

SENATE, No. 1433

STATE OF NEW JERSEY

INTRODUCED JULY 25, 1996

By Senators O'CONNOR, GORMLEY, Sacco and Kenny

1 AN ACT supplementing Title 2A of the New Jersey Statutes, enacting
2 an additional chapter 17A, Notice of Pending Action, chapter 17B,
3 Collection of Judgments, chapter 17C, Foreclosure, chapter 17D,
4 Public Sales, and repealing various sections of the statutory law.

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

8
9 1. An additional chapter, chapter 17A, is added to Title 2A as
10 follows:

11 TITLE 2A

12 CHAPTER 17A

13 NOTICE OF PENDING ACTION

- 14 2A:17A-1. Written Notice of Pending Action Concerning Real
15 Estate.
- 16 2A:17A-2. Contents of Notice of Pending Action.
- 17 2A:17A-3. Records and Index of Notices.
- 18 2A:17A-4. Effect of Notice of Pending Action.
- 19 2A:17A-5. Expiration and Extension of Notice of Pending Action.
- 20 2A:17A-6. Service of Notice of Pending Action.
- 21 2A:17A-7. Hearing.
- 22 2A:17A-8. Discharge of Notice of Pending Action by Court.
- 23 2A:17A-9. Filing of Order of Judgment Discharging Notice of
24 Pending Action.
- 25 2A:17A-10. Effect of Discharge.
- 26 2A:17A-11. Fee for Recording Notice of Taxable Cost.
- 27 2A:17A-1. Written notice of pending action concerning real estate.
- 28 a. A notice of pending action may be filed by a party in any action
29 instituted in a court of this State or in the United States District Court
30 for the District of New Jersey in which the party filing the notice:
- 31 (1) seeks to enforce a lien on real estate; or
32 (2) seeks to affect the title to real estate; or
33 (3) seeks to affect the ownership of a lien or an encumbrance on
34 real estate.
- 35 b. A notice of pending action shall not be filed under this chapter
36 in an action to enforce a construction lien, a mechanic's lien or in an
37 action to recover a judgment for money or damages only.

1 c. The notice of pending action shall be filed after the filing of the
2 party's pleading in the action, in the office of the county clerk or
3 register of deeds and mortgages of the county in which the affected
4 real estate is located.

5 (Source: 2A:15-6)

6 2A:17A-2. Contents of notice of pending action.

7 a. A notice of pending action shall include the complete caption of
8 the pending action, a brief description of the claim of the party filing
9 the notice, and a description of the subject real estate which is
10 sufficient to identify it.

11 b. In an action in which a claim is made for the foreclosure of a
12 recorded or registered mortgage or the foreclosure of a recorded
13 certificate of tax sale, the notice of pending action shall also specify
14 the book and page of the record or registration of the mortgage or of
15 the record of the certificate of tax sale.

16 (Source: 2A:15-6; 2A:15-9)

17 2A:17A-3. Record and index of notices.

18 a. The county clerk or register of deeds and mortgages shall record
19 and index notices of pending action separately from other filings, and
20 shall record the date of filing of each notice.

21 b. If a notice of pending action is filed in an action for the
22 foreclosure of a recorded or registered mortgage or the foreclosure of
23 a recorded certificate of tax sale, the date of the filing of the notice
24 shall be noted on the record of the mortgage, the abstract of the record
25 of the mortgage, or the record of the certificate of tax sale.

26 (Source: 2A:15-9; 2A:15-12)

27 2A:17A-4. Effect of notice of pending action.

28 a. Any person who acquires an interest in, or lien on, the property
29 between the time the notice of pending action is filed and the time it
30 is discharged or expires shall be considered to have had notice of the
31 pendency of the action and shall be bound by any judgment entered in
32 the action.

33 b. If a notice is not filed as provided in this chapter with respect
34 to a pending action, the filing of the action shall not constitute
35 constructive notice to a bona fide purchaser or to a person who
36 acquires a mortgage or a lien on real estate which is the subject matter
37 of the action.

38 (Source: 2A:15-7; 2A:15-8)

39 2A:17A-5. Expiration and extension of notice of pending action.

40 a. A notice of pending action shall expire after three years from the
41 date it is filed, unless an extension notice is filed pursuant to this
42 section.

43 b. A notice of pending action may be extended for periods of one
44 year if an extension is filed prior to the expiration of the original notice
45 or any previous one year extension of the original notice. The
46 extension notice shall contain all of the information required by this

1 chapter for an original notice, and shall also include a certification by
2 the party filing the notice that the subject action is still pending or that
3 an appeal has been filed and is still pending.

4 (Source: 2A:15-11)

5 2A:17A-6. Service of notice pending action.

6 Within three days after filing of a notice of pending action, the party
7 who filed it shall send a copy of the notice by registered or certified
8 mail, return receipt requested to any person who held an interest in or
9 lien on the property on the date of the filing of the notice. Except
10 when the pending action is a mortgage or tax foreclosure, the party
11 who filed the notice of pending action shall also serve a copy of the
12 notice to all other parties in the action against whom a claim is being
13 made. The notice shall be mailed to the current address of the person,
14 if it is known or reasonably ascertainable, or to the party's last known
15 address of record.

16 (Source: 2A:15-7)

17 2A:17A-7. Hearing.

18 a. Any party who is served with a notice of pending action
19 pursuant to this chapter, and who claims an interest in the subject real
20 estate may file a motion for discharge of the notice with the court that
21 has jurisdiction of the action. After hearing and within 10 days, the
22 court shall enter a determination on the motion.

23 b. The party who filed the notice of pending action shall bear the
24 burden of establishing that there is a probability that final judgment
25 will be entered in that party's favor, and that the probability of success
26 on the merits is sufficient to justify the continuation of the notice.

27 c. If the court fails to find that there is a probability that final
28 judgment will be entered in favor of the party filing the notice of
29 pending action, and that the probability of success on the merits is
30 sufficient to justify the continuation of the notice, the court shall
31 immediately order the notice of pending action discharged.

32 (Source: 2A:15-7)

33 2A:17A-8. Discharge of notice of pending action by court.

34 A notice of pending action shall be ordered discharged by the court
35 that has jurisdiction of the action as to which the notice of pending
36 action has been filed:

37 a. If the party who filed a notice of pending action abandons the
38 underlying action or fails to prosecute it diligently; or

39 b. In an action for the enforcement against real estate of a claim
40 for the payment of money, except for the foreclosure of a mortgage or
41 tax sale certificate, if the party against whom a claim is being made
42 gives sufficient security to pay the claim; or

43 c. Upon dismissal of the pending action; or

44 d. Upon the entry of final judgment in the pending action in the
45 judgment docket.

46 (Source: 2A:15-10; 2A:15-14; 2A:15-15; 2A:15-16; 2A:15-17)

1 2A:17A-9. Filing of order or judgment discharge notice of pending
2 action.

3 A copy of the order discharging a notice of pending action shall be
4 filed with the county clerk or register or deeds and mortgages. A
5 statement of the substance of the order shall be entered on the record
6 of the notice of pending action.

7 (Source: 2A:15-14; 2A:15-16; 2A:15-17)

8 2A:17A-10. Effect of discharge.

9 Upon the filing of an order discharging a notice of pending action
10 with the county clerk or register or deeds, the binding effect of the
11 notice shall end, unless:

12 a. The order or judgment provides otherwise; or

13 b. The party who filed the notice of pending action obtains a stay
14 pursuant to the Rules of Court in connection with the filing of a notice
15 of appeal or a motion for relief from the judgment or order discharging
16 the notice.

17 (Source: 2A: 15-10; 2A:15-14; 2A: 15-15; 2A:15-16; 2A:15-17)

18 2A:17A-11. Fee for recording notice a taxable cost.

