

Legislative Information - LBDC

S8159 FLANAGAN Same as [A 10741](#) Rules (Farrell) [Chapter 73 of 2016](#) [Chap Eff Date](#) [Voting](#)

Text Versions: [S 8159](#)

S8159 FLANAGAN Same as [A 10741](#) Rules (Farrell)

Governor Program # 38

ON FILE: 06/17/16 Tax Law

TITLE....Makes amendments to certain provisions of the 2016--2017 state budget

06/17/16	REFERRED TO RULES
06/17/16	ORDERED TO THIRD READING CAL.2010
06/17/16	MESSAGE OF NECESSITY - 3 DAY MESSAGE
06/17/16	PASSED SENATE
06/17/16	DELIVERED TO ASSEMBLY
06/17/16	referred to ways and means
06/17/16	substituted for a10741
06/17/16	ordered to third reading rules cal.557
06/17/16	message of necessity - 3 day message
06/17/16	passed assembly
06/17/16	returned to senate
06/22/16	DELIVERED TO GOVERNOR

FLANAGAN, KLEIN, YOUNG

Amd § 606 & 42, Tax L; amd §§ 425, 520 & 1306-a; RPT L; amd § 207, RWB L; amd § 1, Chap 53 of 2016; amd § 3614-c, Pub Health L; amd § 11, Chap 710 of 1988; amd § 1678-a, Pub Auth L; amd § 3, Chap 549 of 1994; amd § 1, Chap 55 of 2016; amd § 34, Chap 91 of 2002; amd § 17, Chap 345 of 2009; add § 2590-r-1, amd §§ 355 & 2851, Ed L; add §§ 1308, 1309 & 1310, amd §§ 1303, 1304, 1351 & 1353, RPAP L; amd R3408, CPLR

Relates to a school tax reduction credit for residents of a city with a population over one million; relates to the school tax relief exemption (Part A); relates to the farm workforce retention credit (Part B); relates to the board of directors of NYRA (Part C); amends the aid to localities budget, relating to nonpublic school aid payable in the 2014-2015 state fiscal year (Part D); relates to home care worker wage parity (Part E); relates to effectiveness of certain managed care programs (Part F); relates to enforcement of building codes of the City of New York (Part G); intentionally omitted (Part H); relates to the New York state design and construction corporation act (Part I); extends provisions relating to the membership composition of the metropolitan transportation authority board (Part J); amends the aid to localities budget, relating to the office for aging community services program and the Wadsworth center for laboratories and research program (Part K); amends the aid to localities budget, relating to making technical corrections thereto (Part L); amends the capital projects budget, relating to general maintenance and improvements for the city university of New York and state university of New York (Part M); intentionally omitted (Part N); relates to extending the provisions relating to the reorganization of the NYC school construction authority, board of education and community boards; extends such provisions until 2017; relates to school based budgeting and expenditure reporting (Part O); and relates to the duties and powers of charter entities (Part P).

EFF. DATE 06/23/2016 (SEE TABLE)

Governor's Program

Chap Eff document not available

STATE OF NEW YORK

8159

IN SENATE

June 17, 2016

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 tax law, in relation to a school tax reduction credit for residents of a city with a population over one million; to amend the real property tax law and the tax law, in relation to the school tax relief exemption (Part A); to amend the tax law, in relation to the farm workforce retention credit (Part B); to amend the racing, pari-mutuel wagering and breeding law, in relation to the board of directors of the New York racing association (Part C); to amend chapter 53 of the laws of 2016 enacting the Aid to Localities Budget, in relation to the office of prekindergarten through grade twelve education program (Part D); to amend the public health law, in relation to home care worker wage parity (Part E); to amend chapter 710 of the laws of 1988, amending the social services law and the education law relating to medical assistance eligibility of certain persons and providing for managed medical care demonstration programs, in relation to the effectiveness thereof (Part F); relating to the enforcement of building codes of the city of New York (Part G); intentionally omitted (Part H); to amend the public authorities law, in relation to the New York state design and construction corporation act (Part I); to amend chapter 549 of the laws of 1994, amending the public authorities law relating to the membership composition of the metropolitan transportation authority board, in relation to extending the effectiveness of such provisions (Part J); to amend chapter 53 of the laws of 2016 enacting the Aid to Localities Budget, in relation to the office of aging community services program and the Wadsworth center for laboratories and research program (Part K); to amend chapter 53 of the laws of 2016, enacting the Aid to Localities Budget, in relation to making technical corrections thereto (Part L); to amend

chapter 55 of the laws of 2016 enacting the Capital Projects Budget, in relation to general maintenance and improvements for the city university of New York and state university of New York (Part M); intentionally omitted (Part N); to amend chapter 91 of the laws of 2002, amending the education law and other laws relating to reorganization of the New York city school construction authority, board of education and community boards, in relation to the effectiveness ther-

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

LBD12095-01-6

S. 8159

2

eof; and to amend chapter 345 of the laws of 2009, amending the education law and other laws relating to the New York city board of education, chancellor, community councils and community superintendents, in relation to the effectiveness thereof; and to amend the education law, in relation to community school district based budgeting and expenditure reporting (Part O); to amend the education law, in relation to the duties and powers of charter entities (Part P); and 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)

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

1 Section 1. This act enacts into law major components of legislation
2 which are necessary to implement the state fiscal plan for the 2016-2017
3 state fiscal year. Each component is wholly contained within a Part
4 identified as Parts A through Q. The effective date for each particular
5 provision contained within such Part is set forth in the last section of

6 such Part. Any provision in any section contained within a Part, includ-
7 ing the effective date of the Part, which makes a reference to a section
8 "of this act", when used in connection with that particular component,
9 shall be deemed to mean and refer to the corresponding section of the
10 Part in which it is found. Section three of this act sets forth the
11 general effective date of this act.

