

1597

2011-2012 Regular Sessions

I N A S S E M B L Y

January 11, 2011

Introduced by M. of A. JEFFRIES, JAFFEE, COLTON, CAMARA, ROSENTHAL, REILLY, O'DONNELL, COOK, LANCMAN, BARRON, PERRY, PRETLOW, BOYLAND, RAMOS, N. RIVERA, SCHIMEL, HOOPER -- Multi-Sponsored by -- M. of A. ABBATE, FARRELL, GLICK, HEASTIE, MENG, MILLMAN, PEOPLES-STOKES, PHEFFER, THIELE, WEISENBERG, WRIGHT -- read once and referred to the Committee on Banks

AN ACT enacting the "foreclosure diversion act of 2011"; 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 civil practice law and rules, 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; to amend the judiciary law, in relation to the assignment of foreclosure actions; to repeal certain provisions of the civil practice law and rules relating thereto; 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:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "foreclosure diversion act of 2011".
3 S 2. Statement of legislative purpose and findings. The legislature
4 finds and declares that there is a public emergency; that the extension
5 of unaffordable mortgage loans, unaffordable second mortgages and unaf-
6 fordable home equity loans have resulted in thousands of homeowners
7 losing their homes. The problems associated with these loans adversely
8 affect the availability of capital, the demand for housing, the value of
9 real estate, and more importantly, the ability of homeowners to keep
10 their homes and communities viable. The pending reset of interest rates
11 in many home mortgages, second mortgages and home equity loans will only

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

LBD04624-01-1

1 exacerbate this situation for many homeowners. The expectation that many
2 such variable rate mortgages will fall into foreclosure upon the reset
3 of the interest rate compels the state to take action. State assistance
4 to homeowners through a counseling program is necessary in order to stem
5 this crisis.

6 S 3. Definitions. As used in this section and section four of this
7 act, the following words and phrases shall have the following meanings:

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

10 2. "Department" shall mean the banking department.

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

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

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

21 (a) the borrower is a natural person;

22 (b) the debt is incurred by the borrower primarily for personal, fami-
23 ly or household purposes;

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

28 (d) the property is located in this state.

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

34 7. "Non-profit assistance provider" shall mean a corporation or group
35 of corporations organized under the provisions of the not-for-profit
36 corporation law, including but not limited to neighborhood preservation
37 companies as defined in section 902 of the private housing finance law,
38 entities that perform housing preservation and community renewal activ-
39 ities pursuant to article 17 of the private housing finance law, common-
40 ly referred to as rural preservation companies, and legal service
41 providers, and municipalities.

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

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

48 S 4. Education and outreach to homeowners. In coordination with the
49 division and the consumer protection board, the department shall under-
50 take outreach activities directed at any homeowners whose homes are
51 subject to foreclosure. Such outreach activities shall include, but not
52 be limited to:

53 1. the production and broadcast of public service announcements using
54 electronic media to inform the general public of the availability of
55 counseling through the New York state foreclosure diversion program
56 established by this act. Such public service announcements shall inform

1 the homeowner of the nature and purpose of the counseling and provide a
2 website and phone number for the homeowner to utilize; and

3 2. the inclusion of a description on the internet websites maintained
4 by the division, the department and the consumer protection board of the
5 New York state foreclosure diversion program and a listing of those
6 entities that provide counseling with respect to the program. Such
7 listing shall include the address and phone number of each entity.

8 S 5. Subdivisions 1 and 3 of section 1303 of the real property actions
9 and proceedings law, as amended by chapter 507 of the laws of 2009, are
10 amended to read as follows:

11 1. The foreclosing party in a mortgage foreclosure action, involving
12 residential real property shall provide notice to:

13 (a) any mortgagor if the action relates to an owner-occupied one-to-
14 four family dwelling; and

