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

3538

2011-2012 Regular Sessions

I N A S S E M B L Y

January 25, 2011

Introduced by M. of A. CAMARA, CASTRO, SCARBOROUGH -- Multi-Sponsored by -- M. of A. CLARK -- read once and referred to the Committee on Housing

AN ACT enacting the "foreclosure prevention 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 assistance and payments; and to amend the state finance law, in relation to creating the New York state foreclosure prevention fund

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 2011".

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. Accordingly, the legislature hereby creates the New York state foreclosure prevention fund.

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

1. "Annual percentage rate" means the annual percentage rate for the loan calculated according to the provisions of the Federal Truth in

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

LBD03916-01-1

Lending Act (15 U.S.C. Sec. 1601, et seq.), and the regulations promulgated thereunder by the federal reserve board, as amended.

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

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 an eligible subprime or unconventional mortgage who the commissioner determines, pursuant to the eligibility restrictions set forth in this act, is in need of foreclosure prevention assistance.

5. "Eligible subprime or unconventional mortgage" means a home loan that:

(a)(i) for a first lien loan, has an annual percentage rate of three or more percentage points above the yield on treasury securities of comparable maturity measured as of the fifteenth day of the month immediately preceding the month in which the application for the loan is received by the lender; and

(ii) for a subordinate lien loan, has an annual percentage rate of five or more percentage points above the yield on treasury securities of comparable maturity measured as of the fifteenth day of the month immediately preceding the month in which the application for the loan is received by the lender; or

(b) is a nontraditional home loan as such term is described in the "Interagency Guidance on Nontraditional Mortgage Product Risks" issued September 29, 2006, and published in 71 Federal Register, 58609 on October 4, 2006, as updated.

6. "Home loan" means 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 one to four families which is occupied by the borrower as the borrower's principal dwelling; and

(d) the property is located in this state.

7. "Lender" has the same meaning as set forth in 24 Code of Federal Regulations, Section 3500.2 and also includes a mortgage broker.

8. "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.

9. "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.

10. "Foreclosure prevention assistance" shall mean the provision of payments on behalf of an eligible homeowner to mortgagees on an eligible subprime or unconventional mortgage secured by a mortgagor's real

estate, and the training of counselors and other foreclosure prevention providers.

S 4. Foreclosure prevention fund contracts. 1. Within the limit of funds available in the New York state foreclosure prevention fund, established pursuant to section 92-h of the state finance law, the commissioner is hereby authorized to enter into contracts with non-profit assistance providers to provide foreclosure prevention assistance. Such contracts shall be entered into after appropriate findings by the commissioner and shall be subject to the limitations as set forth in this section. The division shall give preference to applications involving 2 or more non-profit assistance providers when evaluating contract applications for the provision of foreclosure prevention assistance and shall, to the extent feasible, attempt to award contracts in a manner that ensures that every homeowner in the state resides within a geographic area defined in the proposal of at least one non-profit assistance provider.

2. Prior to entering into a contract with an existing non-profit assistance provider, the commissioner shall have made a finding that the provider is in good standing and that there is a need for proposed assistance activities based on the documented submission of the provider.

3. Contracts entered into pursuant to this section with non-profit assistance providers shall be limited in duration to periods of 1 year, but may thereafter be renewed, extended or succeeded by new contracts from year to year in the discretion of the commissioner.

4. Prior to renewing or extending a contract or executing a succeeding contract with a non-profit assistance provider the division shall determine that:

(a) the provider shall have substantially completed the foreclosure prevention assistance specified in the contract to be renewed or succeeded;

(b) the provider shall have received the sums and funds specified in this section; and

(c) the assistance carried out by the provider pursuant to its contract shall have resulted in a significant impact on the needs of the at risk existing and potential homeowners in the service area.

5. Prior to terminating a contract or making a determination not to renew a contract, the division shall:

(a) determine that the provider is in violation of the terms and conditions of the contract or that funds provided pursuant to the contract are being expended in a manner not consistent with the terms or provisions of this act or determine that the significant need in the service area no longer exists or all available funds have been expended; and

(b) provide the provider with written notice, at least 45 days in advance, of its intent to terminate or not renew the contract and provide the provider with the opportunity to appear and be heard before the division with respect to the reasons for such proposed termination or non-renewal.

