

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 4034 and 4226**

with committee amendments

STATE OF NEW JERSEY

DATED: JULY 27, 2020

The Assembly Appropriations Committee reports favorably Assembly Bill Nos. 4034 and 4226 (ACS), with committee amendments.

As amended, this bill would provide protections to certain homeowners, tenants, and landlords during the COVID-19 pandemic emergency period. Under the bill, “emergency period” means the period during which a public health emergency exists as declared by the Governor in Executive Order No. 103 of 2020, as extended, and the 60 days following the conclusion of this period.

The bill provides that, during the emergency period, a creditor is required to grant a mortgage forbearance to an impacted homeowner if the impacted homeowner submits a written request to the mortgage servicer affirming the following:

(1) the impacted homeowner has suffered a substantial reduction of income resulting from COVID-19 or the Public Health Emergency or State of Emergency declared in response thereto, including a financial hardship from a reduction in hours or loss of employment, or increased costs incurred in necessary child care resulting from the closure of schools or caring for family members who are ill due to COVID-19 or quarantined due to a suspected exposure to COVID-19, or for funeral costs due to COVID-19;

(2) the gross household income of the homeowner does not exceed 150 percent of the area median income after hardship, unless this requirement for eligibility is waived by the mortgage lender; and

(3) the impacted homeowner’s bank accounts collectively contain less than six months’ reserves of the impacted homeowner’s gross household income for 2019.

Upon receipt of a request for a mortgage forbearance from an impacted homeowner, the bill requires a creditor to provide to the impacted homeowner with a mortgage forbearance and confirmation of that forbearance in writing.

The minimum initial mortgage forbearance period of an impacted homeowner is to be 90 days. An impacted homeowner may request, and is to be granted, a subsequent forbearance period

of at minimum 90 days, for a total of at minimum 180 days. Fees, penalties, or interest, including attorney's fees, shall not be assessed or accrue during and as a result of a mortgage forbearance.

Consistent with federal law, the bill provides that a creditor shall not furnish negative mortgage payment information to a debt collector or credit reporting agency related to mortgage payments subject to a mortgage forbearance under the bill. In response to a complaint to the Attorney General from an impacted homeowner, the Attorney General may bring an action alleging a creditor has violated this prohibition.

Under the bill, the repayment period of any mortgage subject to the forbearance would be extended by the number of months the forbearance is in effect. The payments not made during the months of the forbearance would instead be due on a monthly basis during the period constituting an extension of the mortgage, unless the property owner chooses to make these payments earlier.

An impacted homeowner denied a forbearance under the bill by a creditor licensed by the Department of Banking and Insurance ("DOBI"), and not a State- or nationally-chartered financial institution, may file a complaint with DOBI. The department would be required to investigate the complaint and, if appropriate, would order the creditor to grant a forbearance to the impacted homeowner.

The bill also provides that, prior to the end of the emergency period, a landlord or owner of a residential property would not, for the purposes of a residential eviction for nonpayment or habitually late payment of rent, defined as a "non-essential eviction":

- (1) terminate a tenancy;
- (2) file a summary dispossess action; or
- (3) send any notice, including a notice to quit, requesting or demanding that a tenant of a residential property vacate the premises.

The bill would further require that, upon the filing of a landlord tenant complaint, the plaintiff landlord would be required to certify that the complaint is not seeking to evict an impacted tenant of the tenant's primary residence due to nonpayment or habitually late payment of rent due during the emergency period, except where the impacted tenant has failed to repay rent due during the emergency period in accordance with a repayment plan entered in compliance with the bill. No later than 60 days following enactment of the bill, the plaintiff landlord in any landlord/tenant action pending before the court would also be required to certify that the landlord-tenant complaint is not brought to evict an impacted tenant of the impacted tenant's primary residence due to nonpayment or habitually late payment of rent due during the emergency period, unless the impacted tenant has failed to repay rent due during the emergency

period in accordance with a repayment plan entered in compliance with the bill.

Consistent with federal law, a landlord is required not to furnish rental payment data to a collection or credit reporting agency related to the non-payment of rent during the emergency period. The bill further prohibits landlords from refusing to rent to a tenant or submit the tenant's information for placement on a list for the use of other landlords because of any record or information reflecting the tenant's non-payment of rent during the emergency.

