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

6297--B

2009-2010 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. TITUS, CAMARA -- read once and referred to the Committee on Housing -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reference changed 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 and the real property actions and proceedings law, in relation to evictions of tenants upon foreclosure of a property

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

Section 1. Section 5102 of the civil practice law and rules, as amended by chapter 531 of the laws of 1963, is amended to read as follows:

S 5102. Enforcement of judgment or order awarding possession of real property or a chattel. A judgment or order, or a part thereof, awarding possession of real property or a chattel may be enforced by an execution, which shall particularly describe the property and designate the party to whom the judgment or order awards its possession. The execution shall comply with the provisions of section 5230, except that it shall direct the sheriff to deliver possession of the property to the party designated. In an action to recover a chattel, where the judgment awards possession of the chattel and in the alternative its value, the execution shall also direct the sheriff, if the chattel cannot be found within his county, to levy upon real and personal property as upon an execution to enforce a money judgment. After the death of a party against whom a judgment or order awarding possession of real property has been obtained, an order granting leave to issue such execution may be granted upon twenty days' notice, to be served in the same manner as a summons, to the occupants of the real property and to the heirs or devisees of the deceased party. IF THE REAL PROPERTY TO BE DELIVERED

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

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INCLUDES A DWELLING UNIT LOCATED IN A RESIDENTIAL BUILDING CONTAINING LESS THAN SIX DWELLING UNITS, THE JUDGMENT IN A FORECLOSURE ACTION SHALL PROVIDE THAT ONLY AN OCCUPANT OF SUCH DWELLING UNIT WHO WAS NAMED AS A DEFENDANT IN THE FORECLOSURE ACTION AND WHO WAS SERVED WITH THE NOTICE REQUIRED BY SECTION THIRTEEN HUNDRED THREE OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW MAY BE SUBJECT TO AN EXECUTION DIRECTING DELIVERY OF SUCH DWELLING UNIT AND SUCH OCCUPANT SHALL BE SERVED WITH A NINETY-DAY NOTICE TO QUIT, IN THE MANNER PRESCRIBED IN SECTION SEVEN HUNDRED THIRTY-FIVE OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, PRIOR TO THE EXECUTION OF THAT PART OF THE JUDGMENT THAT DIRECTS DELIVERY OF POSSESSION OF THE DWELLING UNIT.

S 2. Section 221 of the real property actions and proceedings law, as added by chapter 312 of the laws of 1962, is amended to read as follows:

S 221. Compelling delivery of possession of real property. Where a judgment affecting the title to, or the possession, enjoyment or use of, real property allots to any person a distinct parcel of real property, or contains a direction for the sale of real property, or confirms such an allotment or sale, it also may direct the delivery of the possession of the property to the person entitled thereto. If a party, or his representative or successor, who is bound by the judgment, withholds possession from the person thus declared to be entitled thereto, the court, by order, in its discretion, besides punishing the disobedience as a contempt, may require the sheriff to put that person into possession. Such an order shall be executed as if it were an execution for the delivery of the possession of the property. IF THE PROPERTY TO BE DELIVERED INCLUDES A DWELLING UNIT LOCATED IN A RESIDENTIAL BUILDING CONTAINING LESS THAN SIX DWELLING UNITS, THE JUDGMENT IN A FORECLOSURE ACTION SHALL PROVIDE THAT ONLY AN OCCUPANT OF SUCH DWELLING UNIT WHO WAS NAMED AS A DEFENDANT IN THE FORECLOSURE ACTION AND WHO WAS SERVED WITH THE NOTICE REQUIRED BY SECTION THIRTEEN HUNDRED THREE OF THIS CHAPTER MAY BE SUBJECT TO AN EXECUTION DIRECTING DELIVERY OF SUCH DWELLING UNIT AND SUCH OCCUPANT SHALL BE SERVED WITH A NINETY-DAY NOTICE TO QUIT, IN THE MANNER PRESCRIBED IN SECTION SEVEN HUNDRED THIRTY-FIVE OF THIS CHAPTER, PRIOR TO THE EXECUTION OF THAT PART OF THE JUDGMENT THAT DIRECTS DELIVERY OF POSSESSION OF THE DWELLING UNIT.

S 3. The opening paragraph of section 713 of the real property actions and proceedings law is designated subdivision (a).

S 4. Paragraph 5 of subdivision (a) of section 713 of the real property actions and proceedings law, as amended by chapter 642 of the laws of 1976, such subdivision as designated by section three of this act, is amended to read as follows:

5. The property has been sold in foreclosure and either the deed delivered pursuant to such sale, or a copy of such deed, certified as provided in the civil practice law and rules, has been exhibited to [him] THE RESPONDENT WHO IS NOT THE OCCUPANT OF A DWELLING UNIT LOCATED IN A RESIDENTIAL BUILDING CONTAINING LESS THAN SIX DWELLING UNITS.