15 (b) any tenant of a dwelling unit in accordance with the provisions of
16 this section. SUCH NOTICE SHALL INCLUDE INFORMATION ABOUT THE AVAILABIL-
17 ITY OF THE FORECLOSURE DIVERSION PROGRAM AND ITS ABILITY TO ASSIST HOME-
18 OWNERS IN AVOIDING FORECLOSURE AND THE MANDATORY COUNSELING REQUIRED FOR
19 PARTICIPATION IN THE FORECLOSURE DIVERSION PROGRAM. SUCH NOTICE SHALL
20 INCLUDE THE HOTLINE ESTABLISHED BY THE BANKING DEPARTMENT AND PROVIDED
21 BY THE DIVISION OF HOUSING AND COMMUNITY RENEWAL PURSUANT TO SECTION
22 FOUR OF THE FORECLOSURE DIVERSION ACT OF 2011 AND THE NAMES AND CONTACT
23 INFORMATION FOR ALL NOT-FOR-PROFIT ASSISTANCE PROVIDERS AUTHORIZED BY
24 THE DEPARTMENT TO PROVIDE HOUSING COUNSELING SERVICES TO HOMEOWNERS.

25 3. The notice to any mortgagor required by paragraph (a) of subdivi-
26 sion one of this section shall appear as follows:

27 Help for Homeowners in Foreclosure

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

30 BEFORE YOU ATTEND A SETTLEMENT CONFERENCE, YOU ARE STRONGLY URGED TO
31 SCHEDULE AND ATTEND A COUNSELING SESSION BY CALLING THE BANKING DEPART-
32 MENT AT THE FOLLOWING HOTLINE NUMBER: _____

33 Summons and Complaint

34 You are in danger of losing your home. If you fail to respond to the
35 summons and complaint in this foreclosure action, you may lose your
36 home. Please read the summons and complaint carefully. You should imme-
37 diately contact an attorney or your local legal aid office to obtain
38 advice on how to protect yourself. YOU SHOULD IMMEDIATELY SEEK OUT AN
39 APPROVED LOAN COUNSELOR. A LIST OF APPROVED COUNSELORS CAN BE OBTAINED
40 BY CALLING THE HOTLINE. IF YOU DO NOT ATTEND A COUNSELING SESSION, YOU
41 WILL NOT BE ELIGIBLE TO PARTICIPATE IN THE RESIDENTIAL MORTGAGE FORECLO-
42 SURE DIVERSION PROGRAM. THIS WILL NOT AFFECT YOUR RIGHT TO A SETTLEMENT
43 CONFERENCE, BUT WILL AFFECT YOUR ELIGIBILITY FOR A POSTPONEMENT OF FORE-
44 CLOSURE UNDER THE RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM.

45 Sources of Information and Assistance

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

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

54 Foreclosure rescue scams

55 Be careful of people who approach you with offers to "save" your home.
56 There are individuals who watch for notices of foreclosure actions in

1 order to unfairly profit from a homeowner's distress. You should be
2 extremely careful about any such promises and any suggestions that you
3 pay them a fee or sign over your deed. State law requires anyone offer-
4 ing such services for profit to enter into a contract which fully
5 describes the services they will perform and fees they will charge, and
6 which prohibits them from taking any money from you until they have
7 completed all such promised services.

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

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

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

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

23 S 7. Rule 3408 of the civil practice law and rules is REPEALED and a
24 new rule 3408 is added to read as follows:

25 RULE 3408. MANDATORY SETTLEMENT CONFERENCE IN RESIDENTIAL FORECLOSURE
26 ACTIONS. 1. IN ANY RESIDENTIAL FORECLOSURE ACTION IN WHICH THE DEFENDANT
27 IS A RESIDENT OF THE PROPERTY SUBJECT TO FORECLOSURE, THE COURT SHALL
28 HOLD A MANDATORY CONFERENCE WITHIN NINETY DAYS AFTER THE DATE WHEN PROOF
29 OF SERVICE IS FILED WITH THE COUNTY CLERK, OR ON SUCH ADJOURNED DATE AS
30 HAS BEEN AGREED TO BY THE PARTIES, FOR THE PURPOSE OF HOLDING SETTLEMENT
31 DISCUSSIONS PERTAINING TO THE RELATIVE RIGHTS AND OBLIGATIONS OF THE
32 PARTIES UNDER THE MORTGAGE LOAN DOCUMENTS, INCLUDING, BUT NOT LIMITED TO
33 DETERMINING WHETHER THE PARTIES CAN REACH A MUTUALLY AGREEABLE RESOL-
34 UTION TO HELP THE DEFENDANT AVOID LOSING HIS OR HER HOME, AND EVALUATING
35 THE POTENTIAL FOR A RESOLUTION IN WHICH PAYMENT SCHEDULES OR AMOUNTS MAY
36 BE MODIFIED OR OTHER WORKOUT OPTIONS MAY BE AGREED TO, AND FOR WHATEVER
37 OTHER PURPOSES THE COURT DEEMS APPROPRIATE.

