Legislation Details (With Text)

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Title:	A Local Law to amend the administrative code of the city of New York, in relation to distressed property consultants.		
Sponsors:	James Sanders, Jr., Leroy G. Comrie, Jr., Alan J. Gerson, Michael C. Nelson, Thomas White, Jr., Maria Del Carmen Arroyo, Jessica S. Lappin, Robert Jackson, Charles Barron, G. Oliver Koppell, John C. Liu, James F. Gennaro, Kenneth C. Mitchell, David I. Weprin		
Indexes:			
Attachments:	1. Int. No. 1070 - 8/20/09, 2. Committee Report 10/6/09, 3. Hearing Transcript 10/6/09, 4. Hearing Testimony 10/6/09, 5. Committee Report 10/27/09, 6. Hearing Transcript 10/27/09, 7. Fiscal Impact Statement, 8. Hearing Transcript - Stated Meeting 10/28/09, 9. Mayor's Letter, 10. Local Law		

Date	Ver.	Action By	Action	Result
8/20/2009	*	City Council	Introduced by Council	
8/20/2009	*	City Council	Referred to Comm by Council	
10/6/2009	*	Committee on Consumer Affairs	Hearing Held by Committee	
10/6/2009	*	Committee on Consumer Affairs	Laid Over by Committee	
10/27/2009	*	Committee on Consumer Affairs	Hearing Held by Committee	
10/27/2009	*	Committee on Consumer Affairs	Amendment Proposed by Comm	
10/27/2009	*	Committee on Consumer Affairs	Amended by Committee	
10/27/2009	A	Committee on Consumer Affairs	Approved by Committee	Pass
10/28/2009	A	City Council	Approved by Council	Pass
10/28/2009	A	City Council	Sent to Mayor by Council	
11/17/2009	A	Mayor	Hearing Held by Mayor	
11/17/2009	A	Mayor	Signed Into Law by Mayor	
11/17/2009	A	City Council	Recved from Mayor by Council	

Int. No. 1070-A

By Council Members Sanders Jr., Comrie, Gerson, Nelson, White, Arroyo, Lappin, Jackson, Barron, Koppell, Liu, Gennaro, Mitchell and Weprin

A Local Law to amend the administrative code of the city of New York, in relation to distressed property consultants.

Be it enacted by the Council as follows:

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Section 1. Legislative Findings.

The country is currently in the midst of a foreclosure crisis, with thousands of homes being foreclosed upon monthly. Foreclosures in New York City increased steadily throughout 2008, with the highest rates of foreclosure in the Bronx, Queens and Staten Island. Increasing rates of foreclosures and defaults on home loans created an industry of distressed property consultants, or individuals who market themselves as uniquely able to help homeowners negotiate with their lenders. The Council finds that unfortunately, homeowners already in precarious situations find themselves in even worse positions as unscrupulous consultants take their money and do nothing on their behalf. In an effort to combat the perceived wide-spread fraud in this industry, New York State enacted a law in August 2008 that prohibited distressed property consultants from collecting any funds prior to rendering services or taking power of attorney from a homeowner and mandated the parties enter into a fully executed, written contract prior to rendering services. Additionally, consultants are required to notify potential clients that they should consider consulting an independent attorney or government-approved housing counselor prior to signing any documents pertaining to their home and must provide the homeowner with information about how to locate a government-approved housing counselor.

The Council finds that while the state law seeks to prevent fraud by unscrupulous distressed property consultants, distressed property consultants continue to solicit business in communities with high foreclosure rates throughout the City. Many local non-profits offer foreclosure prevention or loan modification services for free, but as long as for-profit distressed property consultants exist, it behooves City residents to be aware of the legal constraints placed on consultants under state law. Therefore, the Council finds it necessary to mandate disclosure requirements in advertisements placed by distressed property consultants. These disclosures will ensure New York City residents are aware of their rights when paying for distressed property consulting services.

§2. Subchapter 5 of Chapter 5 of title 20 of the administrative code of the City of New York is amended by adding a new section 20-723.3 to read as follows:

§ 20-723.3 Disclosure Requirements for Distressed Property Consultants. a. Definitions. For the purposes of this section the following terms shall have the following meanings:

1. "Consulting services" means services promised by a distressed property consultant to a homeowner, including but not limited to services that the consultant represents will help to achieve any of the following:

i. An action to stop, enjoin, delay, set aside, annul, stay or postpone a foreclosure filing, a foreclosure sale or the loss of a home for nonpayment of taxes;

ii. A forbearance from any servicer, beneficiary or mortgagee or relief with respect to the potential loss of the home for nonpayment of taxes;

iii. The exercise of a right of reinstatement or similar right by the homeowner as provided in the mortgage documents or any law or the refinancing of a distressed home loan;

iv. Any extension of the period within which the homeowner may reinstate or otherwise restore his or her rights with respect to the property;

v. A waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a property in foreclosure;

vi. A loan or advance of funds;

vii. Assistance to the homeowner in answering or responding to a summons and complaint, or otherwise providing information regarding the foreclosure complaint and process;

viii. The avoidance or amelioration of the impairment of the homeowner's credit resulting from the commencement of a foreclosure proceeding or tax sale;

ix. The saving of the homeowner's property from foreclosure or loss for non-payment of taxes; or

x. Any other action as may be deemed subject to section 265-b of the New York state general business law.

