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REGULAR SESSION

SENATOR ERIC T. SCHNEIDERMAN, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT SCHNEIDERMAN: The Senate will please come to order.

I ask everyone present to rise and recite with me the Pledge of Allegiance to our Flag.

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

ACTING PRESIDENT SCHNEIDERMAN: The invocation today will be delivered by the Reverend R. Adam Forno, pastor of the Parish of St. John the Evangelist and St. Joseph in Rensselaer, New York.

REVEREND FORNO: Good afternoon.

T.S. Eliot has written, and I quote: "Lord, shall we not bring our gifts to Your service? Shall we not bring to Your service all our powers for life, dignity, order and grace? The Lord of Creation wishes to employ our gifts in creating anew."

Mindful of those timely words, my friends, let us pray.

Sovereign Lord, when the fabric of our society is being frayed by a recession,

deep in our relationship with You, draw the men and women of this Senate into a healing communion with You that will give them the assurance of Your unqualified love.

You've given us magnificent promises to claim. You've told us that if we wait on You, You will renew our strength. You have assured us that You can use our minds to think clearly in response to Your inspiration for right choices.

Gracious God, may the work of these budget hearings this week give life to the dreams of rescuing the poor, the unemployed, and those within our state whose lives are shattered by the trials of this time.

Allow doors closed by habit and routine to be opened by the challenge of change for real growth and the nobility of renewed prosperity.

Lastly, grant these, Your servants, courage, patience, wisdom and strength to speak the truth as he or she knows it. May none feel the pangs of unspoken convictions, and may all be assured that whatever is done

with total trust in You and respect for those served will not lack Your blessing.

We ask this of You, our good and gracious God who lives and reigns forever and ever. Amen.

Thank you.

ACTING PRESIDENT SCHNEIDERMAN: Thank you.

The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Friday, March 6, the Senate met pursuant to adjournment. The Journal of Thursday, March 5, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT SCHNEIDERMAN: 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 Sampson.

SENATOR SAMPSON: Mr. President, on page number 5 I offer the following amendments to Calendar Number 4, Senate Print 134A, and I ask that this bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT SCHNEIDERMAN: So ordered. Thank you.

Senator Klein.

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

ACTING PRESIDENT SCHNEIDERMAN: Yes, there are.

The Secretary will read.

THE SECRETARY: On page 9, Senator Huntley moves to discharge, from the Committee on Judiciary, Assembly Bill Number 2003 and substitute it for the identical Senate Bill Number 2225, Third Reading Calendar 73.

And on page 10, Senator Adams moves to discharge, from the Committee on Racing,

Gaming and Wagering, Assembly Bill Number 4750A and substitute it for the identical Senate Bill Number 2363, Third Reading Calendar 81.

ACTING PRESIDENT SCHNEIDERMAN: Substitutions ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, on behalf of Senator Stachowski, I move that the following bill be discharged from its committee and be recommitted with instructions to strike the enacting clause: Senate Bill 2842.

ACTING PRESIDENT SCHNEIDERMAN: So ordered.

Senator Klein, that was so good, let's go again.

SENATOR KLEIN: Mr. President, can we please move to a noncontroversial reading of the calendar.

ACTING PRESIDENT SCHNEIDERMAN: The Secretary will read.

THE SECRETARY: Calendar Number 67, by Member of the Assembly Peralta,

Assembly Print Number 259, an act to amend the Banking Law, in relation to multiple branches.

ACTING PRESIDENT SCHNEIDERMAN: Read the last section.

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

ACTING PRESIDENT SCHNEIDERMAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT SCHNEIDERMAN: Announce the results.

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT SCHNEIDERMAN: The bill is passed.

THE SECRETARY: Calendar Number 70, by Senator Sampson, Senate Print 1759, an act to amend the New York City Civil Court Act, in relation to commencement.

SENATOR LIBOUS: Lay it aside, please.

ACTING PRESIDENT SCHNEIDERMAN: The bill is laid aside.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 71, by Senator Stachowski, Senate Print 1946, an act to amend the Real Property Law, in relation to clarifying information.

SENATOR LIBOUS: Lay it aside, please.

ACTING PRESIDENT SCHNEIDERMAN: The bill is laid aside.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 73, substituted earlier by Member of the Assembly Weisenberg, Assembly Print Number 2003, an act to amend the Surrogate's Court Procedure Act.

