

[First Reprint]

SENATE, No. 1599

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED APRIL 7, 2008

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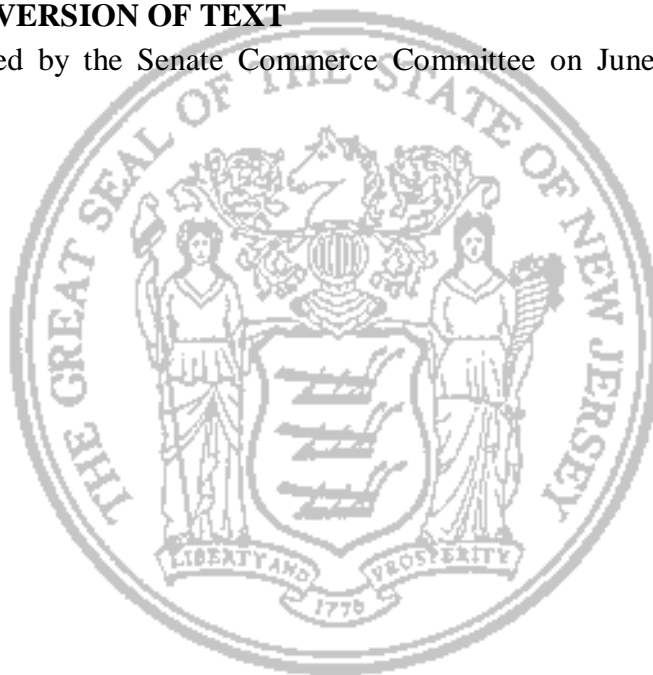
Senators Cunningham, Sacco, Weinberg, Singer and Ruiz

SYNOPSIS

The “New Jersey Homeownership Preservation Act.”

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on June 9, 2008, with amendments.



(Sponsorship Updated As Of: 11/14/2008)

1 AN ACT concerning foreclosures on residential properties ¹[,
2 amending P.L.1974, c.49]¹ and supplementing Title 46 of the
3 Revised Statutes.

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

7
8 1. (New section) This act shall be known and may be cited as
9 the “New Jersey Homeownership Preservation Act.”

10
11 2. ¹[(New section)]¹ The Legislature finds and declares that:

12 a. Many thousands of New Jersey homeowners are at risk of
13 losing their homes as a result of mortgage foreclosures in the
14 immediate future ¹, and according to estimates made by the United
15 States Senate Joint Economic Committee in October 2007, more
16 than 35,000 New Jersey borrowers will lose their homes to
17 foreclosure by the end of 2009¹;

18 b. Foreclosures involve the loss of a family’s home, which is
19 often the family’s most valuable financial asset, and ¹[(foreclosures
20 especially)]¹ undermine the ¹stability,¹ health and economic vitality
21 of ¹neighborhoods, particularly in¹ the urban neighborhoods in
22 which a disproportionate share of ¹[(foreclosures take place)]
23 subprime loans are concentrated¹;

24 c. By displacing homeowners and tenants in one to four family
25 buildings, foreclosures increase the demand for affordable rental
26 housing in the State, putting pressure on all families. Foreclosures
27 which result in abandonment of properties also reduce the State’s
28 already limited supply of affordable housing options;

29 d.¹ Foreclosures ¹[(result in the loss of millions)] cost the public
30 billions¹ of dollars ¹in direct costs and lost¹ assets ¹[(, not only those
31 of the homeowners who are the victims of foreclosure, but in terms
32 of the property values of homes located in the vicinity of foreclosed
33 properties, as well as millions in additional costs to state and local
34 governments)] . The United States Senate Joint Economic
35 Committee estimates that foreclosures over the next two years will
36 result in a 6.3 billion dollar reduction in property values in New
37 Jersey, as foreclosed and abandoned properties lower the value of
38 surrounding homes. As a result of lower property values, New
39 Jersey municipalities will lose 99 million dollars per year in
40 property tax revenue, reducing resources available for public
41 education and other public services¹;

42 ¹[d.] e.¹ Foreclosures, particularly in urban neighborhoods,
43 often result in abandonment of properties, leading to significant

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:

¹Senate SCM committee amendments adopted June 9, 2008.

1 costs and lost revenue for local governments, as well as harm to the
2 neighborhoods in which properties are abandoned;

3 '[e.] f. The number of foreclosures has increased dramatically
4 in New Jersey during the past two years, to the point that, at the end
5 of 2007, nearly 1 out of every 50 mortgages are in some stage of
6 foreclosure proceedings, more than double the number of
7 foreclosures experienced at the beginning of 2006;

8 g.¹ Foreclosures are largely the result of subprime lending
9 practices, which have placed many homeowners in loans that they
10 cannot realistically afford, '[by using loan] and include' features
11 such as low introductory rates, high pre-payment penalties, and
12 failure to require income documentation, all of which increase the
13 risk of default for borrowers;

14 '[f.] h. The increase in foreclosures has been most dramatic
15 among subprime mortgages generally, and above all, among
16 subprime adjustable rate mortgages, when at the end of 2007, more
17 than 1 in every 7 of such mortgages Statewide were in some stage
18 of foreclosure, a number which is more than four times the number
19 for such mortgages the beginning of 2006;

20 i. According to a report issued in April, 2008 by the State
21 Foreclosure Prevention Working Group, the collective efforts of
22 mortgage lenders and government officials to address rising
23 foreclosures have not resulted in a meaningful reduction in
24 foreclosures, and innovative approaches, including efforts to slow
25 down the foreclosure process, are needed to prevent millions of
26 unnecessary foreclosures nationwide;

