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ASSEMBLY, No. 5005

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 7, 2019

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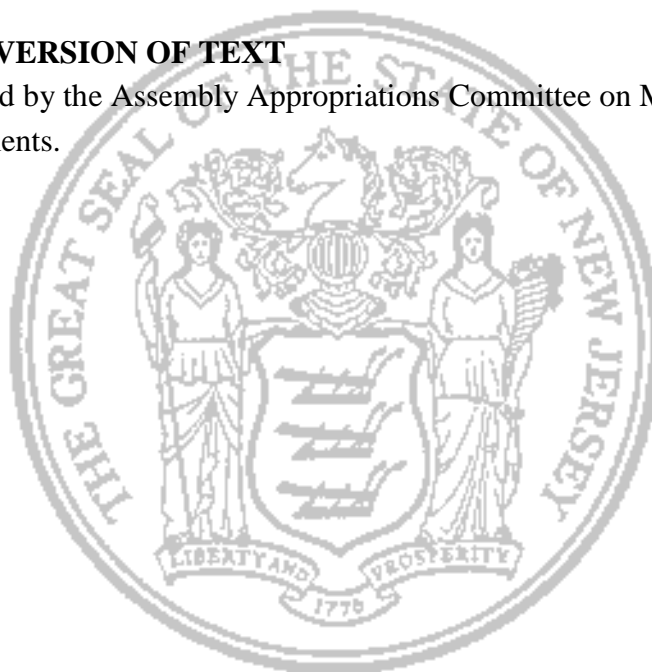
Assemblymen Mazzeo and McKeon

SYNOPSIS

Makes certain changes to summary action foreclosure process under “Fair Foreclosure Act.”

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on March 18, 2019, with amendments.



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

1 AN ACT concerning certain foreclosure sales and amending
2 P.L.2012, c.70.

3

4 1. Section 1 of P.L.2012, c.70 (C.2A:50-73) is amended to read
5 as follows:

6 1. a. For the purposes of this section, "vacant and abandoned"
7 residential property means residential real estate with respect to
8 which the mortgagee proves, by clear and convincing evidence, that
9 the mortgaged real estate is vacant and has been abandoned or
10 where a notice of violation has been issued pursuant to subsection
11 b. of section 1 of P.L.2014, c.35 (C.40:48-2.12s). Where a notice of
12 violation has not been issued pursuant to subsection b. of section 1
13 of P.L.2014, c.35 (C.40:48-2.12s), real property shall be deemed
14 "vacant and abandoned" if the court finds that the mortgaged
15 property is not occupied by a mortgagor or tenant as evidenced by a
16 lease agreement entered into prior to the service of a notice of
17 intention to commence foreclosure according to section 4 of the
18 "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-56), and at least
19 two of the following conditions exist:

- 20 (1) overgrown or neglected vegetation;
- 21 (2) the accumulation of newspapers, circulars, flyers or mail on
22 the property;
- 23 (3) disconnected gas, electric, or water utility services to the
24 property;
- 25 (4) the accumulation of hazardous, noxious, or unhealthy
26 substances or materials on the property;
- 27 (5) the accumulation of junk, litter, trash or debris on the
28 property;
- 29 (6) the absence of window treatments such as blinds, curtains or
30 shutters;
- 31 (7) the absence of furnishings and personal items;
- 32 (8) statements of neighbors, delivery persons, ¹representatives
33 of a common interest community association,¹ or government
34 employees indicating that the residence is vacant and abandoned;
- 35 (9) windows or entrances to the property that are boarded up or
36 closed off or multiple window panes that are damaged, broken and
37 unrepaired;
- 38 (10) doors to the property that are smashed through, broken off,
39 unhinged, or continuously unlocked;
- 40 (11) a risk to the health, safety or welfare of the public, or any
41 adjoining or adjacent property owners, exists due to acts of
42 vandalism, loitering, criminal conduct, or the physical destruction
43 or deterioration of the property;
- 44 (12) an uncorrected violation of a municipal building, housing,
45 or similar code during the preceding year, or an order by municipal

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.

²Assembly AAP committee amendments adopted March 18, 2019.

1 authorities declaring the property to be unfit for occupancy and to
2 remain vacant and unoccupied;

3 (13) the mortgagee or other authorized party has secured or
4 winterized the property due to the property being deemed vacant
5 and unprotected or in danger of freezing;

6 (14) a written statement issued by any mortgagor expressing the
7 clear intent of all mortgagors to abandon the property;

8 (15) any other reasonable indicia of abandonment.

9 b. For the purposes of this section, a residential property shall
10 not be considered "vacant and abandoned" if, on the property:

11 (1) there is an unoccupied building which is undergoing
12 construction, renovation, or rehabilitation that is proceeding
13 diligently to completion, and the building is in compliance with all
14 applicable ordinances, codes, regulations, and statutes;

15 (2) there is a building occupied on a seasonal basis, but
16 otherwise secure; or

17 (3) there is a building that is secure, but is the subject of a
18 probate action, action to quiet title, or other ownership dispute.

