

SENATE, No. 1599

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED APRIL 7, 2008

Sponsored by:

Senator RONALD L. RICE

District 28 (Essex)

Senator DANA L. REDD

District 5 (Camden and Gloucester)

Co-Sponsored by:

Senators Cunningham, Sacco, Weinberg and Singer

SYNOPSIS

The “New Jersey Homeownership Preservation Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/23/2008)

1 AN ACT concerning foreclosures on residential properties,
2 amending P.L. 1974, c.49 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. (New section) 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;

15 b. Foreclosures involve the loss of a family’s home, which is
16 often the family’s most valuable financial asset, and foreclosures
17 especially undermine the health and economic vitality of the urban
18 neighborhoods in which a disproportionate share of foreclosures
19 take place;

20 c. Foreclosures result in the loss of millions of dollars in assets,
21 not only those of the homeowners who are the victims of
22 foreclosure, but in terms of the property values of homes located in
23 the vicinity of foreclosed properties, as well as millions in
24 additional costs to state and local governments;

25 d. Foreclosures, particularly in urban neighborhoods, often
26 result in abandonment of properties, leading to significant costs and
27 lost revenue for local governments, as well as harm to the
28 neighborhoods in which properties are abandoned;

29 e. Foreclosures are largely the result of subprime lending
30 practices, which have placed many homeowners in loans that they
31 cannot realistically afford, by using loan features such as low
32 introductory rates, high pre-payment penalties, and failure to
33 require income documentation, all of which increase the risk of
34 default for borrowers;

35 f. Many of these foreclosures could be avoided if homeowners
36 had greater access to high-quality, in-person foreclosure prevention
37 counseling, emergency financial assistance, or additional time
38 during which to negotiate loan modifications or obtain refinancing;

39 g. There is a compelling public policy need for the State of
40 New Jersey to address these issues, provide the means by which
41 homeowners can obtain counseling, emergency financial assistance,
42 and time to adjust their finances in order to increase their ability to
43 retain their homes, protect local governments and neighborhoods
44 from the negative social, economic, and fiscal consequences of
45 foreclosure and abandonment; and

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 h. 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 needed to address this issue in a
4 responsible and effective manner.

5

6 3. (New section) As used in this act:

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

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

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

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

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

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

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

35 “Department” means the Department of Community Affairs.

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

41 “Mortgage broker” has the same meaning as set forth in section
42 3500.2 of Title 24 of the Code of Federal Regulations.

43 “Points and fees” means:

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

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

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

4 (4) the cost of all premiums financed by a creditor directly or
5 indirectly for any credit life, credit disability, credit unemployment
6 or credit property insurance or any other life or health insurance, or
7 any payments financed by the creditor directly or indirectly for any
8 debt cancellation or suspension agreement or contract, except that
9 insurance premiums, including private mortgage insurance or debt
10 cancellation or suspension fees calculated and paid on a monthly
11 basis or through regularly scheduled periodic payments, may not be
12 considered financed by the creditor;

13 (5) the maximum prepayment fees and penalties that may be
14 charged or collected by the creditor under the terms of the loan
15 documents; and

16 (6) all prepayment fees or penalties that are incurred by the
17 borrower if the covered mortgage loan refinances a previous loan
18 made or currently held by the same creditor or an affiliate of the
19 creditor.

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

39 "Qualified counseling entity" means an agency, organization, or
40 other entity approved by the department to provide foreclosure
41 prevention counseling and related services pursuant to the terms of
42 this act.

43 "Residential real property" means property in this State upon
44 which there is located or there is to be located a one to four family
45 story dwelling which is or will be occupied by a borrower as the
46 borrower's principal dwelling.

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

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

6
7 4. (New section) a. There is established, in the Department of
8 Community Affairs, a Foreclosure Prevention Revolving Trust
9 Fund, comprised of monies collected or accruing to the trust fund
10 pursuant to section 8 and 15 of this act, for the purpose of
11 providing:

12 (1) grants to qualified counseling entities for the purpose of
13 maintaining or expanding foreclosure prevention counseling and
14 related activities;

15 (2) grants to qualified counseling entities for the purpose of
16 providing emergency foreclosure prevention assistance loans; and

17 (3) loans and grants to non-profit entities for the purpose of
18 acquiring mortgage loans or properties from creditors in order to
19 restructure the mortgage loans or restore the properties to
20 productive use.

