

# STATE OF NEW YORK

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8159

## IN SENATE

June 17, 2016

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Introduced by Sens. FLANAGAN, KLEIN, YOUNG -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to ... amend the real property actions and proceedings law and the civil practice law and rules, in relation to foreclosure proceedings and pre-foreclosure notices (Part Q)

### PART Q

Section 1. The real property actions and proceedings law is amended by adding a new section 1308 to read as follows:

**§ 1308. Inspecting, securing and maintaining vacant and abandoned residential real property. Notwithstanding any other provision of law to the contrary, the following subdivisions of this section shall only apply to vacant and abandoned one to four family residential real property, and any duties and responsibilities so prescribed by this section shall only apply to the first lien mortgage holder. Vacant and abandoned residential real property shall be defined pursuant to section thirteen hundred nine of this article. For each calendar year this section shall not apply to state or federally chartered banks, savings banks, savings and loan associations, or credit unions which: (1) originate, own, service and maintain their mortgages or a portion thereof; and (2) have less than three-tenths of one percent of the total loans in the state which they either originate, own, service, or maintain for the calendar year ending December thirty-first of the calendar year ending two years prior to the current calendar year. For any state or federally chartered banks, savings banks, savings and loan associations, or credit unions which originate, own, service and maintain between three-tenths of one percent and five-tenths of one percent of the total loans in the state which they either originate, own, service, or maintain for the calendar year ending December thirty-first of the calendar year ending two years prior to the current calendar year, the application of this section shall be prospective only.**

**1. Subject to bankruptcy filings, cease and desist orders, threats of violence, or active loss mitigation efforts, within ninety days of a borrower's delinquency, the servicer authorized to accept payment of the loan shall complete an exterior inspection of the subject property to determine occupancy. Thereafter, throughout the delinquency of the loan, the servicer shall conduct an exterior inspection of the property every twenty-five to thirty-five days, at different times of the day.**

**2. If a borrower is delinquent and subject to property inspections pursuant to subdivision one of this section, the servicer shall secure and maintain the residential real property pursuant to subdivisions three, four, five, six, and seven of this section where the servicer has a reasonable basis to believe that the residential real property is vacant and abandoned, as defined in section thirteen hundred nine of this chapter, and is not otherwise restricted from accessing the property.**

**3. Within seven business days of determining that the property is vacant and abandoned based on the criteria set forth in subdivision two of this section, the servicer shall post a notice on an easily accessible part of the property that would be reasonably visible to the borrower, property owner or occupant, and monitor the property for any change in occupancy or contact with the borrower, property owner or occupant, and monitor to ensure that the notice remains posted so long as the duty to maintain applies. The posted notice shall provide the servicer's toll free number or similar contact information.**

**4. If the posted notice is not responded to or persists for seven consecutive calendar days without contact with the borrower, property owner or occupant indicating that the property is not vacant or abandoned, or if an emergent property condition that could reasonably damage, destroy or harm the property arises, the servicer shall:**

**(a) in cases where the property contains two or more points of ingress or egress, replace no more than one door lock to provide subsequent access to the property;**

**(b) secure, replace or board up broken doors and windows;**

**(c) secure any part of the property that may be deemed an attractive nuisance including, but not limited to, a water feature that could create a drowning risk, refrigerator or freezer units, outbuildings, wells or septic tanks;**

**(d) take reasonable measures to ensure that pipes, ducts, conductors, fans and blowers do not discharge harmful gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate waste directly upon abutting or adjacent public or private property or that of another tenant;**

**(e) where appropriate, winterize the applicable plumbing and heating systems;**

**(f) provide basic utilities including, but not limited to, water, electricity, natural gas, propane and sewer service, as appropriate and when allowed by the local utility provider, that are needed for the operation of a sump pump or dehumidifier, or when there are jointly owned or shared utilities with adjoining properties or units, except for turning off water service to prevent flooding or water leaks in the property, or when other utility service could reasonably create a hazard to the property or an unauthorized occupant or person entering the property;**

**(g) remove and remediate any significant health and safety issues, including outstanding code violations;**

**(h) take reasonable measures to prevent the growth of harmful mold;**

**(i) respond to government inquiries regarding property condition, subject to restrictions regarding financial privacy; and**

**(j) ensure that the notice required to be posted in subdivision three of this section remains posted on an easily accessible part of the property that would be reasonably visible to the borrower, property owner or occupant so long as the duty to maintain applies.**

**5. At no time shall a servicer remove personal property from the property unless:**

**(a) the personal property poses a significant health and safety issue; or**

**(b) there is an uncontested order to do so by a governmental entity.**

**6. A servicer who has determined a property to be vacant and abandoned and who has secured the same shall take reasonable and necessary actions to maintain the property until the earlier of the following events:**

**(a) an occupant of the property has asserted his or her right to occupy the property, or the servicer or its agents have received threats of violence;**

**(b) the borrower has filed for bankruptcy;**

**(c) a court has ordered the servicer to stop any maintenance of the property;**

**(d) a homeowners' association or cooperative has prevented the servicer from gaining access to or maintaining the property;**

**(e) the property has been sold or transferred to a new owner;**

**(f) the servicer or investor subject to the provisions of this section has released the lien on the property; or**

**(g) the mortgage note has been assigned, transferred or sold to another servicer.**

**7. Reasonable and necessary actions to maintain the property include, but are not limited to:**

**(a) ensuring that the property remains secure pursuant to subdivisions four, five and six of this section; and**

**(b) maintaining property in a manner consistent with the standards set forth in sections 301, 302 (excluding 302.2, 302.6 and 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1, and 308.1 of the New York property maintenance code, to the extent**

that the mortgage servicer or its agents are able to obtain necessary or required permits or approvals.

