NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 13, 2009

11:20 a.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 to rise and recite with me 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, May 12, the Senate met pursuant to adjournment. The Journal of Monday, May 11, 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, on behalf of Senator Craig Johnson, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Bill Number 3462.

ACTING PRESIDENT BRESLIN: So ordered.

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

ACTING PRESIDENT BRESLIN: Yes, there are, Senator Klein.

The Secretary will read.

THE SECRETARY: On page 13, Senator Oppenheimer moves to discharge, from

the Committee on Investigations and Government Operations, Assembly Bill Number 3123 and substitute it for the identical Senate Bill Number 1086, Third Reading Calendar 53.

On page 17, Senator Libous moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 4397 and substitute it for the identical Senate Bill Number 2805, Third Reading Calendar 194.

And on page 23, Senator C. Kruger moves to discharge, from the Committee on Commerce, Economic Development and Small Business, Assembly Bill Number 7458 and substitute it for the identical Senate Bill Number 818, Third Reading Calendar 258.

ACTING PRESIDENT BRESLIN: Substitution ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, I believe there's a resolution at the desk. I ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT BRESLIN: The

Secretary will read.

THE SECRETARY: By Senator Thompson, Legislative Resolution Number 1983, commemorating the 100th anniversary of the Buffalo Audubon Society.

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

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Oppo sed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The resolution is adopted.

Senator Klein.

SENATOR KLEIN: Mr. President, may we at this time move to a reading of Senate Calendar Number 46.

ACTING PRESIDENT BRESLIN: The Secretary will read.

THE SECRETARY: Calendar Number 4, by Senator Sampson, Senate Print 134B, an act to amend the Real Property Law, in relation to requiring.

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.)

SENATOR GRIFFO: Lay it aside.

ACTING PRESIDENT BRESLIN: The bill is laid aside.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 146, by Senator Oppenheimer, Senate Print 1181, an act to amend the Vehicle and Traffic Law, in relation to providing.

ACTING PRESIDENT BRESLIN: There is a home-rule message at the desk.

Read the last section.

THE SECRETARY: Section 3. 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, 57.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 158, by Senator C. Kruger, Senate Print 552, an act to amend the Election Law, in relation to providing Russian-language voting materials.

SENATOR KLEIN: Lay the bill aside for the day, please.

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

The Secretary will continue to read.

THE SECRETARY: Calendar Number 233, by Senator Addabbo, Senate Print 4242, an act to amend the Election Law, in relation to the deadline.

SENATOR KLEIN: Lay that bill aside for the day as well.

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

The Secretary will continue to read.

THE SECRETARY: Calendar Number 236, by Member of the Assembly Wright, Assembly Print Number 1436, an act to amend the Election Law, in relation to providing that designating petitions.

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: Senator DeFrancisco, why do you rise?

SENATOR DeFRANCISCO: Yes, this is an excellent bill.

And since I was accused yesterday of voting against all Election Law bills, and I somehow was against the concept of people voting and being informed of various things, this makes sense.

It's absolutely ridiculous to have

petitions circulated with two Senate districts on the same petition, because people are verifying that they're in the district, I think, and it's kind of silly to be signing for two different Senators.

So it makes great sense, and I want to commend the sponsor for this bill.

ACTING PRESIDENT BRESLIN: Thank you, Senator DeFrancisco.

Announce the results.

THE SECRETARY: Ayes, 57. Nays, 0.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 241, by Senator Montgomery, Senate Print 3378, an act to amend the Election Law, in relation to increasing fees.

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, 57. Nays, 1. Senator Ranzenhofer recorded in the negative.

ACTING PRESIDENT BRESLIN: The bill is passed.

Senator Saland.

SENATOR SALAND: I wish to be recorded in the negative on Senate 3378.

ACTING PRESIDENT BRESLIN: Announce the results on Calendar 241.

THE SECRETARY: Those recorded in the negative are Senators Ranzenhofer and Saland.

Ayes, 57. Nays, 2.

ACTING PRESIDENT BRESLIN: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 282, by Senator Monserrate --

SENATOR VOLKER: Lay it aside,

please.

ACTING PRESIDENT BRESLIN: The bill is laid aside.

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

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

ACTING PRESIDENT BRESLIN: If the Secretary will please ring the bells, and all members will please come to the chamber for the controversial reading of the active bills on the calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 4, by Senator Sampson, Senate Print 134B, an act to amend the Real Property Law.

ACTING PRESIDENT BRESLIN: Read the last section.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, someone needed an explanation; I'll hold my questions.

SENATOR BONACIC: Explanation,

please.

