



NEW YORK STATE SENATOR

Malcolm Smith

Senate President Malcolm A. Smith, Democratic Majority Move To Empower Homeowners Facing Foreclosure

MALCOLM A. SMITH July 7, 2010

| ISSUE: **FORECLOSURE**

Law penalizes lenders who fail to engage in good-faith foreclosure settlement negotiations

(Albany, NY)- In an effort to help more New Yorkers remain in their homes, Senate President Malcolm A. Smith and the Senate Democratic Majority have passed legislation (S7798A) empowering homeowners facing foreclosure to take action when lenders fail to meet their obligation of entering into good-faith settlement negotiations at “settlement conferences.”

Tens of thousands of families across New York have lost their homes in recent years as a result of unethical subprime mortgage practices; now, thousands more are disadvantaged by those operating under the guise of helping them remain in their homes but who are in fact not following ethical business practices, further endangering these families.

This legislation sets up three obligations of a lender at a settlement conference:

- To appear with authority to execute a settlement with the homeowner;
- To negotiate in good faith; and
- To meet any deadline for the production of documents or evidence.

Senator Smith noted that helping families avoid foreclosure has significant benefits for the entire community – not just the family facing homelessness; foreclosed homes tend to lower local property values and services may be cut as a result of properties coming off the local tax rolls.

“The laws on the books are intended to aid homeowners who need assistance in a tough time,” said Senator Smith. “Homeowners don’t receive this aid when lenders choose to flout our laws. Their behavior wastes the homeowners’ time, the court’s time, and if the home is lost, hurts the entire economy.”

This legislation strengthens the Foreclosure Prevention and Responsible Lending Act of 2008 which set up a mandatory settlement conference process for all homeowners facing foreclosure. That law requires parties to bring key documents to the conference, and obliges both parties to negotiate in good faith in order to reach a mutually agreeable resolution with the goal to reduce foreclosures. Many lenders disregarded the law, sending subcontracted attorneys to settlement conferences and foreclosure proceedings who have neither the preparation nor the authority to negotiate with homeowners.

According to a study conducted by the Center for New York City Neighborhoods, of the nearly 800 settlement conferences they studied in 2009 in New York City courts, only 3% resulted in any kind of settlement. The study also showed that lawyers sent by lenders only had a copy of an offer already made to the lender 3% of the time, knew the status of an offer with the lender 6% of the time, and only had a phone number to call someone with authority to settle in 13% of the conferences.

The Senate's new legislation states that the second time the lender fails to meet the obligations as set out, the homeowner automatically makes a motion for an order to dismiss the foreclosure action, unless waived by the homeowner in writing by advice of counsel. Upon the third failure by the lender, the court shall grant the defendant's motion except on good cause shown by the lender.

"This bill sets up strict rules governing foreclosure proceedings and gives lenders a strong incentive to come to settlement conferences prepared to engage in constructive negotiations," Senator Smith concluded. "This will help fulfill the original intent of helping people access the support and guidance they need to remain in their homes."

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