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

4781

2015-2016 Regular Sessions

I N  S E N A T E

April 15, 2015

Introduced by Sens. KLEIN, VALESKY, SAVINO, CARLUCCI, AVELLA -- (at request of the Attorney General) -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT establishing the "New York state abandoned property neighborhood relief act of 2015"; and to amend the real property actions and proceedings law, in relation to the duty of the mortgagee or its loan servicing agent to maintain property secured by delinquent mortgage and in relation to special foreclosure proceedings for vacant abandoned property; and to amend the state finance law, in relation to establishing the abandoned property neighborhood relief fund

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

Section 1. This act shall be known and may be cited as the "New York state abandoned property neighborhood relief act of 2015".

S 2. Section 1307 of the real property actions and proceedings law, as added by chapter 507 of the laws of 2009, is amended to read as follows:

S 1307. Duty to maintain [foreclosed] property SECURED BY DELINQUENT MORTGAGE. 1. [A plaintiff in a mortgage foreclosure action who obtains a judgment of foreclosure and sale pursuant to section thirteen hundred fifty-one of this article, involving residential real property, as defined in section thirteen hundred five of this article, that is vacant, or becomes vacant after the issuance of such judgment, or is abandoned by the mortgagor but occupied by a tenant] (A) WITH RESPECT TO A MORTGAGE LOAN SECURED BY RESIDENTIAL REAL PROPERTY, as defined under section thirteen hundred five of this article, WHERE THE PROPERTY IS "VACANT AND ABANDONED" AS DEFINED IN PARAGRAPH (B) OF THIS SUBDIVISION OR A FORECLOSURE ACTION HAS BEEN COMMENCED AGAINST THE PROPERTY BECAUSE THE MORTGAGOR HAS FAILED TO MAINTAIN THE PROPERTY OR WHERE A JUDGMENT OF FORECLOSURE UNDER SECTION THIRTEEN HUNDRED FIFTY-ONE OF THIS ARTICLE HAS BEEN OBTAINED ON THE PROPERTY THAT HAS BEEN ABANDONED BY THE MORTGAGOR

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

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BUT REMAINS OCCUPIED BY A TENANT LAWFULLY IN POSSESSION, THE MORTGAGEE OR ITS LOAN SERVICING AGENT shall maintain such property until such time as ownership has been transferred through the closing of title in foreclosure, or other disposition, and the deed for such property has been duly recorded; provided, however, that if a municipality or governmental entity holds a mortgage [subordinate to one or more mortgages] on the residential real property, the municipality or governmental entity shall not be subject to the requirements of this section.

(B) FOR PURPOSES OF THIS SECTION, RESIDENTIAL REAL PROPERTY SHALL BE DEEMED "VACANT AND ABANDONED" WHEN: (I) AT LEAST THREE MONTHLY PAYMENTS ARE PAST DUE ON THE MORTGAGE LOAN OR THE MORTGAGOR HAS INFORMED THE MORTGAGEE OR LOAN SERVICING COMPANY IN WRITING THAT THE MORTGAGOR DOES NOT INTEND TO OCCUPY THE PROPERTY IN THE FUTURE; AND (II) EITHER: (A) THERE IS A REASONABLE BASIS TO BELIEVE THAT THE PROPERTY IS NOT OCCUPIED WHICH SHALL BE DETERMINED IN ACCORDANCE WITH THE REQUIREMENTS OF PARAGRAPH (B-1) OF THIS SUBDIVISION; (B) SUCH RESIDENTIAL REAL 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 (C) THE RELEVANT GOVERNMENTAL AUTHORITY HAS DECLARED THE PROPERTY UNFIT FOR OCCUPANCY AND TO REMAIN VACANT AND UNOCCUPIED OR TO BE DEMOLISHED. WHERE A MORTGAGEE OR LOAN SERVICING COMPANY HAS RECEIVED WRITTEN NOTICE FROM A MORTGAGOR THAT SUCH MORTGAGOR DOES NOT INTEND TO OCCUPY SUCH PROPERTY IN THE FUTURE, THE MORTGAGEE OR LOAN SERVICING COMPANY SHALL PROMPTLY NOTIFY THE ATTORNEY GENERAL IN WRITING OF ITS RECEIPT OF SUCH NOTIFICATION AND THE DATE THEREOF.

