STATE OF NEW YORK

7546

2025-2026 Regular Sessions

IN ASSEMBLY

April 1, 2025

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

AN ACT to amend the real property actions and proceedings law and the civil practice law and rules, in relation to actions upon a subordinate bond or note

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

Section 1. Section 1302 of the real property actions and proceedings law, as amended by chapter 145 of the laws of 2022, is amended to read as follows:

§ 1302. Foreclosure of certain residential mortgages. 1. Any complaint served in a proceeding [~~initiated on a residential mortgage covering a one to four family dwelling pursuant to~~] **involving a home loan, as such term is defined in section thirteen hundred four of** this article**,** must contain an affirmative allegation that at the time the proceeding is commenced, the plaintiff:

(a) is the owner and holder of the subject mortgage and note, or has been delegated the authority to institute a mortgage foreclosure action by the owner and holder of the subject mortgage and note; [~~and~~]

(b) has complied with all of the provisions of section five hundred ninety-five-a of the banking law and any rules and regulations promulgated thereunder, and section six-l or six-m of the banking law, for loans governed by section six-l or six-m of the banking law, and section thirteen hundred four of this article for all residential mortgage loans covering a one to four family dwelling**;**

(c) has maintained or is in possession of a payment history of the subject loan, which includes a complete schedule of all transactions credited or debited to the mortgage loan account, including but not limited to any escrow account or suspense account, from the date of origination of the loan to the present; and

(d) if such plaintiff claims to possess the original note, such plaintiff has maintained or is in possession of a custodial file documenting such plaintiff's possession of the subject note, which includes the name of the entity that physically possesses the original note, the date on

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

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which that entity took physical possession of the original note, a chronological listing of the names of all prior entities that physically possessed the original note, the date of transfer of that note starting with the original lender, and the address where the original note is currently located.

2. It shall be a defense to an action to foreclose a mortgage that:

(a) the terms of the home loan or the actions of the lender violate any provision of section six-l or six-m of the banking law or section thirteen hundred four of this article, for loans governed by these provisions;

(b) the plaintiff's payment history for the subject loan does not include a complete schedule of all transactions credited or debited to the mortgage loan account, including any escrow account or suspense account, from the date of origination of the loan to the present; and

(c) if the plaintiff claims to possess the original note, the plaintiff's custodial file does not include the name of the entity that physically possesses the original note, the date on which that entity took physical possession of the original note, the address where the original note is located, a chronological listing of the names of all prior entities that physically possessed the original note and the date of transfer of that note starting with the original lender and, if the note is possessed by an entity other than the plaintiff, the authority under which an entity other than the plaintiff physically possesses the subject note for the plaintiff.

3. Any complaint served in a proceeding involving a home loan, as such term is defined in section thirteen hundred four of this article, in which the plaintiff is seeking to foreclose on a subordinate loan and such plaintiff purchased the subject subordinate loan when that loan was in default, the plaintiff must affirmatively allege the date such plaintiff purchased the subject loan and the amount such plaintiff paid for the subject loan. If the plaintiff purchased the subject loan as part of a portfolio of loans, the amount the plaintiff paid for the subject loan shall be determined by multiplying the total amount paid for the portfolio of loans by a ratio, that ratio being the unpaid principal balance at default for the subject loan divided by the total unpaid principal balance at default for all the loans in the portfolio.

§ 2. Section 1302-a of the real property actions and proceedings law, as added by chapter 739 of the laws of 2019, is amended to read as follows:

§ 1302-a. Defense of statute of limitations and lack of standing; not waived. 1. Notwithstanding the provisions of subdivision (e) of rule thirty-two hundred eleven of the civil practice law and rules, any objection or defense based on the statute of limitations in a foreclosure proceeding related to a home loan, as defined in paragraph (a) of subdivision six of section thirteen hundred four of this article, shall not be waived if a defendant fails to raise the objection or defense in a responsive pleading or pre-answer motion to dismiss.

2. Notwithstanding the provisions of subdivision (e) of rule thirty-two hundred eleven of the civil practice law and rules, any objection or defense based on the plaintiff's lack of standing in a foreclosure proceeding related to a home loan, as defined in paragraph (a) of subdivision six of section thirteen hundred four of this article, shall not be waived if a defendant fails to raise the objection or defense in a responsive pleading or pre-answer motion to dismiss. A defendant may not raise an objection or defense of lack of standing following a foreclo-

sure sale, however, unless the judgment of foreclosure and sale was issued upon defendant's default.

