



Legislation Text

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Res. No. 1832-A

Resolution calling upon the United States Congress to protect homeowners from the national foreclosure crisis by amending Section 109(h) of the United States Bankruptcy Code in order to expand the availability of automatic stay.

By Council Members Nelson, Comrie, James, Crowley, Eugene, Ferreras, Gentile, Gonzalez, Koppell, Martinez, Mark-Viverito, Mealy, Mitchell, Palma, Reyna, Sanders Jr., Stewart, White Jr., Jackson and Weprin

Whereas, America is currently experiencing its greatest financial crisis since the Great Depression and at the epicenter of the present recession are plummeting housing prices and a rise in home foreclosures nationwide; and

Whereas, The Center for Responsible Lending estimates that 2.25 million homes may be lost to foreclosure over the next few years, and, moreover, in February of 2009, the National Association of Consumer Bankruptcy Attorneys estimated that 6,600 American families are losing their homes to foreclosure each day, and

Whereas, One way to stabilize the housing market and solve the foreclosure crisis is to amend Section 109(h)(1) of the United States Bankruptcy Code, 11 U.S.C. 109(h)(1), which was added to the Bankruptcy Code pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. 109-8); and

Whereas, Section 109(h)(1) provides that an individual may not file a petition for protection under the Bankruptcy Code unless such individual has, within 180 days before the petition date, received credit counseling and assistance in performing a budget analysis; and

Whereas, Section 109(h)(3)(A) provides that an individual who files a bankruptcy petition on an emergency basis may obtain such counseling after the petition is filed, provided that the debtor requested such counseling before the date of his or her bankruptcy petition, and obtains such counseling no later than 30 days

after the petition, unless the court, for cause, extends the time for obtaining counseling; and

Whereas, Section 109(h)(4) provides that a debtor is exempt from the credit counseling requirement, if the debtor is unable to meet the requirement because of incapacity, disability, or active military duty in a combat zone; and

Whereas, Under any other circumstance, the failure to obtain such counseling on a timely basis will result in dismissal of the debtor's bankruptcy case; and

Whereas, Many individual debtors who cannot afford the services of a bankruptcy lawyer are unaware of the pre-filing credit counseling requirement; and

Whereas, The dismissal of an individual's bankruptcy petition may have catastrophic consequences because Section 362(c)(3)(C) provides that if an individual debtor's case is dismissed for cause and the individual files a subsequent bankruptcy petition, the automatic stay of actions with respect to debts or property securing such debts, including foreclosure actions, presumptively terminates on the 30th day after the filing of the second case unless the individual is able to demonstrate that the filing of the later case is in good faith; and

Whereas, The automatic stay of actions against the debtor and the debtor's property for the pendency of his or her case is a fundamental protection provided by the Bankruptcy Code; and

Whereas, One of the most crucial protections provided by the automatic stay is the stay of foreclosure actions; and

Whereas, Many individual debtors lack the knowledge or resources to demonstrate that their second case was commenced in good faith; and

Whereas, Many individual debtors are facing foreclosure, among other issues; and

Whereas, Because of the predatory lending tactics of certain mortgage lenders that sold large and complex mortgages with adjustable interest rates to financially unqualified Americans, millions of Americans have lost substantial portions of their life savings that were invested in their homes; and

Whereas, Foreclosures further depress housing values in the neighborhoods where they occur, resulting

in further instability in the housing market; and

Whereas, The Federal Government can accelerate our nation's economic recovery and keep more families in their homes by offering every American- even those in bankruptcy - every possible opportunity to avoid foreclosure by permitting such debtors to work out their financial difficulties while under bankruptcy court protection; now, therefore, be it

Resolved, The Council of the City of New York calls upon the United States Congress to protect homeowners from the national foreclosure crisis by amending Section 109(h) of the United States Bankruptcy Code in order to expand the availability of automatic stay.

JCG
06/12/09
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