

SENATE, No. 2340

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED APRIL 9, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Senators Turner, Addiego, Cardinale, Pennacchio and Thompson

SYNOPSIS

Authorizes Governor to permit mortgage forbearance and rent payment responsibility reduction for certain emergency-impacted residential property owners and tenants during emergency circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 4/13/2020)

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1 AN ACT concerning protections for residential property owners and
2 tenants during emergency circumstances and supplementing Title
3 52 of the Revised Statutes.

4

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

7

8 1. a. Notwithstanding any other law, ordinance, rule or
9 regulation to the contrary, whenever a Public Health Emergency,
10 pursuant to the “Emergency Health Powers Act,” P.L.2005, c.222
11 (C.26:13-1 et seq.), or a State of Emergency, pursuant to
12 P.L.1942, c.251 (C.App.A.9-33 et seq.), or both, has been declared
13 by the Governor and is in effect, the Governor may issue an
14 executive order to declare that an emergency-impacted homeowner
15 may apply, pursuant to subsection c. of this section, for a mortgage
16 forbearance.

17 b. A mortgage forbearance executive order shall indicate the
18 length of time, not to exceed three months, that each individual
19 forbearance shall remain in effect, which period shall commence
20 upon approval by the reviewing entity of the emergency-impacted
21 homeowner’s application.

22 c. (1) A mortgage forbearance executive order shall indicate
23 whether emergency-impacted homeowners shall apply to the
24 commissioner, or to another administrative agent, for mortgage
25 forbearances.

26 (2) An emergency-impacted homeowner may apply on forms to
27 be provided by the department for a certification of eligibility for a
28 mortgage forbearance. The application shall be submitted in
29 accordance with a deadline to be established by a mortgage
30 forbearance executive order. The reviewing entity shall approve or
31 deny an application within 30 days of its delivery. An emergency-
32 impacted homeowner shall be eligible for a mortgage forbearance
33 regardless of whether the residential property is already the subject
34 of a foreclosure proceeding prior to the effective date of a mortgage
35 forbearance executive order.

36 (3) (a) Notwithstanding the provisions of any law, rule, or
37 regulation to the contrary, the repayment period of any mortgage
38 subject to the forbearance established pursuant to this section shall
39 be extended by the number of months the forbearance is in effect.

40 (b) During the time of the forbearance, and during the period
41 constituting an extension of the mortgage, all terms and conditions
42 of the original mortgage, except with regard to default and
43 delinquency during forbearance, shall continue without
44 modification, and there shall be no fees assessed for the
45 forbearance, or penalty for early repayment.

46 (c) A mortgage forbearance executive order may designate a
47 foreclosure action filed by a bank as an unlawful practice, pursuant

1 to the New Jersey consumer fraud act, P.L.1960, c.39 (C.56:8-1 et
2 seq.), if the action is filed only as a result of not receiving mortgage
3 payments from an emergency-impacted homeowner during the time
4 period of the emergency-impacted homeowner's forbearance.

5 (4) (a) An emergency-impacted homeowner who applies for a
6 forbearance on a property as its landlord shall only be eligible for a
7 forbearance if the homeowner commits to providing any
8 emergency-impacted tenant residing in the residential property with
9 an emergency rent reduction period. A mortgage forbearance
10 executive order may direct that, when applying for a forbearance as
11 a landlord, the emergency-impacted homeowner shall indicate the
12 number of residential tenants residing in the residence, the amount
13 of rent charged to each residential tenant, contact information for
14 each residential tenant, whether any tenant's rent is subsidized by
15 the federal Housing Choice Voucher (Section 8) Program or other
16 subsidy, and provide any additional information deemed necessary.

17 (b) If directed in a mortgage forbearance executive order the
18 availability of a forbearance to a residential landlord shall be
19 restricted to a landlord of a building registered as a multiple
20 dwelling pursuant to the "Hotel and Multiple Dwelling Law,"
21 P.L.1967, c.76 (C.55:13A-1 et seq.).

22 (c) A mortgage forbearance executive order may designate that
23 a landlord has engaged in an unlawful practice, pursuant to the New
24 Jersey consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), if,
25 while in receipt of a forbearance, the landlord willfully refuses to
26 provide an emergency-impacted tenant with an emergency rent
27 reduction period.