S 5. Section 713 of the real property actions and proceedings law is amended by adding a new subdivision (b) to read as follows:

(B) GROUNDS WHERE NO LANDLORD-TENANT RELATIONSHIP EXISTS AFTER FORECLOSURE SALE OF RESIDENTIAL PROPERTY. A SPECIAL PROCEEDING MAY BE MAINTAINED UNDER THIS ARTICLE TO OBTAIN POSSESSION OF A DWELLING UNIT LOCATED IN A RESIDENTIAL BUILDING CONTAINING LESS THAN SIX DWELLING UNITS AFTER A NINETY-DAY NOTICE TO QUIT HAS BEEN SERVED UPON THE RESPONDENT IN THE MANNER PRESCRIBED IN SECTION SEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE, UPON THE FOLLOWING GROUND: THE PROPERTY HAS BEEN SOLD IN FORECLOSURE AND RESPONDENT WAS NAMED AS A DEFENDANT IN THE FORECLO-

SURE ACTION AND WAS SERVED WITH THE NOTICE REQUIRED BY SECTION THIRTEEN HUNDRED THREE OF THIS CHAPTER AND EITHER THE DEED DELIVERED PURSUANT TO SUCH SALE, OR A COPY OF SUCH DEED, CERTIFIED AS PROVIDED IN THE CIVIL PRACTICE LAW AND RULES, HAS BEEN EXHIBITED TO THE RESPONDENT.

S 6. Section 1301 of the real property actions and proceedings law is amended by adding a new subdivision 4 to read as follows:

4. THE SUMMONS SHALL CONTAIN A NOTICE ADVISING THAT A TENANT OF A DWELLING UNIT LOCATED IN A RESIDENTIAL BUILDING CONTAINING LESS THAN SIX DWELLING UNITS WHO IS NOT THE MORTGAGOR HAS THE OPTION TO APPEAR WITHOUT CONTESTING THE MERITS OF THE ACTION, BUT MAY APPEAR SOLELY FOR THE PURPOSE OF RECEIVING THE FURTHER ORDERS OF THE COURT RELATED TO THE DISPOSITION AND SALE OF THE PROPERTY AND DESCRIBING A PROCEDURE TO MAKE SUCH AN APPEARANCE IN THE ACTION.

S 7. Section 1303 of the real property actions and proceedings law, as amended by chapter 472 of the laws of 2008, is amended to read as follows:

S 1303. Foreclosures; required notices. 1. The foreclosing party in a mortgage foreclosure action, (A) which involves residential real property consisting of owner-occupied [one-to-four-family] ONE-TO-FIVE-FAMILY dwellings shall provide notice to the mortgagor OR (B) WHICH INVOLVES RESIDENTIAL REAL PROPERTY CONSISTING OF ONE-TO-FIVE-FAMILY DWELLINGS SHALL PROVIDE NOTICE TO ANY TENANT OF A DWELLING UNIT IN SUCH REAL PROPERTY WHO IS NAMED AS A DEFENDANT IN THE FORECLOSURE ACTION in accordance with the provisions of this section with regard to information and assistance about the foreclosure process.

2. The notice required by this section shall be delivered with the summons and complaint to commence a foreclosure action. The notice required by this section shall be in bold, fourteen-point type and shall be printed on colored paper that is other than the color of the summons and complaint, and the title of the notice shall be in bold, twenty-point type. The notice shall be on its own page.

3. The notice required by this section TO BE GIVEN TO HOMEOWNERS shall appear as follows:

Help for Homeowners in Foreclosure

New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully.

Summons and Complaint

You are in danger of losing your home. If you fail to respond to the summons and complaint in this foreclosure action, you may lose your home. Please read the summons and complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself.

Sources of Information and Assistance

The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process.

To locate an entity near you, you may call the toll-free helpline maintained by the New York State Banking Department at _____ (enter number) or visit the Department's website at _____ (enter web address).

Foreclosure rescue scams

Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be

extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

4. THE NOTICE REQUIRED BY THIS SECTION TO BE GIVEN TO TENANTS SHALL APPEAR AS FOLLOWS:

HELP FOR TENANTS OF BUILDINGS IN FORECLOSURE

NEW YORK STATE LAW REQUIRES THAT WE SEND YOU THIS NOTICE ABOUT THE FORECLOSURE PROCESS. PLEASE READ IT CAREFULLY.

SUMMONS AND COMPLAINT

YOU ARE IN DANGER OF LOSING YOUR HOME. IF YOU FAIL TO RESPOND TO THE SUMMONS AND COMPLAINT IN THIS FORECLOSURE ACTION, YOU MAY LOSE YOUR HOME. YOU MAY ALSO BE EVICTED FROM YOUR HOME IF YOUR LANDLORD IS FORECLOSED UPON. PLEASE READ THE SUMMONS AND COMPLAINT CAREFULLY.

