

[First Reprint]

**SENATE, No. 1244**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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INTRODUCED JANUARY 25, 2018

**Sponsored by:**

**Senator RONALD L. RICE**

**District 28 (Essex)**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As reported by the Senate Community and Urban Affairs Committee on February 7, 2019, with amendments.



**(Sponsorship Updated As Of: 10/16/2018)**

1 AN ACT concerning foreclosure mediation, amending  
 2 <sup>1</sup>[N.J.S.22A:2-12 and]<sup>1</sup> P.L.1995, c.244, supplementing Title  
 3 2A of the New Jersey Statutes, and dedicating monies from  
 4 foreclosure filing 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 <sup>1</sup>[2009] 2008<sup>1</sup> 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  
 21 the Legislature as this bill):

22 <sup>1</sup>"Certification document" means the document that the  
 23 homeowner-borrower is required to submit to the court upon the  
 24 initiation of foreclosure mediation, pursuant to subsection b. of  
 25 section 4 and subsection a. of section 5 of P.L. , c. (C. )  
 26 (pending before the Legislature as this bill).<sup>1</sup>

27 "Eligible property" means an owner-occupied one- to <sup>1</sup>[three-  
 28 family residential property that is the homeowner-borrower's  
 29 primary residence] four-dwelling unit residence, one of which is  
 30 occupied, or is planned to be occupied, by the homeowner-  
 31 borrower, or a member of the homeowner-borrower's immediate  
 32 family<sup>1</sup>.

33 "Foreclosure Mediation Program" or "mediation program" means  
 34 the New Jersey Judiciary's Foreclosure Mediation Program as  
 35 authorized by the Supreme Court of New Jersey.

36 "Homeowner-borrower" means the borrower <sup>1</sup>[on a] who  
 37 executed the<sup>1</sup> mortgage loan for an eligible property that is subject  
 38 to a foreclosure complaint filed by the <sup>1</sup>original residential  
 39 mortgage<sup>1</sup> lender or an assignee <sup>1</sup>of the original residential  
 40 mortgage lender<sup>1</sup>.

41 <sup>1</sup>"Trained foreclosure prevention and default mitigation  
 42 counselor" means a housing counselor employed by a housing  
 43 counseling agency certified by the United States Department of

**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:

<sup>1</sup>Senate SCU committee amendments adopted February 7, 2019.

1 Housing and Urban Development, who has successfully completed  
2 a foreclosure prevention and default mitigation training course.<sup>1</sup>

3  
4 3. (New section) <sup>1</sup>**【The】 A**<sup>1</sup> homeowner-borrower shall receive  
5 written notice <sup>1</sup>from the residential mortgage lender<sup>1</sup> of the option  
6 to participate in the Foreclosure Mediation Program in accordance  
7 with the court rules, procedures, and guidelines adopted by the  
8 Supreme Court at the time the homeowner-borrower receives a  
9 notice of intention to foreclose, pursuant to section 4 of P.L.1995,  
10 c.244 (C.2A:50-56). Upon the filing of a mortgage foreclosure  
11 complaint against an eligible property, the homeowner-borrower  
12 shall again receive written notice of the option to participate in the  
13 Foreclosure Mediation Program in accordance with the court rules,  
14 procedures, and guidelines adopted by the Supreme Court. The  
15 written notice required pursuant to this section shall be available in  
16 both English and Spanish.

17  
18 4. (New section) a. (1) A court may order mediation  
19 whenever a homeowner-borrower files an answer to a foreclosure  
20 complaint.

21 (2) Alternatively, the homeowner-borrower may initiate <sup>1</sup>**【the**  
22 **process for scheduling mediation by submitting a mediation request**  
23 **to the court, along with any other documents required by the**  
24 **Supreme Court. The deadline for mediation request submission**  
25 **shall be determined by the court rules, procedures, and guidelines**  
26 **adopted by the Supreme Court】** mediation in accordance with court  
27 rules. The courts shall provide the homeowner-borrower no less  
28 than 60 days following receipt of the foreclosure complaint and  
29 summons to initiate mediation<sup>1</sup>.

