

[Fifth Reprint]

SENATE, No. 1566

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED FEBRUARY 9, 2012

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

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District 18 (Middlesex)

Co-Sponsored by:

Senators Codey, Stack, Ruiz and Cunningham

SYNOPSIS

Establishes the "New Jersey Residential Foreclosure Transformation Act"; provides expedited process for foreclosing abandoned residential properties.

CURRENT VERSION OF TEXT

As amended by the Senate on June 21, 2012.



(Sponsorship Updated As Of: 6/26/2012)

1 AN ACT concerning the foreclosure of residential properties, the
2 transfer and dedication of foreclosed residential properties for
3 affordable housing, and supplementing Title 2A of the New
4 Jersey Statutes and Title 55 of the Revised Statutes.

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

8
9 1. This act shall be known and may be cited as the "New Jersey
10 Residential Foreclosure Transformation Act."

11
12 2. The Legislature finds and declares that:

13 a. In recent years, there has been an enormous expansion in
14 the number of mortgage foreclosure filings in New Jersey and
15 across the nation. The number of mortgage foreclosure actions filed
16 in the New Jersey Courts grew from just over 20,000 in 2005 to
17 more than 51,000 in 2008, 66,000 in 2009, and 58,000 in 2010.

18 b. Preliminary information indicates a decline in the number of
19 residential mortgage foreclosure filings over 2011. However, this
20 decline is largely attributable to actions undertaken by the New
21 Jersey Judiciary which, in December of 2010, suspended the
22 processing of uncontested residential foreclosures by the six biggest
23 lenders in order to address "robo-signing" and other processing
24 irregularities.

25 c. Despite this decline, it has been reported that more than one
26 in 10 New Jersey mortgage loans are already in foreclosure or are
27 90 days or more in arrears. Because of the large number of
28 foreclosures filed during the 2009-2010 period, and the Judiciary's
29 suspension of foreclosure processing, reports indicate that as of
30 August 2011 more than 100,000 residential foreclosure cases were
31 still open. Now that the courts have resumed processing
32 foreclosures for the big six lenders, it is widely believed that
33 foreclosure filings will increase during 2012. This is due in part to
34 the large number of mortgages that are seriously delinquent, more
35 than 90 days past due. Reports have indicated that during the
36 suspension period mortgage lenders were waiting to file more than
37 28,000 additional foreclosures and that another 55,000 mortgage
38 loans were over 90 days delinquent.

39 d. Many of these foreclosed residential properties are vacant,
40 undermining the health, safety, and economic vitality of
41 neighborhoods, depressing their property values, and reducing
42 revenues to municipalities.

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 February 16, 2012.

²Senate SBA committee amendments adopted March 8, 2012.

³Senate floor amendments adopted May 24, 2012.

⁴Senate floor amendments adopted May 31, 2012.

⁵Senate floor amendments adopted June 21, 2012.

1 e. It is the public policy of this State to encourage the
2 production of low-income and moderate-income housing to serve
3 the general welfare of all the State's residents.

4 f. The availability of tens of thousands of foreclosed
5 residential properties presents a unique opportunity for the State to
6 facilitate the purchase and dedication, or the rental, of housing units
7 for low-income and moderate-income residents.

8 g. Establishment of a temporary State entity dedicated to the
9 purpose of identifying foreclosed residential properties and
10 facilitating their purchase and dedication for occupancy or their
11 rental, including but not limited to low-income and moderate-
12 income families, is in the public interest of the State.

13

14 3. As used in this act:

15 "Affordable" means a sales price or rent within the means of a
16 low or moderate income household.

17 "Agency" means the New Jersey Housing and Mortgage Finance
18 Agency established pursuant to section 4 of P.L.1983, c.530
19 (C.55:14K-4).

20 ⁵["Community development corporation" means a nonprofit
21 community development corporation established pursuant to Title
22 15 of the Revised Statutes, Title 15A of the New Jersey Statutes, or
23 other law of this State, with a focus on producing and operating
24 affordable housing or housing with on-site social services for
25 individuals with special needs.]⁵

26 "Community development financial institution" means an entity
27 designated and certified by the United States Department of the
28 Treasury as a Community Development Financial Institution
29 pursuant to ¹[12 CFR 1805] 12 CFR Part 1805¹.

30 "Contractor" means a qualified community development
31 financial institution that enters into a contract or loan with the
32 corporation pursuant to section 7 of this act.

33 "Corporation" means the "New Jersey Foreclosure Relief
34 Corporation" established pursuant to this act.

35 "Eligible property" means any residential property that is owned
36 by an institutional lender as the result of a mortgage foreclosure.

37 ⁵[²"Individuals with special needs" means individuals with
38 mental illness, physical or developmental disabilities, victims of
39 domestic violence, ex-offenders, youth aging out of foster care,
40 disabled and homeless veterans, individuals and households who
41 are homeless, individuals with AIDS/HIV, and individuals in other
42 emerging special needs groups identified by State agencies.
43 Individuals shall be at least 18 years of age if not part of a
44 household.²]⁵

45 "Institutional lender" or "lender" means any lawfully constituted
46 mortgage lender, mortgage investor, or mortgage loan servicer that
47 owns an eligible property including, but not limited to any agency

1 or instrumentality of the United States, including, but not limited to,
2 the Government National Mortgage Association, the Federal Home
3 Loan Mortgage Corporation, the Federal National Mortgage
4 Association, the Federal Housing Administration, the Small
5 Business Administration, the Resolution ¹ **["Trust"] Funding¹**
6 Corporation, and the Federal Deposit Insurance Corporation.

