 the eviction shows up on their credit record,
25 making it very difficult for them to secure a new

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2 apartment. There are a range of solutions that
3 are being tried across the country to deal with
4 this problem and I've given you a copy of a law
5 review article that we published recently that
6 takes a look at the range of options that are out
7 here. I wanted really to just flag a couple of
8 them for you, not so much to comment on these
9 particular bills, but really to put them in
10 perspective of the range of things that people are
11 doing. Chicago has been very successful in this.
12 They're in forming tenants of their rights and
13 trying to provide relocation assistance and other
14 sort of intervention once they find out that they
15 are the subject of an eviction notice or that
16 their homes are subject to foreclosures. One of
17 the things that we've observed is that even those
18 tenants for example who are in rent regulated
19 apartments and therefore have protections in a
20 foreclosure situation often don't know about their
21 rights. They're often offered cash for keys by
22 the holder of the mortgage and they're often given
23 a very short period of time. They're told, we'll
24 give you \$2,000 cash for keys to move out, it's a
25 one-week offer. If you don't take our money

1 within one week, the offer is gone. So the
2 Chicago program really tries to intervene at that
3 point, tell the tenants what their rights are and
4 try to prevent some of this sort of push out
5 situations. Notice, which is the subject of your
6 bills, many states are considering or have adopted
7 legislation requiring that tenants receive notice.
8 About 17 states across the country have notice
9 requirements for tenants and require that the
10 tenant receive a notice at the time that the lis
11 pendens is filed or require that tenants receive a
12 notice for some period of time before they can be
13 evicted. A number of states, for example,
14 Arizona, Nevada and Missouri, are considering
15 adding addition notice requirements, while about
16 17 states, including California and Minnesota have
17 already adopted some form of notice requirements.
18 The third thing that is being done across the
19 country is states are trying to take action to
20 prevent utility shutoffs. During the foreclosure
21 process tenants may be left without utilities or
22 repair services. Pending legislation in Rhode
23 Island would require that the new owners, whether
24 the new owners be the bank through REO or new
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1 purchasers at auction have to continue to provide
2 essential services to the sitting tenants. Some
3 places are considering requiring that the lenders
4 foreclosing on a property give notice to the
5 utilities saying that tenants are still there and
6 that they should not cut off the utilities. And
7 then the last thing is to preserve the tenancies
8 themselves by requiring either the lenders or the
9 new owners to honor the current leases or to
10 execute new leases. Three states, New Jersey, New
11 Hampshire and Washington, DC, protect tenants
12 through just cause laws, which protect tenants in
13 a similar manner to our rent regulation laws.
14 Other states, including Massachusetts, are
15 considering similar types of rules. Some cities
16 have adopted just cause eviction statutes to deal
17 with the tenants who are being affected by
18 foreclosures. Some cities, again Chicago is a
19 leader in this, are providing emergency renter's
20 location assistance to renters who find themselves
21 in these situations. This problem has received
22 some additional attention on the national front.
23 Fannie and Freddie announced rental policies for
24 their REO properties which offer tenants in the
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2 properties either new month to month leases or
3 financial assistance for moving. The recently
4 passed American Recovery and Reinvestment Act
5 provides tenants with some further protections.
6 Tenants in properties that receive funding under
7 the Neighborhood Stabilization Program must now
8 receive 90 days notice before eviction. If they
9 have leases, they may remain for the remainder of
10 the lease term. For tenants that are not
11 protected by the American Recovery and
12 Reinvestment Act, HR1247 if passed, will extend
13 that protection to all tenants. So there is
14 action in Congress as well that we should be aware
15 of. The new programs and legislation that I've
16 discussed that have been put into place have been
17 put into place really too recently for us to have
18 an empirical basis for judging whether they're
19 working or not or what the best practices are. I
20 would just caution, again in line with what HPD
21 was saying, is that there are costs to be
22 considered here when we're thinking about the
23 kinds of protections that need to be put into
24 place. We're completely in favor of providing
25 protections for tenants. But we also have to be

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2 concerned about either them getting notice too
3 early. You asked earlier how long the foreclosure
4 process takes. It can take up to about 18 months
5 in the city. Indeed, we studied the length of
6 time that it was taking in 2003-2004 and it was
7 taking about 18 months. So if a tenant gets
8 notice when the lis pendens is filed, the actual
9 foreclosure auction could take another 18 months
10 to happen. If the tenant moves out immediately
11 upon receiving that notice you could then end up
12 with a vacant house for that 18-month period. So
13 it does have to be fine tuned between the need to
14 protect the tenants and to encourage workouts, and
15 encourage modification and encourage ways to keep
16 the owners of the properties in place but also
17 then to discourage vacant properties that are a
18 blight on the neighborhood for long periods of
19 time. Thank you.

20 CHAIRPERSON DILAN: Thank you. I'm
21 going to start with Council Member Garodnick.
22 Before we go with Council Member Garodnick, I just
23 want to acknowledge that we've been joined by
24 Council Member Leroy Comrie of Queens. Council
25 Member Garodnick?

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2 COUNCIL MEMBER GARODNICK: Thank
3 you, Mr. Chairman. Thank you for your testimony.
4 A question that I had for HPD a few minutes ago
5 was related to the difference in the number of
6 cases that are commenced versus the ones that go
7 to an auction at the very end of the process. As
8 somebody who has studied this in great depth, I'm
9 looking forward to reading the law review article
10 that you have here; do you have a sense of how
11 much drop off there is or if you're able to drop
12 off? How does that happen if you were to file
13 that initial notice, how frequently does it happen
14 that the process is stopped?

15 VICKI BEEN: Unfortunately we don't
16 have good data on that because it's actually very
17 hard to track these things. We're in the middle
18 of matching four different databases, which is a
19 very laborious process. It actually takes four
20 different databases, some of which are not
21 publicly available in order to figure that out.
22 But there is considerable drop off. He gave a
23 number of I think about 1,400 foreclosure
24 auctions.

25 COUNCIL MEMBER GARODNICK: Yes,

1
2 1,065.

3 VICKI BEEN: Keep in mind that for
4 example last year there were about 16,000 notices
5 of lis pendens.

6 COUNCIL MEMBER GARODNICK: The
7 number he gave was for a quarter.

8 VICKI BEEN: So if you multiply
9 that by four quarters you're comparing essentially
10 4,000 or 5,000 foreclosure auctions.

11 COUNCIL MEMBER GARODNICK: And what
12 is the reason for the drop off do you think?

13 VICKI BEEN: Once a property
14 receives a notice of lis pendens, the homeowners
15 could remedy the default. They could work
16 something out with the lender or the servicer to
17 rework the mortgage. They could engage in what
18 are called short sales which is they sell the
19 property and satisfy the lender, even if it's less
20 than the amount of the mortgage or they can end up
21 in auction. Many times the homes that end up in
22 auction, of course, are then retained by the
23 lender. So they're REO, real estate owned
24 property. So any number of things can happen
25 between the lis pendens and the actual auction or

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sale to a third party.

COUNCIL MEMBER GARODNICK: Lots of options. It sounds like it's complicated. Do you think the tenants should know what's happening out there, about what the possibilities are during the course of this process?

VICKI BEEN: It's hard to argue that tenants should be kept in the dark. I'm not going to ever advance that proposition. Of course tenants need to know. One of the things that we haven't talked about is fraud on tenants. That's happening too where somebody knows they're going into foreclosure, they rent the apartment out, they collect security deposit and one or two months rent and know that the building is in foreclosure and the tenants really have no way of finding that out. That's happening as well. So of course tenants should receive notice. I think the real question is where and in what form and in what process and how do we balance the need to give the tenants notice and the desire not to scare the tenants into leaving quickly when it might be in everybody's interest to try to work something out over time.

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2 COUNCIL MEMBER GARODNICK: I think
3 that we all are of the view, because this is what
4 motivates this legislation that nobody wants to
5 scare the tenants. There's a difference between
6 notice as we appreciate it as lawyers or advocates
7 that plain language, certified mail envelopes with
8 lawyer letterheads and things like that versus
9 what we envision which is something which gives
10 people and understanding commonsense language that
11 is easy to understand that does not alarm
12 unnecessarily but rather calms the people who
13 should be calmed and allows people who have some
14 reason for concern to know what their rights are.
15 I call it a notice but maybe we shouldn't really
16 call it a notice. Maybe we should just call it an
17 advisory or communication. Do you think that that
18 which I'm describing now is the sort of thing
19 which would benefit tenants to be able to have?

20 VICKI BEEN: Yes. I think it would
21 be especially helpful if the information gave them
22 some sense of the timing and how much time the
23 average foreclosure takes and where things are so
24 they had a sense that they didn't have to leave in
25 the next week.

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2 COUNCIL MEMBER GARODNICK: Right
3 on. That sounds right to me. You said there are
4 17 states that have certain notice requirements
5 right now. Has there been any concern expressed
6 by the people who have to give the notice about
7 burdens? Has this created any problems in those
8 contexts? Have the banks or other foreclosing
9 entities been able to do that with little
10 difficulty?

11 VICKI BEEN: I have been able to
12 find no hard studies of what has actually
13 happened. You hear from a wide range of people
14 that there is a concern about whether this will
15 lead to essentially more vacancies and to
16 situations where the homeowner is not able to keep
17 a tenant in there while they're trying to work out
18 the default. There's no empirical evidence that's
19 showing how often that happens or that are
20 essentially balancing some of the dangers of
21 longer notice against the advantages of notice.

22 COUNCIL MEMBER GARODNICK: In fact,
23 it would seem to me that the notice that we're
24 proposing would have the effect of likely keeping
25 people in their apartments longer rather than the

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reverse.

VICKI BEEN: I think if they're well informed about the timeline, yes.

COUNCIL MEMBER GARODNICK: Really what I was talking about was the requirement that somebody actually send a little extra information to tenants. Have there been complaints that that is too much of a burden on the banks which are having to send out these notices in 17 states?

VICKI BEEN: Yes, there have been concerns expressed that the notices allow tenants to hold up the foreclosure processes too long. People can say all kinds of things and I don't have any reason to believe that that's happening or not. You asked me are people saying that and yes, people are expressing concerns. People are expressing concerns that it may make foreclosure more difficult so that banks will raise the rates on homes that have tenants in them. That could be a long-term impact. Yes, there are concerns about finding the right balance.

COUNCIL MEMBER GARODNICK: Is there anything that we are proposing here which actually changes the rights of a landlord versus a tenant

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2 or a bank relative to a tenant? Or is this, as I
3 view it, simply an opportunity to communicate with
4 tenants to let them know what is likely to happen
5 under the circumstances?

6 VICKI BEEN: It's more
7 informational. You are not changing the rights as
8 far as I can see.

9 COUNCIL MEMBER GARODNICK: So in
10 that context, those concerns, if that is what's
11 communicated, really would be unfounded. Is that
12 right? There's no way to hold up a foreclosure
13 proceeding by telling tenants what is fact and
14 what is law and what their rights are.

15 VICKI BEEN: You and I both know
16 that a good lawyer can use notice requirements to
17 hold things up.

18 COUNCIL MEMBER GARODNICK: You're
19 talking about if somebody fails to give
20 appropriate notice. That's what you're suggesting
21 right now. If somebody who is required to give
22 notice fails to give notice and what that could
23 mean for foreclosure action, is that what you're
24 saying?