ACTING PRESIDENT SCHNEIDERMAN: Read the last section.

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

ACTING PRESIDENT SCHNEIDERMAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT SCHNEIDERMAN: Announce the results.

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT SCHNEIDERMAN: The bill is passed.

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

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

ACTING PRESIDENT SCHNEIDERMAN: If the Secretary will please ring the bells, members are all asked to come to the chamber for the controversial reading of the calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 70, by Senator Sampson, Senate Print 1759, an act to amend the New York City Civil Court Act.

ACTING PRESIDENT SCHNEIDERMAN: Read the last section.

SENATOR DeFRANCISCO: Explanation, please.

ACTING PRESIDENT SCHNEIDERMAN: An explanation has been requested, Senator Sampson.

SENATOR SAMPSON: Thank you very much, Mr. President.

This bill just asks that if there's going to be commencement of a small claims action, that it be done by certified mail with return receipt, basically to allow those individuals -- just dealing with a due process issue because in small claims court there have been numerous motions to vacate default judgments that have been instituted against individuals, and as a result basically clogging the system, especially the small claims system, with respect to individuals receiving default judgments who never got served at all.

Because if in fact they had moved and these documents weren't forwarded to their forwarding address, they would have a judgement against them and you wouldn't know about it until someone executed it against you. If somebody tried to restrain your bank account, at that point in time in time you would know that you have a default against you and your bank account has already been

restrained.

We're just trying to enhance the due process notice with respect to small claims actions.

ACTING PRESIDENT SCHNEIDERMAN: Thank you.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Would Senator Sampson yield to a question?

ACTING PRESIDENT SCHNEIDERMAN: Senator Sampson, will you yield for a question?

SENATOR SAMPSON: Yes, I will.

SENATOR DeFRANCISCO: This bill only applies to New York City civil courts; correct?

SENATOR SAMPSON: Yes.

SENATOR DeFRANCISCO: Do you know what the procedure is with respect to small claims proceedings, for example, in city courts upstate or town and village courts with respect to the notice? Does that notice currently simply notice by mail, regular mail?

SENATOR SAMPSON: At this point

in time, I'm not certain with respect to that, Senator. Through you, Mr. President.

ACTING PRESIDENT SCHNEIDERMAN: Thank you.

SENATOR DeFRANCISCO: May I ask another question?

ACTING PRESIDENT SCHNEIDERMAN: Senator Sampson, would you continue to yield?

SENATOR SAMPSON: Yes.

SENATOR SALAND: Mr. President, I'm having a very difficult time hearing. Can we please have a little bit of order? I can only hear Senator DeFrancisco and not hear Senator Sampson.

ACTING PRESIDENT SCHNEIDERMAN: Thank you.

If everyone would try to keep conversations outside, please.

Senator DeFrancisco.

SENATOR DeFRANCISCO: I guess the only other question is I think the procedure now is the same in all these other courts for small claims proceedings; namely, simply notice by way of regular mail.

And I guess my only other question is would you think it would be appropriate, Senator Sampson, as the sponsor, to also have the same due process reforms with respect to other courts that deal with the same type of small claims in other jurisdictions?

SENATOR SAMPSON: Through you, Mr. President, good question. I think this would be applicable, but I will definitely look into it, Senator DeFrancisco.

ACTING PRESIDENT SCHNEIDERMAN: Thank you.

Any other Senators wish to be heard?

Senator Saland.

SENATOR SALAND: Thank you, Mr. President. I will apologize if I asked some of the same questions. I simply had a very difficult time hearing Senator Sampson, and I couldn't hear his last response to Senator DeFrancisco's question.

If I may, on the bill. And then I would like Senator Sampson, if he might, to yield.

My understanding of small claims proceedings is that they're intended to be expedited, inexpensive, and trying to take what is by definition a small claim, getting it into the court as quickly as is possible, and resolving these matters without resort to pleadings, discovery -- to move these things along.

And one of the ways by which that's accomplished is by providing notice by ordinary mail. And when I look at what Senator Sampson is proposing to do here, he's eliminating the ordinary mail portion, which under the existing language basically created the presumption. If the mail was not returned within 21 days, there was a presumption -- I underscore presumption -- of service. And at the same time, the party was to be served by certified mail, the defendant, return receipt requested.

