

1203

2009-2010 Regular Sessions

I N S E N A T E

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Introduced by Sens. THOMPSON, KRUEGER, ONORATO, PARKER, SMITH -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT enacting the "foreclosure prevention act of 2009"; to amend the real property actions and proceedings law, in relation to giving notice to mortgagors of the availability of foreclosure prevention assistance and payments; and to amend the state finance law, in relation to creating the New York state foreclosure prevention fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "foreclosure prevention act of 2009".
3 S 2. Statement of legislative purpose and findings. The legislature
4 finds and declares that there is a public emergency; that the extension
5 of unaffordable mortgage loans, unaffordable second mortgages and unaf-
6 fordable home equity loans have resulted in thousands of homeowners
7 losing their homes. The problems associated with these loans adversely
8 affect the availability of capital, the demand for housing, the value of
9 real estate, and more importantly, the ability of homeowners to keep
10 their homes and communities viable. The pending reset of interest rates
11 in many home mortgages, second mortgages and home equity loans will only
12 exacerbate this situation for many homeowners. The expectation that many
13 such variable rate mortgages will fall into foreclosure upon the reset
14 of the interest rate compels the state to take action. State assistance
15 to homeowners through a voluntary program is necessary in order to stem
16 this crisis. Accordingly, the legislature hereby creates the New York
17 state foreclosure prevention fund.
18 S 3. Definitions. As used in this act, the following words and phrases
19 shall have the following meanings:
20 1. "Annual percentage rate" means the annual percentage rate for the
21 loan calculated according to the provisions of the Federal Truth in

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 Lending Act (15 U.S.C. Sec. 1601, et seq.), and the regulations promul-
2 gated thereunder by the federal reserve board, as amended.

3 2. "Commissioner" shall mean the commissioner of the state division of
4 housing and community renewal.

5 3. "Division" shall mean the state division of housing and community
6 renewal.

7 4. "Eligible homeowners" shall mean any resident of this state
8 currently residing in a home located in this state subject to an eligi-
9 ble subprime or unconventional mortgage who the commissioner determines,
10 pursuant to the eligibility restrictions set forth in this act, is in
11 need of foreclosure prevention assistance.

12 5. "Eligible subprime or unconventional mortgage" means a home loan
13 that:

14 (a)(i) for a first lien loan, has an annual percentage rate of three
15 or more percentage points above the yield on treasury securities of
16 comparable maturity measured as of the fifteenth day of the month imme-
17 diately preceding the month in which the application for the loan is
18 received by the lender; and

19 (ii) for a subordinate lien loan, has an annual percentage rate of
20 five or more percentage points above the yield on treasury securities of
21 comparable maturity measured as of the fifteenth day of the month imme-
22 diately preceding the month in which the application for the loan is
23 received by the lender; or

24 (b) is a nontraditional home loan as such term is described in the
25 "Interagency Guidance on Nontraditional Mortgage Product Risks" issued
26 September 29, 2006, and published in 71 Federal Register, 58609 on Octo-
27 ber 4, 2006, as updated.

28 6. "Home loan" means a residential home mortgage loan, including an
29 open-end credit plan, other than a reverse mortgage transaction, in
30 which:

31 (a) the borrower is a natural person;

32 (b) the debt is incurred by the borrower primarily for personal, fami-
33 ly or household purposes;

34 (c) the loan is secured by a mortgage or deed of trust on real estate
35 upon which there is located a structure or structures intended princi-
36 pally for occupancy of from one to four families which is occupied by
37 the borrower as the borrower's principal dwelling; and

38 (d) the property is located in this state.

39 7. "Lender" has the same meaning as set forth in 24 Code of Federal
40 Regulations, Section 3500.2 and also includes a mortgage broker.

41 8. "Non-profit assistance provider" shall mean a corporation or group
42 of corporations organized under the provisions of the not-for-profit
43 corporation law, including but not limited to neighborhood preservation
44 companies as defined in section 902 of the private housing finance law,
45 entities that perform housing preservation and community renewal activ-
46 ities pursuant to article 17 of the private housing finance law, common-
47 ly referred to as rural preservation companies, and legal service
48 providers, and municipalities.

49 9. "Service area" shall mean the established or stated boundaries of a
50 non-profit assistance provider or, if an assistance provider does not
51 have established boundaries for the geographic area in which it provides
52 services, the geographic area defined in its proposal to the division to
53 be a service provider.

54 10. "Foreclosure prevention assistance" shall mean the provision of
55 payments on behalf of an eligible homeowner to mortgagees on an eligible
56 subprime or unconventional mortgage secured by a mortgagor's real

1 estate, and the training of counselors and other foreclosure prevention
2 providers.