25 VICKI BEEN: Or there are issues

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2 raised about whether there was a failure to give
3 correct notice.

4 COUNCIL MEMBER GARODNICK: Got it.
5 You're talking about complying with the notice
6 requirements. I'm talking about assume you comply
7 with the notice requirements, just the substance
8 of what is being communicated here, that's not
9 changing the rights of one party relative to
10 another and should have itself no implications on
11 whether somebody has a right to foreclose or
12 whether somebody has a right to stay as a rent
13 stabilized tenant or whether any of the other
14 existing rules apply.

15 VICKI BEEN: Right. I mean we're
16 not taking about rent stabilized tenants because
17 they already have a different set of rights.

18 COUNCIL MEMBER GARODNICK: They
19 might be worried.

20 VICKI BEEN: They might be, yes.

21 COUNCIL MEMBER GARODNICK: Do you
22 support the legislation?

23 VICKI BEEN: Let me make two
24 caveats. One is that the Furman Center does
25 research. We don't actually take positions on

1
2 specific bills. Certainly our work shows that
3 tenants are very much being harmed by the
4 foreclosure crisis and notice to the tenants seems
5 like a very minor step that one could take to help
6 tenants in that situation with the understanding
7 that one has to take into account the fact that
8 we're trying to protect tenants, we're trying to
9 protect homeowners and we're trying to protect
10 communities from not having vacancies and the
11 blight that that creates. You have to find the
12 right balance, but once you've found that right
13 balance, I think notice that helps to protect the
14 tenants in these situations will be a terrific
15 thing.

16 COUNCIL MEMBER GARODNICK: Thank
17 you very much.

18 CHAIRPERSON DILAN: We're not done.
19 I have some, I just let him lead off. Throughout
20 my chairmanship in this commission, I think
21 balance is one of the words that people have heard
22 me use the most over the past three and a half
23 years. I believe it's absolutely critical in any
24 legislation that we pass. I want to go back to
25 some of the information that you found out from

1
2 the 17 states that have passed some sort of notice
3 requirement and again, how they found the balance
4 to inform the tenants and at what point in the
5 process. I'm just sitting here listening and at
6 the lis pendens stage of the process it may cause
7 some tenants to panic and find other places to
8 live. Some tenants who are less affluent or have
9 less choices obviously are going to ride it out
10 and they're going to try to protect their
11 apartment which is their interest in maintaining
12 their tenancy there. Can you cite some examples
13 in the 17 states in terms of what part of the
14 entire process they found to inform the tenants of
15 what was going on in the building?

16 VICKI BEEN: Keep in mind that New
17 York's foreclosure process is I think the longest
18 in the country if not one of the longest. You're
19 looking at states where a foreclosure can take 30
20 days compared to New York where it can take 18
21 months. If you're in a state where the normal
22 foreclosure takes 30 days, you have much less
23 concern about finding the balance that we're
24 talking about.

25 CHAIRPERSON DILAN: I guess for the

1
2 sake of this argument then, let's eliminate those
3 cities that have it. I don't know Chicago's.
4 What is Chicago's?

5 VICKI BEEN: I have to get back to
6 you on Illinois' requirements, it seems like it's
7 60 days.

8 CHAIRPERSON DILAN: Well any other
9 state that has a longer process. I know Florida
10 and Arizona may have shorter processes, but I'm
11 not familiar with that myself. I probably have to
12 do my own research there.

13 VICKI BEEN: My understanding is
14 that the longest period of notice is about 120
15 days where the tenant would be given 120 days
16 notice before they could be evicted as a result of
17 a foreclosure. So my understanding is that that's
18 the longest. Again, it's too early to know how
19 that 120-day period is working. One has to keep
20 in mind both the state's foreclosure process and
21 also the percentage of units that are in
22 foreclosures that are affecting it.

23 CHAIRPERSON DILAN: That's
24 something that the committee will continue to look
25 into. Again, I want to say balance is key because

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2 I would say for the most part; most tenants are
3 innocent in a foreclosure process. You do have
4 some tenants that don't pay rent and that leads to
5 the foreclosure. They're not 100% innocent in my
6 opinion. You do have some landlords or some
7 homeowners who overcharge rent to meet their
8 monthly obligation to the banks. I think in all
9 of this finding the balance there and making this
10 come out right is absolutely critical. I look
11 forward to working with you in that process.

12 VICKI BEEN: We have a couple of
13 50-state surveys and a couple of summaries of the
14 various state provisions. If that would be
15 helpful I can certainly forward that all to you.

16 CHAIRPERSON DILAN: I would like
17 that. It can only help. Are there any other
18 questions? Council Member Brewer?

19 COUNCIL MEMBER BREWER: Thank you.
20 In that survey, do you also look at the
21 maintenance issue which the Chairman brought up
22 and is of concern I think to all of us? Was that
23 part of the survey, who takes care of maintenance
24 and are there issues, et cetera?

25 VICKI BEEN: The issue there is

1
2 whether the states specifically impose an
3 obligation upon whoever is buying a foreclosed
4 property at auction to provide essential services
5 to sitting tenants. So some states do have
6 particular requirements that the buyer continue
7 essential services and often will state some
8 period of time or for the remainder of the sitting
9 tenants' lease or that kind of thing. That
10 information is in the surveys. I mean this is
11 wrought up in a broader problem of who has a
12 responsibility to maintain the property whether
13 there's a tenant in there or not. That too is of
14 course receiving a lot of attention across the
15 country. States and cities are trying different
16 things to make the lenders or the purchasers at
17 auction have to bear the cost of keeping the house
18 or the apartments from falling into disrepair
19 whether they have a tenant or not.

20 COUNCIL MEMBER BREWER: Because
21 obviously here we have warranty of habitability
22 but if there is nobody doing the habitability
23 maintenance it's a moot issue. So people are very
24 confused about that.

25 VICKI BEEN: Yes, absolutely.

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COUNCIL MEMBER BREWER: Thank you.

CHAIRPERSON DILAN: Thank you,
Council Member Brewer. Ms. Been, thank you for
your time and your testimony today.

VICKI BEEN: Thank you.

CHAIRPERSON DILAN: Next we have
Mr. Michael Smith. He will be followed by Patrick
Kerr and Elise Brown. Mr. Smith, welcome.

MICHAEL P. SMITH: Good afternoon,
Mr. Chairman.

CHAIRPERSON DILAN: You can begin
your testimony by identifying yourself. And at
the appropriate time you can identify the lady
sitting beside you and you can get right into your
testimony.

MICHAEL P. SMITH: Thank you very
much, Mr. Chairman and members of the Council. My
name is Michael Smith and I'm president and chief
executive officer of the New York Bankers
Association. I am accompanied by Roberta Kotkin,
our general counsel and chief operating officer
and someone who is with me and with the
association for some 8 to 10 years as they have
been a major issue throughout the State of New

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2 York. On behalf of the banking industry and its
3 200,000 employees we thank you for this
4 opportunity to comment on Intros 889, 956 and 959,
5 all of which seek to add new responsibilities to
6 financial institutions and other entities who are
7 commencing foreclosure actions in the City of New
8 York. Let me just state that our association
9 represents all the federally insured commercial
10 banks and thrift institutions operating in the
11 State of New York, which is approximately 160
12 institutions. Although we fully appreciate the
13 goals of these proposals to make sure that tenants
14 have notice of pending foreclose actions and to
15 ensure that properties are maintained during the
16 foreclose process, we believe that the duties and
17 rights of mortgagers, mortgagees and tenants are
18 already clearly and appropriately addressed in
19 existing and potentially conflicting state law,
20 which has been noted already in this testimony and
21 which we have worked on with the state. New York
22 has one of the toughest and strongest mortgage
23 laws in the United States. In fact, it has been
24 in some instances, the template for recent federal
25 action. We further believe that particularly

1 during these very difficult economic times any
2 changes to foreclose-related procedures, if
3 warranted, should be consistent across the state.
4 Our long-term goal and our goal overall would be
5 throughout the United States. This will avoid a
6 patchwork of differing local laws and standards
7 throughout our state and beyond which can confuse
8 consumers and make compliance unduly and
9 unnecessarily burdensome for lenders and
10 servicers. Therefore, we are concerned that each
11 of these proposals, though well intended, could
12 ultimately result in fewer mortgages being made by
13 reputable financial institutions in the City of
14 New York. I might add, and I'm going to mention
15 this later, the role of the banking industry in
16 the mortgage industry, as you probably know, most
17 recently about a third of the mortgages in the
18 United States were by banks. Our association, as
19 I said before, is comprised of commercial and
20 thrift institutions. At the outset, I would like
21 to commend the Council as well as our state and
22 federal leaders for their strong commitment to
23 protect homeowners while maintaining access to
24 appropriate credit through a vibrant banking
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1 system. Coupled with a longstanding commitment of
2 our members to eradicate predatory lending
3 practices, New Yorkers have fared better during
4 the current economic and mortgage storm than many
5 of our sister states. In fact, while New York is
6 the fourth most populous state in the nation, for
7 the first quarter of 2009, we are ranked 37th
8 among all states in the rate of foreclose filings.
9 Our statistics continue to compare extremely
10 favorably to the rest of the nation. Indeed,
11 recent statistics from RealtyTrac indicate that
12 New York's foreclose closure filings in March 2009
13 were 11% lower than in March 2008, even as the US
14 as a whole experienced a 46% increase. In fact,
15 in February 2009, New York State, inclusive of New
16 York City, accounted for only 1 of the properties
17 with foreclose filings reported nationwide.
18 Importantly too, approximately 88% of the
19 foreclose filings in New York State in February of
20 this year were in lis pendens, which is only the
21 first filing in a foreclose process that is the
22 longest in the country that can take, as was
23 already stated, up to 18 months; providing ample
24 time for borrowers and lenders to affect a
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2 meaningful workout when possible. Maintaining a
3 public dialogue like this one is one way to
4 continue that progress. I would emphasize the
5 importance of communication here. We can provide
6 to the Council the foreclosure periods throughout
7 the United States. We do have that data, as it
8 relates also to the State of Illinois. Since the
9 issue of predatory lending first came into public
10 view almost seven years ago, we have played a
11 leading role in developing solutions to the
12 problem even though many of our banks do not and
13 did not make subprime loans. In fact, fewer than
14 20% of subprime loans which have generated much of
15 the recent concern were originated by banks or
16 their affiliates at all. In this regard, our
17 members have consistently supported strong
18 legislation which would establish meaningful and
19 workable uniform national standards in the
20 subprime market designed to eradicate predatory
21 practices while not creating unnecessary
22 impediments to the dream of home ownership,
23 particularly for moderate and low-income
24 Americans. We have also worked tirelessly with
25 state legislators to craft high cost home loan and