19 The fee for recording a notice of pending action shall be taxable as
20 a part of the costs in the action.

21 (Source: 2A:15-13)

22

23 2. An additional chapter, chapter 17B, is added to Title 2A as
24 follows:

25 TITLE 2A

26 CHAPTER 17B

27 COLLECTION OF JUDGMENTS

28 2A:17B-1. Definitions.

29 2A:17B-2. Issuance of Collection Orders.

30 2A:17B-3. By Whom Issued.

31 2A:17B-4. To Whom Issued.

32 2A:17B-5. Form and Contents of Collection Orders.

33 2A:17B-6. Exemptions.

34 2A:17B-7. Selection of Exempt Personal Property.

35 2A:17B-8. Receipt of Collection Orders.

36 2A:17B-9. Judgment Creditor's Collection Instructions.

37 2A:17B-10. Levy Against Personal Property in Possession of
38 Judgment Debtor.

39 2A:17B-11. Levy Against Personal Property in a Dwelling.

40 2A:17B-12. Levy Against Property in an Inaccessible Place.

41 2A:17B-13. Levy Against Personal Property in the Custody of a
42 Third Party.

43 2A:17B-14. Service and Mailing of Notice of Levy.

44 2A:17B-15. Collection Orders Against Earning; Earnings Subject to
45 Collection Orders.

46 2A:17B-16. Priorities Among Collection Orders Against Earnings.

- 1 2A:17B-17. Payments Under Collections Orders Against Earnings.
- 2 2A:17B-18. Collection Order; Lien on Personal Property.
- 3 2A:17B-19. Sale or Other Disposition of Property.
- 4 2A:17B-20. Property Sold, Manner.
- 5 2A:17B-21. Objections to Sale or Disposition of Property.
- 6 2A:17B-22. Priorities in Distribution of Proceeds.
- 7 2A:17B-23. Disputes Over Distribution of Proceeds.
- 8 2A:17B-24. Return of Collection Order.

9 2A:17B-1. Definitions

10 As used in this chapter:

11 "Earnings" means payment for personal services performed,
12 whether described as wages, salary, commission, fees, bonus, tips,
13 pension and retirement benefits or otherwise.

14 "Collection officer" includes a sheriff's officer, Special Civil Part
15 officer or any other person performing similar functions.

16 "Collection order" means a court order, formerly called a writ of
17 execution, directing the collection officer to satisfy a money judgment
18 from the property of a judgment debtor.

19 "Property of the judgment debtor" means all interests in real
20 property, all forms of personal property, including rights and credits,
21 and all earnings.

22 (Source: New)

23 2A:17B-2. Issuance of collection orders.

24 a. At the request of a judgment creditor and upon receipt of any
25 required fee, the clerk of the court shall issue a collection order
26 directing the satisfaction of a money judgment from the property of the
27 judgment debtor.

28 b. A collection order may be issued only within 20 years after entry
29 of the judgment to be collected, or if the judgment has been revived,
30 a collection order may be issued only within 20 years after the date of
31 the revival of the judgment.

32 (Source: 2A:17-3)

33 2A:17B-3. By whom issued.

34 a. A collection order against any property of the judgment debtor
35 may be issued by the Clerk of the Superior Court if the judgment is
36 recorded in the judgment docket of the Superior Court.

37 b. A collection order against personal property or earnings may be
38 issued by the Clerk of the Special Civil Part if the judgment is
39 recorded in the case records of the Superior Court, Law Division,
40 Special Civil Part but not in the judgment docket of the Superior
41 Court.

42 (Source: 2A:17-4; 2A:17-17)

43 2A:17B-4. To whom issued.

44 a. Collection orders for judgments recorded in the judgment docket
45 of the Superior Court may be directed to the sheriff of any county.

46 b. Collection orders for judgments recorded in the case records of

1 the Superior Court, Law Division, Special Civil Part but not in the
2 judgment docket of the Superior Court shall be directed to the officer
3 responsible for enforcing judgments of the Law Division, Special Civil
4 Part in any county.

5 (Source: 2A:17-4)

6 2A:17B-5. Form and contents of collection orders.

7 a. A collection order shall specify in its title whether it is directed
8 at the property, or the earnings, of the judgment debtor.

9 b. A collection order shall include such information concerning the
10 judgment, the judgment creditor and the judgment debtor as the Rules
11 of Court require.

12 (Source: New)

13 2A:17B-6. Exemptions.

14 a. The following property of a judgment debtor, who is either a
15 natural person resident in the State of New Jersey or the estate of a
16 decedent who was resident in the State of New Jersey, shall be exempt
17 from a collection order pursuant to this chapter:

18 (1) property that federal or other State statute forbids taking to
19 satisfy a State judgment;

20 (2) wearing apparel of the judgment debtor other than furs and
21 jewelry; and

22 (3) goods whose value does not exceed either \$2,000.00 or the
23 amount determined pursuant to subsection b. of this section; and

24 (4) cash, bank deposits and similar financial property collectible as
25 cash whose aggregate value does not exceed \$1,000.00 or the amount
26 determined pursuant to subsection b. of this section. Banks and
27 financial institutions may assess a fee of no more than \$25.00 per levy
28 against the judgment debtor.

29 b. The Governor, in consultation with the Department of the
30 Treasury, not later than March 1 of each odd-numbered year, shall
31 adjust the exemption amounts set forth in subsection a. of this section,
32 or subsequent to 1997 the exemption amount resulting from any
33 adjustment under this subsection, in direct proportion to the rise or fall
34 of the Consumer Price Index for all urban consumers in the New York
35 City and Philadelphia areas as reported by the United States
36 Department of Labor. The Governor, no later than June 1 of each
37 odd-numbered year, shall notify the Clerk of the Superior Court of the
38 adjustment. The adjustment shall become effective on July 1 of each
39 odd-numbered year.

40 c. The exemptions provided in this section shall not apply if the
41 judgment being enforced:

42 (1) arises from the purchase of the same property against which
43 collection is sought; or

44 (2) is for child support; or

45 (3) is for the collection of taxes or assessments.

46 (Source: 2A:17-19)

1 2A:17B-7. Selection of exempt personal property.

2 a. In consultation with the collection officer, the judgment debtor
3 may select any item or items of personal property whose aggregate
4 value is not greater than the values allowed under section paragraph
5 (3) of subsection a. of N.J.S.2A:17B-6. The selected item or items
6 shall be exempt from levy.

7 b. The collection officer shall prepare an inventory of the items of
8 personal property selected for exemption by the judgment debtor and
9 shall include an impartial and honest evaluation of each item
10 inventoried. The value of an item shall be the price judged to be that
11 for which the item would be sold at public sale. Copies of the
12 inventory shall be given to the debtor and to creditor and to their
13 counsel.

14 c. Within 10 days after receipt of the inventory, either the debtor
15 or the creditor may dispute the value of any item in the inventory by
16 notice to the other party by submitting a written statement under oath
17 concerning the value and applying to the court to make a
18 determination of the value of the items in dispute. The court may
19 receive or require testimony or evidence, including expert appraisals
20 as necessary to make its determination.

21 d. If neither party disputes the values in the inventory, the
22 judgment debtor, on the basis of the inventory values, shall select
23 items whose aggregate value is not greater than the values allowed
24 under paragraph (3) of subsection a. of N.J.S.2A:17B-6. These items
25 shall be exempt from levy. If either party disputes the values in the
26 inventory, the judgment debtor, on the basis of the values determined
27 by the court, shall select items whose aggregate value is not greater
28 than the values allowed under paragraph (3) of subsection a. of
29 N.J.S.2A:17B-6. These items shall be exempt from levy.

30 (Source: 2A:17-20 through 2A:17-28)

31 2A:17B-8. Receipt of collection orders.

32 The collection officer shall record on a collection order the date and
33 time it was received.

34 (Source: 2A:17-11)

35 2A:17B-9. Judgment creditor's collection instructions.

36 a. A judgment creditor who obtains a collection order shall submit
37 written instructions to the collection officer with the order.