27 j. Because of the number of parties involved and the financial
28 structure of the industry, it is often difficult for borrowers to
29 negotiate alternatives to foreclosure even when such alternatives
30 would be in the best financial interest of both the lender and the
31 borrower;

32 k.¹ Many '[of these] unnecessary and costly' foreclosures could
33 be avoided if 'servicers, who have the greatest degree of contact
34 with borrowers, had greater incentive to negotiate with borrowers,
35 and if' homeowners had greater access to high-quality, in-person
36 foreclosure prevention counseling, emergency financial assistance,
37 or additional time during which to negotiate loan modifications or
38 obtain refinancing;

39 '[g. There is a compelling public policy need for the State of
40 New Jersey to address these issues,] l. The recent increase in
41 foreclosures has created an emergency which needs to be addressed
42 by the State, including the need to' provide the means by which
43 homeowners can obtain counseling, emergency financial assistance,
44 and time to adjust their finances in order to increase their ability to
45 retain their homes, 'and' protect local governments and
46 neighborhoods from the negative social, economic, and fiscal
47 consequences of foreclosure and abandonment; and

1 **[h.] m.**¹ Beyond the provisions of this act, a concerted effort,
2 including federal action and the provision of additional public and
3 private financial resources, is 'also' needed to address this issue in
4 a responsible and effective manner.

5
6 3. **[(New section)]**¹ As used in this act:

7 'Agency' means the New Jersey Housing and Mortgage
8 Finance Agency established pursuant to P.L.1983, c.111 (C.55:14K-
9 1 et seq.).¹

10 “Covered mortgage loan” means a first mortgage loan, other than
11 a reverse mortgage loan, on residential real property, which meets
12 any of the following criteria:

13 (1) the loan is a fixed rate mortgage loan with an annual
14 percentage rate which, including all costs charged the borrower
15 amortized over the duration of the comparable Treasury yield at the
16 time of closing, which is at least 300 basis points above the
17 comparable Treasury yield at the time of closing;

18 (2) the loan is an adjustable rate mortgage with an introductory
19 rate, and the highest possible interest rate chargeable under the
20 terms of the loan is at least 300 basis points above the comparable
21 Treasury yield at the time or closing;

22 (3) the loan contains a pre-payment penalty;

23 (4) the total points and fees charged to the borrower at closing
24 exceed four percent of the principal amount of the loan; or

25 (5) the loan is a nontraditional mortgage product, including but
26 not limited to those products set forth in the federal Interagency
27 Guidance on Nontraditional Mortgage Product Risks, and any
28 additional mortgage product or feature thereof that may
29 subsequently be defined as a nontraditional mortgage product by the
30 Department of Banking and Insurance.

31 “Creditor” shall have the same meaning as “lender” as set forth
32 in section 3500.2 of title 24, Code of Federal Regulations, except
33 that it shall also include any person required to be licensed under
34 the provisions of the “New Jersey Licensed Lenders Act,”
35 P.L.1996, c.157 (C.17:11C-1 et seq.), and any entity acting on
36 behalf of the secured creditor named in the debt obligation
37 including, but not limited to, servicers.

38 “Department” means the Department of **[Community Affairs]**
39 Banking and Insurance.¹

40 'Homeowner' means a household that occupies a residential
41 real property to which one or more members of the household hold
42 legal title as their principal dwelling.¹

43 “Introductory rate” means an initial interest rate charged on a
44 covered mortgage loan that remains in effect for no more than three
45 years from the initial date of the loan and which is less than the
46 highest possible interest rate chargeable at any time under the terms
47 of the loan.

1 “Mortgage broker” has the same meaning as set forth in section
2 3500.2 of Title 24 of the Code of Federal Regulations.

3 “Points and fees” means:

4 (1) all items included in the definition of “finance charge” in
5 sections 226.4(a) and 226.4(b) of title 12, Code of Federal
6 Regulations except interest or the time price differential;

7 (2) all items described in Section 226.32(b)(1)(iii) of title 12,
8 Code of Federal Regulations.

9 (3) all compensation paid directly or indirectly to a mortgage
10 broker from any source, including a mortgage broker that originates
11 a loan in its own name in a table-funded transaction;

12 (4) the cost of all premiums financed by a creditor directly or
13 indirectly for any credit life, credit disability, credit unemployment
14 or credit property insurance or any other life or health insurance, or
15 any payments financed by the creditor directly or indirectly for any
16 debt cancellation or suspension agreement or contract, except that
17 insurance premiums, including private mortgage insurance or debt
18 cancellation or suspension fees calculated and paid on a monthly
19 basis or through regularly scheduled periodic payments, may not be
20 considered financed by the creditor;

21 (5) the maximum prepayment fees and penalties that may be
22 charged or collected by the creditor under the terms of the loan
23 documents; and

24 (6) all prepayment fees or penalties that are incurred by the
25 borrower if the covered mortgage loan refinances a previous loan
26 made or currently held by the same creditor or an affiliate of the
27 creditor.

28 Points and fees shall not include the following items: taxes,
29 filing fees, recording fees and other charges and fees paid or to be
30 paid to public officials for determining the existence of or for
31 perfecting, releasing or satisfying a security interest; bona fide and
32 reasonable charges and fees paid to a person other than a creditor or
33 an affiliate of a creditor for the following: fees for tax payment
34 services; fees for flood certification; fees for pest infestation and
35 flood determinations; appraisal fees; fees for inspections performed
36 prior to closing; fees for credit reports; fees for surveys; attorney’s
37 fees; notary fees; escrow charges not otherwise included under
38 paragraph (1); title insurance premiums; and fire and hazard
39 insurance and flood insurance premiums, as long as the conditions
40 in section 226.4(d)(2) of title 12, Code of Federal Regulations are
41 met. For open-end loans, the points and fees shall be calculated by
42 adding the total points and fees known at or before closing,
43 including the maximum prepayment penalties that may be charged
44 or collected under the terms of the loan documents and the
45 minimum additional fees the borrower would be required to pay to
46 draw down an amount equal to the total credit line.

