STATE OF NEW YORK

7334

2017-2018 Regular Sessions

IN ASSEMBLY

April 24, 2017

Introduced by M. of A. FITZPATRICK, McKEVITT, MONTESANO -- Multi-Sponsored by -- M. of A. BARCLAY, CROUCH, GIGLIO, KOLB, McDONOUGH, RAIA -- read once and referred to the Committee on Real Property Taxation

AN ACT to amend the real property tax law, in relation to enacting provisions related to distressed property

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

Section 1. Article 11 of the real property tax law is amended by adding a new title 3-A to read as follows:

TITLE 3-A

DISTRESSED PROPERTY

Section 1141. Definitions.

1142. Procedures for distressed property.

§ 1141. Definitions. When used in this article: 1. "Distressed property" means any parcel of residential real property that is subject to a tax lien or liens with a lien or liens to value ratio, as determined by the enforcing officer, equal to or greater than fifteen percent and that meets one of the following two criteria:

(a) such parcel has an average of five or more violations of record of the housing maintenance code per dwelling unit which constitute a fire hazard or a serious threat to the life, health or safety of occupants thereof; and

(b) such parcel is subject to a lien or liens for any expenses incurred by the department of housing for the repair or the elimination of any fire hazard or serious threat to the life, health or safety of occupants thereof or any dangerous or unlawful conditions, in an amount equal to or greater than one thousand dollars.

2. "Housing maintenance code" means the provisions of the multiple residence law or the multiple dwelling law, whichever is applicable to the tax district in which the distressed property is situate, the state building conservation and fire prevention code or any local law, ordi-

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

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nance, resolution or regulation made or adopted by such tax district relating to the construction, alteration, use, maintenance or occupancy of such property.

3. "Department of housing" means any officer, board, bureau, commission, department or other agency of the tax district, or any other public authority designated by the governing body of the tax district in which such property is situate to carry out the functions vested in the department of housing under this article or delegated to the department by the governing body in order to carry out the purposes and provisions of this article.

4. "Head of the department of housing" means the person who is the chief executive officer of the department of housing.

5. "Residential real property" means any premises that is or may be used in whole or in part as a personal residence, and shall include a one, two, or three family house, an individual condominium unit, a cooperative apartment unit, or a farm dwelling.

6. "Governing body" means: (a) in a county, the county legislative body; (b) in a city, the board of aldermen, common council, commission or other body vested by its charter or other law with jurisdiction to enact ordinances or local laws, except that in a city having a population of one million or more, if there be a board of estimate, the term "governing body" shall mean such board of estimate; (c) in a town, the town board; and (d) in a village, the board of trustees.

§ 1142. Procedures for distressed property. 1. The enforcing officer shall, not less than sixty days preceding the date of the sale of a tax lien or tax liens, submit to the department of housing, a description by tax map number, or by such other identification as the enforcing officer may deem appropriate, of any parcel of residential real property on which there is a tax lien that may be foreclosed by the tax district. The head of the department of housing shall determine and direct the enforcing officer, not less than ten days preceding the date of the sale of a tax lien or tax liens, whether any such parcel is a distressed property as defined in subdivision one of section eleven hundred forty-one of this title. Any tax lien on a parcel so determined to be a distressed property shall not be included in such sale. In connection with a subsequent sale of a tax lien or tax liens, the enforcing officer may, not less than sixty days preceding the date of the sale, resubmit to the head of the department of housing a description by tax map number, or by such other identification as the enforcing officer may deem appropriate, of any parcel of residential real property that was previously determined to be a distressed property pursuant to this subdivision and on which there is a tax lien that may be included in such sale. The head of the department of housing shall determine and direct the enforcing officer, not less than ten days preceding the date of the sale, whether such parcel remains a distressed property. If the head of the department of housing determines that the parcel is not a distressed property, then the tax lien on the parcel may be included in the sale.

2. The head of the department of housing may periodically review whether a parcel of residential real property is subject to subdivision three of this section or subdivision seven of section eleven hundred thirty-six-a of this article remains a distressed property. If the head of the department of housing determines that the parcel is not a distressed property as defined in subdivision one of section eleven hundred forty-one of this title, then the parcel shall not be subject to such subdivisions.

