

[Second Reprint]

SENATE, No. 1853

STATE OF NEW JERSEY
213th LEGISLATURE

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 ¹1. This act shall be known and may be cited as the “Save New
8 Jersey Homes Act of 2008.”¹

9

10 **[1.] 2.**¹ 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 ²[,]² 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 ²[,]² 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:

¹Senate SCM committee amendments adopted June 9, 2008.

²Senate 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 ¹[2.] 3.¹ 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 ¹[4]
31 5¹ of this act.

32 ²“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.²

36 ¹“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.¹

39 “Introductory rate mortgage” means a consumer credit
40 transaction in which the loan is secured by a mortgage ¹[or deed of
41 trust]¹ 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 ¹[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 points¹.
15

16 ¹[3.] ¹4. 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 ¹[the following] 60 day and
22 30 day¹ intervals prior to the date that the interest rate resets ¹[:

- 23 (1) 120 days;
24 (2) 90 days;
25 (3) 60 days; and
26 (4) 30 days¹].

27 b. Each notice required pursuant to subsection a. of this section
28 shall include, in plain language ¹and in at least 14 point bold type¹:

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 ¹prior to the initial interest rate reset of an introductory
45 rate mortgage¹ 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 certification¹ 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]~~ 5¹ of this act.

4
5 ~~'[4.] 5.~~¹ a. Notwithstanding any law or contract right to the
6 contrary, 'prior to the initial interest rate reset of an introductory
7 rate mortgage,¹ 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 certification¹ 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]~~ certification¹ 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 ¹, during the period of extension,¹
27 monthly payments ~~'[of]~~ , which shall include¹ 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 reset¹;

33 (d) agrees to pay the creditor, at the time of the ²~~'[eligible~~
34 borrower's transfer of the title to the property] full repayment of
35 the introductory rate mortgage², 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 mortgage¹ 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 form¹ that contains the terms of the period of extension and any
43 documentation necessary to establish or record the ~~'[subordinate~~
44 lien] modification of mortgage¹.

- 1 c. An eligible borrower who makes a knowing material
2 misrepresentation in ¹['an affidavit] a certification¹ of extension is
3 guilty of a crime of the fourth degree.
- 4 d. The creditor, upon receiving the completed ¹['affidavit]
5 certification¹ of extension, shall grant the eligible borrower the
6 three year period of extension, which shall commence on the date
7 that the ¹['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 mortgage¹.
- 10 e. ¹['Upon] Within a reasonable amount of time after the¹
11 receipt of a completed ¹['affidavit] certification¹ of extension from
12 an eligible borrower, a creditor shall provide to the eligible
13 borrower a written acknowledgment that the ¹['affidavit]
14 certification¹ 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 ¹['be the
18 minimum monthly payment of] include¹ principal and interest,
19 calculated at the introductory rate ¹['.]'¹ on the date the introductory
20 rate mortgage was originated ¹, 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 reset¹;
- 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 ²eligible² borrower shall send the
27 monthly payment; and
- 28 (4) a statement of proposed ¹['subordinate lien] modification of
29 mortgage¹, which shall include:
- 30 (a) a notice to the ²eligible² borrower that the creditor will place
31 a ¹['subordinate lien] modification of mortgage¹ on the property
32 that is the security for the introductory rate mortgage, to secure the
33 ²eligible² 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. ¹(1)¹ A creditor who grants a period of extension to an
38 eligible borrower shall have the right to record a ¹['subordinate
39 lien] modification of mortgage¹ on the eligible borrower's property
40 in the public records in the county in which the property is located¹
41 to secure the ²eligible² borrower's repayment of the amount of
42 interest deferred by the period of extension. The ¹['subordinate
43 lien] modification of mortgage¹ shall be effective from the date
44 ¹['of recording in the public records in the county in which the
45 property is located] that it is executed¹. Notwithstanding any law

1 to the contrary, the ¹["subordinate lien"] modification of mortgage¹
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 ²,
5 which shall only be due upon full repayment of the introductory rate
6 mortgage², the creditor shall provide the eligible borrower with a
7 recordable satisfaction of the ¹["subordinate lien"] modification of
8 mortgage¹, or otherwise cause the ¹["subordinate lien"] modification
9 of mortgage¹ to be discharged of record.

10 ¹(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 ²["certificate]
17 certification² of extension in place of the modification of mortgage.
18 Notwithstanding any other law to the contrary, the ²["certificate]
19 certification² 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 ²["certificate] certification² of
24 extension, or otherwise cause the ²["certificate] certification² of
25 extension to be discharged of record.¹

26 g. ¹A 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.¹ 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 ¹["mortgage loan]¹ modification ¹["agreement] of
39 mortgage¹ entered into between the creditor and the eligible
40 ¹["foreclosed]¹ borrower relating to the period of extension ¹, such
41 that the modification of mortgage becomes 60 days delinquent¹.

42
43 ¹[5.] 6. a.¹ 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 ¹["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 notices¹ shall include ¹in plain language and
5 in at least 14 point bold type¹ :

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

22 ¹(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);¹ and

27 ¹**[c. An affidavit]** ¹(5) A certification¹ 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 ¹**[6]** 7¹ of
30 this act.

