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SYNOPSIS
Provides mortgage payment relief, consumer reporting protection, and eviction protection for residential property owners, tenants, and other consumers, economically impacted during time of coronavirus disease 2019 pandemic.

CURRENT VERSION OF TEXT
Substitute as adopted by the Assembly Housing Committee.

(Sponsorship Updated As Of: 7/2/2020)
AN ACT concerning protections for residential property owners and tenants during emergency circumstances and amending P.L.2020, c.1.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. (New section) The Legislature finds and declares that:
   a. The social distancing measures and associated economic pause, that have been necessary to combat the COVID-19 pandemic, have also forced many New Jersey residents to endure job losses and prolonged depletions of income;
   b. As of May 8, 2020, the unemployment rate of the United States exceeds 14 percent, and is widely expected to grow higher in the coming weeks;
   c. The residents of New Jersey have not been able to avoid suffering as a result of the COVID-19 pandemic, as the State is widely reported to have the second highest COVID-19-related death rate in the nation, and the economic impact on many State residents appears to be similarly catastrophic;
   d. This unprecedented situation has made the timely payment of mortgages, rent, and other bills impossible for many State residents; and
   e. It is, therefore, necessary and in the public interest for the Legislature to enact temporary measures to protect the State’s homeowners, residential tenants, student loan borrowers and other vulnerable consumers from foreclosure, eviction, and consumer reporting injustices that are in danger of resulting from this unprecedented emergency.

2. (New section) As used in P.L. , c. (C. ) (pending before the Legislature as this bill):
   “Creditor” means a person or entity that holds or controls, partially, wholly, indirectly, directly or in a nominee capacity, a mortgage loan securing an owner-occupied residential property, including, but not limited to, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder, Mortgage Electronic Registration System, or mortgage servicer.
   “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.
   “Impacted homeowner” means an owner or mortgagor of title to a residential property, which serves as such person’s primary residence, and who qualifies for a mortgage forbearance pursuant to section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).
   “Impacted tenant” means a tenant has suffered a negative financial impact resulting from COVID-19 or the Public Health
Emergency or State of Emergency declared in response thereto, including but not limited to a financial hardship from a reduction in hours or loss of employment, loss of income 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;

“Landlord” means any person, or agent or assignee thereof, who rents or leases or offers to rent or lease, for a term of at least one-month, dwelling units, except dwelling units in hotels, motels or other guest houses serving transient or seasonal guests.

“Mortgage forbearance” or “forbearance” means a period during which obligations for mortgage principal and interest payments are suspended.

“Non-essential eviction” means an eviction other than for the purpose of removing a residential tenant in the interests of justice whose conduct endangers the health and safety of others.

“Residential property” means a property located in the State rented or owned for residential purposes; provided, however, that residential property shall be limited to the principal residence of a person or a residential health care facility. “Residential property” shall not include an investment property or residence other than a primary residence; residential property taken in whole or in part as collateral for a commercial loan; or a property subject to condemnation or receivership.

3. (New section) a. During the emergency period, a creditor shall grant a mortgage forbearance to an impacted homeowner if the impacted homeowner submits a written request to the creditor affirming the following:

(1) the mortgage loan on residential property for which a mortgage forbearance is being requested pursuant to this section was current with respect to payments as of February 1, 2020;

(2) the impacted homeowner has suffered a negative financial impact resulting from COVID-19 or the Public Health Emergency or State of Emergency declared in response thereto, including but not limited to a financial hardship from a reduction in hours or loss of employment, loss of income 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;

(3) the gross household income of the homeowner does not exceed $150,000 after hardship, unless this requirement for eligibility is waived by the mortgage lender; and

(4) if the impacted homeowner possesses one or more bank accounts, those bank accounts collectively contain less than six months’ reserves of the impacted homeowner’s gross household
income for 2019. The creditor may require the impacted homeowner to provide a cash asset certification to demonstrate compliance with this paragraph.

b. Upon receipt of a written request for a mortgage forbearance from an impacted homeowner pursuant to subsection a. of this section, a creditor shall provide to the impacted homeowner a mortgage forbearance and confirmation of that forbearance in writing. No additional documentation shall be required from the impacted homeowner by the creditor other than the written request under subsection a. of this section. The minimum initial mortgage forbearance period of an impacted homeowner shall be 90 days. An impacted homeowner may request, and shall 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 granted pursuant to this section. Nothing in this section shall be construed to impact property tax and insurance obligations of an owner related to any real property in the State. A mortgagee that grants a mortgage forbearance pursuant to this section shall encourage owners to seek out United States Department of Housing and Urban Development certified housing counseling and shall provide to the property owner confirmation of the approval of the forbearance, information concerning the process for forbearance, and information on how to request a subsequent forbearance.

c. (1) Consistent with the provisions of 15 U.S.C. §1681s-2(a)(1)(F), 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 this section.

