

ASSEMBLY, No. 4063

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JUNE 8, 2009

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

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District 27 (Essex)

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District 35 (Bergen and Passaic)

SYNOPSIS

“New Jersey Foreclosure Fairness Act”; imposes additional foreclosure notice requirements; amends “Mortgage Stabilization and Relief Act.”

CURRENT VERSION OF TEXT

As introduced.



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

1 AN ACT concerning foreclosure on residential properties,
2 supplementing and amending various sections of the statutory
3 law.

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 Foreclosure Fairness Act."

10
11 2. (New section) a. A person who takes title, as a result of a
12 sheriff's sale or deed in lieu of foreclosure, to a residential property
13 containing one or more dwelling units occupied by residential
14 tenants, shall provide notice, no later than five business days after
15 the sale, via certified and regular mail, to the tenants in
16 substantially the following form:

17
18 **NOTICE TO TENANTS**

19 THE FORMER OWNER OF (insert property
20 address) HAS LOST THE PROPERTY AS A RESULT OF A
21 FORECLOSURE. IF YOU ARE A TENANT AT
22 (insert property address) YOU HAVE THE RIGHT TO REMAIN
23 IN YOUR HOUSE OR APARTMENT. THE NEW OWNER
24 CANNOT FORCE YOU TO MOVE OUT BECAUSE OF THE
25 FORECLOSURE.

26 YOU ARE PROTECTED BY NEW JERSEY'S ANTI-
27 EVICTION ACT, N.J.S.A. 2A:18-61.1 ET SEQ. THE NEW
28 OWNER CANNOT EVICT YOU WITHOUT "GOOD CAUSE,"
29 AS DETERMINED BY A COURT. THIS MEANS THAT ONLY
30 A SHERIFF'S OFFICER WITH A COURT ORDER MAY
31 REMOVE YOU FROM THE PREMISES, AND ONLY AFTER
32 YOU HAVE BEEN GIVEN THE OPPORTUNITY TO DEFEND
33 YOURSELF AGAINST EVICTION IN COURT. EXAMPLES OF
34 "GOOD CAUSE" ARE FAILURE TO PAY RENT, WILLFULLY
35 DAMAGING THE PREMISES, OR PERSONAL OCCUPANCY
36 BY THE NEW OWNER OF THE HOUSE OR APARTMENT
37 THAT YOU NOW LIVE IN.

38 IT IS ILLEGAL FOR THE NEW OWNER TO TRY TO FORCE
39 YOU TO LEAVE YOUR HOME IN ANY OTHER MANNER,
40 INCLUDING SHUTTING OFF UTILITIES OR FAILING TO
41 MAINTAIN THE PREMISES. IF THE NEW OWNER
42 PRESSURES YOU TO LEAVE, CONSULT WITH AN
43 ATTORNEY OR FILE A COMPLAINT WITH YOUR LOCAL
44 PROSECUTOR.

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.

1 b. The notice required pursuant to subsection a. of this section
2 shall be printed in no less than 16 point bold point type on heavy
3 stock, at least eight and one-half inches by 11 inches in size, and
4 shall contain contact information, including the name, mailing
5 address, e-mail address, and telephone number of the new owner or
6 a person authorized to act on behalf of the new owner.

7 c. The new owner shall make a diligent effort to obtain the
8 names and addresses of all tenants occupying the property for which
9 a notice is required pursuant to subsection a. of this section. The
10 new owner shall post the notice, required pursuant to subsection a.
11 of this section, prominently on the front door of each tenant's unit.

12 d. Any person taking title to the residential property as a result
13 of a sheriff's sale or deed in lieu of foreclosure shall include a copy
14 of the notice as set forth in subsection a. of this section in any
15 written communication to a tenant for the purposes of inducing a
16 tenant to vacate the property.

