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ASSEMBLY, No. 2517

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED MARCH 13, 2008

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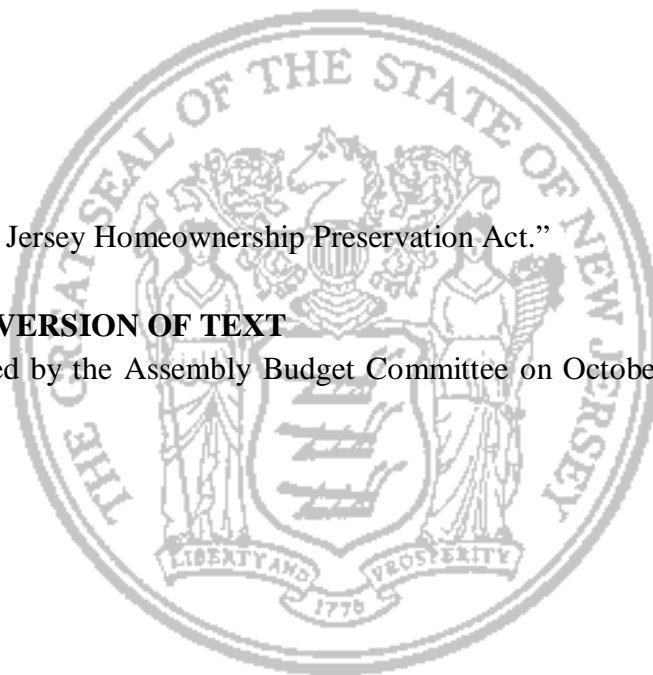
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Assemblymen Vas, Giblin, Assemblywoman Jasey, Assemblymen Ramos,
Johnson, Assemblywoman Quijano, Assemblyman McKeon and
Assemblywoman Vainieri Huttie**

SYNOPSIS

The “New Jersey Homeownership Preservation Act.”

CURRENT VERSION OF TEXT

As reported by the Assembly Budget Committee on October 6, 2008, with amendments.



(Sponsorship Updated As Of: 11/24/2009)

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. ¹By displacing homeowners and tenants in one to four
 25 family buildings, foreclosures increase the demand for affordable
 26 rental housing in the State, putting pressure on all families.
 27 Foreclosures which result in abandonment of properties also reduce
 28 the State’s 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 reduction in property values in New Jersey,
 37 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 per year in property tax
 40 revenue, reducing resources available for public education and other
 41 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:

¹Assembly AHO committee amendments adopted June 5, 2008.

²Assembly ABU committee amendments adopted October 6, 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 in 50 mortgages were in some stage of foreclosure
6 proceedings, more than double the ratio of foreclosures experienced
7 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 7 of such mortgages Statewide were in some stage of
18 foreclosure, a ratio which was more than four times the rate for
19 such mortgages at 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 has not resulted in 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.' 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)]' As used in this act:

7 '"Agency" means the New Jersey Housing and Mortgage
8 Finance Agency established pursuant to P.L.1983, c.530 (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.

40 "Homeowner" means a household that occupies a residential real
41 property to which one or more members of the household hold legal
42 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
49 by the ¹**【department to provide foreclosure prevention counseling**

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

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

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

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

16
17 4. ¹[(New section)] a. There is established, in the
18 ¹[Department of Community Affairs] New Jersey Housing and
19 Mortgage Finance Agency¹, a Foreclosure Prevention Revolving
20 Trust Fund, comprised of monies collected or accruing to the trust
21 fund pursuant to ¹[section] sections¹ 8 and 15 of ¹[this act]
22 P.L. , c. (C.) (pending before the Legislature as this bill)¹ ,
23 for the purpose of providing:

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

28 (2) grants to ¹individuals or to¹ qualified ¹[counseling] entities
29 as defined in subsection b. of section 5 of P.L. , c. (C.)
30 (pending before the Legislature as this bill)¹ for the purpose of
31 providing emergency foreclosure prevention assistance loans; and