38 b. The collection instructions shall contain a description of
39 personal property to be levied against, by item, type or location
40 sufficient to identify it for levy. If all property at particular premises
41 occupied by the debtor is to be levied against, an instruction stating
42 that shall be sufficient. The collection instructions shall contain a
43 description of real property to be levied against sufficient to identify
44 it. The instruction shall state whether the property is located in a
45 dwelling.

46 c. The collection officer shall record on the collection instructions

1 the date they were received.

2 d. The collection officer shall comply with the lawful written
3 collection instructions of the judgment creditor, except that the officer
4 shall not levy against more items of property than necessary, in the
5 judgment of the officer, to satisfy the judgment and pay costs.

6 e. The collection officer may levy against property of the judgment
7 debtor subject to the collection order but not identified in the
8 collection instructions of the judgment creditor, unless the instructions
9 of the judgment creditor state otherwise.

10 (Source: New)

11 2A:17B-10. Levy against personal property in possession of
12 judgment debtor.

13 a. A collection officer may levy against personal property in the
14 possession of the judgment debtor in any of the following ways:

15 (1) by removing the property to a place of safekeeping;

16 (2) by installing a custodian in the place where the property is
17 located to maintain custody over the property; or

18 (3) by any other reasonable means of obtaining possession or
19 control of the property.

20 b. If the creditor agrees, the collection officer, in place of making
21 a levy, may leave the property in the custody of the debtor until the
22 sale. The collection officer shall list each item of property left in the
23 custody of the debtor and give a copy of the list to the debtor and to
24 the creditor. The debtor shall not intentionally damage or dispose of
25 property left by the collection officer. This action by the collection
26 officer shall be considered equivalent to a levy for the purpose of
27 establishing the rights of the creditor as against other judgment
28 creditors, but it shall not affect the rights of a person who, not
29 knowing that the property is held pending public sale, purchases the
30 property or acquires a lien for fair value.

31 (Source: 2A17-14)

32 2A:17B-11. Levy against personal property in a dwelling.

33 a. If the judgment creditor instructs the officer to levy against
34 personal property located in the judgment debtor's dwelling place, the
35 officer shall demand access to the property at the dwelling place where
36 the property is located. At the time the demand is made the officer
37 shall inform the judgment debtor that the judgment debtor may be
38 liable for costs incurred in any further proceedings to obtain access to
39 the property. If the judgment debtor does not allow access to the
40 property upon demand of the collection officer, the officer shall
41 promptly notify the judgment creditor of the failure to obtain custody
42 of the property.

43 b. Whether or not a demand has been made pursuant to subsection
44 a. of this section, the judgment creditor may apply to the court which
45 issued the collection order for an order directing the collection officer
46 to levy against a judgment debtor's property located in a dwelling

1 place. An application for an order to seize property shall describe
2 with particularity sufficient to identify them, both the property sought
3 to be levied against, and the place where it is to be found, according
4 to the best knowledge and belief of the judgment creditor. The court
5 may not issue the order unless the judgment creditor establishes that
6 there is probable cause to believe that the property to be levied against
7 is located in the place described. At the time delivery of the property
8 is demanded, the officer shall make known his or her purpose and
9 authority, and shall announce that persons interfering with officers
10 enforcing the order are subject to arrest for obstructing an officer.

11 (Source: New)

12 2A:17B-12. Levy against property in an inaccessible place.

13 a. If the judgment creditor instructs the officer to levy against
14 personal property located in a place inaccessible to the collection
15 officer, which is other than a dwelling place, the collection officer shall
16 demand access to the property at the place where the property is
17 located. At the time access to the property is demanded, the collection
18 officer shall make known his or her identity, purpose, and authority,
19 and shall announce that persons interfering with officers enforcing the
20 order shall be subject to arrest for obstructing an officer.

21 b. If access to the property is not given, the collection officer may
22 use force to obtain access to the property and may cause the place
23 where the property is believed to be located to be opened in the
24 manner that the collection officer reasonably believes will cause the
25 least damage.

26 (Source: New)

27 2A:17B-13. Levy against personal property in the custody of a
28 third party.

29 a. If the judgment creditor instructs the collection officer to levy
30 against personal property in the possession of a person other than the
31 judgment debtor, the officer shall serve a copy of the collection order
32 personally on the person who has possession of the property.

33 b. The service of the collection order shall be effective against:

34 (1) any personal property of the judgment debtor in the custody of
35 the third party at the time of service; and

36 (2) any additional personal property which the judgment debtor
37 becomes entitled to receive from the time of the levy to the time of the
38 order directing that the property be turned over to the collection
39 officer.

40 c. Service of the collection order on any office of a business shall
41 be effective against any personal property of the judgment debtor of
42 the business.

43 d. During the time the levy is in effect, the third party holding
44 custody of personal property subject to the collection order shall hold
45 the property pending order of the court and shall not honor any other
46 demand for the property.

1 e. Any time within 30 days after levy, the creditor may make a
2 motion pursuant to the Rules of Court for an order directing that the
3 property be turned over to the collection officer.

4 (Source: 2A:17-58; 2A:17-63)

5 2A:17B-14. Service and mailing of notice of levy.

6 a. At the time the collection officer levies against property of a
7 judgment debtor, the officer shall serve a copy of the order on the
8 person who has custody of the property levied against; and

9 b. The collection officer shall mail a copy of the collection order
10 and notice of levy on the same day:

11 (1) to the judgment debtor, if the order and notice have not been
12 served upon the judgment debtor;

13 (2) to any person whom the officer actually knows may have
14 an interest in the property described in the notice; and

15 (3) to the attorneys for the judgment debtor and creditor.

16 c. A notice that specific property has been levied against shall
17 contain a description of the specific property levied against, a
18 statement of the debtor's right to exempt property from collection, and
19 any other information required by the Rules of Court.

20 (Source: New)

21 2A:17B-15. Collection orders against earnings; earnings subject to
22 collection orders.

23 a. At the request of a judgment creditor, the Superior Court shall
24 issue either a collection order directing an employer to withhold a
25 portion of a debtor's earnings, or a collection order to the debtor to
26 make periodic payments to the creditor from earnings.

27 b. A collection order, other than a support order, against the
28 earnings of a judgment debtor shall provide that 10% of gross earnings
29 shall be taken unless the court finds that the needs of the debtor
30 require that a lesser percentage be taken or allow a greater percentage
31 to be taken. The amount to be withheld shall not exceed the amount
32 allowed under section 303 of the Federal Consumer Credit Protection
33 Act (15 U.S.C. sec. 1673).

34 (Source: 2A:17-50; 2A:17-56)

35 2A:17B-16. Priorities among collection orders against earnings.

36 a. If more than one collection order against the earnings of a
37 judgment debtor is served on an employer,

38 (1) only one collection order against earnings shall be satisfied at
39 one time;

40 (2) support orders shall be satisfied before other collection orders;
41 and

42 (3) orders, other than support orders, shall be satisfied in the order
43 in which they were served on the employer.

44 b. If a judgment debtor is subject to more than one collection order
45 against earnings other than a support order, upon application by the
46 debtor the court shall modify the amount of the later order so that the

1 amount to be collected at any time on both orders other than support
2 orders is not greater than 10% of gross earnings.

3 c. For purposes of N.J.S.2A:17B-14, N.J.S.2A:17B:-15 and this
4 section:

5 (1) a collection order against the earnings of a judgment debtor
6 includes any court order that requires that payments be made from the
7 earnings of the judgment debtor whether the payments are to be made
8 by the employer or by the judgment debtor;

9 (2) a support order is any order for the support of a child, spouse
10 or former spouse or any order based on a claim for unpaid support for
11 a child, spouse or former spouse.

12 (Source: 2A:17-52)

13 2A:17B-17. Payments under collection orders against earnings.

