

SENATE, No. 3411

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JANUARY 31, 2019

Sponsored by:

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Senator TROY SINGLETON

District 7 (Burlington)

Senator DAWN MARIE ADDIEGO

District 8 (Atlantic, Burlington and Camden)

SYNOPSIS

Requires notice of intention in residential mortgage foreclosure actions to be filed no more than 180 days prior to commencing foreclosure; limits reinstatements of dismissed mortgage foreclosure actions.

CURRENT VERSION OF TEXT

As introduced.



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 default
17 as provided in section 5 of P.L.1995, c.244 (C.2A:50-57) at least 30
18 days, but not more than 180 days, in advance of such action as
19 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.

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

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

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

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

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

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

37 d. The notice of intention to foreclose required to be provided
38 pursuant to this section shall not be required if the debtor has
39 voluntarily surrendered the property which is the subject of the
40 residential mortgage.

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

46 f. Compliance with this section shall be set forth in the
47 pleadings of any legal action referred to in this section. If the
48 plaintiff in any complaint seeking foreclosure of a residential

1 mortgage alleges that the property subject to the residential
2 mortgage has been abandoned or voluntarily surrendered, the
3 plaintiff shall plead the specific facts upon which this allegation is
4 based.

5 g. If more than 180 days have elapsed since the date the notice
6 required pursuant to this section is sent, and any foreclosure or
7 other legal action to take possession of the residential property
8 which is the subject of the mortgage has not yet been commenced,
9 the lender shall send a new written notice at least 30 days, but not
10 more than 180 days, in advance of that action.

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

12
13 2. (New section) a. If a plaintiff's action to foreclose a
14 residential mortgage has been dismissed without prejudice pursuant
15 to R.4:64-8 of the Rules Governing the Courts of New Jersey of the
16 State of New Jersey, reinstatement of the plaintiff's action may be
17 permitted only on motion for good cause shown and reinstatements
18 shall be limited to three for any action. The fee for a plaintiff to
19 reinstate a residential mortgage foreclosure action shall be twice the
20 amount set by the Administrative Office of the Courts for filing a
21 foreclosure complaint. The plaintiff shall not charge or otherwise
22 pass a reinstatement fee onto the debtor or any other person.

23 b. The amounts paid by plaintiffs for reinstating a mortgage
24 pursuant to subsection a. of this section, that are over and above the
25 amounts set by the Administrative Office of the Courts for filing a
26 foreclosure complaint, shall be aggregated and divided equally on
27 an annual basis, with one-half dedicated to the New Jersey Housing
28 and Mortgage Finance Agency for the purposes of funding the
29 counseling component provided by the agency for the New Jersey
30 Judiciary's Foreclosure Mediation Program, and one-half dedicated
31 to the Administrative Office of the Courts for the general operations
32 provided by the office for the New Jersey Judiciary's Foreclosure
33 Mediation Program.

34
35 3. This act shall take effect on the first day of the fourth month
36 next after enactment.

37 38 39 STATEMENT

40
41 This bill revises the "Fair Foreclosure Act," P.L.1995, c.244
42 (C.2A:50-53 et seq.) to require that a notice of intention to
43 foreclose, including a notice of the right to cure the default, which
44 currently must be sent at least 30 days in advance of a residential
45 mortgage lender commencing foreclosure or other legal action to
46 take possession of a residential property, shall not be sent more than
47 180 days in advance of taking that action.

1 Specifically, the bill provides that, if more than 180 days have
2 elapsed since the date the notice of intent to foreclose is sent, and
3 any foreclosure or other legal action to take possession of the
4 residential property has not yet been commenced, a new notice shall
5 be sent at least 30 days, but not more than 180 days, in advance of
6 that action.

7 The bill also requires the notice of intention to foreclose to
8 include notice that the debtor is entitled to housing counseling, at
9 no cost to the debtor, through the Foreclosure Mediation Program
10 established by the New Jersey Judiciary, including information on
11 how to contact the program.

12 The bill also provides that if a plaintiff's action to foreclose a
13 residential mortgage has been dismissed without prejudice pursuant
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