

3518

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. PERRY -- Multi-Sponsored by -- M. of A. BENEDETTO, BOYLAND, BROOK-KRASNY, CHRISTENSEN, CLARK, COLTON, DelMONTE, ESPAILLAT, GALEF, GLICK, GREENE, HIKIND, HYER-SPENCER, KELLNER, KOON, V. LOPEZ, MAISEL, MAYERSOHN, McENENY, MILLMAN, REILLY, J. RIVERA, ROBINSON, ROSENTHAL, SEMINERIO, SWEENEY, TITUS, TOWNS, WALKER, WEISENBERG, WRIGHT -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property law, in relation to establishing The New York protect title to my home act

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

1 Section 1. Short title. This act shall be known and may be cited as
2 "The New York protect title to my home act".
3 S 2. Section 291 of the real property law, as amended by chapter 447
4 of the laws of 1984, is amended to read as follows:
5 S 291. Recording of conveyances. A conveyance of real property, with-
6 in the state, on being duly acknowledged by the person executing the
7 same, or proved as required by this chapter, and such acknowledgment or
8 proof duly certified when required by this chapter, may be recorded in
9 the office of the clerk of the county where such real property is situ-
10 ated, and such county clerk OR CITY REGISTRAR WHERE APPLICABLE shall,
11 upon the request of any party, on tender of the lawful fees therefor,
12 record the same in [his] said office. THE CLERK OF THE COUNTY OR CITY
13 REGISTRAR WHERE SUCH CONVEYANCE OF RESIDENTIAL REAL PROPERTY IS RECORDED
14 AND MAINTAINED SHALL MAIL A WRITTEN NOTICE OF SUCH CONVEYANCE, NOT LESS
15 THAN THIRTY DAYS PRIOR TO THE RECORDING OF SUCH CONVEYANCE, TO EACH
16 OWNER OR OWNERS OF RECORD OR INTERESTED PERSON OR THE THIRD PARTY DESIG-
17 NEE OF SUCH OWNER OR OWNERS OF RECORD OR INTERESTED PERSON OF RECORD TO
18 SUCH REAL PROPERTY. FOR PURPOSES OF THIS SECTION, A PERSON OF INTEREST
19 SHALL MEAN A PERSON HAVING A VALID LEGAL INTEREST SUCH AS A MORTGAGE
20 HOLDER OR A PERSON HAVING A RECORDED LIEN ON SUCH PROPERTY. THE NOTICE

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

LBD02108-01-9

1 SHALL HAVE THE HEADING PRINTED IN 20 POINT BOLD TYPE AND READ AS
2 FOLLOWS:

3 "NOTICE OF SALE OR TRANSFER OF OWNERSHIP OF YOUR RESIDENTIAL PROPERTY.

4 TO: _____

5 NAME OF OWNER OF RECORD

6 OUR RECORDS SHOW THAT YOU ARE LISTED AS THE CURRENT OWNER, OR PERSON OF
7 INTEREST, ON THE REGISTERED TITLE FOR RESIDENTIAL PROPERTY:

8 BLOCK # _____ LOT # _____

9 LOCATED AT: _____

10 STREET ADDRESS

11 IN THE COUNTY OF _____ NEW YORK

12 ON _____, DOCUMENTS WERE FILED AT THIS

13 DATE

14 OFFICE TO CHANGE OWNERSHIP AND TRANSFER TITLE OF YOUR PROPERTY.

15 TO: _____

16 NAME OF NEW OWNER

17 BY LAW, THE COUNTY CLERK OR CITY REGISTRAR MUST WAIT THIRTY (30) DAYS
18 BEFORE TRANSFER OF TITLE CAN BE REGISTERED. IF YOU HAVE ANY QUESTIONS
19 REGARDING THE VALIDITY OF THE DOCUMENTS, AND WISH TO DISPUTE THE RECORD-
20 ING OF THE TRANSFER, PLEASE CONTACT THE COUNTY CLERK'S OR CITY
21 REGISTRAR'S OFFICE BY _____."

