

**ASSEMBLY, No. 664**

---

**STATE OF NEW JERSEY**

**218th LEGISLATURE**

---

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Assemblywoman MILA M. JASEY**

**District 27 (Essex and Morris)**

**Assemblyman JERRY GREEN**

**District 22 (Middlesex, Somerset and Union)**

**Assemblyman JAMEL C. HOLLEY**

**District 20 (Union)**

**Assemblywoman ELIZABETH MAHER MUOIO**

**District 15 (Hunterdon and Mercer)**

**Assemblyman VINCENT MAZZEO**

**District 2 (Atlantic)**

**SYNOPSIS**

Codifies the Judiciary's Foreclosure Mediation Program; dedicates monies from foreclosure filing fees and fines.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1   **AN ACT** concerning foreclosure mediation, amending N.J.S.22A:2-  
2       12 and P.L.1995, c.244, supplementing Title 2A of the New  
3       Jersey Statutes, and dedicating monies from foreclosure filing  
4       fees and fines.

5

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

8

9       1. (New section) This act shall be known and may be cited as  
10      the “New Jersey Foreclosure Mediation Act.”

11

12      2. (New section) a. The Legislature finds and declares that  
13      the New Jersey Judiciary established a Foreclosure Mediation  
14      Program in 2009 in response to the increase in residential  
15      foreclosures. This act ensures the continuation of mediation  
16      services provided under that program to assist homeowners and  
17      lenders in pursuing a mutually agreeable alternative to mortgage  
18      foreclosure litigation and to avoid the harmful effects of residential  
19      property foreclosure on homeowners, families, and communities.

20      b. For the purposes of P.L.     , c. (C.     ) (pending before the  
21      Legislature as this bill):

22      "Eligible property" means an owner-occupied one- to three-  
23      family residential property that is the homeowner-borrower's  
24      primary residence.

25      "Foreclosure Mediation Program" or "mediation program" means  
26      the New Jersey Judiciary's Foreclosure Mediation Program as  
27      authorized by the Supreme Court of New Jersey.

28      "Homeowner-borrower" means the borrower on a mortgage loan  
29      for an eligible property that is subject to a foreclosure complaint  
30      filed by the lender or an assignee.

31

32      3. (New section) The homeowner-borrower shall receive  
33      written notice of the option to participate in the Foreclosure  
34      Mediation Program in accordance with the court rules, procedures,  
35      and guidelines adopted by the Supreme Court at the time the  
36      homeowner-borrower receives a notice of intention to foreclose,  
37      pursuant to section 4 of P.L.1995, c.244 (C.2A:50-56). Upon the  
38      filing of a mortgage foreclosure complaint against an eligible  
39      property, the homeowner-borrower shall again receive written  
40      notice of the option to participate in the Foreclosure Mediation  
41      Program in accordance with the court rules, procedures, and  
42      guidelines adopted by the Supreme Court. The written notice  
43      required pursuant to this section shall be available in both English  
44      and Spanish.

**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       4. (New section) a. (1) A court may order mediation whenever  
2 a homeowner-borrower files an answer to a foreclosure complaint.

3       (2) Alternatively, the homeowner-borrower may initiate the  
4 process for scheduling mediation by submitting a mediation request  
5 to the court, along with any other documents required by the  
6 Supreme Court. The deadline for mediation request submission  
7 shall be determined by the court rules, procedures, and guidelines  
8 adopted by the Supreme Court.

9       b. After requesting mediation, the homeowner-borrower may  
10 seek to stay the sheriff's sale in accordance with applicable court  
11 rules and procedures.

12       c. The homeowner-borrower shall not be required to pay any  
13 fees to participate in the mediation program.  
14

15       5. (New section) a. Whenever a person submits a mediation  
16 request or is ordered to participate in the mediation program, that  
17 person may be responsible for submitting a certification document  
18 to the court, confirming that they meet the definition of a  
19 homeowner-borrower and that the property being foreclosed upon  
20 continues to be an eligible property pursuant to subsection b. of  
21 section 2 of P.L.     , c. (C.     ) (pending before the Legislature  
22 as this bill).

