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2009-2010 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. JEFFRIES, JAFFEE, COLTON, CAMARA, ESPAILLAT, ROSENTHAL, WALKER, REILLY, O'DONNELL, BENJAMIN, COOK, LANCMAN, BARRON, PERRY, CASTRO -- Multi-Sponsored by -- M. of A. FIELDS, GLICK, HEASTIE, MENG, PEOPLES, PHEFFER, THIELE, WEISENBERG -- read once and referred to the Committee on Banks

AN ACT enacting the "foreclosure diversion act of 2009"; to amend the real property actions and proceedings law, in relation to giving notice to mortgagors of the availability of foreclosure prevention counseling; to amend the banking law and the civil practice law and rules, in relation to settlement conferences; to amend the real property actions and proceedings law, in relation to availability of a settlement conference in pending foreclosure actions; to amend the real property actions and proceedings law, in relation to providing a one-year postponement on foreclosures; to amend the judiciary law, in relation to the assignment of foreclosure actions; and to repeal certain provisions of the civil practice law and rules relating thereto

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 "foreclosure diversion act of 2009".
3 S 2. Statement of legislative purpose and findings. The legislature
4 finds and declares that there is a public emergency; that the extension
5 of unaffordable mortgage loans, unaffordable second mortgages and unaf-
6 fordable home equity loans have resulted in thousands of homeowners
7 losing their homes. The problems associated with these loans adversely
8 affect the availability of capital, the demand for housing, the value of
9 real estate, and more importantly, the ability of homeowners to keep
10 their homes and communities viable. The pending reset of interest rates
11 in many home mortgages, second mortgages and home equity loans will only
12 exacerbate this situation for many homeowners. The expectation that many

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

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1 such variable rate mortgages will fall into foreclosure upon the reset
2 of the interest rate compels the state to take action. State assistance
3 to homeowners through a counseling program is necessary in order to stem
4 this crisis.

5 S 3. Definitions. As used in this act, the following words and phrases
6 shall have the following meanings:

7 1. "Commissioner" shall mean the commissioner of the state division of
8 housing and community renewal.

9 2. "Department" shall mean the banking department.

10 3. "Division" shall mean the state division of housing and community
11 renewal.

12 4. "Eligible homeowners" shall mean any resident of this state
13 currently residing in a home located in this state subject to a home
14 loan who the commissioner determines, pursuant to the eligibility
15 restrictions set forth in this act, is in need of foreclosure diversion
16 assistance.

17 5. "Home loan" shall mean a residential home mortgage loan, including
18 an open-end credit plan, other than a reverse mortgage transaction, in
19 which:

20 (a) the borrower is a natural person;

21 (b) the debt is incurred by the borrower primarily for personal, fami-
22 ly or household purposes;

23 (c) the loan is secured by a mortgage or deed of trust on real estate
24 upon which there is located a structure or structures intended princi-
25 pally for occupancy of 1 to 4 families which is occupied by the borrower
26 as the borrower's principal dwelling; and

27 (d) the property is located in this state.

28 6. "Lender" shall mean (a) a mortgage banker as defined in paragraph
29 (f) of subdivision 1 of section 590 of the banking law, or (b) an exempt
30 organization as defined in paragraph (e) of subdivision 1 of section 590
31 of the banking law, or (c) a mortgage loan servicer as defined in para-
32 graph (h) of subdivision 1 of section 590 of the banking law.

33 7. "Non-profit assistance provider" shall mean a corporation or group
34 of corporations organized under the provisions of the not-for-profit
35 corporation law, including but not limited to neighborhood preservation
36 companies as defined in section 902 of the private housing finance law,
37 entities that perform housing preservation and community renewal activ-
38 ities pursuant to article 17 of the private housing finance law, common-
39 ly referred to as rural preservation companies, and legal service
40 providers, and municipalities.

41 8. "Service area" shall mean the established or stated boundaries of a
42 non-profit assistance provider or, if an assistance provider does not
43 have established boundaries for the geographic area in which it provides
44 services, the geographic area defined in its proposal to the division to
45 be a service provider.

46 9. "Superintendent" shall mean the superintendent of banks.

