

# STATE OF NEW YORK

5473

2021-2022 Regular Sessions

## IN SENATE

March 8, 2021

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, the general obligations law, the real property actions and proceedings law, and the real property law, 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. Short title. This act shall be known and may be cited as  
2 the "Foreclosure Process Abuse Prevention Act".

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

5 (h) Clarification. Once a cause of action has accrued, no party may  
6 unilaterally waive, postpone, cancel, or reset the accrual thereof, or  
7 otherwise effectuate a unilateral extension of the limitations period  
8 prescribed by law to interpose the claim, unless expressly permitted by  
9 law.

10 § 3. Subdivision (a) of section 205 of the civil practice law and  
11 rules, as amended by chapter 156 of the laws of 2008, is amended to read  
12 as follows:

13 (a) New action by plaintiff. If an action is timely commenced and is  
14 terminated in any other manner than by a voluntary discontinuance, a  
15 failure to obtain personal jurisdiction over the defendant, a dismissal  
16 of the complaint for [~~neglect to prosecute the action~~] any form of  
17 neglect, including those specified in subdivision (c) of section thir-  
18 ty-two hundred fifteen, and rules thirty-two hundred sixteen and thir-  
19 ty-four hundred four of this chapter, or sections 202.27 or 202.48 of  
20 part two hundred of title twenty-two of the New York codes, rules, and  
21 regulations, or a final judgment upon the merits, the original plain-  
22 tiff, or, if the original plaintiff dies, and the cause of action  
23 survives, his or her executor or administrator, may commence a new

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

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1 action upon the same transaction or occurrence or series of transactions  
2 or occurrences within six months after the termination provided that the  
3 new action would have been timely commenced within the applicable limi-  
4 tations period prescribed by law at the time of commencement of the  
5 prior action and that service upon the defendant is effected within such  
6 six-month period. Where a dismissal is one for any form of neglect [~~to~~  
7 ~~prosecute the action made pursuant to rule thirty two hundred sixteen of~~  
8 ~~this chapter or otherwise~~], the judge shall set forth on the record  
9 either the specific law, rule or code forming the basis for dismissal  
10 or, in the alternative, the conduct constituting the neglect, which  
11 conduct shall demonstrate a general pattern of delay in proceeding with  
12 the litigation.

13 For the purposes of this subdivision:

14 1. an assignee of the plaintiff shall not be deemed the plaintiff,  
15 unless acting on behalf or asserting the rights of the original plain-  
16 tiff;

17 2. an action is deemed "terminated" upon entry of the order or judg-  
18 ment of dismissal, regardless of whether an appeal is taken therefrom;  
19 and

20 3. in no event shall the plaintiff receive more than one six-month  
21 extension under this subdivision.

22 § 4. Section 206 of the civil practice law and rules is amended by  
23 adding a new subdivision (e) to read as follows:

24 (e) Based on standardized residential mortgage instruments. In an  
25 action to foreclose upon any uniform or model mortgage instrument  
26 securing real property or any interest therein, as adopted by the feder-  
27 al national mortgage association and federal home loan mortgage corpo-  
28 ration or U.S. Department of Housing and Urban Development, the time  
29 within which the action must be commenced shall be computed from the  
30 time the right to demand immediate payment in full of all sums so  
31 secured thereby may be exercised.

32 § 5. Section 306-b of the civil practice law and rules, as amended by  
33 chapter 473 of the laws of 2011, is amended to read as follows:

34 § 306-b. Service of the summons and complaint, summons with notice,  
35 third-party summons and complaint, or petition with a notice of petition  
36 or order to show cause. Service of the summons and complaint, summons  
37 with notice, third-party summons and complaint, or petition with a  
38 notice of petition or order to show cause shall be made within one  
39 hundred twenty days after the commencement of the action or proceeding,  
40 provided that in an action or proceeding, except a proceeding commenced  
41 under the election law, where the applicable statute of limitations is  
42 four months or less, service shall be made not later than fifteen days  
43 after the date on which the applicable statute of limitations expires.  
44 If service is not made upon a defendant within the time provided in this  
45 section, the court, upon motion, shall dismiss the action without preju-  
46 dice as to that defendant, or upon good cause shown or in the interest  
47 of justice, extend the time for service. A motion to extend the time  
48 for service of a defendant under this section shall be denied as untime-  
49 ly if it is made after the entry of any order or judgment of dismissal.