Under this scheme, what will happen will be that your next-door neighbor has a complaint that he or she wants resolved, they go to small claims court, the person who they

would like to get some modest amount of money back -- $500, $1,000, whatever the amount may be, whatever the underlying claim may be -- would now, under this, be served by certified mail, return receipt requested. And all the individual who's the defendant has to do is not sign for the mail. Simply don't sign the return receipt, and the small claims proceeding can never be initiated.

There's no jurisdiction unless you want to attempt to go through the bother of personal service, which in part defeats the whole idea of the small claims proceeding.

The ordinary mail piece is different from everything else we do by way initiating a proceeding in any other court in this state. And again, it's because it is small claims, trying to resolve these claims as inexpensively and as swiftly as possible and not lawyering it to death.

So in this particular instance, what we're doing here is effectively gutting small claims in the City of New York through these particular courts. Because there's

nobody who is going to accept a certified mail, return receipt requested, letter from a court. They're simply not going to accept it.

So the bottom line is is that all of those little claims that some of your friends may have brought in court, some people you know may have brought in court, under this will never see the light of day.

Now, I have enormous regard for Senator Sampson. And I would suggest that what Senator Sampson might want to do -- and far be it from me, but if your concern is that the ordinary mail process is being abused, why not expand the period of time for the presumption for ordinary mail beyond the current 21 days?

You will leave Lord only knows how many claimants with absolutely no remedy unless they're going to hire a lawyer. And you can't hire a lawyer for a small claim because (A) the lawyer won't take it and (B) if he or she did, it would exhaust the amount of the claim.

So you're going to leave people

without a remedy in these courts in the City of New York, a remedy that will still be available, fortunately, for small claims courts outside of the City of New York but not inside the City of New York.

So I would certainly urge my colleagues to vote in opposition to this. I believe that it will cause far more harm than it would do good. You would wind up protecting a lot of people and causing enormous pain to others.

ACTING PRESIDENT SCHNEIDERMAN: Thank you.

Any other Senator wish to be heard?

Senator Ranzenhofer.

SENATOR RANZENHOFER: Will Senator Sampson yield for a question, Mr. President?

ACTING PRESIDENT SCHNEIDERMAN: Senator Sampson, will you yield for a question?

SENATOR SAMPSON: Yes.

SENATOR RANZENHOFER: Kind of following up a little on what Senator Saland

said, if a court sends the certified letter and the person on the receiving end doesn't sign the letter, how do you start the small claims action?

SENATOR SAMPSON: Well, if the person --

ACTING PRESIDENT SCHNEIDERMAN: Hold on, Senator Sampson, just for a moment.

Could I ask the sergeants to keep the doors closed. It is a little loud in here. Thank you.

Senator.

SENATOR SAMPSON: With respect to that, through you, Mr. President, if the person does not sign for that certificate and refuses to sign it, there is a refusal. And therefore the individual -- there's a record of note that it was refused.

At that point in time, then, the individual who's in the process of starting the action can then go to the court and ask for an additional service process if the individual refused.

And at this point in time, if he

continues to refuse, the individual can then start the action and thus, if he doesn't appear in court, they then can get a default judgment. Once they obtain the default judgment, then it makes it difficult for the person who refused it initially to go and vacate the default judgment.

As Senator Saland was talking about, we want to make the small claims courts -- it's supposed to be a swift process. But small claims court, particularly in New York City, has been inundated with motions to vacate default judgments against individuals who claim they never received mail in the first place.

By just sending them a first-class mail, there is no record of saying this mail was actually delivered. You just place a first-class stamp on the envelope and you send it off. There's no record.

But with certified mail, there is a record that this individual did receive it. If he doesn't receive it and they leave the green slip in the envelope, he then has to go

to his post office box to pick up that letter.

In this day and age, an individual doesn't know whether it's coming from small claims court or any court. Most of the times most individuals will go to the post office, give them their identification, and ask for the certified mail.

SENATOR RANZENHOFER: Another question through you, Mr. President.

ACTING PRESIDENT SCHNEIDERMAN: Thank you.

Senator Sampson, will you continue to yield?

SENATOR SAMPSON: Of course.

