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I N   A S S E M B L Y

January 16, 2008

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Introduced by M. of A. BRENNAN, SILVER, CLARK, JEFFRIES,  
ORTIZ, ROBIN-  
SON, ROSENTHAL, R. DIAZ, PERRY, CAMARA, CAHILL, GALEF, J.  
RIVERA,  
P. RIVERA, SCARBOROUGH, BOYLAND, N. RIVERA, BRODSKY,  
LANCMAN,  
KAVANAGH, DINOWITZ, RAMOS, MAISEL, ESPAILLAT, HOOPER --  
Multi-Spon-  
sored by -- M. of A. ABBATE, ALESSI, ALFANO, ARROYO, AUBRY,  
BENEDETTO,  
BENJAMIN, BING, BROOK-KRASNY, COLTON, COOK, CYMBROWITZ,  
DelMONTE,  
DESTITO, L. DIAZ, EDDINGTON, FIELDS, GLICK, GOTTFRIED, GREENE,  
HEAST-  
IE, HOYT, HYER-SPENCER, JACOBS, JAFFEE, KELLNER, LAFAYETTE,  
LENTOL,  
LIFTON, V. LOPEZ, LUPARDO, MARKEY, McENENY, MILLMAN, NOLAN,  
PEOPLES,  
PERALTA, PHEFFER, POWELL, PRETLOW, QUINN, REILLY, SALADINO,  
SCHIMEL,  
SWEENEY, TITUS, WEISENBERG, WRIGHT, YOUNG -- read once and  
referred to  
the Committee on Judiciary -- committee discharged, bill  
amended,  
ordered reprinted as amended and recommitted to said  
committee --  
again reported from said committee with amendments, ordered  
reprinted  
as amended and recommitted to said committee

AN ACT to amend the real property actions and proceedings  
law, in  
relation to providing foreclosure relief; and providing for  
the repeal  
of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND  
ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Legislative intent. The legislature declares that  
a public  
2     emergency exists in regards to real estate foreclosures due  
to the

3 extension of fundamentally unaffordable mortgage loans,  
fundamentally  
4 unaffordable second mortgages and fundamentally unaffordable  
home equity  
5 loans. Many such loans were extended under conditions which  
evince  
6 deception, misrepresentation and fraud on the part of many  
lenders and  
7 agents. This is particularly true of loans which qualify as  
subprime.  
8 The presence of such subprime loans is distorting the New  
York state  
9 real estate market. The problems associated with these  
subprime loans  
10 are adversely affecting availability of capital, the demand for  
housing,  
11 and the value of real estate. The financial problems created  
by such  
12 subprime loans threaten to spill over into the rest of the real  
estate  
13 market and the general economy. It is in the interest of New  
York state  
14 to ensure the rights of all parties are protected and that all  
foreclo-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in  
brackets

{ } is old law to be omitted.

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1 sures which come into the New York courts during this period  
are care-  
2 fully scrutinized.  
3 S 2. The real property actions and proceedings law is  
amended by  
4 adding a new section 1304 to read as follows:  
5 S 1304. FORECLOSURES; COURT RELIEF. 1. VENUE. IN ANY ACTION  
TO FORE-  
6 CLOSE A MORTGAGE UNDER THIS ARTICLE A MORTGAGOR NAMED IN SUCH  
ACTION MAY  
7 APPLY FOR RELIEF IN STATE SUPREME COURT PURSUANT TO THIS  
SECTION.  
8 2. TIMING OF YEAR-LONG MORATORIUM. IF A MORTGAGEE HAS  
OTHERWISE ESTAB-  
9 LISHED ITS LEGAL RIGHT TO JUDGMENT ON AN ACTION TO FORECLOSE A  
MORTGAGE  
10 PURSUANT TO THIS CHAPTER, THEN SUCH ACTION SHALL BE HELD IN  
ABEYANCE BY  
11 THE COURT BEFORE WHICH SUCH ACTION IS PENDING. SUCH PERIOD OF  
TIME IS  
12 INTENDED TO PERMIT THE PARTIES TO SETTLE THE ACTION OUTSIDE OF  
COURT AND  
13 TO FORESTALL FORECLOSURE WITHIN THE CURRENT ECONOMIC CLIMATE.

