STATE OF NEW YORK

2480

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 Housing, Construction and Community Development

AN ACT to amend the real property actions and proceedings law, in relation to foreclosure actions and robosigned documents

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

Section 1. The real property actions and proceedings law is amended by adding a new section 1392 to read as follows:

§ 1392. Robosigned documents. 1. For the purpose of this section "robosigned document" shall mean any document that contains factual assertions that are not accurate, are incomplete, or are unsupported by competent, reliable evidence. A "robosigned document" also means any document that has not been reviewed by its signer to substantiate the factual assertions contained in the document. For purposes of this definition, multiple people may verify the document or statement so long as the document or statement specifies the portions verified by each signer.

2. Any entity that records a robosigned document or files a robosigned document in any court relative to a foreclosure proceeding shall be liable for a civil penalty of ten thousand dollars per robosigned document. The civil penalties under this section are separate from and exclusive of any other remedies or liabilities that may apply. This section is not intended to limit the type of actions regarding robosigned documents that may be filed by any governmental entity.

3. A borrower may seek an order in any court having jurisdiction to enjoin any pending trustee's sale, if a notice of sale has been recorded, and the borrower reasonably believes that the mortgagee, trustee, beneficiary, or authorized agent failed to comply with the requirements of this section. A borrower who obtains an injunction shall be awarded reasonable attorney's fees and costs.

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

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4. Following a trustee's sale, a borrower may recover the greater of actual damages or ten thousand dollars plus reasonable attorney's fees and costs in any court of competent jurisdiction, if the borrower reasonably believes that the mortgagee, trustee, beneficiary, or authorized agent failed to comply with the requirements of this section.

5. A court may award a borrower the greater of treble actual damages or statutory damages of fifty thousand dollars, plus attorney's fees and costs, if it finds that the violation of this section was intentional, reckless, or resulted from willful misconduct by a mortgagee, trustee, beneficiary, or authorized agent.

6. A violation of this article shall not affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice.

7. Notwithstanding subdivisions three and four of this section, a borrower may not obtain relief under this section for any violation that was technical or de minimis in nature that did not impact the borrower's ability to pursue an alternative to foreclosure as provided by this article.

8. It shall be an affirmative defense to any liability for violation of this section that a signatory to a consent judgment entered in the case entitled United States of America v. Bank of America Corporation, filed in the Federal District Court for the District of Washington, D.C., case number 1:12-cv-00361 RMC, is in compliance with that consent judgment while the consent judgment is in effect.

9. A third-party encumbrancer shall not be relieved from liability resulting from a violation of this section committed by that third-party encumbrancer, that occurred prior to the sale of the subject property to the bona fide purchaser.

§ 2. This act shall take effect immediately.