



ROBERTSON, ANSCHUTZ, SCHNEID,
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LAW OFFICES

VALUED CLIENTS:

I write to you from Robertson, Anschutz, Schneid, Crane & Partners, PLLC to share a statutory update. Attached please find the following:

- (1) Memorandum advising of the statutory changes to RPAPL 1305;
- (2) The text of S885 which was signed into law by Governor Cuomo today;
- (3) RPAPL 1303 which is referenced in the legislation;
- (4) S5357 which is referenced for the purpose of establishing the effective date;

If you would like to discuss further, please do not hesitate to contact Joseph Battista, Esq., General Counsel or myself.

Thanks.

Sara Z. Boriskin

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McKinney's Consolidated Laws of New York Annotated

Real Property Actions and Proceedings Law (Refs & Annos)

Chapter 81. Of the Consolidated Laws (Refs & Annos)

Article 13. Action to Foreclose a Mortgage (Refs & Annos)

McKinney's RPAPL § 1303

§ 1303. Foreclosures; required notices

Effective: December 20, 2016

[Currentness](#)

1. The foreclosing party in a mortgage foreclosure action, involving residential real property shall provide notice to:

(a) any mortgagor if the action relates to an owner-occupied one-to-four family dwelling; and

(b) any tenant of a dwelling unit in accordance with the provisions of this section.

2. The notice to any mortgagor required by paragraph (a) of subdivision one of this section shall be delivered with the summons and complaint. Such notice shall be in bold, fourteen-point type and shall be printed on colored paper that is other than the color of the summons and complaint, and the title of the notice shall be in bold, twenty-point type. The notice shall be on its own page.

3. The notice to any mortgagor required by paragraph (a) of subdivision one of this section shall appear as follows:

Help for Homeowners in Foreclosure

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

Summons and Complaint

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

Sources of Information and Assistance

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

To locate an entity near you, you may call the toll-free helpline maintained by the New York State Department of Financial Services at (enter number) or visit the Department's website at (enter web address).

Rights and Obligations

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

Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accordance with state and local law.

Foreclosure rescue scams

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

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

4. The notice to any tenant required by paragraph (b) of subdivision one of this section shall be delivered within ten days of the service of the summons and complaint. Such notice shall be in bold, fourteen-point type, and the paragraph of the notice beginning with the words "ALL RENT-STABILIZED" and ending with the words "FULL HEARING IN COURT" shall be printed entirely in capital letters and underlined. The foreclosing party shall provide its name, address and telephone number on the notice. The notice shall be printed on colored paper that is other than the color of the summons and complaint, and the title of the notice shall be in bold, twenty-point type. The notice shall be on its own page. For buildings with fewer than five dwelling units, the notice shall be delivered to the tenant, by certified mail, return receipt requested, and by first-class mail to the tenant's address at the property if the identity of the tenant is known to the plaintiff, and by first-class mail delivered to "occupant" if the identity of the tenant is not known to the plaintiff. For buildings with five or more dwelling units, a legible copy of the notice shall be posted on the outside of each entrance and exit of the building.

5. The notice required by paragraph (b) of subdivision one of this section shall appear as follows:

Notice to Tenants of Buildings in Foreclosure

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

We, (name of foreclosing party), are the foreclosing party and are located at (foreclosing party's address). We can be reached at (foreclosing party's telephone number).

The dwelling where your apartment is located is the subject of a foreclosure proceeding. If you have a lease, are not the owner of the residence, and the lease requires payment of rent that at the time it was entered into was not substantially less than the fair market rent for the property, you may be entitled to remain in occupancy for the remainder of your lease term. If you do not have a lease, you will be entitled to remain in your home until ninety days after any person or entity who acquires title to the property provides you with a notice as required by [section 1305 of the Real Property Actions and Proceedings Law](#). The notice shall provide information regarding the name and address of the new owner and your rights to remain in your home. These rights are in addition to any others you may have if you are a subsidized tenant under federal, state or local law or if you are a tenant subject to rent control, rent stabilization or a federal statutory scheme.

