



Neighborhood Economic Development Advocacy Project

73 Spring Street, Suite 506, New York, NY 10012

Tel: (212) 680-5100 Fax: (212) 680-5104

www.nedap.org

**TESTIMONY BEFORE THE NEW YORK STATE
ASSEMBLY STANDING COMMITTEES ON
JUDICIARY, BANKS, CONSUMER AFFAIRS AND PROTECTION, HOUSING,
OVERSIGHT, ANALYSIS AND INVESTIGATION
ON SUBPRIME LENDING PRACTICES & FORECLOSURES
IN NEW YORK**

May 29, 2007

Thank you for the opportunity to testify today about subprime lending practices and steps the New York State legislature can take to stem the foreclosure crisis in our state. My name is Sarah Ludwig and I am executive director of the Neighborhood Economic Development Advocacy Project (NEDAP). NEDAP's mission is to promote community economic justice, and to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty. Founded in 1995, NEDAP serves as a resource and advocacy center, providing an array of legal, technical and data support to community-based organizations and individuals seeking to secure access to fair and affordable financial services.

For the past decade, NEDAP has been at the forefront of efforts in New York State to eliminate predatory lending practices. Through mapping, case studies, and data reports, NEDAP has documented abusive and discriminatory mortgage lending patterns. We conduct an ambitious community outreach and education program for prospective homebuyers and existing homeowners, and have equipped thousands of New Yorkers with reliable and timely information on how to obtain a sound mortgage and avoid predatory loans, and what to do if harmed by abusive and discriminatory lending practices. NEDAP convenes the New York City Anti-Predatory Lending Task Force, and New Yorkers for Responsible Lending (NYRL), a state-wide coalition of 131 affordable housing, seniors, consumer, civil rights, and legal services organizations, along with community development financial institutions, dedicated to combating predatory lending.

Despite all our efforts, predatory practices remain rampant in our state. In many ways, the situation is worse than it was five years ago, when New York State passed Banking Law 6-1, in response to refinancing and equity stripping scams that were proliferating around the state. Just as we've gotten a handle on one set of practices, another emerges that we had not anticipated.

We now face a foreclosure crisis in New York and across the country, but the fundamental issues are not new. Since subprime lending came onto the scene in the early to mid-1990s, stepping into the vacuum created by decades of bank redlining, low income neighborhoods and communities of color have been targeted by high cost lenders, and abusive and deceptive mortgage lending practices have abounded. So we have experienced several waves of foreclosures, starting with

the refinancing scams of the 1990s, from which communities are still reeling. In more recent years, neighborhoods of color in New York City have been plagued by property-flipping abuses by one-stop-shops that target first-time homebuyers. Now a new array of subprime products – 2/28s, 3/27s, notoriously referred to as “ticking timebombs,” or “exploding ARMs,” as well as exotic mortgages that were not designed for the general public, and certainly not for unsophisticated borrowers, are leading to record high foreclosures. But whatever the abusive product of the day, these practices all have two common denominators (which are in fact interconnected): (1) unaffordability, that is, loans are unaffordable and inappropriate to borrowers, under any circumstances; and (2) fraud, which simply pervades the subprime industry.

Since the subprime lending crisis began to hit Wall Street, we have seen a rash of news stories about irresponsible borrowers who get in over their heads with their mortgages. Surely there are borrowers who knowingly “overborrow.” But these are not the hundreds of New York homeowners we see in foreclosure, who tell a very different story about why they took out the mortgage they did. Here are just some of the typical statements borrowers hear in the mortgage process, over and over again, from brokers trying to assure them they can afford the loan:

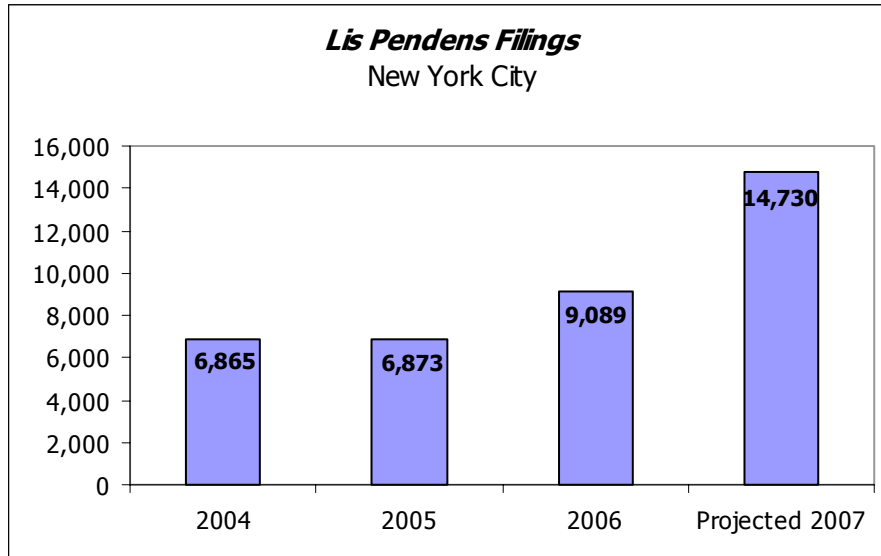
- “*Don’t worry about it. You can refinance later.*”
[-- Prepayment penalties, however, are not mentioned.]
- “*You can afford this loan if you rent out your basement.*”[-- Frequently, however, the certificate of occupancy does not permit creation of an additional unit.]
- “*See, you can afford this monthly payment.*” [-- The homeowner is shown the monthly payment based on interest only, without principal, property taxes, or insurance.]

In my testimony today, I will share some of the documentation NEDAP has done of subprime lending and foreclosures in New York City, and recommend a straightforward legislative plan for addressing the problem going forward.

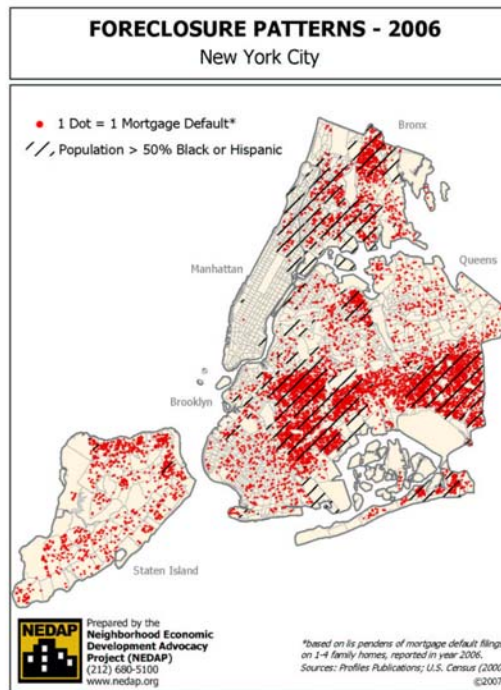
Foreclosures in NYC

NEDAP analysis of foreclosure actions filed on 1-to-4 family homes in New York City shows an alarming upward trend in the past two years. In 2004 and 2005, the numbers were relatively static, at 6,865 and 6,873 foreclosure actions filed. Last year, however, the number of foreclosure actions filed jumped to 9,089, and this year, taking into account the first 11 weeks of 2007, we project 14,730 foreclosure actions will be filed in New York City on 1-to-4 family homes.

