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

2614--B

Cal. No. 53

2009-2010 Regular Sessions

I N S E N A T E

February 25, 2009

Introduced by Sens. KLEIN, DILAN, HASSELL-THOMPSON, C. JOHNSON, KRUEGER, ONORATO, SAVINO, SERRANO, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, substituted by Assembly Bill No. 1239A, substitution reconsidered and vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the real property law, in relation to enacting the "access to justice in lending act"

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

Section 1. This act shall be known and may be cited as the "access to justice in lending act".

S 2. The real property law is amended by adding a new section 282 to read as follows:

S 282. MORTGAGOR'S RIGHT TO RECOVER ATTORNEYS' FEES IN ACTIONS OR PROCEEDINGS ARISING OUT OF FORECLOSURES OF RESIDENTIAL PROPERTY. 1. WHENEVER A COVENANT CONTAINED IN A MORTGAGE ON RESIDENTIAL REAL PROPERTY SHALL PROVIDE THAT IN ANY ACTION OR PROCEEDING TO FORECLOSE THE MORTGAGE THAT THE MORTGAGEE MAY RECOVER ATTORNEYS' FEES AND/OR EXPENSES INCURRED AS THE RESULT OF THE FAILURE OF THE MORTGAGOR TO PERFORM ANY COVENANT OR AGREEMENT CONTAINED IN SUCH MORTGAGE, OR THAT AMOUNTS PAID BY THE MORTGAGEE THEREFOR SHALL BE PAID BY THE MORTGAGOR AS ADDITIONAL PAYMENT, THERE SHALL BE IMPLIED IN SUCH MORTGAGE A COVENANT BY THE MORTGAGEE TO PAY TO THE MORTGAGOR THE REASONABLE ATTORNEYS' FEES AND/OR EXPENSES INCURRED BY THE MORTGAGOR AS THE RESULT OF THE FAILURE OF THE MORTGAGEE

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

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TO PERFORM ANY COVENANT OR AGREEMENT ON ITS PART TO BE PERFORMED UNDER THE MORTGAGE OR IN THE SUCCESSFUL DEFENSE OF ANY ACTION OR PROCEEDING COMMENCED BY THE MORTGAGEE AGAINST THE MORTGAGOR ARISING OUT OF THE CONTRACT, AND AN AGREEMENT THAT SUCH FEES AND EXPENSES MAY BE RECOVERED AS PROVIDED BY LAW IN AN ACTION COMMENCED AGAINST THE MORTGAGEE OR BY WAY OF COUNTERCLAIM IN ANY ACTION OR PROCEEDING COMMENCED BY THE MORTGAGEE AGAINST THE MORTGAGOR. ANY WAIVER OF THIS SECTION SHALL BE VOID AS AGAINST PUBLIC POLICY.

2. FOR THE PURPOSES OF THIS SECTION, "RESIDENTIAL REAL PROPERTY" MEANS REAL PROPERTY IMPROVED BY A ONE- TO FOUR-FAMILY RESIDENCE, A CONDOMINIUM THAT IS OCCUPIED BY THE MORTGAGOR OR A COOPERATIVE UNIT THAT IS OCCUPIED BY THE MORTGAGOR.

S 3. This act shall take effect on the sixtieth day after it shall have become a law, shall apply to residential real property mortgages in existence on or after such date and shall apply to actions and proceedings commenced on or after such date.