

Memo In Support

From: Legal Services NYC

Date: May 15, 2009

Re: The Access to Justice in Lending Act (A.1239a/S.2614a)

The logo for Legal Services NYC is located in the top right corner. It consists of three overlapping rectangular shapes in shades of blue and purple. The text "Legal Services NYC" is written in white, sans-serif font across the middle of these shapes.

Legal
Services NYC

We write in support of the proposed Access to Justice in Lending Act (A.1239a/S.2614a) on behalf of the clients served by the foreclosure prevention projects of Legal Services NYC.

Legal Services NYC provides free, high-quality legal help in civil matters to low-income people throughout New York City. The foreclosure prevention projects of Legal Services NYC are located at four of our constituent programs: South Brooklyn Legal Services, Staten Island Legal Services, Brooklyn Legal Services Corp. A., and Legal Services NYC-Bronx. These projects have been at the forefront of the national fight against predatory lending practices.

Through litigation and advocacy, we have been able to assist hundreds of homeowners to save their homes from foreclosure. However, the demand for our services has grown steadily, as the number of foreclosures in New York City has mounted. The need for legal assistance for homeowners in foreclosure is greater now than ever before. Unfortunately, because of our limited resources, we are able to represent only a fraction of low-income borrowers, even though many of them have meritorious legal claims and defenses to foreclosure. Furthermore, our clients' efforts to negotiate mutually beneficial settlements with their lenders are often thwarted by the addition of lenders' attorneys' fees and costs to their loan arrears.

The proposed Access to Justice in Lending Act would amend the Real Property Law to provide that mortgage agreements which allow a prevailing lender to recover attorneys' fees in a foreclosure proceeding will be read to allow prevailing borrowers to recover attorneys' fees as well. The Act is modeled upon Real Property Law Section 282, which authorizes prevailing tenants to collect attorneys' fees when a lease authorizes fees to be recovered by a prevailing landlord. The proposed Act acknowledges that mortgagors do not have equal bargaining power in negotiating the terms of their mortgages with their lenders, just as tenants lack equal bargaining power in negotiations with their landlords. Both provisions are designed to address this inequality.

The Act would benefit our clients in at least two important respects. First, the proposed amendment to the Real Property Law would level the playing field for low-income borrowers facing foreclosure. At present, borrowers are potentially liable for their lenders' attorneys' fees and costs incurred litigating the foreclosure action, but lenders are not held liable for borrowers' fees and costs even if a borrower has meritorious claims and defenses. The Act would clarify that the obligation to pay attorneys' fees and

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costs is mutual in certain cases. Moreover, it would allow a greater number of borrowers to obtain legal representation. By authorizing borrowers with meritorious defenses to recover attorneys' fees from their lender in certain foreclosure cases, it would increase access to legal representation for low-income borrowers who could not otherwise afford an attorney. Finally, the Act would create an incentive for lenders to resolve more cases early-on in the foreclosure process, before both sides incur significant legal fees and costs. Indeed, this provision would provide a powerful incentive for lenders to negotiate a resolution with borrowers who are behind on their payments before a foreclosure action is ever filed.

In sum, the proposed Access to Justice in Lending Act (A.1239a/S.2614a) would greatly benefit low- and middle-income homeowners facing foreclosure or currently in foreclosure in New York City. On behalf of those homeowners, we commend Assemblyman Lancman and other sponsors of the Act for working to level the playing field for low-income borrowers facing foreclosure, to improve access to counsel for these borrowers and to create incentives to resolve more cases early-on in the foreclosure process.