ACTING PRESIDENT BRESLIN: Senator Sampson, an explanation has been requested by Senator Bonacic.

SENATOR SAMPSON: Through you, Mr. President. This Calendar Number 4 is a -- basically, it's a loan disclosure bill which requires that a loan counseling disclosure rider be attached to contracts of sale either by a broker and/or attorney.

The last time this bill was on, there were certain issues that were raised with respect to this bill, and I went back and made certain changes as to revamp the definitions for residents, mortgagor division, loan counseling list, and residential real properties.

This bill would just apply to brokers and/or attorneys. And the reason brokers are included in this bill is because when looking upstate, you have brokers who generate -- some of my colleague across the aisle raised it to me with respect to upstate -- you have brokers who generate these

sorts of contracts.

In addition, at that point in time we talked about I had a hundred-mile radius in which Senator Bonacic talked about if there were -- we had to look at brokers maybe in New Jersey or Pennsylvania.

But that's why instead of using HUD, which is Housing and Urban Development, what I used is what we call the DHCR, Division of Housing and Community Renewal, which would include a list that is available of loan counselors which is available in all counties throughout the State of New York.

And in this addition also, Senator Bonacic talked about whether this would cause or create a cause of action. This legislation does not create a private cause of action against an attorney and/or broker.

But what it does require is that the Department of Banking or the Attorney General can investigate those individuals who choose not to provide these disclosures and just provide a list to those who are interested who are not providing this

information. There is no punitive, there is no penalty.

And furthermore, just going with some statistics, there was one study of 40,000 loans in Freddie Mac's affordable lending program that provided direct evidence that prepurchasing education and counseling reduced 90-day delinquency rates by up to 34 percent. Furthermore, borrowers who participated in counseling had an overall default rate 50 percent lower than noncounseled borrowers.

And this is basically a legislation to inform the prospective buyers that before they go in and meet with these financial mortgage brokers or these banks, at least they have a litany of questions that they can ask them and they really can't be duped.

Sometimes, you know, you go to these financial institutions, and they can sell -- you know, it's like the fox in the henhouse. They're going to do whatever they can to sell you this mortgage but at the same time not provide you the necessary information.

So what we're saying is I want to educate the buyer before they go to these financial institutions so they are educated.

And furthermore, there was an issue between, you know, whether there was an individual who bought commercial property who was sophisticated in buying that. But what I did, in defining the definition -- and residential means any residential property that has a commercial space or use. Like if you have a commercial store or a supermarket on top of a six-unit home, at that point in time it's a mixed-use property, so therefore it would be covered in the definition of this bill.

So if there's any questions, I would --

ACTING PRESIDENT BRESLIN: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, I just want to speak on the bill briefly.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: And I want

to thank Senator Sampson for taking some of the suggestions from this side of the aisle to modify the bill.

I just have a problem just with the bill in general, and this is what the problem is. There was a time when you went to a closing and when you went to the closing you had a deed to be signed, a closing statement to be signed. And people somehow got around the whole issue of whether it's a good idea to borrow money, whether it's a good idea that this is a good house, whether or not there's an inspection was done properly. I don't know how people possibly did that in the past.

Well, over the last probably 20 to 30 years, there's a new form at every closing. There's a new form every time you sign a contract: a disclosure about this, a disclosure about that.

It was only last year, the last couple of years, a few years ago when the federal government was encouraging people to buy homes to the point where loans were given by banking institutions and organizations,

Fannie Mae and the like, where they had no business whatsoever getting those loans.

So now we've turned to the total opposite. Now we've got a crisis as far as housing is concerned, all these mortgages that defaulted. So now we're going the total opposite. Now everyone can't just go in and buy a house, whether they can afford it or not; now we're going to give loan counseling and information about loan counseling before they sign a contract.

I just think it's to the point where people have to make some judgments on their own. And I think if you don't understand a mortgage or the loan terms, you really should know enough to get advice if you need advice, rather than have another form handed to you when you buy the house.

Which brings me to the other couple of points. And that is an individual, a lawyer or a broker has to have an obligation here to hand out another form, just one more thing to make the closing more costly and to make it more difficult and onerous for anybody

handling these types of deals.

In addition -- and I said it was a good idea, some of these changes -- Senator Sampson made sure there was no cause of action here that could possibly be done or that the transaction could not be set aside if this form wasn't given out. That's terrific, and I think it's a great idea.

And the alternative is basically if you do this, don't provide these forms out, you then could be investigated by some state agency. And if it's a repeated violation, then you could be, I guess, censured. I guess the public could learn that you haven't handed these forms out.

