

ASSEMBLY, No. 1441

STATE OF NEW JERSEY

214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

Assemblyman ALBERT COUTINHO

District 29 (Essex and Union)

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Assemblyman Conners

SYNOPSIS

The “Residential Distressed Property Leaseback Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 6/22/2010)

1 **AN ACT** concerning certain residential sale-leaseback transactions,
2 and 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 1. This act shall be known and may be cited as the “Residential
8 Distressed Property Leaseback Act.”

9
10 2. As used in this act:

11 “Distressed homeowner” means any person residing in a
12 property as an owner-occupied residence that is collateralized by a
13 mortgage, and the property is the subject of a foreclosure as
14 evidenced by a notice of intention to foreclose served upon the
15 person pursuant to the “Fair Foreclosure Act,” P.L.1995, c.244
16 (C.2A:50-53 et al.) and the filing of a notice of lis pendens
17 concerning the foreclosure action pursuant to N.J.S.2A:15-6 et seq.

18 “Distressed property buyer” means any person who purchases a
19 property from a distressed homeowner or otherwise secures an
20 interest in title to the property from the distressed homeowner, with
21 the intention of permitting the distressed homeowner to reside at the
22 property as a tenant pursuant to a residential lease agreement, or a
23 tenant-buyer if the residential lease agreement is accompanied by an
24 option to purchase agreement for the property.

25 “Distressed property conveyance” means any transaction
26 involving the sale or other transfer of interest in title by a distressed
27 homeowner to a distressed property buyer, permitting the distressed
28 homeowner to reside at the property as a tenant pursuant to a
29 residential lease agreement, or a tenant-buyer if the residential lease
30 agreement is accompanied by an option to purchase agreement for
31 the property.

32 “Option to purchase agreement” means a contract between a
33 distressed property buyer and distressed homeowner which contains
34 an exclusive, irrevocable right for a specified period, provided by
35 the distressed property buyer to the distressed homeowner for a fee
36 or other consideration, to purchase a property that was subject to a
37 distressed property conveyance for a determinable price. The
38 distressed homeowner as a tenant-buyer shall not be required to
39 exercise the optional right to purchase the property under any
40 contract agreed to with the distressed property buyer.

41 “Property” means residential real property in this State,
42 consisting of one to four dwelling units, at least one of which is
43 occupied by a distressed homeowner as a primary residence, and
44 which will continue to be occupied by the distressed homeowner as
45 a primary residence following a distressed property conveyance,
46 either as a tenant pursuant to a residential lease agreement, or a

1 tenant-buyer if the residential lease agreement is accompanied by an
2 option to purchase agreement for the property.

3 “Residential lease agreement” means a contract between a
4 distressed property buyer and distressed homeowner that contains
5 terms, including the monthly rental obligation, under which the
6 distressed homeowner, as former owner of a property, is permitted
7 to lease the property for a specified period and reside there as a
8 tenant.

9

10 3. a. Any distressed property conveyance between a distressed
11 homeowner and distressed property buyer shall be in writing in a
12 form containing at least 12-point type. The distressed property
13 buyer shall provide an executed copy of the written agreement,
14 properly notarized by a notary public who is commissioned
15 pursuant to the “Notaries Public Act of 1979,” P.L.1979, c.460
16 (C.52:7-10 et seq.), to the distressed homeowner at the time at
17 which the homeowner signs the agreement.

18 b. The written agreement for the distressed property
19 conveyance shall contain at least the following:

20 (1) the name and mailing address of the distressed homeowner;

21 (2) the name and mailing address of the distressed property
22 buyer;

23 (3) the date on which the conveyance agreement is signed by
24 both the distressed homeowner and distressed property buyer;

25 (4) the recorded physical location of the property that is the
26 subject of the conveyance;

27 (5) the purchase price or other consideration provided for the
28 property that is the subject of the conveyance, and an indication that
29 this consideration represents the greater of: at least 82% of the
30 current appraised fair market value of the property; or at least the
31 amount necessary to satisfy any lien or encumbrance upon the
32 property, unless the lien or encumbrance is forgiven as part of a
33 short sale, as set forth under paragraph (2) of subsection d. of this
34 section;

