



Improve Foreclosure Bill

Testimony of Elise Brown, Esq.
MFY Legal Services, Inc.

New York City Council
Committee on Housing and Buildings
April 21, 2009

My name is Elise Brown, and I am the supervising attorney of the Foreclosure Prevention Project at MFY Legal Services, Inc. I am here today to address Introduction Nos. 889, 956 and 959.

MFY Legal Services provides legal services to more than 6,500 low-income clients in New York City every year. We are the largest legal services provider for mental health services consumers in New York City, and we have many other projects to help low-income New Yorkers with housing-related problems, including Neighborhood Preservation Project, East Side SRO Law Project, Manhattan Legal Aid to Seniors, Lower Manhattan Justice Project, and Foreclosure Prevention Project, which we launched in September 2008 in response to our clients' growing demand for legal representation and information about foreclosure and related issues.

Int. No. 889

Studies have shown that one foreclosure can depress the 80 closest neighbors' property values by nearly \$5,000. This effect is exacerbated if property involved in a foreclosure action is not maintained. The property value declines caused by foreclosure hurt local businesses and erode state and local government tax bases. More urgently, in the case of foreclosed properties that are occupied, failure to maintain property creates serious risks to public health and safety. Int. No. 889 seeks to address the problems associated with the failure to maintain property during the pendency of a foreclosure action.

While MFY commends the Council in addressing this issue, we have several suggestions that we believe would strengthen the bill.

MFY is concerned that the proposed statute is limited to “[a]ny mortgagee that commences an action . . . to foreclose upon a mortgage on real property . . .” It is MFY’s experience in defending such actions that often the person or entity that commences the action is not the mortgagee but rather a mortgage loan servicer. Hence MFY proposes that the statutory language be modified to apply to “any entity or individual which initiates an action for foreclosure . . .” This language is identical to that contained in proposed Int. Nos. 956 and 959.

Moreover, often a mortgagee commences a foreclosure action and then assigns the note and mortgage to another entity, which steps into the mortgagee’s shoes. The current version of this bill does not address this frequent industry practice.

Finally, MFY is concerned about the lack of parallelism in the final two sentences of subsection (a) of proposed section 27-21091. The penultimate sentence provides that a mortgagee must disclose to DHPD w/in ten days of:

- (1) stipulated discontinuance of such foreclosure action; or
- (2) issuance of a judgment in such foreclosure; or
- (3) the sale of such foreclosed property.

But the final sentence states that information pertaining to a foreclosure action posted on DHPD's website will be removed the first business day of the month following disclosure of:

- (1) such discontinuance; or
- (2) sale of such property; or
- (3) one year after notification of an order of foreclosure.

It is unclear whether the "issuance of a judgment" in the penultimate sentence is intended to reference the same thing as "an order of foreclosure" in the final sentence. MFY respectfully suggests that consistent language be employed to avoid confusion.

MFY strongly supports that portion of the bill that requires registration of foreclosure actions pending and filed in the five boroughs and encourages adoption of a proposed amendment to the administrative code of the city of New York requiring registration of foreclosure actions and maintenance of the subject property by the plaintiff while the action is pending.

Int. Nos. 956 and 959

MFY supports the effort to provide additional notice to tenants who reside in buildings made the subject of foreclosure actions as set forth in Int. Nos. 956 and 959. To expand protection to New York City residents, MFY proposes that the notice be provided to all "occupants" of such buildings. Use of the narrower term "tenants" would permit the foreclosing person or entity to dispute a tenant's tenancy rights in defense of its failure to provide the required notice.

The third sentence of Int. No. 956 requires clarification and is omitted altogether from Int. No. 959. That sentence currently provides that "if the names of any such tenants are unknown, such notification shall be done by affixing such notice in a prominent place at such building." As written, the sentence absolves the foreclosing person or entity from notifying all tenants by mail if any tenant's name is unknown. MFY thus suggests that the third sentence of Int. No. 956 be modified to provide: "However, if any such tenant's name is unknown, notification to that tenant shall be done by affixing such notice in a prominent place at such building" and that a comparable sentence be inserted into Int. No. 959. Again, MFY proposes that "occupant" replace "tenant."

MFY also believes it is important that, given the growing foreclosure crises in New York City, the statutes provide a time limit within which the DHPD commissioner promulgates the rules referenced in Int. Nos. 956 and 959.

Finally, MFY suggests that subsection (b) of each proposed statute be amended to clarify that the civil penalties imposed for violation of the notice provisions of subsection (a) may be enforced by and payable to each occupant to whom such notice was not provided.

Conclusion

MFY applauds the Council for addressing the very real problems encountered by residents of property in foreclosure and encourages the Council to continue to address problems arising out of and related to foreclosures in New York City. MFY is committed to working with the City Council to better protect both tenants and homeowners in New York City. Thank you for holding today's hearing and for considering these important bills.