47 “Qualified ¹**[counseling]** foreclosure prevention¹ entity” means
48 an agency, organization, or other entity ¹**[approved]** determined¹

1 by the ¹department to provide foreclosure prevention counseling
 2 and related services pursuant to the terms of this act] agency to
 3 have the ability to provide highly qualified assistance to
 4 homeowners to prevent foreclosures, including but not limited to,
 5 counseling, mediation, assistance in loan mitigation, restructuring
 6 and work-outs, and other services necessary and desirable for this
 7 purpose, provided that the entity shall be organized as a nonprofit
 8 entity¹ .

9 “Residential real property” means property in this State upon
 10 which there is located ¹or there is to be located] ¹a one to four
 11 family story dwelling which is ¹or will be] ¹occupied by a
 12 borrower as the borrower’s principal dwelling.

13 “Servicer” means the person or entity responsible for servicing a
 14 mortgage loan, and shall include any person who makes or holds a
 15 mortgage loan if such person also services the mortgage loan.

16 “Trust fund” means the Foreclosure Prevention Revolving Trust
 17 Fund established in section 4 of this act.

18
 19 4. ¹[(New section)] ¹a. There is established, in the ¹Department
 20 of Community Affairs] New Jersey Housing and Mortgage Finance
 21 Agency¹, a Foreclosure Prevention Revolving Trust Fund,
 22 comprised of monies collected or accruing to the trust fund pursuant
 23 to section 8 ¹and 15] ¹of ¹this act] P.L. _____, c. _____ (C. _____)
 24 (pending before the Legislature as this bill)¹ , for the purpose of
 25 providing:

26 (1) grants to qualified ¹counseling] foreclosure prevention¹
 27 entities for the purpose of maintaining or expanding ¹foreclosure
 28 prevention counseling and related activities] services and activities
 29 to assist homeowners to prevent foreclosure¹;

30 (2) grants to ¹individuals or to] ¹qualified ¹counseling] ¹entities
 31 ¹as defined in subsection b. of section 5 of P.L. _____, c. _____ (C. _____)
 32 (pending before the Legislature as this bill)¹ for the purpose of
 33 providing emergency foreclosure prevention assistance loans; and

34 (3) loans and grants to ¹non-profit] qualified¹ entities ¹as
 35 defined in subsection c. of section 5 of P.L. _____, c. _____ (C. _____)
 36 (pending before the Legislature as this bill)¹ for the purpose of
 37 acquiring mortgage loans or properties from creditors in order to
 38 restructure the mortgage loans or restore the properties to
 39 productive use.

40 b. The ¹department] agency¹ may utilize up to five percent of
 41 the revenues in the trust fund or \$500,000 per year, whichever is
 42 less, for the purposes of contracting with appropriate qualified
 43 vendors, ¹which may be qualified counseling entities,] ¹to provide
 44 training for foreclosure prevention ¹counselors,] specialists.¹ and
 45 to provide information, outreach, and educational programs for
 46 borrowers potentially at risk of foreclosure.

1 c. The **'[department] agency'** shall establish rules and
2 regulations governing the procedures for approval of **'[qualified**
3 **counseling] foreclosure prevention'** entities, **'that are permitted to**
4 **receive funds pursuant to subsections b. and c. of section 5 of P.L.**
5 **, c. (C.) (pending before the Legislature as this bill)'** which
6 shall be based on demonstrated experience in providing
7 **'[counseling] foreclosure prevention assistance'** to low and
8 moderate income homebuyers and homeowners, and evidence that
9 personnel have received specific training in foreclosure prevention
10 counseling **'or other areas directly related to prevention of**
11 **foreclosure'** .

12

13 5. **'[(New section)]'** The **'[department] agency'** shall deposit
14 the monies collected pursuant to **'[sections] section' 8 '[and 15]'**
15 of **'[this act] P.L. , c. (C.) (pending before the**
16 **Legislature as this bill)'** into the trust fund, and shall expend
17 monies from the trust fund, subject to any initial expenditures made
18 pursuant to subsection b. of section 4 of this act, in accordance with
19 the following schedule:

20 a. The first \$5,000,000 collected during a fiscal year shall be
21 allocated as grants to qualified **'[counseling] foreclosure**
22 **prevention'** entities for the purpose of maintaining or expanding
23 their foreclosure prevention counseling and related activities,
24 **'including, but not limited to, foreclosure mediation services and**
25 **the provision of legal services in conjunction with loan**
26 **modifications and other foreclosure prevention activities'**, and any
27 monies collected but not allocated by the end of the fiscal year shall
28 be available for allocation for these grants in the subsequent fiscal
29 year;

30 b. **'(1)'** Any amounts collected during a fiscal year, above
31 \$5,000,000 and up to \$20,000,000, shall be allocated **'[as] for use**
32 **by the agency to make emergency foreclosure prevention assistance**
33 **loans to homeowners, or to make'** grants to qualified
34 **'[counseling]'** entities, for the purpose of making emergency
35 foreclosure prevention assistance loans **'to homeowners'**, and any
36 monies collected but not allocated by the end of the fiscal year shall
37 be available for allocation for these grants in the subsequent fiscal
38 year;

39 **'(2) For purposes of this section, qualified entities may include**
40 **qualified foreclosure prevention entities, community development**
41 **financial institutions, or other community development or financial**
42 **institutions determined by the agency to be qualified to provide**
43 **such loans.'**

44 c. **'(1)'** Any amounts collected in excess of \$20,000,000 during
45 a fiscal year, shall be allocated, in the form of a loan or grant, to
46 **'[non-profit] qualified'** entities, for the purpose of **'[assisting]**

1 acquiring mortgages or properties from creditors, in order to assist¹
2 homeowners in financial distress by restructuring covered mortgage
3 loans acquired from creditors, or restoring the properties acquired
4 from creditors to productive use, and any monies collected but not
5 allocated by the end of the fiscal year shall be available for
6 allocation for these loans or grants in the subsequent fiscal year.