17 e. Service on any tenant of a summons and complaint in an
18 action to foreclose on any residential property by any person, or any
19 written communication by any person to a tenant in a residential
20 property that seeks to induce the tenant to vacate the property prior
21 to the transfer of the property through sheriff's sale or a deed in lieu
22 of foreclosure, shall include a copy of the notice set forth in
23 subsection a. of this section, except that the first sentence shall
24 read:

25
26 A FORECLOSURE ACTION HAS BEEN INITIATED ON
27 (insert address of property) AND THE OWNERSHIP OF THE
28 PROPERTY MAY CHANGE AS A RESULT.

29 f. Any person, their agent, or employee, who violates the
30 provisions of this section shall be subject to the civil remedies
31 provided for in subsection a. of P.L.1975, c.311 (C.2A:18-61.6).

32

33 3. (New section) a. No person, their agent or employee, who
34 has filed a complaint in an action to foreclose on a residential
35 property, or who takes title to any residential property as a result of
36 a sheriff's sale or other transaction following the filing of a
37 complaint in an action to foreclose a mortgage on the property shall
38 make any communication to induce the tenant to vacate the property
39 except through a bona fide monetary offer, which shall be made in
40 accordance with the provisions of subsections d. and e. of section 2
41 of P.L. , c. (C.) (pending before the Legislature as this
42 bill).

43 b. No person, their agent or employee, who has filed a
44 complaint in an action to foreclose shall take any action placing
45 pressure on a tenant to accept any offer to vacate the property,
46 including, but not limited to:

1 (1) Mischaracterizing or misrepresenting the rights of the tenant
2 under the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.),
3 or any other State law or municipal ordinance;

4 (2) Stating the actions the owner may take against the tenant or
5 implying the tenant is obligated to accept an offer or implying
6 consequences against the tenant for failing to accept an offer;

7 (3) Any form of tenant harassment, including, but not limited to
8 discontinuance of electricity, heat, or other utilities, failure to
9 maintain the common areas or facilities of the property, or failure to
10 make repairs in a timely and workmanlike fashion;

11 (4) Any rent increase in violation of a municipal rent control or
12 rent leveling ordinance, or in the event the property is not subject to
13 rent control, any rent increase in excess of the average of the
14 previous two years' rent increases; provided, however, that the
15 increase is imposed no later than one year after the date the new
16 owner took title to the property.

17 c. Any person, their agent or employee, who violates the
18 provisions of this section shall be subject to the civil remedies
19 provided for in subsection a. of P.L.1975, c.311 (C.2A:18-61.6).

20

21 4. Section 15 of P.L.2008, c.127 (C.46:10B-49) is amended to
22 read as follows:

23 15. a. A creditor that institutes a mortgage foreclosure action in
24 the Superior Court of New Jersey shall report to the Department of
25 Banking and Insurance, on a quarterly basis and on a form
26 promulgated by the department, information about the number of
27 mortgage foreclosure actions filed by the creditor in the State.

28 b. The Department of Banking and Insurance shall produce a
29 report, on a quarterly basis; detailing information about mortgage
30 foreclosures filed by creditors in each **[county]** municipality of the
31 State, and shall make the report available to the public on its
32 website. The report shall describe the type of mortgage being
33 foreclosed on based on the following categories:

34 (1) prime rate mortgages foreclosed upon;

35 (2) subprime rate mortgages foreclosed upon;

36 (3) fixed rate mortgages foreclosed upon;

37 (4) adjustable rate mortgages foreclosed upon;

38 (5) nonconforming mortgages, as defined by Fannie Mae,
39 Freddie Mac, or their successors;

40 (6) mortgages insured by the Federal Housing Administration
41 foreclosed upon;

42 (7) mortgages insured by the Veteran's Administration
43 foreclosed upon; and

44 (8) any other category of classification the department deems
45 appropriate to effectuate the purpose of this section.

46 c. The Department of Banking and Insurance, pursuant to the
47 "Administrative Procedure Act," P.L.1986, c.410 (C.52:14B-1 et

1 seq.) shall adopt regulations necessary to effectuate the purpose of
2 this section.