Under the bill, in response to a complaint to the Attorney General from an impacted tenant, the Attorney General may bring an action alleging a landlord has violated prohibition on the furnishing of information to a collection or credit reporting agency. However, if a landlord furnishes rental payment data to a collection or credit reporting agency related to the non-payment of rent during the emergency period, but before the enactment of this bill, then the landlord would not be subject to this penalty provision, except for an order to retract of the report.

Additionally, the bill provides that, in order to avoid mass evictions and widespread homelessness following the conclusion of the moratorium on evictions required under the bill, a landlord shall offer each tenant who has missed any partial or full rent payments prior to the end of the emergency period the ability to enter into an agreement, which would be an addendum to the lease agreement, for the repayment of any partial or full rent payments not made during the emergency period, provided the tenant's rent payments were current including payments held in escrow as of the effective date of Executive Order No. 106 of 2020.

The bill prohibits a tenant from accepting an offer from a landlord if the tenant's gross household income exceeds 100 percent of the area median income after hardship unless the landlord makes an exception; or the tenant possesses one or more bank accounts that collectively contain reserves equaling six months' or more of the tenant's gross household income for 2019.

To prevent a landlord from losing their primary home in a foreclosure due to COVID-19 economic hardship, the bill would exempt owners of owner-occupied properties with four or less units from having to enter into a rent repayment plan with their impacted tenant if after the owner has completed an application for a mortgage forbearance, but is denied the forbearance. Creditors covered in this bill would be prohibited from denying a landlord of an owner-occupied property a mortgage forbearance if their tenants cannot pay rent.

During the repayment period, a landlord would be prohibited from imposing any late fees or any other fees, including attorney's fees, for rent payments not made during the emergency period.

Additionally, the bill requires the Department of Community Affairs to prepare and make available on its Internet website a statement of the rights and responsibilities of impacted tenants and landlords for the repayment of missed rent payments and an explanation of, and model template for, the default repayment plans available pursuant to the bill. This statement and templates shall be printed in the English, Spanish, Arabic, French, Russian, Korean, Chinese, and Vietnamese languages. Under the bill, every landlord is required to distribute one copy of the statement and templates prepared and made available to each of their impacted tenants within 10 business days after it has been made available by the department, and landlords may not demand payment of unpaid rent until after the statement and templates have been distributed to each impacted tenant. If a landlord fails to comply with this distribution requirement, this failure may be used by the impacted tenant as an affirmative defense to an action seeking the recovery of rent, or to a landlord-tenant complaint seeking a judgment for possession against the impacted tenant, if brought by the landlord to recover rent due during the emergency period.

The bill provides that, within 10 business days following the conclusion of the emergency period, a landlord is required to calculate all partial or full rent payments legally owed and not made during the emergency period by each impacted tenant liable for rent repayment pursuant to the bill. After determining the amount of the missed payments and applying all credits, if any, due to the impacted tenant, the landlord is required to provide each impacted tenant with a written notice, using the template to be prepared and made available on its website by the department, of the amount owed by the impacted tenant in a form that specifies, in detail, the amount claimed to be due and an itemization of all credits to which the impacted tenant is entitled. All amounts shall be legal and in compliance with all applicable laws, including local rent control ordinances.

If the impacted tenant does not agree with the amount claimed due, the notice shall provide that the impacted tenant shall notify the landlord within 25 days after the date on which the rent and arrearage repayments are to commence; provided, however, that the impacted tenant shall still begin repayment of missed rent pursuant to the repayment agreement. If the landlord fails to demonstrate the correctness of the amount assessed of rent due and owing by the impacted tenant, then the landlord shall refund any incorrectly assessed amount paid by the tenant plus a penalty of 20 percent of such amount within 30 days.

The bill would require an impacted tenant and landlord to enter into a written agreement for any unpaid rent during the emergency period. If the landlord and impacted tenant are unable to reach an agreement, or if the agreement is deemed to be unaffordable by the

tenant, the bill would require any unpaid rent during the emergency period to be paid through a default repayment plan. The default repayment plan would provide an impacted tenant with six months to repay each month's-worth of rent that was unpaid during the emergency period. However, if this schedule would take over 30 months to repay, then the default repayment plan would require repayments for only 30 months, with each monthly repayment consisting of one-thirtieth of the total amount of rent left unpaid during the emergency period. A surrender of property by an impacted tenant would not relieve the impacted tenant from the obligation to pay any rent missed during the emergency period or restrict a landlord's ability to recover such rent.