7 (2) For purposes of this section, qualified entities may include
8 public entities, including local and county governments or public
9 authorities, non-profit community development or housing
10 organizations, or other entities specifically organized for the
11 purpose set forth above.¹

12
13 6. **'[(New section)]'** In allocating a grant to a qualified
14 **'[counseling]'** entity, pursuant to subsection b. of section 5 of this
15 act, the **'[department] agency'** shall provide for contractual
16 guarantees and procedures by which the **'[department] agency'**
17 ensures that the qualified **'[counseling]'** entity administers the
18 entity's loans made to homeowners in accordance with the
19 following requirements.

20 a. A qualified **'[counseling]'** entity that receives grant proceeds
21 from the trust fund shall use the grant proceeds to provide
22 emergency foreclosure prevention assistance loans to homeowners
23 in situations in which the entity making the loan finds that:

24 (1) the homeowner's covered home loan is at risk of foreclosure;
25 (2) the risk of foreclosure is the product of temporary conditions;
26 and

27 (3) the loan, if provided, creates a significant likelihood that the
28 homeowner will be able to avoid foreclosure and retain ownership
29 of the property.

30 b. The purposes for which a qualified **'[counseling]'** entity may
31 provide emergency foreclosure prevention assistance loans may
32 include, but shall not be not limited to:

33 (1) paying the costs of a homeowner's monthly mortgage
34 payment of interest and principal; and

35 (2) paying attorney's fees and other fees and penalties, including
36 prepayment penalties, associated with refinancing or restructuring a
37 homeowner's mortgage.

38 c. The maximum emergency foreclosure prevention assistance
39 loan to a homeowner shall not exceed **'[\$5,000] \$10,000'**;
40 provided, however, that with written approval of the **'[department]**
41 **agency'**, a loan may be made up to a maximum of **'[\$10,000]**
42 **\$20,000'**.

43 d. All monies disbursed **'by the agency or'** a qualified
44 **'[counseling]'** entity for emergency foreclosure prevention
45 assistance shall be in the form of a loan to a homeowner that shall
46 be secured by a mortgage on the homeowner's property, which

1 mortgage shall be subordinate to existing mortgages. The
2 homeowner shall not be required to make any payments during the
3 term of the mortgage, but all amounts due on the mortgage shall be
4 payable from the proceeds of sale at the time that the property is
5 sold, which amounts shall include interest that shall be calculated in
6 accordance with the rate of increase in the housing component of
7 the National Consumer Price Index, New York-Northeastern New
8 Jersey region, but in any event shall not be more than 4 percent per
9 annum.

10 e. Loan repayment shall be made by the homeowner 'to the
11 agency or' to the qualified **'[counseling]'** entity that made the
12 loan, provided, however, that if the entity is no longer active, or no
13 longer providing foreclosure prevention services, repayment shall
14 be made directly to the **'[department] agency'**, which shall deposit
15 the proceeds into the trust fund.

16 f. A qualified **'[counseling]'** entity which receives repayment
17 from a homeowner pursuant to subsection d. of this section, shall
18 use any monies collected in the same manner and for the same
19 emergency foreclosure prevention assistance purposes as set forth
20 in this section.

21 g. A qualified **'[counseling]'** entity that receives an emergency
22 foreclosure prevention assistance grant from the trust fund shall
23 maintain records and provide reports on the disbursement of those
24 funds as may be required by the **'[department] agency'**.
25

26 7. **'[(New section)]'** The **'[department] agency'** shall establish
27 criteria for allocating grants and loans to **'[non-profit] qualified'**
28 entities pursuant to subsection c. of section 5 of this act, which
29 criteria shall include:

30 a. Giving priority in making loans or grants to non-profit entities
31 that serve areas with a high incidence of foreclosures and a high
32 risk of foreclosures that result in vacant or abandoned properties;
33 and

34 b. Procedures for determining the amount, terms, and conditions
35 of the grant or loan.
36

37 8. **'[(New section)]'** a. A creditor that issues a notice of
38 intention to foreclose on a covered mortgage loan, pursuant to the
39 "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et. seq.), shall
40 simultaneously transmit a certified check in the amount of \$2,000 to
41 the **'[department] agency'**, for deposit into the trust fund. The
42 creditor shall not add the amount paid to the **'[department] agency'**
43 to the amount owed to the creditor by the borrower.

44 b. **'[A motion by a creditor seeking a judgment of foreclosure as**
45 **to a covered mortgage loan, pursuant to R.4:64-1 et seq. of the**
46 **Rules Governing the Courts of the State of New Jersey, shall not be**
47 **accepted by the court unless it is accompanied by evidence that the**

1 creditor bringing the motion has complied with subsection a. of this
2 section. 】 No judgment of foreclosure on a covered mortgage loan
3 shall be entered by the court unless the creditor has provided
4 evidence of compliance with subsection a. of this section.¹

5 c. A creditor that notifies a borrower of a covered mortgage loan
6 pursuant to which, under the terms of the mortgage:

7 (1) the interest rate on the mortgage is to increase; or

8 (2) a mortgage payment is past due,

9 shall simultaneously send the borrower notification of the
10 availability of foreclosure prevention ‘[counseling] assistance’
11 available through qualified ‘[counseling]’ entities, in such form of
12 notification as the ‘[department] agency’ shall establish.

