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

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I N A S S E M B L Y

April 27, 2011

Introduced by M. of A. BRENNAN, SCARBOROUGH, JACOBS, MILLMAN, DINOWITZ, BENEDETTO, STEVENSON, COLTON, GALEF, JAFFEE, ZEBROWSKI, ROBERTS, BARRON, ROBINSON, CASTRO, GIBSON, MARKEY, WEPRIN -- Multi-Sponsored by -- M. of A. GABRYSZAK, GLICK, PHEFFER -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, the banking law and the tax law, in relation to providing for mediation in foreclosure actions; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Legislative intent. The legislature declares that a public emergency exists in regards to real estate foreclosures due to the extension of fundamentally unaffordable mortgage loans, fundamentally unaffordable second mortgages and fundamentally unaffordable home equity loans. Many such loans were extended under conditions which evince deception, misrepresentation and fraud on the part of many lenders and agents. It is in the interest of New York state to ensure the rights of all parties are protected and that all foreclosures which come into the New York courts during this period are carefully scrutinized.

S 2. Subdivision 3 of section 1303 of the real property actions and proceedings law, as amended by chapter 507 of the laws of 2009, is amended to read as follows:

3. The notice to any mortgagor required by paragraph (a) of subdivision one of 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.

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

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

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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.

RIGHT TO PETITION FOR MEDIATION

YOU HAVE THE RIGHT TO PETITION THE COURT TO ORDER MEDIATION BETWEEN YOURSELF AND THE MORTGAGEE. THE MORTGAGEE IS REQUIRED TO SUBMIT TO MEDIATION IF SO ORDERED BY THE COURT. SUCH MEDIATION COULD LEAD TO A NEW MORTGAGE THAT PROTECTS THE INTERESTS OF THE MORTGAGEE WHILE MAKING IT POSSIBLE FOR YOU TO MAKE PAYMENTS YOU CAN AFFORD. YOU SHOULD DISCUSS THIS OPTION WITH AN ATTORNEY OR YOUR LOCAL LEGAL AID OFFICE.

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 3. The real property actions and proceedings law is amended by adding a new section 1308 to read as follows:

S 1308. FORECLOSURES; COURT RELIEF. 1. VENUE. IN ANY ACTION TO FORECLOSE A MORTGAGE UNDER THIS ARTICLE A MORTGAGOR NAMED IN SUCH ACTION MAY APPLY FOR RELIEF IN STATE SUPREME COURT PURSUANT TO THIS SECTION.

2. RIGHT TO PETITION FOR MEDIATION. UPON RECEIPT BY THE MORTGAGOR OF A NOTICE FROM THE MORTGAGEE PURSUANT TO SECTION THIRTEEN HUNDRED THREE OF THIS ARTICLE, THE MORTGAGOR SHALL HAVE THE RIGHT TO PETITION THE COURT TO REQUIRE MEDIATION BETWEEN THE PARTIES PURSUANT TO SUBDIVISION FIVE OF THIS SECTION.

3. PROCEDURE. A. IF AN ACTION TO FORECLOSE A MORTGAGE HAS BEEN COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A MORTGAGOR MAY PETITION THE COURT BEFORE WHICH SUCH ACTION IS COMMENCED, PURSUANT TO SUBDIVISION TWO OF THIS SECTION, TO REQUIRE MEDIATION, PURSUANT TO SUBDIVISION FIVE OF THIS SECTION, INSTEAD OF CONTINUING THE FORECLOSURE ACTION.

B. IF A FORECLOSURE ACTION HAS NOT BEEN COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A MORTGAGEE MUST COMMENCE A FORECLOSURE 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. MEDIATION AND MONTHLY PAYMENT SCHEDULE. A. UPON RECEIPT OF A PETITION FROM THE MORTGAGOR, THE COURT SHALL ORDER A PERIOD OF TIME, NOT LESS THAN SIX MONTHS, FOR MEDIATION BETWEEN THE MORTGAGEE AND MORTGAGOR TO ARRIVE AT A MODIFICATION OF THE LOAN THAT IS EQUITABLE AND JUST TO BOTH PARTIES. THE MEDIATOR, APPOINTED BY 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 MEDIATOR. 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.