The bill provides that it would be unlawful discrimination in violation of the "New Jersey Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) for a creditor or landlord to discriminate in application of the bill because of an impacted homeowners' or tenant's race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, or source of lawful income used for rental or mortgage payments.

The bill would additionally require that, upon written request from a tenant, including electronic communication, money or other forms of security deposited would be applied to or credited towards rent payments due or to become due from the tenant during the emergency period.

When a tenant applies money or other forms of security deposited or advanced to pay rent, the following additional provisions would also apply for the duration of the tenant's current contract, lease, or license agreement:

(1) The landlord would be able to recoup from the tenant any monies the landlord expended that would have been reimbursable by the money or other forms of security deposited or advanced by the tenant, or interest or earnings thereon, at the time that reimbursement from such money, security, interest, or earnings would have taken place; and

(2) The tenant would otherwise be without obligation to deposit or advance further money or forms of security relating to the contract, lease, or license agreement. However, if the tenant and landlord extend or renew their contract, lease, or license agreement following the effective date of the bill, then the tenant would be obligated to replenish the money or forms of security required under the contract, lease, or license agreement in full on or before the end of the emergency period, or on the date on which the

current contract, lease, or license agreement is extended or renewed, whichever is later.

The bill also would establish within the “New Jersey Housing and Mortgage Finance Agency” (HMFA) a “COVID-19 Impact Fund.” Proceeds of the fund may be used: (a) to maintain mortgage payments and related fees and escrows owed to HMFA for properties which are approved for mortgage forbearance or otherwise materially impacted by the impact of COVID-19; and (b) in cases where the value of the Low-Income Housing Tax Credit has been reduced due to the impact of the public health crisis caused by the COVID-19 pandemic, to close the financing gap caused by the pricing drop and ensure that the production of affordable housing can continue. The Executive Director of HMFA would be permitted to petition the Commissioner of Community Affairs to transfer funds from the New Jersey Affordable Housing Trust Fund to the COVID-19 Impact Fund.

This bill would take effect immediately and would apply retroactively to rent and mortgage payments missed subsequent to March 9, 2020.

COMMITTEE AMENDMENTS

The committee amendments to this bill make the following changes:

- Revise the definition of “creditor” to remove a reference to the “Mortgage Electronic Registration System” and clarify a reference to “mortgage servicers” within the definition;
- Replace “creditor” with “mortgage servicer” as appropriate;
- Revise the “emergency period” definition to incorporate the 60 days following the conclusion of the emergency period;
- Revise the “impacted homeowner” definition to allow certain landlords to benefit from the forbearance protections established in the bill;
- Revise provisions of the “impacted tenant” definition;
- Revise the “non-essential eviction” definition to mean an eviction for nonpayment or habitually late payment of rent;
- Remove a limitation from the bill that would have prevented households not current on mortgage payments as of February 1, 2020, from requesting a forbearance;
- Change a limitation on who may request a forbearance as an impacted homeowner, or who may accept relief through a lease addendum as an impacted tenant, from a prohibition on those with a gross income exceeding \$150,000 after hardship to a prohibition on those with gross income exceeding 150 percent and 100 percent of area median income post hardship for impacted homeowners and impacted tenants respectively;
- Permit a forbearance to be requested verbally;

