

SENATE, No. 362

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator RONALD L. RICE

District 28 (Essex)

SYNOPSIS

Provides that deed restrictions on affordable housing units are not extinguished by foreclosure proceedings.

CURRENT VERSION OF TEXT

As reported by the Senate Community and Urban Affairs Committee with technical review.



1 AN ACT concerning affordability controls on affordable housing,
2 supplementing P.L.1985, c.222 (C.52:27D-301 et al.) and
3 amending P.L.1995, c.244.
4

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

8 1. (New section) The Legislature finds and declares that:

9 a. Many thousands of New Jersey homeowners are at risk of
10 losing their homes as a result of mortgage foreclosures in the
11 immediate future;

12 b. Foreclosures involve the loss of a family's home, which is
13 often the family's most valuable financial asset, and foreclosures
14 especially undermine the health and economic vitality of the urban
15 neighborhoods in which a disproportionate share of foreclosures
16 take place;

17 c. Some homes subject to foreclosure proceedings contain deed
18 restrictions requiring the homes to be reserved for occupancy by
19 low and moderate income households as affordable housing as part
20 of the constitutional obligation under the Mt. Laurel decisions to
21 provide affordable housing;

22 d. Regulations that permit affordable housing deed restrictions
23 to be extinguished during foreclosure proceedings are inconsistent
24 with the constitutional obligation to provide affordable housing and
25 are particularly detrimental in that they decrease the availability of
26 affordable housing at a time when more and more New Jersey
27 residents are faced with difficult economic conditions; and

28 e. Deed restrictions should survive a foreclosure in order to
29 enhance the ability of New Jersey residents to obtain housing they
30 can afford.
31

32 2. (New section) Notwithstanding any rule of the Council on
33 Affordable Housing, the Department of Community Affairs, or the
34 New Jersey Housing and Mortgage Finance Agency to the contrary,
35 a deed restriction which was properly recorded in connection with a
36 property for which a credit against the fair share housing obligation
37 was granted pursuant to P.L.1985, c.222 (C.52:27D-301 et al.) shall
38 not expire, extinguish, or be removed prior to the period of
39 termination for such restriction as a result of the sale of the property
40 through foreclosure proceedings by any creditor.
41

42 3. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to
43 read as follows:

44 4. a. Upon failure to perform any obligation of a residential
45 mortgage by the residential mortgage debtor and before any

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 residential mortgage lender may accelerate the maturity of any
2 residential mortgage obligation and commence any foreclosure or
3 other legal action to take possession of the residential property
4 which is the subject of the mortgage, the residential mortgage
5 lender shall give a notice of intention to: the residential mortgage
6 debtor, and, if the mortgage is secured by a residence for which a
7 restriction on affordability was recorded in the county in which the
8 property is located, the clerk of the municipality in which the
9 subject property is located, the municipal housing liaison, if one has
10 been appointed by the municipality pursuant to the regulations of
11 the Council on Affordable Housing, and the Commissioner of
12 Community Affairs, at least 30 days in advance of such action as
13 provided in this section. For the purposes of this section,
14 “restriction on affordability” means any conditions recorded with a
15 mortgage or a deed which would limit the sale of such property to
16 income qualified households pursuant to the rules adopted to
17 effectuate the “Fair Housing Act,” P.L.1985, c.222 (C52:27D-301
18 et al.).

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

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

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

29 (2) the nature of the default claimed;

30 (3) the right of the debtor to cure the default as provided in
31 section 5 of this act;

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

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

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

44 (7) that if the lender takes the steps indicated pursuant to
45 paragraph (6) of this subsection c., a debtor shall still have the right
46 to cure the default pursuant to section 5 of this act, but that the
47 debtor shall be responsible for the lender's court costs and attorneys'

1 fees in an amount not to exceed that amount permitted pursuant to
2 the Rules Governing the Courts of the State of New Jersey;

3 (8) the right, if any, of the debtor to transfer the real estate to
4 another person subject to the security interest and that the transferee
5 may have the right to cure the default as provided in this act,
6 subject to the mortgage documents;

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

16 (10) the possible availability of financial assistance for curing a
17 default from programs operated by the State or federal government
18 or nonprofit organizations, if any, as identified by the
19 Commissioner of Banking and Insurance and, if the property is
20 subject to restrictions on affordability, the address and phone
21 number of the municipal affordable housing liaison and of the New
22 Jersey Housing and Mortgage Finance Agency. This requirement
23 shall be satisfied by attaching a list of such programs promulgated
24 by the 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.

30 d. The notice of intention to foreclose required to be provided
31 pursuant to this section shall not be required if the debtor has
32 voluntarily surrendered the property which is the subject of the
33 residential mortgage.