14 3. PROCESS AND FEES. IF AN ACTION TO FORECLOSE A MORTGAGE  
HAS BEEN  
15 COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A  
MORTGAGOR MAY  
16 ASK THE COURT BEFORE WHICH SUCH ACTION IS COMMENCED TO HOLD SUCH  
ACTION  
17 IN ABEYANCE PURSUANT TO SUBDIVISION TWO OF THIS SECTION.  
MOTIONS ON  
18 NOTICE IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES MADE  
BY THE  
19 MORTGAGOR SHALL BE DEEMED TO HAVE BEEN FILED BY A POOR PERSON  
PURSUANT  
20 TO ARTICLE ELEVEN OF THE CIVIL PRACTICE LAW AND RULES AND ALL  
COURT FEES  
21 OTHERWISE APPLICABLE TO SUCH ACTIONS AND PAYABLE BY A MORTGAGOR  
SHALL BE  
22 WAIVED. IF A FORECLOSURE ACTION HAS NOT BEEN COMMENCED PRIOR  
TO THE  
23 EFFECTIVE DATE OF THIS SECTION, A MORTGAGOR MUST COMMENCE AN  
ACTION IN  
24 STATE SUPREME COURT BY FILING AND SERVING A SUMMONS PURSUANT TO  
ARTICLE  
25 THREE OF THE CIVIL PRACTICE LAW AND RULES WITH A REQUEST  
FOR RELIEF  
26 PURSUANT TO THE TERMS OF THIS SECTION. IN SUCH CASE, SUCH  
FILING SHALL  
27 BE DEEMED TO HAVE BEEN FILED BY A POOR PERSON PURSUANT TO  
ARTICLE ELEVEN  
28 OF THE CIVIL PRACTICE LAW AND RULES AND ALL FILING AND COURT  
FEES OTHER-  
29 WISE APPLICABLE TO SUCH ACTIONS AND PAYABLE BY A MORTGAGOR IN  
THE FORM  
30 OF INDEX AND MOTION FEES SHALL BE WAIVED.  
31 4. PRIMA FACIE CASE. A MORTGAGOR MUST ESTABLISH A PRIMA FACIE  
CASE IN  
32 THE MOTION OR PLEADING. AMENDMENTS TO SUCH MOTION OR PLEADING  
SHALL BE  
33 LIBERALLY GRANTED. SUCH PLEADING MUST ESTABLISH THAT:  
34 A. THE MORTGAGOR IS A NATURAL PERSON; AND  
35 B. THE DEBT IS INCURRED BY THE MORTGAGOR PRIMARILY FOR  
PERSONAL, FAMI-  
36 LY OR HOUSEHOLD PURPOSES; AND  
37 C. THE LOAN IS SECURED BY A MORTGAGE, SECOND MORTGAGE OR HOME  
EQUITY  
38 LOAN ON REAL PROPERTY WHICH IS IMPROVED WITH A RESIDENTIAL  
BUILDING  
39 CONTAINING ONE TO SIX DWELLING UNITS; AND  
40 D. THE REAL PROPERTY SUBJECT TO FORECLOSURE IS THE PRINCIPAL  
RESIDENCE  
41 OF THE MORTGAGOR; AND  
42 E. THE MORTGAGOR OWNS NO OTHER REAL PROPERTY; AND  
43 F. THE REAL PROPERTY IS LOCATED IN THIS STATE; AND  
44 G. THE MORTGAGE, SECOND MORTGAGE OR HOME EQUITY LOAN  
QUALIFIES AS A  
45 SUBPRIME HOME LOAN. A SUBPRIME HOME LOAN FOR A FIRST LIEN  
LOAN IS ONE

46 WHICH HAS AN ANNUAL PERCENTAGE RATE OF THREE OR MORE PERCENTAGE  
POINTS  
47 ABOVE THE YIELD ON TREASURY SECURITIES OF COMPARABLE MATURITY  
MEASURED  
48 AS OF THE FIFTEENTH DAY OF THE MONTH PRECEDING THE MONTH IN  
WHICH THE  
49 APPLICATION FOR THE LOAN IS RECEIVED BY THE LENDER. A SUBPRIME  
HOME LOAN  
50 FOR A SUBORDINATE LIEN LOAN IS ONE WHICH HAS AN ANNUAL  
PERCENTAGE RATE  
51 OF FIVE OR MORE PERCENTAGE POINTS ABOVE THE YIELD ON TREASURY  
SECURITIES  
52 OF COMPARABLE MATURITY MEASURED AS OF THE FIFTEENTH DAY OF  
THE MONTH  
53 PRECEDING THE MONTH IN WHICH THE APPLICATION FOR THE LOAN IS  
RECEIVED BY  
54 THE LENDER.  
55 5. MONTHLY PAYMENT SCHEDULE. IF A PRIMA FACIE CASE HAS  
BEEN ESTAB-  
56 LISHED, THE COURT MUST SET FORTH THE TERMS OF A MONTHLY PAYMENT  
SCHEDULE