35 (6) the period of time the distressed property buyer has to
36 purchase or otherwise acquire title to the property and otherwise
37 perform all conditions contained in the conveyance agreement;

38 (7) the amount of any down payment or other initial
39 consideration provided by the distressed property buyer to the
40 distressed homeowner at the time of the execution of the
41 conveyance agreement;

42 (8) the address at which the settlement of the conveyance
43 agreement will occur;

44 (9) the name of the attorney or other representative for one or
45 both parties handling and administering the settlement of the
46 conveyance agreement;

1 (10) the date on which the settlement of the conveyance
2 agreement shall occur;

3 (11) a notice that, as a condition of the settlement of the
4 conveyance agreement, a residential lease agreement shall be
5 executed between the distressed property buyer and distressed
6 homeowner, as former owner of the property, unless the conveyance
7 agreement involves a short sale, as set forth under paragraph (2) of
8 subsection d. of this section;

9 (12) a notice that, as an option accompanying the settlement of
10 the conveyance agreement, an option to purchase agreement may be
11 executed between the distressed property buyer and distressed
12 homeowner, as former owner of the property, permitting the
13 distressed homeowner the opportunity to purchase back the property
14 from the distressed property buyer; and

15 (13) a notice concerning a seven-day right of cancellation on the
16 conveyance agreement, which includes:

17 (a) an attorney review period of seven days for any party to the
18 agreement, from the date the conveyance agreement is executed by
19 all parties;

20 (b) instructions that cancellation of the conveyance agreement
21 during the seven-day period shall be effectuated in writing, sent by
22 certified mail, informing the recipient of the decision to cancel the
23 agreement, which may be done with or without cause; and

24 (c) the following text presented to the distressed homeowner in
25 bold face 14-point type:

26

27 **This agreement is an important legally binding**
28 **contract that will result in the forfeiture of some or all**
29 **ownership interest you have in this property. Please**
30 **take the next seven (7) days to review this agreement**
31 **with competent legal counsel to determine if this**
32 **arrangement is in your best interest.**

33

34 c. Any distressed property conveyance between a distressed
35 homeowner and distressed property buyer shall comply with the
36 provisions of this act, and may be conducted by an attorney or a
37 title insurance company licensed pursuant to “The Title Insurance
38 Act of 1974,” P.L.1975, c.106 (C.17:46B-1 et seq.).

39 d. The purchase price or other consideration provided for the
40 property that is the subject of the conveyance agreement shall be
41 the greater of:

42 (1) at least 82% of the current appraised fair market value of the
43 property as determined by a real estate appraiser licensed or
44 certified pursuant to the “Real Estate Appraisers Act,” P.L.1991,
45 c.68 (C.45:14F-1 et al.); or

1 (2) at least the amount necessary to satisfy any lien or
2 encumbrance upon the property including, but not limited to,
3 mortgage principal, mortgage interest, mortgage arrears and tax
4 arrears, unless the conveyance agreement involves a short sale, in
5 which the purchase price or other consideration for the conveyance
6 is less than the amount a person is owed under a lien or
7 encumbrance on the property, but that person agrees to accept the
8 lesser amount resulting from the conveyance and forgive any
9 unpaid balance remaining on the lien or encumbrance.

10 e. Any money or other consideration due to the distressed
11 homeowner from the distressed property buyer at the time of the
12 settlement of the conveyance agreement shall be paid directly to the
13 homeowner in full, and shall not be held in escrow.

14
15 4. a. As a condition of the settlement of the conveyance
16 agreement for a distressed property conveyance set forth pursuant to
17 section 3 of this act, a residential lease agreement shall be executed
18 for the same property between the distressed property buyer and
19 distressed homeowner, as former owner of the property, unless the
20 conveyance agreement involves a short sale as set forth under
21 paragraph (2) of subsection d. of that section 3.