47 S 4. Education and outreach to homeowners. In coordination with the
48 division and the consumer protection board, the department shall under-
49 take outreach activities directed at any homeowners whose homes are
50 subject to foreclosure. Such outreach activities shall include, but not
51 be limited to:

52 1. the production and broadcast of public service announcements using
53 electronic media to inform the general public of the availability of
54 counseling through the New York state foreclosure diversion program
55 established by this act. Such public service announcements shall inform

1 the homeowner of the nature and purpose of the counseling and provide a
2 website and phone number for the homeowner to utilize; and

3 2. the inclusion of a description on the internet websites maintained
4 by the division, the banking department and the consumer protection
5 board of the New York state foreclosure diversion program and a listing
6 of those entities that provide counseling with respect to the program.
7 Such listing shall include the address and phone number of each entity.

8 S 5. Subdivisions 1 and 3 of section 1303 of the real property actions
9 and proceedings law, as amended by chapter 472 of the laws of 2008, are
10 amended to read as follows:

11 1. The foreclosing party in a mortgage foreclosure action, which
12 involves residential real property consisting of owner-occupied one-to-
13 four-family dwellings shall provide notice to the mortgagor in accord-
14 ance with the provisions of this section with regard to information and
15 assistance about the foreclosure process. SUCH NOTICE SHALL INCLUDE
16 INFORMATION ABOUT THE AVAILABILITY OF THE FORECLOSURE DIVERSION PROGRAM
17 AND ITS ABILITY TO ASSIST HOMEOWNERS IN AVOIDING FORECLOSURE AND THE
18 MANDATORY COUNSELING REQUIRED FOR PARTICIPATION IN THE FORECLOSURE
19 DIVERSION PROGRAM. SUCH NOTICE SHALL INCLUDE THE HOTLINE ESTABLISHED BY
20 THE BANKING DEPARTMENT AND PROVIDED BY THE DIVISION OF HOUSING AND
21 COMMUNITY RENEWAL PURSUANT TO SECTION FOUR OF THE FORECLOSURE DIVERSION
22 ACT OF 2009 AND THE NAMES AND CONTACT INFORMATION FOR ALL NOT-FOR-PROFIT
23 ASSISTANCE PROVIDERS AUTHORIZED BY THE DEPARTMENT TO PROVIDE HOUSING
24 COUNSELING SERVICES TO HOMEOWNERS.

25 3. The notice required by this section shall appear as follows:

26 Help for Homeowners in Foreclosure

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

29 BEFORE YOU ATTEND A SETTLEMENT CONFERENCE, YOU ARE STRONGLY URGED TO
30 SCHEDULE AND ATTEND A COUNSELING SESSION BY CALLING THE BANKING DEPART-
31 MENT AT THE FOLLOWING HOTLINE NUMBER: _____

32 Summons and Complaint

33 You are in danger of losing your home. If you fail to respond to the
34 summons and complaint in this foreclosure action, you may lose your
35 home. Please read the summons and complaint carefully. You should imme-
36 diately contact an attorney or your local legal aid office to obtain
37 advice on how to protect yourself. YOU SHOULD IMMEDIATELY SEEK OUT AN
38 APPROVED LOAN COUNSELOR. A LIST OF APPROVED COUNSELORS CAN BE OBTAINED
39 BY CALLING THE HOTLINE. IF YOU DO NOT ATTEND A COUNSELING SESSION, YOU
40 WILL NOT BE ELIGIBLE TO PARTICIPATE IN THE RESIDENTIAL MORTGAGE FORECLO-
41 SURE DIVERSION PROGRAM. THIS WILL NOT AFFECT YOUR RIGHT TO A SETTLEMENT
42 CONFERENCE, BUT WILL AFFECT YOUR ELIGIBILITY FOR A POSTPONEMENT OF FORE-
43 CLOSURE UNDER THE RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM.

44 Sources of Information and Assistance

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

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

54 Foreclosure rescue scams

55 Be careful of people who approach you with offers to "save" your home.
56 There are individuals who watch for notices of foreclosure actions in

1 order to unfairly profit from a homeowner's distress. You should be
2 extremely careful about any such promises and any suggestions that you
3 pay them a fee or sign over your deed. State law requires anyone offer-
4 ing such services for profit to enter into a contract which fully
5 describes the services they will perform and fees they will charge, and
6 which prohibits them from taking any money from you until they have
7 completed all such promised services.

