

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1433

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 5, 1997

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1433.

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

The procedure commonly referred to as "lis pendens" permits a party who institutes an action seeking to affect title to real property to provide constructive notice of the pendency of the action to potential bona fide purchasers. This proposed revision retains the substance of the existing statute while greatly simplifying its provisions. The term "notice of pending action" has been substituted for the archaic Latin term "lis pendens."

With regard to collection of judgments, the current law includes many sections that are outdated, unclear or superseded in practice by newer more detailed rules. As a whole, the present statutes fail to reflect current practice. The proposed law is a comprehensive statement of the law relating to collection of judgements.

In addition to clarifications brought about by revisions in terminology, the bill proposes two substantive changes. Foremost among these changes is the abandonment of the current requirement that personal property be executed on before real property. This personal property priority has little foundation in today's society. Moreover, the requirement that personal property be exhausted before collection against real property makes it difficult, if not impossible, to insure the title to real property acquired through a public sale.

Second, the bill proposes that the collection procedure be driven by written collection instructions from the judgment creditor to the collection officer. This innovation conforms the statutes to recent case law and practice. The Commission's proposal establishes the guidelines for determining priorities among claimants and the time

when the collection order must be returned.

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

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

Several of the Commission's proposals explicitly mandate existing practices which now are based on court rule and case law and lack statutory authority. These include a statutory foundation for the debtor's rights of redemption and the ability of a bona fide purchaser at a foreclosure sale to perfect title through strict foreclosure.

Both the current statutes and the Commission proposal apply to all sales conducted by sheriffs and other officers, whether pursuant to enforcement orders on money judgments or mortgage foreclosure. However, the current law includes many sections that are outdated, unclear, and superseded in practice by newer, more detailed rules. It also fails to regulate certain aspects of sales, allowing a variety of local practices. As a whole the current laws fails to reflect present practice.

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

COMMITTEE AMENDMENTS:

The following is a summary of these amendments adopted by the committee:

1. With the regard to filing of a notice of pending action, the amendments clarify that the notice binds both a person acquiring an

interest in property after the filing of the notice and a person claiming through such a person. However, a notice of pending action would not serve as notice to any person who without knowledge of the action acquires an interest in the property.

2. S1433 provided that a notice of pending action, unless extended, would expire three years from the date of filing. The amendments provide that a notice of pending action expires after five years.

3. S1433 required a party filing a notice of pending action to, within 3 days, of filing to send a copy of the notice to any person with an interest in the property. The amendments give the filing party 30 days to fulfill this requirement and clarify that notice need not be sent to a person holding an interest that cannot be affected by the pending action.

4. The amendments delete language which would have permitted a notice of a pending action to be discharged for failure to diligently prosecute an action.

5. Section 2A:17B-6 of S1433 describes the property of a judgment debtor which is exempt from a collection order. As introduced, 2A:17B-6 would exempt from collection goods whose value does not exceed \$2,000.00 and cash, bank deposits and similar financial property not to exceed \$1,000.00. Section 2A:17B-6 also provided that these limits would be adjusted periodically based on the consumer price index. The amendments limit the amount of property exempt from collection to an amount not to exceed \$1,000.00 in goods, cash, bank deposits and similar financial property. The amendments also eliminate the periodic CPI adjustment. The \$1,000.00 exemption limit reflects current New Jersey law.

6. The amendments add language providing that if a judgment debtor fails to exercise his right to choose which of property is to be exempt from levy, the court shall determine what property is to be exempt.

7. S1433 provides that the collection officer is require to comply with the lawful written collections instructions of the judgment creditor. The amendments delete language from this provision which stated that a collection officer need not levy against more items than are necessary, in the collection officer's judgment, to satisfy the judgment.

8. S1433 would have required a collection officer file a return with the court immediately upon receipt of the collection order if no written instruction have been received from the judgement credit. The amendments provide for return of the collection order to the court after 30 days if no written instructions have been received from the judgment creditor.

9. S1433 would have provided that a debtor could cure a default at any time before entry of final judgment but not later than 30 days after the mailing of the notice of default. The amendments delete this 30 day period.

10. The amendments provide that foreclosures would be governed by the provisions of S1433 unless as specifically authorized by another statutory enactment.

11. S1433 would have required that with regard to a public sale that the creditor seeking the sale give notice to any person who had an interest or lien on the subject property. The amendments provide that notice need only be given to the debtor.

12. The amendments amend the repealer section of S1433 to include repeal of the Fair Foreclosure Act.

13. In addition to the changes described, the amendments make a number of technical corrections.