21 b. The department may utilize up to five percent of the
22 revenues in the trust fund or \$500,000 per year, whichever is less,
23 for the purposes of contracting with appropriate qualified vendors,
24 which may be qualified counseling entities, to provide training for
25 foreclosure prevention counselors, and to provide information,
26 outreach, and educational programs for borrowers potentially at risk
27 of foreclosure.

28 c. The department shall establish rules and regulations
29 governing the procedures for approval of qualified counseling
30 entities, which shall be based on demonstrated experience in
31 providing counseling to low and moderate income homebuyers and
32 homeowners, and evidence that personnel have received specific
33 training in foreclosure prevention counseling.

34
35 5. (New section) The department shall deposit the monies
36 collected pursuant to sections 8 and 15 of this act into the trust
37 fund, and shall expend monies from the trust fund, subject to any
38 initial expenditures made pursuant to subsection b. of section 4 of
39 this act, in accordance with the following schedule:

40 a. The first \$5,000,000 collected during a fiscal year shall be
41 allocated as grants to qualified counseling entities for the purpose
42 of maintaining or expanding their foreclosure prevention counseling
43 and related activities, and any monies collected but not allocated by
44 the end of the fiscal year shall be available for allocation for these
45 grants in the subsequent fiscal year;

46 b. Any amounts collected during a fiscal year, above
47 \$5,000,000 and up to \$20,000,000, shall be allocated as grants to
48 qualified counseling entities, for the purpose of making emergency

1 foreclosure prevention assistance loans, and any monies collected
2 but not allocated by the end of the fiscal year shall be available for
3 allocation for these grants in the subsequent fiscal year;

4 c. Any amounts collected in excess of \$20,000,000 during a
5 fiscal year, shall be allocated, in the form of a loan or grant, to non-
6 profit entities, for the purpose of assisting homeowners in financial
7 distress by restructuring covered mortgage loans acquired from
8 creditors, or restoring the properties acquired from creditors to
9 productive use, and any monies collected but not allocated by the
10 end of the fiscal year shall be available for allocation for these loans
11 or grants in the subsequent fiscal year.

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

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

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

24 (2) the risk of foreclosure is the product of temporary conditions;

25 and

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

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

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

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

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

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

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

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

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

15 g. A qualified counseling entity that receives an emergency
16 foreclosure prevention assistance grant from the trust fund shall
17 maintain records and provide reports on the disbursement of those
18 funds as may be required by the department.

19
20 7. (New section) The department shall establish criteria for
21 allocating grants and loans to non-profit entities pursuant to
22 subsection c. of section 5 of this act, which criteria shall include:

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

27 b. Procedures for determining the amount, terms, and
28 conditions of the grant or loan.

29
30 8. (New section) a. A creditor that issues a notice of intention
31 to foreclose on a covered mortgage loan, pursuant to the "Fair
32 Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et. seq.), shall
33 simultaneously transmit a certified check in the amount of \$2,000 to
34 the department, for deposit into the trust fund. The creditor shall
35 not add the amount paid to the department to the amount owed to
36 the creditor by the borrower.

37 b. A motion by a creditor seeking a judgment of foreclosure as
38 to a covered mortgage loan, pursuant to R.4:64-1 et seq. of the
39 Rules Governing the Courts of the State of New Jersey, shall not be
40 accepted by the court unless it is accompanied by evidence that the
41 creditor bringing the motion has complied with subsection a. of this
42 section.

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

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

46 (2) a mortgage payment is past due,

47 shall simultaneously send the borrower notification of the
48 availability of foreclosure prevention counseling available through

1 qualified counseling entities, in such form of notification as the
2 department shall establish.

3
4 9. (New section) a. A creditor that issues, pursuant to the
5 “Fair Foreclosure Act,” P.L.1995, c.244 (C.2A:50-53 et seq.), a
6 notice of intention to foreclose on a covered mortgage loan that
7 contains an introductory rate or a prepayment penalty, upon receipt
8 of a written request by the borrower within 30 days of the
9 borrower’s receipt of the notice of intention to foreclose, shall grant
10 the borrower a six month period of forbearance to pursue a loan
11 workout, loan modification, refinancing, or other alternative. The
12 six month forbearance period shall commence at the time that the
13 creditor receives the borrower’s request. During the six month
14 forbearance period, the interest rate on the covered mortgage loan
15 shall not increase and the creditor shall take no further action to
16 pursue foreclosure of the property.