(2) An impacted homeowner or the Attorney General may bring an action alleging a creditor has violated the provisions of this subsection. Upon a finding that non-compliance by a creditor with this section has occurred, a court of competent jurisdiction may:

(a) order the non-compliant creditor to retract the debt reported to the collection or credit reporting agency, bureau, or data collection facility;

(b) impose a fine on the non-compliant creditor, not to exceed $5,000;

(c) order the non-compliant creditor to pay a reasonable counsel fee in connection with an impacted homeowner whose debt has been reported to a collection or credit reporting agency, bureau, or data collection facility;

(d) provide a copy of the order immediately and at no cost to the impacted homeowner;

(e) order the non-compliant creditor to take such steps as are necessary, within 30 days of the order, to rehabilitate the credit record of an impacted homeowner, with a showing made to the
court and exact copy provided at no cost to the homeowner of the
efforts made in that regard; and

(f) order the non-compliant creditor to pay an award of damages
to the impacted homeowner not to exceed 25 percent of the debt
attempted to be collected or reported by the non-compliant creditor
to the collection or credit reporting agency, bureau, or data
collection facility, the minimum award being $350.

d. During the emergency period and during any period of
mortgage forbearance granted pursuant to this section, a creditor
shall not, for the purposes of foreclosure of a residential property
that is not vacant, abandoned or otherwise subject to P.L.2003,
c.210 (C.55:19-78 et seq.):

   (1) send an impacted homeowner a notice of intention to
foreclose pursuant to section 4 of P.L.1995, c.244 (C.2A:50-56); or

   (2) otherwise initiate the foreclosure process.

   A deadline or time period for action by a party to the foreclosure
process for a residential property filed prior to the effective date of
P.L. , c. (C. ) (pending before the Legislature as this bill) shall
be tolled until the end of the emergency period.

e. Notwithstanding the provisions of any law, rule, or
regulation to the contrary, the repayment period of any mortgage
subject to the forbearance established pursuant to this section shall
be extended by the number of months the forbearance is in effect.
The payments not made during the months of the forbearance shall
instead be due on a monthly basis during the period constituting an
extension of the mortgage, unless the property owner has chosen to
make these payments earlier. During the time of the forbearance,
and during the period constituting an extension of the mortgage, all
terms and conditions of the original mortgage, except with regard to
default and delinquency during forbearance, shall continue without
modification, and there shall be no fees assessed, including
attorney’s fees, related to the forbearance or late payment, or
penalty for early repayment. An impacted homeowner shall have
the option to discontinue the mortgage forbearance at any time at
the election of the impacted homeowner upon written consent and a
written statement that they would have the rights provided herein
and knowingly waive those rights.

f. An impacted homeowner denied a forbearance under this
section by a creditor licensed by the Department of Banking and
Insurance may file a complaint with the Department of Banking and
Insurance. The department shall investigate the complaint and, if
appropriate, shall order the creditor to grant a forbearance to the
impacted homeowner pursuant to this section.

g. The creditor shall provide the docket numbers, party names,
and property addresses as to any pending court actions involving
any property granted a forbearance to the Superior Court Clerk’s
Office at least monthly. The creditor shall submit information on
all forbearances that the creditor has provided to the Department of
Banking and Insurance on a monthly basis, after removing all personally-identifiable information. This information shall be deemed to be government records and subject to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as the open public records act.

h. To the extent any provision of this section is in conflict with federal laws and guidelines, such provision shall not apply to any mortgage loans made, insured, or securitized by any agency or instrumentality of the United States, any Government Sponsored Enterprise, or a Federal Home Loan Bank.

i. It shall be an 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 to discriminate in application of the provisions of this section because of an impacted homeowners’ 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 mortgage payments.

j. This section shall not be construed to prohibit a creditor from considering an oral request for a mortgage forbearance instead of a written request submitted pursuant to subsection a. of this section.