YOU HAVE THE OPTION TO APPEAR IN THIS FORECLOSURE ACTION WITHOUT CONTESTING THE MERITS OF THE ACTION. YOU MAY APPEAR SOLELY FOR THE PURPOSE OF RECEIVING THE FURTHER ORDERS OF THE COURT RELATED TO THE DISPOSITION AND SALE OF THE PROPERTY. THE SUMMONS DESCRIBES THE MANNER IN WHICH YOU CAN MAKE SUCH AN APPEARANCE.

YOU SHOULD IMMEDIATELY CONTACT AN ATTORNEY OR YOUR LOCAL LEGAL AID OFFICE TO OBTAIN ADVICE ON HOW TO PROTECT YOURSELF.

SOURCES OF INFORMATION AND ASSISTANCE

THE STATE ENCOURAGES YOU TO BECOME INFORMED ABOUT YOUR OPTIONS IN FORECLOSURE. IN ADDITION TO SEEKING ASSISTANCE FROM AN ATTORNEY OR LEGAL AID OFFICE, THERE ARE GOVERNMENT AGENCIES AND NON-PROFIT ORGANIZATIONS THAT YOU MAY CONTACT FOR INFORMATION ABOUT POSSIBLE OPTIONS, INCLUDING TRYING TO WORK WITH YOUR LANDLORD'S LENDER OR A NEW OWNER DURING THIS PROCESS IN ORDER TO PREVENT YOUR EVICTION AND TO ENSURE THAT YOUR DWELLING IS PROPERLY MAINTAINED.

TO LOCATE AN ENTITY NEAR YOU, YOU MAY CALL THE TOLL-FREE HELPLINE MAINTAINED BY THE NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL AT (ENTER NUMBER) OR VISIT THE DIVISION'S WEBSITE AT (ENTER WEB ADDRESS). IF YOUR RENTAL UNIT IS LOCATED IN NEW YORK CITY, YOU MAY ALSO CALL THE HELPLINE MAINTAINED BY THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT AT OR VISIT THE DEPARTMENT'S WEBSITE AT (ENTER WEB ADDRESS).

5. The banking department, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL OR THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT shall prescribe the telephone number and web address to be included in the APPROPRIATE notice.

[5] 6. The banking department, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL OR THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT shall post on its website or otherwise make readily available the name and contact information of government agencies or non-profit organizations that may be contacted for information about the foreclosure process, EVICTION PREVENTION, AND REQUIREMENTS FOR THE MAINTENANCE OF PROPERTIES DURING THE PENDENCY OF FORECLOSURE ACTIONS, including maintaining a toll-free helpline to disseminate the information required by this section.

S 8. The real property actions and proceedings law is amended by adding a new section 1305 to read as follows:

S 1305. NOTICES TO TENANTS. 1. IN A MORTGAGE FORECLOSURE ACTION, WHICH INVOLVES RESIDENTIAL REAL PROPERTY CONSISTING OF ONE-TO-FIVE-FAMILY DWELLINGS, A PLAINTIFF UPON COMMENCEMENT OF THE ACTION OR DISCONTINUANCE

OF THE ACTION, THE PREVAILING PLAINTIFF, A PLAINTIFF TAKING A DEED IN LIEU OF FORECLOSURE, A RECEIVER APPOINTED IN SUCH ACTION, A PURCHASER FROM THE MORTGAGOR OR THE PURCHASER AT A FORECLOSURE SALE PURSUANT TO A JUDGMENT OF FORECLOSURE SHALL PROVIDE NOTICE OF THE DATE OF EVERY SUCH OCCURRENCE TO ANY TENANT RESIDING IN SUCH PROPERTY WITHIN THIRTY DAYS OF THE COMMENCEMENT OF THE ACTION, DISCONTINUANCE OF THE ACTION, JUDGMENT OF FORECLOSURE, APPOINTMENT OF A RECEIVER OR THE CLOSING OF TITLE PURSUANT TO A FORECLOSURE SALE OR OTHER DISPOSITION. THEREAFTER, UNTIL THE CLOSING OF TITLE PURSUANT TO A FORECLOSURE SALE OR OTHER DISPOSITION OF THE PROPERTY, SUCH NOTICE OF EVERY SUCH OCCURRENCE SHALL ALSO BE PROVIDED TO A NEW TENANT AT THE TIME SUCH NEW TENANT ENTERS INTO A LEASE OR OTHER RENTAL AGREEMENT AND THEREAFTER FOR A DWELLING UNIT IN THE PROPERTY.

