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New Yorkers need relief from subprime crisis

By Kathleen Lynch and David Derrico
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Abusive lending practices have led to the current meltdown in the subprime market. Each foreclosure affects not only the subject house but diminishes the value of surrounding properties.

Foreclosures are costly for lenders who can reduce losses by keeping a paying borrower in the home. Municipalities are left to deal with the cost of abandoned properties. The State Legislature now has an opportunity to provide essential relief for New Yorkers.

In 2007, there were almost 3,000 foreclosure filings in Erie County, and the Western New York Law Center's research shows that 20 percent of them were related to adjustable rate mortgages. We need a strong bipartisan push to pass laws in both houses. The governor's program bill is a good framework for relief. It provides for early foreclosure notice to borrowers with contact information for housing counselors who can assist them in negotiating a workout. It requires mandatory settlement conferences between lenders and borrowers early in the legal proceeding.

Attempts to negotiate a workout are often stalled by the inability to contact the appropriate loss mitigation specialist with authority to negotiate a resolution. Judicial oversight will ensure that decision-making parties are involved in these conferences.

While lenders and their attorneys have complained that the foreclosure process is too lengthy, these steps could facilitate a much quicker resolution to foreclosure cases (in Erie County the average length is 135 days).

Other measures in the governor's bill address the abuses that led to this situation. A Wall Street Journal report said that by the end of 2006, 61 percent of subprime loans went to people with credit scores high enough to qualify for conventional loans with better terms.

It is common sense that a lender should consider a borrower's ability to repay the loan after the teaser rate expires. Despite assurances that the borrower can "refinance," it is often impossible when the loan-to-value ratio is too high. Mortgage brokers, who often initiate these deals, should have a duty to act in the best interest of the borrower.

Some have suggested that "credit will dry up" if regulation is imposed, but it is clear that lenders are tightening underwriting standards even without regulation. We do not want to see the entire subprime market disappear because there is a need for responsible subprime loans for borrowers with less than perfect credit. However, we are also immersed in this crisis precisely because there has been insufficient oversight of abusive practices and risky loans.

Lawmakers on both sides of the aisle have expressed a desire to pass some form of significant foreclosure prevention legislation. New York can act to address this foreclosure crisis and diminish the negative impact on borrowers, lenders and communities.
