

MEMORANDUM IN SUPPORT

A7737A (Weinstein)

June 8, 2021

BILL NUMBER: A7737A

SPONSOR: Assembly Member Weinstein

TITLE OF BILL: Relates to the rights of parties involved in foreclosure actions

Long Island Housing Services, Inc. (LIHS) is a private, not-for-profit 501(c)(3) corporation, and Long Island's only private fair housing advocacy and enforcement agency serving Nassau and Suffolk counties. LIHS's mission is the elimination of unlawful housing discrimination and promotion of decent and affordable housing through advocacy and education. Our founding objectives are to promote racial and economic integration and equal housing opportunity throughout Long Island, to reduce and eliminate unlawful housing discrimination, to encourage the development of low-income and affordable housing, and to educate and assist the public regarding housing rights and opportunities in the region. As part of our efforts to meet these objectives, LIHS provides housing counseling and legal services to homeowners facing mortgage default and foreclosure.

LIHS supports A7737A, which provides much needed clarification to correct recent judicial decisions that have undermined longstanding legal precedents to excuse financial institutions from the effects of established statutes of limitations principles' application to residential foreclosure cases.

1. The bill would overrule the most egregious aspect of *Freedom Mortgage v. Engel*, 2021 NY Slip Op 01090 (Court of Appeals February 18, 2021), which upended well-established precedent by holding that a voluntary discontinuance of a foreclosure action revokes acceleration even where the discontinuance is silent on revocation and does not advise the homeowner that acceleration is revoked, and that the lender will resume accepting installment payments on the loan. It would restore longstanding precedent requiring that revocation of acceleration be an affirmative, unequivocal act, just as acceleration itself is required to be an affirmative, unequivocal act, and would make clear that after-the-fact assertions of revocation of acceleration to evade the operation of the statute of limitations are ineffective. It would make clear that financial institutions prosecuting foreclosures are bound by the same statutes of limitations that apply to all

other litigants.

2. The bill would also overrule *CitiMortgage v. Ramirez*, 92 AD3d 70 (3rd Dep't December 24, 2020), which rendered the election of remedies provisions of New York Real Property Actions and Proceedings Law §1301 meaningless and invites foreclosure plaintiffs whose cases have been adjudicated to be barred by the statute of limitations to commence non-foreclosure actions for money judgments on the note.
3. The bill also creates a separate CPLR 205-a grace period provision for residential foreclosure cases, to address multiple foreclosure filings by plaintiffs who serially commence foreclosure actions and to correct courts' indulgent interpretations of the existing provision to favor foreclosure plaintiffs to permit such plaintiffs whose cases have been dismissed for various forms of neglect to avail themselves of this grace period. That grace period is meant to be narrowly available only to "diligent" plaintiffs and not to those whose cases have been dismissed for a broad range of behavior beyond the narrow grounds contemplated by CPLR § 3216.

The bill narrowly addresses discrete statute of limitations issues in foreclosure cases and effectively overrules the most harmful aspects of the recent *Engel* and *Ramirez* decisions. Of the proposed legislative solutions, LIHS believes that the tailored approach of A7737A will most effectively correct recent aberrant appellate decisions. The measure would restore the law regarding statute of limitations to where it was before recent appellate decisions reversed established precedent, providing for certainty and stability. It assumes crucial importance right now, with approximately 500,000 New York homeowners experiencing mortgage distress and an anticipated onslaught of new foreclosure cases poised to burden the judiciary. That burden will be amplified by plaintiffs whose cases have been dismissed or discontinued seeking to take advantage of the novel law decreed by *Engel and Ramirez*. The bill would prevent that and restore the law to where it was before the courts' pronouncements in *Engel* and *Ramirez*.

Please contact Trina Kokalis at trinakokalis@lifairhousing.org with any questions about this issue.