12

PART A

13 Section 1. Subsection (eee) of section 606 of the tax law, as added by
14 section 1 of part E of chapter 60 of the laws of 2016 is relettered
15 subsection (ggg).

16 § 2. Subdivision 16 of section 425 of the real property tax law, as
17 added by section 1 of part F of chapter 60 of the laws of 2016, is
18 renumbered subdivision 15-a and amended to read as follows:

19 [~~(16)~~] 15-a. **Direct payments.** Notwithstanding any provision of law to
20 the contrary, when the commissioner finds that a property owner was
21 eligible for the STAR exemption authorized by this section on an assess-
22 ment roll, but the exemption was not taken into account in the calcu-
23 lation of the property owner's school tax bill due to an administrative
24 error, and the property owner or his or her agent paid an excessive
25 amount of school taxes on the property as a result, the commissioner [~~of~~
26 ~~taxation and finance~~] is authorized to remit directly to the property
27 owner the tax savings that the STAR exemption would have yielded if the
28 STAR exemption had been taken into account in the calculation of that
29 taxpayer's school tax bill. The amounts payable under this section shall
30 be paid from the account established for the payment of STAR benefits to
31 late registrants pursuant to subparagraph (iii) of paragraph (a) of
32 subdivision fourteen of this section. Where such a payment has been
33 made, neither the property owner nor his or her agent shall be entitled
34 to a refund of the excessive amount of school taxes paid on account of
35 the administrative error.

36 § 3. Paragraph (c) of subdivision 11 of section 425 of the real prop-

32 2-a. Notwithstanding any other provision of law, rule, or regulation
33 to the contrary, the state university trustees charter school committee,
34 as a charter entity, are further authorized and empowered, to promulgate
35 regulations with respect to governance, structure and operations of
36 charter schools for which they are the charter entity pursuant to
37 section twenty-eight hundred fifty-one of this chapter.

38 § 2. Section 2851 of the education law is amended by adding a new
39 subdivision 5 to read as follows:

40 5. Notwithstanding any provision of law, rule or regulation to the
41 contrary for a period of one year from the effective date of this subdivi-
42 vision, a charter school approved by a charter entity listed in subdivi-
43 sion three of this section may apply at any time during this period to
44 another charter entity, defined in paragraph (a), (b) or (c) of subdivi-
45 sion three of this section to request such other charter entity to over-
46 see and supervise such charter school. All standards and requirements
47 established in the original charter agreement shall remain in effect
48 until the scheduled expiration of such charter agreement and provided
49 however that all obligations of the previous charter entity to oversee
50 and supervise a charter school shall terminate upon the transfer of
51 authorization of such charter school to a new charter entity, as defined
52 in subdivision five of section twenty-eight hundred fifty-two of this
53 article, and the previous charter entity shall provide in a timely fash-
54 ion information relevant to the charter as requested by such other char-

1 ter entity. A charter school that seeks to change its charter entity
2 must have met all other requirements of this article and cannot be in
3 violation of any legal requirement, in probationary status, or slated
4 for closure.

5 § 3. This act shall take effect immediately.

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

9 § 1308. Inspecting, securing and maintaining vacant and abandoned
10 residential real property. Notwithstanding any other provision of law to
11 the contrary, the following subdivisions of this section shall only
12 apply to vacant and abandoned one to four family residential real prop-
13 erty, and any duties and responsibilities so prescribed by this section
14 shall only apply to the first lien mortgage holder. Vacant and abandoned
15 residential real property shall be defined pursuant to section thirteen
16 hundred nine of this article. For each calendar year this section shall
17 not apply to state or federally chartered banks, savings banks, savings
18 and loan associations, or credit unions which: (1) originate, own,
19 service and maintain their mortgages or a portion thereof; and (2) have
20 less than three-tenths of one percent of the total loans in the state
21 which they either originate, own, service, or maintain for the calendar
22 year ending December thirty-first of the calendar year ending two years
23 prior to the current calendar year. For any state or federally chartered
24 banks, savings banks, savings and loan associations, or credit unions
25 which originate, own, service and maintain between three-tenths of one
26 percent and five-tenths of one percent of the total loans in the state
27 which they either originate, own, service, or maintain for the calendar
28 year ending December thirty-first of the calendar year ending two years
29 prior to the current calendar year, the application of this section
30 shall be prospective only.

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

38 2. If a borrower is delinquent and subject to property inspections

39 pursuant to subdivision one of this section, the servicer shall secure
40 and maintain the residential real property pursuant to subdivisions
41 three, four, five, six, and seven of this section where the servicer has
42 a reasonable basis to believe that the residential real property is
43 vacant and abandoned, as defined in section thirteen hundred nine of
44 this chapter, and is not otherwise restricted from accessing the proper-
45 ty.

