

[Second Reprint]

**SENATE, No. 1853**

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**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

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INTRODUCED MAY 19, 2008

**Sponsored by:**

**Senator NIA H. GILL**

**District 34 (Essex and Passaic)**

**Senator M. TERESA RUIZ**

**District 29 (Essex and Union)**

**SYNOPSIS**

Provides period of extension for repayment of introductory rate mortgages on residential property under certain circumstances.

**CURRENT VERSION OF TEXT**

As reported by the Senate Commerce Committee on June 19, 2008, with amendments.



**(Sponsorship Updated As Of: 6/24/2008)**

1 AN ACT concerning certain residential mortgages, and  
2 supplementing Title 46 of the Revised Statutes.

3

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

6

7 <sup>1</sup>1. This act shall be known and may be cited as the “Save New  
8 Jersey Homes Act of 2008.”<sup>1</sup>

9

10 **[1.] 2.<sup>1</sup>** The Legislature finds and declares that:

11 a. Many thousands of New Jersey homeowners are at risk of  
12 losing their homes as a result of mortgage foreclosures in the  
13 immediate future;

14 b. Foreclosure of a family’s home often represents the loss of  
15 the family’s most valuable financial asset, and foreclosures  
16 undermine the health and economic vitality of neighborhoods;

17 c. Foreclosures result in the loss of millions of dollars in assets,  
18 not only those of the homeowners who are the victims of  
19 foreclosure, but also in terms of the property values of homes  
20 located in the vicinity of foreclosed properties, as well as millions  
21 in additional costs to state and local government for the loss of  
22 property tax revenue;

23 d. According to a report issued by the U.S. Government  
24 Accountability Office (GAO) in October <sup>2</sup>[,]<sup>2</sup> 2007, New Jersey  
25 experienced an increase in residential mortgage foreclosure start  
26 rates in excess of 50% over the prior two years and the GAO found  
27 that defaults and foreclosures on mortgages have a significant  
28 economic impact on homeowners, lenders, and neighborhoods;

29 e. According to a report issued in April <sup>2</sup>[,]<sup>2</sup> 2008 by the State  
30 Foreclosure Prevention Working Group, which is composed of  
31 banking regulators and attorneys general of 11 states, the collective  
32 efforts of mortgage lenders and government officials to address  
33 rising foreclosures has not resulted in meaningful improvement in  
34 foreclosure prevention, and new approaches, such as targeted  
35 efforts to slow down the foreclosure process, are needed to prevent  
36 millions of unnecessary foreclosures nationwide.

37 f. Foreclosures are largely the result of subprime lending  
38 practices, which have placed many homeowners in loans that they  
39 cannot realistically afford, by using mortgage loan features such as  
40 low introductory rates which reset to higher, variable rates, thereby  
41 increasing the risk of default for many homeowners in the state  
42 who, at an increasing rate, cannot sell their home or refinance their  
43 mortgage;

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup>Senate SCM committee amendments adopted June 9, 2008.

<sup>2</sup>Senate SCM committee amendments adopted June 19, 2008.

1 g. Industry analysts estimate that, nationwide, about 1.5 million  
2 mortgages are due to reset in 2008, and that as many as three  
3 million subprime mortgages could end up in foreclosure over the  
4 next several years; and

5 h. There is a compelling need for the State of New Jersey to  
6 address the ongoing economic crisis in the subprime mortgage  
7 market and to provide the means by which homeowners can obtain  
8 a period of extension to adjust their finances in order to increase  
9 their ability to retain their homes, encourage mortgage lenders to  
10 modify mortgage loan terms and resolve foreclosure disputes, and  
11 protect local governments and neighborhoods from the negative  
12 social, economic, and fiscal consequences of foreclosure and  
13 abandonment.

14

15 <sup>1</sup>[2.] 3. As used in this act:

16 “Creditor” means a State chartered bank, savings bank, savings  
17 and loan association or credit union, any person required to be  
18 licensed under the provisions of the “New Jersey Licensed Lenders  
19 Act,” P.L.1996, c.157 (C.17:11C-1 et seq.), and any entity acting on  
20 behalf of the creditor named in the debt obligation including, but  
21 not limited to, servicers.

22 “Eligible borrower” means a borrower who is obligated to repay  
23 a loan secured by an introductory rate mortgage.

24 “Eligible foreclosed borrower” means a borrower who is  
25 obligated to repay a loan secured by an introductory rate mortgage  
26 and who receives a notice of intention to foreclose that mortgage  
27 pursuant to the “Fair Foreclosure Act,” P.L.1995, c.244 (C.2A:50-  
28 53 et seq.), except that an “eligible foreclosed borrower” shall not  
29 include an eligible borrower who has previously exercised the right  
30 to obtain a three year period of extension pursuant to section <sup>1</sup>[4]  
31 5<sup>1</sup> of this act.

