

STATE OF NEW YORK

7737--A

2021-2022 Regular Sessions

IN ASSEMBLY

May 20, 2021

Introduced by M. of A. WEINSTEIN -- 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

AN ACT to amend the real property actions and proceedings law and the civil practice law and rules, in relation to the rights of parties involved in foreclosure actions

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

1 Section 1. Subdivision 3 of section 1301 of the real property actions
2 and proceedings law, as added by chapter 312 of the laws of 1962, is
3 amended and a new subdivision 4 is added to read as follows:

4 3. While the action is pending or after final judgment for the plain-
5 tiff therein, no other action shall be commenced or maintained to
6 recover any part of the mortgage debt, without leave of the court in
7 which the former action was brought. This subdivision shall not be
8 treated as a stay or statutory prohibition for purposes of calculating
9 the time within which an action shall be commenced pursuant to sections
10 two hundred four and two hundred thirteen of the civil practice law and
11 rules.

12 4. If an action to collect any part of the mortgage debt is adjudi-
13 cated to be barred by the applicable statute of limitations, any other
14 action seeking to recover any part of the same mortgage debt shall also
15 be barred by the statute of limitations.

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

18 (e) Effect of discontinuance upon certain instruments. In any action
19 on an instrument described under subdivision four of section two hundred
20 thirteen of this chapter in which the underlying indebtedness was accel-
21 erated by the commencement of such action, the voluntary discontinuance
22 of such action, whether on motion or by stipulation, shall not have the

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

LBD11254-03-1

1 effect of revoking acceleration unless such discontinuance is effected
2 within six years of the commencement of the action and explicitly
3 advises the defendant or defendants that such acceleration is revoked
4 and advises the defendant or defendants that the plaintiff shall resume
5 accepting installment payments.

6 § 3. Subdivision (c) of section 205 of the civil practice law and
7 rules, as amended by chapter 216 of the laws of 1992, is amended to read
8 as follows:

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

12 § 4. The civil practice law and rules is amended by adding a new
13 section 205-a to read as follows:

14 § 205-a. Termination of certain actions related to real property. (a)
15 If an action upon an instrument described under subdivision four of
16 section two hundred thirteen of this article is timely commenced and is
17 terminated in any manner other than a voluntary discontinuance, a fail-
18 ure to obtain personal jurisdiction over the defendant, a dismissal of
19 the complaint for any form of neglect, including, but not limited to
20 those specified in subdivision three of section thirty-one hundred twen-
21 ty-six, section thirty-two hundred fifteen, rule thirty-two hundred
22 sixteen and rule thirty-four hundred four of this chapter, for violation
23 of any uniform court rules or individual part rules, for failure to
24 comply with any court scheduling orders, or by default due to nonappear-
25 ance for conference or at a calendar call, or by failure to timely
26 submit any order or judgment, or upon a final judgment upon the merits,
27 the plaintiff, or, if the plaintiff dies and the cause of action
28 survives, his or her executor or administrator, may commence a new
29 action upon the same transaction or occurrence or series of transactions
30 or occurrences within six months following the termination, provided
31 that the new action would have been timely commenced within the applica-
32 ble limitations period prescribed by law at the time of the commencement
33 of the prior action and that service upon the original defendant is
34 effected within such six-month period. For purposes of this subdivision:

35 1. an assignee of the plaintiff shall not be deemed to have capacity
36 to maintain the action as a successor plaintiff, unless pleading and
37 proving that such assignee is acting on behalf of or asserting the
38 rights of the original plaintiff; and

39 2. in no event shall the plaintiff receive more than one six-month
40 extension.

41 (b) Where the defendant has served an answer and the action upon an
42 instrument described under subdivision four of section two hundred thir-
43 teen of this article is terminated in any manner, and a new action upon
44 the same transaction or occurrence or series of transactions or occur-
45 rences is commenced by the original plaintiff, or a successor in inter-
46 est or assignee of the original plaintiff, the assertion of any cause of
47 action or defense by the defendant in the new action shall be timely if
48 such cause of action or defense was timely asserted in the prior action.

49 § 5. This act shall take effect immediately.