

7035

I N S E N A T E

April 21, 2014

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the real property actions and proceedings law, in relation to foreclosure actions and robosigned documents

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The real property actions and proceedings law is amended by
2 adding a new section 1392 to read as follows:
3 S 1392. ROBOSIGNED DOCUMENTS. 1. FOR THE PURPOSE OF THIS SECTION
4 "ROBOSIGNED DOCUMENT" SHALL MEAN ANY DOCUMENT THAT CONTAINS FACTUAL
5 ASSERTIONS THAT ARE NOT ACCURATE, ARE INCOMPLETE, OR ARE UNSUPPORTED BY
6 COMPETENT, RELIABLE EVIDENCE. A "ROBOSIGNED DOCUMENT" ALSO MEANS ANY
7 DOCUMENT THAT HAS NOT BEEN REVIEWED BY ITS SIGNER TO SUBSTANTIATE THE
8 FACTUAL ASSERTIONS CONTAINED IN THE DOCUMENT. FOR PURPOSES OF THIS DEFINITION,
9 MULTIPLE PEOPLE MAY VERIFY THE DOCUMENT OR STATEMENT SO LONG AS
10 THE DOCUMENT OR STATEMENT SPECIFIES THE PORTIONS VERIFIED BY EACH SIGNER.
11 ER.
12 2. ANY ENTITY THAT RECORDS A ROBOSIGNED DOCUMENT OR FILES A ROBOSIGNED
13 DOCUMENT IN ANY COURT RELATIVE TO A FORECLOSURE PROCEEDING SHALL BE
14 LIABLE FOR A CIVIL PENALTY OF TEN THOUSAND DOLLARS PER ROBOSIGNED DOCUMENT.
15 THE CIVIL PENALTIES UNDER THIS SECTION ARE SEPARATE FROM AND
16 EXCLUSIVE OF ANY OTHER REMEDIES OR LIABILITIES THAT MAY APPLY. THIS
17 SECTION IS NOT INTENDED TO LIMIT THE TYPE OF ACTIONS REGARDING ROBOSIGNED
18 DOCUMENTS THAT MAY BE FILED BY ANY GOVERNMENTAL ENTITY.
19 3. A BORROWER MAY SEEK AN ORDER IN ANY COURT HAVING JURISDICTION TO
20 ENJOIN ANY PENDING TRUSTEE'S SALE, IF A NOTICE OF SALE HAS BEEN
21 RECORDED, AND THE BORROWER REASONABLY BELIEVES THAT THE MORTGAGEE, TRUSTEE,
22 BENEFICIARY, OR AUTHORIZED AGENT FAILED TO COMPLY WITH THE REQUIREMENTS
23 OF THIS SECTION. A BORROWER WHO OBTAINS AN INJUNCTION SHALL BE
24 AWARDED REASONABLE ATTORNEY'S FEES AND COSTS.
25 4. FOLLOWING A TRUSTEE'S SALE, A BORROWER MAY RECOVER THE GREATER OF
26 ACTUAL DAMAGES OR TEN THOUSAND DOLLARS PLUS REASONABLE ATTORNEY'S FEES
27 AND COSTS IN ANY COURT OF COMPETENT JURISDICTION, IF THE BORROWER

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 REASONABLY BELIEVES THAT THE MORTGAGEE, TRUSTEE, BENEFICIARY, OR AUTHOR-
2 IZED AGENT FAILED TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION.

3 5. A COURT MAY AWARD A BORROWER THE GREATER OF TREBLE ACTUAL DAMAGES
4 OR STATUTORY DAMAGES OF FIFTY THOUSAND DOLLARS, PLUS ATTORNEY'S FEES AND
5 COSTS, IF IT FINDS THAT THE VIOLATION OF THIS SECTION WAS INTENTIONAL,
6 RECKLESS, OR RESULTED FROM WILLFUL MISCONDUCT BY A MORTGAGEE, TRUSTEE,
7 BENEFICIARY, OR AUTHORIZED AGENT.

8 6. A VIOLATION OF THIS ARTICLE SHALL NOT AFFECT THE VALIDITY OF A SALE
9 IN FAVOR OF A BONA FIDE PURCHASER AND ANY OF ITS ENCUMBRANCERS FOR VALUE
10 WITHOUT NOTICE.

11 7. NOTWITHSTANDING SUBDIVISIONS THREE AND FOUR OF THIS SECTION, A
12 BORROWER MAY NOT OBTAIN RELIEF UNDER THIS SECTION FOR ANY VIOLATION THAT
13 WAS TECHNICAL OR DE MINIMIS IN NATURE THAT DID NOT IMPACT THE BORROWER'S
14 ABILITY TO PURSUE AN ALTERNATIVE TO FORECLOSURE AS PROVIDED BY THIS
15 ARTICLE.

16 8. IT SHALL BE AN AFFIRMATIVE DEFENSE TO ANY LIABILITY FOR VIOLATION
17 OF THIS SECTION THAT A SIGNATORY TO A CONSENT JUDGMENT ENTERED IN THE
18 CASE ENTITLED UNITED STATES OF AMERICA V. BANK OF AMERICA CORPORATION,
19 FILED IN THE FEDERAL DISTRICT COURT FOR THE DISTRICT OF WASHINGTON,
20 D.C., CASE NUMBER 1:12-CV-00361 RMC, IS IN COMPLIANCE WITH THAT CONSENT
21 JUDGMENT WHILE THE CONSENT JUDGMENT IS IN EFFECT.

22 9. A THIRD-PARTY ENCUMBRANCER SHALL NOT BE RELIEVED FROM LIABILITY
23 RESULTING FROM A VIOLATION OF THIS SECTION COMMITTED BY THAT THIRD-PARTY
24 ENCUMBRANCER, THAT OCCURRED PRIOR TO THE SALE OF THE SUBJECT PROPERTY TO
25 THE BONA FIDE PURCHASER.

26 S 2. This act shall take effect immediately.