50 § 6. Section 2001 of the civil practice law and rules, as amended by  
51 chapter 529 of the laws of 2007, is amended to read as follows:

52 § 2001. Mistakes, omissions, defects and irregularities. (a) At any  
53 stage of an action, including the filing of a summons with notice,  
54 summons and complaint or petition to commence an action, the court may  
55 permit a mistake, omission, defect or irregularity, including the fail-  
56 ure to purchase or acquire an index number or other mistake in the

1 filing process, to be corrected, upon such terms as may be just, or, if  
 2 a substantial right of a party is not prejudiced, the mistake, omission,  
 3 defect or irregularity shall be disregarded, provided that any applica-  
 4 ble fees shall be paid.

5 (b) The court shall not disregard or permit a mistake, omission,  
 6 defect or irregularity arising from the failure of a lender, an assignee  
 7 or a mortgage loan servicer to strictly comply with section thirteen  
 8 hundred one, thirteen hundred two, thirteen hundred three, thirteen  
 9 hundred four or thirteen hundred six of the real property actions and  
 10 proceedings law, where applicable.

11 § 7. Rule 3212 of the civil practice law and rules is amended by  
 12 adding a new subdivision (d) to read as follows:

13 (d) Successive motions; standard. Where the court issues an order  
 14 denying all or any part of a motion for summary judgment, the court  
 15 shall consider any successive motion for summary judgment made by the  
 16 party having previously moved unsuccessfully for such relief as a motion  
 17 affecting a prior order and the motion shall be made and reviewed in  
 18 accordance with subdivisions (d), (e) or (f) of rule two thousand two  
 19 hundred twenty-one or subdivision (a) of rule five thousand fifteen of  
 20 this chapter.

21 § 8. Subdivision (d) of rule 3217 of the civil practice law and rules,  
 22 as added by section 29 of part J of chapter 62 of the laws of 2003, is  
 23 amended to read as follows:

24 (d) Effect of discontinuance of actions based upon certain instru-  
 25 ments. Unless effectuated in strict accordance with the applicable  
 26 provisions of article seventeen of the general obligations law, the  
 27 discontinuance of an action upon an instrument described under subdivi-  
 28 sion four of section two hundred thirteen of this chapter, by any means,  
 29 shall not, in form or effect:

30 1. act as a waiver, postponement, cancellation, resetting, or tolling  
 31 of accrual of the cause of action;

32 2. extend the limitations period prescribed by law to interpose the  
 33 claim; or

34 3. automatically revoke or nullify an election of remedies made in any  
 35 complaint.

36 (e) All notices, stipulations, or certificates pursuant to this rule  
 37 shall be filed with the county clerk by the defendant.

38 § 9. Subdivision 3 and paragraph a of subdivision 4 of section 17-103  
 39 of the general obligations law are amended to read as follows:

40 ~~3. [A promise to waive, to extend, or not to plead the statute of~~  
 41 ~~limitation has no effect to]~~ A waiver, promise or agreement, express or  
 42 implied in fact or in law, shall not, in form or effect, postpone,  
 43 cancel, reset, toll, revive or otherwise extend the time limited by  
 44 statute for commencement of an action or proceeding for any greater time  
 45 or in any other manner than that provided in this section, [~~or~~] unless  
 46 made as provided in this section.