1 subprime lending laws, one just in 2008. They are
2 among, as I said, the toughest in the nation. Our
3 association has been at the forefront also of
4 financial literacy, bank access and mortgage
5 workout initiatives. We believe that these
6 initiatives, coupled with strong legislative and
7 regulatory actions already taken in New York State
8 and now in Washington, will ultimately have a
9 meaningful and positive impact on reviving the
10 state's mortgage market. We caution however that
11 unnecessarily burdensome and duplicative new local
12 ordinances, if enacted, could undermine or
13 diminish the resurgence of this important part of
14 our economy. Like you, our members take foreclose
15 and its consequences very seriously. Foreclose
16 closure is the last resort for the lender and
17 lenders will go to great lengths to avoid such a
18 drastic measure. In fact, over the past year, a
19 number of our members have instituted a voluntary
20 foreclose moratorium in order to work
21 cooperatively with the federal government on the
22 implementation of several new mortgage
23 restructuring initiatives, including the Hope for
24 Homeowners Program and the Homeowner Affordability
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2 and Stability Act. It is important to note as
3 well that only a small fraction of foreclose
4 proceedings in New York, as reported by the
5 foreclose tracking services, RealtyTrac, currently
6 result in completed forecloses. Indeed, as the
7 Traiger Hinckley study shows, which we've
8 attached, the RealtyTrac number may be overstated
9 by as much as 5005 because RealtyTrac counts all
10 foreclose filings, including those that only begin
11 the process and are later abandoned, duplicate
12 filings on the same property that do not occur in
13 the same month, property that has been put up for
14 sale by a distressed owner, properties scheduled
15 for foreclose action and forecloses completed that
16 become other real estate owned by a lender. Even
17 many properties scheduled for foreclose action do
18 not actually get auctioned because the owner may
19 sell the property directly, find alternative
20 financing to satisfy the lender or negotiate a
21 settlement with the lender that avoids a sale.
22 Therefore, placing additional new requirements on
23 foreclosing entities, such as those contemplated
24 in the proposals, may not only be overly
25 burdensome but in the majority of cases be

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2 premature or unnecessary. In this regard, I would
3 like to comment first on Intro 956 and 959, which
4 require tenant notification of foreclose
5 proceedings for buildings with one to five
6 dwelling units and six or more dwelling units
7 respectively within ten days of the bringing of
8 such an action. First, we believe this
9 requirement to be redundant and unnecessary and
10 causing burden and cost. Under existing state
11 law, in order to distinguish all possible
12 interests in the property, foreclosing entities
13 already must serve all tenants with copies of the
14 foreclose filings. A failure to serve this notice
15 results in the tenant's continuing right to his or
16 here tenancy after foreclose. Even in those
17 circumstances where the new landlord owner would
18 otherwise have a right of eviction. Indeed, if a
19 tenant is not served with a copy of the foreclose
20 filing and the new owner wishes to evict him or
21 her for any reason after the judgment sale, the
22 new owner is required to institute an additional
23 eviction proceeding which in New York City can
24 take many more months to conclude. Ironically, if
25 this ordinance is ultimately enacted in its

1 present form and additional foreclosure notices
2 are required, tenants who are at risk of eviction
3 may be more likely to be displaced in the near
4 term. The requirement that a notice of the
5 foreclose proceedings be served within ten days of
6 the filing creates an unnecessary and unreasonable
7 short timeframe for this requirement, particularly
8 as the defendant may not even have been served
9 within that time. Moreover, in many instances it
10 is virtually impossible to locate and serve all
11 tenants within ten days, particularly if it's a
12 large apartment building, or as often happens, if
13 a tenant seeks to evade service. Requiring these
14 notices so early in the process also may serve to
15 alarm tenants and perhaps even more importantly
16 provide incentive for some to stop paying their
17 rent, thus creating an even harder financial
18 hurdle for the property to overcome if he or she
19 wishes to prevent a foreclosure sale and retain
20 ultimate ownership of the property. The proposals
21 also require that the notices contain a statement
22 of tenant rights under all laws relating to
23 mortgage forecloses, an incredibly broad
24 requirement which may or may not be made clear by
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2 the promulgation of commissioner rules, also
3 contemplated in the proposals. Failure to provide
4 such notice is subject to a civil penalty of
5 \$1,000 per day. Therefore, even if the tenant has
6 been provided notice once and perhaps twice, an
7 omission in the statement of the tenant's rights
8 could result in significant financial loss to the
9 foreclosing entity. This outcome would seem to
10 put foreclosing banks at a substantial risk of
11 liability and therefore serve as an unintended
12 disincentive to extend mortgages to other than
13 those with the most pristine credit histories.
14 Intro 889 and Res 1725-A raise even further
15 concerns as they seek to reassign the obligations
16 of property ownership from home and building
17 owners to lenders, even when the lenders are
18 without legal authority to enter the properties.
19 Financial institution mortgagees are, like the
20 Council, concerned about the state of neglect of
21 many properties in the foreclose process. We are
22 very aware and troubled by the negative
23 implication these deteriorating properties may
24 have on the neighborhood in which they exist.
25 However, until the foreclose proceeding is

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2 concluded and the judgment sale has taken place,
3 the lender is without legal authority under state
4 law to enter the premises unless otherwise agreed
5 to by the parties in the mortgage documents.

6 Notwithstanding these legal limitations, financial
7 institution mortgagees occasionally find it
8 necessary to hire property maintenance to secure
9 the safety of properties which are vacant at the
10 bank's own legal peril. The burden being places
11 on mortgagees by Intro 889 and by the proposed
12 state legislation in Albany being endorsed in
13 Resolution 1725-A goes well beyond these safety
14 issues. First, these proposals impose maintenance
15 burdens on lenders, even when the property remains
16 occupied by the mortgagor. Needless to say,
17 lenders who seek to enter occupied homes are not
18 only trespassers under the law, but also place
19 themselves in potential peril if challenged by
20 fearful or irate homeowners. Second, the extent
21 of the maintenance requirements are arguably
22 without end, ostensibly requiring mortgagees to
23 maintain and perhaps even repair damages caused by
24 irresponsible property owners as if the lending
25 institution was the actual homeowner. There

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2 appears to be no limit on the cost the mortgagee
3 would be expected to incur, nor are there clear
4 limits as to the mortgagee's maintenance duties.

5 In essence then these proposals impose on the
6 lender all the obligations of a full owner at a
7 time when the lender at best has limited rights of
8 access and is not recognized as a lawful owner.

9 Although we understand the desire of the City

10 Council to see New York City properties

11 maintained, this unfair and onerous proposal is

12 not the answer and surely, if enacted, would

13 discourage banks from extending mortgages in the

14 city. It should also be noted that Intro 889

15 seeks to impose registration requirements on

16 mortgagees who commence foreclosure proceedings that

17 to some extent are duplicative as much of the

18 information required is available today at county

19 clerks' offices. Perhaps more troubling, however,

20 is that the proposal mandates the registration of

21 personal contact information of corporate

22 officers. We've been informed in discussions with

23 the Office of Court Administration that the courts

24 generally do not require or seek this information

25 as they deem it to be both unnecessary to the

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2 process and a violation of individual privacy
3 rights. Such an unnecessary requirement could
4 also place corporate officer/private citizens in
5 jeopardy which clearly is not the intent of Intro
6 889. As a large number of foreclose proceedings
7 do not ultimately result in a loss of the
8 property, and easily accessible public registry,
9 such as that contemplated in this proposal, could
10 also create great embarrassment for many
11 homeowners as they seek to engage in settlement
12 discussions or the renegotiation of their mortgage
13 terms. As I stated earlier, we oppose these
14 proposals not only for their content but also
15 because we do not believe that new foreclose laws
16 and regulations should be mandated at the local
17 level. We notice well that a significant amount
18 of the mortgagees in New York City are national
19 banks or national institutions that at least
20 arguably would not be covered by the mandates in
21 this proposal. Thus, it is possible that
22 different New York City properties would have
23 different maintenance obligations causing
24 confusion and perhaps inappropriate expectations
25 for tenants and homeowners. Despite our concerns

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2 about these proposals, we applaud the Council for
3 seeking solutions to the current crisis and we
4 pledge to collaborate on workable solutions. Our
5 members have been working on this issue going back
6 to 2001, whether it was through the promulgation
7 of best practices, through working with the
8 legislature, giving rise to the most comprehensive
9 predatory lending law in the nation in 2002, or
10 the most recent change in 2008, which by the way
11 was a template for federal action by the Federal
12 Reserve this past summer. We've also worked
13 tirelessly with the legislature and the executive
14 branch and have appeared before the City Council
15 throughout all these processes arguing that what
16 we need more than anything are uniform standards
17 in the mortgage brokerage, in the lending, in the
18 underwriting process and not target the prime
19 mortgage or eradicate the subprime market and to
20 work closely with the court system. We did
21 announce with Judge Judith Kaye a whole program
22 aimed at pre-counseling before a foreclosure is
23 filed with the court system, which we endorse and
24 is now part of state law. New York's banking
25 industry, our members work very closely with

1 nonprofit groups throughout the City of New York.
2 We are the national sponsor for Operation Hope
3 which is a financial education literacy group; the
4 Neighborhood Housing Services, NeighborWorks, and
5 the Long Island Housing Coalition are just a few.
6

7 CHAIRPERSON DILAN: Mr. Smith,
8 there's sometimes where you fade in and out on the
9 mike.

10 MICHAEL P. SMITH: Also, too, just
11 in this past year there have been a number of
12 programs initiated by the United States Treasury
13 Department which mirror closely activities that
14 have been going on in New York now for several
15 years. In fact, Senator Schumer and the New York
16 Bankers Association did work cooperatively on a
17 project aimed at various neighborhoods in Queens
18 to try to define exactly what was happening, what
19 was causing the increase in subprime lending or
20 predatory in various neighborhoods in Queens. We
21 put together a special project in this area and I
22 think it gave rise to the most recent announcement
23 by Senator Schumer to help raise more federal
24 funds to help prosecute mortgage in the City and
25 State of New York, an effort that we fully

1
2 support. Finally, I'd just like to say that one
3 of the most important things throughout all of our
4 public testimony on these issues throughout the
5 last five to seven years has been and continues to
6 be the need for financial education. We are
7 strong proponents and have urged all of our
8 members to be involved with the public school
9 system, with the high school system and to get out
10 the word, whether it's tenants' rights,
11 homeowners' rights or creditors' rights in terms
12 of this very important subject. That ultimately
13 is the best defense against what we have seen
14 every happening again. I appreciate this
15 opportunity to testify and look forward to any
16 questions you may have.

17 CHAIRPERSON DILAN: Mr. Smith, I
18 just want to start by stating that I thank you for
19 at least agreeing with the intent of what we are
20 trying to do if no the exact substance of how we
21 are trying to achieve that with the bills on the
22 agenda today. I just noted a few points in your
23 testimony and would like to discuss them briefly
24 and see if I could better understand your
25 position. Obviously on the fines, I guess

1 conservatively from my opinion just looking at the
2 bills at first glance, \$1,000 per day may appear
3 to be somewhat onerous. However, I haven't ruled
4 out keeping it there. But I could see how one
5 could view that as onerous. I guess the problem
6 that we foresee is overall we want to pass
7 legislation that's meaningful and not overly
8 burdensome that goes after the bad actors. I
9 think you also acknowledged in your testimony that
10 somewhere out there, they may not be members of
11 your association, but somewhere out there are
12 these bad actors and we need to get at those. I
13 think that's one that I'm not sure if that's
14 appropriate for now. The fines in terms of what
15 those levels are, I for one may be open to
16 discussion, but I'll say that just on first
17 glance. I obviously have to do more work and more
18 research on them. In terms of when the tenant
19 should be notified if we were to go forward with
20 these bills, you mentioned, I think correctly in
21 your testimony, that in certain stages the
22 mortgagee doesn't have the right to enter the
23 premises. You may have heard me earlier state
24 that there are certain occasions where I believe
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2 the owner should be responsible. You specifically
3 state that until a foreclose proceeding and the
4 judgment sale has taken place the mortgagee lender
5 is without legal authority to enter the premises.
6 You seem to note this part of the process in your
7 testimony as a point where a mortgagee could
8 potentially be responsible for maintenance. Do
9 you have any ideas or suggestions in that regard?