8. (a) Violations of this section may be heard before a hearing officer or a court of competent jurisdiction. If it shall appear to the satisfaction of the hearing officer or the court, based on the preponderance of the evidence, that the mortgagee or agent of a mortgagee has violated this section, a civil penalty may be issued by the hearing officer or the court in the amount of up to five hundred dollars per day per property for each day the violation persisted.

(b) The superintendent of financial services may, as appropriate and in his or her sole discretion, pursue any suspected violation of this section. Before taking such action, the superintendent shall give the lender, assignee or mortgage loan servicer at least seven days' notice of the violation.

(c) In addition to the authority granted to the department of financial services, the municipality in which such residential real property is located, shall have the right to enforce the obligations described in this section in any court of competent jurisdiction after at least seven days' notice to the lender, assignee or mortgage loan servicer, unless the property requires emergency repairs to address a threat to public health, safety or welfare, in which case the municipality may enter and maintain the property to cure the emergency, provided however, notice shall be provided to the lender, assignee or mortgage loan servicer as soon as practicable. Any municipality acting pursuant to this subdivision shall have a cause of action in any court of competent jurisdiction against the lender, assignee or mortgage loan servicer to recover costs incurred as a result of maintaining the property. Such entity shall provide the department of financial services with written notice at least ten days prior to bringing an action pursuant to this subdivision; provided, however, that failure to comply with this notice requirement shall not be a defense to the entity proceeding pursuant to this subdivision. The authority provided by this subdivision shall be in addition to, and shall not be deemed to diminish or reduce, any rights of the parties described in this section under existing law against the mortgagor of such property for failure to maintain such property. Any civil penalty imposed pursuant to paragraph (a) of this subdivision in an action brought by a municipality pursuant to this paragraph shall be retained by such municipality.

(d) The department of financial services is authorized and empowered to adopt such rules and regulations as may, in the judgment of the superintendent of financial services, be necessary for the effective implementation, administration, operation and enforcement of this section.

9. A servicer who peacefully enters a vacant and abandoned property in order to maintain pursuant to this section shall be immune from liability when such servicer is making reasonable efforts to comply with the statute.

10. The provisions of this section are subject to federal laws, court orders and investor and insurer guidelines.

**11. For all state or federally chartered banks, savings banks, savings and loan associations, credit unions, or servicers for which the provisions of this section do not apply, pursuant to the opening paragraph of this section, any agreement between such state or federally chartered banks, savings banks, savings and loan associations, credit unions, or servicers and the department of financial services that is associated with the maintenance and repair of vacant and abandoned property shall remain in full force and effect between the aforementioned parties for so long as the terms and conditions of such agreement remain in effect.**

**12. The department of financial services shall issue such rules and regulations necessary to implement the terms of this section, including but not limited to rules and regulations pertaining to the reporting of financial information that state or federally chartered banks, savings banks, savings and loan associations, or credit unions must provide to implement this section.**

**13. No local law, ordinance, or resolution shall impose a duty to maintain vacant and abandoned property as defined in section thirteen hundred nine of this article in a manner inconsistent with the provisions of this section that are related to maintenance as provided under subdivisions three, four, five, six and seven of this section, or establish related penalties nor other monetary obligations, with respect to a state or federally chartered bank, savings bank, savings and loan association or credit union that originates, owns, services or maintains a mortgage related to such property.**

**No local law, ordinance, or resolution shall impose a duty to maintain vacant and abandoned property upon any state or federally chartered bank, savings bank, savings and loan association or credit union that originates, owns, services or maintains a mortgage related to such property for which the provisions of this section, pursuant to the opening paragraph of this section, do not apply.**

§ 2. Rule 3408 of the civil practice law and rules, as added by chapter 472 of the laws of 2008, subdivision (a) as amended by chapter 306 of the laws of 2013, subdivisions (d), (e), (f), (g) and (h) as added by chapter 507 of the laws of 2009, is amended to read as follows:

Rule 3408. Mandatory settlement conference in residential foreclosure actions. (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 subject to foreclosure, plaintiff shall file proof of service within twenty days of such service, however service is made, and the court shall hold a mandatory conference within sixty days after the date when proof of service upon such defendant is filed with the county clerk, or on such adjourned date as has been agreed to by the parties, for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties under the mortgage loan documents, including, but not limited to: **1.** determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to, [~~and for~~] **including, but not limited to,**

**a loan modification, short sale, deed in lieu of foreclosure, or any other loss mitigation option; or 2.** whatever other purposes the court deems appropriate.

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

(c) At any conference held pursuant to this section, the plaintiff **and the defendant** shall appear in person or by counsel, and ~~[if appearing by counsel, such counsel]~~ **each party's representative at the conference** shall be fully authorized to dispose of the case. ~~[The defendant shall appear in person or by counsel.]~~ If the defendant is appearing pro se, the court shall advise the defendant of the nature of the action and his or her rights and responsibilities as a defendant. Where appropriate, the court may permit a representative of the plaintiff **or the defendant** to attend the settlement conference telephonically or by video-conference.

