NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:20 p.m.

REGULAR SESSION

SENATOR NEIL D. BRESLIN, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT BRESLIN: The Senate will come to order.

I ask all present to please rise and repeat the Pledge of Allegiance.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

ACTING PRESIDENT BRESLIN: In the absence of clergy, may we bow our heads for a moment of silence.

(Whereupon, the assemblage respected a moment of silence.)

ACTING PRESIDENT BRESLIN: Thank you.

The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Tuesday, February 24, the Senate met pursuant to adjournment. The Journal of Monday, February 23, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT BRESLIN: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Klein.

SENATOR KLEIN: Mr. President, are there any substitutions at the desk?

ACTING PRESIDENT BRESLIN: There are.

The Secretary will read.

THE SECRETARY: On page 9, Senator Stavisky moves to discharge, from the Committee on Higher Education, Assembly Bill Number 300 and substitute it for the identical Senate Bill Number 1747, Third Reading Calendar 43.

ACTING PRESIDENT BRESLIN: Substitution ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, I

believe there are a few resolutions at the desk. I ask that the titles of those resolutions be read and move for their separate and immediate adoption.

ACTING PRESIDENT BRESLIN: The Secretary will read.

THE SECRETARY: By Senator Hassell-Thompson, Legislative Resolution Number 386, memorializing Governor David A. Paterson to proclaim February 2009 as Child Sexual Abuse Prevention Month in the State of New York.

ACTING PRESIDENT BRESLIN: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

Several years ago when I first came to this chamber, I had submitted a bill with the help and support of some of my colleagues in this chamber, including Senator Volker. And over the years, portions of that bill have been passed in this chamber and they have been chaptered. But still there is not the consciousness and the broad-based addressing

of the concern of sexual abuse to children in the State of New York.

I am hoping that and I am pleased that the Governor has agreed to declare this child sexual abuse period so that we can be reflective of the behavior of some of the people within our society and hopefully raise the consciousness of the church and others who have been concerned that this bill is directed at them, as opposed to the fact that across this nation children are being abused not by strangers but, rather, by members of the families, close members. When you look at the statistics, that member of the family most apt to abuse or cause abuse to happen are brothers.

And so that it is not just the church, but it is a cross-section of family members and people who are sexually abusing our children and causing a lifetime of trauma.

I am very hopeful that this will be the year that the State of New York will stand up and that they will pass a full sexual abuse bill in the State of New York and send the

message not only to those who are being abused but those who have historically been traumatized by the fact that they have been abused in their homes.

I would like to invite my colleagues to support me in this effort and hope that they too will believe, as I do, that it is time for us to stand up and act as one on behalf of the children and those adults who were once children and were abused in the State of New York.

And I thank you.

ACTING PRESIDENT BRESLIN: Thank you, Senator Hassell-Thompson.

Are there any other Senators who wish to be heard on this resolution?

The question is on the resolution, All those in favor say aye.

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, say nay.

(No response.)

ACTING PRESIDENT BRESLIN: The resolution is adopted.

At the request of the sponsor, the resolution is open for multisponsorship by the entire house. Any member wishing not to be a multisponsor should so inform the desk.

The Secretary will continue to read.

THE SECRETARY: By Senator Breslin, Legislative Resolution Number 489, memorializing Governor David A. Paterson to proclaim April 9, 2009, as Yellow Ribbon Day in the State of New York.

ACTING PRESIDENT BRESLIN: The question is on this wonderful resolution. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The resolution is adopted.

At the request of the sponsor, the resolution is open for multisponsorship by the entire house. Any member wishing not to be a multisponsor of the resolution should so

inform the desk.

The Secretary will continue to read.

THE SECRETARY: By Senator Hannon, Legislative Resolution Number 502, memorializing Governor David A. Paterson to proclaim March 3, 2009, as Chronic Kidney Disease Awareness Day in the State of New York.

ACTING PRESIDENT BRESLIN: Are there any Senators wishing to be heard on this resolution?

The question is on the resolution. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The resolution is adopted.

At the request of the sponsors, the resolution is open for multisponsorship by the entire house. Any member wishing not to be a

multisponsor of the resolution should so inform the desk.

Senator Klein.

SENATOR KLEIN: Mr. President, at this time can we please go to the noncontroversial reading of Senate Calendar Number 10.

ACTING PRESIDENT BRESLIN: The Secretary will read.

THE SECRETARY: Calendar Number 18, by Senator Klein, Senate Print 1182, an act to amend the General Obligations Law, in relation to conditions on real property.

SENATOR LIBOUS: Lay that bill aside, please.

ACTING PRESIDENT BRESLIN: The bill is laid aside.

THE SECRETARY: Calendar Number 27, by Senator Sampson, Senate Print 148, an act to amend the Executive Law, in relation to the designation of a "Holocaust Remembrance Day" as a day of commemoration.

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT BRESLIN: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 28, by Senator C. Kruger, Senate Print 337, an act to amend the Executive Law, in relation to designation of a "Senior Citizens' Day" as a day of commemoration.

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 29, by Senator C. Kruger, Senate Print 983, an act to amend the New York State Printing and Public Documents Law and others, in relation to consolidating and reducing.

SENATOR KLEIN: Would you please lay the bill aside for the day.

ACTING PRESIDENT BRESLIN: The bill is laid aside for the day.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 30, by Senator Savino, Senate Print 1406, an act to amend the Civil Service Law, in relation to extending the effectiveness.

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT BRESLIN: The bill is passed.

Senator Klein, that completes the reading of the noncontroversial calendar.

SENATOR KLEIN: Mr. President, at this time can we please move to the controversial reading of the calendar.

ACTING PRESIDENT BRESLIN: The Secretary will please ring the bell. Members are all asked to come to the chamber for the controversial reading of the calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 18, by Senator Klein, Senate Print 1182, an act to amend the General Obligations Law.

SENATOR LIBOUS: Explanation.

ACTING PRESIDENT BRESLIN: Senator Klein, an explanation has been

requested.

SENATOR KLEIN: Thank you, Mr. President.

This legislation would impose a duty to keep property in a mortgage foreclosure action in a safe and habitable condition when the lending institution takes over the said property.

ACTING PRESIDENT BRESLIN: Senator Bonacic.

SENATOR BONACIC: Mr. President, will Senator Klein yield for a couple of questions?

ACTING PRESIDENT BRESLIN: Senator Klein, will you yield for a question or two?

SENATOR KLEIN: Mr. President, I'd be happy to yield.

ACTING PRESIDENT BRESLIN: Senator Bonacic.

SENATOR BONACIC: As you know, Senator Klein, I've supported this legislation in the Judiciary; I intend to support it today. I just have a couple of technical

questions that I would like to ask you about the language and what you intended. Okay?

My first question is when you're dealing with foreclosure property, do you think we should have stuck it under the Real Property and Proceedings Law, which deals with foreclosures, rather than the General Obligations Law?

And I would ask you to consider that as the bill moves after today.

ACTING PRESIDENT BRESLIN: Senator Klein.

SENATOR KLEIN: Through you, Mr. President, I will take that under consideration.

But the reason why we thought that this bill was so important was based on a study that my office conducted earlier in the year where we just looked at New York City, Westchester, and Nassau County, where we found close to 3,000 abandoned properties. Needless to say -- and I think we talked about it today at the Banking Committee -- there was another study that was done which shows that for every

foreclosed property on a block, the surrounding property values go down, on average, $18,000. Also, violent crime increases 6.5 percent.

So I think it just made sense to put it in this section of the law, being that the only thing we're doing is creating a standard of "safe and habitable" that, by the way, every other homeowner across the state has to abide to in the way they actually keep their properties.

SENATOR BONACIC: Would Senator Klein continue to yield to a question?

ACTING PRESIDENT BRESLIN: Senator Klein, will you continue to yield to Senator Bonacic?

SENATOR KLEIN: I will continue to yield.

ACTING PRESIDENT BRESLIN: Senator Bonacic.

