

UNDERWRITING BULLETIN

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NY000324

Date: August 23, 2007

To: All New York State Office Counsel, Managers and Agents

From: Harold Boxer, Vice President and Senior Agency Counsel

Re: New requirements for foreclosure actions

New York State has passed a new law (Chpt. 458 of the Laws of 2007) requiring additional notice to an owner of 1-3 family dwellings in a foreclosure proceeding.

A new Section 1320 Real Property Actions and Proceedings Law requires the summons in a foreclosure of a 1-3 family to contain a special notice. A copy of the required notice is attached to this memo.

The following exception must be added in a title coming through foreclosure after August 1, 2007:

Proof of compliance with Section 1320 of the Real Property Actions and Proceedings Law is required. (Note: This Section requires the summons in an action to foreclose a mortgage on a *residential property containing not more than three units* to contain a prescribed notice in bold-face.)

Your examiners must now provide a copy of the summons in a foreclosure action to determine if the attorney complied with the new law.

Also changed by the law was CPLR 3215 (g) (3) (iii). A copy of the summons must be mailed again to the defendant at least 20 days prior to the entry of a default judgment.

The following exception must be added in a title coming through foreclosure after August 1, 2007:

Proof of compliance with Section 3215(g)(3) of the Civil Practice Law and Rules is required. (Note: Section 3215(g)(3)(iii) has been amended to extend the requirements of Section 3215(g)(3) of the Civil Practice Law and Rules to *residential mortgage foreclosure actions*.)

Your examiner must provide a copy of the proof of mailing of the summons to comply with CPLR 3215 (g) (3) (iii).

If an order of foreclosure was not obtained prior to August 1, 2007, company will require mailing, after August 1, 2007, of the summons with the appropriate notice. If the defendant defaulted, company will require the second mailing of the summons pursuant to CPLR 3215 (g) (3) (iii).

NOTICE

YOU ARE IN DANGER OF LOSING YOUR HOME

If you do not respond to this summons and complaint by serving a copy of the answer on the attorney for the mortgage company who filed this foreclosure proceeding against you and filing the answer with the court, a default judgment may be entered and you can lose your home.

Speak to an attorney or go to the court where your case is pending for further information on how to answer the summons and protect your property.

Sending a payment to your mortgage company will not stop this foreclosure action.

YOU MUST RESPOND BY SERVING A COPY OF THE ANSWER ON THE ATTORNEY FOR THE PLAINTIFF (MORTGAGE COMPANY) AND FILING THE ANSWER WITH THE COURT.

Want to receive Alerts & Bulletins by email?

Please email SticMarketing@stewart.com to put your name on the Legal distribution lists for alerts and bulletins.

References:

Bulletins Replaced:	None
Related Bulletins:	None
Underwriting Manual:	None
Exceptions Manual:	None
Forms:	None
Attachments:	None

THIS BULLETIN IS A CONFIDENTIAL COMMUNICATION BETWEEN STEWART AND THE ADDRESSEE. STEWART DOES NOT AUTHORIZE THE DISCLOSURE OF THIS COMMUNICATION TO ANY THIRD PARTIES WITHOUT ITS PRIOR WRITTEN CONSENT.

Introduced by M. of A. TITUS, WEINSTEIN, CLARK -- Multi-Sponsored by --
M. of A. DESTITO, D. GORDON, JAFFEE, JEFFRIES, JOHN, LANCMAN, LAVINE,
MILLMAN, SWEENEY, YOUNG -- (at request of the Office of Court Adminis-
tration) -- 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 providing additional
notice to mortgagors that a foreclosure action has been commenced

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

1 Section 1. The real property actions and proceedings law is amended by
2 adding a new section 1320 to read as follows:

3 § 1320. Special summons requirement in private residence cases. In an
4 action to foreclose a mortgage on a residential property containing not
5 more than three units, in addition to the usual requirements applicable
6 to a summons in the court, the summons shall contain a notice in bold-
7 face in the following form:

8 NOTICE

9 YOU ARE IN DANGER OF LOSING YOUR HOME

10 If you do not respond to this summons and complaint by serving a copy
11 of the answer on the attorney for the mortgage company who filed this
12 foreclosure proceeding against you and filing the answer with the court,
13 a default judgment may be entered and you can lose your home.

14 Speak to an attorney or go to the court where your case is pending for
15 further information on how to answer the summons and protect your prop-
16 erty.

17 Sending a payment to your mortgage company will not stop this foreclo-
18 sure action.

19 YOU MUST RESPOND BY SERVING A COPY OF THE ANSWER ON THE ATTORNEY FOR
20 THE PLAINTIFF (MORTGAGE COMPANY) AND FILING THE ANSWER WITH THE COURT.

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

LBD10538-01-7

A. 8630

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1 § 2. Subparagraph (iii) of paragraph 3 of subdivision (g) of section
2 3215 of the civil practice law and rules, as added by chapter 77 of the
3 laws of 1986, is amended to read as follows:

4 (iii) This requirement shall not apply to cases in the small claims
5 part of any court, or to any summary proceeding to recover possession of
6 real property, or to actions affecting title to real property, except
7 residential mortgage foreclosure actions.

8 § 3. This act shall take effect immediately.

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

BILL NUMBER: A8630

SPONSOR: Titus (MS)

TITLE OF BILL:

An act to amend the real property actions and proceedings law and the
civil practice law and rules, in relation to providing additional notice
to mortgagors that a foreclosure action has been commenced

This is one in a series of measures being introduced at the request of the Chief Administrative Judge on the recommendation of his Advisory Committee on Civil Practice.

This measure would add a new section 1320 to the Real Property Actions and Proceedings Law ("RPAPL") and amend CPLR 3215(g)(3)(iii) to provide additional notice to mortgagors that a foreclosure action has been commenced. This recommendation has been made by members of the Judiciary who believe that unsophisticated homeowners currently do not receive sufficient notice that they are about to lose their homes through foreclosure.

Proposed new section 1320 would add a special summons requirement in private residence mortgage foreclosure cases. This new provision would be applicable to mortgage foreclosures on residential property containing not more than three units. In addition to the usual requirement applicable to a summons in the court, a bold face notice written in plain English would now have to accompany the summons commencing the foreclosure action. This document would provide an explicit warning that if the defendant does not come to court and answer, his or her real property could be taken. It informs the recipient that the entire balance of the mortgage loan is now due, and recommends that the defendant immediately engage an attorney or go to the local court's Office for the Self-Represented for assistance.

This measure also would amend CPLR 3215(g)(3)(iii) to extend the requirement that there be a second notice to a defaulting defendant in a residential mortgage foreclosure proceeding before a default judgment can be issued. Currently, under CPLR 3215(g)(3)(i), a second summons must be sent to a defendant when a plaintiff seeks to obtain a default judgment due to the nonappearance of a natural person based upon a failure to pay a contractual obligation. This summons must be sent by first class mail to the defendant's place of residence, or if that is unknown, to his last known place of employment, or if that is unknown, his last known residence. Although this second notice requirement would seem to include residential mortgage contracts, subdivision (iii) of the same statute states that the extra notice need not be given when the action affects title to real property. This measure would simply limit the last exception, and exclude from its ambit residential mortgage contracts.

This measure, which would have no fiscal impact on the State, would take effect immediately.

2005-06 LEGISLATIVE HISTORY:

OCA 2005-38

Assembly 8110 (M. of A. Titis)

Passed
