STATE OF NEW YORK

4935--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 27, 2023

Introduced by M. of A. WEINSTEIN, WALLACE, WILLIAMS -- read once and referred to the Committee on Real Property Taxation -- recommitted to the Committee on Real Property Taxation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property tax law, in relation to tax lien foreclosure

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

Section 1. Subdivision 1 of section 924-a of the real property tax law, as amended by chapter 26 of the laws of 2003, is amended to read as follows:

1. The amount of interest to be added on all taxes received after the interest free period and all delinquent taxes shall be [~~one-twelfth the rate of interest as determined pursuant to subdivision two or two-a of this section rounded to the nearest one-hundredth of a percentage point~~] **sixteen percent per annum, or such other amount as prescribed by section fourteen-a of the banking law**, except as otherwise provided by a general or special law, or a local law adopted by a city pursuant to the municipal home rule law or any special law. Such interest shall be added for each month or fraction thereof until such taxes are paid.

§ 2. The real property tax law is amended by adding a new section 1185 to read as follows:

§ 1185. Homeowner bill of rights. Any owner of a residential property, as defined in section eleven hundred eleven of this article, who occupies such property as their primary residence (or whose heirs or distributees occupy the property as their primary residence where the homeowner is deceased) or any purchaser of a contract for a residential property (or successor in interest to such purchaser) subject to a tax lien on any parcel of real property, including those liens otherwise exempt under this article, shall have the following rights:

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

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(a) to have any foreclosure on any real property tax lien pursuant to section nine hundred two of this chapter be a judicial proceeding specific to each parcel;

(b) where the property is the primary residence of an owner entitled to tax exemption based on age, disability, or veteran status, a foreclosure may not be maintained;

(c) to not have exemptions removed or waived for nonpayment of property taxes;

(d) to be informed of the amount of tax due, the number of tax years for which the parcel has been in arrears, the date on which the redemption period ends, the accepted forms of payment, the location where payments shall be made, and the contact information for the responsible taxing authority, including but not limited to, the taxpayer advocate or other similar office within the taxing authority working with homeowners to resolve tax arrears;

(e) to receive pre-foreclosure notices, which shall be conditions precedent to maintenance of a foreclosure on any tax lien governed by the service requirements of section thirteen hundred four of the real property actions and proceedings law;

(f) to participate in a mandatory settlement conference process equivalent to the process required in mortgage foreclosure actions pursuant to rule thirty-four hundred eight of the civil practice law and rules, which shall be governed by the same good faith negotiation standard governing that provision, with the goal of: (i) negotiating a mutually agreeable resolution to avert foreclosure, including, but not limited to, establishing an affordable repayment plan, abatement of fees, penalties or other charges, forbearance of amounts due, or other home saving resolution; or (ii) whatever other purposes the court deems appropriate. A party prosecuting a tax lien foreclosure shall be prohibited from charging the homeowner for any fees associated with participating in the settlement conference. Explicitly incorporated into this bill of rights are subdivisions (c) through (n) of rule thirty-four hundred eight of the civil practice law and rules, and the office of court administration shall within ninety days of the effective date of this section promulgate rules implementing this mandatory settlement conference process which shall adapt the foregoing subdivisions to the needs of tax lien foreclosure cases and which shall, without limitation, include a notice of the scheduling of the conference that shall require the parties to appear at the conference with required information for a meaningful conference and with authority to engage in settlement negotiations;

(g) to apply any payments toward delinquent taxes in the order in which the liens became due;

(h) in the event that a residence is foreclosed upon, to receive any surplus following the sale of the property after the tax lien is satisfied ahead of unsecured creditors pursuant to section fifty-two hundred six of the civil practice law and rules; and

(i) where there is a transfer to a municipality pursuant to section eleven hundred thirty-six of this article or where there is a foreclosure auction with no bidders and the municipality takes possession of the property, any subsequent sale of the property must be an arm's length transaction in which the owner has an absolute right to any surplus funds.

