

FOR THE RECORD

New York City Committee on Consumer Affairs
Hearing on introduction of Bill 1070
October 6, 2009

Good afternoon Chairman Comrie and Committee members. Thank you for giving me the opportunity to come here to day and offer my testimony on Introductory Bill 1070, a Local Law to amend the administrative code of the city of New York, in relation to distressed property consultants. My name is Rev. Charles Butler. I am Director of Equitable Development and Housing Counselor for Harlem Congregations for Community Improvement, Inc. (HCCI). HCCI is a faith based not-for profit agency located in Central Harlem. HCCI was established in 1986 by a group of pastors and community leaders to provide affordable housing, employment and training programs and health education and information to the Harlem community. We are an approved HUD Housing Counseling Agency and also an authorized Housing Counseling Agency for New York City Department of Housing Preservation and Development. We provide homebuyer education workshops to approximately 1400 individuals and families each year and average about 70 new homeowner each year. The majority of our homeowners are African American and Latino and their annual income is at or below 80% of the median income level. These new homeowners are now enjoying the success and happiness of achieving the American Dream. They are hardworking people and may be the first ones in their families who have experienced owning their own home. We also provide post homeowner workshops on foreclosure prevention and conduct individual counseling sessions for homeowners who may have become delinquent with their mortgage payment or who may be "at risk" of foreclosure due to experiencing difficulty

in making existing mortgage payments because of resetting of an adjustable rate or a financial hardship such as: loss or a drastic reduction of income, medical illness, divorce or other personal situation. In these cases we will try to determine the cause of the hardship, the long term effect it will have on them maintaining their home, seek to find a remedy with the lender through one of the loan modification options if possible. We will also provide budget and credit counseling to the homeowner to insure that they are staying within their means. Most of these homeowners who are either delinquent or "at risk" of falling behind in their mortgage payments are already struggling to make ends meet. I feel it is in the best interest of the city to have these distressed property consultants at the very least inform the homeowners of the free services provided by the not for profits as an option for assistance. Also there should be a contract as stated in the bill 1070 and no fee at all should be paid to the consultants until they at the very least have been able to work out a loan modification or some type of foreclosure prevention to assist these homeowners in keeping their home. Thank you for your time and consideration regarding this issue.

Center for New York City Neighborhoods

Testimony before the **Committee on Consumer Affairs** Of the New York City Council

Tuesday, October 6th, 2009

Good afternoon Chairman Comrie and members of the Committee on Consumer Affairs. My name is Michael Hickey, Executive Director of the Center for New York City Neighborhoods (CNYCN). Through the support and leadership of the City Council, the Speaker and the Mayor, CNYCN began providing foreclosure prevention support throughout the five boroughs over one year ago.

I'd like to also acknowledge our colleagues from the New York City Department of Housing Preservation and Development and the Department of Consumer Affairs, as well as our other nonprofit partners here to provide testimony today. We are all working diligently to address the many complex challenges of the foreclosure crisis, focusing our efforts on the provision of free, reliable, community-based housing counseling and legal services to those at risk of losing their homes.

Intro 1070 is a compelling piece of proposed legislation that has both potential benefits and some challenges in its current form.

As context for my comments and recommendations, let me begin by providing some background. CNYCN began its service provision in July of 2008, and we have now seen over 5,000 clients through our network of 30 nonprofit providers. Many of you are very familiar with these services and know that we capture tremendous amounts of information regarding the nature of the mortgage distress we observe.

Many of you also know that most distressed homeowners reach us through 311, although substantial numbers also come directly through the outreach efforts of our nonprofit partners. We've recently begun tracking helpline callers to determine how they are interacting with so-called foreclosure or distressed mortgage rescue specialists. A surprisingly low number of callers, approximately 5%, are engaged with some type of mortgage rescue specialist when they call CNYCN seeking support. We examined the records of 40 of these calls. We found that fees ranged from \$500 (charged by an individual who said he worked for JPM Chase) to \$10,000 (this caller was immediately referred to the Attorney General's office in addition to being given a legal services referral), with the median fee being \$2,400. In addition:

- 75% of the purported specialists are unique organizations, leading us to assume that there are many players involved in perpetuating these activities;
- 33% are from out of state, and 95% are based outside of New York City, indicating the possibility for substantial enforcement and legal challenges;
- According to callers, 75% of these entities are not achieving any outcomes on the client's behalf, and we are therefore concerned with the overall legitimacy of this sector;

- Finally, 66% of the callers to our helpline are immediately referred to legal services because the homeowner has already received a notice of foreclosure from the courts. These are homeowners who can ill afford the costs in time and capital that such entities entail, and who frequently arrive seeking services in much worse condition than if they had been able to avoid engaging these entities.

Anecdotally, most of these entities operate on a system we refer to as “flash, cash and dash.” For flash, they make claims of 100% success, special relationships with the banking sector and federal government to facilitate modification, and offer money back guarantees. They then frequently require payments up front, sometimes in cash or by taking credit card charges over the phone. Finally, these consultants simply don’t deliver and frequently simply ignore the homeowner or completely disappear (in the case of our sample, approximately 25% of the distressed mortgage consultants could never be reached again after taking payment).

It is entirely possible that there are legitimate businesses operating in this sector that offer beneficial services to homeowners, albeit for a significant fee. Still, it’s clear that there is also substantial abuse involved in these transactions, and that they are concentrated in high foreclosure neighborhoods with heavy levels of overall economic distress.

