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

4109

2009-2010 Regular Sessions

I N S E N A T E

April 9, 2009

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT enacting the "foreclosure prevention 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 real property actions and proceedings law, 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; and to amend the judiciary law, in relation to the assignment of foreclosure actions

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

Section 1. Short title. This act shall be known and may be cited as the "foreclosure prevention act of 2009".

S 2. Statement of legislative purpose and findings. The legislature finds and declares that there is a public emergency; that the extension of unaffordable mortgage loans, unaffordable second mortgages and unaffordable home equity loans have resulted in thousands of homeowners losing their homes. The problems associated with these loans adversely affect the availability of capital, the demand for housing, the value of real estate, and more importantly, the ability of homeowners to keep their homes and communities viable. The pending reset of interest rates in many home mortgages, second mortgages and home equity loans will only exacerbate this situation for many homeowners. The expectation that many such variable rate mortgages will fall into foreclosure upon the reset of the interest rate compels the state to take action. State assistance to homeowners through a voluntary program is necessary in order to stem this crisis.

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

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

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

2. "Department" shall mean the banking department.

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

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

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

(a) the borrower is a natural person;

(b) the debt is incurred by the borrower primarily for personal, family or household purposes;

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

(d) the property is located in this state.

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

7. "Non-profit assistance provider" shall mean a corporation or group of corporations organized under the provisions of the not-for-profit corporation law, including but not limited to neighborhood preservation companies as defined in section 902 of the private housing finance law, entities that perform housing preservation and community renewal activities pursuant to article 17 of the private housing finance law, commonly referred to as rural preservation companies, and legal service providers, and municipalities.

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

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

S 4. Education and outreach to homeowners. In coordination with the division and the consumer protection board, the department shall undertake outreach activities directed at any homeowners whose homes are subject to foreclosure. Such outreach activities shall include, but not be limited to:

1. the production and broadcast of public service announcements using electronic media to inform the general public of the availability of counseling through the New York state foreclosure prevention program established by this act. Such public service announcements shall inform the homeowner of the nature and purpose of the counseling and provide a website and phone number for the homeowner to utilize; and

2. the inclusion of a description on the internet websites maintained by the division, the banking department and the consumer protection board of the New York state foreclosure prevention program and a listing

of those entities that provide counseling with respect to the program. Such listing shall include the address and phone number of each entity.

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

1. The foreclosing party in a mortgage foreclosure action, which involves residential real property consisting of owner-occupied one-to-four-family dwellings shall provide notice to the mortgagor in accordance with the provisions of this section with regard to information and assistance about the foreclosure process. SUCH NOTICE SHALL INCLUDE INFORMATION ABOUT THE AVAILABILITY OF THE FORECLOSURE PREVENTION PROGRAM AND ITS ABILITY TO ASSIST HOMEOWNERS IN AVOIDING FORECLOSURE AND THE MANDATORY COUNSELING REQUIRED PRIOR TO A SETTLEMENT CONFERENCE AND THE PENALTIES FOR NOT RECEIVING SUCH COUNSELING. SUCH NOTICE SHALL INCLUDE THE HOTLINE ESTABLISHED BY THE BANKING DEPARTMENT AND PROVIDED BY THE DIVISION OF HOUSING AND COMMUNITY RENEWAL PURSUANT TO SECTION FOUR OF THE FORECLOSURE PREVENTION ACT OF 2009 AND THE NAMES AND CONTACT INFORMATION FOR ALL NOT-FOR-PROFIT ASSISTANCE PROVIDERS AUTHORIZED BY THE DEPARTMENT TO PROVIDE HOUSING COUNSELING SERVICES TO HOMEOWNERS.