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

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

45 c. The ¹[department] agency¹ shall establish rules and
46 regulations governing the procedures for approval of ¹[qualified
47 counseling] foreclosure prevention¹ entities, ¹that are permitted to

1 receive funds pursuant to subsections b. and c. of section 5 of
2 P.L. , c. (C.) (pending before the Legislature as this bill)'
3 which shall be based on demonstrated experience in providing
4 '[counseling] foreclosure prevention assistance' to low and
5 moderate income homebuyers and homeowners, and evidence that
6 personnel have received specific training in foreclosure prevention
7 counseling 'or other areas directly related to prevention of
8 foreclosure' .

9
10 5. '[(New section)]' The '[department] agency' shall deposit
11 the monies collected pursuant to sections 8 and 15 of '[this act]
12 P.L. , c. (C.) (pending before the Legislature as this bill)'
13 into the trust fund, and shall expend monies from the trust fund,
14 subject to any initial expenditures made pursuant to subsection b. of
15 section 4 of this act, in accordance with the following schedule:

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

26 b. '(1)' Any amounts collected during a fiscal year, above
27 \$5,000,000 and up to \$20,000,000, shall be allocated '[as] for use
28 by the agency to make emergency foreclosure prevention assistance
29 loans to homeowners, or to make' grants to qualified
30 '[counseling]' entities, for the purpose of making emergency
31 foreclosure prevention assistance loans 'to homeowners', and any
32 monies collected but not allocated by the end of the fiscal year shall
33 be available for allocation for these grants in the subsequent fiscal
34 year;

35 '(2) For purposes of this subsection, qualified entities may
36 include qualified foreclosure prevention entities, community
37 development financial institutions, or other community
38 development or financial institutions determined by the agency to
39 be qualified to provide such loans.'

40 c. '(1)' Any amounts collected in excess of \$20,000,000
41 during a fiscal year, shall be allocated, in the form of a loan or
42 grant, to '[non-profit] qualified' entities, for the purpose of
43 '[assisting] acquiring mortgages or properties from creditors, in
44 order to assist' homeowners in financial distress by restructuring
45 covered mortgage loans acquired from creditors, or restoring the
46 properties acquired from creditors to productive use, and any
47 monies collected but not allocated by the end of the fiscal year shall

1 be available for allocation for these loans or grants in the
2 subsequent fiscal year.

3 '(2) For purposes of this subsection, qualified entities may
4 include public entities, including local and county governments or
5 public authorities, non-profit community development or housing
6 organizations, or other entities specifically organized for the
7 purpose set forth above.'
8

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

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

20 (1) the homeowner's covered home loan is at risk of
21 foreclosure;

22 (2) the risk of foreclosure is the product of temporary
23 conditions; and

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

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

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

32 (2) paying attorney's fees and other fees and penalties, including
33 prepayment penalties, associated with refinancing or restructuring a
34 homeowner's mortgage.

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

40 d. All monies disbursed **'by the agency or'** a qualified
41 **'[counseling]'** entity for emergency foreclosure prevention
42 assistance shall be in the form of a loan to a homeowner that shall
43 be secured by a mortgage on the homeowner's property, which
44 mortgage shall be subordinate to existing mortgages. The
45 homeowner shall not be required to make any payments during the
46 term of the mortgage, but all amounts due on the mortgage shall be
47 payable from the proceeds of sale at the time that the property is

1 sold, which amounts shall include interest that shall be calculated in
2 accordance with the rate of increase in the housing component of
3 the National Consumer Price Index, New York-Northeastern New
4 Jersey region, but in any event shall not be more than 4 percent per
5 annum.

6 e. Loan repayment shall be made by the homeowner ¹to the
7 agency or¹ to the qualified ¹**["counseling"]** entity that made the
8 loan, provided, however, that if the entity is no longer active, or no
9 longer providing foreclosure prevention services, repayment shall
10 be made directly to the ¹**["department"] agency**¹, which shall deposit
11 the proceeds into the trust fund.