32 <sup>2</sup>“Full repayment” means the full repayment of the amounts due  
33 under the introductory rate mortgage, including, without limitation,  
34 upon the maturity date, a refinancing, or a sale of or other transfer  
35 of title to the property.<sup>2</sup>

36 <sup>1</sup>“Fully indexed rate” means the sum of the current value of the  
37 index used for the adjustable rate mortgage and the margin  
38 disclosed in the loan agreement.<sup>1</sup>

39 “Introductory rate mortgage” means a consumer credit  
40 transaction in which the loan is secured by a mortgage <sup>1</sup>[or deed of  
41 trust]<sup>1</sup> on real estate in this State upon which there is located a one  
42 to four family dwelling which is occupied by the borrower as the  
43 borrower’s principal residence, and which provides for <sup>1</sup>[a fixed  
44 interest rate for an introductory period that resets to a variable  
45 interest rate after a period of time] : (1) an introductory payment  
46 rate option that is set at least 3 percent below the fully indexed rate  
47 at the time the loan was originated and payments may adjust by

1 more than 3 percent at the reset date regardless of whether the  
2 variable rate has increased; or (2) an interest rate that may adjust by  
3 more than 2 percent at the end of the initial fixed rate period of the  
4 loan and which, notwithstanding the payment rate in effect, had an  
5 interest rate at origination of more than 200 basis points over the  
6 Freddie Mac 30-year conventional interest rate and which provides  
7 for an introductory rate that is set below the fully indexed rate at the  
8 time the loan was originated and may adjust at the reset date  
9 regardless of whether the variable rate has increased.  
10 “Introductory rate mortgage” shall not include: (1) a loan that  
11 provides for a fixed rate of interest for the first five years or longer;  
12 or (2) a loan that provides for an introductory rate that is set below  
13 the fully indexed rate at the time the loan was originated only as a  
14 result of the borrower’s payment of bona fide discount points<sup>1</sup>.  
15

16 <sup>1</sup>[3.] <sup>1</sup>4. a. Prior to the date on which the interest rate in effect  
17 during the introductory period of an introductory rate mortgage  
18 resets to a variable interest rate under the terms of the mortgage, a  
19 creditor shall provide a series of written notices, separate and  
20 distinct from all other correspondence, to an eligible borrower. The  
21 creditor shall provide these notices at <sup>1</sup>[the following] 60 day and  
22 30 day<sup>1</sup> intervals prior to the date that the interest rate resets <sup>1</sup>[:

- 23 (1) 120 days;  
24 (2) 90 days;  
25 (3) 60 days; and  
26 (4) 30 days<sup>1</sup>].

27 b. Each notice required pursuant to subsection a. of this section  
28 shall include, in plain language <sup>1</sup>and in at least 14 point bold type<sup>1</sup>:

29 (1) the current interest rate under the terms of the introductory  
30 rate mortgage;

31 (2) the date on which the interest rate resets from a fixed interest  
32 rate applicable during the introductory period to a variable interest  
33 rate;

34 (3) an explanation of how the reset interest rate and monthly  
35 payment would be determined;

36 (4) the best estimate by the creditor of the amount of the  
37 monthly payment that will apply after the date of the reset, and the  
38 assumptions upon which the estimate is based;

39 (5) a list of alternatives an eligible borrower may pursue before  
40 the date of the reset, including any refinancing of the loan offered  
41 by the creditor or any renegotiation of loan terms offered by the  
42 creditor;

43 (6) an explanation of the borrower’s right to obtain a period of  
44 extension <sup>1</sup>prior to the initial interest rate reset of an introductory  
45 rate mortgage<sup>1</sup> pursuant to this act and an explanation of the  
46 procedure that a borrower must follow to obtain a period of  
47 extension; and

1 (7) ~~'[an affidavit]~~ a certification<sup>1</sup> of extension form that can be  
2 completed by a borrower in order to obtain a period of extension  
3 authorized pursuant to section ~~'[4]~~ 5<sup>1</sup> of this act.

4  
5 ~~'[4.] 5.~~<sup>1</sup> a. Notwithstanding any law or contract right to the  
6 contrary, 'prior to the initial interest rate reset of an introductory  
7 rate mortgage,<sup>1</sup> a creditor shall provide an eligible borrower a  
8 period of extension for three years as provided in this section,  
9 during which the interest rate on the introductory rate mortgage  
10 shall not increase above the original introductory rate, provided the  
11 eligible borrower completes and returns ~~'[an affidavit]~~ a  
12 certification<sup>1</sup> of extension to the creditor in accordance with the  
13 provisions of this section.

