

3261

2011-2012 Regular Sessions

I N S E N A T E

February 15, 2011

Introduced by Sen. ESPAILLAT -- 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 and the county law, in relation to representation of certain persons in private residential foreclosure actions

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

1 Section 1. The real property actions and proceedings law is amended by
2 adding a new section 1308 to read as follows:
3 S 1308. ASSIGNMENT OF COUNSEL. A HOMEOWNER IN A FORECLOSURE ACTION WHO
4 IS FINANCIALLY UNABLE TO OBTAIN COUNSEL FOR REPRESENTATION IN SUCH
5 ACTION SHALL HAVE A RIGHT TO ASSIGNED COUNSEL BY THE COURT. ASSIGNMENT
6 OF COUNSEL ISSUED UNDER THIS SECTION SHALL BE IMPLEMENTED AS PROVIDED IN
7 ARTICLE EIGHTEEN-B OF THE COUNTY LAW.
8 S 2. Subdivision 3 of section 1303 of the real property actions and
9 proceedings law, as amended by chapter 507 of the laws of 2009, is
10 amended to read as follows:
11 3. The notice to any mortgagor required by paragraph (a) of subdivi-
12 sion one of this section shall appear as follows:
13 Help for Homeowners in Foreclosure
14 New York State Law requires that we send you this notice about the
15 foreclosure process. Please read it carefully.
16 Summons and Complaint
17 You are in danger of losing your home. If you fail to respond to the
18 summons and complaint in this foreclosure action, you may lose your
19 home. Please read the summons and complaint carefully. You should imme-
20 diately contact an attorney or your local legal aid office to obtain
21 advice on how to protect yourself.
22 Sources of Information and Assistance

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

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1 The State encourages you to become informed about your options in
2 foreclosure. In addition to seeking assistance from an attorney or legal
3 aid office, there are government agencies and non-profit organizations
4 that you may contact for information about possible options, including
5 trying to work with your lender during this process. YOU MAY BE ENTI-
6 TLED TO ASSIGNED COUNSEL IF YOU ARE FINANCIALLY UNABLE TO OBTAIN REPRE-
7 SENTATION.

8 To locate an entity near you, you may call the toll-free helpline
9 maintained by the New York State Banking Department at (enter number) or
10 visit the Department's website at (enter web address).
11 Foreclosure rescue scams

12 Be careful of people who approach you with offers to "save" your home.
13 There are individuals who watch for notices of foreclosure actions in
14 order to unfairly profit from a homeowner's distress. You should be
15 extremely careful about any such promises and any suggestions that you
16 pay them a fee or sign over your deed. State law requires anyone offer-
17 ing such services for profit to enter into a contract which fully
18 describes the services they will perform and fees they will charge, and
19 which prohibits them from taking any money from you until they have
20 completed all such promised services.

21 S 3. The article heading of article 18-B of the county law, as amended
22 by chapter 682 of the laws of 1977, is amended to read as follows:

23 REPRESENTATION OF PERSONS ACCUSED OF CRIME OR PARTIES BEFORE THE
24 FAMILY COURT OR SURROGATE'S COURT OR IN CERTAIN FORECLOSURE
25 ACTIONS

26 S 4. The opening paragraph of section 722 of the county law, as
27 amended by chapter 7 of the laws of 2007, is amended to read as follows:

28 The governing body of each county and the governing body of the city
29 in which a county is wholly contained shall place in operation through-
30 out the county a plan for providing counsel to persons charged with a
31 crime or who are entitled to counsel pursuant to section two hundred
32 sixty-two or section eleven hundred twenty of the family court act,
33 article six-C of the correction law, section four hundred seven of the
34 surrogate's court procedure act [or], article ten of the mental hygiene
35 law OR SECTION THIRTEEN HUNDRED EIGHT OF THE REAL PROPERTY ACTIONS AND
36 PROCEEDINGS LAW, who are financially unable to obtain counsel. Each plan
37 shall also provide for investigative, expert and other services neces-
38 sary for an adequate defense. The plan shall conform to one of the
39 following:

40 S 5. This act shall take effect on the first of January next succeed-
41 ing the date on which it shall have become a law.