§ 3. The real property tax law is amended by adding a new section 1185-a to read as follows:

§ 1185-a. Pre-foreclosure notices. (a) The pre-foreclosure notice required in subdivision (e) of section eleven hundred eighty-five of this title shall appear as follows:

"YOU MAY BE AT RISK OF FORECLOSURE ON A PROPERTY TAX LIEN

PLEASE READ THE FOLLOWING NOTICE CAREFULLY.

As of (date), your property taxes have not been paid for the following years and amounts each year:

The total needed to pay off all tax arrears as of the date of this notice is:

Under New York State law, we are required to send you this notice to inform you that you are at risk of losing your home.

Attached to this notice is a list of government approved housing counseling agencies in your area which provide free counseling. You can also call the NYS Office of the Attorney General's Homeowner Protection Program (HOPP) toll-free consumer hotline to be connected to free housing counseling or legal services in your area at 1-855-HOME-456 (1-855-466-3456), or visit their website at http://www.aghomehelp.com. A statewide listing by county is also available at https://www.dfs.ny.gov/consumer/mortgnysnpcounselingagencies.html. Qualified free help is available; watch out for companies or people who charge a fee for these services.

Housing counselors from New York-based agencies listed on the website above are trained to help homeowners who are having problems making their tax payments and can help you find the best option for your situation. If you wish, you may also contact our office directly at ____________ or our taxpayer advocate at ____________, who is responsible for working with homeowners to resolve tax arrears, and ask to discuss possible payment plans and other options.

PLEASE NOTE THAT IF YOU ARE A SENIOR CITIZEN, PHYSICALLY DISABLED, AND/OR A VETERAN, YOU MAY BE ENTITLED TO A PARTIAL EXEMPTION FROM PROPERTY TAXES or to have tax foreclosure delayed. The following exemptions that local rules allow that could prevent foreclosure in your case are:

____ Senior Citizen

____ Veteran

____ Physical Disability

We encourage you to contact our taxpayer advocate at the telephone number above if you have any questions about whether you qualify for any of these exemptions.

While we cannot assure that a mutually agreeable resolution is possible, we encourage you to take immediate steps to try to achieve a resolution. The longer you wait, the fewer options you may have.

If you have not taken any actions to resolve this matter within 90 days from the date this notice was mailed (or sooner if you cease to live in the dwelling as your primary residence), we may commence legal action or other remedies against you to foreclose the tax lien, which may eventually result in eviction from your home.

Under New York State law, you may be barred from entering into a payment plan or from being permitted to make any payment to save your home after the "Redemption Date".

In your case, the "Redemption Date" is ______.

IMPORTANT: You have the right to remain in your home until you receive a court order telling you to leave the property; however, you may lose the right to continue ownership of your home after the Redemption Date. If a foreclosure action is filed against you in court, you still have the right to remain in the home until a court orders you to leave.

This notice is not an eviction notice, and a foreclosure action has not yet been commenced against you."

(b) The notice required in subdivision (e) of section eleven hundred eighty-five of this title shall be sent by such taxing authority or purchaser of delinquent tax liens to the homeowner (or heirs or distributees if the homeowner is deceased), by registered or certified mail and also by first-class mail to the last known address of the homeowner, and to the residence subject to the tax lien. The notices required by subdivision (e) of section eleven hundred eighty-five of this title shall be sent by the taxing authority or purchaser of delinquent tax liens in a separate envelope from any other mailing or notice. Notice is considered given as of the date it is mailed. The notice required by subdivision (e) of section eleven hundred eighty-five of this title shall contain a current list of at least five housing counseling agencies serving the county where the property is located from the most recent listing available from the department of financial services. The list shall include the counseling agencies' last known addresses and telephone numbers. The department of financial services shall make available on its website a listing, by county, of such agencies. The taxing authority or purchaser of delinquent tax liens shall use such lists to meet the requirements of this section.