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

S. 8159

28

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

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

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

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

14 (d) take reasonable measures to ensure that pipes, ducts, conductors,

15 fans and blowers do not discharge harmful gases, steam, vapor, hot air,
16 grease, smoke, odors or other gaseous or particulate waste directly upon
17 abutting or adjacent public or private property or that of another
18 tenant;

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

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

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

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

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

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

39 5. At no time shall a servicer remove personal property from the prop-
40 erty unless:

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

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

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

47 (a) an occupant of the property has asserted his or her right to occu-

48 py the property, or the servicer or its agents have received threats of
49 violence;
50 (b) the borrower has filed for bankruptcy;
51 (c) a court has ordered the servicer to stop any maintenance of the
52 property;
53 (d) a homeowners' association or cooperative has prevented the servi-
54 cer from gaining access to or maintaining the property;
55 (e) the property has been sold or transferred to a new owner;

S. 8159

29

1 (f) the servicer or investor subject to the provisions of this section
2 has released the lien on the property; or
3 (g) the mortgage note has been assigned, transferred or sold to another
4 servicer.
5 7. Reasonable and necessary actions to maintain the property include,
6 but are not limited to:
7 (a) ensuring that the property remains secure pursuant to subdivisions
8 four, five and six of this section; and
9 (b) maintaining property in a manner consistent with the standards set
10 forth in sections 301, 302 (excluding 302.2, 302.6 and 302.8), 304.1,
11 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1, and 308.1
12 of the New York property maintenance code, to the extent that the mort-
13 gage servicer or its agents are able to obtain necessary or required
14 permits or approvals.
15 8. (a) Violations of this section may be heard before a hearing offi-
16 cer or a court of competent jurisdiction. If it shall appear to the
17 satisfaction of the hearing officer or the court, based on the prepon-
18 derance of the evidence, that the mortgagee or agent of a mortgagee has
19 violated this section, a civil penalty may be issued by the hearing
20 officer or the court in the amount of up to five hundred dollars per day
21 per property for each day the violation persisted.
22 (b) The superintendent of financial services may, as appropriate and

23 in his or her sole discretion, pursue any suspected violation of this
24 section. Before taking such action, the superintendent shall give the
25 lender, assignee or mortgage loan servicer at least seven days' notice
26 of the violation.

27 (c) In addition to the authority granted to the department of finan-
28 cial services, the municipality in which such residential real property
29 is located, shall have the right to enforce the obligations described in
30 this section in any court of competent jurisdiction after at least seven
31 days' notice to the lender, assignee or mortgage loan servicer, unless
32 the property requires emergency repairs to address a threat to public
33 health, safety or welfare, in which case the municipality may enter and
34 maintain the property to cure the emergency, provided however, notice
35 shall be provided to the lender, assignee or mortgage loan servicer as
36 soon as practicable. Any municipality acting pursuant to this subdivi-
37 sion shall have a cause of action in any court of competent jurisdiction
38 against the lender, assignee or mortgage loan servicer to recover costs
39 incurred as a result of maintaining the property. Such entity shall
40 provide the department of financial services with written notice at
41 least ten days prior to bringing an action pursuant to this subdivision;
42 provided, however, that failure to comply with this notice requirement
43 shall not be a defense to the entity proceeding pursuant to this subdivi-
44 vision. The authority provided by this subdivision shall be in addition
45 to, and shall not be deemed to diminish or reduce, any rights of the
46 parties described in this section under existing law against the mortga-
47 gor of such property for failure to maintain such property. Any civil
48 penalty imposed pursuant to paragraph (a) of this subdivision in an
49 action brought by a municipality pursuant to this paragraph shall be
50 retained by such municipality.

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

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

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

7 11. For all state or federally chartered banks, savings banks,
8 savings and loan associations, credit unions, or servicers for which the
9 provisions of this section do not apply, pursuant to the opening para-
10 graph of this section, any agreement between such state or federally
11 chartered banks, savings banks, savings and loan associations, credit
12 unions, or servicers and the department of financial services that is
13 associated with the maintenance and repair of vacant and abandoned prop-
14 erty shall remain in full force and effect between the aforementioned
15 parties for so long as the terms and conditions of such agreement remain
16 in effect.

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

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

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

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

42 Rule 3408. Mandatory settlement conference in residential foreclosure
43 actions. (a) In any residential foreclosure action involving a home
44 loan as such term is defined in section thirteen hundred four of the
45 real property actions and proceedings law, in which the defendant is a
46 resident of the property subject to foreclosure, plaintiff shall file
47 proof of service within twenty days of such service, however service is
48 made, and the court shall hold a mandatory conference within sixty days
49 after the date when proof of service upon such defendant is filed with
50 the county clerk, or on such adjourned date as has been agreed to by the
51 parties, for the purpose of holding settlement discussions pertaining to
52 the relative rights and obligations of the parties under the mortgage
53 loan documents, including, but not limited to: 1. determining whether
54 the parties can reach a mutually agreeable resolution to help the
55 defendant avoid losing his or her home, and evaluating the potential for
56 a resolution in which payment schedules or amounts may be modified or

1 other workout options may be agreed to, [~~and for~~] including, but not
2 limited to, a loan modification, short sale, deed in lieu of foreclo-
3 sure, or any other loss mitigation option; or 2. whatever other purposes
4 the court deems appropriate.

5 (b) At the initial conference held pursuant to this section, any

6 defendant currently appearing pro se, shall be deemed to have made a
7 motion to proceed as a poor person under section eleven hundred one of
8 this chapter. The court shall determine whether such permission shall be
9 granted pursuant to standards set forth in section eleven hundred one of
10 this chapter. If the court appoints defendant counsel pursuant to subdivi-
11 sion (a) of section eleven hundred two of this chapter, it shall
12 adjourn the conference to a date certain for appearance of counsel and
13 settlement discussions pursuant to subdivision (a) of this section, and
14 otherwise shall proceed with the conference.

