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

5719

2013-2014 Regular Sessions

I N S E N A T E

June 7, 2013

Introduced by Sen. SKELOS -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the real property actions and proceedings law, in relation to summary action to foreclose mortgages on vacant and abandoned residential property

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

Section 1. The real property actions and proceedings law is amended by adding a new section 1308 to read as follows:

S 1308. ABANDONED PROPERTY FORECLOSURE SUMMARY PROCEDURE. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(A) "VACANT AND ABANDONED" RESIDENTIAL PROPERTY MEANS RESIDENTIAL REAL PROPERTY, AS DEFINED IN SECTION THIRTEEN HUNDRED FIVE OF THIS ARTICLE, WITH RESPECT TO WHICH THE MORTGAGEE PROVES BY REPORTS, AFFIDAVIT OR AFFIDAVITS, AFFIRMATION OR AFFIRMATIONS, PHOTOGRAPHS OR OTHERWISE, OR ANY COMBINATION THEREOF TO THE SATISFACTION OF THE COURT, THAT THE MORTGAGED REAL PROPERTY IS VACANT AND HAS BEEN ABANDONED. REAL PROPERTY SHALL BE DEEMED "VACANT AND ABANDONED" IF THE COURT FINDS THAT THE MORTGAGED PROPERTY IS NOT OCCUPIED BY A MORTGAGOR OR TENANT PURSUANT TO AND AS EVIDENCED BY A WRITTEN LEASE AGREEMENT IN THE TENANT'S POSSESSION ENTERED INTO PRIOR TO THE INITIATION OF THE FORECLOSURE ACTION, AND AT LEAST TWO OF THE FOLLOWING CONDITIONS EXIST:

(I) THE PROPERTY IS NOT MAINTAINED BY A MORTGAGOR IN A MANNER CONSISTENT WITH THE STANDARDS SET FORTH IN SUBDIVISION FIVE OF SECTION THIRTEEN HUNDRED SEVEN OF THIS ARTICLE;

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

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

LBD11331-01-3

(III) THE PROPERTY IS SUBJECT TO AN UNCORRECTED VIOLATION OF A MUNICIPAL BUILDING, HOUSING OR SIMILAR CODE DURING THE YEAR PRECEDING INITIATION OF THE FORECLOSURE ACTION, OR AN ORDER BY ANY MUNICIPAL OR OTHER GOVERNMENTAL AUTHORITY DECLARING THE PROPERTY UNFIT FOR OCCUPANCY AND TO REMAIN VACANT AND UNOCCUPIED OR TO BE DEMOLISHED;

(IV) A WRITTEN STATEMENT HAS BEEN ISSUED BY ANY MORTGAGOR EXPRESSING THE CLEAR INTENT OF ALL MORTGAGORS TO ABANDON THE PROPERTY; OR

(V) ANY OTHER REASONABLE INDICIA OF ABANDONMENT.

(B) A RESIDENTIAL PROPERTY SHALL NOT BE CONSIDERED "VACANT AND ABANDONED" IF, ON THE PROPERTY:

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

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

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

2. WHERE THE FORECLOSING PARTY REASONABLY BELIEVES THAT THE MORTGAGED PROPERTY IS VACANT AND ABANDONED PURSUANT TO THIS SECTION, THEN THAT FORECLOSING PARTY MAY INCLUDE AN ALLEGATION IN THE COMPLAINT THAT UPON INFORMATION AND BELIEF THE MORTGAGED PREMISES ARE VACANT AND ABANDONED PURSUANT TO THIS SECTION, AND PURSUE AWARD AND ENTRY OF A JUDGMENT OF FORECLOSURE AND SALE WITHOUT NECESSITY FOR THE APPOINTMENT OF A REFEREE TO COMPUTE AND THE REFEREE'S COMPUTATION OF THE SUM DUE AS OTHERWISE REQUIRED BY THIS ARTICLE. IF THE INFORMATION SUPPORTING THE BELIEF THAT THE MORTGAGED PREMISES ARE VACANT AND ABANDONED IS OBTAINED OR DETERMINED AFTER INITIATION OF THE FORECLOSURE ACTION, THE COMPLAINT ALLEGATION THEREFOR SHALL NOT BE REQUIRED AND APPOINTMENT OF A REFEREE AND THE REFEREE'S CALCULATION OF THE SUM DUE SHALL BE BYPASSED PURSUANT TO THE FOLLOWING PROCEDURE:

(A) AFTER SERVICE OF PROCESS OF THE SUMMONS AND COMPLAINT IN THE FORECLOSURE ACTION IS COMPLETE AND THE TIME FOR ALL DEFENDANTS OVER WHOM JURISDICTION HAS BEEN OBTAINED TO APPEAR OR ANSWER HAS EXPIRED, THE FORECLOSING PARTY MAY:

