Home for the Holidays?:

Tracking Foreclosures During the Holiday Season.

Senator Jeffrey D. Klein

Deputy Minority Leader

34th Senate District

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Deputy Minority Leader, New York State Senate

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We welcome feedback on our reports. Please contact Alex Camarda, Policy Director, at 718-822-2049 to provide your thoughts on this report or discuss collaboration on implementing its initiatives. Special thanks to Propertyshark.com for free access to their property records.

Dear Reader:

In September Congress passed a $700 billion bailout package which relieved major mortgage banks of the growing burden caused by the dissolution of the credit market. However, with the economic recession and persistent drop in the consumer price index, average Americans remain dogged by financial failure and pending foreclosure. Despite the federal government's rhetoric toward home retention, little has actually been done to incentivize banks to modify mortgages and keep people in their homes. The banks listed in this report, or Subprime Scrooges, have received over $122 billion in taxpayer monies, yet continue to file foreclosure proceedings rather than use programs like the federally funded Hope for Homeowners, to help distressed borrowers. In essence, the government is offering socialism to the banks and capitalism to everyone else. We need to fundamentally refocus the banks on loan modification and make the state a stakeholder so as to wield homeownership as a responsible investment rather than a financial scalpel.

Last year the New York State Senate worked with the New York State Banking Department and over 15 lending institutions to conduct "Operation Protect Your Home" in seven different counties across the state. Over 3,500 homeowners from the Bronx to Buffalo who were in default, or whose mortgages were slated to re-set, met with their lenders for the purpose of loan modification. Operation Protect Your Home was incredibly successful as a voluntary program and should be mandated to require all banks to prioritize loan modification before resorting to foreclosure. Furthermore, I propose that the State can prevent future foreclosures by authorizing the State of New York Mortgage Agency (SONYMA) to refinance troubled mortgages at a 30 year fixed rate. The home would be appraised at the time the SONYMA refinancing and the mortgage would be up to 90 % of the value of the mortgage. This process would make the state an active stakeholder and provide an intrinsic protection against abuse. Lastly, in order to effectively deal with the myriad of lending institutions, servicers, and realty companies now holding properties in the metro area, and to combat declining property values due to foreclosure, the legislature must pass the NEIGHBORHOOD PRESERVATION BILL S. 7028. The bill would allow a municipality to enforce safety and habitability requirements for bank owned properties which now plague our communities.

Regards,
Senator Jeffrey D. Klein

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Section One:

The Foreclosure Process

Foreclosure Overview & Foreclosure Process[1]

Foreclosure is a process that allows a lender to recover the amount owed on a defaulted loan by selling or taking ownership (repossession) of the property securing the loan. The foreclosure process begins when a borrower/owner defaults on loan payments (usually mortgage payments) and the lender files a public default notice, called a Lis Pendens. The foreclosure process can end one of four ways:

1. **The borrower/owner reinstates the loan by paying off the default amount during a 90 day grace period determined by state law.**
2. **The borrower/owner sells the property to a third party during the pre-foreclosure period. The sale allows the borrower/owner to pay off the loan and avoid having a foreclosure on his or her credit history.**
3. **A third party buys the property at a public auction at the end of the pre-foreclosure period.**
4. **The lender takes ownership of the property, usually with the intent to re-sell it on the open market. The lender can take ownership either through an agreement with the borrower/owner during pre-foreclosure, via a** short sale **foreclosure** **or by buying back the property at the public auction. Properties repossessed by the lender are also known as bank-owned or** **REO properties** **(Real Estate Owned by the lender).**

1 The Foreclosure Overview Process Realtytrac, ed <http:// www. realtytrac.com/foreclosure/overview. html>.

The Costs of Foreclosure

2.8 foreclosures for every 100 owner- occupied properties in one year corresponds to an increase in neighborhood violent crime of approximately 6.7 percent.[2]

Homeowners living near foreclosed properties will see their property values decrease $5,000 on average per each foreclosed home.[3]

40.6 million neighboring homes in the United States will experience devaluation because of sub prime foreclosures that take place nearby.[4]

2 Immergluck, Dan, and Geoff Smith. 2006. The Impact of Singlr Family Mortgage Forclosures on Neighborhood Crime*. Housing Studies*

3 **"Subprime Spillover" Center For Responsible Lending Issue Paper Updated and Revised 1/18/2008.**

4 Ibid.

Section Two:

Analysis of Foreclosure Filings during the Holidays

Methodology

In order to calculate the families facing foreclosures during this holiday season, the Office of Senator Jeff Klein studied the number of lis pendens filed against homes in October and November as well as the number of homes set to go to auction in October and November.

