

**SENATE, No. 1491**

**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

INTRODUCED FEBRUARY 22, 2010

**Sponsored by:**

**Senator RONALD L. RICE**

**District 28 (Essex)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



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 a dwelling, as defined in section 103(v) of the Truth in  
14 Lending Act, Pub.L.90-321 (15 U.S.C. s.1602(v)), with one to four  
15 family housing units or individual units of condominiums or  
16 cooperatives, and which is occupied by residential tenants, shall  
17 provide notice, in both English and Spanish, no later than ten  
18 business days after the sale, to the tenants in accordance with the  
19 provisions of subsection c. of this section. The notice shall be in  
20 the following form:

21  
22 **NOTICE TO TENANTS**

23 THE FORMER OWNER OF . . . . . (insert property  
24 address) HAS LOST THE PROPERTY AS A RESULT OF A  
25 FORECLOSURE. FROM THE TIME YOU RECEIVE THIS AND  
26 UNTIL FURTHER NOTICE, YOU SHOULD PAY RENT TO  
27 .....(insert name and address of person to whom rent is due)  
28 PLEASE SEND RENT BY .....(insert method of transmission) ON  
29 THE .....(insert day) OF EACH MONTH.

30 WITH LIMITED EXCEPTIONS, THE NEW JERSEY ANTI-  
31 EVICTION ACT, N.J.S.A.2A:18-61.1 ET SEQ., PROTECTS  
32 YOUR RIGHT TO REMAIN IN YOUR HOME. FORECLOSURE  
33 ALONE IS NOT GROUNDS FOR EVICTION OF A TENANT.  
34 YOU ARE PROTECTED BY THIS LAW EVEN IF YOU DO NOT  
35 HAVE A WRITTEN LEASE.

36 THE NEW OWNER CANNOT EVICT YOU WITHOUT  
37 "GOOD CAUSE," AS DETERMINED BY A COURT.  
38 EXAMPLES OF "GOOD CAUSE" ARE FAILURE TO PAY  
39 RENT, WILLFULLY DAMAGING THE PREMISES, OR  
40 PERSONAL OCCUPANCY BY THE NEW OWNER OF THE  
41 HOUSE OR APARTMENT THAT YOU NOW LIVE IN.

42 A RESIDENTIAL TENANT IN NEW JERSEY CAN BE  
43 EVICTED ONLY THROUGH A COURT PROCESS. ONLY A  
44 SHERIFF WITH A COURT ORDER MAY REMOVE YOU FROM  
45 THE PREMISES, AND ONLY AFTER YOU HAVE BEEN

**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 GIVEN THE OPPORTUNITY TO DEFEND YOURSELF IN  
2 COURT.

3 IT IS ILLEGAL FOR ANYONE TO TRY TO FORCE YOU TO  
4 LEAVE YOUR HOME IN ANY OTHER MANNER, INCLUDING  
5 BY SHUTTING OFF UTILITIES OR OTHER VITAL SERVICE  
6 OR FAILING TO MAINTAIN THE PREMISES. HOWEVER  
7 YOU MAY ACCEPT FINANCIAL COMPENSATION FOR  
8 LEAVING VOLUNTARILY IF THE NEW OWNER OFFERS  
9 SUCH COMPENSATION.

10 IF SOMEONE IS PRESSURING YOU TO LEAVE, CONSULT  
11 WITH AN ATTORNEY OR FILE A COMPLAINT WITH YOUR  
12 LOCAL PROSECUTOR.

13 b. The notice required pursuant to subsection a. of this section  
14 shall be printed in no less than 14 point bold point type on heavy  
15 stock, at least eight and one-half inches by 11 inches in size, and  
16 shall contain contact information, including the name, mailing  
17 address, e-mail address, and telephone number of the new owner or  
18 a person authorized to act on behalf of the new owner.

19 c. The new owner shall make a diligent effort to obtain the  
20 names of all tenants occupying the property for which a notice is  
21 required pursuant to subsection a. of this section. The notice shall  
22 be addressed to tenants by name; provided, however, that in the  
23 event a diligent search fails to identify the tenant by name, the new  
24 owner shall address the notice required pursuant to subsection a. of  
25 this section to "Tenant." The new owner shall post the notice  
26 prominently on the front door of each tenant's unit and send the  
27 notice to each tenant via certified and regular mail.

28 d. Any person taking title to the residential property as a result  
29 of a sheriff's sale or deed in lieu of foreclosure, or that person's  
30 agent or employee, shall provide a copy of the notice as set forth in  
31 subsection a. of this section with any written or verbal  
32 communication to a tenant for the purposes of inducing a tenant to  
33 vacate the property in accordance with the provisions of section 3  
34 of P.L. , c. (C )(pending before the Legislature as this bill).

