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

8103

2013-2014 Regular Sessions

I N A S S E M B L Y

June 18, 2013

Introduced by M. of A. WEINSTEIN -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, in relation to special foreclosure proceeding for vacant and abandoned property

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

Section 1. A part of the supreme court shall be devoted to foreclosure actions involving property alleged to be vacant and abandoned.

S 2. The real property actions and proceedings law is amended by adding a new section 1308 to read as follows:

S 1308. SPECIAL FORECLOSURE PROCEEDING FOR VACANT AND ABANDONED PROPERTY. 1. IN ANY FORECLOSURE ACTION INVOLVING PROPERTY ALLEGED TO BE VACANT AND ABANDONED, THE PLAINTIFF MAY MAKE AN APPLICATION FOR AN ORDER TO SHOW CAUSE UPON NOTICE WHICH SEEKS ENTRY OF JUDGMENT OF FORECLOSURE AND SALE ON THE GROUNDS THAT SUCH PROPERTY IS VACANT AND ABANDONED. ANY SUCH APPLICATION SHALL BE MADE VIA ORDER TO SHOW CAUSE, WHEREIN THE COURT SHALL DIRECT SERVICE CONSISTENT WITH SECTION THREE HUNDRED EIGHT OF THE CIVIL PRACTICE LAW AND RULES. NO SUCH APPLICATION SHALL BE DIRECTED TO BE SERVED UPON DEFENDANT UNTIL THE TIME TO ANSWER THE COMPLAINT IN SUCH ACTION SHALL HAVE EXPIRED, NOR SHALL ANY SUCH APPLICATION BE GRANTED UNTIL AFTER THE MANDATORY SETTLEMENT CONFERENCE PURSUANT TO RULE THREE THOUSAND FOUR HUNDRED EIGHT OF THE CIVIL PRACTICE LAW AND RULES HAS BEEN NOTICED TO ANY SUCH DEFENDANT, AND AFTER ALL SUCH DEFENDANTS HAVE FAILED TO APPEAR FOR SAID CONFERENCE. SUCH APPLICATION SHALL:

(A) STATE ON THE FACE OF THE ORDER TO SHOW CAUSE THAT "THIS ORDER TO SHOW CAUSE SEEKS ENTRY OF A JUDGMENT OF FORECLOSURE AND SALE PURSUANT TO REAL PROPERTY ACTIONS AND PROCEEDINGS LAW S 1308 ON THE GROUND THAT THE MORTGAGED PREMISES ARE VACANT AND ABANDONED";

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

LBD11598-02-3

(B) SET FORTH THE ALLEGATIONS EVIDENCING VACANT AND ABANDONED RESIDENTIAL PROPERTY AS PROVIDED FOR UNDER SUBDIVISION FOUR OF THIS SECTION AND ATTACH DOCUMENTARY EVIDENCE IN SUPPORT;

(C) STATE WITHIN THE AFFIDAVIT OR AFFIRMATION SUPPORTING THE APPLICATION THE SUMS ALLEGED TO BE DUE AND OWING UPON THE SUBJECT MORTGAGE DOCUMENTS AND ATTACH DOCUMENTARY EVIDENCE IN SUPPORT, INCLUDING BUT NOT LIMITED TO PROOF OF OWNERSHIP OF THE MORTGAGE AND THE NOTE; AND

(D) STATE WITHIN THE AFFIDAVIT OR AFFIRMATION SUPPORTING THE APPLICATION THAT AN IMMEDIATE ORDER OF REFERENCE IS SOUGHT FOR THE APPOINTMENT OF A REFEREE TO COMPUTE PURSUANT TO THIS CHAPTER.

2. THE CHIEF ADMINISTRATIVE JUDGE OF THE COURTS SHALL ADOPT SUCH RULES AS HE OR SHE DEEMS NECESSARY TO EXPEDITIOUSLY IMPLEMENT THE PROVISIONS OF THIS SUBDIVISION.

3. THE COURT SHALL TAKE THE EVIDENCE SUPPORTING THE FACTS AND CIRCUMSTANCES STATED IN THE ORDER TO SHOW CAUSE AND SHALL EXAMINE THE PLAINTIFF OR HIS OR HER AGENT, AT AN EVIDENTIARY HEARING UNDER OATH, AS TO THE EVIDENCE PRESENTED WITH RESPECT TO VACANT AND ABANDONED PROPERTY, AND SHALL MAKE A WRITTEN FINDING WHETHER THE PROPERTY TO BE FORECLOSED UPON PURSUANT TO THIS SECTION MEETS THE DEFINITION OF VACANT AND ABANDONED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION AND SHALL SET FORTH WITH SPECIFICITY THE FACTORS MET UNDER SUCH SECTION. EVIDENCE TO BE SUBMITTED TO THE COURT SHALL INCLUDE UTILITY COMPANY RECORDS EVIDENCING THE ABANDONED STATUS OF THE PREMISES. WRITTEN FINDINGS SHALL INCLUDE EVIDENCE THAT 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 OF SAME.

