

[Second Reprint]

**ASSEMBLY, No. 2780**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED MAY 22, 2008

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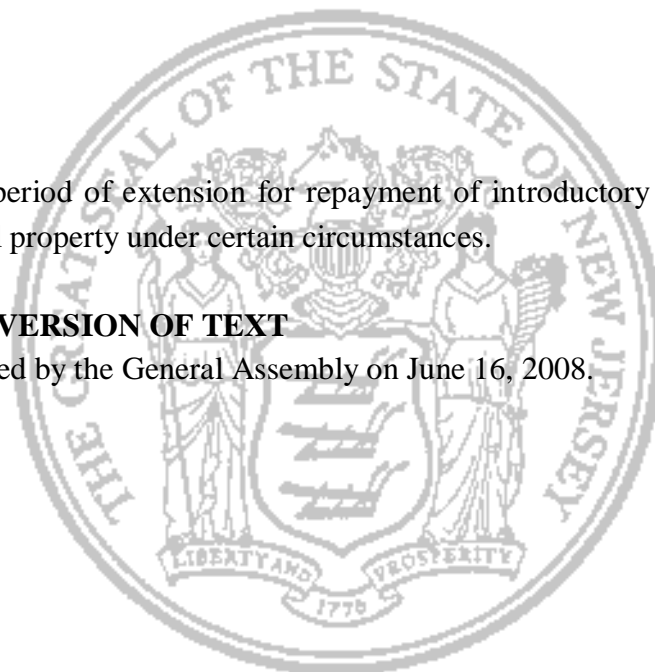
**Assemblymen Diegnan, Conaway, Senators Gill and Ruiz**

**SYNOPSIS**

Provides period of extension for repayment of introductory rate mortgages on residential property under certain circumstances.

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on June 16, 2008.



**(Sponsorship Updated As Of: 6/24/2008)**

1 AN ACT concerning certain residential mortgages, and  
2 supplementing Title 46 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the “Save New  
8 Jersey Homes Act of 2008”.

9

10 2. The Legislature finds and declares that:

11 a. Many thousands of New Jersey homeowners are at risk of  
12 losing their homes as a result of mortgage foreclosures in the  
13 immediate future;

14 b. Foreclosure of a family’s home often represents the loss of  
15 the family’s most valuable financial asset, and foreclosures  
16 undermine the health and economic vitality of neighborhoods;

17 c. Foreclosures result in the loss of millions of dollars in assets,  
18 not only those of the homeowners who are the victims of  
19 foreclosure, but also in terms of the property values of homes  
20 located in the vicinity of foreclosed properties, as well as millions  
21 in additional costs to state and local government for the loss of  
22 property tax revenue;

23 d. According to a report issued by the U.S. Government  
24 Accountability Office (GAO) in October 2007, New Jersey  
25 experienced an increase in residential mortgage foreclosure start  
26 rates in excess of 50% over the prior two years and the GAO found  
27 that defaults and foreclosures on mortgages have a significant  
28 economic impact on homeowners, lenders, and neighborhoods;

29 e. According to a report issued in April 2008 by the State  
30 Foreclosure Prevention Working Group, which is composed of  
31 banking regulators and attorneys general of 11 states, the collective  
32 efforts of mortgage lenders and government officials to address  
33 rising foreclosures has not resulted in meaningful improvement in  
34 foreclosure prevention, and new approaches, such as targeted  
35 efforts to slow down the foreclosure process, are needed to prevent  
36 millions of unnecessary foreclosures nationwide.

37 f. Foreclosures are largely the result of subprime lending  
38 practices, which have placed many homeowners in loans that they  
39 cannot realistically afford, by using mortgage loan features such as  
40 low introductory rates which reset to higher, variable rates, thereby  
41 increasing the risk of default for many homeowners in the state  
42 who, at an increasing rate, cannot sell their home or refinance their  
43 mortgage;

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup>Assembly AFI committee amendments adopted May 22, 2008.

<sup>2</sup>Assembly floor amendments adopted June 16, 2008.