SENATOR BONACIC: I understand it's important that the party that is going to get title to the property get in there as soon as possible and fix it up so we're not hurting

the other homes in the neighborhood. I think that's the goal.

In your mind, under this bill, if a foreclosure is started, when do I have the right to go on that property? When title passes? Because you refer to a judgment, and that's different than when title passes. Because some mortgages don't give the mortgagor the right to go in until title passes.

So what was your -- could you please explain what you were thinking in there?

SENATOR KLEIN: Through you, Mr. President, that's a very good point.

The way it works now is once a property is foreclosed upon, there's a referee sale, it has to be posted for four to six weeks. And once the sale takes place, the lending institution then moves, when they take back the property, to take title.

It's my belief that now this would be an impetus for the lending institution to move very quickly after they foreclose on the

property, after they now repurchase the property at sale, to take title to the property, to actually maintain the property in a safe and habitable standard.

One of the things we've seen time and time again is that lending institutions of course are very quick to foreclose on properties, and in many cases now that they have this property, they tend to hold the property for a long period of time because the market isn't what it should be, and they tend to hold it, turn it over to a management company.

And what we've seen, time and time again, these management companies are not really taking care of the properties. And that's how they've become a problem.

So I'm hopeful that this process will cause a lending institution to move quickly, take title -- which, by the way, isn't a very lengthy process once the foreclosure takes place -- and actually maintain the property as it should be.

SENATOR BONACIC: Would Senator

Klein yield for another question?

ACTING PRESIDENT BRESLIN: Senator Klein, will you yield for another question?

SENATOR KLEIN: Mr. President, I'll be happy to yield.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR BONACIC: Let's say the bank now takes title to the property, and we want to make sure that they fix it up. But what I have seen in some examples is people strip the house. They take the appliances, they take the plumbing, they take the copper, they strip it. And stripping a house can run $75,000, $100,000 to put it in a habitable condition.

Now, is it your intent that the bank has to make that investment? Or do they have to seal it? Do they have to cut the grass? There's a difference. And I'd just like to know what you're thinking when you say "safe and habitable."

ACTING PRESIDENT BRESLIN:

Senator Klein.

SENATOR KLEIN: Again, through you, Mr. President. The standard is one, as I said earlier, which is applied to all homeowners.

As a matter of fact, under New York City law, when the City of New York takes a property in rem, they own the property, they have to maintain their properties to that same safe and habitable standard. So we're not kind of reinventing the wheel.

In answer to your second question, one of the things that I've seen firsthand in my communities are properties that are now abandoned because the lending institution foreclosed, they have these management companies. We've had squatters move into the premises, destroy the premises, and really cause problems for neighboring homeowners.

So I think the standard should be more than just boarding up the property, but maintaining the property so they can turn around quickly and sell the property and get a new homeowner in there that's going to take

care of the property and lend stability to the neighborhood.

So what I'm saying is the case that I've seen that happened in my district, we had a lending institution that foreclosed on the property, the management company was now taking care of this property. They destroyed the entire house because squatters were in there. As a matter of fact, they ripped open one of the toilets, flooded the neighboring homeowners.

And when we called the local buildings department from the City of New York, they said there was nothing they can do because there was no standard in place, there was nothing that they can do other than view what happened on the outside. Which, by the way, wasn't so nice either.

And finally, after some effort by my office, we finally got the management company to take care of the property. We also helped in evicting these squatter tenants that were there for two months.

So I don't think it's too much to

ask a lending institution that now owns this property and takes title to a property to maintain this property, as every other homeowner on that block, in that neighborhood, in that community has to maintain that home.

SENATOR BONACIC: Thank you, Senator Klein.

On the bill.

ACTING PRESIDENT BRESLIN: Senator Bonacic, on the bill.

SENATOR BONACIC: I agree with Senator Klein as to where he wants to go with this legislation.

I'm a country attorney. I can tell you that grandmothers, individuals, pension plans own mortgages, not only banks.

So the second thing that I'd like to point out is that we are trying to give people in their homes more time to renegotiate -- because payments are too high, maybe they're going to try to work refinancing out -- so the whole foreclosure process is taking longer.

And many of the times the bank or

the mortgagee does not have the right to go on those premises until title passes. So now our notice is longer. When the foreclosure process starts, it could take six months to a year. That mortgagee does not have the right to go on that land.

And what's happening in that year? That person that occupies that house is saying: I can't pay it. I'm staying here. I'm staying here for free rent as long as I can. So they stay there till the bank is ready to sell it at auction to somebody.

Now, let's say the mortgage lien -- and I'm making this up now -- is $300,000. Just making it up. I go to the auction, which I have done many times as a bank attorney, and the bank says: I bid $70,000. And then one of you comes along and bids $71,000. The bank says: I don't want this, I'm not in the real estate business, now you are the owner.

That's the first time that you can go on the property and fix the house up to save the neighborhood.

I'm going to give you another

worst-case scenario. On the morning of the auction sale, that mortgagor gets an attorney and declares bankruptcy. That kicks the delay another year before we can go in and take care of that house.

So I agree with what Senator Klein is trying to do. But we have legal impediments to get us where we want to go.

There are other ways that if we're going to stay with this mission and try to accomplish saving neighborhoods from ugly eyesores, then we have to maybe insist that in a standard mortgage document that the mortgagee can get in there sooner, number one. A trigger mechanism before that auction nine months down the road.

Or we may have to look into the bankruptcy law to authorize the bankruptcy judge to have a fast-track process to allow that mortgagee to go in and take care of the house.

So these are impediments that we have to think about if we're going to accomplish the goals of saving the

neighborhoods from eyesores that according to Senator Klein's bill -- which I will support, but I think more work has to be done to accomplish our goals.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Bonacic.

Senator Saland.

SENATOR SALAND: Thank you, Mr. President. Mr. President, would Senator Klein yield?

ACTING PRESIDENT BRESLIN: Senator Klein, will you yield for a question?

SENATOR KLEIN: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Saland.

SENATOR SALAND: Thank you, Mr. President. Thank you, Senator Klein.

Senator Klein, one of the obviously critical points of your legislation is the obligation to maintain the premises in a safe and habitable condition. Is that defined in statute anywhere?

SENATOR KLEIN: It's actually part of common law, which requires every property to be maintained in that fashion by, you know, anyone who owns either a multifamily dwelling or a single-family house.

SENATOR SALAND: So if it's not defined in statute and is defined by practice and common law, then it becomes a question of fact, does it not?

SENATOR KLEIN: Yes.

SENATOR SALAND: Does the definition of "safe and habitable" require that the premises be maintained in accordance with whatever may be the role of municipal codes or state codes?

SENATOR KLEIN: Through you, Mr. President. As a matter of fact, in the legislation it actually states "said premises, subject to the rules and regulations of such association, shall have the right to enforce the provisions of this section."

So the legal buildings department, which has their individual specific codes, would be able to apply their standard of "safe

and habitable."

SENATOR SALAND: So --

ACTING PRESIDENT BRESLIN: Senator Saland.

SENATOR SALAND: Would Senator Klein continue to yield?

ACTING PRESIDENT BRESLIN: Senator Klein, do you continue to yield?

SENATOR KLEIN: Yes, I'll continue to yield, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Saland.

SENATOR SALAND: So then it's your interpretation that by that particular sentence any foreclosed property would be subject to being maintained in accordance with whatever the municipal codes of whatever that town, village, or city might be?

SENATOR KLEIN: Through you, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR KLEIN: I believe that it would, because it would leave the locality the

ability to determine what "safe and habitable" is.

And again, coming back to the example that I saw is that the local buildings department in my community was unable to give a violation because the lending institution who owned the property at that time, after foreclosure and taking title, was not maintaining the property, but they had no mechanism to enforce it.

So in other words, they couldn't turn around and say "We're going to fine you X amount of dollars," because they were looking for the actual homeowner.

And believe me, we had local police and the buildings department go to various units on many occasions to try to do something, and they just -- their hands were tied in their ability to do that.