(B-1) FOR PURPOSES OF PARAGRAPH (B) OF THIS SUBDIVISION, A REASONABLE BASIS TO BELIEVE THAT RESIDENTIAL REAL PROPERTY IS NOT OCCUPIED SHALL, AT A MINIMUM, BE BASED UPON PERIODIC INSPECTIONS OF SUCH PROPERTY, AT LEAST THIRTY DAYS APART, WHERE TWO OR MORE SUCH INSPECTIONS REVEAL EVIDENCE OF ABANDONMENT. FOR PURPOSES OF THIS SUBDIVISION, "EVIDENCE OF ABANDONMENT" SHALL INCLUDE BUT NOT BE LIMITED TO ANY OF THE FOLLOWING CONDITIONS: (I) OVERGROWN OR DEAD VEGETATION; (II) ACCUMULATION OF NEWSPAPERS, CIRCULARS, FLYERS OR MAIL; (III) PAST DUE UTILITY NOTICES, DISCONNECTED UTILITIES, OR UTILITIES NOT IN USE; (IV) ACCUMULATION OF TRASH REFUSE OR OTHER DEBRIS; (V) ABSENCE OF WINDOW COVERINGS SUCH AS CURTAINS, BLINDS, OR SHUTTERS; (VI) ONE OR MORE BOARDED, MISSING OR BROKEN WINDOWS; (VII) THE PROPERTY IS OPEN TO CASUAL ENTRY OR TRESPASS; OR (VIII) THE PROPERTY HAS A BUILDING OR STRUCTURE THAT IS OR APPEARS STRUCTURALLY UNSOUND OR HAS ANY OTHER CONDITION THAT PRESENTS A POTENTIAL HAZARD OR DANGER TO THE SAFETY OF PERSONS.

(B-2) FOR PURPOSES OF DETERMINING WHETHER RESIDENTIAL REAL PROPERTY IS OCCUPIED, THE MORTGAGEE OR LOAN SERVICING COMPANY SHALL CONDUCT OR CAUSE TO BE CONDUCTED PERIODIC INSPECTIONS OF SUCH PROPERTY AT LEAST ONCE EVERY THIRTY DAYS COMMENCING NO LATER THAN SEVEN DAYS AFTER THE DATE UPON WHICH TWO MORTGAGE PAYMENTS ON SUCH PROPERTY ARE PAST DUE, OR SOONER IF SO REQUIRED BY FEDERAL STATUTE, RULE, REGULATION, PUBLISHED GUIDANCE, OR OTHER REQUIREMENTS OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION, FEDERAL HOME LOAN MORTGAGE CORPORATION OR FEDERAL HOUSING FINANCE AGENCY.

(B-3) FOR PURPOSES OF PARAGRAPH (B) OF THIS SUBDIVISION, RESIDENTIAL REAL PROPERTY SHALL NOT BE DEEMED "VACANT AND ABANDONED" WHERE SUCH PROPERTY IS: (I) 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; (II) A BUILDING OCCUPIED ON A

SEASONAL BASIS THAT IS OTHERWISE SECURE; (III) A BUILDING THAT IS SECURE, BUT IS THE SUBJECT OF A PROBATE ACTION, ACTION TO QUIET TITLE, OR OTHER SIMILAR OWNERSHIP DISPUTE; (IV) A BUILDING DAMAGED BY A NATURAL DISASTER AND ONE OR MORE OWNER INTENDS TO REPAIR AND REOCCUPY THE PROPERTY; OR (V) OCCUPIED BY THE MORTGAGOR, A RELATIVE OF THE MORTGAGOR OR A TENANT LAWFULLY IN POSSESSION.

2. Such [plaintiff] MORTGAGEE AND/OR ITS LOAN SERVICING AGENT shall have the right to peaceably enter upon such property DETERMINED TO BE VACANT AND ABANDONED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, or to cause others to peaceably enter upon the property for the limited purpose of inspections, repairs and maintenance as required by this section, or as otherwise ordered by court; provided, however, that if the property is occupied by a tenant LAWFULLY IN POSSESSION, at least seven days notice must be given to such tenant, unless emergency repairs are required in which case reasonable notice shall be provided to the tenant.

2-A. (A) IT SHALL BE UNLAWFUL FOR A MORTGAGEE, ITS SERVICER OR A THIRD PARTY AGENT OR OTHER PERSON ACTING ON BEHALF OF A MORTGAGEE TO ENTER RESIDENTIAL REAL PROPERTY THAT IS NOT VACANT AND ABANDONED FOR THE PURPOSE OF FORCING, INTIMIDATING, HARASSING OR COERCING A LAWFUL OCCUPANT OF SUCH RESIDENTIAL PROPERTY TO VACATE THAT PROPERTY IN ORDER TO RENDER THE PROPERTY VACANT AND ABANDONED, OR TO OTHERWISE FORCE, INTIMIDATE, HARASS, OR COERCE A LAWFUL OCCUPANT OF RESIDENTIAL REAL PROPERTY TO VACATE THAT PROPERTY SO THAT IT MAY BE CONSIDERED AS VACANT AND ABANDONED.