Number of New York City Metro Area Families Facing Foreclosures (includes NYC, Westchester and Nassau & Suffolk County)

Nassau County: 1033

Suffolk County: 762

Queens County: 1291

Kings County: 569

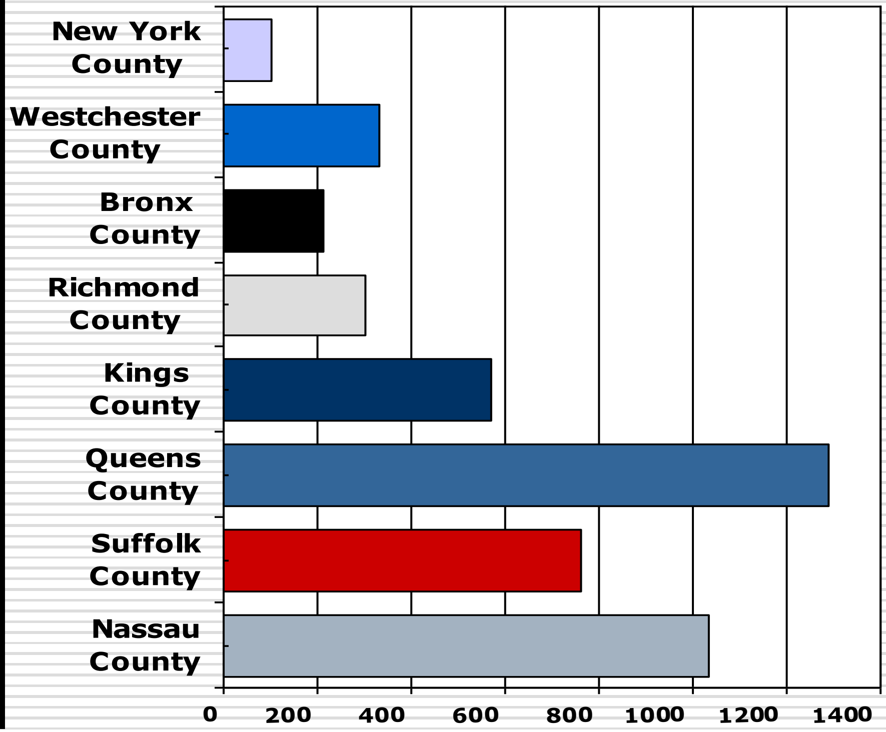
Richmond County: 301

Bronx County: 214

New York County: 102

Westchester County: 331

Total Families Facing Foreclosures: 4603



The Subprime Scrooges in New York City for the Holiday Season

Lending Institution	Number of Foreclosure Actions
1. US Bank	276
2. Deutsche Bank	243
3. Wells Fargo	235
4. HSBC	201
5. Bank of America	140
6. JP Morgan Chase	144
7. The Bank of New York	95
8. Indymac	87
9. Citigroup	77
10. Capital One	38

The Subprime Scrooges in Long Island for the Holiday Season

Lending Institution	Number of Foreclosure Actions
1. US Bank	204
2. Deutsche Bank	202
3. Wells Fargo	167
4. JP Morgan Chase	105
5. HSBC	125
6. Bank of America	102
7. The Bank of New York	90
8. Citigroup	88
9. Indymac	83
10. Capital One	45

The Subprime Scrooges in Westchester County for the Holiday Season

Lending Institution	Number of Foreclosure Actions
1. US Bank	38
2. Deutsche Bank	36
3. Wells Fargo	36
4. HSBC	22
5. Bank of America	16
6. Indymac	13
7. The Bank of New York	11
8. Citigroup	10
9. Emigrant	10
10. Fremont	8

Institutions with Foreclosure Filings during the Holiday Season in the New York State Area (includes NYC, Westchester and Long Island)*

Aames Funding Corporation
Argent
Accredited Home Lenders
American Home Mortgage: Option One
Bank of America: Equicredit, Countrywide, LaSalle Bank
Bank of New York
Bayview Loan Servicing
Bear Stearns: EMC, Encore Credit
Capital One : Greenpoint
Citigroup: ABN Ambro, Argent, Associates Consumer Discount Company, IMC, Principal Residential Mortgage
Conseco: Green Tree
Conti Mortgage
Credit Suisse: DLJ
Delta Funding
Deutsche Bank: MortgageIt
Dlj Mortgages
Eastern Savings Bank
Everhome Mortgages
Fremont
General Electric: WMC Mortgage*
GMAC: Ditech
HomeSales, Inc.
HomeStar Mortgage
HSBC: Beneficial Mortgage*, Decision One, Household Finance, Marine Midland
Key Bank: Champion
Lehman Brothers: Aurora Loan Services, BNC, Finance America
M&T Bank
Merrill Lynch: First Franklin Financial, Nationpoint
Midfirst Mortgage Company
New Century
New Prospect Holding Corp.
Partners Financial: Private Capital Group
Phh Mortgage Corporation
Sallie Mae: GRP Loan
Suntrust
US Bank, N.A
Wachovia: American Mortgage Network, World Savings Bank
Washington Mutual: WM Specialty
Wells Fargo