47 a. does not change the requirements or the effect with respect to the  
 48 [~~statute of limitation, of~~] accrual of a cause of action, nor the time  
 49 limited for commencement of an action based upon an acknowledgment or  
 50 promise to pay[~~r~~] or a payment or part payment of principal or inter-  
 51 est[~~, or a stipulation made in an action or proceeding~~];

52 § 10. Subdivisions 4 and 5 of section 17-105 of the general obli-  
 53 gations law are amended to read as follows:

54 4. [~~Except as provided in subdivision five, no~~] An acknowledgment,  
 55 waiver [or promise has any effect to], promise or agreement, express or  
 56 implied in fact or in law, shall not, in form or effect, postpone,

1 cancel, reset, toll, revive or otherwise extend the time limited for  
 2 commencement of an action to foreclose [~~of~~] a mortgage for any greater  
 3 time or in any other manner than that provided in this section, [~~nor~~]  
 4 unless it is made as provided in this section.

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

8 a. a payment or part payment of the principal or interest secured by  
 9 the mortgage, or

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

11 § 11. Subdivisions 1, 1-a and 2 of section 1304 of the real property  
 12 actions and proceedings law, subdivision 1 as amended by section 6 of  
 13 part Q of chapter 73 of the laws of 2016, subdivision 1-a as added by  
 14 section 3 and subdivision 2 as amended by section 4 of part HH of chap-  
 15 ter 58 of the laws of 2018, are amended to read as follows:

16 1. Notwithstanding any other provision of law, with regard to a home  
 17 loan, at least ninety days before a lender, an assignee or a mortgage  
 18 loan servicer commences legal action against the borrower, or borrowers  
 19 at the property address and any other address of record, including mort-  
 20 gage foreclosure, such lender, assignee or mortgage loan servicer shall  
 21 give notice to the borrower in at least fourteen-point type which shall  
 22 include the following:

23 "YOU MAY BE AT RISK OF FORECLOSURE. PLEASE READ THE FOLLOWING NOTICE  
 24 CAREFULLY"

25 "As of \_\_\_, your home loan is \_\_\_ days and \_\_\_ dollars in default.  
 26 Under New York State Law, we are required to send you this notice to  
 27 inform you that you are at risk of losing your home.

28 Attached to this notice is a list of government approved housing coun-  
 29 seling agencies in your area which provide free counseling. You can also  
 30 call the NYS Office of the Attorney General's Homeowner Protection  
 31 Program (HOPP) toll-free consumer hotline to be connected to free hous-  
 32 ing counseling services in your area at 1-855-HOME-456 (1-855-466-3456),  
 33 or visit their website at [~~http://www.aghomehelp.com/~~]

34 <https://ag.ny.gov/consumer-frauds/help-homeowners>. A statewide listing  
 35 by county is also available at [http://www.dfs.ny.gov/consumer/mortg\\_nys](http://www.dfs.ny.gov/consumer/mortg_nys)  
 36 [np counseling agencies.htm](http://www.dfs.ny.gov/consumer/mortg_nys); housing counselors from New York-based agen-  
 37 cies listed on this website are trained to help homeowners who are  
 38 having problems making their mortgage payments and can help you find the  
 39 best option for your situation. Qualified free help is available; watch  
 40 out for non-attorney companies or people who charge a fee for these  
 41 services. To learn more about and protect your legal rights, it is  
 42 advisable that you consult or retain a New York state licensed attorney  
 43 who is experienced in foreclosure defense. Contact your local bar asso-  
 44 ciation or a local state funded legal services agency to consult or  
 45 retain an attorney. To check an attorney's license status, educational  
 46 background and history of misconduct, you can visit the unified court  
 47 system's attorney directory database at  
 48 <https://iapps.courts.state.ny.us/attorneyservices/search?0>. Additional  
 49 free information and resources can be found at the following websites:  
 50 <https://homeownerhelpny.org/> and  
 51 <https://www.lawhelpny.org/issues/housing>.

52 [~~Housing counselors from New York-based agencies listed on the website~~  
 53 ~~above are trained to help homeowners who are having problems making~~  
 54 ~~their mortgage payments and can help you find the best option for your~~  
 55 ~~situation.~~] If you wish, you may also contact us directly at \_\_\_\_\_

56 and ask to discuss possible options.

1 While we cannot assure that a mutually agreeable resolution is possi-  
 2 ble, we encourage you to take immediate steps to try to achieve a resol-  
 3 ution. The longer you wait, the fewer options you may have.