SENATOR RANZENHOFER: How do you know if the person is simply not living there anymore and therefore is not signing it or the person is refusing? How does the court who is sending this out, how would the court know that?

SENATOR SAMPSON: Through you, Mr. President. Well, the court would know that with respect to when the document comes back indicating that it has not been

delivered, either it has been refused by the person it has been addressed to. The plaintiff at that point in time can therefore ask the court for additional means of service with respect to that individual.

SENATOR RANZENHOFER: Another question through you, Mr. President.

ACTING PRESIDENT SCHNEIDERMAN: Thank you.

Senator Sampson, will you yield for another question?

SENATOR SAMPSON: Of course.

SENATOR RANZENHOFER: What exactly does the person have to do when they go back into court to ask for another method of service? Do they then have to ask for personal service, or can they ask for ordinary mail? Is that specified in the bill, what's the next step?

SENATOR SAMPSON: Through you, Mr. President, it's not specified in the bill. But at that point in time the other service methods within the CPLR would apply.

SENATOR RANZENHOFER: Another

question if I may, Mr. President.

ACTING PRESIDENT SCHNEIDERMAN: Thank you.

Senator Sampson, will you continue to yield?

SENATOR SAMPSON: Of course.

SENATOR RANZENHOFER: Does that mean that the person would then have to ask for -- if it's through the CPLR, you just can't mail a regular letter, so you then have to hire a process server to go out and personally serve that person?

SENATOR SAMPSON: Through you, Mr. President. To answer the question, most of the time the court system is the one who, especially in New York City, performs the service with respect to small claims actions.

SENATOR RANZENHOFER: Would that be the city marshal, then? If I may, Mr. President. I'm just still a little confused over how the actual notice is going to be mailed out by the court.

The person has to go back to the court and ask for another method of service

which is going to be performed by the court. Is that going to be personally served? Or is that going to be -- what's the next method of service after the certified mail does not work?

SENATOR SAMPSON: Through you, Mr. President. Whichever means that the court sees as justified or that individual can work with the court to determine. The individual could take it upon themselves if they want to hire a process server to seek personal service.

SENATOR RANZENHOFER: Another question.

ACTING PRESIDENT SCHNEIDERMAN: Senator Sampson, will you continue to yield?

SENATOR SAMPSON: Yes.

SENATOR RANZENHOFER: Through small claims, normally the person doesn't do that, it's the court that actually does the service. So I'm still not sure whether or not the court is then going to provide for service or the individual is going to provide for service, and who's going to pay for the

additional service.

I'm still not sure how the system actually works. I mean, I know the problem you're trying to solve, and I'm trying to figure out how you don't create a problem going the other way.

SENATOR SAMPSON: Through you, Mr. President. Usually the litigant pays for the form of service with respect to the fees that they give in small claims court.

SENATOR RANZENHOFER: Okay. And one more question.

ACTING PRESIDENT SCHNEIDERMAN: Senator Sampson, will you yield for another question?

SENATOR SAMPSON: Of course.

SENATOR RANZENHOFER: In the CPLR, if the certified mailing doesn't work, can they then use ordinary mail? Because I don't think that's provided for in the CPLR.

SENATOR SAMPSON: I'm not certain what is provided for, but I know the parameters of the CPLR does provide alternate means of service.

SENATOR RANZENHOFER: Thank you.

Thank you, Mr. President.

ACTING PRESIDENT SCHNEIDERMAN: Thank you.

Any other Senator wish to be heard?

Hearing none, the debate is closed.

The Secretary will please ring the bell.

Read the last section.

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

ACTING PRESIDENT SCHNEIDERMAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT SCHNEIDERMAN: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 70 are Senators Bonacic, Griffo, Hannon, Larkin, Leibell, Libous, Little, Marcellino, Morahan, Nozzolio, Ranzenhofer, Saland, Seward, Skelos and Young. Also Senator Winner.

Ayes, 46. Nays, 16.

ACTING PRESIDENT SCHNEIDERMAN:

The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 71, by Senator Stachowski, Senate Print 1946, an act to amend the Real Property Law.

ACTING PRESIDENT SCHNEIDERMAN: Read the last section.

SENATOR SALAND: Explanation.

ACTING PRESIDENT SCHNEIDERMAN: Senator Stachowski, an explanation has been requested.