1 g. Industry analysts estimate that, nationwide, about 1.5 million  
2 mortgages are due to reset in 2008, and that as many as three  
3 million subprime mortgages could end up in foreclosure over the  
4 next several years; and

5 h. There is a compelling need for the State of New Jersey to  
6 address the ongoing economic crisis in the subprime mortgage  
7 market and to provide the means by which homeowners can obtain  
8 a period of extension to adjust their finances in order to increase  
9 their ability to retain their homes, encourage mortgage lenders to  
10 modify mortgage loan terms and resolve foreclosure disputes, and  
11 protect local governments and neighborhoods from the negative  
12 social, economic, and fiscal consequences of foreclosure and  
13 abandonment.

14  
15 3. As used in this act:

16 “Creditor” means a State chartered bank, savings bank, savings  
17 and loan association or credit union, any person required to be  
18 licensed under the provisions of the “New Jersey Licensed Lenders  
19 Act,” P.L.1996, c.157 (C.17:11C-1 et seq.), and any entity acting on  
20 behalf of the creditor named in the debt obligation including, but  
21 not limited to, servicers.

22 “Eligible borrower” means a borrower who is obligated to repay  
23 a loan secured by an introductory rate mortgage.

24 “Eligible foreclosed borrower” means a borrower who is  
25 obligated to repay a loan secured by an introductory rate mortgage  
26 and who receives a notice of intention to foreclose that mortgage  
27 pursuant to the “Fair Foreclosure Act,” P.L.1995, c.244 (C.2A:50-  
28 53 et seq.), except that an “eligible foreclosed borrower” shall not  
29 include an eligible borrower who has previously exercised the right  
30 to obtain a three year period of extension pursuant to section 5 of  
31 this act.

32 <sup>2</sup>“Full repayment” means the full repayment of the amounts due  
33 under the introductory rate mortgage, including, without limitation,  
34 upon the maturity date, a refinancing, or a sale of or other transfer  
35 of title to the property.<sup>2</sup>

36 <sup>1</sup>**“Fully indexed rate”** “Fully indexed rate”<sup>1</sup> means the sum of  
37 the current value of the index used for the adjustable rate mortgage  
38 and the margin disclosed in the loan agreement.

39 “Introductory rate mortgage” means a consumer credit  
40 transaction in which the loan is secured by a mortgage <sup>2</sup>**[**or deed of  
41 trust<sup>2</sup>**]** on real estate in this State upon which there is located a one  
42 to four family dwelling which is occupied by the borrower as the  
43 borrower’s principal residence, and which provides for <sup>2</sup>: (1)<sup>2</sup> an  
44 introductory <sup>2</sup>payment<sup>2</sup> rate <sup>2</sup>option<sup>2</sup> that is set <sup>2</sup>at least 3 percent<sup>2</sup>  
45 below the fully indexed rate at the time the loan was originated and  
46 <sup>2</sup>payments<sup>2</sup> may adjust <sup>2</sup>by more than 3 percent<sup>2</sup> at the reset date  
47 regardless of whether the variable rate index has increased <sup>2</sup>; or (2)

1 an interest rate that may adjust by more than 2 percent at the end of  
2 the initial fixed rate period of the loan and which, notwithstanding  
3 the payment rate in effect, had an interest rate at origination of more  
4 than 200 basis points over the Freddie Mac 30-year conventional  
5 interest rate and which provides for an introductory rate that is set  
6 below the fully indexed rate at the time the loan was originated and  
7 may adjust at the reset date regardless of whether the variable rate  
8 index has increased<sup>2</sup> . <sup>1</sup>“Introductory rate mortgage” shall not  
9 include: (1) a loan that provides for a fixed rate of interest for the  
10 first five years <sup>2</sup>or longer<sup>2</sup> ; or (2) a loan that provides for an  
11 introductory rate that is set below the fully indexed rate at the time  
12 the loan was originated only as a result of the borrower’s payment  
13 of bona fide discount points.<sup>1</sup>  
14

15 4. a. Prior to the date on which the interest rate in effect during  
16 the introductory period of an introductory rate mortgage resets to a  
17 variable interest rate under the terms of the mortgage, a creditor  
18 shall provide a series of written notices, separate and distinct from  
19 all other correspondence, to an eligible borrower. The creditor shall  
20 provide these notices at 60 day and 30 day intervals prior to the date  
21 that the introductory interest rate resets.