Our primary recommendation is to make charging fees for this type of service illegal. While we understand that municipal regulations are likely to face pre-emption or other legal challenges that would inhibit their effectiveness, this recommendation conveys our general regard for distressed mortgage consultants and their ilk. Within the context of the current proposed legislation, we would also strongly suggest striking obligations to publish the City’s 311 number in marketing materials, as these are likely to both confuse homeowners and add greater legitimacy to practices we largely consider illegitimate.

Finally, we strongly support additional efforts by the City Council, HPD, DCA, and our other partners to strengthen and magnify education and outreach campaigns. While forcing bad actors to be more transparent is always beneficial, the most effective solution is to simply make the alternative of legitimate and effective services more visible and available.

We thank you for this opportunity to testify and we look forward to responding to any questions you may have.

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**Statement of Andrew Eiler,
Director of Legislative Affairs
Department of Consumer Affairs
before the
City Council Committee on
Consumer Affairs
on
Intro. 1070**

October 6, 2009

Good morning, Chairman Comrie, and committee members. I am Andrew Eiler, Director of Legislation for the Department of Consumer Affairs. On behalf of Commissioner Mintz, I thank you for the opportunity to appear before you to comment on Intro. 1070, regarding distressed property consultants. I also thank my colleagues who have broadly described the nature and scope of the problems that distressed property consultant pose for consumers facing the loss of their most prized financial asset – their homes.

We agree with our colleagues that this predatory industry poses a huge threat to those most in need of assistance. As Commissioner Mintz testified before the U.S. House of Representative’s Judiciary Committee on April 1, 2009, the “shadow industry aimed at profiteering from both the enormity of the crisis and federal resources is moving very aggressively” and has brought in its wake “a tide of foreclosure prevention and loan modification scams [that are] sweeping across our cities and stripping those who can least afford it of their last chance to save their homes and keep their family finances stable.”

“This shadow industry – referred to as loan modification companies, mortgage modification assistance or, more aptly, foreclosure rescue scams – varies widely. At their most outrageous, these are outright criminals who engage in deed theft. Others are con artists who offer homeowners assistance in negotiating with lenders or help refinancing, collect an up front fee and then simply disappear... The more pernicious component of these scams is that these businesses dissuade consumers from contacting their lenders or servicers, thereby wasting opportunities for homeowners to negotiate directly with their lenders. By the time the homeowner realizes the swindle, generally too much time has elapsed for the lender or servicer to modify the loan.”

According to Commissioner Mintz, even “the less fraudulent companies are just as costly and dangerous, convincing struggling homeowners to pay for a service that ultimately has no value. With millions of dollars streaming into HUD-certified

counseling organizations and free legal services provided throughout the country, there is simply no reason for a homeowner behind on mortgage payments also to pay someone precious dollars to contact the lender on his or her behalf.”

The City’s position is that the only relief that fully protects consumers is banning the practice of providing distress property consulting services for a fee. This industry has no redeeming features that would make it possible to cure its faults with disclosures. As Commissioner Mintz informed the House Judiciary Committee on behalf of the City, “there is no reason for distressed homeowners to pay unqualified, for profit actors to negotiate with their servicers or lenders on their behalf. No for-profit enterprise is better positioned than a qualified not-for-profit HUD counselor, or an attorney acting in a legal capacity, or an individual homeowner, to work with a mortgage servicer. This includes mortgage brokers, some of whom have reshaped their businesses from subprime mortgage swindles to foreclosure rescue scams. Akin to the banning of fee-based debt counseling services in New York, [these abusive scams can be curbed immediately] with the enactment of a simple ban on fee-for-service foreclosure prevention businesses.”

While we agree with City Council’s concern about the industry and applaud its efforts, through Intro 1070, to shine a spotlight on this shadow industry, requiring distressed property consultants to disclose in advertising units restrictions imposed on them pursuant to section 265-b of the New York State Real Property Law, and other measures, just doesn’t go far enough. The Department joins our colleagues in expressing concern that the proposed relief is inadequate to address the predatory practices it seeks to curb. As Commissioner Mintz noted in his testimony, “this shadow industry thrives for three reasons all too familiar to consumer protection agencies: first, the intense demand for loan modifications; second, a captive, vulnerable and often unsophisticated population; and third, the lack of a single, clear, trustworthy, and tamper-proof source to which people can directed to as their sole source of help.”

We agree with our colleagues that the City should not further legitimize this industry by allowing these untrustworthy entities to use 311 on their advertisements. The proposal to include a public service announcement in promotional material for predatory products is likely to be counter-productive: it mixes a positive message with a swindler’s “pitch” which raises a sense of distrust and detracts from the public service message. In addition, we believe that the general description of legal rights proposed for inclusion in advertisements is not a sufficiently bright-line warning to signal consumers to reach an immediate decision to steer clear of the service.

Similarly, we believe the City should not appear to be “vetting” this industry by listing bad players on DCA’s web site. The Sanitation Department’s experience with enforcing the law prohibiting the defacement of public property by the posting of flyers is a clear measure of the danger of using such listings to warn consumers about bad players. Since January 2009, the Sanitation Department’s inspectors have removed 172 signs that “distressed property consultants” have posted on public property. Yet the Department

has been unable to identify sixty-four operators that could be issued a violation. As this experience demonstrates, no enforcement would be able to track and catch the fly-by-nights whose cell phone numbers appear on the advertisements tacked to trees and lampposts, hung on doorknobs or shoved under doors. Because the Department would be unable to identify and make findings on all such businesses that violate the law, these violators would never be listed. Lulled into a false sense of security, consumers would then assume that the services of a company not listed as a bad player were safe to use.

There are also some technical issues regarding the language of the bill that would need to be tweaked, such as the definition of what comprises a “unit or units of advertising space” which requires disclosures. The bill as currently written leaves entirely unclear and ambiguous exactly what kinds of promotional materials would be required to contain the contemplated disclosure.

