

STATE OF NEW YORK

5473--A

2021-2022 Regular Sessions

IN SENATE

March 8, 2021

Introduced by Sens. SANDERS, KAVANAGH, SALAZAR, SKOUFIS -- 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, the general obligations law, the real property actions and proceedings law, and the real property 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. The civil practice law and rules is amended by adding a new
12 section 205-a to read as follows:

13 § 205-a. Termination of specific actions related to real property.
14 (a) If an action upon an instrument described under subdivision four of
15 section two hundred thirteen of this article is timely commenced and is
16 terminated in any other manner than by a voluntary discontinuance, a
17 failure to obtain personal jurisdiction over the defendant, a dismissal
18 of the complaint for any form of neglect, including, but not limited to,
19 those specified in subdivision (c) of section thirty-two hundred
20 fifteen, rules thirty-two hundred sixteen and thirty-four hundred four
21 of this chapter, or sections 202.27 and 202.48 of part two hundred of

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

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title twenty-two of the New York state codes, rules and regulations, or a final judgment upon the merits, the original plaintiff, or, if the original plaintiff dies, and the cause of action survives, his or her executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced within the applicable limitations period prescribed by law at the time of commencement of the prior action and that service upon the original defendant is effected within such six-month period. Where a dismissal is one for any form of neglect, the judge shall set forth on the record either the specific law, rule or code forming the basis for dismissal or, in the alternative, the conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation. For purposes of this subdivision:

1. an assignee of the plaintiff shall not be deemed the plaintiff, unless acting on behalf or asserting the rights of the original plaintiff; and

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

(b) Where the defendant has served an answer and the action upon an instrument described under subdivision four of section two hundred thirteen of this article is terminated in any manner, and a new action upon the same transaction or occurrence or series of transactions or occurrences is commenced by the original plaintiff or a successor in interest or assignee of the original plaintiff, the assertion of any cause of action or defense by the defendant in the new action shall be timely if it was timely asserted in the prior action.

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

(e) Based on standardized mortgage instruments. In an action to foreclose upon any uniform or model mortgage instrument securing real property or any interest therein, as adopted by the federal national mortgage association (Fannie Mae), federal home loan mortgage corporation (Freddie Mac), or U.S. Department of Housing and Urban Development, the time within which the action must be commenced and the claim interposed shall be computed from the time the right to demand immediate payment in full of all sums so secured thereby may be exercised.

§ 5. Section 306-b of the civil practice law and rules, as amended by chapter 473 of the laws of 2011, is amended to read as follows:

§ 306-b. Service of the summons and complaint, summons with notice, third-party summons and complaint, or petition with a notice of petition or order to show cause. Service of the summons and complaint, summons with notice, third-party summons and complaint, or petition with a notice of petition or order to show cause shall be made within one hundred twenty days after the commencement of the action or proceeding, provided that in an action or proceeding, except a proceeding commenced under the election law, where the applicable statute of limitations is four months or less, service shall be made not later than fifteen days after the date on which the applicable statute of limitations expires. If service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service. In an action based upon an instrument described under subdivision four of section two hundred thirteen of this chapter, a motion to extend the time for service of a

defendant under this section shall be denied as untimely if it is made after the entry of any order or judgment of dismissal.

§ 6. Section 2001 of the civil practice law and rules, as amended by chapter 529 of the laws of 2007, is amended to read as follows:

§ 2001. Mistakes, omissions, defects and irregularities. (a) At any stage of an action, including the filing of a summons with notice, summons and complaint or petition to commence an action, the court may permit a mistake, omission, defect or irregularity, including the failure to purchase or acquire an index number or other mistake in the filing process, to be corrected, upon such terms as may be just, or, if a substantial right of a party is not prejudiced, the mistake, omission, defect or irregularity shall be disregarded, provided that any applicable fees shall be paid.

(b) The court shall not disregard or permit a mistake, omission, defect or irregularity arising from the failure of a lender, an assignee or a mortgage loan servicer to strictly comply with sections thirteen hundred one, thirteen hundred two, thirteen hundred three, thirteen hundred four or thirteen hundred six of the real property actions and proceedings law, where applicable.

§ 7. Rule 3212 of the civil practice law and rules is amended by adding a new subdivision (d) to read as follows:

(d) Successive motions; standard. Where the court issues an order denying all or any part of a motion for summary judgment, the court shall consider any successive motion for summary judgment made by the party having previously moved unsuccessfully for such relief as a motion affecting a prior order and the motion shall be made and reviewed in accordance with subdivisions (d), (e) or (f) of rule two thousand two hundred twenty-one or subdivision (a) of rule five thousand fifteen of this chapter.