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

Help for Homeowners in Foreclosure

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

BEFORE YOU ATTEND A SETTLEMENT CONFERENCE, YOU MUST SCHEDULE AND ATTEND A COUNSELING SESSION BY CALLING THE BANKING DEPARTMENT AT THE FOLLOWING HOTLINE NUMBER: _______________________

Summons and Complaint

You are in danger of losing your home. If you fail to respond to the summons and complaint in this foreclosure action, you may lose your home. Please read the summons and complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself. YOU SHOULD IMMEDIATELY SEEK OUT AN APPROVED LOAN COUNSELOR. A LIST OF APPROVED COUNSELORS CAN BE OBTAINED BY CALLING THE HOTLINE.

Sources of Information and Assistance

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

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

Foreclosure rescue scams

Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

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

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

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

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

S 7. The real property actions and proceedings law is amended by adding a new section 1314 to read as follows:

S 1314. MANDATORY SETTLEMENT CONFERENCE IN RESIDENTIAL FORECLOSURE ACTIONS. 1. IN ANY RESIDENTIAL FORECLOSURE ACTION IN WHICH THE DEFENDANT IS A RESIDENT OF THE PROPERTY SUBJECT TO FORECLOSURE, THE COURT SHALL HOLD A MANDATORY CONFERENCE WITHIN NINETY DAYS AFTER THE DATE WHEN PROOF OF SERVICE IS FILED WITH THE COUNTY CLERK, OR ON SUCH ADJOURNED DATE AS HAS BEEN AGREED TO BY THE PARTIES, FOR THE PURPOSE OF HOLDING SETTLEMENT DISCUSSIONS PERTAINING TO THE RELATIVE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THE MORTGAGE LOAN DOCUMENTS, INCLUDING, BUT NOT LIMITED TO DETERMINING WHETHER THE PARTIES CAN REACH A MUTUALLY AGREEABLE RESOLUTION TO HELP THE DEFENDANT AVOID LOSING HIS OR HER HOME, AND EVALUATING THE POTENTIAL FOR A RESOLUTION IN WHICH PAYMENT SCHEDULES OR AMOUNTS MAY BE MODIFIED OR OTHER WORKOUT OPTIONS MAY BE AGREED TO, AND FOR WHATEVER OTHER PURPOSES THE COURT DEEMS APPROPRIATE.

2. THE COURT SHALL CAUSE A NOTICE TO BE SENT TO THE PARTIES BY CERTIFIED MAIL INFORMING THEM OF THE DATE, TIME, AND LOCATION OF THE CONFERENCE, AND INFORMING THE HOMEOWNER OF HIS OR HER REQUIRED PARTICIPATION IN THE RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM ESTABLISHED PURSUANT TO THE FORECLOSURE PREVENTION ACT OF 2009. THE NOTICE SHALL INCLUDE THE HOTLINE ESTABLISHED BY THE BANKING DEPARTMENT PURSUANT TO THE FORECLOSURE PREVENTION ACT OF 2009 AND A STATEMENT THAT THE HOMEOWNER MUST COMPLETE A COUNSELING SESSION PRIOR TO HIS OR HER SCHEDULED CONCILIATION CONFERENCE.

3. A COUNSELOR SHALL SEND A LOAN MODIFICATION PROPOSAL TO THE FORECLOSING PARTY AT LEAST TEN DAYS PRIOR TO THE SETTLEMENT CONFERENCE. THE FORECLOSING PARTY SHALL, PRIOR TO THE SETTLEMENT CONFERENCE, REVIEW THE MODIFICATION PROPOSAL AND MAKE A GOOD FAITH EFFORT TO REACH A RESOLUTION WITH THE HOMEOWNER.

4. AT THE INITIAL CONFERENCE HELD PURSUANT TO THIS SECTION, ANY DEFENDANT CURRENTLY APPEARING PRO SE, SHALL BE DEEMED TO HAVE MADE A MOTION TO PROCEED AS A POOR PERSON UNDER SECTION ELEVEN HUNDRED ONE OF THE CIVIL PRACTICE LAW AND RULES. THE COURT SHALL DETERMINE WHETHER SUCH PERMISSION SHALL BE GRANTED PURSUANT TO STANDARDS SET FORTH IN SECTION ELEVEN HUNDRED ONE OF THE CIVIL PRACTICE LAW AND RULES. IF THE COURT APPOINTS DEFENDANT COUNSEL PURSUANT TO SUBDIVISION (A) OF SECTION ELEVEN HUNDRED TWO OF THE CIVIL PRACTICE LAW AND RULES, IT SHALL ADJOURN THE CONFERENCE TO A DATE CERTAIN FOR APPEARANCE OF COUNSEL AND SETTLEMENT DISCUSSIONS PURSUANT TO SUBDIVISION ONE OF THIS SECTION, AND OTHERWISE SHALL PROCEED WITH THE CONFERENCE.