4 If you have not taken any actions to resolve this matter within 90  
 5 days from the date this notice was mailed, we may commence legal action  
 6 against you (or sooner if you cease to live in the dwelling as your  
 7 primary residence.)

8 If you need further information, please call the New York State  
 9 Department of Financial Services' toll-free helpline at [~~(show number)~~]  
 10 [877-226-5697](tel:877-226-5697) or visit the Department's website at [~~(show web address)~~]  
 11 <http://www.dfs.ny.gov>.

12 **IMPORTANT:** You have the right to remain in your home until you receive  
 13 a court order telling you to leave the property. If a foreclosure action  
 14 is filed against you in court, you still have the right to remain in the  
 15 home until a court orders you to leave. You legally remain the owner of  
 16 and are responsible for the property until the property is sold by you  
 17 or by order of the court at the conclusion of any foreclosure  
 18 proceedings. This notice is not an eviction notice, and a foreclosure  
 19 action has not yet been commenced against you."

20 1-a. Notwithstanding any other provision of law, with regard to a  
 21 reverse mortgage home loan, at least ninety days before a lender, an  
 22 assignee or a mortgage loan servicer commences legal action against the  
 23 borrower or borrowers at the property address and any other addresses of  
 24 record, including reverse mortgage foreclosure, such lender, assignee or  
 25 mortgage loan servicer shall give notice to the borrower in at least  
 26 fourteen-point type except for the heading which shall be in at least  
 27 sixteen-point type which shall include the following:

28 "YOU COULD LOSE YOUR HOME TO FORECLOSURE.  
 29 PLEASE READ THE FOLLOWING NOTICE CAREFULLY.

30 Date  
 31 Borrower's address  
 32 Loan Number:  
 33 Property Address:  
 34 Dear Borrower(s):

35 As of \_\_\_\_\_, we as your lender or servicer claim that your reverse  
 36 mortgage loan is \_\_\_ days in default. Under New York State Law, we are  
 37 required to send you this notice to inform you that you may be at risk  
 38 of losing your home.

39 We, the lender or servicer of your loan, are claiming that your reverse  
 40 mortgage loan is in default because you have not complied with the  
 41 following conditions of your loan:

42 \_\_\_\_\_ You are not occupying your home as your principal residence  
 43 \_\_\_\_\_ You did not submit the required annual certificate of occupancy  
 44 \_\_\_\_\_ The named borrower on the reverse mortgage has died  
 45 \_\_\_\_\_ You did not pay property taxes  
 46 {Servicer name} paid your property taxes for the following  
 47 time periods: \_\_\_\_\_  
 48 \_\_\_\_\_ {quarter/year}  
 49 \_\_\_\_\_ You did not maintain homeowner's insurance  
 50 {Servicer name} purchased homeowner's insurance for you on the  
 51 following date(s) and for the following cost(s):  
 52 \_\_\_\_\_

1 \_\_\_\_\_ You did not pay water/sewer charges  
2 {Servicer name} paid water/sewer charges for you on the  
3 following date(s) and for the following cost(s):  
4 \_\_\_\_\_  
5 \_\_\_\_\_ You did not make required repairs to your home

6 If the claim is based on your failure to pay property or water and sewer  
7 charges or maintain homeowner's insurance, you can cure this default by  
8 making the payment of \$\_\_\_\_\_ for the advancements we made towards  
9 these payments on your behalf.

10 You have the right to dispute the claims listed above by contacting us,  
11 by calling \_\_\_\_\_ or sending a letter to \_\_\_\_\_. This  
12 may include proof of payments made for property taxes or water and sewer  
13 charges or a current declaration page from your insurance company, or  
14 any other proof to dispute the servicer's claim.

15 If you are in default for failure to pay property charges (property  
16 taxes, homeowner's insurance and/or water/sewer charges) you may qualify  
17 for a grant, loan, or re-payment plan to cure the default balance owed.

18 If you are in default due to the death of your spouse, you may be  
19 considered an eligible "Non-Borrowing Spouse" under a HUD program which  
20 allows you to remain in your home for the rest of your life.