SENATOR STACHOWSKI: This bill is a result of three years of work by the Anti-Flipping Task Force in the City of Buffalo that is chaired by myself and Assemblyman Hoyt.

In Buffalo, there's a lot of illegal house flipping. And one of the ways that flippers continue to do business even after they're identified -- and they usually pick up these houses at the auction -- is they will form a new LLC, sign the line on the form with an illegible signature, and have a P.O.

box for the address.

So all this bill does is ask for the name of the fiduciary person in the LLC, an actual phone number and an actual place of business that they work out of, so that when the fines and problems with the house after they bought it start to roll up, there's someplace to contact them.

Because currently the building inspectors have pointed out to us, time and again, that there is no place to contact these people because they send the notices to the P.O. box that is no longer valid and they can't find the person because the signature is illegible. And so that this would be a simple change that would help us deal better with this problem.

It's been a significant problem in Buffalo. They're starting to get a handle on it through changes in the way the auction is done, by identifying people at the auction. This would also put a fine -- if the person didn't put the proper name and they caught up with them, there would be a fine on the

transfer. So obviously they'd catch them at that point.

I know there's some concern about membership in the LLC. But hopefully everybody would understand, in this day of information and an age where you can get information on almost anybody, why you wouldn't want a contact person when you're buying a property in the city -- there is no reason to hide having a contact person, an address to reach them at and a phone number where to contact them at.

But if there's a problem with those three things, then I'd be anxious to hear what it is.

ACTING PRESIDENT SCHNEIDERMAN: Thank you.

Senator Saland.

SENATOR SALAND: Thank you.

Mr. President, would Senator Stachowski yield?

ACTING PRESIDENT SCHNEIDERMAN: Senator Stachowski, will you yield for a question?

SENATOR STACHOWSKI: Yes, I will.

SENATOR SALAND: Senator Stachowski, I think from your explanation -- well, based on your explanation, would you care to share with me or, for that matter, all of our colleagues whether your intent is that for all of these entities that you've enumerated -- associations, joint stock companies, limited liability companies -- is it your intent that one member or one principal or one partner be the sole signatory and the only disclosed individual for whatever that entity might be?

SENATOR STACHOWSKI: That's our intent. We don't plan on knowing who every member of the LLC is, who every member of the corporation that buys it is. We just want to make sure we have one person that is the fiduciarily responsible person, at least in this transaction, who will sign and be able to be contacted. And that's the person that would be the contact person whose place of business would be -- it might be their lawyer.

SENATOR SALAND: If Senator

Stachowski would continue to yield.

ACTING PRESIDENT SCHNEIDERMAN: Senator Stachowski, will you yield for another question?

SENATOR STACHOWSKI: Yes, I will.

SENATOR SALAND: Thank you.

This is just a draftsmanship question. I notice that in 9A, beginning on line 15 and 16 -- as distinguished from subpart B, beginning on 18 and running through 19 -- you have different categories enumerated for those people responsible to sign the 5217, which we used to call the old E&A form.

Is there a reason why, for example, in (A) you have an individual in a limited liability company and then go to on to enumerate society, association, joint stock company, and so on, and in (B) you don't enumerate all of those categories, you omit the individual and limited liability company?

SENATOR STACHOWSKI: I believe, Senator, that that's the way the law is. I'm not certain on that. I will be happy to get back to you.

But I believe that's the way it is written. That's why it stated that way, with the change being one person, and that we get the address of one person representing these various possibilities.

SENATOR SALAND: I just -- I think inadvertently or intentionally --

ACTING PRESIDENT SCHNEIDERMAN: Senator Saland, are you asking Senator Stachowski to yield?

SENATOR SALAND: Just on the bill.

ACTING PRESIDENT SCHNEIDERMAN: On the bill. Thank you.

SENATOR SALAND: Whether it's inadvertently or perhaps intentionally, you're creating two different universes under both of those subparagraphs. They include substantially all of the same entities. And for whatever reason, you omit from the second subparagraph, paragraph B, an individual and a limited liability company. And I'm not quite sure that that doesn't in some fashion impede your ability to accomplish as thoroughly that

which you hope to do.

Thank you.

ACTING PRESIDENT SCHNEIDERMAN: Thank you.

Any other Senator wish to be heard?