23       b. Each party shall participate in foreclosure mediation in good  
24 faith. A good faith effort includes, but is not limited to, the  
25 mortgage lender or its servicer attending the mediation session in  
26 person or by telephone through a person with the authority to  
27 consider alternatives to foreclosure so that the parties may reach a  
28 mutually acceptable loan modification, loan workout, refinancing  
29 agreement, or other resolution. If any party or attorney for a party  
30 fails to attend a mediation session or to make a good faith effort to  
31 mediate, the court, in addition to any sanction the court deems  
32 appropriate, may sanction a party or attorney for a violation of this  
33 subsection with a civil penalty of up to \$1,000 or allow a party to  
34 recover reasonable attorney's fees or litigation expenses, or both. In  
35 determining the type of sanction to impose against a party, the court  
36 may consider whether the conduct was intentional and whether the  
37 party has engaged in a pattern of similar conduct with respect to the  
38 current complaint or any previous complaints.  
39

40       6. (New section) There is created in the General Fund a  
41 dedicated, non-lapsing fund to be known as the "Foreclosure  
42 Mediation Fund," to be held separate and apart from all other funds of  
43 the State. The fund shall be administered by the Administrative Office  
44 of the Courts. In each action for foreclosure, the plaintiff shall pay  
45 \$50 to the clerk of the court in addition to the fee associated with the  
46 filing of the first paper, and all monies collected from each civil  
47 penalty imposed for violations of subsection b. of section 5 of P.L.     ,  
48 c. (C.     ) (pending before the Legislature as this bill), shall be

1 deposited in the fund. The monies shall be appropriated annually by  
2 the Legislature to the Administrative Office of the Courts for the  
3 purposes of the operation of the Foreclosure Mediation Program and to  
4 enhance the integrity of the mortgage foreclosure review process. All  
5 interest or other income earned on monies deposited into the fund, and  
6 any monies that may be appropriated or otherwise become available  
7 for the purpose of the fund, shall be credited and deposited into the  
8 fund.

9  
10 7. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to  
11 read as follows:

12 4. a. Upon failure to perform any obligation of a residential  
13 mortgage by the residential mortgage debtor and before any  
14 residential mortgage lender may accelerate the maturity of any  
15 residential mortgage obligation and commence any foreclosure or  
16 other legal action to take possession of the residential property  
17 which is the subject of the mortgage, the residential mortgage  
18 lender shall give the residential mortgage debtor notice of such  
19 intention at least 30 days in advance of such action as provided in  
20 this section.

21 b. Notice of intention to take action as specified in subsection  
22 a. of this section shall be in writing, sent to the debtor by registered  
23 or certified mail, return receipt requested, at the debtor's last known  
24 address, and, if different, to the address of the property which is the  
25 subject of the residential mortgage. The notice is deemed to have  
26 been effectuated on the date the notice is delivered in person or  
27 mailed to the party.

28 c. The written notice shall clearly and conspicuously state in a  
29 manner calculated to make the debtor aware of the situation:

30 (1) the particular obligation or real estate security interest;

31 (2) the nature of the default claimed;

32 (3) the right of the debtor to cure the default as provided in  
33 section 5 of **【this act】** P.L.1995, c.244 (C.2A:50-57);

34 (4) what performance, including what sum of money, if any, and  
35 interest, shall be tendered to cure the default as of the date specified  
36 under paragraph (5) of this subsection c.;

37 (5) the date by which the debtor shall cure the default to avoid  
38 initiation of foreclosure proceedings, which date shall not be less  
39 than 30 days after the date the notice is effective, and the name and  
40 address and phone number of a person to whom the payment or  
41 tender shall be made;

42 (6) that if the debtor does not cure the default by the date  
43 specified under paragraph (5) of this subsection c., the lender may  
44 take steps to terminate the debtor's ownership in the property by  
45 commencing a foreclosure suit in a court of competent jurisdiction;

46 (7) that if the lender takes the steps indicated pursuant to  
47 paragraph (6) of this subsection c., a debtor shall still have the right  
48 to cure the default pursuant to section 5 of **【this act】** P.L.1995,

1 c.244 (C.2A:50-57), but that the debtor shall be responsible for the  
2 lender's court costs and attorneys' fees in an amount not to exceed  
3 that amount permitted pursuant to the Rules Governing the Courts  
4 of the State of New Jersey;

5 (8) the right, if any, of the debtor to transfer the real estate to  
6 another person subject to the security interest and that the transferee  
7 may have the right to cure the default as provided in **[this act]**  
8 P.L.1995, c.244 (C.2A:50-53 et seq.), subject to the mortgage  
9 documents;

10 (9) that the debtor is advised to seek counsel from an attorney of  
11 the debtor's own choosing concerning the debtor's residential  
12 mortgage default situation, and that, if the debtor is unable to obtain  
13 an attorney, the debtor may communicate with the New Jersey Bar  
14 Association or Lawyer Referral Service in the county in which the  
15 residential property securing the mortgage loan is located; and that,  
16 if the debtor is unable to afford an attorney, the debtor may  
17 communicate with the Legal Services Office in the county in which  
18 the property is located;

