

STATE OF NEW YORK

5473--B

2021-2022 Regular Sessions

IN SENATE

March 8, 2021

Introduced by Sens. SANDERS, GOUNARDES, KAMINSKY, KAVANAGH, MYRIE, REICHLIN-MELNICK, 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 -- 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, 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

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

LBD09373-06-1

1 section two hundred thirteen of this article is timely commenced and is
2 terminated in any other manner than by a voluntary discontinuance, a
3 failure to obtain personal jurisdiction over the defendant, a dismissal
4 of the complaint for any form of neglect, including, but not limited to,
5 those specified in subdivision three of section thirty-one hundred twen-
6 ty-six, subdivision (c) of section thirty-two hundred fifteen, rules
7 thirty-two hundred sixteen and thirty-four hundred four of this chapter,
8 for violation of, or non-compliance with, any uniform court rules, local
9 court rules, individual judge part rules, or court order, or a final
10 judgment upon the merits, the original plaintiff, or, if the original
11 plaintiff dies, and the cause of action survives, his or her executor or
12 administrator, may commence a new action upon the same transaction or
13 occurrence or series of transactions or occurrences within six months
14 after the termination provided that the new action would have been time-
15 ly commenced within the applicable limitations period prescribed by law
16 at the time of commencement of the prior action and that service upon
17 the original defendant is effected within such six-month period. For
18 purposes of this subdivision:

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

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

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

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

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

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

54 (d) Effect of discontinuance of actions based upon certain instruments
55 related to real property. Unless effectuated in strict accordance with
56 the applicable provisions of article seventeen of the general obli-

1 gations law, the discontinuance of an action upon an instrument
 2 described under subdivision four of section two hundred thirteen of this
 3 chapter, by any means, shall not, in form or effect:

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

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

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

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

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

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

21 5. This section does not change the requirements[~~7~~] or the effect with
 22 respect to the accrual of a cause of action, nor the time limited for
 23 commencement of an action[~~7-ef~~] based upon either:

24 a. a payment or part payment of the principal or interest secured by
 25 the mortgage, or

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

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

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

39 4. If an action to foreclose the mortgage or recover any part of the
 40 mortgage debt is adjudicated to be barred by the applicable statute of
 41 limitations, any other action to foreclose the same mortgage or recover
 42 any part of the same mortgage debt shall also be barred by the statute
 43 of limitations.

44 § 9. Severability clause. If any clause, sentence, paragraph, section
 45 or part of this act shall be adjudged by any court of competent juris-
 46 diction to be invalid, such judgment shall not affect, impair or invali-
 47 date the remainder thereof, but shall be confined in its operation to
 48 the clause, sentence, paragraph, section or part thereof directly
 49 involved in the controversy in which such judgment shall have been
 50 rendered.

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

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

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