STATE OF NEW YORK

8849

IN ASSEMBLY

January 18, 2022

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

AN ACT to amend the real property actions and proceedings law, in relation to requiring a plaintiff in a mortgage foreclosure action to maintain the subject property

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

Section 1. Subdivision 2 of section 1307 of the real property actions and proceedings law is amended by adding four new paragraphs (a), (b), (c), and (d) to read as follows:

(a) A residential property is deemed vacant for the purposes of this section if the residential property meets the definition of a "vacant and abandoned residential property" under section thirteen hundred nine of this article or there is an order or finding by a court of competent jurisdiction or by the municipality in which the residential property is located that the property is vacant;

(b) A residential property is deemed abandoned by the mortgagor if: (i) All owners of the residential property have indicated in writing that they have abandoned all rights of possession to the residential property;

(ii) There is an order or finding by a court of competent jurisdiction or by the municipality in which the residential property is located, either on the initiative of the court or municipality or in response to a complaint filed with the court or municipality by a tenant in lawful occupancy, that the property was abandoned by the mortgagor; or

(iii) The plaintiff receives a complaint from a tenant in lawful occupancy of the residential property indicating that the owner of the residential property has ceased maintaining the property and:

(1) The plaintiff posts a notice on the residential property that would be reasonably visible to the owner of the property indicating that the property is deemed abandoned and the owner must contact the plaintiff at a number listed on the notice if the owner still occupies or claims the right to occupy the property; and

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

LBD08533-04-2

(2) The plaintiff has received no communication within one week of posting the notice of the owner's intention to occupy the property.

(c) Such plaintiff shall have the right to peaceably enter upon such property, or to cause others to peaceably enter upon the property for the limited purpose of inspections, repairs and maintenance as required by this section, or as otherwise ordered by court; provided, however, that if the property is occupied by a tenant, at least seven days notice must be given to such tenant, unless emergency repairs are required in which case reasonable notice shall be provided to the tenant.

(d) Any plaintiff that enters a residential property without a good faith basis for believing that the property is vacant or abandoned and who does not comply with the requirements of paragraph (b) of this subdivision shall be subject to a penalty of five hundred dollars that may be sought by the owner of the residential property or any tenant in lawful possession of such property. This penalty may be recovered by a property owner or tenant in lawful occupancy of such property either within the foreclosure action pending against the subject residential real property or in a separate action commenced to collect the penalty.

§ 2. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the real property actions and proceedings law relating to requiring a plaintiff in a mortgage foreclosure action to maintain the subject property, as proposed in legislative bills numbers S. 1579-A and A. 5923-A, takes effect.