12 f. A qualified ¹**["counseling"]** entity which receives repayment
13 from a homeowner pursuant to subsection d. of this section, shall
14 use any monies collected in the same manner and for the same
15 emergency foreclosure prevention assistance purposes as set forth
16 in this section.

17 g. A qualified ¹**["counseling"]** entity that receives an
18 emergency foreclosure prevention assistance grant from the trust
19 fund shall maintain records and provide reports on the disbursement
20 of those funds as may be required by the ¹**["department"] agency**¹.
21

22 7. ¹**["(New section)"]** The ¹**["department"] agency**¹ shall
23 establish criteria for allocating grants and loans to ¹**["non-profit"]**
24 qualified¹ entities pursuant to subsection c. of section 5 of this act,
25 which criteria shall include:

26 a. Giving priority in making loans or grants to non-profit
27 entities that serve areas with a high incidence of foreclosures and a
28 high risk of foreclosures that result in vacant or abandoned
29 properties; and

30 b. Procedures for determining the amount, terms, and
31 conditions of the grant or loan.
32

33 8. ¹**["(New section)"]** a. A creditor that issues a notice of
34 intention to foreclose on a covered mortgage loan, pursuant to the
35 "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et. seq.), shall
36 simultaneously transmit a certified check in the amount of \$2,000 to
37 the ¹**["department"] agency**¹, for deposit into the trust fund. The
38 creditor shall not add the amount paid to the ¹**["department"] agency**¹
39 to the amount owed to the creditor by the borrower.

40 b. ¹**["A motion by a creditor seeking a judgment of foreclosure**
41 **as to a covered mortgage loan, pursuant to R.4:64-1 et seq. of the**
42 **Rules Governing the Courts of the State of New Jersey, shall not be**
43 **accepted by the court unless it is accompanied by evidence that the**
44 **creditor bringing the motion has complied with subsection a. of this**
45 **section.】** No judgment of foreclosure on a covered mortgage loan
46 shall be entered by the court unless the creditor has provided
47 evidence of compliance with subsection a. of this section.¹ ²This

1 subsection shall apply to foreclosure complaints for covered
2 mortgage loans filed on or after the effective date of P.L. _____.

3 c. (C. _____) (pending before the Legislature as this bill).²

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

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

7 (2) a mortgage payment is past due,

8 shall simultaneously send the borrower notification of the
9 availability of foreclosure prevention '[counseling] assistance'
10 available through qualified '[counseling]'¹ entities, in such form of
11 notification as the '[department] agency'¹ shall establish.

12

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

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

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

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

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

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

38 'c. The provisions of this section shall no longer apply
39 whenever the department determines that, for four consecutive
40 quarters, the rate of foreclosure for the State of New Jersey of
41 covered loans which contain introductory rates or prepayment
42 penalties, which shall be defined as the number of foreclosures
43 initiated during any quarter as a percentage of all outstanding loans
44 meeting that definition, is equal to or less than the average rate of
45 foreclosures for the State of New Jersey for the calendar years 2002
46 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
16 modifications to the mortgage or payments required under it with
17 the borrower; 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 bill)' ,
43 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 bill)' ,
48 the Department of Banking and Insurance shall make regularly

1 updated information on foreclosure activity for each census tract in
2 the State available to the public on its website.

3
4 11. **'[(New section)]'** a. A creditor serving a notice of
5 intention to foreclose on a mortgage on residential property in this
6 State shall serve the public officer of the municipality in which the
7 property is located, or, if the municipality has not designated a
8 public officer pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the
9 municipal clerk, with a copy of the notice at the same time it is
10 served on the owner of the property. The copy served on the public
11 officer or municipal clerk shall include the full name and contact
12 information of an individual located within the State who is
13 authorized to accept service on behalf of the creditor.

