

# **WESTERN NEW YORK LAW CENTER, INC.**

237 Main Street, Suite 1030, Buffalo, New York 14203

---

Telephone: (716)855-0203 x6  
Fax: (716)855-0203

E-Mail: [wnylc@wnylc.com](mailto:wnylc@wnylc.com)  
[klynch@wnylc.com](mailto:klynch@wnylc.com)

Testimony by Kathleen A. Lynch, Esq. on behalf of  
Western New York Law Center Inc.

Thank you for the opportunity to address you today relating to the Governor's budget. My name is Kathleen Lynch. I am an attorney at the Western New York Law Center, a not for profit law and technology firm. Our mission is to represent low-income and underserved clients and groups who would not otherwise be entitled to advocacy in civil arenas and to provide legal, training and technical assistance to legal service organizations.

My comments today relate primarily to the importance of funding the work that our Law Center and other legal assistance agencies perform-especially as we attempt to deal with the fallout from abusive lending practices in the sub-prime market. We provide unique and valuable legal, research, advocacy, and technical services. We deeply appreciate the Governor's recognition that access to justice for all is essential and that NY residents and communities can be devastated by abusive lending practices. We appreciate the funding provided by the Governor, and the Legislature, in the 2007-2007 budget for civil legal services and today, urge the Governor to maintain and strengthen this commitment.

We are members of New Yorkers for Responsible Lending and applaud the recent announcement by Governor Spitzer and Attorney General Cuomo which outlines initiatives to combat the abuses in the lending industry. This is a great start that will assist housing counseling and legal organizations like WNYLC that have been on the ground dealing with these issues facing borrowers and communities for a long time. It is absolutely necessary to arm our agencies with the resources and tools needed to diminish the negative impact of these harmful practices.

The WNYLC is funded primarily by IOLA but also receives a small amount of funding through Civil Legal Services as well as the State Senate and the Assembly and the City of Buffalo to work on advocacy and projects related to efforts to combat abusive lending practices and to promote fair lending. We provide legal support, training and technical support to legal services entities by designing and advocating for programs like the local Foreclosure Prevention

Project as well as to government and to other not-for-profit agencies and organizations like the Predatory Lending Task Force. We co-hosted the HALT conference in Buffalo NY, playing a major role in planning the event, securing speakers and also video taping and producing a web video for the Banking Department.

The WNYLC has coordinated a Community Reinvestment and Fair Lending Project at the Center since 1999 in an effort to increase access to fair credit for low to moderate income borrowers and neighborhoods. We also advocate for increased access to Small Business credit. For over two years, I have served as Coordinator of the Mayor's Anti-Flipping Task Force, which is Co-Chaired by Senator Stachowski and Assemblymember Sam Hoyt. This task force was created to combat destructive real estate practices, including flipping, fraud and foreclosures, all of which have seriously harmed Buffalo neighborhoods. Through this effort, we have assisted NYS Attorney General Andrew Cuomo in his prosecution of 2 major flipping related lawsuits in Western NY. We continue to provide research to the Attorney General as well as to a number of other federal and state law enforcement agencies to help detect fraud over the internet and in real estate transactions. The WNYLC, with the assistance of an Americorps Vista volunteer, has undertaken to conduct a Foreclosure Study Project of Erie County in order to gain actual information about the impact of this problem in our county. Based on our research, we are very concerned that news reports that cite sources like Realty-Trac to report the number of potential foreclosures in Western New York are not fully representative of the actual number of foreclosure filings in Western NY.

Though the general public is now becoming painfully aware of the impact of abusive lending practices on our communities and our economy, this effect does not come as a surprise to legal services attorneys like the WNYLC that have been dealing with the impact on clients and neighborhoods for a long time. It is the reason that we have dedicated our limited resources to this area of practice and advocacy,

In our investigation and research for the AFTF, we have observed a number of harmful practices and policies that negatively impact consumers and neighborhoods. Collectively, we have been able to work with city, state and federal departments and agencies to effect change that has reduced flipping and fraud in Buffalo.

Still, in a city where we already have too many vacancies, we understand that increased foreclosures will devastate neighborhoods. These properties are used in flipping schemes and we are concerned that more foreclosures will increase the number of properties that may become available for flipping. In addition, the foreclosure process does not even have to be completed for a vacancy to occur. We have seen a pattern emerge here in Buffalo where lenders commence foreclosure proceedings that result in the borrower leaving the home before the

foreclosure is completed, usually because there has been no successful workout or the borrower receives a notice to vacate. Once the lender realizes that actual value of the property is lower than the loan value, it will abandon the foreclosure proceeding. This has the effect of creating a vacant property since the title never passes back to the lender and the homeowner is long gone. Vacant properties deteriorate and become havens for crime and arson, ultimately placing the burden of maintenance and demolition costs on the City. These are the kinds of activities we target in our work.

