

ASSEMBLY, No. 1167

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

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District 27 (Essex and Morris)
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District 35 (Bergen and Passaic)
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SYNOPSIS

Revises residential property mortgage foreclosure process.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning foreclosure of residential properties, amending
2 and supplementing P.L.1995, c.244, supplementing chapter 50 of
3 Title 2A of the New Jersey Statutes, and making an
4 appropriation.

5

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

8

9 1. Section 3 of P.L.1995, c.244 (C.2A:50-55) is amended to
10 read as follows:

11 3. As used in this act:

12 "Commissioner" means the Commissioner of Community
13 Affairs.

14 "Deed in lieu of foreclosure" means a voluntary, knowing and
15 uncoerced conveyance by the residential mortgage debtor to the
16 residential mortgage lender of all claim, interest and estate in the
17 property subject to the mortgage. In order for a conveyance to be
18 voluntary, the debtor shall have received notice of, and been fully
19 apprised of the debtor's rights as specified in section 4 of this act.
20 For purposes of this act, "voluntarily surrendered" has the same
21 meaning as "deed in lieu of foreclosure."

22 "Foreclosure Mediation Program" or "mediation program"
23 means the New Jersey Judiciary's Foreclosure Mediation Program
24 as authorized by the Supreme Court of New Jersey.

25 "Foreclosure prevention assistance" means the provision of
26 payments on behalf of a debtor to a servicer on an eligible mortgage
27 secured by real estate, and the training of counselors and other
28 foreclosure prevention providers.

29 "Immediate family" means the debtor, the debtor's spouse, or the
30 mother, father, sister, brother or child of the debtor or debtor's
31 spouse.

32 "Loan modification agreement" means the waiver, modification
33 or variation of any material term of a residential mortgage loan, that
34 changes the interest, forbears or forgives the payment of principal
35 or interest, or extends the final maturity date of the loan.

36 "Loss mitigation option" means an alternative to foreclosure,
37 including a loan modification agreement, a deed in lieu of
38 foreclosure, and a short sale.

39 "Nonprofit foreclosure assistance provider" or "provider" means
40 a corporation organized under the provisions of the "New Jersey
41 Nonprofit Corporation Act," which provides foreclosure prevention
42 assistance.

43 "Non-residential mortgage" means a mortgage, security interest
44 or the like which is not a residential mortgage. If a mortgage
45 document includes separate tracts or properties, those portions of

EXPLANATION – Matter enclosed in bold-faced brackets **thus in the above bill is
not enacted and is intended to be omitted in the law.**

Matter underlined **thus** is new matter.

1 the mortgage document covering the non-residential tracts or
2 properties shall be a non-residential mortgage.

3 "Obligation" means a promissory note, bond or other similar
4 evidence of a duty to pay.

5 "Office" means the Office of Foreclosure within the
6 Administrative Office of the Courts.

7 "Residential mortgage" means a mortgage, security interest or
8 the like, in which the security is a residential property such as a
9 house, real property or condominium, which is occupied, or is to be
10 occupied, by the debtor, who is a natural person, or a member of the
11 debtor's immediate family, as that person's residence. This act shall
12 apply to all residential mortgages wherever made, which have as
13 their security such a residence in the State of New Jersey, provided
14 that the real property which is the subject of the mortgage shall not
15 have more than four dwelling units, one of which shall be, or is
16 planned to be, occupied by the debtor or a member of the debtor's
17 immediate family as the debtor's or member's residence at the time
18 the loan is originated.

19 "Residential mortgage debtor" or "debtor" means any person
20 shown on the record of the residential mortgage lender as being
21 obligated to pay the obligation secured by the residential mortgage,
22 including any successor in interest to a residential mortgage debtor.

23 "Residential mortgage lender" or "lender" means any person,
24 corporation, or other entity which makes or holds a residential
25 mortgage, and any person, corporation or other entity to which such
26 residential mortgage is assigned.

27 "Servicer" means the person, corporation or other entity
28 responsible for servicing a residential mortgage loan, including a
29 residential mortgage lender who makes or holds a loan if the lender
30 also services the loan.