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1 WHICH WILL PRESERVE THE RELATIVE FINANCIAL INTERESTS OF BOTH  
PARTIES  
2 UNDER TERMS WHICH ARE EQUITABLE AND JUST. TOWARDS THAT END,  
THE COURT  
3 SHALL INQUIRE INTO THE FINANCES OF BOTH THE MORTGAGEE AND THE  
MORTGAGOR.  
4 THE PURPOSE OF SUCH INQUIRY SHALL BE TO DETERMINE THE  
MINIMUM AMOUNT  
5 NECESSARY TO MAINTAIN THE MORTGAGEE'S FINANCIAL POSITION AND TO  
DETER-  
6 MINE THE AMOUNT WHICH THE MORTGAGOR WILL BE ABLE TO AFFORD.  
SUCH MONTH-  
7 LY PAYMENTS SHALL BE APPLIED TO THE PRINCIPAL AND INTEREST  
UPON THE  
8 INDEBTEDNESS. IF THE FINANCIAL CONDITION OF THE MORTGAGOR  
EXCEEDS THE  
9 MINIMUM AMOUNT NECESSARY TO MAINTAIN THE FINANCIAL POSITION OF  
THE MORT-  
10 GAGEE, SUCH MONTHLY AMOUNT MAY BE INCREASED BEYOND THE MINIMUM  
AMOUNT AS  
11 DETERMINED WITHIN THE DISCRETION OF THE COURT. IT IS WITHIN THE  
COURT'S  
12 DISCRETION TO DETERMINE WHETHER THE ESTABLISHMENT OF SUCH  
PAYMENT SCHED-  
13 ULE IS POSSIBLE UNDER TERMS WHICH ARE EQUITABLE AND JUST. THE  
PURPOSE OF  
14 SUCH MONTHLY PAYMENTS ARE TO PRESERVE THE RELATIVE FINANCIAL  
INTERESTS  
15 OF BOTH PARTIES UNTIL A SETTLEMENT CAN BE REACHED BUT IN NO  
EVENT SHALL  
16 SUCH ORDER GOVERN FOR MORE THAN ONE YEAR. FAILURE TO ADHERE TO  
THE TERMS

17 OF SUCH SCHEDULE MAY ALSO RESULT IN FORECLOSURE OR LIFTING OF  
THE ABEY-  
18 ANCE. MORE THAN ONE SINGLE YEAR LONG MORATORIUM MAY BE  
GRANTED IN THE  
19 DISCRETION OF THE COURT SUBJECT TO THE FACTS ESTABLISHED  
DURING THE  
20 PROCEEDINGS.  
21 6. POSTPONEMENT ORDER. ONCE THE COURT DETERMINES THAT AN  
EQUITABLE AND  
22 JUST PAYMENT SCHEDULE CAN BE ESTABLISHED, IT SHALL ISSUE AN  
ORDER WHICH  
23 SETS FORTH THE TERMS OF SUCH PAYMENT SCHEDULE AND SERVE IT  
UPON ALL  
24 PARTIES TO THE PROCEEDING. SUCH ORDER SHALL SET FORTH A RETURN  
DATE FOR  
25 THE REEXAMINATION OF SUCH MATTER AFTER PASSAGE OF THE  
POSTPONEMENT TIME  
26 PERIOD AT A FORMAL HEARING ON NOTICE TO THE PARTIES. THE  
COURT MAY  
27 TAILOR RELIEF AS REQUIRED BY THE FACTS OF EACH CASE THAT FALLS  
WITHIN  
28 THE PURVIEW OF THIS SECTION. HOWEVER, IN NO EVENT SHALL SUCH  
ORDER POST-  
29 PONE FINAL ACTION BEYOND ONE YEAR WITHOUT A RE-  
EXAMINATION OF THE  
30 PARTIES' FINANCIAL CIRCUMSTANCES AFTER FORMAL HEARING ON NOTICE  
TO THE  
31 PARTIES. THE TIME PERIOD OF SUCH ORDER SHALL RUN FROM THE  
DATE OF THE  
32 ENTRY OF SUCH ORDER. SUCH ABEYANCE SHALL NOT BEGIN UNTIL THE  
FORECLO-  
33 SURE PROCESS HAS REACHED THE POINT WHERE A FINAL DETERMINATION  
IS POSSI-  
34 BLE BUT SHALL BE WITHHELD UNTIL THE POSTPONEMENT PERIOD HAS  
ELAPSED.  
35 ENTITLEMENT TO SUCH ABEYANCE MAY BE ESTABLISHED AT ANY TIME  
REGARDLESS  
36 OF WHETHER FORECLOSURE IS BEING SOUGHT BY THE MORTGAGEE.  
MULTIPLE POST-  
37 PONEMENTS MAY BE GRANTED IN THE DISCRETION OF THE COURT IF  
WARRANTED BY  
38 THE FACTS OF A GIVEN CASE AND THE ECONOMIC CONDITIONS ACROSS THE  
STATE.  
39 7. CONTINUING JURISDICTION. THE COURT SHALL MAINTAIN  
CONTINUING JURIS-  
40 DICTION OF THE MATTER UNTIL IT REACHES FINAL RESOLUTION. UPON  
THE APPLI-  
41 CATION OF EITHER PARTY, PRIOR TO THE EXPIRATION OF THE  
POSTPONEMENT  
42 PERIOD, UPON PRESENTATION OF EVIDENCE THAT THE TERMS FIXED BY  
THE COURT  
43 ARE NO LONGER JUST AND EQUITABLE, THE COURT MAY REVISE AND  
ALTER SUCH  
44 TERMS IN SUCH MANNER AS THE CHANGED CIRCUMSTANCES AND  
CONDITIONS MAY  
45 REQUIRE.

46       S 3. This act shall take effect immediately and shall  
expire and be  
47 deemed repealed 3 years after such date.