We support and commend the kinds of targeted educational initiatives already outlined by our colleagues. Commissioner Mintz suggested, in his April testimony, that cities use municipal 311 and 211 systems as the single source to which consumers are directed to legitimate counseling and rescue resources through a national public awareness campaign with a single call to action: CALL 311, just the kind of City-wide campaign that our colleague from HPD has described.

The work of the Department of Consumer Affairs’ Office of Financial Empowerment also reflects the ongoing commitment of the City to provide appropriate relief for those on the brink of foreclosure. Our Financial Empowerment Centers, located throughout the City, offer free, one-on one, confidential financial counseling in both English and Spanish to individuals and families in financial crisis. Our robust and comprehensive Financial Education Network of the City’s legitimate providers of financial education classes, workshops and counseling opportunities is available on line in a searchable, accessible database or by calling 311. It was especially designed to offer options to New Yorkers who may prefer to choose from a range of free assistance. The Department also developed several “plain vanilla” banking products with no fees, and no overdraft charges, available to all New Yorkers. In addition, the Department implements the Mayor’s tax credit public awareness campaign, now in its eight year, to help put real and substantial dollars back into the pockets of those New Yorkers who qualify for the Earned Income Tax Credit and the City’s Child Care Tax Credit. That campaign’s single call to action has always been: Call 311.

We commend the Council for seeking to protect consumers from the distressed property consulting scams the foreclosure crisis has created, and thank the Council for the opportunity to comment. While we would wholeheartedly support the enactment of a ban on this industry, with the appropriate enforcement mechanisms needed to make it viable, we look forward to working with the Council on ways to better address curbing this troublesome and predatory industry.

This page is located on the NYC.gov Web site at
http://www.nyc.gov/html/dca/html/pr2009/pr_040109.shtml

FOR IMMEDIATE RELEASE
Wednesday, April 1, 2009

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**NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS COMMISSIONER
JONATHAN MINTZ TESTIFIES BEFORE THE HOUSE JUDICIARY
COMMITTEE AND PROPOSES SOLUTIONS TO MORTGAGE FRAUD SCAMS**

*Commissioner Mintz Calls for Federal Ban on Fee-for-Service Foreclosure
Prevention Businesses, Creation of National Enforcement Task Force to
Coordinate Local Tips, and Utilization of 311 and 211 Services Across the
Country as the Single Conduit for Legitimate Mortgage Refinancing Services*

The following is Commissioner Mintz's testimony as prepared.

"Good morning. Thank you, Chairman Conyers and Ranking Member Smith, for the opportunity to testify today on behalf of Mayor Michael Bloomberg and for shining a spotlight on a national crisis.

"Given your full schedule and the urgent nature of these hearings, I'll skip the extensive background on DCA's 40-year history of enforcing and litigating against deceptive and misleading practices in NYC. And I'll forego the in-depth stories about the damage inflicted on consumers by foreclosure and mortgage scams. This matter necessitates cutting to the chase. Put simply, mortgage restructuring scams not only prey upon vulnerable people already in crisis, they also undermine critical federal efforts to prevent foreclosures and avoid further destabilization of our neighborhoods and our economy. This malignant industry warrants a systematic and overarching response at the federal, state and local level.

"I'd like to use my brief testimony to give you a ground-level view of the anatomy of the scam, diagnose from a consumer affairs perspective why these scams are so virulent, and finally suggest some practical, immediate outreach and enforcement interventions that must occur in the coming days and weeks.

"The New York City Department of Consumer Affairs (DCA) enforces the City's aggressive Consumer Protection Law and other business regulations. * DCA regularly prosecutes businesses engaged in illegal and misleading conduct, from cell phone companies engaged in deceptive advertising, to tax preparers, process servers, employment agencies, and dozens of other industries. We stop illegal practices, garner millions of dollars in fines, and recover millions more in consumer monies owed.

"Through targeted outreach, partnerships with community and trade organizations, informational materials, and large-scale public awareness campaigns, DCA also educates consumers and businesses about their rights and responsibilities. Through the Department's Office of Financial Empowerment, we also coordinate Mayor Bloomberg's efforts to help New Yorkers grow and protect their assets. Our many large-scale initiatives include our leadership, for the past seven years, of Mayor Bloomberg's

extensive Earned Income Tax Credit outreach campaign, more than doubling the number of people receiving free tax preparation over that time period and making a significant dent in the number of New Yorkers who had yet to claim their EITC and other credits. Last year, nearly 40,000 people called the City's 3-1-1 information and referral line to seek tax preparation help alone.

"This combination of enforcement and education is exactly what is needed to intervene and disrupt the tide of foreclosure prevention and loan modification scams sweeping across our cities and stripping those who can least afford it of their last chance to save their homes and keep their family finances stable. The numbers are alarming: nearly 5,000 homes in New York City were auctioned off last year and nearly 14,000 homeowners had official, public notices, or *lis pendens* filings.

"The national foreclosure crisis has created a formidable demand for rescue and refinancing. Unfortunately, the shadow industry aimed at profiteering from both the enormity of the crisis and the federal resources is moving very aggressively.

"This shadow industry – referred to as loan modification companies, mortgage modification assistance or, more aptly, foreclosure rescue scams – varies widely. At their most outrageous, these are outright criminals who engage in deed theft. Others are con artists who offer homeowners assistance in negotiating with lenders or help refinancing, collect an upfront fee and then simply disappear. While the financial impact of these swindles is, of course, devastating for homeowners (we've seen upfront fees of \$1,500 to \$5,000), the more pernicious component of these scams is that these businesses dissuade homeowners from contacting their own lenders or servicers, thereby wasting opportunities for homeowners to negotiate directly with their lenders. By the time the homeowner realizes the swindle, generally too much time has elapsed for the lender or servicer to modify the loan.