31 "Servicing" means managing the mortgage loan account on a
32 daily basis, including collecting and crediting periodic loan
33 payments, managing escrow accounts, or enforcing the terms of the
34 mortgage or note.

35 "Short sale" means the sale of real property in which the lender
36 or servicer agrees to release the lien that is secured by a residential
37 mortgage on the property upon receipt of a lesser amount than is
38 owed on the mortgage.

39 (cf: P.L.2017, c.157, s.1)

40

41 2. (New section) a. A servicer that files and serves, pursuant
42 to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et al.), a
43 summons and complaint of foreclosure on a residential mortgage
44 loan, shall initiate a process to consider loss mitigation options
45 through the Foreclosure Mediation Program by:

46 (1) submitting a request for mediation to the court, in
47 accordance with the court rules, procedures, and guidelines adopted
48 by the Superior Court for the mediation program;

1 (2) establishing a single point of contact and providing the
2 debtor with one or more direct means for communication with the
3 single point of contact;

4 (3) providing the debtor with all of the following:

5 (a) a current mortgage loan payment history in a format that
6 includes at least five years of payment history, that is plain and
7 readily understandable by the general public, and that lists all
8 payments, charges, credits, and fees, with specific details as to
9 each;

10 (b) an accurate and specific month-by-month itemization of the
11 amounts needed to cure the default;

12 (c) an accurate statement of the amount due to pay off the
13 mortgage loan in full;

14 (d) a copy of the mortgage and all assignments of the mortgage;

15 (e) a copy of the note with all endorsements and allonges,
16 including a certification setting forth the date of endorsement;

17 (f) a complete list of items that the debtor must supply to the
18 servicer in order for the servicer to process an application for each
19 type of loss mitigation option administered by the servicer; and

20 (g) a copy of the request for mediation submitted to the court;
21 and

22 (4) provide the debtor with information about the availability of
23 foreclosure prevention assistance from the State, pursuant to
24 P.L. , c. (C.) (pending before the Legislature as this
25 bill).

26 b. The servicer shall:

27 (1) make reasonable and good faith efforts to engage in
28 appropriate loss mitigation options during the mediation program;
29 and

30 (2) ensure that the single point of contact shall be responsible
31 for and have sufficient authority to perform all of the following
32 functions with respect to loss mitigation options:

33 (a) communicate the process by which a debtor may apply for
34 an available loss mitigation option and the deadlines for any
35 required submissions of applications or documentation to be
36 considered for the option;

37 (b) coordinate receipt of all applications and documentation
38 associated with an available loss mitigation option and notify the
39 debtor of any missing items necessary for consideration for the
40 option;

41 (c) maintain access to sufficient current information and
42 appropriate personnel as necessary to timely, accurately, and
43 adequately inform the debtor on an ongoing basis of the current
44 status of a loss mitigation option for which the debtor is being
45 considered;

46 (d) ensure that a debtor is considered for all loss mitigation
47 options administered by the servicer;

1 (e) maintain access to individuals with the ability and authority
2 to approve loss mitigation options, suspend foreclosure
3 proceedings, or dismiss foreclosure complaints, as appropriate; and

4 (f) ensure that all notices provided to a debtor pursuant to the
5 provisions of P.L. , c. (C.) (pending before the
6 Legislature as this bill) shall be in plain language that is clear and
7 conspicuous and readily understandable by the general public.

8

9 3. (New section) a. In the event that a debtor fails to provide
10 all of the items required by section 2 of P.L. , c. (C.)
11 (pending before the Legislature as this bill) for consideration of loss
12 mitigation options for the mediation program, the servicer shall be
13 entitled to proceed with the foreclosure action.

14 b. (1) If a debtor and servicer enter into a loan modification
15 agreement as a loss mitigation option pursuant to the mediation
16 program, the agreement shall provide for a trial period during which
17 payment for a set amount of principal and interest shall be made by
18 the debtor each month for three months. If the debtor fails to make
19 all three payments during the trial period, the servicer shall be
20 entitled to proceed with the foreclosure action.

21 (2) If the debtor makes all three payments during the loan
22 modification trial period, the servicer shall provide the debtor the
23 option of entering into a final loan modification agreement and,
24 upon entering that agreement, the servicer shall dismiss the
25 foreclosure action.

