

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

TitleTRACK

New foreclosure laws enacted

Chapter 507 of the Laws of 2009, enacted Dec. 15, 2009, adds requirements for lenders foreclosing mortgages against residential real property in New York.

Real Property Actions and Proceedings Law

Section 1303 was amended by Section 1 of Chapter 507, effective Jan. 14, 2010. The "Help for Homeowners in Foreclosure" notice under RPAPL Section 1303 was first required by Chapter 308 of the Laws of 2007 for mortgage foreclosures commenced on and after Feb. 1, 2007 on property improved by a single- to four-family dwelling.

As amended by Chapter 472 of the Laws of 2008, the notice has been required to be delivered to the mortgagor with the summons and complaint in a mortgage foreclosure if the property in question also is owner-occupied.

Chapter 507 does not change the requirement for service on the mortgagor or the form of the notice. An additional notice must be provided to any tenant of a dwelling unit in accordance with the requirements of new subdivision 4 of Section 1303. That is not limited to property improved by a one- to four-family dwelling.

Section 1303 notices are required to be on a separate page in bold, 14-point type, printed on paper that is a different color from that of the paper on which the summons and complaint are printed, captioned, in bold 20-point type, "Help for Homeowners in Foreclosure."

RPAPL Section 1304

RPAPL Section 1304 has been amended by Section 1-a of Chapter 507, effective Jan. 14, 2010, for notices required on or after such date.

RPAPL Section 1304, added by Chapter 472 of the Laws of 2008 effective Sept. 1, 2008, has required the lender or mortgage loan servicer, when the loan is a high-cost home loan (as defined in Banking Law Section 6-l), a sub-prime home loan or a non-traditional home loan (as defined in Section 1304), to provide a "You Could Lose Your Home" notice to the borrower at least 90 days before commencing a legal action, such as a foreclosure.

The notice is to be given when the lender, assignee or mortgage loan servicer commences a legal action against the borrower and the loan is a home loan, as defined in amended Section 1304. The notice no longer is limited to the foreclosure of a high-cost home loan, a sub-prime home loan and a non-traditional home loan.

Section 1305

Section 1305 has been added to the RPAPL by Section 4 of Chapter 507, effective Jan. 14, 2010 and applies to actions in which a judgment of foreclosure and sale is issued on or after such date.

Section 1305 gives certain rights to tenants in occupancy of residential real property, allowing them to continue to occupy their dwellings, and requires a successor in interest to provide written notice to such tenants of their rights to remain in occupancy. There is no statutory form of the notice.

The notice states that the tenants may remain in occupancy of such property for the remainder of the lease term, or a period of 90 days from the date of mailing of such notice, whichever is greater, on the same terms and conditions in effect at the time of transfer of ownership of such property. The name and address of the new owner must be included. It also states that "Any person or entity who or which becomes a successor in interest after the issuance of the 90-day notice ... shall notify all tenants of its name and address and shall

assume such interest subject to the right of the tenant to maintain possession."

RPAPL Section 1307

RPAPL Section 1307 has been added by Section 6 of Chapter 507, effective the 120th day after the date on which the chapter was enacted. Under RPAPL Section 1307, a plaintiff (other than a governmental entity holding a subordinate mortgage) having obtained a judgment of foreclosure involving residential real property (as defined in RPAPL Section 1305) which is vacant, becomes vacant after issuance of the judgment of foreclosure or is abandoned by the mortgagor but occupied by a tenant (also defined in RPAPL Section 1305), shall maintain the property until a deed transferring the ownership of the property is recorded.

The plaintiff is not responsible for maintaining the property while a receiver is serving or, if the mortgagor commences a bankruptcy proceeding, while the bankruptcy stay is in effect.

The municipality where the property is located, any tenant lawfully in possession of the property and, if applicable, a condo-

Continued ...



By **MATTHEW SCHULER**

Daily Record
Columnist

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Continued ...

minium board of managers or a homeowners association, have the right to bring an action to enforce such obligations.

Subdivision (a) of CPLR Rule 3408

(Mandatory settlement conference in residential foreclosure actions) has been amended by Section 9 of Chapter 507, and five new subdivisions have been added to Rule 3408, effective Feb. 13, 2010, 60 days after the date on which the chapter was enacted. The new provisions will apply to all actions filed on and after that date.

Rule 3408(a) has required that a court, in a residential foreclosure involving a high-cost, a sub-prime or a non-traditional home loan, hold a mandatory conference for settlement discussions within 60 days after the date when proof of service is filed with the county clerk, or on an adjourned date agreed to by the parties.

Chapter 507 makes the requirement applicable broadly to residential foreclosures involving home loans, as defined in RPAPL Section 1304.

The new legislation was enacted to ensure that all homeowners and tenants are notified properly of their rights and remedies under state law, and have the opportunity to work out a modification or a settlement with the lender instead of losing their home to foreclosure.

Matthew Schuler is vice president/chief title officer of Rochester-based WebTitle Agency and Cascade Settlement Agency, an authorized title insurance issuing agent for First American Title Insurance Co. of New York, Fidelity National Title Insurance Co. and Old Republic National Title Insurance Co. Offices are located at 69 Cascade Drive, Rochester, N.Y. 14614; phone (585) 454-4770; www.webtitle.us.