The less fraudulent companies, which are just as costly and dangerous, convince struggling homeowners to pay for a service that ultimately has no value. With millions of dollars streaming into HUD-certified housing counseling organizations and free legal services providers throughout the country, there is simply no reason for a homeowner behind on mortgage payments also to pay someone precious dollars to contact the lender on his or her behalf.

"Regardless of the particular type, these scams are undermining the admirable emergency efforts of this Administration as well as states and local governments to restore stability to our economy. States such as New York for example, have given homeowners additional time to pay lenders and even require conferencing before a foreclosure can take place. But such rescue efforts are worthless if time is consumed by ineffective or non-existent third party-negotiations, or if funds owed to lenders end up in the hands of shadow players. These scams leave homeowners right where they started before any of our interventions.

"This shadow industry thrives for three reasons all too familiar to consumer protection agencies: first, the intense demand for loan modifications; second, a captive, vulnerable, and often unsophisticated population; and third, the lack of a single, clear, trustworthy, and tamper-proof source to which people can be directed as their sole source of help. I've said enough about the intense demand. Exploration of the second and third factors, however, reveals clear, feasible steps the federal government can take to turn the tide.

"**The second factor: a vulnerable population.** Many of the same people who were deceived by the marketing tactics used for subprime loans – people with limited experience with financial services, without legal representation or good advice from friends and family – are the targets now. Adding fuel to this fire is that these "easy targets" can be easily and precisely identified. *Lis pendens* lists – readily available for

purchase online – make it simple to get the names, addresses, and phone numbers of consumers in mortgage distress. Scam artists can also access critical information on the loans, like servicers and payment histories, so they can employ a disarming familiarity.

“And the third factor: lots of attention, but no tamper-proof conduit. The public hears daily about the Federal government’s determination and efforts to help distressed mortgage holders. The media is abuzz with terms like “Economic Stimulus Plan”; “foreclosure prevention”; “HUD”; “FHA”; and the like. But homeowners in foreclosure don’t know what that means for them individually or where they can turn. Information is channeled through multiple conduits – from every level of government and from non-profit sector partners. Simply put, it is this diffuse messaging and multiple doorways which facilitate swindles.

“Foreclosure rescue scams take advantage of our failure to provide a clear path to good options for loan modification. Modifiers pose as “messengers” from government agencies, lenders and services. Advertisements take on an official veneer for example, stating, “Your loan is eligible for a special conversion by the Governmental Economic Stimulus Act of 2008” or, “The Federal Government has ordered a mandate stating that all toxic loans *MUST* be modified”. Others use FHA seals or include legal citations to provisions of the Community Reinvestment Act. Some companies imply that they are already working on the homeowner’s behalf by referencing the mortgage broker that originated the loan or the servicer, or including official-sounding titles such as “National Financial Benefits Advisor.”

Given this diagnosis, let’s zero in on solutions. We believe that three feasible steps can effectively intervene to protect people in foreclosure from these scams and get them to the right help:

1. First, a targeted, multi-media messaging campaign that directs the public to official municipal “311” and “211” call centers, tamper-proof conduits that could then directly link consumers to legitimate resources;
2. Second, coordinated investigation and a centralized information repository through a national enforcement task force; and
3. Third, a federal statutory ban on fee-based foreclosure rescue activities.

1. Use municipal 311 and 211 systems as the single, tamper-proof number to which consumers are directed to legitimate rescue resources through a national outreach campaign.

“While so-called “loan modifiers” are located throughout the country, their targeting and marketing is usually local in nature. In New York City, the neighborhoods most dramatically impacted by the foreclosure crisis are papered with flyers offering rescue from foreclosure – on lampposts, on trees, at grocery stores, and at local businesses. In the last three months alone, NYC’s Sanitation Department removed 64 different illegally-posted foreclosure rescue posters in just two of the highly-affected neighborhoods. The scam artists are even inside homes, with robo-calls and dozens of letters showered on the doorstep of every person on the *lis pendens* list.

“And so to combat this flood of marketing, the national response needs to be clear and simple in messaging, yet local in delivery. Scammers take advantage of the public’s inability to distinguish one hopeful sounding phone number or web site from another, the legitimate from the one that only looks or sounds legitimate. Simplifying the conduit to well-trusted and tamper-proof “311’s” or “211’s” is an ideal intervening fix.

“More than 60 cities across the U.S. – covering 78% of the American population – have ‘311’ or ‘211’ information and referral systems, generally available 24 hours a day, seven days a week, in dozens of languages. These systems are well-known and appropriately trusted resources. Local governments have invested millions of dollars to popularize

these free and multi-purpose hotlines as safe, reliable information sources – and we stand ready to utilize this incredible resource for the present emergency.

"In New York City, residents who call 311 regarding foreclosure are directed to the specially-trained call-takers who triage and assess their needs at the Center for New York City Neighborhoods (CNYCN), a non-profit created by Mayor Bloomberg, in partnership with the New York City Council and private sector funders. The Center coordinates and expands services to New York City residents at risk of losing their homes to foreclosure and funds a network of more than 19 non-profit legal service and housing counseling organizations to which it refers thousands of New Yorkers. More than 90% of people contacting the Center come through the City's 311 system.

"The federal government has the unique power to mobilize tens, if not hundreds, of thousands of civic leaders and community partners to carry a unified message. Loan servicers, lenders, mortgage brokers and real estate agents should all be required to include references to 311 or 211 in their communications to homeowners. All federally-funded social and housing programs, federal benefits offices, the Postal Service, and others should all carry the same simple message: "don't talk to anyone about helping you avoid foreclosure unless you got to them through 311 or 211."

