

# STATE OF NEW YORK

7737--B

Cal. No. 274

2021-2022 Regular Sessions

## IN ASSEMBLY

May 20, 2021

Introduced by M. of A. WEINSTEIN, ZINERMAN, SOLAGES, SEAWRIGHT, COLTON, SIMON, ZEBROWSKI, PRETLOW, BURDICK, BRONSON, DAVILA, ENGLEBRIGHT, DINOWITZ, GLICK, SAYEGH -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the real property actions and proceedings law, the general obligations law and the civil practice law and rules, in relation to the rights of parties involved in actions commenced upon real property related instruments

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "foreclosure abuse prevention act".

3 § 2. Subdivision 3 of section 1301 of the real property actions and  
4 proceedings law, as added by chapter 312 of the laws of 1962, is amended  
5 and a new subdivision 4 is added to read as follows:

6 3. While the action is pending or after final judgment for the plain-  
7 tiff therein, no other action shall be commenced or maintained to  
8 recover any part of the mortgage debt, including an action to foreclose  
9 the mortgage, without leave of the court in which the former action was  
10 brought. The procurement of such leave shall be a condition precedent to  
11 the commencement of such other action and the failure to procure such  
12 leave shall be a defense to such other action. For purposes of this  
13 subdivision, in the event such other action is commenced without leave  
14 of the court, the former action shall be deemed discontinued upon the  
15 commencement of the other action, unless prior to the entry of a final  
16 judgment in such other action, a defendant raises the failure to comply  
17 with this condition precedent therein, or seeks dismissal thereof based

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

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1 upon a ground set forth in paragraph four of subdivision (a) of rule  
2 thirty-two hundred eleven of the civil practice law and rules. This  
3 subdivision shall not be treated as a stay or statutory prohibition for  
4 purposes of calculating the time within which an action shall be  
5 commenced and the claim interposed pursuant to sections two hundred four  
6 and two hundred thirteen of the civil practice law and rules.

7 4. If an action to foreclose a mortgage or recover any part of the  
8 mortgage debt is adjudicated to be barred by the applicable statute of  
9 limitations, any other action seeking to foreclose the mortgage or  
10 recover any part of the same mortgage debt shall also be barred by the  
11 statute of limitations.

12 § 3. Subdivisions 4 and 5 of section 17-105 of the general obligations  
13 law are amended to read as follows:

14 4. [~~Except as provided in subdivision five, no~~] An acknowledgment,  
15 waiver [~~or promise has any effect to~~], promise or agreement, express or  
16 implied in fact or in law, shall not, in form or effect, postpone,  
17 cancel, reset, toll, revive or otherwise extend the time limited for  
18 commencement of an action to foreclose [~~or~~] a mortgage for any greater  
19 time or in any other manner than that provided in this section, [~~nor~~]  
20 unless it is made as provided in this section.

21 5. This section does not change the requirements[~~7~~] or the effect with  
22 respect to the accrual of a cause of action, nor the time limited for  
23 commencement of an action[~~7-ef~~] based upon either:

24 a. a payment or part payment of the principal or interest secured by  
25 the mortgage, or

26 b. a stipulation made in an action or proceeding.

27 § 4. Section 203 of the civil practice law and rules is amended by  
28 adding a new subdivision (h) to read as follows:

29 (h) Claim and action upon certain instruments. Once a cause of action  
30 upon an instrument described in subdivision four of section two hundred  
31 thirteen of this article has accrued, no party may, in form or effect,  
32 unilaterally waive, postpone, cancel, toll, revive, or reset the accrual  
33 thereof, or otherwise purport to effect a unilateral extension of the  
34 limitations period prescribed by law to commence an action and to inter-  
35 pose the claim, unless expressly prescribed by statute.

36 § 5. Subdivision (c) of section 205 of the civil practice law and  
37 rules, as amended by chapter 216 of the laws of 1992, is amended to read  
38 as follows:

39 (c) Application. This section also applies to a proceeding brought  
40 under the workers' compensation law but shall not apply to any proceed-  
41 ing governed by section two hundred five-a of this article.