Through our work on the Mayor's Anti-Flipping Task Force, we've discovered that a variety of real estate related data is maintained by a variety of governmental offices. Therefore, it is a challenge to conduct an analysis of real estate transactions that would detect trends like foreclosure, fraud, and property flipping. For example, the state requires county clerks to maintain records such as recorded deeds, mortgages and foreclosure documents; however, indexing this information by anything more than party name is not required. Indexing by a unique identifier (such as a property address, or SBL) for property parcels is not required. As a result, a mandatory manual search of records by type of record is necessary to determine information such as the recorded owner of a property, if that property has a mortgage, and if that mortgage has entered the foreclosure process. These records are not linked and therefore understanding where foreclosures or even mortgages are executed is impossible to determine without doing an in-depth search of documents. For example, if I were asked if a property at 123 Smith St. had a mortgage, I would first have to consult the municipality to find out who the current owner is, then I would have to go to the county clerks office and search under that owners name and look at all the mortgage documents to see if they related to the property address in question, then I would have to determine if the mortgage had been satisfied or if a foreclosure initiation (lis pendens) had been filed against it, and if there was a judgment of foreclosure. Essentially, short of looking at every filed document, understanding how many foreclosures have been initiated on loans executed within the last five years is impossible.

The methods and condition of reported real estate data is thus a concern for those of us who wish to analyze actual trends. It seems clear that it would benefit all NY municipalities to recognize trends like flipping and increased foreclosures as soon as possible.

Information is provided through industry self-reporting. However, there are limits with respect to the information provided and also the kind on the analyses conducted for industry purposes. Though companies such as RealtyTrac report on things such as foreclosure, these reports are not wholly reflective of the market. For instance, a recent report by RealtyTrac showed cities with the most foreclosures, however, the report gave an index of foreclosures in relation to all housing units whether vacant or occupied (all housing units include apartments as well as mobile homes). This index is not very accurate in terms of foreclosures

in relation to all mortgaged homes, and thus cannot be understood as giving an accurate description of foreclosure trends, especially in areas such as Buffalo, which had a vacancy rate of 16% in 2000. In fact, a presentation recently given by the New York State Banking Department showed that in the first half of 2006, Erie County experienced 1,715 foreclosures, while New York City (all five Boroughs) experienced 3,686 foreclosures. While Erie County experienced just over half the number of foreclosure of New York City, it has just an eighth of the population of New York City. Additionally, the approximate rate of foreclosure (of owner occupied housing units) over the same period in Erie County was 6.9% while the same figure for New York City was 4%.

Another industry source is First American Loan Performance. The Ninth Periodic Mortgage Fraud Case Report to the Mortgage Bankers Association, released in April 2007 utilized representative reporting from lenders through First American Loan Performance. A troubling piece of that report indicated that the Buffalo Niagara MSA had the highest number of 90 day defaults, in the first 90 days, on PRIME mortgages after accounting (separating out) for Hurricane affected areas. We do NOT know what information lies behind these statistics such as why these borrowers are defaulting, which lenders were making these loans, and whether there were mortgage brokers involved.

The federal government requires reporting from some lenders through the Home Mortgage Disclosure Act (HMDA). This information is helpful in determining which lenders are making loans to which type of borrowers and in which census tracts, including high cost loans. However, we discovered that in Erie County, just shy of half of all mortgages executed over the last five years loans were loans that had no requirement to report under HMDA. Through our work on the Anti-Flipping Task force project, we've discovered that individuals and companies hold many private mortgages and then sell those mortgages. However, because these individuals are not required to report, we have no way to know the terms of those mortgages as the note is not required to be filed with the mortgage at the clerk's office.

It is important to note that even HMDA data does not provide loan terms and lenders have only recently been required to report interest rates over a particular threshold, which still leaves many rates unreported.

With respect to a recommendation for Foreclosure Data Collection, we support the goal expressed by NYRL to collect and analyze data and oversight by the New York State Banking Department. We have recommendations on how to best collect and record such information based on our experiences with research and data analysis and WNYLC could be a resource to a statewide effort.

Clearly, a standardized statewide format for reporting real estate transaction data, which links property parcel identifiers to owners, lenders, and lis pendens actions and which includes interest rates and terms of the agreement, would

allow for 1) better analysis of trends 2) increased oversight by regulatory agencies to uncover abusive tactics like those in the sub-prime market and 3) reduce the potential for fraudulent transactions to occur.

Therefore we encourage the Governor to devote resources to the study and use of technology that would enhance our ability to research and evaluate real estate trends statewide.

Together with our legal services colleagues across the state, we urge the Governor to maintain his commitment to funding civil legal services offices and to strengthen our ability to provide these services by increasing funding to \$25 million, with a goal of reaching \$50 million by 2010. We support the creation of an Office of Civil Justice in the Executive Branch that would coordinate and oversee distribution of state funds for Civil Legal Services and ensure that the funding is maintained and expanded upon in the state budget.

We thank the Governor, and you, for the opportunity to speak today about these critically important issues that enable offices like the WNYLC to provide access to justice and to strengthen the lives of residents as well as communities in New York State.

Kathleen Lynch, Esq.

&

Holly D. Lindstrom, M.U.P.

Western New York Law Center  
& Mayor's Anti-Flipping Task Force  
237 Main Street, Suite 1030  
Buffalo, NY 14203  
(716) 855-0203  
flipping@wnylc.com