14 a. Any employer to whom a collection order against earnings is
15 presented shall deduct from earnings owed the judgment debtor the
16 amount prescribed in the order and pay the amount prescribed to the
17 collection officer presenting the order. The employer may deduct a fee
18 of no more than 5% to \$5.00, whichever is less, from each payment,
19 to compensate the employer for expenses. The judgment debtor shall
20 bear the expense of the fee.

21 b. Any employer who fails to make payments required by a
22 collection order against earnings shall be liable to the judgment
23 creditor for the payments.

24 (Source: 2A:17-53; 2A:17-56)

25 2A:17B-18. Collection order, lien on personal property.

26 a. A judgment creditor who files a collection order with a
27 collection officer shall have a lien on any property of the debtor levied
28 against by that officer from the time of levy.

29 b. A judgment creditor who has caused a levy to be made against
30 the proceeds of the collection or sale of debtor's property levied
31 against for another creditor shall have a lien on that property from the
32 time of levy on the proceeds.

33 c. If more than one lien established by this section is applicable to
34 an item of property, priority among the liens shall be governed by the
35 same rules as those governing distribution of the proceeds of property
36 which has been levied against to enforce a judgment.

37 d. A lien established by this section shall prevail over any
38 subsequent transfer of an interest in the property.

39 (Source: 2A:17-10)

40 2A:17B-19. Sale or other disposition of property.

41 a. Cash shall be collected and applied to the satisfaction of the
42 judgment as so much money collected, unless it has a value exceeding
43 its face value, in which case it shall be sold.

44 b. The following property of a judgment debtor shall be collected
45 and reduced to cash and applied to the satisfaction of the judgment in
46 accordance with the instructions of the judgment creditor:

- 1 (1) instruments payable within the term of the collection order;
- 2 (2) any other rights to the payment of money.

3 c. Other property of a judgment debtor that has been levied against
4 pursuant to a collection order shall be sold as provided in this chapter
5 and proceeds applied to the payment of the judgment.

6 (Source: 2A:17-15; 2A:17-16; 2A:17-17; 2A:17-19; 2A:17-61)

7 2A:17B-20. Property sold, manner.

8 a. Property that has been levied against may be sold by any method
9 specified in a court order or agreed upon by the judgment creditor, the
10 judgment debtor and any other party having an interest in the property.

11 b. In the absence of an order or agreement, that property shall be
12 sold as follows:

13 (1) Personal property that has a readily ascertainable current value
14 and that is normally sold in an established public market shall be sold
15 in that market.

16 (2) All other property shall be sold by auction, pursuant to
17 provisions governing public sales.

18 (Source: New)

19 2A:17B-21. Objections to sale or disposition of property.

20 a. Any person who claims an interest in property which has been
21 levied against or who objects to the sale or other disposition of
22 property which has been levied against may file a written objection to
23 the sale or disposition with the clerk of the court which issued the
24 collection order and deliver a copy of the objection to the collection
25 officer.

26 b. The clerk shall notify the collection officer, the judgment
27 creditor, and the attorney for the judgment creditor of any objections
28 that have been received to the sale or other disposition. Upon receipt
29 of notification of the objections, the collection officer shall not sell or
30 dispose of the property until further order of the court.

31 (Source: 2A:17-29; 2A:17-31)

32 2A:17B-22. Priorities in distribution of proceeds.

33 The proceeds of property which has been levied against to collect
34 a judgment shall be distributed in the following order:

35 a. to the judgment creditor for whom the property was levied
36 against and sold;

37 b. if the sale is of personal property, to other judgment creditors
38 who have levied against the proceeds of the sale;

39 c. to junior lienholders whose liens are extinguished by the sale;

40 d. to the debtor.

41 (Source: New)

42 2A:17B-23. Disputes over distribution of proceeds.

43 If a dispute arises concerning the application of either money
44 collected or proceeds of a sale to the satisfaction of a judgment, the
45 officer or any party with a right to the property to be distributed may
46 apply to the court, on notice to the other parties whose property rights

1 will be affected by resolution of the dispute, for an order directing the
2 distribution of the money or proceeds.

3 (Source: 2A:17-6)

4 2A:17B-24. Return of collection order.

5 a. The collection officer shall file a return with the court which
6 issued the collection order at the earliest of the following times:

7 (1) immediately after receipt of the collection order, if no written
8 instructions have been received from the judgment creditor.

9 (2) 30 days after notice to the judgment creditor unless directed
10 otherwise.

11 (3) immediately after a request in writing for a return by the
12 judgment creditor.

13 (4) 12 months after the date of the issuance of the collection order
14 against property.

15 (5) immediately after a collection order is satisfied.

16 b. The return filed by the levying officer shall include:

17 (1) A statement of the amount collected, if any, and the time when
18 it was collected and remitted to the judgment creditor; and

19 (2) An itemized bill of costs and fees.

20 (Source: 2A:17-9; 2A:18-27)

21

22 3. An additional chapter, chapter 17C, is added to Title 2A as
23 follows:

24

TITLE 2A

25

CHAPTER 17C

26

FORECLOSURE

27 2A:17C-1. Notice of Intention to Foreclose a Residential
28 Mortgage.

29 2A:17C-2. Notice of Right to Cure Default.

30 2A:17C-3. Curing Default.

31 2A:17C-4. Action Necessary for Foreclosure; Sale Pending
32 Foreclosure.

33 2A:17C-5. When Foreclosure is required Before Action on
34 Debt.

35 2A:17C-6. Deficiency Action.

36 2A:17C-7. Sale.

37 2A:17C-8. Proceeds.

38 2A:17C-9. Strict Foreclosure.

39 2A:17C-1. Notice of intention to foreclose residential mortgage.

40 a. As used in this chapter, a "residential mortgage" means a
41 mortgage of a one-, two-, three-, or four-family dwelling in which the
42 owner or the owner's immediate family resides when the notice of
43 intention to foreclose is sent.

44 b. Before a plaintiff may commence foreclosure of a residential
45 mortgage, the plaintiff shall give the debtor written notice of intention
46 to foreclose at least 30 days in advance.

1 c. Notice of intention shall be sent by registered or certified mail,
2 return receipt requested, to the debtor's last known address, and, if
3 different, to the address of the mortgaged property. If the return
4 receipt is not returned to the sender within 15 days, notice shall be
5 made by ordinary first class mail.

6 d. The notice of intention shall state:

7 (1) the mortgage obligation;

8 (2) the nature of the default claimed, and the name and address of
9 the mortgage holder and telephone number of the mortgage holder's
10 representative whom the debtor may contact to dispute the claimed
11 default or the amount required to cure the default;

12 (3) the debtor's right to cure the default;

13 (4) what action the debtor must make to cure the default;

14 (5) the date, at least 30 days after notice is given, by which the
15 debtor shall cure the default to avoid commencement of foreclosure,
16 and the name, address and telephone number of the person to receive
17 payment;

18 (6) that upon the debtor's failure to cure default by the specified
19 date, the mortgage holder may commence foreclosure; and

20 (7) that the debtor may also have the right to cure a default prior
21 to entry of final judgment.

22 e. Compliance with this section shall be stated in a foreclosure
23 action complaint.

24 (Source: New)

25 2A:17C-2. Notice of right to cure default.

26 a. If an action to foreclose a mortgage is uncontested, a mortgage
27 holder shall apply for entry of final judgment and provide the debtor
28 with a notice mailed at least 16 days before submission of proofs for
29 entry of a foreclosure judgment advising that:

30 (1) absent a response from the debtor, the mortgage holder will
31 submit proof for entry of final judgment; and

32 (2) upon entry of final judgment, the debtor will lose the right to
33 cure the default.

34 b. Within 8 days of receiving notice, the debtor may send the
35 mortgage holder by registered or certified mail, return receipt
36 requested, and file with the court, a statement certifying that there is
37 a reasonable likelihood of the debtor's curing the default within 45
38 days of the date the notice was received, or if the notice was sent by
39 ordinary mail, the date the notice was mailed.