7 "Intercreditor agreement" means an agreement among creditors
8 that sets forth the various lien positions and the rights and liabilities
9 of each creditor and its impacts on the other creditors.

10 "Low-income" means 50 percent or less of the median gross
11 household income for households of the same size within the
12 housing region in which the household is located, based upon the
13 United States Department of Housing and Urban Development's
14 (HUD) Section 8 Income Limits (uncapped) averaged across
15 counties for the housing region.

16 "Low-income housing" means housing affordable according to
17 United States Department of Housing and Urban Development or
18 other recognized standards for home ownership and rental costs,
19 and occupied or reserved for occupancy by households with a gross
20 household income equal to 50 percent or less of the median gross
21 household income for households of the same size within the
22 housing region in which the housing is located.

23 "Market-rate units" means housing not restricted to low- and
24 moderate-income households that may sell or rent at any price.

25 "Moderate-income" means more than 50 percent but less than 80
26 percent of the median gross household income for households of the
27 same size within the housing region in which the household is
28 located, based upon the United States Department of Housing and
29 Urban Development's (HUD's) Section 8 Income Limits (uncapped)
30 averaged across counties for the housing region.

31 "Moderate-income housing" means housing affordable according
32 to United States Department of Housing and Urban Development or
33 other recognized standards for home ownership and rental costs and
34 occupied or reserved for occupancy by households with a gross
35 household income equal to more than 50 percent but less than 80
36 percent of the median gross household income for households of the
37 same size within the housing region in which the housing is located.

38 ⁵ **["Permanent supportive housing" means ¹ **["affordable housing**
39 **dedicated for persons with developmental disabilities or mental**
40 **illness, designed as permanent housing, and regulated by the New**
41 **Jersey Department of Human Services] a permanent lease based**
42 **housing unit that provides access to supportive services for**
43 **individuals with special needs and households with individuals with**
44 **special needs who can benefit from housing with services.** ¹ **]**⁵**

45 "Qualified community development financial institution" means
46 a community development financial institution that has a minimum
47 of \$50 million in assets under management and a minimum of 2

1 years' experience in the financing and acquisition of real estate for
2 affordable housing.

3 "Qualifying household" means a very-low, low-, or moderate-
4 income household, the head of which certifies in writing that the
5 household intends to occupy the property as a principal residence
6 for at least 12 months.

7 ⁵["Supportive shared living housing" means permanent lease-
8 based supportive housing that provides access to supportive
9 services to individuals with special needs who maintain separate
10 leases for bedrooms and share common living space.]⁵

11 "Very-low-income" means 30 percent or less of the median gross
12 household income for households of the same size within the
13 housing region in which the household is located, based upon the
14 United States Department of Housing and Urban Development's
15 (HUD) Section 8 Income Limits (uncapped) averaged across
16 counties for the housing region.

17 "Very-low-income housing" means housing affordable to,
18 according to United States Department of Housing and Urban
19 Development or other recognized standards for home ownership
20 and rental costs, and occupied by, or reserved for occupancy by,
21 households with a gross household income equal to 30 percent or
22 less of the median gross household income for households of the
23 same size within the housing region in which the housing is located.
24

25 4. a. There is established in the New Jersey Housing and
26 Mortgage Finance Agency the "New Jersey Foreclosure Relief
27 Corporation."

28 b. The corporation shall constitute a body corporate and politic
29 and an instrumentality exercising public and essential governmental
30 functions, and the exercise by the corporation of the powers
31 conferred by this act shall be deemed and held to be an essential
32 governmental function of the State.

33 c. The corporation shall be governed by a seven-member
34 board, consisting of the Commissioner of Community Affairs, the
35 Executive Director of the New Jersey Housing and Mortgage
36 Finance Agency, the Commissioner of Banking and Insurance, and
37 the State Treasurer, who shall be members ex officio, and three
38 members appointed by the Governor. Each ex officio member of
39 the board may designate an officer or employee of his department to
40 represent him at meetings of the board, and each such designee may
41 lawfully vote and otherwise act on behalf of the member for whom
42 he constitutes the designee. Any such designation shall be in
43 writing delivered to the secretary of the board and shall continue in
44 effect until revoked or amended by writing delivered to the
45 secretary of the board.

46 d. The three members appointed by the Governor shall be
47 residents of the State and shall have knowledge in the areas of 'real
48 estate.'¹ housing design, construction, or operation; mortgage

1 banking, finance and foreclosure; or community development. Of
2 the three members appointed by the Governor, one shall be a
3 nominee of the Senate President and one shall be a nominee of the
4 Speaker of the General Assembly. 'At least one of the members
5 appointed by the Governor shall hold a license as a real estate
6 broker, broker-salesperson, salesperson, or referral agent under the
7 provisions of R.S.45:15-1 et seq.'¹ No more than two of the
8 members appointed by the Governor shall be members of the same
9 political party. The members shall serve for two-year terms. Each
10 member shall hold office for the term of his appointment and until
11 the appointment of his successor. A member of the board shall be
12 eligible for reappointment. A member of the board may be removed
13 from office by the Governor, for cause, after a public hearing and
14 may be suspended by the Governor pending the completion of such
15 a hearing.

16 e. (1) The Executive Director of the New Jersey Housing and
17 Mortgage Finance Agency shall be the chairperson of the board.
18 The chairperson shall appoint the secretary to the board. The
19 chairperson shall convene an organizational meeting of the board as
20 soon as possible after the appointment of its members.