I don't know what protection the public gets from that remedy, primarily because I don't think any lawyer would really lose any business or any broker would lose any business because the public is being told by some state agency that they did not hand out a form and they didn't do it repeatedly.

So I guess I just don't understand -- I don't believe in the need for

this. Buyers should have some basic intelligence and understand, should be able to ask questions of whomever they need. And, you know, that's basically where I'm standing.

And the other point was that these loan counselors, we're basically I would think starting to generate a new business. Maybe -- I don't know if they're going to be licensed, required to be licensed or not. And a new business when, in my judgment, it's really not necessary to make make-work businesses, it's necessary to support the ones that we currently have. And you don't support them by making it more difficult to do business in our state.

So I'm going to vote no on this bill. Thank you.

ACTING PRESIDENT BRESLIN: Thank you, Senator DeFrancisco.

Senator Bonacic.

Senator Sampson, why do you rise?

SENATOR SAMPSON: Just to respond to Senator DeFrancisco's comments. Through you, Mr. President. May I respond?

SENATOR BONACIC: Mr. President, we concede to Senator Sampson.

ACTING PRESIDENT BRESLIN: Fine. You may speak, Senator Sampson.

SENATOR SAMPSON: I hear your point, Senator DeFrancisco. And the gist of everything is, you know, spending time on the -- instead of spending time on the back end, spending time on the front end.

And it just goes to educating people more so they're not put into positions where we're in this financial crisis that we are. If people asked a few more questions, they wouldn't have been able to get into -- obtain certain mortgages or be in certain predicaments.

And furthermore, when you talk about the onus of the attorneys and everything else, this was a question that the State Bar Association's real estate division had the same issues that you had. And I had a conversation with them -- through you, Mr. President -- at which point in time I explained to them the gist of this bill and

what we're trying to do. And they were opposed.

But this morning I got a letter in support from the State Bar Association real estate division. Because what I'm trying to do is not giving another responsibility and onus on attorneys, what we're trying to do is create a situation where, after the contract, we're ready to go close and all of a sudden the buyer says, "I don't really know what I'm getting into, I don't know what happened." And then the next thing you know, once they close the deal, they call the district attorney's office, saying, "Well, I didn't know what was going on, I was confused. So you know what, you need to investigate to see what's going on."

What I'm just trying to do is, instead of doing everything on the back end, to try to do it on the front end so they can educate themselves and they can ask important questions that they need to when they fill out these documents and finally go to closing.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Sampson.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Senator, I understand what you're trying to do, and I'm not in any way saying that it's not being done in good faith.

I guess the major point is for years people didn't need loan counseling. Then all of a sudden there's a crisis. The crisis was not caused by people not understanding the mortgages, the crisis was caused by mortgage companies and loan origination people that were pushing mortgages and government organizations pushing, pushing mortgages.

And it seems to me people were incentivized to go forward and try to get a house when they might not otherwise have even thought about it. And that's what caused it.

And the remedy should be in other areas rather than requiring every single transaction from here on forward in the State of New York to require another form to be

handed out so that people understand. They should know what they're doing before they go into it.

And if, after this crisis, people buying houses, if they're not aware that they've got to look into what they're getting into before they get into it, after all the publicity and all the heartache and all the foreclosures, another form isn't going to help them.

SENATOR SAMPSON: And through you, Mr. President --

ACTING PRESIDENT BRESLIN: Senator Sampson.

SENATOR SAMPSON: I would agree with you, Senator DeFrancisco, that is why there's so much work for attorneys. Because we have individuals who just go into things blindly and need to be educated.

And by educating them and asking them a few more questions when they go into these situations, I don't think that is too much of a burden. Because we have seen the impact that has happened with respect to this

financial crisis and the destruction that it is causing, not only in New York State but throughout this country.

So what I'm saying is a little bit more information on the front end instead of back end will save us a lot more grief and also a lot more money on the back end.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Sampson.

Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President.

Will Senator Sampson yield to a couple of questions?

ACTING PRESIDENT BRESLIN: Senator Sampson, will you yield to Senator Bonacic for a question?

SENATOR SAMPSON: Through you, Mr. President, yes, I will.

SENATOR BONACIC: First of all, Senator Sampson, I wanted to thank you for listening in the Judiciary, because several members brought up many points. And you went

back and worked on this bill and made it a better bill. We thank you for doing that.

Just a couple of quick questions. Is there an Assembly sponsor?

SENATOR SAMPSON: At this point in time, yes, there is an Assembly sponsor, Assemblyman Towns in the Assembly.

SENATOR BONACIC: Okay. Senator Sampson, from my experience with real estate, most of the complicated issues have to do with financing.

SENATOR SAMPSON: Correct.

