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May 27, 2022

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

RE: S. 5473/A.7737

Dear Governor Hochul,

The New York Mortgage Bankers Association (NYMBA) maintains its grave concerns with proposed legislation that will have foreseeable adverse impacts for New Yorkers. While it is difficult to quantify the precise impact of any one legislative action on availability of credit, this bill will have material and negative consequences. The fact that federal regulatory agencies have expressed similar concerns underlines this risk. NYMBA urges you to veto the current bill.

Vetoing this bill will not be the end of the discussion or result in problems that will not be addressed. Our members and the Legislature share a goal of ensuring that the foreclosure process and associated judicial review is fair, equitable and proceeds with due speed. A veto will allow for industry and lawmakers to work together to address concerns and craft a bill that will not result in reduced access to credit, increased community blight and higher costs borne by all New Yorkers in an increasingly expensive market. Our members are engaged and eager to address the concerns identified, and any discussions on an improved bill would be swift and constructive.

In earlier discussions with Senator Sanders' office about our concerns, the Senator's counsel, Ivan Young, provided insights and noted that sections of the bill were not intended as industry perceived them. Through drafting errors, the bill does not permit a lender to pursue legal actions if a borrower defaults on subsequent mortgage payments. Mr. Young specifically stated that the bill is not meant to impede lenders' ability to pursue future foreclosure actions in the event of a future default. This is among the several technical and complex concerns NYMBA has and why we urge the bill be vetoed.

If not persuaded to veto the bill, we respectfully request consideration of the following high-priority amendments to be adopted before the end of the 2022 session which includes the correction for the drafting error mentioned above. This is an imperfect solution that may still result in the unanticipated consequences we mention unless any amendments are enacted near-simultaneously with the underlying bill. This submission is made without prejudice to suggested amendments that other industry organizations opposing this bill may have made. We have merely included the most important recommendations from NYMBA members as the session comes to a close next week. Attached to this letter is suggested language that corresponds to the major issues noted in the excerpts of Senate Bill 5473 provided below.

**1. Apply the measure's provisions on a prospective basis only; to new foreclosure actions filed after the effective date of the law.**

This act shall take effect immediately and shall apply to all actions commenced on an instrument described under subdivision four of section two hundred thirteen of the civil

practice law and rules in which a final judgment of foreclosure and sale has not been enforced.

**Commented [CW1]:** This section will disrupt the markets to the extent that they deal with federally related loans. Recommend: "This act shall take effect immediately."

## 2. Define the scope of "neglect" as it relates to the "Savings Clause"

§ 6. The civil practice law and rules is amended by adding a new section 205-a to read as follows:

§ 205-a. Termination of certain actions related to real property. (a) If an action upon an instrument described under subdivision four of section two hundred thirteen of this article is timely commenced and is terminated in any manner other than a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for any form of neglect, including, but not limited to those specified in subdivision three of section thirty-one hundred twenty-six, section thirty-two hundred fifteen, rule thirty-two hundred sixteen and rule thirty-four hundred four of this chapter, for violation of any court rules or individual part rules, for failure to comply with any court scheduling orders, or by default due to nonappearance for conference or at a calendar call, or by failure to timely submit any order or judgment, or upon a final judgment upon the merits, the original plaintiff, or, if the original plaintiff dies and the cause of action survives, his or her executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months following the termination, provided that the new action would have been timely commenced within the applicable limitations period prescribed by law at the time of the commencement of the prior action and that service upon the original defendant is completed within such six-month period. For purposes of this subdivision:

**Commented [CW2]:** This section does not account instances that are beyond the control of the lender. For example: court moratoriums; when FEMA puts a hold on mortgages; Ch.13 Bankruptcy plans. Insert: "Inexcusable" neglect.

**Commented [CW3]:** This section uses language that implies the plaintiff is an individual rather than a lender or business entity. References to death are not applicable. "Original" plaintiff does not account for the subsequent sale of mortgages that occurs the secondary market and would interfere with the ability to so. Suggestion to modify/delete references to "original" plaintiff.

1. a successor in interest or an assignee of the original plaintiff shall not be permitted to commence the new action, unless pleading and proving that such assignee is acting on behalf of the original plaintiff; and

**Commented [CW4]:** This section does not account for the sale of mortgage loans on the secondary market. Suggest modifying this provision to "proving that such assignee has standing." (See attached)

2. in no event shall the original plaintiff receive more than one six-month extension.

(b) Where the defendant has served an answer and the action upon an instrument described under subdivision four of section two hundred thirteen of this article is terminated in any manner, and a new action upon the same transaction or occurrence or series of transactions or occurrences is commenced by the original plaintiff, or a successor in interest or assignee of the original plaintiff, the assertion of any cause of action or defense by the defendant in the new action shall be timely if such cause of action or defense was timely asserted in the prior action.