8 S 6. The banking law is amended by adding a new section 6-n to read
9 as follows:

10 S 6-N. COUNSELING OF MORTGAGEES. 1. THE DEPARTMENT SHALL ESTABLISH A
11 PROCEDURE TO COUNSEL HOMEOWNERS WHOSE PROPERTY IS SUBJECT TO OR ABOUT TO
12 BECOME SUBJECT TO FORECLOSURE.

13 2. A COUNSELOR FROM A NOT-FOR-PROFIT ASSISTANCE PROVIDER APPROVED BY
14 THE DEPARTMENT SHALL MEET WITH ALL HOMEOWNERS PRIOR TO THEIR SCHEDULED
15 SETTLEMENT CONFERENCE. THE COUNSELOR SHALL ALSO CONSULT WITH THE FORE-
16 CLOSING PARTY OR SUCH PARTY'S REPRESENTATIVE AND ATTEMPT TO FORMULATE A
17 REPAYMENT SCHEDULE THAT IS ACCEPTABLE TO BOTH THE HOMEOWNER AND THE
18 FORECLOSING PARTY. IF THE PARTIES AGREE, THEY SHALL FILE A CERTIFICATE
19 OF RESOLUTION WITH THE COURT OF JURISDICTION.

20 3. IF THE COUNSELOR IS UNABLE TO NEGOTIATE AN ACCEPTABLE RESOLUTION,
21 THE PARTIES SHALL FILE A CERTIFICATE OF PARTICIPATION WITH THE COURT OF
22 JURISDICTION AND THE SCHEDULED SETTLEMENT CONFERENCE SHALL PROCEED.

23 S 7. Rule 3408 of the civil practice law and rules is REPEALED and a
24 new rule 3408 is added to read as follows:

25 RULE 3408. MANDATORY SETTLEMENT CONFERENCE IN RESIDENTIAL FORECLOSURE
26 ACTIONS. 1. IN ANY RESIDENTIAL FORECLOSURE ACTION IN WHICH THE DEFENDANT
27 IS A RESIDENT OF THE PROPERTY SUBJECT TO FORECLOSURE, THE COURT SHALL
28 HOLD A MANDATORY CONFERENCE WITHIN NINETY DAYS AFTER THE DATE WHEN PROOF
29 OF SERVICE IS FILED WITH THE COUNTY CLERK, OR ON SUCH ADJOURNED DATE AS
30 HAS BEEN AGREED TO BY THE PARTIES, FOR THE PURPOSE OF HOLDING SETTLEMENT
31 DISCUSSIONS PERTAINING TO THE RELATIVE RIGHTS AND OBLIGATIONS OF THE
32 PARTIES UNDER THE MORTGAGE LOAN DOCUMENTS, INCLUDING, BUT NOT LIMITED TO
33 DETERMINING WHETHER THE PARTIES CAN REACH A MUTUALLY AGREEABLE RESOL-
34 UTION TO HELP THE DEFENDANT AVOID LOSING HIS OR HER HOME, AND EVALUATING
35 THE POTENTIAL FOR A RESOLUTION IN WHICH PAYMENT SCHEDULES OR AMOUNTS MAY
36 BE MODIFIED OR OTHER WORKOUT OPTIONS MAY BE AGREED TO, AND FOR WHATEVER
37 OTHER PURPOSES THE COURT DEEMS APPROPRIATE.