10 MICHAEL P. SMITH: I want to defer
11 to Roberta on the latter part of the question
12 because she's done the work with the court system
13 and with the legal community on the process. At
14 the outset, I would just like to say to your first
15 point that we want to work with you to eradicate
16 the bad players. We share that objective. In
17 doing so, we would like to stay away from issues
18 that center on the amount of a fine as opposed to
19 perfecting a law that would eliminate the bad
20 players and at the same time provide a vibrant
21 housing area in the City of New York. That we
22 believe we can be partners with the Council on. I
23 would defer to Roberta. You've done the work on
24 this whole question of servicing the property and
25 the legal aspects.

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2 CHAIRPERSON DILAN: I know that Mr.
3 Smith acknowledged you, but just for our purposes
4 if you could identify yourself in your own voice
5 for the record.

6 ROBERTA KOTKIN: My name is Roberta
7 Kotkin. I'm the general counsel and chief
8 operating office of the New York Bankers
9 Association. We were focusing very much not only
10 on the tenants but on individual property owners
11 and homes where there are just a couple of
12 apartments, not necessarily big apartment
13 buildings. The way the law is and there is a
14 seminal case on that which is cited in our
15 testimony that affirms that until the sale after
16 the foreclose, not until the sale until is the
17 mortgagee legally entitled to go on the premises.
18 To do so is to do so as a trespasser. Often, or
19 occasionally at least, the mortgagee will do that
20 to try to shore up something on the property
21 that's dangerous, but they do so at their own
22 peril. Even if a property looks like it's vacant
23 and appears to be vacant, until that sale there is
24 nothing that can prevent the owner from taking the
25 premises back or going back on the property and

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2 claiming that you have trespassed. So it's a real
3 problem for the mortgagee, in our case the
4 financial institution. What concerns us about
5 this legislation is that you're clearly wanting
6 somebody to take care of the property and we
7 totally are with you on that, but we think that
8 the responsibility is being pointed,
9 unfortunately, in the wrong direction and in a
10 direction that state law prohibits.

11 CHAIRPERSON DILAN: But at a
12 certain point after the court proceedings are done
13 with and the foreclose has happened and the bank
14 has now title again, before it disposes of the
15 property to the next owner, at that point would
16 think it's safe to say the bank should take care
17 of the property.

18 ROBERTA KOTKIN: It is my
19 understanding under the law and under the court
20 cases as well that until the sale, until the
21 actual sale, it is not the legal right of the
22 mortgagee, even after the actual foreclose
23 proceeding has concluded.

24 CHAIRPERSON DILAN: I understand.
25 I'm going to just state that there are a lot of

1 things in your testimony that I agree with. It
2 still doesn't remove the need to feel that we need
3 to do something in this regard. A lot of the
4 banks clearly don't come from the State of New
5 York. There are banks all across the country that
6 hold title to buildings and own property in this
7 city. From my perspective, I've dealt with a few
8 banks from the State of Kentucky and how they've
9 treated their properties continues to be a
10 problem. But that's not a concern of yours, you
11 don't represent them. I think as an industry as a
12 whole we need to do something here on the
13 maintenance front to make sure that while these
14 buildings are in this process, and I'm not talking
15 about just general capital improvements, I'm
16 talking about the day to day maintenance from
17 keeping these buildings from being dumping
18 grounds, from keeping these buildings to be
19 properly secured so that illegal activity can't go
20 on inside of them while these buildings are in
21 this process. This is kind of what I experience
22 in my district. I'm not sure what the rest of the
23 members are experiencing. I want to be careful in
24 doing this and want to do it correctly and look
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2 forward to working with you on it. I may have
3 some other questions but at this time I'm going to
4 move to Council Member Dan Garodnick.

5 COUNCIL MEMBER GARODNICK: Thank
6 you, Mr. Chairman. Mr. Smith, welcome and thank
7 you for your testimony. I appreciate the
8 information you offered to us and I think that you
9 certainly make some interesting and valid points
10 related to specific rights or obligations relative
11 to when a mortgagee can go onto a property to do
12 certain things. I hear that. I'm looking forward
13 to hearing also from the advocates as to how that
14 may not be right. I'm interested in hearing that
15 point. I'm not certain now, but I do appreciate
16 what you said. On the much simpler issue, in my
17 view, of notice, I wanted to make two points off
18 the bat and then ask you a few questions about
19 your testimony. The first is I'm glad that you
20 appreciate the goals of making sure that tenants
21 have notice of pending foreclose actions. But I
22 wanted to just clarify that a little bit. It's
23 not just that we want tenants to have notice of
24 the pending foreclose actions. We want them to
25 have notice and an understanding of what it may

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2 mean for them. Because that is something which is
3 not offered or provided in any of the formal
4 structures that are out there today. I also
5 wanted to just add one perhaps slight difference
6 to what my Chairman said in that of course we do
7 want to make sure that we go after bad actors when
8 it comes to maintenance and other issues, but in
9 terms of notice, this one isn't just about bad
10 actors. This is about simply actors. People who
11 are doing exactly as they're supposed to under the
12 law and under the rules that are out there today.
13 The question here is whether there are ways for us
14 to give tenants a little more information at an
15 earlier stage so as to be able to alleviate fear
16 or give them the ability to make concrete and
17 practical decisions for themselves. But let me go
18 to your testimony for a second. You started off
19 by noting that it is your belief that during these
20 difficult economic times that changes to
21 foreclose-related procedures should be consistent
22 across the state and consistent across the nation
23 to avoid a patchwork of different local rules and
24 standards around the country. My question for you
25 is hasn't the train already left the station on

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2 that? The last witness who was up here testified
3 that there are 17 states that already have notice
4 provisions for tenants who are in buildings that
5 are subject to foreclosure actions. Unless that
6 was specifically targeted to maintenance
7 obligations and the bill 889, don't we already
8 have a patchwork out there today on notice
9 requirements? If so, what different does it make
10 from that perspective for us to be able to give
11 rights to the tenants here much like tenants have
12 in other places?

13 MICHAEL P. SMITH: Well, first of
14 all, hearing that testimony, I don't have the list
15 of 17 states. New York, as I said in the
16 testimony, has the strongest mortgage laws in the
17 nation by our reckoning and the fact looking at
18 those 17 states and I think the witness mentioned
19 this that we don't know what the length is of
20 their foreclose process. New York State I believe
21 is about 440 days. By the way, with voluntary
22 moratorium, or with the 90-day period which
23 applies to some property in New York, which is in
24 the recent New York State Law, it's longer than
25 440 days. But the next state, to my recollection,

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2 and we'll confirm this for you because we've
3 testified on this on a number of occasions, is
4 Illinois at 260. Some states are as low, in terms
5 of the foreclose process to the actual sale is
6 about 120 days or 90 days. New York has a statute
7 that is aimed at protecting the owner and the
8 tenants. Our view on uniformity, it may be a
9 wish, it may an ideal but we're seeing it now in
10 the subprime area. It took seven years. We now
11 have federal regulations on subprime lending that
12 mirror very closely to New York statute, but it
13 took seven years. But the fact of the matter is
14 to the extent that you have uniformity, certainly
15 it should be a goal that there be uniformity
16 within the State of New York if we can achieve
17 that. The issue about notice is that if you look
18 at these for example, the 17 states and then
19 compare it to New York, we have to look at each of
20 the processes in each of those states and put it
21 up against what New York's current process is in
22 terms of the number of days. As was said earlier,
23 and what we said is, we don't want to alarm or
24 raise concern by notifying a tenant to something
25 that could be in the first stage of foreclose. As

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2 we stated in the testimony, the mortgagee is
3 required to notify the tenant otherwise he's
4 subject to a claim or subject to not being evicted
5 under our reading of the law. So therefore, we
6 think that there is ample protection under New
7 York State Law and if anything, New York State Law
8 should be a template for the rest of the country.
9 I don't know which states we're talking about here
10 outside of the State of New York, but in fact we
11 have a fine law now. As to rights, listening to
12 the testimony and also clearly understanding your
13 concerns, communication is the most important
14 thing. The more we can communicate in terms of
15 tenant's rights, owner's rights, and mortgagor's
16 rights though, whether it's public service
17 announcements, any kind of communication,
18 including this hearing, is a positive. That's the
19 first threshold before you get to the point of
20 possibly causing alarm to a tenant which could
21 actually accelerate the owner having problems,
22 which in turn accelerates foreclosure.

23 COUNCIL MEMBER GARODNICK: I think
24 the answer to the question was if there are 17
25 states that already have it, which you may not

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accept, but we have it as testimony.

MICHAEL P. SMITH: No, I mean I accept the fact that they do.

COUNCIL MEMBER GARODNICK: Then there are different rules in different states and that really was the one point that I was looking to establish and it's a simple one, which is New York does not today have notice rules in the way that we're describing. Seventeen other states, according to the Furman Center do. That to me means there are different rules in different places and I'm sure that you would agree with that. That's a rather simple proposition.

MICHAEL P. SMITH: I agree with that. As we move forward, New York in this particular, we've seen the nation and there is also preemption rules in terms of applying it--

COUNCIL MEMBER GARODNICK:
[interposing] Notice here is not subject to preemption. Do you agree with that?

ROBERTA KOTKIN: I would say more likely than not, it's not. But there might be some institutions who would disagree with that.

COUNCIL MEMBER GARODNICK: As to

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2 the number of days overall in the process, I don't
3 think anybody is debating that New York has a
4 different number of days than Illinois or the
5 lower numbers at 120 or 90. I think your point
6 that the more we can communicate is a positive is
7 exactly the point here. That we don't want to
8 alarm unnecessarily, I wonder if you have any
9 sense of what tenants who get that notice that you
10 referred to in your testimony. In your testimony
11 you were talking about how there are requirements
12 that foreclosing entities must serve all tenants
13 with copies of foreclose filings. Do you think
14 that that might have the possibility of causing
15 alarm or even unnecessary alarm in certain
16 circumstances?

17 ROBERTA KOTKIN: The notices
18 required to eradicate a tenant's possessor
19 interest and to facilitate an eviction. If there
20 is no notice there can be no eviction. So, of
21 course, whenever a tenant hears about this it may
22 cause alarm. But the proposal as drafted is to
23 notify tenants within ten days of the lis pendens
24 and that is extremely premature we think and can
25 cause really undue alarm, cause people not to pay

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2 their rents and push a landlord owner right into a
3 foreclose that he might have been able to work out
4 of.

5 COUNCIL MEMBER GARODNICK: When
6 does a foreclosing entity need to serve tenants
7 with the copies of foreclose filings in order to
8 preserve their possessory rights in this context?

9 ROBERTA KOTKIN: I've tried to poke
10 around at this quite a bit, but as I understand
11 it, there is not a specific you must serve the
12 notice within 30 days. But if you have not served
13 the tenant and the foreclosure is over and you
14 want to evict a tenant, you then have to go
15 through a multi-month eviction proceeding.