(B) LIABILITY FOR SUCH UNLAWFUL CONDUCT SHALL EXTEND TO ANY MORTGAGEE FOR WHOSE BENEFIT THE ACTIONS WERE INITIATED, IN ADDITION TO ANY AGENT, EMPLOYEE OR SUBCONTRACTOR OF THE MORTGAGEE WHO RETAINED, HIRED OR OTHERWISE ENLISTED THE PERPETRATOR.

(C) A HOMEOWNER AND/OR OCCUPANT WHO HAS BEEN SUBJECTED TO SUCH UNLAWFUL CONDUCT MAY BRING AN ACTION FOR DAMAGES AND INJUNCTIVE RELIEF WHICH MAY BE RAISED AS A COUNTERCLAIM IN A FORECLOSURE OR EVICTION PROCEEDING, OR IN ANY OTHER ACTION OR PROCEEDING BROUGHT TO REGAIN POSSESSION OF, OR QUIET TITLE TO, RESIDENTIAL REAL PROPERTY, OR MAY BE RAISED AS AN AFFIRMATIVE ACTION IN ANY COURT OF COMPETENT JURISDICTION.

(D) PUNITIVE DAMAGES, COSTS AND/OR ATTORNEY FEES, MAY BE AWARDED WHEN THE CONDUCT COMPLAINED OF HAS BEEN CARRIED OUT WITH KNOWING DISREGARD OF THE RIGHTS OF THE OCCUPANT OR WAS PART OF A PATTERN OF CONDUCT INTENDED TO SECURE THE VACATING OF PROPERTIES SO THAT THOSE PROPERTIES WOULD BE CONSIDERED AS VACANT AND ABANDONED FOR PURPOSES OF THIS SECTION.

3. [The] IN ADDITION TO THE AUTHORITY GRANTED TO THE ATTORNEY GENERAL PURSUANT TO SUBDIVISION THREE OF SECTION THIRTEEN HUNDRED SEVEN-A OF THIS ARTICLE, THE municipality in which such residential real property is located, any tenant lawfully in possession, and a board of managers of a condominium in which the premises are located or a homeowners association if said premises are subject to the rules and regulations of such an association, shall have the right to enforce the obligations described in this section in any court of competent jurisdiction after at least seven days notice to the [plaintiff in the foreclosure action] MORTGAGEE OR ITS LOAN SERVICING AGENT unless emergency repairs are required. Any entity acting pursuant to this subdivision shall have a cause of action in any court of competent jurisdiction against the [plaintiff in the foreclosure action] MORTGAGEE OR ITS LOAN SERVICING AGENT to recover costs incurred as a result of maintaining the property. SUCH ENTITY SHALL PROVIDE THE ATTORNEY GENERAL WITH WRITTEN NOTICE AT LEAST TEN DAYS PRIOR TO BRINGING AN ACTION PURSUANT TO THIS SUBDIVISION;

PROVIDED, HOWEVER, THAT FAILURE TO COMPLY WITH THIS NOTICE REQUIREMENT SHALL NOT BE A DEFENSE TO THE ENTITY'S PROCEEDING. The authority provided by this subdivision shall be in addition to, and shall not be deemed to diminish or reduce, any rights of the parties described in this section under existing law against the mortgagor of such property for failure to maintain such property.

4. In the event the mortgagor of the property commences a proceeding in bankruptcy court prior to the completion of the public auction ordered in the judgment of sale, the duties created by this section shall be suspended during the pendency of the bankruptcy proceeding or until such time as an order has been entered in that proceeding lifting or removing the automatic stay of the foreclosure sale.

5. For the purposes of this section "maintain" shall mean keeping the subject property in a manner that is consistent with the standards set forth in the New York property maintenance code chapter 3 sections 301, 302 (excluding 302.2, 302.6 and 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1, and 308.1; provided, however, that if the property is occupied by a tenant, then such property must also be maintained in a safe and habitable condition.

6. A [plaintiff] MORTGAGEE OR ITS LOAN SERVICING AGENT shall be relieved of its responsibilities [to maintain the residential real property that is the subject of a foreclosure action] UNDER PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION for the period that a receiver of such property is serving.