38 2. THE COURT SHALL CAUSE A NOTICE TO BE SENT TO THE PARTIES BY CERTI-
39 FIED MAIL INFORMING THEM OF THE DATE, TIME, AND LOCATION OF THE CONFER-
40 ENCE, AND INFORMING THE HOMEOWNER OF HIS OR HER OPTION OF PARTICIPATION
41 IN THE RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM ESTABLISHED
42 PURSUANT TO THE FORECLOSURE DIVERSION ACT OF 2009. THE NOTICE SHALL
43 INCLUDE THE HOTLINE ESTABLISHED BY THE BANKING DEPARTMENT PURSUANT TO
44 THE FORECLOSURE DIVERSION ACT OF 2009 AND A STATEMENT THAT THE HOMEOWNER
45 MUST COMPLETE A COUNSELING SESSION PRIOR TO HIS OR HER SCHEDULED SETTLE-
46 MENT CONFERENCE IN ORDER TO PARTICIPATE IN THE RESIDENTIAL MORTGAGE
47 FORECLOSURE DIVERSION PROGRAM.

48 3. IF THE HOMEOWNER COMPLETES A COUNSELING SESSION WITH A COUNSELOR
49 FROM A NOT-FOR-PROFIT ASSISTANCE PROVIDER APPROVED BY THE DEPARTMENT,
50 SUCH COUNSELOR SHALL SEND A LOAN MODIFICATION PROPOSAL TO THE FORECLOS-
51 ING PARTY AT LEAST TEN DAYS PRIOR TO THE SETTLEMENT CONFERENCE. THE
52 FORECLOSING PARTY SHALL, PRIOR TO THE SETTLEMENT CONFERENCE, REVIEW THE
53 MODIFICATION PROPOSAL AND MAKE A GOOD FAITH EFFORT TO REACH A RESOLUTION
54 WITH THE HOMEOWNER.

55 4. AT THE INITIAL CONFERENCE HELD PURSUANT TO THIS SECTION, ANY
56 DEFENDANT CURRENTLY APPEARING PRO SE, SHALL BE DEEMED TO HAVE MADE A

1 MOTION TO PROCEED AS A POOR PERSON UNDER SECTION ELEVEN HUNDRED ONE OF
2 THE CIVIL PRACTICE LAW AND RULES. THE COURT SHALL DETERMINE WHETHER SUCH
3 PERMISSION SHALL BE GRANTED PURSUANT TO STANDARDS SET FORTH IN SECTION
4 ELEVEN HUNDRED ONE OF THIS CHAPTER. IF THE COURT APPOINTS DEFENDANT
5 COUNSEL PURSUANT TO SUBDIVISION (A) OF SECTION ELEVEN HUNDRED TWO OF
6 THIS CHAPTER, IT SHALL ADJOURN THE CONFERENCE TO A DATE CERTAIN FOR
7 APPEARANCE OF COUNSEL AND SETTLEMENT DISCUSSIONS PURSUANT TO SUBDIVISION
8 ONE OF THIS SECTION, AND OTHERWISE SHALL PROCEED WITH THE CONFERENCE.

9 5. AT ANY CONFERENCE HELD PURSUANT TO THIS SECTION, THE PLAINTIFF
10 SHALL APPEAR IN PERSON OR BY COUNSEL, AND IF APPEARING BY COUNSEL, SUCH
11 COUNSEL SHALL BE FULLY AUTHORIZED TO DISPOSE OF THE CASE. THE DEFENDANT
12 SHALL APPEAR IN PERSON OR BY COUNSEL. IF THE DEFENDANT IS APPEARING PRO
13 SE, THE COURT SHALL ADVISE THE DEFENDANT OF THE NATURE OF THE ACTION AND
14 HIS OR HER RIGHTS AND RESPONSIBILITIES AS A DEFENDANT. WHERE APPROPRI-
15 ATE, THE COURT MAY PERMIT A REPRESENTATIVE OF THE PLAINTIFF TO ATTEND
16 THE SETTLEMENT CONFERENCE TELEPHONICALLY OR BY VIDEO-CONFERENCE.

17 6. BOTH PARTIES MUST HAVE ANY SUPPORTING DOCUMENTATION WITH THEM AT
18 THE TIME OF THE CONFERENCE. IF THE HOMEOWNER ATTENDED A COUNSELING
19 SESSION WITH AN APPROVED COUNSELOR, SUCH COUNSELOR MUST HAVE GIVEN A
20 LOAN MODIFICATION PROPOSAL TO THE FORECLOSING PARTY AT LEAST TEN DAYS
21 PRIOR TO THE SETTLEMENT CONFERENCE.