SENATOR BONACIC: And emanates usually from a mortgage and a mortgage commitment. Would you generally agree with that?

SENATOR SAMPSON: Through you, Mr. President. Yes, I do, Senator Bonacic.

SENATOR BONACIC: Okay. Then I guess my last question is --

ACTING PRESIDENT BRESLIN: Senator Bonacic, would you want Senator Sampson to continue to yield?

SENATOR BONACIC: Yeah, would you

continue for one more question?

SENATOR SAMPSON: Of course, yes. Through you, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Bonacic.

SENATOR BONACIC: I'm just wondering why you omitted lending institutions from having the duty and the requirement of providing this disclosure notice.

SENATOR SAMPSON: Through you, Mr. President. As I talked about, that is the fox guarding the henhouse. You go to these financial institutions and they will tell you that, you know, "I'm going to give you a fixed mortgage for three years with an adjustable rate, and your adjustable rate is 4 percent."

But if you're educated and you understand that: "I don't want a fixed with an adjustable, I want a fixed-rate mortgage over a period of time."

And these are the questions -- through you, Mr. President -- that that buyer can ask these, not only of the loan counselors, but also when they go before these

financial institutions, to ask them these questions. And at that point in time at least they have a frame of reference where they can refer to so they can educate themselves.

And I'd rather have an educated buyer asking these questions, because at that point in time you know whether or not that a financial institution or a mortgage broker may be trying to engage in some sort of fraud or whatever it is. Just to make them aware.

Through you, Mr. President.

SENATOR BONACIC: Thank you, Senator.

On the bill.

ACTING PRESIDENT BRESLIN: Senator Bonacic, on the bill.

SENATOR BONACIC: I think there are many instances in real estate transactions where there's not a seller or a buyer, there is a lending institution and a borrower. And that borrower needs as much education as a first-time homebuyer.

So I would suggest to the sponsor -- and I'm going to support this bill.

But I think it could be a better bill if, upon application of the buyer and/or borrower to that lending institution, that that lending institution have an obligation, before the commitment is given, to provide that borrower and/or buyer with the options, what they mean, and make that borrower or buyer more educated.

Because you can never give enough education to people, and to try to do that is a good thing. So I would hope that if this becomes law and you work with your counterpart in the Assembly, you would give some consideration to that.

And the banks basically are equipped, they have the process, the staff to devise this disclosure. They're in a better position to give it, with the mortgage application request. Not after the fact, not at the time of commitment, but before. And I think we could accomplish more in educating those borrowers and/or buyers.

I thank you again, Senator Sampson. I vote in the affirmative.

ACTING PRESIDENT BRESLIN: Thank

you, Senator Bonacic.

Senator Ranzenhofer.

SENATOR RANZENHOFER: Thank you, Mr. President. Would Senator Sampson yield for a few questions?

ACTING PRESIDENT BRESLIN: Senator Sampson, will you yield for some questions?

SENATOR SAMPSON: Yes, I will.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR RANZENHOFER: We've had this discussion before about where the proper place for the disclosure should be.

And I just wanted to ask you if you support Senator Monserrate's bill, which is very similar to yours --

ACTING PRESIDENT BRESLIN: Excuse me, Senator Ranzenhofer.

May we have quiet?

SENATOR RANZENHOFER: Do you support Senator Monserrate's bill, which requires the exact same disclosure that you've provided, but to be provided by the mortgage

institution?

SENATOR SAMPSON: By the mortgage institution. Are you saying do I support Senator Monserrate's bill?

SENATOR RANZENHOFER: Yes.

SENATOR SAMPSON: Yes, I support Senator Monserrate's bill.

SENATOR RANZENHOFER: Okay. Are you aware that Senator --

ACTING PRESIDENT BRESLIN: Do you want Senator Sampson to continue to yield?

SENATOR RANZENHOFER: Yes. Sorry, yes, if you would.

SENATOR SAMPSON: Of course I will yield.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR RANZENHOFER: If your bill passes and Senator Monserrate's bill passes, are you then suggesting that there should be double disclosure, there should be disclosure of this information by the bank and also disclosure by somebody at the real estate transaction?

SENATOR SAMPSON: Through you, Mr. President. Senator Ranzenhofer, there is never enough education with respect to dealing with purchases such as this or mortgages.

The information that is given, that is provided to these borrowers and/or buyers is very pertinent when they're making these decisions. And if you look at the situation we are in now globally with respect to the financial institutions, the real estate market, this had a lot to do with, as Senator DeFrancisco said, those individuals just taking advantage but at the same time taking advantage of those individuals or those persons who were not knowledgeable enough or didn't understand with respect to engaging in such a practice.