14 b. In order to obtain the period of extension, the eligible  
15 borrower shall provide to the creditor, prior to the date that the  
16 interest rate resets under the terms of the introductory rate  
17 mortgage, a completed ~~'[affidavit]~~ certification<sup>1</sup> of extension form  
18 signed by the eligible borrower, which contains:

19 (1) the name of the eligible borrower;

20 (2) the address of the property; and

21 (3) an affirmative statement that the eligible borrower:

22 (a) does not have sufficient monthly income, after deductions  
23 for necessary living expenses, to pay the monthly payments that  
24 will apply after the date that the interest rate resets;

25 (b) requests the period of extension;

26 (c) agrees to continue <sup>1</sup>, during the period of extension,<sup>1</sup>  
27 monthly payments ~~'[of]~~ , which shall include<sup>1</sup> principal and  
28 interest calculated at the introductory rate ~~'[during the period of~~  
29 extension] on the date that the introductory rate mortgage was  
30 originated, as well as amounts for taxes, insurance, and any other  
31 amounts being paid under the terms of the mortgage prior to the  
32 interest rate reset<sup>1</sup>;

33 (d) agrees to pay the creditor, at the time of the <sup>2</sup>~~'[eligible~~  
34 borrower's transfer of the title to the property] full repayment of  
35 the introductory rate mortgage<sup>2</sup>, any interest deferred on account of  
36 the period of extension;

37 (e) agrees to accept the creditor's placement of a ~~'[subordinate~~  
38 lien] modification of mortgage<sup>1</sup> on the property to secure the  
39 repayment of the interest deferred on account of the period of  
40 extension; and

41 (f) agrees to sign a modification of mortgage ~~'[loan document]~~  
42 form<sup>1</sup> that contains the terms of the period of extension and any  
43 documentation necessary to establish or record the ~~'[subordinate~~  
44 lien] modification of mortgage<sup>1</sup>.

- 1 c. An eligible borrower who makes a knowing material  
2 misrepresentation in <sup>1</sup>['an affidavit] a certification<sup>1</sup> of extension is  
3 guilty of a crime of the fourth degree.
- 4 d. The creditor, upon receiving the completed <sup>1</sup>['affidavit]  
5 certification<sup>1</sup> of extension, shall grant the eligible borrower the  
6 three year period of extension, which shall commence on the date  
7 that the <sup>1</sup>['creditor receives the eligible borrower's completed  
8 affidavit of extension] introductory rate is due to reset under the  
9 terms of the introductory rate mortgage<sup>1</sup>.
- 10 e. <sup>1</sup>['Upon] Within a reasonable amount of time after the<sup>1</sup>  
11 receipt of a completed <sup>1</sup>['affidavit] certification<sup>1</sup> of extension from  
12 an eligible borrower, a creditor shall provide to the eligible  
13 borrower a written acknowledgment that the <sup>1</sup>['affidavit]  
14 certification<sup>1</sup> of extension has been received. The acknowledgment  
15 shall contain the following:
- 16 (1) the monthly payment amount that is due from the eligible  
17 borrower during the period of extension, which shall <sup>1</sup>['be the  
18 minimum monthly payment of] include<sup>1</sup> principal and interest,  
19 calculated at the introductory rate <sup>1</sup>['.']<sup>1</sup> on the date the introductory  
20 rate mortgage was originated <sup>1</sup>, as well as amounts for taxes,  
21 insurance, and any other amounts being paid under the terms of the  
22 mortgage prior to the interest rate reset<sup>1</sup>;
- 23 (2) a schedule of payments, indicating the date that the first  
24 monthly payment is due and the dates that each subsequent monthly  
25 payment is due during the period of extension;
- 26 (3) the address to which the <sup>2</sup>eligible<sup>2</sup> borrower shall send the  
27 monthly payment; and
- 28 (4) a statement of proposed <sup>1</sup>['subordinate lien] modification of  
29 mortgage<sup>1</sup>, which shall include:
- 30 (a) a notice to the <sup>2</sup>eligible<sup>2</sup> borrower that the creditor will place  
31 a <sup>1</sup>['subordinate lien] modification of mortgage<sup>1</sup> on the property  
32 that is the security for the introductory rate mortgage, to secure the  
33 <sup>2</sup>eligible<sup>2</sup> borrower's repayment of the amount of interest deferred  
34 by the period of extension; and
- 35 (b) an explanation of the method the creditor will use to calculate  
36 the amount of the interest deferred by the period of extension.
- 37 f. <sup>1</sup>(1)<sup>1</sup> A creditor who grants a period of extension to an  
38 eligible borrower shall have the right to record a <sup>1</sup>['subordinate  
39 lien] modification of mortgage<sup>1</sup> on the eligible borrower's property  
40 <sup>1</sup>in the public records in the county in which the property is located<sup>1</sup>  
41 to secure the <sup>2</sup>eligible<sup>2</sup> borrower's repayment of the amount of  
42 interest deferred by the period of extension. The <sup>1</sup>['subordinate  
43 lien] modification of mortgage<sup>1</sup> shall be effective from the date  
44 <sup>1</sup>['of recording in the public records in the county in which the  
45 property is located] that it is executed<sup>1</sup>. Notwithstanding any law

