

SENATE, No. 1346

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED FEBRUARY 27, 2014

Sponsored by:

Senator RONALD L. RICE

District 28 (Essex)

Co-Sponsored by:

Senator Stack

SYNOPSIS

Concerns the recording of mortgages.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/6/2014)

1 AN ACT concerning the recording of mortgages, amending
2 P.L.1975, c.137 and P.L.1999, c.40, and supplementing chapter
3 18 of Title 46 of the 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) a. Only the established holder of a mortgage
9 shall take action to foreclose a mortgage.

10 b. A person, or entity, is the “established holder of a mortgage”
11 if that person, or entity, is:

12 (1) the record holder of the mortgage as established by the latest
13 record of assignment or by the original mortgage recording in the
14 records of the county clerk or the register of deeds and mortgages,
15 as appropriate to the county in which the mortgaged property is
16 located, or

17 (2) found to be the holder of the mortgage in a civil action
18 joining as defendants the record holder of the mortgage, the
19 mortgagor, and any other person known to have an interest in the
20 mortgage.

21
22 2. Section 2 of P.L.1975, c.137 (C.46:18-11.3) is amended to
23 read as follows:

24 2. a. (1) If the mortgagee **【**, his agent or assigns**】** fails to
25 comply with the applicable provisions of subsection a. or b. of
26 section 1 of P.L.1975, c.137 (C.46:18-11.2) , the mortgagor or the
27 mortgagor's agent may serve the mortgagee **【**or his assigns**】** with
28 written notice of the noncompliance, which notice shall identify the
29 mortgage and the date and means of its redemption, payment and
30 satisfaction. If the mortgagee has not complied within 15 business
31 days after receipt of the written notice from the mortgagor or
32 mortgagor's agent pursuant to this paragraph (1) , the mortgagee
33 **【**or his assigns**】** shall be subject to a fine of \$50 per day for each
34 day after the 15-day period until compliance, except that the total
35 fine imposed pursuant to this paragraph (1) shall not exceed
36 \$1,000.

37 (2) If the mortgagee **【**, his agent or assigns**】** fails to comply with
38 the applicable provisions of section 1 of P.L.1975, c.137 (C.46:18-
39 11.2), the purchaser or the purchaser's agent may serve the
40 mortgagee **【**or his assigns**】** with written notice of the
41 noncompliance, which notice shall identify the mortgage and the
42 date and means of its redemption, payment and satisfaction. If the
43 mortgagee has not complied within 15 business days after receipt of
44 the written notice from the purchaser or purchaser's agent pursuant
45 to this paragraph (2), the mortgagee **【**or his assigns**】** shall be

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 subject to a fine of \$50 per day for each day after the 15-day period
2 until compliance, except that the total fine imposed pursuant to this
3 paragraph (2) shall not exceed \$1,000.

4 b. Of each fine collected pursuant to subsection a. of this
5 section, 100% shall be payable to the private citizen instituting the
6 action. The fine may be collected by summary proceedings
7 instituted by a private citizen or the Attorney General in accordance
8 with **["the penalty enforcement law" (N.J.S.2A:58-1 et seq.)]** the
9 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
10 et seq.).

11 c. (1) If a mortgagee **[, his agent or assigns]** has not applied to
12 the county recording officer to cancel the mortgage of record
13 pursuant to subsection a. or b. of section 1 of P.L.1975, c.137
14 (C.46:18-11.2), within the 15 business day period provided by
15 paragraph (1) of subsection a. of this section, the mortgagee shall be
16 liable to the mortgagor for the greater of the mortgagor's actual
17 damages or the sum of \$1,000, less any fines recovered by the
18 mortgagor pursuant to paragraph (1) of subsection a. and
19 paragraph (1) of subsection b. of this section. In any successful
20 action to recover damages pursuant to this paragraph (1), the
21 mortgagee shall reimburse the mortgagor for the costs of the action
22 including the mortgagor's reasonable attorneys' fees.

23 (2) If a mortgagee **[, his agent or assigns]** has not applied to the
24 county recording officer to cancel the mortgage of record pursuant
25 to subsection a. or b. of section 1 of P.L.1975, c.137 (C.46:18-11.2),
26 within the 15 business day period provided by paragraph (2) of
27 subsection a. of this section, the mortgagee shall be liable to the
28 purchaser for the greater of the purchaser's actual damages or the
29 sum of \$1,000, less any fines recovered by the purchaser pursuant
30 to paragraph (2) of subsection a. and paragraph (2) of subsection b.
31 of this section. In any successful action to recover damages
32 pursuant to this paragraph (2), the mortgagee shall reimburse the
33 purchaser for the costs of the action including the purchaser's
34 reasonable attorneys' fees.

35 (cf: P.L.1999, c.272, s.2)

36

37 3. Section 3 of P.L.1975, c.137 (C.46:18-11.4) is amended to
38 read as follows:

39 3. Any mortgagee **[or his assigns]** who **[fail]** fails to comply
40 with section 1 of **[this act]** P.L.1975, c.137 (C.46:18-11.2) shall be
41 liable to the mortgagor, or his heirs, successors or assigns who have
42 an interest in the mortgaged premises for the cost of any legal
43 action to have the mortgage canceled of record, including
44 reasonable attorneys' fees, but no attorneys' fees shall be allowed
45 unless 20 days written notice is given to the mortgagee prior to
46 institution of suit.