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

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

34 (e) The court shall promptly send a notice to parties advising them of
35 the time and place of the settlement conference, the purpose of the
36 conference and the requirements of this section. The notice shall be in
37 a form prescribed by the office of court administration, or, at the
38 discretion of the office of court administration, the administrative

39 judge of the judicial district in which the action is pending, and shall
40 advise the parties of the documents that they [~~should~~] shall bring to
41 the conference.

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

S. 8159

32

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

9 2. For the defendant, such documents [~~should~~] shall include, but are
10 not limited to, [~~proof of current income such as the two most recent pay~~
11 ~~stubs, most recent tax return and most recent property tax statements]~~
12 if applicable, information on current income tax returns, expenses,

13 property taxes and previously submitted applications for loss miti-
14 gation; benefits information; rental agreements or proof of rental
15 income; and any other documentation relevant to the proceeding required
16 by the presiding judge.

17 (f) Both the plaintiff and defendant shall negotiate in good faith to
18 reach a mutually agreeable resolution, including but not limited to a
19 loan modification, short sale, deed in lieu of foreclosure, or any other
20 loss mitigation, if possible. Compliance with the obligation to negoti-
21 ate in good faith pursuant to this section shall be measured by the
22 totality of the circumstances, including but not limited to the follow-
23 ing factors:

24 1. Compliance with the requirements of this rule and applicable court
25 rules, court orders, and directives by the court or its designee
26 pertaining to the settlement conference process;

27 2. Compliance with applicable mortgage servicing laws, rules, regu-
28 lations, investor directives, and loss mitigation standards or options
29 concerning loan modifications, short sales, and deeds in lieu of fore-
30 closure; and

31 3. Conduct consistent with efforts to reach a mutually agreeable
32 resolution, including but not limited to, avoiding unreasonable delay,
33 appearing at the settlement conference with authority to fully dispose
34 of the case, avoiding prosecution of foreclosure proceedings while loss
35 mitigation applications are pending, and providing accurate information
36 to the court and parties.

37 Neither of the parties' failure to make the offer or accept the offer
38 made by the other party is sufficient to establish a failure to negoti-
39 ate in good faith.

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

43 (h) A party to a foreclosure action may not charge, impose, or other-
44 wise require payment from the other party for any cost, including but
45 not limited to attorneys' fees, for appearance at or participation in

46 the settlement conference.

47 (i) The court may determine whether either party fails to comply with
48 the duty to negotiate in good faith pursuant to subdivision (f) of this
49 section, and order remedies pursuant to subdivisions (j) and (k) of this
50 section, either on motion of any party or sua sponte on notice to the
51 parties, in accordance with such procedures as may be established by the
52 court or the office of court administration. A referee, judicial hearing
53 officer, or other staff designated by the court to oversee the settle-
54 ment conference process may hear and report findings of fact and conclu-
55 sions of law, and may make reports and recommendations for relief to the

S. 8159

33

1 court concerning any party's failure to negotiate in good faith pursuant
2 to subdivision (f) of this section.

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

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

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

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

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

20 (k) Upon a finding by the court that the defendant failed to negotiate

21 in good faith pursuant to subdivision (f) of this section, the court
22 shall, at a minimum, remove the case from the conference calendar. In
23 considering such a finding, the court shall take into account equitable
24 factors including, but not limited to, whether the defendant was repres-
25 ented by counsel.

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

- 29 1. advise the defendant of the requirement to answer the complaint;
- 30 2. explain what is required to answer a complaint in court;
- 31 3. advise that if an answer is not interposed the ability to contest
32 the foreclosure action and assert defenses may be lost; and
- 33 4. provide information about available resources for foreclosure
34 prevention assistance.

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

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

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

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

53 (a) In any residential foreclosure action involving a high-cost home

54 loan consummated between January first, two thousand three and September
55 first, two thousand eight, or a subprime or nontraditional home loan, as
56 those terms are defined under section thirteen hundred four of the real

S. 8159

34

1 property actions and proceedings law, in which the defendant is a resi-
2 dent of the property subject to foreclosure, the court shall hold a
3 mandatory conference within sixty days after the date when proof of
4 service is filed with the county clerk, or on such adjourned date as has
5 been agreed to by the parties, for the purpose of holding settlement
6 discussions pertaining to the relative rights and obligations of the
7 parties under the mortgage loan documents, including, but not limited
8 to: 1. determining whether the parties can reach a mutually agreeable
9 resolution to help the defendant avoid losing his or her home, and eval-
10 uating the potential for a resolution in which payment schedules or
11 amounts may be modified or other workout options may be agreed to[,—and
12 for] **including, but not limited to, a loan modification, short sale,**
13 **deed in lieu of foreclosure, or any other loss mitigation option; or 2.**
14 whatever other purposes the court deems appropriate.