1 to the contrary, the <sup>1</sup>[subordinate lien] modification of mortgage<sup>1</sup>  
2 shall have the same priority as the lien of the introductory rate  
3 mortgage. Upon payment by the eligible borrower of the total  
4 amount of interest deferred pursuant to the period of extension <sup>2</sup>,  
5 which shall only be due upon full repayment of the introductory rate  
6 mortgage<sup>2</sup>, the creditor shall provide the eligible borrower with a  
7 recordable satisfaction of the <sup>1</sup>[subordinate lien] modification of  
8 mortgage<sup>1</sup>, or otherwise cause the <sup>1</sup>[subordinate lien] modification  
9 of mortgage<sup>1</sup> to be discharged of record.

10 <sup>1</sup>(2) If an eligible borrower fails to return to a creditor, who has a  
11 right to record a modification of mortgage pursuant to paragraph (1)  
12 of this subsection, a properly executed modification of mortgage or  
13 any other documentation necessary to establish or record the  
14 modification of mortgage, within 30 days from the borrower's  
15 receipt from the creditor of a modification of mortgage form, the  
16 creditor may record the eligible borrower's <sup>2</sup>[certificate]17 certification<sup>2</sup> of extension in place of the modification of mortgage.  
18 Notwithstanding any other law to the contrary, the <sup>2</sup>[certificate]  
19 certification<sup>2</sup> of extension shall have the same priority as the lien of  
20 the introductory rate mortgage. Upon payment by the eligible  
21 borrower of the total amount of interest deferred pursuant to the  
22 period of extension, the creditor shall provide the eligible borrower  
23 with a recordable satisfaction of the <sup>2</sup>[certificate] certification<sup>2</sup> of  
24 extension, or otherwise cause the <sup>2</sup>[certificate] certification<sup>2</sup> of  
25 extension to be discharged of record.<sup>1</sup>

26 g. <sup>1</sup>A creditor shall not require an eligible borrower to limit or  
27 waive the rights of the borrower to bring any claims, defenses,  
28 demands, proceedings, actions, or causes of action against the  
29 creditor as a condition of accepting an offer of any loss mitigation  
30 activities made available by the "Save New Jersey Homes Act of  
31 2008," P.L. , c. (C. ) (pending before the Legislature as this  
32 bill).

33 h.<sup>1</sup> An eligible borrower who has been granted a period of  
34 extension shall forfeit all rights concerning deferment of interest  
35 payments provided by this act if the eligible borrower fails to make  
36 payments under the schedule of payments set forth in the creditor's  
37 acknowledgment of the period of extension or fails to comply with  
38 the terms of any <sup>1</sup>[mortgage loan]<sup>1</sup> modification <sup>1</sup>[agreement] of  
39 mortgage<sup>1</sup> entered into between the creditor and the eligible  
40 <sup>1</sup>[foreclosed]<sup>1</sup> borrower relating to the period of extension <sup>1</sup>, such  
41 that the modification of mortgage becomes 60 days delinquent<sup>1</sup>.

42  
43 <sup>1</sup>[5.] 6. a.<sup>1</sup> A creditor that issues to an eligible foreclosed  
44 borrower a notice of intention to foreclose an introductory rate  
45 mortgage pursuant to the "Fair Foreclosure Act," P.L.1995, c.244  
46 (C.2A:50-53 et seq.), shall <sup>1</sup>[include with the notice of intention, an

1 additional notice, written in plain language, which] send to the  
2 eligible foreclosed borrower a series of written notices, by regular  
3 and registered mail, separate and distinct from all other  
4 correspondence. The notices<sup>1</sup> shall include <sup>1</sup>in plain language and  
5 in at least 14 point bold type<sup>1</sup> :