21 If you are over the age of 80 and have a long term illness, you may also  
22 qualify for the "At-Risk Extension," which allows you to remain in your  
23 home for one additional year and requires an annual re-certification.

24 Attached to this notice is a list of government-approved housing coun-  
25 seling agencies and legal services in your area which provide free coun-  
26 seling. You can also call the NYS Office of the Attorney General's Home-  
27 owner Protection Program (HOPP) toll-free consumer hotline to be  
28 connected to free housing counseling services in your area at  
29 1-855-HOME-456 (1-855-466-3456), or visit their website at  
30 [~~<http://www.aghomehelp.com>~~] [https://ag.ny.gov/consumer-frauds/help-](https://ag.ny.gov/consumer-frauds/help-homeowners)  
31 [homeowners](https://ag.ny.gov/consumer-frauds/help-homeowners). A statewide listing by county is also available at  
32 [http://www.dfs.ny.gov/consumer/mortg\\_nys\\_np\\_counseling\\_agencies.htm](http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm);  
33 [housing counselors from New York-based agencies listed on this website](#)  
34 [are trained to help homeowners who are having problems making their](#)  
35 [mortgage payments and can help you find the best option for your situ-](#)  
36 [ation](#). You may also call your local Department of Aging for a referral  
37 or call 311 if you live in New York City.

38 Qualified free help is available; watch out for non-attorney companies  
39 or people who charge a fee for these services. [To learn more about and](#)  
40 [protect your legal rights, it is advisable that you consult or retain a](#)  
41 [New York state licensed attorney who is experienced in foreclosure](#)  
42 [defense. Contact your local bar association or a local state funded](#)  
43 [legal services agency to consult or retain an attorney. To check an](#)  
44 [attorney's license status, educational background and history of miscon-](#)  
45 [duct, you can visit the unified court system's attorney directory data-](#)  
46 [base at <https://iapps.courts.state.ny.us/attorneyservices/search?0>.](#)  
47 [Additional free information and resources can be found at the following](#)  
48 [websites: <https://homeownerhelpny.org/>](#)  
49 [and <https://www.lawhelpny.org/issues/housing>.](#)

1 You may also contact us directly at \_\_\_\_\_ and ask to discuss all  
2 possible options to allow you to cure your default and prevent the fore-  
3 closure of your home. While we cannot ensure that a resolution is possi-  
4 ble, we encourage you to take immediate steps to try to achieve a resol-  
5 ution. The longer you wait, the fewer options you may have.

6 If you have not taken any actions to resolve this matter within 90 days  
7 from the date this notice was mailed, we may commence legal action  
8 against you (or sooner if you cease to live in the dwelling as your  
9 primary residence).

10 If you need further information, please call the New York State Depart-  
11 ment of Financial Services' toll-free helpline at 877-226-5697 or visit  
12 the Department's website at <http://www.dfs.ny.gov>.

13 IMPORTANT: You have the right to remain in your home until you receive a  
14 court order telling you to leave the property. If a foreclosure action  
15 is filed against you in court, you still have the right to remain in the  
16 home until a court orders you to leave. You legally remain the owner of  
17 and are responsible for the property until the property is sold by you  
18 or by order of the court at the conclusion of any foreclosure  
19 proceedings. This notice is not an eviction notice, and a foreclosure  
20 action has not yet been commenced against you."

21 A lender, assignee or mortgage loan servicer of a reverse mortgage  
22 home loan which provides notice to the borrower as required by this  
23 subdivision is not required to provide notice to such borrower with  
24 regard to such loan pursuant to subdivision one of this section. For  
25 purposes of this section, the borrower shall also mean any non-borrower  
26 mortgagor and non-borrowing mortgagors shall be entitled to notice under  
27 this section in the same manner and direction as the borrower.