22 7. THE COURT SHALL PRESIDE OVER THE CONFERENCE IN AN EFFORT TO ESTAB-
23 LISH A REPAYMENT PLAN THAT IS ACCEPTABLE TO THE LENDER THAT ALLOWS THE
24 HOMEOWNER TO REMAIN IN THE HOME.

25 8. AFTER THE SETTLEMENT CONFERENCE, THE COURT SHALL PRODUCE A REPORT
26 FINALIZING AND DETAILING ANY TERMS AND CONDITIONS THAT HAVE BEEN AGREED
27 UPON BY THE PARTIES. SUCH REPORT SHALL BE MADE PART OF THE RECORD FOR
28 THE ACTION.

29 S 8. The real property actions and proceedings law is amended by
30 adding a new section 1316 to read as follows:

31 S 1316. THE COURT SHALL NOTIFY THE DEFENDANT OF ANY FORECLOSURE ACTION
32 ON A RESIDENTIAL MORTGAGE LOAN, IN WHICH THE ACTION WAS INITIATED BUT
33 WHERE THE FINAL ORDER OF JUDGMENT WAS NOT ISSUED PRIOR TO THE EFFECTIVE
34 DATE OF THE FORECLOSURE DIVERSION ACT OF 2009, THAT SUCH DEFENDANT MAY
35 REQUEST A SETTLEMENT CONFERENCE IN ACCORDANCE WITH RULE THIRTY-FOUR
36 HUNDRED EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

37 S 9. The real property actions and proceedings law is amended by
38 adding a new section 1305 to read as follows:

39 S 1305. FORECLOSURES; COURT RELIEF. 1. VENUE. IN ANY ACTION TO FORE-
40 CLOSE A RESIDENTIAL MORTGAGE UNDER THIS ARTICLE A MORTGAGOR NAMED IN
41 SUCH ACTION MAY APPLY FOR RELIEF IN STATE SUPREME COURT PURSUANT TO THIS
42 SECTION.

43 2. TIMING OF POSTPONEMENT. IF A MORTGAGEE HAS OTHERWISE ESTABLISHED
44 ITS LEGAL RIGHT TO JUDGMENT ON AN ACTION TO FORECLOSE A RESIDENTIAL
45 MORTGAGE PURSUANT TO THIS CHAPTER, THEN SUCH ACTION SHALL BE HELD IN
46 ABEYANCE BY THE COURT BEFORE WHICH SUCH ACTION IS PENDING FOR A PERIOD
47 OF NINETY DAYS. IF THE MORTGAGOR RECEIVES COUNSELING FROM A NOT-FOR-PRO-
48 FIT ASSISTANCE PROVIDER APPROVED BY THE DIVISION AND SUBSEQUENTLY
49 PARTICIPATES IN A SETTLEMENT CONFERENCE, THEN THE COURT BEFORE WHICH
50 SUCH ACTION IS PENDING SHALL HOLD SUCH ACTION IN ABEYANCE FOR AN ADDI-
51 TIONAL NINE MONTHS. SUCH ADDITIONAL PERIOD OF TIME IS INTENDED TO
52 PERMIT THE PARTIES TO SETTLE THE ACTION OUTSIDE OF COURT AND TO FORE-
53 STALL FORECLOSURE WHEREVER POSSIBLE.

54 3. PROCESS AND FEES. IF AN ACTION TO FORECLOSE A RESIDENTIAL MORTGAGE
55 HAS BEEN COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A MORT-
56 GAGOR MAY ASK THE COURT BEFORE WHICH SUCH ACTION IS COMMENCED TO HOLD