42 § 6. The civil practice law and rules is amended by adding a new  
43 section 205-a to read as follows:

44 § 205-a. Termination of certain actions related to real property. (a)  
45 If an action upon an instrument described under subdivision four of  
46 section two hundred thirteen of this article is timely commenced and is  
47 terminated in any manner other than a voluntary discontinuance, a fail-  
48 ure to obtain personal jurisdiction over the defendant, a dismissal of  
49 the complaint for any form of neglect, including, but not limited to  
50 those specified in subdivision three of section thirty-one hundred twen-  
51 ty-six, section thirty-two hundred fifteen, rule thirty-two hundred  
52 sixteen and rule thirty-four hundred four of this chapter, for violation  
53 of any court rules or individual part rules, for failure to comply with  
54 any court scheduling orders, or by default due to nonappearance for  
55 conference or at a calendar call, or by failure to timely submit any  
56 order or judgment, or upon a final judgment upon the merits, the

1 original plaintiff, or, if the original plaintiff dies and the cause of  
2 action survives, his or her executor or administrator, may commence a  
3 new action upon the same transaction or occurrence or series of trans-  
4 actions or occurrences within six months following the termination,  
5 provided that the new action would have been timely commenced within the  
6 applicable limitations period prescribed by law at the time of the  
7 commencement of the prior action and that service upon the original  
8 defendant is completed within such six-month period. For purposes of  
9 this subdivision:

10 1. a successor in interest or an assignee of the original plaintiff  
11 shall not be permitted to commence the new action, unless pleading and  
12 proving that such assignee is acting on behalf of the original plain-  
13 tiff; and

14 2. in no event shall the original plaintiff receive more than one  
15 six-month extension.

16 (b) Where the defendant has served an answer and the action upon an  
17 instrument described under subdivision four of section two hundred thir-  
18 teen of this article is terminated in any manner, and a new action upon  
19 the same transaction or occurrence or series of transactions or occur-  
20 rences is commenced by the original plaintiff, or a successor in inter-  
21 est or assignee of the original plaintiff, the assertion of any cause of  
22 action or defense by the defendant in the new action shall be timely if  
23 such cause of action or defense was timely asserted in the prior action.

24 § 7. Subdivision 4 of section 213 of the civil practice law and rules  
25 is amended by adding two new paragraphs (a) and (b) to read as follows:

26 (a) In any action on an instrument described under this subdivision,  
27 if the statute of limitations is raised as a defense, and if that  
28 defense is based on a claim that the instrument at issue was accelerated  
29 prior to, or by way of commencement of a prior action, a plaintiff shall  
30 be estopped from asserting that the instrument was not validly acceler-  
31 ated, unless the prior action was dismissed based on an expressed judi-  
32 cial determination, made upon a timely interposed defense, that the  
33 instrument was not validly accelerated.

34 (b) In any action seeking cancellation and discharge of record of an  
35 instrument described under subdivision four of section fifteen hundred  
36 one of the real property actions and proceedings law, a defendant shall  
37 be estopped from asserting that the period allowed by the applicable  
38 statute of limitation for the commencement of an action upon the instru-  
39 ment has not expired because the instrument was not validly accelerated  
40 prior to, or by way of commencement of a prior action, unless the prior  
41 action was dismissed based on an expressed judicial determination, made  
42 upon a timely interposed defense, that the instrument was not validly  
43 accelerated.

44 § 8. Rule 3217 of the civil practice law and rules is amended by  
45 adding a new subdivision (e) to read as follows:

46 (e) Effect of discontinuance upon certain instruments. In any action  
47 on an instrument described under subdivision four of section two hundred  
48 thirteen of this chapter, the voluntary discontinuance of such action,  
49 whether on motion, order, stipulation or by notice, shall not, in form  
50 or effect, waive, postpone, cancel, toll, extend, revive or reset the  
51 limitations period to commence an action and to interpose a claim,  
52 unless expressly prescribed by statute.

53 § 9. Severability clause. If any clause, sentence, paragraph, section  
54 or part of this act shall be adjudged by any court of competent juris-  
55 diction to be invalid, such judgment shall not affect, impair or invali-  
56 date the remainder thereof, but shall be confined in its operation to

1 the clause, sentence, paragraph, section or part thereof directly  
2 involved in the controversy in which such judgment shall have been  
3 rendered.

4 § 10. This act shall take effect immediately and shall apply to all  
5 actions commenced on an instrument described under subdivision four of  
6 section two hundred thirteen of the civil practice law and rules in  
7 which a final judgment of foreclosure and sale has not been enforced.