

Legislative Bill Drafting Commission
14658-01-7

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship of this proposal

S. _____
Senate

a20 Adams	a23 Golden	a39 Larkin	a11 Padavan	a14 Smith
a55 Aloni	a33 Gonzalez	a51 LaValle	a21 Parker	a58 Stachowski
a42 Amadio	a47 Griffo	a40 LeBell	a30 Perkins	a16 Stavisky
a46 Arcella	a06 Hansen	a32 Libous	a51 Rath	a35 Stewart-Cousins
a43 Bruno	a26 Harbolla	a48 Little	a56 Sabach	a60 Thompson
a29 Connor	Thompson	a15 Maltova	a13 Sabini	a03 Trumbo
a00 DeFrancisco	a10 Mumley	a05 Marcellino	a41 Saland	a49 Valawky
a33 Diaz	a07 Johnson, C.	a62 Marfari	a19 Sampson	a59 Volker
a17 Dihan	a04 Johnson, O.	a18 Montgomery	a23 Savino	a55 Winnes
a29 Duane	a34 Klein	a38 Maraban	a31 Schneiderman	a48 Wright
a44 Farley	a26 Krueger	a54 Moxellie	a28 Serrano	a57 Young
a02 Flanagan	a27 Kruger	a12 Onorato	a51 Seward	
a08 Fuschillo	a24 Lanna	a37 Oppenheimer	a09 Skalos	

IN SENATE--Introduced by Sen

--read twice and ordered printed, and when printed to be committed to the Committee on

_____ A.
Assembly

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the multi-sponsorship of this proposal:

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

a049 Abbate	a047 Colton	a098 Guther	a030 Markov	a088 Rivera, M.
a001 Alessi	a010 Conte	a139 Hawley	a027 Mayerstein	a076 Rivera, P.
a021 Alfano	a032 Cook	a148 Hayon	a112 McDonald	a056 Robinson
a105 Amadora	a107 Crouch	a083 Heanitia	a035 McDonough	a067 Rodenthal
a084 Arroyo	a063 Cusick	a028 Hevazi	a104 Mendez	a012 Saladino
a126 Aubertine	a045 Cymbrowitz	a048 Hiskind	a017 McKevitt	a113 Sayward
a035 Aubry	a138 DeMonte	a018 Hooper	a102 Miller	a028 Seashorough
a136 Baccalera	a116 Dentito	a144 Hoyt	a054 Hillman	a016 Schindel
a098 Ball	a086 Diaz, L.	a060 Hyer-Symour	a103 Molinaro	a140 Schimminger
a124 Baniolay	a085 Diaz, R.	a042 Jacobs	a132 Morzella	a145 Schreeder
a014 Barza	a081 Dinowitz	a095 Jaffee	a037 Nolan	a122 Scomafava
a093 Benedetto	a124 Duprey	a057 Jarriles	a128 Oakes	a038 Sominario
a079 Benjamin	a003 Edgington	a131 John	a069 O'Donnell	a064 Silver
a073 Bieg	a004 Hoglebight	a074 Kavanagh	a137 O'Hara	a093 Spina
a085 Boyland	a130 Errigo	a065 Kellner	a081 Optiz	a121 Starke
a008 Boyle	a072 Espallant	a100 Kirwan	a150 Palment	a011 Sweeney
a089 Bradley	a071 Farrell	a129 Kolb	a088 Paulin	a110 Tadiaco
a044 Brennan	a005 Flahde	a135 Koon	a141 Peoples	a002 Thiele
a092 Brodsky	a123 Finch	a034 Lafayette	a039 Parsola	a061 Titone
a046 Brook-Kruey	a009 Fitzpatrick	a025 Lencman	a058 Perry	a031 Titus
a147 Buxling	a143 Gabryszak	a091 Latimer	a023 Pfeffer	a062 Tobacco
a117 Butler	a090 Galan	a013 Levine	a068 Towall	a054 Towns
a101 Cahill	a133 Hanks	a080 Lentol	a087 Fretlow	a115 Townsend
a096 Calhoun	a036 Gianeris	a125 Litton	a146 Quinn	a015 Walker
a045 Carvaz	a149 Giglio	a127 Lopez, P.	a097 Rabbitt	a041 Weinstein
a106 Ceccottrari	a066 Glick	a033 Lopez, V.	a009 Raia	a020 Weisenberg
a026 Carrossa	a040 Garson, D.	a126 Lupardo	a006 Ramon	a024 Woprin
a119 Christensen	a108 Gordon, T.	a111 Nages	a134 Redlich	a070 Wright
a033 Clark	a075 Gottfried	a120 Maganelli	a109 Rolly	a022 Young
a142 Cole	a077 Greene	a089 Maisel	a078 Rivera, J.	a094 Zabrowski, J.

--read once and referred to the Committee on

REALPALA

(Provides foreclosure relief for fundamentally unaffordable mortgage loans, second mortgages and home equity loans)

RPAP L. foreclosure relief

AN ACT

to amend the real property actions and proceedings law, in relation to providing foreclosure relief; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1) Single House Bill (introduced and printed separately in either or both Houses). Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 3 signed copies of bill and 4 copies of memorandum in support (single house); or 4 signed copies of bill and 6 copies of memorandum in support (uni-bill).

