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Statement
New York State Senator Tony Avella

New York State
Department of State

Public Hearing on "Cease and Desist" Zones

September 14th and 15th 2016

I would like to thank Secretary of State Rosado for arranging tonight's public hearing to hear from the community about their experience with intense and repeated solicitation by members of the real estate industry in an effort to get them to sell their homes.

On April 29th we held a hearing at Bayside High School which was well attended by the community including many real estate professionals who either live or work in the community. There were also many real estate professionals who did not live in the community who chose to come testify.

Although I appreciate concerns that were raised by many of the real estate professionals regarding their right to engage in their profession and I acknowledge the important part that the real estate industry plays in our communities and our economy in general, this hearing is focused on a very specific standard set forth in New York law and upheld by the federal appeals court in 2002.

The cease and desist provisions of the law simply state that a cease and desist zone can be created where property owners are subject to **intense and repeated solicitation** to sell their home by real estate brokers, salespersons or others regularly engaged in the business of buying and selling real estate.

More importantly, the law states that once a cease and desist zone is created it is still the option of the property owner to voluntarily decide whether or not they want to continue to receive these solicitations or whether they choose not to receive such solicitations.

I believe this is straightforward and recognizes the rights of both the real estate professional and the homeowner and balances both of their interests in engaging in their profession and protecting their right to privacy.

As I said in a letter to Secretary of State Rosado after the last hearing,

In the same way that the real estate agents argued that they have a right to work and make a living in their chosen field and to exercise their freedom of speech, the federal court clearly recognized the substantial "right to privacy" that homeowners have and noted the "cease and desist" law makes a careful distinction in placing restrictions on those selling or buying real estate only when a homeowner "elects to seek" the law's protection by asking to be placed on the cease and desist list.

Some in the industry who testified attempted to say that they are being discriminated against when other types of commercial entities are allowed to solicit business by going door to door, or leaving circulars, such as grocery circulars or food delivery and home improvement ads.

The fact is there is a 'do not circulate law' that allows property owners to place a sign in front of their home to notify such businesses that they do not want circulars left on their property. This law is enforceable and can lead to significant fines for violators.

In addition, millions of people throughout the United States have availed themselves of a "do not call" list to prevent unwanted phone call solicitations

There were also comparisons to elected officials making unwanted calls and sending unwanted mailings.

I know many people are fed up with the mountains of political mail that comes through their doors and I can appreciate that frustration.

But there is a big distinction between the public knowing who their elected officials will be and repeated and unwanted solicitations from someone who is trying to get you to sell your home on a regular basis throughout an entire year rather than during a yearly election season.

It was unfortunate that many of those who testified at the April hearing sought to make that hearing about racial or cultural animosity when in fact all this is about is a homeowner's right to privacy and commensurate right to say "I choose not to be contacted by you about selling my home".