*While this list is not exhaustive, it represents lending institutions with a least 10 foreclosure filings in October and November in the property records studied for this analysis. Companies following the bank name are servicers, subsidiaries, and/or newly acquired companies that issue mortgages.

Section Three:

The Federal Troubled Asset Relief Program (TARP)

The $700 Billion Bailout

The **Troubled Asset Relief Fund** was originally designed to buy up struggling securities from bank balance sheets. The hope was that the government would help the banks secure some of its bad debt and also help create a market for the securities by setting a price for them. In the end, the banks would have the working capital and become more secure to lend again.

But the situation has changed since the bailout bill passed. The initial $250 billion Congress doled out to Treasury is being used to inject capital directly into banks, with no mention of purchasing assets. In fact, on Nov. 12, Paulson, with about two months in office, said Treasury had for now abandoned the repurchase part of the plan.

Dozens of bank have applied for funds from the Treasury Department as part of the $700 billion Troubled Asset Relief Program. The Treasury has already transferred capital to 30 of these companies.

The following list details the institutions receiving the most money through the Federal Government’s Troubled Asset Relief program.[5]

5. As reported in the NY Times article, “ Tracking the $700 Billion Bailout” on 11/24/2008

Top Ten Institutions Ranked by Expected Investment by Federal Government through the $700 billion Troubled Asset Relief Program.

Lending Institution	Expected Investment
1. Citigroup	$45,000,000,000
2. AIG	$40,000,000,000
3. JP Morgan Chase	$25,000,000,000
4. Wells Fargo	$25,000,000,000
5. Bank of America	$15,000,000,000
6. Goldman Sachs	$10,000,000,000
7. Merrill Lynch	$10,000,000,000
8. Morgan Stanley	$10,000,000,000
9. PNC	$7,700,000,000
10. U.S. Bancorp	$6,599,000,000

The $700 Billion Bailout

The top ten foreclosing institutions throughout the holidays complied by the Office of Senator Jeff Klein for NYC, Westchester and Long Island have received over 122 billion dollars of Federal taxpayer money

The following list details the amount of money these foreclosing institutions are receiving (if any) through the Federal Government's Troubled Asset Relief program.

Banks Receiving TARP money with the Most Foreclosures in the NYC Metro Area

US Bank Corp	$ 6,599,000,000
Wells Fargo	$25,000,000,000
Bank of America	$15,000,000,000
JP Morgan Chase	$25,000,000,000
Citigroup	$45,000,000,000
Capital One	$ 3,500,000,000
Bank of New York	$ 3,000,000,000
Total	**$122,099,000,000**

Section Four:
New York State’s Response

In 2006, NYS Senator Jeff Klein introduced S.5311 A and S.6394 A relating to subprime mortgages and the consumer protections that needed to be afforded to New Yorkers to prevent unfair deceptive lending practices and to stem the tide of foreclosures that Senator Klein predicted as affecting the State of New York. Some key protections called for in both of these bills were :

- **Strict Prohibition on Deceptive Lending**

  Express prohibition for lenders making misleading statements in connection with a loan transaction, especially regarding the borrower’s ability to qualify for any loan product.

- **No Lending without regard for borrower’s ability to repay**

  Prohibit lending based on borrower’s home equity, rather than on income and other financial resources.

- **No Loan Flipping**
  A lender many not refinance an existing home unless the new loan provides a tangible net benefit for the borrower

- **Mandatory Homeowner Education/Counseling**
  All homeowners must attend a mandatory education/ counseling class before entering any sub prime loan. This class would be mandatory as part of the loan approval process.

- **A Fiduciary Duty must be established for mortgage brokers and other non-bank mortgage originators**

- **All Lenders and mortgage brokers must file a report with the State Banking Department in instances of loan default or foreclosure within 30 days.**

- **No influencing of the appraisal process by originators**
  A lender many not refinance an existing home unless the new loan provides a tangible net benefit for the borrower

S. 8143A

On August 5th 2008, Governor Patterson signed into law a bill which addressed the many concerns previously brought to the floor by Senator Klein in his previous legislation. Some of the most important aspects of this bill were:

Section 1 of the bill amends Real Property Actions and Proceedings Law ("RPAPL") § 1303 to provide a clear and concise notice detailing instructions and potential options for those homeowners against whom foreclosure proceedings are being commenced.