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

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

34
35 12. A consumer reporting agency or any other business entity
36 shall not sell to, or exchange with, a third party, unless the third
37 party holds an existing mortgage loan on the property, the existence
38 of a credit inquiry arising from a consumer mortgage loan
39 application when the sale or exchange is triggered by an inquiry
40 made in response to an application for credit. This section shall not
41 apply to information provided by a mortgage originator or servicer
42 to a third party providing services in connection with the mortgage
43 loan origination or servicing; a proposed or actual securitization;
44 secondary market sale, including sales of servicing rights; or similar
45 transaction related to the consumer mortgage loan.

46
47 13. a. Notwithstanding any other provision of law to the
48 contrary, a homeowner who is a borrower under a covered mortgage

1 loan and who loses title as a result of foreclosure may remain in
2 possession of the property as a tenant in possession subject to the
3 provisions of this section, unless the entity taking title through
4 foreclosure requires the property for their personal use and
5 occupancy, or the entity taking title through foreclosure
6 subsequently conveys the property to another entity which requires
7 the property for their personal use and occupancy, in which case the
8 tenant in possession shall be required to vacate the property upon
9 '[90 days] two months' notice.

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

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

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

24

25 NOTICE TO BORROWER:

26

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

32

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

39

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

42 2. No lessee or tenant or the assigns, under-tenants or legal
43 representatives of such lessee or tenant may be removed by the
44 Superior Court from any house, building, mobile home or land in a
45 mobile home park or tenement leased for residential purposes, other
46 than (1) owner-occupied premises with not more than two rental
47 units or a hotel, motel or other guest house or part thereof rented to
48 a transient guest or seasonal tenant; (2) a dwelling unit which is
49 held in trust on behalf of a member of the immediate family of the

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

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

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

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

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

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

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

47 f. The person has failed to pay rent after a valid notice to quit
48 and notice of increase of said rent, provided the increase in rent is

1 not unconscionable and complies with any and all other laws or
2 municipal ordinances governing rent increases.

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

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

32 i. The landlord or owner proposes, at the termination of a
33 lease, reasonable changes of substance in the terms and conditions
34 of the lease, including specifically any change in the term thereof,
35 which the tenant, after written notice, refuses to accept; provided
36 that in cases where a tenant has received a notice of termination
37 pursuant to subsection g. of section 3 of P.L.1974, c.49 (C.2A:18-
38 61.2), or has a protected tenancy status pursuant to section 9 of the
39 "Senior Citizens and Disabled Protected Tenancy Act," P.L.1981,
40 c.226 (C.2A:18-61.30), or pursuant to the "Tenant Protection Act of
41 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.), the landlord or
42 owner shall have the burden of proving that any change in the terms
43 and conditions of the lease, rental or regulations both is reasonable
44 and does not substantially reduce the rights and privileges to which
45 the tenant was entitled prior to the conversion.

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

48 k. The landlord or owner of the building or mobile home park
49 is converting from the rental market to a condominium, cooperative

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

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

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

30 (3) The owner of a building of three residential units or less
31 seeks to personally occupy a unit, or has contracted to sell the
32 residential unit to a buyer who wishes to personally occupy it and
33 the contract for sale calls for the unit to be vacant at the time of
34 closing.

35 m. The landlord or owner conditioned the tenancy upon and in
36 consideration for the tenant's employment by the landlord or owner
37 as superintendent, janitor or in some other capacity and such
38 employment is being terminated.

