

# Who is Accepting Responsibility?

## *A Survey of Bank Owned Properties in New York City*



**State Senator Jeffrey D. Klein**

**July 2011**

## **Introduction**

On April 25<sup>th</sup>, 2011 three people were killed when a fire erupted inside an apartment building in the Tremont section of the Bronx. The home, located at 2321 Prospect Avenue, had apparently been abandoned by the owner, Dominic Cedano and had been illegally subdivided. Con Edison had stopped providing electricity and gas to the residence two weeks prior. Neighbors reported that the occupants of the property had subsequently tapped into the city grid for electricity. While one may view this incident as another tragedy as a result of the rampant illegal subdivisions one sees in single to three family homes in the outer boroughs, this tragedy could have been avoided if the financial institutions responsible for this property and others like it were in compliance with New York State law and New York City used the tools at its disposal because of this law.

## **Four Years Earlier**

In September of 2007, Senator Klein was approached by a group of constituents who complained about a house on their tree-lined street in the Bronx. The problem they were having is one that cities across the United States have been experiencing on a daily basis. They had a house on their block which was owned by a bank due to a foreclosure of a subprime mortgage. This house was not only in complete disrepair, but had become a haven for squatters and juvenile delinquents engaged in violent behavior and drug use. The bank, which was waiting for someone to purchase it, had left the property unkempt and unsupervised from the day they foreclosed on the owner. Numerous calls to both the bank, acting as a trustee, and the servicer were made until the Senator found a responsible party to come and board up the house and take care of the maintenance of the house. This responsibility though was not defined in the law however, and was done at the discretion of the servicer of the loan only after the Senator brought the horrific state of the property into light through the local media.

What this situation uncovered though was a legal black hole when it came to the maintenance of foreclosed properties that was brought to light due to the subprime mortgage crisis. At the time, every mortgage had a duty to repair clause, however that clause could only be triggered by the bank if it felt that the collateral that the mortgage was securing, i.e. the home, was deteriorating into such disrepair as it would make it worthless as security for the loan. However, when the subprime mortgage crisis hit, financial institutions that were so quick to lend residents of New York 100% financing for homes, were just as quick to foreclose on them. What that left was a large inventory of homes that banks now owned. Financial institutions, in the middle of a whirlwind of bankrupting servicers and foreclosures by the thousands, were not only not invoking the duty to repair clause but were themselves letting the properties they foreclosed upon fall into total disrepair.

This is the state of affairs Senator Klein found New York State in when he came across the property in the Bronx in 2007. Lenders, foreclosing at record breaking rates, were delaying recording title, therefore, claiming that since they were not the owner of record, they had no duty to maintain the property. However, the homeowner who had lost the property due to a judgment of foreclosure and sale had no financial or personal interest in maintaining the property either. City agencies, including law enforcement and the building department, had no authority to enter onto the property to either make repairs or secure it for safety reasons because they had no owner

to notify. The last owner of record was usually the homeowner, but they were unreachable because they and lost the property in court. The financial institution, denied ownership, because they never recorded title. What resulted were properties all over New York State falling into disrepair, resulting in diminishing home values and rising crime rates.<sup>1</sup>

### **The Duty To Maintain: The Laws of Chapter 507 of 2009**

On December 15<sup>th</sup>, 2009 Governor Paterson signed into law in one of the most sweeping foreclosure diversion bills in the nation. Filled with consumer protections and foreclosure prevention opportunities not normally afforded to residents of New York who were struggling with making their mortgage payments, Chapter 507 of 2009 of the Laws of New York State gave New York homeowners and tenants relief in a housing market that was deteriorating before our eyes. Yet one provision of this legislation, championed by Senator Jeff Klein since the incidents of 2007, focused not on the homeowner, but on the properties left behind in the wake of the subprime foreclosure crisis. This provision, otherwise known as the property maintenance requirement, would in essence force a bank who was awarded a judgment of foreclosure, to maintain the property they now owned as defined in Chapter 507 of 2009 in relation to property maintenance. Signed in the neighborhood of Morris Park, in the Bronx only 2.2 miles from the tragedy at 2321 Prospect Avenue, this provision could have been used to avoid the circumstances those three people found them in the early morning of April 25<sup>th</sup>, 2011.