16 COUNCIL MEMBER GARODNICK: Right.
17 Because they have rights in that context where
18 they have a lease or they have not gotten the
19 appropriate notice or whatever. It's only in the
20 situations where a mortgagee wants to evict once
21 they take title and possession that they must
22 serve. Isn't that accurate? If you have no
23 interest in evicting--

24 ROBERTA KOTKIN: [interposing]
25 Right. You are supposed to serve under the law.

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Our institutions do provide the notices.

COUNCIL MEMBER GARODNICK: When do your institutions provide those notices?

MICHAEL P. SMITH: It depends. It's discretionary.

ROBERTA KOTKIN: It depends. I don't think that I can tell you on the exact date. I think it depends on the proceeding.

COUNCIL MEMBER GARODNICK: So some of them do it at the very beginning of the process and some of them do it in the middle and some of them do it at the end.

MICHAEL P. SMITH: We could find out.

ROBERTA KOTKIN: I think it's also dependent on getting the names and how long it takes to serve because a lot of tenants evade the service process. A lot of tenants you don't have the names. So it's not a cut and dried thing.

COUNCIL MEMBER GARODNICK: But you're not actually required to give the actual names of tenants in those contexts, right?

ROBERTA KOTKIN: I think they do try to give the name of the tenants. Where they

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can do so, they certainly do try to give notice.

COUNCIL MEMBER GARODNICK: It's my understanding of the rules that you can serve somebody as a John or a Jane Doe living in Apartment 17B or whatever.

ROBERTA KOTKIN: I would presume that that happens if you cannot find out who is living in that apartment, if you cannot get the name.

MICHAEL P. SMITH: Can I just comment also on this? I understand the importance of the law here. But the fact of the matter is from a business standpoint, our members, the banks; we do not want to foreclose. We're working constantly to avoid that, whether it's in the pre-filing process which now may be a 90-day period before the filing, or thereafter, because it's not in their interest. They do not want to be the owners of the property.

COUNCIL MEMBER GARODNICK: It's a last resort.

MICHAEL P. SMITH: When you make this filing you are obviously getting to the end. So I would say if you're talking about a period

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2 that's 400 days, you're clearly talking about the
3 latter part of that period.

4 COUNCIL MEMBER GARODNICK: I'm
5 sorry, the 400 days is the period between?

6 MICHAEL P. SMITH: The initial
7 filing.

8 COUNCIL MEMBER GARODNICK: The
9 initial filing and the auction, right?

10 MICHAEL P. SMITH: Right.

11 ROBERTA KOTKIN: Right.

12 COUNCIL MEMBER GARODNICK: So I
13 understood from your testimony that initially
14 before you commence an action that's rather the
15 last resort or that's the serious point. But is
16 what you're saying is that you hope to resolve it
17 during the foreclose action?

18 MICHAEL P. SMITH: We always hope
19 to.

20 ROBERTA KOTKIN: I would say we
21 always hope to resolve it.

22 MICHAEL P. SMITH: I'm sorry. The
23 Treasury announcements which I know come out
24 weekly, in terms of workouts in various properties
25 are all designed to avoid foreclose.

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2 COUNCIL MEMBER GARODNICK: But I
3 assume that you're not initiating these; that the
4 lis pendens is a pretty serious moment in this
5 process.

6 MICHAEL P. SMITH: Trying to avoid
7 that.

8 ROBERTA KOTKIN: It's generally at
9 least 120 days of nonpayment.

10 COUNCIL MEMBER GARODNICK: So
11 you're trying to avoid that at the outset.

12 ROBERTA KOTKIN: Absolutely.

13 COUNCIL MEMBER GARODNICK: So if
14 this is such a significant moment, why then
15 shouldn't the tenants be part of this process in
16 one way or another? Even if it's simply to give
17 them an understanding of what it means for them,
18 remind them that their obligations to pay their
19 rent continue, which certainly would be one which
20 would be favorable but is a fact, and is one that
21 I would certainly support going into whatever
22 notice goes here. Why is that so problematic at
23 that point?

24 ROBERTA KOTKIN: The problem in the
25 proposal is the burden falls on the mortgagee to

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2 list every possible law out there, anything
3 related to their rights at all. That's a very big
4 obligation.

5 COUNCIL MEMBER GARODNICK: What if
6 we were to narrow that down to be a little clearer
7 and not be so all-encompassing. We could
8 negotiate this with HPD and even with you as to
9 what would be the appropriate thing to include in
10 that sort of notice. Let's say we were to narrow
11 it down, how about then?

12 ROBERTA KOTKIN: I would say that
13 there are different and better ways to do it than
14 through an ordinance to explain tenant's rights to
15 them. There are many ways to do that.

16 COUNCIL MEMBER GARODNICK: What
17 would you propose?

18 ROBERTA KOTKIN: As Mr. Smith said
19 public service announcements.

20 COUNCIL MEMBER GARODNICK: Public
21 service announcements paid for by the banking
22 industry or paid for by the city? What do you
23 mean when you say public service announcements?

24 MICHAEL P. SMITH: Financial
25 education. First of all, we can't commit any of

our institutions.

COUNCIL MEMBER GARODNICK: I just want to understand. You say instead of providing direct notice to the people who are directly impacted, you think that there should be more generalized public service announcement. What do you have in mind when you say that?

MICHAEL P. SMITH: I think first of all it's through these discussions which are public. I think they're public.

COUNCIL MEMBER GARODNICK: It's certainly public.

MICHAEL P. SMITH: There are a number of initiatives and we have endorsed moving forward on these types of initiatives. But quite frankly, we find ourselves responding to state, federal and local laws or initiatives. We have been strong advocates of establishing private/public efforts to get the word out on what the tenants and owners rights are to the community and in whatever form that would take in terms of the best communications. We feel that that's the best way to go.

COUNCIL MEMBER GARODNICK: I'm

1
2 sorry. I don't understand what you're saying
3 exactly.

4 MICHAEL P. SMITH: I know that the
5 province of a legislature is to pass laws. But
6 the fact of the matter is rather than sending a
7 notice out and putting a letter under a door or
8 having it hand-delivered giving information that
9 the owner may be in a foreclose closure process,
10 wouldn't it be better to get the word out in terms
11 of renters, tenants and owners' rights under the
12 law? That's something that our industry clearly
13 would commit to. How that is done is something
14 that could be discussed as we go forward.

15 COUNCIL MEMBER GARODNICK: I would
16 have to say in answer to that question, great.
17 Communication is great. The folks who need it at
18 that junction are the folks who need it under
19 their door or in their building because it's their
20 building that's being foreclosed upon and they
21 don't know what that means. Even if they're
22 absolutely protected under they law, they don't
23 know what that means. What I'm struggling with
24 here is that I hear you saying that every right
25 under any law is perhaps a little too vague. I'm

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2 paraphrasing but that's essentially how it's
3 characterized as to what would be included in such
4 a notice. Then I bring up narrowing it down and
5 the response is that there are better ways to do
6 that. I ask what the better ways to do that are
7 and I hear public service or generalized
8 communication about the rights of tenants in
9 foreclose action. To me that's just not good
10 enough in this context because there are too many
11 concerns for tenants when they find themselves in
12 this circumstance. I don't know how we have that
13 sort of communication if we can't do it at the
14 moment where this becomes relevant to somebody.

15 ROBERTA KOTKIN: I have thoughts
16 which I could parse out and get back to you on
17 ways to do this. But what is of real concern to
18 us is that notice with that bill of tenants'
19 rights is attached to \$1,000 a day fine, is
20 attached to the summons and complaint and frankly
21 that was one of many issues relative to the
22 service of process that's in this ordinance that
23 could be parsed out and worked on in a different
24 manner. I mean we could get back to you with
25 alternatives.

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2 COUNCIL MEMBER GARODNICK: I would
3 love to hear them, particularly if they were in
4 the context of communication to the actual people
5 who are implicated by this who had no role in
6 anything. That's why we're delighted that you're
7 here today and I definitely would like to hear
8 that. I do not think public service announcements
9 do the trick. I also hear you about duplicative
10 nature. You may say, as you just did, there's no
11 reason to do a summons and complaint twice. I
12 understand that. Maybe what you come back to us
13 with is that you need to do that only once during
14 the course of this process and maybe it is a
15 summary of the rights or whatever has happened.
16 The point here is we want tenants to understand
17 what's going on. I know the Chairman wants to
18 move on and the last question that I have for you
19 is concerning what you said about the notice of
20 the foreclose proceedings. That the requirement
21 to serve the notice of foreclose proceedings
22 within ten days of the filing creates an
23 unreasonably short timeframe particularly as the
24 defendant may not even have been served within
25 that time. When does the defendant get served in

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this process?

ROBERTA KOTKIN: The defendant is required to be served generally within 30 days. If he's not served within 120 days then the foreclosure proceeding is moot and you have to start over. But within ten days it's very likely that the defendant hasn't been served with that process.

COUNCIL MEMBER GARODNICK: If the bill were to say within ten days from the moment of service on the defendant I assume that obviates that problem.

MICHAEL P. SMITH: Anytime you have greater flexibility and we deal with this all the time in the legislative process, when you put in days and attach penalties it becomes that much more onerous and burdensome. It would be better to give some flexibility.

COUNCIL MEMBER GARODNICK: This is my parting question and then I'll leave you be. How do you do it without timeframes and penalties? How do you require somebody to do something without that? If there's a way to do that, I'm open to it. But I don't know how you do that

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2 without putting those numbers attached. Maybe the
3 timeframe, maybe the dollars are too high. I
4 don't know. But that's a question and that's a
5 fair question. Without attaching a timeframe and
6 a dollar amount, how do you get anybody to do
7 this?

8 MICHAEL P. SMITH: I think those
9 are issues that need to be discussed. What we
10 were saying when we were asked to comment on it
11 were these bills and that's what we attempted.

12 COUNCIL MEMBER GARODNICK: This is
13 in one of the bills.

14 MICHAEL P. SMITH: That's what we
15 were doing by bringing it up.

16 ROBERTA KOTKIN: One last point is
17 on that notice. That notice as you've written it
18 is seeking to do many things. It's a notice, it's
19 a summons and complaint, it's the tenant's rights,
20 and it's a lot of stuff all of which any violation
21 of any portion of that is linked to \$1,000 a day
22 fine. So it's a conglomerate of problems and I
23 don't think we can answer them in a simplistic
24 way.

25 COUNCIL MEMBER GARODNICK: I hear

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2 you. I think that you've made some excellent
3 points. As the chairman said, we are at the
4 beginning process in these bills. We want to move
5 them and we want them to work in a way that is not
6 unduly burdensome and duplicative but rather does
7 the maximum in terms of answering questions for
8 tenants when they find themselves in these
9 situations. So if you do have feedback or
10 thoughts about how to deal with those please tell
11 us quickly because we would be happy to entertain
12 them and consider them in this process. Thank
13 you.