## 3. 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.

§ 3. Subdivisions 4 and 5 of section 17-105 of the general obligations law are amended to read as follows:

4. ~~Except as provided in subdivision five, no~~ An acknowledgment, waiver or promise has any effect to, promise or agreement, express or implied in fact or in law, shall not, in form or effect, postpone, cancel, reset, toll, revive or otherwise extend the time limited for commencement of an action to foreclose on a mortgage for any greater time or in any other manner than that



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provided in this section, ~~nor~~ unless it is made as provided in this section.

5. This section does not change the requirements, or the effect with respect to the accrual of a cause of action, nor the time limited for commencement of an action, ~~or~~ based upon either:

- a. a payment or part payment of the principal or interest secured by the mortgage, or
- b. a stipulation made in an action or proceeding.

§ 4. Section 203 of the civil practice law and rules is amended by adding a new subdivision (h) to read as follows:

(h) Claim and action upon certain instruments. Once a cause of action upon an instrument described in subdivision four of section two hundred thirteen of this article has accrued, no party may, in form or effect, unilaterally waive, postpone, cancel, toll, revive, or reset the accrual thereof, or otherwise purport to effect a unilateral extension of the limitations period prescribed by law to commence an action and to interpose the claim, unless expressly prescribed by statute.

**Commented [CW5]:**  
This section fails to account for the ability to de-accelerate a loan and needs to add a provision to allow lenders/servicers the right to do so. (See attached)

**Commented [CW6]:** Currently there is no statutory prescription that is covered with the last clause of this statute. (See attached)

NYMBA appreciates the opportunity to present our concerns with the bill in its current form. We want to partner with lawmakers to find solutions that address issues facing New York homeowners. Since the financial crisis, the real estate finance industry has made major advances in working with borrowers who experience difficulty in making their monthly mortgage payments. NYMBA members stepped up their efforts during the pandemic, abiding by state and federal emergency parameters, to find solutions to keep borrowers in their homes and avoid serious default that leads to foreclosure.

Please reach out to me if you or your staff have questions or would like to engage further on this or other matters for which we can be a resource.

Respectfully,  
  
Christina Wiley  
Executive Director  
518-963-0593  
cwiley@nymba.org

Encl.

2021 New York Senate Bill No. 5473, New York Two Hundred Forty-Fourth Legislative Session

NEW YORK BILL TEXT

**TITLE: Relates to the rights of parties involved in foreclosure actions.**

VERSION: Amended/Substituted

February 14, 2022

Sanders, Jr., James



[Image 1 within document in PDF format.](#)

SUMMARY: SANDERS, KAVANAGH, SALAZAR, SKOUFIS Amd ii203, 206, 306-b & 2001, RR3212 & 3217, add i205-a, CPLR; amd ii17-103 & 17-105, Gen Ob L; amd i1304, RPAP L; amd i282, RP L Relates to the rights of parties involved in foreclosure actions; allows the mortgagee, or mortgagor and borrower to recover attorney fees; makes conforming technical changes.

**TEXT:**

STATE OF NEW YORK \_\_\_\_\_

5473--D

2021-2022 Regular Sessions

IN SENATE

March 8, 2021 \_\_\_\_\_

Introduced by Sens. SANDERS, THOMAS, SALAZAR, ADDABBO, BAILEY, BIAGGI, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, GOUNARDES, HARCKHAM, HINCHEY, HOYLMAN, JACKSON, KAMINSKY, KAVANAGH, KENNEDY, KRUEGER, LIU, MANNION, MAY, MYRIE, PARKER, RAMOS, REICHLIN-MELNICK, RIVERA, SAVINO, SEPULVE- DA, SKOUFIS, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property actions and proceedings law, the general obligations law and the civil practice law and rules, in relation to the rights of parties involved in actions commenced upon real property related instruments

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

Section 1. Short title. This act shall be known and may be cited as the “foreclosure abuse prevention act”.

§ 2. [Subdivision 3 of section 1301 of the real property actions and proceedings law](#), as added by chapter 312 of the laws of 1962, is amended and a new subdivision 4 is added to read as follows:

3. While the action is pending or after final judgment for the plaintiff therein, no other action shall be commenced or maintained to recover any part of the mortgage debt, **including an action to foreclose the mortgage**, without leave of the court in which the former action was brought. **The procurement of such leave shall be a condition precedent to the commencement of such other action and the failure to procure such leave shall be a defense to such other action.** For purposes of this subdivision, in the event such other action is commenced without leave of the court, the former action shall be deemed discontinued upon the commencement of the other action, unless prior to the entry of a final judgment in such other action, a defendant raises the failure to comply with this condition precedent therein, or seeks dismissal thereof based upon a ground set forth in paragraph four of subdivision (a) of rule thirty-two hundred eleven of the civil practice law and rules. This subdivision shall not be treated as a stay or statutory prohibition for purposes of calculating the time within which an action shall be commenced and the claim interposed pursuant to sections two hundred four and two hundred thirteen of the civil practice law and rules.

4. If an action to foreclose a mortgage or recover any part of the mortgage debt is adjudicated to be barred by the applicable statute of limitations, any other action seeking to foreclose the mortgage or recover any part of the same mortgage debt shall also be barred by the statute of limitations.