3 (cf: P.L.2008, c.127, s.15)

4

5 5. Section 16 of P.L.2008, c.127 (C.46:10B-50) is amended to
6 read as follows:

7 16. a. (1) A creditor that files, pursuant to the "Fair Foreclosure
8 Act," P.L.1995, c.244 (C.2A:50-53 et al.), a complaint of
9 foreclosure on a high risk mortgage loan, shall grant the borrower a
10 six-month period of forbearance, upon request of the borrower, to
11 pursue a loan workout, loan modification, refinancing, or other
12 alternative through mediation sponsored by the Administrative
13 Office of the Courts. During the six-month forbearance period, the
14 interest rate on the **[covered]** mortgage loan shall not increase and
15 the creditor shall take no further action to pursue foreclosure of the
16 property. Nothing in this subsection shall constitute a limitation on
17 the ability of the creditor and borrower to participate in mediation
18 sponsored by the Administrative Office of the Courts or enter into
19 an agreement as a result of that mediation pursuant to subsection b.
20 of this section.

21 As used in this section:

22 "Forbearance" means a period of six months during which the
23 judicial foreclosure proceedings filed by the creditor against the
24 borrower are suspended**;** however the borrower is obligated to
25 continue making monthly mortgage payments**].**

26 "High Risk Mortgage" means the first mortgage loan that has one
27 or more of the following characteristics:

28 is an interest only mortgage with a future interest reset rate;

29 has a reset mortgage interest rate that increases the interest rate;

30 contains a payment option plan or a "pick a payment" plan;

31 contains a negative amortization schedule;

32 is a subprime mortgage, which means a consumer credit
33 transaction, secured by the consumer's principal dwelling, with an
34 annual percentage rate that exceeds the average prime offer rate for
35 a comparable transaction, as of the date the interest rate is set, by
36 1.5 or more percentage points for loans secured by a first lien on a
37 dwelling, or by 3.5 or more percentage points for loans secured by a
38 subordinate lien on a dwelling;

39 contains an enforceable prepayment penalty; or

40 is a high cost home loan as defined in section 3 of the "New
41 Jersey Home Ownership Security Act of 2002," P.L.2003, c.64
42 (C.46:10B-24).

43 (2) Upon serving the summons and complaint in a foreclosure
44 action, the creditor shall notify the borrower of the borrower's right
45 to forbearance as provided for in this section, and, upon receipt of
46 written request by the borrower, within 30 days of the receipt of the
47 summons and complaint, the creditor shall grant the borrower a

1 period of forbearance, beginning on the date the creditor receives
2 the borrower's request.

3 (3) The notice of the borrower's right to forbearance shall
4 include the following information:

5 (a) whether the loan being foreclosed upon is eligible to receive
6 forbearance;

7 (b) that the borrower has the right to request the period of
8 forbearance in writing no later than 30 days after receipt of the
9 summons and complaint;

10 (c) the full address and other contact information to which the
11 request for forbearance may be sent.

12 (4) Upon receipt of a request for forbearance, the creditor shall
13 advise the court to place a six-month stay on the foreclosure action.

14 b. Upon filing of a complaint for foreclosure, and the
15 beginning of the six-month forbearance period, the borrower and
16 creditor shall participate in mediation sponsored by the
17 Administrative Office of the Courts; provided, however, that the
18 inability of the borrower to participate in mediation as a result of
19 circumstances beyond the borrower's control shall not affect the
20 borrower's continued eligibility for forbearance.

21 c. If the borrower ceases to occupy the property at any time
22 subsequent to the period of forbearance under this section, the
23 creditor may notify the court, and upon notification the period of
24 forbearance shall be deemed to have ended.

25 d. The provisions of this section shall expire two years
26 following the effective date of [P.L.2008, c.127]
27 P.L. , c. (C.) (pending before the Legislature as this bill).
28 (cf: P.L.2008, c.127, s.16)
29

30 6. Section 17 of P.L.2008, c.127 (C.46:10B-51) is amended to
31 read as follows:

32 17. a. (1) A creditor serving a [notice of intention to foreclose]
33 summons and complaint in an action to foreclose on a mortgage on
34 residential property in this State shall [serve] notify the [public
35 officer] municipal clerk of the municipality in which the property is
36 located[, or, if the municipality has not designated a public officer
37 pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the municipal
38 clerk with a copy of the notice at the same time it is served on the
39 owner of the] that a foreclosure complaint has been filed against
40 the subject property. The notice may be effectuated via electronic
41 communication. If the municipality has appointed a public officer
42 pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the municipal
43 clerk shall forward a copy of the notice to the public officer.

