

ASSEMBLY HOUSING AND COMMUNITY DEVELOPMENT  
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3119

**STATE OF NEW JERSEY**

DATED: MARCH 5, 2018

The Assembly Housing and Community Development Committee reports favorably Assembly Bill No. 3119.

This bill provides that a residential mortgage lender that files and serves, pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et al.), a summons and complaint of foreclosure on a high risk mortgage loan, as defined in the bill, shall grant the borrower a six-month period of forbearance, upon written request of the borrower, to pursue a loan workout, loan modification, refinancing, or other alternative through the Judiciary's Foreclosure Mediation Program, if eligible, or another form of mediation or settlement discussion. During the six-month forbearance period, the interest rate on the high risk mortgage loan shall not increase and the creditor shall take no further action to pursue foreclosure of the property.

The bill provides that upon serving the summons and complaint in a foreclosure action, the residential mortgage lender shall notify the borrower of the borrower's right to forbearance, and, upon receipt of written request by the borrower, within 30 days of the receipt of the summons and complaint, the residential mortgage lender shall grant the borrower a six-month period of forbearance, beginning on the date the residential mortgage lender receives the borrower's request.

Upon receipt of a request for forbearance, the residential mortgage lender shall:

- (1) suspend all efforts, during the forbearance period, to advance any judicial proceeding in furtherance of the foreclosure action; and
- (2) notify the court that a forbearance has been granted with the dates that the forbearance period will begin and end.

The bill also provides that when a forbearance period is granted by the residential mortgage lender, the borrower and residential mortgage lender shall participate in the Judiciary's Foreclosure Mediation Program, if eligible, or another form of mediation or settlement discussion.

If the borrower ceases to occupy the property at any time during the period of forbearance, or if the borrower affirmatively advises the residential mortgage lender, in writing, that the borrower will not participate in the Judiciary's Foreclosure Mediation Program or another form of mediation or settlement discussion, the residential mortgage lender shall notify the court, and upon notification, and

approval of the court, the period of forbearance shall be deemed to have ended.

The provisions of the bill relating to the six-month period of forbearance shall expire two years following the effective date of the bill. However, a forbearance period shall continue for its entire six-month period notwithstanding the expiration of the bill's provisions.

The bill also provides that in addition to any other requirements under law, regulation or court rule, in all residential mortgage foreclosure actions, an attorney filing a foreclosure complaint shall include a certification of diligent inquiry. The certification of diligent inquiry shall certify:

(1) that the attorney has communicated with an employee or employees of the plaintiff who: (a) personally reviewed the documents being submitted to support the complaint; and (b) confirmed the accuracy of the documents;

(2) the names and titles, and the responsibilities in those titles, of the plaintiff's employees with whom the attorney communicated;

(3) that the attorney has reviewed the facts of the case and that, based on the information received pursuant to this section and the attorney's review of the pertinent documents, to the best of the attorney's knowledge, information and belief there is a reasonable basis for the commencement of the action and that the plaintiff is currently the residential mortgage lender entitled to enforce rights under those documents;

(4) that the attorney is aware that the failure to comply with these provisions may result in the penalties provided for in the bill or, where the failure constitutes a violation of the Rules of Professional Conduct, may include sanctions imposed by the Supreme Court of New Jersey; and

(5) that the complaint and all documents annexed thereto, comport with the requirements of R.1:4-8(a), which prohibits frivolous litigation, and include the original promissory note, or a copy, and a detailed methodology used to compute the debt.

The bill also stipulates that the court may, if it finds that the plaintiff has failed to comply with the provisions of the bill relating to the certificate of diligent inquiry, dismiss the complaint, with or without prejudice, or deny the accrual of any interest, costs, attorney's fees and other fees relating to the mortgage debt.

The bill also provides, that in addition to any other requirements under law, regulation, or court rule, in all residential mortgage foreclosure actions, a residential mortgage lender, as a condition of proceeding with a mortgage foreclosure action, shall provide a certification to the court, which states all of the following:

(1) the lender owns the mortgage and the note evidencing the mortgage debt, and has attached to the certification, the original note which names the plaintiff as the payee on the note;

(2) in the case of an assignment of mortgage, an affidavit, or any other document purporting to confirm the mortgage debt or default on payments, that the lender has not engaged in any creating, signing, or notarizing, by persons who are without knowledge of the facts being attested to;

(3) the methodology used to calculate and compute the amount of principal and interest due from the debtor as stated in the complaint and any subsequent pleadings or filings with the court that indicate the amount due from the debtor; and

(4) the names of all the parties in interest, including any party whose interest is subordinate to, or affected by, the mortgage foreclosure action and, for each party, a description of the nature of the interest.

The bill also stipulates that if the court finds that the plaintiff has failed to comply with the provisions of the bill relating to the certification by the residential mortgage lender, the court may dismiss the complaint, with or without prejudice, or deny the accrual of any interest, costs, attorney's fees and other fees relating to the mortgage debt.

The bill also provides that in addition to any other requirements under law, regulation, or court rule, in all residential mortgage foreclosure actions, a court shall:

(1) allow an evidentiary hearing for any debtor that requests an evidentiary hearing;

(2) allow plaintiffs to place on the record only evidence that is admissible according to court rule and relevant case law; and

(3) ensure that the plaintiff in the action owns the mortgage and the note and, in the case of a party that is a foreign trust claiming interest in the note, through participation in a mortgage-backed security or otherwise, the court shall not proceed with the foreclosure action if the foreign trust is not registered to do business in New Jersey.