26 (3) If the debtor fails to make a payment under the terms of the
27 final modification agreement, and the debtor contests the default
28 under the modification agreement, the servicer may bring an action
29 to foreclose pursuant to the "Fair Foreclosure Act," P.L.1995, c.244
30 (C.2A:50-53 et al.).

31 c. Within 30 days of a denial of any loss mitigation option
32 pursuant to the mediation program a servicer shall provide the
33 debtor with:

34 (1) the appraisal or other opinion or analysis regarding the fair
35 market value of the property most recently relied upon by the
36 servicer;

37 (2) an explanation for the denial of a loss mitigation option in
38 sufficient detail for a reasonable person to understand why the
39 option was denied; and

40 (3) the portion or excerpt of the pooling and servicing
41 agreement or other agreement relating to the residential mortgage
42 loan that limits or prohibits the servicer from implementing a loss
43 mitigation option, if the servicer claims a loss mitigation option
44 cannot be implemented due solely to those prohibitions or
45 limitations, and the documentation or detailing of the efforts of the
46 servicer to obtain a waiver of the limitations.

1 4. (New section) a. A motion by a servicer seeking a final
2 judgment of foreclosure, pursuant to R.4:64-1 et seq. of the Rules
3 Governing the Courts of the State of New Jersey, in a foreclosure
4 action shall not be accepted by the court unless it is accompanied by
5 an affidavit by the servicer stating that the servicer has:

6 (1) contacted the debtor, or has attempted with due diligence to
7 contact the debtor for consideration of loss mitigation options
8 through the mediation program, consistent with the provisions of
9 this section;

10 (2) made reasonable and good faith efforts to participate in the
11 mediation program and engage in appropriate loss mitigation
12 options; and

13 (3) otherwise substantially complied with the provisions of
14 P.L. , c. (C.) (pending before the Legislature as this
15 bill).

16 b. In a manner consistent with the Rules Governing the Courts
17 of the State of New Jersey, any interested party may present a
18 defense in response to the foreclosure action within a time frame to
19 be determined by the court, provided the defense is accompanied by
20 an affidavit stating that the defense is not made solely for the
21 purpose of delaying the relief requested pursuant to the foreclosure
22 action.

23 c. Upon a finding that a servicer has acted in bad faith in its
24 efforts to participate in mediation and engage in loss mitigation, or
25 has violated any of the provisions of this section, the court, in
26 addition to any sanction in accordance with R.1:4-8 of the Rules
27 Governing the Courts of the State of New Jersey, may:

28 (1) Prohibit the servicer's collection of legal fees or expenses;
29 (2) Impose a civil penalty of not more than \$5,000 on the
30 servicer; and

31 (3) Stay foreclosure proceedings until the servicer resumes
32 settlement negotiations in good faith.

33 d. Nothing in this section shall be construed to affect the rights
34 of a tenant to possession of a leasehold interest under the anti-
35 eviction act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New Jersey
36 Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et seq.), or
37 any other applicable law.

38

39 5. (New section) a. Upon failure to perform any obligation of
40 a residential mortgage by a residential mortgage debtor and before
41 any servicer may accelerate the maturity of any residential
42 mortgage obligation and commence any foreclosure or other legal
43 action to take possession of the residential property which is the
44 subject of the mortgage, the servicer shall provide the court in
45 which the action is to be brought with a signed affidavit that
46 provides that the servicer has a bond or note secured by a mortgage
47 on the residential property at least 30 days in advance of the
48 foreclosure action.

1 b. Any servicer who violates this section is subject, upon order
2 of the court, to a civil penalty of not more than \$1,000 for the first
3 offense and not more than \$2,500 for the second and each
4 subsequent offense. Any penalty imposed under this section may
5 be recovered with costs in a summary proceeding pursuant to the
6 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
7 et seq.).

8

9 6. (New section) a. Except as provided in subsection b. of this
10 section, in any foreclosure action in which the servicer does not
11 prevail, the court shall order the servicer to pay reasonable court
12 costs and attorney's fees incurred by the debtor in defending against
13 the foreclosure action.