3. Any parcel so determined to be a distressed property shall be subject to an in rem foreclosure action, or in the case where the enforcing officer does not commence such action the head of the department of housing shall evaluate such parcel and take such action as he or she deems appropriate under the programs, existing at the time of such evaluation, that are designed to encourage the rehabilitation and preservation of existing housing, and shall monitor or cause to be monitored the status of the property. The head of the department of housing, in his or her discretion, shall cause an inspection to be conducted on any parcel so determined to be a distressed property. In addition, the head of the department of housing shall submit to the governing body of the tax district in which such distressed property is situate, a list of all parcels so determined to be a distressed property within thirty days from the date such parcels are identified as a distressed property.

§ 2. The real property tax law is amended by adding two new sections 1136-a and 1136-b to read as follows:

§ 1136-a. Special procedures relating to final judgment and release of residential real property. Notwithstanding any other provision of law to the contrary:

1. The court shall determine upon proof and shall make a finding upon such proof whether there has been due compliance by the tax district with the applicable provisions of this chapter.

2. (a) The court shall make a final judgment authorizing the award of possession of any parcel of residential real property described in the list of delinquent taxes not redeemed or withdrawn as provided in this article and as to which no answer is interposed as provided in this section, and authorizing the enforcing officer to prepare, execute and cause to be recorded a deed conveying either to the tax district or to a third party deemed qualified and designated by the head of the department of housing full and complete title to such lands. Any such conveyance to a third party shall be for an existing use.

(b) Such third party shall be deemed qualified and shall be designated pursuant to such criteria as are established in rules promulgated by the head of the department of housing, provided, however, that such criteria shall include but not be limited to: residential management experience; financial ability; rehabilitation experience; ability to work with government and community organizations; neighborhood ties; and that the head of the department of housing shall consider whether the third party is a responsible legal tenant, not-for-profit organization or neighborhood-based-for-profit individual or organization. The head of the department of housing shall not deem qualified any third party who has been finally adjudicated by a court of competent jurisdiction, within seven years of the date on which such third party would otherwise be deemed qualified, to have violated any section of articles one hundred fifty, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five or two hundred of the penal law or any similar laws of another jurisdiction, or who has been suspended or debarred from contracting with the tax district or any agency of the tax district pursuant to any provision of law, rule or regulation during the period of such suspension or debarment. The rules promulgated by the head of the department of housing pursuant to this paragraph may establish other bases for disqualification of a third party.

3. (a) Following the expiration of the four-month period prescribed in subdivision four of this section, but not more than eight months after the date on which, pursuant to subdivision two of this section, the final judgment authorizing the award of possession of a parcel of resi-

dential real property was entered, the enforcing officer may execute a deed, pursuant to subdivision two of this section, with respect to such parcel. The owner of said parcel shall continue to have all of the rights, liabilities, responsibilities, duties and obligations of an owner of such parcel, including, but not limited to, maintaining such parcel in compliance with the housing maintenance, building and fire codes, and all other applicable laws, unless and until the enforcing officer has prepared and executed a deed conveying to the tax district or to a third party full and complete title to such parcel. Upon the execution of such deed, the tax district or the third party shall be seized of an estate in fee simple absolute in such land and all persons, including the state of New York, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien or equity of redemption in or upon such lands shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption. The appointment and tenure of receivers, trustees or any other persons, including administrators under article seven-A of the real property actions and proceedings law, appointed by an order of a court to manage real property, shall terminate when title to such property vests in the city or a third party pursuant to the provisions of this chapter. After such termination, said receivers, trustees or administrators shall be accountable to the courts that appointed them for the faithful performance of their fiduciary obligations during the term of their appointment and to the tax district or such third party for any rents and income received by them for any period subsequent to the date of the vesting of title in the tax district or such third party.

(b) If the tax district serves a tenant in possession of a dwelling unit with notice of termination of tenancy on grounds other than nonpayment of rent, the acceptance of rent for the first forty-five days after termination of tenancy by anyone other than an employee of the department of housing designated by the department of housing to receive such rent shall not be deemed or construed as a waiver of the tax district's right to initiate and prosecute a proceeding to terminate the tenancy for good cause.