4. (New section)  
a. Prior to the 60th day next following the end of the emergency period, a landlord or owner of a residential property shall not, for the purposes of a non-essential eviction for a residential property:

(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.

b. Prior to the 60th day next following the end of the emergency period, a court having jurisdiction over an action for summary dispossess shall not, in a non-essential eviction for a residential property:

(1) accept for filing a summons or complaint;

(2) enter a judgment or default judgment for a plaintiff for possession of a residential property;

(3) issue warrant of removal;

(4) deny, upon the request of a defendant, a stay of execution, or upon the request by a party, a continuance of a summary dispossess case; or

(5) schedule a court event, including a summary dispossess trial.

c. A deadline or time period for action by a party to a non-essential eviction for a residential property shall be tolled until the 60th day next following the end of the emergency period.
d. Nothing in this section shall relieve a tenant from the 
obligation to pay rent or restrict a landlord’s ability to recover rent 
consistent with the provisions of section 6 of P.L.    , c.   (C.     ) 
(pending before the Legislature as this bill).

5. (New section) a. Prior to the 60th day next following the end 
of the emergency period, a landlord shall not impose a late fee for 
non-payment of rent for a residential property that was due during 
the emergency period.

b. (1) Consistent with the provisions of 15 U.S.C. s.1681s-
2(a)(1)(F), a landlord shall not furnish rental payment data to a 
collection or credit reporting agency related to the non-payment of 
rent during the emergency period and the 60 days next following 
the end of the emergency period.

(2) A landlord shall not refuse to rent to a tenant or place, or 
disseminate a tenant’s information for the purpose of placing, a 
tenant on a list for the use of other landlords, as a result of any 
record or information reflecting the tenant’s non-payment of rent 
during the emergency period and the 60 days next following the end 
of the emergency period.

c. A tenant or the Attorney General may bring an action 
alleging a landlord has violated the provisions of subsection b. of 
this section concerning the furnishing of information to a collection 
or credit reporting agency. Upon a finding that non-compliance by 
a landlord with subsection b. of this section has occurred, a court of 
competent jurisdiction may:

(1) order the non-compliant landlord to retract the report of 
debt provided to the collection or credit reporting agency, bureau, 
or data collection facility;

(2) impose a fine on the non-compliant landlord, not to exceed 
$5,000 per tenant;

(3) order the non-compliant landlord to pay a reasonable 
counsel fee in connection with a tenant whose debt has been 
reported to a collection or credit reporting agency, bureau, or data 
collection facility;

(4) provide a copy of the order immediately and at no cost to 
the impacted homeowner;

(5) order the non-compliant landlord to take such steps as are 
necessary, within 30 days of the order, to rehabilitate the credit 
record of a tenant, with a showing made to the court, and exact copy 
provided to the tenant at no cost, of the efforts made in that regard; 
and

(6) order the non-compliant landlord to pay an award of 
damages to the impacted tenant not to exceed 25 percent of the debt 
tried to be collected or reported by the non-compliant landlord 
to the collection or credit reporting agency, bureau, or data 
collection facility, the minimum award being $350.
6. (New section) a. In order to avoid mass evictions and widespread homelessness following the conclusion of the moratorium on evictions required by section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill), a landlord shall offer each tenant of the properties owned by the landlord the ability to enter into an agreement pursuant to subsection d. of this section, which shall be an addendum to the lease agreement, for the repayment of any partial or full rent payments not made during the emergency period and the 60 days next following the end of the emergency period, provided the impacted tenant’s rent payments were current including payments held in escrow as of the effective date of Executive Order No. 106 of 2020.

(1) A tenant shall not accept an offer from a landlord pursuant to this subsection if (a) the tenant’s gross household income exceeds $150,000 after hardship unless the landlord makes an exception; or (b) 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. The landlord may require the impacted tenant to provide a cash asset certification to demonstrate compliance with this subparagraph.

(2) During the repayment period, a landlord shall not impose any late fees or any other fees, including attorney’s fees, for rent payments not made during the emergency period and the 60 days next following the end of the emergency period.

b. The Department of Community Affairs shall, as soon as practicable following the effective date of P.L. , c. (pending before the Legislature as this bill), 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 pursuant to this section and an explanation of, and model template for, the default repayment plans available pursuant to subsection d. of this section. This statement and templates shall be printed in the English, Spanish, Arabic, French, Russian, Korean, Chinese, and Vietnamese languages. Every landlord shall distribute one copy of the statement and templates prepared and made available pursuant to this subsection to each of their 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 tenant. If a landlord fails to comply with this subsection, this failure may be used by the tenant as an affirmative defense to liability for payment of the applicable interest due in any monetary judgment action against the tenant, if brought by the landlord to recover rent due during the emergency period.

c. (1) Within 10 business days following the conclusion of the 60 days next following the end of the emergency period, a landlord shall calculate all partial or full rent payments legally owed and not made during the emergency period and the 60 days next following
the end of the emergency period by each impacted tenant liable for rent repayment pursuant to subsection a. of this section. After determining the amount of the missed payments and applying all credits, if any, due to the impacted tenant, the landlord shall 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.