Senator Winner.

SENATOR WINNER: Will Senator Stachowski yield for a couple of questions?

ACTING PRESIDENT SCHNEIDERMAN: Senator, will you yield?

SENATOR STACHOWSKI: Yes, I will.

ACTING PRESIDENT SCHNEIDERMAN: Senator Winner.

SENATOR WINNER: Mr. President, through you. Senator Stachowski, can you tell me what the fee currently charged by the county clerk to record the real property tax form that you're intending to have --

SENATOR STACHOWSKI: No, actually I can't.

SENATOR WINNER: You can't? Okay.

Do you know whether or not the form currently contains a provision for an

affidavit?

SENATOR STACHOWSKI: The form, I'm not sure it does.

I think the problem is in this particular form that we're speaking about, RP5217, all it has is a place for a signature and they can use a P.O. box as an address. Which is the source of our problem in Buffalo currently.

SENATOR WINNER: So now --

ACTING PRESIDENT SCHNEIDERMAN: Senator Winner, are you asking Senator Stachowski to yield?

SENATOR WINNER: Thank you, Mr. President.

Through you, Mr. President, could Senator Stachowski tell us whether or not there's currently on that form a provision for an affidavit and whether or not the form will now have to be revised?

SENATOR STACHOWSKI: I don't believe there's a provision for an affidavit now, Senator.

But what we found in Buffalo is we

make people that buy property at the auction now have an affidavit, the City of Buffalo does. And the reason they do that is because of all the house flipping and the problems that we had subsequent to that.

Now, before this becomes a problem in everybody else's area -- and I would take you back to I think it was a year ago, maybe two, Senator Farley had a bill expanding the MBBA program across the state. And it was a great success in Schenectady, and it was a great success in a few other places. It was a terrible failure in Buffalo.

As a matter of fact, they had to work out a plan on how to get those properties back from that company, because from the day they were purchased to the day they finally started getting them back, all they did was get worse and worse because they couldn't sell them. Because too many properties are always available on the auction.

So the terrible hardship of doing an affidavit that you actually represent this group that's buying the house I think is well

worth the benefit to the people that live next door to that house that might run down or might be sold illegally or might be in a bad situation and you're just going to walk away from it and it's going to take a few more years before we catch up to it.

So I don't think adding an affidavit plus the signature is a terrible hardship or a great cost.

SENATOR WINNER: Would Senator Stachowski yield for another question?

ACTING PRESIDENT SCHNEIDERMAN: Senator, will you yield again?

SENATOR STACHOWSKI: Yes, I will.

SENATOR WINNER: Senator -- through you, Mr. President -- do you know whether or not the form that you're now requiring to be revised and the affidavit that you're now going to be provided will be able to be done on the same page? Or will there have to be another page attached to the form?

SENATOR STACHOWSKI: Senator, I'm guessing that it might take a page for the affidavit. It just might.

But I know that the main part of this is to make sure that we get a name and address where they do business, and a phone number, and then the affidavit would be saying that this is actually -- verifying that that's a real name, a real address, and a real phone number.

SENATOR WINNER: Would Senator Stachowski yield to another question?

ACTING PRESIDENT SCHNEIDERMAN: Senator Stachowski, will you yield for another question?

SENATOR STACHOWSKI: Sure.

SENATOR WINNER: Through you, Mr. President, would the Senator indicate to us whether or not he believes that it will be permissible, in the event that there's another page, for the county clerk or the State of New York to now entice or grab another fee from the person who is filing that page, which fee is totally unrelated, as you would know, to any kind of costs that are associated with filing that document but is another burden on the part of the real property purchaser,

particularly the individuals out there who are not these bad LLCs or flippers, as you would indicate, but might be just plain old grandma and grandpa who want to transfer a house to their grandchildren or whatever and now will be faced with another fee or another burden that you're imposing upon them because you're not limiting what you're asking to do just to those bad people that you're trying to get at?

SENATOR STACHOWSKI: Well, unfortunately, there's no way we can stop any municipality from increasing fees whenever that they'd like. And the same thing with the state, as you see by various budgets that both you and I have seen through all the years that we have been here.

But we would hope that nobody would add one, other than the fee that you get if they find out, as they're filing the paperwork, that you gave them bad information and there was a fee that we had in there for that. Other than that, I don't see any reason for additional fees.

