

7871

2013-2014 Regular Sessions

I N A S S E M B L Y

June 6, 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 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:

1 Section 1. The real property actions and proceedings law is amended by
2 adding a new section 1308 to read as follows:
3 S 1308. ABANDONED PROPERTY FORECLOSURE SUMMARY PROCEDURE. 1. FOR THE
4 PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:
5 (A) "VACANT AND ABANDONED" RESIDENTIAL PROPERTY MEANS RESIDENTIAL REAL
6 PROPERTY, AS DEFINED IN SECTION THIRTEEN HUNDRED FIVE OF THIS ARTICLE,
7 WITH RESPECT TO WHICH THE MORTGAGEE PROVES BY REPORTS, AFFIDAVIT OR
8 AFFIDAVITS, AFFIRMATION OR AFFIRMATIONS, PHOTOGRAPHS OR OTHERWISE, OR
9 ANY COMBINATION THEREOF TO THE SATISFACTION OF THE COURT, THAT THE MORT-
10 GAGED REAL PROPERTY IS VACANT AND HAS BEEN ABANDONED. REAL PROPERTY
11 SHALL BE DEEMED "VACANT AND ABANDONED" IF THE COURT FINDS THAT THE MORT-
12 GAGED PROPERTY IS NOT OCCUPIED BY A MORTGAGOR OR TENANT PURSUANT TO AND
13 AS EVIDENCED BY A WRITTEN LEASE AGREEMENT IN THE TENANT'S POSSESSION
14 ENTERED INTO PRIOR TO THE INITIATION OF THE FORECLOSURE ACTION, AND AT
15 LEAST TWO OF THE FOLLOWING CONDITIONS EXIST:
16 (I) THE PROPERTY IS NOT MAINTAINED BY A MORTGAGOR IN A MANNER CONSIST-
17 ENT WITH THE STANDARDS SET FORTH IN SUBDIVISION FIVE OF SECTION THIRTEEN
18 HUNDRED SEVEN OF THIS ARTICLE;
19 (II) THE PROPERTY IS A RISK TO THE HEALTH, SAFETY OR WELFARE OF THE
20 PUBLIC, OR ANY ADJOINING OR ADJACENT PROPERTY OWNERS, WHICH EXISTS DUE
21 TO ACTS OF VANDALISM, LOITERING, CRIMINAL CONDUCT, OR PHYSICAL
22 DESTRUCTION OR DETERIORATION OF THE PROPERTY;
23 (III) THE PROPERTY IS SUBJECT TO AN UNCORRECTED VIOLATION OF A MUNICI-
24 PAL BUILDING, HOUSING OR SIMILAR CODE DURING THE YEAR PRECEDING INITI-

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

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1 ATION OF THE FORECLOSURE ACTION, OR AN ORDER BY ANY MUNICIPAL OR OTHER
2 GOVERNMENTAL AUTHORITY DECLARING THE PROPERTY UNFIT FOR OCCUPANCY AND TO
3 REMAIN VACANT AND UNOCCUPIED OR TO BE DEMOLISHED;

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

6 (V) ANY OTHER REASONABLE INDICIA OF ABANDONMENT.

7 (B) A RESIDENTIAL PROPERTY SHALL NOT BE CONSIDERED "VACANT AND ABAN-
8 DONED" IF, ON THE PROPERTY:

9 (I) THERE IS AN UNOCCUPIED BUILDING WHICH IS UNDERGOING CONSTRUCTION,
10 RENOVATION OR REHABILITATION THAT IS PROCEEDING DILIGENTLY TO
11 COMPLETION, AND THE BUILDING IS IN COMPLIANCE WITH ALL APPLICABLE ORDI-
12 NANCES, CODES, REGULATIONS AND STATUTES;

13 (II) THERE IS A BUILDING OCCUPIED ON A SEASONAL BASIS, BUT IS OTHER-
14 WISE SECURE; OR

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

18 2. WHERE THE FORECLOSING PARTY REASONABLY BELIEVES THAT THE MORTGAGED
19 PROPERTY IS VACANT AND ABANDONED PURSUANT TO THIS SECTION, THEN THAT
20 FORECLOSING PARTY MAY INCLUDE AN ALLEGATION IN THE COMPLAINT THAT UPON
21 INFORMATION AND BELIEF THE MORTGAGED PREMISES ARE VACANT AND ABANDONED
22 PURSUANT TO THIS SECTION, AND PURSUE AWARD AND ENTRY OF A JUDGMENT OF
23 FORECLOSURE AND SALE WITHOUT NECESSITY FOR THE APPOINTMENT OF A REFEREE
24 TO COMPUTE AND THE REFEREE'S COMPUTATION OF THE SUM DUE AS OTHERWISE
25 REQUIRED BY THIS ARTICLE. IF THE INFORMATION SUPPORTING THE BELIEF THAT
26 THE MORTGAGED PREMISES ARE VACANT AND ABANDONED IS OBTAINED OR DETER-
27 MINED AFTER INITIATION OF THE FORECLOSURE ACTION, THE COMPLAINT ALLEGA-
28 TION THEREFOR SHALL NOT BE REQUIRED AND APPOINTMENT OF A REFEREE AND THE
29 REFEREE'S CALCULATION OF THE SUM DUE SHALL BE BYPASSED PURSUANT TO THE
30 FOLLOWING PROCEDURE:

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

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

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

54 (III) IF ONLY A NOTICE OF APPEARANCE AND WAIVER HAS BEEN INTERPOSED BY
55 DEFENDANT OR DEFENDANTS AND ANY DEFENDANT NOT INTERPOSING A NOTICE OF
56 APPEARANCE AND WAIVER HAS DEFAULTED IN APPEARING OR ANSWERING, UPON EX

1 PARTE APPLICATION FOR ISSUANCE AND ENTRY BY THE COURT OF A JUDGMENT OF
2 FORECLOSURE AND SALE AS SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH.

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

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

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

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

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

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

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

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

33 S 2. This act shall take effect immediately.