22 b. Each notice required pursuant to subsection a. of this section  
23 shall include, in plain language and in at least 14 point bold type:

24 (1) the current interest rate under the terms of the introductory  
25 rate mortgage;

26 (2) the date on which the interest rate resets from a fixed interest  
27 rate applicable during the introductory period to a variable interest  
28 rate;

29 (3) an explanation of how the reset interest rate and monthly  
30 payment would be determined;

31 (4) the best estimate by the creditor of the amount of the monthly  
32 payment that will apply after the date of the reset, and the  
33 assumptions upon which the estimate is based;

34 (5) a list of alternatives an eligible borrower may pursue before  
35 the date of the reset, including any refinancing of the loan offered  
36 by the creditor or any renegotiation of loan terms offered by the  
37 creditor;

38 (6) an explanation of the borrower’s right to obtain a period of  
39 extension prior to the initial interest rate reset of an introductory  
40 rate mortgage pursuant to this act and an explanation of the  
41 procedure that a borrower must follow to obtain a period of  
42 extension; and

43 (7) a certification of extension form that can be completed by a  
44 borrower in order to obtain a period of extension authorized  
45 pursuant to section 5 of this act.

46

47 5. a. Notwithstanding any law or contract right to the contrary,  
48 prior to the initial interest rate reset of an introductory rate

1 mortgage, a creditor shall provide an eligible borrower a period of  
2 extension for three years as provided in this section, during which  
3 the interest rate on the introductory rate mortgage shall not increase  
4 above the original introductory rate, provided the eligible borrower  
5 completes and returns a certification of extension to the creditor in  
6 accordance with the provisions of this section.

7 b. In order to obtain the period of extension, the eligible  
8 borrower shall provide to the creditor, prior to the date that the  
9 interest rate resets under the terms of the introductory rate  
10 mortgage, a completed certification of extension form signed by the  
11 eligible borrower, which contains:

12 (1) the name of the eligible borrower;

13 (2) the address of the property; and

14 (3) an affirmative statement that the eligible borrower:

15 (a) does not have sufficient monthly income, after deductions for  
16 necessary living expenses, to pay the monthly payments that will  
17 apply after the date that the interest rate resets;

18 (b) requests the period of extension;

19 (c) agrees to continue, during the period of extension, monthly  
20 payments, which shall include principal and interest calculated at  
21 the introductory rate on the date that the introductory rate mortgage  
22 was originated, as well as amounts for taxes, insurance, and any  
23 other amounts being paid under the terms of the mortgage prior to  
24 the interest rate reset;

25 (d) agrees to pay the creditor, at the time of the <sup>2</sup>[eligible  
26 borrower's transfer of the title to the property] full repayment of  
27 the introductory rate mortgage<sup>2</sup>, any interest deferred on account of  
28 the period of extension;

29 (e) agrees to accept the creditor's placement of a <sup>1</sup>[subordinate  
30 lien] modification of mortgage<sup>1</sup> on the property to secure the  
31 repayment of the interest deferred on account of the period of  
32 extension; and

33 (f) agrees to sign a modification of mortgage <sup>1</sup>[loan document]  
34 form<sup>1</sup> that contains the terms of the period of extension and any  
35 documentation necessary to establish or record the <sup>1</sup>[subordinate  
36 lien] modification of mortgage<sup>1</sup>.

37 c. An eligible borrower who makes a knowing material  
38 misrepresentation in a certification of extension is guilty of a crime  
39 of the fourth degree.

40 d. The creditor, upon receiving the completed certification of  
41 extension, shall grant the eligible borrower the three year period of  
42 extension, which shall commence on the date that the introductory  
43 rate is due to reset under the terms of the introductory rate  
44 mortgage.