But I can't predict the future. I

can't say what the county executives of any county are going to do. I don't think people that are legitimately buying a house would mind putting their name, address and phone number on, because it wouldn't be a hardship to them. They wouldn't mind signing an affidavit saying yes, this is me. And I don't think they'd have any problem with this.

And I don't foresee counties, unless they have some bad way of doing budgeting, adding another fee. But hopefully they wouldn't, because this wouldn't require them to.

And based on all the papers that you sign when you buy a piece of property, I don't think one more is going to make a difference.

SENATOR WINNER: Would the Senator yield to another question?

ACTING PRESIDENT SCHNEIDERMAN: Senator Stachowski, will you yield for another question?

SENATOR STACHOWSKI: Absolutely.

SENATOR WINNER: Senator, are you

aware that the fee that's associated with this particular document is a fee that's levied by you and me and the State of New York, not by the county executives, and that as a result, even now Governor Paterson is proposing to increase this fee?

SENATOR STACHOWSKI: Well, I know that that fee -- if that's the question, I know that fee is used for the EPF, if I'm not mistaken. And he doesn't want to use it for that anymore, but we'd still like to use it for that.

And I don't know if it's going to be increased yet or not. Hopefully it won't be.

But the fact is, as I said, legislators can do it. Usually local governments will decide they want to increase a fee and some of them, they have to come to us to get permission to increase. I know that in Erie County the buses once stopped because they didn't want to do a transfer tax and dedicate the money to the mass transit association in that county.

So I am aware of those things. And hopefully that won't happen in this case.

SENATOR WINNER: Thank you, Senator.

On the bill real briefly.

ACTING PRESIDENT SCHNEIDERMAN: Senator Winner, on the bill.

SENATOR WINNER: Obviously we've seen the costs of transferring real property in this state increase at an absolutely alarming basis for things like transfer taxes, fees for the real property tax report, fees associated with all types of numerous requirements that we impose upon them.

And what will happen is that instead of getting after a good purpose like Senator Stachowski is indicating, which are some people who may be flipping properties and hiding their identity, this bill goes well beyond that laudable goal and impacts upon the ordinary homeowner, ordinary real property purchaser, and will inevitably increase their costs at that closing and will add to the burden that they experience within that

closing and that real property transfer.

And so if this legislation were tightened up to limit it specifically to making sure that the identity of LLC responsible fiduciary representatives is identified and sworn to, then that would be acceptable. But there's no reason to impose that burden on the small individual homeowner who is merely trying to unload their property in a very, very difficult climate.

I'm going to vote in the opposition.

ACTING PRESIDENT SCHNEIDERMAN: Senator Stachowski.

SENATOR STACHOWSKI: On the bill.

ACTING PRESIDENT SCHNEIDERMAN: Senator Stachowski, on the bill.

SENATOR STACHOWSKI: There is no increase of a fee to anybody that's unloading their property. There's no increase of a fee on anybody that's buying a property. The only time there's an increase to the fee is if the clerk finds out in the transfer, based on the form, that the information wasn't provided.

So that any increase in fees, I don't know where they're coming from. But the fact is, it's not existent in this bill. To say it is is disingenuous. It's okay to do it, but it's disingenuous.

The fact is this bill just asks for a name, a printed, legible name, a phone number, a real address. And to help fight a very serious problem, especially in my community.

We've worked on this problem for three years. We've been making some headway. At one time -- we're even getting help from people like eBay. At one time, it was easier to sell a house on eBay than it was to sell an autographed baseball card, because for an autographed baseball card you needed a lot of documentation. To sell a house, you needed a picture, an address, and any kind of description you wanted to have, and people from all over the world could buy a house in Buffalo.

And I can tell you that the place where we had the first press conference was

off of Broadway, which is now in Senator Thompson's district. It was a house that was in very bad shape in the front, but if you took the time to walk around the back, there wasn't a back end to the house. You could see right into the house. It was in unbelievable shape.

And the person that bought it got a description -- and now the business community there is an older community, it's got a couple of stores. But they built a K Mart and they closed it before the time this happened. And the description was on eBay was: "House near busy business section, just off bus route, not far from the lake."

So you think you're moving in someplace in a beautiful community with a nice, thriving business section and you're just a short either drive or walk to the lake.