13

14 9. ‘[(New section)]’ a. A creditor that issues, pursuant to the
15 “Fair Foreclosure Act,” P.L.1995, c.244 (C.2A:50-53 et seq.), a
16 notice of intention to foreclose on a covered mortgage loan that
17 contains an introductory rate or a prepayment penalty, upon receipt
18 of a written request by the borrower within 30 days of the
19 borrower’s receipt of the notice of intention to foreclose, shall grant
20 the borrower a six month period of forbearance to pursue a loan
21 workout, loan modification, refinancing, or other alternative. The
22 six month forbearance period shall commence at the time that the
23 creditor receives the borrower’s request. During the six month
24 forbearance period, the interest rate on the covered mortgage loan
25 shall not increase and the creditor shall take no further action to
26 pursue foreclosure of the property.

27 The notice of intention to foreclose shall contain in a prominent
28 location a statement indicating:

29 (1) whether the loan meets the criteria set forth in this section;

30 (2) that in the event the loan meets the criteria, the borrower has
31 a right to request a six month forbearance period within 30 days of
32 receipt of the notice; and

33 (3) the full address and other contact information to which a
34 request to initiate the six month forbearance period may be sent.

35 b. If the borrower ceases to occupy the property at any time
36 subsequent to initiating a period of forbearance under this section,
37 the creditor may notify the court, and upon notification the period
38 of forbearance shall be deemed to have ended.

39 ‘c . The provisions of this section shall no longer apply
40 whenever the department determines that, for four consecutive
41 quarters, the rate of foreclosure for the State of New Jersey of
42 covered loans which contain introductory rates or prepayment
43 penalties, which shall be defined as the number of foreclosures
44 initiated during any quarter as a percentage of all outstanding loans
45 meeting that definition, is equal to or less than the average rate of
46 foreclosures for the State of New Jersey for the calendar years 2002
47 through 2004.¹

- 1 10. **'[(New section)]'** a. A creditor filing a notice of intention
2 to foreclose on a covered mortgage loan, pursuant to the "Fair
3 Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.), shall file
4 within 30 days of that notice an initial foreclosure report with the
5 Department of Banking and Insurance on a form prescribed by the
6 department by regulation, which shall include but not be limited to:
- 7 (1) the terms of the mortgage, including interest rate, rate
8 adjustments, prepayment fees, negative amortization, and such other
9 terms as the department may specify;
 - 10 (2) the date of the mortgage;
 - 11 (3) the maker of the mortgage;
 - 12 (4) the current holder and servicer of the mortgage, including
13 contact information for a responsible individual employed by the
14 servicer;
 - 15 (5) all efforts made by the creditor to negotiate any modifications
16 to the mortgage or payments required under it with the borrower;
17 and
 - 18 (6) the amount due on the mortgage, including interest and
19 penalties.
- 20 b. A creditor filing an initial foreclosure report as required by
21 subsection a. of this section shall file a quarterly supplementary
22 foreclosure report on each quarterly anniversary of filing the notice
23 of intention to foreclose, up until the entry of judgment of
24 foreclosure. The quarterly supplemental report shall set forth:
- 25 (1) the status of foreclosure proceedings;
 - 26 (2) the amount due on the mortgage, including interest and
27 penalties;
 - 28 (3) a description of all efforts made by the creditor during the
29 preceding 90 days to negotiate any modifications to the mortgage or
30 payments required under it with the borrower; and
 - 31 (4) any alternatives to foreclosure, including any sales or
32 conveyances, and any modifications to the mortgage or payments
33 required under it, entered into between the creditor and the
34 borrower.
- 35 c. The creditor shall provide a copy of the initial foreclosure
36 report and the quarterly supplemental foreclosure report to the court
37 and to the borrower, and shall also provide a copy of the reports to a
38 qualified **'[counseling]'** entity upon submission by the entity of a
39 letter signed by the borrower authorizing release of the reports to
40 the entity.
- 41 d. Within three months of the effective date of **'[this act]**
42 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
43 bill)', the Department of Banking and Insurance shall adopt and
44 promulgate forms for the initial and supplementary foreclosure
45 reports required under this section.
- 46 e. Within six months of the effective date of **'[this act]**
47 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this

1 bill¹, the Department of Banking and Insurance shall make
2 regularly updated information on foreclosure activity for each
3 census tract in the State available to the public on its website.
4

5 11. **'[(New section)]'** a. A creditor serving a notice of
6 intention to foreclose on a mortgage on residential property in this
7 State shall serve the public officer of the municipality in which the
8 property is located, or, if the municipality has not designated a
9 public officer pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the
10 municipal clerk, with a copy of the notice at the same time it is
11 served on the owner of the property. The copy served on the public
12 officer or municipal clerk shall include the full name and contact
13 information of an individual located within the State who is
14 authorized to accept service on behalf of the creditor.

15 b. If **'[a] the borrower vacates the'** residential property
16 **'[becomes vacant]'** at any point subsequent to the creditor's filing
17 the notice of intention to foreclose, but prior to vesting of title in
18 the creditor or any other third party, and the property is found to be
19 a nuisance or in violation of any applicable State or local code, the
20 local public **'or code enforcement'** officer or municipal clerk shall
21 notify the creditor, which shall have the responsibility to abate the
22 nuisance or correct the violation in the same manner and to the
23 same extent as the title owner of the property, to such standard or
24 specification as may be required by the public **'or code**
25 **enforcement'** officer or **'[municipal clerk] the municipality'**.

