



March 4, 2015

The Honorable Eric T. Schneiderman
New York State Attorney General
Office of the Attorney General
The Capitol
Albany, NY 12224-0341

RE: Vacant and Abandoned Properties in New York State

Dear State Attorney General Schneiderman,

The New York Mortgage Bankers Association (NYMBA)¹ and the Mortgage Bankers Association (MBA)² — respectively the statewide and national associations representing the real estate finance industry — share your concern about the vacant and abandoned property epidemic in New York State. These empty homes inadvertently become havens for a full range of criminal activities, rendering neighborhoods and communities unsafe for families and capital investment. In addition, vacant and abandoned properties devalue neighboring home values and escalate maintenance and administrative costs for local officials and mortgage lenders/servicers. These harms are a drain on every aspect of the housing finance system, impacting consumers, industry, and the government alike.

¹ The New York Mortgage Bankers Association, Inc. (NYMBA), founded in 2014, is a statewide organization, devoted exclusively to the field of real estate finance. NYMBA's rapidly growing membership comprises of both bank and non- bank mortgage lenders and servicers, as well as a wide variety of mortgage industry-related firms. The NYMBA was formed to encourage its members to engage only in sound and ethical business practices, and to inform its members of changes in the laws and regulations affecting the mortgage business. The Association helps those engaged in or affected by the mortgage business to be better informed and more knowledgeable. It is dedicated to the maintenance of a strong real estate finance system. This involves support for a strong economy, a public-private partnership for the production and maintenance of single and multi-family homeownership opportunities, and a strong secondary mortgage market. For additional information on the New York Mortgage Bankers Association, visit NYMBA's website: www.nymba.org.

² The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, DC, the Association works to ensure the continued strength of the Nation's residential and commercial real estate markets; to expand homeownership and 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 over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information on the Mortgage Bankers Association, visit MBA's website: www.mba.org.

Recently, we have been informed that you will re-propose legislation related to this issue — the *Abandoned Property Neighborhood Relief Act* — for introduction in the 2015 legislative session by State Senator Jeffrey Klein and State Assemblywoman Helene Weinstein.³ We applaud your collective desire to seek a solution for vacant and abandoned properties, in the current legislative session and in 2014.⁴ However, we have numerous concerns with what we anticipate will be the provisions of the *Act* upon introduction. One provision that is of particular concern is the proposed requirement for mortgage lenders/servicers to identify, secure and maintain vacant and abandoned properties prior to completing the foreclosure process.⁵ Such a provision raises serious legal and economic issues for lenders/servicers, ranging from trespass concerns to the costs of maintenance for properties that they do not own. At best, the *Act* would provide a rudimentary level of preservation for vacant and abandoned properties, but would fail to provide the lasting, corrective solution that New York communities and neighborhoods deserve and need.

Although we view legislation as being necessary to address the vacant and abandoned property epidemic, the NYMBA and MBA believe that any legislative proposal introduced must confront the larger question: **How do we return New York’s current backlog of vacant and abandoned residential properties to productive homeownership?**

In May 2013, the Federal Reserve Bank of Cleveland published a staff report, titled “Policy Considerations for Improving Ohio’s Housing Markets.” Their extensive research resulted in a number of important recommendations, the first of which was the need for a “foreclosure fast-track for vacant and abandoned properties.”⁶ While written for Ohio, this recommendation would also be beneficial for states with protracted foreclosure timeframes like New York, which has the longest in the country.⁷ Bringing the State’s empty homes back to market in a faster, more efficient manner would allow for new homeownership opportunities, as well as improvements in community safety and growth for property values. As the Federal Reserve Bank indicates, “when a home is vacant and abandoned, efforts to protect homeowners may unintentionally create costs with no

³ New York State Office of the Attorney General, Press Release, “A.G. Schneiderman To Submit Expanded Legislation To Address Growing Problem Of ‘Zombie Properties’” (Feb 16, 2015), available at www.ag.ny.gov/press-release/ag-schneiderman-submit-expanded-legislation-address-growing-problem-%E2%80%9Czombie-properties.

⁴ See New York Assembly Bill 9341 and New York Senate Bill 7350 (2013-2014).

⁵ See *supra* note 3.

⁶ “Policy Considerations for Improving Ohio’s Housing Markets,” A Staff Report of the Federal Reserve Bank of Cleveland (May 22, 2013):

“A foreclosure fast-track for vacant and abandoned properties: It takes a long time—an average of one to two years—for mortgage loans to go from delinquency through the foreclosure process in Ohio. When a home is vacant and abandoned, efforts to protect homeowners may unintentionally create costs with no corresponding benefits. These ‘deadweight losses’ resulting from a lengthy foreclosure process include legal costs, physical damage to properties, crime, and downward pressure on neighboring property prices. Many states have moved to speed up the mortgage foreclosure process in cases where the owner has abandoned the home.”

⁷ See Fannie Mae Foreclosure Time Frames, available at https://www.fanniemae.com/content/guide_exhibit/foreclosure-timeframes-compensatory-fees-allowable-delays.pdf (As of Nov. 17, 2014); See Freddie Mac Foreclosure Time Lines, available at <http://www.freddiemac.com/learn/pdfs/service/exhibit83.pdf> (As of Nov. 1, 2014).

corresponding benefits.”⁸ Requiring mortgage lenders/servicers to identify, secure and maintain vacant and abandoned properties prior to completing the foreclosure process results in significant expenditures by lenders/servicers on behalf of homeowners that have already abandoned the home and the neighborhood. Actions to expedite the process of bringing these properties back to productive use must instead be championed.

Building on the Federal Reserve Bank’s staff report and the need for a vacant and abandoned property solution, in September 2014 MBA brought together key representatives from numerous mortgage lenders/servicers, along with leading industry attorneys, property preservation and foreclosure experts, and state MBA leaders — including leadership of the NYMBA. After months of discussion, this working group approved a comprehensive series of principles that would responsibly expedite the foreclosure process for vacant and abandoned properties. MBA and the NYMBA believe a solution that protects borrower rights while expediting foreclosure for truly vacant and abandoned properties is a better solution for New York than the status quo, or actions that would simply make it more difficult to foreclose or require legally vague duties for lenders/servicers.

We have enclosed a copy of this approved document, titled “Principles to Expedite the Foreclosure Process for Vacant and Abandoned Properties.” We encourage you and your staff to review these Principles, as we believe they serve as a starting point for developing a targeted fast-track foreclosure process for vacant and abandoned homes that would efficiently convert these New York properties to responsible homeownership situations.

We ask that you set aside the *Abandoned Property Neighborhood Relief Act* and work with the real estate finance industry to develop legislation that embodies these Principles. If you would like to discuss these Principles further, or would like to work with us to create legislation that focuses on returning vacant and abandoned properties to productive use, please feel free to contact Marianne Collins at (518) 963-0593 (mcollins@nymba.org) or Scott Nowak at (202) 557-2811 (snowak@mba.org).

Respectfully,



Pete Mills
Senior Vice President
Residential Policy and Member Services
Mortgage Bankers Association



Marianne Collins
Executive Director and COO
New York Mortgage Bankers Association

⁸ See *supra* note 6.

CC: The Honorable Jeffrey D. Klein
The Honorable Helene E. Weinstein

Attachment: "Principles to Expedite the Foreclosure Process for Vacant and Abandoned Properties"