

5045

2009-2010 Regular Sessions

I N   A S S E M B L Y

February 10, 2009

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

AN ACT to amend the civil practice law and rules, in relation to invalidating certain confessions of judgment, security interests, and liens obtained by attorneys in matrimonial actions

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

1     Section 1. Section 3218 of the civil practice law and rules is amended  
2 by adding a new subdivision (e) to read as follows:

3     (E) CONFESSION OF JUDGMENT, SECURITY INTEREST, OR LIEN UNENFORCEABLE  
4 BY ATTORNEY IN MATRIMONIAL ACTIONS. NO CONFESSION OF JUDGMENT, SECURITY  
5 INTEREST, OR LIEN ON A PRIMARY RESIDENCE ARISING FROM PROFESSIONAL  
6 SERVICES RENDERED BY AN ATTORNEY IN A MATRIMONIAL ACTION SHALL BE  
7 ENFORCEABLE UNLESS:

8     1. THE CLIENT IS SPECIFICALLY ADVISED IN A RETAINER AGREEMENT THAT  
9 SUCH A LEVY OR LIEN IS POSSIBLE;

10    2. UPON APPLICATION AND FOLLOWING NOTICE OF THE APPLICATION TO THE  
11 OTHER PARTY IN THE MATRIMONIAL ACTION, THE JUSTICE PRESIDING OVER THE  
12 CASE GIVES APPROVAL OF SUCH LEVY OR LIEN; AND

13    3. THE JUSTICE FINDS, FOLLOWING A CAREFUL EXAMINATION OF THE FINANCES  
14 OF THE PARTIES TO THE ACTION, THAT THERE IS NO OTHER MEANS OF SECURING  
15 PAYMENT OF THE FEE.

16     NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBDIVISION, AN ATTORNEY  
17 SHALL NOT FORECLOSE ON A MORTGAGE PLACED ON THE MARITAL RESIDENCE WHILE  
18 THE SPOUSE WHO CONSENTS TO THE MORTGAGE REMAINS THE TITLEHOLDER AND THE  
19 RESIDENCE REMAINS THE SPOUSE'S PRIMARY RESIDENCE.

20     ANY JUDGMENT ENTERED IN VIOLATION OF THIS SUBDIVISION IS VOID AND  
21 UNENFORCEABLE.

22     S 2. This act shall take effect immediately and shall apply to judgments  
23 entered on or after such date.

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

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