Under Section 6 of Chapter 507 of the Laws of 2009, the duty to maintain a property by a lender begins when the lender (plaintiff) obtains a judgment of foreclosure and sale on the residential property. This duty would last until ownership transfers through the closing of title in foreclosure and the deed for such property has been duly recorded. Section 6 also allows the lender (plaintiff) to enter on property or have others enter on property for purpose of maintaining and repairing property. If the property happens to be occupied by tenant, 7 days notice must be given unless emergency repairs. Furthermore, and most importantly, Section 6 of Chapter 507 of the Laws of 2009 allows not only the municipality, tenant or board of managers with regards to a condo the right to enforce the duty to maintain after at least 7 days notice unless emergency repairs required but it also allows the municipality, tenant or board of managers to have a cause of action to recover costs incurred as a result of maintaining the property.

Maintain for the purposes of New York State in regards to this law means that it is the responsibility of the foreclosing lender to keep a property in a manner that is consistent with the standards set forth in the New York State Property Maintenance Code Chapter Three. Also if the property is occupied by a tenant then such property must be maintained in a safe and habitable condition. With these duties set forth in the law, enforceable by the municipalities where the

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<sup>1</sup> According to the Center for Responsible Lending Issue Paper “Subprime Spillover” issued in 2008, in New York State, the number of neighboring homes experiencing devaluation in 2007 due to subprime foreclosures was 3,552,642 and the combined monetary decrease in home values/tax base in New York State due to subprime foreclosures was \$36.841 billion dollars. Furthermore, according to the report The Impact of Single-Family Mortgage Foreclosures on Neighborhood Crime by Immergluck and Smith issued in 2006 for every 2.8 foreclosures for every 100 owner-occupied properties in one year corresponded to an increase in neighborhood violent crime of approximately 6.7 percent.

bank owned properties reside, what happened to the property located at 2321 Prospect Avenue that made it a deathtrap for the families that lived in it up until April 25<sup>th</sup>, 2011?

## **The History of 2321 Prospect Avenue**

In November of 2005, Domingo Cedano, a.k.a Dominic Cedano, purchased 2321 Prospect Avenue. He did it without putting any money down. Using what was commonly referred to in the industry as an 80/20 mortgage; Dominic Cedano paid the \$480,000 purchase price with a \$384,000 mortgage from Accredited Home Lenders and a \$96,000 mortgage from the same lender, Accredited Home Mortgage. This put Dominic Cedano in the position so many other purchasers of property during the foreclosure crisis were put in, the ownership of a property with no true investment. Therefore, the ability to walk away from a property when it became too much of a financial burden made it that much easier for men like Mr. Cedano and that is exactly what he did in April of 2009.

On April 12<sup>th</sup>, 2009 the Bank of New York Mellon served a summons and complaint on Mr. Dominic Cedano for foreclosure.<sup>2</sup> At that time there was one complaint on record against the home for a defective boiler. The Department of Buildings was unable to gain access. Nothing was resolved. After the filing of the summons and complaint, there were four complaints about 2321 Prospect Avenue called in to New York City. All revolved around the illegal subdivision of the property and the faulty wiring attributed to temporary power sources being used. Again, the Department of Buildings responded to the calls. They did not gain access, the issues went unresolved.<sup>3</sup> However, the foreclosure went forth with the lender expending money to make sure that they received a judgment of foreclosure but not expending any money to see the condition of the property it was fighting so hard to obtain.<sup>4</sup> Therefore, at this point the City is unable to go in to make the necessary repairs because they need permission to enter the property unless they want to go through a lengthy court process to get a court order for access without permission and the lender, who does have the ability to send someone in to inspect the property, obviously had no interest to do so even though they were involved in this foreclosure proceeding.

Finally on October 8<sup>th</sup>, 2009 a judgment of foreclosure and sale is entered in the courts. Two months later, Chapter 507 of 2009 of the Laws of New York State is signed into law, making a bank responsible for the maintenance of a property and ensuring if any tenants live in that property that they live in a safe and habitable environment. The law goes into effect 120 days after its signing. On April 14<sup>th</sup>, 2011 a call is received by the city again regarding the conversion of this property into an SRO. No inspection is made and it is obvious by the tragedy that occurred on April 25<sup>th</sup>, 2011 the bank, which now was responsible under New York State law, ever made any effort to secure or inspect that property. For if they would have hired a property maintenance company or sent a field representative, they would have viewed not only the SRO

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<sup>2</sup> On November 11<sup>th</sup>, 2008 the mortgage was assigned from the Alliance Mortgage Banking Corporation through the Mortgage Electronic Registration System ( MERS) to the CIT Group/Consumer Finance Inc. From there, eleven days later it was assigned to the bank of New York Mellon, who brought the action to foreclose.

