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

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2009-2010 Regular Sessions

I N A S S E M B L Y

March 12, 2009

Introduced by M. of A. BRENNAN, CLARK, JEFFRIES, ORTIZ, ROBINSON, ROSENTHAL, DIAZ, PERRY, CAMARA, CAHILL, GALEF, J. RIVERA, P. RIVERA, SCARBOROUGH, BOYLAND, N. RIVERA, BRODSKY, LANCMAN, KAVANAGH, DINOWITZ, RAMOS, MAISEL, ESPAILLAT, HOOPER, ENGLEBRIGHT, SPANO -- Multi-Sponsored by -- M. of A. ABBATE, ALESSI, ALFANO, ARROYO, AUBRY, BENEDETTO, BENJAMIN, BING, BROOK-KRASNY, COLTON, COOK, CYMBROWITZ, DelMONTE, DESTITO, EDDINGTON, FIELDS, GABRYSZAK, GLICK, GOTTFRIED, GREENE, HEASTIE, HOYT, HYER-SPENCER, JACOBS, JAFFEE, JOHN, KELLNER, KOON, LENTOL, LIFTON, V. LOPEZ, LUPARDO, MARKEY, McENENY, MILLMAN, NOLAN, PEOPLES, PERALTA, PHEFFER, POWELL, PRETLOW, QUINN, REILLY, SALADINO, SCHIMEL, SWEENEY, TITUS, WALKER, WEISENBERG, WRIGHT -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, in relation to providing foreclosure relief; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Legislative intent. The legislature declares that a public emergency exists in regards to real estate foreclosures due to the extension of fundamentally unaffordable mortgage loans, fundamentally unaffordable second mortgages and fundamentally unaffordable home equity loans. Many such loans were extended under conditions which evince deception, misrepresentation and fraud on the part of many lenders and agents. This is particularly true of loans which qualify as subprime. The presence of such subprime loans is distorting the New York state real estate market. The problems associated with these subprime loans are adversely affecting availability of capital, the demand for housing, and the value of real estate. The financial problems created by such subprime loans threaten to spill over into the rest of the real estate market and the general economy. It is in the interest of New York state to ensure the rights of all parties are protected and that all foreclo-

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

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sures which come into the New York courts during this period are carefully scrutinized.

S 2. The real property actions and proceedings law is amended by adding a new section 1305 to read as follows:

S 1305. FORECLOSURES; COURT RELIEF. 1. VENUE. IN ANY ACTION TO FORECLOSE A MORTGAGE UNDER THIS ARTICLE A MORTGAGOR NAMED IN SUCH ACTION MAY APPLY FOR RELIEF IN STATE SUPREME COURT PURSUANT TO THIS SECTION.

2. TIMING OF YEAR-LONG MORATORIUM. IF A MORTGAGEE HAS OTHERWISE ESTABLISHED ITS LEGAL RIGHT TO JUDGMENT ON AN ACTION TO FORECLOSE A MORTGAGE PURSUANT TO THIS CHAPTER, THEN SUCH ACTION SHALL BE HELD IN ABEYANCE BY THE COURT BEFORE WHICH SUCH ACTION IS PENDING. SUCH PERIOD OF TIME IS INTENDED TO PERMIT THE PARTIES TO SETTLE THE ACTION OUTSIDE OF COURT AND TO FORESTALL FORECLOSURE WITHIN THE CURRENT ECONOMIC CLIMATE.

3. PROCESS AND FEES. IF AN ACTION TO FORECLOSE A MORTGAGE HAS BEEN COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A MORTGAGOR MAY ASK THE COURT BEFORE WHICH SUCH ACTION IS COMMENCED TO HOLD SUCH ACTION IN ABEYANCE PURSUANT TO SUBDIVISION TWO OF THIS SECTION. MOTIONS ON NOTICE IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES MADE BY THE MORTGAGOR SHALL BE DEEMED TO HAVE BEEN FILED BY A POOR PERSON PURSUANT TO ARTICLE ELEVEN OF THE CIVIL PRACTICE LAW AND RULES AND ALL COURT FEES OTHERWISE APPLICABLE TO SUCH ACTIONS AND PAYABLE BY A MORTGAGOR SHALL BE WAIVED. IF A FORECLOSURE ACTION HAS NOT BEEN COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A MORTGAGOR MUST COMMENCE AN ACTION IN STATE SUPREME COURT BY FILING AND SERVING A SUMMONS PURSUANT TO ARTICLE THREE OF THE CIVIL PRACTICE LAW AND RULES WITH A REQUEST FOR RELIEF PURSUANT TO THE TERMS OF THIS SECTION. IN SUCH CASE, SUCH FILING SHALL BE DEEMED TO HAVE BEEN FILED BY A POOR PERSON PURSUANT TO ARTICLE ELEVEN OF THE CIVIL PRACTICE LAW AND RULES AND ALL FILING AND COURT FEES OTHERWISE APPLICABLE TO SUCH ACTIONS AND PAYABLE BY A MORTGAGOR IN THE FORM OF INDEX AND MOTION FEES SHALL BE WAIVED.

