
News from
**The Senate
Republican Majority**



Senator Joseph L. Bruno, Majority Leader

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Title: SENATE PASSES BILL TO ADDRESS SUBPRIME MORTGAGE CRISIS

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**SENATE PASSES BILL TO ADDRESS SUBPRIME MORTGAGE CRISIS
Consensus legislation will protect thousands of New Yorkers from losing their homes,
Provide counseling to allow homeowners to take control of their finances**

The New York State Senate today passed comprehensive legislation (S8143-A), sponsored by Senator Hugh Farley, to address the subprime mortgage crisis in New York by immediately assisting homeowners who are facing foreclosure from losing their homes while implementing critical reforms designed to help prevent them from losing their homes in the future.

The legislation is the result of an agreement reached between the Governor, the Senate and the Assembly, and announced publicly last week.

According to statistics compiled by the New York State Banking Department, approximately one in 200 New York homes is currently in the foreclosure process. Some areas of New York – such as Queens, Brooklyn and Long Island – are being disproportionately impacted.

In Upstate New York, Monroe and Albany counties have experienced high foreclosure rates. The bill is an effort to balance the government's responsibility to provide reasonable consumer protection and the need to offer affordable credit options to New Yorkers.

Senate Majority Leader Joseph L. Bruno said: "This legislation balances the need to help families who are facing foreclosure of their mortgages and the loss of their homes, with concerns raised by the banking industry about protecting the ability of lenders to provide mortgages to future homeowners. I'm pleased that the Senate, Governor and Assembly were able to reach agreement on this important issue and, and thank Senator Farley for his leadership."

Senator Hugh Farley, Chairman of the Senate Banking Committee said: "This legislation represents an important agreement on a critical topic. Working together, we have crafted legislation which will hopefully help families who are at risk of losing their homes because of the subprime mortgage crisis, but at the same time we are trying to ensure that future home buyers will continue to have access to the mortgage market. I commend the Governor and the Superintendent for their active involvement and leadership working with the Legislature."

“This comprehensive legislation will provide much needed relief and help at-risk homeowners throughout New York facing a foreclosure on their home,” Senator Frank Padavan (Queens) said. “The legislation is reflective of the strong commitment at all levels of state government to providing the necessary legislative initiatives and tools to help halt the rise of home foreclosures in all reaches our state. I applaud Governor Paterson, Senator Bruno and Speaker Silver for their intensive efforts and working in a bipartisan fashion in advancing this legislation to help ensure that dream of owning a home in New York remains strong today and in the future.”

Assist People Currently Facing Foreclosure

he immediate focus of the bill will assist existing homeowners facing foreclosure. Those provisions include:

- > The bill requires lenders to send a pre-foreclosure notice to borrowers at least 90 days before foreclosure proceedings may be initiated. This will encourage homeowners to seek help prior to the initiation of foreclosure proceedings. The bill would also require lenders to list in the notice government approved housing counselors serving the borrower’s area.
- > The bill establishes a mandatory settlement conference for foreclosure proceedings involving homeowners with certain subprime loans. For homeowners who cannot afford an attorney, the court under certain circumstances, may appoint one.
- > The bill requires plaintiffs in an action against a homeowner to make an affirmative allegation that they have standing to bring the foreclosure action and have complied with certain applicable laws. Ownership of the mortgage and the note is sometimes uncertain, which has lead to questionable foreclosure practices.
- > The bill includes provisions to address foreclosure rescue scams intended to take advantage of borrowers when they are most vulnerable. This bill will prohibit upfront fees and require a written contract from so-called “distressed property consultants.”

Avoid Another Crisis In The Future

There are additional reforms in the bill that are designed to prevent future crises. They include:

- > The bill enacts a new provision in the Banking Law to establish strong consumer protections for subprime loans and minimum underwriting standards that protect borrowers.
- > Ascertaining the borrower’s ability to pay is a basic tenet of prudent lending. The bill establishes an ability to pay standard requiring lenders to make a reasonable and good faith determination of the borrower’s ability to repay the loan, including the principal, interest, taxes, insurance, assessments, points and fees.
- > The duty of care feature of the bill requires brokers to act in the borrower’s interest by presenting loans most appropriate for the borrower.
- > All mortgage servicers servicing loans on residential property in New York would be required to register with the Banking Department.

> Mortgage fraud would be classified as a crime under the Penal Law, making it easier for prosecutors to pursue cases. As the magnitude of the fraud increases, so would the criminal penalty.

A number of new programs to fund homeowner counseling have already been established in New York State, including the Subprime Foreclosure Prevention Services Program, a \$25 million statewide program approved by the Legislature. This program includes grants and aid to non-profits to provide financial counseling, mediation, legal representation, negotiation, and other support services to borrowers who are facing default or foreclosure.

Additionally, the State Foreclosure Prevention Working Group is a multi-state task force working with subprime mortgage loan servicers to reduce the number of unnecessary foreclosures by encouraging loan modifications and other sustainable long-term solutions.

To date, the most notable outreach effort is Operation Protect Your Home, a series of foreclosure prevention forums bringing borrowers and servicers together face-to-face to discuss possible alternatives to foreclosure. Seven Operation Protect Your Home forums have been held across the state – in the Bronx, Brooklyn, Buffalo, Queens, Westchester and Staten Island with the most recent forum in Long Island on June 7.

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