22 b. The residential lease agreement shall be in writing in a form
23 containing at least 12-point type. The distressed property buyer
24 shall provide an executed copy of the written lease agreement,
25 properly notarized by a notary public who is commissioned
26 pursuant to the "Notaries Public Act of 1979," P.L.1979, c.460
27 (C.52:7-10 et seq.), to the distressed homeowner, as former owner
28 of the property, who will reside at the property as a tenant, at the
29 time at which the distressed homeowner signs the agreement.

30 c. The written residential lease agreement shall contain at least
31 the following:

32 (1) the name and mailing address of the distressed property
33 buyer and any agent for the buyer acting as a landlord for the
34 property;

35 (2) the name of the former distressed homeowner residing at,
36 and responsible for, the property as a tenant;

37 (3) the name of any additional occupant residing at the property;

38 (4) the date on which the residential lease agreement is signed
39 by both the former distressed homeowner to be a tenant under the
40 agreement and the distressed property buyer;

41 (5) the recorded physical location of the property that is the
42 subject of the residential lease agreement, which shall be the same
43 property that is the subject of the distressed property conveyance set
44 forth pursuant to section 3 of this act;

45 (6) the monthly rental obligation for the former distressed
46 homeowner as a tenant residing on the property, with an indication:

1 (a) that the monthly rental obligation shall not exceed 31% of
2 the tenant's gross monthly income, as required by subsection d. of
3 this section; and

4 (b) that each monthly rental obligation may not be declared due
5 more than 30 days immediately preceding the month during which
6 the tenant shall reside at the property, as required by subsection e.
7 of this section;

8 (7) the length of time of the residential lease agreement;

9 (8) the mailing address to which the monthly rental obligation
10 shall be remitted, if different from the mailing address for the
11 distressed property buyer and agent provided under paragraph (1) of
12 this subsection; and

13 (9) the amount of any security deposit required by the
14 residential lease agreement, and an indication that all information
15 concerning the investment or deposit of the security deposit shall be
16 provided to the former distressed homeowner as a tenant under the
17 agreement, as required by section 1 of P.L.1967, c.265 (C.46:8-19).

18 d. The monthly rental obligation of the former distressed
19 homeowner as a tenant set forth in the residential lease agreement
20 shall not exceed 31% of his gross monthly income at the time of
21 executing the agreement, determined as follows:

22 (1) the average of salary or wages for the three most recent
23 calendar months, as evidenced by an employer provided paycheck,
24 pay stub, or other similar proof of compensation; or

25 (2) the average of the bank deposits for compensation for work,
26 for the three most recent calendar months, if the tenant is self-
27 employed.

28 e. The monthly rental obligation set forth in the residential
29 lease agreement may not be declared due more than 30 days
30 immediately preceding the month during which the former
31 distressed homeowner as a tenant under the agreement shall reside
32 at the property.

33 f. In addition to the provisions of this section, the residential
34 lease agreement shall comply with any State law applicable to
35 residential real property in this State consisting of one to four
36 dwelling units.

37
38 5. a. As an option accompanying the settlement of the
39 conveyance agreement set forth pursuant to section 3 of this act and
40 an executed residential lease agreement set forth pursuant to section
41 4 of this act, an option to purchase agreement may be executed
42 between the distressed property buyer and distressed homeowner, as
43 former owner of the property, permitting the distressed homeowner
44 the exclusive, irrevocable right, as a tenant-buyer, to purchase back
45 the property from the distressed property buyer. The terms and
46 conditions of the option to purchase agreement shall be contingent
47 upon the tenant-buyer's fulfillment of all obligations under the

1 residential lease agreement. The failure to fulfill any obligation
2 under the residential lease agreement shall render the option to
3 purchase agreement voidable by the distressed property buyer.