6. The division may temporarily withhold payments and may elect not to enter into a succeeding contract with any non-profit assistance provider if the provider is not in compliance with the contract or has without good cause failed to submit the documentation required under the contract.

7. The division shall establish eligibility criteria for use by the non-profit assistance provider in ranking eligible homeowners for the

provision of foreclosure prevention assistance under this act. Such criteria shall, based on the mortgagor's application for assistance, consider:

(a) need for assistance, including whether the mortgagor has insufficient household income or net worth to correct the existing delinquency or delinquencies within a reasonable period of time and make full mortgage payments and whether any other federal, state, local or private sources of assistance exist that would be available to the mortgagor and would provide adequate assistance to the mortgagor to retain ownership of the home; and

(b) if there is a reasonable prospect that a negotiated mortgage contract may be reached so that the mortgagor will be able to resume mortgage payments within a reasonable amount of time after the beginning of the period for which assistance payments are provided under this act and pay the mortgage or mortgages in full by its maturity date or by a later date agreed to by the mortgagee or mortgagees for completing mortgage payments.

S 5. Eligibility for assistance. 1. No assistance may be provided under this act unless all of the following are established:

(a) the applicant's 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 is located in this state;

(b) the non-profit assistance provider has determined that the mortgagor is in need of mortgage counseling and/or assistance in engaging his or her lender or loan servicer in the development of loan modifications or any other steps taken by a lender or servicer with a borrower to resolve the problem of delinquent loan payments;

(c) the mortgagor has applied to the non-profit assistance provider for assistance on an application form prescribed by the division for this use which includes a financial statement disclosing all assets and liabilities of the mortgagor, whether singly or jointly held, and all household income regardless of source. Any applicant who intentionally misrepresents any financial information in conjunction with the filing of an application for assistance under this act may be denied assistance;

(d) the mortgagee is not prevented by law from foreclosing upon the mortgage;

(e) the non-profit assistance provider has determined, based on the mortgagor's financial statement, that the mortgagor has insufficient household income or net worth to correct the delinquency or delinquencies within a reasonable period of time and make full mortgage payments;

(f) except for the current delinquency, the mortgagor shall have had a reasonably favorable residential mortgage credit history; and

(g) the mortgagor meets any other procedural requirements established by the division.

2. Upon a determination that the conditions of eligibility described in subdivision one of this section have been met by a mortgagor and money is available in the New York state foreclosure prevention fund established by section 92-h of the state finance law, the mortgagor shall become eligible for the assistance described in this act.

S 6. Foreclosure prevention assistance. The division shall establish a system by which it shall make, upon the recommendation of a participating non-profit assistance provider, payments to mortgagees who hold a mortgage secured by an eligible homeowner's real estate on behalf of the

mortgagor when such payments are in support of a negotiated settlement that allow a homeowner to remain in his or her home and when the mortgagor has in concessions matched the amount of the authorized payments. In no instance shall payments to mortgagees exceed the total amount of the 3 monthly payments owed by the homeowner before the date the homeowner applied for assistance under this act. The division shall establish regional assistance limits based on regional disparities in the cost of housing in this state and restrict the total amount of payments to eligible homeowners to the limit set for the region in which the real estate is located.

S 7. Payment to non-profit assistance providers for foreclosure prevention fund contracts. 1. Each contract entered into with a non-profit assistance provider shall provide payment to the non-profit assistance provider for foreclosure prevention assistance which the provider has provided.

2. Payments shall be made by the division to the non-profit assistance provider, not less frequently than semiannually at or prior to the commencement of the contract, to compensate the provider for the foreclosure prevention assistance which it shall undertake to provide; provided that with respect to contracts entered on or after June 30, the first such payment shall be made by the division beginning on or after July 1 of the fiscal year for which an appropriation in support of such payment is made and provided further that the final such payment to the non-profit assistance provider shall be made no later than March 31 of such fiscal year.

