

[First Reprint]

ASSEMBLY, No. 5003

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED FEBRUARY 7, 2019

Sponsored by:

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblyman BENJIE E. WIMBERLY

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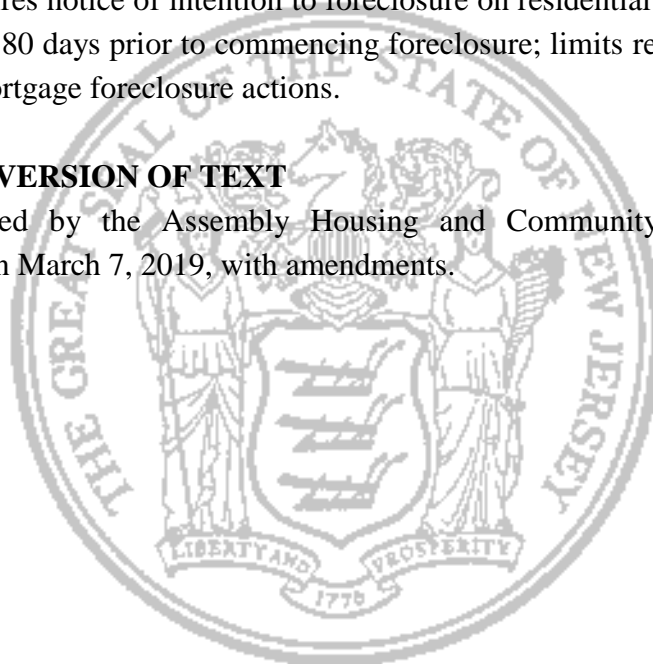
Assemblywoman Murphy, Assemblyman McKeon and Assemblywoman Jasey

SYNOPSIS

Requires receivership appointment application prior to certain foreclosure actions; requires notice of intention to foreclosure on residential mortgage to be filed within 180 days prior to commencing foreclosure; limits reinstatements of dismissed mortgage foreclosure actions.

CURRENT VERSION OF TEXT

As reported by the Assembly Housing and Community Development Committee on March 7, 2019, with amendments.



(Sponsorship Updated As Of: 3/26/2019)

1 AN ACT concerning residential mortgage foreclosure and amending
2 and supplementing P.L.1995, c.244.

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

6
7 1. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to
8 read as follows:

9 4. a. Upon failure to perform any obligation of a residential
10 mortgage by the residential mortgage debtor and before any
11 residential mortgage lender may accelerate the maturity of any
12 residential mortgage obligation and commence any foreclosure or
13 other legal action to take possession of the residential property
14 which is the subject of the mortgage, the residential mortgage
15 lender shall give the residential mortgage debtor notice of such
16 intention, which shall include a notice of the right to cure the
17 default as provided in section 5 of P.L.1995, c.244 (C.2A:50-57), at
18 least 30 days, but not more than 180 days, in advance of such action
19 as provided in this section.

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

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

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

30 (2) the nature of the default claimed;

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

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

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

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

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:

¹Assembly AHO committee amendments adopted March 7, 2019.

(7) that if the lender takes the steps indicated pursuant to paragraph (6) of this subsection c., a debtor shall still have the right to cure the default pursuant to section 5 of **[this act]** P.L.1995, c.244 (C.2A:50-57), but that the debtor shall be responsible for the lender's court costs and attorneys' fees in an amount not to exceed that amount permitted pursuant to the Rules Governing the Courts of the State of New Jersey;

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

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

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

(11) the name and address of the lender and the telephone number of a representative of the lender whom the debtor may contact if the debtor disagrees with the lender's assertion that a default has occurred or the correctness of the mortgage lender's calculation of the amount required to cure the default ¹;

(12) that the debtor is entitled to housing counseling, at no cost to the debtor, through the Foreclosure Mediation Program established by the New Jersey Judiciary, including information on how to contact the program; and

(13) that if the property which is the subject of the mortgage has more than one dwelling unit but less than five, one of which is occupied by the debtor or a member of the debtor's immediate family as the debtor's or member's residence at the time the loan is originated, and is not properly maintained and meets the necessary conditions for receivership eligibility, established pursuant to section 4 of the "Multifamily Housing Preservation and Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential mortgage lender shall file an order to show cause to appoint a receiver¹.

1 d. The notice of intention to foreclose required to be provided
2 pursuant to this section shall not be required if the debtor has
3 voluntarily surrendered the property which is the subject of the
4 residential mortgage.

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

10 f. Compliance with this section shall be set forth in the
11 pleadings of any legal action referred to in this section. If the
12 plaintiff in any complaint seeking foreclosure of a residential
13 mortgage alleges that the property subject to the residential
14 mortgage has been abandoned or voluntarily surrendered, the
15 plaintiff shall plead the specific facts upon which this allegation is
16 based.

17 g. If more than 180 days have elapsed since the date the notice
18 required pursuant to this section ¹**['was'] is¹** sent, and any
19 foreclosure or other legal action to take possession of the residential
20 property which is the subject of the mortgage has not yet been
21 commenced, the lender shall send a new written notice at least 30
22 days, but not more than 180 days, in advance of that action.

23 ¹h. If the property which is the subject of the notice of intention
24 to foreclose has more than one dwelling unit but less than five, one
25 of which is occupied by the debtor or a member of the debtor's
26 immediate family as the debtor's or member's residence at the time
27 the loan is originated, and is not properly maintained and meets the
28 necessary conditions for receivership eligibility, established
29 pursuant to section 4 of the "Multifamily Housing Preservation and
30 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential
31 mortgage lender shall file an order to show cause to appoint a
32 receiver.¹

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

34
35 2. (New section) a. If a plaintiff's action to foreclose a
36 residential mortgage has been dismissed without prejudice pursuant
37 to R.4:64-8 of the Rules Governing the Courts of New Jersey of the
38 State of New Jersey, reinstatement of the plaintiff's action may be
39 permitted only on motion for good cause shown ¹**['and**
40 **reinstatements']** . Reinstatements¹ shall be limited to three for any
41 action ¹, except that a reinstatement which is granted following a
42 dismissal without prejudice that resulted from the plaintiff's
43 compliance with federal law or regulation shall not count toward
44 the limit established by this subsection¹. The fee for a plaintiff to
45 reinstate a residential mortgage foreclosure action shall be twice the
46 amount set ¹**['by the Administrative Office of the Courts']¹** for filing

- 1 a foreclosure complaint. The plaintiff shall not charge or otherwise
2 pass a reinstatement fee onto the debtor or any other person.
- 3 b. The amounts paid by plaintiffs for reinstating a mortgage
4 pursuant to subsection a. of this section, that are over and above the
5 amounts set ¹by the Administrative Office of the Courts¹ for
6 filing a foreclosure complaint, shall be aggregated and divided
7 equally on an annual basis, with one-half dedicated to the New
8 Jersey Housing and Mortgage Finance Agency for the purposes of
9 funding the counseling component provided by the agency for the
10 New Jersey Judiciary's Foreclosure Mediation Program, and one-
11 half dedicated to the Administrative Office of the Courts for the
12 general operations provided by the office for the New Jersey
13 Judiciary's Foreclosure Mediation Program.
- 14
- 15 3. This act shall take effect on the first day of the fourth month
16 next after enactment.