4 b. The option to purchase agreement shall be in writing in a
5 form containing at least 12-point type. The distressed property
6 buyer shall provide an executed copy of the written option to
7 purchase agreement, properly notarized by a notary public who is
8 commissioned pursuant to the "Notaries Public Act of 1979,"
9 P.L.1979, c.460 (C.52:7-10 et seq.), to the distressed homeowner, as
10 former owner of the property, residing as a tenant-buyer under the
11 executed residential lease agreement set forth pursuant to section 4
12 of this act and this agreement, at the time at which the distressed
13 homeowner signs the option to purchase agreement.

14 c. The written option to purchase agreement shall contain at
15 least the following:

16 (1) the name and mailing address of the distressed homeowner
17 as the tenant-buyer under the executed residential lease agreement
18 and the option to purchase agreement;

19 (2) the name and mailing address of the distressed property
20 buyer;

21 (3) the date on which the option to purchase agreement is signed
22 by both the former distressed homeowner as a tenant-buyer and the
23 distressed property buyer;

24 (4) the recorded physical location of the property that is the
25 subject of the option to purchase agreement, which shall be the
26 same property that is the subject of the distressed property
27 conveyance and residential lease agreement set forth pursuant to
28 sections 3 and 4 of this act;

29 (5) (a) the purchase price or other consideration provided for
30 the property that is the subject of the option to purchase agreement;
31 or

32 (b) the manner in which the purchase price or other
33 consideration shall be determined at the time the distressed
34 homeowner, as a tenant-buyer, exercises his optional right to
35 purchase back the property from the distressed property buyer,
36 which shall include an appraisal of the property by a real estate
37 appraiser licensed or certified pursuant to the "Real Estate
38 Appraisers Act," P.L.1991, c.68 (C.45:14F-1 et al.);

39 (6) the amount of any fee or other consideration provided by the
40 distressed homeowner as a tenant-buyer at the time of the execution
41 of the option to purchase agreement as consideration for the
42 agreement, which shall not exceed 3.5% of the purchase price or
43 other consideration provided for the property pursuant to paragraph
44 (5) of this subsection; and, the amount, if any, of this fee or other
45 consideration that shall be applied as credit towards the purchase of
46 the property if the tenant-buyer exercises his optional right to
47 purchase back the property from the distressed property buyer;

1 (7) the amount of any money to be provided by the former
2 distressed homeowner as a tenant-buyer to the distressed property
3 buyer, to be credited towards the purchase of the property, remitted
4 on a monthly basis in excess of the monthly rental obligation
5 established pursuant to the executed residential lease agreement
6 between the parties;

7 (8) the amount of any charge or fee to the distressed homeowner
8 as a tenant-buyer for services included in the option to purchase
9 agreement that is distinct from the fee, money, or other
10 consideration described in paragraphs (5) through (7) of this
11 subsection;

12 (9) a notice that the distressed property buyer shall be
13 responsible for the payment of taxes, insurance, assessments, and
14 any other charges against the property during the length of time of
15 the agreement, and if the former distressed homeowner as a tenant-
16 buyer exercises his optional right to purchase back the property, the
17 distressed property buyer shall deliver the deed and convey title to
18 the property free of any liens or encumbrances as a condition of the
19 settlement of the option to purchase agreement; and

20 (10) a notice that the distressed property buyer, as a condition of
21 the settlement of the option to purchase agreement, shall not
22 possess a mortgage on the property that is the subject of the
23 agreement in an amount greater than the purchase price or other
24 consideration provided for the property as agreed to between the
25 distressed property buyer and former distressed homeowner as a
26 tenant-buyer pursuant to paragraph (5) of this subsection.

27 d. The option to purchase agreement shall provide for a length
28 of time of at least three years within which the former distressed
29 homeowner as tenant-buyer may exercise his exclusive, irrevocable
30 right to purchase back the property from the distressed property
31 buyer.