35 e. Service on any tenant of a summons and complaint in an  
36 action to foreclose on any residential property by any person, or the  
37 initial written or verbal communication by a foreclosing creditor to  
38 a tenant in a residential property subject to ongoing foreclosure  
39 proceedings, or any written or verbal communication that seeks to  
40 induce the tenant to vacate the property prior to the transfer of the  
41 property through sheriff's sale or a deed in lieu of foreclosure, shall  
42 include a copy of the notice set forth in subsection a. of this section,  
43 except that the notice shall substitute the following three paragraphs  
44 for the first two paragraphs in the notice of subsection a. of this  
45 section:

1 A FORECLOSURE ACTION HAS BEEN INITIATED ON . . . .  
2 . . (insert address of property) AND THE OWNERSHIP OF THE  
3 PROPERTY MAY CHANGE AS A RESULT.

4 UNTIL SUCH TIME AS THE OWNERSHIP CHANGES, YOU  
5 SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD.  
6 YOU SHOULD GET AND KEEP RECORDS OF YOUR RENTAL  
7 PAYMENT, SUCH AS RENT RECEIPTS OR CANCELED  
8 CHECKS.

9 IF YOU ARE UNSURE ABOUT WHO YOUR LANDLORD IS,  
10 OR TO WHOM YOU SHOULD PAY RENT, YOU SHOULD  
11 SAVE YOUR RENT MONEY SO THAT YOU WILL HAVE IT  
12 WHEN THE OWNER DEMANDS THE RENT. NONPAYMENT  
13 OF RENT IS GROUNDS FOR EVICTION.

14 f. Any person, or that person's agent or employee, who  
15 violates the provisions of this section shall be subject to the same  
16 civil remedies as are provided for in subsection a. of P.L.1975,  
17 c.311 (C.2A:18-61.6), or, in the alternative, damages in the amount  
18 of \$2,000 per violation, plus attorney's fees and costs. Nothing in  
19 this subsection shall limit the liability, either civil or criminal, of a  
20 person, or a person's agent or employee, who violates any other law  
21 or regulation.

22  
23 3. (New section) a. No person, or the person's agent or  
24 employee, who has filed a complaint in an action to foreclose on a  
25 residential property, as described in section 2 of  
26 P.L. , c. (C. ) (pending before the Legislature as this bill), or  
27 who takes title to a residential property as a result of a sheriff's sale  
28 or other transaction following the filing of a complaint in an action  
29 to foreclose a mortgage on the property shall make any  
30 communication to induce the tenant to vacate the property except  
31 through a bona fide monetary offer, which shall be made in  
32 accordance with the provisions of subsections d. and e. of section 2  
33 of P.L. , c. (C. ) (pending before the Legislature as this  
34 bill).

35 b. No person, or the person's agent or employee, who has filed  
36 a complaint in an action to foreclose on a residential property shall  
37 take any action placing pressure on a tenant to accept any offer to  
38 vacate the property, including, but not limited to:

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

42 (2) Stating the actions the owner may take against the tenant or  
43 implying the tenant is obligated to accept an offer or implying  
44 consequences against the tenant for failing to accept an offer;

45 (3) Any form of tenant harassment, including, but not limited to,  
46 discontinuance of electricity, heat, or other utilities, failure to  
47 maintain the common areas or facilities of the property, or any other  
48 failure to maintain the premises in a habitable condition;

1 (4) Any rent increase in violation of a municipal rent control or  
2 rent leveling ordinance, or in the event the property is not subject to  
3 rent control, any rent increase in excess of the increase in the  
4 consumer price index for all urban consumers in the New York City  
5 and Philadelphia areas as reported by the United States Department  
6 of Labor.

7 c. Any person, or that person's agent or employee, who  
8 violates the provisions of this section shall be subject to the same  
9 civil remedies as are provided for in subsection a. of P.L.1975,  
10 c.311 (C.2A:18-61.6), or, in the alternative, damages in the amount  
11 of \$2,000 per violation, plus attorney's fees and costs. Nothing in  
12 this subsection shall limit the liability, either civil or criminal, of a  
13 person, or a person's agent or employee, who violates any other law  
14 or regulation.

15  
16 4. Section 17 of P.L.2008, c.127 (C.46:10B-51) is amended to  
17 read as follows:

18 17. a. (1) A creditor serving a [notice of intention to foreclose]  
19 summons and complaint in an action to foreclose on a mortgage on  
20 residential property in this State shall [serve] , within 10 days of  
21 serving the summons and complaint, notify the [public officer]  
22 municipal clerk of the municipality in which the property is located  
23 [, or, if the municipality has not designated a public officer  
24 pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the municipal  
25 clerk with a copy of the notice at the same time it is served on the  
26 owner of the] that a foreclosure complaint has been filed against  
27 the subject property. The notice shall contain the name and contact  
28 information for the representative of the creditor who is responsible  
29 for receiving complaints of property maintenance and code  
30 violations, may contain information about more than one property,  
31 and shall be provided via written communication, or through  
32 electronic communication, at the discretion of the municipal clerk.  
33 If the municipality has appointed a public officer pursuant to  
34 P.L.1942, c.112 (C.40:48-2.3 et seq.), the municipal clerk shall  
35 forward a copy of the notice to the public officer or shall otherwise  
36 provide it to any other local official responsible for administration  
37 of any property maintenance or public nuisance code.