5. AT ANY CONFERENCE HELD PURSUANT TO THIS SECTION, THE PLAINTIFF SHALL APPEAR IN PERSON OR BY COUNSEL, AND IF APPEARING BY COUNSEL, SUCH COUNSEL SHALL BE FULLY AUTHORIZED TO DISPOSE OF THE CASE. THE DEFENDANT

SHALL APPEAR IN PERSON OR BY COUNSEL. IF THE DEFENDANT IS APPEARING PRO SE, THE COURT SHALL ADVISE THE DEFENDANT OF THE NATURE OF THE ACTION AND HIS OR HER RIGHTS AND RESPONSIBILITIES AS A DEFENDANT. WHERE APPROPRIATE, THE COURT MAY PERMIT A REPRESENTATIVE OF THE PLAINTIFF TO ATTEND THE SETTLEMENT CONFERENCE TELEPHONICALLY OR BY VIDEO-CONFERENCE.

6. BOTH PARTIES MUST HAVE ANY SUPPORTING DOCUMENTATION WITH THEM AT THE TIME OF THE CONFERENCE. THE HOMEOWNER MUST HAVE ATTENDED A COUNSELING SESSION WITH AN APPROVED COUNSELOR.

7. THE COURT SHALL PRESIDE OVER THE CONFERENCE IN AN EFFORT TO ESTABLISH A REPAYMENT PLAN THAT IS ACCEPTABLE TO THE LENDER THAT ALLOWS THE HOMEOWNER TO REMAIN IN THE HOME.

8. THE COURT SHALL PROVIDE ALL APPROVED LOAN COUNSELING AGENCIES WITH A LIST OF THE NAMES AND ADDRESSES OF HOMEOWNERS WHO HAVE BEEN SERVED WITH A SETTLEMENT CONFERENCE NOTICE IN THEIR SERVICE AREA.

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

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

S 1316. THE COURT SHALL NOTIFY THE DEFENDANT OF ANY FORECLOSURE ACTION ON A RESIDENTIAL MORTGAGE LOAN, IN WHICH THE ACTION WAS INITIATED BUT WHERE THE FINAL ORDER OF JUDGMENT WAS NOT ISSUED PRIOR TO THE EFFECTIVE DATE OF THE FORECLOSURE PREVENTION ACT OF 2009, THAT SUCH DEFENDANT MAY REQUEST A SETTLEMENT CONFERENCE IN ACCORDANCE WITH SECTION THIRTEEN HUNDRED FOURTEEN OF THIS ARTICLE.

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

S 1305. FORECLOSURES; COURT RELIEF. 1. VENUE. IN ANY ACTION TO FORECLOSE A RESIDENTIAL MORTGAGE UNDER THIS ARTICLE A MORTGAGOR NAMED IN SUCH ACTION MAY APPLY FOR RELIEF IN STATE SUPREME COURT PURSUANT TO THIS SECTION.

