



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, Corporation Counsel

Press Release

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For Immediate Release

**COMPREHENSIVE STATEWIDE ANTI-PREDATORY
LENDING LAW IS HELD BY MANHATTAN STATE SUPREME COURT
TO PRE-EMPT CITY COUNCIL LAW**

CITY'S SUIT IS SUCCESSFUL IN INVALIDATING LOCAL LAW 36

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New York, Jan. 26, 2004 – The City's challenge to Local Law 36 of 2002 – the City Council's anti-predatory lending law – was successful, and the law was invalidated, in a decision issued today by Justice Michael D. Stallman of Manhattan Supreme Court. Justice Stallman invalidated and permanently enjoined enforcement of the Council's law because it was pre-empted by State Banking law, which "contains a comprehensive regulatory scheme" concerning the same predatory lending activity.

The City argued that State banking law amply protects borrowers, because it imposes severe penalties for predatory lending practices – the very conduct also targeted by Local Law 36 – and in addition gives borrowers substantial legal rights and defenses in the face of unlawful high cost home loans. The State Attorney General, the Superintendent of Banking and any party to a high-cost home loan can enforce the State's anti-predatory lending law.

"Predatory lending," as the term is generally used, describes how home loans with excessive rates, fees and/or terms are made without sufficient investigation of a borrower's ability to pay. Local Law 36 prohibited the City from entering into business with, depositing City funds with, or providing financial assistance to any financial institution or affiliate that came within the meaning of the City Council's definition of "predatory lender." The Council's law indirectly targeted conduct that the State law essentially prohibited outright, but the Council's law would have imposed significant and costly administrative burdens on the City.

The Court decision held that Local Law 36 was pre-empted in its entirety by State banking laws and by other State laws with which Local Law 36 conflicted. In addition, Justice Stallman held that Local Law 36 could not be applied to nationally chartered banks and federal savings associations, because federal law preempted regulation of those banks by the City Council. Finally, the Court identified many other conflicts with Federal law.

"I believe predatory lending practices should not be tolerated. However, Local Law 36 was not the way to deal with this problem because a new State law prohibits predatory lending outright and give borrowers substantial legal recourse against unscrupulous lenders," Corporation Counsel Michael A. Cardozo of the New York City Law Department. "We are gratified that the Court permanently enjoined the enforcement of Local Law 36, and we are confident that the rights of borrowers will be protected under State law."

Joshua Rubin, an Assistant Corporation Counsel in the Law Department's Affirmative Litigation Division, led the City's legal team. Other members included:

- Gail Rubin, Chief, and June Buch, Senior Counsel, Affirmative Litigation Division
- Spencer Fisher, Senior Counsel, Legal Counsel Division
- Albert Moncure, Chief, and Jim McSpirtt, Deputy Chief, Municipal Finance Division
- Steve Cushman, Deputy Chief, Contracts & Real Estate Division
- Robert Firestone, Senior Counsel, Tax & Bankruptcy Litigation Division.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 100,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

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