1 SUCH ACTION IN ABEYANCE PURSUANT TO SUBDIVISION TWO OF THIS SECTION.
2 MOTIONS ON NOTICE IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES
3 MADE BY THE MORTGAGOR SHALL BE DEEMED TO HAVE BEEN FILED BY A POOR
4 PERSON PURSUANT TO ARTICLE ELEVEN OF THE CIVIL PRACTICE LAW AND RULES
5 AND ALL COURT FEES OTHERWISE APPLICABLE TO SUCH ACTIONS AND PAYABLE BY A
6 MORTGAGOR SHALL BE WAIVED. IF A FORECLOSURE ACTION HAS NOT BEEN
7 COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A MORTGAGOR MUST
8 COMMENCE AN ACTION IN STATE SUPREME COURT BY FILING AND SERVING A
9 SUMMONS PURSUANT TO ARTICLE THREE OF THE CIVIL PRACTICE LAW AND RULES
10 WITH A REQUEST FOR RELIEF PURSUANT TO THE TERMS OF THIS SECTION. IN SUCH
11 CASE, SUCH FILING SHALL BE DEEMED TO HAVE BEEN FILED BY A POOR PERSON
12 PURSUANT TO ARTICLE ELEVEN OF THE CIVIL PRACTICE LAW AND RULES AND ALL
13 FILING AND COURT FEES OTHERWISE APPLICABLE TO SUCH ACTIONS AND PAYABLE
14 BY A MORTGAGOR IN THE FORM OF INDEX AND MOTION FEES SHALL BE WAIVED.

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

18 A. THE MORTGAGOR IS A NATURAL PERSON; AND

19 B. THE DEBT IS INCURRED BY THE MORTGAGOR PRIMARILY FOR PERSONAL, FAMI-
20 LY OR HOUSEHOLD PURPOSES; AND

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

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

26 E. THE MORTGAGOR OWNS NO OTHER REAL PROPERTY; AND

27 F. THE REAL PROPERTY IS LOCATED IN THIS STATE.

28 5. MONTHLY PAYMENT SCHEDULE. IF A PRIMA FACIE CASE HAS BEEN ESTAB-
29 LISHED, THE COURT OFFICER OR MEDIATOR PRESIDING OVER THE SETTLEMENT
30 CONFERENCE SET FORTH IN RULE 3408 OF THE CIVIL PRACTICE LAW AND RULES
31 SHALL WORK WITH THE PARTIES TO ESTABLISH THE TERMS OF A MONTHLY PAYMENT
32 SCHEDULE WHICH WILL PRESERVE THE RELATIVE FINANCIAL INTERESTS OF BOTH
33 PARTIES UNDER TERMS WHICH ARE EQUITABLE AND JUST. TOWARDS THAT END, THE
34 COURT OFFICER OR MEDIATOR SHALL INQUIRE INTO THE FINANCES OF BOTH THE
35 MORTGAGEE AND THE MORTGAGOR. THE PURPOSE OF SUCH INQUIRY SHALL BE TO
36 DETERMINE THE MINIMUM AMOUNT NECESSARY TO MAINTAIN THE MORTGAGEE'S
37 FINANCIAL POSITION AND TO DETERMINE THE AMOUNT WHICH THE MORTGAGOR WILL
38 BE ABLE TO AFFORD. SUCH MONTHLY PAYMENTS SHALL BE APPLIED TO THE PRIN-
39 CIPAL AND INTEREST UPON THE INDEBTEDNESS. IF THE FINANCIAL CONDITION OF
40 THE MORTGAGOR EXCEEDS THE MINIMUM AMOUNT NECESSARY TO MAINTAIN THE
41 FINANCIAL POSITION OF THE MORTGAGEE, SUCH MONTHLY AMOUNT MAY BE
42 INCREASED BEYOND THE MINIMUM AMOUNT AS DETERMINED WITHIN THE DISCRETION
43 OF THE COURT OFFICER OR MEDIATOR. IT IS WITHIN THE COURT OFFICER'S OR
44 MEDIATOR'S DISCRETION TO DETERMINE WHETHER THE ESTABLISHMENT OF SUCH
45 PAYMENT SCHEDULE IS POSSIBLE UNDER TERMS WHICH ARE EQUITABLE AND JUST.
46 THE PURPOSE OF SUCH MONTHLY PAYMENTS IS TO PRESERVE THE RELATIVE FINAN-
47 CIAL INTERESTS OF BOTH PARTIES UNTIL A SETTLEMENT CAN BE REACHED BUT IN
48 NO EVENT SHALL SUCH ORDER GOVERN FOR MORE THAN ONE YEAR. FAILURE TO
49 ADHERE TO THE TERMS OF SUCH SCHEDULE MAY ALSO RESULT IN FORECLOSURE OR
50 LIFTING OF THE ABEYANCE.

