

STATE OF NEW YORK

2143--A

2021-2022 Regular Sessions

IN SENATE

January 20, 2021

Introduced by Sens. KAVANAGH, BRISPORT, SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law, in relation to mortgage loan servicers

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

1 Section 1. Section 595-b of the banking law is amended by adding two
2 new subdivisions 3 and 4 to read as follows:

3 3. Actions and damages. (a) Any person who has been injured by reason
4 of any violation of any such rules, regulations or policies as the
5 superintendent may promulgate to effectuate the purposes of this arti-
6 cle, including but not limited to 3 NYCRR 419 or any subsequently
7 promulgated mortgage servicing rules pursuant to this subdivision, may:

8 (i) Bring an action in his or her own name;

9 (ii) Assert a counterclaim; or

10 (iii) If an action is commenced by the mortgagee or anyone acting on
11 its behalf, bring a third party claim, against either the mortgagee
12 and/or the mortgage servicer to enjoin any violations thereof.

13 (b) The person injured pursuant to this section:

14 (i) May recover statutory damages of one thousand dollars per
15 violation;

16 (ii) May recover treble actual damages; and

17 (iii) If awarded damages or injunctive relief, shall also be entitled
18 to recover costs and expenses, including but not limited to reasonable
19 attorneys' fees.

20 (c) The mortgagee and the mortgage servicer shall be jointly and
21 severally liable for any recoveries by an injured mortgagor in any
22 action brought pursuant to this subdivision.

23 4. Compliance with rules, regulations or policies. Compliance with any
24 such rules, regulations or policies as the superintendent may promulgate

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

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1 to effectuate the purposes of this article, including but not limited to
2 3 NYCRR 419 or any subsequently promulgated mortgage servicing rules
3 pursuant to this subdivision, shall be a condition precedent to commenc-
4 ing an action to foreclose upon a mortgage subject to this article or an
5 action on the note, and the failure to comply with such rules, regu-
6 lations or policies shall be a defense to a foreclosure action or action
7 on the note, even if servicing has been transferred to a different mort-
8 gage servicer when a foreclosure action or action on the note is
9 commenced.

10 § 2. This act shall take effect immediately.