22 DATE

23 THE PARTY SEEKING TO RECORD SUCH CONVEYANCE SHALL BEAR THE COST OF SUCH
24 WRITTEN NOTICE. SUCH COST SHALL BE PRESCRIBED BY THE MUNICIPALITY. IF
25 THE ACTUAL OWNER OR OWNERS OF RECORD OR INTERESTED PERSON OF RECORD
26 EXECUTED SUCH CONVEYANCE, RECEIPT OF ANY NOTICE REQUIRED BY THIS
27 SECTION, FAILURE TO MAIL SUCH NOTICE OR THE FAILURE OF ANY PARTY TO
28 RECEIVE THE SAME, SHALL NOT AFFECT THE VALIDITY OF THE CONVEYANCE OF THE
29 PROPERTY OWNED BY SUCH PERSON. THE COUNTY CLERK OR CITY REGISTRAR SHALL
30 RECORD SUCH CONVEYANCE AFTER THIRTY DAYS UNLESS THE OWNER OR OWNERS OF
31 RECORD OR INTERESTED PERSON SHALL HAVE FILED AN AFFIDAVIT SIGNED UNDER
32 OATH AND UNDER PENALTY OF PERJURY THAT SUCH PERSON DID NOT PARTICIPATE
33 IN SUCH TRANSACTION AND DID NOT EXECUTE ANY OF THE DOCUMENTS SUBMITTED
34 TO RECORD SUCH CONVEYANCE AND DID NOT CONVEY A POWER OF ATTORNEY TO
35 ANOTHER PERSON TO ACT ON SUCH PERSON'S BEHALF.

36 WHERE THE CONVEYANCE OF PROPERTY WAS EXECUTED WITHOUT THE KNOWLEDGE,
37 CONSENT AND PARTICIPATION OF THE OWNER OR OWNERS OF RECORD, SUCH CONVEY-
38 ANCE SHALL BE DEEMED FRAUDULENT RENDERING VOID THE TITLE OF SUCH GRANTOR
39 AND TITLE SHALL REMAIN VESTED WITH THE OWNER OR OWNERS OF RECORD. ANY
40 PERSON WHO, WITH INTENT TO DEFRAUD, VIOLATES THIS SECTION OR ENGAGES IN
41 ANY PRACTICE WHICH WOULD OPERATE AS A CRIMINAL FRAUD OR DECEIT UPON AN
42 OWNER OR OWNERS OF RECORD SHALL, UPON CONVICTION, BE GUILTY OF A CLASS E
43 FELONY AND SUBJECT TO A FINE OF NOT MORE THAN TWENTY-FIVE THOUSAND
44 DOLLARS, IMPRISONMENT IN ACCORDANCE WITH THE PENAL LAW, OR BOTH. ANY
45 PURCHASER WHO, WHEN ACTING IN GOOD FAITH, VIOLATES THIS SECTION, SHALL
46 NOT BE DEEMED TO HAVE VIOLATED SUCH SECTION IF THE PURCHASER:

47 (I) ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT THE FRAUDULENT
48 CONVEYANCE WAS NOT INTENTIONAL AND RESULTED WITHOUT THE PURCHASER'S
49 KNOWLEDGE;

(II) NOTIFIES THE OWNER OR OWNERS OF RECORD AND ANY APPROPRIATE AUTHORITY WITHIN NINETY DAYS OF HAVING KNOWLEDGE OR BECOMING AWARE OF SUCH FRAUDULENT CONVEYANCE; AND

(III) PROVIDES HIS OR HER FULL COOPERATION TO AUTHORITIES INVESTIGATING SUCH FRAUD. Every such conveyance not so recorded is void as against any person who subsequently purchases or acquires by exchange or contracts to purchase or acquire by exchange, the same real property or any portion thereof, or acquires by assignment the rent to accrue therefrom as provided in section two hundred ninety-four-a of [the real property law] THIS ARTICLE, in good faith and for a valuable consideration, from the same vendor or assignor, his OR HER distributees or devisees, and whose conveyance, contract or assignment is first duly recorded, and is void as against the lien upon the same real property or any portion thereof arising from payments made upon the execution of or pursuant to the terms of a contract with the same vendor, his OR HER distributees or devisees, if such contract is made in good faith and is first duly recorded. Notwithstanding the foregoing, any increase in the principal balance of a mortgage lien by virtue of the addition thereto of unpaid interest in accordance with the terms of the mortgage shall retain the priority of the original mortgage lien as so increased provided that any such mortgage instrument sets forth its terms of repayment.

S 3. The real property law is amended by adding a new section 292-b to read as follows:

S 292-B. THIRD PARTY NOTICE OF CONVEYANCE OF RESIDENTIAL REAL PROPERTY. 1. A PROPERTY OWNER MAY REQUEST THAT A NOTICE OF CONVEYANCE BE SENT TO SUCH OWNER AND TO AN ADULT THIRD PARTY. SUCH REQUEST SHALL BE MADE ON A FORM PRESCRIBED BY THE STATE BOARD AND SHALL BE SUBMITTED TO THE RECORDING OFFICER OF THE COUNTY IN WHICH THE REAL PROPERTY IS SITUATED. SUCH FORM SHALL PROVIDE A SECTION WHEREBY THE DESIGNATED THIRD PARTY SHALL CONSENT TO SUCH DESIGNATION. SUCH REQUEST SHALL BE EFFECTIVE UPON RECEIPT BY THE RECORDING OFFICER. THE RECORDING OFFICER SHALL MAINTAIN A LIST OF ALL PROPERTY OWNERS WHO HAVE DESIGNATED A THIRD PARTY RECIPIENT OF NOTICES PURSUANT TO THIS SECTION.