7. Nothing contained in this section shall diminish in any way the obligations pursuant to any state or local law of the mortgagor of the property or a receiver of rents and profits appointed in an action to foreclose a mortgage to maintain the property prior to the closing of title pursuant to a foreclosure sale.

8. 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 3. The real property actions and proceedings law is amended by adding a new section 1307-a to read as follows:

S 1307-A. DELINQUENT MORTGAGE; VACANT AND ABANDONED PROPERTY; STATEWIDE VACANT AND ABANDONED PROPERTY ELECTRONIC REGISTRY. 1. WHERE A MORTGAGOR IS THREE MONTHLY PAYMENTS PAST DUE ON A MORTGAGE LOAN SECURED BY RESIDENTIAL REAL PROPERTY, THE MORTGAGEE OR ITS LOAN SERVICING AGENT SHALL PROVIDE WRITTEN NOTICE TO THE MORTGAGOR STATING THAT THE MORTGAGOR HAS THE RIGHT TO OCCUPY THE PROPERTY UNTIL HE OR SHE IS ORDERED TO LEAVE THE PROPERTY BY A COURT OF COMPETENT JURISDICTION. SUCH NOTICE SHALL BE PROVIDED TO THE MORTGAGOR WITHIN FIFTEEN DAYS OF THE DATE THAT THE HOMEOWNER'S ACCOUNT IS PAST DUE BY NINETY DAYS, AND A COPY OF SUCH NOTICE SHALL PROMPTLY BE PROVIDED BY SUCH MORTGAGEE OR LOAN SERVICING AGENT TO THE ATTORNEY GENERAL. THE NOTICE SHALL BE IN FOURTEEN-POINT FONT AND SHALL INCLUDE THE FOLLOWING LANGUAGE IN A CLEAR AND CONSPICUOUS FORMAT:

"AS YOUR LOAN SERVICER OR MORTGAGE HOLDER, WE ARE REQUIRED TO SEND YOU THIS NOTICE PURSUANT TO NEW YORK STATE LAW.

AS THE OWNER OF YOUR HOME, YOU HAVE THE RIGHT TO OCCUPY YOUR HOME UNTIL SUCH TIME AS YOU ARE ORDERED TO LEAVE BY A COURT OF COMPETENT JURISDICTION.

WE MAY INITIATE COLLECTION ACTIVITY INCLUDING TAKING STEPS TO COMMENCE AND LITIGATE A FORECLOSURE LAWSUIT AGAINST YOU AND THE PROPERTY.

YOU ARE ALLOWED BY NEW YORK STATE LAW TO CONTINUE LIVING IN YOUR HOME REGARDLESS OF ANY COLLECTION METHODS WE PURSUE OR ORAL OR WRITTEN STATEMENTS MADE DURING THE COLLECTIONS PROCESS, INCLUDING THE FORECLOSURE

PROCESS, UNTIL SUCH TIME AS YOU ARE ORDERED BY A COURT TO LEAVE YOUR PROPERTY."

2. (A) THE ATTORNEY GENERAL SHALL MAINTAIN A STATEWIDE VACANT AND ABANDONED PROPERTY REGISTRY IN THE FORM OF AN ELECTRONIC DATABASE. THE ATTORNEY GENERAL MAY, IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF THE STATE FINANCE LAW, RETAIN A PRIVATE CONTRACTOR TO ADMINISTER SUCH DATABASE FOR THE PURPOSES OF SATISFYING THIS REQUIREMENT, AND SHALL, UPON WRITTEN REQUEST, PROVIDE APPROPRIATE OFFICIALS OF ANY COUNTY, CITY, TOWN OR VILLAGE WITH DIRECT ELECTRONIC ACCESS TO INFORMATION MAINTAINED ON SUCH DATABASE FOR THE PURPOSE OF ENFORCING THIS SECTION, SECTION THIRTEEN HUNDRED SEVEN OF THIS ARTICLE OR ARTICLE NINETEEN-A OF THIS CHAPTER, OR ANY OTHER RELATED LAW, CODE, RULE, REGULATION OR ORDINANCE.