2. Coordinate and streamline information sharing and enforcement.

"We applaud Chairman Conyers' proposed "Fight Fraud Act," and the additional resources he intends to direct to federal law enforcement agencies such as the FBI and the Postal Service. Given the local nature of the marketing of these scams and the accompanying wealth of local information and leads, these federal agencies will be most effective when meaningfully partnering with local enforcement and consumer protection agencies. We have the information – we just need to get it into the right hands.

"We propose the establishment of a national task force which includes local, state and federal enforcement and investigation agencies. Coordination among enforcement agencies is critical to identifying egregious scams and tracking down perpetrators who take the money and run – usually without respect for geographical boundaries. Local enforcement is often thwarted by our inability to pursue bad actors across state borders. A comprehensive database and tips-line would allow local enforcement agencies immediately to relay critical data to help federal agents track down elusive businesses that too easily shut down and reincorporate.

3. Enact a federal ban on fee-for-service mortgage relief advocacy.

"There is no reason for distressed homeowners to pay unqualified, for-profit actors to negotiate with their servicers or their lenders on their behalf. No for-profit enterprise is better positioned than a qualified, not-for-profit HUD counselor, or an attorney acting in a legal capacity, or an individual homeowner, to work with mortgage servicers. This includes mortgage brokers, some of whom have reshaped their businesses from subprime mortgage swindles to foreclosure rescue scams. Akin to the banning of fee-based debt counseling services in New York, Congress has the power to curb abusive scams immediately, with the enactment of a simple ban on fee-for-service foreclosure prevention businesses. Moreover, state and local governments must be empowered to enforce such legislation. Congress has the ability to eliminate these practices now by enlisting the army of local and state enforcement agencies.

"We applaud this Committee's recognition of the critical importance of this problem. We must act immediately: marshal a clear message with an unmistakable phone number, coordinate enforcement with local data-rich agents, and enact aggressive legislation to outlaw the for-profit industry within which scammers hide.

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"Thank you. I would be pleased to answer your questions."

**Chapter 64, Section 2203(a)*

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TESTIMONY OF DEPARTMENTS OF HOUSING PRESERVATION AND
DEVELOPMENT AND CONSUMER AFFAIRS AND THE CENTER FOR NEW
YORK CITY NEIGHBORHOODS BEFORE THE CITY COUNCIL'S CONSUMER
AFFAIRS COMMITTEE – TUESDAY OCTOBER 6TH, 2009 AT 1PM.

GOOD AFTERNOON, COUNCILMAN COMRIE AND MEMBERS OF THE
CONSUMER AFFAIRS COMMITTEE. I AM BARBARA FLYNN, CHIEF OF STAFF
OF INTERGOVERNMENTAL AFFAIRS AT THE DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT (HPD) AND SITTING NEXT TO ME ARE
ANDREW EILER, DIRECTOR OF LEGISLATION FROM THE DEPARTMENT OF
CONSUMER AFFAIRS (DCA) AND MICHAEL HICKEY, EXECUTIVE DIRECTOR
OF THE CENTER FOR NEW YORK CITY NEIGHBORHOODS (CNYCN).

WE ARE HERE TODAY TO DISCUSS INTRO 1070, SPONSORED BY
COUNCILMEN SANDERS, COMRIE, GERSON AND NELSON, AND TO SHARE
SOME IDEAS AND CONCERNS ABOUT THE LEGISLATION. WE WILL ALSO
PRESENT SOME MORTGAGE FORECLOSURE FACTS & FIGURES THAT WE
HAVE COLLECTED AS WELL AS SOME OF THE PUBLIC SERVICE
INITIATIVES THAT THE ADMINISTRATION IS CREATING AND SOME
ALREADY UNDERTAKEN.

THE MORTGAGE FORECLOSURE PROBLEM HAS GROWN SUBSTANTIALLY
IN NEW YORK CITY OVER THE LAST FEW YEARS. THERE WERE 13,215 LIS
PENDENS FILINGS CITYWIDE IN THE FIRST EIGHT MONTHS OF 2009 AND
JUST THREE YEARS EARLIER (2006) DURING THE SAME TIME PERIOD,

THERE WERE FEWER THAN 5500. FORECLOSURES HAVE A REAL IMPACT ON HOMEOWNERS AND RENTERS BY DISPLACING FAMILIES FROM THEIR HOMES, WHILE NEIGHBORHOODS CAN FACE DETERIORATION AND DESTABILIZATION DUE TO VACANT PROPERTIES AND DECLINING HOME VALUES. MANY HOMEOWNERS ARE AFRAID AND EMBARRASSED BY THEIR CIRCUMSTANCES AND THEY MAY NAIVELY RELY ON THE FIRST PERSON THAT OFFERS ASSISTANCE WHETHER OR NOT THAT PERSON IS SEEKING A FEE FOR THEIR SERVICE. WE WOULD FURTHER ADD THAT WHATEVER ONE CALLS THE COMPANIES AND INDIVIDUALS WHO TAKE ADVANTAGE OF VULNERABLE HOMEOWNERS, "DISTRESSED PROPERTY CONSULTANTS", "LOAN MODIFICATION COMPANIES", OR "MORTGAGE MODIFICATION CONSULTANTS", THEY MORE OFTEN THAN NOT SERVE TO DESTABILIZE OUR NEIGHBORHOODS AND OUR ECONOMY. OVER THE FIRST 8 MONTHS OF THIS YEAR (2009), OVER 50% OF ALL FORECLOSURE FILINGS IN THE CITY WERE IN JAMAICA, BELLEROSE/ROSEDALE, KEW GARDENS/WOODHAVEN, HOWARD BEACH/SOUTH OZONE PARK AND THE NORTH SHORE OF STATEN ISLAND.