<sup>3</sup> Note that on one occasion (10/30/2009), a male answered the door and denied access. This complaint was for illegal SRO's with no means of egress in a property vacated by the FDNY. Nothing was pursued.

<sup>4</sup> Most mortgages in New York State, including the one on 2321 Prospect Avenue, include an obligation on the borrower to maintain the property and a right conferred on the lender to inspect the property. (even though they are not technically the owners).

complaint but also the faulty wiring complaints that had been called in two years earlier with no resolution since the Department of Buildings was refused access.

What we are left with today is a timeline that looks fraught with opportunities to have avoided the tragedy that befell those who resided at Prospect Avenue. Unfortunately, the tools at the disposal of the City were not originally in place. However, thanks to Chapter 507 of the Laws of 2009 and its property maintenance provision, the tools are there now. The municipality can enter the property by giving 7 days notice. The lender is responsible for the property if there is a judgment of foreclosure and the municipality after notifying the lender of the issues at its property can go in and make the repairs and recoup the expenses from the lender. We can't go back and change what occurred on April 25<sup>th</sup>, but we can possibly work towards identifying the problems and issues that exist now at other properties and work towards making sure the tragedy at 2321 Prospect Avenue doesn't occur again.

## **Data Analysis**

### **Methodology**

In July of 2011, the Office of Senator Jeff Klein decided to conduct a survey of properties in the five boroughs that were currently owned by lenders, realty companies and/or property Management LLCs using the reputable real estate tracking site of RealtyTrac.com. Known as REO properties, these properties are the ones that would fall under the new obligations laid out in Section 6 of Chapter 507 of the Laws of 2009 regarding property maintenance as well as the laws of New York State regarding an owner's duty to maintain their property and keep it free from hazards.<sup>5</sup> Each property was then entered into the NYC database of properties located at the website of the NYC Department of Buildings to determine how many open Building and Environmental Control Board violations existed on each property.<sup>6</sup>

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<sup>5</sup> The property maintenance provisions of Chapter 507 of the Laws of 2009 were needed to deal with the time from when a lender receives a judgment of foreclosure to the time when title is recorded. Some of the properties are owned by a property maintenance LLC or a realty company and although not the foreclosing lender, as the owner of record of the property has all the duties provided under the law for maintenance of the property.

<sup>6</sup> While every effort is made to get an accurate sense of ownership for every property identified as Real Estate Owned (REO), the lack of up to the cut-off date recording of documents for some properties results in data with a +/- 5 % margin of error.

## The State of New York City

- Close to 2000 REO properties in NYC as of July 2011
- Over 7000 total complaints made on these properties since they were erected
  - 3751 open violations (DOB and ECB) currently on all 2000 properties

### Lenders with the Most Properties in NYC

Deutsche Bank	285
US Bank	161
Wells Fargo	104
Federal National Mortgage	84
Bank of New York	54

### Worst Buildings in New York City

County	Open Violations	Address	Zip	Lender/Owner
Brooklyn	100	68 <sup>th</sup> Street	11220	Indymac
Bronx	84	1055 MLK Blvd	10452	Highbridge Apts
New York	74	1 Central Parkway West	10023	CSB NY Holdings
Bronx	62	900 Hoe Avenue	10459	Hunts Point Assn
Bronx	60	1744 Clay Avenue	10457	OLR ECW

### Top Five Lenders with Open Violations on their REO Properties

Open Violations	Lender
211	Deutsche Bank
163	US Bank
141	Federal National Mtg
119	SG Assets LLC
118	Indymac

## Bronx County

- 273 REO properties in the Bronx as of July 2011
- Over 1674 total complaints made on these structures since they were erected
  - 899 open violations (DOB and ECB) currently on all 273 properties

### Worst Properties

Open Violations	Address	Zip Code	Lender/Owner
84	1055 Dr. ML King Jr. Blvd	10452	Highbridge Apartments
62	900 Hoe Avenue	10459	Hunts Point Association
60	1744 Clay Avenue	10457	OLR ECW
46	1055 Jerome Avenue	10452	Yankee 167 Realty
37	806 E 175 <sup>th</sup> Street	10460	OLR LBCE