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

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

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

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

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

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

§ 9. Subdivision 3 and paragraph a of subdivision 4 of section 17-103 of the general obligations law are amended to read as follows:

3. ~~[A promise to waive, to extend, or not to plead the statute of limitation has no effect to]~~ A waiver, promise or agreement, express or implied in fact or in law, shall not, in form or effect, postpone, cancel, reset, toll, revive or otherwise extend the time limited by statute for commencement of an action or proceeding for any greater time or in any other manner than that provided in this section, ~~[or]~~ unless made as provided in this section.

1 a. does not change the requirements or the effect with respect to the
2 ~~[statute of limitation, of]~~ accrual of a cause of action, nor the time
3 limited for commencement of an action based upon an acknowledgment or
4 promise to pay[,] or a payment or part payment of principal or inter-
5 est~~[, or a stipulation made in an action or proceeding]~~;

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

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

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

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

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

21 § 11. Subdivisions 1, 1-a and 2 of section 1304 of the real property
22 actions and proceedings law, subdivision 1 as amended by section 6 of
23 part Q of chapter 73 of the laws of 2016, subdivision 1-a as added by
24 section 3 and subdivision 2 as amended by section 4 of part HH of chap-
25 ter 58 of the laws of 2018, are amended to read as follows:

26 1. Notwithstanding any other provision of law, with regard to a home
27 loan, at least ninety days before a lender, an assignee or a mortgage
28 loan servicer commences legal action against the borrower, or borrowers
29 at the property address and any other address of record, including mort-
30 gage foreclosure, such lender, assignee or mortgage loan servicer shall
31 give notice to the borrower in at least fourteen-point type which shall
32 include the following:

33 "YOU MAY BE AT RISK OF FORECLOSURE. PLEASE READ THE FOLLOWING NOTICE
34 CAREFULLY"

35 "As of ___, your home loan is ___ days and ___ dollars in default.
36 Under New York State Law, we are required to send you this notice to
37 inform you that you are at risk of losing your home.

38 Attached to this notice is a list of government approved housing coun-
39 seling agencies in your area which provide free counseling. You can also
40 call the NYS Office of the Attorney General's Homeowner Protection
41 Program (HOPP) toll-free consumer hotline to be connected to free hous-
42 ing counseling services in your area at 1-855-HOME-456 (1-855-466-3456),
43 or visit their website at ~~[http://www.aghomehelp.com/]~~
44 https://ag.ny.gov/consumer-frauds/help-homeowners. A statewide listing
45 by county is also available at ~~[http://www.dfs.ny.gov/consumer/mortg nys np~~
46 ~~np counseling agencies.htm]~~ http://www.dfs.ny.gov/consumer/mortg nys np
47 counseling agencies.htm; housing counselors from New York-based agencies
48 listed on this website are trained to help homeowners who are having
49 problems making their mortgage payments and can help you find the best
50 option for your situation. Qualified free help is available; watch out
51 for companies or people who charge a fee for these services. Additional
52 free information and resources can be found at the following websites:
53 https://homeownerhelpny.org/ and
54 https://www.lawhelpny.org/issues/housing.

55 ~~[Housing counselors from New York-based agencies listed on the website~~
56 ~~above are trained to help homeowners who are having problems making~~

~~their mortgage payments and can help you find the best option for your situation.~~] If you wish, you may also contact us directly at _____ and ask to discuss possible options.

While we cannot assure that a mutually agreeable resolution is possible, we encourage you to take immediate steps to try to achieve a resolution. The longer you wait, the fewer options you may have.

If you have not taken any actions to resolve this matter within 90 days from the date this notice was mailed, we may commence legal action against you (or sooner if you cease to live in the dwelling as your primary residence.)

If you need further information, please call the New York State Department of Financial Services' toll-free helpline at [~~(show number)~~] **877-226-5697** or visit the Department's website at [~~(show web address)~~] **<http://www.dfs.ny.gov>**.

IMPORTANT: You have the right to remain in your home until you receive a court order telling you to leave the property. If a foreclosure action is filed against you in court, you still have the right to remain in the home until a court orders you to leave. You legally remain the owner of and are responsible for the property until the property is sold by you or by order of the court at the conclusion of any foreclosure proceedings. This notice is not an eviction notice, and a foreclosure action has not yet been commenced against you."

1-a. Notwithstanding any other provision of law, with regard to a reverse mortgage home loan, at least ninety days before a lender, an assignee or a mortgage loan servicer commences legal action against the borrower or borrowers at the property address and any other addresses of record, including reverse mortgage foreclosure, such lender, assignee or mortgage loan servicer shall give notice to the borrower in at least fourteen-point type except for the heading which shall be in at least sixteen-point type which shall include the following:

"YOU COULD LOSE YOUR HOME TO FORECLOSURE.
PLEASE READ THE FOLLOWING NOTICE CAREFULLY.