45 e. Within a reasonable amount of time after the receipt of a  
46 completed certification of extension from an eligible borrower, a  
47 creditor shall provide to the eligible borrower a written

1 acknowledgment that the certification of extension has been  
2 received. The acknowledgment shall contain the following:

3 (1) the monthly payment amount that is due from the eligible  
4 borrower during the period of extension, which shall include  
5 principal and interest, calculated at the introductory rate on the date  
6 the introductory rate mortgage was originated, as well as amounts  
7 for taxes, insurance, and any other amounts being paid under the  
8 terms of the mortgage prior to the interest rate reset;

9 (2) a schedule of payments, indicating the date that the first  
10 monthly payment is due and the dates that each subsequent monthly  
11 payment is due during the period of extension;

12 (3) the address to which the <sup>2</sup>eligible<sup>2</sup> borrower shall send the  
13 monthly payment; and

14 (4) a statement of proposed <sup>1</sup>['subordinate lien] modification of  
15 mortgage<sup>1</sup>, which shall include:

16 (a) a notice to the <sup>2</sup>eligible<sup>2</sup> borrower that the creditor will place  
17 a <sup>1</sup>['subordinate lien] modification of mortgage<sup>1</sup> on the property  
18 that is the security for the introductory rate mortgage, to secure the  
19 <sup>2</sup>eligible<sup>2</sup> borrower's repayment of the amount of interest deferred  
20 by the period of extension; and

21 (b) an explanation of the method the creditor will use to calculate  
22 the amount of the interest deferred by the period of extension.

23 f. <sup>1</sup>(1)<sup>1</sup> A creditor who grants a period of extension to an eligible  
24 borrower shall have the right to record a <sup>1</sup>['subordinate lien]  
25 modification of mortgage<sup>1</sup> on the eligible borrower's property <sup>1</sup>in  
26 the public records in the county in which the property is located<sup>1</sup> to  
27 secure the <sup>2</sup>eligible<sup>2</sup> borrower's repayment of the amount of interest  
28 deferred by the period of extension. The <sup>1</sup>['subordinate lien]  
29 modification of mortgage<sup>1</sup> shall be effective from the date <sup>1</sup>['of  
30 recording in the public records in the county in which the property  
31 is located] that it is executed<sup>1</sup>. Notwithstanding any law to the  
32 contrary, the <sup>1</sup>['subordinate lien] modification of mortgage<sup>1</sup> shall  
33 have the same priority as the lien of the introductory rate mortgage.  
34 Upon payment by the eligible borrower of the total amount of  
35 interest deferred pursuant to the period of extension <sup>2</sup>, which shall  
36 only be due upon full repayment of the introductory rate mortgage<sup>2</sup>  
37 , the creditor shall provide the eligible borrower with a recordable  
38 satisfaction of the <sup>1</sup>['subordinate lien] modification of mortgage<sup>1</sup> ,  
39 or otherwise cause the <sup>1</sup>['subordinate lien] modification of  
40 mortgage<sup>1</sup> to be discharged of record.

41 <sup>1</sup>(2) If an eligible borrower fails to return to a creditor, who has a  
42 right to record a modification of mortgage pursuant to paragraph (1)  
43 of this subsection, a properly executed modification of mortgage or  
44 any other documentation necessary to establish or record the  
45 modification of mortgage, within 30 days from the borrower's  
46 receipt from the creditor of a modification of mortgage form, the

1 creditor may record the eligible borrower's <sup>2</sup>[certificate]  
2 certification<sup>2</sup> of extension in place of the modification of mortgage.  
3 Notwithstanding any other law to the contrary, the <sup>2</sup>[certificate]  
4 certification<sup>2</sup> of extension shall have the same priority as the lien of  
5 the introductory rate mortgage. Upon payment by the eligible  
6 borrower of the total amount of interest deferred pursuant to the  
7 period of extension, the creditor shall provide the eligible borrower  
8 with a recordable satisfaction of the <sup>2</sup>[certificate] certification<sup>2</sup> of  
9 extension, or otherwise cause the <sup>2</sup>[certificate] certification<sup>2</sup> of  
10 extension to be discharged of record.<sup>1</sup>

11 g. <sup>2</sup>A creditor shall not require an eligible borrower to limit or  
12 waive the rights of the borrower to bring any claims, defenses,  
13 demands, proceedings, actions, or causes of action against the  
14 creditor as a condition of accepting an offer of any loss mitigation  
15 activities made available by the "Save New Jersey Homes Act of  
16 2008," P.L. , c. (C. ) (pending before the Legislature as this  
17 bill).