(c) For any homeowner known to have limited English proficiency, the notice required by subdivision (e) of section eleven hundred eighty-five of this title shall be in the homeowner's native language (or a language in which the homeowner is proficient), provided that the language is one of the six most common non-English languages spoken by individuals with limited English proficiency in the state of New York, based on United States census data. The department of financial services shall post the notices required by subdivision (e) of section eleven hundred eighty-five of this title on its website in the six most common non-English languages spoken by individuals with limited English proficiency in the state of New York, based on the United States census data.

§ 4. Section 1104 of the real property tax law is amended by adding two new subdivisions 3 and 4 to read as follows:

3. Notwithstanding the provisions of subdivision two of this section, every county, city and town shall comply with the requirements of sections eleven hundred eighty-five and eleven hundred eighty-five-a of this article.

4. Notwithstanding the provisions of subdivision two of this section, every county, city, and town shall comply with the requirements of title six of this article.

§ 5. Article 11 of the real property tax law is amended by adding a new title 7 to read as follows:

TITLE 7

ADDITIONAL PROTECTIONS

Section 1198. Notice of exemptions.

1198-a. Senior citizen delinquent tax deferral program.

1198-b. Repayment plan.

§ 1198. Notice of exemptions. Tax districts shall include a statement on every property tax collection notice notifying homeowners of available exemptions. The provision of this subdivision shall be met by providing a notice or legend sent on or with each tax bill to homeowners reading "IF YOU ARE A SENIOR CITIZEN, PHYSICALLY DISABLED, AND/OR A VETERAN, YOU MAY BE ENTITLED TO A PARTIAL EXEMPTION FROM PROPERTY TAXES OR TO HAVE TAX FORECLOSURE DELAYED", followed by the name and telephone number of a person or department selected by the tax district to respond to inquiries regarding tax exemptions, eligibility, and instructions on how to apply for such exemptions.

§ 1198-a. Senior citizen delinquent tax deferral program. 1. A request by an owner to defer delinquent taxes shall be granted by a tax district to an individual with an ownership interest in the property if:

(a) the property is a one-, two-, or three-family residential property;

(b) the property serves as the primary residence of the owner;

(c) all of the owners are at least seventy years of age or older, or in the case of property owned by husband and wife, one of the owners is at least seventy years of age;

(d) the gross income of the homeowner is at or below two hundred percent of the federal poverty level; and

(e) the deferral amount plus interest does not exceed eighty percent of the owner's equity in the property.

2. All amounts owed by the owner pursuant to this section shall become due immediately upon the occurrence of any of the following events:

(a) The owner ceases to own the residence.

(b) The residence ceases to be the owner's primary residence.

(c) The owner's equity in the residence falls below the required eligible amount pursuant to paragraph (e) of subdivision one of this section.

§ 1198-b. Repayment plan. 1. A residential owner of property with a tax delinquency exceeding five hundred dollars shall be entitled to enter into a repayment plan to cure a tax delinquency at any time until the date of redemption.

2. The term of the repayment plan shall be no less than eighteen months, unless a shorter duration is requested by the owner. The amount due under the agreement shall be paid, as nearly as possible, in equal amounts on each payment due date. The amount of each such payment shall be determined by dividing the amount due by the number of required installment payments.

3. No penalties shall be imposed and interest shall not accrue throughout the repayment plan period.

4. The owner shall be deemed to be in default of a payment plan agreement pursuant to this section upon the occurrence of any of the following events:

(a) Any installment payment is not made within forty-five days from the payment due date.

(b) Any current county tax, assessment, fee, or charge is not paid when due.

(c) The subject property is sold.

5. In the event of a default in payments, and after service of a twenty-day notice of default, the tax district shall have the right to require the entire unpaid balance, with interest, to be paid in full.

§ 6. The real property tax law is amended by adding a new section 1194-b to read as follows:

§ 1194-b. Proceeding for determining just compensation after foreclosure of tax lien by proceeding in rem. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Appraised value" shall mean a retrospective appraisal of the property effective as of the date of the loss of title by the former owners determined by an independent New York state licensed residential real estate appraiser.