ALL RENT-STABILIZED TENANTS AND RENT-CONTROLLED TENANTS ARE PROTECTED UNDER THE RENT REGULATIONS WITH RESPECT TO EVICTION AND LEASE RENEWALS. THESE RIGHTS ARE UNAFFECTED BY A BUILDING ENTERING FORECLOSURE STATUS. THE TENANTS IN RENT-STABILIZED AND RENT-CONTROLLED BUILDINGS CONTINUE TO BE AFFORDED THE SAME LEVEL OF PROTECTION EVEN THOUGH THE BUILDING IS THE SUBJECT OF FORECLOSURE. EVICTIONS CAN ONLY OCCUR IN NEW YORK STATE PURSUANT TO A COURT ORDER AND AFTER A FULL HEARING IN COURT.

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

6. The department of financial services shall prescribe the telephone number and web address to be included in either notice.

7. The department of financial services shall post on its website or otherwise make readily available the name and contact information of government agencies or non-profit organizations that may be contacted by mortgagors for information about the foreclosure process, including maintaining a toll-free helpline to disseminate the information required by this section.

Credits

(Added L.2006, c. 308, § 4, eff. Feb. 1, 2007. Amended L.2007, c. 154, § 13, eff. July 3, 2007; L.2008, c. 472, § 1, eff. Aug. 5, 2008; L.2009, c. 507, § 1, eff. Jan. 14, 2010; L.2010, c. 358, § 1, eff. Sept. 12, 2010; L.2011, c. 62, pt. A, § 104, eff. Oct. 3, 2011; L.2012, c. 155, § 83, eff. July 18, 2012; L.2016, c. 73, pt. Q, § 5, eff. Dec. 20, 2016.)

McKinney's R. P. A. P. L. § 1303, NY RP ACT & PRO § 1303

Current through L.2021, chapters 1 to 49, 61 to 80. Some statute sections may be more current, see credits for details.

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STATE OF NEW YORK

885

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the real property actions and proceedings law, in relation to notice to tenants in mortgage foreclosure actions

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

1 Section 1. Subdivisions 2 and 3 of section 1305 of the real property
2 actions and proceedings law, as added by chapter 507 of the laws of
3 2009, are amended to read as follows:

4 2. Notwithstanding any other provision of law, a tenant of a unit not
5 subject to rent control or rent stabilization shall have the right to
6 remain in occupancy of the unit of the subject residential real property
7 where he or she resides on the date of [mailing] service of the notice
8 required by subdivision three of this section for the greater of: (a) a
9 period of ninety days from the date of the [mailing] service of such
10 notice; or (b) for the remainder of the lease term if the tenant occu-
11 pied the premises at the commencement of the foreclosure action or
12 received a notice pursuant to section thirteen hundred three of this
13 article; or (c) for the remainder of the lease term, provided that the
14 lease agreement was entered into in good faith pursuant to this section
15 and federal law, up to a maximum of three years, for tenants who did not
16 occupy the premises at the commencement of the foreclosure action and
17 therefore did not receive the original notice of service required pursu-
18 ant to section thirteen hundred three of this article; provided that if
19 a successor in interest who acquires title to such residential real
20 property intends to occupy a single unit as his or her primary residence
21 and the unit is not subject to a federal or state statutory system of
22 subsidy or other federal or state statutory scheme, the successor may
23 limit for one unit only, the tenant's right of occupancy to ninety days.
24 For a lease to qualify under this subdivision, the tenant under such

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

LBD07178-01-1

1 lease may not be the owner of the residential real property, and such
2 lease must require the payment of rent for such unit that is not
3 substantially less than the fair market rent for the unit, unless the
4 unit is subject to federal or state statutory system of subsidy or other
5 federal or state statutory scheme. A tenant under paragraph (a) ~~[ex]~~,
6 (b), or (c) of this subdivision shall continue such tenancy subject to
7 any limitations in this subdivision under the same terms and conditions
8 as were in effect at the time of entry of the judgment of foreclosure
9 and sale, or if no such judgment was entered, upon the terms and condi-
10 tions that were in effect at the time of the transfer of ownership of
11 such property. For purposes of this section, "fair market rent" shall
12 mean rent for a unit of residential real property of similar size,
13 location and condition.