14 b. A court shall not order the servicer to make payments
15 pursuant to subsection a. of this section if:

16 (1) the action ends in a stipulation of dismissal entered into by
17 the parties, a motion to dismiss without prejudice to facilitate
18 settlement, or successful mediation of the foreclosure action; or

19 (2) the court finds specific circumstances that would make those
20 payments unjust.

21

22 7. (New section) The Legislature finds and declares:

23 a. The citizens of New Jersey with homes in danger of being
24 foreclosed upon risk losing their homes and are faced with a
25 complicated and confusing legal process that can be very difficult
26 for an individual to navigate.

27 b. It is in the best interests of the State to establish a
28 foreclosure prevention fund and to protect its citizens by entering
29 into contracts with nonprofit foreclosure assistance providers to
30 advocate on the behalf of those faced with foreclosure and to help
31 these citizens navigate the process of loan modification.

32 c. When the commissioner selects nonprofit foreclosure
33 assistance providers pursuant to P.L. , c. (C.) (pending
34 before the Legislature as this bill), and when those providers select
35 their administrators and employees, those selections should be made
36 to ensure the greatest benefit to the citizens of New Jersey who are
37 facing foreclosure of their homes.

38

39 8. (New section) a. Within the limit of funds available in the
40 New Jersey Foreclosure Prevention Fund, the commissioner is
41 authorized to enter into contracts with nonprofit foreclosure
42 assistance providers to provide foreclosure prevention assistance.
43 The contracts shall be entered into after appropriate findings by the
44 commissioner. The commissioner shall give preference to
45 applications involving two or more nonprofit corporations when
46 evaluating contract applications for the provision of foreclosure
47 prevention assistance and shall, to the extent feasible, attempt to
48 award contracts in a manner that ensures that every homeowner in

1 the State has access or reasonable access to at least one nonprofit
2 foreclosure assistance provider.

3 b. Prior to entering into a contract with an existing provider,
4 the commissioner shall have made a finding that the provider is in
5 good standing and that there is a need for proposed assistance
6 activities based on the documented submission of the provider.

7 c. A contract entered into pursuant to this section with a
8 provider shall be limited in duration to a period of one year, but
9 may be renewed, extended, or succeeded at the discretion of the
10 commissioner.

11 d. Prior to renewing, extending, or succeeding a contract with a
12 provider the commissioner shall determine that:

13 (1) the provider has substantially completed the foreclosure
14 prevention assistance specified in the contract;

15 (2) the provider has received the sums and funds specified in
16 this section; and

17 (3) the assistance carried out by the provider pursuant to its
18 contract has resulted in a significant impact on the needs of the at
19 risk existing and potential homeowners in the service area.

20 e. Prior to terminating a contract or making a determination not
21 to renew a contract, the commissioner shall:

22 (1) determine that: (a) the provider is in violation of the terms
23 and conditions of the contract; (b) funds provided pursuant to the
24 contract are being expended in a manner not consistent with the
25 terms or provisions of P.L. , c. (C.) (pending before
26 the Legislature as this bill); or (c) the significant need in the service
27 area no longer exists or all available funds have been expended; and

28 (2) provide the provider with written notice, at least 45 days in
29 advance, of its intent to terminate or not renew the contract and
30 provide the provider with the opportunity to appear and be heard
31 before the commissioner with respect to the reasons for the
32 proposed termination or non-renewal.

33 f. The commissioner may temporarily withhold payments and
34 may elect not to enter into a succeeding contract with any nonprofit
35 foreclosure assistance provider if the provider is not in compliance
36 with the contract or has without good cause failed to submit the
37 documentation required under the contract.

38 g. The commissioner shall establish eligibility criteria for use
39 by the nonprofit prevention assistance provider. That criteria shall,
40 based on the debtor's application for assistance, consider:

41 (1) need for assistance, including whether the debtor has
42 insufficient household income or net worth to correct the existing
43 delinquency or delinquencies within a reasonable period of time and
44 make full mortgage payments and whether any other federal, State,
45 local, or private sources of assistance exist that would be available
46 to the debtor and would provide adequate assistance to the debtor to
47 retain ownership of the home; and

1 (2) if there is a reasonable prospect that a loan modification
2 agreement may be reached so that the debtor will be able to resume
3 mortgage payments within a reasonable amount of time after the
4 beginning of the period for which assistance payments are provided
5 under P.L. , c. (C.) (pending before the Legislature
6 as this bill) and pay the mortgage in full by its maturity date or by a
7 later date agreed to by the servicer for completing mortgage
8 payments.

