New York Bankers Association
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New York, New York 10016

Michael P. Smith
President & CEO

December 11, 2019

The Honorable Andrew M. Cuomo
Governor
State of New York
Executive Chamber
State Capitol
Albany, NY 12224

RE: **Opposition of S.5079A (Skoufis)/ A.1859A (Magnarelli)**

Dear Governor Cuomo:

The New York Bankers Association ("NYBA")[1] strongly opposes this legislation that would permit a municipality to compel a mortgagee to either complete a mortgage foreclosure proceeding or to issue a certificate of discharge of the mortgage, as well as file a satisfaction of the mortgage, for any property which has been certified as abandoned pursuant to Real Properties Actions and Proceedings Law, Section 1971. We urge that the bill be **disapproved**.

While NYBA is supportive of efforts to streamline an extremely long foreclosure process in New York, as well as address the zombie property and consequential blight issues in the State, this legislation, though good in intent, is likely unconstitutional, would incur

[1] NYBA is comprised of community, regional, and large banks and thrifts across every region of New York State. Together NYBA members employ nearly 200,000 New Yorkers, safeguard $2 trillion in deposits, and extend nearly $70 billion in home and small business loans.

unnecessary cost on municipalities, and requires an unrealistic timeframe for settling a foreclosure action given the lengthy foreclosure procedure in New York.

Most concerning, the bill would allow a municipality to force a mortgagee to issue a certificate of discharge of the mortgage within three months and file a satisfaction of the mortgage with the appropriate local office. We believe that this particular section of the bill, by creating a new liability on a mortgagee that is not covered in a contract, is in contravention of New York State and U.S. Constitutional principles that reject interfering with or impairing the provisions of contracts. Authorizing a third party (the municipality) to have standing to sue to force a mortgagee to give up rights within the contract, when the third party is not party to the contract between the mortgagor and mortgagee, contradicts well settled constitutional contract principles.

Moreover, forcing a mortgagee to discharge and file a satisfaction, *without it even being conditioned on the note being in default*, will harm the consumer who is dutifully working with the lender to mitigate and make whole its contract with the lender. From a municipality perspective, the legislature is setting up a locality to expend tax dollars on frivolous lawsuits that are impossible to carry out. From a community perspective, it will not prevent or cure blight, or ensure that the property gets sold to a party who will make improvements to the property. From a financial perspective, it will inject an unpredictable new amount of risk into the mortgage lending process, resulting in increased financing costs to all New York consumers, as well as a reduction of available home lending credit.

In addition, the legislation would allow a municipality to compel a mortgagee to start a foreclosure "if a note is in default" within three months of the municipality's action. While there may be some cases where there are bad actors, more than likely a bank may not have started foreclosure proceedings on what appears to be an abandoned property for good reason: often times banks are attempting loss mitigation, dealing with an estate dispute, or generally working with a borrower or their heirs to resolve issues before foreclosure. This legislation would encourage municipalities to force a mortgagee into not working with borrowers, thus dissuading attempts to protect consumers.

Furthermore, the municipality could compel the mortgagee to either commence a foreclosure and complete it within one year, or, if a foreclosure has already been commenced, file "the necessary motions and within three months paperwork" to move the case to judgment foreclosure within three months. This assumes that the mortgagee is the reason for the delay in proceedings, when often times it is the mortgagor, or even the court itself (which in many parts of the State have been backlogged in this issue area) that is causing delay. The mortgagee has no control over that timeframe and should not be held liable for delay it does not cause.

Finally, it is important to note that the foreclosure issues in New York have been improving since the immediate aftermath of the financial crisis. In March 2019, the Office of the New York State Comptroller (OSC) issued a report finding that statewide,

foreclosure filings fell by 46 percent between 2013 and 2018, and that the foreclosure rate has also fallen in every part of the State. In the report, OSC points to several recent pieces of legislation and court process changes that have helped in efforts to help manage vacant and abandoned properties, including land banks, the Vacant and Abandoned Property Database, expedited foreclosures for such properties, and the NYS Community Restoration Fund. Many of these were only enacted or expanded in 2016 and there is already improvement. While there are always ways to improve upon this success, it should be done in a careful and thoughtful manner so that unintended consequences are not the result.

For these reasons, the New York Bankers Association strongly opposes this legislation and urges that it be **disapproved**.

Sincerely,

Michael P. Smith

cc: Niall O'Hegarty, Esq.
Josh Norkin, Esq.