30 b. <sup>1</sup>**【After requesting mediation, the homeowner-borrower may**  
31 **seek to stay the sheriff's sale in accordance with applicable court**  
32 **rules and procedures】** The homeowner-borrower may not  
33 participate in mediation unless the certification document required  
34 pursuant to section 5 of P.L. , c. (C. ) (pending before the  
35 Legislature as this bill) is submitted to the court and signed by a  
36 trained foreclosure prevention and default mitigation counselor,  
37 verifying that the homeowner-borrower is cooperating with the  
38 counselor<sup>1</sup>.

39 c. The homeowner-borrower shall not be required to pay any  
40 fees to participate in the mediation program.

41  
42 5. (New section) a. Whenever a <sup>1</sup>**【person submits a】**  
43 homeowner-borrower initiates<sup>1</sup> mediation <sup>1</sup>**【request】**<sup>1</sup> or is ordered  
44 to participate in the mediation program, that <sup>1</sup>**【person may】**  
45 homeowner-borrower shall<sup>1</sup> be responsible for submitting a  
46 certification document to the court, confirming that they meet the  
47 definition of a homeowner-borrower <sup>1</sup>, pursuant to subsection b. of

1 section 2 of P.L. , c. (C. ) (pending before the Legislature  
2 as this bill),<sup>1</sup> and that the property being foreclosed upon continues  
3 to be an eligible property pursuant to subsection b. of section 2 of  
4 P.L. , c. (C. ) (pending before the Legislature as this bill).  
5 <sup>1</sup>Pursuant to subsection b. of section 4 of P.L. , c. (C. )  
6 (pending before the Legislature as this bill), the certification  
7 document submitted to the court shall also be signed by the trained  
8 foreclosure prevention and default mitigation counselor, verifying  
9 that the trained foreclosure prevention and default mitigation  
10 counselor is counseling the homeowner-borrower.<sup>1</sup>

11 b. Each party shall participate in foreclosure mediation <sup>1</sup>["in  
12 good faith. A good faith effort includes, but is not limited to, the  
13 mortgage lender or its servicer attending] , and shall attend<sup>1</sup> the  
14 mediation session in person or by telephone through a person with  
15 the authority to consider alternatives to foreclosure so that the  
16 parties may reach a mutually acceptable loan modification, loan  
17 workout, refinancing agreement, or other resolution. If any party or  
18 attorney for a party fails to attend a mediation session <sup>1</sup>["or to make  
19 a good faith effort to mediate"]<sup>1</sup>, the court, in addition to any  
20 sanction the court deems appropriate, may sanction a party or  
21 attorney for a violation of this subsection with a civil penalty of up  
22 to \$1,000 or allow a party to recover reasonable attorney's fees or  
23 litigation expenses, or both. In determining the type of sanction to  
24 impose against a party, the court may consider whether the conduct  
25 was intentional and whether the party has engaged in a pattern of  
26 similar conduct with respect to the current complaint or any  
27 previous complaints.

28  
29 <sup>1</sup>6. (New section) The Judiciary shall record the result of each  
30 foreclosure mediation session, and compile this information into an  
31 accessible format so that the frequency of the program's success  
32 can be identified, and shall publish the compiled information on the  
33 Judiciary's Internet website. The information shall include the  
34 aggregate data regarding: the number of cases in mediation; the  
35 number of mediation sessions held; the number of mediation  
36 sessions that did not go forward because either party did not  
37 participate; the number of successful mediations delineated by loan  
38 modification, forbearance, deed in lieu of foreclosure, short sale  
39 agreement, or other agreement resulting in the dismissal of the  
40 complaint for foreclosure; and the number of homeowners against  
41 whom another complaint for foreclosure was not filed in the  
42 following two years. The information published on the Judiciary's  
43 Internet website shall be updated at least annually. However, the  
44 first report shall be published two years after the effective date of  
45 P.L. , c. (C. ) (pending before the Legislature as this bill).<sup>1</sup>