SENATOR SALAND: If Senator Klein will continue to yield.

ACTING PRESIDENT BRESLIN: Do you continue to yield, Senator Klein?

SENATOR KLEIN: I will continue

to yield, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Saland.

SENATOR SALAND: Thank you, Senator Klein.

Is it your intention that this particular section of the General Obligations Law would be similarly applicable to both residential and commercial properties?

SENATOR KLEIN: This would actually be only applicable to residential properties. This actually could apply to a multifamily dwelling as well.

SENATOR SALAND: Is there something in this section that makes it clear that it is not applicable to commercial properties?

SENATOR KLEIN: I don't think there's anything specifically in there. But it's -- no, there's nothing specifically in there that would address just residential.

SENATOR SALAND: Thank you.

If Senator Klein will continue to yield.

ACTING PRESIDENT BRESLIN:

Senator Klein, will you continue to yield?

SENATOR KLEIN: Mr. President, I'd be happy to continue to yield.

SENATOR SALAND: In your responses to Senator Bonacic you at some point made some reference to not asking too much of a lending institution to maintain the premises. Was that on your part an expression of intent that this would not be applicable to purchase money mortgages?

SENATOR KLEIN: I'm sorry?

SENATOR SALAND: That it would not be applicable to purchase money mortgages, someone sells a piece of property and takes back a mortgage?

SENATOR KLEIN: It would actually be anyone who actually took back a piece of property subject to a foreclosure. It's actually when they actually take back title to the premises.

SENATOR SALAND: Would Senator Klein continue to yield?

ACTING PRESIDENT BRESLIN: Would

you continue to yield, Senator Klein?

SENATOR KLEIN: Yes, Mr. President.

SENATOR SALAND: So that if my dear old aunt or if I were to sell my property and, in light of the financial circumstances of today, the difficulties in securing a mortgage, I were to take back a purchase money mortgage and that purchaser were to default and it were to take -- and this would be certainly well within the realm of possibility -- eight, 10, 12 months before you might be able to get a judgment of foreclosure, I could find myself in a situation or my dear old aunt could find herself in a situation in which the premises were not vacated, the premises, as is not uncommon in these types of situations, are totally trashed -- the holes in the wall, as Senator Bonacic mentioned, anything of value ripped out. Destruction for destruction's sake.

And I now have title. I get a referee's deed, the title is back in me or,

again, my dear old aunt. And she now has to spend -- she can't sell it as-is under this bill any longer. She can't say, "I don't have the money and I can't get a mortgage," but I'm responsible to make it safe and habitable. I assume that would be required under your bill.

SENATOR KLEIN: Through you, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Klein.

SENATOR KLEIN: Again, the purpose of the legislation I think is quite clear. Under that scenario, I suppose that person would be responsible to maintain the property.

But once someone is in foreclosure, from the time they're in foreclosure to the time the foreclosure ends in the foreclosing institution taking back the property, the person who actually has the mortgage is still responsible to take care of that property.

And the situation we're trying to deal with right now, as I said earlier, is a rather simple one. We are seeing, time and

time again, the fallout from the subprime lending crisis. That's the issue at hand, where lending institutions are foreclosing on properties, very quick to do that, and not giving in many cases individuals the chance, in some cases, to modify their mortgages, keep them in their home, but in many cases holding onto these properties because the properties are not worth what they were a year ago.

In the interim, they're turning over the responsibility to maintain these properties to management companies, which quite frankly, according to the investigation conducted by my office, are running these properties into the ground.

So what I'm trying to achieve through this legislation is to make sure that anyone who owns a property, a lending institution in this case, or even, I guess, in your aunt's scenario, to maintain this property as any other homeowner would maintain a property to fit in with the neighborhood. And the standard that I chose is safe and habitable.

SENATOR SALAND: Through you, Mr. President. When one takes a mortgage, as I'm sure you're aware, there's a note and a mortgage, the note representing the personal obligation and the mortgage representing the security for the loan.

If in fact, going back to my dear old aunt, she has this note -- and as you point out, certainly until title passes the person who gave her the note is responsible for whatever damage has occurred. But that person has gone belly-up. I mean, that's why the property is being foreclosed. And getting a deficiency judgment is a total waste of time. All that my aunt wants to do is to get her property back.

But once she has accomplished that, she has a property that has been absolutely wrecked. She's not a person of means. This had been a principal asset in her life. And now, under your bill, she is responsible -- she can't get a mortgage. She can't get a mortgage, the mortgage market is dried up. And even if so, she's an elderly woman with a

badly damaged property that she can't use for security to get the amount of money she needs to repair it.

So she's sort of in a never-never land. I mean, she has the obligation -- she's not an institutional lender. She has the obligation to fix up the building and yet at the same time doesn't have the means by which to do it.

Would those people -- and it's certainly a small number of people, but they're out there nonetheless -- would they not be better served by your at the very least carving out an exclusion for those types of purchase money mortgages so that those people don't find themselves in the impossible situation of having to take back an asset that they're required to improve and don't have the means to do it?

SENATOR KLEIN: Through you, Mr. President. I guess the question I have for the Senator is, was this purchased for investment purposes? Your dear old hypothetical aunt bought the property and --

SENATOR SALAND: She lived in the house with her late husband for 35 years, she sold the property and moved into assisted living, and that was the source of her income.

SENATOR KLEIN: And now she rented the property and those are the people who destroyed the entire property.

SENATOR SALAND: She sold the property, took back a purchase money mortgage, and after a matter of several months, a couple of years, the money stopped flowing. She now finds herself in this untenuous --

SENATOR KLEIN: Through you, Mr. President. Clearly that's a case where -- you know, which is not the intent of this legislation, of course. But in a case like that, I would say that it would actually pay for the individual in question to fix up the property, maintain the property, and be able to sell it to try to get back some of your losses or maybe even refinance the property.

So I think it's in everyone's best interest in any community around our state to make sure that all homes are actually

maintained in a safe and habitable manner.

SENATOR SALAND: Well, I think you present an impossibility to perform.

SENATOR KLEIN: I'm sorry to put that burden on your aunt.

SENATOR SALAND: If Senator Klein will continue to yield.

ACTING PRESIDENT BRESLIN: Senator Klein, would you continue to yield?

SENATOR KLEIN: Mr. President, I'm happy to continue to yield.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR SALAND: You make this legislation effective immediately. Would it apply prospectively to mortgage foreclosures? Would it apply to those proceedings currently initiated for foreclosure that have not yet gotten to judgment or have not gone to foreclosure? Or would it apply to any foreclosed property currently anywhere in New York State?

SENATOR KLEIN: It would apply to foreclosed properties that are actually --

when the actual lending institution or anyone else who takes the property takes new title to the property.

ACTING PRESIDENT BRESLIN: Senator Saland.

SENATOR SALAND: If you would continue to yield.

SENATOR KLEIN: I would continue to yield.

ACTING PRESIDENT BRESLIN: Senator Saland.

SENATOR SALAND: The XYZ Bank foreclosed 18 months ago on a property, took back title through the referee, and the property has been sitting there for 18 months. Your bill is signed into law the 1st of April. Does the XYZ Bank now find itself having to comply with the terms?

SENATOR KLEIN: If they take title after April 1st, yes.

SENATOR SALAND: Okay. So what you're saying, then, it's prospective.

SENATOR KLEIN: Yes.

SENATOR SALAND: It doesn't apply

to anything already in the pipeline or previously foreclosed.

SENATOR KLEIN: Correct. Correct. When they take title after April 1st.

SENATOR SALAND: Thank you, Senator Klein.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Saland.

The chair recognizes Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: On the bill just very quickly.

ACTING PRESIDENT BRESLIN: Senator Hassell-Thompson, on the bill.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

I am not an attorney, and these are days when I'm very glad that I'm not. It just seems very simple and straightforward to me, having had several properties in my own neighborhood that were in foreclosure and those properties were not cared for.