9

10 9. (New section) a. No assistance may be provided under
11 P.L. , c. (C.) (pending before the Legislature as this
12 bill) unless all of the following are established:

13 (1) the debtor's loan is secured by a residential mortgage;
14 (2) the nonprofit foreclosure assistance provider has determined
15 that the debtor is in need of mortgage counseling or assistance in
16 engaging the servicer in the development of loan modifications or
17 any other steps taken by a servicer with a debtor to resolve the
18 problem of delinquent payments;

19 (3) the debtor has applied to the provider for assistance on an
20 application form prescribed by the commissioner for this use which
21 includes a financial statement disclosing all assets and liabilities of
22 the debtor, whether held singly or jointly, and all household income
23 regardless of source. Any debtor who intentionally misrepresents
24 any financial information in conjunction with the filing of an
25 application for assistance may be denied assistance;

26 (4) the servicer is not prevented by law from foreclosing upon
27 the mortgage;

28 (5) the provider has determined, based on the debtor's financial
29 statement, that the debtor has insufficient household income or net
30 worth to correct the delinquency within a reasonable period of time
31 and make full mortgage payments;

32 (6) except for the current delinquency, the debtor shall have had
33 a reasonably favorable residential mortgage credit history; and

34 (7) the debtor meets any other procedural requirements
35 established by the commissioner.

36 b. Upon a determination that the conditions of eligibility
37 described in subsection a. of this section have been met by a debtor
38 and money is available in the New Jersey Foreclosure Prevention
39 Fund, the debtor shall be eligible for the mortgage foreclosure
40 assistance.

41

42 10. (New section) The commissioner shall establish a system by
43 which the commissioner shall make, upon the recommendation of a
44 participating nonprofit foreclosure assistance provider, payments to
45 servicers who hold a residential mortgage on behalf of the debtor
46 when those payments are in support of a negotiated settlement that
47 allow a homeowner to remain in the homeowner's home and when
48 the servicer has in concessions matched the amount of the

1 authorized payments. In no instance shall payments to servicers
2 exceed the total amount of the three monthly payments owed by the
3 homeowner before the date the homeowner applied for assistance
4 under P.L. , c. (C.) (pending before the Legislature as
5 this bill).

6

7 11. (New section) a. Each contract entered into with a
8 nonprofit foreclosure assistance provider shall provide payment to
9 the provider for foreclosure prevention assistance.

10 b. Payments shall be made by the commissioner to the provider
11 not less frequently than semiannually at or prior to the
12 commencement of the contract, to compensate the provider for the
13 assistance which it undertakes to provide.

14

15 12. (New section) The commissioner shall submit a report to the
16 Legislature within one year of the effective date of
17 P.L. , c. (C.) (pending before the Legislature as this bill),
18 and annually thereafter, on the implementation of P.L. ,
19 c. (C.) (pending before the Legislature as this bill). The
20 report shall include, but not be limited to, the specific foreclosure
21 prevention assistance provided by the provider and the number of
22 persons and households served by each provider.

23

24 13. (New section) In coordination with Department of Banking
25 and Insurance and the Division of Consumer Affairs in the
26 Department of Law and Public Safety, the commissioner shall
27 undertake outreach activities directed at eligible homeowners within
28 this State. The outreach activities shall be conducted in English and
29 Spanish, and shall contain a notice that other languages may be
30 available upon request. Outreach activities shall include, but not be
31 limited to:

32 a. The production and broadcast of public service
33 announcements using electronic media to inform the general public
34 of the availability of financial assistance through the New Jersey
35 Foreclosure Prevention Fund. The public service announcements
36 shall state the amount of financial assistance that may be available,
37 who qualifies, and where the financial assistance may be obtained;

38 b. The establishment and maintenance of a toll-free telephone
39 number to provide information on the New Jersey Foreclosure
40 Prevention Fund and respond to consumer's questions regarding the
41 fund; and

42 c. The inclusion of a description on the internet websites
43 maintained by the commissioner, the Department of Banking and
44 Insurance, and the Division of Consumer Affairs of the New Jersey
45 Foreclosure Prevention Fund. The description shall include the
46 address and phone number of each nonprofit foreclosure assistance
47 provider.