§ 3. Subdivisions 4 and 5 of section 17-105 of the general obligations law are amended to read as follows:

4. ~~Except as provided in subdivision five, no~~ An acknowledgment, waiver ~~or promise has any effect to, promise or agreement, express or implied in fact or in law, shall not, in form or effect, postpone, cancel, reset, toll, revive or otherwise~~ extend the time limited for commencement of an action to foreclose ~~or~~ a mortgage for any greater time or in any other manner than that provided in this section, ~~nor~~ unless it is made as provided in this section.

5. This section does not change the requirements, or the effect with respect to the **accrual of a cause of action or an agreement to de-accelerate a mortgage loan**, nor the time limited for commencement of an action, ~~or~~ based upon either:

a. a written agreement with the party to be charged or payment or part payment of the principal or interest secured by the mortgage, or b. a stipulation made in an action or proceeding.

§ 4. Section 203 of the civil practice law and rules is amended by adding a new subdivision (h) to read as follows:

(h) Claim and action upon certain instruments. Once a cause of action upon an instrument described in subdivision four of section two hundred thirteen of this article has accrued, no party may, in form or effect, unilaterally waive, postpone, cancel, toll, revive, or reset the accrual thereof, or otherwise purport to effect a unilateral extension of the limitations period prescribed by law to commence an action and to interpose the claim, unless **expressly prescribed by statute notice is given to the obligor, their successor or assigns.**

§ 5. Subdivision (c) of section 205 of the civil practice law and rules, as amended by chapter 216 of the laws of 1992, is amended to read as follows:

(c) Application. This section also applies to a proceeding brought under the workers' compensation law **but shall not apply to any proceeding governed by section two hundred five-a of this article.**

§ 6. The civil practice law and rules is amended by adding a new section 205-a to read as follows:

§ 205-a. Termination of certain actions related to real property. (a) If an action upon an instrument described under subdivision four of section two hundred thirteen of this article is timely commenced and is terminated in any manner other than a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for any form of **inexcusable** neglect, including, but not limited to those specified in subdivision three of section thirty-one hundred twenty-six, section thirty-two hundred fifteen, rule thirty-two hundred sixteen and rule thirty-four hundred four of this chapter, for violation of any court rules or individual part rules, for failure to comply with any court scheduling orders, or by default due to nonappearance for conference or at a calendar call, or by failure to timely submit any order or judgment, or upon a final judgment upon the merits, the ~~original plaintiff, or, if the original plaintiff dies and the cause of action survives, his or her executor or administrator,~~ may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months following the termination, provided that the new action would have been timely commenced within the applicable limitations period prescribed by law at the time of the commencement of the prior action and that service upon the original defendant is completed within such six-month period. For purposes of this subdivision:

1. a successor in interest or an assignee of the original plaintiff shall not be permitted to commence the new action, unless pleading and proving that such assignee **is acting on behalf of the original plaintiff has standing to maintain the**

**new action**; and

**2. in no event shall the original plaintiff receive more than one six-month extension.**

**(b) Where the defendant has served an answer and the action upon an instrument described under subdivision four of section two hundred thirteen of this article is terminated in any manner, and a new action upon the same transaction or occurrence or series of transactions or occurrences is commenced by the original plaintiff, or a successor in interest or assignee of the original plaintiff, the assertion of any cause of action or defense by the defendant in the new action shall be timely if such cause of action or defense was timely asserted in the prior action.**

§ 7. [Subdivision 4 of section 213 of the civil practice law and rules](#) is amended by adding two new paragraphs (a) and (b) to read as follows:

**(a) In any action on an instrument described under this subdivision, if the statute of limitations is raised as a defense, and if that defense is based on a claim that the instrument at issue was accelerated prior to, or by way of commencement of a prior action, a plaintiff shall be estopped from asserting that the instrument was not validly accelerated, unless the prior action was dismissed based on an expressed judicial determination, made upon a timely interposed defense, that the instrument was not validly accelerated.**

**(b) In any action seeking cancellation and discharge of record of an instrument described under subdivision four of section fifteen hundred one of the real property actions and proceedings law, a defendant shall be estopped from asserting that the period allowed by the applicable statute of limitation for the commencement of an action upon the instrument has not expired because the instrument was not validly accelerated prior to, or by way of commencement of a prior action, unless the prior action was dismissed based on an expressed judicial determination, made upon a timely interposed defense, that the instrument was not validly accelerated.**

§ 8. [Rule 3217 of the civil practice law and rules](#) is amended by adding a new subdivision (e) to read as follows:

**(e) Effect of discontinuance upon certain instruments. In any action on an instrument described under subdivision four of section two hundred thirteen of this chapter, the voluntary discontinuance of such action, whether on motion, order, stipulation or by notice, shall not, in form or effect, waive, postpone, cancel, toll, extend, revive or reset the limitations period to commence an action and to interpose a claim, unless expressly prescribed by statute.**

§ 9. Severability clause. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 10. This act shall take effect immediately ~~and shall apply to all actions commenced on an instrument described under subdivision four of section two hundred thirteen of the civil practice law and rules in which a final judgment of foreclosure and sale has not been enforced.~~