STATE OF NEW YORK

1992--A

2017-2018 Regular Sessions

IN SENATE

January 11, 2017

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- recommitted to the Committee on Housing, Construction and Community Development in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property actions and proceedings law and the civil practice law and rules, in relation to foreclosure upon a reverse mortgage

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (a) of subdivision 6 of section 1304 of the real property actions and proceedings law, as amended by section 6 of part Q of chapter 73 of the laws of 2016, is amended to read as follows:

(a) **(1)** "Home loan" means a loan, including an open-end credit plan, [~~other than a reverse mortgage transaction,~~] in which:

(i) The borrower is a natural person;

(ii) The debt is incurred by the borrower primarily for personal, family, or household purposes;

(iii) The loan is secured by a mortgage or deed of trust on real estate improved by a one to four family dwelling, or a condominium unit, in either case, used or occupied, or intended to be used or occupied wholly or partly, as the home or residence of one or more persons and which is or will be occupied by the borrower as the borrower's principal dwelling; and

(iv) The property is located in this state.

(2) A home loan shall include a loan secured by a reverse mortgage that meets the requirements of clauses (i) through (iv) of subparagraph one of this paragraph.

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

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§ 2. Subdivision (a) of rule 3408 of the civil practice law and rules, as amended by section 3 of part Q of chapter 73 of the laws of 2016, is amended to read as follows:

(a) [~~In~~] **1. Except as provided in paragraph two of this subdivision, in** any residential foreclosure action involving a high-cost home loan consummated between January first, two thousand three and September first, two thousand eight, or a subprime or nontraditional home loan, as those terms are defined under 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, the court shall hold a mandatory conference within sixty days after the date when proof of service 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: [~~1.~~] **(i)** 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 including, but not limited to, a loan modification, short sale, deed in lieu of foreclosure, or any other loss mitigation option; or [~~2.~~] **(ii)** whatever other purposes the court deems appropriate.

2. (i) Paragraph one of this subdivision shall not apply to a home loan secured by a reverse mortgage where the default was triggered by the death of the last surviving borrower unless:

(A) the last surviving borrower's spouse, if any, is a resident of the property subject to foreclosure; or

(B) the last surviving borrower's successor in interest, who, by bequest or through intestacy, owns, or has a claim to the ownership of the property subject to foreclosure, and who was a resident of such property at the time of the death of such last surviving borrower.

(ii) The superintendent of financial services may promulgate such rules and regulations as he or she shall deem necessary to implement the provisions of this paragraph.

§ 3. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 20, 2017; provided that:

(a) the amendments to subdivision 6 of section 1304 of the real property actions and proceedings law, made by section one of this act, shall not affect the expiration and reversion of such subdivision pursuant to subdivision a of section 25 of chapter 507 of the laws of 2009, as amended, and shall be deemed repealed therewith; and

(b) the amendments to subdivision (a) of rule 3408 of the civil practice law and rules, made by section two of this act, shall take effect on the same date and in the same manner as section 3 of part Q of chapter 73 of the laws of 2016 takes effect.