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

442

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

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

AN ACT to amend the judiciary law and the civil practice law and rules, in relation to dismissal of residential mortgage foreclosure actions for repeated failure by plaintiff to appear with authority to negotiate or to negotiate in good faith or meet other deadlines

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

Section 1. Subdivision 2 of section 212 of the judiciary law is amended by adding a new paragraph (s) to read as follows:

(S) ADOPT RULES PROVIDING FOR CONSIDERATION OF AND WAIVER OF MOTIONS TO DISMISS PURSUANT TO SUBDIVISION (I) OF RULE THREE THOUSAND FOUR HUNDRED EIGHT OF THE CIVIL PRACTICE LAW AND RULES, WHERE THE PLAINTIFF IN A RESIDENTIAL FORECLOSURE ACTION PURSUANT TO SECTION THIRTEEN HUNDRED FOUR OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW TWICE FAILS IN SUCH AN ACTION TO MAKE AN APPEARANCE WITH AUTHORITY TO NEGOTIATE AND EXECUTE A SETTLEMENT OR TO NEGOTIATE IN GOOD FAITH OR TO MEET ANY DEADLINE FOR THE PRODUCTION OF DOCUMENTS OR OTHER EVIDENCE REQUIRED BY LAW, BY COURT RULE, BY THE COURT OR BY STIPULATION.

S 2. Rule 3408 of the civil practice law and rules is amended by adding a new subdivision (i) to read as follows:

(I) WHERE A PLAINTIFF IN AN ACTION SUBJECT TO THIS SECTION TWICE FAILS IN A SETTLEMENT CONFERENCE TO MAKE AN APPEARANCE WITH AUTHORITY TO NEGOTIATE AND EXECUTE A SETTLEMENT OR TO NEGOTIATE IN GOOD FAITH OR TO MEET ANY DEADLINE FOR THE PRODUCTION OF DOCUMENTS OR OTHER EVIDENCE REQUIRED BY LAW, BY COURT RULE, BY THE COURT OR BY STIPULATION, UPON THE SECOND SUCH FAILURE THE DEFENDANT SHALL BE DEEMED TO MAKE A MOTION FOR AN ORDER DISMISSING SUCH ACTION, WITHOUT PREJUDICE, UNLESS THE DEFENDANT SHALL WAIVE THE MAKING OF SUCH MOTION ON ADVICE OF COUNSEL BY SIGNED WRITING FILED WITH THE COURT. THE COURT SHALL RESERVE DECISION ON SUCH MOTION

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

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AND UPON THE THIRD SUCH FAILURE BY THE PLAINTIFF IN SUCH ACTION, THE COURT SHALL GRANT SUCH MOTION, EXCEPT ON GOOD CAUSE SHOWN BY THE PLAINTIFF.

S 3. This act shall take effect immediately; provided, however, that section two of this act shall take effect ninety days after this act shall have become a law.