

# STATE OF NEW YORK

7922

2021-2022 Regular Sessions

## IN ASSEMBLY

May 28, 2021

Introduced by M. of A. WALKER -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, the general obligations law, and the real property actions and proceedings law, in relation to the rights of parties involved in foreclosure actions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "Foreclosure Process Abuse Prevention Act".

3 § 2. Section 203 of the civil practice law and rules is amended by  
4 adding a new subdivision (h) to read as follows:

5 (h) Clarification. Once a cause of action upon an instrument described  
6 under subdivision four of section two hundred thirteen of this article  
7 has accrued, no party may unilaterally waive, postpone, cancel, or reset  
8 the accrual thereof, or otherwise effectuate a unilateral extension of  
9 the limitations period prescribed by law to interpose the claim, unless  
10 expressly permitted by law.

11 § 3. Subdivision (c) of section 205 of the civil practice law and  
12 rules, as amended by chapter 216 of the laws of 1992, is amended to read  
13 as follows:

14 (c) Application. This section also applies to a proceeding brought  
15 under the workers' compensation law but shall not apply to any  
16 proceedings governed by section two hundred five-a of this article.

17 § 4. The civil practice law and rules is amended by adding a new  
18 section 205-a to read as follows:

19 § 205-a. Termination of certain actions related to real property. (a)  
20 If an action upon an instrument described under subdivision four of  
21 section two hundred thirteen of this article is timely commenced and is  
22 terminated in any other manner than by a voluntary discontinuance, a  
23 failure to obtain personal jurisdiction over the defendant, a dismissal  
24 of the complaint for any form of neglect, including, but not limited to,  
25 those specified in subdivision three of section thirty-one hundred twen-  
26 ty-six, subdivision (c) of section thirty-two hundred fifteen, rules  
27 thirty-two hundred sixteen and thirty-four hundred four of this chapter,

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

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1 for violation of, or non-compliance with, any uniform court rules, local  
2 court rules, individual judge part rules, or court order, or a final  
3 judgment upon the merits, the original plaintiff, or, if the original  
4 plaintiff dies, and the cause of action survives, his or her executor or  
5 administrator, may commence a new action upon the same transaction or  
6 occurrence or series of transactions or occurrences within six months  
7 after the termination provided that the new action would have been time-  
8 ly commenced within the applicable limitations period prescribed by law  
9 at the time of commencement of the prior action and that service upon  
10 the original defendant is effected within such six-month period. For  
11 purposes of this subdivision:

12 1. a successor in interest or assignee of the plaintiff shall not be  
13 deemed the plaintiff, unless pleading and proving upon clear and  
14 convincing evidence that said successor in interest or assignee is  
15 acting on behalf or asserting the rights of the original plaintiff; and

16 2. in no event shall the plaintiff receive more than one six-month  
17 extension under this subdivision.

18 (b) Where the defendant has served an answer and the action upon an  
19 instrument described under subdivision four of section two hundred thir-  
20 teen of this article is terminated in any manner, and a new action upon  
21 the same transaction or occurrence or series of transactions or occur-  
22 rences is commenced by the original plaintiff or a successor in interest  
23 or assignee of the original plaintiff, the assertion of any cause of  
24 action or defense by the defendant in the new action shall be timely if  
25 it was timely asserted in the prior action.

26 § 5. Section 206 of the civil practice law and rules is amended by  
27 adding a new subdivision (e) to read as follows:

28 (e) Based on standardized mortgage instruments. In an action to fore-  
29 close upon any uniform or model mortgage instrument securing real prop-  
30 erty or any interest therein, as adopted by the federal national mort-  
31 gage association (Fannie Mae), federal home loan mortgage corporation  
32 (Freddie Mac), or U.S. Department of Housing and Urban Development  
33 (HUD), the time within which the action must be commenced and the claim  
34 interposed shall be computed from the time the right to demand immediate  
35 payment in full of all sums so secured thereby may be exercised. For  
36 purposes of this subdivision only, there shall be a rebuttable presump-  
37 tion that all substantive conditions precedent to accrual of a cause of  
38 action to foreclose upon any such mortgage instrument, if any, have been  
39 satisfied. The presumption may be rebutted by clear and convincing  
40 evidence. Nothing contained herein shall give rise to the presumption  
41 that any event of default under the mortgage instrument has occurred,  
42 except for purposes of computation of the time within which the action  
43 must be commenced and the claim interposed.