28 (5) An emergency-impacted tenant whose landlord has been
29 provided with a forbearance may apply to the landlord for an
30 emergency rent reduction period, unless directed by a mortgage
31 forbearance executive order to apply to an alternative administrative
32 agent. A mortgage forbearance executive order shall establish
33 whether other forms of financial relief obtained by the landlord, in
34 addition to a mortgage forbearance, shall also authorize the
35 landlord's emergency-impacted tenant to apply for an emergency
36 rent reduction period. An emergency-impacted tenant shall be
37 provided with the level of rent reduction directed by a mortgage
38 forbearance executive order. A mortgage forbearance executive
39 order may authorize the rent reduction provided during an
40 emergency rent reduction period to exceed any limitation on rent
41 increases established by a "Notice of Rent Protection Emergency,"
42 pursuant to P.L.2002, c.133 (C.2A:18-61.62 et seq.). The
43 application deadline for an emergency rent reduction period shall be
44 established by a mortgage forbearance executive order.

45 (6) A mortgage forbearance executive order may provide the
46 following protections to residential tenants regardless of whether
47 the tenant's landlord has obtained a forbearance:

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- 1 (a) A mortgage forbearance executive order may provide that
2 eviction proceedings shall not be initiated or continued during the
3 time provided in the executive order, unless the court determines on
4 its own motion or motion of the parties that a proceeding is
5 necessary in the interest of justice; and
- 6 (b) A mortgage forbearance executive order may prohibit
7 landlords from imposing late fees on residential tenants.
- 8 (c) A mortgage forbearance executive order may establish a 90-
9 day repayment window for each month of rent arrears for a
10 residential tenant, beginning with the first day of the second month
11 next following the conclusion of both the state of emergency and
12 public health emergency established pursuant to subsection a. of
13 this section.
- 14 d. (1) No later than one month following the effective date of
15 this act, the commissioner, to the greatest extent reasonably
16 possible, shall:
- 17 (a) notify homeowners of the forbearance program;
- 18 (b) notify landlords who may obtain a forbearance, or other
19 qualifying financial relief, of their responsibilities to alert their
20 tenants of the option, if emergency-impacted, to apply for an
21 emergency rent reduction period.
- 22 (c) post information on eligibility and the application process
23 for the forbearance, and make forbearance applications available,
24 on the department's Internet website;
- 25 (d) notify the courts of the individuals and associated residential
26 properties that are eligible for a forbearance; and
- 27 (e) notify the State's active banks of the individuals and
28 associated residential properties that are eligible for a forbearance.
- 29 (2) Upon knowledge of a homeowner's eligibility for a
30 forbearance, the bank shall notify the homeowner and the courts.
- 31 (3) Upon approval of a forbearance application pursuant to
32 subsection c. of this section, the reviewing entity shall notify the
33 applicant, the bank, and the courts.
- 34 e. Emergency-impacted homeowners awarded a forbearance
35 under this section shall be responsible for the maintenance of the
36 property during the period of forbearance. After service of notice
37 of any proceedings conducted to terminate forbearance, made on the
38 homeowner at an address determined pursuant to due diligence of
39 the movant bank to be the actual current residence of the
40 homeowner, providing opportunity for the homeowner to respond
41 and contest the proceedings, a forbearance awarded under this
42 section shall cease immediately upon a court's determination that
43 the subject residential property has been abandoned by the
44 homeowner.
- 45 f. Nothing in this section shall be construed as limiting the
46 ability of a bank and residential property owner to participate in a
47 mediation sponsored by the Administrative Office of the Courts in
48 accordance with the requirements of the mediation program.

1 Nothing in this section shall be construed to impact property tax
2 and insurance obligations of a property owner related to any real
3 property in the State.

4 g. A mortgage forbearance executive order may limit the
5 application of this section to avoid affecting any mortgage loans
6 made, insured, or securitized by any agency or instrumentality of
7 the United States, any Government Sponsored Enterprise, or a
8 Federal Home Loan Bank, or the rights and obligations of any
9 lender, issuer, servicer or trustee of such obligations, including
10 servicers for the Government National Mortgage Association. A
11 mortgage forbearance executive order may further limit the
12 application of this section as determined necessary to comply with
13 federal law.

14 h. As used in this section:

15 “Bank” means the mortgage lender or servicer for the primary
16 residence of the emergency-impacted homeowner.

17 “Commissioner” means the Commissioner of Community
18 Affairs.

19 “Department” means the Department of Community Affairs.

20 “Emergency-impacted homeowner” means a homeowner,
21 including, but not limited to, an owner of a residential property
22 serving as the owner’s primary residence, or person or business
23 entity serving as the landlord of a residential property, who is
24 subject to a substantial loss of income, in accordance with the terms
25 of a mortgage forbearance executive order, resulting from a Public
26 Health Emergency, declared pursuant to the “Emergency Health
27 Powers Act,” P.L.2005, c.222 (C.26:13-1 et seq.), or a State of
28 Emergency, declared pursuant to P.L.1942, c.251 (C.App.A.9-33 et
29 seq.).