38 In the event that the property being foreclosed is an affordable  
39 unit pursuant to the "Fair Housing Act," P.L.1985, c.222  
40 (C.52:27D-301 et al.), then the creditor shall identify that the  
41 property is subject to the "Fair Housing Act."

42 The [copy served on the public officer or municipal clerk]  
43 notice shall also include the street address, lot and block number of  
44 the property, and the full name and contact information of an  
45 individual located within the State who is authorized to accept  
46 service on behalf of the creditor. The notice shall be provided to

1 the municipal clerk within 10 days of service of a summons and  
2 complaint in a foreclosure action.

3 (2) Within 30 days following the effective date of  
4 P.L. , c. (C. ) (pending before the Legislature as this bill), any  
5 creditor that has initiated a foreclosure proceeding on any  
6 residential property which is pending in Superior Court shall  
7 provide to the municipal clerk of the municipality in which the  
8 property is located, a listing of all residential properties in the  
9 municipality for which the creditor has foreclosure actions pending  
10 by street address and lot and block number. If the municipality has  
11 appointed a public officer pursuant to P.L.1942, c.112 (C.40:48-2.3  
12 et seq.), the municipal clerk shall forward a copy of the notice to the  
13 public officer, or shall otherwise provide it to any other local  
14 official responsible for administration of any property maintenance  
15 or public nuisance code.

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

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

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

40 5. (New section) The provisions of any regulation, ordinance,  
41 rule, or resolution of any municipality, county or other subdivision  
42 of the State, or any agency or instrumentality of that municipality,  
43 county or other subdivision, relating to foreclosure practices, or the  
44 extension, delay, forbearance or imposition of moratorium periods  
45 concerning foreclosures, are superseded by the provisions of the  
46 “Save New Jersey Homes Act of 2008,” P.L.2008, c.86 (C.46:10B-  
47 36 et seq.) and the forbearance and nuisance abatement provisions

1 of the “Mortgage Stabilization and Relief Act,” P.L.2008, c.127  
2 (C.55:14K-82 et al.).

3

4 6. Section 4 of this act shall take effect on the 10th day after the  
5 date of enactment, and the remainder of the act shall take effect on  
6 the 30th day after the date of enactment.

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8

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**STATEMENT**

10

11 This bill imposes additional requirements on lenders seeking to  
12 foreclose on a residential mortgage property and take title to the  
13 property. The bill requires persons taking title to a property  
14 through sheriff’s sale or deed in lieu of foreclosure to send notice to  
15 any tenants at the property that ownership has changed and that the  
16 tenants are not required to vacate the premises unless the new  
17 owner files an eviction complaint in Superior Court and obtains a  
18 court order requiring the tenant to move. A new owner who does  
19 not provide the notice to the residential tenant is liable to the tenant  
20 in a civil action for triple damages plus attorney’s fees and costs or  
21 damages up to \$2,000 plus attorney’s fees and costs.

22 The new owner must include the notice in any communication  
23 with the tenant which seeks to induce the tenants to vacate the  
24 property. The new owner of the property must make a diligent  
25 effort to obtain the names and addresses of all tenants occupying  
26 the property. If enacted, this legislation would prohibit the new  
27 owner from harassing a tenant or mischaracterizing the right of the  
28 tenant to remain in the property under any federal, State, or local  
29 law.

30 The bill amends the “Mortgage Stabilization and Relief Act,”  
31 P.L.2008, c.127, to require a lender that files a foreclosure  
32 complaint to provide to the municipal clerk of the municipality  
33 where the property is located, or other authorized municipal  
34 official, the location all properties the creditor is foreclosing upon  
35 within the municipality and the status of each action. Current law  
36 requires the Department of Banking and Insurance to provide  
37 detailed information on residential foreclosures, arranged by  
38 county. The bill requires that this information be arranged by  
39 municipality and include the disposition of all foreclosure actions  
40 initiated by the creditor within the municipality. Information sent  
41 to the municipal clerk by the creditor may be provided by way of  
42 electronic communication.

43 The bill further amends the Mortgage Stabilization and  
44 Relief Act to require that a creditor serving a complaint for  
45 foreclosure on a property that is an affordable housing unit pursuant  
46 to the Fair Housing Act notify the municipality, via electronic  
47 communication, that the property is an designated as affordable  
48 housing.