

A 7546 Lavine Same as S 6971 KAVANAGH Real Property Actions and Proceedings Law TITLE....Relates to actions upon a subordinate bond or note 04/01/25 referred to judiciary	S6971 KAVANAGH Same as A 7546 Lavine ON FILE: 03/28/25 Real Property Actions and Proceedings Law TITLE....Relates to actions upon a subordinate bond or note 03/27/25 REFERRED TO HOUSING, CONSTRUCTION AND COMMUNITY DEVELOPMENT 04/28/25 1ST REPORT CAL.698 04/29/25 2ND REPORT CAL. 04/30/25 ADVANCED TO THIRD READING 06/13/25 COMMITTED TO RULES
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STATE OF NEW YORK

7546

2025-2026 Regular Sessions

IN ASSEMBLY

April 1, 2025

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

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

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

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

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

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

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

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

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

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

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1 which that entity took physical possession of the original note, a chro-
2 nological listing of the names of all prior entities that physically
3 possessed the original note, the date of transfer of that note starting
4 with the original lender, and the address where the original note is
5 currently located.

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

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

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

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

25 3. Any complaint served in a proceeding involving a home loan, as such
26 term is defined in section thirteen hundred four of this article, in
27 which the plaintiff is seeking to foreclose on a subordinate loan and
28 such plaintiff purchased the subject subordinate loan when that loan was
29 in default, the plaintiff must affirmatively allege the date such plain-
30 tiff purchased the subject loan and the amount such plaintiff paid for
31 the subject loan. If the plaintiff purchased the subject loan as part of
32 a portfolio of loans, the amount the plaintiff paid for the subject loan
33 shall be determined by multiplying the total amount paid for the portfo-
34 lio of loans by a ratio, that ratio being the unpaid principal balance
35 at default for the subject loan divided by the total unpaid principal
36 balance at default for all the loans in the portfolio.

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

40 § 1302-a. Defense of statute of limitations and lack of standing; not
41 waived. 1. Notwithstanding the provisions of subdivision (e) of rule
42 thirty-two hundred eleven of the civil practice law and rules, any
43 objection or defense based on the statute of limitations in a foreclo-
44 sure proceeding related to a home loan, as defined in paragraph (a) of
45 subdivision six of section thirteen hundred four of this article, shall
46 not be waived if a defendant fails to raise the objection or defense in
47 a responsive pleading or pre-answer motion to dismiss.

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

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

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

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

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

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

16 § 1321. [~~Default or admission~~] Order of reference. 1. [~~If the defend-~~
17 ~~ant fails to answer within the time allowed or the right of the plain-~~
18 ~~tiff is admitted by the answer, upon~~] Upon motion of the plaintiff, the
19 court shall ascertain and determine the amount due, or direct a referee
20 to compute the amount due to the plaintiff and to such of the defendants
21 as are prior incumbrancers of the mortgaged premises, and to examine and
22 report whether the mortgaged premises can be sold in parcels and, if the
23 whole amount secured by the mortgage has not become due, to report the
24 amount thereafter to become due. Where the defendant is an infant, and
25 has put in a general answer by [~~his~~] such defendant's guardian, or if
26 any of the defendants be absentees, the order of reference also shall
27 direct the referee to take proof of the facts and circumstances stated
28 in the complaint and to examine the plaintiff or [~~his~~] such plaintiff's
29 agent, on oath, as to any payments which have been made. The order of
30 reference shall also include the name and telephone number of the mort-
31 gage servicer for a plaintiff involving a mortgage foreclosure of a one-
32 to four-family residential property.

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

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

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

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

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

53 § 213-e. Action upon a subordinate bond or note. Beginning January
54 first, two thousand twenty-seven, an action upon a subordinate bond or
55 note, the payment of which is secured by a mortgage upon real property,

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

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

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

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

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

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

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

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

14 § 10. Subdivision (f) of rule 3408 of the civil practice law and
15 rules, as amended by section 2 of part Q of chapter 73 of the laws of
16 2016, is amended to read as follows:

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.