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

17 § 1309. Expedited application for judgment of foreclosure and sale for
18 vacant and abandoned property. 1. The plaintiff in any foreclosure
19 proceeding may make an application by notice of motion or order to show
20 cause for a judgment of foreclosure and sale on the grounds that the
21 subject property is vacant and abandoned. The motion or order to show
22 cause shall include the last known address of the borrower and the prop-
23 erty address. Notwithstanding subdivision (m) of rule thirty-four
24 hundred eight of the civil practice law and rules no such application
25 may be made until the defendant's time to answer the complaint in the
26 foreclosure proceeding shall have expired. Such application shall be
27 served on defendant, regardless of whether a defendant has filed an

28 answer or appeared in the case. Such application shall: (a) state in
29 bold letters, on the first page of the notice of motion or order to show
30 cause: (i) "The plaintiff in this lawsuit has applied for an expedited
31 judgment of foreclosure and sale of your property on the ground that it
32 is vacant and abandoned"; (ii) "Your property may be foreclosed upon and
33 sold without any further proceedings if you do not respond to this
34 motion by or on the return date, which is ___"; (iii) "You have the
35 right to stay in your property until a court orders you to leave"; and
36 (iv) "You may respond to this motion by either submitting a written
37 document or by appearing in court on the return date."; (b) be supported
38 by affidavit and other proof, including but not limited to: (i) proof of
39 ownership of the mortgage and the note, (ii) photographs evidencing that
40 the subject property is vacant and abandoned as provided for under
41 subdivision two of this section, and (iii) if available, utility company
42 records or other documentation evidencing the vacant and abandoned
43 status of the premises; (c) set forth, supported by documentary
44 evidence, the sums alleged to be due and owing upon the subject mortgage
45 and note, including the current principal balance and a detailed and
46 itemized account of each fee, each cost, and a calculation of interest
47 accrued; and (d) request that the court confirm the sums due and owing
48 upon the subject mortgage and note without appointment of a referee. The
49 court shall promptly send a notice to the defendant of the plaintiff's
50 notice of motion or order to show cause for a judgement of foreclosure
51 and sale on the grounds that the subject property is vacant and aban-
52 doned. The notice shall advise the defendant that the lender is asking
53 the court to expedite a judgement of foreclosure and sale of his or her
54 property on the ground that it is vacant and abandoned and about the
55 time and place of the court date. The notice shall be in a form
56 prescribed by the courts, or, at the discretion of the courts.

2 property" means residential real property, as defined in section thir-
3 teen hundred five of this article, with respect to which the plaintiff
4 has proven, by preponderance of the evidence, that it has conducted at
5 least three consecutive inspections of such property, with each
6 inspection conducted twenty-five to thirty-five days apart and at
7 different times of the day, and at each inspection (i) no occupant was
8 present and there was no evidence of occupancy on the property to indi-
9 cate that any persons are residing there; and (ii) the residential real
10 property was not being maintained in a manner consistent with the stand-
11 ards set forth in New York property maintenance code chapter 3 sections
12 301, 302 (excluding 302.2, 302.6, 302.8), 304.1, 304.3, 304.7, 304.10,
13 304.12, 304.13, 304.15, 304.16, 307.1 and 308.1.

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

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

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

24 (c) Evidence of lack of occupancy shall include but not be limited to
25 the following conditions: (i) overgrown or dead vegetation; (ii) accumu-
26 lation of newspapers, circulars, flyer or mail; (iii) past due utility
27 notices, disconnected utilities, or utilities not in use; (iv) accumu-
28 lation of trash, refuse or other debris; (v) absence of window coverings
29 such as curtains, blinds, or shutters; (vi) one or more boarded, missing
30 or broken windows; (vii) the property is open to casual entry or tres-
31 pass; or (viii) the property has a building or structure that is or
32 appears structurally unsound or has any other condition that presents a
33 potential hazard or danger to the safety of persons.

34 (d) Residential real property will not be deemed vacant and abandoned

35 if, on the property:

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

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

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

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

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

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

52 4. The court shall make a written finding as soon as practicable as to
53 whether the plaintiff has proved that the property to be foreclosed upon
54 pursuant to this section is vacant and abandoned pursuant to subdivision
55 two of this section and, if the court determines that the property is
56 vacant and abandoned, it shall set forth: (a) the evidence relied upon

1 by the court in finding that the property is vacant and abandoned; (b)
2 the evidence showing that the plaintiff is the owner and holder of the
3 subject mortgage and note, or has been delegated the authority to insti-
4 tute a mortgage foreclosure action by the owner of same; and (c) the
5 sums due and owing upon the subject mortgage and note after a review of
6 the detailed and itemized account of each fee, each cost, and a calcu-
7 lation of interest accrued.

8 5. With respect to foreclosure actions brought pursuant to this

9 section:

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

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

19 6. It shall be unlawful for a lender, assignee, mortgage loan servi-
20 cer, or a third party agent or other person acting on behalf of a lend-
21 er, assignee or mortgage loan servicer to enter residential real proper-
22 ty that is not vacant and abandoned for the purpose of forcing,
23 intimidating, harassing or coercing a lawful occupant of such residen-
24 tial property to vacate that property in order to render the property
25 vacant and abandoned, or to otherwise force, intimidate, harass, or
26 coerce a lawful occupant of residential real property to vacate that
27 property so that it may be deemed vacant and abandoned, provided howev-
28 er, a lender, assignee, mortgage loan servicer, or a third party agent
29 or other person acting on behalf of a lender, assignee or mortgage loan
30 servicer who peacefully enters a vacant and abandoned property in order
31 to render the property vacant and abandoned shall be immune from liabil-
32 ity when such lender, assignee, mortgage loan servicer, third party
33 agent or other person acting on behalf of a lender, assignee or mortgage
34 loan servicer is making reasonable efforts to comply with this section.

