

P.L.2012, CHAPTER 70, *approved December 3, 2012*

Senate, No. 2156 (*First Reprint*)

1 **AN ACT** establishing a summary action to foreclose mortgages on
2 vacant and abandoned residential property and supplementing
3 chapter 50 of Title 2A of the New Jersey Statutes.

4

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

7

8 1. a. For the purposes of this section, "vacant and abandoned"
9 residential property means residential real estate with respect to
10 which the mortgagee proves, by clear and convincing evidence, that
11 the mortgaged real estate is vacant and has been abandoned. Real
12 property shall be deemed "vacant and abandoned" if the court finds
13 that the mortgaged property is not occupied by a mortgagor or
14 tenant as evidenced by a lease agreement entered into prior to the
15 service of a notice of intention to commence foreclosure according
16 to section 4 of the "Fair Foreclosure Act," P.L.1995, c.244
17 (C.2A:50-56), and at least two of the following conditions exist:

18 (1) overgrown or neglected vegetation;

19 (2) the accumulation of newspapers, circulars, flyers or mail on
20 the property;

21 (3) disconnected gas, electric, or water utility services to the
22 property;

23 (4) the accumulation of hazardous, noxious, or unhealthy
24 substances or materials on the property;

25 (5) the accumulation of junk, litter, trash or debris on the
26 property;

27 (6) the absence of window treatments such as blinds, curtains or
28 shutters;

29 (7) the absence of furnishings and personal items;

30 (8) statements of neighbors, delivery persons, or government
31 employees indicating that the residence is vacant and abandoned;

32 (9) windows or entrances to the property that are boarded up or
33 closed off or multiple window panes that are damaged, broken and
34 unrepaired;

35 (10) doors to the property that are smashed through, broken off,
36 unhinged, or continuously unlocked;

37 (11) a risk to the health, safety or welfare of the public, or any
38 adjoining or adjacent property owners, exists due to acts of

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEG committee amendments adopted August 20, 2012.

1 vandalism, loitering, criminal conduct, or the physical destruction
2 or deterioration of the property;

3 (12) an uncorrected violation of a municipal building, housing,
4 or similar code during the preceding year, or an order by municipal
5 authorities declaring the property to be unfit for occupancy and to
6 remain vacant and unoccupied;

7 (13) the mortgagee or other authorized party has secured or
8 winterized the property due to the property being deemed vacant
9 and unprotected or in danger of freezing;

10 (14) a written statement issued by any mortgagor expressing the
11 clear intent of all mortgagors to abandon the property;

12 (15) any other reasonable indicia of abandonment.

13 b. For the purposes of this section, a residential property shall
14 not be considered "vacant and abandoned" if, on the property:

15 (1) there is an unoccupied building which is undergoing
16 construction, renovation, or rehabilitation that is proceeding
17 diligently to completion, and the building is in compliance with all
18 applicable ordinances, codes, regulations, and statutes;

19 (2) there is a building occupied on a seasonal basis, but
20 otherwise secure; or

21 (3) there is a building that is secure, but is the subject of a
22 probate action, action to quiet title, or other ownership dispute.

23 c. In addition to the residential mortgage foreclosure
24 procedures set out in the "Fair Foreclosure Act," P.L.1995, c.244
25 (C.2A:50-53 et seq.), a summary action to foreclose a mortgage
26 debt secured by residential property that is vacant and abandoned
27 may be brought by a lender in the Superior Court. In addition, a
28 lender may, at any time after filing a foreclosure action, file with
29 the court, in accordance with the Rules Governing the Courts of the
30 State of New Jersey, an application to proceed in a summary
31 manner because the residential property that is the subject of the
32 foreclosure action is believed to be "vacant and abandoned";
33 provided, however, that this section shall not apply to a foreclosure
34 of a timeshare interest secured by a mortgage.