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

24 [~~1-~~] (i) Compliance with the requirements of this rule and applicable
25 court rules, court orders, and directives by the court or its designee
26 pertaining to the settlement conference process;

27 [~~2-~~] (ii) Compliance with applicable mortgage servicing laws, rules,
28 regulations, investor directives, and loss mitigation standards or
29 options concerning loan modifications, short sales, and deeds in lieu of
30 foreclosure; and

31 [~~3-~~] (iii) Conduct consistent with efforts to reach a mutually agree-
32 able resolution, including but not limited to, avoiding unreasonable
33 delay, appearing at the settlement conference with authority to fully
34 dispose of the case, avoiding prosecution of foreclosure proceedings
35 while loss mitigation applications are pending, and providing accurate
36 information 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 2. As provided for under section thirteen hundred twenty-one of the
41 real property actions and proceedings law, it shall be unlawful for a
42 plaintiff to demand payment in excess of the amount the plaintiff paid
43 for a subordinate loan such plaintiff purchased in default, as deter-
44 mined under section thirteen hundred two of the real property actions
45 and proceedings law, and the maximum rate of interest provided under
46 section fourteen-a of the banking law accruing from the date the plain-
47 tiff purchased the subject loan. Any demand for a payment in excess of
48 this amount, whether to reinstate the loan or through a repayment plan,
49 loan modification or other loss mitigation option, shall also constitute
50 a failure to negotiate in good faith.

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

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A7546

SPONSOR: Lavine

TITLE OF BILL:

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

PURPOSE:

The bill limits the ability of mortgage debt speculators to strip equity from homeowners by strengthening existing foreclosure laws to require increased consumer transparency, mandate compliance with existing duties to negotiate in good faith at foreclosure settlement conferences, and conform the statute of limitations for such cases with those governing other analogous consumer debt collection cases.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1 of the bill amends section 1302 of the real property actions and proceedings law (RPAPL).

Subdivision 1 of section 1302 of the RPAPL is amended to make its provisions applicable to any complaint served in a proceeding involving a home loan, as defined in RPAPL section 1304, and to add new paragraphs (c) and (d) to establish new affirmative allegation requirements for the foreclosure complaint to prevent abuse of the foreclosure process and the court system.

A new paragraph (c) is added to subdivision 1 of section 1302 of the RPAPL to require the holder of the debt to allege in a foreclosure complaint that it has a complete record of all transactions of the subject loan.

A new paragraph (d) is added to subdivision 1 section 1302 of the RPAPL to require the holder of the debt to document the chain of ownership of the subject loan.

Subdivision 2 of section 1302 of the RPAPL is amended by adding new paragraphs (b) and (c) to establish additional defenses to a foreclosure action.

A new paragraph (b) is added to subdivision 2 of section 1302 of the RPAPL to add as a defense where the debt holder does not keep and main-

tain a complete record of all transactions of the subject loan.

A new paragraph (c) is added to subdivision 2 of section 1302 of the RPAPL to add as a defense where the holder of the debt does not document the chain of ownership of the subject loan.

Section 1 of the bill also adds a new subdivision 3 to section 1302 of the RPAPL to require a foreclosing party who purchased the subject loan when that loan was in default to affirmatively allege the date and amount of the purchase. If the subject loan was purchased as part of a portfolio of loans, the amount paid for the subject loan shall be determined by a formula based on a ratio of unpaid-to-paid loan balance at the time of default for all the loans in the portfolio.

Section 2 of the bill amends section 1302-a of the RPAPL and adds a new subdivision (1) to the section to specify that statute of limitations is not waived in a foreclosure proceeding, regardless of whether the defendant fails to raise the defense in a responsive pleading.

Section 3 of the bill amends the opening paragraph and subdivision 3 of section 1311 of the RPAPL by making every person having a lien or encumbrance upon the subject real property a necessary and indispensable party to the foreclosure action.

Section 4 of the bill amends section 1321 of the RPAPL by adding a new subdivision 3 to limit the amount recoverable in a foreclosure on a subordinate loan where such plaintiff purchased the subject subordinate loan when that loan was in default. The limit is the amount the plaintiff paid for the subject loan, as determined under new subdivision 3 of section 1302, and the maximum rate of interest is as provided under section 14-a of the banking law accruing from the date the plaintiff purchased the subject loan.