AS YOU KNOW, THIS ADMINISTRATION AND THE CITY COUNCIL CREATED THE NOT FOR PROFIT ORGANIZATION, THE CENTER FOR NEW YORK CITY NEIGHBORHOODS (CNYCN) ALMOST TWO YEARS AGO. THE CENTER CONTINUES TO RECEIVE FUNDING FROM THE ADMINISTRATION, THE COUNCIL AND FOUNDATIONS AND INCLUDES SOME OF OUR LARGEST

BANKING PARTNERS SUCH AS CITIBANK, DEUTSCHE BANK, AND JPMORGAN CHASE. THE CENTER HAS COMMUNITY PARTNERS THAT PROVIDE COUNSELING, EDUCATION, AND LEGAL SERVICES TO HOMEOWNERS AT RISK IN ADDITION TO LOAN REMEDIATION. HOMEOWNERS CAN REACH ONE OF THE COMMUNITY BASED ORGANIZATIONS BY CALLING 311 OR VISITING 311 ONLINE. THE CENTER HAS CONTRACTS WITH MULTIPLE (30) COMMUNITY-BASED NOT FOR PROFIT ORGANIZATIONS THROUGHOUT THE CITY THAT PROVIDE BOTH COUNSELING AND LEGAL SERVICES TO AT RISK INDIVIDUALS. THERE IS NO CHARGE FOR ANY OF THESE SERVICES. MR. HICKEY AND HIS STAFF TESTIFY AT HEARINGS, ATTEND COMMUNITY STREET FAIRS, HPD'S HOMEOWNERS NIGHTS AND THE MAYOR'S TOWN HALL MEETINGS – ALL IN AN EFFORT TO GET THE WORD OUT WE ARE ASSISTING HOMEOWNERS AT RISK OF LOSING THEIR HOMES AND THERE IS NO CHARGE FOR THESE SERVICES.

WE ARE VERY CONCERNED THAT COMPANIES THAT PREY ON ELDERLY OR VULNERABLE CITY RESIDENTS SHOULD NOT BE GIVEN ANY LEGITIMACY AND WE ENCOURAGE HOMEOWNERS TO CALL 311 WHERE THEY WILL BE DIRECTED TO REPUTABLE AND RESPONSIBLE COMMUNITY BASED NOT FOR PROFIT PROVIDERS WHO WILL NOT ASK THEM FOR ANY PAYMENT FOR ANY SERVICE PROVIDED.

FINALLY, THE ADMINISTRATION IS OFFERING SOME PRACTICAL AND IMMEDIATE STEPS TO HELP HOMEOWNERS AT RISK. WHILE WE DO NOT WANT TO INCLUDE "CALL 311" ON DISTRESSED PROPERTY CONSULTANTS' ADVERTISING, THE ADMINISTRATION STRONGLY SUPPORTS GETTING THE 311 WORD OUT TO AS MANY PEOPLE (TENANTS AND HOMEOWNERS) AS POSSIBLE.

THE ADMINISTRATION SUPPORTS A COMBINATION OF ENFORCEMENT AND EDUCATION, AND IS CREATING A PUBLIC SERVICE AWARENESS CAMPAIGN THAT YOU WILL START TO SEE BEFORE THE END OF THE MONTH ON BUS SHELTERS AND IN FLYERS BEING DISTRIBUTED IN TARGETED NEIGHBOHROODS INFORMING RESIDENTS TO CALL 311 IF THEY ARE HAVING TROUBLE PAYING THEIR MORTGAGE. WE HAVE ALREADY LAUNCHED A FEW INITIATIVES INFORMING THE PUBLIC THEY SHOULD CALL 311 FOR ASSISTANCE: THANKS TO YOUR COLLEAGUE, COUNCILMAN LEW FIDLER, WE HAVE INCLUDED LANGUAGE ON HOMEOWNERS QUARTERLY STATEMENT OF ACCOUNTS WHICH TELLS HOMEOWNERS THAT IF THEY ARE HAVING TROUBLE PAYING THEIR MORTGAGE TO CALL 311, AND DURING SEPTEMBER CITY PAYCHECKS INCLUDED A SENTENCE ON THE BOTTOM OF THE CHECK TO CALL 311 IF YOU ARE EXPERIENCING FINANCIAL TROUBLE.

WHILE THE ADMINISTRATION SUPPORTS THE CONCEPT OF THIS BILL, YOU MAY ALSO WANT TO CONSIDER REQUIRING THAT THE DISTRESSED PROPERTY CONSULTANTS SPECIFICALLY STATE ON THEIR DOCUMENTS THAT THEY ARE A FOR-PROFIT COMPANY.

MORTGAGE FORECLOSURE SCAMS ARE TROUBLING, NOT JUST FOR THE HOMEOWNER WHO HAS BEEN TAKEN ADVANTAGE OF AND PERHAPS LOST MONEY, BUT FOR THE MANY DOZENS OF NOT FOR PROFIT ORGANIZATIONS WHO ARE WORKING HARD TO PROTECT AND ASSIST HOMEOWNERS AND THE BANKS AND LENDERS WHO ARE ALSO WORKING WITH THE HOMEOWNERS TO RENOGIATE THEIR LOANS AND FOR OUR NEIGHBORHOODS AND COMMUNITIES STABILITY. WE HOPE TO WORK WITH YOU AND THE CENTER ON THIS DISTURBING PROBLEM OF SCAM ARTISTS ABUSING OUR VULNERABLE NEIGHBORS.