44 (2) In the event that the property being foreclosed is an
45 affordable unit pursuant to the "Fair Housing Act," P.L.1985, c.222
46 (C.52:27D-301 et al.), then the creditor shall identify that the
47 property is subject to the "Fair Housing Act." This notice

1 requirement may be effectuated via electronic communication to the
2 municipality at the time the complaint for foreclosure is filed. The
3 copy served on the public officer or municipal clerk shall include
4 the full name and contact information of an individual located
5 within the State who is authorized to accept service on behalf of the
6 creditor.

7 (3) Within 30 days following the effective date of P.L. _____, c.
8 (C. _____) (pending before the Legislature as this bill), any creditor that
9 has initiated a foreclosure proceeding on any residential property
10 which is pending in Superior Court shall provide to the municipal
11 clerk of the municipality in which the property is located, a listing
12 of all residential properties in the municipality for which the
13 creditor has foreclosure actions pending by street address and lot
14 and block number.

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

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

36 (cf: P.L.2008, c.127, s.17)

37

38 7. This act shall take effect immediately.

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40

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STATEMENT

42

43 This bill imposes additional requirements on lenders seeking to
44 foreclose on a residential mortgage property and take title to the
45 property. The bill requires persons taking title to a property
46 through sheriff's sale or deed in lieu of foreclosure to send notice to
47 any tenants at the property that ownership has changed and that the
48 tenants are not required to vacate the premises unless the new

1 owner files an eviction complaint in Superior Court and obtains a
2 court order requiring the tenant to move. A new owner who does
3 not provide the notice to the residential tenant is liable to the tenant
4 in a civil action for triple damages plus attorney's fees and costs.

5 The new owner must include the notice in any communication
6 with the tenant which seeks to induce the tenants to vacate the
7 property. The new owner of the property must make a diligent
8 effort to obtain the names and addresses of all tenants occupying
9 the property. If enacted, this legislation would prohibit the new
10 owner from harassing a tenant or mischaracterizing the right of the
11 tenant to remain in the property under any federal, State, or local
12 law.

13 The bill amends the "Mortgage Stabilization and Relief Act,"
14 P.L.2008, c.127, to require a lender that files a foreclosure
15 complaint to provide to the municipal clerk of the municipality
16 where the property is located a list detailing the location of all
17 property the creditor is foreclosing on within the municipality and
18 the status of each action. Current law requires the Department of
19 Banking and Insurance to provide detailed information on
20 residential foreclosures, arranged by county. The bill requires that
21 this information be arranged by municipality and include the
22 disposition of all foreclosure actions initiated by the creditor within
23 the municipality. Information sent to the municipal clerk by the
24 creditor may be provided by way of electronic communication.

25 The bill permits a borrower whose property is subject to a
26 foreclosure complaint to request, in writing, a period of
27 forbearance, within 30 days of being served with the foreclosure
28 complaint. The forbearance period shall last six months, during
29 which time no action shall be taken by the lender to foreclose on the
30 property. The lender must provide the borrower with information
31 about the forbearance period, including the address to which any
32 request for forbearance may be sent. The bill states that failure of
33 the borrower to participate in court sponsored mediation, due to
34 circumstances beyond the borrower's control, will not inhibit the
35 borrower's continued eligibility for forbearance. The bill extends
36 the term for which a period of forbearance is offered from January
37 9, 2011 to two years following the effective date of the bill.

38 The bill further amends the Mortgage Stabilization and Relief
39 Act to require that a creditor serving a complaint for foreclosure on
40 a property that is an affordable housing unit pursuant to the Fair
41 Housing Act notify the municipality, via electronic communication,
42 that the property is an designated as affordable housing.