21 (2) The board shall have the exclusive authority to approve all
22 financial transactions of the corporation, to approve minutes of
23 board meetings, and to make determinations concerning the
24 corporation's governing structure.

25 (3) The secretary to the board shall deliver a true copy of the
26 minutes of every board meeting to the Governor. No action taken at
27 a board meeting shall have force or effect until the Governor
28 approves the action or fails to veto the action within 10 business
29 days after a true copy of the minutes were delivered. During that
30 10-day period, the Governor may render any action taken by the
31 board or any member thereof null and void by returning a copy of
32 the minutes with a veto of the action to the board.

33 f. The corporation shall use employees (selected by the board)
34 of the agency and the agency shall provide such personnel to the
35 corporation for its use. In addition to persons otherwise employed
36 by the agency, the agency shall employ, and shall provide to the
37 corporation, such persons as the corporation may request from time
38 to time. Agency employees provided to the corporation shall be
39 subject to the direction and control of the corporation and any of
40 them may be returned to the agency at any time by the corporation
41 in the discretion of the corporation. The corporation may use
42 administrative services of the agency and, if it does so, shall
43 reimburse the agency for the actual costs of providing such
44 services.

45 g. With the agreement of an executive department or other
46 executive agency, the corporation may utilize the personnel of that
47 department or agency on a reimbursable basis to cover actual and
48 reasonable expenses.

- 1 h. (1) On or before the last day of March in each year, the
2 corporation shall make an annual report of its activities for the
3 preceding calendar year, and its planned activities for the current
4 and following calendar year, to the Governor and to the Legislature.
- 5 (2) Each annual report shall set forth the current nature and
6 extent of foreclosure activity in New Jersey and shall depict
7 changes in foreclosure activity from the prior calendar year. The
8 report shall set forth a complete operating and financial statement
9 covering the corporation's operations, transactions and holdings
10 during the preceding year, including but not limited to:
- 11 (a) the total number of re-capitalized market rate units.
- 12 (b) the total numbers of very-low-income, low-income, and
13 moderate-income units that were produced for sale and for rental in
14 the preceding year pursuant to this act, their locations by
15 municipality, and the sources of financing used.
- 16 (3) The corporation shall cause an audit of its books and
17 accounts to be made at least once in each year by certified public
18 accountants. The cost of the audit shall be considered an expense of
19 the corporation and a copy thereof shall be filed with the State
20 Treasurer.
- 21 (4) The corporation shall provide copies of its annual reports
22 and audits to the agency and the agency shall display the
23 corporation's annual reports and audits on the agency's website.
- 24 i. The corporation shall cease its operations on December 31,
25 2017. On that date, any assets, liabilities, properties, or funds held
26 by the corporation shall transfer to the agency. The corporation
27 shall expire upon transmittal of the 2017 annual report.
- 28
- 29 5. The corporation shall have the following powers:
- 30 a. To adopt, alter, and use a corporate seal.
- 31 b. To enter into contracts and modify, or consent to the
32 modification of, any contract or agreement to which the corporation
33 is a party or in which the corporation has an interest under this act,
34 with or without public bidding, notwithstanding the provisions of
35 any other law.
- 36 c. To make advance, progress, or other payments.
- 37 d. To acquire, hold, lease, mortgage, maintain, ⁴[or] and⁴
38 dispose of, at public or private sale, real and personal property,
39 using any legally available private sector methods including without
40 limitation, securitization of debt or equity, limited partnerships,
41 mortgage investment conduits, and real estate investment trusts, and
42 otherwise exercise all the usual incidents of ownership of property
43 necessary and convenient to the operations of the corporation ⁴;
44 provided, however, that every contract for the acquisition of real
45 property entered into by the corporation, and every deed conveying
46 real property to the corporation, shall provide that if the corporation
47 holds title to the property on the 61st day after the date of the deed,
48 all rights, title, and interest conveyed to the corporation shall

1 automatically revert to and vest in the grantor without the necessity
2 of any further act on the part of or on behalf of the grantor, it being
3 the intent to convey a determinable estate⁴. ⁵In each case where
4 title has reverted to and re-vested in the grantor as provided in this
5 subsection, the corporation shall memorialize the reversion and re-
6 vesting of title by the immediate execution and delivery of a deed to
7 the grantor conveying all of the corporation's estate, right, title and
8 interest in and to the property described therein.⁵

9 e. To sue and be sued in its corporate capacity in any court of
10 competent jurisdiction.

11 f. To exercise any other power established under this section
12 and such incidental powers as are necessary to carry out its duties
13 and functions under this section. The corporation may indemnify
14 the directors, officers, and employees of the corporation on such
15 terms as the corporation deems proper against any liability under
16 any civil suit pursuant to any statute or pursuant to common law
17 with respect to any claim arising out of or resulting from any act or
18 omission by such person within the scope of such person's
19 employment in connection with any transaction entered into
20 involving the disposition of assets (or any interests in any assets or
21 any obligations backed by any assets) by the corporation. For
22 purposes of this subsection, the terms "officers" and "employees"
23 include officers and employees of the agency. The indemnification
24 authorized by this subsection shall be in addition to and not in lieu
25 of any immunities or other protections that may be available to such
26 person under applicable law, and this provision does not affect any
27 such immunities or other protections.