14 ROBERTA KOTKIN: Thank you.

15 CHAIRPERSON DILAN: Council Member
16 Fidler?

17 COUNCIL MEMBER FIDLER: Thank you,
18 Mr. Chairman. Mr. Smith, I apologize, I wasn't
19 here while you were reading your testimony. I had
20 a number of meetings down in the Speaker's Office.
21 I've had an opportunity now to read your testimony
22 and before I inquire I just want to say that I see
23 you've relied heavily on a study from Traiger and
24 Hinckley and I think it's only fair for me to put
25 on the record that Mr. Traiger is a friend of

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2 mine, a former law school colleague and is in my
3 baseball league. I should lay that out there. In
4 spite of that, I think a lot of what he had to say
5 and a lot of what you said is correct. I also
6 agree with a lot of what Council Member Garodnick
7 said. I've done a lot of work in and around the
8 subprime lending crisis in this body. It has
9 become very, very clear that the fault lies with
10 many, many different elements, banks being one of
11 them, government being another, greed being
12 another. There's plenty of blame to go around, so
13 I don't point the finger at banks exclusively.
14 Clearly however banks played a role. Now the one
15 group that we've talked about today that clearly
16 has not played a role are tenants. Maybe in a
17 couple of cases a building was forced into
18 foreclosure because tenants didn't pay their rent.
19 That would not be the reason why we are here today
20 facing a lending crisis in this world. You've
21 acknowledged that we've raised legitimate issues.
22 How do we protect the thousands of tenants who are
23 the collateral damage here without providing the
24 kind of notice that will put them in a panic,
25 promote the idea of not paying because there is no

1 point, which would only exacerbate the problem,
2 place undue burden on the bank or the property
3 owner? Clearly there's a problem and you've
4 acknowledged there's a problem. So how do we do
5 that? Second, on the other bill, the disrepair
6 that some of these properties have fallen into
7 from the time they are foreclosed upon until the
8 time of the sale, which is a problem that not only
9 affects occupants of the building but entire
10 neighborhoods and begins the process of incipient
11 decline in a community. It's what makes the
12 foreclose crisis so dangerous because it starts to
13 affect the property values and quality of life of
14 people who are paying their loan. It struck me
15 that your answer to that one is it's not our
16 problem. To the extent that the banks have played
17 a role in that, and I'm not even going to get into
18 the preemption issue, we'll leave that to the
19 other lawyers, but what would you suggest? What
20 solution would you craft to the disrepair problem?
21 What solution would you craft to the problems
22 that's being created for tens of thousands of
23 tenants? What would you do? Doing nothing is not
24 satisfactory.
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2 MICHAEL P. SMITH: We're not
3 suggesting that. Thank you for your comments.
4 First of all, it is our problem because we're
5 here. There are a lot of firms or whatever who
6 are not here, but we're here. We're here because
7 we want to be part of this solution. From the
8 comments made from the bench, it sounds like what
9 we might want to do is start with principles and
10 from those principles move forward with what might
11 be the construct of some kind of a response. One
12 of those principles, the banks obviously do care
13 about the tenants. Their legal relationship is
14 with the mortgagor. They do not want to become
15 the owner of the property. It sounds to me
16 there's agreement that we do not want to alarm the
17 tenants and cause concern which would hurt that
18 ownership responsibility. The purpose of the
19 hearing is talking about specific proposals, but
20 it sounds like it might be looking at principles
21 of how we do this with seeking to achieve the best
22 for the tenant. I know that we commented on a
23 patchwork quilt and the chairman mentioned some
24 other states and some other lenders. The fact of
25 the matter is it would be good if there were a

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2 template here because one of the problems that we
3 saw in the subprime crisis was a patchwork quilt
4 of laws gave rise to people operating in other
5 jurisdictions and coming into New York. So to the
6 extent we could possibly come up with something
7 that would embrace the intent of the authors and
8 also be responsive to our concerns that we've
9 articulated today, we'd like to work with you. We
10 are concerned with the current proposals as we've
11 articulated.

12 COUNCIL MEMBER FIDLER: I got that
13 much. Your written, as opposed to the colloquy
14 that you've had with the Chairman and Council
15 Member Garodnick was all about why these bills are
16 no good. I was flipping the question. I was
17 putting you up here. You're the elected
18 representative and you have a responsibility to
19 protect the innocent tenants, to protect the
20 people living next to the properties that are
21 falling into disrepair. Now you craft the
22 solution, not as a banker but as a legislator.
23 What would you do? You gave me a statement of
24 wonderful intent but you didn't answer the
25 question. I'll be fair because maybe you were

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2 prepared to come to class today to answer that
3 question. I think if you're going to oppose this
4 solution and many of the reasons that you gave
5 make sense to me. As a practicing attorney with
6 some experience in this area, a lot of what you
7 said made a lot of sense to me. But I still need
8 to hear from you as a representative of the
9 industry as to what you would do because doing
10 nothing is not something that this Council can do.
11 There are too many people being hurt.

12 MICHAEL P. SMITH: Clearly that is
13 the view of sponsors and your view and we've come
14 here today to put forward what current law
15 provides in New York, which we think is one of the
16 best laws in the nation. I think what we've said
17 clearly also is that we'd like to see uniformity.
18 There are proposals in Albany on the same topic.
19 We'd like to see something that was workable. It
20 would not be something that would be penal in
21 nature because the bottom line is we want to make
22 sure that the tenants are protected in terms that
23 the property does not go into disrepair, it is not
24 sold and that the tenant is protected. The
25 ultimate interest of our clients is to not be an

1 owner of the property and to work the loan out.

2 To the extent that we can work together on that we
3 pledge to do that. To say that we didn't come
4 here with a counterproposal, we came here to
5 comment on the specific aspects of the proposals.
6

7 COUNCIL MEMBER FIDLER: I

8 understand that. That's why I said I don't want
9 to be unfair. You obviously have some pretty good
10 legal talent on your side; you even have some
11 sitting here. So I'm going to charge you with
12 making a proposal on both of those topics. I
13 would also charge you not to put it off on
14 somebody else and say this is not the problem of
15 the banking industry; that maintaining the state
16 of repair is just not our responsibility because
17 the current state of the law prevents it. We can
18 go to Albany and we can ask for the state of the
19 law to be changed. You may be right about
20 preemption on some of these issues. The solution
21 may be in Albany. But the beginning of the
22 process could be right here. So I'd ask you to do
23 that and get back to us.

24 MICHAEL P. SMITH: We have never
25 fallen back on this issue. It was mentioned

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because it's a reality.

COUNCIL MEMBER FIDLER: I

understand.

MICHAEL P. SMITH: We are the home

headquartered institutions of the State of New York and the City of New York and we care deeply about the city. To that extent we share your concerns.

COUNCIL MEMBER FIDLER: I

appreciate that and I'd appreciate hearing back your thoughts and proposals because I think clearly we've identified a problem without identifying the perfect solution. We need to identify one. Thank you.

MICHAEL P. SMITH: Thank you very

much.

CHAIRPERSON DILAN: Thank you. I

think Council Member Fidler articulated what I tried to say at the outset a little bit better than I did. The one concern that I do have and it doesn't require a response is the rent regulated units there may be a duplication with the state law, but for the unregulated units, those tenants are without protection and I think that needs some

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work as well.

MICHAEL P. SMITH: We'd like to talk some more about that. That is an issue in this area and in a lot of areas.

CHAIRPERSON DILAN: I think that's the greater issue here because they have no other buffer or recourse. That's something I'm concerned about.

MICHAEL P. SMITH: Thank you, Mr. Chairman.

CHAIRPERSON DILAN: Thank you for your time.

MICHAEL P. SMITH: Thank you very much.

CHAIRPERSON DILAN: I want to say that I'm open to discussing these items with you offline so that we can craft better bills and create a better final product.

MICHAEL P. SMITH: Thank you very much. We're committed to that.

CHAIRPERSON DILAN: Thank you. Next we have Patricia Kerr of NHS of Jamaica, Elise Brown of MFY Legal Services and Josh Zinner of the Neighborhood Economic Development Advocacy

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2 Project. I try to stay from acronyms because I
3 don't pronounce them well. That's been the theme
4 of this hearing. You can begin in the order that
5 you were called up. Please identify yourself for
6 the record and you can get right into your
7 testimony.

8 PATRICIA KERR: Good afternoon to
9 Councilman Dilan and the other Council Members.
10 My name is Patricia Kerr. I am the program
11 director for Neighborhood Housing Services of
12 Jamaica. I would like to thank you for the
13 opportunity to speak today in support of
14 legislation which will mandate notification of
15 tenants living in properties that are being
16 foreclosed. My organization has provided
17 comprehensive services relating to home ownership
18 and neighborhood stabilization for low and middle
19 income homeowners in Southern Queens for the past
20 35 years. During that period, our products and
21 services have primarily concentrated on home
22 ownership opportunities for existing homeowners
23 and first time home buyers. In 2004, when
24 foreclose intensively ravaged our communities we
25 became acutely aware of needs and the lack of

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2 resources and services for tenants. The forgotten
3 population that is at risk of displacement,
4 eviction and eventually homelessness. They are
5 families with children, elderly and disabled who
6 need counseling service to help them through
7 difficult times that affect the health and welfare
8 of their stability. In an effort to better serve
9 the community, NHS of Jamaica has partnered with
10 Queens Community House to help tenants facing
11 their homes as a result of foreclose. That
12 representative is with me this afternoon. Also
13 I'm joined by counsel who has partnered with us in
14 the foreclose crisis and they are at the forefront
15 dealing with tenants and evictions. They're here
16 to testify along with me this afternoon. In my
17 testimony you will find a memo that the attorney
18 has put together in support and she has added her
19 comments as to these items that you have regarding
20 notification. I would like to defer to the legal
21 counsel at this time. She has some addendums that
22 she wanted to put on the floor for your inclusion.

23 CHAIRPERSON DILAN: She's not
24 signed up to testify.

25 PATRICIA KERR: That's her. She

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has extensive experience.

CHAIRPERSON DILAN: I'm going to stop your testimony here. I'm going to allow the other two groups to testify and then you can resume your testimony and I'll allow her to speak at that time.

PATRICIA KERR: Thank you.

CHAIRPERSON DILAN: Who was next? Was it Elise Brown? I'm a little confused.

PATRICIA KERR: I have two people here with me.

CHAIRPERSON DILAN: I'll allow those two and then you can bring your people up together with you.