44 § 6. Subdivision (d) of rule 3217 of the civil practice law and rules,  
45 as added by section 29 of part J of chapter 62 of the laws of 2003, is  
46 amended to read as follows:

47 (d) Effect of discontinuance of actions based upon certain instruments  
48 related to real property. Unless effectuated in strict accordance with  
49 the applicable provisions of article seventeen of the general obli-  
50 gations law, the discontinuance of an action upon an instrument  
51 described under subdivision four of section two hundred thirteen of this  
52 chapter, by any means, shall not, in form or effect:

53 1. act as a waiver, postponement, cancellation, resetting, or tolling  
54 of accrual of the cause of action;

55 2. extend the limitations period prescribed by law to interpose the  
56 claim; or

1 3. automatically revoke or nullify an election of remedies made in any  
2 complaint.

3 (e) All notices, stipulations, or certificates pursuant to this rule  
4 shall be filed with the county clerk by the defendant.

5 § 7. Subdivisions 4 and 5 of section 17-105 of the general obligations  
6 law are amended to read as follows:

7 4. [~~Except as provided in subdivision five, no~~] An acknowledgment,  
8 waiver [~~or promise has any effect to~~], promise or agreement, express or  
9 implied in fact or in law, shall not, in form or effect, postpone,  
10 cancel, reset, toll, revive or otherwise extend the time limited for  
11 commencement of an action to foreclose [~~or~~] a mortgage for any greater  
12 time or in any other manner than that provided in this section, [~~nor~~]  
13 unless it is made as provided in this section.

14 5. This section does not change the requirements[~~r~~] or the effect with  
15 respect to the accrual of a cause of action, nor the time limited for  
16 commencement of an action[~~r, of~~] based upon either:

17 a. a payment or part payment of the principal or interest secured by  
18 the mortgage, or

19 b. a stipulation made in an action or proceeding.

20 § 8. Subdivision 3 of section 1301 of the real property actions and  
21 proceedings law, as added by chapter 312 of the laws of 1962, is amended  
22 and a new subdivision 4 is added to read as follows:

23 3. While the action is pending or after final judgment for the plain-  
24 tiff therein, no other action shall be commenced or maintained to  
25 recover any part of the mortgage debt, without leave of the court in  
26 which the former action was brought. For purposes of calculating the  
27 time within which an action must be commenced and the claim interposed  
28 under subdivision four of section two hundred thirteen of the civil  
29 practice law and rules, this subdivision shall not constitute a stay of  
30 proceedings or statutory prohibition with the meaning of section two  
31 hundred four of the civil practice law and rules.

32 4. If an action to foreclose the mortgage or recover any part of the  
33 mortgage debt is adjudicated to be barred by the applicable statute of  
34 limitations, any other action to foreclose the same mortgage or recover  
35 any part of the same mortgage debt shall also be barred by the statute  
36 of limitations.

37 § 9. Severability clause. If any clause, sentence, paragraph, section  
38 or part of this act shall be adjudged by any court of competent juris-  
39 diction to be invalid, such judgment shall not affect, impair or invali-  
40 date the remainder thereof, but shall be confined in its operation to  
41 the clause, sentence, paragraph, section or part thereof directly  
42 involved in the controversy in which such judgment shall have been  
43 rendered.

44 § 10. This act shall take effect immediately; provided, however:

45 a. for causes of action pursuant to subdivision (e) of section 206 of  
46 the civil practice law and rules as added by section five of this act,  
47 having accrued prior to, and would be time barred immediately upon, the  
48 effective date of this act, suits thereupon shall be commenced within  
49 one year after this act shall have become a law; and

50 b. for causes of action pursuant to subdivision (e) of section 206 of  
51 the civil practice law and rules as added by section five of this act,  
52 having accrued prior to the effective date of such section and for which  
53 less than one year remains upon the applicable limitations period for  
54 the commencement of an action or proceeding thereupon, such suits shall  
55 be commenced within one year after this act shall have become a law.