(B) A MORTGAGEE OR ITS AGENT SHALL SUBMIT TO THE ATTORNEY GENERAL INFORMATION REQUIRED BY THE ATTORNEY GENERAL ABOUT ANY VACANT AND ABANDONED RESIDENTIAL REAL PROPERTY, AS THAT TERM IS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED SEVEN OF THIS ARTICLE, WITHIN FIFTEEN DAYS OF WHEN THE MORTGAGEE OR ITS AGENTS LEARN, OR REASONABLY SHOULD HAVE LEARNED, THAT SUCH PROPERTY IS VACANT AND ABANDONED. SUCH INFORMATION SHALL, AT A MINIMUM, INCLUDE: (I) THE CURRENT NAME, ADDRESS AND CONTACT INFORMATION FOR THE LENDER OR SERVICER RESPONSIBLE FOR MAINTAINING THE VACANT PROPERTY; (II) WHETHER A FORECLOSURE ACTION HAS BEEN FILED FOR THE PROPERTY IN QUESTION, AND, IF SO, THE DATE ON WHICH THE FORECLOSURE ACTION WAS COMMENCED; AND (III) THE LAST KNOWN ADDRESS AND CONTACT INFORMATION FOR THE MORTGAGEE OF RECORD.

(C) WHERE ANY OF THE INFORMATION CONTAINED IN A MORTGAGEE'S OR ITS AGENT'S INITIAL SUBMISSION TO THE REGISTRY HAS MATERIALLY CHANGED SINCE SUCH SUBMISSION, SUCH MORTGAGEE OR AGENT SHALL MAKE AN AMENDED SUBMISSION TO THE REGISTRY NOT LATER THAN THIRTY DAYS AFTER THE MORTGAGEE OR ITS AGENTS LEARN, OR REASONABLY SHOULD HAVE LEARNED, OF THE NEW OR CHANGED INFORMATION.

(D) THE ATTORNEY GENERAL IS AUTHORIZED AND EMPOWERED TO ADOPT SUCH RULES AND REGULATIONS AS MAY IN THE JUDGMENT OF THE ATTORNEY GENERAL BE NECESSARY FOR THE EFFECTIVE ADMINISTRATION AND OPERATION OF SUCH REGISTRY, INCLUDING BUT NOT LIMITED TO RULES AND REGULATIONS GOVERNING ACCESS TO THE REGISTRY AND SPECIFYING THE MANNER AND FREQUENCY OF REGISTRATION AND THE INFORMATION THAT MUST BE PROVIDED. THE ATTORNEY GENERAL MAY AMEND SUCH REGULATIONS FROM TIME TO TIME AS NECESSARY TO EFFECTUATE THE PURPOSE OF THIS SECTION AND SECTION THIRTEEN HUNDRED SEVEN OF THIS ARTICLE.

(D-1) THE ATTORNEY GENERAL SHALL TAKE SUCH MEASURES AS HE OR SHE DEEMS APPROPRIATE TO ENSURE THAT THE FEDERAL NATIONAL MORTGAGE ASSOCIATION OR THE FEDERAL HOME LOAN MORTGAGE ASSOCIATION, AS APPLICABLE, IS PROMPTLY NOTIFIED IN WRITING, WHICH MAY INCLUDE NOTIFICATION BY EMAIL OR OTHER ELECTRONIC MEANS, WHEN RESIDENTIAL REAL PROPERTY WITH RESPECT TO WHICH EITHER SUCH ASSOCIATION IS THE MORTGAGEE, SERVICER OR INSURER, IS ADDED TO THE REGISTRY.

(E) THE ATTORNEY GENERAL SHALL ESTABLISH AND MAINTAIN A TOLL-FREE HOTLINE THAT NEIGHBORS OF REAL PROPERTY THAT IS, OR APPEARS TO BE, VACANT AND ABANDONED RESIDENTIAL REAL PROPERTY, AS SUCH TERM IS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED SEVEN OF THIS ARTICLE, AND OTHER COMMUNITY RESIDENTS CAN USE TO REPORT TO THE ATTORNEY GENERAL ANY HAZARDS, BLIGHT OR OTHER CONCERNS RELATED TO SUCH PROPERTY AND TO OBTAIN PUBLICLY AVAILABLE INFORMATION CONCERNING THE STATUS OF SUCH PROPERTY. SUCH PUBLICLY AVAILABLE INFORMATION SHALL INCLUDE BUT NOT BE LIMITED TO WHETHER SUCH PROPERTY IS CURRENTLY LISTED ON THE STATEWIDE VACANT AND ABANDONED PROPERTY REGISTRY ESTABLISHED

PURSUANT TO THIS SUBDIVISION, AND THE IDENTITY OF THE MORTGAGEE OR LOAN SERVICING COMPANY RESPONSIBLE FOR MAINTAINING SUCH VACANT AND ABANDONED PROPERTY PURSUANT TO SUBDIVISION ONE OF THIS SECTION. THE OFFICE OF THE ATTORNEY GENERAL SHALL INCLUDE ON ITS OFFICIAL PUBLIC WEBSITE INFORMATION ABOUT SUCH TOLL-FREE HOTLINE.

