Legislation Details (With Text)

File #:	Res 0988-2011	**Version:**	A	**Name:**	Require the foreclosing party in a mortgage foreclosure action to produce the pooling and service agreement at the commencement of a mortgage foreclosure action.
Type:	Resolution			**Status:**	Adopted
				In control:	Committee on Community Development
On agenda:	8/17/2011				
Enactment date:				**Enactment #:**	

Title: Resolution calling on the New York State Legislature and the Governor to enact legislation that would require the foreclosing party in a mortgage foreclosure action to produce the pooling and service agreement at the commencement of a mortgage foreclosure action.

Sponsors: Albert Vann, Gale A. Brewer, Lewis A. Fidler, Letitia James, Brad S. Lander, Rosie Mendez, Jumaane D. Williams, Melissa Mark-Viverito, Deborah L. Rose, Ruben Wills, Leroy G. Comrie, Jr., Stephen T. Levin, Charles Barron, Daniel Dromm, Margaret S. Chin, Annabel Palma, Robert Jackson, Helen D. Foster, Inez E. Dickens, Diana Reyna, Darlene Mealy, Sara M. Gonzalez, Julissa Ferreras-Copeland, Vincent J. Gentile, James Sanders, Jr., G. Oliver Koppell, Daniel R. Garodnick, Ydanis A. Rodriguez, James F. Gennaro, Daniel J. Halloran III

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Attachments: 1. Res. No. 988 - 8/17/11, 2. Committee Report 1/30/12, 3. Hearing Testimony 1/30/12, 4. Committee Report 1/31/12, 5. Hearing Transcript 1/30/12, 6. Hearing Transcript 1/31/12, 7. Hearing Transcript - Stated Meeting 2-1-12

Date	Ver.	Action By	Action	Result
8/17/2011	*	City Council	Introduced by Council	
8/17/2011	*	City Council	Referred to Comm by Council	
1/30/2012	*	Committee on Community Development	Hearing Held by Committee	
1/30/2012	*	Committee on Community Development	Laid Over by Committee	
1/31/2012	*	Committee on Community Development	Amendment Proposed by Comm	
1/31/2012	*	Committee on Community Development	Amended by Committee	
1/31/2012	A	Committee on Community Development	Approved by Committee	Pass
1/31/2012	*	Committee on Community Development	Hearing Held by Committee	
2/1/2012	A	City Council	Approved, by Council	Pass

Res. No. 988-A

Resolution calling on the New York State Legislature and the Governor to enact legislation that would require the foreclosing party in a mortgage foreclosure action to produce the pooling and service agreement at the commencement of a mortgage foreclosure action.

By Council Members Vann, Brewer, Fidler, James, Lander, Mendez, Williams, Mark-Viverito, Rose, Wills,

Comrie, Levin, Barron, Dromm, Chin, Palma, Jackson, Foster, Dickens, Reyna, Mealy, Gonzalez, Ferreras, Gentile, Sanders Jr., Koppell, Garodnick, Rodriguez, Gennaro and Halloran

Whereas, According to the Center for Responsible Lending, after a dramatic rise in foreclosures from 2008, foreclosure activity is expected to increase again as lenders and servicers gradually process the backlog of thousands of foreclosures that have been delayed due to improperly processed paperwork; and

Whereas, Mortgages are often bundled and sold as mortgage backed securities involving the transfer of the mortgages between several parties, which allow mortgage lenders to disperse exposure to credit risk, and the proliferation of these securities have made it difficult for judges and lawyers to determine who actually owns the underlying properties in a typical securitized mortgage pool; and

Whereas, The Pooling and Servicing Agreement (PSA) is the primary contractual document between all parties involving the transfer of mortgages from the originator to the servicer and ultimately to a trust, which then becomes the legal owner of a pool of mortgages; and

Whereas, The Pooling and Servicing Agreement prescribes how the trust must oversee the disbursement of the cash flows, monitors compliance with appropriate covenants by other parties to the agreement, and details the specific loan documents contained in each loan file that will be delivered to the Trustee or Document Custodian on behalf of the trust, establishing who holds the original note and where it may be found; and

Whereas, In New York State, in order for a homeowner in a mortgage foreclosure action to assert that the party initiating the foreclosure does not have a legal right to do so, he or she must include that claim in a written answer in the foreclosure proceeding and many homeowners do not file a written answer or do not have enough information to make that assertion; and

Whereas, The homeowner's time to serve and file an answer is only approximately 20 to 40 days after they receive the initial foreclosure papers, depending on the method of service; and

Whereas, After the time to answer has expired, a defendant may not later assert the standing defense unless he or she receives permission from the court to allow the filing of a late or amended answer, which generally requires that the defendant show 1) a reasonable excuse for the delay and 2) a meritorious defense to

the foreclosure; and

Whereas, These motions are not easily made by pro se defendants, so the absence of legal representation for homeowners means that very few such motions are being made despite the difficulties in determining who owns the underlying property in a securitized mortgage pool; and

Whereas, The process of reversing a wrongful foreclosure is difficult once an auction has taken place and is almost impossible once the property is purchased by a third party; now, therefore, be it

Resolved, That the Council of the City of New York calls on the New York State Legislature and the Governor to enact legislation that would require the foreclosing party in a mortgage foreclosure action to produce the pooling and service agreement at the commencement of a mortgage foreclosure action.

LS 1823
AS 7-15-11

AS
1-30-12 Res. No. 988