Section 2 of the bill adds a new Real Property Actions and Proceedings Law ("RPAPL") § 1304 to require lenders and mortgage loan servicers to send a notice to borrowers who took out a subprime or nontraditional loan between January 1, 2003 and September 1, 2008, at least 90 days before they may commence legal action against the borrower.

Section 3-a of the bill allows those homeowners against whom a foreclosure action has already been commenced to also participate in a settlement conference.

Section 5 of the bill adds a new Banking Law § 6-m which: (1) defines the term "subprime home loan"; (2) provides consumer protections and minimum underwriting standards for such loans; and (3) establishes an enforcement mechanism for these provisions, and remedies for violations.

Section 6 of the bill adds a new Banking Law § 590-b to establish certain responsibilities for lenders and mortgage brokers. In particular, this section of the bill establishes: (1) a duty of care for mort-gage brokers in soliciting, placing, processing and arranging home loans; and (2) standards for lenders and mortgage brokers in their dealings with appraisers.

Section Five: Proposals

Proposals

1. **Similar to the Federal Government's, Hope for Homeowner's Program, Senator Jeff Klein proposes that New York State through the State of New York Mortgage Agency (SONYMA) help avoid foreclosures in New York by refinancing troubled mortgages into 30 year fixed mortgages at a fair and sustainable interest rate. Participating homes would be appraised at the time the SONYMA refinancing takes place and the new mortgage would be issued for up to 90% of the current assessed value of the property. In return the state would receive a portion of the increase of the home equity when the mortgagee sells or refinances the home in the future.**

   All lenders would be required to work with SONYMA to determine if the homeowner qualifies for this refinancing option and would receive a tax incentive to refinance qualifying homeowners into the SONYMA loan if all conditions are met.

   - **Benefits to Homeowner:**
     - **Stay in their home**
     - **New more affordable 30 year fixed mortgage at an appraisal value that more accurately reflects the current value of their home.**
   - **Benefits to the State:**
     - **A share in the equity of the home upon sale or refinance of this mortgage.**
     - **A share in the appreciation of the home over the appraised value upon sale of the home.**

Proposals

2. **In 2008, the New York State Senate worked with the New York State Banking Department and over 15 lending institutions to create "Operation Protect Your Home". Homeowners from all over the state who were late on their mortgage or whose mortgages were about to reset were sent invitations to attend one-on-one modification meetings with their lender at locations around the state. More than 3500 at risk mortgages were discussed for modification under this program.**

   Making this successful program universal would help stem the rising tide of foreclosures in the State by requiring lenders to sit down with New York borrowers and work out mutually beneficial ways to avoid foreclosure.

   Governor Patterson's 2008 subprime lending law made formal settlement conferences between lenders and borrowers mandatory within 60 days of a foreclosure filing on any subprime or non traditional mortgage. Senator Klein will introduce new legislation in January 2009 to extend this protection to all residential mortgage borrowers. However lenders will also be offered the option of satisfying this obligation by participating in a series of state sponsored Operation Protect Your Home events throughout the state for lenders serving large numbers of New York properties, "Operation Protect Your Home" is likely to be the most efficient way to connect directly with their borrowers. It will also keep more New Yorkers in their homes by facilitating direct contact before at risk mortgages reach the foreclosure stage

Legislative Proposal

3. **In order to effectively deal with the myriad of lending institutions, servicers, and realty companies now holding properties in the New York City, Westchester and Long Island Area, and to combat the effects that foreclosed homes already have on property values and communities, NEIGHBORHOOD PRESERVATION BILL S. 7028 must be passed allowing a municipality to enforce safety and habitability requirements for every REO owned property.**

   The Neighborhood Preservation Bill would impose a duty on a lending institution and/or servicer to keep property in a mortgage foreclosure action in a safe and habitable condition. Where a final judgment for the holder of a mortgage has been rendered in an action to recover any part of the mortgaged debt, it shall be the duty of the prevailing party to enter into control and possession of the foreclosed property and to maintain it in a safe and habitable condition until said premises are sold, occupied by a renter or otherwise legally disposed of. The municipality in which the premises are located or a homeowners association, if said premises are subject to the rules and regulations of such association, shall have the right to enforce the provisions of this section.