

STATE OF NEW YORK

5473--D

2021-2022 Regular Sessions

IN SENATE

March 8, 2021

Introduced by Sens. SANDERS, THOMAS, SALAZAR, ADDABBO, BAILEY, BIAGGI, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, GOUNARDES, HARCKHAM, HINCHEY, HOYLMAN, JACKSON, KAMINSKY, KAVANAGH, KENNEDY, KRUEGER, LIU, MANNION, MAY, MYRIE, PARKER, RAMOS, REICHLIN-MELNICK, RIVERA, SAVINO, SEPULVEDA, SKOUFIS, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 leave shall be a defense to such other action. For purposes of this
2 subdivision, in the event such other action is commenced without leave
3 of the court, the former action shall be deemed discontinued upon the
4 commencement of the other action, unless prior to the entry of a final
5 judgment in such other action, a defendant raises the failure to comply
6 with this condition precedent therein, or seeks dismissal thereof based
7 upon a ground set forth in paragraph four of subdivision (a) of rule
8 thirty-two hundred eleven of the civil practice law and rules. This
9 subdivision shall not be treated as a stay or statutory prohibition for
10 purposes of calculating the time within which an action shall be
11 commenced and the claim interposed pursuant to sections two hundred four
12 and two hundred thirteen of the civil practice law and rules.

13 4. If an action to foreclose a mortgage or recover any part of the
14 mortgage debt is adjudicated to be barred by the applicable statute of
15 limitations, any other action seeking to foreclose the mortgage or
16 recover any part of the same mortgage debt shall also be barred by the
17 statute of limitations.

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

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

27 5. This section does not change the requirements[~~r~~] or the effect with
28 respect to the accrual of a cause of action, nor the time limited for
29 commencement of an action[~~r~~, ~~of~~] based upon either:

30 a. a payment or part payment of the principal or interest secured by
31 the mortgage, or

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

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

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

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

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

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

50 § 205-a. Termination of certain actions related to real property. (a)
51 If an action upon an instrument described under subdivision four of
52 section two hundred thirteen of this article is timely commenced and is
53 terminated in any manner other than a voluntary discontinuance, a fail-
54 ure to obtain personal jurisdiction over the defendant, a dismissal of
55 the complaint for any form of neglect, including, but not limited to
56 those specified in subdivision three of section thirty-one hundred twen-

1 ty-six, section thirty-two hundred fifteen, rule thirty-two hundred
2 sixteen and rule thirty-four hundred four of this chapter, for violation
3 of any court rules or individual part rules, for failure to comply with
4 any court scheduling orders, or by default due to nonappearance for
5 conference or at a calendar call, or by failure to timely submit any
6 order or judgment, or upon a final judgment upon the merits, the
7 original plaintiff, or, if the original plaintiff dies and the cause of
8 action survives, his or her executor or administrator, may commence a
9 new action upon the same transaction or occurrence or series of trans-
10 actions or occurrences within six months following the termination,
11 provided that the new action would have been timely commenced within the
12 applicable limitations period prescribed by law at the time of the
13 commencement of the prior action and that service upon the original
14 defendant is completed within such six-month period. For purposes of
15 this subdivision:

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

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

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

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

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

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

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

52 (e) Effect of discontinuance upon certain instruments. In any action
53 on an instrument described under subdivision four of section two hundred
54 thirteen of this chapter, the voluntary discontinuance of such action,
55 whether on motion, order, stipulation or by notice, shall not, in form
56 or effect, waive, postpone, cancel, toll, extend, revive or reset the

1 limitations period to commence an action and to interpose a claim,
2 unless expressly prescribed by statute.

3 § 9. Severability clause. If any clause, sentence, paragraph, section
4 or part of this act shall be adjudged by any court of competent juris-
5 diction to be invalid, such judgment shall not affect, impair or invali-
6 date the remainder thereof, but shall be confined in its operation to
7 the clause, sentence, paragraph, section or part thereof directly
8 involved in the controversy in which such judgment shall have been
9 rendered.

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