2. A NOTICE SHALL BE SENT TO THE PROPERTY OWNER AND THE DESIGNATED THIRD PARTY AT LEAST THIRTY DAYS PRIOR TO THE RECORDING OF ANY CONVEYANCE INVOLVING THE RESIDENTIAL REAL PROPERTY. SUCH NOTICE SHALL READ SUBSTANTIALLY AS FOLLOWS: "ON BEHALF OF (IDENTIFY THE PROPERTY OWNER OF RECORD), YOU ARE ADVISED THAT THE REAL PROPERTY SITUATED AT (IDENTIFY THE LOCATION OF THE REAL PROPERTY) IS IN THE PROCESS OF BEING CONVEYED. YOU ARE ENCOURAGED TO CONFIRM THE VALIDITY OF THIS CONVEYANCE WITH SUCH PROPERTY OWNER, AND TO OFFER ASSISTANCE IF NEEDED, ALTHOUGH YOU ARE UNDER NO LEGAL OBLIGATION TO DO SO. YOUR COOPERATION AND ASSISTANCE ARE GREATLY APPRECIATED."

3. A NOTICE SHALL BE SENT TO THE PROPERTY OWNER AND DESIGNATED THIRD PARTY WHENEVER THE RECORDING OFFICER IS REQUIRED TO SEND A NOTICE TO THE PROPERTY OWNER OF RECORD REGARDING THE PROPERTY. THE NOTICE SHALL HAVE THE HEADING PRINTED IN 20 POINT BOLD TYPE AND READ AS FOLLOWS:

"NOTICE OF SALE OR TRANSFER OF OWNERSHIP OF YOUR RESIDENTIAL PROPERTY. TO: _____

NAME OF OWNER OF RECORD

OUR RECORDS SHOW THAT YOU ARE LISTED AS THE CURRENT OWNER, OR PERSON OF INTEREST, ON THE REGISTERED TITLE FOR RESIDENTIAL PROPERTY:

BLOCK # _____ LOT # _____

1 LOCATED AT: _____
2 STREET ADDRESS

3 IN THE COUNTY OF _____ NEW YORK
4 ON _____, DOCUMENTS WERE FILED AT THIS
5 DATE

6 OFFICE TO CHANGE OWNERSHIP AND TRANSFER TITLE OF YOUR PROPERTY.

7 TO: _____
8 NAME OF NEW OWNER

9 BY LAW, THE COUNTY CLERK MUST WAIT THIRTY (30) DAYS BEFORE TRANSFER OF
10 TITLE CAN BE REGISTERED. IF YOU HAVE ANY QUESTIONS REGARDING THE VALID-
11 ITY OF THE DOCUMENTS, AND WISH TO DISPUTE THE RECORDING OF THE TRANSFER,
12 PLEASE CONTACT THE COUNTY CLERK'S OFFICE BY _____."
13 DATE

14 THE COST OF SUCH NOTICE SHALL BE BORNE BY THE PERSON OR PERSONS REQUEST-
15 ING SUCH NOTICE. THE COUNTY CLERK OR CITY REGISTRAR WHERE APPLICABLE
16 SHALL RECORD SUCH CONVEYANCE AFTER THIRTY DAYS UNLESS THE OWNER OR
17 OWNERS OF RECORD OR INTERESTED PERSON SHALL HAVE FILED AN AFFIDAVIT
18 SIGNED UNDER OATH AND PENALTY OF PERJURY THAT THEY DID NOT PARTICIPATE
19 IN SUCH TRANSACTION AND DID NOT EXECUTE ANY OF THE DOCUMENTS SO SUBMIT-
20 TED TO RECORD SUCH CONVEYANCE.

21 4. IF THE ACTUAL OWNER OR OWNERS OF RECORD OR INTERESTED PERSON OF
22 RECORD EXECUTED SUCH CONVEYANCE, RECEIPT OF ANY NOTICE REQUIRED BY THIS
23 SECTION, FAILURE TO MAIL SUCH NOTICE OR THE FAILURE OF ANY PARTY TO
24 RECEIVE THE SAME, SHALL NOT AFFECT THE VALIDITY OF THE CONVEYANCE OF THE
25 PROPERTY OWNED BY SUCH PERSON.