3 S 4. Foreclosure prevention fund contracts. 1. Within the limit of
4 funds available in the New York state foreclosure prevention fund,
5 established pursuant to section 92-h of the state finance law, the
6 commissioner is hereby authorized to enter into contracts with non-pro-
7 fit assistance providers to provide foreclosure prevention assistance.
8 Such contracts shall be entered into after appropriate findings by the
9 commissioner and shall be subject to the limitations as set forth in
10 this section. The division shall give preference to applications
11 involving 2 or more non-profit assistance providers when evaluating
12 contract applications for the provision of foreclosure prevention
13 assistance and shall, to the extent feasible, attempt to award contracts
14 in a manner that ensures that every homeowner in the state resides with-
15 in a geographic area defined in the proposal of at least one non-profit
16 assistance provider.

17 2. Prior to entering into a contract with an existing non-profit
18 assistance provider, the commissioner shall have made a finding that the
19 provider is in good standing and that there is a need for proposed
20 assistance activities based on the documented submission of the provid-
21 er.

22 3. Contracts entered into pursuant to this section with non-profit
23 assistance providers shall be limited in duration to periods of 1 year,
24 but may thereafter be renewed, extended or succeeded by new contracts
25 from year to year in the discretion of the commissioner.

26 4. Prior to renewing or extending a contract or executing a succeeding
27 contract with a non-profit assistance provider the division shall deter-
28 mine that:

29 (a) the provider shall have substantially completed the foreclosure
30 prevention assistance specified in the contract to be renewed or
31 succeeded;

32 (b) the provider shall have received the sums and funds specified in
33 this section; and

34 (c) the assistance carried out by the provider pursuant to its
35 contract shall have resulted in a significant impact on the needs of the
36 at risk existing and potential homeowners in the service area.

37 5. Prior to terminating a contract or making a determination not to
38 renew a contract, the division shall:

39 (a) determine that the provider is in violation of the terms and
40 conditions of the contract or that funds provided pursuant to the
41 contract are being expended in a manner not consistent with the terms or
42 provisions of this act or determine that the significant need in the
43 service area no longer exists or all available funds have been expended;
44 and

45 (b) provide the provider with written notice, at least 45 days in
46 advance, of its intent to terminate or not renew the contract and
47 provide the provider with the opportunity to appear and be heard before
48 the division with respect to the reasons for such proposed termination
49 or non-renewal.

50 6. The division may temporarily withhold payments and may elect not to
51 enter into a succeeding contract with any non-profit assistance provider
52 if the provider is not in compliance with the contract or has without
53 good cause failed to submit the documentation required under the
54 contract.

55 7. The division shall establish eligibility criteria for use by the
56 non-profit assistance provider in ranking eligible homeowners for the

1 provision of foreclosure prevention assistance under this act. Such
2 criteria shall, based on the mortgagor's application for assistance,
3 consider:

4 (a) need for assistance, including whether the mortgagor has insuffi-
5 cient household income or net worth to correct the existing delinquency
6 or delinquencies within a reasonable period of time and make full mort-
7 gage payments and whether any other federal, state, local or private
8 sources of assistance exist that would be available to the mortgagor and
9 would provide adequate assistance to the mortgagor to retain ownership
10 of the home; and

11 (b) if there is a reasonable prospect that a negotiated mortgage
12 contract may be reached so that the mortgagor will be able to resume
13 mortgage payments within a reasonable amount of time after the beginning
14 of the period for which assistance payments are provided under this act
15 and pay the mortgage or mortgages in full by its maturity date or by a
16 later date agreed to by the mortgagee or mortgagees for completing mort-
17 gage payments.

18 S 5. Eligibility for assistance. 1. No assistance may be provided
19 under this act unless all of the following are established:

20 (a) the applicant's loan is secured by a mortgage or deed of trust on
21 real estate upon which there is located a structure or structures
22 intended principally for occupancy of from 1 to 4 families which is
23 occupied by the borrower as the borrower's principal dwelling and is
24 located in this state;

25 (b) the non-profit assistance provider has determined that the mortga-
26 gor is in need of mortgage counseling and/or assistance in engaging his
27 or her lender or loan servicer in the development of loan modifications
28 or any other steps taken by a lender or servicer with a borrower to
29 resolve the problem of delinquent loan payments;

30 (c) the mortgagor has applied to the non-profit assistance provider
31 for assistance on an application form prescribed by the division for
32 this use which includes a financial statement disclosing all assets and
33 liabilities of the mortgagor, whether singly or jointly held, and all
34 household income regardless of source. Any applicant who intentionally
35 misrepresents any financial information in conjunction with the filing
36 of an application for assistance under this act may be denied assist-
37 ance;

38 (d) the mortgagee is not prevented by law from foreclosing upon the
39 mortgage;

40 (e) the non-profit assistance provider has determined, based on the
41 mortgagor's financial statement, that the mortgagor has insufficient
42 household income or net worth to correct the delinquency or delinquen-
43 cies within a reasonable period of time and make full mortgage payments;

44 (f) except for the current delinquency, the mortgagor shall have had a
45 reasonably favorable residential mortgage credit history; and

46 (g) the mortgagor meets any other procedural requirements established
47 by the division.

