S T A T E  O F  N E W  Y O R K

5045

2009-2010 Regular Sessions

I N  A S S E M B L Y

February 10, 2009

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:

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

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

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

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

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

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

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

S 2. This act shall take effect immediately and shall apply to judgments 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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