STATE OF NEW YORK

2456

2021-2022 Regular Sessions

IN ASSEMBLY

January 19, 2021

Introduced by M. of A. HYNDMAN -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, in relation to imposing a temporary ban on the commencement of mortgage foreclosure actions and the sale of foreclosed properties; and providing for the repeal of such provisions upon expiration thereof

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 1393 to read as follows:

§ 1393. Temporary ban on foreclosure actions and sales of foreclosed properties. 1. Except with respect to a vacant or abandoned property, state regulated servicers, banks and/or credit unions of a mortgage loan may not initiate any judicial process, move for a foreclosure judgment or execute a foreclosure-related eviction or foreclosure sale of real properties for twelve months after the date that the covered period ends.

2. (a) During such moratorium period, state regulated mortgagees, lenders or servicers are required to either: (i) send the borrower a notice of default in accordance with the term of the mortgage loan, which shall include a list of state certified housing counseling agencies and a list of state funded legal services where the property is located. This requirement is not a substitute for the notice required under section thirteen hundred four of this article; (ii) participate in the mandatory settlement conference pursuant to rule thirty-four hundred eight of the civil practice law and rules for all pending foreclosure actions including actions where the mortgagor appeared at a prior settlement conference and the case was marked unsettled. This requirement shall not apply to pending foreclosure actions where a mortgagor has not appeared at a prior settlement conference; or (iii) engage the mortgagors in a pre-foreclosure workout to negotiate in good faith a

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

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modification or forbearance agreements in accordance with rule thirty-four hundred eight of the civil practice law and rules.

(b) The mortgagors must demonstrate compliance with this requirement in order to commence or proceed with a foreclosure action after the covered period has expired. Failure to demonstrate compliance shall be an affirmative defense to the foreclosure action and/or the borrower may request a bad faith hearing for the lender or servicer non-compliance with rule thirty-four hundred eight of the civil practice law and rules. Should the court find the lender or servicer failed to negotiate a modification or forbearance agreement in good faith, the court may waive all interest accrued on the loan during the moratorium.

3. For the purposes of this section, the term "the covered period" shall mean from the date the governor declared a state of disaster emergency or March seventh, two thousand twenty until three hundred sixty-five days after the date the last region and/or county of New York state entered phase three of the governor's reopening plan for the state relating to the COVID-19 pandemic.

§ 2. This act shall take effect immediately and shall expire and be deemed repealed 1 year after such effective date.