(d) Upon the filing of a request for judicial intervention in any action pursuant to this section, the court shall send either a copy of such request or the defendant's name, address and telephone number (if available) to a housing counseling agency or agencies on a list designated by the division of housing and community renewal for the judicial district in which the defendant resides. Such information shall be used by the designated housing counseling agency or agencies exclusively for the purpose of making the homeowner aware of housing counseling and foreclosure prevention services and options available to them.

(e) The court shall promptly send a notice to parties advising them of the time and place of the settlement conference, the purpose of the conference and the requirements of this section. The notice shall be in a form prescribed by the office of court administration, or, at the discretion of the office of court administration, the administrative judge of the judicial district in which the action is pending, and shall advise the parties of the documents that they ~~[should]~~ **shall** bring to the conference.

**1.** For the plaintiff, such documents ~~[should]~~ **shall** include, but are not limited to, **(i)** the payment history~~;~~; **(ii)** an itemization of the amounts needed to cure and pay off the loan~~;~~~~and~~; **(iii)** the mortgage and note **or copies of the same;** **(iv)** **standard application forms and a description of loss mitigation options, if any, which may be available to the defendant; and** **(v)** **any other documentation required by the presiding judge.** If the plaintiff is not the owner of the mortgage and note, the plaintiff shall provide the name, address and telephone number of the legal owner of the mortgage and note. **For cases in which the lender or its servicing agent has evaluated or is evaluating eligibility for home loan modification programs or other loss mitigation options, in addition to the documents listed above, the plaintiff shall bring a summary of the status of the lender's or servicing agent's evaluation for such modifications or other loss mitigation options, including, where applicable, a list of outstanding items**

required for the borrower to complete any modification application, an expected date of completion of the lender's or servicer agent's evaluation, and, if the modification(s) was denied, a denial letter or any other document explaining the reason(s) for denial and the data input fields and values used in the net present value evaluation. If the modification was denied on the basis of an investor restriction, the plaintiff shall bring the documentary evidence which provides the basis for the denial, such as a pooling and servicing agreement.

2. For the defendant, such documents [~~should~~] shall include, but are not limited to, [~~proof of current income such as the two most recent pay stubs, most recent tax return and most recent property tax statements~~] if applicable, information on current income tax returns, expenses, property taxes and previously submitted applications for loss mitigation; benefits information; rental agreements or proof of rental income; and any other documentation relevant to the proceeding required by the presiding judge.

(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. 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. 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. 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. 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.

(g) The plaintiff must file a notice of discontinuance and vacatur of the lis pendens within [~~one hundred fifty days~~] ninety days after any settlement agreement or loan modification is fully executed.

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

(i) The court may determine whether either party fails to comply with the duty to negotiate in good faith pursuant to subdivision (f) of this section, and order remedies pursuant to subdivisions (j) and (k) of this section, either on motion of any party or sua sponte on notice to the parties, in accordance with such procedures as may be established by the court or the office of court administration. A referee, judicial hearing officer, or other staff designated by the court to oversee the settlement conference process may hear and report findings of fact and conclusions of law, and may make reports and recommendations for relief to the court concerning any party's failure to negotiate in good faith pursuant to subdivision (f) of this section.

(j) Upon a finding by the court that the plaintiff failed to negotiate in good faith pursuant to subdivision (f) of this section, and order remedies pursuant to this subdivision and subdivision (k) of this section the court shall, at a minimum, toll the accumulation and collection of interest, costs, and fees during any undue delay caused by the plaintiff, and where appropriate, the court may also impose one or more of the following:

1. Compel production of any documents requested by the court pursuant to subdivision (e) of this section or the court's designee during the settlement conference;

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

3. The court may award actual damages, fees, including attorney fees and expenses to the defendant as a result of plaintiff's failure to negotiate in good faith; or

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

(k) Upon a finding by the court that the defendant failed to negotiate in good faith pursuant to subdivision (f) of this section, the court shall, at a minimum, remove the case from the conference calendar. In considering such a finding, the court shall take into account equitable factors including, but not limited to, whether the defendant was represented by counsel.

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

1. advise the defendant of the requirement to answer the complaint;

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

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

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

**At the first conference held pursuant to this section, the court shall also provide the defendant with a copy of the Consumer Bill of Rights provided for in section thirteen hundred three of the real property actions and proceedings law.**

**(m) A defendant who appears at the settlement conference but who failed to file a timely answer, pursuant to rule 320 of the civil practice law and rules, shall be presumed to have a reasonable excuse for the default and shall be permitted to serve and file an answer, without any substantive defenses deemed to have been waived within thirty days of initial appearance at the settlement conference. The default shall be deemed vacated upon service and filing of an answer.**

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

§ 3. Subdivision (a) of rule 3408 of the civil practice law and rules, as added by chapter 472 of the laws of 2008, is amended to read as follows:

(a) In any residential foreclosure action involving a high-cost home loan consummated between January first, two thousand three and September first, two thousand eight, or a subprime or nontraditional home loan, as those terms are defined under section thirteen hundred four of the real property actions and proceedings law, in which the defendant is a resident of the property subject to foreclosure, the court shall hold a mandatory conference within sixty days after the date when proof of service is filed with the county clerk, or on such adjourned date as has been agreed to by the parties, for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties under the mortgage loan documents, including, but not limited to: **1.** determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to ~~[, and for]~~ **including, but not limited to, a loan modification, short sale, deed in lieu of foreclosure, or any other loss mitigation option; or 2.** whatever other purposes the court deems appropriate.