28
29 6. In addition to the powers of the corporation described in
30 section 5 of P.L. , c. (C.) (pending before the Legislature as
31 this bill), the corporation shall have the following powers:

32 a. The corporation may enter into contracts with any person,
33 corporation, or entity which the corporation determines to be
34 necessary or appropriate to carry out its responsibilities under this
35 act. Such contracts shall be subject to the procedures adopted
36 pursuant to section 7 of this act.

37 b. In carrying out the corporation's duties under this act, the
38 corporation may utilize the services of private persons, including
39 real estate and loan portfolio asset management, property
40 management, auction marketing, and brokerage services, if such
41 services are available in the private sector and the corporation
42 determines utilization of such services are practicable and efficient.

43 c. Within 120 days after the adoption of this act, the
44 corporation shall enter into ¹**【an intercreditor】** a mutually binding
45 funding¹ agreement with the New Jersey Housing and Mortgage
46 Finance Agency for the ¹**【sole purpose】** purposes¹ of

1 ¹(1) determining the target amount of bond proceeds to be raised
2 by the agency for the activities of the corporation, as well as the
3 sources of repayment of, and security for, the agency's bonds; and

4 ¹(2) identifying underwriting standards, securitization of debt,
5 and credit standards for the acquisition of foreclosed residential
6 properties or mortgage assets.

7
8 7. a. (1) The corporation shall enter into contracts or loans, or
9 both, with no more than two qualified community development
10 financial institutions to negotiate, bid for, and purchase eligible
11 properties and mortgage assets from institutional lenders for the
12 purpose of producing affordable housing. In selecting contractors
13 from among qualified community development financial
14 institutions, the corporation shall accord a strong preference to
15 qualified community development financial institutions that have
16 substantial experience in lending in New Jersey and substantial
17 knowledge of New Jersey real estate markets. The corporation may
18 enter into contracts or loans, or both, with a partnership or consortia
19 of organizations, as long as a qualified community development
20 financial institution is the lead entity, or a partnership or consortia
21 of multiple qualified community development financial institutions.

22 (2) The contracts shall specify the amounts, schedules, and
23 types of funding to be provided by the corporation to the qualified
24 community development financial institutions, the repayment
25 schedule for the portion of that funding to be repaid, and targeted
26 goals of affordable housing to be produced. The corporation may
27 condition funding and goals upon the availability of funds to the
28 corporation. The contracts shall specify reasonable administrative
29 costs sufficient to enable the qualified community development
30 financial institutions to exercise their obligations pursuant to this
31 act. The contracts shall set forth criteria for instances when the
32 purchase, sale, lease, and conveyance of properties as market-rate
33 units furthers the purposes of this act.

34 b. (1) ⁴Upon ⁵As soon as possible after ⁵entering ⁵the
35 ⁵corporation or one of its contractors enters ⁵into a contract to⁴
36 ⁴purchase ⁴of ⁴an eligible property or mortgage asset for use as
37 ⁵affordable housing ⁵by the corporation or its contractors, ⁵the
38 ⁵corporation or contractor shall provide ⁵the municipality in which
39 ⁵the property is located ⁵shall be afforded ⁵a 45-day period of time
40 ⁵within which the municipal governing body may ⁵:

41 ⁵(a) consent or withhold consent to the corporation's or
42 ⁵contractor's purchase of the eligible property for use as affordable
43 ⁵housing, or

44 ⁵(b) opt to purchase the property in lieu of the corporation ⁵or
45 ⁵contractor ⁵in accordance with the provisions set forth in this act.
46 The municipality may waive ⁵this right ⁵these rights ⁵through
47 written notice to the corporation or, if so designated by the

1 corporation, its contractors, prior to the expiration of the 45-day
2 period.

3 (2) Those eligible properties purchased by the qualified
4 community development financial institutions and designated
5 pursuant to this act for use as affordable housing shall be restricted
6 for occupancy as affordable housing for a period of 30 years. The
7 restriction shall be set forth in the deed and recorded in the office of
8 the county recording officer of the county wherein the real estate is
9 situated. Affordability controls shall be imposed upon purchase and
10 maintained upon transfer in accordance with the provisions of the
11 Uniform Housing Affordability Controls promulgated by the
12 agency.

13 c. (1) As soon as possible after entering into a contract to
14 purchase an eligible property ⁵for use as affordable housing⁵, but
15 not less than five days after the date the corporation or its
16 contractors enters into the contract, the corporation or its
17 contractors shall provide written notice by personal service or
18 certified mail to the governing body of the municipality within
19 which the eligible property is located. The notice shall inform the
20 ⁵municipal⁵ governing body of ⁵:

21 (a) the corporation's or contractor's intent to purchase the
22 eligible property and to restrict it for use as affordable housing for
23 30 years,

24 (b) the municipality's opportunity to consent or to withhold
25 consent to the proposed purchase and dedication of the property for
26 affordable housing,

27 (c)⁵ the municipality's opportunity to purchase the eligible
28 property,

29 ⁵(d)⁵ the municipality's right of first refusal to purchase the
30 property, and

31 ⁵(e)⁵ the municipality's right to use monies deposited in its
32 affordable housing trust fund.

33 (2) As soon as possible after entering into a contract to purchase
34 an eligible property, but not less than five days after the date the
35 corporation or its contractors enters into the contract, the
36 corporation or its contractors shall list the property on the
37 Department of the Treasury's website. The listing shall contain
38 basic information about the property, including but not limited to
39 location, condition, and information relating to the estimated fair
40 market value of the property. The corporation or its contractors
41 shall make information about the listing available to the agency
42 and, upon request, to municipalities, other public agencies,
43 community development corporations, developers, and qualifying
44 households.