38 2. THE COURT SHALL CAUSE A NOTICE TO BE SENT TO THE PARTIES BY CERTI-
39 FIED MAIL INFORMING THEM OF THE DATE, TIME, AND LOCATION OF THE CONFER-
40 ENCE, AND INFORMING THE HOMEOWNER OF HIS OR HER OPTION OF PARTICIPATION
41 IN THE RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM ESTABLISHED
42 PURSUANT TO THE FORECLOSURE DIVERSION ACT OF 2011. THE NOTICE SHALL
43 INCLUDE THE HOTLINE ESTABLISHED BY THE BANKING DEPARTMENT PURSUANT TO
44 THE FORECLOSURE DIVERSION ACT OF 2011 AND A STATEMENT THAT THE HOMEOWNER
45 MUST COMPLETE A COUNSELING SESSION PRIOR TO HIS OR HER SCHEDULED SETTLE-
46 MENT CONFERENCE IN ORDER TO PARTICIPATE IN THE RESIDENTIAL MORTGAGE
47 FORECLOSURE DIVERSION PROGRAM.

48 3. IF THE HOMEOWNER COMPLETES A COUNSELING SESSION WITH A COUNSELOR
49 FROM A NOT-FOR-PROFIT ASSISTANCE PROVIDER APPROVED BY THE DEPARTMENT,
50 SUCH COUNSELOR SHALL SEND A LOAN MODIFICATION PROPOSAL TO THE FORECLOS-
51 ING PARTY AT LEAST TEN DAYS PRIOR TO THE SETTLEMENT CONFERENCE. THE
52 FORECLOSING PARTY SHALL, PRIOR TO THE SETTLEMENT CONFERENCE, REVIEW THE
53 MODIFICATION PROPOSAL AND MAKE A GOOD FAITH EFFORT TO REACH A RESOLUTION
54 WITH THE HOMEOWNER.

55 4. AT THE INITIAL CONFERENCE HELD PURSUANT TO THIS SECTION, ANY
56 DEFENDANT CURRENTLY APPEARING PRO SE, SHALL BE DEEMED TO HAVE MADE A

1 MOTION TO PROCEED AS A POOR PERSON UNDER SECTION ELEVEN HUNDRED ONE OF
2 THIS CHAPTER. THE COURT SHALL DETERMINE WHETHER SUCH PERMISSION SHALL BE
3 GRANTED PURSUANT TO STANDARDS SET FORTH IN SECTION ELEVEN HUNDRED ONE OF
4 THIS CHAPTER. IF THE COURT APPOINTS DEFENDANT COUNSEL PURSUANT TO SUBDI-
5 VISION (A) OF SECTION ELEVEN HUNDRED TWO OF THIS CHAPTER, IT SHALL
6 ADJOURN THE CONFERENCE TO A DATE CERTAIN FOR APPEARANCE OF COUNSEL AND
7 SETTLEMENT DISCUSSIONS PURSUANT TO SUBDIVISION ONE OF THIS SECTION, AND
8 OTHERWISE SHALL PROCEED WITH THE CONFERENCE.

