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2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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Introduced by M. of A. WEINSTEIN, CLARK, COLTON, WEPRIN, CASTRO, JAFFEE,  
WRIGHT -- Multi-Sponsored by -- M. of A. ABINANTI, PERRY, SCHIMEL,  
SWEENEY -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, in  
relation to standing to commence an action to foreclose a mortgage

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

1     Section 1. Subdivision 1 of section 1302 of the real property actions  
2     and proceedings law, as amended by chapter 472 of the laws of 2008, is  
3     amended to read as follows:  
4     1. Any complaint served in a proceeding initiated pursuant to this  
5     article relating to a high-cost home loan or a subprime home loan, as  
6     such terms are defined in section six-l and six-m of the banking law,  
7     respectively, must contain an affirmative allegation that at the time  
8     the proceeding is commenced, the plaintiff[:  
9     (a) is the owner and holder of the subject mortgage and note, or has  
10    been delegated the authority to institute a mortgage foreclosure action  
11    by the owner and holder of the subject mortgage and note; and  
12    (b)] has complied with all of the provisions of section five hundred  
13    ninety-five-a of the banking law and any rules and regulations promul-  
14    gated thereunder, section six-l or six-m of the banking law, and SUBDI-  
15    VISION TWO OF SECTION THIRTEEN HUNDRED TWO-A AND section thirteen  
16    hundred four of this article.  
17    S 2. The real property actions and proceedings law is amended by  
18    adding a new section 1302-a to read as follows:  
19    S 1302-A. STANDING TO COMMENCE AN ACTION ON A HOME LOAN. 1. NO PERSON  
20    SHALL HAVE STANDING TO COMMENCE AN ACTION PURSUANT TO THIS ARTICLE TO  
21    FORECLOSE ON A HOME LOAN, AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION  
22    FIVE OF SECTION THIRTEEN HUNDRED FOUR OF THIS ARTICLE, UNLESS IT IS THE  
23    OWNER AND HOLDER OF THE SUBJECT MORTGAGE AND NOTE, OR HAS BEEN DELEGATED

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

LBD03701-01-3

1 THE AUTHORITY TO INSTITUTE A MORTGAGE FORECLOSURE ACTION BY THE OWNER  
2 AND HOLDER OF THE SUBJECT MORTGAGE AND NOTE. NOTWITHSTANDING THE  
3 PROVISIONS OF SUBDIVISION (E) OF RULE THIRTY-TWO HUNDRED ELEVEN OF THE  
4 CIVIL PRACTICE LAW AND RULES, ANY DEFENSE BASED ON THE PLAINTIFF'S LACK  
5 OF STANDING IN A FORECLOSURE PROCEEDING SHALL NOT BE WAIVED IF A DEFEND-  
6 ANT FAILS TO RAISE THE DEFENSE IN A RESPONSIVE PLEADING OR PRE-ANSWER  
7 MOTION TO DISMISS.

8 2. EVERY SUMMONS AND COMPLAINT TO COMMENCE A FORECLOSURE ACTION ON A  
9 HOME LOAN, AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FIVE OF SECTION  
10 THIRTEEN HUNDRED FOUR OF THIS ARTICLE, SHALL INCLUDE AN AFFIRMATIVE  
11 ALLEGATION THAT AT THE TIME THE PROCEEDING IS COMMENCED, THE PLAINTIFF  
12 IS THE OWNER AND HOLDER OF THE SUBJECT MORTGAGE AND NOTE, OR HAS BEEN  
13 DELEGATED THE AUTHORITY TO INSTITUTE A MORTGAGE FORECLOSURE ACTION BY  
14 THE OWNER AND HOLDER OF THE SUBJECT MORTGAGE AND NOTE. IN ADDITION, THE  
15 PLAINTIFF SHALL PLEAD IN ITS COMPLAINT THAT THE ORIGINALS OF THE SUBJECT  
16 MORTGAGE AND NOTE ARE IN ITS POSSESSION AND CONTROL, OR THAT OF THE  
17 HOLDER OR CUSTODIAN, OR THAT THE PLAINTIFF HAS COMPLIED WITH SUBDIVISION  
18 FIVE OF THIS SECTION AND THAT SUCH PLAINTIFF IS OTHERWISE ENTITLED TO  
19 ENFORCE THE SUBJECT MORTGAGE AND NOTE PURSUANT TO LAW.

20 3. THERE SHALL BE FILED WITH EVERY SUMMONS AND COMPLAINT TO COMMENCE A  
21 FORECLOSURE ACTION ON A HOME LOAN, AS DEFINED IN PARAGRAPH (A) OF SUBDI-  
22 VISION FIVE OF SECTION THIRTEEN HUNDRED FOUR OF THIS ARTICLE:

23 (A) A COPY OF THE ORIGINAL SUBJECT MORTGAGE AND NOTE, AND PROOF OF THE  
24 OWNERSHIP THEREOF INCLUDING ALL ORIGINAL ENDORSEMENTS, ASSIGNMENTS AND  
25 TRANSFERS OF SUCH MORTGAGE AND NOTE; AND

26 (B) IF APPLICABLE, PROOF OF DELEGATION OF AUTHORITY FROM THE OWNER AND  
27 HOLDER OF THE SUBJECT MORTGAGE AND NOTE TO INSTITUTE A MORTGAGE FORECLO-  
28 SURE ACTION ON BEHALF OF SUCH OWNER AND HOLDER.

29 4. THE COURT SHALL MAKE AN AFFIRMATIVE FINDING OF STANDING WHICH SHALL  
30 BE INCLUDED IN THE JUDGMENT OF FORECLOSURE AND SALE ON A HOME LOAN, AS  
31 DEFINED IN PARAGRAPH (A) OF SUBDIVISION FIVE OF SECTION THIRTEEN HUNDRED  
32 FOUR OF THIS ARTICLE.

33 5. IF THE ORIGINAL NOTE OR ANY ORIGINAL ENDORSEMENTS, ASSIGNMENTS AND  
34 TRANSFERS OF SUCH MORTGAGE AND NOTE ARE LOST OR OTHERWISE UNAVAILABLE,  
35 THE PLAINTIFF MUST COMPLY WITH APPLICABLE LAW TO ESTABLISH THE RIGHT TO  
36 ENFORCE THE MORTGAGE AND NOTE INCLUDING THE UNIFORM COMMERCIAL CODE.

37 S 3. This act shall take effect immediately, except that section one  
38 of this act and subdivisions 2 and 3 of section 1302-a of the real prop-  
39 erty actions and proceedings law, as added by section two of this act,  
40 shall take effect on the ninetieth day after it shall have become a law.