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

1000

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 1 of section 1302 of the real property actions and proceedings law, as amended by chapter 472 of the laws of 2008, is amended to read as follows:

1. Any complaint served in a proceeding initiated pursuant to this article relating to a high-cost home loan or a subprime home loan, as such terms are defined in section six-l and six-m of the banking law, respectively, must contain an affirmative allegation that at the time the proceeding is commenced, the plaintiff[:

(a) is the owner and holder of the subject mortgage and note, or has been delegated the authority to institute a mortgage foreclosure action by the owner and holder of the subject mortgage and note; and

(b)] has complied with all of the provisions of section five hundred ninety-five-a of the banking law and any rules and regulations promulgated thereunder, section six-l or six-m of the banking law, and SUBDIVISION TWO OF SECTION THIRTEEN HUNDRED TWO-A AND section thirteen hundred four of this article.

S 2. The real property actions and proceedings law is amended by adding a new section 1302-a to read as follows:

S 1302-A. STANDING TO COMMENCE AN ACTION ON A HOME LOAN. 1. NO PERSON SHALL HAVE STANDING TO COMMENCE AN ACTION PURSUANT TO THIS ARTICLE TO FORECLOSE ON A HOME LOAN, AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FIVE OF SECTION THIRTEEN HUNDRED FOUR OF THIS ARTICLE, UNLESS IT IS THE 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

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

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

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

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

(B) IF APPLICABLE, PROOF OF DELEGATION OF AUTHORITY FROM THE OWNER AND HOLDER OF THE SUBJECT MORTGAGE AND NOTE TO INSTITUTE A MORTGAGE FORECLOSURE ACTION ON BEHALF OF SUCH OWNER AND HOLDER.

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

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

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