

# STATE OF NEW YORK

7722

## IN SENATE

February 11, 2020

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 providing resources for adequate legal counsel to homeowners

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

1 Section 1. Subdivisions 1 and 2 of section 1304 of the real property  
2 actions and proceedings law, subdivision 1 as amended by section 6 of  
3 part Q of chapter 73 of the laws of 2016 and subdivision 2 as amended by  
4 section 4 of part HH of chapter 58 of the laws of 2018, are amended and  
5 a new subdivision 8 is added to read as follows:

6 1. Notwithstanding any other provision of law, with regard to a home  
7 loan, at least ninety days before a lender, an assignee or a mortgage  
8 loan servicer commences legal action against the borrower, or borrowers  
9 at the property address and any other address of record, including mort-  
10 gage foreclosure, such lender, assignee or mortgage loan servicer shall  
11 give notice to the borrower in at least fourteen-point type which shall  
12 include the following:

13 "YOU MAY BE AT RISK OF FORECLOSURE. PLEASE READ THE FOLLOWING NOTICE  
14 CAREFULLY"

15 "As of \_\_\_\_, your home loan is \_\_\_\_ days and \_\_\_\_ dollars in default.  
16 Under New York State Law, we are required to send you this notice to  
17 inform you that you are at risk of losing your home.

18 Attached to this notice is a list of government approved housing coun-  
19 seling agencies in your area which provide free counseling. You can also  
20 call the NYS Office of the Attorney General's Homeowner Protection  
21 Program (HOPP) toll-free consumer hotline to be connected to free hous-  
22 ing counseling services in your area at 1-855-HOME-456 (1-855-466-3456),  
23 or visit their website at <http://www.ago.homehelp.com/>. A statewide list-  
24 ing by county is also available at <http://www.dfs.ny.gov/consumer/mortg>-  
25 nys np counseling agencies.htm. Qualified free help is available; watch  
26 out for non-attorney companies or people who charge a fee for these

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

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1 services. This notice is the first step to a possible foreclosure  
2 action against you. To protect your legal rights, it is advisable that  
3 you consult or retain a licensed attorney who is well versed in foreclo-  
4 sure defense. Contact your local bar association or a local state funded  
5 legal services agency to consult or retain an attorney. To check an  
6 attorney's license status, educational background and history of miscon-  
7 duct, you may visit the New York state unified court system's attorney  
8 directory database at:  
9 <http://iapps.courts.state.ny.us/attorney/AttorneySearch>.

10 Housing counselors from New York-based agencies listed on the website  
11 above are trained to help homeowners who are having problems making  
12 their mortgage payments and can help you find the best option for your  
13 situation. If you wish, you may also contact us directly at \_\_\_\_\_  
14 and ask to discuss possible options.

15 While we cannot assure that a mutually agreeable resolution is possi-  
16 ble, we encourage you to take immediate steps to try to achieve a resol-  
17 ution. The longer you wait, the fewer options you may have.

18 If you have not taken any actions to resolve this matter within 90  
19 days from the date this notice was mailed, we may commence legal action  
20 against you (or sooner if you cease to live in the dwelling as your  
21 primary residence.)

22 If you need further information, please call the New York State  
23 Department of Financial Services' toll-free helpline at (show number) or  
24 visit the Department's website at (show web address).

25 IMPORTANT: You have the right to remain in your home until you receive  
26 a court order telling you to leave the property. If a foreclosure action  
27 is filed against you in court, you still have the right to remain in the  
28 home until a court orders you to leave. You legally remain the owner of  
29 and are responsible for the property until the property is sold by you  
30 or by order of the court at the conclusion of any foreclosure  
31 proceedings. This notice is not an eviction notice, and a foreclosure  
32 action has not yet been commenced against you."

33 2. The notices required by this section shall be sent by such lender,  
34 assignee (including purchasing investor) or mortgage loan servicer to  
35 the borrower, by registered or certified mail and also by first-class  
36 mail to the last known address of the borrower, and to the residence  
37 that is the subject of the mortgage. The notices required by this  
38 section shall be sent by the lender, assignee or mortgage loan servicer  
39 in a separate envelope from any other mailing or notice. Notice is  
40 considered given as of the date it is mailed. The notices required by  
41 this section shall contain a current list of at least five housing coun-  
42 seling agencies, all county bar associations and/or all state funded  
43 legal services agencies serving the county where the property is located  
44 from the most recent listing available from department of financial  
45 services. The list shall include the counseling agencies', county bar  
46 associations' and legal services agencies' last known addresses and  
47 telephone numbers. The department of financial services shall make  
48 available on its websites a listing, by county, of such agencies and  
49 services. The lender, assignee or mortgage loan servicer shall use such  
50 lists to meet the requirements of this section.

51 8. Dismissal of a foreclosure complaint based upon a court's finding  
52 that the lender failed to strictly comply with the provisions of this  
53 section shall constitute a successful defense pursuant to section two  
54 hundred eighty-two of the real property law.

55 § 2. This act shall take effect on the sixtieth day after it shall  
56 have become a law.