§ 3. The opening paragraph and subdivision 3 of section 1311 of the real property actions and proceedings law, as added by chapter 312 of the laws of 1962, are amended to read as follows:

Each of the following persons[~~, whose interest is claimed to be subject and subordinate to the plaintiff's lien,~~] shall be made a party defendant to the action**, and shall be necessary and indispensable parties to that action**:

3. Every person having any lien or incumbrance upon the real property [~~which is claimed to be subject and subordinate to the lien of the plaintiff~~].

§ 4. Section 1321 of the real property actions and proceedings law, as added by chapter 312 of the laws of 1962, subdivision 1 as amended by chapter 269 of the laws of 2020, is amended to read as follows:

§ 1321. [~~Default or admission~~] **Order of reference**. 1. [~~If the defendant fails to answer within the time allowed or the right of the plaintiff is admitted by the answer, upon~~] **Upon** motion of the plaintiff, the court shall ascertain and determine the amount due, or direct a referee to compute the amount due to the plaintiff and to such of the defendants as are prior incumbrancers of the mortgaged premises, and to examine and report whether the mortgaged premises can be sold in parcels and, if the whole amount secured by the mortgage has not become due, to report the amount thereafter to become due. Where the defendant is an infant, and has put in a general answer by [~~his~~] **such defendant's** guardian, or if any of the defendants be absentees, the order of reference also shall direct the referee to take proof of the facts and circumstances stated in the complaint and to examine the plaintiff or [~~his~~] **such plaintiff's** agent, on oath, as to any payments which have been made. The order of reference shall also include the name and telephone number of the mortgage servicer for a plaintiff involving a mortgage foreclosure of a one- to four-family residential property.

2. When [~~he~~] **the plaintiff** moves for judgment, the plaintiff shall show whether any of the defendants who have not appeared are absentees.

3. In any residential foreclosure action involving a home loan, as such term is defined in section thirteen hundred four of this article, in which the plaintiff is seeking to foreclose on a subordinate loan and such plaintiff purchased the subject subordinate loan when that loan was in default, the amount due shall not exceed the amount the plaintiff paid for the subject loan, as determined under section thirteen hundred two of this article, and the maximum rate of interest provided under section fourteen-a of the banking law accruing from the date the plaintiff purchased the subject loan.

§ 5. The opening paragraph of subdivision 4 of section 213 of the civil practice law and rules is amended to read as follows:

an action upon a bond or note, the payment of which is secured by a mortgage upon real property, or upon a bond or note and mortgage so secured, or upon a mortgage of real property, or any interest therein**, except for a subordinate bond or note purchased when such bond or note is in default**;

§ 6. The civil practice law and rules is amended by adding a new section 213-e to read as follows:

§ 213-e. Action upon a subordinate bond or note. Beginning January first, two thousand twenty-seven, an action upon a subordinate bond or note, the payment of which is secured by a mortgage upon real property, or upon a bond or note and mortgage so secured, or upon a mortgage of

real property, or any interest therein, where the subject bond or note is purchased when such bond or note was in default, shall be commenced within the shorter of (a) three years of the purchase of the bond or note or (b) the relevant time limit as provided by subdivision four of section two hundred thirteen of this article.

§ 7. Subdivision (h) of section 203 of the civil practice law and rules, as added by chapter 821 of the laws of 2022, is amended to read as follows:

(h) Claim and action upon certain instruments. Once a cause of action upon an instrument described in subdivision four of section two hundred thirteen **or section two hundred thirteen-e** of this article has accrued, no party may, in form or effect, unilaterally waive, postpone, cancel, toll, revive, or reset the accrual thereof, or otherwise purport to effect a unilateral extension of the limitations period prescribed by law to commence an action and to interpose the claim, unless expressly prescribed by statute.