32 e. With respect to the amount of any fee or other consideration
33 provided by the former distressed homeowner as a tenant-buyer at
34 the time of the execution of the option to purchase agreement as
35 consideration for the agreement, as set forth in paragraph (6) of
36 subsection c. of this section:

37 (1) the entire fee or other consideration shall be provided by the
38 tenant-buyer at the time of the execution of the option to purchase
39 agreement;

40 (2) the distressed property buyer may declare some or all of the
41 fee or other consideration to be non-refundable, regardless of
42 whether the tenant-buyer exercises his right to purchase back the
43 property from the distressed property buyer pursuant to the option
44 to purchase agreement, or declare that some or all of the fee or other
45 consideration shall be applied as credit toward the purchase of the
46 property, if the tenant-buyer does exercise his right to purchase

1 back the property, so long as this declaration is agreed to by the
2 tenant-buyer and expressly stated in the agreement; and

3 (3) the fee or other consideration provided to the distressed
4 property buyer shall not constitute an equitable ownership interest
5 in the property.

6 f. With respect to any money provided by the distressed
7 homeowner as a tenant-buyer to the distressed property buyer,
8 remitted as a monthly credit towards the purchase of the property in
9 excess of the monthly rental obligation established pursuant to the
10 executed residential lease agreement between the parties, as set
11 forth in paragraph (7) of subsection c. of this section:

12 (1) the distressed property buyer may declare some or all of the
13 money to be non-refundable, if the tenant-buyer does not exercise
14 his right to purchase back the property from the distressed property
15 buyer pursuant to the option to purchase agreement, so long as this
16 declaration is agreed to by the tenant-buyer and expressly stated in
17 the agreement; and

18 (2) the money provided the distressed property buyer shall not
19 constitute an equitable ownership interest in the property.

20 g. If the distressed homeowner as a tenant-buyer exercises his
21 right to purchase back the property from the distressed property
22 buyer pursuant to the option to purchase agreement, any amount
23 still owed toward the purchase price or other consideration on the
24 property, as set forth in the agreement, following the application of
25 any fee, money, or other consideration described under paragraphs
26 (6) and (7) of subsection c. of this section by the distressed property
27 buyer as credit towards the purchase, shall be the sole responsibility
28 of the tenant-buyer.

29

30 6. a. A distressed homeowner or distressed property buyer may
31 bring an action in a court of competent jurisdiction for legal and
32 equitable relief against the other party for failing to comply with the
33 provisions of this act, or if the other party violates any of the
34 contract provisions set forth in any written agreement for a
35 distressed property conveyance, residential lease agreement, or
36 option to purchase agreement between the parties as provided by
37 this act. The relief sought by the distressed homeowner or
38 distressed property buyer may include enforcement or rescission of
39 any agreement, damages, including consequential damages, and
40 restitution.

41 b. A distressed property buyer, in accordance with
42 N.J.S.2A:18-51 et seq. and any other applicable State eviction law,
43 may initiate an eviction action against a distressed homeowner as a
44 tenant under a residential lease agreement, for failure to comply
45 with the provisions of that agreement.

1 As a condition of the settlement of the distressed property
2 conveyance, a residential lease agreement shall be executed for the
3 same property between the distressed property buyer and distressed
4 homeowner, as former owner of the property, unless the conveyance
5 agreement involves a short sale as described above. As with the
6 conveyance agreement, the residential lease agreement shall be in
7 writing, and notarized by a notary public at the time the former
8 homeowner, who will reside at the property as a tenant, signs the
9 agreement.

10 The monthly rental obligation of the former distressed
11 homeowner as a tenant set forth in the residential lease agreement
12 shall not exceed 31% of his gross monthly income at the time of
13 executing the agreement, determined as follows: (1) the average of
14 salary or wages for the three most recent calendar months, as
15 evidenced by an employer provided paycheck, pay stub, or other
16 similar proof of compensation; or (2) the average of the bank
17 deposits for compensation for work, for the three most recent
18 calendar months, if he is self-employed. This obligation may not be
19 declared due more than 30 days immediately preceding the month
20 during which the former distressed homeowner as a tenant under the
21 agreement shall reside at the property.

22 Additionally, the residential lease agreement shall comply with
23 any State law applicable to residential real property in this State
24 consisting of one to four dwelling units.