THANK YOU FOR THE OPPORTUNITY TO TESTIFY. THE DEPARTMENT OF CONSUMER AFFAIRS WILL NOW DISCUSS THEIR EFFORTS TO COMBAT THIS WIDESPREAD PROBLEM, AS WELL AS SOME OF THEIR OWN CONCERNS REGARDING THE PROPOSED LEGISLATION.

**Testimony of Cyrus Dugger, Staff Attorney
Foreclosure Prevention Project, South Brooklyn Legal Services**

Before the New York City Council, Committee on Consumer Affairs

**Int. No. 1070
October 6, 2009**

Good afternoon. My name is Cyrus Dugger and I am a Staff Attorney for the Foreclosure Prevention Project at South Brooklyn Legal Services ("SBLs"). Thank you to the Committee on Consumer Affairs for inviting me to speak today about Int. No. 1070, a local law to amend the code of the city of New York in relation to distressed property consultants.

For more than 10 years, the Foreclosure Prevention Project has represented low-to moderate-income homeowners in New York City who are at risk of losing their homes because of predatory lending practices. Through litigation and advocacy, we have been able to save hundreds of homeowners from foreclosure. In recent years, our project has advised hundreds of New York City homeowners, most of whom have defaulted on unaffordable mortgages.

As you know, the nation has recently become embroiled in a foreclosure crisis with devastating consequences for homeowners and their communities throughout New York City.

In addition, during the last two years, SBLs has witnessed the rise of the distressed property consultant industry. As the housing market imploded, many of the same actors responsible for the foreclosure crisis reconstituted as distressed property consultant companies.

These for-profit companies claim to be experts in loan modifications and foreclosure prevention, and aggressively solicit distressed homeowners. They often convince troubled homeowners to pay thousands of dollars in up-front fees with irresistible and inflated promises about their ability to resolve distressed homeowners' foreclosure or mortgage default.

After spending their savings to pay up-front fees, many homeowners are instructed to stop making mortgage payments or communicating directly with their servicer. Others are told that they should not respond to court papers. Thus, while these consultants usually do little to nothing to help homeowners obtain affordable loan modifications, they simultaneously force homeowners further into default, thereby causing, or contributing to, thousands of potentially avoidable foreclosures in New York City each year.

Unfortunately, and ironically, many of the homeowners working with costly and usually ineffective distressed property consultants could have obtained high-quality

assistance negotiating affordable loan modifications free of charge from neighborhood housing counselors or legal services organizations like SBLs.

In an acknowledgement of the widespread problems with the distressed property consultant industry in New York State, on August 5, 2008, Governor Patterson signed into law Program Bill #44 (A.10817-A/S.8143-A), commonly referred to as the Foreclosure Prevention and Responsible Lending Act of 2008. Among many other important provisions, through the addition of Real Property Law § 265-b, this bill imposed substantial new limitations on the activities of distressed property consultants.

If universally adhered to, these prohibitions and requirements would effectively prevent the most unscrupulous practices of distressed property consultants.

Unfortunately, the primary shortcoming of § 265-b has been that distressed property consultants flagrantly violate the law every day. Among other violations, distressed property consultants continue to collect up-front fees and fail to execute written consulting contracts that comply with the requirements stated in § 265-b. In the vast majority of cases, only with our intervention are our clients able to have these illegal up-front fees refunded.

Another issue with the current law is that attorneys admitted to practice law in New York are exempt from the requirements of § 265-b. Alarming, distressed property consultant firms increasingly seek to avoid the application of § 265-b by hiring lawyers and coordinating their services with law firms, leaving homeowners without any recourse.

We welcome the Council's attention to this issue and hope you will continue to work with consumer advocates to address the foreclosure crisis.

In reality, the most effective way to prevent homeowners from being taken advantage of by distressed property consultants would be to prohibit them from operating. SBLs has yet to see a distressed property consultant that substantially assisted a homeowner prevent a foreclosure or cure a default.

Nonetheless, to the extent the Committee is unable to prohibit distressed property consultants from doing business in New York, the concepts in the proposed amendment could prevent some homeowners from being induced into these fraudulent schemes.

Clear disclosures could dissuade some homeowners from contacting distressed property consultants and educate homeowners about some of their rights. However, as currently drafted, it appears the amendment merely requires that the advertisement restate the relevant statutory language of § 265-b. A notice like this will not be comprehensible to the majority of New York City residents. The disclosures must be in plain English and in a readable font and size in all advertisements. If the disclosures are difficult for consumers to understand or too small for them to read, they could do more harm than good.

SBLS also supports the idea of encouraging homeowners whose rights have been violated to seek legal assistance from a legal services office or a government enforcement agency. Indeed, we need to dramatically increase public awareness about these fraudulent schemes and how homeowners can access free assistance. However, we are concerned that requiring these companies to put 311 in their advertisements may mistakenly lead some consumers to believe that the City is actually endorsing these companies.

Although § 265-b was an important first step towards strong consumer protections for New York City homeowners, SBLS's experience has been that it has yet to effectively control the conduct of distressed property consultants in New York City. Much more needs to be done to stop these consultants from targeting vulnerable homeowners for fraudulent schemes and to address the foreclosure crisis more broadly. We look forward to working closely with the City and State on these issues.

Thank you again for inviting me to speak today.



