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

1697

2011-2012 Regular Sessions

I N S E N A T E

January 11, 2011

Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the real property actions and proceedings law, in relation to the failure of auction and requirements for sale of real estate owned property

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

Section 1. The real property actions and proceedings law is amended by adding a new section 1355-a to read as follows:

S 1355-A. FAILURE OF AUCTION: REQUIREMENTS FOR SALE OF REAL ESTATE OWNED PROPERTY. 1. DEFINITIONS. (A) "REAL ESTATE OWNED PROPERTY" SHALL MEAN A CLASS OF PROPERTY OWNED BY A LENDER, TYPICALLY A BANK OR MORTGAGE COMPANY, AFTER AN UNSUCCESSFUL SALE AT A FORECLOSURE AUCTION; THIS CLASS OF PROPERTY IS CATEGORIZED AS AN ASSET.

(B) "REGISTERED REAL ESTATE OWNED PROPERTY LAWYER" SHALL MEAN ANY ATTORNEY WHO HAS REGISTERED WITH THE SECRETARY OF STATE PURSUANT TO SUBDIVISION TWO OF THIS SECTION TO CONDUCT A SALE OR OTHER TRANSACTION OF REAL ESTATE OWNED PROPERTY; THIS SECTION SHALL NOT BE CONSTRUED TO MEAN ANY ATTORNEY ON RETAINER BY THE BANK TO HANDLE REAL ESTATE TRANSACTIONS OR ANYONE DEEMED IN-HOUSE COUNSEL.

(C) "REGISTERED REAL ESTATE OWNED PROPERTY AGENT OR BROKER" SHALL MEAN ANY INDIVIDUAL INVOLVED IN REAL ESTATE BROKERAGE ACTIVITY AS DEFINED IN SECTION FIVE HUNDRED NINETY-NINE-B OF THE BANKING LAW WHO HAS REGISTERED WITH THE SECRETARY OF STATE PURSUANT TO SUBDIVISION TWO OF THIS SECTION TO LIST FOR SALE ANY REAL ESTATE OWNED PROPERTY; THIS SECTION SHALL NOT BE CONSTRUED TO MEAN ANY AGENT OR BROKER ON RETAINER BY A BANK TO HANDLE REAL ESTATE SALES OR PURCHASES OR ANY AGENT OR BROKER EMPLOYED BY A BANK OR MORTGAGE COMPANY'S SUBSIDIARY.

(D) "REGISTERED REAL ESTATE OWNED PROPERTY MAINTENANCE COMPANY" SHALL MEAN ANY INDIVIDUAL OR COMPANY WHO HAS REGISTERED WITH THE SECRETARY OF

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

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STATE PURSUANT TO SUBDIVISION TWO OF THIS SECTION TO MAINTAIN FORECLOSED PROPERTIES PURSUANT TO SECTION THIRTEEN HUNDRED SEVEN OF THIS ARTICLE.

2. REGISTRATION. (A) THE SECRETARY OF STATE SHALL POST AND MAINTAIN ON ITS WEBSITE OR OTHERWISE MAKE READILY AVAILABLE A LIST OF REGISTERED REAL ESTATE OWNED PROPERTY LAWYERS, A LIST OF REGISTERED REAL ESTATE OWNED PROPERTY AGENTS OR BROKERS AND A LIST OF REGISTERED REAL ESTATE OWNED PROPERTY MAINTENANCE COMPANIES ALONG WITH COMPREHENSIVE CONTACT INFORMATION, INCLUDING, BUT NOT LIMITED TO, FULL NAME, NAME OF ANY ASSOCIATED LAW FIRM, LEGAL PRACTICE OR PARENT COMPANY, ADDRESS, PHONE NUMBER, AND ANY KNOWN AFFILIATION WITH ANY STATE-CHARTERED BANK.

(I) THE SECRETARY OF STATE SHALL CONSULT WITH THE HEAD OF THE DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT TO USE REASONABLE MEASURES TO ENSURE THAT BUSINESSES CERTIFIED UNDER ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW, WHICH TRADITIONALLY HAVE BEEN WOMEN AND MINORITIES ARE AFFORDED EQUAL OPPORTUNITY TO PARTICIPATE IN AND BE INCLUDED ON THE LISTS ALLOWED UNDER THIS SECTION.

(II) THE SECRETARY OF STATE SHALL DENOTE ON THE LIST CREATED UNDER THIS SECTION THAT AN ATTORNEY, BROKER OR MAINTENANCE COMPANY IS A MINORITY OR WOMEN-OWNED BUSINESS OR ENTERPRISE, AND SHALL ENSURE THAT, AT ALL TIMES, FIVE TO TEN PERCENT OF THE LIST IS MADE UP OF MINORITY AND WOMEN-OWNED BUSINESSES.

(B) ANY ATTORNEY, REAL ESTATE BROKER OR PROPERTY MAINTENANCE COMPANY INTENDING TO BE PART OF THE LIST MAINTAINED PURSUANT TO THIS SECTION SHALL MAKE APPLICATION TO THE SECRETARY OF STATE.

(C) SUCH APPLICATION SHALL BE IN A FORM AND MANNER PRESCRIBED BY THE SECRETARY OF STATE AND SHALL CONTAIN SUCH INFORMATION AS, IN THE SECRETARY OF STATE'S JUDGMENT, IS REASONABLE AND NECESSARY TO DETERMINE THE QUALIFICATIONS FOR LICENSING OF THE APPLICANT, EXCEPT THAT THE SECRETARY OF STATE SHALL AUTOMATICALLY DISQUALIFY ANY INDIVIDUAL OR COMPANY AFFILIATED WITH OR RETAINED BY ANY STATE-CHARTERED BANK.