3. (A) WHENEVER A MORTGAGEE OR AGENT OF A MORTGAGEE SHALL VIOLATE THIS SECTION OR SECTION THIRTEEN HUNDRED SEVEN OF THIS ARTICLE, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN OR RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION OR SECTION THIRTEEN HUNDRED SEVEN OF THIS ARTICLE, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

(B) IN ADDITION TO, OR IN LIEU OF, THE RELIEF AUTHORIZED IN PARAGRAPHS (A) AND (C) OF THIS SUBDIVISION, A MUNICIPALITY WHERE THE RESIDENTIAL REAL PROPERTY IS LOCATED MAY INTERVENE AS A MATTER OF RIGHT IN ANY FORECLOSURE ACTION COMMENCED UNDER THIS ARTICLE FOR THE PURPOSES OF REQUESTING INJUNCTIVE RELIEF TO ASSURE THAT THE PROPERTY IN QUESTION IS MAINTAINED IN ACCORDANCE WITH ALL ORDINANCES, CODES, REGULATIONS AND STATUTES AND THAT THE FORECLOSURE ACTION IS TIMELY PROSECUTED. THE INTERVENOR MAY MOVE TO HAVE ANY ADJOURNMENTS OR VOLUNTARY DISCONTINUANCES IN SUCH FORECLOSURE ACTION CONDITIONED UPON THE POSTING OF A BOND OR OTHER UNDERTAKING OR TO ORDER OTHER MEASURES INTENDED TO ENSURE ONGOING MAINTENANCE OF THE PROPERTY UNTIL SUCH TIME AS TITLE TO THE PROPERTY HAS BEEN TRANSFERRED THROUGH A FORECLOSURE SALE OR OTHERWISE. INTERVENTION IN A FORECLOSURE ACTION PURSUANT TO THIS PARAGRAPH SHALL BE AVAILABLE WITH RESPECT TO ANY RESIDENTIAL PROPERTY SECURED BY A MORTGAGE LOAN AS DEFINED UNDER SECTION THIRTEEN HUNDRED FIVE OF THIS ARTICLE, REGARDLESS OF WHETHER THE PROPERTY IS OCCUPIED, SO LONG AS ONE OF THE OTHER CONDITIONS DESCRIBED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED SEVEN OF THIS ARTICLE IS PRESENT.

(C) WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION OR SECTION THIRTEEN HUNDRED SEVEN OF THIS ARTICLE BY A MORTGAGEE OR AGENT OF A MORTGAGEE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF UP TO ONE THOUSAND DOLLARS PER DAY FOR EACH DAY THE VIOLATION PERSISTED IN ADDITION TO THE COSTS OF MAINTAINING THE PROPERTY. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ALL CIVIL PENALTIES COLLECTED BY THE ATTORNEY GENERAL PURSUANT TO THIS PARAGRAPH SHALL BE DEPOSITED TO THE CREDIT OF THE ABANDONED PROPERTY NEIGHBORHOOD RELIEF FUND ESTABLISHED PURSUANT TO SECTION NINETY-ONE-G OF THE STATE FINANCE LAW.

(D) THE PROVISIONS OF THIS SECTION MAY ALSO BE ENFORCED BY ANY LOCALITY OR MUNICIPALITY IN WHICH THE VACANT PROPERTY IS LOCATED, PROVIDED THAT THE LOCALITY OR MUNICIPALITY PROVIDES THE ATTORNEY GENERAL WITH WRITTEN NOTICE AT LEAST TEN DAYS PRIOR TO COMMENCING SUCH AN ACTION UNDER THIS SECTION; AND PROVIDED FURTHER THAT FAILURE TO COMPLY WITH THIS NOTICE REQUIREMENT SHALL NOT BE A DEFENSE TO THE LOCALITY'S OR MUNICIPALITY'S PROCEEDING. ANY CIVIL PENALTY IMPOSED PURSUANT TO PARA-

GRAPH (C) OF THIS SUBDIVISION IN AN ACTION BROUGHT BY A MUNICIPALITY PURSUANT TO THIS PARAGRAPH SHALL BE RETAINED BY SUCH MUNICIPALITY.

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

S 4. A part of the supreme court shall be devoted to foreclosure actions involving property alleged to be vacant and abandoned.