4. (A) AS USED IN THIS SECTION, "VACANT AND ABANDONED" RESIDENTIAL PROPERTY MEANS RESIDENTIAL REAL ESTATE, AS DEFINED IN SECTION THIRTEEN HUNDRED FIVE OF THIS ARTICLE, WITH RESPECT TO WHICH THE MORTGAGEE PROVES TO THE SATISFACTION OF THE COURT THAT THE MORTGAGED PROPERTY IS NOT OCCUPIED BY A MORTGAGOR OR TENANT AS DEFINED IN SECTION THIRTEEN HUNDRED FIVE OF THIS ARTICLE, AND:

(1) THE PROPERTY IS A RISK TO THE HEALTH, SAFETY, OR WELFARE OF THE PUBLIC, OR ANY ADJOINING OR ADJACENT PROPERTY OWNERS, DUE TO ACTS OF VANDALISM, LOITERING, CRIMINAL CONDUCT, OR PHYSICAL DESTRUCTION OR DETERIORATION OF THE PROPERTY; OR

(2) THE RELEVANT GOVERNMENTAL AUTHORITY HAS DECLARED THE PROPERTY UNFIT FOR OCCUPANCY AND TO REMAIN VACANT AND UNOCCUPIED OR TO BE DEMOLISHED.

(B) FOR THE PURPOSES OF THIS SECTION, A RESIDENTIAL PROPERTY SHALL NOT BE CONSIDERED "VACANT AND ABANDONED" IF, ON THE PROPERTY:

(1) THERE IS AN UNOCCUPIED BUILDING WHICH IS UNDERGOING CONSTRUCTION, RENOVATION, OR REHABILITATION THAT IS PROCEEDING TO COMPLETION, AND THE BUILDING IS IN COMPLIANCE WITH ALL APPLICABLE ORDINANCES, CODES, REGULATIONS, AND STATUTES;

(2) THERE IS A BUILDING OCCUPIED ON A SEASONAL BASIS, BUT OTHERWISE SECURE;

(3) THERE IS A BUILDING THAT IS SECURE, BUT IS THE SUBJECT OF A PROBATE ACTION, ACTION TO QUIET TITLE, OR OTHER SIMILAR OWNERSHIP DISPUTE; OR

(4) THERE IS A BUILDING DAMAGED BY NATURAL DISASTER UPON DECLARATION OF A STATE DISASTER EMERGENCY BY THE GOVERNOR PURSUANT TO SECTION TWENTY-EIGHT OF THE EXECUTIVE LAW RELATING TO ANY CLAIM ARISING FROM THE CAUSE OF SUCH DECLARATION, WHILE AWAITING FUNDS TO REPAIR.

5. (A) A JUDGMENT OF FORECLOSURE AND SALE SHALL NOT BE ENTERED PURSUANT TO THIS SECTION IF THE MORTGAGOR OR ANY OTHER DEFENDANT HAS FILED AN ANSWER, APPEARANCE OR OTHER WRITTEN OBJECTION THAT IS NOT WITHDRAWN.

(B) THE COURT'S DENIAL OF A JUDGMENT OF FORECLOSURE AND SALE PURSUANT TO THIS SECTION WHERE THE COURT DOES NOT FIND THAT THE MORTGAGED PROPERTY IS VACANT AND ABANDONED SHALL NOT BE ON THE MERITS.

(C) THE PROVISIONS OF THIS SECTION SHALL NOT PREEMPT, REDUCE OR LIMIT ANY RIGHTS OR OBLIGATIONS IMPOSED BY ANY LOCAL LAWS WITH RESPECT TO PROPERTY MAINTENANCE OR A LOCALITY'S ABILITY TO ENFORCE SUCH LAWS.

(D) THE PROVISIONS OF THIS SECTION SHALL NOT ABROGATE ANY RIGHTS OR DUTIES PURSUANT TO THIS ARTICLE.

S 3. This act shall take effect on the three hundred sixty-fifth day after it shall have become a law.