Date

Borrower's address

Loan Number:

Property Address:

Dear Borrower(s):

As of _____, we as your lender or servicer claim that your reverse mortgage loan is ____ days in default. Under New York State Law, we are required to send you this notice to inform you that you may be at risk of losing your home.

We, the lender or servicer of your loan, are claiming that your reverse mortgage loan is in default because you have not complied with the following conditions of your loan:

____ You are not occupying your home as your principal residence

____ You did not submit the required annual certificate of occupancy

____ The named borrower on the reverse mortgage has died

____ You did not pay property taxes

{Servicer name} paid your property taxes for the following time periods:_____

_____ {quarter/year}

____ You did not maintain homeowner's insurance

1 {Servicer name} purchased homeowner's insurance for you on the
2 following date(s) and for the following cost(s):

3
4 ____ You did not pay water/sewer charges
5 {Servicer name} paid water/sewer charges for you on the
6 following date(s) and for the following cost(s):

7
8 ____ You did not make required repairs to your home

9 If the claim is based on your failure to pay property or water and sewer
10 charges or maintain homeowner's insurance, you can cure this default by
11 making the payment of \$_____ for the advancements we made towards
12 these payments on your behalf.

13 You have the right to dispute the claims listed above by contacting us,
14 by calling _____ or sending a letter to _____. This
15 may include proof of payments made for property taxes or water and sewer
16 charges or a current declaration page from your insurance company, or
17 any other proof to dispute the servicer's claim.

18 If you are in default for failure to pay property charges (property
19 taxes, homeowner's insurance and/or water/sewer charges) you may qualify
20 for a grant, loan, or re-payment plan to cure the default balance owed.

21 If you are in default due to the death of your spouse, you may be
22 considered an eligible "Non-Borrowing Spouse" under a HUD program which
23 allows you to remain in your home for the rest of your life.

24 If you are over the age of 80 and have a long term illness, you may also
25 qualify for the "At-Risk Extension," which allows you to remain in your
26 home for one additional year and requires an annual re-certification.

27 Attached to this notice is a list of government-approved housing coun-
28 seling agencies and legal services in your area which provide free coun-
29 seling. You can also call the NYS Office of the Attorney General's Home-
30 owner Protection Program (HOPP) toll-free consumer hotline to be
31 connected to free housing counseling services in your area at
32 1-855-HOME-456 (1-855-466-3456), or visit their website at
33 [~~http://www.aghomehelp.com~~] [https://ag.ny.gov/consumer-frauds/help-](https://ag.ny.gov/consumer-frauds/help-homeowners)
34 [homeowners](https://ag.ny.gov/consumer-frauds/help-homeowners). A statewide listing by county is also available at
35 [~~http://www.dfs.ny.gov/consumer/mortg-nys-np-counseling-agencies.htm~~]
36 [http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm](http://www.dfs.ny.gov/consumer/mortg-nys-np-counseling-agencies.htm);
37 [housing counselors from New York-based agencies listed on this website](http://www.dfs.ny.gov/consumer/mortg-nys-np-counseling-agencies.htm)
38 [are trained to help homeowners who are having problems making their](http://www.dfs.ny.gov/consumer/mortg-nys-np-counseling-agencies.htm)
39 [mortgage payments and can help you find the best option for your situ-](http://www.dfs.ny.gov/consumer/mortg-nys-np-counseling-agencies.htm)
40 [ation](http://www.dfs.ny.gov/consumer/mortg-nys-np-counseling-agencies.htm). You may also call your local Department of Aging for a referral
41 or call 311 if you live in New York City.

42 Qualified free help is available; watch out for companies or people who
43 charge a fee for these services. [Additional free information and](https://homeownerhelpny.org/)
44 [resources can be found at the following websites:](https://homeownerhelpny.org/)
45 <https://homeownerhelpny.org/> [and](https://www.lawhelpny.org/issues/housing)
46 [https://www.lawhelpny.org/issues/housing.](https://www.lawhelpny.org/issues/housing)

47 [~~You~~] [If you wish, you](#) may also contact us directly at _____ and
48 ask to discuss [~~all~~] possible options [~~to allow you to cure your default~~]

1 ~~and prevent the foreclosure of your home~~]. While we cannot ensure that a
2 mutually agreeable resolution is possible, we encourage you to take
3 immediate steps to try to achieve a resolution. The longer you wait, the
4 fewer options you may have.