You were far from the lake. You were in kind of a rundown neighborhood, and a neighborhood that the neighbors were trying to save because they wanted their houses to be worth more and they didn't want to move, but

they wanted to be rid of houses like that. And the fact that you could sell them so easy on eBay, that's what happened.

I can give you one more quick example, only because the colorfulness of the story is worth it. I get a call from an Australian television station. They were coming in because a man from Australia bought a house on a street in Buffalo called May Street. It's about a block in from Bailey Avenue in a section that is a transitional neighborhood, which makes it rougher because there's a lot of bad actors as well as people who are moving in and a lot of older people that refuse to move out.

This house was a house that had -- probably every house on either side was not occupied. This particular house had no water, no electricity. We went up to it -- a guy from Australia bought it under a similar description: "Wonderful house, just off main thoroughfare, near business section."

The building inspector that was with us went up and knocked on the door; there

was somebody living in there. He was paying rent to a guy that called himself a business manager. They had trouble with him again. The building inspector reacted immediately, shaking his head because he had to write this guy up again for posing as a property manager.

And the poor guy was a guy that was up in Buffalo from Katrina. And he was paying rent and heating the place with a kerosene heater, which -- it was February -- he was fortunate he's alive, either from burning himself to death or some other mishap.

And so things like that are going on, and we're trying to get a handle on it. This is just another tool to help the task force continue in its fight to get people to say Buffalo is no longer a desirable place to try to do illegal flipping.

There's nothing wrong with legitimate flipping of houses, because those are people that buy a house at an auction, fix it up, and sell it to somebody that then can live there. We're talking about people who buy a house at an auction, don't do anything

to it, sell it -- as a matter of fact, before we made some changes, a house that was going to be condemned but Buffalo didn't condemn it because they had no way of demolishing it, they would be able to buy a house that was in that kind of condition and be able to sell it to somebody else under a false pretense.

So we're trying to get a handle on that, make our communities better, let the people that live there fight back and keep their neighborhoods. This is just another tool, and I hope my colleagues will vote for it.

Thank you, Mr. President.

ACTING PRESIDENT SCHNEIDERMAN: Thank you, Senator Stachowski.

Any other Senator wish to be heard on the bill?

Hearing none, debate is closed.

The Secretary will please ring the bells.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT SCHNEIDERMAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT SCHNEIDERMAN: Announce the results.

THE SECRETARY: In relation to Calendar Number 71: Ayes, 61. Nays, 1. Senator Winner recorded in the negative.

ACTING PRESIDENT SCHNEIDERMAN: The bill is passed.

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

SENATOR KLEIN: Mr. President, would you please recognize Senator Hassell-Thompson for a brief announcement.

ACTING PRESIDENT SCHNEIDERMAN: It is my pleasure to recognize Senator Hassell-Thompson for an announcement.

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

Just briefly, the Senate Majority will have a conference immediately following today's session.

ACTING PRESIDENT SCHNEIDERMAN:

In Room 332, perhaps?

SENATOR HASSELL-THOMPSON: In Room 332.

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

There will be a conference of the Majority in Room 332 immediately following session.

Senator Volker.

SENATOR VOLKER: Mr. President, some people have noticed that I seem to be a little early with the Irish garb, and that's because tonight is the Irish-American Legislators' party. And at the usual place, the Hibernian Hall.

And we'd love to have anybody that has anything to do that's legal to come and party with us.

So that's tonight at 7 o'clock.

ACTING PRESIDENT SCHNEIDERMAN: Seven o'clock. Thank you, Senator Volker.

Senator Klein.

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

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

But members are reminded that there will be a joint session of the Legislature at noon tomorrow in the Assembly chamber for the election of four Regents. Attendance by all members of the house is strongly encouraged.

Senator Klein.

SENATOR KLEIN: There being none, Mr. President, I move that we adjourn until tomorrow, March 10th, at 4:00 p.m.

Again, as you said, Mr. President, the joint session will resume at 12:00 noon.

ACTING PRESIDENT SCHNEIDERMAN: There being no further business to come before the Senate, on motion, the Senate stands adjourned until Tuesday, March 10th, at 4:00 p.m.

(Whereupon, at 4:12 p.m., the Senate adjourned.)