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

2703

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

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

AN ACT to amend the real property actions and proceedings law, in relation to requiring service of notice of foreclosure upon all tenants of the building to be foreclosed upon

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

Section 1. Subdivision 1 of section 1402 of the real property actions and proceedings law, as amended by chapter 123 of the laws of 2005, is amended to read as follows:

1. Not later than ten days after commencing the non-judicial proceeding by filing the notice of pendency pursuant to section fourteen hundred three of this article, and not less than ten days prior to the first service of the notice of sale pursuant to section fourteen hundred six of this article, a copy of the notice of pendency, together with a notice of intention to foreclose, in a writing complying with subdivision two of this section, shall be sent to the mortgagor, the obligor on the note, bond, or other obligation if other than the mortgagor, TO ANY TENANT RESIDING WITHIN THE MORTGAGED PROPERTY AT THE TIME SERVICE OF NOTICE IS MADE, the owner of the mortgaged property, if other than the mortgagor, and to any person or entity having a lien of record upon the mortgaged property, or interest in the mortgaged property subordinate to the mortgage that the mortgagee seeks to foreclose, at the time of the filing of the notice of pendency of which the mortgagee has actual knowledge or is on constructive notice, both by (a) registered mail or certified mail and (b) ordinary first class mail, or by personal service in the same manner as service of a summons. Such notice shall be sent to the owner of the mortgaged property at the address of the property or at such other address that is known to the mortgagee, to a mortgagor at the mortgagor's address specified in the mortgage or to such other place as may have been directed by the mortgagor in writing in accordance with

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

LBD03507-01-9

the mortgage, TO A TENANT AT SUCH TENANT'S UNIT WITHIN THE MORTGAGED PROPERTY, and to any person or entity having a lien of record subordinate to the mortgage that the mortgagee seeks to foreclose at the address shown on such lien. The notice shall be sent to a person or entity having any subordinate interest in the mortgaged property that the mortgagee seeks to foreclose and of which the mortgagee has such actual knowledge or constructive notice at such person's or entity's last known personal or business address.

S 2. Subdivision 1 of section 1405 of the real property actions and proceedings law, as added by chapter 231 of the laws of 1998, is amended to read as follows:

1. A copy of the notice shall be served, as prescribed in section fourteen hundred six of this article, upon:

(a) the mortgagor;

(b) the obligor on the note, bond or other obligation, if other than the mortgagor;

(c) the owner of the mortgaged property, if other than the mortgagor;

(d) any other person or entity in the mortgage designated to receive notice;

(e) a subsequent lienor of the mortgaged property that the mortgagee seeks to foreclose whose interest was recorded or docketed in the proper office for recording or filing in the county in which the mortgaged property is located at the time of the filing of the notice of pendency;

(f) any person having a lien upon or interest in the mortgaged property, or any part thereof, at the time of the filing of the notice of pendency that is subordinate to the mortgage and that the mortgagee seeks to foreclose;

(G) ANY TENANT RESIDING WITHIN THE MORTGAGED PROPERTY AT THE TIME SERVICE OF NOTICE IS MADE.

Affidavits of service or mailing upon each of the persons or entities entitled to notice of the sale shall be filed prior to the date of sale under the index number of the non-judicial proceeding with the clerk of the county in which the sale is to take place.

S 3. This act shall take effect immediately and shall apply to foreclosures commenced on or after the effective date of this act; provided, however, that the amendments to subdivision 1 of section 1402 and subdivision 1 of section 1405 of the real property actions and proceedings law, made by sections one and two of this act, shall not affect the repeal of such sections and shall be deemed repealed therewith.