31 ¹**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.”¹

1 ¹[6.] 7.¹ 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 (¹[C.2A50-53] C.2A:50-53¹ et
6 seq.) shall be suspended and the ¹[interest rate on the introductory
7 rate mortgage shall be deemed to be the minimum] ²[foreclosed]²
8 eligible ²foreclosed² borrower shall continue to pay¹ monthly
9 ¹[payment of] payments, which shall include¹ principal and
10 interest, calculated at the introductory rate ¹[,]¹ on the date that the
11 ¹[loan] introductory rate mortgage¹ 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.¹
14 provided the eligible foreclosed borrower completes and returns
15 ¹[an affidavit] a certification¹ 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, ¹[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 act¹, a completed ¹[affidavit]
25 certification¹ 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 ¹, during the period of extension,¹
33 monthly payments ¹[of] which shall include¹ principal and interest,
34 calculated at the introductory rate ¹on 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 reset¹;

38 (c) agrees to pay the creditor, at the time of ²[transfer of title to
39 the property] full repayment of the introductory rate mortgage²:

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 ²foreclosed²

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 ¹[subordinate
4 lien] modification of mortgage¹ 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 ¹[loan document]
8 form¹ that contains the terms of the period of extension and any
9 documentation necessary to establish or record the ¹[subordinate
10 lien] modification of mortgage¹.

11 c. The creditor, upon receiving the completed ¹[affidavit]
12 certification¹ of extension ¹within the time period specified in
13 subsection b. of this section¹, shall:

14 (1) grant the eligible foreclosed borrower the three year period
15 of extension, which shall commence ¹[on] no later than 30 days
16 from¹ the date that the creditor receives the eligible foreclosed
17 borrower's completed ¹[affidavit] certification¹ 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 ¹A 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.¹

26 d. ¹[Upon] Within a reasonable period of time after the¹
27 receipt of a completed ¹[affidavit] ²[certificate¹] certification²
28 extension from an eligible foreclosed borrower ¹within the time
29 period specified in subsection b. of this section¹, a creditor shall
30 provide to the eligible foreclosed borrower a written
31 acknowledgment that the ¹[affidavit] certification¹ of extension has
32 been received. The acknowledgment shall contain the following:

33 (1) a statement that the foreclosure ²[proceedings] proceeding²
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 ¹[be the minimum monthly payment of] include¹ principal and
40 interest, calculated at the introductory rate, on the date the
41 introductory mortgage rate was originated ¹, 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 reset¹;

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 ²eligible foreclosed² borrower
2 ²**[must]** shall² send the monthly payment; and

3 (5) a statement of proposed ¹**[subordinate lien]** modification of
4 mortgage¹, which shall include:

5 (a) a notice to the eligible foreclosed borrower that the creditor
6 will place a ¹**[subordinate lien]** modification of mortgage¹ 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 ¹**[arrearages]** amounts¹ 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 ¹paragraph (1) of¹
14 subsection e. of this section, for which repayment is secured by the
15 ¹**[subordinate lien]** modification of mortgage¹.

16 e. (1) A creditor that grants a period of extension to an eligible
17 foreclosed borrower shall have the right to record a ¹**[subordinate**
18 **lien]** modification of mortgage¹ 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 ¹**[subordinate lien]** modification of mortgage¹ shall be
30 effective from the date ¹**[of recording in the public records in the**
31 **county in which the property is located]** that it is executed¹.
32 Notwithstanding any other law to the contrary, the ¹**[subordinate**
33 **lien]** modification of mortgage¹ shall have the same priority as the
34 lien of the introductory rate mortgage. Upon payment by the
35 ²eligible foreclosed² 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 ¹**[subordinate lien]**
38 modification of mortgage¹ secures repayment pursuant to this act,
39 ¹which shall only be due upon ²**[the borrower's transfer of title to**
40 **the property]** full repayment of the introductory rate mortgage²,¹
41 the creditor shall provide the eligible foreclosed borrower with a
42 recordable satisfaction of the ¹**[subordinate lien]** modification of
43 mortgage¹, or otherwise cause the ¹**[subordinate lien]** modification
44 of mortgage¹ to be discharged of record.

45 ¹(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 ²[certificate] certification² of extension in place of the
7 modification of mortgage. Notwithstanding any other law to the
8 contrary, the ²[certificate] certification² 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, ²and any other
12 amounts representing the arrearages for which the certification of
13 extension secures repayment pursuant to this act,² the creditor shall
14 provide the eligible foreclosed borrower with a recordable
15 satisfaction of the ²[certificate] certification² of extension, or
16 otherwise cause the ²[certificate] certification² of extension to be
17 discharged of record.¹

18 f. ¹A 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. ¹ An eligible foreclosed borrower who has been granted a
26 period of extension shall forfeit all rights concerning deferment of
27 interest payments ¹[and] ¹, suspension of foreclosure ¹, and
28 deferment of payment of amounts secured by a modification of
29 mortgage.¹ 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 ¹[any] the
33 modification of¹ mortgage ¹[loan modification agreement]¹ entered
34 into between the creditor and the eligible foreclosed borrower
35 relating to the period of extension ¹, such that the modification of
36 mortgage becomes 60 days delinquent¹.

37 ¹[g.] h.¹ 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 ¹[affidavits] certifications¹ 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 '[7.] 8. a.'¹ Any person who ²willfully² 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.) ², 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 act² .

9 '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.).¹

14
15 '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.¹

23
24 '10. This act shall be liberally construed to effectuate the
25 purposes of the act.¹

26
27 '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.¹

33
34 '[8.] 12.'¹ The ¹Attorney General, in consultation with the¹
35 Department of Banking and Insurance shall ¹enforce the
36 provisions of this act, and the department, in consultation with the
37 Attorney General, shall¹ 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 '[9.] 13.'¹ This act shall take effect immediately, and remain in
42 effect until January 1, 2011.