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*Distressed Property Consultants
Public Hearing
City Hall
New York, New York
October 6, 2009*

*Urban Justice Center - Community Development Project
Testimony before the Committee on Consumer Affairs*

Good morning. My name is Harvey Epstein; I am the Project Director of the Community Development Project at the Urban Justice Center. The Urban Justice Center is a project-based umbrella legal services and advocacy organization serving New York City residents. In the past 25 years, the Urban Justice Center has provided direct legal assistance, systemic advocacy and community education in New York City and the greater Metropolitan area. The Community Development Project (CDP) of the Urban Justice Center was formed in September 2001 to provide legal, technical, research and policy assistance to grassroots community groups engaged in a wide range of community development efforts throughout New York City. Our work is informed by the belief that real and lasting change in low-income, urban neighborhoods is often rooted in the empowerment of grassroots, community institutions.

The CDP represents homeowners who are trying to negotiate loan modification plans with their lenders & thereby save their homes from foreclosure. Prior to seeking our services, many of these homeowners were approached by, and subsequently fell prey to, unscrupulous for-profit distressed property consultants. In our experience, every client who has worked with a distressed property consultant, either before or after being served with a foreclosure notice, has lost money to the tune of several thousand dollars that otherwise could have gone to pay down mortgage debt and interest. In each case, these consultants who promised to deliver "home-saving" services but instead delivered nothing.

This bill requires disclosure of current state law regulating distressed property consultants in written advertisements, but unfortunately, it does little else. Enhanced disclosure, on its own, is unlikely to be enough to stop homeowners from falling victim to unscrupulous distressed property consultants. New York state law already requires that lenders send homeowners a notice about the foreclosure process, which warns homeowners about individuals who approach them with offers to "save" their home. New York state law also requires that all such services be expressed in a written contact that contains disclosures regarding the right to cancel the contract and the recommendation to contact a housing counselor approved by the New York State Banking Department. Unfortunately, these disclosures have had little effect on reducing fraud in the distressed property consultant industry. Beyond educating homeowners, the City Council

needs to create and pass laws that will adequately govern the distressed property consulting industry and prevent the exploitation of vulnerable homeowners.

The city of New York can, and should, do more to protect vulnerable homeowners from foreclosure scams. Title 6 Chapter 5 subchapter 1 of the New York City Administrative Code, the Consumer Protection Law, provides protections to residents of New York City. These protections should be expanded to include laws regulating distressed property consultants. While the state of New York has acted to regulate the distressed property consultant industry generally, the regulations have proved largely ineffectual. Nothing in the New York State Real Property Law Section 265-b prevents further action by municipalities; as a result, the City of New York should act to supplement the protections already provided in the New York state law.

We recommend that this bill be revised & strengthened so that the city of New York could see real progress in the fight against distressed property consulting fraud.

Specifically, shortcomings of this bill include:

1. It covers only print advertising, and ignores in person and telephone solicitation. Many distressed property consultants rely on door-to-door & telephone sales pitches rather than traditional print advertising.
2. It does not require disclosure that others may provide the same or similar services, for free. While current state law requires disclosure of a list of housing counselors available from the New York State Banking department, it does not disclose that the services provided are similar and without cost.
3. It does not require disclosure that homeowners are always free to talk with their mortgage lenders or servicers on their own, at any time. It is our experience that some consultants tell consumers that, after signing a contract, the consumers are prohibited from attempting to negotiate with their mortgage lender on their own.
4. It does not require disclosure that hiring a distressed property consultant does not stop the foreclosure process. One of our clients was told by a distressed property consultant that she did not have to respond to court papers, and as a result, she missed the statutory period for responding to a complaint.
5. It does not require disclosure that there is no guarantee that they will obtain a particular result. Some homeowners will initially approach a government not-for-profit counselor but they are told (truthfully) that there is no guarantee of a successful loan modification, and there is a possibility that they will lose their home. Then, after hearing this news, the homeowner will then turn to paid distressed property consultant, because these consultants will tell homeowners that they can guarantee a successful modification.

Recommendations

This bill is a good first step in creating awareness among homeowners of their rights regarding distressed property consultants. However, this bill should be strengthened in the following ways:

- Include all mediums of solicitation, rather than just print advertisements.
- Require disclosure that the same or similar services provided by the distressed property consultant are available to the homeowner for free.

- Require disclosure that homeowners are always free to speak with their mortgage lender or servicer at any time.
- Require disclose that hiring a distressed property consultant does not stop the foreclosure process.
- Require disclose that hiring a distressed property consultant does not guarantee any particular result.

Thank you for holding this hearing today and giving me the opportunity to testify on this important issue.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1070 Res. No. _____

in favor, in opposition

Date: 10/6/09

(PLEASE PRINT)

Name: MIKE HICKEY

Address: 74 TRINITY PL SUITE 1302, NY 10006

I represent: CENTER FOR NYC NEIGHBORHOODS

Address: SAME

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1070 Res. No. _____

in favor, in opposition

Date: 10-6-09

(PLEASE PRINT)

Name: Barbara Flynn Chief of Staff

Address: Intergovt Affairs HPD

I represent: HPD

Address: 100 GOLD ST

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor, in opposition

Date: _____

(PLEASE PRINT)

Name: ANDY EILER

Address: _____

I represent: DCA

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1070 Res. No. _____

in favor in opposition

Date: 10-6-09

Name: Lisa Parington (PLEASE PRINT)

Address: 114th St Hoboken NJ

I represent: Urban Justice Center

Address: 123 William Street

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1070 Res. No. _____

in favor in opposition

Date: 10/6/09

Name: Cyrus Dugger (PLEASE PRINT)

Address: 105 Court St 3rd Floor Brooklyn, NY

I represent: South Brooklyn Legal Services, LSNY

Address: same

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10-6-09

Name: Herman De Jesus (PLEASE PRINT)

Address: 73 Spring St, #506, NY, NY 10012

I represent: NEDAP

Address: same as above.

Please complete this card and return to the Sergeant-at-Arms