S 8. Annual report to the legislature. The commissioner shall submit a report to the legislature on or before December 31, 2011, and annually thereafter, on the implementation of this act. Such report shall include, but not be limited to, for each provider receiving funds under this act, a description of such provider's contract amount, the specific foreclosure prevention assistance provided by such provider and the number of persons and households served by each provider.

S 9. Education and outreach to homeowners. In coordination with the banking department and the consumer protection board, the division shall undertake outreach activities directed at eligible homeowners as defined in this act. 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 financial assistance through the New York state foreclosure prevention fund established by section 92-h of the state finance law. Such public service announcements shall state the amount of financial assistance that may be available, who qualifies, and where such financial assistance may be obtained;

2. the establishment and maintenance at the division of a toll-free telephone number to provide information on the New York state foreclosure prevention fund and respond to consumers' questions regarding such fund; and

3. 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 fund and a listing of all not-for-profit contractors providing financial assistance through the fund. Such listing shall include the address and phone number of each not-for-profit contractor.

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

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

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

(b) any tenant of a dwelling unit in accordance with the provisions of this section. SUCH NOTICE SHALL INCLUDE INFORMATION ABOUT THE AVAILABILITY OF FORECLOSURE PREVENTION ASSISTANCE FROM THE STATE TO PREVENT FORECLOSURE.

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 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. TEMPORARY FINANCIAL ASSISTANCE TO MAKE MORTGAGE PAYMENTS TO PREVENT FORECLOSURE IS AVAILABLE TO ELIGIBLE HOMEOWNERS THROUGH A LOCAL NON-PROFIT ASSISTANCE PROVIDER.

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.

ADDITIONALLY, THE STATE OF NEW YORK HAS DETERMINED THAT THERE EXISTS A SERIOUS NEED FOR FINANCIAL RESOURCES TO ASSIST HOMEOWNERS FACING FORECLOSURE. TOWARDS THAT END, IT HAS ESTABLISHED THE NEW YORK STATE FORECLOSURE PREVENTION FUND. TO BE ELIGIBLE, A HOMEOWNER MUST LIVE IN THEIR HOME, OWN NO OTHER REAL PROPERTY AND FILL OUT AN APPLICATION FOR ASSISTANCE WITH A LOCAL NON-PROFIT ASSISTANCE PROVIDER WHO WILL DETERMINE WHO SHALL RECEIVE AID WITHIN THE FUNDS APPROPRIATED. FOR INFORMATION ON WHICH NON-PROFIT ASSISTANCE PROVIDER IS SERVING YOUR GEOGRAPHICAL AREA, PLEASE CONTACT THE NEW YORK STATE BANKING DEPARTMENT AT THE NUMBER AND/OR WEBSITE PROVIDED ON THIS NOTICE.

SUCH ASSISTANCE IS IN THE FORM OF MORTGAGE PAYMENTS ON BEHALF OF AN ELIGIBLE HOMEOWNER TO THE LENDER FOR THE PURPOSE OF PREVENTING FORECLOSURE.

S 11. The state finance law is amended by adding a new section 92-h to read as follows:

S 92-H. NEW YORK STATE FORECLOSURE PREVENTION FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE A SPECIAL FUND TO BE KNOWN AS THE "NEW YORK STATE FORECLOSURE PREVENTION FUND".

2. THE NEW YORK STATE FORECLOSURE PREVENTION FUND SHALL CONSIST OF MONEYS APPROPRIATED TO IT FROM THE GENERAL FUND AND ALLOCATED PURSUANT TO A CERTIFICATE OF APPROVAL OF AVAILABILITY ISSUED BY THE DIRECTOR OF THE BUDGET AND ALL OTHER MONEYS CREDITED, APPROPRIATED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCES.

3. MONEYS OF THE FUND, FOLLOWING APPROPRIATION BY THE LEGISLATURE, MAY BE EXPENDED IN ACCORDANCE WITH THE FORECLOSURE PREVENTION ACT OF TWO THOUSAND NINE AND THE REGULATIONS PROMULGATED THEREUNDER, PURSUANT TO A CERTIFICATE OF APPROVAL OF AVAILABILITY ISSUED BY THE DIRECTOR OF THE BUDGET.

S 12. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.