18 h.<sup>2</sup> An eligible borrower who has been granted a period of  
19 extension shall forfeit all rights concerning deferment of interest  
20 payments provided by this act if the eligible borrower fails to make  
21 payments under the schedule of payments set forth in the creditor's  
22 acknowledgment of the period of extension or fails to comply with  
23 the terms of any <sup>1</sup>[mortgage loan]<sup>1</sup> modification <sup>1</sup>[agreement] of  
24 mortgage<sup>1</sup> entered into between the creditor and the eligible  
25 <sup>1</sup>[foreclosed]<sup>1</sup> borrower relating to the period of extension, such  
26 that the modification [agreement] <sup>1</sup>of mortgage<sup>1</sup> becomes 60 days  
27 delinquent.

28  
29 6. a. A creditor that issues to an eligible foreclosed borrower a  
30 notice of intention to foreclose an introductory rate mortgage  
31 pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-  
32 53 et seq.), shall send to the eligible foreclosed borrower a series of  
33 written notices, by regular and registered mail, separate and distinct  
34 from all other correspondence. The notices shall include in plain  
35 language and in at least 14 point bold type:

36 (1) A statement that the information in the notice is being  
37 provided as required by the "Save New Jersey Homes Act of 2008,"  
38 P.L. , c. (C. ) (pending before the Legislature as this bill),  
39 which was enacted by the New Jersey Legislature and which  
40 provides certain rights to borrowers whose homes are the subject of  
41 a mortgage foreclosure action;

42 (2) A list of alternatives to foreclosure that an eligible foreclosed  
43 borrower may pursue, including any refinancing of the loan offered  
44 by the creditor and any renegotiation of loan terms offered by the  
45 creditor;

46 (3) An explanation of the eligible foreclosed borrower's right to  
47 obtain a period of extension for three years pursuant to the "Save

1 New Jersey Homes Act of 2008,” P.L. , c. (C. ) (pending  
2 before the Legislature as this bill), and an explanation of the  
3 procedure that an eligible foreclosed borrower must follow to obtain  
4 a period of extension;

5 (4) A statement that the notice should be read carefully and that  
6 the eligible foreclosed borrower may wish to consult with an  
7 attorney to understand the rights that may be available under the  
8 “Save New Jersey Homes Act of 2008,” P.L. , c. (C. )  
9 (pending before the Legislature as this bill); and

10 (5) A certification of extension form that can be completed by  
11 an eligible foreclosed borrower in order to obtain the period of  
12 extension authorized pursuant to section 7 of this act.

13 b. The notices required pursuant to subsection a. of this section  
14 shall be sent at the following intervals:

15 (1) within 10 days of issuing the notice of intention; and

16 (2) at the time that the creditor applies for entry of final  
17 judgment of foreclosure pursuant to section 6 of P.L.1995, c.244  
18 (C.2A:50-58).

19 c. The notices shall be sent in envelopes that state the following  
20 information on the outside front portion of the envelope: “The New  
21 Jersey Legislature has enacted the Save New Jersey Homes Act of  
22 2008, which may help you save your home from foreclosure.  
23 Details as to the rights you may have to obtain a period of extension  
24 of foreclosure under this new law are contained within. Please read  
25 the contents carefully. You may wish to consult with an attorney to  
26 understand your rights under this new law.”

27

28 7. a. Notwithstanding any law or contract right to the contrary, a  
29 creditor shall provide an eligible foreclosed borrower a period of  
30 extension for three years as provided in this section, during which  
31 foreclosure proceedings pursuant to the “Fair Foreclosure Act,”  
32 P.L.1995, c.244 (C.2A:50-53 et seq.) shall be suspended and the  
33 <sup>2</sup>[foreclosed] eligible <sup>2</sup>foreclosed borrower shall continue to pay  
34 monthly payments, which shall include principal and interest,  
35 calculated at the introductory rate on the date that the introductory  
36 rate mortgage was originated, as well as amounts for taxes,  
37 insurance, and any other amounts being paid under the terms of the  
38 mortgage prior to the interest rate reset, provided the eligible  
39 foreclosed borrower completes and returns a certification of  
40 extension to the creditor in accordance with the provisions of this  
41 section.