(b) "Just compensation" shall mean the appraised value of the property less:

(i) all real property taxes, associated interest, and penalties reasonably related to the cost of the delinquency owed to the tax district;

(ii) reasonable attorney's fees and costs of the foreclosure proceeding;

(iii) reasonable appraisal costs; and

(iv) referee fees and costs.

(c) "Former owner" shall mean a party divested of title due to unpaid real property taxes or that party's successors, heirs, or assigns, or a representative of such successors, heirs, or assigns.

2. (a) (i) Not more than five days after a former owner is divested of title, the tax district shall serve upon such former owner, or such former owner's successors, heirs, or assigns, or a representative of such successors, heirs, or assigns, a notice of potential compensation. The tax district may serve anyone whose interest is claimed to be subject and subordinate to the foreclosed taxes with such notice of potential compensation.

(ii) Such notice of potential compensation shall be served upon the former owner by regular first class mail and by certified mail, return receipt requested, to the property address and the last known address of the former owner. If no address is provided for a property on the tax rolls, the tax district shall conduct a diligent inquiry for the address for each and every former owner and send the notice to such addresses.

(iii) Such notice of potential compensation must be provided in substantially the following form: "NOTICE OF POTENTIAL COMPENSATION. The tax lien foreclosure process for property located at (Property Address) has concluded and you are entitled to determination of just compensation through a court proceeding. You should consult an attorney who can assist you in this process. To be connected with a legal services or housing counseling organization near you, call 855-HOME-456 or visit homeownerhelpny.org."

(b) (i) Within sixty days of the loss of title resulting from a tax foreclosure, the tax district shall determine the appraised value of the property. Within ninety days of the loss of title resulting from a tax foreclosure, the tax district shall file with the office of the clerk where the property is located a notice of just compensation. Such notice shall be served personally upon the former owner and served by regular mail upon attorneys appearing on behalf of such former owners.

(ii) Such notice of just compensation shall include:

(A) an offer of just compensation;

(B) an itemization of deductions from the appraised value; and

(C) a copy of the written appraisal obtained by the tax district.

(c) (i) Within sixty days of the mailing by the tax district of the offer of just compensation, the former owner shall complete and serve upon the tax district a response to notice of just compensation.

(ii) Such response to notice of just compensation shall include an election by the former owner to either accept the tax district's offer or reject the offer and contest the appraised value.

3. (a) (i) Upon receipt of a response to notice of just compensation accepting the offer of just compensation, the former owner shall enter into a written agreement with the tax district accepting such offer.

(ii) Upon receipt of a response to notice of just compensation rejecting the offer of just compensation, the tax district shall enter into negotiations to reach a consensual agreement with the former owner. At all times, the tax district shall make every reasonable and expeditious effort to justly compensate the former owner for such real property by good faith negotiation and agreement.

(b) (i) If the former owner is dissatisfied with the result of the negotiations required pursuant to subparagraph (ii) of paragraph (a) of this subdivision, the former owner may submit to a court of competent jurisdiction a request for hearing to determine just compensation.

(ii) Within fourteen days of receipt of a request for hearing to determine just compensation, the court shall by reference or otherwise:

(A) direct the parties to exchange and file appraisal reports by a date certain before the hearing, to be completed at least twenty days before such hearing; and

(B) fix the place and time for such hearing to determine the just compensation.

(c) The former owner shall have a period of up to three years from the loss of title to either (i) accept the tax district's offer; or (ii) request a hearing to ascertain just compensation. In the event of any conflict, the three-year period specified in this paragraph shall control. Following such three-year period, funds held by the tax district after the payment of real property taxes, associated interest, and penalties reasonably related to the cost of the delinquency owed to the tax district shall be transferred to the New York state comptroller's office of unclaimed funds.

4. All tax districts shall review and amend existing legislation as necessary to establish procedures to carry out the provisions of this section.

§ 7. This act shall take effect immediately.