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1 Section 1. Legislative intent. The legislature declares that a public
2 emergency exists in regards to real estate foreclosures due to the
3 extension of fundamentally unaffordable mortgage loans, fundamentally
4 unaffordable second mortgages and fundamentally unaffordable home equity
5 loans. Many such loans were extended under conditions which evince
6 deception, misrepresentation and fraud on the part of many lenders and
7 agents. The presence of such loans is distorting the New York state real
8 estate market. The problems associated with these loans are adversely
9 affecting availability of capital, the demand for housing, and the value
10 of real estate. The financial problems created by such loans threaten to
11 spill over into the rest of the real estate market and the general econ-
12 omy. It is in the interest of New York state to ensure the rights of all
13 parties are protected and that all foreclosures which come into the New
14 York courts during this period are carefully scrutinized.

15 § 2. The real property actions and proceedings law is amended by
16 adding a new section 1304 to read as follows:

17 § 1304. Foreclosures; court relief. 1. Venue. In any action to fore-
18 close a mortgage under this article a mortgagor named in such action may
19 apply for relief in state supreme court pursuant to this section.

20 2. Timing of year-long moratorium. If a mortgagee has otherwise estab-
21 lished its legal right to commence a foreclosure proceeding pursuant to
22 this chapter, then such action shall be held in abeyance by the court
23 before which such action is pending. Such period of time is intended to
24 permit the parties to settle the action outside of court and to fore-
25 stall foreclosure within the current economic climate.

26 3. Process and fees. If an action to foreclose a mortgage has been
27 commenced prior to the effective date of a chapter of the laws of two
28 thousand eight which added this section, a mortgagor may ask the court

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1 before which such action is commenced to hold such action in abeyance
2 pursuant to subdivision two of this section. Motions on notice in
3 accordance with the civil practice law and rules made by the mortgagor
4 shall be deemed to have been filed by a poor person pursuant to article
5 eleven of the civil practice law and rules and all court fees otherwise
6 applicable to such actions and payable by a mortgagor shall be waived.
7 If a foreclosure action has not been commenced prior to the effective
8 date of a chapter of the laws of two thousand eight which added this
9 section, a mortgagor must commence an action in state supreme court by
10 filing and serving a summons pursuant to article three of the civil
11 practice law and rules with a request for relief pursuant to the terms
12 of this statute. In such case, such filing shall be deemed to have been
13 filed by a poor person pursuant to article eleven of the civil practice
14 law and rules and all filing and court fees otherwise applicable to such
15 actions and payable by a mortgagor in the form of index and motion fees
16 shall be waived.

17 4. Prima facie case. A mortgagor must establish a prima facie case in
18 the motion or pleading. Amendments to such motion or pleadings shall be
19 liberally granted. Such pleading must establish that:

20 a. the mortgagor is the owner of the real estate subject to foreclo-
21 sure;

22 b. the real property subject to foreclosure is the principal residence
23 of the mortgagor;

24 c. the mortgagor owns no other real estate;

25 d. the real estate is improved with a residential building containing
26 less than six dwelling units; and

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1 e. the real property is subject to a mortgage, second mortgage or home
2 equity loan which is, or is likely to become, the subject of foreclo-
3 sure.

4 5. Monthly payment schedule. If a prima facie case has been estab-
5 lished, the court must set forth the terms of a monthly payment schedule
6 which will preserve the relative financial interests of both parties
7 under terms which are equitable and just. Towards that end, the court
8 shall inquire into the finances of both the mortgagee and the mortgagor.
9 The purpose of such inquiry shall be to determine the minimum amount
10 necessary to maintain the mortgagee's financial position and to deter-
11 mine the amount which the mortgagor will be able to afford. If the
12 financial condition of the mortgagor exceeds the minimum amount neces-
13 sary to maintain the financial position of the mortgagee, such monthly
14 amount may be increased beyond the minimum amount as determined within
15 the discretion of the court. It is within the court's discretion to
16 determine whether the establishment of such payment schedule is possible
17 under terms which are equitable and just. The purpose of such monthly
18 payments is to preserve the relative financial interests of both parties
19 until a settlement can be reached but in no event shall such order
20 govern for more than one year. Failure to adhere to the terms of such
21 schedule may also result in foreclosure or lifting of the abeyance.
22 More than one single year long moratorium may be granted in the
23 discretion of the court subject to the facts established during the
24 proceedings.

25 6. Postponement order. Once the court determines that an equitable and
26 just payment schedule can be established, it shall issue an order which
27 sets forth the terms of such payment schedule and serve it upon all
28 parties to the proceeding. Such order shall set forth a return date for

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1 the reexamination of such matter after passage of the postponement time
2 period at a formal hearing on notice to the parties. The court may
3 tailor relief as required by the facts of each case that falls within
4 the purview of this statute. However, in no event shall such order post-
5 pone final action beyond one year without a re-examination of the
6 parties' financial circumstances after formal hearing on notice to the
7 parties. The time period of such order shall run from the date of the
8 entry of such order. Such abeyance shall not begin until the foreclo-
9 sure process has reached the point where a final determination is possi-
10 ble but shall be withheld until the postponement period has elapsed.
11 Entitlement to such abeyance may be established at any time regardless
12 of whether foreclosure is being sought by the mortgagee. Multiple post-
13 ponements may be granted in the discretion of the court if warranted by
14 the facts of a given case and the economic conditions across the state.

15 7. Continuing jurisdiction. The court shall maintain continuing juris-
16 isdiction of the matter until it reaches final resolution. Upon the appli-
17 cation of either party, prior to the expiration of the postponement
18 period, upon presentation of evidence that the terms fixed by the court
19 are no longer just and equitable, the court may revise and alter such
20 terms in such manner as the changed circumstances and conditions may
21 require.

22 § 3. This act shall take effect immediately and shall expire and be
23 deemed repealed 3 years after such date.