42 b. In order to obtain the period of extension, the eligible  
43 foreclosed borrower shall provide to the creditor, no later than 90  
44 days from the date that the creditor sends the notice required  
45 pursuant to paragraph (2) of subsection b. of section 6 of this act, a  
46 completed certification of extension form signed by the eligible  
47 foreclosed borrower, which contains:

48 (1) the name of the eligible foreclosed borrower;

- 1 (2) the address of the property; and
- 2 (3) an affirmative statement that the eligible foreclosed  
3 borrower:
- 4 (a) requests the period of extension;
- 5 (b) agrees to continue, during the period of extension, monthly  
6 payments which shall include principal and interest, calculated at  
7 the introductory rate on the date that the introductory rate mortgage  
8 was originated, as well as amounts for taxes, insurance, and any  
9 other amounts being paid under the terms of the mortgage prior to  
10 the interest rate reset;
- 11 (c) agrees to pay the creditor, at the time of <sup>2</sup>transfer of title to  
12 the property full repayment of the introductory rate mortgage<sup>2</sup> :
- 13 (i) any interest deferred on account of the period of extension;
- 14 (ii) any fees and costs incurred by the creditor in connection with  
15 the foreclosure proceeding; and
- 16 (iii) any arrearages owed to the creditor for monthly principal  
17 and interest payments, homeowners insurance payments, property  
18 tax payments, and any other payments that the eligible <sup>2</sup>foreclosed<sup>2</sup>  
19 borrower was required to pay, but failed to pay, under the terms of  
20 the introductory rate mortgage;
- 21 (d) agrees to accept the creditor's placement of a <sup>1</sup>subordinate  
22 lien modification of mortgage<sup>1</sup> on the property to secure the  
23 repayment of amounts owed pursuant to subparagraph (c) of this  
24 paragraph; and
- 25 (e) agrees to sign a modification of mortgage <sup>1</sup>loan document  
26 form<sup>1</sup> that contains the terms of the period of extension and any  
27 documentation necessary to establish or record the <sup>1</sup>subordinate  
28 lien modification of mortgage<sup>1</sup>.
- 29 c. The creditor, upon receiving the completed certification of  
30 extension within the time period specified in subsection b. of this  
31 section, shall:
- 32 (1) grant the eligible foreclosed borrower the three year period of  
33 extension, which shall commence no later than 30 days from the  
34 date that the creditor receives the eligible foreclosed borrower's  
35 completed certification of extension; and
- 36 (2) suspend the foreclosure proceeding that the creditor initiated  
37 pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-  
38 53 et seq.).
- 39 A creditor may grant relief pursuant to paragraphs (1) and (2) of  
40 this subsection, upon receipt of a completed <sup>1</sup>certificate  
41 certification<sup>1</sup> of extension from an eligible foreclosed borrower  
42 after the time period specified in subsection b. of this section, in the  
43 sole discretion of the creditor.
- 44 d. Within a reasonable period of time after the receipt of a  
45 completed certification of extension from an eligible foreclosed  
46 borrower within the time period specified in subsection b. of this  
47 section, a creditor shall provide to the eligible foreclosed borrower

1 a written acknowledgment that the certification of extension has  
2 been received. The acknowledgment shall contain the following:

3 (1) a statement that the foreclosure <sup>2</sup>~~proceedings~~ proceeding<sup>2</sup>  
4 initiated pursuant to the “Fair Foreclosure Act,” P.L.1995, c.244  
5 (C.2A:50-53 et seq.) will be suspended during the period of  
6 extension;

7 (2) the monthly payment amount that is due from the eligible  
8 foreclosed borrower during the period of extension, which shall  
9 include principal and interest, calculated at the introductory rate, on  
10 the date the introductory mortgage rate was originated, as well as  
11 amounts for taxes, insurance, and any other amounts being paid  
12 under the terms of the mortgage prior to the interest rate reset;

13 (3) a schedule of payments, indicating the date that the first  
14 monthly payment is due and the dates that each subsequent monthly  
15 payment is due during the period of extension;

16 (4) the address to which the <sup>2</sup>eligible foreclosed<sup>2</sup> borrower  
17 <sup>2</sup>~~must~~ shall<sup>2</sup> send the monthly payment; and

18 (5) a statement of proposed <sup>1</sup>~~subordinate lien~~ modification of  
19 mortgage<sup>1</sup>, which shall include:

20 (a) a notice to the eligible foreclosed borrower that the creditor  
21 will place a <sup>1</sup>~~subordinate lien~~ modification of mortgage<sup>1</sup> on the  
22 property that is the security for the introductory rate mortgage, to  
23 secure the eligible foreclosed borrower’s repayment of the amounts  
24 provided for in paragraph (1) of subsection e. of this section; and

25 (b) an explanation of the method the creditor will use to calculate  
26 the amount of the interest deferred by the period of extension, and  
27 the amounts provided for in paragraph (1) of subsection e. of this  
28 section, for which repayment is secured by the <sup>1</sup>~~subordinate lien~~  
29 modification of mortgage<sup>1</sup>.