It became the responsibility of the neighborhood association in the beginning to cut the grass, because nobody was taking responsibility for the upkeep of the property. And then several nights ago there was a gas leak which was traced to that property. And for several hours, almost 20 hours, Con Edison was there first to gain access and then later to secure that property.

There were lots of live animals and critters sleeping in the tall grass. And it became somewhat unsafe and problematic.

The point here, I think, in this bill, as I understand it, is to ensure that someone appropriately take responsibility for securing and the safety and conditions of these abandoned properties. Because for all intents and purposes, if they're not being taken care of, they give the appearance of being abandoned, which in fact sends a message to some of our less lawful citizens that it is in fact a place that can be inhabited, number one.

Number two, it also does damage to

the property values of people who live in the neighborhoods. It is difficult enough to see our neighbors in the state of foreclosure. It is even more difficult for us to anticipate that that loss of property on their part can have a slippery-slope effect on the rest of the properties in communities.

If those properties are cared for, it sends a different kind of signal. And I think that that's really at the heart of what this bill is speaking to.

And so if there is a need for the legalese to be adjusted, then do so. But in the meantime, it falls upon the local municipalities to be responsible for taking care of these properties. And it leaves the bank and others free to dispose of their obligations.

So I think that the bill has tremendous merit, and I commend my colleague for its presentation. And I certainly will be voting for the bill.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank

you, Senator Hassell-Thompson.

Senator LaValle.

SENATOR LaVALLE: Thank you, Mr. President.

Senator Klein, I want to say, as I think the other speakers have --

ACTING PRESIDENT BRESLIN: Is this on the bill?

SENATOR LaVALLE: On the bill and then I'm going to ask the Senator to yield.

ACTING PRESIDENT BRESLIN: Senator Klein, will you yield for a question?

SENATOR KLEIN: Mr. President, I'd be happy to yield for a question.

ACTING PRESIDENT BRESLIN: Senator LaValle.

SENATOR LaVALLE: Senator, first of all, I agree with Senator Bonacic. This section should clearly be in the Real Property Proceedings Law, I don't think there's any doubt.

Because the first thing you start off with is the final judgment. And in the final judgment the judge lays out, as you are

aware, what has to take place in terms of securing a referee and notice and so forth. So it's the beginning of a process.

My question to you is you say that we have to maintain it in a safe -- I'm on line 8 -- safe and habitable condition until said premises are sold. "Sold" meaning at the auction by the referee?

SENATOR KLEIN: No.

Mr. President, through you.

ACTING PRESIDENT BRESLIN: Senator Klein.

SENATOR KLEIN: No. What actually happens is once -- the cases that we're talking about here is when the lending institution actually forecloses on a property, then they take title back to the property --

SENATOR LaVALLE: No, they don't.

SENATOR KLEIN: And they take title back to the property after a referee sale. They buy back a property, then take title.

SENATOR LaVALLE: Okay.

SENATOR KLEIN: And now they're

not maintaining the property in a safe and habitable manner.

SENATOR SALAND: That's what I'm saying.

ACTING PRESIDENT BRESLIN: Senator LaValle, through the chair, please.

SENATOR LaVALLE: I'm sorry, Mr. President. Through you, will Senator Klein continue to yield?

ACTING PRESIDENT BRESLIN: Senator Klein, do you continue to yield?

SENATOR KLEIN: I'll continue to yield.

ACTING PRESIDENT BRESLIN: You may proceed, Senator LaValle.

SENATOR LaVALLE: So what we're saying is what I had indicated, premises are sold meaning when the referee sells the property.

And that sale, by the way, in probably 25 percent of the cases or more, is purchased or the winning bid is by someone other than the bank.

SENATOR KLEIN: Through you,

Mr. President.

ACTING PRESIDENT BRESLIN:

Senator Klein, you may proceed.

SENATOR KLEIN: I've taken part in numerous referee sales. And the referee sales that I took part in, the majority was the foreclosing lender was the one who repurchased the property back. And I would assume, in this unfortunately horrible real estate market, it's even more prevalent now.

ACTING PRESIDENT BRESLIN:

Senator LaValle.

SENATOR LaVALLE: On the bill.

ACTING PRESIDENT BRESLIN:

Senator LaValle, on the bill.

SENATOR LaVALLE: Mr. President, in Suffolk County, where I have been through some foreclosure sales as referee, at least a quarter of the sales are bid and the winning bid is by someone other than the bank.

And so the procedure -- and we're assuming, Senator Klein, that the defendant's attorney hasn't brought an action for bankruptcy, as Senator Bonacic has indicated.

In today's world I would say it would almost be legal malpractice not to protect your client as the defendant without bringing a bankruptcy action.

So the amount of time from the judgment, the final judgment to the final sale can be a very long period of time. And then from the sale to title, unless there is a provision "time of the essence" in it, can be many, many months more beyond that.

So what I'm not understanding here is a couple of things. Number one, and it's been brought out, you should delineate very specifically that we're talking about residential property. Because in other sections of law in the Real Property Law we have, as you know, definition of warranty of habitability. And so we have lots of sections of law here, and you've put everything under the General Obligations Law.

Your purpose -- and I think we have to do something, because communities are blighted. There is absolutely no doubt about that. And, you know, when I cast my vote, I'm

probably casting it for something that we should be doing.

But in all candor, Senator, I think my learned colleagues Senator Bonacic and Senator Saland, I think, you know, hit the nail on the head, you know, in terms of the actual legal dynamics here that take place from the final judgment to the time title is conveyed.

So I probably will vote for the bill based on the purpose but not on the legal action -- that is, the words here -- that you have laid out.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator LaValle.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President. Not being an attorney, but I have --

ACTING PRESIDENT BRESLIN: On the bill, Senator Marcellino?

SENATOR MARCELLINO: Yes, on the bill right now.

ACTING PRESIDENT BRESLIN: On the bill.

SENATOR MARCELLINO: I do hold a real estate broker's license and have been involved in some of these sales. And there is a continuing education requirement in the law for brokers, and I know for attorneys. And the colloquy between Senator Saland and Senator Klein before, I think, would probably qualify anybody in the room for that continuing education program. It was very enlightening.

I would never like to see the perfect be the enemy of the good. I think this bill has merit. As has been pointed out, there are obviously communities that are in need of legislation like this. However, I don't think the bill goes far enough.

In many cases, municipalities are owners, probably the largest property owners in the area. They've taken buildings, they've taken homes, they've taken structures for tax lien purposes. Being that people, if they're not paying their mortgage, they're also not

paying their taxes. And the municipality generally grabs the property first.

Now you have a conflict. Who's responsible for that property? Is it going to be the bank, is it going to be the owner, is it going to be the municipality?

I have seen situations where the municipality didn't even know they owned the property. They were totally unaware that one section of the government had seized the property and taken it over, and then consequently the place just sits there and decays. The lawn is about three feet high, and the property is maybe occupied by transients, maybe occupied by squatters and the like, or worse. And the people on either side of the building, if they're trying to live their peaceful life and are law-abiding, they're suffering because of what's next door.

So I think what has to be done -- and I don't know if there is a same-as in the other house, Senator Klein. I'm not asking you to yield, but -- Senator Klein, would you yield for -- through you, Mr. President, would

you yield for just one question?

ACTING PRESIDENT BRESLIN: Senator Klein, will you yield to Senator Marcellino?

SENATOR KLEIN: I'd be happy to yield, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Marcellino, you may proceed.

SENATOR MARCELLINO: I believe this is a one-house bill. I don't mean that pejoratively. But is there a same-as in the other house?

SENATOR KLEIN: Through you, Mr. President, my legislation is a two-house bill. Assemblymember Spano has introduced the bill and it is presently in the Judiciary Committee in the Assembly.

SENATOR MARCELLINO: Okay. So then you have --

ACTING PRESIDENT BRESLIN: Through me, please.

SENATOR MARCELLINO: I'm sorry. Through you, Mr. President. Back on the bill.