4. PRIMA FACIE CASE. A MORTGAGOR MUST ESTABLISH A PRIMA FACIE CASE IN THE MOTION OR PLEADING. AMENDMENTS TO SUCH MOTION OR PLEADING SHALL BE LIBERALLY GRANTED. SUCH PLEADING MUST ESTABLISH THAT:

A. THE MORTGAGOR IS A NATURAL PERSON; AND

B. THE DEBT IS INCURRED BY THE MORTGAGOR PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES; AND

C. THE LOAN IS SECURED BY A MORTGAGE, SECOND MORTGAGE OR HOME EQUITY LOAN ON REAL PROPERTY WHICH IS IMPROVED WITH A RESIDENTIAL BUILDING CONTAINING ONE TO SIX DWELLING UNITS; AND

D. THE REAL PROPERTY SUBJECT TO FORECLOSURE IS THE PRINCIPAL RESIDENCE OF THE MORTGAGOR; AND

E. THE MORTGAGOR OWNS NO OTHER REAL PROPERTY; AND

F. THE REAL PROPERTY IS LOCATED IN THIS STATE; AND

G. THE MORTGAGE, SECOND MORTGAGE OR HOME EQUITY LOAN QUALIFIES AS A SUBPRIME HOME LOAN. A SUBPRIME HOME LOAN FOR A FIRST LIEN LOAN IS ONE WHICH HAS AN ANNUAL PERCENTAGE RATE OF THREE OR MORE PERCENTAGE POINTS ABOVE THE YIELD ON TREASURY SECURITIES OF COMPARABLE MATURITY MEASURED AS OF THE FIFTEENTH DAY OF THE MONTH PRECEDING THE MONTH IN WHICH THE APPLICATION FOR THE LOAN IS RECEIVED BY THE LENDER. A SUBPRIME HOME LOAN FOR A SUBORDINATE LIEN LOAN IS ONE WHICH HAS AN ANNUAL PERCENTAGE RATE OF FIVE OR MORE PERCENTAGE POINTS ABOVE THE YIELD ON TREASURY SECURITIES OF COMPARABLE MATURITY MEASURED AS OF THE FIFTEENTH DAY OF THE MONTH PRECEDING THE MONTH IN WHICH THE APPLICATION FOR THE LOAN IS RECEIVED BY THE LENDER.

5. MONTHLY PAYMENT SCHEDULE. IF A PRIMA FACIE CASE HAS BEEN ESTABLISHED, THE COURT MUST SET FORTH THE TERMS OF A MONTHLY PAYMENT SCHEDULE

