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**Date: December 17, 2009**  
**To: All Clients and Friends**  
**From: Cliff Bernstein**  
**Re: Enactment of New Mortgage Foreclosure Legislation**

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**NEW YORK  
LEGISLATIVE ALERT**

## **Enactment of New Mortgage Foreclosure Legislation**

The New York State Legislature has passed and Governor Patterson has signed Program Bill No. 46 to significantly expand the scope of the mortgage foreclosure legislation enacted in 2008 that pertained to subprime loans.

Also known as S66007/and A40007, the legislation, which takes effect immediately, makes many important changes in the law and, most importantly, expands the use of early mandatory settlement conferences to include all home loans.

At the bottom of this message is a link to a copy of the Bill, the Sponsors' Memorandum and the Governor's message. Here are some of the major points covered by the legislation:

- Expands the 90-day pre-foreclosure notice currently sent for subprime loans to include all home loans, including loans on cooperative apartments.
- Requires lenders who serve a 90-day notice on a homeowner to make, within three days of that service, a regulatory filing with the Banking Department with specified information to allow the Banking Department and the Division of Housing and Community Renewal to provide targeted assistance to distressed homeowners during the pre-foreclosure period and closely monitor foreclosure statistics
- Expands the scope of early mandatory settlement conferences to include borrowers of all home loans and not just borrowers with subprime loans and requires both plaintiffs and defendants to negotiate in good faith to reach a mutually agreeable resolution, including a loan modification, if possible
- Establishes protections for tenants in foreclosed properties by requiring that they receive written notification of the foreclosure action and the change in ownership of the property, and be permitted to remain in their home for the remainder of their lease term or 90 days, whichever is longer, provided that such lease requires the payment of rent that is not substantially less than fair market rent
- Requires plaintiffs in a foreclosure action who obtain a judgment of foreclosure and sale to maintain the foreclosed property so that it does not pose a blight or nuisance, or create a blighting influence on neighboring properties -- if the property is occupied by a tenant, the plaintiff must also maintain the property in a safe and habitable condition
- Prevents brokers who perform distressed property consulting services from accepting upfront fees

- Permits the court to award reasonable attorneys' fees to a prevailing borrower in a foreclosure action

This is a brief summary of the major points covered by the legislation and many of you will want to read the entire Bill.

This legislative update was prepared by Steve Alden, Rebecca Case Grammatico and Harry Meyer.

To view/download, the Bill, the Sponsors' Memorandum and the Governor's message, go to [www.nysba.org/RPLSLegislation](http://www.nysba.org/RPLSLegislation).

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