9 5. AT ANY CONFERENCE HELD PURSUANT TO THIS SECTION, THE PLAINTIFF
10 SHALL APPEAR IN PERSON OR BY COUNSEL. ANY PERSON REPRESENTING THE PLAIN-
11 TIFF SHALL HAVE FULL SETTLEMENT AUTHORITY, INCLUDING THE AUTHORITY TO
12 DISPOSE OF THE CASE AND TO ENTER INTO OR APPROVE A LOAN MODIFICATION OR
13 WORKOUT AGREEMENT. THE DEFENDANT-MORTGAGOR SHALL APPEAR IN PERSON OR BY
14 COUNSEL. SUCH APPEARANCE AND PARTICIPATION BY THE DEFENDANT-MORTGAGOR
15 SHALL NOT CONSTITUTE AN APPEARANCE IN THE ACTION NOR SHALL IT BE DEEMED
16 TO BE A WAIVER, IN WHOLE OR IN PART, OF ANY DEFENSES, JURISDICTIONAL OR
17 OTHERWISE, THAT THE DEFENDANT-MORTGAGOR MAY HAVE TO THE ACTION. ANY AND
18 ALL STATEMENTS MADE, WHETHER ORAL OR WRITTEN, AND ANY OR ALL INFORMATION
19 EXCHANGED AT THE CONFERENCE, SHALL BE SOLELY FOR THE PURPOSES OF RESOL-
20 UTION AND SETTLEMENT AND SHALL NOT BE DEEMED TO BE THE ADMISSIONS OF ANY
21 PARTY WITH RESPECT TO THE UNDERLYING ACTION. IF THE DEFENDANT IS APPEAR-
22 ING PRO SE, THE COURT SHALL ADVISE THE DEFENDANT OF THE NATURE OF THE
23 ACTION AND HIS OR HER RIGHTS AND RESPONSIBILITIES AS A DEFENDANT. WHERE
24 APPROPRIATE, THE COURT MAY PERMIT A PLAINTIFF OR THE PLAINTIFF'S REPRE-
25 SENTATIVE TO ATTEND THE SETTLEMENT CONFERENCE TELEPHONICALLY OR BY
26 VIDEO-CONFERENCE. UNTIL ALL THE PROVISIONS AND PROCEDURES OF THE SETTLE-
27 MENT CONFERENCE ARE CONCLUDED, THE MORTGAGEE SHALL BE PRECLUDED FROM
28 FILING A MOTION FOR SUMMARY JUDGMENT OR ORDER OF REFERENCE OR OTHERWISE
29 PROCEEDING WITH THE FORECLOSURE CASE. THE FAILURE OF THE PLAINTIFF TO
30 APPEAR AT A SCHEDULED CONFERENCE WITHOUT GOOD CAUSE OR APPEARANCE BY A
31 REPRESENTATIVE WITHOUT FULL AUTHORITY TO ENTER INTO A SETTLEMENT,
32 MODIFICATION OR WORKOUT AGREEMENT SHALL SUBJECT THE PLAINTIFF AND/OR
33 COUNSEL TO APPROPRIATE REMEDIAL ACTION INCLUDING BUT NOT LIMITED TO
34 DEFAULT, NON-SUIT OR DISMISSAL WITH PREJUDICE.

35 6. BOTH PARTIES MUST HAVE ANY SUPPORTING DOCUMENTATION WITH THEM AT
36 THE TIME OF THE CONFERENCE. IF THE HOMEOWNER ATTENDED A COUNSELING
37 SESSION WITH AN APPROVED COUNSELOR, SUCH COUNSELOR MUST HAVE GIVEN A
38 LOAN MODIFICATION PROPOSAL TO THE FORECLOSING PARTY AT LEAST TEN DAYS
39 PRIOR TO THE SETTLEMENT CONFERENCE.

40 7. THE COURT SHALL PRESIDE OVER THE CONFERENCE IN AN EFFORT TO ESTAB-
41 LISH A REPAYMENT PLAN THAT IS ACCEPTABLE TO THE LENDER THAT ALLOWS THE
42 HOMEOWNER TO REMAIN IN THE HOME.

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

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

49 S 1316. THE COURT SHALL NOTIFY THE DEFENDANT OF ANY FORECLOSURE ACTION
50 ON A RESIDENTIAL MORTGAGE LOAN, IN WHICH THE ACTION WAS INITIATED BUT
51 WHERE THE FINAL ORDER OF JUDGMENT WAS NOT ISSUED PRIOR TO THE EFFECTIVE
52 DATE OF THE FORECLOSURE DIVERSION ACT OF 2011, THAT SUCH DEFENDANT MAY
53 REQUEST A SETTLEMENT CONFERENCE IN ACCORDANCE WITH RULE THIRTY-FOUR
54 HUNDRED EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

55 S 9. The real property actions and proceedings law is amended by
56 adding a new section 1309 to read as follows:

1 S 1309. FORECLOSURES; COURT RELIEF. 1. VENUE. IN ANY ACTION TO FORE-
2 CLOSE A RESIDENTIAL MORTGAGE UNDER THIS ARTICLE A MORTGAGOR NAMED IN
3 SUCH ACTION MAY APPLY FOR RELIEF IN STATE SUPREME COURT PURSUANT TO THIS
4 SECTION.