40 c. A mortgage holder who receives a statement from the debtor
41 shall not submit proofs for entry of final judgment in foreclosure with
42 a return date earlier than 46 days after the notice was received, or if
43 the notice was sent by ordinary mail, the date the notice was mailed.

44 (Source: New)

45 2A:17C-3. Curing default.

46 a. At any time before entry of final judgment, not later than 30 days

1 after mailing of the notice of default, the debtor shall have the right to
2 cure a default by:

3 (1) paying all sums which would have been due in the absence of
4 default at the time of payment, any court costs and attorney's fees, and
5 contractual late charges, and

6 (2) performing any obligation which the debtor would have been
7 bound to perform in the absence of default.

8 b. If default is cured prior to the filing of a foreclosure action, the
9 mortgage holder shall not bring a foreclosure action. If default is
10 cured after the filing of a foreclosure action, the mortgage holder shall
11 give written notice of the cure to the court which shall dismiss the
12 action without prejudice.

13 c. A debtor does not have the right to cure a default after an action
14 for foreclosure has been filed:

15 (1) on a residential mortgage if the default occurs within 18 months
16 of the previous cure unless the cure occurs within 30 days after service
17 of the notice of intention; and

18 (2) on a commercial mortgage if the default occurs within 24
19 months of the previous cure unless the cure occurs within 30 days
20 after the mortgage holder has notified the debtor in writing that default
21 has occurred.

22 (Source: New)

23 2A:17C-4. Action necessary for foreclosure; sale pending
24 foreclosure.

25 a. A mortgage may be foreclosed only by a civil action.

26 b. If the court determines that the mortgage is valid and that the
27 plaintiff has the right under the mortgage to foreclose, it shall enter
28 judgment ordering the property sold in whole or in sufficient part and
29 stating the amount due on the debt secured by the mortgage.

30 c. The court shall enter summary judgment of foreclosure, if:

31 (1) the mortgage is not a residential mortgage as defined in this
32 chapter,

33 (2) the debtor has not made a payment of principal or interest when
34 due under the term of the mortgage as recorded, and

35 (3) the debtor has not cured the default as allowed by this chapter.

36 The debtor's defenses or counterclaims shall not affect the creditor's
37 right to summary judgment of foreclosure.

38 d. A foreclosure judgment shall be a binding determination of the
39 amount due on the debt secured by the mortgage but it may be
40 enforced only by sale of the mortgaged property and not as a money
41 judgment.

42 e. When mortgaged property is likely to deteriorate in value
43 pending determination of the action, the court, before judgment, upon
44 application of any party, may order the sale of the property, and the
45 deposit in court of the proceeds to be distributed after judgment.

46 f. The owner of the property that is the subject of a foreclosure

1 judgment may redeem the property by paying the amount due on the
2 debt secured by the mortgage plus applicable fees and costs:

3 (1) at any time up to ten days after the sale; or

4 (2) if objections to the sale are filed, until an order confirming the
5 sale.

6 (Source: New; 2A:50-1; 2A:50-31; 2A:50-36)

7 2A:17C-5. When foreclosure is required before action on debt.

8 a. A holder of a residential mortgage may bring an action to collect
9 the debt secured by the mortgage only by foreclosure. After
10 foreclosure, the mortgage holder may bring an action for deficiency.
11 However, a residential mortgage holder is not bound by this subsection
12 if:

13 (1) the residential mortgage is subject to a prior mortgage held by
14 a different person; or

15 (2) the mortgage is not the primary security for the debt.

16 b. A mortgage holder may enforce a contract of a surety or
17 guarantor to pay the debt and mortgage other than one that is subject
18 to a prior mortgage held by a different person only by bringing an
19 action for foreclosure that joins the surety or guarantor. After
20 foreclosure, a mortgage holder may bring an action against the surety
21 or guarantor for the deficiency.

22 c. A mortgage holder who is not required by this section to
23 foreclose the mortgage before bringing an action to collect the debt
24 may:

25 (1) use the procedure of this section, or

26 (2) bring an action to collect the debt before, or joined with, a
27 foreclosure action.

28 (Source: 2A:50-2; 2A:50-2.3; 2A:50-22)

29 2A:17C-6. Deficiency action.

30 a. Deficiency action on a debt secured by mortgage that has been
31 foreclosed:

32 (1) may be brought by the mortgage holder only within three
33 months after the foreclosure sale or confirmation of sale;

34 (2) may be brought against a person answerable on a bond or note
35 only if the person was a party in the foreclosure action.

36 b. A deficiency action on a debt secured by mortgage that has been
37 extinguished by the foreclosure of a prior mortgage:

38 (1) may be brought by the mortgage holder only within one year
39 after the foreclosure sale or confirmation of sale; and

40 (2) shall not open the foreclosure and sale of the mortgaged
41 premises nor result in a right of redemption.

42 c. If a defendant in the deficiency action disputes the amount of the
43 deficiency, the court shall determine the amount of deficiency by
44 deducting the fair market value of the mortgaged property at the time
45 of the foreclosure sale from the amount of the debt, interest and costs.
46 The court shall determine the fair market value from evidence

1 submitted by the parties, or, upon agreement of all parties, the court
2 may accept the value which three appraisers fix as the fair market
3 value.

4 (Source: 2A:50-2; 2A:50-2.1; 2A:50-3; 2A:50-8; 2A:50-9)

5 2A:17C-7. Sale.

6 a. Without further court order, a judgment of foreclosure shall
7 authorize sale of the property.

8 b. If the judgment does not specify otherwise, the sale shall be
9 conducted by the sheriff of the county in which the property is located.
10 If the sheriff cannot effect the sale within 45 days after receiving the
11 judgment, or if there is other good cause, the court may appoint a
12 special referee to conduct the sale. If the sheriff is restrained from
13 conducting the sale by bankruptcy proceedings or court order, the
14 same restraint shall not be counted in determining the 45-day period.

15 c. Whether the sale is conducted by the sheriff, or a special referee,
16 the terms of sale and the fees and costs chargeable for the sale shall be
17 those provided by law for public sales.

18 d. If the mortgage debtor agrees, or if the mortgage is not a
19 residential mortgage and the mortgage provides for private sale, or if
20 the court finds from affidavits submitted that the mortgage debtor has
21 abandoned the mortgaged property or that the amount of the plaintiff's
22 judgment is at least 92% of the current value of the property, the court
23 shall order that the plaintiff may sell the property privately in any
24 commercially reasonable manner. After sale, the plaintiff shall pay the
25 part of the proceeds that exceeds the judgment and the cost of sale
26 into court for distribution as provided in this chapter.

27 e. The interests in the property that shall be sold are the interests
28 of the mortgage debtor and of the mortgage holder. The property
29 shall be sold free of any liens that are: (1) subordinate to the lien of
30 the mortgage holder, and (2) that were held by defendants in the
31 foreclosure action or that attached to the property after the
32 commencement of the foreclosure action and the filing of the notice of
33 pending action. The property shall also be sold free of any liens or
34 interests that could have been recorded in the office of the register of
35 deeds or county clerk but were not recorded there.

36 (Source: New; 2A:50-19; 2A:50-30; 2A:50-37)

37 2A:17C-8. Proceeds.

38 a. After sale of the property, the proceeds shall be applied as
39 follows:

40 (1) to pay the fees and costs of sale;

41 (2) to pay the amount specified in the judgment of foreclosure as
42 due on the mortgage foreclosed;

43 (3) to pay the amount necessary to satisfy any other liens that
44 were on the property at the time of the commencement of the
45 foreclosure action and were extinguished by the foreclosure;

46 (4) to pay the amount necessary to satisfy any other liens

1 extinguished by the foreclosure;

2 (5) to the owners of the property in proportion to their interests in
3 the property;

4 (6) to the debtor.