26 c. If the municipality expends public funds in order to abate a
27 nuisance or correct a violation on a residential property in situations
28 in which the creditor was given notice pursuant to the provisions of
29 subsection b. of this section but failed to abate the nuisance or
30 correct the violation as directed, the public **'or code enforcement'**
31 officer or **'[municipal clerk] the municipality'** shall have the same
32 recourse against the creditor as it would have against the title owner
33 of the property, including but not limited to the recourse provided
34 under section 23 of P.L.2003, c.210 (C.55:19-100).
35

36 12. A consumer reporting agency or any other business entity
37 shall not sell to, or exchange with, a third party, unless the third
38 party holds an existing mortgage loan on the property, the existence
39 of a credit inquiry arising from a consumer mortgage loan
40 application when the sale or exchange is triggered by an inquiry
41 made in response to an application for credit. This section shall not
42 apply to information provided by a mortgage originator or servicer
43 to a third party providing services in connection with the mortgage
44 loan origination or servicing; a proposed or actual securitization;
45 secondary market sale, including sales of servicing rights; or similar
46 transaction related to the consumer mortgage loan.

1 13. a. Notwithstanding any other provision of law to the
2 contrary, a homeowner who is a borrower under a covered mortgage
3 loan and who loses title as a result of foreclosure may remain in
4 possession of the property as a tenant in possession subject to the
5 provisions of this section, unless the entity taking title through
6 foreclosure requires the property for their personal use and
7 occupancy, or the entity taking title through foreclosure
8 subsequently conveys the property to another entity which requires
9 the property for their personal use and occupancy, in which case the
10 tenant in possession shall be required to vacate the property upon
11 ¹ ~~90 days~~ two months notice.

12 b. A tenant in possession pursuant to subsection a. of this
13 section shall pay the title holder a fair market rent for the property.
14 The title holder shall provide the tenant with notice of the fair
15 market rent for the property, and the information that the title owner
16 used as a basis to determine the rent for the property, which shall
17 include rental income for comparable properties in the same area.

18 c. The title holder may evict the tenant in possession for cause
19 as set forth in the section 2 of P.L.1974, c.49 (C.2A:18-61.1 et
20 seq.).

21 d. Simultaneously with serving the notice of intention to
22 foreclose on a covered mortgage loan on a borrower who is the
23 owner-occupant of the property, the creditor shall send the borrower
24 by certified mail a notice that shall identify the property and that
25 shall include the following information prominently displayed:

26
27 NOTICE TO BORROWER:

28
29 YOU HAVE THE RIGHT TO REMAIN IN THIS
30 PROPERTY DURING THE FORECLOSURE PROCEEDINGS
31 AND AFTER THE SHERIFF'S SALE UNLESS THE PROPERTY
32 IS ACQUIRED BY AN INDIVIDUAL WHO PLANS TO
33 OCCUPY THE PROPERTY.

34
35 IF [NAME OF CREDITOR] ACQUIRES THE PROPERTY AT
36 SHERIFF'S SALE, YOU MAY REMAIN IN THE PROPERTY AS
37 A TENANT UNTIL [NAME OF CREDITOR] SELLS THE
38 PROPERTY TO AN INDIVIDUAL WHO PLANS TO OCCUPY
39 THE PROPERTY. YOU MUST PAY A FAIR MARKET RENT
40 AND KEEP THE PROPERTY IN GOOD CONDITION.

41
42 ¹ [14. Section 2 of P.L.1974, c.49 (C.2A:18-61.1) is amended to
43 read as follows:

44 2. No lessee or tenant or the assigns, under-tenants or legal
45 representatives of such lessee or tenant may be removed by the
46 Superior Court from any house, building, mobile home or land in a
47 mobile home park or tenement leased for residential purposes, other
48 than (1) owner-occupied premises with not more than two rental

1 units or a hotel, motel or other guest house or part thereof rented to
2 a transient guest or seasonal tenant; (2) a dwelling unit which is
3 held in trust on behalf of a member of the immediate family of the
4 person or persons establishing the trust, provided that the member
5 of the immediate family on whose behalf the trust is established
6 permanently occupies the unit; and (3) a dwelling unit which is
7 permanently occupied by a member of the immediate family of the
8 owner of that unit, provided, however, that exception (1) shall not
9 apply where the owner-occupant has been the subject of a
10 foreclosure proceeding as a result of which title has passed by
11 sheriff's sale to another party; exception (2) or (3) shall apply only
12 in cases in which the member of the immediate family has a
13 developmental disability, except upon establishment of one of the
14 following grounds as good cause:

15 a. The person fails to pay rent due and owing under the lease
16 whether the same be oral or written; provided that, for the purposes
17 of this section, any portion of rent unpaid by a tenant to a landlord
18 but utilized by the tenant to continue utility service to the rental
19 premises after receiving notice from an electric, gas, water or sewer
20 public utility that such service was in danger of discontinuance
21 based on nonpayment by the landlord, shall not be deemed to be
22 unpaid rent.

23 b. The person has continued to be, after written notice to cease,
24 so disorderly as to destroy the peace and quiet of the occupants or
25 other tenants living in said house or neighborhood.

26 c. The person has willfully or by reason of gross negligence
27 caused or allowed destruction, damage or injury to the premises.

28 d. The person has continued, after written notice to cease, to
29 substantially violate or breach any of the landlord's rules and
30 regulations governing said premises, provided such rules and
31 regulations are reasonable and have been accepted in writing by the
32 tenant or made a part of the lease at the beginning of the lease term.