5 2. TIMING OF POSTPONEMENT. IF A MORTGAGEE HAS OTHERWISE ESTABLISHED
6 ITS LEGAL RIGHT TO JUDGMENT ON AN ACTION TO FORECLOSE A RESIDENTIAL
7 MORTGAGE PURSUANT TO THIS CHAPTER, THEN SUCH ACTION SHALL BE HELD IN
8 ABEYANCE BY THE COURT BEFORE WHICH SUCH ACTION IS PENDING FOR A PERIOD
9 OF NINETY DAYS. IF THE MORTGAGOR RECEIVES COUNSELING FROM A NOT-FOR-PRO-
10 FIT ASSISTANCE PROVIDER APPROVED BY THE DIVISION AND SUBSEQUENTLY
11 PARTICIPATES IN A SETTLEMENT CONFERENCE, THEN THE COURT BEFORE WHICH
12 SUCH ACTION IS PENDING SHALL HOLD SUCH ACTION IN ABEYANCE FOR AN ADDI-
13 TIONAL NINE MONTHS. SUCH ADDITIONAL PERIOD OF TIME IS INTENDED TO
14 PERMIT THE PARTIES TO SETTLE THE ACTION OUTSIDE OF COURT AND TO FORE-
15 STALL FORECLOSURE WHEREVER POSSIBLE.

16 3. PROCESS AND FEES. IF AN ACTION TO FORECLOSE A RESIDENTIAL MORTGAGE
17 HAS BEEN COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A MORT-
18 GAGOR MAY ASK THE COURT BEFORE WHICH SUCH ACTION IS COMMENCED TO HOLD
19 SUCH ACTION IN ABEYANCE PURSUANT TO SUBDIVISION TWO OF THIS SECTION.
20 MOTIONS ON NOTICE IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES
21 MADE BY THE MORTGAGOR SHALL BE DEEMED TO HAVE BEEN FILED BY A POOR
22 PERSON PURSUANT TO ARTICLE ELEVEN OF THE CIVIL PRACTICE LAW AND RULES
23 AND ALL COURT FEES OTHERWISE APPLICABLE TO SUCH ACTIONS AND PAYABLE BY A
24 MORTGAGOR SHALL BE WAIVED. IF A FORECLOSURE ACTION HAS NOT BEEN
25 COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A MORTGAGOR MUST
26 COMMENCE AN ACTION IN STATE SUPREME COURT BY FILING AND SERVING A
27 SUMMONS PURSUANT TO ARTICLE THREE OF THE CIVIL PRACTICE LAW AND RULES
28 WITH A REQUEST FOR RELIEF PURSUANT TO THE TERMS OF THIS SECTION. IN SUCH
29 CASE, SUCH FILING SHALL BE DEEMED TO HAVE BEEN FILED BY A POOR PERSON
30 PURSUANT TO ARTICLE ELEVEN OF THE CIVIL PRACTICE LAW AND RULES AND ALL
31 FILING AND COURT FEES OTHERWISE APPLICABLE TO SUCH ACTIONS AND PAYABLE
32 BY A MORTGAGOR IN THE FORM OF INDEX AND MOTION FEES SHALL BE WAIVED.