Section 5 of the bill amends the opening paragraph of subdivision 4 of section 213 of the civil practice law and rules (CPLR) to exclude from covered actions a subordinate bond or note purchased when such bond or note was in default in order to conform with the adjustment to the statute of limitations for such loans in Section 6 of the bill.

Section 6 of the bill amends the CPLR by adding a new section 213-e to establish a statute of limitations for actions on a subordinate bond or note purchased in default, which shall be commenced within the shorter of (a) three years of the purchase of the bond or note or (b) the relevant time limit as provided by subdivision 4 of section 213 of the CPLR. This conforms the statute of limitations for such actions with other categories of cases that have a three-year limitations period, such as consumer credit collection actions (CPLR section 214-i).

Section 7 of the bill amends Subdivision (h) of section 203 of the CPLR to conform the existing prohibition on unilateral extensions of the statute of limitations to reflect the bill's addition of CPLR section 213-e.

Section 8 of the bill amends the opening paragraph of subdivision (a) of section 205-a of the CPLR to conform the existing provision to reflect this bill's addition of CPLR section 213-e.

Section 9 of the bill amends subdivision (a) of section 3012-b of the CPLR to conform the existing certificate of merit provision with the amended pleading requirements enacted by this bill.

Section 10 of the bill amends rule 3408 of the CPLR governing foreclosure settlement conferences to conform to the provisions of this bill and to clarify that the existing good faith negotiation standard in subdivision (f) is violated if a plaintiff demands payment in excess of the limit set out in section 1321 of the RPAPL, and establishes that any demand made for a payment in excess of this amount, whether to reinstate the loan or through a repayment plan, loan modification or other loss mitigation option, would also constitute a failure to negotiate in good faith.

Section 11 of the bill sets forth the effective date.

JUSTIFICATION:

This bill seeks to address the growing prevalence of "zombie second mortgage" foreclosures -debt-collection actions initiated by holders of a home's subordinate, high-interest second mortgage loan in default that can result in foreclosure if the homeowner/borrower fails to repay the loan's outstanding balance along with interest and fees.

When the holder of a defaulted second mortgage chooses not to collect on the loan because any prospect of recovery is subordinated to a first mortgage, the second mortgage becomes dormant. Many holders of these loans cease sending mortgage statements and "charge off" and warehouse these loans. Borrowers, many of whom never even knew that their homes were encumbered by second mortgages because they were marketed simultaneously with their first mortgages as "80/20" loans, receive no statements on these loans, sometimes for a decade or longer. And if a homeowner in default of a first mortgage successfully avoids foreclosure by obtaining a loan modification, they may reasonably believe that the loan modification has also resolved their second mortgage.

Second mortgage loans left uncollected for years are often sold to debt buyers "for pennies on the dollar," according to an advisory opinion on this issue released by the U.S. Consumer Financial Protection Bureau (CFPB) in April 2023. The same opinion further explains that "(s)uch sales often occurred unbeknownst to borrowers, who continued to receive no communications regarding the loans. Many borrowers, having not received any notices or periodic statements for years, concluded that their second mortgages had been modified along with the first mortgage, discharged in bankruptcy, or forgiven."

As home prices have increased over the years and borrowers have paid down their first mortgages, thousands of homeowners are now being sued by debt collection firms and private equity investors claiming to own or have the right to collect on their homes' dormant second mortgages. These debt collectors demand the outstanding balance on the second mortgage -regardless of whether the mortgage was acquired from a previous debt holder at a steep discount -- plus high fees and interest. Homeowners face a choice between entering into onerous payment plans or losing their homes and the equity they have diligently built.

This bill would address the lack of transparency in the mortgage lien

process, which currently allows debt collectors to purchase liens for pennies on the dollar and then demand collection on the full value of the defaulted loan while piling on unreasonable fees and interest, all without notice to the borrower. This bill requires the sharing of accurate payment and chain of title records between parties before any foreclosure action may be brought, providing homeowners with proper notice regarding the status of their debt.

In addition to the procedural protections afforded by transparency, this bill would substantively reduce the amount of fees and interest chargeable on the zombie second mortgage loan not to exceed the amount paid for the subject loan by the debt holder, plus the maximum rate of interest permitted under section 14(a) of the Banking Law accruing from the date of the subject loan's purchase.

