



Long Island Housing Services, Inc.

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Protecting Civil Rights for Long Islanders since 1969



MEMORANDUM IN SUPPORT

S. 00070/A.03348

February 27, 2025

BILL NUMBER: S. 00070/A.03348

SPONSORS: Senator Kavanagh/Assembly Member Dinowitz

TITLE OF BILL: AN ACT to amend Section 595-b of the Banking Law

SUMMARY OF BILL: This bill provides that any person who has been injured by reason of any violation of any such rules, regulations or policies as the superintendent of the Department of Financial Services may promulgate governing mortgage loan servicing may bring an action in his or her own name; assert a counterclaim; or, if an action is commenced by the mortgagee or anyone acting on its behalf, bring a third party claim, against either the mortgagee and/or the mortgage servicer to enjoin any violations thereof or for damages caused by such violation; makes related provisions.

STATEMENT REGARDING THE BILL: Long Island Housing Services, Inc. strongly supports S. 00070/A.03348 because it would provide much needed protection for New York homeowners with mortgages who lack the ability to ensure compliance with New York's strong mortgage servicing rules, which mortgage servicers presently violate with impunity. It has long been an anomaly that New York has had strong mortgage servicing rules on the books that can be violated without consequence, even though analogous federal mortgage servicing rules have long been enforceable by a private right of action. Ensuring that mortgage servicers servicing New York mortgages are held accountable for violation of the New York mortgage servicing rules has assumed urgent importance right now as the current Washington administration is working to dismantle the federal agency that promulgates and enforces the federal mortgage servicing rules—the Consumer Financial Protection Bureau (“CFPB”). Although mortgage servicers have been far less likely to flout the federal mortgage servicing rules because they carried a private right of action allowing for their enforcement, with the CFPB under threat and all of its work currently suspended, ensuring that New York's own mortgage servicing rules are enforceable has assumed even greater urgency.

Long Island Housing Services, Inc. (“LIHS”) is a private nonprofit Fair Housing advocacy organization, serving Nassau and Suffolk counties since 1969. Our mission is the elimination of unlawful housing discrimination and promotion of decent and affordable housing through advocacy and education. In furtherance of our mission, LIHS is also a HUD-approved housing counseling agency. Through our housing counseling and legal services, we work with homeowners facing mortgage default and foreclosure, helping them navigate complex mortgage servicing issues and advocate for fair treatment.

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*Our mission is the elimination of unlawful housing discrimination
and promotion of decent and affordable housing through advocacy and education.*

LIHS has firsthand experience assisting homeowners who have suffered from servicer misconduct, including failures to provide forbearances, misleading information regarding eligibility, and a lack of responsiveness that exacerbates financial distress. Throughout the COVID-19 pandemic and beyond, homeowners have encountered systemic failures in mortgage servicing, ranging from unacceptably long hold times to critical errors in forbearance administration that led to negative credit reporting and unnecessary financial hardship. Without the ability to hold servicers accountable, these violations persist, leaving homeowners vulnerable to foreclosure despite existing state protections.

While New York has strong mortgage servicing regulations, the absence of a private right of action has allowed servicers to repeatedly disregard these rules without consequence. Instead, LIHS has relied on the CFPB as the primary avenue for reporting servicer violations. The CFPB's complaint process has been instrumental in bringing servicer misconduct to light and securing corrective action for homeowners. However, with the CFPB's enforcement power increasingly under threat, homeowners have fewer protections and even less recourse against unlawful servicing practices. This makes state-level enforcement mechanisms, like the private right of action in S. 00070/A.03348, more critical to our work than ever. **For LIHS, this bill is essential because it would provide a critical enforcement tool to hold servicers accountable when they violate the law, allowing us to better advocate for homeowners facing unlawful servicing practices.**

As New York continues to grapple with the health and economic implications of the COVID-19 pandemic, many homeowners have experienced staggering losses of income, with mortgage default rates at levels that dwarf the highest rates of default experienced during the peak of the Great Recession in 2009. As with the impacts of the pandemic in general, foreclosures disproportionately impact communities of color, whose rates of mortgage default are nearly double those of the white population. At-risk homeowners seeking relief from their lenders must interact with the mortgage servicing companies most lenders contract with to administer residential mortgage loans. Those companies are charged with billing and collecting payments from borrowers, crediting borrowers' accounts when payments are made, responding to borrowers' inquiries about their accounts, and working with distressed borrowers seeking assistance when they encounter difficulty paying their mortgages. Borrowers seeking assistance from mortgage servicers might apply for forbearance under a complex maze of federal and state sponsored programs enacted in the wake of the pandemic, or they might seek a loan modification or other relief from the lender in order to avert loss of their homes to foreclosure. This process is known as "loss mitigation."

In accordance with authority given to it by Section 595-b of the Banking Law, the Department of Financial Services has promulgated detailed regulations governing the business of mortgage servicing in New York State, which provide many consumer protections for New York mortgage borrowers. These detailed rules cover the gamut of mortgage servicers' activity, including handling of escrow accounts, crediting of payments, statements of account, fees, borrower complaints and inquiries, prohibited conduct, oversight of third-party providers, transfers of servicing, the loss mitigation process, and affiliated entities. These rules, codified at 3 NYCRR 419 (and colloquially known as Part 419), also impose a duty of good faith and fair dealing applicable to servicers' interactions with mortgage borrowers. These regulations are in many ways parallel to mortgage servicing rules promulgated by the federal Consumer Financial Protection Bureau ("CFPB") pursuant to the federal Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. 2601 *et seq.* (known as "Regulation X").

But in contrast to the federal Regulation X, which is enforceable by a private right of action under RESPA if it is violated, the Part 419 protections are frequently and flagrantly violated by mortgage servicers or the law firms they retain to prosecute foreclosures, who can complacently rely on the absence of an

enforcement mechanism for the very borrowers the rules were meant to protect. This bill would rectify this anomalous absence of an enforcement mechanism by specifying that the violation of mortgage servicing regulations promulgated by the Department of Financial Services are enforceable by borrowers harmed by their violation just as the comparable federal regulations are enforceable.

It would also ensure compliance with the rules by specifying that material compliance with the rules is a condition precedent to commencement of an action in court, and it would make clear that lenders hiring mortgage servicing companies to service their loans would also be liable for violations, thereby incentivizing lenders to retain servicers equipped to comply with New York law. The law would protect against efforts to evade compliance by transferring servicing to a new servicing company, by specifying that violations of a prior servicer may nonetheless be asserted as a defense to actions brought to enforce mortgage loans after the transfer of servicing rights to a new servicer. It also protects against attempts to evade these protections by bringing actions for money judgments on the mortgage note, instead of seeking to foreclose on the mortgage lien on the property, as some servicers have done in an attempt to evade other consumer protections, by making the defense available in both foreclosure actions and actions on the note.

The need for a private right of action to enforce New York's servicing rules is all the more important now that the current presidential administration is ensuring that federal regulators abdicate their consumer protection obligations. With so many New Yorkers contending with lost income and mortgage distress as New York emerges from the long-term impacts of the pandemic, ensuring accountability from mortgage servicers and lenders, and incentivizing them to comply with their existing obligations governing the loss mitigation process under New York law is one of the most important things that government can do to ameliorate the impact of the crisis and to prevent avoidable foreclosures.

Please contact Trina Kokalis at trinakokalis@lifairhousing.org or 631-567-5111 x 325 with any questions.