



June 30, 2022

Hon. Kathy Hochul
Governor of the State of New York
NYS Capitol Building
Albany, NY 12224

RE: Opposition to the Foreclosure Abuse Prevention Act (S5473/A7737)

Dear Governor Hochul,

The Mortgage Bankers Association (MBA)¹ would like to express our significant concerns with the Foreclosure Abuse Prevention Act (S5473 & A7737), which would abrogate the well-reasoned ruling by the New York Court of Appeals in *Freedom Mortgage Corporation v. Engel*. If signed, the legislation would potentially harm New York homeowners by limiting a lender's flexibility to work with borrowers in default to offer them home retention options in lieu of foreclosure. In addition, while it is difficult to precisely quantify the legislation's effect on the availability of credit, signing this legislation could have the unintended consequence of reducing access to affordable credit for borrowers in the state. To prevent harming New York borrowers, MBA urges you to veto this legislation.

The Foreclosure Abuse Prevention Act, if enacted, would reverse the affirmed and long-standing New York practice by lenders to suspend the statute of limitations timeline to enforce a mortgage in order to offer loss mitigation options and avoid a foreclosure sale. Reversing the court ruling of *Engel* and denying lenders an established tool to avoid proceeding with foreclosure would result in homeowners not receiving the necessary time to cure a payment default. Furthermore, it could encourage servicers interested in

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 330,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 1,900 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

assisting borrowers with home retention options to accelerate the foreclosure process simply to avoid the statute of limitations from lapsing and preventing the holder of the note from being able to enforce it.

The economic dislocation caused by the COVID-19 pandemic has led to the federal and many state governments to pass laws that would require lenders to provide additional forbearance options and delay foreclosures and evictions. MBA's members rose to this challenge and helped more than 6.5 million families safely exit the foreclosure process nationwide. Removing the option for a lender to decelerate a loan and provide borrowers with more time to cure a default will hurt many New Yorkers still attempting to recover from the economic loss of the pandemic.

In addition, the Foreclosure Abuse Prevention Act would also encourage home equity theft by sophisticated real estate investors who deceive homeowners to transfer their deed for a nominal sum, so the investor can take the property and litigate matters past the statute of limitations in order to discharge the mortgage. The result is the real estate investor reaps all the benefit of a mortgage-free property, and the consumer gets a nominal amount of money.

Servicers should not be allowed to manipulate the statute of limitations timeline, however, the bill as drafted, does not protect servicers that unilaterally decelerate in order to offer borrowers home retention options in lieu of foreclosure. A veto would allow all stakeholders to attempt to balance the interests here and achieve any legislative objective without unintended consequences that will fall on New York borrowers. If you are not inclined to veto the legislation, we respectfully request consideration of the following high priority amendments to be introduced during a 2021-2022 special session or at the beginning of the 2022-2023 state legislative session:

- Apply the measure's provisions on a prospective basis only; to new foreclosure actions filed after the effective date of the law.
- Define the scope of "neglect" as it relates to the "Savings Clause"
- Allow for loans to be automatically deaccelerated if the customer becomes current either through reinstatement or a retention option after foreclosure is filed, even if no payment is made.

MBA appreciates the opportunity to present our concerns with the Foreclosure Abuse Prevention Act in its current form. Our association believes that signing this legislation would exacerbate the economic harm caused by the pandemic and create barriers to servicer efforts to provide home retention options to New York borrowers in the wake of future disasters or economic downturns. MBA and its member companies urge you to veto this bill to preserve a valuable foreclosure prevention tool currently being used to keep borrowers in their homes. In addition, MBA urges you to engage the New York Department of Financial Services (NYDFS) prior to making a final decision on the bill to

gather additional information on the financial impact to your state. We would also welcome the opportunity to work constructively next year to better tailor this legislation and eliminate unintended consequences. If you have any questions, please feel free to contact Kobie Pruitt (kpruitt@mba.org) at MBA.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pete Mills".

Pete Mills
Senior Vice President, Residential Policy and Strategic Industry Engagement
Mortgage Bankers Association

Attached: NYMBA Letter of Opposition to S5473/A7737