

ASSEMBLY, No. 1186

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Assemblyman STEVE CORODEMUS

District 11 (Monmouth)

SYNOPSIS

Requires mortgage lenders to use certified mail to notify borrowers of mortgage transfers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning the transfer of mortgage loans and amending
2 P.L.1990, c.69 and P.L.1995, c.244.

3

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

6

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

9 3. As used in this act:

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

18 "Effective date of transfer" means the date on which the
19 mortgage payment of a residential mortgage debtor is first due to
20 the lender pursuant to the sale, assignment or transfer of the
21 servicing of a residential mortgage.

22 "Immediate family" means the debtor, the debtor's spouse, or the
23 mother, father, sister, brother or child of the debtor or debtor's
24 spouse.

25 "Non-residential mortgage" means a mortgage, security interest
26 or the like which is not a residential mortgage. If a mortgage
27 document includes separate tracts or properties, those portions of
28 the mortgage document covering the non-residential tracts or
29 properties shall be a non-residential mortgage.

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

32 "Office" means the Office of Foreclosure within the
33 Administrative Office of the Courts.

34 "Residential mortgage" means a mortgage, security interest or
35 the like, in which the security is a residential property such as a
36 house, real property or condominium, which is occupied, or is to be
37 occupied, by the debtor, who is a natural person, or a member of the
38 debtor's immediate family, as that person's residence. This act shall
39 apply to all residential mortgages wherever made, which have as
40 their security such a residence in the State of New Jersey, provided
41 that the real property which is the subject of the mortgage shall not
42 have more than four dwelling units, one of which shall be, or is
43 planned to be, occupied by the debtor or a member of the debtor's
44 immediate family as the debtor's or member's residence at the time
45 the loan is originated.

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 "Residential mortgage debtor" or "debtor" means any person
2 shown on the record of the residential mortgage lender as being
3 obligated to pay the obligation secured by the residential mortgage.

4 "Residential mortgage lender" or "lender" means any person,
5 corporation, or other entity which makes or holds a residential
6 mortgage, and any person, corporation or other entity to which such
7 residential mortgage is assigned.

8 "Selling servicing organization" means any person, corporation
9 or other entity which sells, assigns or transfers the servicing of a
10 residential mortgage.

11 (cf: P.L.1995, c.244, s.3.)

12
13 2. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read
14 as follows:

15 4. a. Upon failure to perform any obligation of a residential
16 mortgage by the residential mortgage debtor and before any
17 residential mortgage lender may accelerate the maturity of any
18 residential mortgage obligation and commence any foreclosure or
19 other legal action to take possession of the residential property
20 which is the subject of the mortgage, the residential mortgage
21 lender shall give the residential mortgage debtor notice of such
22 intention at least 30 days in advance of such action as provided in
23 this section.

24 b. Notice of intention to take action as specified in subsection
25 a. of this section shall be in writing, sent to the debtor by registered
26 or certified mail, return receipt requested, at the debtor's last known
27 address, and, if different, to the address of the property which is the
28 subject of the residential mortgage. The notice is deemed to have
29 been effectuated on the date the notice is delivered in person or
30 mailed to the party.

31 c. The written notice shall clearly and conspicuously state in a
32 manner calculated to make the debtor aware of the situation:

33 (1) the particular obligation or real estate security interest;

34 (2) the nature of the default claimed;

35 (3) the right of the debtor to cure the default as provided in
36 section 5 of this act;

37 (4) what performance, including what sum of money, if any, and
38 interest, shall be tendered to cure the default as of the date specified
39 under paragraph (5) of this subsection c.;

40 (5) the date by which the debtor shall cure the default to avoid
41 initiation of foreclosure proceedings, which date shall not be less
42 than 30 days after the date the notice is effective, and the name and
43 address and phone number of a person to whom the payment or
44 tender shall be made;

45 (6) that if the debtor does not cure the default by the date
46 specified under paragraph (5) of this subsection c., the lender may
47 take steps to terminate the debtor's ownership in the property by
48 commencing a foreclosure suit in a court of competent jurisdiction;

1 (7) that if the lender takes the steps indicated pursuant to
2 paragraph (6) of this subsection c., a debtor shall still have the right
3 to cure the default pursuant to section 5 of this act, but that the
4 debtor shall be responsible for the lender's court costs and attorneys'
5 fees in an amount not to exceed that amount permitted pursuant to
6 the Rules Governing the Courts of the State of New Jersey;

7 (8) the right, if any, of the debtor to transfer the real estate to
8 another person subject to the security interest and that the transferee
9 may have the right to cure the default as provided in this act,
10 subject to the mortgage documents;