45 (3) The corporation or its contractors shall allow public
46 agencies, community development corporations, developers, and

1 qualifying households reasonable access to an eligible property for
2 purposes of inspection.

3 d. (1) In order to ⁵consent or withhold consent to the proposed
4 purchase and dedication of an eligible property as affordable
5 housing or⁵ exercise its right to purchase an eligible property, the
6 governing body of the municipality shall provide written notice to
7 the chairperson of the corporation or, if so designated by the
8 corporation, its contractors, within 45 days of the municipality's
9 receipt of the notice required pursuant to subsection c. of this
10 section.

11 (2) The governing body of a municipality may adopt a
12 resolution authorizing the mayor or other designated municipal
13 official to respond to notices received pursuant to subsection c. of
14 this section. The resolution may establish parameters for that
15 exercise of authority, including but not limited to the total amount
16 of funds that may be expended and the amount that may be
17 expended for each unit of housing.

18 (3) A municipality may use any available funding sources to
19 purchase eligible properties or mortgage assets through the
20 corporation pursuant to this act, except for funds that are dedicated
21 to another purpose by law, covenant, or other obligation.

22 (4) Whenever a municipality does not exercise an option to
23 purchase an eligible property under this section ⁵or withhold
24 consent to the proposed purchase and dedication of the property for
25 affordable housing within 45 days of the municipality's receipt of
26 the notice required pursuant to subsection c. of this section⁵, the
27 corporation or its contractors may ⁴lease the property for
28 occupancy as affordable housing subject to a 30-year deed
29 restriction or⁴ convey the property for occupancy as affordable
30 housing subject to a 30-year deed restriction to another public
31 agency, a community development corporation, a developer, or a
32 qualifying household ⁴or the contractors may lease the property for
33 occupancy as affordable housing subject to a 30-year deed
34 restriction⁴. ¹【The】 A municipality that does not exercise an option
35 to purchase an eligible property under this section may adopt a
36 resolution authorizing the¹ corporation or its contractors ¹【may】 to¹
37 use monies deposited in that municipality's affordable housing trust
38 fund, up to and including the negotiated purchase price of the
39 eligible property, and apply those funds to the purchase of the
40 eligible property.

41 e. Notwithstanding any other provision of this section to the
42 contrary, the corporation and, if authorized by contract, its
43 contractors, may purchase, sell, lease, and convey market rate-units
44 without offering those units to the municipality and without
45 imposing affordability controls upon the property if the purchase,
46 sale, lease, and conveyance of those properties as market-rate units
47 satisfy criteria established pursuant to contract in accordance with

1 subsection a. of this section and does not violate the terms of any
2 other provision of law or requirement, including those governing
3 the use of funds used to make the purchase.

4 f. All purchases, sales, leases, and conveyances of property by
5 qualified community development financial institutions exercised
6 pursuant to this section shall be deemed to lessen the burdens of
7 government in furthering the purposes of this act.

8
9 8. a. A municipality that purchases an eligible property
10 pursuant to this act shall sell and convey or lease the housing unit or
11 units acquired within 60 days of the date of purchase, unless it is
12 not possible to do so due to practical or market conditions. In the
13 event that an eligible property is not conveyed or leased within 180
14 days of the date of purchase, or remains vacant for a 180-day period
15 during the pendency of affordability controls, the corporation, or
16 the agency as successor to the corporation, may commence
17 proceedings to take control of the property and to sell and convey or
18 lease the property in furtherance of the purposes of this act and deed
19 restrictions of record.

20 b. The governing body of a municipality that purchases an
21 eligible property pursuant to this act may, by resolution, authorize
22 the private sale and conveyance or the lease of a housing unit or
23 units acquired pursuant to this act. Every deed and rental
24 agreement shall contain a provision specifying the requirement that
25 the housing unit or units shall remain available to low- and
26 moderate-income households for a period of at least 30 years.

27 c. ¹ [A] Except as provided in subsection d. of this section,
28 whenever the corporation, its contractors, or a¹ municipality
29 '[that]' purchases an eligible property pursuant to this act from
30 monies deposited in ¹ [its municipal] the municipality's' affordable
31 housing trust fund and dedicates the property for affordable
32 housing, as required by this act, ¹that municipality' shall receive ⁵ [:

33 (1) ⁵] two units of credit towards its affordable housing
34 obligation for ⁵ [:

35 (a) each eligible property sold or conveyed as a for-sale unit or
36 leased as rental housing, and

37 (b) ⁵ each '[new bedroom] unit of affordable housing'
38 dedicated⁵ [for permanent supportive housing other than supportive
39 shared living housing.

40 (2) one and one-quarter units of credit towards its affordable
41 housing obligation for each new bedroom dedicated in supportive
42 shared living housing and provided⁵.

43 ¹ d. The total number of additional units of credit beyond the
44 actual units of housing provided pursuant to this act shall not
45 exceed 25 percent of whatever the municipality's affordable
46 housing obligation may be.¹ ²No unit ⁵ [or bedroom] of affordable
47 housing⁵ shall receive the additional units of credit described in this

1 act in addition to any other type of additional units of credit that
2 may be available towards a municipality's affordable housing
3 obligation.²
4

5 9. The corporation and the State Treasurer shall prioritize the
6 allocation of tax-exempt private activity bonds in the amount
7 necessary to effectuate the purposes of this act in each year until the
8 corporation ceases operation, provided that the proceeds of tax-
9 exempt private activity bonds to support the purposes of this act
10 shall be limited to contracts with and loans to qualified community
11 development financial institutions pursuant to section 7 of this act.
12

13 10. a. For the purposes of this section:

14 "Foreclosure-impacted municipality" means a municipality that
15 documents a minimum of 10 units of housing that have been
16 foreclosed upon and have remained unsold on a Multiple Listing
17 Service for at least 60 days; and

18 "Units of housing" means units of housing that are not age-
19 restricted and are habitable year-round, including but not limited to,
20 single family homes, condominium units, cooperative units, and
21 mobile homes with at least two bedrooms.