26 5. WHERE THE CONVEYANCE OF PROPERTY WAS EXECUTED WITHOUT THE KNOW-
27 LEDGE, CONSENT AND PARTICIPATION OF THE OWNER OR OWNERS OF RECORD, SUCH
28 CONVEYANCE SHALL BE DEEMED FRAUDULENT RENDERING VOID THE TITLE OF SUCH
29 GRANTOR AND TITLE SHALL REMAIN VESTED WITH THE OWNER OR OWNERS OF
30 RECORD. ANY PERSON WHO, WITH INTENT TO DEFRAUD, VIOLATES THIS SECTION OR
31 ENGAGES IN ANY PRACTICE WHICH WOULD OPERATE AS A CRIMINAL FRAUD OR
32 DECEIT UPON AN OWNER OR OWNERS OF RECORD SHALL, UPON CONVICTION, BE
33 GUILTY OF A CLASS E FELONY AND SUBJECT TO A FINE OF NOT MORE THAN TWEN-
34 TY-FIVE THOUSAND DOLLARS, IMPRISONMENT IN ACCORDANCE WITH THE PENAL LAW,
35 OR BOTH. ANY PURCHASER WHO, WHEN ACTING IN GOOD FAITH, VIOLATES THIS
36 SECTION, SHALL NOT BE DEEMED TO HAVE VIOLATED SUCH SECTION IF THE
37 PURCHASER:

38 (I) ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT THE FRAUDULENT
39 CONVEYANCE WAS NOT INTENTIONAL AND RESULTED WITHOUT THE PURCHASER'S
40 KNOWLEDGE;

41 (II) NOTIFIES THE OWNER OR OWNERS OF RECORD WITHIN NINETY DAYS OF THE
42 CONTRACT DATE OF THE CONVEYANCE; AND

43 (III) MAKES APPROPRIATE RESTITUTION TO THE OWNER OR OWNERS OF RECORD
44 AND APPROPRIATE ADJUSTMENTS TO THE TRANSACTION WITHIN NINETY DAYS OF THE
45 CONTRACT DATE.

46 S 4. Subdivision (c) of section 379 of the real property law, as
47 amended by chapter 640 of the laws of 1991, is amended to read as
48 follows:

49 (c) The names and places of residence with street number, if any, and
50 post-office addresses of all persons having or claiming any interest in
51 or lien upon the property, or any part thereof, the title to which is
52 sought to be registered, and whether or not any of them are infants or
53 otherwise incapacitated; THE NAMES AND ADDRESSES OF ANY THIRD PARTY

1 DESIGNEE OF SUCH PERSONS, AS PROVIDED IN SECTION TWO HUNDRED
2 NINETY-TWO-B OF THIS CHAPTER; the owners in fee simple of the surround-
3 ing contiguous properties, and their post-office addresses so far as
4 they are known or can be reasonably ascertained by inquiry on such prop-
5 erty; the people of the state of New York; and a designation of all
6 other possible owners and claimants of the property or any right or
7 interest in or lien upon the property or any part thereof as "all other
8 persons, if any, having any right or interest in or lien upon the prop-
9 erty affected by this proceeding, or any part thereof." The petition
10 shall state so far as is known to the petitioner, what claim, if any,
11 the state of New York makes to the property in question or what inter-
12 est, if any, it has therein other than the general governmental interest
13 or such as exists as to all land in private ownership.

14 S 5. Section 412 of the real property law, as added by chapter 640 of
15 the laws of 1991, is amended to read as follows:

16 S 412. When a transfer is deemed to be registered. Every transfer of
17 registered property shall be deemed to be registered under this article
18 when such document has been filed of record, in the office of the
19 registrar of the county where the property is located and a serial
20 number and certificate number assigned to the instrument AND A WRITTEN
21 NOTICE OF SUCH TRANSFER HAS BEEN SENT BY SUCH OFFICE TO EACH OF THE
22 OWNER OR OWNERS OF RECORD OR INTERESTED PERSONS OF RECORD OR A THIRD
23 PARTY DESIGNEE OF SUCH OWNER OR OWNERS OF RECORD OR INTERESTED PERSON OF
24 RECORD TO SUCH REGISTERED PROPERTY; all other dealings shall be consid-
25 ered as registered when the document has been filed of record in the
26 office of the registrar of the county where the property is located and
27 a serial number and certificate number has been assigned the instrument.
28 THE PARTY REGISTERING SUCH TRANSFER SHALL BE RESPONSIBLE FOR THE COSTS
29 ASSOCIATED WITH THE MAILING OF SUCH WRITTEN NOTICE.

30 S 6. This act shall take effect on the ninetieth day after it shall
31 have become a law.