17 The notice of intention to foreclose shall contain in a prominent
18 location a statement indicating:

- 19 (1) whether the loan meets the criteria set forth in this section;
20 (2) that in the event the loan meets the criteria, the borrower has
21 a right to request a six month forbearance period within 30 days of
22 receipt of the notice; and
23 (3) the full address and other contact information to which a
24 request to initiate the six month forbearance period may be sent.
25 b. If the borrower ceases to occupy the property at any time
26 subsequent to initiating a period of forbearance under this section,
27 the creditor may notify the court, and upon notification the period
28 of forbearance shall be deemed to have ended.

29
30 10. (New section) a. A creditor filing a notice of intention to
31 foreclose on a covered mortgage loan, pursuant to the “Fair
32 Foreclosure Act,” P.L.1995, c.244 (C.2A:50-53 et seq.), shall file
33 within 30 days of that notice an initial foreclosure report with the
34 Department of Banking and Insurance on a form prescribed by the
35 department by regulation, which shall include but not be limited to:

- 36 (1) the terms of the mortgage, including interest rate, rate
37 adjustments, prepayment fees, negative amortization, and such other
38 terms as the department may specify;
39 (2) the date of the mortgage;
40 (3) the maker of the mortgage;
41 (4) the current holder and servicer of the mortgage, including
42 contact information for a responsible individual employed by the
43 servicer;
44 (5) all efforts made by the creditor to negotiate any modifications
45 to the mortgage or payments required under it with the borrower;
46 and
47 (6) the amount due on the mortgage, including interest and
48 penalties.

1 b. A creditor filing an initial foreclosure report as required by
2 subsection a. of this section shall file a quarterly supplementary
3 foreclosure report on each quarterly anniversary of filing the notice
4 of intention to foreclose, up until the entry of judgment of
5 foreclosure. The quarterly supplemental report shall set forth:

- 6 (1) the status of foreclosure proceedings;
7 (2) the amount due on the mortgage, including interest and
8 penalties;
9 (3) a description of all efforts made by the creditor during the
10 preceding 90 days to negotiate any modifications to the mortgage or
11 payments required under it with the borrower; and
12 (4) any alternatives to foreclosure, including any sales or
13 conveyances, and any modifications to the mortgage or payments
14 required under it, entered into between the creditor and the
15 borrower.

16 c. The creditor shall provide a copy of the initial foreclosure
17 report and the quarterly supplemental foreclosure report to the court
18 and to the borrower, and shall also provide a copy of the reports to a
19 qualified counseling entity upon submission by the entity of a letter
20 signed by the borrower authorizing release of the reports to the
21 entity.

22 d. Within three months of the effective date of this act, the
23 Department of Banking and Insurance shall adopt and promulgate
24 forms for the initial and supplementary foreclosure reports required
25 under this section.

26 e. Within six months of the effective date of this act, the
27 Department of Banking and Insurance shall make regularly updated
28 information on foreclosure activity for each census tract in the State
29 available to the public on its website.

30

31 11. (New section) a. A creditor serving a notice of intention to
32 foreclose on a mortgage on residential property in this State shall
33 serve the public officer of the municipality in which the property is
34 located, or, if the municipality has not designated a public officer
35 pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the municipal
36 clerk, with a copy of the notice at the same time it is served on the
37 owner of the property. The copy served on the public officer or
38 municipal clerk shall include the full name and contact information
39 of an individual located within the State who is authorized to accept
40 service on behalf of the creditor.

41 b. If a residential property becomes vacant at any point
42 subsequent to the creditor's filing the notice of intention to
43 foreclose, but prior to vesting of title in the creditor or any other
44 third party, and the property is found to be a nuisance or in
45 violation of any applicable State or local code, the local public
46 officer or municipal clerk shall notify the creditor, which shall have
47 the responsibility to abate the nuisance or correct the violation in
48 the same manner and to the same extent as the title owner of the

1 property, to such standard or specification as may be required by
2 the public officer or municipal clerk.

3 c. If the municipality expends public funds in order to abate a
4 nuisance or correct a violation on a residential property in situations
5 in which the creditor was given notice pursuant to the provisions of
6 subsection b. of this section but failed to abate the nuisance or
7 correct the violation as directed, the public officer or municipal
8 clerk shall have the same recourse against the creditor as it would
9 have against the title owner of the property, including but not
10 limited to the recourse provided under section 23 of P.L.2003, c.210
11 (C.55:19-100).