Through you, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Ranzenhofer.

SENATOR RANZENHOFER: Yes, if Senator Sampson would continue to yield.

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

SENATOR SAMPSON: Of course. Definitely. Definitely.

SENATOR RANZENHOFER: Are you suggesting that this loan disclosure information of loan counselors within a hundred-mile radius needs to be provided when the person applies for their mortgage and also needs to be provided when somebody signs a real estate contract?

SENATOR SAMPSON: Well, through you, Mr. President, in reading my bill, those were changes that were made to my bill based upon the comments that were made on the other side with respect to the hundred-mile radius.

If you looked at the bill, you would see that it is confined to the Department of Housing and Community Renewal. And according to the Housing Works of America report, there are about 170 loan counseling offices in all the counties in New York State. So that hundred-mile radius has no application whatsoever. Through you, Mr. President.

SENATOR RANZENHOFER: Through you, Mr. President, if Senator Sampson would

continue to yield.

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

SENATOR SAMPSON: Of course.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR RANZENHOFER: My focus wasn't really on the jurisdiction. But do you think it's necessary to --

SENATOR SAMPSON: I can't hear Senator Ranzenhofer.

SENATOR RANZENHOFER: Can we have some quiet, please.

ACTING PRESIDENT BRESLIN: May we have some quiet. Take your conversations out of the chamber.

Senator Ranzenhofer.

SENATOR RANZENHOFER: Do you think it's necessary that a consumer be provided with a loan counseling disclosure when they apply for their mortgage and then again when they sign the contract or advice versa, when they sign the contract and then when they go get their loan application?

SENATOR SAMPSON: Through you, Mr. President. As I indicated before earlier, Senator Ranzenhofer, to me there is never enough education when engaging in these transactions, especially looking at the results of what has happened in the last two or three years with respect to the tremendous financial crisis and the monies that we had to use through the government to bail out financial institutions such as Fannie Mae, these big lending institutions.

So I don't think there is enough education that can be provided to them. And the only thing we're providing, Mr. President, is just a brochure to give them an opportunity to read up so when they go into these settings and situations, they can ask the necessary questions.

And it's just like anything else, when you go prepare for an exam -- through you, Mr. President -- I'd rather have all the information necessary that prepares me for any situation or circumstances that may arise on an examination. Through you, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Ranzenhofer.

SENATOR RANZENHOFER: Yes, if Senator Sampson would continue to yield.

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

SENATOR SAMPSON: Yes, I do.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR RANZENHOFER: In a real estate transaction where there is no lawyer and no real estate broker, who is required to provide the loan disclosure information?

SENATOR SAMPSON: Well, if there is a situation where there is no attorney and/or broker, I would advise the person who is engaging in that to not engage in that transaction at all.

SENATOR RANZENHOFER: So you shouldn't be allowed to have -- through you, Mr. President, if the Senator will continue to yield.

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

SENATOR SAMPSON: Of course I would.

SENATOR RANZENHOFER: Are you suggesting that you shouldn't be allowed to sell your property for sale by owner and then close it yourself?

SENATOR SAMPSON: If an owner is selling the property himself?

SENATOR RANZENHOFER: Right.

SENATOR SAMPSON: If the owner is selling his property himself at that point to an individual who is purchasing a piece of property, at that point in time this would only apply to attorneys and/or brokers.

But you can classify -- you can make the argument that the person who is selling that property is acting as his own broker, if you want to get technical about it.

SENATOR RANZENHOFER: I'm sorry?

SENATOR SAMPSON: Through you, Mr. President, if you want to get technical, you can make the argument that the person who is selling their property, I would make the

argument that they themselves are a broker, so therefore they would be required to provide the notice.

ACTING PRESIDENT BRESLIN: Senator Ranzenhofer.

SENATOR RANZENHOFER: On the bill.

ACTING PRESIDENT BRESLIN: Senator Ranzenhofer, on the bill.

SENATOR RANZENHOFER: I understand what Senator Sampson is trying to accomplish.

And actually, there's actually a bill pending in this house sponsored by Senators Monserrate, Hassell-Thompson, Klein, Onorato, Oppenheimer and Thompson which actually deals with the issue that I think Senator Sampson is trying to address. And that is requiring disclosure about mortgages by the mortgage lending institution. This is a bill which has already passed the Assembly, is pending in this house, and really puts the onus of the responsibility where it belongs.

There's two parts of every real

estate transaction. There's the real estate contract between a buyer and a seller -- sometimes using real estate agents and sometimes using attorneys and sometimes not -- and then there's the financial contract.

