

4530--A

2013-2014 Regular Sessions

I N S E N A T E

April 8, 2013

Introduced by Sens. KLEIN, AVELLA, GOLDEN, HASSELL-THOMPSON, KENNEDY, LANZA, LATIMER, PARKER, PERALTA, TKACZYK -- (at request of the Office of Court Administration) -- (at request of the Department of Law) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, in relation to residential foreclosure actions

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

1 Section 1. The civil practice law and rules is amended by adding a new
2 section 3012-b to read as follows:
3 S 3012-B. CERTIFICATE OF MERIT IN CERTAIN RESIDENTIAL FORECLOSURE
4 ACTIONS. (A) IN ANY RESIDENTIAL FORECLOSURE ACTION INVOLVING A HOME
5 LOAN, AS SUCH TERM IS DEFINED IN SECTION THIRTEEN HUNDRED FOUR OF THE
6 REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, IN WHICH THE DEFENDANT IS A
7 RESIDENT OF THE PROPERTY WHICH IS SUBJECT TO FORECLOSURE, THE COMPLAINT
8 SHALL BE ACCOMPANIED BY A CERTIFICATE, SIGNED BY THE ATTORNEY FOR THE
9 PLAINTIFF, CERTIFYING THAT THE ATTORNEY HAS REVIEWED THE FACTS OF THE
10 CASE AND THAT, BASED ON CONSULTATION WITH REPRESENTATIVES OF THE PLAIN-
11 TIFF IDENTIFIED IN THE CERTIFICATE AND THE ATTORNEY'S REVIEW OF PERTI-
12 NENT DOCUMENTS, INCLUDING THE MORTGAGE, SECURITY AGREEMENT AND NOTE OR
13 BOND UNDERLYING THE MORTGAGE EXECUTED BY DEFENDANT AND ALL INSTRUMENTS
14 OF ASSIGNMENT, IF ANY, AND ANY OTHER INSTRUMENT OF INDEBTEDNESS INCLUD-
15 ING ANY MODIFICATION, EXTENSION, AND CONSOLIDATION, TO THE BEST OF SUCH
16 ATTORNEY'S KNOWLEDGE, INFORMATION AND BELIEF THERE IS A REASONABLE BASIS
17 FOR THE COMMENCEMENT OF SUCH ACTION AND THAT THE PLAINTIFF IS CURRENTLY
18 THE CREDITOR ENTITLED TO ENFORCE RIGHTS UNDER SUCH DOCUMENTS. IF NOT
19 ATTACHED TO THE SUMMONS AND COMPLAINT IN THE ACTION, A COPY OF THE MORT-
20 GAGE, SECURITY AGREEMENT AND NOTE OR BOND UNDERLYING THE MORTGAGE
21 EXECUTED BY DEFENDANT AND ALL INSTRUMENTS OF ASSIGNMENT, IF ANY, AND ANY

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

1 OTHER INSTRUMENT OF INDEBTEDNESS INCLUDING ANY MODIFICATION, EXTENSION,
2 AND CONSOLIDATION SHALL BE ATTACHED TO THE CERTIFICATE.

3 (B) WHERE A CERTIFICATE IS REQUIRED PURSUANT TO THIS SECTION, A SINGLE
4 CERTIFICATE SHALL BE FILED FOR EACH ACTION EVEN IF MORE THAN ONE DEFEND-
5 ANT HAS BEEN NAMED IN THE COMPLAINT OR IS SUBSEQUENTLY NAMED.

6 (C) WHERE THE DOCUMENTS REQUIRED UNDER SUBDIVISION (A) ARE NOT
7 ATTACHED TO THE SUMMONS AND COMPLAINT OR TO THE CERTIFICATE, THE ATTOR-
8 NEY FOR THE PLAINTIFF SHALL ATTACH TO THE CERTIFICATE SUPPLEMENTAL AFFI-
9 DAVITS BY SUCH ATTORNEY OR REPRESENTATIVE OF PLAINTIFF ATTESTING THAT
10 SUCH DOCUMENTS ARE LOST WHETHER BY DESTRUCTION, THEFT OR OTHERWISE.
11 NOTHING HEREIN SHALL REPLACE OR ABROGATE PLAINTIFF'S OBLIGATIONS AS SET
12 FORTH IN THE NEW YORK UNIFORM COMMERCIAL CODE.

13 (D) THE PROVISIONS OF SUBDIVISION (D) OF RULE 3015 OF THIS ARTICLE
14 SHALL NOT BE APPLICABLE TO A DEFENDANT WHO IS NOT REPRESENTED BY AN
15 ATTORNEY.

16 (E) IF A PLAINTIFF WILLFULLY FAILS TO PROVIDE COPIES OF THE PAPERS AND
17 DOCUMENTS AS REQUIRED BY SUBDIVISION (A) OF THIS SECTION AND THE COURT
18 FINDS, UPON THE MOTION OF ANY PARTY OR ON ITS OWN MOTION ON NOTICE TO
19 THE PARTIES, THAT SUCH PAPERS AND DOCUMENTS OUGHT TO HAVE BEEN PROVIDED,
20 THE COURT MAY DISMISS THE COMPLAINT OR MAKE SUCH FINAL OR CONDITIONAL
21 ORDER WITH REGARD TO SUCH FAILURE AS IS JUST INCLUDING BUT NOT LIMITED
22 TO DENIAL OF THE ACCRUAL OF ANY INTEREST, COSTS, ATTORNEYS' FEES AND
23 OTHER FEES, RELATING TO THE UNDERLYING MORTGAGE DEBT. ANY SUCH DISMISSAL
24 SHALL BE WITHOUT PREJUDICE AND SHALL NOT BE ON THE MERITS.

25 S 2. Subdivision (a) of rule 3408 of the civil practice law and rules,
26 as amended by chapter 507 of the laws of 2009, is amended to read as
27 follows:

28 (a) In any residential foreclosure action involving a home loan as
29 such term is defined in section thirteen hundred four of the real prop-
30 erty actions and proceedings law, in which the defendant is a resident
31 of the property subject to foreclosure, PLAINTIFF SHALL FILE PROOF OF
32 SERVICE WITHIN TWENTY DAYS OF SUCH SERVICE, HOWEVER SERVICE IS MADE, AND
33 the court shall hold a mandatory conference within sixty days after the
34 date when proof of service UPON SUCH DEFENDANT is filed with the county
35 clerk, or on such adjourned date as has been agreed to by the parties,
36 for the purpose of holding settlement discussions pertaining to the
37 relative rights and obligations of the parties under the mortgage loan
38 documents, including, but not limited to determining whether the parties
39 can reach a mutually agreeable resolution to help the defendant avoid
40 losing his or her home, and evaluating the potential for a resolution in
41 which payment schedules or amounts may be modified or other workout
42 options may be agreed to, and for whatever other purposes the court
43 deems appropriate.

44 S 3. This act shall take effect on the thirtieth day after it shall
45 have become a law and shall apply to actions commenced on or after such
46 effective date; provided, however that the amendments to subdivision (a)
47 of rule 3408 of the civil practice law and rules made by section two of
48 this act shall not affect the expiration of such subdivision and shall
49 be deemed to expire therewith.