25 As an option accompanying the settlement of the conveyance
26 agreement and an executed residential lease agreement, an option to
27 purchase agreement may be executed between the distressed
28 property buyer and distressed homeowner, as former owner of the
29 property, permitting the distressed homeowner the exclusive,
30 irrevocable right, as a tenant-buyer, to purchase back the property
31 from the distressed property buyer. The terms and conditions of the
32 option to purchase agreement shall be contingent upon the tenant-
33 buyer's fulfillment of all obligations under the residential lease
34 agreement. The failure to fulfill any obligation under the residential
35 lease agreement shall render the option to purchase agreement
36 voidable by the distressed property buyer.

37 The option to purchase agreement, as with the conveyance
38 agreement and residential lease agreement, shall be in writing, and
39 notarized by a notary public at the time the former homeowner, who
40 will reside at the property as a tenant-buyer pursuant to the
41 executed residential lease agreement and option to purchase
42 agreement, signs the latter agreement.

43 The option to purchase agreement shall provide for a length of
44 time of at least three years within which the former distressed
45 homeowner as tenant-buyer may exercise his exclusive, irrevocable
46 right to purchase back the property from the distressed property
47 buyer. The agreement shall contain provisions concerning any fee

1 or other consideration provided by the tenant-buyer as consideration
2 for the agreement, which shall not exceed 3.5% of the purchase
3 price or other consideration for the property, as well as provisions
4 concerning the amount of money to be provided, in monthly
5 installments in excess of the monthly rental obligation, and credited
6 toward the purchase of the property.

7 With respect to the amount of any fee or other consideration
8 provided as consideration for the option to purchase agreement: (1)
9 the entire fee or other consideration shall be provided by the tenant-
10 buyer at the time of the execution of the agreement; (2) the
11 distressed property buyer may declare some or all of the fee or other
12 consideration to be non-refundable, regardless of whether the
13 tenant-buyer exercises his right to purchase back the property from
14 the distressed property buyer pursuant to the option to purchase
15 agreement, or declare that some or all of the fee or other
16 consideration shall be credited toward the purchase of the property,
17 if the tenant-buyer does exercise his right to purchase back the
18 property, so long as this declaration is agreed to by the tenant-buyer
19 and expressly stated in the agreement; and (3) the fee or other
20 consideration provided the distressed property buyer shall not
21 constitute an equitable ownership interest in the property.

22 With respect to any money provided as a monthly credit towards
23 the purchase of the property: (1) the distressed property buyer may
24 declare some or all of the money to be non-refundable, if the tenant-
25 buyer does not exercise his right to purchase back the property from
26 the distressed property buyer pursuant to the option to purchase
27 agreement, so long as this declaration is agreed to by the tenant-
28 buyer and expressly stated in the agreement; and (2) the money
29 provided to the distressed property buyer shall not constitute an
30 equitable ownership interest in the property.

31 If the former distressed homeowner as a tenant-buyer exercises
32 his right to purchase back the property from the distressed property
33 buyer pursuant to the option to purchase agreement, any amount
34 still owed toward the purchase price or other consideration on the
35 property, as set forth in the agreement, following the application of
36 any of the credit toward the purchase, shall be the sole
37 responsibility of the tenant-buyer.

38 A distressed homeowner or distressed property buyer may bring
39 an action in a court of competent jurisdiction for legal and equitable
40 relief against the other party for failing to comply with the
41 provisions of the bill, or if the other party violates any of the
42 contract provisions set forth in any written agreement for a
43 distressed property conveyance, residential lease agreement, or
44 option to purchase agreement between the parties. The relief sought
45 by the distressed homeowner or distressed property buyer may
46 include enforcement or rescission of any agreement, damages,
47 including consequential damages, and restitution.

1 In addition, a distressed property buyer, in accordance with
2 N.J.S.2A:18-51 et seq. and any other applicable State eviction law,
3 may initiate an eviction action against a distressed homeowner as a
4 tenant under a residential lease agreement, for failure to comply
5 with the provisions of that agreement.