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

2177

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. McENENY -- read once and referred to the Committee on Real Property Taxation

AN ACT to amend the real property tax law, in relation to the provision of personal notice to a real property owner of the commencement of a foreclosure proceeding and the entry of a default judgment against such property, and requiring taxing authorities to reconvey foreclosed property with 4 months of service of the default judgment, upon the former owner if the taxes, interest and penalties are paid thereon

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

Section 1. Subdivision 7 of section 1123 of the real property tax law, as amended by chapter 532 of the laws of 1994, is amended to read as follows:

7. An answer to a petition of foreclosure shall be duly verified by the respondent and shall set forth in detail the nature and amount of his or her interest and any defense or objections to the foreclosure of the tax lien. THE ANSWER MAY CLAIM ANY SURPLUS RECEIVED AT THE FORECLOSURE SALE OVER THE AMOUNT OF MONEY OWED FOR TAXES, INTEREST AND PENALTIES. Such answer shall be filed in the office of the county clerk and served on the attorney for the tax district foreclosing on or before the last day for redemption, as specified in the notice of petition. Whenever an answer has been interposed as herein provided, either party shall have an absolute right to a severance of the proceeding as to the parcel or parcels to which the answer relates.

S 2. Section 1125 of the real property tax law is amended by adding a new subdivision 1-a to read as follows:

1-A. IN THE EVENT THAT THE NOTICE MAILED BY CERTIFIED MAIL TO ANY OWNER IS RETURNED, WITHOUT A SIGNED RECEIPT, AS UNDELIVERED TO THE ENFORCING OFFICER OR IF THE ENFORCING OFFICER IS UNABLE TO SECURE PROOF OF RECEIPT FROM THE UNITED STATES POSTAL SERVICE, SUCH OFFICER SHALL MAIL SUCH NOTICE TO THE OWNER BY ORDINARY FIRST CLASS MAIL AND SHALL

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

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AFFIX SUCH NOTICE TO THE DOOR OF THE ACTUAL DWELLING PLACE OR PLACE OF BUSINESS OF THE OWNER WITHIN THE STATE OR, IF SUCH OWNER IS NOT WITHIN THE STATE, SHALL AFFIX SUCH NOTICE TO THE DOOR OF THE REAL PROPERTY WHICH IS THE SUBJECT OF THE FORECLOSURE PROCEEDING AND IF SUCH REAL PROPERTY IS UNDEVELOPED, THE NOTICE SHALL BE POSTED IN A CONSPICUOUS LOCATION ON THE PROPERTY. UPON THE PROVISION OF NOTICE PURSUANT TO THIS SUBDIVISION, THE ENFORCING OFFICER SHALL ATTEST TO SUCH IN AN AFFIDAVIT FILED IN THE OFFICE OF THE COUNTY CLERK.

S 3. Paragraph (b) of subdivision 3 of section 1125 of the real property tax law, as amended by chapter 579 of the laws of 1995, is amended to read as follows:

(b) The failure of an intended recipient to receive any such notice shall not invalidate any tax [or prevent the enforcement of the same as provided by law]. FORECLOSURE BY DEFAULT MAY ONLY BE TAKEN IF THE OWNER HAS ACTUALLY RECEIVED THE NOTICE OF FORECLOSURE OR IF THERE HAS BEEN A DILIGENT EFFORT TO PROVIDE ACTUAL NOTICE TO THE OWNER AND SUCH EFFORTS ARE FUTILE.

S 4. Section 1131 of the real property tax law, as amended by chapter 532 of the laws of 1994, is amended to read as follows:

S 1131. Default judgment. 1. In the event of a failure to redeem or answer by any person having the right to redeem or answer, such person shall forever be barred and foreclosed of all right, title, and interest and equity of redemption in and to the parcel in which the person has an interest and a judgment in foreclosure may be taken by default as provided by subdivision three of section eleven hundred thirty-six of this title. A motion to reopen any such default may not be brought later than [one month] THIRTY-ONE DAYS after [entry] SERVICE of the judgment BY CERTIFIED MAIL UPON THE OWNER. IF THE JUDGMENT IS RETURNED AS UNDELIVERED OR UNCLAIMED TO THE ENFORCEMENT OFFICER OR IF THE ENFORCEMENT OFFICER IS UNABLE TO SECURE PROOF OF RECEIPT THEREOF FROM THE UNITED STATES POSTAL SERVICE, SUCH JUDGMENT SHALL BE REMAILED TO THE OWNER BY ORDINARY FIRST CLASS MAIL AND THE ENFORCEMENT OFFICER SHALL AFFIX SUCH JUDGMENT TO THE DOOR OF THE ACTUAL DWELLING PLACE OR PLACE OF BUSINESS OF THE OWNER WITHIN THE STATE OR, IF SUCH OWNER IS NOT WITHIN THE STATE, SHALL AFFIX SUCH JUDGMENT TO THE DOOR OF THE REAL PROPERTY WHICH IS SUBJECT TO FORECLOSURE AND IF SUCH REAL PROPERTY IS UNDEVELOPED, THE JUDGMENT SHALL BE POSTED IN A CONSPICUOUS LOCATION ON THE PROPERTY.

2. IN ADDITION TO SERVICE OF THE DEFAULT JUDGMENT, THE OWNER SHALL BE SERVED BY THE ENFORCEMENT OFFICER WITH THE FOLLOWING NOTICE:

"..... (NAME OF THE TAX AUTHORITY)...NOW OWNS YOUR PROPERTY LOCATED AT:..... YOU HAVE 31 DAYS TO FILE A MOTION TO VACATE WITH THE COURT LISTED ON THE DEFAULT JUDGMENT IF YOU WISH TO REDEEM YOUR PROPERTY OR FILE AN ANSWER TO THE FORECLOSURE PROCEEDING. YOU SHOULD CONTACT AN ATTORNEY IMMEDIATELY IF YOU WANT TO CONTEST THIS DEFAULT JUDGMENT AGAINST YOU."

S 5. The real property tax law is amended by adding a new section 1133 to read as follows:

S 1133. RECONVEYANCE OF FORECLOSED PROPERTY. THE TAXING AUTHORITY SHALL RECONVEY THE FORECLOSURE PROPERTY BACK TO THE FORMER OWNER THEREOF FOR FULL PAYMENT OF ALL UNPAID TAXES, INTEREST, AND LAWFUL COSTS AND PENALTIES FOR FOUR MONTHS AFTER THE DEFAULT JUDGMENT HAS BEEN SERVED UPON SUCH FORMER OWNER.

S 6. This act shall take effect immediately.