30 e. (1) A creditor that grants a period of extension to an eligible  
31 foreclosed borrower shall have the right to record a <sup>1</sup>~~subordinate~~  
32 lien modification of mortgage<sup>1</sup> on the eligible foreclosed  
33 borrower’s property to secure the eligible foreclosed borrower’s  
34 repayment of:

35 (a) the amount of interest deferred by the period of extension;

36 (b) any fees and costs already incurred in connection with the  
37 foreclosure proceeding; and

38 (c) any arrearages owed to the creditor for monthly payments of  
39 principal and interest, homeowner insurance payments, property tax  
40 payments, or any other payments that the eligible foreclosed  
41 borrower was required to pay, but failed to pay, under the terms of  
42 the introductory rate mortgage.

43 (2) The <sup>1</sup>~~subordinate lien~~ modification of mortgage<sup>1</sup> shall be  
44 effective from the date <sup>1</sup>~~of recording in the public records in the~~  
45 county in which the property is located that it is executed<sup>1</sup>.  
46 Notwithstanding any other law to the contrary, the <sup>1</sup>~~subordinate~~

1 lien] modification of mortgage<sup>1</sup> shall have the same priority as the  
2 lien of the introductory rate mortgage. Upon payment by the  
3 eligible foreclosed<sup>2</sup> borrower of the total amount of interest  
4 deferred pursuant to the period of extension, and any other amounts  
5 representing the arrearages for which the <sup>1</sup>[subordinate lien]  
6 modification of mortgage<sup>1</sup> secures repayment pursuant to this act,  
7 which shall only be due upon <sup>2</sup>[the borrower's transfer of title to  
8 the property] full repayment of the introductory rate mortgage<sup>2</sup> ,  
9 the creditor shall provide the eligible foreclosed borrower with a  
10 recordable satisfaction of the <sup>1</sup>[subordinate lien] modification of  
11 mortgage<sup>1</sup> , or otherwise cause the <sup>1</sup>[subordinate lien] modification  
12 of mortgage<sup>1</sup> to be discharged of record.

13 <sup>1</sup>(3) If an eligible foreclosed borrower fails to return to a  
14 creditor, who has a right to record a modification of mortgage  
15 pursuant to paragraph (1) of this subsection, a properly executed  
16 modification of mortgage or any other documentation necessary to  
17 establish or record the modification of mortgage within 30 days  
18 from the borrower's receipt from the creditor of a modification of  
19 mortgage form, the creditor may record the eligible foreclosed  
20 borrower's <sup>2</sup>[certificate] certification<sup>2</sup> of extension in place of the  
21 modification of mortgage. Notwithstanding any other law to the  
22 contrary, the <sup>2</sup>[certificate] certification<sup>2</sup> of extension shall have the  
23 same priority as the lien of the introductory rate mortgage. Upon  
24 payment by the eligible foreclosed borrower of the total amount of  
25 interest deferred pursuant to the period of extension, <sup>2</sup>and any other  
26 amounts representing the arrearages for which the certification of  
27 extension secures repayment pursuant to this act, <sup>2</sup> the creditor shall  
28 provide the eligible foreclosed borrower with a recordable  
29 satisfaction of the <sup>2</sup>[certificate] certification<sup>2</sup> of extension, or  
30 otherwise cause the <sup>2</sup>[certificate] certification<sup>2</sup> of extension to be  
31 discharged of record.<sup>1</sup>

32 f. <sup>2</sup>A creditor shall not require an eligible foreclosed borrower to  
33 limit or waive the rights of the borrower to bring any claims,  
34 defenses, demands, proceedings, actions, or causes of action against  
35 the creditor as a condition of accepting an offer of any loss  
36 mitigation activities made available by the "Save New Jersey  
37 Homes Act of 2008," P.L. , c. (C. ) (pending before the  
38 Legislature as this bill).