1       <sup>1</sup>**[6.] 7.**<sup>1</sup> (New section) There is created in the General Fund a  
2 dedicated, non-lapsing fund to be known as the “Foreclosure  
3 Mediation Fund,” to be held separate and apart from all other funds  
4 of the State. The fund shall be administered by the Administrative  
5 Office of the Courts. In each action for foreclosure, the plaintiff  
6 shall pay <sup>1</sup>**[\$50]** \$75<sup>1</sup> to the clerk of the court in addition to the fee  
7 associated with the filing of the first paper <sup>1</sup>. Of that \$75 payment<sup>1</sup> ,  
8 <sup>1</sup>\$50<sup>1</sup> and all monies collected from each civil penalty imposed for  
9 violations of subsection b. of section 5 of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_ )  
10 (pending before the Legislature as this bill), shall be deposited in  
11 the fund. The monies shall be appropriated annually by the  
12 Legislature to the Administrative Office of the Courts for the  
13 purposes of the operation of the Foreclosure Mediation Program <sup>1</sup>,  
14 including the compensation of mediators.<sup>1</sup> and to enhance the  
15 integrity of the mortgage foreclosure review process. All interest or  
16 other income earned on monies deposited into the fund, and any  
17 monies that may be appropriated or otherwise become available for  
18 the purpose of the fund, shall be credited and deposited into the  
19 fund. <sup>1</sup>The remaining \$25 collected from each filing fee shall be  
20 used to reimburse trained foreclosure prevention and default  
21 mitigation counselors for their services, pursuant to P.L. \_\_\_\_\_,  
22 c. \_\_\_\_\_ (C. \_\_\_\_\_ ) pending before the Legislature as this bill).<sup>1</sup>

23  
24       <sup>1</sup>**[7.] 8.**<sup>1</sup> Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended  
25 to read as follows:

26       4. a. Upon failure to perform any obligation of a residential  
27 mortgage by the residential mortgage debtor and before any  
28 residential mortgage lender may accelerate the maturity of any  
29 residential mortgage obligation and commence any foreclosure or  
30 other legal action to take possession of the residential property  
31 which is the subject of the mortgage, the residential mortgage  
32 lender shall give the residential mortgage debtor notice of such  
33 intention at least 30 days in advance of such action as provided in  
34 this section.

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

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

- 44       (1) the particular obligation or real estate security interest;  
45       (2) the nature of the default claimed;  
46       (3) the right of the debtor to cure the default as provided in  
47 section 5 of **[this act]** P.L.1995, c.244 (C.2A:50-57);

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

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

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

13 (7) that if the lender takes the steps indicated pursuant to  
14 paragraph (6) of this subsection c., a debtor shall still have the right  
15 to cure the default pursuant to section 5 of **[this act]**  
16 P.L.1995, c.244 **'[(C.2A:50-57)] (C.2A:50-57)'**<sup>1</sup>, but that the debtor  
17 shall be responsible for the lender's court costs and attorneys' fees  
18 in an amount not to exceed that amount permitted pursuant to the  
19 Rules Governing the Courts of the State of New Jersey;

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

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

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

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

45 (12) that if the lender takes the steps indicated pursuant to  
46 paragraph (6) of this subsection, the debtor has the option to  
47 participate in the Foreclosure Mediation Program <sup>1</sup>**[by submitting a**

1 mediation request to the court<sup>1</sup> following the filing of a mortgage  
2 foreclosure complaint <sup>1</sup>by initiating mediation pursuant to  
3 paragraph (2) of subsection a. of section 4 of P.L. , c. (C. )  
4 (pending before the Legislature as this bill)<sup>1</sup> . Notice of the option  
5 to participate in the Foreclosure Mediation Program shall adhere to  
6 the requirements of section 3 of P.L. , c. (C. ) (pending  
7 before the Legislature as this bill) and any court rules, procedures,  
8 or guidelines adopted by the Supreme Court.

9 d. The notice of intention to foreclose required to be provided  
10 pursuant to this section shall not be required if the debtor has  
11 voluntarily surrendered the property which is the subject of the  
12 residential mortgage.

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

18 f. Compliance with this section shall be set forth in the  
19 pleadings of any legal action referred to in this section. If the  
20 plaintiff in any complaint seeking foreclosure of a residential  
21 mortgage alleges that the property subject to the residential  
22 mortgage has been abandoned or voluntarily surrendered, the  
23 plaintiff shall plead the specific facts upon which this allegation is  
24 based.

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

26

27 <sup>1</sup>**[8.] 9.**<sup>1</sup> This act shall take effect <sup>1</sup>**[immediately]** on the first  
28 day of the seventh month next following enactment<sup>1</sup>.