STATE OF NEW YORK

1136

2023-2024 Regular Sessions

IN ASSEMBLY

January 13, 2023

Introduced by M. of A. WALKER, ANDERSON, BURGOS, CARROLL, DAVILA, DILAN, EICHENSTEIN, EPSTEIN, FALL, GALLAGHER, HUNTER, PAULIN, RAJKUMAR, REYES, RIVERA, D. ROSENTHAL, VANEL, WEPRIN -- read once and referred to the Committee on Judiciary

AN ACT to amend 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:

Section 1. Section 203 of the civil practice law and rules is amended by adding a new subdivision (i) to read as follows:

(i) Clarification. Once a cause of action upon an instrument described under subdivision four of section two hundred thirteen of this article has accrued, no party may unilaterally waive, postpone, cancel, or reset the accrual thereof, or otherwise effectuate a unilateral extension of the limitations period prescribed by law to interpose the claim, unless expressly permitted by law.

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

(e) Based on standardized mortgage instruments. In an action to foreclose upon any uniform or model mortgage instrument securing real property or any interest therein, as adopted by the federal national mortgage association (Fannie Mae), federal home loan mortgage corporation (Freddie Mac), or U.S. Department of Housing and Urban Development (HUD), the time within which the action must be commenced and the claim interposed shall be computed from the time the right to demand immediate payment in full of all sums so secured thereby may be exercised. For purposes of this subdivision only, there shall be a rebuttable presumption that all substantive conditions precedent to accrual of a cause of action to foreclose upon any such mortgage instrument, if any, have been satisfied. The presumption may be rebutted by clear and convincing evidence. Nothing contained herein shall give rise to the presumption

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

LBD04666-01-3

that any event of default under the mortgage instrument has occurred, except for purposes of computation of the time within which the action must be commenced and the claim interposed.

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

(d) **Effect of discontinuance of actions based upon certain instruments related to real property. Unless effectuated in strict accordance with the applicable provisions of article seventeen of the general obligations law, the discontinuance of an action upon an instrument described under subdivision four of section two hundred thirteen of this chapter, by any means, shall not, in form or effect:**

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

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

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

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

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

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

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