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

39 f. Compliance with this section shall be set forth in the
40 pleadings of any legal action referred to in this section. If the
41 plaintiff in any complaint seeking foreclosure of a residential
42 mortgage alleges that the property subject to the residential
43 mortgage has been abandoned or voluntarily surrendered, the
44 plaintiff shall plead the specific facts upon which this allegation is
45 based.

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

1 4. Section 11 of P.L.1995, c.244 (C.2A:50-63) is amended to
2 read as follows:

3 11. a. An optional foreclosure procedure without sale for the
4 disposition of a foreclosed premises is hereby established pursuant
5 to subsection b. of this section, wherein a lender may elect to
6 proceed according to the provisions of this act and R.4:64-1(d) of
7 the Rules Governing the Courts of the State of New Jersey.

8 b. Use of the optional procedure without sale, as provided in
9 this section, shall be permitted only when:

10 (1) the debtor has abandoned the property which is the subject of
11 the residential mortgage;

12 (2) the debtor has voluntarily surrendered the property which is
13 the subject of the residential mortgage by signing a deed in lieu of
14 foreclosure in favor of the lender; **[or]**

15 (3) there is no equity in the property which is the subject of the
16 residential mortgage, as defined in subsection e. of this section; or

17 (4) there are no recorded restrictions on affordability on the
18 property, as defined in section 4 of P.L.1995, c.244 (C.2A:50-56).

19 c. Pursuant to paragraph (1) of subsection b. of this section,
20 and for purposes of this section only, abandonment of the property
21 subject to the residential mortgage shall be established by an
22 affidavit or certification from an individual having personal
23 knowledge of the contents thereof, setting forth the specific facts
24 upon which that conclusion is based. The affidavit or certification
25 shall be submitted to the office or the court at the same time that the
26 lender applies to the office or the court for the order fixing the
27 amount, time and place for redemption.

28 d. Pursuant to paragraph (2) of subsection b. of this section and
29 for purposes of this section only, if the lender receives a deed in
30 lieu of foreclosure, the conveyance shall be effective only if the
31 deed clearly and conspicuously provides: that the debtor may,
32 without penalty, rescind the conveyance within seven days,
33 excluding Saturdays, Sundays and legal holidays; and that such
34 **[recision]** rescission is effective upon delivery of a written notice
35 to the lender or its agent or upon mailing of such notice to the
36 lender or its agent by certified or registered mail, return receipt
37 requested.

38 e. (1) For purposes of paragraph (3) of subsection b. of this
39 section, a property subject to a residential mortgage shall be
40 deemed to have no equity if the total unpaid balance of all liens and
41 encumbrances against the property, including mortgages, tax liens
42 and judgments actually against the property (not including similar
43 name judgments), and any other lien, is equal to or greater than 92
44 percent of the fair market value of the property. An affidavit setting
45 forth with specificity the fair market value of the property, the
46 unpaid balance of the obligation, including all mortgages and liens
47 and the method by which the lender determined that the property
48 has no equity, shall be submitted to the office or the court at the

1 time the lender applies for the order fixing the amount, time and
2 place for redemption.

3 (2) If a lender proceeds with the optional procedure under this
4 subsection, and if the debtor has not objected and requested a public
5 sale pursuant to this section, when the foreclosed property is resold
6 by the lender following judgment and provided the resale price
7 received by the lender is in excess of the amount necessary to repay
8 the debt, interest and reasonable costs of the lender, and all carrying
9 charges, including, but not limited to, the reasonable costs of
10 maintenance and resale, the lender shall deposit any such excess in
11 accordance with R.4:57 et seq. of the Rules Governing the Courts of
12 the State of New Jersey.

13 (3) Upon deposit of any such excess with the Superior Court, the
14 lender shall notify the debtor and any lien holder who held a lien
15 junior to the lender and whose lien was lost in whole or in part as a
16 result of the foreclosure. Such notification shall be by certified
17 mail, return receipt requested, to the last known address of the
18 debtor and such lien holders. The debtor and the lien holders shall
19 then have six months to make an application to the Superior Court,
20 in the form of an application for surplus funds, upon appropriate
21 notice to all other parties in interest, to seek an order for turnover of
22 the excess funds. Failure of a lender to comply with the provisions
23 of paragraphs (2) and (3) of this subsection e. shall not affect title to
24 the foreclosed property.

25 f. (1) In accordance with the provisions of R.4:64-1(d) of the
26 Rules Governing the Courts of the State of New Jersey, and subject
27 to compliance with the provisions of this act, a lender may elect to
28 proceed with the optional procedure by filing an affidavit or
29 certification with the office or the court.

30 (2) The affidavit or certification shall set forth the facts which
31 the lender alleges show that it is entitled to proceed under one or
32 more paragraphs of subsection b. of this section and shall be
33 supported by the proofs required by this section and such other
34 proofs as may be required by the office or the court.