33 e. (1) The person has continued, after written notice to cease, to
34 substantially violate or breach any of the covenants or agreements
35 contained in the lease for the premises where a right of reentry is
36 reserved to the landlord in the lease for a violation of such covenant
37 or agreement, provided that such covenant or agreement is
38 reasonable and was contained in the lease at the beginning of the
39 lease term.

40 (2) In public housing under the control of a public housing
41 authority or redevelopment agency, the person has substantially
42 violated or breached any of the covenants or agreements contained
43 in the lease for the premises pertaining to illegal uses of controlled
44 dangerous substances, or other illegal activities, whether or not a
45 right of reentry is reserved to the landlord in the lease for a
46 violation of such covenant or agreement, provided that such
47 covenant or agreement conforms to federal guidelines regarding

1 such lease provisions and was contained in the lease at the
2 beginning of the lease term.

3 f. The person has failed to pay rent after a valid notice to quit
4 and notice of increase of said rent, provided the increase in rent is
5 not unconscionable and complies with any and all other laws or
6 municipal ordinances governing rent increases.

7 g. The landlord or owner (1) seeks to permanently board up or
8 demolish the premises because he has been cited by local or State
9 housing inspectors for substantial violations affecting the health and
10 safety of tenants and it is economically unfeasible for the owner to
11 eliminate the violations; (2) seeks to comply with local or State
12 housing inspectors who have cited him for substantial violations
13 affecting the health and safety of tenants and it is unfeasible to so
14 comply without removing the tenant; simultaneously with service of
15 notice of eviction pursuant to this clause, the landlord shall notify
16 the Department of Community Affairs of the intention to institute
17 proceedings and shall provide the department with such other
18 information as it may require pursuant to rules and regulations. The
19 department shall inform all parties and the court of its view with
20 respect to the feasibility of compliance without removal of the
21 tenant and may in its discretion appear and present evidence; (3)
22 seeks to correct an illegal occupancy because he has been cited by
23 local or State housing inspectors or zoning officers and it is
24 unfeasible to correct such illegal occupancy without removing the
25 tenant; or (4) is a governmental agency which seeks to permanently
26 retire the premises from the rental market pursuant to a
27 redevelopment or land clearance plan in a blighted area. In those
28 cases where the tenant is being removed for any reason specified in
29 this subsection, no warrant for possession shall be issued until
30 P.L.1967, c.79 (C.52:31B-1 et seq.) and P.L.1971, c.362 (C.20:4-1
31 et seq.) have been complied with.

32 h. The owner seeks to retire permanently the residential
33 building or the mobile home park from residential use or use as a
34 mobile home park, provided this subsection shall not apply to
35 circumstances covered under subsection g. of this section.

36 i. The landlord or owner proposes, at the termination of a
37 lease, reasonable changes of substance in the terms and conditions
38 of the lease, including specifically any change in the term thereof,
39 which the tenant, after written notice, refuses to accept; provided
40 that in cases where a tenant has received a notice of termination
41 pursuant to subsection g. of section 3 of P.L.1974, c.49 (C.2A:18-
42 61.2), or has a protected tenancy status pursuant to section 9 of the
43 "Senior Citizens and Disabled Protected Tenancy Act," P.L.1981,
44 c.226 (C.2A:18-61.30), or pursuant to the "Tenant Protection Act of
45 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.), the landlord or
46 owner shall have the burden of proving that any change in the terms
47 and conditions of the lease, rental or regulations both is reasonable

1 and does not substantially reduce the rights and privileges to which
2 the tenant was entitled prior to the conversion.

3 j. The person, after written notice to cease, has habitually and
4 without legal justification failed to pay rent which is due and owing.

5 k. The landlord or owner of the building or mobile home park
6 is converting from the rental market to a condominium, cooperative
7 or fee simple ownership of two or more dwelling units or park sites,
8 except as hereinafter provided in subsection l. of this section.
9 Where the tenant is being removed pursuant to this subsection, no
10 warrant for possession shall be issued until this act has been
11 complied with. No action for possession shall be brought pursuant
12 to this subsection against a senior citizen tenant or disabled tenant
13 with protected tenancy status pursuant to the "Senior Citizens and
14 Disabled Protected Tenancy Act," P.L.1981, c.226 (C.2A:18-61.22
15 et al.), or against a qualified tenant under the "Tenant Protection
16 Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.), as long as the
17 agency has not terminated the protected tenancy status or the
18 protected tenancy period has not expired.

19 l. (1) The owner of a building or mobile home park, which is
20 constructed as or being converted to a condominium, cooperative or
21 fee simple ownership, seeks to evict a tenant or sublessee whose
22 initial tenancy began after the master deed, agreement establishing
23 the cooperative or subdivision plat was recorded, because the owner
24 has contracted to sell the unit to a buyer who seeks to personally
25 occupy it and the contract for sale calls for the unit to be vacant at
26 the time of closing. However, no action shall be brought against a
27 tenant under this paragraph unless the tenant was given a statement
28 in accordance with section 6 of P.L.1975, c.311 (C.2A:18-61.9);

29 (2) The owner of three or less condominium or cooperative units
30 seeks to evict a tenant whose initial tenancy began by rental from an
31 owner of three or less units after the master deed or agreement
32 establishing the cooperative was recorded, because the owner seeks
33 to personally occupy the unit, or has contracted to sell the unit to a
34 buyer who seeks to personally occupy it and the contract for sale
35 calls for the unit to be vacant at the time of closing;

36 (3) The owner of a building of three residential units or less
37 seeks to personally occupy a unit, or has contracted to sell the
38 residential unit to a buyer who wishes to personally occupy it and
39 the contract for sale calls for the unit to be vacant at the time of
40 closing.

41 m. The landlord or owner conditioned the tenancy upon and in
42 consideration for the tenant's employment by the landlord or owner
43 as superintendent, janitor or in some other capacity and such
44 employment is being terminated.