5 b. If there is more than one owner of the property and there are
6 liens that affect the interests of only certain of the owners, the payment
7 of the amounts necessary to satisfy those liens shall not reduce the
8 proceeds paid to the other owners.

9 (Source: 2A:50-34; 2A:50-37)

10 2A:17C-9. Strict foreclosure.

11 A good faith purchaser at a foreclosure sale may bring an action to
12 compel a person holding a lien subordinate to the foreclosed lien to
13 redeem its mortgage or be foreclosed of the equity of redemption, if
14 the subordinate lien would not have entitled the lienholder to any
15 proceeds even if joined in the original foreclosure action and if through
16 inadvertence, it was not extinguished by the foreclosure.

17 (Source: New)

18

19 4. An additional chapter, chapter 17D, is added to Title 2A as
20 follows:

21

TITLE 2A

22

CHAPTER 17D

23

PUBLIC SALES

24 2A:17D-1. Public Sales; Authority.

25 2A:17D-2. Statement of Prior Encumbrances.

26 2A:17D-3. Notice of Pending Sale.

27 2A:17D-4. Contents of Notice of Pending Sale.

28 2A:17D-5. Advertisement of Sales; Publication.

29 2A:17D-6. Notice of Date, Time and Place of Public Sale.

30 2A:17D-7. Adjournments.

31 2A:17D-8. Conditions of Sale of Real Property.

32 2A:17D-9. Conditions of Sale of Personal Property.

33 2A:17D-10. Objections to Sale; Confirmation of Sale.

34 2A:17D-11. Delivery by Deed.

35 2A:17D-12. Form of Sheriff's Deed.

36 2A:17D-13. Delivery by Certificate of Title.

37 2A:17D-14. Delivery of Personal Property Not Requiring Certificate
38 of Title.

39 2A:17D-1. Public Sales; Authority.

40 Where a public sale is ordered or required by statute, the sheriff or
41 the person to whom the order is directed shall make the sale pursuant
42 to this chapter and court order, and shall execute, as the case requires,
43 a deed or certificate of title for the property sold.

44 (Source: 2A:50-19; 2A:50-37)

45 2A:17D-2. Statement of prior encumbrances.

46 The sheriff or other person authorized shall not conduct a public

1 sale of real property before receipt of the affidavit required by Section
2 1 of P.L.1979, c.225 (C.46:15-6.1) listing all liens and encumbrances
3 that will affect the property after the sale and the current balance of
4 each. The sheriff shall make the contents of the affidavit available to
5 any person requesting it.

6 (Source: C.46:15-6.1)

7 2A:17D-3. Notice of pending sale.

8 a. A person who has obtained an order directing a public sale of
9 real property, in an action as to which no notice of pending action has
10 been filed, shall file a notice of pending sale in the office of the county
11 clerk or register of deeds and mortgages of the county in which the
12 property is located.

13 b. A notice of pending sale filed in the office of the county clerk or
14 register of deeds and mortgages of the county in which the property
15 is located shall be notice of the pendency of a public sale of the
16 property to any person who acquires an interest in, or lien on, the
17 property after the filing of the notice.

18 c. Notices of pending sale of real property shall be filed and
19 indexed in the office of the county clerk or register of deeds and
20 mortgages in the same manner as notices of pending action, and the
21 fee for filing such notices shall be the same as the fee for filing a notice
22 of pending action.

23 d. A notice of pending sale filed or posted pursuant to this section
24 shall expire one year from the date of the issuance of the order
25 directing the public sale, or upon the return of the enforcement order
26 by the officer to the court that issues the order, whichever is earlier.
27 A notice of pending sale may be extended for periods of one year if an
28 extension notice is filed prior to the expiration of the original notice
29 or any previous one year extension of the original notice.

30 (Source: New)

31 2A:17D-4. Contents of notice of pending sale.

32 A copy of the order directing the public sale of real property shall
33 be appended to the notice of pending sale. The notice shall contain:

34 a. A statement that the property is subject to sale at any time after
35 the expiration of 30 days from the date of filing and mailing the notice;

36 b. A description of the property sufficient to identify it; and

37 c. A statement of the approximate amount of the judgment or order
38 to be satisfied by the sale.

39 (Source: New)

40 2A:17D-5. Advertisement of sales; publication.

41 a. The sheriff or other person authorized to conduct a public sale
42 shall:

43 (1) post a notice of the sale in the office of the sheriff at least 10
44 days before the sale date;

45 (2) in the case of real property, publish the notice of sale once,
46 between 10 and 20 days before first date scheduled for the sale, in two

1 newspapers:

2 (a) both published in the county where the property is located, and
3 one published in the county seat of the municipality with the largest
4 population in the county if a newspaper is published in either such
5 municipality; or

6 (b) both circulating in the county, and one published in the county,
7 if only one newspaper is published in the county; or

8 (c) both circulating in the county, if no newspapers are published
9 in the county; and

10 (3) make copies of notices of sale available to members of the
11 public on request.

12 b. The notice of sale in the case of real property shall:

13 (1) state the terms of sale;

14 (2) state the amount of the judgment or order to be satisfied by the
15 sale;

16 (3) include either a diagram or concise statement describing the
17 property, and if practicable, the street and number of the property; and
18 give the location of the full legal description of the property.

19 c. The following form may be used as notice of sale of real
20 property:

21 PUBLIC AUCTION OF PREMISES

22 shall occur at the Office of the _____ County
23 Sheriff, _____ (address & phone) at
24 _____ (time), on _____ (date), of the following premises:

25 Address: _____

26 Municipality: _____ Tax lot number: _____

27 Nearest cross street: _____

28 Concise characterization (Approx. dimensions, number of rooms, etc):

29 _____

30 _____

31 By order of the Superior Court, _____ Division, in the case of:

32 _____, v. _____,

33 Case number: _____; approximate amount due: \$ _____,

34 plus Sheriff's fees.

35 At sale, the purchaser must pay 10% deposit. Within 30 days after
36 sale, the purchaser must pay the balance due. Both payments must be
37 in cash or certified or cashier's check.

38 Copies of the full legal description of the property and Conditions of
39 Sale set by statute (N.J.S. _____) are available in the Sheriff's Office.

40 The Sheriff may adjourn this sale without further notice by publication.

41 Attorney for Plaintiff: (name, address, telephone) _____

42 _____

43 d. The notice of sale in the case of personal property shall:

44 (1) state the terms of sale;

45 (2) state the amount of the judgment or order to be satisfied by the
46 sale;

1 (3) include a description of the property sufficient to identify it;
2 and

3 (4) if the property to be sold required a certificate of title, give the
4 registration number and legal description of the property along with
5 the location of the office where the certificate is registered.

6 e. The sheriff or other person authorized to conduct a public sale
7 may advertise the sale in any manner reasonably calculated to increase
8 the price of the property to be sold. The cost of advertisement
9 authorized by this subsection shall not be charged against the sale
10 price as a cost of sale.

11 (Source: 2A:17-33; 2A:17-34; 2A: 61-1)

12 2A:17D-6. Notice of date, time and place of public sale.

13 a. At least 10 days before a public sale of real property, a creditor
14 for whose benefit the property is to be sold shall send notice of the
15 date, time and place of the sale by registered or certified mail, return
16 receipt requested to any person who had an interest or lien in the
17 subject property that was of record 14 days before the date first
18 scheduled for the sale. If the creditor knows that a person who is sent
19 notice is represented by an attorney, the creditor also shall send a copy
20 of the notice to the attorney by ordinary mail. If the sale is adjourned
21 more than 30 days from the date first scheduled for the sale, the
22 creditor shall also send notice to any person who had an interest or
23 lien in the subject property that was of record 14 days before the new
24 date scheduled for the sale.