35 g. In accordance with the provisions of R.4:64-1(d) of the
36 Rules Governing the Courts of the State of New Jersey, and subject
37 to compliance with the provisions of this act, the office or the court
38 may enter an order fixing the amount, time, and place for
39 redemption, which shall be not less than 45 days nor more than 60
40 days after the date of the order. The office or the court may grant
41 an extension of time for good cause shown. The order shall provide
42 that:

43 (1) the redeeming defendant pay to the plaintiff's attorney the
44 amount fixed by the office or the court for redemption, together
45 with interest to the date of redemption, plus all court costs;

46 (2) redemption shall be by cash, cashier's check or certified
47 check and made at the office of the plaintiff's attorney, if such
48 office is located in the county where the property is situated, or at

1 such other place as designated by the office or the court, between
2 the hours of 9:00 a.m. and 4:00 p.m. of the date set by the office or
3 the court in the order; and

4 (3) in the absence of redemption, the defendants shall stand
5 absolutely debarred and foreclosed from all equity of redemption.

6 h. (1) The order for redemption or notice thereof shall be
7 mailed to each defendant's last known address and, if different, also
8 to the address of the property being foreclosed. The order for
9 redemption or notice thereof shall be sent by ordinary mail and
10 certified mail, return receipt requested, within 20 days after the date
11 the order is entered, except that, as to defendants whose addresses
12 are unknown and who were served by publication, no further
13 publication of the order for redemption or notice thereof need be
14 made.

15 (2) The notice shall:

16 (a) inform the defendants that the plaintiff is proceeding under an
17 optional procedure authorized by section 11 of this act and set out
18 the steps of the optional procedure;

19 (b) inform all defendants of the terms and conditions under
20 which a defendant may request a public sale of the mortgaged
21 premises pursuant to subsection i. of this section; and

22 (c) clearly state that no request for a public sale made after 30
23 days from the date of service will be granted, except for good cause
24 shown.

25 i. In any matter in which the office or the court has issued an
26 order for redemption and the lender is permitted to proceed by the
27 optional procedure, a defendant who wishes to object to the optional
28 procedure and request a public sale with respect to the mortgaged
29 premises being foreclosed, shall submit to the office or the court a
30 written request for a public sale within 30 days of the date the order
31 or notice thereof is served. If a defendant requests a public sale
32 within the required time period, and subject to compliance with the
33 provisions of this act, the office or court shall enter a judgment of
34 foreclosure which provides for a public sale of the premises in
35 accordance with applicable law. Any such defendant who requests
36 a public sale, other than a natural person who is the owner or a
37 voluntary transferee from that owner, shall be required to post a
38 cash deposit or bond prior to the date fixed for redemption. This
39 cash deposit or bond shall be in an amount which is 10% of the
40 amount found due in the order fixing the amount, time and place for
41 redemption and shall be held to secure the plaintiff against any
42 additional interest and costs, as well as any deficiency, as a result of
43 the public sale. The office or the court may dispense with this
44 requirement for good cause shown. The defendant who requests a
45 public sale, other than a natural person who is the owner or a
46 voluntary transferee from that owner, shall pay all expenses and
47 costs associated with the public sale, including, but not limited to,
48 all sheriff's fees and commissions.

- 1 j. In the event of any dispute among defendants over the right
2 to redeem, the court shall enter such order as is necessary to secure
3 the plaintiff pending the resolution of the dispute, including, but not
4 limited to, payment of plaintiff's additional interest and costs which
5 accrue as a result of the dispute.
- 6 k. Upon redemption, the plaintiff shall furnish the
7 redemptioner with an appropriate certificate of redemption and the
8 redemptioner shall acquire all rights provided by law and equity but
9 shall not be entitled to a deed or title to the mortgaged premises
10 solely by virtue of the redemption. A redemptioner in proper cases
11 may proceed to foreclose the redemptioner's interest.
- 12 l. In the absence of redemption, and on proof of mailing of the
13 order for redemption or notice thereof pursuant to subsection h. of
14 this section and an affidavit of non-redemption, the plaintiff shall be
15 entitled to a judgment debarring and foreclosing the equity of
16 redemption of the defendants and each of them and any person
17 claiming by, through or under them, and adjudging the plaintiff be
18 vested with a valid and indefeasible estate in the mortgaged
19 premises. Anything to the contrary notwithstanding, redemption
20 shall be permitted at any time up until the entry of judgment
21 including the whole of the last day upon which judgment is entered.
22 A certified copy of the judgment shall be accepted for recording by
23 the county recording officer pursuant to P.L.1939, c.170 (C.46:16-
24 1.1).
- 25 m. Upon entry of a judgment vesting title in the plaintiff
26 pursuant to subsection l. of this section, the debt which was secured
27 by the foreclosed mortgage shall be deemed satisfied, and the
28 plaintiff shall not be permitted to institute any further or
29 contemporaneous action for the collection of the debt.
30 (cf: P.L.1995, c.244, s.11)
31
- 32 5. This act shall take effect immediately.