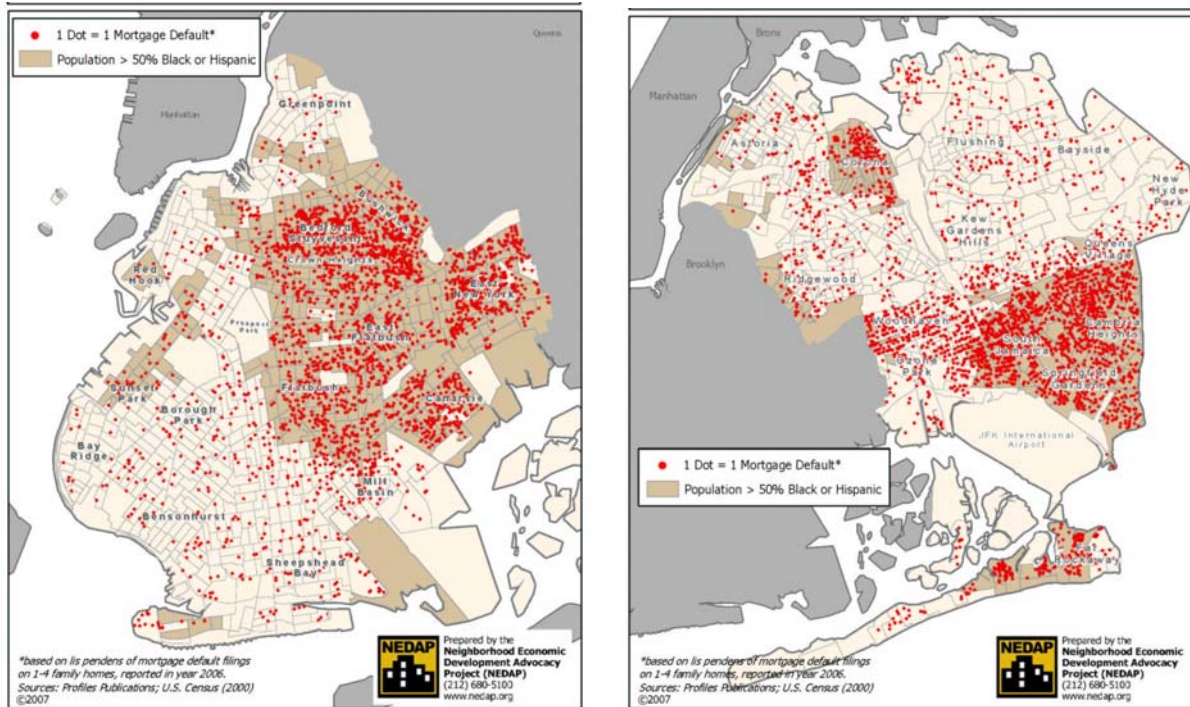
Foreclosure Actions Filed on 1-4 Family Properties in NYC 2004-2007



These numbers are disturbing for multiple reasons. First, the foreclosure numbers were already spiking. Second, the foreclosure actions filed are highly concentrated in a handful of neighborhoods – all communities of color.



Foreclosure Actions Filed in Brooklyn & Queens in 2006



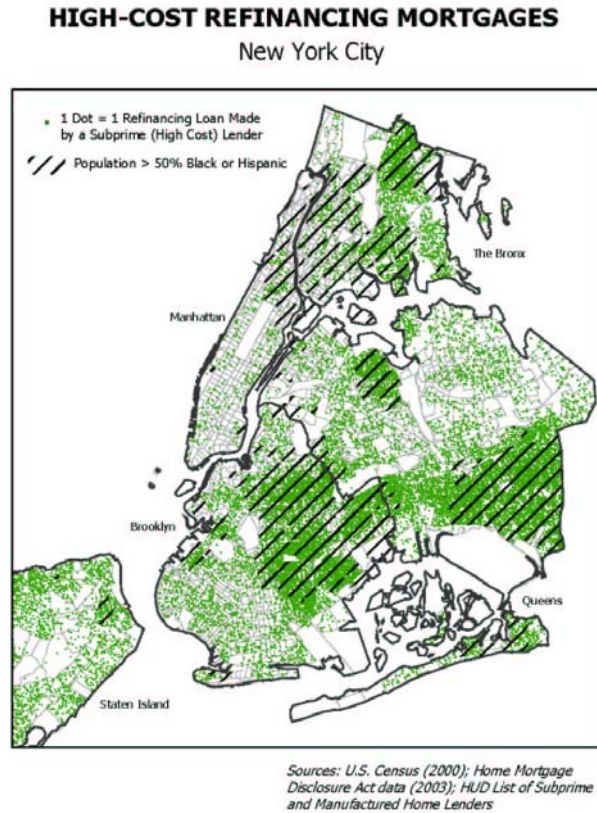
Third, the average age of mortgages going into foreclosure has decreased markedly, from almost four years in 2004 to under three years in 2006. This decrease is linked to unaffordability of some loans from the outset, combined with the increase in 2/28 mortgages, which reset upwards after two years.

AVERAGE AGE OF MORTGAGES GOING INTO FORECLOSURE IN NYC			
	2004	2005	2006
Bronx	4.12	3.63	2.78
Brooklyn	3.57	2.99	2.54
Manhattan	3.00	2.95	3.36
Queens	3.79	3.15	2.53
Staten Island	3.95	3.49	2.88
NYC	3.68	3.24	2.82

SOURCE: Profile Publications; NEDAP

Subprime Lending Patterns

Since 2000, NEDAP has documented subprime lending patterns for NYC, showing through maps and data research what studies have demonstrated nation-wide – that subprime loans are overwhelmingly concentrated in neighborhoods of color.