- Clarify that the bill would not prohibit a creditor from offering a more extensive forbearance period than the period established in the bill;
- Clarify the types of penalties and interest that a creditor may not compel payment of during the forbearance period;
- Revise parameters in the bill on how complaints may be initiated in relation to the bill's restrictions on disseminating information to credit reporting agencies and others on impacted homeowners and tenants;
- Clarify that impacted homeowners may not file complaints with the Department of Banking and Insurance ("DOBI") against financial institutions that are not licensed with DOBI;
- Provide the Superior Court and DOBI with control over how forbearance-related information is provided to them, and how the information is open to public inspection;
- Clarify what types of mortgage loans would be affected by the forbearance provisions of the bill;
- Clarify that the bill would not prohibit forbearance requests to be made electronically;
- Remove a restriction from the bill that would have expressly prohibited courts from accepting for filing a summons or complaint of a non-essential eviction action, or from issuing certain judgments during the emergency period;
- Require that, upon the filing of a landlord-tenant complaint, the plaintiff landlord would certify that the complaint is not to evict an impacted tenant of the tenant's primary residence due to nonpayment or habitually late payment of rent due during the emergency period, except where the impacted tenant has failed to repay in accordance with a repayment plan entered in compliance with the bill;
- Require that, no later than 60 days following enactment of the bill, the plaintiff landlord in any landlord-tenant action pending before the court would also be required to certify that the landlord-tenant complaint is not brought to evict an impacted tenant of the impacted tenant's primary residence due to nonpayment or habitually late payment of rent due during the emergency period, unless the impacted tenant has failed to repay rent due during the emergency period in accordance with a repayment plan entered in compliance with the bill;
- Throughout the bill, clarify what provisions apply to all tenants and what applies to impacted tenants exclusively;
- Limit the tenants to whom a landlord is required to provide a lease addendum offer, and a statement of the rights and responsibilities of impacted tenants and landlords, to only those tenants who have missed a partial or full rent payment during the emergency period;

- To prevent a landlord from losing their primary home in a foreclosure due to COVID-19 economic hardship, exempt owners of owner-occupied properties with four or less units from having to enter into a rent repayment plan with their impacted tenant, if the owner completes a forbearance application and is denied;
- Prohibit creditor covered by the bill from denying an owner occupied property a mortgage forbearance if their tenants cannot pay rent;
- Require the lease addendum offer to be provided in writing to the tenant by hand delivery, regular mail or e-mail, in addition to the statement of the rights and responsibilities of impacted tenants and landlords;
- Clarify the enforcement mechanism for fraudulent a tenant's fraudulent claim of qualifying as an impacted tenant;
- Remove language from the bill authorizing impacted tenants to assert certain additional objections, such as habitability, to an action for the amount claimed due under a lease addendum, because the authority of a tenant, under appropriate conditions, to assert these additional objections is already available in existing law, making the language redundant;
- Require that if a landlord-tenant complaint seeking judgment for possession is filed, the court shall offer the parties the opportunity to settle the case, through which the parties would have to voluntarily agree to participate in the settlement conference/mediation and would have to voluntarily agree to any resulting settlement;
- Revise the rent repayment options to allow, under a default repayment plan, six months to repay each month of unpaid rent that had been due during the repayment period, such that each repayment could consist of no more than one-sixth of monthly rent;
- Require a 30-month cap to the default repayment plan;
- Make the default repayment plan only apply if a landlord and impacted tenant are unable to reach an agreement, or if the agreement is deemed to be unaffordable by the tenant;
- Permit tenant security deposits to be applied against rent under certain circumstances;
- Establish within the "New Jersey Housing and Mortgage Finance Agency" (HMFA) a "COVID-19 Impact Fund;" and
- Make technical changes to the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the enactment of the bill would result in an indeterminate increase in general State expenditures, primarily through administrative expenses borne by the Department of Community Affairs, the Department of

Banking and Insurance, the Attorney General, and the Administrative Director of the Courts.

Each entity is required to promulgate forms or investigate complaints to enable the bill's protections for homeowners, tenants, and landlords during the COVID-19 pandemic emergency period.

The Attorney General is permitted to impose fines, not to exceed \$5,000 per violation on non-compliant creditors or per impacted tenant on non-compliant landlords, which could reduce some of the added financial burden involved in investigating complaints.

Additionally, the New Jersey Housing and Mortgage Finance Agency (HMFA) would establish a "COVID-19 Impact Fund" to (1) maintain mortgage payments for the HMFA properties impacted by the bill's mortgage forbearance or COVID-19; and (2) ensure the continuation of affordable housing production despite the reduced value of the Low-Income Housing Tax Credit caused by COVID-19.

However, the bill appropriates no monies and solely permits the HMFA's Executive Director to petition the Commissioner of Community Affairs to transfer funds from the New Jersey Affordable Housing Trust Fund to the COVID-19 Impact Fund.