So you have time, in a sense, in my

mind, that corrections or amendments could be made to this piece of legislation I think to satisfy some of the concerns that have been registered here. Because I think they're valid concerns.

And if we could do it before the bill passes either house, I think we're better off and I think we have a better piece of legislation to go forward with. And I think you get far more votes that way, probably unanimous passing, if that could be done. That would be a recommendation to my colleague. You do with it as you please, obviously.

SENATOR KLEIN: Through you, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Klein.

SENATOR KLEIN: I certainly will take my colleagues on the other side of the aisle, their recommendations.

But again, what we talked about before, this is an epidemic. I've been involved in this issue, you know, from the

start. And unfortunately, sometimes I felt like the boy who cried wolf.

And I'll be quite honest, when I spoke to my constituents in my district, who luckily weren't as impacted as some of the other communities around the State of New York on the subprime lending crisis, they looked at me in sort of a dazed fashion when I told them that this eventually is going to affect each and every one of us, whether or not we have a home in foreclosure, whether or not we have a subprime loan.

Now we're seeing these foreclosed properties actually causing our property values -- innocent people who had nothing to do with the subprime lending crisis to lose value in their property, and their communities are constantly being plagued with crime.

So this is a problem that I think we have to deal with immediately. And while I think we did a lot on this issue through the Governor's program bill that we unanimously passed last year, this is one thing that I think we have to deal with now.

And I think, you know, the section can be changed. I guess it could be a stronger bill. But I think, more importantly, this is a very, very important issue that has to be dealt with immediately. And I look forward to quick passage today and then of course in the Assembly as well.

ACTING PRESIDENT BRESLIN: Thank you, Senator Klein.

SENATOR MARCELLINO: Well, I concur with my colleague, it is an important piece of legislation. The concept is very important. There are communities at risk.

One of the things that might occur, though, as Senator Saland pointed out earlier, if the banks are not in the lending business, in many cases you get that private mortgage money, that private individual who may hold back the paper and may actually offer that private mortgage.

And we may be causing them, with legislation that puts onto them the potential to have to go back into a property that has been trashed, that has been literally run down

by the occupier -- and they're going to say, hey, maybe I don't even want to get into this lending business, because it could be a potential problem.

I would think that it would be -- again, just a recommendation, but I think we're better off if we fix it now. I agree with you we should be doing this, it's important. But it should be done right or better. Because, you know, the concept is fine. I'm going to vote for the bill as it stands. But I do think it could be a better bill and should be a better bill.

So again, a recommendation to you in a friendly way.

ACTING PRESIDENT BRESLIN: Thank you, Senator Marcellino.

Senator Craig Johnson.

SENATOR CRAIG JOHNSON: Thank you very much, Mr. President. On the bill.

ACTING PRESIDENT BRESLIN: Senator Johnson, on the bill.

SENATOR CRAIG JOHNSON: Thank you.

I first want to commend the Deputy Majority Leader for this legislation. He has certainly been extremely dedicated to addressing the issue of the foreclosure crisis in New York State and in particular the suburbs, areas like Nassau County and Suffolk County.

Just a couple of months ago, Senator Klein joined me, Supervisor John Kaiman of the Town of North Hempstead, and Town Councilman Robert Troiano, and we stood outside a foreclosed home in my Senate district in the Town of North Hempstead. And we looked at the dilapidated condition of this home. The bank had foreclosed upon it, the bank had taken it, and they had allowed this home, one of many in the community that I represent, to fall into shambles or to continue to fall into shambles.

The fact is is that this legislation is truly necessary.

Now, I've listened very intently to some very valid points that my colleagues on the other side have made. Senator Bonacic,

you made some excellent points concerning the delays that are facing. The fact is is that in a bankruptcy situation, the one that you indicated, that could add further delay.

A bank, a very sophisticated lender, has numerous remedies in the bankruptcy code to expedite and end the bankruptcy to get the foreclosed home to continue a foreclosure sale. And listening to other of my colleagues express concerns about certain hypotheticals, it almost sounded like I was back in law school and listening to hypotheticals about what-ifs and what-ifs.

But banks aren't going to stop lending over a certain fee and a requirement to maintain the property. Maybe we can keep pushing banks to stop taking TARP money and fly to Las Vegas and to do special junkets with our tax monies. That's what we should be angry about.

So maybe while they're spending that extra TARP money from the federal government and abusing our tax dollars, we could put a new little small obligation to

help maintain the properties that they want to foreclose upon.

Yes, in this process now -- when a couple of years ago members of this conference wanted to actually put a stay on foreclosures to stop the process, and we weren't able to do that -- it's nice to see that banks are slowly understanding that maybe it's better to keep people in their homes than have them out of their homes.

But the fact is, ladies and gentlemen of this great body, when the banks take it, more often than not they let it go. And many times they're holding onto the properties to try and get as much money -- well, that's fine. That's the American way. But the fact is is that we cannot allow them to take down other people who are the neighbors who are paying their taxes, paying their mortgages, paying their bills, and having this new neighbor, the bank, not take care of their property.

I'm proud to support this great piece of legislation. I am honored to serve

as a cosponsor, like many of our colleagues. And because of the new rules, I hope those on the Republican side that vote in favor of this join us to be cosponsors.

But this is a great piece of legislation. And I thank Senator Klein for his dedication, for answering the questions, providing the information. I applaud this Senate for taking this step to protect the homeowners of our districts. I'll be voting yes.

Thank you very much, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Johnson.

Senator Little.

SENATOR LITTLE: Thank you, Mr. President. Would the sponsor yield for a question, please.

ACTING PRESIDENT BRESLIN: Senator Klein, would you yield to Senator Little for a question?

SENATOR KLEIN: Mr. President, I'd be happy to yield.

ACTING PRESIDENT BRESLIN: You

may proceed, Senator Little.

SENATOR LITTLE: Thank you.

Senator Klein, I spent several years as a realtor, so I definitely understand the purpose in what you're trying to get to in this bill. Because if one house in a neighborhood is allowed to become in disrepair, it affects the value of all the other homes in the neighborhood.

But I have a problem with the word "habitable." Because in the North Country, if you have a house and you want to keep it in good condition and there is no one in it, you need to drain the pipes, lower the heat, take care of the house so that the pipes don't burst. And then it is -- no longer could be habitable at that time, so it would not fall under your regulations.

You have to shovel the sidewalk and all of those things, which add to the expense. I mean, if a mortgage company or a bank had to heat this house with below zero temperatures, check on it, check the roof, the icicles, check the sidewalk and all, it's an expense.

And it certainly is reducing what they're going to ever get from this house.

And it's not just the bank or the mortgage company. Many of these mortgages -- and this is where the problems have come from -- were purchased and securitized, and the assets are not what they were made out to be. Therefore, people whose pensions, people who have stock in these places are losing.

So I would just ask if you would consider changing that one word to be able to keep the house "safe and in good condition."

ACTING PRESIDENT BRESLIN: Senator Klein.

SENATOR KLEIN: With all due respect to Senator Little, I think -- again, as I said before, I don't think it's too much to ask that we apply a standard which is applied to homeowners throughout the state to, in this case -- in my example, it's a lending institution that now owns this property.

I mean, I can't emphasize enough the problems this has caused all over the State of New York. As I said, in New York

there's over 3,552,000 homes which have experienced devaluation last year because of subprime foreclosures. That's resulting in a combined monetary decrease in home values and tax base in New York State of $36.8 billion, $36.8 billion.

As my colleague Senator Johnson pointed out, we all know now about the bailouts to the lending institutions. Another thing that I had the opportunity to look at is that the 10 banks that were responsible for the most number of foreclosures in New York State got $110 billion from that bailout package.

So in all due respect, Senator Little, I do not think it's too much to ask that these lending institutions, as you said, now drain the water out of the pipes to make sure the pipes don't explode or do anything they have to to maintain this property so it's not a blight in the community and it doesn't cause innocent homeowners to have their property values decrease and it doesn't cause the community to be rampant in crime, which is

also a very strong correlation between foreclosed properties and an increase in crime.