§ 4. The real property actions and proceedings law is amended by adding two new sections 1309 and 1310 to read as follows:

**§ 1309. Expedited application for judgment of foreclosure and sale for vacant and abandoned property. 1. The plaintiff in any foreclosure proceeding may make an application by notice of motion or order to show cause for a judgment of foreclosure and sale on the grounds that the subject property is vacant and abandoned. The motion or order to show cause shall include the last known address of the borrower and the property address. Notwithstanding subdivision (m) of rule thirty-four hundred eight of the civil practice law and rules no such application may be made until the defendant's time to answer the complaint in the foreclosure proceeding shall have expired. Such application shall be served on defendant, regardless of whether a defendant has filed an answer or appeared in the case. Such application shall: (a) state in bold letters, on the first page of the**

notice of motion or order to show cause: (i) "The plaintiff in this lawsuit has applied for an expedited judgment of foreclosure and sale of your property on the ground that it is vacant and abandoned"; (ii) "Your property may be foreclosed upon and sold without any further proceedings if you do not respond to this motion by or on the return date, which is \_\_\_\_\_"; (iii) "You have the right to stay in your property until a court orders you to leave"; and (iv) "You may respond to this motion by either submitting a written document or by appearing in court on the return date."; (b) be supported by affidavit and other proof, including but not limited to: (i) proof of ownership of the mortgage and the note, (ii) photographs evidencing that the subject property is vacant and abandoned as provided for under subdivision two of this section, and (iii) if available, utility company records or other documentation evidencing the vacant and abandoned status of the premises; (c) set forth, supported by documentary evidence, the sums alleged to be due and owing upon the subject mortgage and note, including the current principal balance and a detailed and itemized account of each fee, each cost, and a calculation of interest accrued; and (d) request that the court confirm the sums due and owing upon the subject mortgage and note without appointment of a referee. The court shall promptly send a notice to the defendant of the plaintiff's notice of motion or order to show cause for a judgement of foreclosure and sale on the grounds that the subject property is vacant and abandoned. The notice shall advise the defendant that the lender is asking the court to expedite a judgement of foreclosure and sale of his or her property on the ground that it is vacant and abandoned and about the time and place of the court date. The notice shall be in a form prescribed by the courts, or, at the discretion of the courts.

2. (a) As used in this section, "vacant and abandoned residential property" means residential real property, as defined in section thirteen hundred five of this article, with respect to which the plaintiff has proven, by preponderance of the evidence, that it has conducted at least three consecutive inspections of such property, with each inspection conducted twenty-five to thirty-five days apart and at different times of the day, and at each inspection (i) no occupant was present and there was no evidence of occupancy on the property to indicate that any persons are residing there; and (ii) the residential real property was not being maintained in a manner consistent with the standards set forth in New York property maintenance code chapter 3 sections 301, 302 (excluding 302.2, 302.6, 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1 and 308.1.

(b) Residential real property will also be deemed vacant and abandoned if:

(i) A court or other appropriate state or local governmental entity has formally determined, following due notice to the borrower at the property address and any other known addresses, that such residential real property is vacant and abandoned; or

(ii) Each borrower and owner has separately issued a sworn written statement, expressing his or her intent to vacate and abandon the property and an inspection of the property shows no evidence of occupancy to indicate that any persons are residing there.

(c) Evidence of lack of occupancy shall include but not be limited to the following conditions: (i) overgrown or dead vegetation; (ii) accumulation of newspapers, circulars,

flyer or mail; (iii) past due utility notices, disconnected utilities, or utilities not in use; (iv) accumulation of trash, refuse or other debris; (v) absence of window coverings such as curtains, blinds, or shutters; (vi) one or more boarded, missing or broken windows; (vii) the property is open to casual entry or trespass; or (viii) the property has a building or structure that is or appears structurally unsound or has any other condition that presents a potential hazard or danger to the safety of persons.

(d) Residential real property will not be deemed vacant and abandoned if, on the property:

(i) There is an unoccupied building that is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion;

(ii) There is a building occupied on a seasonal basis, but otherwise secure;

(iii) There is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute of which the servicer has actual notice;

(iv) There is a building damaged by a natural disaster and one or more owner intends to repair and reoccupy the property; or

(v) There is a building occupied by the mortgagor, a relative of the mortgagor or a tenant lawfully in possession.

3. In connection with an application for a judgment of foreclosure and sale on the ground that the subject property is vacant and abandoned, the court may require the plaintiff or an agent to appear to provide testimony in support of the application.

4. The court shall make a written finding as soon as practicable as to whether the plaintiff has proved that the property to be foreclosed upon pursuant to this section is vacant and abandoned pursuant to subdivision two of this section and, if the court determines that the property is vacant and abandoned, it shall set forth: (a) the evidence relied upon by the court in finding that the property is vacant and abandoned; (b) the evidence showing that the plaintiff 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 of same; and (c) the sums due and owing upon the subject mortgage and note after a review of the detailed and itemized account of each fee, each cost, and a calculation of interest accrued.