22 b. (1) Prior to the date that a foreclosure-impacted
23 municipality's development fees or payments-in-lieu fees are
24 scheduled to transfer to the "New Jersey Affordable Housing Trust
25 Fund" pursuant to section 8 of P.L.2008, c.46 (C.52:27D-329.2) or
26 section 9 of P.L.2008, c.46 (C.52:27D-329.3), the municipality may
27 adopt a resolution committing the expenditure of municipal
28 affordable housing trust fund monies ²~~for the purposes of this act~~.
29 These funds shall be used to produce very-low-income, low-
30 income, and moderate-income housing². The resolution shall
31 authorize the transfer of a minimum of \$150,000 from the
32 municipality's municipal affordable housing trust fund to the
33 "Foreclosure to Affordable Housing Transformation Fund" for use
34 by the corporation or its contractors for the provision of affordable
35 housing pursuant to this section and the procedures specified in
36 section 7 of this act.

37 (2) The resolution may authorize the mayor or other designated
38 municipal official to exercise the municipal powers described in
39 section 7 of this act. The resolution may establish parameters for
40 that exercise of authority, including but not limited to purchase
41 price levels for the exercise of that power.

42 c. (1) The corporation or its contractors ²~~may~~ shall² use
43 funds transferred pursuant to subsection ²~~a.~~ b.² of this section
44 ²~~in any manner designed to further the purposes of this act,~~
45 ~~provided that the corporation or its contractors shall use its best~~
46 ~~efforts]~~² to produce very-low, low-, and moderate-income housing
47 within the municipality transferring funds pursuant to this section,

1 with a deed restriction specifying that the housing unit or units shall
2 remain available to low- and moderate-income households for a
3 period of at least 30 years² [, and may target the acquisition of
4 eligible property towards such municipalities to further that end]².

5 (2) If the corporation or its contractors are unable to utilize
6 some or all of the funds provided to produce affordable housing
7 within the municipality within two years of the transfer of such
8 funds to the "Foreclosure to Affordable Housing Transformation
9 Fund," the funds shall be returned to the municipality as soon as
10 practicable after the two-year anniversary of such transfer. From
11 the date any such funds are returned to the municipality, the
12 municipality shall be required to commit the funds in accordance
13 with section 8 of P.L.2008, c.46 (C.52:27D-329.2) or section 9 of
14 P.L.2008, c.46 (C.52:27D-329.3), as applicable, within the time
15 constraints set forth in those sections or within six months after the
16 date of transfer of funds back to the municipality, whichever is
17 later.

18 d. Affordable housing created through the "Foreclosure to
19 Affordable Housing Transformation Fund" pursuant to this section
20 shall receive bonus affordable housing credit as set forth in
21 subsection c. of section 8 of this act, even if the municipality does
22 not exercise its right to purchase the property.

23 e. No agency of the State of New Jersey shall take any action
24 to transfer funds from a municipal affordable housing trust fund to
25 the "New Jersey Affordable Housing Trust Fund" established
26 pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320) when
27 such funds are designated to effectuate the purposes of this act
28 during the timeframes established in this section.

29
30 11. a. There is established within the agency a "Foreclosure to
31 Affordable Housing Transformation Fund," which shall be a non-
32 lapsing, revolving fund and which shall be the repository for funds
33 appropriated or otherwise made available for the purposes of this
34 act, and any interest earned thereon. The fund shall be administered
35 by the agency, in accordance with its authority under section 5 of
36 P.L.1983, c.530 (C.55:14K-5) to manage funds for housing
37 programs.

38 b. The agency may transfer into the "Foreclosure to Affordable
39 Housing Transformation Fund" any amounts held or received by the
40 agency that may be used for the production of affordable housing
41 and that is needed by the corporation or its contractors for the
42 purchase of eligible property. ¹Subject to the provisions of sections
43 20 through 28 of P.L.1983, c.530 (C.55:14K-20 through C.55:14K-
44 28), the agency is authorized to issue its bonds to fund the activities
45 of the corporation; provided, however, that tax-exempt bonds shall
46 only be issued consistent with the requirements of section 9 of
47 P.L. , c. (C.) (pending before the Legislature as this bill).¹

1 c. In any year in which the proceeds from the receipts of the
2 additional fee collected pursuant to paragraph (2) of subsection a. of
3 section 3 of P.L.1968, c.49 (C.46:15-7) exceeds \$75 million, the
4 first \$10 million above the \$75 million collected shall be transferred
5 into the "Foreclosure to Affordable Housing Transformation Fund"
6 for the purposes of the production of affordable housing.