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

36 A. THE MORTGAGOR IS A NATURAL PERSON; AND

37 B. THE DEBT IS INCURRED BY THE MORTGAGOR PRIMARILY FOR PERSONAL, FAMI-
38 LY OR HOUSEHOLD PURPOSES; AND

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

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

44 E. THE MORTGAGOR OWNS NO OTHER REAL PROPERTY; AND

45 F. THE REAL PROPERTY IS LOCATED IN THIS STATE.

46 5. MONTHLY PAYMENT SCHEDULE. IF A PRIMA FACIE CASE HAS BEEN ESTAB-
47 LISHED, THE COURT OFFICER OR MEDIATOR PRESIDING OVER THE SETTLEMENT
48 CONFERENCE SET FORTH IN RULE THIRTY-FOUR HUNDRED EIGHT OF THE CIVIL
49 PRACTICE LAW AND RULES SHALL WORK WITH THE PARTIES TO ESTABLISH THE
50 TERMS OF A MONTHLY PAYMENT SCHEDULE WHICH WILL PRESERVE THE RELATIVE
51 FINANCIAL INTERESTS OF BOTH PARTIES UNDER TERMS WHICH ARE EQUITABLE AND
52 JUST. TOWARDS THAT END, THE COURT OFFICER OR MEDIATOR SHALL INQUIRE INTO
53 THE FINANCES OF BOTH THE MORTGAGEE AND THE MORTGAGOR. THE PURPOSE OF
54 SUCH INQUIRY SHALL BE TO DETERMINE THE MINIMUM AMOUNT NECESSARY TO MAIN-
55 TAIN THE MORTGAGEE'S FINANCIAL POSITION AND TO DETERMINE THE AMOUNT
56 WHICH THE MORTGAGOR WILL BE ABLE TO AFFORD. SUCH MONTHLY PAYMENTS SHALL

1 BE APPLIED TO THE PRINCIPAL AND INTEREST UPON THE INDEBTEDNESS. IF THE
2 FINANCIAL CONDITION OF THE MORTGAGOR EXCEEDS THE MINIMUM AMOUNT NECES-
3 SARY TO MAINTAIN THE FINANCIAL POSITION OF THE MORTGAGEE, SUCH MONTHLY
4 AMOUNT MAY BE INCREASED BEYOND THE MINIMUM AMOUNT AS DETERMINED WITHIN
5 THE DISCRETION OF THE COURT OFFICER OR MEDIATOR. IT IS WITHIN THE COURT
6 OFFICER'S OR MEDIATOR'S DISCRETION TO DETERMINE WHETHER THE ESTABLISH-
7 MENT OF SUCH PAYMENT SCHEDULE IS POSSIBLE UNDER TERMS WHICH ARE EQUITA-
8 BLE AND JUST. THE PURPOSE OF SUCH MONTHLY PAYMENTS IS TO PRESERVE THE
9 RELATIVE FINANCIAL INTERESTS OF BOTH PARTIES UNTIL A SETTLEMENT CAN BE
10 REACHED BUT IN NO EVENT SHALL SUCH ORDER GOVERN FOR MORE THAN ONE YEAR.
11 FAILURE TO ADHERE TO THE TERMS OF SUCH SCHEDULE MAY ALSO RESULT IN FORE-
12 CLOSURE OR LIFTING OF THE ABEYANCE.

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

31 7. CONTINUING JURISDICTION. THE COURT SHALL MAINTAIN CONTINUING JURIS-
32 DICTION OF THE MATTER UNTIL IT REACHES FINAL RESOLUTION. UPON THE APPLI-
33 CATION OF EITHER PARTY, PRIOR TO THE EXPIRATION OF THE POSTPONEMENT
34 PERIOD, UPON PRESENTATION OF EVIDENCE THAT THE TERMS FIXED BY THE COURT
35 ARE NO LONGER JUST AND EQUITABLE, THE COURT MAY REVISE AND ALTER SUCH
36 TERMS IN SUCH MANNER AS THE CHANGED CIRCUMSTANCES AND CONDITIONS MAY
37 REQUIRE.

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

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

44 S 11. Notwithstanding the ninety day provision in subdivision 1 of
45 rule 3408 of the civil practice law and rules, a judge shall schedule
46 settlement conferences pursuant to such section for any foreclosure
47 proceeding currently on their calendar.

48 S 12. This act shall take effect on the sixtieth day after it shall
49 have become a law and shall expire 3 years after such effective date
50 when upon such date the provisions of this act shall be deemed repealed.
51 Effective immediately, the superintendent of banks may promulgate any
52 rule or regulation necessary for the timely implementation of this act
53 on its effective date.