5. With respect to foreclosure actions brought pursuant to this section:

(a) A judgment of foreclosure and sale shall not be entered pursuant to this section if the mortgagor or any other defendant has filed an answer, appearance, other written objection that is not withdrawn, or has otherwise demonstrated an intention to contest the foreclosure action.

(b) A denial of a judgment of foreclosure and sale pursuant to this section where the court does not find that the mortgaged property is vacant and abandoned shall not be deemed to be on the merits for purposes of any other proceeding with respect to such real property.

6. It shall be unlawful for a lender, assignee, mortgage loan servicer, or a third party agent or other person acting on behalf of a lender, assignee or mortgage loan servicer to enter residential real property that is not vacant and abandoned for the purpose of forcing, intimidating, harassing or coercing a lawful occupant of such residential property to vacate that property in order to render the property vacant and abandoned, or to otherwise force, intimidate, harass, or coerce a lawful occupant of residential real property to vacate that property so that it may be deemed vacant and abandoned, provided however, a lender, assignee, mortgage loan servicer, or a third party agent or other person acting on behalf of a lender, assignee or mortgage loan servicer who peacefully enters a vacant and abandoned property in order to render the property vacant and abandoned shall be immune from liability when such lender, assignee, mortgage loan servicer, third party agent or other person acting on behalf of a lender, assignee or mortgage loan servicer is making reasonable efforts to comply with this section.

7. The chief administrative judge of the courts shall adopt such rules as he or she deems necessary to expeditiously implement the provisions of this section.

§ 1310. Vacant and abandoned property; statewide vacant and abandoned property electronic registry. 1. The department of financial services shall maintain a statewide vacant and abandoned property registry in the form of an electronic database. The department of financial services may, in accordance with the applicable provisions of the state finance law, retain a private contractor to administer such database for the purposes of satisfying this requirement. The information provided to the department of financial services pursuant to this section shall be deemed and treated confidential, provided however, the superintendent of financial services, in her or his sole discretion, may release the information if it is in the best interest of the public. Any such released information shall continue to be treated confidentially by the parties. The department of financial services shall, upon written request, provide public officials of any state district, county, city, town or village with access to information specific to such public official's district, county, city, town or village maintained on such database to further the purposes of this section, section thirteen hundred seven of this article or article nineteen-A of this chapter, or any other related law, code, rule, regulation or ordinance.

2. A lender, assignee or mortgage loan servicer shall submit or cause to be submitted to the department of financial services information required by the superintendent of financial services about any vacant and abandoned residential real property, as that term is defined in subdivision two of section thirteen hundred nine of this article, or as the superintendent of financial services may otherwise define that term, within twenty-one business days of when the lender, assignee or mortgage loan servicer learns, or should have learned, that such property is vacant and abandoned. Such information shall, at a minimum, include: (a) the current name, address and contact information for the lender,

assignee or mortgage loan servicer responsible for maintaining the vacant property; (b) whether a foreclosure action has been filed for the property in question, and, if so, the date on which the foreclosure action was commenced; and (c) the last known address and contact information for the mortgagor(s) of record.

3. Where any of the information contained in a lender's, assignee's or mortgage loan servicer's initial submission to the registry has materially changed since such submission, such lender, assignee or mortgage loan servicer shall make an amended submission to the registry not later than thirty days after the lender, assignee or mortgage loan servicer learns, or reasonably should have learned, of the new or changed information.

4. The department of financial services is authorized and empowered to adopt such rules and regulations as may in the judgment of the superintendent of financial services necessary for the effective administration and operation of such registry, including but not limited to rules and regulations governing access to the registry and specifying the manner and frequency of registration and the information that must be provided. The superintendent of financial services may amend such regulations from time to time as necessary to effectuate the purpose of this section and section thirteen hundred seven of this article.

5. The department of financial services shall establish and maintain a toll-free hotline that neighbors of real property that is, or appears to be, vacant and abandoned residential real property, as such term is defined in subdivision two of section thirteen hundred nine of this article, and other community residents can use to report to the superintendent of financial services any hazards, blight or other concerns related to such property. The department of financial services shall include on its official public website information about such toll-free hotline.

No local law, ordinance, or resolution shall impose a duty to register vacant and abandoned property as defined in section thirteen hundred nine of the article in a manner inconsistent with the provisions of this section that are related to registration as provided under section thirteen hundred ten of this article or establish related penalties or other monetary obligation, with respect to a state or federally chartered bank, savings bank, savings and loan association or credit union that originates, owns, services or maintains a mortgage related to such property.

No local law, ordinance, or resolution shall impose a duty to maintain vacant and abandoned property upon any state or federally chartered bank, savings bank, savings and loan association or credit union that originates, owns, services or maintains a mortgage related to such property for which the provisions of this section, pursuant to the opening paragraph of section thirteen hundred eight of this article, do not apply.

§ 5. Subdivision 3 of section 1303 of the real property actions and proceedings law, as amended by chapter 507 of the laws of 2009 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended and a new subdivision 3-a is added to read as follows:

3. The notice to any mortgagor required by paragraph (a) of subdivision one of this section shall appear as follows:

#### Help for Homeowners in Foreclosure

New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully. Summons and Complaint

You are in danger of losing your home. If you fail to respond to the summons and complaint in this foreclosure action, you may lose your home. Please read the summons and complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself. Sources of Information and Assistance

The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process.