(D) THE APPLICATION SHALL BE SUBSCRIBED BY THE APPLICANT AND AFFIRMED UNDER PENALTY OF PERJURY.

(E) THERE SHALL BE NO APPLICATION FEE ASSOCIATED WITH THE APPLICATION DESCRIBED IN THIS ARTICLE.

(F) EACH APPLICATION SHALL BE ACCOMPANIED BY SATISFACTORY EVIDENCE OF GOOD STANDING AND LEGITIMATE LICENSING WITH THE NEW YORK STATE BAR, OR BY THE SECRETARY OF STATE OR DEPARTMENT OF STATE.

(G) ANY APPLICANT FOR INCLUSION ON THIS LIST MAY SUBMIT SATISFACTORY EVIDENCE OF LICENSURE TO PRACTICE AN EQUIVALENT OCCUPATION ISSUED BY ANY OTHER STATE, TERRITORY, PROTECTORATE OR DEPENDENCY OF THE UNITED STATES OR ANY OTHER COUNTRY IN LIEU OF THE EVIDENCE REQUIRED BY THIS SUBDIVISION, PROVIDED THAT SUCH LICENSE WAS GRANTED IN COMPLIANCE WITH STANDARDS WHICH WERE, IN THE JUDGMENT OF THE SECRETARY OF STATE, NOT LOWER THAN THOSE OF THIS STATE AND PROVIDED THAT SUCH STATE, TERRITORY, PROTECTORATE, DEPENDENCY, OR COUNTRY EXTENDS SIMILAR RECIPROCITY TO THE LICENSEES OF THIS STATE OR THE APPLICANT PRACTICED AN EQUIVALENT OCCUPATION IN SUCH STATE, TERRITORY, PROTECTORATE, DEPENDENCY OR COUNTRY FOR A MINIMUM OF FIVE YEARS.

(H) IN ADDITION TO THE POWERS AND DUTIES ELSEWHERE PRESCRIBED IN NEW YORK STATE LAW, THE SECRETARY OF STATE SHALL HAVE THE POWER TO:

(I) APPOINT A SUFFICIENT NUMBER OF ASSISTANTS, INSPECTORS AND OTHER EMPLOYEES AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS ARTICLE, TO PRESCRIBE THEIR DUTIES, AND TO FIX THEIR COMPENSATION WITHIN THE AMOUNT APPROPRIATED THEREFOR;

(II) EXAMINE THE QUALIFICATIONS AND FITNESS OF APPLICANTS FOR REGISTRATION;

(III) KEEP RECORDS OF ALL APPLICANTS APPROVED OR DENIED REGISTRATION; AND

(IV) ADOPT SUCH RULES AND REGULATIONS NOT INCONSISTENT WITH THE PROVISIONS OF THIS SECTION, AS MAY BE NECESSARY WITH RESPECT TO THE FORM AND CONTENT OF APPLICATIONS FOR REGISTRATION, THE RECEPTION THEREOF, THE INVESTIGATION AND EXAMINATION OF APPLICANTS AND PROSPECTIVE APPLICANTS AS NEEDED, AND OTHER MATTERS INCIDENTAL OR APPROPRIATE TO THE POWERS AND DUTIES OF THE SECRETARY OF STATE AS PRESCRIBED BY THIS SECTION AND FOR THE PROPER ADMINISTRATION AND ENFORCEMENT OF THE PROVISIONS OF THIS SECTION.

3. REQUIREMENTS OF SALE. (A) ANY STATE-CHARTERED BANK UNDER THE SUPERVISION OF THE BANKING DEPARTMENT MAY NOT CONSULT WITH, CONTRACT WITH, OR AFFILIATE ITSELF WITH ANY ATTORNEY, AGENT, BROKER OR MAINTENANCE COMPANY IN A TRANSACTION INVOLVING A REAL ESTATE OWNED PROPERTY UNLESS SUCH INDIVIDUAL OR BUSINESS IS ON THE LIST PRESCRIBED BY PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION.

(B) STATE-CHARTERED BANKS UNDER THE SUPERVISION OF THE BANKING DEPARTMENT MUST SELECT AN ATTORNEY, AGENT, BROKER OR MAINTENANCE COMPANY DENOTED AS A MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISE AND INCLUDED ON THE LIST PRESCRIBED BY PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION WHENEVER FEASIBLE IN TRANSACTIONS INVOLVING A REAL ESTATE OWNED PROPERTY.

4. PENALTIES. (A) EACH VIOLATION OF THIS ARTICLE BY ANY STATE-CHARTERED BANK UNDER THE SUPERVISION OF THE BANKING DEPARTMENT SHALL BE A VIOLATION SUBJECT TO A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS, UNLESS SUCH VIOLATION SHALL BE KNOWING AND WILLFUL, IN WHICH EVENT THE FINE IMPOSED SHALL BE ONE THOUSAND DOLLARS.

(B) IF A STATE-CHARTERED BANK UNDER THE SUPERVISION OF THE BANKING DEPARTMENT HAS THREE OR MORE PREVIOUS CONVICTIONS IN A FIVE-YEAR PERIOD FOR VIOLATIONS OF THIS SECTION, SUCH CURRENT VIOLATION SHALL BE SUBJECT TO A FINE OF NOT LESS THAN ONE THOUSAND FIVE HUNDRED DOLLARS.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.