Again, I don't know why we're now coddling these lending institutions that were very quick to foreclose on these properties. And now the only thing I'm asking through this legislation is that they maintain the properties they now have title to.

SENATOR LITTLE: Thank you.

And through you, Mr. President. Senator Klein --

ACTING PRESIDENT BRESLIN: Senator Klein, would you continue to yield to Senator Little?

SENATOR KLEIN: I continue to yield, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR LITTLE: I'm really not disagreeing with the fact that you maintain the property.

But I'm saying that in my area, if you were going to leave your property and even

go south for a few months, you do drain the pipes, you do lower the heat, and you do that. Then the house is no longer habitable.

So I'm questioning just that one word that I think that you could clarify and come to the exact same conclusion in --

SENATOR KLEIN: I will clarify that. Through you, Mr. President.

As I think I am mentioned to one of my other colleagues on the other side of the aisle before, what this legislation would do, it would give the authority to the legal buildings department to apply what their definition of safe and habitable is. Because again, it's the local buildings department of the locality which would go in upon a call from, I guess, one of your constituents to go in and give a violation to this property which isn't being maintained properly.

So I guess in your case it would apply to how in your county would apply the "safe and habitable."

ACTING PRESIDENT BRESLIN: Senator Little.

SENATOR LITTLE: It would. However, through you, sir --

SENATOR KLEIN: In other words, the "safe and habitable" standard would apply --

SENATOR LITTLE: Where is that in the --

ACTING PRESIDENT BRESLIN: Senator Klein, will you continue to yield to Senator Little?

SENATOR KLEIN: I'm sorry, Mr. President?

ACTING PRESIDENT BRESLIN: Will you continue to yield Senator Little?

SENATOR KLEIN: Yes, I continue to yield, Mr. President.

SENATOR LITTLE: I'm sorry, Mr. President, through you.

That would definitely answer the question. But I don't see it in the legislation. So how does it come about? Is it through --

SENATOR KLEIN: I'll point it out in the legislation. It said "said premises,

subject to the rules and regulations of such association, shall have the right to enforce the provisions of this section."

The municipality in which the presences are located or a homeowner's association, if said premises are subject to the rules and regulations of such associations, shall have the right to enforce the provisions of the section.

SENATOR LITTLE: Okay. Thank you.

ACTING PRESIDENT BRESLIN: Thank you, Senator Little.

Senator Volker.

SENATOR VOLKER: Mr. President -- first of all, I want to tell you, Senator Klein, that --

ACTING PRESIDENT BRESLIN: Senator Volker, on the bill?

SENATOR VOLKER: Yes, on the bill.

I agree with much of what you've said about banks and about all the things that are involved here and that they need

protection and all that. But there's one small problem. I think this bill probably was drafted by the Center for Responsible Lending, whoever the heck that is, because people like that tend to use the General Obligations Law.

And I've been involved in real estate -- my family, my father -- for years. You don't use the General Obligations Law in real estate, you use the Real Property Law or the -- the problem with this bill is -- I know what you're trying to do, and it's laudable. But it is drafted in such a way that if it ever gets to the Governor, it will vetoed, I don't think there's any question about it.

And I'm just going to have to vote against it, because -- and you keep talking about the banks. And it's very true that some of the banks have certainly been irresponsible, although you have to realize something. We have very, very few subprime mortgages in upstate New York, because the banks in upstate New York wouldn't do them. I mean, most of the subprime mortgages in this state are in Queens and down in the City, some

on Long Island. I mean, we didn't have them.

But we do have a huge problem in Buffalo. Not with subprime mortgages, just with bad housing and foreclosing and all that sort of stuff. And I've been involved in a lot of those. I've been in housing court quite a bit. It might be hard to believe, but I have -- even now that my practice is down quite a bit, I go in with people that have been clients of my father's and so forth. And I've sat with the housing judge and talked to him. What a mess. I tell you, it's sad.

But I have to tell you very honestly, I'm going to have to vote against this bill. Because I really think you ought to change this from the General Obligations Law and I think make it a little bit tighter, because -- and I don't see how you can possibly make it effective immediately. I just -- I just can't see it. I think you've got to give it a little bit of time. Because I think what will happen is the first time you try to use it, I suspect that a judge is probably going to throw it out.

That's just me. As I said, I've done a lot of real estate over the years.

Your intent is great. I happen to agree with most everything you've said. But I just think this bill is not drawn in a way that will accomplish what you want to accomplish.

ACTING PRESIDENT BRESLIN: Thank you, Senator Volker.

Senator Bonacic.

SENATOR BONACIC: I apologize to Senator Klein for getting up a second time. I don't normally do that. But as the discussions were going on, I just have two other questions I'd like to ask you that I don't think were covered. Would you yield to two quick questions?

ACTING PRESIDENT BRESLIN: Senator Klein, would you yield for two quick questions?

SENATOR KLEIN: I'd be happy to yield, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Bonacic.

SENATOR BONACIC: I read the bill very closely. You used the word "property." Was the intent "residence"?

Because we deal with farm properties upstate. And, you know, it's a barn, it's other farm buildings and a residence. And many a times when land was expensive, that farmer sold to a speculator who was eventually going to put in a subdivision. The market changed, and he didn't do anything, that speculator. And that farmer gets the land back.

The question is, does he have to fix up all the outer buildings too? Because you used the word "property." Is the intent "residence"?

SENATOR KLEIN: The word "property" -- through you, Mr. President, the word "property" I used, as I said earlier in the explanation, was under common law how real property is supposed to be maintained, in a safe and habitable manner.

SENATOR BONACIC: But, I mean, all of these buildings --

ACTING PRESIDENT BRESLIN:

Senator Bonacic, through the chair, please.

Senator Klein, would you yield --

SENATOR BONACIC: But all of the farm buildings and the barns and the residence is real property. So I'd just ask you to look at that.

ACTING PRESIDENT BRESLIN: Would you continue to yield, Senator Klein?

SENATOR KLEIN: Yes, I continue to yield.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR BONACIC: Okay. My other question is, does the mortgagee, if he makes a decision that the value of the land is worth more than the value of the house to rehabilitate it, would you give him the option of tearing the house down instead of putting it in a safe and habitable condition?

SENATOR KLEIN: Again, that would be up to the owner of the property.

Because again, I'm not forcing the locality to make the repairs and then bill the

lending institution. What I'm doing in this case is merely allowing the local buildings department to enforce their standard of safe and habitable.

So if they feel, I guess, if the fines are so great that it would pay for them to knock down the property and I guess sell the vacant land, I guess they would have the opportunity to do that.

SENATOR BONACIC: Okay. And my last question for Senator Klein, I promise it's my last question.

ACTING PRESIDENT BRESLIN: Senator Klein, do you continue to yield to Senator Bonacic?

SENATOR KLEIN: I'll continue to yield.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR BONACIC: Some people get themselves in a foreclosure position because they can't pay their property taxes; has nothing to do with the bank or a mortgagee. And many a times the counties upstate get

properties in a foreclosure because of tax sales where they take title.

Is it your intent that if the counties took a collection of these properties for taxes that they have to put all of those houses in a safe and habitable condition? Or did you mean it to apply to a foreclosure with a traditional bank or any mortgagor?

SENATOR KLEIN: Through you, Mr. President. One of the cases in the case law that I cited early on is that the "safe and habitable" standard applies to in rem properties. So in the City of New York, the City of New York, when they take over properties, they have a duty, they have a duty to maintain the properties in that standard.

So in answer to your question, yes.

SENATOR BONACIC: Thank you, Senator Klein.

ACTING PRESIDENT BRESLIN: Thank you, Senator Bonacic.

Senator DeFrancisco.

SENATOR DeFRANCISCO: I'm not going to repeat the various areas --

ACTING PRESIDENT BRESLIN:

Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: On the bill for the moment.