48 2. Upon a determination that the conditions of eligibility described
49 in subdivision one of this section have been met by a mortgagor and
50 money is available in the New York state foreclosure prevention fund
51 established by section 92-h of the state finance law, the mortgagor
52 shall become eligible for the assistance described in this act.

53 S 6. Foreclosure prevention assistance. The division shall establish a
54 system by which it shall make, upon the recommendation of a participat-
55 ing non-profit assistance provider, payments to mortgagees who hold a
56 mortgage secured by an eligible homeowner's real estate on behalf of the

1 mortgagor when such payments are in support of a negotiated settlement
2 that allow a homeowner to remain in his or her home and when the mortga-
3 gor has in concessions matched the amount of the authorized payments. In
4 no instance shall payments to mortgagees exceed the total amount of the
5 3 monthly payments owed by the homeowner before the date the homeowner
6 applied for assistance under this act. The division shall establish
7 regional assistance limits based on regional disparities in the cost of
8 housing in this state and restrict the total amount of payments to
9 eligible homeowners to the limit set for the region in which the real
10 estate is located.

11 S 7. Payment to non-profit assistance providers for foreclosure
12 prevention fund contracts. 1. Each contract entered into with a non-pro-
13 fit assistance provider shall provide payment to the non-profit assist-
14 ance provider for foreclosure prevention assistance which the provider
15 has provided.

16 2. Payments shall be made by the division to the non-profit assistance
17 provider, not less frequently than semiannually at or prior to the
18 commencement of the contract, to compensate the provider for the fore-
19 closure prevention assistance which it shall undertake to provide;
20 provided that with respect to contracts entered on or after June 30, the
21 first such payment shall be made by the division beginning on or after
22 July 1 of the fiscal year for which an appropriation in support of such
23 payment is made and provided further that the final such payment to the
24 non-profit assistance provider shall be made no later than March 31 of
25 such fiscal year.

26 S 8. Annual report to the legislature. The commissioner shall submit a
27 report to the legislature on or before December 31, 2009, and annually
28 thereafter, on the implementation of this act. Such report shall
29 include, but not be limited to, for each provider receiving funds under
30 this act, a description of such provider's contract amount, the specific
31 foreclosure prevention assistance provided by such provider and the
32 number of persons and households served by each provider.

33 S 9. Education and outreach to homeowners. In coordination with the
34 banking department and the consumer protection board, the division shall
35 undertake outreach activities directed at eligible homeowners as defined
36 in this act. Such outreach activities shall include, but not be limited
37 to:

38 1. the production and broadcast of public service announcements using
39 electronic media to inform the general public of the availability of
40 financial assistance through the New York state foreclosure prevention
41 fund established by section 92-h of the state finance law. Such public
42 service announcements shall state the amount of financial assistance
43 that may be available, who qualifies, and where such financial assist-
44 ance may be obtained;

45 2. the establishment and maintenance at the division of a toll-free
46 telephone number to provide information on the New York state foreclo-
47 sure prevention fund and respond to consumers' questions regarding such
48 fund; and

49 3. the inclusion of a description on the internet websites maintained
50 by the division, the banking department and the consumer protection
51 board of the New York state foreclosure prevention fund and a listing of
52 all not-for-profit contractors providing financial assistance through
53 the fund. Such listing shall include the address and phone number of
54 each not-for-profit contractor.

1 S 10. Subdivisions 1 and 3 of section 1303 of the real property
2 actions and proceedings law, as amended by chapter 472 of the laws of
3 2008, are amended to read as follows:

4 1. The foreclosing party in a mortgage foreclosure action, which
5 involves residential real property consisting of owner-occupied one-to-
6 four-family dwellings shall provide notice to the mortgagor in accord-
7 ance with the provisions of this section with regard to information and
8 assistance about the foreclosure process. SUCH NOTICE SHALL INCLUDE
9 INFORMATION ABOUT THE AVAILABILITY OF FORECLOSURE PREVENTION ASSISTANCE
10 FROM THE STATE TO PREVENT FORECLOSURE.