To locate an entity near you, you may call the toll-free helpline maintained by the New York State Department of Financial Services at (enter number) or visit the Department's website at (enter web address).

**Rights and Obligations YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right to stay in your home during the foreclosure process. You are not required to leave your home unless and until your property is sold at auction pursuant to a judgment of foreclosure and sale. Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accordance with state and local law.** Foreclosure rescue scams

Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

**3-a. No later than sixty days after the effective date of this subdivision, the department of financial services shall publish a Consumer Bill Of Rights, in consultation with all stakeholders, which shall detail the rights and responsibilities of the plaintiff and defendant in a foreclosure proceeding. Such Bill of Rights shall be updated on an annual basis and as appropriate.**

§ 6. Section 1304 of the real property actions and proceedings law, as added by chapter 472 of the laws of 2008, subdivision 1 as amended and subdivision 6 as added by chapter 155 of the laws of 2012, and subdivisions 2 and 5 as amended by chapter 507 of the laws of 2009, and

subdivision 2 as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

§ 1304. Required prior notices. 1. Notwithstanding any other provision of law, with regard to a home loan, at least ninety days before a lender, an assignee or a mortgage loan servicer commences legal action against the borrower, **or borrowers at the property address and any other address of record**, including mortgage foreclosure, such lender, assignee or mortgage loan servicer shall give notice to the borrower in at least fourteen-point type which shall include the following:

"YOU [~~COULD LOSE YOUR HOME~~] **MAY BE AT RISK OF FORECLOSURE**. PLEASE READ THE FOLLOWING NOTICE CAREFULLY"

"As of \_\_\_\_, your home loan is \_\_\_\_ days **and dollars** in default. 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. [~~You can cure this default by making the payment of \_\_\_\_\_ dollars by \_\_\_\_.~~]

[~~If you are experiencing financial difficulty, you should know that there are several options available to you that may help you keep your home.~~] Attached to this notice is a list of government approved housing counseling agencies in your area which provide free [~~or very low-cost~~] counseling. [~~You should consider contacting one of these agencies immediately. These agencies specialize in helping homeowners who are facing financial difficulty. Housing counselors can help you assess your financial condition and work with us to explore the possibility of modifying your loan, establishing an easier payment plan for you, or even working out a period of loan forbearance.~~] **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 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 [http://www.dfs.ny.gov/consumer/mortg\\_nys\\_np\\_counseling\\_agencies.htm](http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm). 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 mortgage payments and can help you find the best option for your situation.** If you wish, you may also contact us directly at \_\_\_\_\_ and ask to discuss possible options.

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 [~~this matter is not resolved~~] **you have not taken any actions to resolve this matter** within 90 days from the date this notice was mailed, we may commence legal action against you (or sooner if you cease to live in the dwelling as your primary residence.)

If you need further information, please call the New York State Department of Financial Services' toll-free helpline at (show number) or visit the Department's website at (show web address)[<sup>12</sup>].

**IMPORTANT: You have the right to remain in your home until you receive a court order telling you to leave the property. 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. You legally remain the owner of and are responsible for the property until the property is sold by you or by order of the court at the conclusion of any foreclosure proceedings. This notice is not an eviction notice, and a foreclosure action has not yet been commenced against you.**

2. Such notice shall be sent by such lender, assignee (**including purchasing investor**) or mortgage loan servicer to the borrower, by registered or certified mail and also by first-class mail to the last known address of the borrower, and [~~if different,~~] to the residence that is the subject of the mortgage. Such notice shall be sent by the lender, assignee or mortgage loan servicer in a separate envelope from any other mailing or notice. Notice is considered given as of the date it is mailed. The notice shall contain a **current** list of at least five housing counseling agencies [~~as designated by the division of housing and community renewal, that serve the region where the borrower resides~~] **servicing the county where the property is located from the most recent listing available from department of financial services.** The list shall include the counseling agencies' last known addresses and telephone numbers. The department of financial services [~~and the division of housing and community renewal~~] shall make available on [~~their respective~~] **its** websites a listing, by [~~region~~] **county**, of such agencies. The lender, assignee or mortgage loan servicer shall use [~~either of these~~] **such** lists to meet the requirements of this section.

3. The ninety day period specified in the notice contained in subdivision one of this section shall not apply, or shall cease to apply, if the borrower has filed [~~an application for the adjustment of debts of the borrower or an order for relief from the payment of debts,~~] **for bankruptcy protection under federal law,** or if the borrower no longer occupies the residence as the borrower's principal dwelling. **Nothing herein shall relieve the lender, assignee or mortgage loan servicer of the obligation to send such notice, which notice shall be a condition precedent to commencing a foreclosure proceeding.**

4. The notice and the ninety day period required by subdivision one of this section need only be provided once in a twelve month period to the same borrower in connection with the same loan **and same delinquency. Should a borrower cure a delinquency but re-default in the same twelve month period, the lender shall provide a new notice pursuant to this section.**

5. **For any borrower known to have limited English proficiency, the notice required by subdivision one of this section shall be in the borrower's native language (or a language in which the borrower 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 notice required by subdivision one of this section 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.**

**6.** (a) "Home loan" means a loan, including an open-end credit plan, other than a reverse mortgage transaction, in which:

(i) The borrower is a natural person;

(ii) The debt is incurred by the borrower primarily for personal, family, or household purposes;

(iii) The loan is secured by a mortgage or deed of trust on real estate improved by a one to four family dwelling, or a condominium unit, in either case, used or occupied, or intended to be used or occupied wholly or partly, as the home or residence of one or more persons and which is or will be occupied by the borrower as the borrower's principal dwelling; and

(iv) The property is located in this state.

