



New York Bankers Association
99 Park Avenue, 4th Floor
New York, New York 10016

Michael P. Smith
President & CEO

September 2, 2020

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

RE: Opposition of S.5357 (Comrie)/ A.6370 (Williams)

Dear Governor Cuomo:

The New York Bankers Association (“NYBA”)¹ urges this legislation related to the definition of a tenant requiring notice in the foreclosure process in New York be disapproved. Specifically, the bill would require plaintiffs in a foreclosure action to give notice of the foreclosure to lessees whose tenancy began *after* the foreclosure commenced. Currently, the law requires sending such notices to current tenants within 10 days of service of the notice that initiates the foreclosure action, with an established mechanism in place for foreclosure plaintiffs to obtain those names. While we appreciate and join in the bill’s goal of protecting vulnerable consumers from unscrupulous actors, we believe the bill poses significant challenges while creating confusion for a new tenant. For the reasons set forth below, NYBA opposes this bill and urges that the bill be **disapproved**.

At present, it is not legally required for landlords to notify foreclosure plaintiffs about tenancies created during the pendency of the foreclosure process. Furthermore, the law does not currently require landlords to disclose to prospective tenants a pending foreclosure action. The bill expands the definition of tenants requiring notice of a mortgage foreclosure action by removing the reference to the section of the Real

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.

Property Actions and Proceedings Law that defines the tenant requiring notice. This change in the law requiring foreclosure plaintiffs to notify new tenants *after* the foreclosure action is commenced poses significant challenges to the plaintiffs as they are not privy to the creation of a new tenancy nor the new tenant's information.

While NYBA supports a requirement to notify a tenant, instead, we believe a landlord is in the better position to give that notification. Foreclosure plaintiffs remain in an adversarial process with the landlord issuing these leases, as information exchanged between the parties is governed by specific legal rules. A landlord that issues new leases while a foreclosure action is pending already has all the information necessary regarding the status of the foreclosure process to provide the foreclosure notice. A landlord knows the new tenant, knows the plaintiff and knows the new leases' terms and conditions much more intimately than the foreclosure plaintiff, who has yet to learn of this new tenancy.

Requiring the foreclosure plaintiff, rather than the landlord, to send a foreclosure notice to newly minted tenants is more likely to create shock and surprise, as this bill would establish that a new tenant may only learn about a foreclosure proceeding once the foreclosure plaintiff tells them, by which time the ink on their lease is already dry. As such this bill ultimately delays the discovery of the foreclosure proceeding until after the new tenant signs the lease.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael P. Smith".

Michael P. Smith

cc: Joshua Norkin, Esq.