Long Island Housing Services, Inc.

640 Johnson Avenue, Suite 8, Bohemia, New York 11716-2624
631-567-5111 ~ info@LIFairHousing.org ~ www.LIFairHousing.org
Protecting Civil Rights for Long Islanders since 1969

Long Island celebrates the 50th Anniversary of the Fair Housing Act

MEMORANDUM IN SUPPORT

A7737A (Weinstein)/S5473D(Sanders)

February 15, 2022

BILL NUMBER: A7737B/S5473D

SPONSOR: Assembly Member Weinstein/Senator Sanders

TITLE OF BILL: Relates to the rights of parties involved in foreclosure actions; provides additional details regarding the commencement and termination of certain actions related to real property.

Long Island Housing Services, Inc. (LIHS) is a 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 A7737B/S5473D, 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. A7737B/S5473D is narrowly tailored to restore the law concerning statutes of limitations in residential foreclosure cases so that foreclosing financial institutions are not excused from longstanding statute of limitations principles at the expense of New York's struggling homeowners.

A7737B/S5473D provides much needed clarification to correct recent judicial decisions that have undermined longstanding legal precedents to excuse financial institutions from the effects of longstanding statutes of limitations principles. With mortgage delinquency rates in the wake of the COVID-19 pandemic dwarfing the worst delinquency rates seen during the Great Recession, an unprecedented wave of new foreclosure filings is looming as forbearance plans conclude and federal and state moratoriums have ended. Even before the pandemic foreclosure cases represented about

twenty percent of the statewide civil docket in New York's Supreme Courts and even higher percentages at the intermediate appellate courts; with the new wave of foreclosures it is critical that foreclosing lenders not be excused from the operation of longstanding statute of limitations principles embedded in New York jurisprudence that apply to all litigants, even large financial institutions. Indeed, those foreclosing lenders were represented by counsel at every stage of the proceeding and should not be excused from the operation of basic statute of limitations principles.

Although this legislation addresses seemingly arcane statute of limitations issues, the real world implications of the failure to correct recent case law excusing foreclosing financial institutions from their violations of the statute of limitations would have real world consequences for thousands of New York homeowners who are subjected to multiple foreclosure proceedings by lenders who start and stop foreclosure proceedings and attempt thereby to manipulate the operation of the statute of limitations, leaving distressed homeowners in a perpetual state of uncertainty as their cases remain unresolved, in many cases over the course of a decade or more.

1. The bill would overrule the most egregious aspect of *Freedom Mortgage v. Enge*l, 2021 NY Slip Op 01090, 37 NY3d 1 (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. This ruling has revived many foreclosure actions that were otherwise barred by the statute of limitations and placed a cloud on the title of many properties formerly encumbered by mortgages whose enforcement was barred by existing statute of limitations principles before the decision. It would restore longstanding precedent and make clear that a lender's voluntary discontinuance of a pending action does not serve to restart the statute of limitations 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 also clarify that financial institutions prosecuting foreclosures are bound by the same statutes of limitations that apply to all other litigants. Finally, it would bar plaintiffs who commenced a foreclosure action and thereby accelerated a mortgage loan from arguing, in a later action, that they failed to effectively accelerate a loan to evade the statute of limitations.

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. If a lender is barred by the statute of limitations from pursuing a foreclosure action—which bar resulted from the lender's own actions—there is no reason why such a lender should be able to achieve the same result by resorting to the artifice of pursing an action for a money judgment on the note, but that is precisely what the Ramirez decision invited lenders to do.

3. It 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 and permit such plaintiffs whose cases have been dismissed for various forms of neglect to avail themselves of this grace period. This grace period permitting a plaintiff to recommence a dismissed action, and have it deemed timely commenced is meant to be narrowly available only to "diligent" plaintiffs and not to those whose cases have been dismissed for a broad range of neglectful behavior beyond the narrow grounds contemplated by CPLR § 3216, which the courts have interpreted to favor foreclosing lenders.

The bill narrowly addresses discrete statute of limitations issues in foreclosure cases and effectively overrules the most harmful aspects of the recent court decisions. The measure would restore the law regarding the 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 ten percent of New York homeowners experiencing mortgage delinquency and an onslaught of new foreclosure cases poised to burden the judiciary, coming on top of the already voluminous backlog of existing cases. 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*.

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