### Top Five Lenders with Open Violations on their REO Properties

Open Violations	Lender	Number of Properties
56	US Bank	24
43	Federal National Mtg	25
23	Wells Fargo	21
20	Deutsche Bank	17
10	Bank Of New York	5

## Queens County

- 1157 REO properties in Queens as of July 2011
- Over 2988 total complaints made on these structures since they were erected
  - 969 open violations (DOB and ECB) currently on all 1157 properties

### Worst Properties

Open Violations	Address	Zip Code	Lender/Owner
32	8370 Charlecote Ridge	11432	GF Global Equity
29	119-45 Union Tpk	11375	State Farm Assets
24	2 Bay Club Drive	11360	EDND IRT Assets
24	1149 Welling Court	11102	JP Morgan Chase
19	10935 111 Street	11420	Bank of New York

### Top Five Lenders with Open Violations on their REO Properties

Open Violations	Lender	Number of Properties
149	Deutsche Bank	180
96	US Bank	107
85	Bank of New York	46
75	Federal National Mtg	60
40	JP Morgan Chase	21

## Kings County

- 332 REO properties in Brooklyn as of July 2011
- Over 1086 total complaints made on these structures since they were erected
  - 1024 open violations (DOB and ECB) currently on all 332 properties

### Worst Properties

Open Violations	Address	Zip Code	Lender/Owner
100	231 68 <sup>th</sup> Street	11220	Indymac
57	455 Schnectady Avenue	11203	SG Assets LLC
52	389 Nostrand Avenue	11216	Fairbanks National
30	34 Sunnyside Court	11207	G Stamp Trust 2007
23	599 Sutter Avenue	11207	M&T Bank

### Top Five Lenders with Open Violations on their REO Owned Properties

Open Violations	Lender	Number of Properties
119	SG Assets LLC	15
118	Indymac	5
59	Fairbanks National	2
42	Deutsche Bank	18
36	Wells Fargo	12

## Richmond County

- 145 REO properties in Staten Island as of July 2011
- Over 305 total complaints made on these structures since they were erected
  - 112 open violations (DOB and ECB) currently on all 145 properties

### Worst Properties

Open Violations	Address	Zip	Lender/Owner
18	2 Elmwood Park Drive	10314	Federal National Mtg
11	296 Monahan Avenue	10314	Wells Fargo
12	247 Ardmore Avenue	10314	Residential Assets
7	61 Harrison Avenue	10302	Morgan Stanley
7	119 Roe Street	10301	US Bank

### Top Five Lenders with Open Violations on their REO Owned Properties

Open Violations	Lender	Number of Properties
23	Federal National Mortgage	15
16	Wells Fargo	5
16	Morgan Stanley	8
11	US Bank	17
12	Residential Assets	1



## New York County

- 81 REO properties in Manhattan as of July 2011
- Over 947 total complaints made on these buildings since they were erected
  - 747 open violations (DOB and ECB) currently on all 81 buildings

### Worst Properties

Open Violations	Address	Zip	Lender/Owner
74	1 Central Park West	10023	CSB NY Holdings
55	68 Bradhurst Avenue	10039	NYC Ptnrshp Hsng Dev Fnd
55	225 East 86 <sup>th</sup> Street	10028	HSBC
40	330 East 38 <sup>th</sup> Street	10016	Antonie Katbe
26	2038 Madison Avenue	10035	2038 Madison Avenue Ass.

### Top Five Lenders with Open Violations on their REO Owned Properties

Open Violations	Lender	Properties
74	CSB UE NY Holdings	1
56	HSBC	2
55	NYC Ptnrshp Hsg Dev Fnd	1
50	Aurora Loan Services	4
40	Antonie Katbe	1

### Conclusion

There are over 2000 REO properties in New York City. Under New York State Law, the responsibility to maintain these properties with or without tenants occupying the property falls on the lender. If the lender fails to maintain these properties, with notice, New York City can enter onto the property, repair the defects and charge the lender. The law is in place to not only preserve the housing stock of New York City but to also make sure that those who occupy these properties live in a safe and habitable condition. Now it is up to the lenders to step up and accept the responsibility placed on them by New York State and for New York City to ensure that they accept this responsibility. By working together we can ensure that another 2321 Prospect Avenue tragedy never occurs again.