39 g. <sup>2</sup> An eligible foreclosed borrower who has been granted a  
40 period of extension shall forfeit all rights concerning deferment of  
41 interest payments, suspension of foreclosure, and deferment of  
42 payment of amounts secured by a <sup>1</sup>[subordinate lien] modification  
43 of mortgage<sup>1</sup>, provided by the provisions of this act if the eligible  
44 foreclosed borrower fails to make payments under the schedule of  
45 payments as set forth in the creditor's acknowledgment of the  
46 period of extension or fails to comply with the terms of <sup>1</sup>[any] the

1 modification of<sup>1</sup> mortgage <sup>1</sup>["loan modification agreement"]<sup>1</sup> entered  
2 into between the creditor and the eligible foreclosed borrower  
3 relating to the period of extension, such that the modification  
4 <sup>1</sup>["agreement"] of mortgage<sup>1</sup> becomes 60 days delinquent.

5 <sup>2</sup>["g.] h.<sup>2</sup> A court shall not approve an entry of final judgment in  
6 a foreclosure proceeding commenced pursuant to the "Fair  
7 Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.) as to an  
8 introductory rate mortgage unless the court is satisfied from the  
9 pleadings and certifications on file with the court that notice of the  
10 availability of the period of extension was provided to the eligible  
11 foreclosed borrower in accordance with the provisions of this act.

12  
13 8. <sup>1</sup>a.<sup>1</sup> Any person who <sup>2</sup>willfully<sup>2</sup> violates any provision of this  
14 act shall be liable to a penalty of not more than \$10,000 for the first  
15 offense, and not more than \$20,000 for the second and subsequent  
16 offense, which penalty may be collected in a summary proceeding  
17 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,  
18 c.274 (C.2A:58-10 et seq.) <sup>2</sup>, except that immaterial errors in a  
19 notice required to be provided by a creditor pursuant to this act,  
20 shall not constitute a violation of this act<sup>2</sup>.

21 <sup>1</sup>b. If a creditor violates any provision of this act, an eligible  
22 borrower, an eligible foreclosed borrower, or the Attorney General  
23 may bring an action to enforce compliance by a summary  
24 proceeding pursuant to the "Penalty Enforcement Law of 1999,"  
25 P.L.1999, c.274 (C.2A:58-10 et seq.).<sup>1</sup>

26  
27 <sup>1</sup>9. Failure of a creditor to fulfill any obligation under this act  
28 shall not be considered to be the exercise of a power, right, benefit,  
29 or privilege under the parity provisions of P.L.1981, c.163  
30 (C.17:9A-24b.1), section 48 of P.L.1963, c.144 (C.17:12B-48), or  
31 section 12 of P.L.1984, c.171 (C.17:13-90), and it shall not be a  
32 defense to a violation of this act that the failure to fulfill any  
33 provision of the act is an exercise of such a power, right, benefit, or  
34 privilege.<sup>1</sup>

35  
36 <sup>1</sup>["9.] 10.<sup>1</sup> This act shall be liberally construed to effectuate the  
37 purposes of the act.

38  
39 <sup>1</sup>["10.] 11.<sup>1</sup> If any section, subsection, paragraph, sentence or  
40 other part of this act is adjudged unconstitutional or invalid, the  
41 judgment shall not affect, impair or invalidate the remainder of this  
42 act, but shall be confined in its effect to the section, subsection,  
43 paragraph, sentence or other part of this act directly involved in the  
44 controversy in which the judgment shall have been rendered.

45  
46 <sup>1</sup>["11.] 12.<sup>1</sup> The <sup>1</sup>Attorney General, in consultation with the<sup>1</sup>  
47 Department of Banking and Insurance shall <sup>1</sup>enforce the

1 provisions of this act, and the department, in consultation with the  
2 Attorney General, shall]’ adopt regulations, pursuant to the  
3 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et  
4 seq.) to effectuate the purposes of this act.

5

6 ‘[12.] 13.’ This act shall take effect immediately, and remain in  
7 effect until January 1, 2011.