NEDAP’s March 2007 report, “Paying More for the American Dream,” documented that blacks in New York City were five times, and Latinos almost four times, more likely to receive a higher-cost home purchase loan than their white counterparts. The rates of foreclosures on subprime loans are disproportionately high, leading to disparate impact on people and neighborhoods of color. The problem is systemic; our credit system is bifurcated, working differently for people depending on their race and the community in which they live.

These practices manifest themselves differently throughout the state – the high property values in New York City, Long Island, and Westchester, for example, mean we don’t have the same problems of blight and abandonment that one finds in Buffalo, Schenectady, Troy, and rural parts of the state. But we experience abusive subprime lending practices statewide, and we have the opportunity and obligation to address them through effective state legislation.

Policy Recommendations

The foreclosure crisis requires both retrospective and prospective solutions.

NEDAP has worked with other members of New Yorkers for Responsible Lending to craft a model bill that updates Banking Law 6-1 and will go a long way to curbing the abusive practices going forward. The bill incorporates many provisions of Banking Law 6-1 and includes definitions of key terms based on already existing state and federal language and guidance. NYRL unveiled the model bill at a press event last week in Albany. Key elements include:

- A requirement that lenders verify borrowers' ability to repay the loan both at the loan's outset and, for adjustable rate mortgages, when the interest rate resets;
- A legal duty on the part of brokers to act in the borrower's interest;
- A requirement that lenders escrow property taxes and mortgage insurance, for subprime and exotic mortgages;
- Prohibitions against abusive terms in subprime and exotic mortgages, such as balloon payments, prepayment penalties, negative amortization, mandatory arbitration, and yield spread premiums;
- Enforcement by the NYS Attorney General, Banking Superintendent, and any party to a loan covered under the law.

(New York State also should require all county clerks to report *lis pendens* filings, as a way to gauge foreclosure trends in the state. Currently, one has to buy foreclosure data from private companies that collect foreclosure filing information from county clerks' offices.)

On the remedial side, it is imperative that we find ways to assist people in foreclosure and ensure that, wherever practical, New Yorkers in financial distress are able to stay in their homes. The remedial approach will require major concessions from servicers, who must step up to write down and modify overpriced, unaffordable loans. Wall Street, which has fueled the industry, must be prepared to absorb its share of losses, and not obstruct efforts to do workouts for borrowers. We must develop new refinancing products to help people get out of bad mortgages and into sound ones, which I understand SONYMA is now doing. And we must create a publicly accountable mechanism for buying and restructuring non-performing loans.

Other considerations

• How effective can New York State be in regulating mortgage lending, given federal preemption?

In recent weeks, some people have asserted that the state cannot legislate or regulate effectively in this area because of federal preemption. As I hear it, this approach is little more than a pretext for not doing anything in our state. Yes, preemption poses a major impediment for states wishing to protect their citizens from abusive practices by national banks and federal thrifts. But more than 75% of all mortgage lenders fall within the state's jurisdiction. New York is the country's banking center, and many states around the country are looking to New York for leadership on this issue.

• Don't we already have an anti-predatory lending law in NY?

You're going to hear from representatives of the industry that the solution is a federal one, and that we already have an effective law in New York State. The first, obvious response is that if

our state anti-predatory lending law is so effective, why do we have the problems we now do? When New York's Responsible Lending Act, Banking Law 6-1, was drafted more than five years ago, we did not even fathom the crisis we now face. The bill was enacted in response to specific refinancing and home improvement scams we were seeing in the high cost mortgage lending market. Non-traditional and stated income mortgages were relatively uncommon, compared to today's market. With high interest rate and points and fees thresholds, the law captures very few subprime loans.

• **Hasn't subprime lending created homeownership opportunities, and democratized credit?**

We are hearing from industry a defense of broad subprime lending, with claims that it has enabled many people to buy homes who would not have otherwise been able to do so. But can we call this beneficial if the credit is harmful, unaffordable, destabilizing?

Conclusion

Thousands of New Yorkers have lost their homes and many more will continue to lose their homes because of abusive and deceptive mortgage lending practices, if the legislature does not act now. Thank you for the opportunity to testify today.