35 d. (1) In addition to the service of process required by the Rules
36 of Court, a lender shall establish, for the entry of a residential
37 foreclosure judgment under this section, that a process server has
38 made two unsuccessful attempts to serve the mortgagor or occupant
39 at the residential property, which attempts must be at least 72 hours
40 apart, and during different times of the day, either before noon,
41 between noon and 6 P.M., or between 6 P.M. and 10 P.M.

42 (2) In addition to any notices required to be served by law or the
43 Rules of Court, a lender shall, with any order to show cause served
44 as original service of process or a motion to proceed summarily,
45 serve a notice that the lender is seeking, on the return date of the
46 order to show cause, or on the date fixed by the court, to proceed
47 summarily for entry of a residential foreclosure judgment because
48 the property is vacant and abandoned.

1 (3) ¹【Notwithstanding the procedure for serving a notice to cure
2 required by section 6 of the "Fair Foreclosure Act," P.L.1995, c.244
3 (C.2A:50-58), a lender filing a summary action for entry of a
4 residential mortgage foreclosure judgment under this section shall
5 serve the mortgagor with a notice to cure with the order to show
6 cause served as original service of process. When a lender makes
7 application to proceed summarily because a property is vacant and
8 abandoned, a notice to cure shall be served with the order fixing the
9 date for the matter to proceed summarily】 When a property is
10 deemed vacant and abandoned as herein defined, a lender shall not
11 be required to serve the debtor with the notice to cure required by
12 section 6 of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-
13 58)¹.

14 e. (1) The court may enter a final residential mortgage
15 foreclosure judgment under this section upon a finding, ¹【(1)】 (a)¹
16 by clear and convincing evidence, that the residential property is
17 vacant and abandoned as defined under subsection a. of this section,
18 and ¹【(2)】 (b)¹ that a review of the pleadings and documents filed
19 with the court, as required by the Rules of Court, supports the entry
20 of a final residential mortgage foreclosure judgment.

21 (2) A final residential mortgage foreclosure judgment under this
22 section shall not be entered if the court finds that ¹;

23 (a) the property is not vacant or abandoned ¹【,】¹ or

24 (b) the mortgagor or any other defendant has filed an answer,
25 appearance, or other written objection that is not withdrawn and the
26 defenses or objection asserted provide cause to preclude the entry of
27 a final residential mortgage foreclosure judgment.

28 f. If a final residential mortgage foreclosure judgment under
29 this section is not entered on the original or adjourned return date of
30 an order to show cause or the date fixed by the court to proceed
31 summarily, the court may direct that the foreclosure action continue
32 on the normal track for residential mortgage foreclosure actions for
33 properties that are not vacant and abandoned and the notice to cure
34 served with the order to show cause or the order fixing that date for
35 the matter to proceed summarily shall be of no effect.

36 g. All actions brought to foreclose on real property pursuant to
37 this section shall proceed in accordance with the Rules of the Court.

38 h. Nothing in this section is intended to supersede or limit other
39 procedures adopted by the Court to resolve residential mortgage
40 foreclosure actions, including, but not limited to, foreclosure
41 mediation.

42 i. Nothing in this section shall be construed to affect the rights
43 of a tenant to possession of a leasehold interest under the Anti-
44 Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New
45 Jersey Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et
46 seq.), or any other applicable law.

S2156 [1R]

1 j. Notwithstanding paragraph (3) of subsection a. of section 12
2 of P.L.1995 c.244 (C.2A:50-64) to the contrary, if the court makes a
3 finding in the foreclosure judgment that the property is vacant and
4 abandoned, the sheriff shall sell the property within '~~75~~ 60' days
5 of the sheriff's receipt of any writ of execution issued by the court.
6 If it becomes apparent that the sheriff cannot comply with the
7 provisions of this subsection, the foreclosing plaintiff may apply to
8 the court for an order appointing a Special Master or judicial agent
9 to hold the foreclosure sale.

10

11 2. This act shall take effect immediately but shall remain
12 inoperative until the first day of the fourth month next following the
13 date of enactment.

14

15

16

17

18 Establishes summary action to foreclose mortgages on vacant
19 and abandoned residential property.