STATE OF NEW YORK

2465

2019-2020 Regular Sessions

IN SENATE

January 25, 2019

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the real property law, in relation to prohibiting mortgagors from recovering attorney's fees and/or expenses incurred during a foreclosure

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

Section 1. Section 282 of the real property law, as added by chapter 550 of the laws of 2010, is amended to read as follows:

§ 282. [~~Mortgagor's right to recover~~] **Mortgagors prohibited from recovering** attorneys' fees in actions or proceedings arising out of foreclosures of residential property. 1. [~~Whenever a covenant contained in a mortgage on residential real property shall provide that in any action or proceeding to foreclose the mortgage that the mortgagee may recover attorneys' fees and/or expenses incurred as the result of the failure of the mortgagor to perform any covenant or agreement contained in such mortgage, or that amounts paid by the mortgagee therefor shall be paid by the mortgagor as additional payment, there shall be implied in such mortgage a covenant by the mortgagee to pay to the mortgagor the reasonable~~] **In the foreclosure of residential property mortgagors are prohibited from recovering from the mortgagees any** attorneys' fees and/or expenses incurred by the mortgagor as the result of the failure of the mortgagee to perform any covenant or agreement on its part to be performed under the mortgage or in the successful defense of any action or proceeding commenced by the mortgagee against the mortgagor arising out of the contract, and an agreement that such fees and expenses may be recovered [~~as provided by law in an action commenced against the mortgagee or by way of counterclaim in any action or proceeding commenced by the mortgagee against the mortgagor. Any waiver of this section shall be void as against public policy~~] **is void**.

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

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2. For the purposes of this section, "residential real property" means real property improved by a one- to four-family residence, a condominium that is occupied by the mortgagor or a cooperative unit that is occupied by the mortgagor.

§ 2. This act shall take effect immediately.