11 (9) that the debtor is advised to seek counsel from an attorney of
12 the debtor's own choosing concerning the debtor's residential
13 mortgage default situation, and that, if the debtor is unable to obtain
14 an attorney, the debtor may communicate with the New Jersey State
15 Bar Association or Lawyer Referral Service in the county in which
16 the residential property securing the mortgage loan is located; and
17 that, if the debtor is unable to afford an attorney, the debtor may
18 communicate with the Legal Services Office in the county in which
19 the property is located;

20 (10) the possible availability of financial assistance for curing a
21 default from programs operated by the State or federal government
22 or nonprofit organizations, if any, as identified by the
23 Commissioner of Banking and Insurance. This requirement shall be
24 satisfied by attaching a list of such programs promulgated by the
25 commissioner; [and]

26 (11) the name and address of the lender and the telephone
27 number of a representative of the lender whom the debtor may
28 contact if the debtor disagrees with the lender's assertion that a
29 default has occurred or the correctness of the mortgage lender's
30 calculation of the amount required to cure the default; and

31 (12) if the servicing of the residential mortgage loan has been
32 sold, assigned or transferred to the lender, a declaration that the
33 selling servicing organization notified the debtor of the sale,
34 assignment or transfer, by certified mail, return receipt requested,
35 not less than 15 days prior to the effective date of transfer.

36 d. The notice of intention to foreclose required to be provided
37 pursuant to this section shall not be required if the debtor has
38 voluntarily surrendered the property which is the subject of the
39 residential mortgage.

40 e. The duty of the lender under this section to serve notice of
41 intention to foreclose is independent of any other duty to give
42 notice under the common law, principles of equity, State or federal
43 statute, or rule of court and of any other right or remedy the debtor
44 may have as a result of the failure to give such notice.

45 f. Compliance with this section shall be set forth in the
46 pleadings of any legal action referred to in this section. If the
47 plaintiff in any complaint seeking foreclosure of a residential

1 mortgage alleges that the property subject to the residential
2 mortgage has been abandoned or voluntarily surrendered, the
3 plaintiff shall plead the specific facts upon which this allegation is
4 based.

5 (cf. P.L.2003, c.298, s.1)

6
7 3. Section 1 of P.L.1990, c.69 (C.17:16F-15) is amended to read
8 as follows:

9 1. As used in this act:

10 "Commissioner" means the Commissioner of Community
11 Affairs.

12 "Duplicate copy" means a duplicate of the original property tax
13 bill which duplicate is generated by the collector of a taxing district.

14 "Effective date of transfer" means the date on which the
15 mortgage payment of a mortgagor is first due to the purchasing
16 servicing organization pursuant to the sale, assignment or transfer
17 of the servicing of a mortgage loan.

18 "Mortgagee" means the holder of a mortgage loan.

19 "Mortgage escrow account" or "escrow account" means an
20 account which is part of a mortgage loan agreement, whether
21 incorporated into the agreement or as part of a separately executed
22 document, whereby: the mortgagor is obligated to make periodic
23 payment to the mortgagee or his agent for taxes, insurance
24 premiums, or other charges with respect to the real property which
25 secures the mortgage loan; and the mortgagee or his agent is
26 obligated to make payments for taxes, insurance premiums or other
27 charges with respect to the real property which secures the
28 mortgage loan.

29 "Mortgage loan" means a loan made to a natural person or
30 persons to whom credit is offered or extended primarily for
31 personal, family or household purposes which is secured by a
32 mortgage constituting a lien upon real property located in this State
33 on which there is erected or to be erected a structure containing one,
34 two, three, four, five or six dwelling units, a portion of which
35 structure may be used for nonresidential purposes, in the making of
36 which the mortgagee relies primarily upon the value of the
37 mortgaged property.

38 "Mortgagor" includes any person liable for the payment of a
39 mortgage loan, and the owner of real property which secures the
40 payment of a mortgage loan.

41 "Original tax bill" means the property tax bill as originally
42 prepared and mailed by the collector of a taxing district pursuant to
43 subsection a. of R.S.54:4-64.

44 "Property tax processing organization" means an organization
45 which, under contract with a mortgagee or a servicing organization,
46 collects and processes property tax information with respect to
47 properties securing mortgage loans.

48 "Purchasing servicing organization" means a person or entity to

1 whom or which a mortgagee or a selling servicing organization
2 sells, assigns or transfers the servicing of a mortgage loan.

3 "Replacement bill" means a property tax bill made or generated
4 by a mortgagee, servicing organization or tax processing
5 organization subject to the restrictions provided pursuant to
6 subsection a. of section 5 of this act and regulations promulgated by
7 the Commissioner of Community Affairs pursuant to subsection a.
8 of section 5 of this act. "Selling servicing organization" means
9 a person or entity who sells, assigns or transfers the servicing of a
10 mortgage loan.