12
13 12. (New section) A consumer reporting agency or any other
14 business entity shall not sell to, or exchange with, a third party,
15 unless the third party holds an existing mortgage loan on the
16 property, the existence of a credit inquiry arising from a consumer
17 mortgage loan application when the sale or exchange is triggered by
18 an inquiry made in response to an application for credit. This
19 section shall not apply to information provided by a mortgage
20 originator or servicer to a third party providing services in
21 connection with the mortgage loan origination or servicing; a
22 proposed or actual securitization; secondary market sale, including
23 sales of servicing rights; or similar transaction related to the
24 consumer mortgage loan.

25
26 13. a. Notwithstanding any other provision of law to the
27 contrary, a homeowner who is a borrower under a covered mortgage
28 loan and who loses title as a result of foreclosure may remain in
29 possession of the property as a tenant in possession subject to the
30 provisions of this section, unless the entity taking title through
31 foreclosure requires the property for their personal use and
32 occupancy, or the entity taking title through foreclosure
33 subsequently conveys the property to another entity which requires
34 the property for their personal use and occupancy, in which case the
35 tenant in possession shall be required to vacate the property upon
36 90 days notice.

37 b. A tenant in possession pursuant to subsection a. of this
38 section shall pay the title holder a fair market rent for the property.
39 The title holder shall provide the tenant with notice of the fair
40 market rent for the property, and the information that the title owner
41 used as a basis to determine the rent for the property, which shall
42 include rental income for comparable properties in the same area.

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

46 d. Simultaneously with serving the notice of intention to
47 foreclose on a covered mortgage loan on a borrower who is the
48 owner-occupant of the property, the creditor shall send the borrower

1 by certified mail a notice that shall identify the property and that
2 shall include the following information prominently displayed:

3
4 NOTICE TO BORROWER:

5
6 YOU HAVE THE RIGHT TO REMAIN IN THIS PROPERTY
7 DURING THE FORECLOSURE PROCEEDINGS AND AFTER
8 THE SHERIFF'S SALE UNLESS THE PROPERTY IS
9 ACQUIRED BY AN INDIVIDUAL WHO PLANS TO OCCUPY
10 THE PROPERTY.

11
12 IF [NAME OF CREDITOR] ACQUIRES THE PROPERTY AT
13 SHERIFF'S SALE, YOU MAY REMAIN IN THE PROPERTY AS
14 A TENANT UNTIL [NAME OF CREDITOR] SELLS THE
15 PROPERTY TO AN INDIVIDUAL WHO PLANS TO OCCUPY
16 THE PROPERTY. YOU MUST PAY A FAIR MARKET RENT
17 AND KEEP THE PROPERTY IN GOOD CONDITION.

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

21 2. No lessee or tenant or the assigns, under-tenants or legal
22 representatives of such lessee or tenant may be removed by the
23 Superior Court from any house, building, mobile home or land in a
24 mobile home park or tenement leased for residential purposes, other
25 than (1) owner-occupied premises with not more than two rental
26 units or a hotel, motel or other guest house or part thereof rented to
27 a transient guest or seasonal tenant; (2) a dwelling unit which is
28 held in trust on behalf of a member of the immediate family of the
29 person or persons establishing the trust, provided that the member
30 of the immediate family on whose behalf the trust is established
31 permanently occupies the unit; and (3) a dwelling unit which is
32 permanently occupied by a member of the immediate family of the
33 owner of that unit, provided, however, that exception (1) shall not
34 apply where the owner-occupant has been the subject of a
35 foreclosure proceeding as a result of which title has passed by
36 sheriff's sale to another party; exception (2) or (3) shall apply only
37 in cases in which the member of the immediate family has a
38 developmental disability, except upon establishment of one of the
39 following grounds as good cause:

40 a. The person fails to pay rent due and owing under the lease
41 whether the same be oral or written; provided that, for the purposes
42 of this section, any portion of rent unpaid by a tenant to a landlord
43 but utilized by the tenant to continue utility service to the rental
44 premises after receiving notice from an electric, gas, water or sewer
45 public utility that such service was in danger of discontinuance
46 based on nonpayment by the landlord, shall not be deemed to be
47 unpaid rent.

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

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

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

11 e. (1) The person has continued, after written notice to cease, to
12 substantially violate or breach any of the covenants or agreements
13 contained in the lease for the premises where a right of reentry is
14 reserved to the landlord in the lease for a violation of such covenant
15 or agreement, provided that such covenant or agreement is
16 reasonable and was contained in the lease at the beginning of the
17 lease term.