19 c. In addition to the residential mortgage foreclosure
20 procedures set out in the "Fair Foreclosure Act," P.L.1995, c.244
21 (C.2A:50-53 et seq.), a summary action to foreclose a mortgage
22 debt secured by residential property that is vacant and abandoned
23 may be brought by a lender in the Superior Court. In addition, a
24 lender may, at any time after filing a foreclosure action, file with
25 the court, in accordance with the Rules Governing the Courts of the
26 State of New Jersey, an application to proceed in a summary
27 manner because the residential property that is the subject of the
28 foreclosure action is believed to be "vacant and abandoned";
29 provided, however, that this section shall not apply to a foreclosure
30 of a timeshare interest secured by a mortgage.

31 d. (1) In addition to the service of process required by the
32 Rules of Court, a lender shall establish, for the entry of a residential
33 foreclosure judgment under this section, that a process server has
34 made two unsuccessful attempts to serve the mortgagor or occupant
35 at the residential property, which attempts must be at least 72 hours
36 apart, and during different times of the day, either before noon,
37 between noon and 6 P.M., or between 6 P.M. and 10 P.M.

38 (2) In addition to any notices required to be served by law or the
39 Rules of Court, a lender shall, with any order to show cause served
40 as original service of process or a motion to proceed summarily,
41 serve a notice that the lender is seeking, on the return date of the
42 order to show cause, or on the date fixed by the court, to proceed
43 summarily for entry of a residential foreclosure judgment because
44 the property is vacant and abandoned.

45 (3) When a property is deemed vacant and abandoned as herein
46 defined, a lender shall not be required to serve the debtor with the
47 notice to cure required by section 6 of the "Fair Foreclosure Act,"
48 P.L.1995, c.244 (C.2A:50-58).

1 e. (1) The court may enter a final residential mortgage
2 foreclosure judgment under this section upon a finding, (a) by clear
3 and convincing evidence, that the residential property is vacant and
4 abandoned as defined under subsection a. of this section, and (b)
5 that a review of the pleadings and documents filed with the court, as
6 required by the Rules of Court, supports the entry of a final
7 residential mortgage foreclosure judgment.

8 (2) A final residential mortgage foreclosure judgment under this
9 section shall not be entered if the court finds that:

10 (a) the property is not vacant or abandoned; or

11 (b) the mortgagor or any other defendant has filed an answer,
12 appearance, or other written objection that is not withdrawn and the
13 defenses or objection asserted provide cause to preclude the entry of
14 a final residential mortgage foreclosure judgment.

15 f. If a final residential mortgage foreclosure judgment under
16 this section is not entered on the original or adjourned return date of
17 an order to show cause or the date fixed by the court to proceed
18 summarily, the court may direct that the foreclosure action continue
19 on the normal track for residential mortgage foreclosure actions for
20 properties that are not vacant and abandoned and the notice to cure
21 served with the order to show cause or the order fixing that date for
22 the matter to proceed summarily shall be of no effect.

23 g. All actions brought to foreclose on real property pursuant to
24 this section shall proceed in accordance with the Rules of Court.

25 h. Nothing in this section is intended to supersede or limit other
26 procedures adopted by the Court to resolve residential mortgage
27 foreclosure actions, including, but not limited to, foreclosure
28 mediation.

29 i. Nothing in this section shall be construed to affect the rights
30 of a tenant to possession of a leasehold interest under the Anti-
31 Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New
32 Jersey Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et
33 seq.), or any other applicable law.

34 j. ¹(1)¹ Notwithstanding paragraph (3) of subsection a. of
35 section 12 of P.L.1995, c.244 (C.2A:50-64) to the contrary, ¹["if the
36 court makes a finding in the foreclosure judgment that the property
37 is vacant and abandoned,"]¹ the sheriff shall sell the property within
38 ²["60"] 90² days of the sheriff's receipt of any writ of execution
39 issued by the court ¹if:

40 (a) the court makes a finding in the foreclosure judgment that
41 the property is vacant and abandoned; or

42 (b) the court issues an order directing the sheriff to sell the
43 property within ²["60"] 90² days, pursuant to the provisions of
44 subsection k. of this section¹.

45 ¹(2)¹ If it becomes apparent that the sheriff cannot comply with
46 the provisions of ¹paragraph (1) of¹ this subsection, the foreclosing
47 plaintiff **["may"] shall** apply to the court for an order appointing a

1 Special Master or judicial agent to hold the foreclosure sale , within
2 ²**[60]** ⁹⁰² days of the date of application.

3 ¹k. (1) Following issuance of a foreclosure judgment, in which
4 the court did not make a finding that the property is vacant and
5 abandoned, a foreclosing plaintiff may make application to the
6 court for the property to be sold by the sheriff within ²**[60]** ⁹⁰²
7 days of the date of application. The application shall include a
8 certification that the mortgaged real estate is vacant and abandoned.

9 (2) Upon application that meets the criteria set forth in
10 paragraph (1) of this subsection, the court shall issue an order
11 directing the sheriff to sell the property in accordance with the
12 provisions of subsection j. of this section. A hearing shall not be
13 required unless the application is contested.¹

14 (cf: P.L.2014, c.35, s.3)

15

16 2. This act shall take effect ²**[immediately]** on the 30th day
17 next following the date of enactment².