Sometimes people are prequalified so they get all their financial information up front, and then they go look for a home. And sometimes people do it the other way around, that they go and buy a home and then they look for the real estate contract.

I am troubled by the last comment that it would be suggested that if you sell your home by yourself, that you would then be deemed to be a real estate broker -- because that would actually be illegal. Because I think in order to be a real estate broker, you have to be licensed. So you'd actually be committing a crime.

And to suggest that that type of activity could take place and you'd be subjecting a homeowner who sells the house by himself or herself to criminal activity because they're selling a home without a

license, that really troubles me greatly.

But I've said from the very beginning, I realize that there are improvements to the bill, that there have been some suggestions. But the basic problem that I have is that it really puts the responsibility for notifying a prospective purchaser really in the wrong place.

I do favor disclosure, but I think that Senator Monserrate and the cosponsors of that bill really have the issue correctly and putting the responsibility where the responsibility should lie.

When people are looking for a house and they're signing a contract, they're concerned about the price, they're concerned about whether or not they get the refrigerator. Those are the issues that they're thinking about. And any disclosure at that time, if there is to be disclosure, is really not going to be relevant at that time.

Relevant disclosure for a consumer takes place when you're dealing with the financial issues, whether -- again, whether

you get prequalified or whether you do it after the fact.

So again, I'm troubled by this. Because as I said from the very beginning when we discussed this, the disclosure is really not taking place where the disclosure has any effect.

I think the Monserrate bill which has been introduced and already passed by the Assembly is the proper way to go.

Again, I'm deeply troubled that by voting for this it would be suggesting that homeowners would be committing some sort of illegal activity, that they would have some sort of responsibility as a broker for this disclosure and therefore could be getting in trouble. So I will not be supporting this bill.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Ranzenhofer.

Senator Volker.

SENATOR VOLKER: Mr. President, let me just say I think part of the confusion

for those of us --

ACTING PRESIDENT BRESLIN: Senator Volker, on the bill.

SENATOR VOLKER: -- that practice real estate upstate -- and I admit that I don't practice a lot anymore. In my younger days, I practiced a great deal. In fact, I closed deals in Buffalo, Rochester, Syracuse, Albany and New York City at one time or another.

The funny thing about it is I thought the New York City process was the poorest of all the processes. And the bank that I closed at was the Chase Manhattan Bank.

But the Buffalo process encompasses just about everything that's in your bill. We have our own contract now, and we have three-day clauses, we have inspections, we have all sorts of things. And in fact the problem is we've got so much paperwork now -- in the old days you had a couple of papers, a contract. Today we've got about eight or 10, and everybody has to sign off.

I think probably -- and I don't

know the New York City situation anymore. My guess is that because of the situation in New York City, your bill probably is aimed at certain banks or whatever who may not be as careful.

We have a situation, for instance, where you've got the attorney for both sides, you've got the attorney for the title company, because the banks won't close mortgages in Western New York anymore without a title company. And there's an attorney for the title company plus then you have the attorney for the bank. I'm not exactly sure sometimes what that attorney for the bank does, other than reading what the title report is.

But I think the thing is, if I could just put it, I think our difficulty is we're used to different situations. And New York City is probably different. I think that's where a lot of the confusion lies and the reasons some of us have concerns.

Frankly, I don't -- my personal feeling is I doubt this will have much application in my area anyways.

ACTING PRESIDENT BRESLIN: Thank you, Senator Volker.

Are there any other Senators wishing to be heard?

Hearing none, the debate is closed.

The Secretary will ring the bell.

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 LaValle, to explain his vote.

SENATOR LaVALLE: Thank you, Mr. President.

We were talking, and Senator Padavan, of course, is always a good person to whittle down and get to the bottom line on an issue. But one of the things is that I think we're mixing a couple of issues here together.

The contract for sale, which can be a discussion between the seller and the purchaser and take a long time whittling down

the details on how the property is going to be sold, in what condition, and on and on and on. Now we're attaching, you know, another document on top of getting to the actual closing.

I think that every attorney who does real estate closings, if you wait a six-month period between one closing and another, you will find new forms, new things that have been added to the transaction.

ACTING PRESIDENT BRESLIN: Excuse me, Senator LaValle.

May we have quiet.

SENATOR LaVALLE: And I think every attorney here knows you sit with your client and you say, "This form does this." "Okay." They sign it. "This form does this." "Okay." They sign it.

I think the appropriate place for this is at the time the person is taking out their mortgage, having that discussion and having the bank do the disclosure form, and that ends it. It's the same thing at the beginning of the process where there's a real

estate broker, they have documentation that is separate and apart from the contract for sale.

