



NEW YORK STATE SENATOR

Shirley L. Huntley

Foreclosure Prevention

SHIRLEY L. HUNTLEY July 7, 2010

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News From Senator Shirley L. Huntley

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Senate Moves To Empower Homeowners Facing Foreclosure

**Law penalizes lenders who fail to engage in good-faith
foreclosure settlement negotiations**

Senator Shirley L. Huntley (D-Jamaica) along with the State Senate has passed legislation (S.7798A) empowering homeowners facing foreclosure to take action when lenders fail to meet their obligation of entering into good-faith settlement negotiations at “settlement conferences.”

According to the Daily News, in 2009, more homeowners in Queens were at risk of foreclosure than in any other borough. There had been approximately 1,748 foreclosure filings in Queens alone, up 7.6% from the end of 2008. This has been a common scene throughout New York for thousands of families as a result of unethical subprime mortgage practices; now, thousands more are disadvantaged by those operating under the guise of helping them remain in their homes but who are in fact not following ethical business

practices, further endangering these families. They often offer financing at an interest rate that is higher than the rate for standard loans, sometimes at double digit interest rates.

This legislation sets up three obligations of a lender at a settlement conference:

- To appear with authority to execute a settlement with the homeowner;
- To negotiate in good faith; and
- To meet any deadline for the production of documents or evidence.

According to the Urban Institute report, foreclosures can result in a downward domino effect for the community. Therefore, Senator Huntley noted that helping families avoid foreclosure has significant benefits for the entire community – not just the family facing homelessness; foreclosed homes tend to lower local property values by approximately \$7,200. Services may also be cut as a result of properties coming off the local tax rolls and crime may increase in the area due to the availability of empty homes for the taking by vandals, thieves, and gangs.

This legislation strengthens the Foreclosure Prevention and Responsible Lending Act of 2008 which set up a mandatory settlement conference process for all homeowners facing foreclosure. That law requires parties to bring key documents to the conference, and obliges both parties to negotiate in good faith in order to reach a mutually agreeable resolution with the goal to reduce foreclosures. Many lenders disregarded the law, sending subcontracted attorneys to settlement conferences and foreclosure proceedings who have neither the preparation nor the authority to negotiate with homeowners.

According to a study conducted by the Center for New York City Neighborhoods, of the nearly 800 settlement conferences they studied in 2009 in New York City courts, only 3%

resulted in any kind of settlement. The study also showed that lawyers sent by lenders only had a copy of an offer already made to the lender 3% of the time, knew the status of an offer with the lender 6% of the time, and only had a phone number to call someone with authority to settle in 13% of the conferences.

True negotiations cannot be conducted if the lender's representative has no authority to negotiate. Therefore, in order to provide homeowners with a fair chance, Senator Huntley has voted to pass this legislation which would ensure that they get a true opportunity to keep their homes by mandating a representative, with authority to execute a settlement with the homeowner, be present at the negotiations.

"The laws on the books are intended to aid homeowners who need assistance in a tough time," said Senator Huntley. "Homeowners don't receive this aid when lenders choose to flout our laws. Their behavior wastes the homeowners' time, the court's time, and if the home is lost, hurts the entire economy."

The Senate's new legislation states that the second time the lender fails to meet the obligations as set out, the homeowner automatically makes a motion for an order to dismiss the foreclosure action, unless waived by the homeowner in writing by advice of counsel. Upon the third failure by the lender, the court shall grant the defendant's motion except on good cause shown by the lender.

"This bill sets up strict rules governing foreclosure proceedings and gives lenders a strong incentive to come to settlement conferences prepared to engage in constructive negotiations," Senator Huntley concluded. "This will help fulfill the original intent of helping people access the support and guidance they need to remain in their homes."

Visit the United States Department of Housing and Urban Development website to learn more about mortgage counseling services, your legal rights during the home-buying process, and safeguards against predatory lending: www.hud.gov or reach them by telephone at (212-264-8000)