1 14. (New section) There is hereby established a special fund to
2 be known as the New Jersey Foreclosure Prevention Fund. The
3 New Jersey Foreclosure Prevention Fund shall consist of moneys
4 appropriated to it from the general fund. Moneys from the fund
5 shall be expended in accordance with P.L. , c. (C.)
6 (pending before the Legislature as this bill) and the regulations
7 promulgated pursuant to P.L. , c. (C.) (pending before
8 the Legislature as this bill).

9

10 15. (New section) A conflict or inconsistency between P.L. ,
11 c. (C.) (pending before the Legislature as this bill) and
12 federal law, including any mortgage servicing rules or other
13 regulations promulgated by the Consumer Financial Protection
14 Bureau, should be construed in favor of protecting the borrower's
15 interests and rights, to the extent that P.L. , c. (C.)
16 (pending before the Legislature as this bill) is not in violation of
17 federal law.

18

16. This act shall take effect on the 90th day next following
enactment.

21

22

STATEMENT

24

25 This bill revises New Jersey's "Fair Foreclosure Act," P.L.1995,
26 c.244 (C.2A:50-53 et seq.), to require mortgage loan servicers to
27 initiate a process to consider loss mitigation options through the
28 New Jersey Judiciary Foreclosure Mediation Program under certain
29 circumstances and to establish the New Jersey Foreclosure
30 Prevention Fund.

31 While the “Fair Foreclosure Act” currently requires lenders to
32 adhere to certain homeowner protection provisions during the
33 foreclosure process, this bill expands homeowner protections to
34 include mediation with respect to loss mitigation options and places
35 certain responsibilities for participation on debtors, and both lenders
36 and servicers, as defined in the bill, since servicers more typically
37 manage mortgage loan accounts on a daily basis on behalf of
38 lenders.

The bill requires a servicer who files a summons and complaint of foreclosure on a residential mortgage loan to initiate a process to assess the debtor's financial situation and appropriate loss mitigation options through the New Jersey Judiciary's Foreclosure Mediation Program. The bill defines "loss mitigation option" to mean an alternative to foreclosure, including a loan modification, a deed in lieu of foreclosure, and a short sale. Under these circumstances, the servicer must: (1) submit a request for mediation to the court; (2) establish a single point of contact with the debtor; (3) provide the debtor with certain information regarding the

1 mortgage loan; and (4) provide the debtor with information about
2 the availability of foreclosure prevention assistance from the State.

3 The bill also requires the servicer to: (1) make reasonable and
4 good faith efforts to engage in appropriate loss mitigation options;
5 and (2) ensure that the single point of contact shall be responsible
6 for and have sufficient authority to perform certain functions.

7 Under the bill, if a debtor and servicer enter into a loan
8 modification agreement as a loss mitigation option pursuant to the
9 mediation program, the agreement shall provide for a trial period
10 during which payment for a set amount of principal and interest
11 shall be made by the debtor each month for three months. If the
12 debtor fails to make all three payments during the trial period, the
13 servicer shall be entitled to proceed with the foreclosure action.

14 The bill also requires a servicer, within 30 days of a denial of
15 any loss mitigation option pursuant to the mediation, to provide the
16 debtor with certain information pertaining to the reasons for the
17 denial.

18 Pursuant to the bill, a motion by a servicer seeking a final
19 judgment of foreclosure, pursuant to R.4:64-1 et seq. of the Rules
20 Governing the Courts of the State of New Jersey, shall not be
21 accepted by the court unless it is accompanied by an affidavit by the
22 servicer stating that the servicer has made certain efforts to
23 participate in the mediation program and engage in appropriate loss
24 mitigation options. The bill provides for certain penalties,
25 including prohibition of the servicer's collection of legal fees, a
26 civil penalty of not more than \$5,000, and a stay of foreclosure
27 proceedings, which may be assessed by the court upon a finding
28 that a servicer has acted in bad faith in its efforts to participate in
29 mediation and engage in loss mitigation.