WHICH WILL PRESERVE THE RELATIVE FINANCIAL INTERESTS OF BOTH PARTIES UNDER TERMS WHICH ARE EQUITABLE AND JUST. TOWARDS THAT END, THE COURT SHALL INQUIRE INTO THE FINANCES OF BOTH THE MORTGAGEE AND THE MORTGAGOR. THE PURPOSE OF SUCH INQUIRY SHALL BE TO DETERMINE THE MINIMUM AMOUNT NECESSARY TO MAINTAIN THE MORTGAGEE'S FINANCIAL POSITION AND TO DETERMINE THE AMOUNT WHICH THE MORTGAGOR WILL BE ABLE TO AFFORD. SUCH MONTHLY PAYMENTS SHALL BE APPLIED TO THE PRINCIPAL AND INTEREST UPON THE INDEBTEDNESS. IF THE FINANCIAL CONDITION OF THE MORTGAGOR EXCEEDS THE MINIMUM AMOUNT NECESSARY TO MAINTAIN THE FINANCIAL POSITION OF THE MORTGAGEE, SUCH MONTHLY AMOUNT MAY BE INCREASED BEYOND THE MINIMUM AMOUNT AS DETERMINED WITHIN THE DISCRETION OF THE COURT. IT IS WITHIN THE COURT'S DISCRETION TO DETERMINE WHETHER THE ESTABLISHMENT OF SUCH PAYMENT SCHEDULE IS POSSIBLE UNDER TERMS WHICH ARE EQUITABLE AND JUST. THE PURPOSE OF SUCH MONTHLY PAYMENTS ARE TO PRESERVE THE RELATIVE FINANCIAL INTERESTS OF BOTH PARTIES UNTIL A SETTLEMENT CAN BE REACHED BUT IN NO EVENT SHALL SUCH ORDER GOVERN FOR MORE THAN ONE YEAR. FAILURE TO ADHERE TO THE TERMS OF SUCH SCHEDULE MAY ALSO RESULT IN FORECLOSURE OR LIFTING OF THE ABEYANCE. MORE THAN ONE SINGLE YEAR LONG MORATORIUM MAY BE GRANTED IN THE DISCRETION OF THE COURT SUBJECT TO THE FACTS ESTABLISHED DURING THE PROCEEDINGS.

6. POSTPONEMENT ORDER. ONCE THE COURT DETERMINES THAT AN EQUITABLE AND JUST PAYMENT SCHEDULE CAN BE ESTABLISHED, IT SHALL ISSUE AN ORDER WHICH SETS FORTH THE TERMS OF SUCH PAYMENT SCHEDULE AND SERVE IT UPON ALL PARTIES TO THE PROCEEDING. SUCH ORDER SHALL SET FORTH A RETURN DATE FOR THE REEXAMINATION OF SUCH MATTER AFTER PASSAGE OF THE POSTPONEMENT TIME PERIOD AT A FORMAL HEARING ON NOTICE TO THE PARTIES. THE COURT MAY TAILOR RELIEF AS REQUIRED BY THE FACTS OF EACH CASE THAT FALLS WITHIN THE PURVIEW OF THIS SECTION. HOWEVER, IN NO EVENT SHALL SUCH ORDER POSTPONE FINAL ACTION BEYOND ONE YEAR WITHOUT A RE-EXAMINATION OF THE PARTIES' FINANCIAL CIRCUMSTANCES AFTER FORMAL HEARING ON NOTICE TO THE PARTIES. THE TIME PERIOD OF SUCH ORDER SHALL RUN FROM THE DATE OF THE ENTRY OF SUCH ORDER. SUCH ABEYANCE SHALL NOT BEGIN UNTIL THE FORECLOSURE PROCESS HAS REACHED THE POINT WHERE A FINAL DETERMINATION IS POSSIBLE BUT SHALL BE WITHHELD UNTIL THE POSTPONEMENT PERIOD HAS ELAPSED. ENTITLEMENT TO SUCH ABEYANCE MAY BE ESTABLISHED AT ANY TIME REGARDLESS OF WHETHER FORECLOSURE IS BEING SOUGHT BY THE MORTGAGEE. MULTIPLE POSTPONEMENTS MAY BE GRANTED IN THE DISCRETION OF THE COURT IF WARRANTED BY THE FACTS OF A GIVEN CASE AND THE ECONOMIC CONDITIONS ACROSS THE STATE.

7. CONTINUING JURISDICTION. THE COURT SHALL MAINTAIN CONTINUING JURISDICTION OF THE MATTER UNTIL IT REACHES FINAL RESOLUTION. UPON THE APPLICATION OF EITHER PARTY, PRIOR TO THE EXPIRATION OF THE POSTPONEMENT PERIOD, UPON PRESENTATION OF EVIDENCE THAT THE TERMS FIXED BY THE COURT ARE NO LONGER JUST AND EQUITABLE, THE COURT MAY REVISE AND ALTER SUCH TERMS IN SUCH MANNER AS THE CHANGED CIRCUMSTANCES AND CONDITIONS MAY REQUIRE.

S 3. This act shall take effect immediately and shall expire and be deemed repealed 3 years after such date.