30 “Emergency-impacted tenant” means a tenant of a residential
31 property, who occupies the property as the tenant’s primary
32 residence, and who is subject to a substantial loss of income, in
33 accordance with the terms of a mortgage forbearance executive
34 order, resulting from a Public Health Emergency, declared pursuant
35 to the “Emergency Health Powers Act,” P.L.2005, c.222 (C.26:13-1
36 et seq.), or a State of Emergency, declared pursuant to
37 P.L.1942, c.251 (C.App.A.9-33 et seq.).

38 “Emergency rent reduction period” means a period of time
39 during which an emergency-impacted tenant is provided with a
40 reduction in rent payment responsibilities, pursuant to paragraph (5)
41 of subsection c. of this section.

42 “Mortgage forbearance” or “forbearance” means a period of time
43 during which obligations for mortgage and interest payments are
44 suspended.

45 “Mortgage forbearance executive order” means an executive
46 order issued pursuant to subsection a. of this section.

47 “Residential property” means any property rented or owned for
48 residential purposes, including, but not limited to, any house,

1 building, mobile home or land in a mobile home park, or tenement
2 leased for residential purposes, but shall not include any hotel,
3 motel, or other guest house, or part thereof, rented to a transient
4 guest or seasonal tenant, or a residential health care facility.

5 "Reviewing entity" means the entity designated in a mortgage
6 forbearance executive order, pursuant to paragraph (1) of subsection
7 c. of this section, with reviewing mortgage forbearance applications
8 submitted by emergency-impacted homeowners. A mortgage
9 forbearance executive order may designate the commissioner, the
10 commissioner's designee, the bank, or another administrative agent
11 as the reviewing entity.

12 i. The Commissioner of Community Affairs shall, pursuant to
13 the provisions of the "Administrative Procedure Act,"
14 P.L.1968, c.410 (C.52:14B-1 et seq.), adopt such rules and
15 regulations as shall be necessary to implement the provisions of this
16 section no later than one month following the effective date of this
17 act. The rules and regulations adopted by the commissioner may
18 adjust and supplement the provisions of a mortgage forbearance
19 executive order, as long as those adjustments and additions do not
20 conflict with this section.

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22 2. This act shall take effect immediately.

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STATEMENT

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27 This bill allows the Governor to permit mortgage forbearances
28 and rent payment responsibility reductions for certain emergency-
29 impacted residential property owners and tenants when a state of
30 emergency or public health emergency has been declared.

31 This bill would provide that, whenever a public health
32 emergency or a state of emergency is declared by the Governor and
33 is in effect, the Governor may issue an executive order to provide
34 that emergency-impacted homeowners, who have sustained a
35 substantial loss of income, may apply for a mortgage forbearance,
36 meaning a period of time, not to exceed three months, during which
37 obligations for mortgage and interest payments are suspended.

38 Under the bill, an emergency-impacted homeowner would apply
39 to the Commissioner of Community Affairs, or to an alternative
40 administrative agent serving as the reviewing entity, if directed by
41 the executive order, for a certification of eligibility for the
42 forbearance. The commissioner, or other reviewing entity, would
43 approve or deny an application within 30 days.

44 The forbearance period of an emergency-impacted homeowner
45 would conclude no later than three months following the
46 commencement of the forbearance period, which period would
47 commence upon application approval.

1 The repayment period of any mortgage subject to a forbearance
2 would be extended by the number of months the forbearance is in
3 effect. During the time of the forbearance and during the period
4 constituting an extension of the mortgage, all terms and conditions
5 of the original mortgage, except with regard to default and
6 delinquency during forbearance, would continue without
7 modification, and there would be no fees assessed for the
8 forbearance, or penalty for early repayment.

9 The bill includes qualifying residential landlords in its definition
10 of emergency-impacted homeowners. However, if directed in a
11 mortgage forbearance executive order, the availability of a
12 forbearance to a residential landlord would be restricted to a
13 landlord of a building registered as a multiple dwelling pursuant to
14 the “Hotel and Multiple Dwelling Law.”

15 An emergency-impacted homeowner who applies for a
16 forbearance on a property as its landlord would only be eligible for
17 a forbearance if the homeowner commits to providing any
18 emergency-impacted tenant residing in the residential property with
19 an emergency rent reduction period, consisting of a temporary
20 reduction in rent payment responsibilities.