ELISE BROWN: I'm Elise Brown. I'm the supervising attorney of the Foreclosure Prevention Project at MFY Legal Services. I'm here today to address the bills that are under consideration. I'm sorry, but MFY is an acronym and it exists as an acronym. MFY provides legal services to about 6,500 low-income New Yorkers per year. We're the largest provider of mental health legal services in the city. We have many other projects that represent tenants in housing court

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2 proceedings. We have a Lower Manhattan Justice,
3 an SRO Law Project, Neighborhood Preservation
4 Project and the Legal Aid to Seniors. I am the
5 supervising attorney, as I said; of the Foreclose
6 Prevention Project which defends homeowners in
7 foreclose. I have a couple of things to address
8 about the proposed bills. Intro 889 we support,
9 but we're concerned that the proposed statute is
10 limited to any mortgagee that commences an action
11 whereas the other two proposed bills use the
12 phraseology "any entity or individual" which
13 initiates an action. The problem of the term
14 mortgagee is that in many instances it's not just
15 the mortgagee that brings the action. We've
16 defended a number where it's the servicer. So in
17 terms of the maintenance of the property it's
18 limited and we would propose that you change the
19 language in that regard. We support the
20 notification requirement. Josh probably can speak
21 to this more, but unless a mortgage is written on
22 a napkin, there's standard language in all
23 mortgages that we see today. Like in the Fannie
24 Mae/Freddie Mac uniform instrument, paragraph 9
25 gives the mortgagee the right to go on the

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2 property. They're not trespassing. Contractually
3 the borrower has given the right to the lender to
4 go on a property and maintain the property at its
5 option if the property is not being properly
6 maintained. I would hazard a guess that almost
7 every mortgage that would be at issue in this bill
8 are going to have that provision in it. With
9 regard to the notice Introductions 956 and 959, we
10 support any effort on the Council's part to expand
11 notice provisions. We would propose that notice
12 is given to occupants, not just tenants; because
13 in many instances landlords or lenders might try
14 to get around the notice by saying somebody is an
15 occupant and not a tenant and attack the tenancy
16 rights. This is a health and safety issue for
17 occupants as well as tenants. We would suggest
18 that subsection b of both 956 and 959 be amended
19 to clarify that civil penalties imposed may be
20 enforced by and payable to each occupant to whom
21 such notice was not provided. I will conclude by
22 saying that we applaud the Council for addressing
23 very real problems encountered by residents of
24 property in foreclose. We encourage you to
25 continue to address the problems and we're

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2 committed to working with you in any way we can.
3 Thank you for holding today's hearing.

4 CHAIRPERSON DILAN: Normally I
5 don't do this but there was a piece I missed in
6 the beginning where you asked for language to be
7 changed. Can you just restate all the areas where
8 you're looking for change in language?

9 ELISE BROWN: It's at the top of
10 the second page in my written testimony.

11 CHAIRPERSON DILAN: You have it in
12 the written testimony?

13 ELISE BROWN: Yes.

14 CHAIRPERSON DILAN: That's fine.
15 Then you don't need to restate it.

16 ELISE BROWN: I'm just asking to
17 have identical language as to who is supposed to
18 provide notice and also who's supposed to maintain
19 the property in all three introductions. 956 and
20 959 the language is appropriate, but 889 needs to
21 be modified to provide a comparable coverage.
22 Thank you very much.

23 CHAIRPERSON DILAN: Thank you. Mr.
24 Zinner?

25 JOSH ZINNER: Thank you, Chairman

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2 Dilan and thank you to the Committee for holding
3 this hearing. Let me apologize that I don't have
4 written testimony, but I can certainly provide any
5 written testimony or information subsequently.

6 CHAIRPERSON DILAN: Not a
7 requirement.

8 JOSH ZINNER: I'm the co-director
9 of the Neighborhood Economic Development Advocacy
10 Project known as NEDAP.

11 CHAIRPERSON DILAN: Please say your
12 name in your own voice for the record.

13 JOSH ZINNER: I'm sorry. My name
14 is Josh Zinner and I'm the co-director of NEDAP.
15 We're an organization that does policy and
16 advocacy work around financial justice issues that
17 affect low-income communities and communities of
18 color. We do a lot of work on subprime lending
19 and foreclose prevention issues. We also run the
20 New York City Foreclose Prevention Gap Loan Fund
21 that provides low and no-interest small loans to
22 homeowners in foreclosure to prevent foreclosure.
23 Just by way of background, I was the longtime
24 director of the Foreclose Prevention Project at
25 South Brooklyn Legal Services. I have many, many

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2 years of experience doing foreclose defense. Just
3 put a historical perspective here, and as I think
4 members of the committee know, this subprime
5 lending and foreclose is an issue that hits
6 communities of color in New York City particularly
7 hard because of historical redlining and then
8 reverse redlining by abusive lenders and brokers.

9 Although this is a crisis in numbers now in
10 foreclose, the foreclose crisis to many working on
11 the ground has been going on for many, many years.

12 Of course now we're looking at a doubling in
13 foreclose filings since 2005, so the crisis has
14 just amplified. We're also looking at this crisis
15 to get worse due to a combination of abusive
16 nontraditional loan products such as payment
17 option adjustable rate mortgages that are set to
18 explode in large numbers and also due to the
19 economic crisis and an expected rise in defaults
20 on prime loans. I want to say upfront that we
21 thank the City Council for the support that
22 they've provided for counseling and legal services
23 through the Center for New York City Neighborhoods
24 and it's critical that the Council continue with
25 this support. This is an area where the Council

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2 can really help issue. When I started in the 90s
3 there was very little funding available for these
4 services and very little services available for
5 low-income homeowners. So it's a sea change now
6 that there are some resources available and it's a
7 good first step towards preventing forecloses.

8 Addressing the bills at issue, Intro 889, it
9 certainly makes a lot of sense for the city to
10 track and to register forecloses to mitigate the
11 effects on communities. I think the issue that we
12 have with Intro 889 is certainly not with the
13 intent, but the fact that it doesn't focus enough
14 on REO properties or properties where the deed
15 transfers to the lender after the foreclose sale.
16 There is a huge issue nationally and in New York
17 City with REO properties because what happens in
18 lenders end up with these properties in their
19 portfolios and the servicers hold them. And
20 often, particularly if tenants are evicted early
21 on in the process, they stand abandoned until they
22 can be resold. It's really critical that the city
23 track the REO properties that are out there that
24 lenders are holding. The way that Intro 889 is
25 crafted it doesn't do this. In fact it says that

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2 the registration information should be removed
3 following the sale of the property. And of course
4 at the foreclosure sale, the property is sold, but
5 it often goes to the lender. We think that the
6 language should be crafted to make clear that
7 actually this information should continue to be
8 tracked particularly where the property ends up
9 post-sale in the hands of the lender. It's very
10 important for the city to track REO properties.
11 It also would be valuable for the city to track
12 properties that are purchased by speculators and
13 that is a little more complicated. But certainly
14 where properties are not purchased by individuals
15 who intend to reside in the properties there is a
16 value to the city continuing to track those
17 properties until they end up in the hands of
18 individuals who will reside in them, due to the
19 history of property flipping and over appraisal by
20 real estate speculators who are buying properties
21 at foreclose sales. We believe that the language
22 needs to be tweaked to reflect that. The most
23 important thing for the city to track is in fact
24 the status of properties post-sale particularly
25 when they end up with lenders as REO properties.

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2 We certainly support the provisions that require
3 lenders to maintain the habitability of the
4 properties, but again there is the same issue
5 here. The language specifically says that the
6 responsibility of such real property shall cease
7 upon the sale of such property. Actually this is
8 the time when it's most important to put that
9 burden on lenders when these properties end up in
10 REO stock. The number one thing that this
11 language should be doing is providing that post-
12 sale if the property ends up with a lender or a
13 real estate company or a speculator that that
14 entity and particularly the lenders have the
15 burden of maintaining the habitability for the
16 tenants. So that's actually the number one thing
17 that would be helpful in this statute. It would
18 be helpful to tweak the language to provide for
19 the responsibility of habitability on lenders when
20 they're holding REO properties. Just to put this
21 out there, it's not to say that the city shouldn't
22 track in a public database all foreclose related
23 information, but it is important to note that
24 having the information in a public database does
25 create a database not just for the public and for

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2 property owners and policy makers but also for
3 speculators and scammers who would try to take
4 advantage of people in foreclose. I think it's
5 important to note that there is a possible adverse
6 effect to posting all of this information
7 publicly. We don't take the position that it
8 shouldn't be posted, but it's important for the
9 Council to note that. Earlier there were some
10 questions about what happened to all of the
11 properties. The numbers obviously are much higher
12 for foreclose filings than they are for foreclose
13 sales. Several people testified that a number of
14 things can happen. Properties can be sold.
15 People can work things out with the lenders or get
16 a loan modification. One of the things that does
17 happen in large numbers is that there are
18 speculators that when those lis penden filings
19 become public record they're soliciting borrowers
20 for all sorts of scams. Often speculators are
21 getting control of property, purchasing them from
22 homeowners often at high discounted values and
23 ripping people off. Again, it's just important to
24 note that. It doesn't change the need to provide
25 notice to tenants. In fact maybe that's an

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2 addition reason to do so. That way tenants are
3 aware that the property may change hands. But,
4 again, it does explain some of the disparity
5 between foreclose filings and completed
6 forecloses. We'd like to say that most of those
7 loans get worked out or modified, but
8 unfortunately that's not the case. Hopefully that
9 will change but it's certainly not the case today.
10 We do support notice to tenants in a foreclosed
11 property. It's important to provide them with
12 notice and with information about their rights. I
13 just want to note that it's also critical to get
14 strong legislation at the state level. We're
15 hopeful that the Council would support such
16 legislation that would create some rights to
17 tenancy for tenants post-foreclose. One concept
18 that we support would be a month to month tenancy
19 created for a period of up to six months after the
20 sale for REO properties or for properties that are
21 not purchased to be owner occupied. To create
22 additional protection for tenants in those
23 properties and also for owners who have been
24 foreclosed on so that their tenancies would
25 continue on a month to month basis for six months.

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2 Then if those properties that are in REO are not
3 sold after that time, those tenancies would
4 continue on a month to month basis until the
5 properties were sold by the lenders out of REO
6 status. This is critical, again to provide
7 protections to tenants but also to ensure healthy
8 communities so that properties aren't sitting
9 abandoned while lenders are holding them in their
10 REO portfolios. Finally, one other thing I'd like
11 to note and then I'll stop. The president put
12 forth a plan for loan modifications, the making
13 home affordable plan. It's been mentioned
14 earlier. The plan has a lot of strong elements to
15 it. It has some elements that are not as strong
16 but we do believe that it will prevent a lot of
17 forecloses. Under the plan for all the servicers
18 that enter into contracts under the plan, they are
19 obliged to comply with the plan guidelines. Many
20 of the big lenders have already signed up and we
21 expect that most of the servicers will end up
22 participating. That means that most of the loans
23 that are potentially going into foreclose in New
24 York City will have to go through this plan so
25 that the lenders will have to screen them under

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2 the plan to see if they qualify for an affordable
3 loan modification. The reason I raise that here
4 is because it would be extremely valuable for the
5 Council to pass a resolution calling on servicers
6 who are participating in the plan to refrain from
7 all foreclose related activity while they are
8 going through these portfolios of loans to
9 determine whether the borrowers would qualify for
10 a modification. Under the plan the servicers are
11 supposed to hold off on foreclose sales while
12 they're reviewing their portfolios but there's
13 nothing that prevents them from initiating
14 foreclose actions and continuing with forecloses
15 up to the point of sale. What happens is that
16 when they file foreclose actions and continue with
17 forecloses it piles on attorney fees and all sorts
18 of fees and makes it much, much more difficult for
19 borrowers to get an affordable loan modification
20 through the program. That would be an additional
21 thing that would be valuable for the Council to
22 consider is a resolution calling on servicers to
23 refrain from foreclose related activities while
24 they're reviewing these loans. With that I will
25 close. Thank you.

2 CHAIRPERSON DILAN: Thank you, Mr.
3 Zinner. I don't have any questions. I thank you
4 for your time. I want to call up the other two
5 ladies that were with NHS of Jamaica so that they
6 can finalize their testimony. Thank you. If you
7 want to go, you're free to go. Thank you.

8 PATRICIA KERR: I really want to
9 thank you for considering the additional testimony
10 here. I think it's important to entertain these
11 two ladies, especially this attorney that's
12 sitting here at my right because she has some very
13 valuable information. She's reviewed the items
14 and she has some comments that she wants to share.
15 Thank you.