2. TIMING OF POSTPONEMENT. IF A MORTGAGEE HAS OTHERWISE ESTABLISHED ITS LEGAL RIGHT TO JUDGMENT ON AN ACTION TO FORECLOSE A RESIDENTIAL MORTGAGE PURSUANT TO THIS CHAPTER, THEN SUCH ACTION SHALL BE HELD IN ABEYANCE BY THE COURT BEFORE WHICH SUCH ACTION IS PENDING FOR A PERIOD OF NINETY DAYS. IF THE MORTGAGOR RECEIVES COUNSELING FROM A NOT-FOR-PROFIT ASSISTANCE PROVIDER APPROVED BY THE DIVISION AND PARTICIPATES IN A SETTLEMENT CONFERENCE, THEN THE COURT BEFORE WHICH SUCH ACTION IS PENDING SHALL HOLD SUCH ACTION IN ABEYANCE FOR AN ADDITIONAL NINE MONTHS. SUCH ADDITIONAL PERIOD OF TIME IS INTENDED TO PERMIT THE PARTIES TO SETTLE THE ACTION OUTSIDE OF COURT AND TO FORESTALL FORECLOSURE WHEREVER POSSIBLE.

3. PROCESS AND FEES. IF AN ACTION TO FORECLOSE A RESIDENTIAL MORTGAGE HAS BEEN COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A MORTGAGOR MAY ASK THE COURT BEFORE WHICH SUCH ACTION IS COMMENCED TO HOLD SUCH ACTION IN ABEYANCE PURSUANT TO SUBDIVISION TWO OF THIS SECTION. MOTIONS ON NOTICE IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES MADE BY THE MORTGAGOR SHALL BE DEEMED TO HAVE BEEN FILED BY A POOR PERSON PURSUANT TO ARTICLE ELEVEN OF THE CIVIL PRACTICE LAW AND RULES AND ALL COURT FEES OTHERWISE APPLICABLE TO SUCH ACTIONS AND PAYABLE BY A MORTGAGOR SHALL BE WAIVED. IF A FORECLOSURE ACTION HAS NOT BEEN COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A MORTGAGOR MUST COMMENCE AN ACTION IN STATE SUPREME COURT BY FILING AND SERVING A SUMMONS PURSUANT TO ARTICLE THREE OF THE CIVIL PRACTICE LAW AND RULES WITH A REQUEST FOR RELIEF PURSUANT TO THE TERMS OF THIS SECTION. IN SUCH

CASE, SUCH FILING SHALL BE DEEMED TO HAVE BEEN FILED BY A POOR PERSON PURSUANT TO ARTICLE ELEVEN OF THE CIVIL PRACTICE LAW AND RULES AND ALL FILING AND COURT FEES OTHERWISE APPLICABLE TO SUCH ACTIONS AND PAYABLE BY A MORTGAGOR IN THE FORM OF INDEX AND MOTION FEES SHALL BE WAIVED.

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

A. THE MORTGAGOR IS A NATURAL PERSON; AND

B. THE DEBT IS INCURRED BY THE MORTGAGOR PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES; AND

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

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

E. THE MORTGAGOR OWNS NO OTHER REAL PROPERTY; AND

F. THE REAL PROPERTY IS LOCATED IN THIS STATE.

5. MONTHLY PAYMENT SCHEDULE. IF A PRIMA FACIE CASE HAS BEEN ESTABLISHED, THE COURT MUST SET FORTH THE TERMS OF A MONTHLY PAYMENT SCHEDULE WHICH WILL PRESERVE THE RELATIVE FINANCIAL INTERESTS OF BOTH PARTIES UNDER TERMS WHICH ARE EQUITABLE AND JUST. TOWARDS THAT END, THE COURT SHALL INQUIRE INTO THE FINANCES OF BOTH THE MORTGAGEE AND THE MORTGAGOR. THE PURPOSE OF SUCH INQUIRY SHALL BE TO DETERMINE THE MINIMUM AMOUNT NECESSARY TO MAINTAIN THE MORTGAGEE'S FINANCIAL POSITION AND TO DETERMINE THE AMOUNT WHICH THE MORTGAGOR WILL BE ABLE TO AFFORD. SUCH MONTHLY PAYMENTS SHALL BE APPLIED TO THE PRINCIPAL AND INTEREST UPON THE INDEBTEDNESS. IF THE FINANCIAL CONDITION OF THE MORTGAGOR EXCEEDS THE MINIMUM AMOUNT NECESSARY TO MAINTAIN THE FINANCIAL POSITION OF THE MORTGAGEE, SUCH MONTHLY AMOUNT MAY BE INCREASED BEYOND THE MINIMUM AMOUNT AS DETERMINED WITHIN THE DISCRETION OF THE COURT. IT IS WITHIN THE COURT'S DISCRETION TO DETERMINE WHETHER THE ESTABLISHMENT OF SUCH PAYMENT SCHEDULE IS POSSIBLE UNDER TERMS WHICH ARE EQUITABLE AND JUST. THE PURPOSE OF SUCH MONTHLY PAYMENTS ARE TO PRESERVE THE RELATIVE FINANCIAL INTERESTS OF BOTH PARTIES UNTIL A SETTLEMENT CAN BE REACHED BUT IN NO EVENT SHALL SUCH ORDER GOVERN FOR MORE THAN ONE YEAR. FAILURE TO ADHERE TO THE TERMS OF SUCH SCHEDULE MAY ALSO RESULT IN FORECLOSURE OR LIFTING OF THE ABEYANCE.