21 An emergency-impacted tenant whose landlord has been
22 provided with a forbearance would apply to the landlord for an
23 emergency rent reduction period, unless directed by the mortgage
24 forbearance executive order to apply to an alternative administrative
25 agent. The mortgage forbearance executive order would establish
26 whether other forms of financial relief obtained by the landlord, in
27 addition to a mortgage forbearance, would also authorize the
28 landlord’s emergency-impacted tenant to apply for an emergency
29 rent reduction period. An emergency-impacted tenant would be
30 provided with the level of rent reduction directed by the mortgage
31 forbearance executive order. The mortgage forbearance executive
32 order may authorize the rent reduction provided during an
33 emergency rent reduction period to exceed any limitation on rent
34 increases established by a “Notice of Rent Protection Emergency,”
35 that may have been issued by the Governor.

36 Under the bill, a mortgage forbearance executive order may
37 provide the following protections to residential tenants regardless of
38 whether the tenant’s landlord has obtained a forbearance:

- 39 • that eviction proceedings shall not be initiated or continued
40 during the time provided in the executive order, unless the
41 court determines on its own motion or motion of the parties
42 that a proceeding is necessary in the interest of justice;
- 43 • A prohibition preventing landlords from imposing late fees
44 on residential tenants; and
- 45 • A 90-day repayment window for each month of rent arrears
46 for a residential tenant, beginning with the first day of the
47 second month next following the conclusion of both the state

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1 of emergency and public health emergency established
2 pursuant to subsection a. of this section.

3 Prior to one month following the effective date of this bill, the
4 bill directs the commissioner, to the greatest extent reasonably
5 possible, to:

- 6 • notify homeowners of the forbearance program;
- 7 • notify landlords who may obtain a forbearance, or other
8 qualifying financial relief, of their responsibilities to alert
9 their tenants of the option, if emergency-impacted, to
10 apply for an emergency rent reduction period;
- 11 • post information on eligibility and the application process
12 for the forbearance, and make forbearance applications
13 available, on DCA's website;
- 14 • notify the courts of the individuals and associated
15 residential properties that are eligible for a forbearance;
16 and
- 17 • notify the State's active mortgage lenders of the
18 individuals and associated residential properties that are
19 eligible for a forbearance.

20 Under the bill, upon knowledge of a homeowner's eligibility for
21 a forbearance, the mortgage lender would notify the homeowner
22 and the courts. Upon approval of a forbearance application, the
23 reviewing entity would notify the applicant, the mortgage lender,
24 and the courts.

25 The bill provides that a mortgage forbearance executive order
26 may designate a foreclosure action filed by a bank as an unlawful
27 practice, pursuant to the New Jersey consumer fraud act, if the
28 action is filed only as a result of not receiving mortgage payments
29 from an emergency-impacted homeowner during the time period of
30 a forbearance. The bill also provides that the executive order may
31 designate that a landlord has engaged in an unlawful practice under
32 the New Jersey consumer fraud act if, while in receipt of a
33 forbearance, the landlord willfully refuses to provide an emergency-
34 impacted tenant with an emergency rent reduction period.

35 Emergency-impacted homeowners awarded a forbearance under
36 this bill would be responsible for the maintenance of the property
37 during the period of forbearance. After service of notice of any
38 proceedings conducted to terminate forbearance, made on the
39 homeowner at an address determined pursuant to due diligence of
40 the creditor to be the actual current residence of the homeowner,
41 providing opportunity for the homeowner to respond and contest the
42 proceedings a forbearance awarded under the bill would cease
43 immediately upon a court's determination that the subject residential
44 property has been abandoned by the emergency-impacted
45 homeowner.

46 Nothing in this bill would limit the ability of parties to a
47 foreclosure action to participate in a mediation sponsored by the
48 Administrative Office of the Courts in accordance with the

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1 requirements of the mediation program. Nothing in this bill would
2 be construed to impact property tax and insurance obligations of a
3 property owner related to any real property in the State.

4 The bill directs the Commissioner of Community Affairs to
5 adopt the rules and regulations necessary for implementation no
6 later than one month following enactment. The mortgage
7 forbearance executive order, or the rules and regulations adopted by
8 the commissioner, may limit the bill's application to non-federally-
9 guaranteed mortgages, and may further limit its application as
10 deemed necessary to comply with federal law. Additionally, the
11 commissioner's rules and regulations would be able to adjust and
12 supplement the provisions of the initial executive order, as long as
13 those adjustments and additions would not conflict with the bill.