6 <sup>1</sup>**[a.] (1)** A statement that the information in the notice is being  
7 provided as required by the “Save New Jersey Homes Act of 2008,”  
8 P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) (pending before the Legislature as this bill),  
9 which was enacted by the New Jersey Legislature and which  
10 provides certain rights to borrowers whose homes are the subject of  
11 a mortgage foreclosure action;

12 <sup>1</sup>(2) A list of alternatives to foreclosure that an eligible  
13 foreclosed borrower may pursue, including any refinancing of the  
14 loan offered by the creditor and any renegotiation of loan terms  
15 offered by the creditor;

16 <sup>1</sup>**[b.] (3)** An explanation of the eligible foreclosed borrower’s  
17 right to obtain a period of extension for three years pursuant to  
18 <sup>1</sup>**[this act]** the “Save New Jersey Homes Act of 2008,” P.L. \_\_\_\_\_,  
19 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill),<sup>1</sup> and an  
20 explanation of the procedure that an eligible foreclosed borrower  
21 must follow to obtain a period of extension;

22 <sup>1</sup>(4) A statement that the notice should be read carefully and that  
23 the eligible foreclosed borrower may wish to consult with an  
24 attorney to understand the rights that may be available under the  
25 “Save New Jersey Homes Act of 2008,” P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_)  
26 (pending before the Legislature as this bill);<sup>1</sup> and

27 <sup>1</sup>**[c. An affidavit]** <sup>1</sup>(5) A certification<sup>1</sup> of extension form that can  
28 be completed by an eligible foreclosed borrower in order to obtain  
29 the period of extension authorized pursuant to section <sup>1</sup>**[6]** 7<sup>1</sup> of  
30 this act.

31 <sup>1</sup>**b.** The notices required pursuant to subsection a. of this section  
32 shall be sent at the following intervals:

33 (1) within 10 days of issuing the notice of intention; and

34 (2) at the time that the creditor applies for entry of final  
35 judgment of foreclosure pursuant to section 6 of P.L.1995, c.244  
36 (C.2A:50-58).

37 c. The notices shall be sent in envelopes that state the  
38 following information on the outside front portion of the envelope:  
39 “The New Jersey Legislature has enacted the Save New Jersey  
40 Homes Act of 2008, which may help you save your home from  
41 foreclosure. Details as to the rights you may have to obtain a period  
42 of extension of foreclosure under this new law are contained within.  
43 Please read the contents carefully. You may wish to consult with an  
44 attorney to understand your rights under this new law.”<sup>1</sup>

1       <sup>1</sup>[6.] 7.<sup>1</sup> a. Notwithstanding any law or contract right to the  
2 contrary, a creditor shall provide an eligible foreclosed borrower a  
3 period of extension for three years as provided in this section,  
4 during which foreclosure proceedings pursuant to the “Fair  
5 Foreclosure Act,” P.L.1995, c.244 (<sup>1</sup>[C.2A50-53] C.2A:50-53<sup>1</sup> et  
6 seq.) shall be suspended and the <sup>1</sup>[interest rate on the introductory  
7 rate mortgage shall be deemed to be the minimum] <sup>2</sup>[foreclosed]<sup>2</sup>  
8 eligible <sup>2</sup>foreclosed<sup>2</sup> borrower shall continue to pay<sup>1</sup> monthly  
9 <sup>1</sup>[payment of] payments, which shall include<sup>1</sup> principal and  
10 interest, calculated at the introductory rate <sup>1</sup>[,]<sup>1</sup> on the date that the  
11 <sup>1</sup>[loan] introductory rate mortgage<sup>1</sup> was originated, as well as  
12 amounts for taxes, insurance, and any other amounts being paid  
13 under the terms of the mortgage prior to the interest rate reset.<sup>1</sup>  
14 provided the eligible foreclosed borrower completes and returns  
15 <sup>1</sup>[an affidavit] a certification<sup>1</sup> of extension to the creditor in  
16 accordance with the provisions of this section.

