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SYNOPSIS
Concerns mortgage forbearance for certain residential homeowners and protections for certain tenants and landlords during COVID-19 pandemic.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning mortgage forbearance for certain residential homeowners and protections for certain tenants and landlords during COVID-19 pandemic.

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

1. 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 2 of P.L. , c. (C. ) (pending before the Legislature as this bill).

“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.

2. 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; and

(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.

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. s.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) file a notice of a foreclosure under N.J.S.2A:15-9;

(2) exercise a power of sale;

(3) exercise a right of entry; or

(4) otherwise initiate a judicial or non-judicial foreclosure process.

A deadline or time period for action by a party to a judicial or non-judicial 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. Nothing in this section shall prohibit a creditor and impacted homeowner from entering into an alternative payment agreement for the payments subject to the mortgage
forbearance and 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. To the extent any provision of this section is in conflict with
federal law, 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.

3. 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 writ, 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 5 of P.L. , c. (C. )
(pending before the Legislature as this bill).
4. 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.
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 a tenant on a “blacklist” or any other list because 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, if the tenant provides notice and documentation to the landlord establishing that:
      (a) the tenant’s rent payments were current as of February 1, 2020, including rent payments held in escrow due to a previous landlord tenant dispute; and
      (b) the 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, 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.
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 debt reported 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 tenant not to exceed 25 percent of the debt attempted 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.

5. 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. (pending before the Legislature as this bill), a tenant and landlord shall 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 tenant’s rent payments were current including payments held in escrow as of the effective date of Executive Order No. 106 of 2020. 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 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.

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 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 tenant, the landlord shall provide each 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 tenant in a form that specifies, in detail, the amount claimed to be due and an itemization of all credits to which the
tenant is entitled. All amounts shall be legal and in compliance with all applicable laws, including local rent control ordinances.

(2) If the tenant does not agree with the amount claimed due, the notice shall provide that the 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 tenant shall still begin repayment of missed rent pursuant to the repayment agreement. The tenant may assert any and all additional objections to the amount claimed due, including diminished habitability, payment by the tenant or by others on behalf of the 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 tenant, then the landlord shall refund any incorrectly assessed amount paid by the 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 monthly payments for the tenant, or a plan agreed to between the landlord and 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 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. The subsection d. agreement shall be deemed 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 3 of P.L. c. (pending before the Legislature as this bill) has ended.

f. Any payments made for or on behalf of a tenant by other entities, including government agencies, non-profit organizations, or in any other manner, shall be credited against the amount due from that tenant.
g. The landlord is encouraged to pass on any financial relief obtained by the landlord from local, state, federal or private financial relief, including mortgage forbearance, to be applied as a credit for the months received to the tenant.

h. In any dispute, the Courts may consider whether other forms of local, state, federal or private financial relief obtained by the landlord, including mortgage forbearance, shall impact the payment period or payments required, or automatically require tenants to receive without application a level of rent reduction related to such financial relief.

6. 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 repealed, to the extent so in conflict.

7. This act shall not apply to individuals who gross more than $150,000 household income after hardship.

8. This act shall take effect immediately.

STATEMENT

This bill provides 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.

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 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; and

(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.

Upon receipt of a written request for a mortgage forbearance from an impacted homeowner pursuant to the provisions of the bill, a creditor is to provide to the impacted homeowner 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 granted pursuant to this section.

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. An impacted homeowner or the Attorney General may bring an action alleging a creditor has violated the provisions of the bill.

Under the bill, 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.

An impacted homeowner denied a forbearance under the bill 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.

The bill also provides that, 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.

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:
accept for filing a writ, 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.

The bill also provides that, 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.

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 and the 60 days next following the end of the emergency period, and no landlord shall refuse to rent to a tenant and place a renter on a “blacklist” or any list because 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, if the tenant provides notice and documentation to the landlord establishing that:

(1) the tenant’s rent payments were current as of February 1, 2020, including rent payments held in escrow due to a previous landlord tenant dispute; and
(2) the 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, 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.

Under the bill, 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.

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 tenant and landlord shall enter into an agreement pursuant to the bill, 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 tenant’s rent payments were current including payments held in escrow as of the effective date of Executive Order No. 106 of 2020. 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.

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 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 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.

The bill provides that, within 10 business days following the
conclusion of the 60 days next following the end 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
and the 60 days next following the end of the emergency period by
each 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 tenant, the landlord is required to provide
each 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 tenant in a form that specifies, in detail, the amount
claimed to be due and an itemization of all credits to which the
tenant is entitled. All amounts shall be legal and in compliance
with all applicable laws, including local rent control ordinances.

If the tenant does not agree with the amount claimed due, the
notice shall provide that the 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 tenant shall still
begin repayment of missed rent pursuant to the repayment
agreement. The tenant may assert any and all additional objections
to the amount claimed due, including diminished habitability,
payment by the tenant or by others on behalf of the 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 tenant, then the landlord shall refund any incorrectly
assessed amount paid by the tenant plus a penalty of 20 percent of
such amount.

Any unpaid rent during the emergency period is to be paid in
accordance with whichever repayment plan set forth below results
in the lowest monthly payments for the tenant, or a plan agreed to
between the landlord and tenant as long as that plan has lower
monthly payments than either option set forth below.
(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 tenant’s net household income after taxes.

(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.