25 b. At least 20 days before a public sale of personal property, a
26 creditor for whose benefit the property is to be sold shall send notice
27 of the date, time and place of the sale by registered or certified mail,
28 return receipt requested to any person whom the creditor knows had
29 an interest or lien in the subject property on the date the notice of
30 pending sale was filed. If the creditor knows that a person who is sent
31 notice is represented by an attorney, the creditor also shall send a copy
32 of the notice to the attorney by ordinary mail.

33 c. The notice shall be mailed to the current address of the person,
34 if it is known or reasonably ascertainable, or to the party's last know
35 address of record. The notice shall include a description of the
36 property sufficient to identify it and a statement of the approximate
37 amount of the judgment or order to be satisfied by the sale.

38 d. Notice need not be sent to a public entity.

39 (Source: New)

40 2A:17D-7. Adjournments.

41 a. The sheriff or other person authorized to make the sale may
42 allow two adjournments of sale of no more than 14 days each at the
43 judgment debtor's request.

44 b. The sheriff or other person authorized to make the sale may
45 allow adjournments of sale at the judgment creditor's request.

46 c. The sheriff or other person authorized to make the sale may

1 charge a fee authorized by law for adjournments.
2 (Source: 2A:17-36; 2A:61-5; 2A: 61-6)
3 2A:17D-8. Conditions of sale of real property.
4 a. The following conditions shall apply in all public sales of real
5 property:
6 (1) The property shall be sold subject to interests and restrictions
7 of record, rights of tenants, rights of redemption of the debtor or of
8 the federal government, unpaid taxes, assessments or condominium
9 charges, and any facts that an accurate survey or an inspection of the
10 property would disclose.
11 (2) The property shall be sold at auction to the highest bidder. The
12 person conducting the sale shall accept, in addition to oral bids,
13 written bids for a fixed amount accompanied by the required
14 purchaser's deposit and a signed agreement to comply with all
15 conditions of sale. If dispute arises regarding who has made the
16 highest bid, the property will be resold immediately.
17 (3) At the close of sale, the purchaser shall
18 (a) pay 10% of the purchase price in cash or by certified, cashier's
19 or treasurer's check, unless the purchaser is the foreclosing party in a
20 foreclosure procedure; and
21 (b) sign an agreement to comply with all conditions of sale and
22 deliver the agreement to the person conducting the sale.
23 (4) If the purchaser is required to pay the 10% deposit, and does
24 not pay it, or if the purchaser does not sign the Conditions of Sale, the
25 person conducting the sale shall immediately resell the property
26 without further public advertisement.
27 (5) Within 30 days after sale, the purchaser shall pay the balance
28 of the purchase price and interest at the lawful rate on the balance due,
29 from the 11th day after sale, until the balance is paid.
30 (6) The fees and commissions of the person conducting the sale are
31 included in the amount bid and will be deducted to determine the
32 purchase price.
33 b. If the purchaser fails to pay the balance of the sale price within
34 30 days and the time for payment has not been extended by the
35 creditor, the property shall be sold a second time.
36 c. The purchaser may decline to complete the sale and may reclaim
37 the deposit if there is a lien or encumbrance on the property that was
38 not listed in the affidavit required to be filed before the sale by Section
39 1 of P.L.1979, c.225 (C.46:15-6.1). Otherwise, a purchaser who fails
40 to pay the balance of the sale price within 30 days shall be responsible
41 for expenses of the second sale and any difference between the first
42 and second sale price, and the sheriff or other authorized person shall
43 retain the deposit to be disbursed by court order.
44 (Source: New)
45 2A:17D-9. Conditions of sale of personal property.
46 The following conditions shall apply in all public sales of personal

1 property:

2 a. The property shall be sold as it is at the time of sale and subject
3 to interests and restrictions of record.

4 b. The property shall be sold at auction to the highest bidder. The
5 person conducting the sale shall accept, in addition to oral bids,
6 written bids for a fixed amount accompanied by the required
7 purchaser's deposit and signed agreement to comply with all conditions
8 of sale. If dispute arises regarding who has made the highest bid, the
9 property will be resold immediately.

10 c. At the close of sale, the purchaser shall pay the purchase price
11 immediately in cash or by certified, cashier's or treasurer's check unless
12 the creditor agrees to another schedule or mode of payment. If the
13 creditor allows another schedule or mode of payment, the creditor
14 shall be responsible for payment if the purchaser fails to pay as agreed.

15 d. If there is no agreement that allows another schedule or mode
16 of payment and the purchaser does not pay the purchase price at the
17 close of sale, the person conducting the sale shall immediately resell
18 the property without further public advertisement.

19 e. The fees and commissions of the person conducting the sale are
20 included in the amount bid and will be deducted to determine the
21 purchase price.

22 (Source: New)

23 2A:17D-10. Objections to sale; confirmations of sale.

24 a. A person who objects to a public sale of real property shall file
25 that objection with the Superior Court and with the person who
26 conducted the sale within 10 days after the sale or any time thereafter
27 before delivery of the deed.

28 b. If the sale was not conducted by the sheriff, the person who
29 conducted the sale shall apply to the Superior Court for confirmation
30 of the sale.

31 c. If the court approves the sale, it may confirm the sale as valid
32 and direct the sheriff or clerk of the court to deliver a deed.

33 2A:17D-11. Delivery by deed.

34 a. In the case of a public sale of real property, the purchaser shall
35 prepare a deed to the property sold and present it to the sheriff if the
36 property was sold by the sheriff and otherwise to the clerk of the court
37 under which authority the property was sold. The sheriff or clerk shall
38 execute the deed if, after examination, the sheriff or clerk determines;

39 (1) that the purchaser has paid the balance of the purchase price
40 and interest on the balance due, from the 11th day after sale;

41 (2) that the deed complies with this section;

42 (3) that the sale has not been set aside by a court and no objection
43 to the sale is pending;

44 (4) that, if the sale was not conducted by the sheriff, the sale was
45 confirmed by the court; and

46 (5) if redemption of the property is permitted by law, that the time

1 for redemption has passed and that the property has not been
2 redeemed.

3 b. The deed shall state the person whose interest in the real estate
4 was sold and the execution or other legal proceeding for which the real
5 estate was sold.

6 c. The purchaser shall pay the cost of preparing and recording the
7 deed and any realty transfer tax.

8 d. The sheriff shall attach a copy of the affidavit required by
9 Section 1 of P.L.1979, c.225 (C.46:15-6.1) to the deed.

10 e. A deed executed pursuant to this action shall transfer all
11 interests of the execution defendant in the same manner as a deed by
12 that person to a purchaser for value. The deed shall extinguish any
13 lien resulting from the judgment executed and any lien subordinate to
14 that lien.

15 (Source: 2A:17-40; 2A:17-41; 2A:50-37.)

16 2A:17D-12. Form of sheriff's deed.

17 A sheriff's deed may be substantially in the following form:

18 DEED

19 Prepared by: _____

20
21 From: _____ Sheriff of _____ County, New Jersey

22 To: _____

23 Address: _____

24 Dated: _____

25 In compliance with an order of New Jersey Superior Court,

26 _____ Division, _____ County, dated _____ in the case of

27 _____, Plaintiff

28 v. _____, Defendant.

29 Docket number: _____

30 By this deed, I, _____, Sheriff of _____

31 County, New Jersey transfer ownership of all interest of the following

32 parties: _____

33 _____

34 in premises described as:

35

36 [insert legal description]

37

38 constituting block _____, lot _____

39 in the municipality of _____, county of _____

40 including any property attached to the premises of rights to related to

41 it, and subject to restrictions of record or restrictions that would be

42 disclosed by a survey of the premises and the following restriction:

43 _____

44 _____

45 for the sum of _____ which I have received.

46 This sale which occurred on _____ was

1 advertised and conducted in accordance with law.