§ 8. The opening paragraph of subdivision (a) of section 205-a of the civil practice law and rules, as added by chapter 821 of the laws of 2022, is amended to read as follows:

If an action upon an instrument described under subdivision four of section two hundred thirteen **or section two hundred thirteen-e** of this article is timely commenced and is terminated in any manner other than a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for any form of neglect, including, but not limited to those specified in subdivision three of section thirty-one hundred twenty-six, section thirty-two hundred fifteen, rule thirty-two hundred sixteen and rule thirty-four hundred four of this chapter, for violation of any court rules or individual part rules, for failure to comply with any court scheduling orders, or by default due to nonappearance for conference or at a calendar call, or by failure to timely submit any order or judgment, or upon a final judgment upon the merits, the original plaintiff, or, if the original plaintiff dies and the cause of action survives, [~~his or her~~] **such original plaintiff's** executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months following the termination, provided that the new action would have been timely commenced within the applicable limitations period prescribed by law at the time of the commencement of the prior action and that service upon the original defendant is completed within such six-month period. For purposes of this subdivision:

§ 9. Subdivision (a) of section 3012-b of the civil practice law and rules, as added by chapter 306 of the laws of 2013, is amended to read as follows:

(a) In any residential foreclosure action involving a home loan, as such term is defined in section thirteen hundred four of the real property actions and proceedings law, in which the defendant is a resident of the property which is subject to foreclosure, the complaint shall be accompanied by a certificate, signed by the attorney for the plaintiff, certifying that the attorney has reviewed the facts of the case and that, based on consultation with representatives of the plaintiff identified in the certificate and the attorney's review of pertinent documents, including the mortgage, security agreement and note or bond underlying the mortgage executed by defendant and all instruments of assignment, if any, [~~and~~] any other instrument of indebtedness including any modification, extension, and consolidation **agreement, and the payment history for the subject loan and the custodial file for the**

subject note as defined under section thirteen hundred two of the real property actions and proceedings law, to the best of such attorney's knowledge, information and belief there is a reasonable basis for the commencement of such action and that the plaintiff is currently the creditor entitled to enforce rights under such documents. If not attached to the summons and complaint in the action, a copy of the mortgage, security agreement and note or bond underlying the mortgage executed by defendant and all instruments of assignment, if any, and any other instrument of indebtedness including any modification, extension, and consolidation agreement, and the payment history for the subject loan and the custodial file for the subject note as defined under section thirteen hundred two of the real property actions and proceedings law shall be attached to the certificate.

§ 10. Subdivision (f) of rule 3408 of the civil practice law and rules, as amended by section 2 of part Q of chapter 73 of the laws of 2016, is amended to read as follows:

(f) Both the plaintiff and defendant shall negotiate in good faith to reach a mutually agreeable resolution, including but not limited to a loan modification, short sale, deed in lieu of foreclosure, or any other loss mitigation, if possible.

1. Compliance with the obligation to negotiate in good faith pursuant to this section shall be measured by the totality of the circumstances, including but not limited to the following factors:

[~~1.~~] (i) Compliance with the requirements of this rule and applicable court rules, court orders, and directives by the court or its designee pertaining to the settlement conference process;

[~~2.~~] (ii) Compliance with applicable mortgage servicing laws, rules, regulations, investor directives, and loss mitigation standards or options concerning loan modifications, short sales, and deeds in lieu of foreclosure; and

[~~3.~~] (iii) Conduct consistent with efforts to reach a mutually agreeable resolution, including but not limited to, avoiding unreasonable delay, appearing at the settlement conference with authority to fully dispose of the case, avoiding prosecution of foreclosure proceedings while loss mitigation applications are pending, and providing accurate information to the court and parties.

Neither of the parties' failure to make the offer or accept the offer made by the other party is sufficient to establish a failure to negotiate in good faith.

2. As provided for under section thirteen hundred twenty-one of the real property actions and proceedings law, it shall be unlawful for a plaintiff to demand payment in excess of the amount the plaintiff paid for a subordinate loan such plaintiff purchased in default, as determined under section thirteen hundred two of the real property actions and proceedings law, and the maximum rate of interest provided under section fourteen-a of the banking law accruing from the date the plaintiff purchased the subject loan. Any demand for a payment in excess of this amount, whether to reinstate the loan or through a repayment plan, loan modification or other loss mitigation option, shall also constitute a failure to negotiate in good faith.

§ 11. This act shall take effect on the one hundred twentieth day after it shall have become a law and shall apply to all actions filed on or after such effective date.