17       b. In order to obtain the period of extension, the eligible  
18 foreclosed borrower shall provide to the creditor, <sup>1</sup>[prior to a  
19 court’s entry of final judgment of foreclosure pursuant to the “Fair  
20 Foreclosure Act,” P.L.1995, c. 244 (C.2A:50-53 et seq.) or prior to  
21 the expiration of a period of redemption provided pursuant to New  
22 Jersey Court Rule 4:65-5] no later than 90 days from the date that  
23 the creditor sends the notice required pursuant to paragraph (2) of  
24 subsection b. of section 6 of this act<sup>1</sup>, a completed <sup>1</sup>[affidavit]  
25 certification<sup>1</sup> of extension form signed by the eligible foreclosed  
26 borrower, which contains:

27       (1) the name of the eligible foreclosed borrower;  
28       (2) the address of the property; and  
29       (3) an affirmative statement that the eligible foreclosed  
30 borrower:

31       (a) requests the period of extension;  
32       (b) agrees to continue <sup>1</sup>, during the period of extension,<sup>1</sup>  
33 monthly payments <sup>1</sup>[of] which shall include<sup>1</sup> principal and interest,  
34 calculated at the introductory rate <sup>1</sup>on the date that the introductory  
35 rate mortgage was originated, as well as amounts for taxes,  
36 insurance, and any other amounts being paid under the terms of the  
37 mortgage prior to the interest rate reset<sup>1</sup>;

38       (c) agrees to pay the creditor, at the time of <sup>2</sup>[transfer of title to  
39 the property] full repayment of the introductory rate mortgage<sup>2</sup>:

40       (i) any interest deferred on account of the period of extension;  
41       (ii) any fees and costs incurred by the creditor in connection with  
42 the foreclosure proceeding; and  
43       (iii) any arrearages owed to the creditor for monthly principal  
44 and interest payments, homeowners insurance payments, property  
45 tax payments, and any other payments that the eligible <sup>2</sup>foreclosed<sup>2</sup>

1 borrower was required to pay, but failed to pay, under the terms of  
2 the introductory rate mortgage;

3 (d) agrees to accept the creditor's placement of a <sup>1</sup>[subordinate  
4 lien] modification of mortgage<sup>1</sup> on the property to secure the  
5 repayment of amounts owed pursuant to subparagraph (c) of this  
6 paragraph; and

7 (e) agrees to sign a modification of mortgage <sup>1</sup>[loan document]  
8 form<sup>1</sup> that contains the terms of the period of extension and any  
9 documentation necessary to establish or record the <sup>1</sup>[subordinate  
10 lien] modification of mortgage<sup>1</sup>.

11 c. The creditor, upon receiving the completed <sup>1</sup>[affidavit]  
12 certification<sup>1</sup> of extension <sup>1</sup>within the time period specified in  
13 subsection b. of this section<sup>1</sup>, shall:

14 (1) grant the eligible foreclosed borrower the three year period  
15 of extension, which shall commence <sup>1</sup>[on] no later than 30 days  
16 from<sup>1</sup> the date that the creditor receives the eligible foreclosed  
17 borrower's completed <sup>1</sup>[affidavit] certification<sup>1</sup> of extension; and

18 (2) suspend the foreclosure proceeding that the creditor initiated  
19 pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-  
20 53 et seq.).

21 <sup>1</sup>A creditor may grant relief pursuant to paragraphs (1) and (2) of  
22 this subsection, upon receipt of a completed certification of  
23 extension from an eligible foreclosed borrower after the time period  
24 specified in subsection b. of this section, in the sole discretion of  
25 the creditor.<sup>1</sup>

26 d. <sup>1</sup>[Upon] Within a reasonable period of time after the<sup>1</sup>  
27 receipt of a completed <sup>1</sup>[affidavit] <sup>2</sup>[certificate<sup>1</sup>] certification<sup>2</sup>  
28 extension from an eligible foreclosed borrower <sup>1</sup>within the time  
29 period specified in subsection b. of this section<sup>1</sup>, a creditor shall  
30 provide to the eligible foreclosed borrower a written  
31 acknowledgment that the <sup>1</sup>[affidavit] certification<sup>1</sup> of extension has  
32 been received. The acknowledgment shall contain the following:

33 (1) a statement that the foreclosure <sup>2</sup>[proceedings] proceeding<sup>2</sup>  
34 initiated pursuant to the "Fair Foreclosure Act," P.L.1995, c.244  
35 (C.2A:50-53 et seq.) will be suspended during the period of  
36 extension;

37 (2) the monthly payment amount that is due from the eligible  
38 foreclosed borrower during the period of extension, which shall  
39 <sup>1</sup>[be the minimum monthly payment of] include<sup>1</sup> principal and  
40 interest, calculated at the introductory rate, on the date the  
41 introductory mortgage rate was originated <sup>1</sup>, as well as amounts for  
42 taxes, insurance, and any other amounts being paid under the terms  
43 of the mortgage prior to the interest rate reset<sup>1</sup>;

44 (3) a schedule of payments, indicating the date that the first  
45 monthly payment is due and the dates that each subsequent monthly  
46 payment is due during the period of extension;