2

3 _____, Sheriff,

4 _____, County

5 _____, date

6

7 State of New Jersey:

8 County of _____:

9

10 On _____, _____, Sheriff of _____

11 County, New Jersey personally appeared before me and acknowledged

12 that this deed was executed voluntarily as the sheriff's own act and

13 swore that the facts alleged in it are true.

14

15 _____

16 _____

17 (Source: New)

18 2A:17D-13. Delivery by certificate of title.

19 a. In the case of a public sale of personal property which is

20 required by law to be registered under a certificate of title, the sheriff

21 or officer authorized to conduct the sale shall, prior to the time of the

22 sale:

23 (1) forward a copy of the order authorizing the sale to the office
24 where the certificate of title is registered; and

25 (2) request a certificate authorizing the sheriff or officer to transfer
26 title by public sale.

27 b. Upon payment of the full purchase price, the sheriff or officer

28 shall endorse the certificate to assign ownership to the purchaser and

29 deliver it to the purchaser.

30 c. A certificate executed pursuant to this section shall transfer all

31 interests of the judgment creditor in the same manner as a certificate

32 of ownership endorsed by that person to a purchaser for value. It shall

33 extinguish any lien resulting from the judgment enforced by the public

34 sale and any lien subordinate to that lien.

35 (Source: New)

36 2A:17D-14. Delivery of personal property not requiring certificate
37 of title.

38 In the case of public sale of personal property which does not

39 require a certificate of title, after payment of the full purchase price the

40 sheriff or officer authorized to conduct the sale shall allow the

41 purchaser to take possession of the property.

42 (Source: New)

43

44 5. The following are repealed:

45 New Jersey Statutes sections:

46 N.J.S.2A:15-6 to 2A:15-17, inclusive;

1 N.J.S.2A:17-1 to N.J.S.2A:17-64, inclusive;
2 N.J.S.2A:50-1 to N.J.S.2A:50-52; inclusive.
3 N.J.S.2A:61-1 to 2A:61-6;
4 N.J.S.2A:61-8 to 2A:61-13;
5 N.J.S.2A:61-16.
6 Pamphlet Laws:
7 Laws of 1981, c.203, ss. 3 and 4 (C.2A:17-56.1a. and C.2A:17-
8 56.6);
9 Laws of 1979, c.286, ss. 11-14 (C.2A:50-2.1 to 2A:50-2.4,
10 inclusive).

11

12 6. This act shall take effect 60 days following enactment.

13

14

15

STATEMENT

16

17 This bill would implement the recommendations contained in a
18 recently issued report by the New Jersey Law Revision Commission
19 with regard to the following procedures in civil actions: notice of
20 pending actions, collection of judgment, foreclosure and public sales.
21 The implementation of these recommendations would be accomplished
22 through the repeal of the current Title 2A statutes in these areas and
23 the enactment of an additional four new chapters to Title 2A. The
24 following is an outline of the bill's provisions.

NOTICE OF PENDING ACTION

25
26 The procedure commonly referred to as "lis pendens" permits a
27 party who institutes an action seeking to affect title to real property to
28 provide constructive notice of the pendency of the action to potential
29 bona fide purchasers, thus preserving the subject matter of the action
30 until final judgment may be obtained.

31 This proposed revision retains the substance of the existing statute
32 while greatly simplifying its provisions. The term "notice of pending
33 action" has been substituted for the archaic Latin term "lis pendens."

COLLECTION OF JUDGMENTS

34
35 The current law on collection of judgments includes many sections
36 that are outdated, unclear or superseded in practice by newer more
37 detailed rules. As a whole, the present statutes fail to reflect current
38 practice. The proposed law is a comprehensive statement of the law
39 relating to collection of judgments.

40 In addition to clarifications brought about by revisions in
41 terminology, the Commission proposes three substantive changes.
42 Foremost among these changes is the abandonment of the current
43 requirement that personal property be executed on before real
44 property. This personal property priority has little foundation in
45 today's society. Moreover, the requirement that personal property be
46 exhausted before collection against real property makes it difficult, if

1 not impossible, to insure the title to real property acquired through a
2 public sale.

3 Second, the Commission proposes that the collection procedure be
4 driven by written collection instructions from the judgment creditor to
5 the collection officer. This innovation conforms the statutes to recent
6 case law and practice. The Commission's proposal establishes the
7 guidelines for determining priorities among claimants and the time
8 when the collection order must be returned.

9 Third, the Commission proposes modification of the current
10 inadequate \$1,000 personal property exemption in line with
11 recommendations made in the 1993 Report of the Supreme Court
12 Committee on Post Judgment Collection Procedures. It also revises
13 the unworkable system of appraisal that accompanies present
14 exemption procedures. The Commission proposes that when neither
15 party objects, the collection officer's informal evaluation of items of
16 personal property would be accepted as the basis for claiming the
17 exemption.

18 FORECLOSURE

19 The Commission's proposed revision of mortgage foreclosure
20 statutes arises from the serious problems afflicting the State's
21 homeowners and commercial community under current mortgage
22 foreclosure law. The chief criticism of New Jersey mortgage
23 foreclosure practice is its slowness.

24 The Commission's proposal includes a number of new substantive
25 provisions to simplify and expedite the foreclosure process. For
26 example, this proposal dispenses with the writ of execution currently
27 required and allows sale of property upon a judgment of foreclosure.
28 Most significantly, the Commission proposes that if the sheriff cannot
29 conduct the sale within 45 days after the judgment of foreclosure, if
30 the debtor agrees or if the debtor has abandoned the property the court
31 may order that the sale be conducted by someone other than the
32 sheriff. Other new provisions are derived from the recently enacted
33 Fair Foreclosure Act, P.L.1995, c.244. The most important of these
34 provisions are those relating to "cure" of default by a debtor. These
35 provisions promote the policy of helping homeowners retain their
36 homes by reinstating their mortgages after missed payments.

37 Several of the Commission's proposals explicitly mandate existing
38 practices which now are based on Court Rule and case law and lack
39 statutory authority. These include a statutory foundation for the
40 debtor's right of redemption and the ability of a bona fide purchaser at
41 a foreclosure sale to perfect title through strict foreclosure.

42 PUBLIC SALES

43 Both the current statutes and the Commission proposal apply to all
44 sales conducted by sheriffs and other officers, whether pursuant to
45 enforcement orders on money judgments or mortgage foreclosure.
46 However, the current law includes many sections that are outdated,

1 unclear, and superseded in practice by newer, more detailed rules. It
2 also fails to regulate certain aspects of sales, allowing a variety of local
3 practices. As a whole the current law fails to reflect present practice.

4 The Commission's proposals involve a codification of current
5 practice, as well as some significant changes to simplify and shorten
6 the process of public sale. For example, the Commission proposal
7 requires that the sale be advertised in newspapers only one time. That
8 change and the inclusion of an example of a sufficient advertisement
9 should reduce both the time and cost of advertisement. The proposal
10 also reduces the length of the adjournments that the sheriff may grant
11 the debtor from a month to 14 days. These adjournments are routinely
12 given; shortening them will shorten the foreclosure process. In
13 addition, on issues where practice varies, the Commission proposal
14 establishes a standard.

15 The Commission proposal also attempts to deal with the
16 constitutional issues raised in the case of New Brunswick Savings
17 Bank v. Markouski, 123 N.J.402 (1991). That case requires that
18 notice be given to holders of subordinate liens before property is sold
19 to satisfy a prior lien. Under current law, the effect of the case is to
20 require the creditor or foreclosing party to conduct searches up to the
21 date of actual sale and to notify creditors of sale. The provisions
22 proposed require filing notice of the sale in the land records and
23 notices to interest holders based on a single search before the first
24 scheduled date of sale. This solution is an attempt to balance the
25 constitutional rights of interest holders with the practical burden of
26 multiple searches.

27

28

29

30

31 Revises present statutes dealing with procedures in civil actions
32 relating to notice of pending actions, collection of judgments,
33 foreclosures and public sales.