(2) 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. The impacted tenant may assert any and all additional objections to the amount claimed due, including diminished habitability, payment by the impacted tenant or by others on behalf of the impacted tenant, or other legal and equitable setoffs or defenses. 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 impacted tenant plus a penalty of 20 percent of such amount.

d. Any unpaid rent during the emergency period shall be paid in accordance with whichever repayment plan set forth in paragraphs (1) and (2) of this subsection results in the lowest average monthly payments for the impacted tenant, or a plan agreed to between the landlord and impacted tenant so long as that plan has lower monthly payments than either option in paragraphs (1) or (2) of this subsection.

(1) Repayment Plan A shall provide that any unpaid rent during the emergency period shall be repaid in equal installments over the remainder of the lease and shall constitute no more than 10 percent of the impacted tenant’s net household income after taxes. The surrender of property by the tenant shall not relieve the tenant from the obligation to pay any rent missed during the emergency period or restrict a landlord’s ability to recover such rent.

(2) Repayment Plan B shall provide a tenant with six months to repay each months’ rent that was unpaid, whether in full or in part, during the emergency period. The surrender of property by the tenant shall not relieve the tenant from the obligation to pay any rent missed during the emergency period or restrict a landlord’s ability to recover such rent.

e. An agreement entered into pursuant to subsection d. of this section shall be null and void upon full payment of the monies stipulated in the agreement. Nothing in this section shall prohibit a
landlord from filing an action for eviction for the failure to pay rent
in accordance with a repayment plan in effect pursuant to
subsection a. or b. of this section after the eviction moratorium
period required by section 4 of P.L. , c. (C. ) (pending
before the Legislature as this bill) has ended.

f. Any payments made for or on behalf of an impacted tenant
by other entities, including government agencies, non-profit
organizations, or in any other manner, shall be credited against the
amount due from that impacted tenant.

g. It shall be an unlawful discrimination in violation of the
“New Jersey Law Against Discrimination,” P.L.1945, c.169
(C.10:5-1 et seq.) for a landlord to discriminate in application of the
provisions of this section because of a 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
payments.

7. Section 1 of P.L.2020, c.1 (C.2A:18-59.3) is amended to read
as follows:

1. a. Notwithstanding any other law to the contrary, whenever
a Public Health Emergency, pursuant to the "Emergency Health
Emergency, pursuant to P.L.1942, c.251 (C.App.A.9-33 et seq.), or
both, has been declared by the Governor and is in effect, the
Governor may issue an executive order to declare that a lessee,
tenant, homeowner or any other person shall not be removed from a
residential property as the result of an eviction or foreclosure
proceeding. This executive order shall remain in effect for no
longer than two months following the end of the Public Health
Emergency or State of Emergency. An executive order issued
pursuant to this subsection may be adjusted by a subsequent
executive order.

b. Eviction and foreclosure proceedings may be initiated or
continued during the time of an executive order issued pursuant to
this section [ , but enforcement ] , unless provided pursuant to a
subsequently-enacted statute, or in an executive order issued
pursuant to subsection a. of this section, that eviction actions may
not be initiated or continued for nonpayment or habitually late
payment of rent, or for another reason, during a period of time
overlapping that of the initial executive order. Enforcement of all
judgments for possession, warrants of removal, and writs of
possession shall be stayed during this period if the Governor has
issued an executive order prohibiting certain removals from
residential property pursuant to subsection a. of this section, unless
the court determines on its own motion or motion of the parties that enforcement is necessary in the interest of justice.

c. Sheriffs, court officers, and their agents shall refrain from acting to remove individuals from residential properties through the eviction or foreclosure processes during the time of an executive order issued by the Governor prohibiting certain removals from residential property pursuant to subsection a. of this section, unless the court determines on its own motion or motion of the parties that removal is necessary in the interest of justice.

d. As used in this section, "residential property" means any property rented or owned for residential purposes, including, but not limited to, any house, building, mobile home or land in a mobile home park, or tenement leased for residential purposes, but shall not include any hotel, motel, or other guest house, or part thereof, rented to a transient guest or seasonal tenant, or a residential health care facility.

8. (New section) a. The powers granted and duties imposed by this act shall be construed to be independent and severable. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the sections which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. All laws and parts of law in conflict with any of the provisions of this act are hereby construed to be inferior to this act, to the extent so in conflict.

b. It shall be an 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 provisions of this act 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.

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