Now, it varies in different parts of the state. But while the intention of this bill is good, and I would like to support this, I think that this bill will come back again for another amendment.

At this time, I vote in the negative.

ACTING PRESIDENT BRESLIN: Senator LaValle will be recorded in the negative.

Senator Saland, to explain his vote.

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

I first would like to commend Senator Sampson, who obviously listened at great length to some of the exchanges that occurred with regard to his bill. And I fear I may be accused of to some extent piling on.

I think virtually all of the issues have been addressed. I certainly support the concept and the idea of the disclosure that's

contained within this legislation.

But the point at which there is nexus is the initial point of application for the lending institution. We do have other instances in which, for example, you have rights of rescission with respect to certain loans. You could craft something which would enable an individual who is making an application to have, in effect, a breathing period that would trigger the ability to get that loan counseling if he, she or they wish it, without prejudicing their application.

So I commend you, Senator Sampson. I think there's one little step left to go. And I think that is not to put the burden on third parties -- attorneys and brokers. Place it where the nexus is, where the application is being submitted, with the institution that has the wherewithal to take care of all these things under one umbrella.

And for that reason and that reason alone, I can't support this bill at this time, and I will be voting in the negative.

Thank you.

ACTING PRESIDENT BRESLIN:

Senator Saland to be recorded in the negative.

Senator Marcellino, to explain his vote.

SENATOR MARCELLINO: Yes, Mr. President, I thank you for recognizing me so I can explain my vote.

Senator Sampson, I agree, I understand what you're trying to do. And like my colleague before me just stated, I think, as we used to say in my neighborhood, you put the emPHAsis on the wrong syllABle.

This belongs at the bank. This belongs at the lending institution. It doesn't belong on the back of the brokers or the attorneys. I think by that time it's too late. It should be done at the initial stage, when the client goes into the bank and decides to take that loan or not, and I think that's where the emphasis should be placed.

So I will be voting no on this particular bill at this time. I look forward to the merging, perhaps, of this current bill with perhaps Senator Monserrate's bill, and

see if we can get the two together, because I think the Monserrate bill does what you want, and I think at the right spot.

I vote no, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Marcellino will be recorded in the negative.

Senator Liz Krueger, to explain her vote.

SENATOR LIZ KRUEGER: Thank you. I rise to support the bill and particularly to highlight the point I think that some of my colleagues don't agree with me on, that it should be done somehow later in the process rather than at the actual contract of sale.

I in my own district have had a whole group of constituents come to me -- and again, I tend to have a very sophisticated district. Everyone has lawyers, they're talking about purchasing fairly expensive condominium and co-ops. And they came to me to show that in the contract of sale they had signed it didn't even allow them an out if they couldn't get a mortgage.

And so they are trapped in contracts where they couldn't get mortgages, because of course the reality of mortgages has changed, and they're trapped in a contract of sale to have to purchase apartments they can't afford with no out.

And I asked, "You're such educated, sophisticated people, how did you not see that, and you had lawyers?" And they said, "Well, that was the standard." And so things become the standard without anybody looking or questioning.

And so I think it is critical to have independent counselors who people have do go to even before they get to the stage of making the right decision over a type of mortgage.

And again, it's very disturbing to me that in our state, at this point in history, we have these kinds of shenanigans going on. So you're right, there are different riders that can come and go, but I think it is crucial that there be an independent model of counseling people: Do

you know what you're being asked to sign.

And so I think that this is very good legislation, very timely and important, and I vote yes.

Thank you.

ACTING PRESIDENT BRESLIN: Senator Montgomery, to explain her vote.

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

I rise to also commend and thank my colleague Senator Sampson for this legislation, as one who has represented a problem that has been going for some years back, even before the current explosion. There was a lot of activity related to predatory lending in my district in the northern part of the Brooklyn, as well as Queens, as well as the Bronx and many other communities.

So this really is an attempt to help people protect themselves from predators who come into communities and really prey on people who don't understand the implications of what is being offered to them.

And so this really is important legislation for that reason, that purpose. And I commend Senator Sampson because this is something that is already in law in some of the states, and it has been a proven success that people who have knowledge before they enter into contracts are less likely, much less likely to have a predatory lending problem.

So I appreciate this. And I'm sure that my constituents would be very, very pleased to know that we are doing something that actually helps them protect themselves from the kind of unscrupulous activities related to purchasing homes and selling their homes.

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

ACTING PRESIDENT BRESLIN: Senator Montgomery will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 4 are Senators

DeFrancisco, Flanagan, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, LaValle, Leibell, Libous, Little, Marcellino, Maziarz, Nozzolio, Ranzenhofer, Robach, Saland, Seward, Skelos, Winner and Young.