4. Within four months after the date on which, pursuant to subdivision two of this section, the final judgment authorizing the award of possession of a parcel of residential real property was entered, any person claiming to have an interest in such parcel shall have the right to make a payment to the enforcing officer of all taxes, assessments and other legal charges owing on said parcel, the lawful interest thereon to the date of payment and a penalty of five percent of said payment of taxes, assessments and other legal charges and interest, which penalty may not exceed one thousand dollars. Such payment shall be made in cash or by certified or bank check. Within such four-month period, such interested person may also request an installment agreement from the enforcing officer. Such agreement shall require, in addition to full payment of the penalty specified in this subdivision at the time such agreement is entered into, the payment at such time of a first installment equal to fifty percent of all taxes, assessments and other legal charges, and the lawful interest thereon, then owing on such parcel, and the payment of the balance of such taxes, assessments and other legal charges and interest in four equal quarterly installments together with all current taxes, assessments and other legal charges that accrue during such period. Upon receipt of payment in full of the amount specified in the first sentence of this subdivision, the enforcing officer shall direct the attorney for the tax district to prepare and cause to

be entered an order discontinuing the in rem tax foreclosure action as to said property, cancelling the notice of pendency of such action as to said property and vacating and setting aside the final judgment. Upon the execution of an installment agreement and payment of the amounts due at the time such agreement is executed as provided in this subdivision, the enforcing officer shall direct the attorney for the tax district to prepare and cause to be entered an order vacating and setting aside the final judgment. The entry of either such order shall restore all parties, including owners, mortgagees and any and all lienors, receivers and administrators and encumbrancers, to the status they held immediately before such final judgment was entered. Where the enforcing officer approves an application requesting an installment agreement pursuant to this subdivision, the order vacating and setting aside the final judgment shall provide that in the event of any default as to the payment of either quarterly installments or current taxes, assessments or other legal charges during the term of such agreement, all payments under said agreement shall be forfeited and the attorney for the tax district, immediately upon notification by the enforcing officer of such default, shall cause to be entered as to such property a supplemental judgment of foreclosure in the in rem action which authorizes the enforcing officer to prepare, execute and cause to be recorded a deed conveying either to the tax district or to a third party full and complete title to such lands. Upon the entry of such supplemental judgment, the provisions of subdivision three of this section shall apply in the same manner as such subdivision would have applied had no payment been made nor installment agreement executed during the four-month period specified in this subdivision.

5. Every deed given pursuant to the provisions of this section shall be presumptive evidence that the action and all proceedings therein and all proceedings prior thereto from and including the assessment of the lands affected and all notices required by law were regular and in accordance with all provisions of law relating thereto. After four months from the date of entry of the final judgment authorizing the award of possession of any parcel of residential real property pursuant to the provisions of this section, the presumption shall be conclusive. No action to set aside such deed may be maintained unless the action is commenced and a notice of pendency of the action is filed in the office of the proper county clerk prior to the time that the presumption becomes conclusive as aforesaid. Should any lawsuit or proceeding be commenced to set aside a deed conveying to a third party a parcel of residential real property pursuant to the provisions of this section, such third party shall send to the attorney for the tax district within ten days of their receipt a copy of any papers served on such third party in such lawsuit or proceeding.

6. If the enforcing officer does not execute a deed conveying to the tax district or to a third party a parcel of residential real property within eight months after the entry of final judgment authorizing the award of possession of such parcel pursuant to subdivision two of this section, the enforcing officer shall direct the attorney for the tax district to prepare and cause to be entered an order discontinuing the in rem foreclosure action as to said property, canceling the notice of pendency of such action as to said property and vacating and setting aside said final judgment. The entry of such order shall restore all parties, including owners, mortgagees and any and all lienors, receivers and administrators and encumbrancers, to the status they held immediately before such final judgment was entered.

7. If the enforcing officer directs the attorney for the tax district, pursuant to subdivision six of this section, to prepare and cause to be entered an order discontinuing the in rem foreclosure action with respect to a parcel of residential real property determined to be distressed pursuant to section eleven hundred forty-two of this article, the head of the department of housing shall evaluate the parcel determined to be distressed and take such action as he or she deems appropriate under the programs, existing at the time of such evaluation, that are designed to encourage the rehabilitation and preservation of existing housing, and shall monitor or cause to be monitored the status of the property. The head of the department of housing shall maintain a register of properties determined to be distressed.

§ 1136-b. Governing body review of conveyance to a third party. The enforcing officer shall, prior to the execution of a deed conveying full and complete title of any parcel of residential real property to a third party pursuant to subdivision three of section eleven hundred thirty-six-a of this title, notify the governing body of the tax district in which such residential real property is situated of the proposed conveyance. Within forty-five days of such notification, the governing body may act by local law disapproving the proposed conveyance. In the event the governing body does not act by local law within such forty-five day period, the governing body shall be deemed to have approved the proposed conveyance. During such forty-five day period or, if the governing body acts by local law pursuant to this section, during the period of time from the notification of the governing body to the presentation to the chief executive officer of such tax district of such local law, the eight-month period provided in subdivision three of section eleven hundred thirty-six-a of this title shall be tolled.

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