

[First Reprint]

SENATE, No. 1593

STATE OF NEW JERSEY
217th LEGISLATURE

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Sponsored by:

Senator RONALD L. RICE

District 28 (Essex)

Senator BRIAN P. STACK

District 33 (Hudson)

SYNOPSIS

Provides foreclosure stay of proceedings for certain residential borrowers and exempts certain lenders that offer sustainable mortgage modifications.

CURRENT VERSION OF TEXT

As reported by the Senate Community and Urban Affairs Committee on June 16, 2016, with amendments.



(Sponsorship Updated As Of: 6/17/2016)

1 AN ACT concerning residential mortgage foreclosures and
 2 supplementing Title 46 of the Revised Statutes.

3
 4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 5 *of New Jersey:*

6
 7 1. The Legislature finds and declares that:

8 a. New Jersey is facing an unprecedented emergency due to the
 9 increasing number of residential mortgage foreclosures in the State.
 10 The growing number of homeowners whose mortgage principal
 11 exceeds their home's value, a situation commonly referred to as
 12 being "underwater," has exacerbated this problem. A vicious cycle
 13 is created in which more foreclosures adversely affect property
 14 values, thereby pushing more mortgages underwater.

15 b. It is reasonable and necessary, in order to avoid more
 16 foreclosures and the deleterious effects of foreclosures on
 17 neighborhoods and the economy, to modify the foreclosure process
 18 through a ¹**["forbearance period"] stay of proceedings¹** to provide
 19 additional time for underwater borrowers to work out loan
 20 modifications, while providing an exemption from forbearance
 21 periods for lenders that agree to a sustainable mortgage
 22 modification of the underwater mortgage.

23
 24 2. As used in this act:

25 ¹**["Forbearance" means a period of six months during which the**
 26 **creditor shall suspend all efforts to advance any judicial foreclosure**
 27 **proceedings filed by the creditor against the borrower pursuant to**
 28 **section 3 of this act.]"¹**

29 "Principal write-down" means a reduction in the amount of
 30 principal owed on a mortgage note so that the principal amount of
 31 the mortgage does not exceed the property's fair market value. A
 32 principal write-down shall include, but not be limited to, a reduction
 33 in principal conditioned on a shared appreciation agreement in
 34 which the borrower and the creditor share in any appreciation in the
 35 property's value after the date the principal write-down is executed.

36 "Residential borrower" or "borrower" means a borrower: (1)
 37 whose mortgage is the subject of a foreclosure action filed pursuant
 38 to the "Fair Foreclosure Act," P.L.1979, c.244 (C.2A:50-53 et al.),
 39 and is secured by a property that is the borrower's primary
 40 residence for at least two years prior to the borrower being served
 41 the summons and complaint of foreclosure; and (2) that owes a
 42 principal amount, on the mortgage that is the subject of the
 43 foreclosure action, that is in excess of 110% of the fair market value
 44 of the property to which the mortgage is attached.

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 SCU committee amendments adopted June 16, 2016.

1 ¹“Stay of proceedings” means a period of six months during
2 which the creditor shall negotiate with the borrower pursuant to
3 section 3 of this act.¹

4 “Sustainable modification” means a loan modification that is
5 either: (1) a principal write-down; or (2) a reduction in the
6 borrower’s monthly mortgage payment to 30% or less of the
7 borrower’s gross monthly income.
8

9 3. a. (1) Except as provided in section 4 of this act, ¹after¹ a
10 creditor ¹that¹ files and serves, pursuant to the "Fair Foreclosure
11 Act," P.L.1995, c.244 (C.2A:50-53 et al.), a summons and
12 complaint of foreclosure on a residential mortgage loan, ¹shall¹
13 the court may¹ grant a residential borrower a six-month ¹period of
14 forbearance¹ stay of proceedings¹, upon written request of the
15 borrower, to pursue a loan workout, loan modification, refinancing,
16 or other alternative through the Judiciary's Foreclosure Mediation
17 Program, where eligible, or another form of mediation or settlement
18 discussion. ¹The court shall grant a stay of proceedings upon
19 motion by the borrower if, (a) both the lender and borrower consent,
20 or (b) the court determines that negotiations during the stay of
21 proceedings could render the foreclosure action moot.¹ During the
22 six-month ¹forbearance period¹ stay of proceedings¹, the creditor
23 shall take no further action to pursue foreclosure of the property¹
24 and shall negotiate with the borrower in good faith¹.