Absent from voting: Senator Diaz.

Excused: Senator Alesi.

Ayes, 38. Nays, 22.

ACTING PRESIDENT BRESLIN: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 282, by Senator Monserrate, Senate Print 2760, an act to amend the Banking Law and the Real Property Tax Law.

SENATOR VOLKER: Mr. President, will you recognize Senator Ranzenhofer, who has an amendment. And you don't have to read the amendment.

ACTING PRESIDENT BRESLIN: Senator Ranzenhofer.

SENATOR RANZENHOFER: Thank you, Mr. President. I have an amendment. After

the --

ACTING PRESIDENT BRESLIN: Senator Ranzenhofer. Excuse me, Senator Ranzenhofer. I have reviewed the amendment with counsel and rule it out of order as not germane to the original bill.

SENATOR RANZENHOFER: Mr. President, if I could just have a word on that or challenge the chair.

ACTING PRESIDENT BRESLIN: Would you let me please finish?

SENATOR RANZENHOFER: I'm sorry, Mr. President.

ACTING PRESIDENT BRESLIN: Your amendment providing for a real property tax cap for persons over the age of 70 deals with a different topic and body of substantive law than the underlying bill; that is, amending the Banking Law to provide that proceeds of a reverse mortgage cannot be considered as income for purposes of certain property tax exemptions. Your amendment would require a change in the title of the original bill.

For those reasons, I believe that

the amendment that you offered today relates to a different subject matter than the one under consideration.

Moreover, your amendment significantly expands the purpose, scope, and object of the original bill. Since the fundamental purpose of your amendment does not relate to the same fundamental purpose of the Monserrate bill, the amendment is not germane to the original bill.

SENATOR RANZENHOFER: Thank you, Mr. President. I'd like to challenge the ruling of the chair.

ACTING PRESIDENT BRESLIN: Are you appealing the ruling?

SENATOR RANZENHOFER: Yes, I am.

Could I speak on that?

ACTING PRESIDENT BRESLIN: You can now speak on that, Senator Ranzenhofer.

SENATOR RANZENHOFER: Thank you, Mr. President.

If you take a look at the bill that's before us and my amendment, both deal with the exact same section of law. So when

you say it deals with a different area of substantive law, both deal with Section 467 of the Real Property Tax Law. So I don't understand the explanation that it deals with a different area of substantive law, because it deals with the exact same section.

Furthermore, they both deal with the very important issue of property taxes, which again, after the STAR rebate checks were killed, the property tax is very important. And again, both bills deal with property taxes.

And finally, both deal with property tax relief for seniors.

So for those reasons, Mr. President, especially since both deal with exactly the same section, 467, I think they should be considered together.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Ranzenhofer.

The question before the house is whether the decision of the chair shall stand as the judgment of the Senate. All those in

favor of overruling the decision of the chair please signify by raising your hands.

The Secretary will announce the results.

THE SECRETARY: Ayes, 27. Nays, 31.

ACTING PRESIDENT BRESLIN: Having failed to obtain the necessary votes, the ruling of the chair is sustained and the appeal is denied.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 90th day.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Ring the bell, please.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 90th day.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN:

Announce the results.

THE SECRETARY: In relation to Calendar Number 282, absent from voting: Senator Diaz. Excused, Senator Alesi.

Ayes, 60. Nays, 0.

ACTING PRESIDENT BRESLIN:

Senator Klein, why do you rise?

SENATOR KLEIN: Would you recognize and congratulate Senator Monserrate. This was his first bill passed in the Senate.

(Applause.)

ACTING PRESIDENT BRESLIN:

Congratulations, Senator Monserrate.

SENATOR MONSERRATE: I'd like to thank my colleagues and the staff in the passing of this very important legislation to provide seniors with the protections and clarity to this bill and this legislation.

Thank you all very much.

ACTING PRESIDENT BRESLIN: The bill is passed.

Senator Klein, that completes the controversial reading of active bills on the

calendar.

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

ACTING PRESIDENT BRESLIN: Senator Hassell-Thompson.

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

I would like to announce that immediately following session there will be a Majority conference in Room 332, immediately. Thank you.

ACTING PRESIDENT BRESLIN: There will be an immediate meeting of the Senate Majority in Room 332 after this session.

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

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

SENATOR KLEIN: There being none, I move we adjourn until Monday, May 18th, at 3:00 p.m., intervening days to be legislative days.

ACTING PRESIDENT BRESLIN: There

being no further business to come before the Senate, on motion, the Senate stands adjourned until Monday, May 18th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 12:19 p.m., the Senate adjourned.)