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

38 § 1310. Vacant and abandoned property; statewide vacant and abandoned
39 property electronic registry. 1. The department of financial services
40 shall maintain a statewide vacant and abandoned property registry in the
41 form of an electronic database. The department of financial services

42 may, in accordance with the applicable provisions of the state finance
43 law, retain a private contractor to administer such database for the
44 purposes of satisfying this requirement. The information provided to
45 the department of financial services pursuant to this section shall be
46 deemed and treated confidential, provided however, the superintendent of
47 financial services, in her or his sole discretion, may release the
48 information if it is in the best interest of the public. Any such
49 released information shall continue to be treated confidentially by the
50 parties. The department of financial services shall, upon written
51 request, provide public officials of any state district, county, city,
52 town or village with access to information specific to such public offi-
53 cial's district, county, city, town or village maintained on such data-
54 base to further the purposes of this section, section thirteen hundred
55 seven of this article or article nineteen-A of this chapter, or any
56 other related law, code, rule, regulation or ordinance.

S. 8159

37

1 2. A lender, assignee or mortgage loan servicer shall submit or cause
2 to be submitted to the department of financial services information
3 required by the superintendent of financial services about any vacant
4 and abandoned residential real property, as that term is defined in
5 subdivision two of section thirteen hundred nine of this article, or as
6 the superintendent of financial services may otherwise define that term,
7 within twenty-one business days of when the lender, assignee or mortgage
8 loan servicer learns, or should have learned, that such property is
9 vacant and abandoned. Such information shall, at a minimum, include:
10 (a) the current name, address and contact information for the lender,
11 assignee or mortgage loan servicer responsible for maintaining the
12 vacant property; (b) whether a foreclosure action has been filed for the
13 property in question, and, if so, the date on which the foreclosure
14 action was commenced; and (c) the last known address and contact infor-
15 mation for the mortgagor(s) of record.

16 3. Where any of the information contained in a lender's, assignee's or
17 mortgage loan servicer's initial submission to the registry has mate-
18 rially changed since such submission, such lender, assignee or mortgage
19 loan servicer shall make an amended submission to the registry not later
20 than thirty days after the lender, assignee or mortgage loan servicer
21 learns, or reasonably should have learned, of the new or changed infor-
22 mation.

23 4. The department of financial services is authorized and empowered to
24 adopt such rules and regulations as may in the judgment of the super-
25 intendent of financial services necessary for the effective adminis-
26 tration and operation of such registry, including but not limited to
27 rules and regulations governing access to the registry and specifying
28 the manner and frequency of registration and the information that must
29 be provided. The superintendent of financial services may amend such
30 regulations from time to time as necessary to effectuate the purpose of
31 this section and section thirteen hundred seven of this article.

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

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

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

S. 8159

38

1 § 5. Subdivision 3 of section 1303 of the real property actions and
2 proceedings law, as amended by chapter 507 of the laws of 2009 and as
3 further amended by section 104 of part A of chapter 62 of the laws of
4 2011, is amended and a new subdivision 3-a is added to read as follows:

5 3. The notice to any mortgagor required by paragraph (a) of subdivi-
6 sion one of this section shall appear as follows:

7 Help for Homeowners in Foreclosure

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

10 Summons and Complaint

11 You are in danger of losing your home. If you fail to respond to the
12 summons and complaint in this foreclosure action, you may lose your
13 home. Please read the summons and complaint carefully. You should imme-
14 diately contact an attorney or your local legal aid office to obtain
15 advice on how to protect yourself.

16 Sources of Information and Assistance

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

22 To locate an entity near you, you may call the toll-free helpline

23 maintained by the New York State Department of Financial Services at
24 (enter number) or visit the Department's website at (enter web address).

25 **Rights and Obligations**

26 **YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right**
27 **to stay in your home during the foreclosure process. You are not**
28 **required to leave your home unless and until your property is sold at**
29 **auction pursuant to a judgment of foreclosure and sale.**

30 **Regardless of whether you choose to remain in your home, YOU ARE**
31 **REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accord-**
32 **ance with state and local law.**

33 Foreclosure rescue scams

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

43 **3-a. No later than sixty days after the effective date of this subdivi-**
44 **vision, the department of financial services shall publish a Consumer**
45 **Bill Of Rights, in consultation with all stakeholders, which shall**
46 **detail the rights and responsibilities of the plaintiff and defendant in**
47 **a foreclosure proceeding. Such Bill of Rights shall be updated on an**
48 **annual basis and as appropriate.**

49 § 6. Section 1304 of the real property actions and proceedings law, as
50 added by chapter 472 of the laws of 2008, subdivision 1 as amended and
51 subdivision 6 as added by chapter 155 of the laws of 2012, and subdivi-
52 sions 2 and 5 as amended by chapter 507 of the laws of 2009, and subdivi-
53 sion 2 as further amended by section 104 of part A of chapter 62 of
54 the laws of 2011, is amended to read as follows:

55 § 1304. Required prior notices. 1. Notwithstanding any other

1 before a lender, an assignee or a mortgage loan servicer commences legal
2 action against the borrower, or borrowers at the property address and
3 any other address of record, including mortgage foreclosure, such lend-
4 er, assignee or mortgage loan servicer shall give notice to the borrower
5 in at least fourteen-point type which shall include the following:

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

7 FORECLOSURE. PLEASE READ THE FOLLOWING NOTICE CAREFULLY"

8 "As of ____, your home loan is __ days and _____ dollars in default.