2. "Distressed home loan" means a home loan that is in danger of being foreclosed because the homeowner has one or more defaults under the mortgage that entitles the lender to accelerate full payment of

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the mortgage and repossess the property, or a home loan where the lender has commenced a foreclosure action. For purposes of this paragraph, a "home loan' is a loan in which the debt is incurred by the homeowner, or shareholder in a cooperative corporation, primarily for personal, family, or household purposes, and the loan is secured by a mortgage or deed of trust on property, or in the case of a cooperative by a security agreement in shares in a corporation, upon which there is located or there is to be located a structure or structures intended principally for occupancy of from one to four families, which is or will be occupied by the homeowner as the homeowner's principal dwelling.

3. "Distressed property consultant" means an individual or corporation, partnership, limited liability company or other business entity that, directly or indirectly, solicits or undertakes employment to provide consulting services to a homeowner for compensation or promise of compensation with respect to a distressed home loan or a potential loss of the home for nonpayment of taxes, or any individual or business entity considered a distressed property consultant for purposes of New York state real property law section 265-b. A distressed property consultant does not include the following:

i. An attorney admitted to practice in the State of New York;

ii. A person or entity who holds or is owed an obligation secured by a lien on any property in foreclosure while the person or entity performs services in connection with the obligation or lien;

iii. A bank, trust company, private banker, bank holding company, savings bank, savings and loan association, thrift holding company, credit union or insurance company organized under the laws of this state, another state or the United States, or a subsidiary or affiliate of such entity or a foreign banking corporation licensed by the superintendent of banks or the comptroller of the currency;

iv. A federal Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of such mortgagee, and any agent or employee of these persons while engaged in the business of such mortgagee;

v. A judgment creditor of the homeowner, if the judgment creditor's claim accrues before the written

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notice of foreclosure sale is sent;

vi. A title insurer authorized to do business in this state, while performing title insurance and settlement services;

vii. A person licensed as a mortgage banker or registered as a mortgage broker or registered as a mortgage loan servicer as defined in article 12-d of the New York state banking law;

viii. A bona fide not-for-profit organization that offers counseling or advice to homeowners in foreclosure or loan default; or

ix. A person or entity that the superintendent of banks has determined is not subject to section 265-b of the New York state real property law.

4. “Homeowner” means a natural person who is the mortgagor with respect to a distressed home loan or who is in danger of losing a home for nonpayment of taxes.

5. "Unit of advertising space" means any real property, space, facility or instrumentality, or any portion thereof, owned or operated by the city of New York, or which is located or operates on real property owned or operated by the city of New York, and which is the subject of the same contract, lease, rental agreement, franchise, revocable consent, concession or other similar written agreement with the city of New York which allows the placement or display of advertisements, but not including any real property, space or facility leased from the city of New York for a term of thirty years or more during the entire term of the lease or any real property, space or facility leased from or to the industrial development agency.

b. Every distressed property consultant who does business in New York City and who advertises distressed property consulting services through the media of a newspaper, magazine, circular, pamphlet, store display, letter or handbill and/or via a unit or units of advertising space, shall disclose in such advertising, in accordance with the rules established by the commissioner, in clear and prominent letter type, in a print color that contrasts with the background against which it appears:

1. that, pursuant to section 265-b of the New York state real property law, a distressed property

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consultant is prohibited from:

i. performing services without a written, fully executed contract with a homeowner;

ii. accepting payment for consulting services before the full completion of such services;

iii. taking power of attorney from a homeowner; and

iv. retaining any original loan document or other original document related to the distressed home loan, the property, or the potential loss of the home for nonpayment of taxes.

2. that hiring a distressed property consultant does not stop the foreclosure process, nor can a distressed property consultant guarantee any particular result with regards to a distressed property.

c. The commissioner may make and promulgate such rules as may be necessary for the proper implementation and enforcement of this section.

d. Any person who is a party to an otherwise valid agreement with the city of New York in effect on the date of enactment of the local law that added this section shall not be subject to the requirements of this section for the term of such agreement. However, where such agreement provides for a right or rights of renewal for one or more periods upon the same terms and conditions or terms and conditions set forth in such agreement, the holder who is a party to such agreement or any agreements entered into pursuant to such right or rights of renewal shall be subject to the requirements of this section at the commencement of the first renewal period.

e. (1) Notwithstanding any other provision of law, the department shall be authorized upon due notice and hearing, to impose civil penalties for the violation of any provision of this section. The department shall have the power to render decisions and orders and to impose civil penalties of not less than two thousand five hundred dollars nor more than five thousand dollars for each violation. All proceedings authorized pursuant to this paragraph shall be conducted in accordance with rules promulgated by the commissioner. The remedies and penalties provided for in this paragraph shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

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(2) All such proceedings shall be commenced by the service of a notice of violation returnable to the administrative tribunal of the department. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein.

§3. This local law shall take effect 90 days after its enactment into law; provided, however, that the commissioner of consumer affairs shall take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, the adoption of any necessary rules.

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10/21/09