(b) "Lender" means a mortgage banker as defined in paragraph (f) of subdivision one of section five hundred ninety of the banking law or an exempt organization as defined in paragraph (e) of subdivision one of section five hundred ninety of the banking law.

~~[6.]~~ **7.** The department of financial services shall prescribe the telephone number and web address to be included in the notice.

§ 7. Subdivisions 1, 2, 5 and 6 of section 1304 of the real property actions and proceedings law, subdivision 1 as amended and subdivision 6 as added by chapter 155 of the laws of 2012, and subdivisions 2 and 5 as added by chapter 472 of the laws of 2008, subdivision 2 and paragraph (f) of subdivision 5 as further amended by section 104 of part A of chapter 62 of the laws of 2011, are amended to read as follows:

1. Notwithstanding any other provision of law, with regard to a high-cost home loan, as such term is defined in section six-1 of the banking law, a subprime home loan or a non-traditional home loan, at least ninety days before a lender or a mortgage loan servicer commences legal action against the borrower, including mortgage foreclosure, the lender or mortgage loan servicer shall give notice to the borrower(s) **at the property address and any other address of record** in at least fourteen-point type which shall include the following:

"YOU [~~COULD LOSE YOUR HOME~~] **MAY BE AT RISK OF**

**FORECLOSURE.** PLEASE READ THE FOLLOWING NOTICE CAREFULLY"

"As of \_\_\_\_, your home loan is \_\_\_\_ days **and dollars** in default. 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. **[You can cure this default by making the payment of \_\_\_\_\_ dollars by \_\_\_\_.] There may be**

**options available to you to keep your home. This may include applying for a loan modification of your mortgage, or reinstating your loan by making the payment.**

~~[If you are experiencing financial difficulty, you should know that there are several options available to you that may help you keep your home.]~~ Attached to this notice is a list of government approved housing counseling agencies in your area which provide free or very low-cost counseling. ~~[You should consider contacting one of these agencies immediately. These agencies specialize in helping homeowners who are facing financial difficulty. Housing counselors can help you assess your financial condition and work with us to explore the possibility of modifying your loan, establishing an easier payment plan for you, or even working out a period of loan forbearance.]~~ **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 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 [http://www.dfs.ny.gov/consumer/mortg\\_nys\\_np\\_counseling\\_agencies.htm](http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm). 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 mortgage payments and can help you find the best option for your situation.** If you wish, you may also contact us directly at \_\_\_\_\_ and ask to discuss possible options.

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 ~~[this matter is not resolved]~~ **you have not taken any actions to resolve this matter** within 90 days from the date this notice was mailed, we may commence legal action against you (or sooner if you cease to live in the dwelling as your primary residence.)

If you need further information, please call the New York State Department of Financial Services' toll-free helpline at (show number) or visit the Department's website at (show web address)".

**IMPORTANT: You have the right to remain in your home until you receive a court order telling you to leave the property. 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. You legally remain the owner of and are responsible for the property until the property is sold by you or by order of the court at the conclusion of any foreclosure proceedings. This notice is not an eviction notice, and a foreclosure action has not yet been commenced against you.**

2. Such notice shall be sent by the lender or mortgage loan servicer to the borrower, by registered or certified mail and also by first-class mail to the last known address of the borrower, and ~~[if different,]~~ to the residence which is the subject of the mortgage. Notice is considered given as of the date it is mailed. The notice shall contain a **current** list of ~~[at least five]~~ United

States department of housing and urban development approved housing counseling agencies, or other housing counseling agencies [~~as designated by the division of housing and community renewal, that serve the region where the borrower resides.~~] 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 [~~and/or the division of housing and community renewal~~] shall make available a listing, by [~~region~~] county, of such agencies which the lender or mortgage loan servicer may use to meet the requirements of this section.

[5.] **6.** (a) "Annual percentage rate" means the annual percentage rate for the loan calculated according to the provisions of the Federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated thereunder by the federal reserve board (as said act and regulations are amended from time to time).

(b) "Home loan" means a home loan, including an open-end credit plan, other than a reverse mortgage transaction, in which:

(i) The principal amount of the loan at origination did not exceed the conforming loan size that was in existence at the time of origination for a comparable dwelling as established by the federal national mortgage association;

(ii) The borrower is a natural person;

(iii) The debt is incurred by the borrower primarily for personal, family, or household purposes;

(iv) The loan is secured by a mortgage or deed of trust on real estate upon which there is located or there is to be located a structure or structures intended principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling; and

(v) The property is located in this state.

(c) "Subprime home loan" for the purposes of this section, means a home loan consummated between January first, two thousand three and September first, two thousand eight in which the terms of the loan exceed the threshold as defined in paragraph (d) of this subdivision. A subprime home loan excludes a transaction to finance the initial construction of a dwelling, a temporary or "bridge" loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within twelve months, or a home equity line of credit.