19 (10) the possible availability of financial assistance for curing a  
20 default from programs operated by the State or federal government  
21 or nonprofit organizations, if any, as identified by the  
22 Commissioner of Banking and Insurance. This requirement shall be  
23 satisfied by attaching a list of such programs promulgated by the  
24 commissioner; **[and]**

25 (11) the name and address of the lender and the telephone  
26 number of a representative of the lender whom the debtor may  
27 contact if the debtor disagrees with the lender's assertion that a  
28 default has occurred or the correctness of the mortgage lender's  
29 calculation of the amount required to cure the default; and

30 (12) that if the lender takes the steps indicated pursuant to  
31 paragraph (6) of this subsection, the debtor has the option to  
32 participate in the Foreclosure Mediation Program by submitting a  
33 mediation request to the court following the filing of a mortgage  
34 foreclosure complaint. Notice of the option to participate in the  
35 Foreclosure Mediation Program shall adhere to the requirements of  
36 section 3 of P.L. , c. (C. ) (pending before the Legislature  
37 as this bill) and any court rules, procedures, or guidelines adopted  
38 by the Supreme Court.

39 d. The notice of intention to foreclose required to be provided  
40 pursuant to this section shall not be required if the debtor has  
41 voluntarily surrendered the property which is the subject of the  
42 residential mortgage.

43 e. The duty of the lender under this section to serve notice of  
44 intention to foreclose is independent of any other duty to give  
45 notice under the common law, principles of equity, State or federal  
46 statute, or rule of court and of any other right or remedy the debtor  
47 may have as a result of the failure to give such notice.

1 f. Compliance with this section shall be set forth in the  
2 pleadings of any legal action referred to in this section. If the  
3 plaintiff in any complaint seeking foreclosure of a residential  
4 mortgage alleges that the property subject to the residential  
5 mortgage has been abandoned or voluntarily surrendered, the  
6 plaintiff shall plead the specific facts upon which this allegation is  
7 based.

8 (cf: P.L.2003, c.298, s.1)

9  
10 8. This act shall take effect immediately.

11  
12  
13 STATEMENT

14  
15 This bill codifies into State law New Jersey's Foreclosure  
16 Mediation Program, established in 2009 by the New Jersey  
17 Judiciary in response to an alarming increase in residential  
18 foreclosures. This bill also strengthens the program to more  
19 effectively protect home ownership in New Jersey.

20 The bill requires that, at the time the homeowner-borrower  
21 receives a notice of intention to foreclose pursuant to section 4 of  
22 P.L.1995, c.244 (C.2A:50-56), a homeowner-borrower must receive  
23 written notice of the option to participate in the Foreclosure  
24 Mediation Program. Upon the filing of a mortgage foreclosure  
25 complaint against an eligible property, the homeowner-borrower  
26 must again receive written notice of the option to participate in the  
27 Foreclosure Mediation Program. The written notice must be  
28 available in both English and Spanish.

29 The bill authorizes eligible homeowners to submit a mediation  
30 request, thereby initiating the process of scheduling a mediation  
31 session with their lender. Along with the mediation request, the  
32 homeowner may be required to submit additional information that  
33 may be necessary for creating a loan modification, or other  
34 agreement, but will not have to pay any fees to participate in the  
35 program. The bill requires lenders to have a representative attend  
36 the mediation session, either in person or by telephone, who has  
37 authority to reach a mutually acceptable loan modification, loan  
38 workout, refinancing agreement, or other resolution. If either party  
39 fails to attend a mediation session or make a good faith effort to  
40 mediate, courts will have the authority to penalize the party through  
41 a fine of up to \$1,000, through allowing the other party to recover  
42 reasonable attorney's fees and litigation expenses, or through any  
43 other sanction the court deems appropriate.

44 The bill also creates a dedicated, non-lapsing fund within the  
45 General Fund to be known as the "Foreclosure Mediation Fund."  
46 This fund would be comprised of receipts equaling \$50 from every  
47 foreclosure complaint filing fee, along with all fines imposed on  
48 lenders for noncompliance with obligations of the mediation

1 program found in subsection b. of section 5 of the bill. Pursuant to  
2 R.1:43 of the Rules of Court, foreclosure complaint filing fees have  
3 recently been increased from \$200 to \$250. Instead of establishing  
4 those fees at \$250, this bill permits the judicial branch to maintain  
5 the role of determining foreclosure complaint filing fee levels, so  
6 long as \$50 of each fee is contributed to the fund.