



Legislation Text

File #: Res 0580-2010, **Version:** *

Res. No. 580

Resolution calling upon the New York State Legislature to enact A. 11465/S.8174, an act to amend the real property actions and proceedings law, in relation to standing to commence an action to foreclose a mortgage.

By Council Members Fidler, Cabrera, Comrie, Dromm, Gentile, James, Lander, Reyna, Vann, Williams, Nelson and Halloran

Whereas, Challenging the standing of the lender making a claim in a foreclosure action is one of the primary defenses available to a homeowner and is a valuable protection from fraudulent, or improperly filed, foreclosures by entities that do not actually have the legal right to foreclose; and

Whereas, While pursuant to section 1302 of the New York State Real Property Actions and Proceedings Law, a plaintiff may affirmatively state ownership of the subject mortgage and note for which a claim is brought, the statute does not contain a specific provision relating to allowing lack of standing to be a defense that may be raised at any time during the proceeding; and

Whereas, In *HSBC Bank; USA v Dammond*, 59 AD3d 679 (2nd Dept 2009), the court ruled that since the defendant in a foreclosure action did not file a motion raising the issue of standing by the plaintiff, the respondent subsequently waived his ability to use a lack of standing claim as his defense; and

Whereas, The number of both foreclosed homes and homeowners at risk of foreclosure has grown in recent years, making it increasingly likely that a homeowner receiving a foreclosure claim from a lender would initially believe it to be legitimate and not immediately raise or utilize all of the possible defenses available; and

Whereas, Many foreclosure actions may involve a situation where the homeowner and borrower may not know who legally owns the loan and if the issue of standing is not raised by the homeowner initially in a motion to dismiss then the defense would be lost and the plaintiff may be able to foreclose on a home that the

plaintiff does not have the legal right to foreclose on; and

Whereas, It should be a goal of New York State to promote home ownership and minimize foreclosures, especially those which may be improper or fraudulent; and

Whereas, A.11465/S.8174 would provide statutory clarification and ensure that homeowners are properly protected during the foreclosure process; and

Whereas, A.11465/S.8174 would provide that only the owner and holder of the mortgage and note would have standing to commence an action and that a defendant could challenge the plaintiff's lack of standing at any time during the action as part of a defense, with prior failure to raise it not considered a waiver of that defense; and

Whereas, A.11465/S. 8174 would also require that every summons and complaint to commence a foreclosure action should include an affirmative statement from the plaintiff that, at the time of the proceeding, they are the owner and holder of the note and this would be accompanied by a copy of the note, with all original endorsements, assignments and transfers; and

Whereas, The New York State Legislature should enact A.11465/S. 8174 in order to ensure that New York State homeowners do not lose their homes in foreclosure actions when the foreclosing party does not have the legal right to foreclose; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to enact A. 11465/S.8174, an act to amend the real property actions and proceedings law, in relation to standing to commence an action to foreclose a mortgage.

LS# 1648
BJG
11/9/2010