

STATE OF NEW YORK

3453

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to mandatory settlement conference in cooperative apartment unit foreclosure actions

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

1 Section 1. The civil practice law and rules is amended by adding a
2 new rule 3411 to read as follows:

3 Rule 3411. Mandatory settlement conference in cooperative apartment
4 unit foreclosure actions. (a) For purposes of this section "a cooper-
5 ative apartment unit loan" means a loan secured by rights to a cooper-
6 ative apartment required to receive an additional pre-disposition notice
7 pursuant to subsection (f) of section 9--611 of the uniform commercial
8 code.

9 In addition to such other notifications as may be required pursuant to
10 the uniform commercial code, in any foreclosure action involving a coop-
11 erative apartment unit loan, in which the borrower is a resident of the
12 property subject to foreclosure, the lender shall file a petition with
13 the supreme court of the county in which the cooperative apartment is
14 located stating the loan is in default and the reason for the default.

15 The petition must be served on the borrower pursuant to section three
16 hundred eight of this chapter. The lender shall file proof of service
17 within twenty days of such service and the court shall hold a mandatory
18 conference within sixty days after the date when proof of service upon
19 the borrower is filed with the county clerk or on such adjourned date as
20 has been agreed to by the parties, for the purpose of holding settlement
21 discussions pertaining to the relative rights and obligations of the
22 parties under the loan documents, including, but not limited to:

23 1. determining whether the parties can reach a mutually agreeable
24 resolution to help the borrower avoid losing their home, and evaluating

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

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1 the potential for a resolution in which payment schedules or amounts may
2 be modified or other workout options may be agreed to, including but not
3 limited to, a loan modification or any other loss mitigation option; or
4 2. whatever other purposes the court deems appropriate.

5 (b) At the initial conference held pursuant to this section, any
6 borrower currently appearing pro se, shall be deemed to have made a
7 motion to proceed as a poor person under section eleven hundred one of
8 this chapter. The court shall determine whether such permission shall be
9 granted pursuant to standards set forth in section eleven hundred one of
10 this chapter. If the court appoints defendant counsel pursuant to subdivi-
11 vision (a) of section eleven hundred two of this chapter, it shall
12 adjourn the conference to a date certain for appearance of counsel and
13 settlement discussions pursuant to subdivision (a) of this rule, and
14 otherwise shall proceed with the conference.

15 (c) At any conference held pursuant to this rule, the lender and the
16 borrower shall appear in person or by counsel, and each party's repre-
17 sentative at the meeting shall be fully authorized to dispose of the
18 matter. If the borrower is appearing without counsel, the court shall
19 inform the borrower of the nature of the action and his or her rights
20 and responsibilities. Where appropriate, the court may permit the
21 borrower or a representative of the borrower or the defendant to attend
22 the settlement conference telephonically or by video-conference.

23 (d) Upon the filing of a request for judicial intervention in any
24 action brought pursuant to this section, the court shall send either a
25 copy of such request or the borrower's name, address and telephone
26 number (if available) to a housing counseling agency or agencies on a
27 list designated by the division of housing and community renewal for the
28 judicial district in which the borrower resides. Such information shall
29 be used by the designated housing counseling agency or agencies exclu-
30 sively for the purpose of making the borrower aware of housing coun-
31 seling and foreclosure prevention services and options available to
32 them.

33 (e) The court shall promptly send a notice to parties advising them of
34 the time and place of the meeting, the purpose of the meeting and the
35 requirements of this rule. The notice shall be in a form prescribed by
36 the court, and shall advise the parties of the documents that they shall
37 bring to the conference.

38 1. For the lender, such documents shall include, but are not limited
39 to: (i) the payment history; (ii) an itemization of the amounts needed
40 to cure and pay off the loan; (iii) the mortgage and note or copies of
41 the same; (iv) standard application forms and a description of loss
42 mitigation options, if any, which may be available to the borrower; and
43 (v) any other documentation required by the presiding judge. If the
44 lender is not the owner of the mortgage and note, the lender shall
45 provide the name, address and telephone number of the legal owner of the
46 mortgage and note. For cases in which the lender or its servicing agent
47 has evaluated or is evaluating eligibility for home loan modification
48 programs or other loss mitigation options, in addition to the documents
49 listed above, the lender shall bring a summary of the status of the
50 lender's or servicing agent's evaluation for such modifications or other
51 loss mitigation options, including, where applicable, a list of
52 outstanding items required for the borrower to complete any modification
53 application, an expected date of completion of the lender's or servicer
54 agent's evaluation, and, if the modification or modifications were
55 denied, a denial letter or any other document explaining the reason or
56 reasons for denial and the data input fields and values used in the net

1 present value evaluation. If the modification was denied on the basis of
2 an investor restriction, the plaintiff shall bring the documentary
3 evidence which provides the basis for the denial, such as a pooling and
4 servicing agreement.

