



Empire Justice Center

Making the law work for all New Yorkers

Albany ♦ Rochester ♦ White Plains ♦ Long Island

MEMORANDUM IN SUPPORT

BILL NUMBER: A.1239 (Lancman)

TITLE OF BILL: The "Access to Justice in Lending Act"

BILL PURPOSE: The purpose of this bill is to provide mortgagors a right to recover attorneys' fees in foreclosure cases.

STATEMENT OF SUPPORT

Empire Justice Center supports the "Access to Justice in Lending Act." The bill provides that a mortgagor (homeowner) may recover reasonable attorneys' fees and costs in an action in which they prevail against the mortgagee (lender). The bill creates fairness among the parties, promotes justice and hopefully will enable more homeowners to find legal representation when their homeownership is in jeopardy.

Under the bill, a mortgagor's right to recover attorneys' fees and costs would only exist in cases in which the underlying loan transaction contracts (the note and/or the mortgage) provide for recovery of attorneys' fees and costs by the mortgagee. It is common practice for contracts to include provisions which allow lenders to collect fees which are "reasonable and actually incurred," and lenders routinely collect these fees from homeowners. The bill redresses the inequity which exists for mortgagors who rarely have any genuine bargaining power in the formation of contracts with mortgagees.

There is strong and long-standing precedent for this bill in Real Property Law Section 234, enacted in 1969. This landlord-tenant law provides for reciprocal attorneys' fees to prevailing tenants in legal actions when the underlying lease authorizes attorneys' fees be paid to a prevailing landlord. This law has been found effective and landlords may be more inclined to peaceably resolve a matter with a tenant rather than risk paying attorneys' fees and costs.

In addition to creating parity among the parties, the bill has the potential of increasing the number of homeowners represented by legal counsel. Even with increased funding from the state which has put more legal services lawyers on the ground representing homeowners, the vast majority of homeowners go unrepresented. People can't afford to pay a private lawyer and private lawyers have shied away from this practice because of the low expectations of being paid. Hopefully with this bill, more homeowners will be represented as the lenders always are.

CONCLUSION

The Empire Justice Center supports the passage of A.1239

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