2. THE NOTICE SHALL ADVISE THE TENANT OF THE OCCURRENCE OF AN EVENT DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, AS WELL AS OF THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE PERSON OR ENTITY RESPONSIBLE FOR MAINTENANCE OF THE PROPERTY AND ENTITLED TO COLLECT RENT FROM THE TENANT.

3. THE NOTICE SHALL BE PERSONALLY SERVED UPON THE TENANT, OR SERVED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND ALSO BY FIRST-CLASS MAIL TO THE TENANT'S ADDRESS AT THE PROPERTY. THE NOTICE SHALL BE ACCOMPANIED BY AN ACKNOWLEDGEMENT OF SERVICE THAT SHALL BE SIGNED BY THE TENANT SO SERVED. IF A TENANT REFUSES TO SIGN THE ACKNOWLEDGEMENT OF SERVICE, THE SERVING PARTY MAY FILE WITH A COURT A SWORN AFFIDAVIT STATING THE MANNER IN WHICH THE TENANT WAS SERVED AND THAT THE TENANT REFUSED TO SIGN SUCH ACKNOWLEDGMENT.

4. A TENANT WHO IS NOT SERVED BY THE NOTICE REQUIRED BY THIS SECTION WITHIN THE TIME PERIOD FOR SERVICE OF SUCH NOTICE SHALL NOT BE LIABLE FOR ANY RENT FROM THE EXPIRATION OF SUCH TIME PERIOD UNTIL SUCH NOTICE IS DULY SERVED UPON SUCH TENANT.

5. A TENANT ENTITLED TO NOTICE PURSUANT TO THIS SECTION SHALL NOT BE SUBJECT TO AN EXECUTION PURSUANT TO SECTION TWO HUNDRED TWENTY-ONE OF THIS CHAPTER OR SECTION FIFTY-ONE HUNDRED TWO OF THE CIVIL PRACTICE LAW AND RULES OR BE MADE A DEFENDANT OR RESPONDENT IN ANY ACTION OR PROCEEDING SEEKING POSSESSION OF SUCH TENANT'S DWELLING UNIT BROUGHT PURSUANT TO SUBDIVISION (B) OF SECTION SEVEN HUNDRED THIRTEEN OF THIS CHAPTER UNLESS SUCH TENANT WAS PREVIOUSLY SERVED WITH THE NOTICE REQUIRED BY THIS SECTION. THE NOTICE REQUIRED BY THIS SECTION SHALL BE IN ADDITION TO THE NOTICES TO QUIT REQUIRED BY SECTION TWO HUNDRED TWENTY-ONE AND SUBDIVISION (B) OF SECTION SEVEN HUNDRED THIRTEEN OF THIS CHAPTER OR SECTION FIFTY-ONE HUNDRED TWO OF THE CIVIL PRACTICE LAW AND RULES.

6. ANY PROVISION OF A LEASE OR RENTAL AGREEMENT PURPORTING TO WAIVE A PROVISION OF THIS SECTION IS NULL AND VOID.

S 9. Section 1311 of the real property actions and proceedings law is amended by adding two new subdivisions 5 and 6 to read as follows:

5. A PERSON MAY NOT BE NAMED AS A PARTY DEFENDANT BY USE OF A PSEUDONYM UNLESS PLAINTIFF HAS SUBMITTED TO THE COURT AN AFFIDAVIT ATTESTING TO THE INQUIRY UNDERTAKEN SO AS TO DEMONSTRATE THAT REASONABLE AND DILIGENT EFFORTS WERE MADE TO ASCERTAIN THE IDENTITY OF SUCH DEFENDANT.

6. THE TENANCY OF A TENANT WHO IS NOT NAMED AS A PARTY DEFENDANT IN THE ACTION SHALL NOT BE AFFECTED IN ANY WAY BY THE JUDGMENT IN THE ACTION. THE INTEREST OF THE PREVAILING PLAINTIFF IN THE ACTION AND ANY PURCHASER PURSUANT TO A FORECLOSURE SALE SHALL BE SUBJECT TO THE INTEREST OF ANY SUCH TENANT.

S 10. Section 1351 of the real property actions and proceedings law is amended by adding a new subdivision 4 to read as follows:

4. THE TENANCY OF A TENANT WHO IS NOT NAMED AS A PARTY DEFENDANT IN THE ACTION SHALL NOT BE AFFECTED IN ANY WAY BY THE JUDGMENT IN THE ACTION. THE INTEREST OF THE PREVAILING PLAINTIFF IN THE ACTION AND ANY PURCHASER PURSUANT TO A FORECLOSURE SALE SHALL BE SUBJECT TO THE INTEREST OF ANY SUCH TENANT.

S 11. This act shall take effect on the ninetieth day after it shall have become a law.