1 (4) the address to which the <sup>2</sup>eligible foreclosed<sup>2</sup> borrower  
2 <sup>2</sup>**[must]** shall<sup>2</sup> send the monthly payment; and

3 (5) a statement of proposed <sup>1</sup>**[subordinate lien]** modification of  
4 mortgage<sup>1</sup>, which shall include:

5 (a) a notice to the eligible foreclosed borrower that the creditor  
6 will place a <sup>1</sup>**[subordinate lien]** modification of mortgage<sup>1</sup> on the  
7 property that is the security for the introductory rate mortgage, to  
8 secure the eligible foreclosed borrower's repayment of the  
9 <sup>1</sup>**[arrearages]** amounts<sup>1</sup> provided for in paragraph (1) of subsection  
10 e. of this section; and

11 (b) an explanation of the method the creditor will use to  
12 calculate the amount of the interest deferred by the period of  
13 extension, and the amounts provided for in <sup>1</sup>paragraph (1) of<sup>1</sup>  
14 subsection e. of this section, for which repayment is secured by the  
15 <sup>1</sup>**[subordinate lien]** modification of mortgage<sup>1</sup>.

16 e. (1) A creditor that grants a period of extension to an eligible  
17 foreclosed borrower shall have the right to record a <sup>1</sup>**[subordinate**  
18 **lien]** modification of mortgage<sup>1</sup> on the eligible foreclosed  
19 borrower's property to secure the eligible foreclosed borrower's  
20 repayment of:

21 (a) the amount of interest deferred by the period of extension;

22 (b) any fees and costs already incurred in connection with the  
23 foreclosure proceeding; and

24 (c) any arrearages owed to the creditor for monthly payments of  
25 principal and interest, homeowner insurance payments, property tax  
26 payments, or any other payments that the eligible foreclosed  
27 borrower was required to pay, but failed to pay, under the terms of  
28 the introductory rate mortgage.

29 (2) The <sup>1</sup>**[subordinate lien]** modification of mortgage<sup>1</sup> shall be  
30 effective from the date <sup>1</sup>**[of recording in the public records in the**  
31 **county in which the property is located]** that it is executed<sup>1</sup>.  
32 Notwithstanding any other law to the contrary, the <sup>1</sup>**[subordinate**  
33 **lien]** modification of mortgage<sup>1</sup> shall have the same priority as the  
34 lien of the introductory rate mortgage. Upon payment by the  
35 <sup>2</sup>eligible foreclosed<sup>2</sup> borrower of the total amount of interest  
36 deferred pursuant to the period of extension, and any other amounts  
37 representing the arrearages for which the <sup>1</sup>**[subordinate lien]**  
38 modification of mortgage<sup>1</sup> secures repayment pursuant to this act,  
39 <sup>1</sup>which shall only be due upon <sup>2</sup>**[the borrower's transfer of title to**  
40 **the property]** full repayment of the introductory rate mortgage<sup>2</sup>, <sup>1</sup>  
41 the creditor shall provide the eligible foreclosed borrower with a  
42 recordable satisfaction of the <sup>1</sup>**[subordinate lien]** modification of  
43 mortgage<sup>1</sup>, or otherwise cause the <sup>1</sup>**[subordinate lien]** modification  
44 of mortgage<sup>1</sup> to be discharged of record.

45 <sup>1</sup>(3) If an eligible foreclosed borrower fails to return to a  
46 creditor, who has a right to record a modification of mortgage

1 pursuant to paragraph (1) of this subsection, a properly executed  
2 modification of mortgage or any other documentation necessary to  
3 establish or record the modification of mortgage within 30 days  
4 from the borrower's receipt from the creditor of a modification of  
5 mortgage form, the creditor may record the eligible foreclosed  
6 borrower's <sup>2</sup>[certificate] certification<sup>2</sup> of extension in place of the  
7 modification of mortgage. Notwithstanding any other law to the  
8 contrary, the <sup>2</sup>[certificate] certification<sup>2</sup> of extension shall have the  
9 same priority as the lien of the introductory rate mortgage. Upon  
10 payment by the eligible foreclosed borrower of the total amount of  
11 interest deferred pursuant to the period of extension, <sup>2</sup>and any other  
12 amounts representing the arrearages for which the certification of  
13 extension secures repayment pursuant to this act,<sup>2</sup> the creditor shall  
14 provide the eligible foreclosed borrower with a recordable  
15 satisfaction of the <sup>2</sup>[certificate] certification<sup>2</sup> of extension, or  
16 otherwise cause the <sup>2</sup>[certificate] certification<sup>2</sup> of extension to be  
17 discharged of record.<sup>1</sup>

18 f. <sup>1</sup>A creditor shall not require an eligible foreclosed borrower  
19 to limit or waive the rights of the borrower to bring any claims,  
20 defenses, demands, proceedings, actions, or causes of action against  
21 the creditor as a condition of accepting an offer of any loss  
22 mitigation activities made available by the "Save New Jersey  
23 Homes Act of 2008," P.L. , c. (C. ) (pending before the  
24 Legislature as this bill).