5 If you have not taken any actions to resolve this matter within 90 days
6 from the date this notice was mailed, we may commence legal action
7 against you (or sooner if you cease to live in the dwelling as your
8 primary residence).

9 If you need further information, please call the New York State Depart-
10 ment of Financial Services' toll-free helpline at 877-226-5697 or visit
11 the Department's website at <http://www.dfs.ny.gov>.

12 IMPORTANT: You have the right to remain in your home until you receive a
13 court order telling you to leave the property. If a foreclosure action
14 is filed against you in court, you still have the right to remain in the
15 home until a court orders you to leave. You legally remain the owner of
16 and are responsible for the property until the property is sold by you
17 or by order of the court at the conclusion of any foreclosure
18 proceedings. This notice is not an eviction notice, and a foreclosure
19 action has not yet been commenced against you."

20 A lender, assignee or mortgage loan servicer of a reverse mortgage
21 home loan which provides notice to the borrower as required by this
22 subdivision is not required to provide notice to such borrower with
23 regard to such loan pursuant to subdivision one of this section. For
24 purposes of this section, the borrower shall also mean any non-borrower
25 mortgagor and non-borrowing mortgagors shall be entitled to notice under
26 this section in the same manner and direction as the borrower.

27 2. The notices required by this section shall be sent by such lender,
28 assignee (including purchasing investor) or mortgage loan servicer to
29 the borrower, by registered or certified mail and also by first-class
30 mail to the last known address of the borrower, and to the residence
31 that is the subject of the mortgage. The notices required by this
32 section shall be sent by the lender, assignee or mortgage loan servicer
33 in a separate envelope from any other mailing or notice. Notice is
34 considered given as of the date it is mailed. The notices required by
35 this section shall contain a current list of at least five housing coun-
36 seling agencies serving the county where the property is located from
37 the most recent listing available from department of financial services.
38 The list shall include the counseling agencies' last known addresses and
39 telephone numbers. The department of financial services shall make
40 available on its websites a listing, by county, of such agencies. The
41 lender, assignee or mortgage loan servicer shall use such lists to meet
42 the requirements of this section. The department of financial services
43 shall update the counseling agency listings on its websites on the first
44 Friday of every month and shall save, archive and make available on its
45 websites each monthly listing for a period of no less than ten years.

46 § 12. Section 282 of the real property law, as added by chapter 550 of
47 the laws of 2010, is amended to read as follows:

48 § 282. [~~Mortgagor's right~~] Right to recover attorneys' fees in actions
49 or proceedings arising out of foreclosures of residential property. 1.
50 Whenever a covenant contained in a mortgage on residential real property
51 shall provide that in any action or proceeding to foreclose the mortgage
52 that the mortgagor may recover attorneys' fees and/or expenses incurred

1 as the result of the failure of the mortgagor or borrower to perform any
2 covenant or agreement contained in such mortgage, or that amounts paid
3 by the mortgagee therefor shall be paid by the mortgagor as additional
4 payment, there shall be implied in such mortgage a covenant by the mort-
5 gagee to pay to the mortgagor or borrower the reasonable attorneys' fees
6 and/or expenses incurred by the mortgagor or borrower as the result of
7 the failure of the mortgagee to perform any covenant or agreement on its
8 part to be performed under the mortgage or in the successful defense of
9 any action or proceeding pending or commenced by the mortgagee against
10 the mortgagor or borrower arising out of the contract, and an agreement
11 that such fees and expenses may be recovered as provided by law in an
12 action or proceeding pending or commenced against the mortgagee or by
13 way of counterclaim in any action or proceeding pending or commenced by
14 the mortgagee against the mortgagor or borrower. Any waiver of this
15 section shall be void as against public policy.

16 2. For the purposes of this section, "residential real property" means
17 real property improved by a one- to four-family residence, a condominium
18 that is occupied by the mortgagor or borrower or a cooperative unit that
19 is occupied by the mortgagor or borrower.

20 3. For the purposes of this section, "successful defense" of any
21 action or proceeding pending or commenced by the mortgagee shall mean
22 any form of dismissal of the action or proceeding, with or without prej-
23 udice, on the court's own initiative, after trial, or upon application
24 or motion made by the mortgagor or borrower.

25 § 13. Severability clause. If any clause, sentence, paragraph, section
26 or part of this act shall be adjudged by any court of competent juris-
27 diction to be invalid, such judgment shall not affect, impair or invali-
28 date the remainder thereof, but shall be confined in its operation to
29 the clause, sentence, paragraph, section or part thereof directly
30 involved in the controversy in which such judgment shall have been
31 rendered.

32 § 14. This act shall take effect immediately; provided, however:

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

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