The CFPB's advisory opinion also discusses how a state's statute of limitations on debt collection practices may provide a jurisdictional hook into federal law. Debt collectors as defined in section 803(6) of the federal Fair Debt Collection Practices Act (FDCPA) and implemented in Regulation F, 12 CFR 1006.2(i) prohibits a debt collector from bringing suit or threatening to sue to collect a time-barred debt. Accordingly, an FDCPA debt collector who brings or threatens to bring a State court foreclosure action to collect a time-barred mortgage debt may violate the FDCPA and Regulation F.

The existing six-year statute of limitations for foreclosure actions operates as an injustice in these zombie second foreclosure actions, as homeowner defendants who have received no statements or communications from their lender for many years lack access to any payment records with which to challenge these actions, and the debt-buyer plaintiffs often have no documentation and routinely flout the discovery process when they bring judicial foreclosure actions. By conforming the statute of limitations for these cases to the three-year limitations period governing consumer credit cases, which are also typically brought by debt buyers paying pennies on the dollar for the debts, this bill would ensure that zombie second mortgage foreclosure defendants receive similar protections to those already extended to consumer credit case defendants.

As a matter of fairness and in view of the ongoing homelessness and affordability crisis in New York, homeowners should be protected from abusive and unfair debt collection practices and be given the opportunity to defend these actions in a fair and transparent judicial foreclosure process.

LEGISLATIVE HISTORY:

This is a new bill.

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

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

STATE OF NEW YORK

7546

2025–2026 Regular Sessions

IN ASSEMBLY

April 1, 2025

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

AN ACT to amend the real property actions and proceedings law and the

civil practice law and rules, in relation to actions upon a subordinate bond or note

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

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

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

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

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

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

(d) if such plaintiff claims to possess the original note, such plaintiff has maintained or is in possession of a custodial file documenting such plaintiff's possession of the subject note, which includes the name of the entity that physically possesses the original note, the date on which that entity took physical possession of the original note, a chronological listing of the names of all prior entities that physically possessed the original note, the date of transfer of that note starting with the original lender, and the address where the original note is currently located.

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

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

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

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

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

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

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

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

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

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

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

~~and subordinate to the lien of the plaintiff~~].

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

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

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

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

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

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

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

§ 213-e. Action upon a subordinate bond or note. Beginning January first, two thousand twenty-seven, an action upon a subordinate bond or note, the payment of which is secured by a mortgage upon real property, or upon a bond or note and mortgage so secured, or upon a mortgage of real property, or any interest therein, where the subject bond or note is purchased when such bond or note was in default, shall be commenced within the shorter of (a) three years of the purchase of the bond or note or (b) the relevant time limit as provided by subdivision four of section two hundred thirteen of this article.

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

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

commence an action and to interpose the claim, unless expressly prescribed by statute.

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

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

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

(a) In any residential foreclosure action involving a home loan, as such term is defined in section thirteen hundred four of the real property actions and proceedings law, in which the defendant is a resident of the property which is subject to foreclosure, the complaint shall be accompanied by a certificate, signed by the attorney for the plaintiff, certifying that the attorney has reviewed the facts of the case and that, based on consultation with representatives of the plaintiff identified in the certificate and the attorney's review of pertinent documents, including the mortgage, security agreement and note or bond underlying the mortgage executed by defendant and all instruments of assignment, if any, [~~and~~] any other instrument of indebtedness including any modification, extension, and consolidation **agreement, and the payment history for the subject loan and the custodial file for the subject note as defined under section thirteen hundred two of the real property actions and proceedings law**, to the best of such attorney's knowledge, information and belief there is a reasonable basis for the commencement of such action and that the plaintiff is currently the creditor entitled to enforce rights under such documents. If not attached to the summons and complaint in the action, a copy of the mortgage, security agreement and note or bond underlying the mortgage executed by defendant and all instruments of assignment, if any, and any other instrument of indebtedness including any modification, extension, and consolidation **agreement, and the payment history for the subject loan and the custodial file for the subject note as defined under section thirteen hundred two of the real property actions and proceedings law** shall be attached to the certificate.

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

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

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

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

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

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

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

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

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