(d) "Threshold" means, for a first lien mortgage loan, the annual percentage rate of the home loan at consummation of the transaction exceeds three percentage points over the yield on treasury securities having comparable periods of maturity to the loan maturity measured as of the fifteenth day of the month in which the loan was consummated; or for a subordinate mortgage lien, the annual percentage rate of the home loan at consummation of the transaction equals or

exceeds five percentage points over the yield on treasury securities having comparable periods of maturity on the fifteenth day of the month in which the loan was consummated; as determined by the following rules: if the terms of the home loan offer any initial or introductory period, and the annual percentage rate is less than that which will apply after the end of such initial or introductory period, then the annual percentage rate that shall be taken into account for purposes of this section shall be the rate which applies after the initial or introductory period.

(e) "Non-traditional home loan" shall mean a payment option adjustable rate mortgage or an interest only loan consummated between January first, two thousand three and September first, two thousand eight.

(f) For purposes of determining the threshold, the department of financial services shall publish on its website a listing of constant maturity yields for U.S. Treasury securities for each month between January first, two thousand three and September first, two thousand eight, as published in the Federal Reserve Statistical Release on selected interest rates, commonly referred to as the H.15 release, in the following maturities, to the extent available in such release: six month, one year, two year, three year, five year, seven year, ten year, thirty year.

(g) "Lender" means a mortgage banker as defined in paragraph (f) of subdivision one of section five hundred ninety of the banking law or an exempt organization as defined in paragraph (e) of subdivision one of section five hundred ninety of the banking law.

[6.] **7.** The department of financial services shall prescribe the telephone number and web address to be included in the notice.

§ 8. Subdivision 1 of section 1351 of the real property actions and proceedings law, as added by chapter 312 of the laws of 1962, is amended to read as follows:

1. The judgment shall direct that the mortgaged premises, or so much thereof as may be sufficient to discharge the mortgage debt, the expenses of the sale and the costs of the action, and which may be sold separately without material injury to the parties interested, be sold by or under the direction of the sheriff of the county, or a referee **within ninety days of the date of the judgment.**

§ 9. Subdivision 1 of section 1353 of the real property actions and proceedings law, as added by chapter 312 of the laws of 1962, is amended to read as follows:

1. After the property has been sold, the officer conducting the sale shall execute a deed to the purchaser. The plaintiff, or any other party, may become a purchaser. **If the plaintiff (or its affiliate, as defined in paragraph (a) of subdivision one of section six-1 of the banking law) is the purchaser, such party shall place the property back on the market for sale or other occupancy: (a) within one hundred eighty days of the execution of the deed of sale, or (b) within ninety days of completion of construction, renovation, or rehabilitation of the property, provided that such construction, renovation, or rehabilitation proceeded diligently to completion, whichever comes first, provided however, a court of competent jurisdiction may grant an extension for good cause.**

§ 10. No local law, ordinance, or resolution shall impose a duty to maintain or register vacant and abandoned property as defined in section 1309 of the real property actions and proceedings law in a manner inconsistent with the provisions of this act that are related to maintenance as provided under subdivision 3, 4, 5, 6 and 7 of section 1308 of the real property actions and proceedings law, or registration as provided under section 1310 of the real property actions and proceedings law, or establish related penalties or other monetary obligation, with respect to a state or federally chartered bank, savings bank, savings and loan association or credit union that originates, owns, services or maintains mortgages related to such property.

No local law, ordinance, or resolution shall impose a duty to maintain vacant and abandoned property upon any state or federally chartered bank, savings bank, savings and loan association or credit union that originates, owns, services or maintains mortgages related to such property for which the provisions of this act, pursuant to the opening paragraph of section 1308 of the real property actions and proceedings law as added by section one of this act, do not apply.

§ 11. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that:

(a) The amendments to subdivision (a) of rule 3408 of the civil practice law and rules made by section two of this act shall be subject to the expiration and reversion of such subdivision pursuant to chapter 507 of the laws of 2009, as amended, when upon such date the provisions of section three of this act shall take effect; and

(b) The amendments to subdivisions 1, 2, 5 and 6 of section 1304 of the real property actions and proceedings law made by section six of this act shall be subject to the expiration and reversion of such subdivisions pursuant to chapter 507 of the laws of 2009, as amended, when upon such date the provisions of section seven of this act shall take effect.

NEW YORK STATE SENATE  
INTRODUCER'S MEMORANDUM IN SUPPORT  
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S8159

SPONSOR: FLANAGAN

TITLE OF BILL: An act to ... amend the real property actions and proceedings law and the civil practice law and rules, in relation to foreclosure proceedings and pre-foreclosure notices (Part Q)

PURPOSE: This bill would refine parts of the 2016-17 Enacted Budget by making several technical amendments.

SUMMARY OF PROVISIONS: ...

Part Q would require federally chartered banks, savings banks, savings and loan associations, or credit unions that originate, own, service, or maintain loans to secure and maintain 1 to 4 residential real properties deemed to be vacant and abandoned; mandates good faith negotiations during mandatory settlement conferences during foreclosure proceedings; expedites the foreclosure process for vacant and abandoned properties; and imposes additional notice requirements.

STATEMENT IN SUPPORT: Enactment of this bill is necessary to support the implementation of the 2016-17 Enacted Budget.

BUDGET IMPLICATIONS: The provisions of this bill are accommodated for in the Financial Plan.

EFFECTIVE DATE:

This bill would take effect immediately.