11 3. The notice required by this section shall appear as follows:

12 Help for Homeowners in Foreclosure

13 New York State Law requires that we send you this notice about the
14 foreclosure process. Please read it carefully.

15 Summons and Complaint

16 You are in danger of losing your home. If you fail to respond to the
17 summons and complaint in this foreclosure action, you may lose your
18 home. Please read the summons and complaint carefully. You should imme-
19 diately contact an attorney or your local legal aid office to obtain
20 advice on how to protect yourself. TEMPORARY FINANCIAL ASSISTANCE TO
21 MAKE MORTGAGE PAYMENTS TO PREVENT FORECLOSURE IS AVAILABLE TO ELIGIBLE
22 HOMEOWNERS THROUGH A LOCAL NON-PROFIT ASSISTANCE PROVIDER.

23 Sources of Information and Assistance

24 The State encourages you to become informed about your options in
25 foreclosure. In addition to seeking assistance from an attorney or legal
26 aid office, there are government agencies and non-profit organizations
27 that you may contact for information about possible options, including
28 trying to work with your lender during this process.

29 To locate an entity near you, you may call the toll-free helpline
30 maintained by the New York State Banking Department at _____
31 (enter number) or visit the Department's website at _____
32 (enter web address).

33 Foreclosure rescue scams

34 Be careful of people who approach you with offers to "save" your home.
35 There are individuals who watch for notices of foreclosure actions in
36 order to unfairly profit from a homeowner's distress. You should be
37 extremely careful about any such promises and any suggestions that you
38 pay them a fee or sign over your deed. State law requires anyone offer-
39 ing such services for profit to enter into a contract which fully
40 describes the services they will perform and fees they will charge, and
41 which prohibits them from taking any money from you until they have
42 completed all such promised services.

43 ADDITIONALLY, THE STATE OF NEW YORK HAS DETERMINED THAT THERE EXISTS A
44 SERIOUS NEED FOR FINANCIAL RESOURCES TO ASSIST HOMEOWNERS FACING FORE-
45 CLOSURE. TOWARDS THAT END, IT HAS ESTABLISHED THE NEW YORK STATE FORE-
46 CLOSURE PREVENTION FUND. TO BE ELIGIBLE, A HOMEOWNER MUST LIVE IN THEIR
47 HOME, OWN NO OTHER REAL PROPERTY AND FILL OUT AN APPLICATION FOR ASSIST-
48 ANCE WITH A LOCAL NON-PROFIT ASSISTANCE PROVIDER WHO WILL DETERMINE WHO
49 SHALL RECEIVE AID WITHIN THE FUNDS APPROPRIATED. FOR INFORMATION ON
50 WHICH NON-PROFIT ASSISTANCE PROVIDER IS SERVING YOUR GEOGRAPHICAL AREA,
51 PLEASE CONTACT THE NEW YORK STATE BANKING DEPARTMENT AT THE NUMBER
52 AND/OR WEBSITE PROVIDED ON THIS NOTICE.

53 SUCH ASSISTANCE IS IN THE FORM OF MORTGAGE PAYMENTS ON BEHALF OF AN
54 ELIGIBLE HOMEOWNER TO THE LENDER FOR THE PURPOSE OF PREVENTING FORECLO-
55 SURE.

1 S 11. The state finance law is amended by adding a new section 92-h to
2 read as follows:

3 S 92-H. NEW YORK STATE FORECLOSURE PREVENTION FUND. 1. THERE IS HEREBY
4 ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE
5 COMMISSIONER OF TAXATION AND FINANCE A SPECIAL FUND TO BE KNOWN AS THE
6 "NEW YORK STATE FORECLOSURE PREVENTION FUND".

7 2. THE NEW YORK STATE FORECLOSURE PREVENTION FUND SHALL CONSIST OF
8 MONEYS APPROPRIATED TO IT FROM THE GENERAL FUND AND ALLOCATED PURSUANT
9 TO A CERTIFICATE OF APPROVAL OF AVAILABILITY ISSUED BY THE DIRECTOR OF
10 THE BUDGET AND ALL OTHER MONEYS CREDITED, APPROPRIATED OR TRANSFERRED
11 THERETO FROM ANY OTHER FUND OR SOURCES.

12 3. MONEYS OF THE FUND, FOLLOWING APPROPRIATION BY THE LEGISLATURE, MAY
13 BE EXPENDED IN ACCORDANCE WITH THE FORECLOSURE PREVENTION ACT OF TWO
14 THOUSAND NINE AND THE REGULATIONS PROMULGATED THEREUNDER, PURSUANT TO A
15 CERTIFICATE OF APPROVAL OF AVAILABILITY ISSUED BY THE DIRECTOR OF THE
16 BUDGET.

17 S 12. This act shall take effect on the ninetieth day after it shall
18 have become a law; provided, however, that effective immediately, the
19 addition, amendment and/or repeal of any rule or regulation necessary
20 for the implementation of this act on its effective date is authorized
21 and directed to be made and completed on or before such effective date.