45 n. The person has been convicted of or pleaded guilty to, or if a
46 juvenile, has been adjudicated delinquent on the basis of an act
47 which if committed by an adult would constitute an offense under
48 the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et

1 al. involving the use, possession, manufacture, dispensing or
2 distribution of a controlled dangerous substance, controlled
3 dangerous substance analog or drug paraphernalia within the
4 meaning of that act within or upon the leased premises or the
5 building or complex of buildings and land appurtenant thereto, or
6 the mobile home park, in which those premises are located, and has
7 not in connection with his sentence for that offense either (1)
8 successfully completed or (2) been admitted to and continued upon
9 probation while completing, a drug rehabilitation program pursuant
10 to N.J.S.2C:35-14; or, being the tenant or lessee of such leased
11 premises, knowingly harbors or harbored therein a person who has
12 been so convicted or has so pleaded, or otherwise permits or
13 permitted such a person to occupy those premises for residential
14 purposes, whether continuously or intermittently, except that this
15 subsection shall not apply to a person harboring or permitting a
16 juvenile to occupy the premises if the juvenile has been adjudicated
17 delinquent upon the basis of an act which if committed by an adult
18 would constitute the offense of use or possession under the said act.
19 No action for removal may be brought pursuant to this subsection
20 more than two years after the date of the adjudication or conviction
21 or more than two years after the person's release from incarceration
22 whichever is the later.

23 o. The person has been convicted of or pleaded guilty to, or if a
24 juvenile, has been adjudicated delinquent on the basis of an act
25 which if committed by an adult would constitute an offense under
26 N.J.S.2C:12-1 or N.J.S.2C:12-3 involving assault, or terroristic
27 threats against the landlord, a member of the landlord's family or an
28 employee of the landlord; or, being the tenant or lessee of such
29 leased premises, knowingly harbors or harbored therein a person
30 who has been so convicted or has so pleaded, or otherwise permits
31 or permitted such a person to occupy those premises for residential
32 purposes, whether continuously or intermittently. No action for
33 removal may be brought pursuant to this subsection more than two
34 years after the adjudication or conviction or more than two years
35 after the person's release from incarceration whichever is the later.

36 p. The person has been found, by a preponderance of the
37 evidence, liable in a civil action for removal commenced under this
38 act for an offense under N.J.S.2C:20-1 et al. involving theft of
39 property located on the leased premises from the landlord, the
40 leased premises or other tenants residing in the leased premises, or
41 N.J.S.2C:12-1 or N.J.S.2C:12-3 involving assault or terroristic
42 threats against the landlord, a member of the landlord's family or an
43 employee of the landlord, or under the "Comprehensive Drug
44 Reform Act of 1987," N.J.S.2C:35-1 et al., involving the use,
45 possession, manufacture, dispensing or distribution of a controlled
46 dangerous substance, controlled dangerous substance analog or drug
47 paraphernalia within the meaning of that act within or upon the
48 leased premises or the building or complex of buildings and land

1 appurtenant thereto, or the mobile home park, in which those
2 premises are located, and has not in connection with his sentence
3 for that offense either (1) successfully completed or (2) been
4 admitted to and continued upon probation while completing a drug
5 rehabilitation program pursuant to N.J.S.2C:35-14; or, being the
6 tenant or lessee of such leased premises, knowingly harbors or
7 harbored therein a person who committed such an offense, or
8 otherwise permits or permitted such a person to occupy those
9 premises for residential purposes, whether continuously or
10 intermittently, except that this subsection shall not apply to a person
11 who harbors or permits a juvenile to occupy the premises if the
12 juvenile has been adjudicated delinquent upon the basis of an act
13 which if committed by an adult would constitute the offense of use
14 or possession under the said "Comprehensive Drug Reform Act of
15 1987."

16 q. The person has been convicted of or pleaded guilty to, or if a
17 juvenile, has been adjudicated delinquent on the basis of an act
18 which if committed by an adult would constitute an offense under
19 N.J.S.2C:20-1 et al. involving theft of property from the landlord,
20 the leased premises or other tenants residing in the same building or
21 complex; or, being the tenant or lessee of such leased premises,
22 knowingly harbors therein a person who has been so convicted or
23 has so pleaded, or otherwise permits such a person to occupy those
24 premises for residential purposes, whether continuously or
25 intermittently.

26 For purposes of this section, (1) "developmental disability"
27 means any disability which is defined as such pursuant to section 3
28 of P.L.1977, c.82 (C.30:6D-3); (2) "member of the immediate
29 family" means a person's spouse, parent, child or sibling, or a
30 spouse, parent, child or sibling of any of them; and (3)
31 "permanently" occupies or occupied means that the occupant
32 maintains no other domicile at which the occupant votes, pays rent
33 or property taxes or at which rent or property taxes are paid on the
34 occupant's behalf.

35 (cf: P.L.2000, c.113, s.3)]¹

36

37 ¹[15. Immediately upon the effective date of this act, the New
38 Jersey Housing and Mortgage Finance Agency shall provide the
39 amount of \$1,000,000 from its reserves or administrative monies to
40 the department for the purpose of establishing the initial revenues
41 for the trust fund established under section 4 of this act.]¹

1 ~~'[16.] 14.'~~ The ~~'[Department of Community Affairs] agency'~~,
2 in consultation with the Department of Banking and Insurance, shall
3 adopt, pursuant to the "Administrative Procedure Act," P.L.1968,
4 c.410 (C.52:14B-1 et seq.), rules and regulations to effectuate the
5 purposes of this act.

6
7 ~~'[17.] 15.'~~ This act shall take effect immediately upon
8 enactment.