51 6. POSTPONEMENT ORDER. ONCE THE COURT DETERMINES THAT AN EQUITABLE AND
52 JUST PAYMENT SCHEDULE CAN BE ESTABLISHED, IT SHALL ISSUE AN ORDER WHICH
53 SETS FORTH THE TERMS OF SUCH PAYMENT SCHEDULE AND SERVE IT UPON ALL
54 PARTIES TO THE PROCEEDING. SUCH ORDER SHALL SET FORTH A RETURN DATE FOR
55 THE RE-EXAMINATION OF SUCH MATTER AFTER PASSAGE OF THE POSTPONEMENT TIME
56 PERIOD AT A FORMAL HEARING ON NOTICE TO THE PARTIES. THE COURT MAY

1 TAILOR RELIEF AS REQUIRED BY THE FACTS OF EACH CASE THAT FALLS WITHIN
2 THE PURVIEW OF THIS SECTION. HOWEVER, IN NO EVENT SHALL SUCH ORDER POST-
3 PONE FINAL ACTION BEYOND ONE YEAR WITHOUT A RE-EXAMINATION OF THE
4 PARTIES' FINANCIAL CIRCUMSTANCES AFTER FORMAL HEARING ON NOTICE TO THE
5 PARTIES. THE TIME PERIOD OF SUCH ORDER SHALL RUN FROM THE DATE OF THE
6 ENTRY OF SUCH ORDER. SUCH ABEYANCE SHALL NOT BEGIN UNTIL THE FORECLO-
7 SURE PROCESS HAS REACHED THE POINT WHERE A FINAL DETERMINATION IS POSSI-
8 BLE BUT SHALL BE WITHHELD UNTIL THE POSTPONEMENT PERIOD HAS ELAPSED.
9 ENTITLEMENT TO SUCH ABEYANCE MAY BE ESTABLISHED AT ANY TIME REGARDLESS
10 OF WHETHER FORECLOSURE IS BEING SOUGHT BY THE MORTGAGEE. MULTIPLE POST-
11 PONEMENTS MAY BE GRANTED IN THE DISCRETION OF THE COURT IF WARRANTED BY
12 THE FACTS OF A GIVEN CASE AND THE ECONOMIC CONDITIONS ACROSS THE STATE.

13 7. CONTINUING JURISDICTION. THE COURT SHALL MAINTAIN CONTINUING JURIS-
14 DICTION OF THE MATTER UNTIL IT REACHES FINAL RESOLUTION. UPON THE APPLI-
15 CATION OF EITHER PARTY, PRIOR TO THE EXPIRATION OF THE POSTPONEMENT
16 PERIOD, UPON PRESENTATION OF EVIDENCE THAT THE TERMS FIXED BY THE COURT
17 ARE NO LONGER JUST AND EQUITABLE, THE COURT MAY REVISE AND ALTER SUCH
18 TERMS IN SUCH MANNER AS THE CHANGED CIRCUMSTANCES AND CONDITIONS MAY
19 REQUIRE.

20 S 10. The judiciary law is amended by adding a new section 2-c to read
21 as follows:

22 S 2-C. INDIVIDUAL ASSIGNMENTS. THE UNIFIED COURT SYSTEM, IN ACCORDANCE
23 WITH THEIR INDIVIDUAL ASSIGNMENT SYSTEM, SHALL ENSURE THAT ALL CAUSES OF
24 ACTION TO FORECLOSE ON REAL PROPERTY SHALL BE ASSIGNED TO THE SAME JUDGE
25 OR JUDGES, TO THE EXTENT PRACTICABLE.

26 S 11. Notwithstanding the ninety day provision in subdivision 1 of
27 rule 3408 of the civil practice law and rules, a judge shall schedule
28 settlement conferences pursuant to such section for any foreclosure
29 proceeding currently on their calendar.

30 S 12. This act shall take effect on the sixtieth day after it shall
31 have become a law. Effective immediately, the superintendent of banks
32 may promulgate any rule or regulation necessary for the timely implemen-
33 tation of this act on its effective date.