30 The bill also provides that, upon failure to perform any
31 obligation of a residential mortgage by a residential mortgage
32 debtor and before any servicer may accelerate the maturity of any
33 residential mortgage obligation and commence any foreclosure or
34 other legal action to take possession of the residential property
35 which is the subject of the mortgage, the servicer must provide the
36 court in which the action is to be brought with a signed affidavit
37 that provides that the servicer has a bond or note secured by a
38 mortgage on the residential property at least 30 days in advance of
39 the foreclosure action. A servicer that violates those requirements
40 is subject to a civil penalty of not more \$1,000 for the first offense
41 and not more than \$2,500 for the second and each subsequent
42 offense.

43 The bill provides that, in any foreclosure action in which the
44 servicer does not prevail, the court shall order the servicer to pay
45 reasonable court costs and attorney's fees incurred by debtor in
46 defending against the foreclosure action, unless the action ends in a
47 stipulation of dismissal entered into by the parties, a motion to
48 dismiss without prejudice to facilitate settlement, or successful

1 mediation of the foreclosure action, or the court finds specific
2 circumstances that would make that payment unjust.

3 The bill establishes a special fund to be known as the New Jersey
4 Foreclosure Prevention Fund. The New Jersey Foreclosure
5 Prevention Fund shall consist of moneys appropriated to it from the
6 general fund.

7 The bill provides that, within the limit of funds available in the
8 New Jersey Foreclosure Prevention Fund, the Commissioner of
9 Community Affairs is authorized to enter into contracts with
10 nonprofit foreclosure assistance providers to provide foreclosure
11 prevention assistance.

12 The bill requires, prior to renewing, extending, or succeeding a
13 contract with a nonprofit foreclosure assistance provider the
14 commissioner shall determine that: (1) the provider shall have
15 substantially completed the foreclosure prevention assistance
16 specified in the contract; (2) the provider shall have received the
17 sums and funds specified in this section; and (3) the assistance
18 carried out by the provider pursuant to its contract shall have
19 resulted in a significant impact on the needs of the at risk existing
20 and potential homeowners.

21 Under the bill, prior to terminating a contract or making a
22 determination not to renew a contract, the commissioner shall: (1)
23 determine that the provider is in violation of the terms and
24 conditions of the contract or the bill; and (2) provide the provider
25 with written notice, at least 45 days in advance, of its intent to
26 terminate or not renew the contract and provide the provider with
27 the opportunity to appear and be heard before the commissioner.

28 The bill requires the commissioner to establish eligibility criteria
29 for use by the nonprofit foreclosure prevention assistance provider.
30 That criteria shall, based on the debtor's application for assistance,
31 consider: (1) the need for assistance, including whether the debtor
32 has insufficient household income or net worth to correct the
33 existing delinquency; and (2) if there is a reasonable prospect that a
34 loan modification agreement may be reached so that the debtor will
35 be able to resume mortgage payments within a reasonable amount
36 of time.

37 In order for assistance to be provided under the bill, the debtor
38 must supply certain information and meet certain criteria, and
39 certain steps must be taken by the nonprofit foreclosure assistance
40 provider. Upon a determination that the conditions of eligibility
41 have been met by a debtor and money is available in the New Jersey
42 Foreclosure Prevention Fund, the debtor is eligible for the
43 assistance.

44 The bill establishes a system to make, upon the recommendation
45 of a participating nonprofit foreclosure assistance provider,
46 payments to servicers on behalf of debtors, when these payments
47 are in support of a negotiated settlement allowing a homeowner to
48 remain in the homeowner's home and when the servicer has, in

1 concessions, matched the amount of the authorized payments, with
2 certain limitations.

3 The bill requires, in coordination with Department of Banking
4 and Insurance and the Division of Consumer Affairs, the
5 Commissioner of Community Affairs to undertake certain
6 educational outreach activities directed at eligible homeowners
7 within this State.