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2013-2014 Regular Sessions

I N A S S E M B L Y

March 4, 2013

Introduced by M. of A. WEINSTEIN, ROBINSON, COLTON, PERRY -- Multi-Sponsored by -- M. of A. CLARK, GALEF, GOTTFRIED, JAFFEE, LENTOL, MARKEY -- (at request of the Office of Court Administration) -- (at the request of the Department of Law) -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to residential foreclosure actions

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

1 Section 1. The civil practice law and rules is amended by adding a new
2 section 3012-b to read as follows:
3 S 3012-B. CERTIFICATE OF MERIT IN CERTAIN RESIDENTIAL FORECLOSURE
4 ACTIONS. (A) IN ANY RESIDENTIAL FORECLOSURE ACTION INVOLVING A HOME
5 LOAN, AS SUCH TERM IS DEFINED IN SECTION THIRTEEN HUNDRED FOUR OF THE
6 REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, IN WHICH THE DEFENDANT IS A
7 RESIDENT OF THE PROPERTY SUBJECT TO FORECLOSURE, THE COMPLAINT SHALL BE
8 ACCOMPANIED BY A CERTIFICATE, EXECUTED BY THE ATTORNEY FOR THE PLAINTIFF,
9 CERTIFYING THAT THE ATTORNEY HAS REVIEWED THE FACTS OF THE CASE
10 AND THAT, BASED ON CONSULTATION WITH AUTHORIZED REPRESENTATIVES OF THE
11 PLAINTIFF AND THE ATTORNEY'S REVIEW OF PERTINENT DOCUMENTS, INCLUDING
12 THE MORTGAGE, SECURITY AGREEMENT AND NOTE OR BOND UNDERLYING THE MORTGAGE
13 EXECUTED BY THE RESIDENTIAL DEFENDANT AND ALL INSTRUMENTS OF
14 ASSIGNMENT, IF ANY, OR ANY OTHER INSTRUMENT OF INDEBTEDNESS, THERE IS A
15 REASONABLE BASIS FOR THE COMMENCEMENT OF SUCH ACTION AND THAT THE PLAINTIFF
16 IS CURRENTLY THE CREDITOR ENTITLED TO ENFORCE RIGHTS UNDER SUCH
17 DOCUMENTS. SUCH CERTIFICATE SHALL ATTACH A COPY OF THE MORTGAGE, SECURITY
18 AGREEMENT AND NOTE OR BOND UNDERLYING THE MORTGAGE EXECUTED BY THE
19 RESIDENTIAL DEFENDANT AND ALL INSTRUMENTS OF ASSIGNMENT.
20 (B) WHERE A CERTIFICATE IS REQUIRED PURSUANT TO THIS SECTION, A SINGLE
21 CERTIFICATE SHALL BE FILED FOR EACH ACTION EVEN IF MORE THAN ONE DEFENDANT
22 HAS BEEN NAMED IN THE COMPLAINT OR IS SUBSEQUENTLY NAMED.

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

1 (C) THE PROVISIONS OF SUBDIVISION (D) OF RULE 3015 OF THIS ARTICLE
2 SHALL NOT BE APPLICABLE TO A DEFENDANT RESIDENT OF THE PROPERTY SUBJECT
3 TO FORECLOSURE WHO IS NOT REPRESENTED BY AN ATTORNEY.

4 (D) IF A PLAINTIFF WILLFULLY FAILS TO PROVIDE COPIES OF THE PAPERS AND
5 DOCUMENTS AS REQUIRED BY SUBDIVISION (A) OF THIS SECTION AND THE COURT
6 FINDS, UPON THE MOTION OF ANY PARTY OR ON ITS OWN MOTION ON NOTICE TO
7 THE PARTIES, THAT SUCH PAPERS AND DOCUMENTS OUGHT TO HAVE BEEN PROVIDED,
8 THE COURT MAY DISMISS THE COMPLAINT OR MAKE SUCH FINAL OR CONDITIONAL
9 ORDER WITH REGARD TO SUCH FAILURE AS IS JUST INCLUDING BUT NOT LIMITED
10 TO DENIAL OF THE ACCRUAL OF ANY INTEREST, COSTS, ATTORNEYS' FEES AND
11 OTHER FEES, RELATING TO THE UNDERLYING MORTGAGE DEBT. ANY SUCH DISMISSAL
12 SHALL NOT BE ON THE MERITS.

13 S 2. Subdivision (a) of rule 3408 of the civil practice law and rules,
14 as amended by chapter 507 of the laws of 2009, is amended to read as
15 follows:

16 (a) In any residential foreclosure action involving a home loan as
17 such term is defined in section thirteen hundred four of the real prop-
18 erty actions and proceedings law, in which the defendant is a resident
19 of the property subject to foreclosure, PLAINTIFF SHALL FILE PROOF OF
20 SERVICE WITHIN TWENTY DAYS OF SUCH SERVICE, HOWEVER SERVICE IS MADE, AND
21 the court shall hold a mandatory conference within sixty days after the
22 date when proof of service UPON SUCH DEFENDANT RESIDENT is filed with
23 the county clerk, or on such adjourned date as has been agreed to by the
24 parties, for the purpose of holding settlement discussions pertaining to
25 the relative rights and obligations of the parties under the mortgage
26 loan documents, including, but not limited to determining whether the
27 parties can reach a mutually agreeable resolution to help the defendant
28 avoid losing his or her home, and evaluating the potential for a resol-
29 ution in which payment schedules or amounts may be modified or other
30 workout options may be agreed to, and for whatever other purposes the
31 court deems appropriate.

32 S 3. This act shall take effect immediately and shall apply to actions
33 commenced on or after such effective date; provided, however that the
34 amendments to subdivision (a) of rule 3408 of the civil practice law and
35 rules made by section two of this act shall not affect the expiration of
36 such subdivision and shall be deemed to expire therewith.