9 Under New York State Law, we are required to send you this notice to
10 inform you that you are at risk of losing your home. [~~You can cure this~~
11 ~~default by making the payment of _____ dollars by _____.~~]

12 [~~If you are experiencing financial difficulty, you should know that~~
13 ~~there are several options available to you that may help you keep your~~
14 ~~home.~~] Attached to this notice is a list of government approved housing
15 counseling agencies in your area which provide free [~~or very low cost~~]
16 counseling. [~~You should consider contacting one of these agencies imme-~~
17 ~~diately. These agencies specialize in helping homeowners who are facing~~
18 ~~financial difficulty. Housing counselors can help you assess your finan-~~
19 ~~cial condition and work with us to explore the possibility of modifying~~
20 ~~your loan, establishing an easier payment plan for you, or even working~~
21 ~~out a period of loan forbearance.] You can also call the NYS Office of
22 the Attorney General's Homeowner Protection Program (HOPP) toll-free
23 consumer hotline to be connected to free housing counseling services in
24 your area at 1-855-HOME-456 (1-855-466-3456), or visit their website at
25 <http://www.aghomehelp.com/>. A statewide listing by county is also avail-
26 able at [http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agen-](http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm)
27 [cies.htm](http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm). Qualified free help is available; watch out for companies or
28 people who charge a fee for these services.~~

29 Housing counselors from New York-based agencies listed on the website

30 above are trained to help homeowners who are having problems making
31 their mortgage payments and can help you find the best option for your
32 situation. If you wish, you may also contact us directly at _____
33 and ask to discuss possible options.

34 While we cannot assure that a mutually agreeable resolution is possi-
35 ble, we encourage you to take immediate steps to try to achieve a resol-
36 ution. The longer you wait, the fewer options you may have.

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

41 If you need further information, please call the New York State
42 Department of Financial Services' toll-free helpline at (show number) or
43 visit the Department's website at (show web address)[¹¹].

44 IMPORTANT: You have the right to remain in your home until you receive
45 a court order telling you to leave the property. If a foreclosure action
46 is filed against you in court, you still have the right to remain in the
47 home until a court orders you to leave. You legally remain the owner of
48 and are responsible for the property until the property is sold by you
49 or by order of the court at the conclusion of any foreclosure
50 proceedings. This notice is not an eviction notice, and a foreclosure
51 action has not yet been commenced against you.

52 2. Such notice shall be sent by such lender, assignee (including
53 purchasing investor) or mortgage loan servicer to the borrower, by
54 registered or certified mail and also by first-class mail to the last
55 known address of the borrower, and [~~if different,~~] to the residence that
56 is the subject of the mortgage. Such notice shall be sent by the lender,

1 assignee or mortgage loan servicer in a separate envelope from any other
2 mailing or notice. Notice is considered given as of the date it is
3 mailed. The notice shall contain a current list of at least five housing

4 counseling agencies [~~as designated by the division of housing and commu-~~
5 ~~nity renewal, that serve the region where the borrower resides]~~ servicing
6 the county where the property is located from the most recent listing
7 available from department of financial services. The list shall include
8 the counseling agencies' last known addresses and telephone numbers. The
9 department of financial services [~~and the division of housing and commu-~~
10 ~~nity renewal]~~ shall make available on [~~their respective]~~ its websites a
11 listing, by [~~region]~~ county, of such agencies. The lender, assignee or
12 mortgage loan servicer shall use [~~either of these]~~ such lists to meet
13 the requirements of this section.

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

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

29 5. For any borrower known to have limited English proficiency, the
30 notice required by subdivision one of this section shall be in the
31 borrower's native language (or a language in which the borrower is
32 proficient), provided that the language is one of the six most common
33 non-English languages spoken by individuals with limited English profi-
34 ciency in the state of New York, based on United States census data. The
35 department of financial services shall post the notice required by
36 subdivision one of this section on its website in the six most common

37 non-English languages spoken by individuals with limited English profi-
38 ciency in the state of New York, based on the United States census data.

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

41 (i) The borrower is a natural person;

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

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

50 (iv) The property is located in this state.

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

55 [~~6.~~] 7. The department of financial services shall prescribe the tele-
56 phone number and web address to be included in the notice.

S. 8159

41

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

7 1. Notwithstanding any other provision of law, with regard to a high-
8 cost home loan, as such term is defined in section six-1 of the banking
9 law, a subprime home loan or a non-traditional home loan, at least nine-
10 ty days before a lender or a mortgage loan servicer commences legal

11 action against the borrower, including mortgage foreclosure, the lender
12 or mortgage loan servicer shall give notice to the borrower(s) at the
13 property address and any other address of record in at least fourteen-
14 point type which shall include the following:

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

17 "As of ___, your home loan is ___ days and _____ dollars in default.
18 Under New York State Law, we are required to send you this notice to
19 inform you that you are at risk of losing your home. ~~[You can cure this~~
20 ~~default by making the payment of _____ dollars by _____.]~~ There may be
21 options available to you to keep your home. This may include applying
22 for a loan modification of your mortgage, or reinstating your loan by
23 making the payment.

24 ~~[If you are experiencing financial difficulty, you should know that~~
25 ~~there are several options available to you that may help you keep your~~
26 ~~home.]~~ Attached to this notice is a list of government approved housing
27 counseling agencies in your area which provide free or very low-cost
28 counseling. ~~[You should consider contacting one of these agencies imme-~~
29 ~~diately. These agencies specialize in helping homeowners who are facing~~
30 ~~financial difficulty. Housing counselors can help you assess your finan-~~
31 ~~cial condition and work with us to explore the possibility of modifying~~
32 ~~your loan, establishing an easier payment plan for you, or even working~~
33 ~~out a period of loan forbearance.]~~ You can also call the NYS Office of
34 the Attorney General's Homeowner Protection Program (HOPP) toll-free
35 consumer hotline to be connected to free housing counseling services in
36 your area at 1-855-HOME-456 (1-855-466-3456), or visit their website at
37 <http://www.aghomehelp.com/>. A statewide listing by county is also avail-
38 able at [http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agen-](http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm)
39 [cies.htm](http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm). Qualified free help is available; watch out for companies or
40 people who charge a fee for these services.