18 (2) In public housing under the control of a public housing
19 authority or redevelopment agency, the person has substantially
20 violated or breached any of the covenants or agreements contained
21 in the lease for the premises pertaining to illegal uses of controlled
22 dangerous substances, or other illegal activities, whether or not a
23 right of reentry is reserved to the landlord in the lease for a
24 violation of such covenant or agreement, provided that such
25 covenant or agreement conforms to federal guidelines regarding
26 such lease provisions and was contained in the lease at the
27 beginning of the lease term.

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

32 g. The landlord or owner (1) seeks to permanently board up or
33 demolish the premises because he has been cited by local or State
34 housing inspectors for substantial violations affecting the health and
35 safety of tenants and it is economically unfeasible for the owner to
36 eliminate the violations; (2) seeks to comply with local or State
37 housing inspectors who have cited him for substantial violations
38 affecting the health and safety of tenants and it is unfeasible to so
39 comply without removing the tenant; simultaneously with service of
40 notice of eviction pursuant to this clause, the landlord shall notify
41 the Department of Community Affairs of the intention to institute
42 proceedings and shall provide the department with such other
43 information as it may require pursuant to rules and regulations. The
44 department shall inform all parties and the court of its view with
45 respect to the feasibility of compliance without removal of the
46 tenant and may in its discretion appear and present evidence; (3)
47 seeks to correct an illegal occupancy because he has been cited by
48 local or State housing inspectors or zoning officers and it is

1 unfeasible to correct such illegal occupancy without removing the
2 tenant; or (4) is a governmental agency which seeks to permanently
3 retire the premises from the rental market pursuant to a
4 redevelopment or land clearance plan in a blighted area. In those
5 cases where the tenant is being removed for any reason specified in
6 this subsection, no warrant for possession shall be issued until
7 P.L.1967, c.79 (C.52:31B-1 et seq.) and P.L.1971, c.362 (C.20:4-1
8 et seq.) have been complied with.

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

13 i. The landlord or owner proposes, at the termination of a
14 lease, reasonable changes of substance in the terms and conditions
15 of the lease, including specifically any change in the term thereof,
16 which the tenant, after written notice, refuses to accept; provided
17 that in cases where a tenant has received a notice of termination
18 pursuant to subsection g. of section 3 of P.L.1974, c.49 (C.2A:18-
19 61.2), or has a protected tenancy status pursuant to section 9 of the
20 "Senior Citizens and Disabled Protected Tenancy Act," P.L.1981,
21 c.226 (C.2A:18-61.30), or pursuant to the "Tenant Protection Act of
22 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.), the landlord or
23 owner shall have the burden of proving that any change in the terms
24 and conditions of the lease, rental or regulations both is reasonable
25 and does not substantially reduce the rights and privileges to which
26 the tenant was entitled prior to the conversion.

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

29 k. The landlord or owner of the building or mobile home park
30 is converting from the rental market to a condominium, cooperative
31 or fee simple ownership of two or more dwelling units or park sites,
32 except as hereinafter provided in subsection l. of this section.
33 Where the tenant is being removed pursuant to this subsection, no
34 warrant for possession shall be issued until this act has been
35 complied with. No action for possession shall be brought pursuant
36 to this subsection against a senior citizen tenant or disabled tenant
37 with protected tenancy status pursuant to the "Senior Citizens and
38 Disabled Protected Tenancy Act," P.L.1981, c.226 (C.2A:18-61.22
39 et al.), or against a qualified tenant under the "Tenant Protection
40 Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.), as long as the
41 agency has not terminated the protected tenancy status or the
42 protected tenancy period has not expired.

43 l. (1) The owner of a building or mobile home park, which is
44 constructed as or being converted to a condominium, cooperative or
45 fee simple ownership, seeks to evict a tenant or sublessee whose
46 initial tenancy began after the master deed, agreement establishing
47 the cooperative or subdivision plat was recorded, because the owner
48 has contracted to sell the unit to a buyer who seeks to personally

1 occupy it and the contract for sale calls for the unit to be vacant at
2 the time of closing. However, no action shall be brought against a
3 tenant under this paragraph unless the tenant was given a statement
4 in accordance with section 6 of P.L.1975, c.311 (C.2A:18-61.9);

5 (2) The owner of three or less condominium or cooperative units
6 seeks to evict a tenant whose initial tenancy began by rental from an
7 owner of three or less units after the master deed or agreement
8 establishing the cooperative was recorded, because the owner seeks
9 to personally occupy the unit, or has contracted to sell the unit to a
10 buyer who seeks to personally occupy it and the contract for sale
11 calls for the unit to be vacant at the time of closing;

12 (3) The owner of a building of three residential units or less
13 seeks to personally occupy a unit, or has contracted to sell the
14 residential unit to a buyer who wishes to personally occupy it and
15 the contract for sale calls for the unit to be vacant at the time of
16 closing.