7 d. Notwithstanding any provision of law to the contrary, the
8 Commissioner of Community Affairs may transfer into the
9 "Foreclosure to Affordable Housing Transformation Fund" amounts
10 held for the production of affordable housing and not designated for
11 a specific purpose beyond the overall production of affordable
12 housing by the annual budget, including but not limited to monies
13 deposited in the "New Jersey Affordable Housing Trust Fund,"
14 which amounts are needed by the corporation for the purchase of
15 eligible property. The commissioner shall consider the transfer of
16 funds from the "New Jersey Affordable Housing Trust Fund" to the
17 "Foreclosure to Affordable Housing Transformation Fund" as a
18 priority for funding until the corporation ceases its operations.

19 e. All amounts deposited into the "Foreclosure to Affordable
20 Housing Transformation Fund" that are derived from federal
21 funding sources or are otherwise dedicated to the production of
22 affordable housing shall be used exclusively for the production of
23 affordable housing. The corporation may use other funds for the
24 production of affordable housing or market rate housing.

25 f. The corporation may use annually up to three percent of the
26 monies available in the fund for the payment of any necessary
27 administrative costs related to the administration of this act.

28
29 ²[12. a. In an uncontested action to enforce a residential
30 mortgage governed by the "Fair Foreclosure Act," P.L.1995, c.244
31 (C. 2A:50-53 et seq.), against vacant and abandoned real property,
32 the lender may file a Motion for Expedited Judgment and Sale. The
33 motion shall be accompanied by an affidavit from a person having
34 personal knowledge of the contents and shall plead the specific
35 facts upon which the finding of vacancy and abandonment is based,
36 consistent with subsection b. of this section. If the Superior Court
37 finds the motion and affidavit to be in compliance with the
38 provisions of this section, the Superior Court shall enter final
39 judgment in foreclosure and direct issuance of a writ of execution to
40 the sheriff of the county in which the real property is situate, or to a
41 receiver appointed by the Superior Court, for the sale of the
42 property within 45 days after entry of final judgment.

43 b. Real property shall be presumed vacant and abandoned
44 under this section if there has been no legal resident or tenant for a
45 period of 45 or more consecutive days. Vacancy and abandonment
46 may also be evidenced by the presence of any condition that on its
47 own, or in combination with other conditions present, would lead a
48 reasonable person to believe that the property is vacant and

1 abandoned, including: (1) the failure to pay taxes; (2) a failure to
2 claim certified mail; (3) the filing of a change of address form; (4)
3 overgrown or dead vegetation; (5) accumulation of flyers, mail, or
4 trash; (6) disconnected utilities; (7) the absence of window
5 coverings or furniture; (8) statements of neighbors, delivery
6 persons, or government employees that are consistent with vacancy
7 and abandonment.

8 c. If a tenant occupied all or a portion of the property prior to
9 the mailing of a default notice by the lender, and the tenant is
10 paying fair market value rent to the landlord or debtor pursuant to a
11 valid assignment of rents, then a presumption shall exist that the
12 property has not been abandoned for the purposes of this section. If
13 a debtor enters into a lease agreement with a tenant after the mailing
14 of a default notice from the lender, then a presumption that the
15 property has not been abandoned shall not be made, but shall be
16 weighed against other factors as to whether or not the property has
17 been abandoned.

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

23 e. A Motion for Expedited Judgment and Sale filed pursuant to
24 this section shall be deemed to be constructive notice to all persons
25 and entities with an interest in the property that is properly recorded
26 with the county clerk or county registrar prior to the recording of
27 the notice of lis pendens in the foreclosure action, whether or not
28 the person or entity entered an appearance or answered the
29 foreclosure complaint. Pursuant to the New Jersey Rules of Court,
30 any interested party may present a defense to rebut a claim of
31 abandonment that shall be accompanied by an affidavit stating that
32 the defense is not made for the purpose of delaying the relief
33 requested pursuant to the Motion for Expedited Judgment and
34 Sale.]²

35
36 ²12. a. For the purposes of this section, "vacant and abandoned"
37 residential property means residential real estate ³[that upon
38 inspection is vacant and not occupied by any mortgagor or owner as
39 a principal residence. Conditions, taken separately or as a whole,
40 that may lead a court to conclude that a residential property is
41 vacant and abandoned include, but are not limited to:] with respect
42 to which the mortgagee proves, by clear and convincing evidence,
43 that the mortgaged real estate is vacant and has been abandoned.
44 Real property shall be deemed "vacant and abandoned" if the court
45 finds that the mortgaged property is not occupied by a mortgagor or
46 tenant as evidenced by a lease agreement entered into prior to the
47 service of a notice of intention to commence foreclosure according