11 "Servicing organization" means a mortgagee or an agent of the
12 mortgagee, pursuant to a written agreement between the agent and
13 the mortgagee, which is responsible for one or more mortgage
14 escrow accounts.

15 "Tax authorization form" means a form approved by the
16 Commissioner of Community Affairs whereby the mortgagor
17 authorizes the municipal tax collector to send the original municipal
18 tax bill to the mortgagee or the mortgagee's servicing organization
19 pursuant to R.S.54:4-64.
20 (cf: P.L.1990, c.69, s.1)

21

22 4. Section 3 of P.L.1990, c.69 (C.17:16F-17) is amended to read
23 as follows:

24 3. If the servicing of a mortgage loan for which a mortgage
25 escrow account has been established is sold, assigned or transferred
26 to a purchasing servicing organization:

27 a. (Deleted by amendment, P.L.1997, c.33.)

28 b. The selling servicing organization shall notify the tax
29 collector of the taxing district in which the mortgaged property is
30 located of the sale, assignment or transfer not more than 45 days
31 after the actual date of the sale, assignment or transfer or not less
32 than 10 days before the date the next payment of property taxes is
33 due, whichever is earlier. The notification provided to the tax
34 collector shall be on a form approved by the commissioner. The
35 selling servicing organization shall also forward to the purchasing
36 servicing organization the tax bill and stubs for the property
37 securing the mortgage loan.

38 c. The purchasing servicing organization shall issue corrected
39 coupon or payment books, if such are used, not later than 20 days
40 after the first mortgage escrow payment to the purchasing servicing
41 organization is due.

42 d. The purchasing servicing organization shall notify the tax
43 collector of the taxing district in which the mortgaged property is
44 located of the sale, assignment or transfer of the servicing of the
45 mortgage loan not later than 45 days after the actual date of the
46 sale, assignment or transfer or not less than 10 days prior to the date
47 the next payment of property taxes is due, whichever is earlier.
48 This notice shall include the purchasing servicing organization's

1 procedure for responding to questions regarding a mortgage escrow
2 account it manages.

3 e. A mortgagee or servicing organization which has been
4 authorized to receive the original tax bill from the tax collector of
5 the taxing district in which the mortgagor's property is located
6 pursuant to R.S.54:4-64, may request the tax collector to send the
7 original tax bill to its property tax processing organization. This
8 request shall be made in writing on a form approved by the
9 commissioner.

10 f. The selling servicing organization shall notify the mortgagor
11 of the sale, assignment or transfer of the servicing of the mortgage
12 loan, by certified mail, return receipt requested, not less than 15
13 days prior to the effective date of transfer.

14 For the purposes of this section, "the date the next payment of
15 property taxes is due" means either the first day of February, May,
16 August or November, as applicable, and shall not include any grace
17 period.

18 For the purposes of this section, the terms, "purchasing servicing
19 organization" and "selling servicing organization" shall not include
20 the Government National Mortgage Association, the Federal
21 National Mortgage Association, the Federal Home Loan Mortgage
22 Corporation, the Resolution Trust Corporation, or the Federal
23 Deposit Insurance Corporation, if the assignment, sale, or transfer
24 of the servicing of the mortgage loan is preceded by:

25 (1) Termination of the contract for servicing the loan for cause;

26 (2) Commencement of proceedings for bankruptcy of the
27 servicer; or

28 (3) Commencement of proceedings by the Federal Deposit
29 Insurance Corporation or the Resolution Trust Corporation for
30 conservatorship or receivership of the servicer, or an entity by
31 which the servicer is owned or controlled.

32 (cf: P.L.1997, c.33, s.14)

33

34 5. This act shall take effect on the 90th day following
35 enactment, except that the requirement with respect to foreclosures
36 contained in section 2 shall take effect 120 days following
37 enactment.

38

39

40

STATEMENT

41

42 This bill ensures that a mortgagor receives notice of a sale,
43 assignment or transfer of a residential mortgage to a new lender so
44 that the mortgagor can direct payments to the appropriate lender.

45 The bill requires that under the "Fair Foreclosure Act," whenever
46 a mortgage lender initiates a foreclosure or other legal action to take
47 possession of residential real property and the lender purchased the
48 mortgage from a previous lender - a "selling servicing

A1186 CORODEMUS

8

1 organization"- the lender must include a certain declaration in the
2 notice of intention to foreclose. The declaration must state that the
3 selling servicing organization notified the mortgagor of the sale,
4 assignment or transfer by certified mail, return receipt requested,
5 not less than 15 days prior to the effective date of the transfer.
6 The bill also requires that whenever a lender sells, assigns or
7 transfers the servicing of a mortgage loan for which an escrow
8 account has been established, the lender must notify the mortgagor,
9 by certified mail, return receipt requested, not less than 15 days
10 before the effective date of the transfer.