I'm not going to repeat some of these areas, but I think there have been some constructive ways to make the bill better and to make it enforceable and make it work. Because the concept is a good concept.

And I think right now if this bill went into effect and a bank was in a foreclosure proceeding, found out the property was worthless, they're just going to withdraw the petition for foreclosure. And the property is just going to deteriorate and look pretty bad with no one having any responsibility to do it and not have any effect. So that should be a consideration as to the value of this bill.

Secondly -- and I'd ask Senator Klein to yield to a question, if he would, please.

ACTING PRESIDENT BRESLIN:

Senator Klein, would you yield to Senator

DeFrancisco for a question?

SENATOR KLEIN: Yes, Mr. President, I'd yield for a question.

ACTING PRESIDENT BRESLIN: The question through me, Senator DeFrancisco.

SENATOR DeFRANCISCO: Through you.

Would Senator Klein agree with me that the way the bill is written right now that the bank, if they take the property back in a foreclosure action, has the duty to keep the property in a safe and habitable condition until it's sold?

ACTING PRESIDENT BRESLIN: Senator Klein?

SENATOR KLEIN: Yes.

SENATOR DeFRANCISCO: Would Senator Klein also yield to another question.

ACTING PRESIDENT BRESLIN: Do you yield to another question, Senator Klein?

SENATOR KLEIN: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator DeFrancisco.

SENATOR DeFRANCISCO: If a bank wanted to avoid the provisions of this particular bill, is there anything in the bill that would prohibit the bank to take the title in foreclosure and sell it for a dollar to someone else? Because the way I understand the bill, the prevailing party at the foreclosure actions has the duty until they sell it.

If they sell it for a dollar that same day to another corporation or a dummy corporation, my understanding of the way the bill reads is the dummy corporation has no duty whatsoever. They were not the prevailing party.

ACTING PRESIDENT BRESLIN: Senator Klein.

SENATOR KLEIN: Through you, Mr. President. I doubt that would happen, because the lending institution is foreclosing on the property. And if they were willing to sell the property, which still has value, they wouldn't have been so quick to foreclose on the homeowner and give them an opportunity

maybe to modify their mortgage, change the terms of their mortgage, and keep the owner in their home, which is certainly a lot more profitable than selling the said property for a dollar.

SENATOR DeFRANCISCO: On the bill.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: The purpose of the question -- I think everybody understands what a dummy corporation is. It's a corporation that's set up to do very little other than to maybe receive a piece of property.

If the bank wanted to go through the bother of getting a foreclosure and didn't want to pay to make it habitable and safe, they could sell it for a dollar to another corporation. They've accomplished their purpose; they have control through a new corporation that has no duty other than to avoid the law. And as a result, the whole bill would be very -- well, it would be

emasculated, to say the least.

The reason I bring this up is that in view of that and all the other potential problems here, it seems to me that there ought to be some more thought given to this bill to make sure it's a workable bill and some of these holes that have been mentioned and some of these concerns that have been mentioned could be dealt with.

So that was the purpose of my question and I'm sure the purpose of the other constructive suggestions that were made here today.

ACTING PRESIDENT BRESLIN: Thank you, Senator DeFrancisco. And thank you for your attentiveness to direct your questions through the chair.

Senator Young.

SENATOR YOUNG: Thank you, Mr. President.

Senator Bonacic did a very good job in asking the questions that I was planning on asking, so I pass at this particular time.

ACTING PRESIDENT BRESLIN: Thank

you, Senator Young.

Are there any other Senators wishing to be heard on the bill before us?

Hearing none, the debate is closed. The Secretary will ring the bells.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I'm very proud to support this legislation. And I think that many of us who are supporters of the legislation and admirers of Senator Klein's pursuit of this cause have chosen not to speak just because the hour is late.

But I want to say to anyone who has expressed concerns here today, there's a bigger concern. And Senator Klein came to

Washington Heights, in my district, where we're dealing with the same problem. We're talking about all of the hardworking families who are on blocks and in neighborhoods where there are houses in states of disrepair.

And I would urge all of you, you have a lot more, Senator Saland, beloved aunts who are living down the street from a house that's falling down. And their own houses, where they are paying the mortgages, are at risk.

This is the first serious effort to address the collateral damage of the mortgage crisis caused to neighborhoods all over our state where there are people who are still working harder than ever to pay their mortgages, but they're faced with a catastrophe in their own property values because there are houses around them that are not being maintained by financial institutions that hold mortgages.

There are a few families that hold mortgages of individuals, but over 90 percent of mortgages are held by financial

institutions. So let's not let specific anecdotal problems prevent us from addressing a tremendously serious crisis in many communities.

I commend Senator Klein for his work on this. Believe me, this will benefit every community you represent, and I urge everyone here to vote yes.

ACTING PRESIDENT BRESLIN: Senator Adams, to explain his vote.

SENATOR ADAMS: Thank you, Mr. President.

I too just want to thank Senator Klein for this piece of legislation, and also want to thank all of the Senators on both sides of the aisle who all recognize that this is a serious problem and the bipartisan understanding that we need to address the issue that's taking place with these abandoned properties.

I know I have one on my block, and it's just -- it's an eyesore. It's dealing with property value. And when there's emergencies, it's a safe haven for those who

want to commit crimes, who want to sell drugs. It just becomes really a deterrent to anyone to invest in the community.

So I think this is an important piece of legislation. I believe it's important to listen to what our colleagues said on the other side of the aisle. If we need to do things better, there's always an opportunity to do so.

But I want to thank Senator Klein, who has really taken this foreclosure issue on and has been a voice throughout the last few years on how we must do something with the foreclosure issues, and this is another aspect of it. And I want to thank him, and I vote aye on this bill.

ACTING PRESIDENT BRESLIN: Thank you, Senator Adams.

Senator Stewart-Cousins, to explain her vote.

SENATOR STEWART-COUSINS: Yes, I too wanted to rise and really commend Senator Klein for the diligence in terms of this whole process.

This is a continuum, it's a natural continuum from when we as a conference, and certainly with Senator Klein's leadership in this matter, looked at the subprime mortgages, looked at how people were not faring well. And he has continued consistently to put our attention on this very huge issue right down to what blighted homes do to neighborhoods, right down to how our properties are devalued, and right down to really saying to banks as they foreclose: These will be the consequences should you continue with a foreclosure. Maybe you do want to sit down and speak to the homeowner and talk about what we can do. Maybe they don't want to have to maintain and upkeep housing.

So this gives more options. It sends a message. And it certainly is something that I readily support and again commend Senator Klein for the continued persistence of keeping our attention on what this means on every level for our housing and for our homeowners.

ACTING PRESIDENT BRESLIN: Thank

you, Senator Stewart-Cousins.

Senator Perkins, to explain his vote.

SENATOR PERKINS: Thank you very much.

I just want to again commend Senator Klein for his leadership. The problem of the blight in our communities with abandoned properties is a very significant one.

I would only hope, however, that we do much better than the in rem process has been in some respects as far as our communities are concerned, because that has not always worked out so well.

But I think the approach that you're taking will not only be good in terms of what we're doing, but I think it may also be a model for others to use to guarantee that when these unfortunate circumstances take place that the communities won't have to suffer the consequences in terms of blight.

So congratulations to you and also to our colleagues on the other side who

engaged in such an important discussion about the value of this approach and raising some concerns that I think help us to understand even better the importance of the legislation.

So thank you very much. I vote aye.

ACTING PRESIDENT BRESLIN: Thank you, Senator Perkins.

Senator Liz Krueger, to explain her vote.

SENATOR LIZ KRUEGER: Thank you.

I rise to thank Senator Klein for his legislation and to support it.

I just want to remind all my colleagues that actually this isn't just a question of subprime mortgages, this is any foreclosure in New York State. And in fact, the statistics are getting worse and they're growing.

We had a presentation at the Banking Committee this morning by the banking commissioner showing the statistics on foreclosures, and the foreclosures are everywhere in the State of New York. They are

in Long Island, they are in upstate New York, they are in Buffalo, they are throughout the state.