47 (cf: P.L.1975, c.137, s.3)

1 4. Section 1 of P.L.1999, c.40 (C.46:18-11.5) is amended to
2 read as follows:

3 1. As used in this act:

4 "Mortgage" means a residential mortgage, security interest or the
5 like, in which the security is a residential property such as a house,
6 real property or condominium, which is occupied, or is to be
7 occupied, by the debtor, who is a natural person, or a member of the
8 debtor's immediate family, as that person's residence. The
9 provisions of sections 2 and 3 of P.L.1999, c.40 (C.46:18-11.6 and
10 C.46:18-11.7) shall apply to all residential mortgages wherever
11 made, which have as their security a residence in the State of New
12 Jersey, provided that the real property which is the subject of the
13 mortgage shall not have more than four dwelling units, one of
14 which shall be, or is planned to be, occupied by the debtor or a
15 member of the debtor's immediate family as the debtor's or family
16 member's residence at the time the loan is originated.

17 "Pay-off letter" means a written document prepared by the holder
18 or servicer of the mortgage being paid, which is dated not more than
19 60 days prior to the date the mortgage is paid, and which contains a
20 statement of all the sums due to satisfy the mortgage debt,
21 including, but not limited to, interest accrued to the date the
22 statement is prepared and a means of calculating per diem interest
23 accruing thereafter.

24 "Mortgagee" means the holder of the mortgage reflected in the
25 latest record filed with the county recording office. If the entity
26 that is recorded as the holder of the mortgage is no longer in
27 existence, "mortgagee" shall mean the entity that was authorized to
28 receive the latest payment on the mortgage.

29 (cf: P.L.1999, c.40, s.1)

30

31 5. (New section) It shall be the responsibility of a mortgage
32 servicer to advise, in writing, each mortgagor whose mortgage the
33 mortgage servicer is servicing, of the name, address, and telephone
34 number of the mortgage servicer. A mortgagor who is misinformed
35 as to the identity of the mortgage servicer, through fraud or error,
36 and who pays another mortgage servicer in error shall not be
37 required to make an additional payment to the actual mortgage
38 servicer. The actual mortgage servicer shall be required to contact
39 the mortgage servicer who was paid in error by the mortgagor to
40 obtain the payment from that entity on the mortgagor's behalf. A
41 payment made to the wrong mortgage servicer due to fraud or
42 misinformation shall not be included as the basis for any
43 foreclosure action.

44

45 6. This act shall take effect on the 30th day next following
46 enactment.

STATEMENT

This bill would revise current law regarding the recording of mortgages, in response to the findings from a study of mortgage recording law undertaken by the New Jersey Law Revision Commission.

The bill would require that only the established holder of a mortgage could take action to foreclose a mortgage; and would define “established holder of a mortgage” as either the record holder of the mortgage as established by the latest record of assignment or by the original mortgage recording in the records of the county clerk or the register of deeds and mortgages, as appropriate to the county in which the mortgaged property is located, or the entity found to be the holder of the mortgage in a civil action joining as defendants the record holder of the mortgage, the mortgagor, and any other person known to have an interest in the mortgage.

The bill would also make it the responsibility of a mortgage servicer to advise, in writing, each mortgagor whose mortgage the mortgage servicer is servicing of the name, address and telephone number of the mortgage servicer. Under the bill, a mortgagor who is misinformed as to the identity of the mortgage servicer and who pays another mortgage servicer in error cannot be required to make an additional payment to the actual mortgage servicer. The actual mortgage servicer shall be required to contact the mortgage servicer who was paid in error by the mortgagor to obtain the payment from that entity on the mortgagor’s behalf.

The New Jersey Law Revision Commission recommended these changes to current mortgage recording law due to several relatively recent practices concerning mortgages. In its report, the commission notes that the business that initiates a mortgage may well transfer it immediately; and typically, a mortgage will be transferred a number of times. Some mortgages become security for bonds and are held by a trustee for the bondholders. Others are held and traded through other investment vehicles. Mortgages are managed by mortgage servicers that usually do not own the mortgage. There are difficulties in proving that the plaintiff is the proper party to foreclose. The provisions of this bill would address these concerns by stating that only the established holder of a mortgage may foreclose a mortgage.

Also, the commission heard testimony concerning fraud by persons claiming to be servicers of a mortgage. Apparently, there have been situations where a criminal writes to mortgagors claiming to be the new servicer, signing the letter as the new servicer and forging a signature as the old servicer. If the mortgagor pays the criminal, there is a question of whether the mortgagor still owes a payment to the real mortgage holder. No case law currently exists on this subject in New Jersey. So, the commission suggested that

S1346 RICE

6

1 the mortgagor should not have to make another payment. The bill
2 would require that a mortgagor who is misinformed as to the
3 identity of the mortgage servicer and who pays another mortgage
4 servicer in error would not be required to make an additional
5 payment to the actual mortgage servicer. The actual mortgage
6 servicer would have to contact the mortgage servicer who was paid
7 in error by the mortgagor to obtain the payment from that entity on
8 the mortgagor's behalf.