17 m. The landlord or owner conditioned the tenancy upon and in
18 consideration for the tenant's employment by the landlord or owner
19 as superintendent, janitor or in some other capacity and such
20 employment is being terminated.

21 n. The person has been convicted of or pleaded guilty to, or if a
22 juvenile, has been adjudicated delinquent on the basis of an act
23 which if committed by an adult would constitute an offense under
24 the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et
25 al. involving the use, possession, manufacture, dispensing or
26 distribution of a controlled dangerous substance, controlled
27 dangerous substance analog or drug paraphernalia within the
28 meaning of that act within or upon the leased premises or the
29 building or complex of buildings and land appurtenant thereto, or
30 the mobile home park, in which those premises are located, and has
31 not in connection with his sentence for that offense either (1)
32 successfully completed or (2) been admitted to and continued upon
33 probation while completing, a drug rehabilitation program pursuant
34 to N.J.S.2C:35-14; or, being the tenant or lessee of such leased
35 premises, knowingly harbors or harbored therein a person who has
36 been so convicted or has so pleaded, or otherwise permits or
37 permitted such a person to occupy those premises for residential
38 purposes, whether continuously or intermittently, except that this
39 subsection shall not apply to a person harboring or permitting a
40 juvenile to occupy the premises if the juvenile has been adjudicated
41 delinquent upon the basis of an act which if committed by an adult
42 would constitute the offense of use or possession under the said act.
43 No action for removal may be brought pursuant to this subsection
44 more than two years after the date of the adjudication or conviction
45 or more than two years after the person's release from incarceration
46 whichever is the later.

47 o. The person has been convicted of or pleaded guilty to, or if a
48 juvenile, has been adjudicated delinquent on the basis of an act

1 which if committed by an adult would constitute an offense under
2 N.J.S.2C:12-1 or N.J.S.2C:12-3 involving assault, or terroristic
3 threats against the landlord, a member of the landlord's family or an
4 employee of the landlord; or, being the tenant or lessee of such
5 leased premises, knowingly harbors or harbored therein a person
6 who has been so convicted or has so pleaded, or otherwise permits
7 or permitted such a person to occupy those premises for residential
8 purposes, whether continuously or intermittently. No action for
9 removal may be brought pursuant to this subsection more than two
10 years after the adjudication or conviction or more than two years
11 after the person's release from incarceration whichever is the later.

12 p. The person has been found, by a preponderance of the
13 evidence, liable in a civil action for removal commenced under this
14 act for an offense under N.J.S.2C:20-1 et al. involving theft of
15 property located on the leased premises from the landlord, the
16 leased premises or other tenants residing in the leased premises, or
17 N.J.S.2C:12-1 or N.J.S.2C:12-3 involving assault or terroristic
18 threats against the landlord, a member of the landlord's family or an
19 employee of the landlord, or under the "Comprehensive Drug
20 Reform Act of 1987," N.J.S.2C:35-1 et al., involving the use,
21 possession, manufacture, dispensing or distribution of a controlled
22 dangerous substance, controlled dangerous substance analog or drug
23 paraphernalia within the meaning of that act within or upon the
24 leased premises or the building or complex of buildings and land
25 appurtenant thereto, or the mobile home park, in which those
26 premises are located, and has not in connection with his sentence
27 for that offense either (1) successfully completed or (2) been
28 admitted to and continued upon probation while completing a drug
29 rehabilitation program pursuant to N.J.S.2C:35-14; or, being the
30 tenant or lessee of such leased premises, knowingly harbors or
31 harbored therein a person who committed such an offense, or
32 otherwise permits or permitted such a person to occupy those
33 premises for residential purposes, whether continuously or
34 intermittently, except that this subsection shall not apply to a person
35 who harbors or permits a juvenile to occupy the premises if the
36 juvenile has been adjudicated delinquent upon the basis of an act
37 which if committed by an adult would constitute the offense of use
38 or possession under the said "Comprehensive Drug Reform Act of
39 1987."