16 CHAIRPERSON DILAN: Please identify
17 yourself for the record and then you can share
18 what you have with us.

19 VANDANA CHAK: My name is Vandana
20 Chak. I'm counsel to Neighborhood Housing
21 Services of Jamaica. I'm a litigator here in New
22 York City for the past 20 years. I have done
23 foreclose defense work and I have participated
24 over the last three years in NHS Jamaica's
25 financial education seminars in Southeast Queens.

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2 Neighborhood Housing Services Jamaica asked me to
3 review the three Intros that are presented today.
4 My first reading was very positive, which was also
5 NHS Jamaica's response. I would like to support
6 the three critical issues. There are so many that
7 have arisen over the period of this afternoon, but
8 there are three issues I'd like to bring up to the
9 Council's attention. Once is, again, repeating
10 and supporting what Mr. Zimmer said earlier, which
11 was to look carefully at the language in Intro 889
12 and tweak it to ensure that REO properties where
13 mortgages are reverting back to the lender that
14 the lender is also held liable to maintain that
15 property. They should be held accountable to the
16 maintenance of the property. The reason I am
17 supporting Mr. Zimmer's comments is that while
18 theoretically as the members of the banking
19 committee testified earlier, banks do not wish to
20 repossess properties, but practically in the
21 market today the latest numbers are that
22 repossessions by banks has increased over 98% from
23 last year. There is a report on this that
24 actually comes out of Chicago, and I would be
25 happy to share that report with the committee.

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2 This will actually focus out attention on the fact
3 that the majority of the mortgages in 2007 and
4 2008 are reverting back to the lender. Those
5 homes, therefore, are left without an occupant and
6 are left unattended. Therefore, the language in
7 Intro 889 I have comments on how it could address
8 the issue of the responsibility of maintaining the
9 property in that situation. That is the most
10 highly recurring event today in the market, which
11 is leaving properties unattended. The other
12 comment is with respect to the language crafted
13 with respect to the milestones that the Council
14 has suggested of a ten day notice. The milestones
15 are at the filing of the foreclose action, at the
16 judgment and at sale. There has to be a notice
17 reporting requirement within ten days of each of
18 these milestone events. A very critical milestone
19 event between the foreclose judgment and the sale
20 is actually the notice of publication for sale.
21 What I'd like to bring your attention to is that
22 in this milestone is when the mortgagee actually
23 files or publishes the first publication in a
24 newspaper, two-week, four-week, and 28-day notice
25 of sale. That milestone must be include in your

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2 milestone reporting requirement of the first
3 notice of sale, which would be publicly available
4 for anyone to see. My reason for suggesting this
5 is that very often tenants and occupants, whatever
6 term we use, might be interested in actually
7 purchasing the property. They would have then the
8 notice of the date on which the process of sale
9 begins. Because once the property is sold it is
10 very difficult to revert to a point where there
11 was never a sale. That should be an additional
12 milestone, a 10-day notice requirement for the
13 first publication of sale. It can be tracked
14 thereafter. Sometimes sales are postponed. It
15 doesn't have to have a notice on each postponement
16 but at least if the first publication notice comes
17 up, then it's easy for anyone to track it; for
18 agencies to track it and for people who are
19 interested in purchasing the property to track
20 when the actual day of sale will be. Furthermore,
21 I think from NHS' experience which they have
22 shared with me over the years, there are occupants
23 who are other than tenants. Tenancies in most of
24 Jamaica or in Southeast Queens or in Jackson
25 Heights or in other areas are month to month.

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2 Usually tenants don't have a lease. It's very
3 easy to evict a tenant. You'd have to give them a
4 30-day notice to evict them. Definitely the word
5 occupant, as was mentioned earlier, should be
6 included in the notice requirement. The notice to
7 the occupant is far more critical in units that
8 are five and less rather than in units that are
9 five and more. It is these unprotected tenants
10 and occupants of units that are five and less that
11 we need to protect at this time. It's easier to
12 give them a notice. You do know who those people
13 are in those five units. You may not know how
14 many occupants there are in 100-unit building so
15 that may be an onerous requirement. But in a
16 situation where the building or the house is less
17 than five units the notice requirement to an
18 occupant as well, not just a tenant, would not be
19 onerous. It would be something easily
20 identifiable by the mortgagee. What I do want to
21 reiterate is that number that was given on the
22 number of forecloses filed as opposed to the
23 number that closed, what tends to happen in the
24 community is that during the point of the filing
25 of lis pendens and that of foreclose sale, there

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2 are numerous players in the market who involve
3 themselves in something called title theft. It
4 takes away the document that proves your title
5 from the owner. What we must remember is that
6 many of the forecloses today which I look at in my
7 work are not a home mortgage. It's a mortgage on
8 the home but usually they are borrowing the
9 equity. They're equity mortgages. There has been
10 borrowing on the value of the property, some small
11 amount of borrowing. Those terms were onerous
12 with high interest rates. They've brought a
13 foreclosure on the house. They were not originally
14 home mortgages. Originally the homes were free
15 and clear of all mortgages for many years until a
16 new mortgage comes up. Therefore, that makes the
17 foreclosure action even more onerous on the tenant
18 or the owner who may have lived in that property
19 for a number of years. They may have spent their
20 lives there. Therefore, what you are suggesting
21 is what you are doing is you are not changing the
22 property law of New York or the requirements of
23 the CPLR, what you are doing is adding an
24 additional notice requirement for publication.
25 You're just wanting the community to know, in

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2 Intro 889, with the registration requirements that
3 anyone can access certain critical information.
4 That information I'd like you to add. I'm
5 repeating again another milestone of a notice
6 within ten days of the first notice of publication
7 for sale of the property as one milestone. The
8 second is I definitely would like you to emphasize
9 clearly that a REO ownership when a lender
10 purchases the property which is what is happening
11 today. In reality the largest number of sales is
12 where the lender is buying up the property himself
13 and just leaving the property closed. They should
14 be included in the language of having the
15 responsibility to maintain the property. Third,
16 the language should be crafted that the notice
17 requirement remain with the penalty so that the
18 title theft issue is addressed automatically. It
19 will automatically address that issue if your
20 suggestions go through.

21 CHAIRPERSON DILAN: The title theft
22 issue is one that I'm dealing with in another
23 piece of legislation separate and apart from this.
24 I think there are some actions that need to take
25 place with regard to the City's Registrar's Office

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2 in order to do that correctly. So it wouldn't be
3 under the jurisdiction of this committee, but I am
4 working on that. Separate from this hearing I can
5 reach out to you through NHS of Jamaica to see if
6 there are any suggestions you have on improving
7 that.

8 VANDANA CHAK: Definitely.

9 CHAIRPERSON DILAN: That happens to
10 a lot of my senior citizens. Not a subject of
11 today's hearing but very important.

12 VANDANA CHAK: But each of these
13 combine together to create the crisis. It is
14 terrific that you are having a separate
15 legislation. It is also good to include the
16 notice and the registration requirements to add to
17 the safety net of the true owner. It helps in
18 that as well.

19 CHAIRPERSON DILAN: I'm definitely
20 interested in doing that.

21 PATRICIA KERR: I really just
22 wanted to add that in terms of maintenance we are
23 very concerned about this piece. We have
24 partnered with Wildcat Corporation to really go
25 out into the community and begin to do some of

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2 this. We're really putting this back on the
3 banks, if you will, to really maybe get them to
4 invest into our organization so that we can begin
5 to do some of this needed work into the community
6 and get the community back to where it needs to
7 be. I'm really very interested in that piece of
8 the legislation. Anything that we can do to
9 support and be part of this process we will be
10 than happy to entertain.

11 CHRISTINE ROLAND: I'm Christine
12 Roland. I'm with Queens Community House. We're
13 here in support of this legislation because it's
14 really needed. We work mostly from a tenant
15 perspective. Last year we worked with
16 approximately 3,000 tenants. Over the course of
17 last year we saw a 47% increase in tenants being
18 affected by forecloses. I think the point of
19 giving them information is really, really
20 necessary. By the time they find us somehow,
21 they're scared, they don't know what's going on;
22 people have told them they're going to just throw
23 them out. Sometimes the electric goes off and
24 they don't know what happened. They come and they
25 tell you I've been paying my rent, I don't

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2 understand. Why are they going to take the house
3 away? Why do I have to move? So they really are
4 being affected. I know you know this because I
5 can see it in your face. I don't need to push
6 that point. One suggestion I might make is that
7 first of that it be very clear what their rights
8 are because not everybody has the same reading
9 skills. Second give a list of some of the
10 agencies they can go to for assistance like Legal
11 Services or our agency or Neighborhood Housing so
12 that they have it right there and they don't have
13 to get crazy trying to find somebody who will help
14 them. I'd be happy to work on a list of getting
15 agencies together so it could be put out with the
16 information that could help them understand what's
17 going on in the process. We're working with NHS
18 in trying to help them with relocation and things
19 like that, getting money to move because a lot of
20 them live month to month with their rent. So when
21 the landlord accepts the rent and then all of the
22 sudden they're in foreclose, they don't have money
23 to move. That's a real hardship on a lot of
24 families. We put together a project where they're
25 helping the homeowners and we're working with the

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2 tenants and we're hoping that will be successful
3 in helping a lot more people. I hope that was
4 painless.

5 PATRICIA KERR: And useful, right?

6 CHRISTINE ROLAND: Thank you very
7 much for this. It's really needed. Because most
8 people weren't thinking about tenants at all,
9 everything was about the homeowner.

10 CHAIRPERSON DILAN: You can thank
11 the sponsors and I guess me for bringing it up for
12 a hearing, but it was really the ideas of the
13 sponsors. My focus was also geared toward the
14 homeowner. I had forgot to think about the tenant
15 in this issue. In most cases the tenant is
16 probably a victim in this but not in all cases.

17 CHRISTINE ROLAND: No, nothing is
18 in all. Let's face it, there's good and bad to
19 everything.

20 CHAIRPERSON DILAN: I think I've
21 said that consistently throughout the hearing. I
22 believe there is a point in the process where the
23 tenants do have a right to know what's going on.
24 I'd like to thank you ladies for your time and for
25 your testimony today.

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CHRISTINE ROLAND: Thank you.

PATRICIA KERR: Thank you.

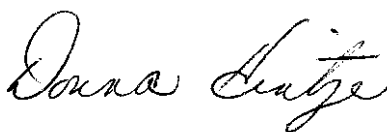
CHAIRPERSON DILAN: Before I conclude I have a little housekeeping. I have to ask the two ladies that didn't fill out an appearance to please do so before you leave.

CHRISTINE ROLAND: Thank you very much.

CHAIRPERSON DILAN: I have testimony from three entities for the record. One is from Mr. Harvey Epstein from the Urban Justice Center and his testimony will be read into the record as if it was read in full. Also from the director from ANHD, Mr. Dave Hanzel. His testimony will be entered into the record as if read in full. Also, testimony from Legal Services of New York and the Legal Aid Society, their testimony will be entered into the record as if it was read in full. All three entities' testimony appears to be in favor of the items. With that, all items before the Housing and Buildings Committee will be laid aside and this committee is adjourned.

C E R T I F I C A T E

I, Donna Hintze 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 May 5, 2009