And this is a fundamental issue for the economics of our state, for the future protection of the housing market and our communities. Let's not forget, whoever ends up owning these houses, if they collapse, if they are not habitable, then they have no resale value. And if they have no resale value, we have lost an incredible resource for our communities as we work to get out of this economic crisis.

So this is a win/win for the communities, for the housing stock of the State of New York. And in fact even the banks should support this legislation if they end up owning these houses, because they don't want to have something that has no value in the market. They don't want to deal with trying to resell their houses, hopefully as the economy improves. If in fact they own 20 or 30 in a community, they will lose housing value as well.

So I am very happy to support this bill. Thank you.

ACTING PRESIDENT BRESLIN: Thank you, Senator Krueger.

Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President, thank you.

I just want to rise and thank Senator Klein for all the work that he has done on the issue of what do we do about foreclosures, what do we do to help people who are victimized by subprime activities, what do we do to protect communities.

And so this is what I believe to be a wonderful answer to those areas, especially areas like mine. But I've been in other parts of the state. I was in Senator Bonacic's district, I've been in Senator Oppenheimer's district. So one has rural area, one has suburban area. And I drive through and I see signs: "Foreclosure. Owned by the bank," and properties just sitting there, looking like they've been abandoned. This is a real

problem.

And in districts like mine, where the foreclosure, the subprime foreclosures was one of the most dramatic, drastic issues for us -- so many of our properties were foreclosed because of the subprime mortgages. So I have whole blocks where there are several buildings on a block that are boarded up. And it invites all kinds of problems for the people who live in that block.

So I thank you, Senator Klein. I vote aye on this legislation because it would require that any property that is in foreclosure be kept up until that property is disposed of. And that's what we want. We do not want boarded-up properties to be sitting dormant for months and months and months, no upkeep, and it eventually will bring down the value in the entire community and in the entire block.

So thank you, Mr. President. I vote aye.

ACTING PRESIDENT BRESLIN: Thank you, Senator Montgomery.

Senator Saland, to explain his vote.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, I listened to the entire debate. And first let me commend Senator Klein for bringing this issue before us. And I certainly believe the issue is one that has to be dealt with.

Unfortunately, and regrettably, I believe that the draftsmanship of this particular proposal leaves a lot to be desired. And I would suggest to you that unlike one of the comments I heard from one of my colleagues earlier that this was great legislation, I think it comes up rather short and is severely lacking. Perhaps my standards are too high.

The fact of the matter is is that there is not a single building that was referred to as being boarded-up currently that will get any benefit from this legislation. In my exchange with Senator Klein, he said that this applied prospectively. We used a

theoretical adoption date of the 1st of April, and it applied to those properties after the 1st of April. So all those abandoned, boarded-up buildings get no additional maintenance because of this bill.

And I would suggest to you that if the desire is to bring more mortgage money into our respective communities and to avoid the kinds of problems that we have run into both in subprime and now in mortgages that are not subprime, this will have the absolutely opposite effect. This would have a chilling effect.

You're going to need a credit score of somewhere in the area of 750 or more to be able to get a mortgage, and you're going to have to put a substantial down payment in before a bank is going to take the risk of taking on the responsibility of a foreclosed piece of property that in all likelihood has been trashed and they're going to have to pour major dollars into.

So I welcome the concept. I would hope that we can revisit this and do it in a

fashion that will actually provide the kinds of relief that the sponsor would hope to see. But I don't think this vehicle gets us there, and I'm going to vote in the negative.

Thank you.

ACTING PRESIDENT BRESLIN: Thank you, Senator Saland.

Senator Stavisky.

SENATOR STAVISKY: Thank you, Mr. President.

First of all, there are many foreclosures in Queens County, as there are throughout the state.

But I rise really to vote yes but also to thank Senator Klein for his commitment to help many of the people that are the victims of the economy and particularly the foreclosure crisis.

This is not a newfound issue with Senator Klein. He has been interested in this entire problem for many, many years. And I'm delighted that we're at least attempting to solve some of the problems, and perhaps by the end of the session we will have a whole

package of bills dealing with the subprime, dealing with foreclosure. And by then hopefully things will have resolved themselves.

I vote aye.

ACTING PRESIDENT BRESLIN: Thank you, Senator Stavisky.

Senator Klein, to explain his vote.

SENATOR KLEIN: Thank you, Mr. President, to explain my vote.

You know, clearly we've seen the impact of the subprime lending crisis all across our state and all across our country. I want to give a tremendous amount of thanks to my colleagues for their hard work on this issue.

During this past year, the Senate Democratic conference kicked off a program called Operation Protect Your Home where we traveled all over the state and we worked with lending institutions in modifying mortgages for distressed homeowners. To date, we have modified over 3,500 mortgages, keeping people in their homes. I think that's everyone's

intent, that's what we should try to be doing.

But as I said earlier, unfortunately, some homes do fall into foreclosure. And I do find that the lending institutions were very quick to foreclose on these properties, not giving the homeowner the opportunity to modify their mortgages.

And I'll give you an example. Last year, across the country, 58 percent of individuals whose mortgages ended in foreclosure had no contact with their lending institution. So there was really no give-and-take or no calling up a distressed borrower to say, hey, is there anything we can do to keep you in your home, put you in a mortgage you can afford, lower your interest rate to, let's say, 6 percent instead of 10 percent.

So what we're seeing now is a subprime fallout in communities all over the state. This is not a New York City problem. We have seen foreclosures as far away as Chemung County. Suffolk County is hard-hit. The area of Buffalo, which I visited with my

two colleagues from the Erie County area, has a tremendous amount of foreclosures because of subprime products.

So I think it's incumbent upon us now to protect innocent homeowners, people who had nothing to do with the subprime lending crisis, and make sure their communities are stable and safe. And I think this legislation will do that.

I know everyone is talking about we're not going to be able to sell homes again. Well, you know something? I think maybe we can light a fire under these lending institutions to quickly take title to these properties, maintain their properties and sell them, sell these properties to homeowners who will maintain them as the surrounding homes in that community do so, and bring our communities back.

Because right now what we're seeing is on every foreclosed property, innocent homeowners are seeing their property values plummet. And we need to put an end to that. So I urge all of my colleagues to vote yes.

And, Mr. President, I vote yes on this legislation.

ACTING PRESIDENT BRESLIN: Thank you, Senator Klein.

Senator Johnson, to explain his vote.

SENATOR OWEN JOHNSON: Yes, I'd like to explain my vote.

Senator Klein, you've done a good job getting a sentiment out there in the bill. But the bill, as has been demonstrated by all the questions asked, is not perfected. The bill is very imprecise in many respects. And of course it ever got before the Governor, I'm sure it wouldn't be signed.

So I think, Mr. Klein, if this doesn't go down or whatever you choose to do, if it gets passed or not, it will have to come back again. And when it comes back again, I'll vote for it when the problems that have been pointed out to you so far today are rectified.

Thank you. So I vote no.

ACTING PRESIDENT BRESLIN: Thank

you, Senator Johnson.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 18 are Senators Alesi, DeFrancisco, Golden, O. Johnson, Lanza, Leibell, Nozzolio, Saland, Seward, Volker and Young.

Absent from voting: Senators Farley, Hannon and Winner.

Senator Flanagan, excused.

Ayes, 47. Nays, 11.

ACTING PRESIDENT BRESLIN: The bill is passed.

Senator Klein, that completes the controversial reading of the calendar.

SENATOR KLEIN: Mr. President, is there any further business at the desk?

ACTING PRESIDENT BRESLIN: Senator Klein, the desk is clear.

SENATOR KLEIN: There being none, I move that we adjourn until Thursday, February 26th, at 11:00 a.m.

ACTING PRESIDENT BRESLIN: There being no further business to come before the

Senate, on motion, the Senate stands adjourned until Thursday, February 26th, at 11:00 a.m.

(Whereupon, at 4:53 p.m., the Senate adjourned.)