(I) IF ANY ANSWER HAS BEEN INTERPOSED, EXCEPT AN ANSWER CONTESTING THE VACANT AND ABANDONED STATUS OF THE MORTGAGED PREMISES, IN WHICH EVENT THE PROCEDURE OF THIS SECTION SHALL BE UNAVAILABLE, UPON NOTICE OF MOTION OR ORDER TO SHOW CAUSE MOVE FOR SUMMARY JUDGMENT PURSUANT TO RULE THIRTY-TWO HUNDRED TWELVE OF THE CIVIL PRACTICE LAW AND RULES TO STRIKE THE ANSWER OR ANSWERS AND, IN ADDITION, FOR ISSUANCE AND ENTRY BY THE COURT OF A JUDGMENT OF FORECLOSURE AND SALE WHICH JUDGMENT SHALL HAVE BEEN SUBMITTED BY THE FORECLOSING PARTY WITH THE MOTION OR ORDER TO SHOW CAUSE, AND IN WHICH JUDGMENT THE COURT SHALL HAVE DETERMINED THAT THE MORTGAGED PROPERTY IS VACANT AND ABANDONED, COMPUTED THE SUM DUE UPON THE SUBJECT MORTGAGE DOCUMENTS AND SHALL HAVE DECLARED THAT THE MORTGAGED PROPERTY IS TO BE SOLD AS ONE PARCEL OR IN PARCELS AS THE COURT SHALL HAVE DECIDED; OR

(II) IF ONLY A GENERAL NOTICE OF APPEARANCE HAS BEEN INTERPOSED BY DEFENDANT OR DEFENDANTS, AND ANY DEFENDANT NOT INTERPOSING A GENERAL NOTICE OF APPEARANCE HAS DEFAULTED IN ANSWERING OR APPEARING, UPON NOTICE OF MOTION OR ORDER TO SHOW CAUSE MOVE FOR ISSUANCE AND ENTRY BY THE COURT OF A JUDGMENT OF FORECLOSURE AND SALE AS SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH; OR

(III) IF ONLY A NOTICE OF APPEARANCE AND WAIVER HAS BEEN INTERPOSED BY DEFENDANT OR DEFENDANTS AND ANY DEFENDANT NOT INTERPOSING A NOTICE OF APPEARANCE AND WAIVER HAS DEFAULTED IN APPEARING OR ANSWERING, UPON EX PARTE APPLICATION FOR ISSUANCE AND ENTRY BY THE COURT OF A JUDGMENT OF FORECLOSURE AND SALE AS SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH.

(B) ANY MOTION OR ORDER TO SHOW CAUSE PURSUANT TO THIS SECTION SHALL CONTAIN A DECLARATION IN THE NOTICE OF MOTION OR THE ORDER TO SHOW CAUSE, AS THE CASE MAY BE, THAT:

"THIS MOTION SEEKS ENTRY OF A JUDGMENT OF FORECLOSURE AND SALE PURSUANT TO SECTION 1308 OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW ON THE GROUND THAT THE MORTGAGED PREMISES ARE VACANT AND ABANDONED."

(C) IF THE MORTGAGED PROPERTY, IN ADDITION TO BEING RESIDENTIAL PROPERTY, SHALL ALSO BE A HOME LOAN AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FIVE OF SECTION THIRTEEN HUNDRED FOUR OF THIS ARTICLE, THEN THE SETTLEMENT CONFERENCE OTHERWISE REQUIRED BY RULE THIRTY-FOUR HUNDRED EIGHT OF THE CIVIL PRACTICE LAW AND RULES SHALL BE DISPENSED WITH CONDITIONED UPON THE COMPLAINT HAVING PROPOUNDED THE ALLEGATION SET FORTH IN SUBDIVISION TWO OF THIS SECTION THAT THE MORTGAGED PREMISES ARE VACANT AND ABANDONED.

3. A JUDGMENT OF FORECLOSURE AND SALE UNDER THE PROCEDURE OF THIS SECTION SHALL NOT BE ENTERED IF THE COURT FINDS THAT:

(A) THE PROPERTY IS NOT VACANT OR ABANDONED; OR

(B) THE MORTGAGOR OR ANY OTHER DEFENDANT HAS FILED AN ANSWER, APPEARANCE OR OTHER WRITTEN OBJECTION THAT IS NOT WITHDRAWN, AND A DEFENSE OR OBJECTION ASSERTED CONTESTS THE STATUS OF THE PROPERTY AS VACANT OR ABANDONED.

4. IF A JUDGMENT OF FORECLOSURE AND SALE PURSUANT TO THIS SECTION IS DENIED UPON THE COURT'S FINDING THAT THE MORTGAGED PROPERTY IS NOT VACANT AND ABANDONED, THEN ALL OTHER RIGHTS AND PROCEDURES AVAILABLE TO A FORECLOSING PARTY PURSUANT TO THIS ARTICLE MAY BE PURSUED AND ANY MOTION FOR SUMMARY JUDGMENT WHICH SHALL HAVE BEEN GRANTED AS TO AN ANSWER INTERPOSED SHALL STILL BE EFFECTIVE.

5. THIS SECTION SHALL NOT PREEMPT, REDUCE OR LIMIT ANY RIGHTS OR OBLIGATIONS IMPOSED BY ANY LOCAL LAWS WITH RESPECT TO PROPERTY MAINTENANCE AND THE LOCALITY'S ABILITY TO ENFORCE THOSE LAWS.

S 2. This act shall take effect immediately.