28 2. The notices required by this section shall be sent by such lender,  
29 assignee (including purchasing investor) or mortgage loan servicer to  
30 the borrower, by registered or certified mail and also by first-class  
31 mail to the last known address of the borrower, and to the residence  
32 that is the subject of the mortgage. The notices required by this  
33 section shall be sent by the lender, assignee or mortgage loan servicer  
34 in a separate envelope from any other mailing or notice. Notice is  
35 considered given as of the date it is mailed. The notices required by  
36 this section shall contain a current list of at least five housing coun-  
37 seling agencies and at least one bar association serving the county  
38 where the property is located from the most recent listing available  
39 from department of financial services. The list shall include the coun-  
40 seling agencies' and county bar associations' last known addresses and  
41 telephone numbers. The department of financial services shall make  
42 available on its websites a listing, by county, of such agencies and bar  
43 associations. The lender, assignee or mortgage loan servicer shall use  
44 such lists to meet the requirements of this section. The department of  
45 financial services shall update the counseling agency and bar associ-  
46 ation listings on its websites on the first Friday of every month and  
47 shall save, archive and make available on its websites each monthly  
48 listing for a period of no less than ten years.

49 § 12. Section 282 of the real property law, as added by chapter 550 of  
50 the laws of 2010, is amended to read as follows:

51 § 282. [~~Mortgagor's right~~] Right to recover attorneys' fees in actions  
52 or proceedings arising out of foreclosures of residential property. 1.

1 Whenever a covenant contained in a mortgage on residential real property  
2 shall provide that in any action or proceeding to foreclose the mortgage  
3 that the mortgagee may recover attorneys' fees and/or expenses incurred  
4 as the result of the failure of the mortgagor or borrower to perform any  
5 covenant or agreement contained in such mortgage, or that amounts paid  
6 by the mortgagee therefor shall be paid by the mortgagor as additional  
7 payment, there shall be implied in such mortgage a covenant by the mort-  
8 gagee to pay to the mortgagor or borrower the reasonable attorneys' fees  
9 and/or expenses incurred by the mortgagor or borrower as the result of  
10 the failure of the mortgagee to perform any covenant or agreement on its  
11 part to be performed under the mortgage or in the successful defense of  
12 any action or proceeding pending or commenced by the mortgagee against  
13 the mortgagor or borrower arising out of the contract, and an agreement  
14 that such fees and expenses may be recovered as provided by law in an  
15 action or proceeding pending or commenced against the mortgagee or by  
16 way of counterclaim in any action or proceeding pending or commenced by  
17 the mortgagee against the mortgagor or borrower. Any waiver of this  
18 section shall be void as against public policy.

19 2. For the purposes of this section, "residential real property" means  
20 real property improved by a one- to four-family residence, a condominium  
21 that is occupied by the mortgagor or borrower or a cooperative unit that  
22 is occupied by the mortgagor or borrower.

23 3. For the purposes of this section, "successful defense" of any  
24 action or proceeding pending or commenced by the mortgagee shall mean  
25 any form of dismissal of the action or proceeding, with or without prej-  
26 udice, on the court's own initiative, after trial, or upon application  
27 or motion made by the mortgagor or borrower.

28 § 13. Severability clause. If any clause, sentence, paragraph, section  
29 or part of this act shall be adjudged by any court of competent juris-  
30 diction to be invalid, such judgment shall not affect, impair or invali-  
31 date the remainder thereof, but shall be confined in its operation to  
32 the clause, sentence, paragraph, section or part thereof directly  
33 involved in the controversy in which such judgment shall have been  
34 rendered.

35 § 14. This act shall take effect immediately; provided, however:

36 a. for causes of action pursuant to subdivision (e) of section 206 of  
37 the civil practice law and rules as added by section four of this act,  
38 having accrued prior to, and would be time barred immediately upon, the  
39 effective date of this act, suits thereupon shall be commenced within  
40 one year after this act shall have become a law; and

41 b. for causes of action pursuant to subdivision (e) of section 206 of  
42 the civil practice law and rules as added by section four of this act,  
43 having accrued prior to the effective date of such section and for which  
44 less than one year remains upon the applicable limitations period for  
45 the commencement of an action or proceeding thereupon, such suits shall  
46 be commenced within one year after this act shall have become a law.