



NEW YORK STATE SENATOR

Jeffrey D. Klein

“Access to Justice in Lending” Act Passes Both Houses of State Legislature

JEFFREY D. KLEIN June 23, 2010

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Legislation Will Level the Legal Playing Field for Homeowners Facing Foreclosure

State Senator and Deputy Majority Leader Jeff Klein (D-Bronx/Westchester) and Assemblyman Rory Lancman (D-Queens) announced passage of the “Access to Justice in Lending Act” (A.1239/S.2614) by both houses of the legislature on Tuesday. The bill creates a reciprocal right to attorneys fees for borrowers who successfully defend against foreclosure when the mortgage agreement gives such a right to lenders, and is modeled on an existing provision of the law which give tenants the same reciprocal rights to attorneys fees in residential leases.

"We know that many of the families that we see being foreclosed upon today entered into their mortgages due to predatory lending. These are the very people who should have the best defenses to foreclosure, but lose their homes simply because they could not secure counsel to defend them. Today, we have put homeowners on even playing ground with the

lenders that are foreclosing on them, and given them a fighting chance to stay in their homes," said State Senator and Deputy Majority Leader Jeffrey D. Klein (D-Bronx/Westchester).

Virtually all mortgage agreements require borrowers to pay attorneys fees to lenders who foreclose on their mortgage, but borrowers don't have the same contractual right. As a result, few homeowners are able to retain attorneys in foreclosure proceedings – most default or try to represent themselves -- even though many homeowners have valid defenses to foreclosure and could save their homes with adequate legal representation. To add insult to injury, these homeowners then have the banks' attorneys fees tacked on to the overall amount they owe the bank, pushing desperate homeowners further into debt.

"We cannot let people with valid defenses to foreclosure lose their homes merely for lack of legal representation, particularly when the mortgage agreement written by the bank tilts the legal playing field in the bank's favor," said Assemblyman Lancman (D-Queens). "If homeowners had the money to pay for a lawyer to represent them in foreclosure, they probably wouldn't be in foreclosure in the first place. This legislation will allow lawyers to take on meritorious foreclosure cases with the fair and reasonable expectation that they will be compensated if they succeed."