5 2. For the borrower, such documents shall include, but are not limited
6 to, if applicable, information on current income tax returns, expenses,
7 property taxes and previously submitted applications for loss miti-
8 gation; benefits information; rental agreements or proof of rental
9 income; and any other documentation relevant to the proceeding required
10 by the presiding judge.

11 (f) Both the lender and the borrower shall negotiate in good faith to
12 reach a mutually agreeable resolution, including but not limited to a
13 re-payment agreement, or any other loss mitigation, if possible.
14 Compliance with the obligation to negotiate in good faith pursuant to
15 this rule shall be measured by the totality of the circumstances,
16 including but not limited to the following factors:

17 1. compliance with the requirements of this rule and applicable court
18 rules, court orders, and directives by the court or its designee
19 pertaining to the settlement conference process;

20 2. compliance with applicable lending mortgage servicing laws, rules,
21 regulations, investor directives, and loss mitigation standards or
22 options concerning loan modifications; and

23 3. conduct consistent with efforts to reach a mutually agreeable
24 resolution, including but not limited to, avoiding unreasonable delay,
25 appearing at the settlement conference with authority to fully dispose
26 of the matter, avoiding moving forward with a judicial or a non-judicial
27 foreclosure proceeding while loss mitigation applications and attempts
28 are pending, and providing accurate information to the court and
29 parties.

30 Neither of the parties' failure to make the offer or accept the offer
31 made by the other party is sufficient to establish a failure to negoti-
32 ate in good faith.

33 (g) The lender must file a notice of discontinuance within ninety days
34 after any settlement agreement or loan modification has been fully
35 executed or a determination by the court that the settlement foreclosure
36 conference process has concluded if the lender elects to use the non-ju-
37 dicial foreclosure method.

38 (h) A party to a default action may not charge, impose, or otherwise
39 require payment from the other party for any cost, including but not
40 limited to attorneys' fees, for appearance at or participation in the
41 settlement conference process.

42 (i) The court may determine whether either party fails to comply with
43 the duty to negotiate in good faith pursuant to subdivision (f) of this
44 rule and order remedies pursuant to subdivisions (j) and (k) of this
45 rule, either on motion of any party or sua sponte on notice to the
46 parties, in accordance with such procedures as may be established by the
47 court or office of court administration. A referee, judicial hearing
48 officer, or other staff designated by the court to oversee the settle-
49 ment conference process may hear and report findings of fact and conclu-
50 sions of law, and may make reports and recommendations for relief to the
51 court concerning any party's failure to negotiate in good faith pursuant
52 to subdivision (f) of this rule.

53 (j) Upon a finding by the lender failed to negotiate in good faith
54 pursuant to subdivision (f) of this section, and order remedies pursuant
55 to this subdivision and subdivision (k) of this section the court shall,
56 at a minimum, toll the accumulation and collection of interest, costs,

1 and fees during any undue delay caused by the lender, and where appro-
2 priate, the court may also impose one or more of the following:

3 1. compel production of any documents requested by the court pursuant
4 to subdivision (e) of this rule or the court's designee during the
5 settlement conference;

6 2. impose a civil penalty payable to the state that is sufficient to
7 deter repetition of the conduct and in an amount not to exceed twenty-
8 five thousand dollars;

9 3. the court may award actual damages, fees, including attorneys' fees
10 and expenses to the borrower as a result of lender's failure to negoti-
11 ate in good faith; or

12 4. award any other relief that the court deems just and proper.

13 (k) Upon a finding by the court that the borrower failed to negotiate
14 in good faith pursuant to subdivision (f) of this rule, the court shall,
15 at a minimum, remove the case from the conference calendar. In consider-
16 ing such a finding, the court shall take into account equitable factors
17 including, but not limited to, whether the borrower was represented by
18 counsel.

19 (l) At the first settlement conference held pursuant to this rule, if
20 the borrower has not filed an answer or made a pre-answer motion to
21 dismiss, the court shall:

22 1. advise the borrower of the requirement to answer the complaint;

23 2. explain what is required to answer a complaint in court;

24 3. advise that if an answer is not interposed the ability to contest
25 the foreclosure action and assert defenses may be lost; and

26 4. provide information about available resources for foreclosure
27 prevention assistance.

28 (m) A defendant who appears at the settlement conference but who
29 failed to file a timely answer, pursuant to rule three hundred twenty of
30 this chapter, shall be presumed to have a reasonable excuse for the
31 default and shall be permitted to serve and file an answer, without any
32 substantive defenses deemed to have been waived within thirty days of
33 initial appearance at the settlement conference. The default shall be
34 deemed vacated upon service and filing of an answer.

35 (n) Any motions submitted by the plaintiff or defendant shall be held
36 in abeyance while the settlement conference process is ongoing, except
37 for motions concerning compliance with this rule and its implementing
38 rules.

39 Nothing in this rule shall impair a lender who has complied with this
40 section from proceeding with a judicial or a non-judicial foreclosure
41 pursuant to article nine of the uniform commercial code.

42 § 2. This act shall take effect immediately.