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

9096

I N A S S E M B L Y

January 20, 2012

Introduced by M. of A. RA -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to mandatory settlement conferences

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

Section 1. Subdivision (f) of rule 3408 of the civil practice law and rules, as added by chapter 507 of the laws of 2009, is amended and a new subdivision (i) is added to read as follows:

(f) Both the plaintiff and defendant shall negotiate in good faith to reach a mutually agreeable resolution, including a loan modification, if possible. FOR THE PURPOSES OF THIS SECTION, FAILURE TO ACT IN GOOD FAITH SHALL INCLUDE BUT NOT BE LIMITED TO:

(I) FAILURE OF EITHER PARTY TO ATTEND AND PARTICIPATE IN MEDIATION SETTLEMENT SESSIONS WITHOUT CAUSE;

(II) FAILURE OF THE PLAINTIFF TO DESIGNATE A REPRESENTATIVE TO PARTICIPATE IN THE SETTLEMENT CONFERENCE AUTHORIZED TO MAKE COMMITMENTS BINDING ON THE PLAINTIFF;

(III) FAILURE OF THE PLAINTIFF TO FOLLOW A COURT'S ORDER TO MAKE A REASONABLE OFFER OF SETTLEMENT; OR

(IV) FAILURE OF THE PLAINTIFF TO FULFILL REQUIREMENTS UNDER STATE AND FEDERAL LAW.

THE PLAINTIFF'S FAILURE TO REDUCE, RESTRUCTURE, REFINANCE OR FORGIVE THE DEBT SHALL NOT IN AND OF ITSELF BE EVIDENCE OF LACK OF GOOD FAITH BY THE PLAINTIFF.

(I) THE FAILURE OF A PLAINTIFF TO ACT IN GOOD FAITH SHALL ENTITLE THE DEFENDANT TO APPROPRIATE RELIEF AS DETERMINED BY THE COURT INCLUDING, BUT NOT LIMITED TO, IMPOSING A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED THE PRINCIPAL BALANCE DUE ON THE LOAN, ATTORNEY FEES, DISMISSAL OF THE PROCEEDING AND/OR CANCELLATION OF THE UNDERLYING LOAN WHERE APPROPRIATE.

S 2. This act shall take effect immediately.

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

LBD13884-03-2