S 5. 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 RESIDENTIAL REAL PROPERTY. 1. IN ANY FORECLOSURE ACTION INVOLVING RESIDENTIAL REAL PROPERTY, AS DEFINED IN SECTION THIRTEEN HUNDRED FIVE OF THIS ARTICLE, 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";

(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 REAL PROPERTY MEANS RESIDENTIAL REAL PROPERTY, 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 PURPOSES OF THIS SECTION, RESIDENTIAL REAL PROPERTY SHALL NOT BE CONSIDERED "VACANT AND ABANDONED" IF THE PROPERTY IS A BUILDING DESCRIBED IN SUBPARAGRAPH (I), (II), (III) OR (IV) OF PARAGRAPH (B-3) OF SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED SEVEN OF THIS ARTICLE, OR IS OCCUPIED AS DESCRIBED IN SUBPARAGRAPH (V) OF SUCH PARAGRAPH.

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 6. The state finance law is amended by adding a new section 91-g to read as follows:

S 91-G. ABANDONED PROPERTY NEIGHBORHOOD RELIEF FUND; ENFORCEMENT ASSISTANCE GRANTS. 1. THERE IS HEREBY ESTABLISHED IN THE CUSTODY OF THE STATE COMPTROLLER A SPECIAL FUND TO BE KNOWN AS THE "ABANDONED PROPERTY NEIGHBORHOOD RELIEF FUND."

2. SUCH FUND SHALL CONSIST OF ALL CIVIL PENALTIES COLLECTED BY THE ATTORNEY GENERAL PURSUANT TO PARAGRAPH (C) OF SUBDIVISION THREE OF SECTION THIRTEEN HUNDRED SEVEN-A OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW AND REQUIRED TO BE DEPOSITED INTO THIS FUND, AND ALL OTHER MONEYS CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE PURSUANT TO LAW. ANY INCOME EARNED ON MONEYS WITHIN THE ABANDONED PROPERTY NEIGHBORHOOD RELIEF FUND SHALL BE ADDED TO AND MADE AVAILABLE FOR THE PURPOSE OF SUCH FUND.

3. MONIES OF THE FUND SHALL BE ALLOCATED TO AND EXPENDED BY THE ATTORNEY GENERAL, ON THE AUDIT AND WARRANT OF THE STATE COMPTROLLER, ONLY FOR THE PURPOSE OF PROVIDING ABANDONED PROPERTY ENFORCEMENT ASSISTANCE GRANTS TO LOCALITIES IN ACCORDANCE WITH SUBDIVISIONS FOUR, FIVE AND SIX OF THIS SECTION.

4. THE CHIEF ELECTED OFFICIAL OF A COUNTY, CITY, TOWN OR VILLAGE LOCATED WITHIN THE STATE MAY, ON AN ANNUAL BASIS, SUBMIT A WRITTEN APPLICATION TO THE ATTORNEY GENERAL, OR HIS OR HER AUTHORIZED DESIGNEE, FOR AN ABANDONED PROPERTY ENFORCEMENT ASSISTANCE GRANT FROM AVAILABLE MONEYS IN THE ABANDONED PROPERTY NEIGHBORHOOD RELIEF FUND ESTABLISHED PURSUANT TO SUBDIVISION ONE OF THIS SECTION. THE ATTORNEY GENERAL SHALL REQUIRE THAT APPLICATIONS SUBMITTED PURSUANT TO THIS SUBDIVISION PROVIDE

SUCH INFORMATION AS THE ATTORNEY GENERAL DEEMS APPROPRIATE, INCLUDING, AT A MINIMUM, THE FOLLOWING:

(A) THE AMOUNT OF FUNDING SOUGHT;

(B) A DETAILED DESCRIPTION OF THE IMPACT THAT THE PRESENCE OF VACANT AND ABANDONED RESIDENTIAL REAL PROPERTIES IN THE REQUESTING LOCALITY HAS HAD ON ITS AFFECTED COMMUNITIES, THE LOCALITY'S EFFORTS TO ADDRESS THE PROBLEM TO DATE AND THE RESULT OF THOSE EFFORTS;

(C) A DETAILED DESCRIPTION OF THE ENFORCEMENT PURPOSE OR PURPOSES TO WHICH THE FUNDING WILL BE APPLIED, WITH SPECIFIC REFERENCE TO THE PROVISION OR PROVISIONS OF SECTIONS THIRTEEN HUNDRED SEVEN AND THIRTEEN HUNDRED SEVEN-A OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW SOUGHT TO BE ENFORCED; AND

(D) THE DATE AND RESULT OF ANY PRIOR APPLICATIONS MADE BY THE LOCALITY TO THE ATTORNEY GENERAL PURSUANT TO THIS SECTION.

