

**Written Testimony of the Broadway-Flushing Homeowners' Association, Inc. submitted to
the New York City Council's Housing & Buildings Committee
Subject: City Council Intro 280**

Date: September 16, 2015

To: **New York City Council** - Housing & Buildings Committee

From: Broadway-Flushing Homeowners' Association, P.O. Box 580031, Flushing, NY 11358

On behalf of the members of the Broadway-Flushing Homeowners' Association, we are pleased to submit this Statement regarding District #19, Councilmember Paul Vallone's proposed legislation, Intro 280, a Bill requiring the Department of Buildings to maintain a publicly available Registry of Restrictive Covenants contained in certain property deeds.

The neighborhood of Broadway-Flushing, located in the northeast corner of Queens County, New York, comprises more than 1,300 homes, and approximately one-half of them have a restrictive deed that runs in perpetuity with the property, known as the Rickert-Finlay Covenant of 1906. The Association's boundaries can be found at: www.broadwayflushing.org They extend from Northern Boulevard on the south, to 29th Avenue on the north, from 155 Street on the west to 170 Street on the east.

Intro 280 is a simple and inexpensive measure that will be of great value to residents of Broadway-Flushing and similar communities, and also to developers and others who propose residential or commercial construction within these communities.

The City of New York and its Department of Buildings (DOB) are not legally authorized to administer or enforce our Rickert-Finlay Covenant – only private legal action initiated by an individual or organization representing the neighborhood can enforce a covenant. Under the terms of Intro 280, however, DOB would maintain a publicly available Registry providing notification that these specific parcels are subject to covenants in the deeds. That notification will be of great value to prospective developers as well as individual homeowners, reminding them to inform themselves about these covenants before finalizing their building plans. Intro 280 is an important first step in bringing attention to restrictive deeds.

This simple step will **raise awareness** of restrictive covenants and **begin to improve** communication between prospective builders and homeowners, save months or years of delay, and the huge costs associated with such delays. It is a first step to help the Broadway-Flushing Homeowners' Association, funded by membership dues and voluntary contributions, from the enormous effort, cost and time consuming litigation to enforce the terms of our Covenant against those who elect to ignore them, or who assert they were unaware of the existence of the covenants.

The community of Broadway-Flushing, like our sister neighborhoods of Westmoreland and Douglas Manor, was developed, in whole or in part, by the Rickert-Finlay Realty Company in the first two decades of the 20th century. At that time there were no municipal zoning rules in effect. The Rickert-Finlay company made the farsighted decision to incorporate covenants in the deeds of the properties it was offering for sale, recognizing that these would enhance and protect the character and value of the communities. We are extremely proud to say that the Rickert-Finlay Covenant of 1906 is still valid and enforceable in Broadway-Flushing in 2015, and was upheld recently by a Decision of the Appellate Division, 2nd Department of NYS Court of Appeals which declined to disturb the Appellate Division's findings.

The covenant was designed to ensure that our community would maintain a welcoming and "open" and "green" ambiance. This was achieved by establishing a minimum 20-foot setback requirement for all residential properties, and also prohibiting the construction of fences or walls within the first 20 feet of the front property line, and the side property line for corner properties (hedges and shrubbery are permitted).

These covenants run with the land – that is, they are incorporated in the property deeds and pass from owner to owner. They are applicable to all owners in the chain of title. A competent title search will always identify the covenants.

Nevertheless, with troubling frequency, unscrupulous builders elect to tear down, commence construction, or attempt to subdivide property in knowing violation of a covenant. They may be able to do so in accordance with zoning regulations, and since there is no current Registry, the DOB will sign off on a building permit. It then becomes a private legal matter to enforce the Rickert-Finlay Covenant. Because of this simple lack of communication when a permit is issued by the DOB, our Association must assume the financial responsibility of enforcing the Covenant in court. Although our Association has been serving the community for more than fifty years and has been successful each time in enforcing the Covenant, an enormous amount of time and expense on both sides is unnecessarily expended.

Intro 280 does not assign to the Buildings Department any responsibility to interpret, administer, apply or enforce those covenants. The Bill merely provides a mechanism to notify owners, prospective purchasers and developers of the existence of the covenants. We consider this a first step in expanding the communication and actionable steps between the DOB and those seeking building permits.

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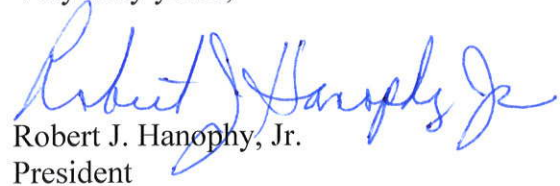
Broadway-Flushing Homeowners' Association

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While we prefer that Intro 280 be amended to allow the Department of Buildings to search the proposed Registry prior to issuing a permit and, if any Covenant be violated, the permit request be denied, we understand the intent of Intro 280. However, it is most important that the City Council seriously consider a revision to Intro 280. It should definitely be enhanced by requiring the Department of Buildings to place a "flag" in its online database identifying parcels subject to restrictive covenants. The "flag" would simply direct users to the Registry. Further, the Broadway-Flushing Homeowners' Association is prepared to provide the Department of Buildings with the address, including block and lot of each home covered by the Rickert-Finlay Covenant, within the borders of Broadway-Flushing.

Therefore, we submit our appreciation to Councilmember Paul Vallone for proposing this legislation as a first step in raising awareness of enforceable restrictive covenants that exist to protect our neighborhoods. ***We respectfully request that the Committee on Housing and Buildings and the entire City Council support Intro 280, with the above-suggested enhancement to place a "flag" in the database.***

Very truly yours,



Robert J. Hanophy, Jr.
President

cc: Councilmember Paul Vallone, New York City Council District 19
Zoning Committee, Broadway-Flushing Homeowners' Association