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

5582--A

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I N A S S E M B L Y

March 4, 2013

Introduced by M. of A. WEINSTEIN, ROBINSON, COLTON, PERRY, O'DONNELL, STEVENSON, BARRETT, STECK, CRESPO, McDONALD, FAHY -- Multi-Sponsored by -- M. of A. CLARK, GALEF, GOTTFRIED, JAFFEE, LENTOL, MARKEY, PEOPLES-STOKES, SCHIMEL, WRIGHT -- (at request of the Office of Court Administration) -- (at request of the Department of Law) -- read once and referred to the Committee on Judiciary -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

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:

Section 1. The civil practice law and rules is amended by adding a new section 3012-b to read as follows:

S 3012-B. CERTIFICATE OF MERIT IN CERTAIN RESIDENTIAL FORECLOSURE ACTIONS. (A) IN ANY RESIDENTIAL FORECLOSURE ACTION INVOLVING A HOME LOAN, AS SUCH TERM IS DEFINED IN SECTION THIRTEEN HUNDRED FOUR OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, IN WHICH THE DEFENDANT IS A RESIDENT OF THE PROPERTY WHICH IS SUBJECT TO FORECLOSURE, THE COMPLAINT SHALL BE ACCOMPANIED BY A CERTIFICATE, SIGNED BY THE ATTORNEY FOR THE PLAINTIFF, CERTIFYING THAT THE ATTORNEY HAS REVIEWED THE FACTS OF THE CASE AND THAT, BASED ON CONSULTATION WITH REPRESENTATIVES OF THE PLAINTIFF IDENTIFIED IN THE CERTIFICATE AND THE ATTORNEY'S REVIEW OF PERTINENT DOCUMENTS, INCLUDING THE MORTGAGE, SECURITY AGREEMENT AND NOTE OR BOND UNDERLYING THE MORTGAGE EXECUTED BY DEFENDANT AND ALL INSTRUMENTS OF ASSIGNMENT, IF ANY, AND ANY OTHER INSTRUMENT OF INDEBTEDNESS INCLUDING ANY MODIFICATION, EXTENSION, AND CONSOLIDATION, TO THE BEST OF SUCH ATTORNEY'S KNOWLEDGE, INFORMATION AND BELIEF THERE IS A REASONABLE BASIS FOR THE COMMENCEMENT OF SUCH ACTION AND THAT THE PLAINTIFF IS CURRENTLY THE CREDITOR ENTITLED TO ENFORCE RIGHTS UNDER SUCH DOCUMENTS. IF NOT

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

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ATTACHED TO THE SUMMONS AND COMPLAINT IN THE ACTION, A COPY OF THE MORTGAGE, SECURITY AGREEMENT AND NOTE OR BOND UNDERLYING THE MORTGAGE EXECUTED BY DEFENDANT AND ALL INSTRUMENTS OF ASSIGNMENT, IF ANY, AND ANY OTHER INSTRUMENT OF INDEBTEDNESS INCLUDING ANY MODIFICATION, EXTENSION, AND CONSOLIDATION SHALL BE ATTACHED TO THE CERTIFICATE.

(B) WHERE A CERTIFICATE IS REQUIRED PURSUANT TO THIS SECTION, A SINGLE CERTIFICATE SHALL BE FILED FOR EACH ACTION EVEN IF MORE THAN ONE DEFENDANT HAS BEEN NAMED IN THE COMPLAINT OR IS SUBSEQUENTLY NAMED.

(C) WHERE THE DOCUMENTS REQUIRED UNDER SUBDIVISION (A) ARE NOT ATTACHED TO THE SUMMONS AND COMPLAINT OR TO THE CERTIFICATE, THE ATTORNEY FOR THE PLAINTIFF SHALL ATTACH TO THE CERTIFICATE SUPPLEMENTAL AFFIDAVITS BY SUCH ATTORNEY OR REPRESENTATIVE OF PLAINTIFF ATTESTING THAT SUCH DOCUMENTS ARE LOST WHETHER BY DESTRUCTION, THEFT OR OTHERWISE. NOTHING HEREIN SHALL REPLACE OR ABROGATE PLAINTIFF'S OBLIGATIONS AS SET FORTH IN THE NEW YORK UNIFORM COMMERCIAL CODE.

(D) THE PROVISIONS OF SUBDIVISION (D) OF RULE 3015 OF THIS ARTICLE SHALL NOT BE APPLICABLE TO A DEFENDANT WHO IS NOT REPRESENTED BY AN ATTORNEY.

(E) IF A PLAINTIFF WILLFULLY FAILS TO PROVIDE COPIES OF THE PAPERS AND DOCUMENTS AS REQUIRED BY SUBDIVISION (A) OF THIS SECTION AND THE COURT FINDS, UPON THE MOTION OF ANY PARTY OR ON ITS OWN MOTION ON NOTICE TO THE PARTIES, THAT SUCH PAPERS AND DOCUMENTS OUGHT TO HAVE BEEN PROVIDED, THE COURT MAY DISMISS THE COMPLAINT OR MAKE SUCH FINAL OR CONDITIONAL ORDER WITH REGARD TO SUCH FAILURE AS IS JUST INCLUDING BUT NOT LIMITED TO DENIAL OF THE ACCRUAL OF ANY INTEREST, COSTS, ATTORNEYS' FEES AND OTHER FEES, RELATING TO THE UNDERLYING MORTGAGE DEBT. ANY SUCH DISMISSAL SHALL BE WITHOUT PREJUDICE AND SHALL NOT BE ON THE MERITS.

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

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

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