40 q. The person has been convicted of or pleaded guilty to, or if a
41 juvenile, has been adjudicated delinquent on the basis of an act
42 which if committed by an adult would constitute an offense under
43 N.J.S.2C:20-1 et al. involving theft of property from the landlord,
44 the leased premises or other tenants residing in the same building or
45 complex; or, being the tenant or lessee of such leased premises,
46 knowingly harbors therein a person who has been so convicted or
47 has so pleaded, or otherwise permits such a person to occupy those

1 premises for residential purposes, whether continuously or
2 intermittently.

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

12 (cf: P.L.2000, c.113, s.3)

13

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

19

20 16. The Department of Community Affairs, in consultation with
21 the Department of Banking and Insurance, shall adopt, pursuant to
22 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
23 et seq.), rules and regulations to effectuate the purposes of this act.

24

25 17. This act shall take effect immediately upon enactment.

26

27

28

STATEMENT

29

30 This bill, entitled the "New Jersey Homeownership Preservation
31 Act," provides for a trust fund, the Foreclosure Prevention Revolving
32 Trust Fund, to be established in the Department of Community Affairs
33 for the purpose of providing relief to homeowners in this State who are
34 at risk of mortgage foreclosure. The bill also places certain
35 requirements on creditors who initiate foreclosure proceedings against
36 homeowners who have "covered mortgage loans," which, as defined in
37 the bill, are loans normally associated with the subprime lending
38 market.

39 The trust fund established by the bill is comprised of monies
40 collected from a \$2,000 fee applied to each creditor who initiates a
41 foreclosure action against a borrower under a covered mortgage loan,
42 and a \$1 million appropriation from the reserves or administrative
43 monies of the New Jersey Housing and Mortgage Finance Agency.

44 The bill directs the department to use the trust fund to provide
45 certain grants and loans, in accordance with a schedule set forth in the
46 bill, to qualified counseling agencies, as defined in the bill, and non-
47 profit agencies. Qualified counseling agencies must use the funding to
48 assist homeowners by providing foreclosure prevention counseling

1 services and making emergency foreclosure prevention assistance
2 loans. The non-profit agencies must use the funding to assist
3 homeowners by restructuring covered mortgage loans acquired from
4 creditors or restoring properties acquired from creditors. The bill
5 applies certain conditions as to the allocated funds, including
6 requirements for the department to use contractual guarantees and to
7 establish procedures, to ensure that the qualified counseling agencies
8 and non-profits use the funds to effectively assist financially distressed
9 homeowners who are most at risk for foreclosure.

10 The bill also applies certain requirements to creditors who initiate
11 foreclosure proceedings as to a covered mortgage loan pursuant to the
12 “Fair Foreclosure Act” P.L.1995, c.244 (C.2A:50-53) by issuing a
13 notice of intention to foreclose.

14 Under certain circumstances, the creditor must:

15 (1) grant the borrower, upon the borrower’s request, a six month
16 period of forbearance so that the borrower may pursue a loan workout,
17 loan modification, refinancing, or other alternative. During the period
18 of forbearance, the interest rate cannot increase and the creditor cannot
19 take any further action to foreclose on the property, beyond issuing the
20 notice of intention; and

21 (2) file certain reports with the Department of Banking and
22 Insurance, indicating the status of the foreclosure and any attempts to
23 work out the mortgage payments with the borrower.

24 Further, the bill requires a creditor that issues a notice of intention
25 to foreclose mortgage on residential property, to notify the
26 municipality by providing a copy of the notice to the public officer or
27 municipal clerk of the municipality. In certain circumstances, the bill
28 makes the creditor responsible to abate any nuisance or correct any
29 violations related to the property, and provides the municipality with
30 recourse against the creditor for failure to do so.

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

42 The bill also provides that a homeowner who is a borrower under a
43 covered mortgage loan and who loses the home to foreclosure, may
44 remain in possession of the property as a tenant in possession, under
45 certain circumstances, provided the homeowner pays fair market rent
46 to the owner of the property.

47 Finally, the bill provides that the Department of Community
48 Affairs, in consultation with the Department of Banking and

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- 1 Insurance, shall adopt, pursuant to the “Administrative Procedure
- 2 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations to
- 3 effectuate the purposes of the bill.