5. IN DETERMINING WHETHER TO APPROVE AN APPLICATION SUBMITTED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION, THE ATTORNEY GENERAL SHALL, AT A MINIMUM, CONSIDER:

(A) THE EXTENT TO WHICH THE PRESENCE OF VACANT AND ABANDONED RESIDENTIAL PROPERTIES IN THE REQUESTING LOCALITY HAS NEGATIVELY IMPACTED THE COMMUNITIES WHERE THOSE PROPERTIES ARE LOCATED AND THE LOCALITY AS A WHOLE;

(B) THE LIKELY IMPACT APPROVAL OF THE APPLICATION AND DISBURSEMENT OF FUNDS WOULD HAVE ON ADDRESSING THE PROBLEM OF VACANT AND ABANDONED RESIDENTIAL PROPERTIES IN THE REQUESTING LOCALITY THROUGH ENHANCED ENFORCEMENT OF SECTIONS THIRTEEN HUNDRED SEVEN AND THIRTEEN HUNDRED SEVEN-A OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW;

(C) THE AVAILABILITY OF OTHER SOURCES OF FUNDING TO PAY SOME OR ALL OF THE ENFORCEMENT COSTS FOR WHICH THE REQUESTING LOCALITY SEEKS FUNDING; AND

(D) WHERE THE REQUESTING LOCALITY PREVIOUSLY APPLIED FOR AND RECEIVED AN ENFORCEMENT ASSISTANCE GRANT PURSUANT TO THIS SECTION, WHETHER THE GRANT FUNDS WERE USED BY THE LOCALITY IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION AND ANY APPLICABLE RULES OR REGULATIONS ADOPTED BY THE ATTORNEY GENERAL.

6. UPON APPROVAL OF AN APPLICATION, THE ATTORNEY GENERAL MAY AUTHORIZE DISBURSEMENT OF FUNDS IN ANY AMOUNT UP TO THE AMOUNT SOUGHT BY THE REQUESTING LOCALITY. SUCH DISBURSEMENT MAY BE BY ADVANCE PAYMENT TO THE LOCALITY BEFORE IT INCURS THE COST FOR WHICH ITS APPLICATION SOUGHT FUNDING, BY REIMBURSEMENT TO THE LOCALITY AFTER IT INCURS AND PAYS SUCH COSTS IN THE FIRST INSTANCE, OR BY SOME COMBINATION THEREOF, AS THE ATTORNEY GENERAL DETERMINES IS APPROPRIATE UNDER THE CIRCUMSTANCES. ANY AND ALL ENFORCEMENT ASSISTANCE GRANT MONEYS DISBURSED PURSUANT TO THIS SECTION SHALL BE USED BY THE RECIPIENT COUNTY, CITY, TOWN OR VILLAGE SOLELY TO AID IN THE ENFORCEMENT BY SUCH LOCALITY OF SECTIONS THIRTEEN HUNDRED SEVEN AND THIRTEEN HUNDRED SEVEN-A OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW.

7. THE ATTORNEY GENERAL SHALL ADOPT SUCH RULES AND REGULATIONS AS HE OR SHE DEEMS APPROPRIATE TO EFFECTUATE THE PURPOSES OF THIS SECTION, INCLUDING PROVISIONS FOR PERIODIC MONITORING AND EVALUATION OF THE ENFORCEMENT ASSISTANCE GRANT PROGRAM ESTABLISHED HEREIN.

8. THE STATE COMPTROLLER SHALL HAVE THE POWER TO INSPECT, EXAMINE AND AUDIT THE FISCAL AFFAIRS OF ANY LOCALITY AWARDED AN ENFORCEMENT ASSISTANCE GRANT PURSUANT TO THIS SECTION TO THE EXTENT NECESSARY TO DETERMINE WHETHER THE FUNDING RECEIVED HAS BEEN USED IN ACCORDANCE WITH THE PURPOSE OR PURPOSES FOR WHICH IT WAS SOUGHT IN THE APPLICATION, AND WHETHER THERE HAS BEEN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THIS

SECTION AND ANY APPLICABLE RULES OR REGULATIONS ADOPTED BY THE ATTORNEY GENERAL.

9. THE ATTORNEY GENERAL, IN CONSULTATION WITH THE STATE COMPTROLLER, SHALL REPORT ANNUALLY TO THE GOVERNOR AND THE LEGISLATURE REGARDING THE OPERATION AND SUCCESS OF SUCH GRANT PROGRAM.

S 7. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that effective immediately, the addition and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.