41 Housing counselors from New York-based agencies listed on the website
42 above are trained to help homeowners who are having problems making
43 their mortgage payments and can help you find the best option for your

44 situation. If you wish, you may also contact us directly at _____
45 and ask to discuss possible options.

46 While we cannot assure that a mutually agreeable resolution is possi-
47 ble, we encourage you to take immediate steps to try to achieve a resol-
48 ution. The longer you wait, the fewer options you may have.

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

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

S. 8159

42

1 IMPORTANT: You have the right to remain in your home until you receive
2 a court order telling you to leave the property. If a foreclosure action
3 is filed against you in court, you still have the right to remain in the
4 home until a court orders you to leave. You legally remain the owner of
5 and are responsible for the property until the property is sold by you
6 or by order of the court at the conclusion of any foreclosure
7 proceedings. This notice is not an eviction notice, and a foreclosure
8 action has not yet been commenced against you.

9 2. Such notice shall be sent by the lender or mortgage loan servicer
10 to the borrower, by registered or certified mail and also by first-class
11 mail to the last known address of the borrower, and [~~if different,~~] to
12 the residence which is the subject of the mortgage. Notice is considered
13 given as of the date it is mailed. The notice shall contain a current
14 list of [~~at least five~~] United States department of housing and urban
15 development approved housing counseling agencies, or other housing coun-
16 seling agencies [~~as designated by the division of housing and community~~
17 ~~renewal, that serve the region where the borrower resides.~~] serving the
18 county where the property is located from the most recent listing avail-

19 able from the department of financial services. The list shall include
20 the counseling agencies' last known addresses and telephone numbers. The
21 department of financial services [~~and/or the division of housing and~~
22 ~~community renewal~~] shall make available a listing, by [~~region~~] county,
23 of such agencies which the lender or mortgage loan servicer may use to
24 meet the requirements of this section.

25 [~~5.~~] 6. (a) "Annual percentage rate" means the annual percentage rate
26 for the loan calculated according to the provisions of the Federal
27 Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations
28 promulgated thereunder by the federal reserve board (as said act and
29 regulations are amended from time to time).

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

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

36 (ii) The borrower is a natural person;

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

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

44 (v) The property is located in this state.

45 (c) "Subprime home loan" for the purposes of this section, means a
46 home loan consummated between January first, two thousand three and
47 September first, two thousand eight in which the terms of the loan
48 exceed the threshold as defined in paragraph (d) of this subdivision. A
49 subprime home loan excludes a transaction to finance the initial
50 construction of a dwelling, a temporary or "bridge" loan with a term of
51 twelve months or less, such as a loan to purchase a new dwelling where

52 the borrower plans to sell a current dwelling within twelve months, or a
53 home equity line of credit.

54 (d) "Threshold" means, for a first lien mortgage loan, the annual
55 percentage rate of the home loan at consummation of the transaction
56 exceeds three percentage points over the yield on treasury securities

S. 8159

43

1 having comparable periods of maturity to the loan maturity measured as
2 of the fifteenth day of the month in which the loan was consummated; or
3 for a subordinate mortgage lien, the annual percentage rate of the home
4 loan at consummation of the transaction equals or exceeds five percent-
5 age points over the yield on treasury securities having comparable peri-
6 ods of maturity on the fifteenth day of the month in which the loan was
7 consummated; as determined by the following rules: if the terms of the
8 home loan offer any initial or introductory period, and the annual
9 percentage rate is less than that which will apply after the end of such
10 initial or introductory period, then the annual percentage rate that
11 shall be taken into account for purposes of this section shall be the
12 rate which applies after the initial or introductory period.

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

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

25 (g) "Lender" means a mortgage banker as defined in paragraph (f) of

26 subdivision one of section five hundred ninety of the banking law or an
27 exempt organization as defined in paragraph (e) of subdivision one of
28 section five hundred ninety of the banking law.

29 [~~6.~~] 7. The department of financial services shall prescribe the tele-
30 phone number and web address to be included in the notice.

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

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

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

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

55 § 10. No local law, ordinance, or resolution shall impose a duty to
56 maintain or register vacant and abandoned property as defined in section

1 1309 of the real property actions and proceedings law in a manner incon-
2 sistent with the provisions of this act that are related to maintenance
3 as provided under subdivision 3, 4, 5, 6 and 7 of section 1308 of the
4 real property actions and proceedings law, or registration as provided
5 under section 1310 of the real property actions and proceedings law, or
6 establish related penalties or other monetary obligation, with respect
7 to a state or federally chartered bank, savings bank, savings and loan
8 association or credit union that originates, owns, services or maintains
9 mortgages related to such property.

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

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

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

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

30 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
31 sion, section or part of this act shall be adjudged by any court of
32 competent jurisdiction to be invalid, such judgment shall not affect,

33 impair, or invalidate the remainder thereof, but shall be confined in
34 its operation to the clause, sentence, paragraph, subdivision, section
35 or part thereof directly involved in the controversy in which such judg-
36 ment shall have been rendered. It is hereby declared to be the intent of
37 the legislature that this act would have been enacted even if such
38 invalid provisions had not been included herein.

39 § 3. This act shall take effect immediately provided, however, that
40 the applicable effective date of Parts A through Q of this act shall be
41 as specifically set forth in the last section of such Parts.