14 3. Notwithstanding any other provision of law, and consistent with
15 subdivision two of this section, a successor in interest of residential
16 real property shall provide written notice to all tenants in the same
17 manner as required by subdivision four of section thirteen hundred three
18 of this article: (a) that they are entitled to remain in occupancy of
19 such property for the remainder of the lease term, or a period of ninety
20 days from the date of mailing of such notice, whichever is greater, on
21 the same terms and conditions as were in effect at the time of entry of
22 the judgment of foreclosure and sale, or if no such judgment was
23 entered, upon the terms and conditions as were in effect at the time of
24 transfer of ownership of such property; and (b) of the name and address
25 of the new owner. Any person or entity who or which becomes a successor
26 in interest after the issuance of the ninety-day notice provided for in
27 this subdivision, shall notify all tenants of its name and address and
28 shall assume such interest subject to the right of the tenant to main-
29 tain possession as provided in this subdivision.

30 § 2. This act shall take effect on the same date and in the same
31 manner as a chapter of the laws of 2020 amending the real property
32 actions and proceedings law relating to the definition of "tenant" for
33 purposes of mortgage foreclosures, as proposed in legislative bills
34 numbers S. 5357 and A. 6370, take effect.



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L A W O F F I C E S

M E M O R A N D U M

TO: RAS CLIENTS
FROM: Joseph F. Battista, Esq., General Counsel – New York
RE: S885 – Amends RPAPL 1305
DATE: March 25, 2021

We are writing to advise you of a New York statutory update. On March 25, 2021, Governor Cuomo signed S885 into law, which amends RPAPL § 1305.

Effective Date: The amendments are effective January 1, 2021 and apply to eviction proceedings filed on or after January 1, 2021.

Statutory Amendment Summary: The amendments to RPAPL § 1305 pertain to tenants occupying foreclosed properties pursuant to the terms of an existing lease, and should not significantly impact your processes or procedures. The key changes of which you should be aware are as follows:

- 1) Notice to tenants advising of their rights to remain the property must be served within 10 days of service of the eviction petition.
- 2) If a tenant occupied the mortgaged property prior to or at the time the foreclosure action was commenced, or received a tenant's notice pursuant to RPAPL § 1303, the tenant may remain in the property through the end of the lease term, or 90 days whichever is greater.
- 3) If a tenant entered into a lease of the mortgaged property in good faith subsequent to commencement of the foreclosure action, the tenant may remain in the property through the end of the lease term under the same terms in effect at the time of entry of the judgment of foreclosure if:
 - (i) The lease was entered into with good faith; and
 - (ii) The lease is for a maximum of three years; and
 - (iii) The tenant is not the former owner; and
 - (iv) The rental payment is not substantially less than fair market rental.

If you would like to schedule a call to discuss the new statutory requirements and the impact on the foreclosure process, please feel free to contact me at jbattista@raslg.com or 516-280-7675 ext. 1059.

STATE OF NEW YORK

5357

2019-2020 Regular Sessions

IN SENATE

April 29, 2019

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the real property actions and proceedings law, in relation to the definition of "tenant" for purposes of mortgage foreclosures

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

1 Section 1. Paragraph (c) of subdivision 1 of section 1305 of the real
2 property actions and proceedings law, as added by chapter 507 of the
3 laws of 2009, is amended to read as follows:

4 (c) "Tenant" shall mean any person who [~~at the time the notice~~
5 ~~required by subdivision four of section thirteen hundred three of this~~
6 ~~article~~] appears as a lessee on a lease of one or more dwelling units of
7 a residential real property that is subordinate to the mortgage on such
8 residential real property; or who at such time is a party to an oral or
9 implied rental agreement with the mortgagor and obligated to pay rent to
10 the mortgagor or such mortgagor's representative, for the use or occu-
11 pancy of one or more dwelling units of a residential real property.

12 § 2. This act shall take effect on the first of January next succeed-
13 ing the date on which it shall have become a law, and shall apply to
14 actions commenced on or after such date.

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

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