39 n. The person has been convicted of or pleaded guilty to, or if a
40 juvenile, has been adjudicated delinquent on the basis of an act
41 which if committed by an adult would constitute an offense under
42 the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et
43 al. involving the use, possession, manufacture, dispensing or
44 distribution of a controlled dangerous substance, controlled
45 dangerous substance analog or drug paraphernalia within the
46 meaning of that act within or upon the leased premises or the
47 building or complex of buildings and land appurtenant thereto, or
48 the mobile home park, in which those premises are located, and has
49 not in connection with his sentence for that offense either (1)

1 successfully completed or (2) been admitted to and continued upon
2 probation while completing, a drug rehabilitation program pursuant
3 to N.J.S.2C:35-14; or, being the tenant or lessee of such leased
4 premises, knowingly harbors or harbored therein a person who has
5 been so convicted or has so pleaded, or otherwise permits or
6 permitted such a person to occupy those premises for residential
7 purposes, whether continuously or intermittently, except that this
8 subsection shall not apply to a person harboring or permitting a
9 juvenile to occupy the premises if the juvenile has been adjudicated
10 delinquent upon the basis of an act which if committed by an adult
11 would constitute the offense of use or possession under the said act.
12 No action for removal may be brought pursuant to this subsection
13 more than two years after the date of the adjudication or conviction
14 or more than two years after the person's release from incarceration
15 whichever is the later.

16 o. 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:12-1 or N.J.S.2C:12-3 involving assault, or terroristic
20 threats against the landlord, a member of the landlord's family or an
21 employee of the landlord; or, being the tenant or lessee of such
22 leased premises, knowingly harbors or harbored therein a person
23 who has been so convicted or has so pleaded, or otherwise permits
24 or permitted such a person to occupy those premises for residential
25 purposes, whether continuously or intermittently. No action for
26 removal may be brought pursuant to this subsection more than two
27 years after the adjudication or conviction or more than two years
28 after the person's release from incarceration whichever is the later.

29 p. The person has been found, by a preponderance of the
30 evidence, liable in a civil action for removal commenced under this
31 act for an offense under N.J.S.2C:20-1 et al. involving theft of
32 property located on the leased premises from the landlord, the
33 leased premises or other tenants residing in the leased premises, or
34 N.J.S.2C:12-1 or N.J.S.2C:12-3 involving assault or terroristic
35 threats against the landlord, a member of the landlord's family or an
36 employee of the landlord, or under the "Comprehensive Drug
37 Reform Act of 1987," N.J.S.2C:35-1 et al., involving the use,
38 possession, manufacture, dispensing or distribution of a controlled
39 dangerous substance, controlled dangerous substance analog or drug
40 paraphernalia within the meaning of that act within or upon the
41 leased premises or the building or complex of buildings and land
42 appurtenant thereto, or the mobile home park, in which those
43 premises are located, and has not in connection with his sentence
44 for that offense either (1) successfully completed or (2) been
45 admitted to and continued upon probation while completing a drug
46 rehabilitation program pursuant to N.J.S.2C:35-14; or, being the
47 tenant or lessee of such leased premises, knowingly harbors or
48 harbored therein a person who committed such an offense, or
49 otherwise permits or permitted such a person to occupy those

1 premises for residential purposes, whether continuously or
2 intermittently, except that this subsection shall not apply to a person
3 who harbors or permits a juvenile to occupy the premises if the
4 juvenile has been adjudicated delinquent upon the basis of an act
5 which if committed by an adult would constitute the offense of use
6 or possession under the said "Comprehensive Drug Reform Act of
7 1987."

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

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

27 (cf: P.L.2000, c.113, s.3)]¹
28

29 ¹[15. Immediately upon the effective date of this act, the New
30 Jersey Housing and Mortgage Finance Agency shall provide the
31 amount of \$1,000,000 from its reserves or administrative monies to
32 the department for the purpose of establishing the initial revenues
33 for the trust fund established under section 4 of this act.]¹
34

35 ¹[16.] 14.¹ The ¹[Department of Community Affairs] agency¹,
36 in consultation with the Department of Banking and Insurance, shall
37 adopt, pursuant to the "Administrative Procedure Act," P.L.1968,
38 c.410 (C.52:14B-1 et seq.), rules and regulations to effectuate the
39 purposes of this act.
40

41 ¹[17.] 15.¹ This act shall take effect immediately upon
42 enactment.