25 (2) Upon serving the summons and complaint in a foreclosure
26 action, the creditor shall notify the borrower of the borrower's right
27 to ¹forbearance¹ a stay of proceedings,¹ as provided in this section
28 ¹and, upon receipt of written request by the borrower and
29 sufficient documentation evidencing eligibility for forbearance
30 pursuant to this section, within 30 days of the receipt of the
31 summons and complaint, the creditor shall grant the unemployed or
32 underemployed borrower a six-month period of forbearance,
33 beginning on the date the creditor receives the borrower's request¹.

34 (3) The notice of the borrower's right to ¹forbearance¹ a stay of
35 proceedings¹ shall include the following information:

36 (a) the circumstances provided for in this section under which a
37 borrower is eligible to receive ¹forbearance¹ a stay of
38 proceedings¹;

39 (b) that the borrower has the right to request the ¹period of
40 forbearance¹ a stay of proceedings¹ in writing no later than 30 days
41 after receipt of the summons and complaint; and

42 (c) the full address and other contact information to which the
43 request for forbearance may be sent.

44 ¹(4) Upon receipt of a request for forbearance, the creditor
45 shall:

1 (a) notwithstanding any other law, rule, or contract provision to
2 the contrary, suspend all efforts, during the forbearance period, to
3 advance any judicial proceeding in furtherance of the foreclosure
4 action; and

5 (b) notify the court that a forbearance has been granted with the
6 dates that the forbearance period will begin and end. ¹

7 b. When a ¹**["forbearance period"]** stay of proceedings¹ is
8 granted by the ¹**["creditor"]** court¹ pursuant to subsection a. of this
9 section, the borrower and creditor shall participate in the Judiciary's
10 Foreclosure Mediation Program, where eligible, or another form of
11 mediation or settlement discussion; provided, however, that the
12 inability of the borrower to participate in mediation as a result of
13 circumstances beyond the borrower's control shall not affect the
14 borrower's continued eligibility for ¹**["forbearance"]** a stay of
15 proceedings¹.

16 c. If the borrower ceases to occupy the property at any time
17 during ¹**["the period of forbearance"]** a stay of proceedings¹ under
18 this section, or if the borrower affirmatively advises the creditor, in
19 writing, that the borrower will not participate in the Judiciary's
20 Foreclosure Mediation Program or another form of mediation or
21 settlement discussion, the creditor shall notify the court, and upon
22 notification, and approval of the court, the ¹**["period of forbearance"]**
23 stay of proceedings¹ shall be terminated.

24 d. Nothing in this section shall constitute a limitation on the
25 ability of the creditor and borrower to participate in the Judiciary's
26 Foreclosure Mediation Program or another form of mediation or
27 settlement discussion, or enter into an agreement as a result of that
28 mediation.

29
30 4. a. Notwithstanding the provisions of section 3 of this act, a
31 ¹**["creditor that is otherwise required to grant a forbearance period**
32 **pursuant to that section shall be exempt from that requirement with**
33 **respect to a property"]** court shall not grant a stay of proceedings, or
34 shall terminate the stay of proceedings, as applicable,¹ if the
35 creditor offers the borrower a sustainable modification of the
36 mortgage loan. If a creditor offers a sustainable modification, the
37 creditor shall notify the court, and upon notification, and approval
38 of the court, ¹**["the creditor shall be exempt from the requirements of**
39 **section 3 of this act with respect to that property"]** the borrower
40 shall not be eligible for a stay of proceedings¹.

41 b. A creditor that offers a sustainable modification, after
42 obtaining approval of the court, shall notify the borrower that is
43 offered the sustainable modification pursuant to subsection a. of this
44 section that the borrower shall be ineligible for a ¹**["forbearance**
45 **period pursuant to"]** stay of proceedings under¹ section 3 of this act.

1 5. This bill shall take effect immediately and shall expire three
2 years thereafter; provided, however, that a ¹**【forbearance period】**
3 stay of proceedings¹ shall, subject to the provisions of section 3 of
4 this act, continue for its entire six-month period notwithstanding the
5 expiration of this act.