25 g. <sup>1</sup> An eligible foreclosed borrower who has been granted a  
26 period of extension shall forfeit all rights concerning deferment of  
27 interest payments <sup>1</sup>[and] <sup>1</sup>, suspension of foreclosure <sup>1</sup>, and  
28 deferment of payment of amounts secured by a modification of  
29 mortgage.<sup>1</sup> provided by the provisions of this act if the eligible  
30 foreclosed borrower fails to make payments under the schedule of  
31 payments as set forth in the creditor's acknowledgment of the  
32 period of extension or fails to comply with the terms of <sup>1</sup>[any] the  
33 modification of<sup>1</sup> mortgage <sup>1</sup>[loan modification agreement]<sup>1</sup> entered  
34 into between the creditor and the eligible foreclosed borrower  
35 relating to the period of extension <sup>1</sup>, such that the modification of  
36 mortgage becomes 60 days delinquent<sup>1</sup>.

37 <sup>1</sup>[g.] h.<sup>1</sup> A court shall not approve an entry of final judgment in  
38 a foreclosure proceeding commenced pursuant to the "Fair  
39 Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.) as to an  
40 introductory rate mortgage unless the court is satisfied from the  
41 pleadings and <sup>1</sup>[affidavits] certifications<sup>1</sup> on file with the court that  
42 notice of the availability of the period of extension was provided to  
43 the eligible foreclosed borrower in accordance with the provisions  
44 of this act.

1        <sup>1</sup>[7.] 8. a. Any person who <sup>2</sup>willfully<sup>2</sup> violates any provision  
2 of this act shall be liable to a penalty of not more than \$10,000 for  
3 the first offense, and not more than \$20,000 for the second and  
4 subsequent offense, which penalty may be collected in a summary  
5 proceeding pursuant to the “Penalty Enforcement Law of 1999,”  
6 P.L.1999, c.274 (C.2A:58-10 et seq.) <sup>2</sup>, except that immaterial  
7 errors in a notice required to be provided by a creditor pursuant to  
8 this act, shall not constitute a violation of this act<sup>2</sup>.

9        <sup>1</sup>b. If a creditor violates any provision of this act, an eligible  
10 borrower, an eligible foreclosed borrower, or the Attorney General  
11 may bring an action to enforce compliance by a summary  
12 proceeding pursuant to the “Penalty Enforcement Law of 1999,”  
13 P.L.1999, c.274 (C.2A:58-10 et seq.).<sup>1</sup>

14  
15        <sup>1</sup>9. Failure of a creditor to fulfill any obligation under this act  
16 shall not be considered to be the exercise of a power, right, benefit,  
17 or privilege under the parity provisions of P.L.1981, c.163  
18 (C.17:9A-24b.1), section 48 of P.L.1963, c.144 (C.17:12B-48), or  
19 section 12 of P.L.1984, c.171 (C.17:13-90), and it shall not be a  
20 defense to a violation of this act that the failure to fulfill any  
21 provision of the act is an exercise of such a power, right, benefit, or  
22 privilege.<sup>1</sup>

23  
24        <sup>1</sup>10. This act shall be liberally construed to effectuate the  
25 purposes of the act.<sup>1</sup>

26  
27        <sup>1</sup>11. If any section, subsection, paragraph, sentence or other part  
28 of this act is adjudged unconstitutional or invalid, the judgment  
29 shall not affect, impair or invalidate the remainder of this act, but  
30 shall be confined in its effect to the section, subsection, paragraph,  
31 sentence or other part of this act directly involved in the  
32 controversy in which the judgment shall have been rendered.<sup>1</sup>

33  
34        <sup>1</sup>[8.] 12.<sup>1</sup> The <sup>1</sup>Attorney General, in consultation with the<sup>1</sup>  
35 Department of Banking and Insurance shall <sup>1</sup>[enforce the  
36 provisions of this act, and the department, in consultation with the  
37 Attorney General, shall]<sup>1</sup> adopt regulations, pursuant to the  
38 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et  
39 seq.) to effectuate the purposes of this act.

40  
41        <sup>1</sup>[9.] 13.<sup>1</sup> This act shall take effect immediately, and remain in  
42 effect until January 1, 2011.