- 1 to section 4 of the "Fair Foreclosure Act," P.L.1995, c.244
2 (C.2A:50-56), and at least two of the following conditions exist:³
- 3 (1) overgrown or neglected vegetation ³[.] ;
4 (2) the³ accumulation of newspapers, circulars, flyers or mail
5 on the property³;
6 ³[(2) past due utility notices;]³
7 (3) disconnected gas, electric, or water utility services to the
8 property;
9 (4) the accumulation of³ hazardous, noxious, or unhealthy
10 substances or materials ³[that have accumulated]³ on the property;
11 ³[(4)] (5) the³ accumulation of junk, litter, trash or debris on the
12 property;
13 ³[(5)] (6) the³ absence of window treatments such as blinds,
14 curtains or shutters;
15 ³[(6)] (7) the³ absence of furnishings and personal items;
16 ³[(7)] (8)³ statements ³[by at least two] of³ neighbors
17 ³[indicate] , delivery persons, or government employees
18 indicating³ that the residence ³[has been] is vacant and³
19 abandoned;
20 ³[(8)] (9)³ windows or entrances to the property that are boarded
21 up or closed off or multiple window panes that are damaged, broken
22 and unrepaired;
23 ³[(9)] (10)³ doors to the property that are smashed through,
24 broken off, unhinged, or continuously unlocked;
25 ³[(10) the termination of gas, electric, or water utility service to
26 the property;]³
27 (11) ³[reports to law enforcement officials of trespassing,
28 vandalism, or other illegal acts being committed on the property] a
29 risk to the health, safety or welfare of the public, or any adjoining
30 or adjacent property owners, exists due to acts of vandalism,
31 loitering, criminal conduct, or the physical destruction or
32 deterioration of the property³ ;
33 (12) an uncorrected ³violation of a³ municipal building, housing,
34 or similar code ³[violation in] during³ the preceding year, or an
35 order by municipal authorities declaring the property to be unfit for
36 occupancy and to remain vacant and unoccupied;
37 (13) the mortgagee or other authorized party has secured or
38 winterized the property due to the property being deemed vacant
39 and unprotected or in danger of freezing;
40 (14) a written statement issued by any mortgagor expressing the
41 clear intent of all mortgagors to abandon the property;
42 (15) any other reasonable indicia of abandonment.
- 43 b. ³[(1)] For the purposes of this section, a residential property
44 shall not be considered "vacant and abandoned" if, on the property:
45 (1) there is an unoccupied building which is undergoing
46 construction, renovation, or rehabilitation that is proceeding

1 diligently to completion, and the building is in compliance with all
2 applicable ordinances, codes, regulations, and statutes;

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

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

7 c.³ In addition to the residential mortgage foreclosure procedures
8 set out in the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53
9 et seq.), a summary action to foreclose a mortgage debt secured by
10 residential property that is vacant and abandoned may be brought by
11 a lender in the Superior Court. In addition, a lender may, at any
12 time after filing a foreclosure action, file with the court, in
13 accordance with the Rules Governing the Courts of the State of
14 New Jersey, an application to proceed in a summary manner
15 because the residential property that is the subject of the foreclosure
16 action is believed to be "vacant and abandoned"; provided,
17 however, that this section shall not apply to a foreclosure of a
18 timeshare interest secured by a mortgage.

19 ³[(2) (a)] d. (1)³ In addition to the service of process required by
20 the Rules of Court, a lender shall establish, for the entry of a
21 residential foreclosure judgment under this section, that a process
22 server has made two unsuccessful attempts to serve the mortgagor
23 or occupant at the residential property, which attempts must be at
24 least 72 hours apart, and during different times of the day, either
25 before noon, between noon and 6 P.M., or between 6 P.M. and 10
26 P.M.

27 ³[(b)] (2)³ In addition to any notices required to be served by
28 law or the Rules of Court, a lender shall, with any order to show
29 cause served as original service of process or a motion to proceed
30 summarily, serve a notice that the lender is seeking, on the return
31 date of the order to show cause, or on the date fixed by the court, to
32 proceed summarily for entry of a residential foreclosure judgment
33 because the property is vacant and abandoned.

34 ³[(c)] (3)³ Notwithstanding the procedure for serving a notice to
35 cure required by section 6 of the "Fair Foreclosure Act," P.L.1995,
36 c.244 (C.2A:50-58), a lender filing a summary action for entry of a
37 residential mortgage foreclosure judgment under this section shall
38 serve the mortgagor with a notice to cure with the order to show
39 cause served as original service of process. When a lender makes
40 application to proceed summarily because a property is vacant and
41 abandoned, a notice to cure shall be served with the order fixing the
42 date for the matter to proceed summarily.

43 ³[(d)] e.³ (1) The court may enter a final residential mortgage
44 foreclosure judgment under this section upon a finding, (1) by clear
45 and convincing evidence, that the residential property is vacant and
46 abandoned as defined under subsection a. of this section, and (2)
47 that a review of the pleadings and documents filed with the court, as

1 required by the Rules of Court, supports the entry of a final
2 residential mortgage foreclosure judgment.

3 (2) A ³[court shall not enter a]³ final residential mortgage
4 foreclosure judgment under this section ³shall not be entered³ if the
5 court finds that

6 (a) the property is not vacant or abandoned, or

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

11 ³[e.] f.³ If a ³[court determines that it will not enter a]³ final
12 residential mortgage foreclosure judgment under this section ³is not
13 entered³ on the original or adjourned return date of an order to show
14 cause or the date fixed by the court to proceed summarily, the court
15 may direct that the foreclosure action ³[may]³ continue on the
16 normal track for residential mortgage foreclosure actions for
17 properties that are not vacant and abandoned and the notice to cure
18 served with the order to show cause or the order fixing that date for
19 the matter to proceed summarily shall be of no effect.

20 ³[f.] g.³ All actions brought to foreclose on real property
21 pursuant to this section shall proceed in accordance with the Rules
22 of the Court.

23 ³[g.] h.³ Nothing in this section is intended to supersede or limit
24 other procedures adopted by the Court to resolve residential
25 mortgage foreclosure actions, including, but not limited to,
26 foreclosure mediation.

27 ³[h.] i.³ Nothing in this section shall be construed to affect the
28 rights of a tenant to possession of a leasehold interest under the
29 Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New
30 Jersey Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et
31 seq.), or any other applicable law.²

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

41

42 13. This act shall take effect immediately ², except that section
43 12 shall remain inoperative until the first day of the ³[third] fourth³
44 month next following enactment ³[and section 12 shall expire on
45 December 31, 2014²]³.