6. POSTPONEMENT ORDER. ONCE THE COURT DETERMINES THAT AN EQUITABLE AND JUST PAYMENT SCHEDULE CAN BE ESTABLISHED, IT SHALL ISSUE AN ORDER WHICH SETS FORTH THE TERMS OF SUCH PAYMENT SCHEDULE AND SERVE IT UPON ALL PARTIES TO THE PROCEEDING. SUCH ORDER SHALL SET FORTH A RETURN DATE FOR THE RE-EXAMINATION OF SUCH MATTER AFTER PASSAGE OF THE POSTPONEMENT TIME PERIOD AT A FORMAL HEARING ON NOTICE TO THE PARTIES. THE COURT MAY TAILOR RELIEF AS REQUIRED BY THE FACTS OF EACH CASE THAT FALLS WITHIN THE PURVIEW OF THIS SECTION. HOWEVER, IN NO EVENT SHALL SUCH ORDER POSTPONE FINAL ACTION BEYOND ONE YEAR WITHOUT A RE-EXAMINATION OF THE PARTIES' FINANCIAL CIRCUMSTANCES AFTER FORMAL HEARING ON NOTICE TO THE PARTIES. THE TIME PERIOD OF SUCH ORDER SHALL RUN FROM THE DATE OF THE ENTRY OF SUCH ORDER. SUCH ABEYANCE SHALL NOT BEGIN UNTIL THE FORECLOSURE PROCESS HAS REACHED THE POINT WHERE A FINAL DETERMINATION IS POSSIBLE BUT SHALL BE WITHHELD UNTIL THE POSTPONEMENT PERIOD HAS ELAPSED. ENTITLEMENT TO SUCH ABEYANCE MAY BE ESTABLISHED AT ANY TIME REGARDLESS OF WHETHER FORECLOSURE IS BEING SOUGHT BY THE MORTGAGEE. MULTIPLE POSTPONEMENTS MAY BE GRANTED IN THE DISCRETION OF THE COURT IF WARRANTED BY THE FACTS OF A GIVEN CASE AND THE ECONOMIC CONDITIONS ACROSS THE STATE.

7. CONTINUING JURISDICTION. THE COURT SHALL MAINTAIN CONTINUING JURISDICTION OF THE MATTER UNTIL IT REACHES FINAL RESOLUTION. UPON THE APPLICATION OF EITHER PARTY, PRIOR TO THE EXPIRATION OF THE POSTPONEMENT PERIOD, UPON PRESENTATION OF EVIDENCE THAT THE TERMS FIXED BY THE COURT ARE NO LONGER JUST AND EQUITABLE, THE COURT MAY REVISE AND ALTER SUCH TERMS IN SUCH MANNER AS THE CHANGED CIRCUMSTANCES AND CONDITIONS MAY REQUIRE.

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

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

S 11. Notwithstanding the ninety day provision in subdivision 1 of section 1314 of the real property actions and proceedings law, a judge shall schedule settlement conferences pursuant to such section for any foreclosure proceeding currently on their calendar.

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