B. THE AIM OF MEDIATION PURSUANT TO THIS SUBDIVISION SHALL BE A NEW MORTGAGE THAT IS NEGOTIATED IN A MANNER TO PROTECT THE INTERESTS OF THE MORTGAGEE WHILE MAKING IT POSSIBLE FOR THE MORTGAGOR TO MAKE PAYMENTS IN HIS OR HER CURRENT CIRCUMSTANCE. THESE GOALS MAY BE ACCOMPLISHED BY REDUCING THE PRINCIPAL OWED, REDUCING THE INTEREST RATE ON THE LOAN, EXTENDING THE LIFE OF THE LOAN, OR ANY OTHER MODIFICATION OR COMBINATION OF MODIFICATIONS THAT PROVIDES FOR A SATISFACTORY END RESULT FOR BOTH PARTIES. THE MORTGAGEE SHALL BARGAIN IN GOOD FAITH.

6. POSTPONEMENT ORDER. ONCE THE COURT DETERMINES THAT AN EQUITABLE AND JUST PAYMENT SCHEDULE CAN BE ESTABLISHED THROUGH MEDIATION, 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 REEXAMINATION 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.

8. FINAL MODIFICATION. UPON AGREEMENT BY THE MORTGAGOR AND THE MORTGAGEE ON THE TERMS OF A PAYMENT SCHEDULE THAT IS EQUITABLE AND JUST TO BOTH PARTIES, THE COURT SHALL, AFTER CERTIFYING SUCH AGREEMENT, DISMISS THE FORECLOSURE ACTION.

S 4. Subdivision 1 of section 14 of the banking law is amended by adding a new paragraph (ff) to read as follows:

(FF) TO DEFINE THE MORTGAGEE'S DUTY OF BARGAINING IN GOOD FAITH FOR THE PURPOSES OF MEDIATION PURSUANT TO SUBDIVISION FIVE OF SECTION THIRTEEN HUNDRED EIGHT OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW. SUCH DEFINITION SHALL INCLUDE INCENTIVES, PURSUANT TO SUBSECTION (Y) OF SECTION FOURTEEN HUNDRED FIFTY-SIX OF THE TAX LAW AND SANCTIONS INCLUDING, BUT NOT LIMITED TO WITHDRAWAL OF STATE DEPOSITS FROM SUCH INSTITUTION AND THE DELISTING OF SUCH INSTITUTION FROM STATE BUSINESS.

S 5. Section 1456 of the tax law is amended by adding a new subsection (y) to read as follows:

(Y) LOAN PRINCIPAL REDUCTION TAX CREDIT. (1) FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TWELVE, A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE IF SUCH TAXPAYER AGREES TO MODIFY A LOAN THROUGH MEDIATION PURSUANT TO SECTION THIRTEEN HUNDRED EIGHT OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE REDUCTION IN THE PRINCIPAL OF SUCH LOAN AND SUCH CREDIT SHALL BE APPLIED OVER TEN YEARS WITH TEN PERCENT OF SUCH CREDIT ALLOWED EACH YEAR.

(2) THE CREDIT AND CARRYOVERS OF SUCH CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL NOT, IN THE AGGREGATE, REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM TAX FIXED BY SUBSECTION (B) OF SECTION FOURTEEN HUNDRED FIFTY-FIVE OF THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT, OR BOTH, ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, THEN ANY AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS; PROVIDED, HOWEVER, THAT ANY TAX CREDIT PURSUANT TO THIS SUBSECTION SHALL NOT BE APPLIED FOR MORE THAN FIVE TAXABLE YEARS.

S 6. This act shall take effect immediately and shall expire and be deemed repealed 3 years after such date; provided however that section four of this act shall take effect on the same date as section 90 of part A of chapter 62 of the laws of 2011, takes effect.