

[First Reprint]

**SENATE, No. 1832**

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**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

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INTRODUCED MARCH 7, 2016

**Sponsored by:**

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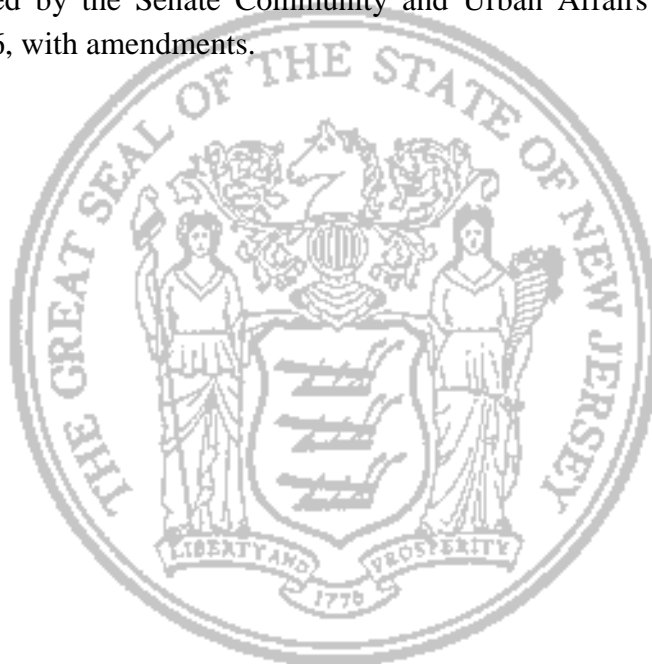
**Senator Thompson**

**SYNOPSIS**

Concerns expedited process for foreclosing vacant and abandoned residential properties in uncontested actions.

**CURRENT VERSION OF TEXT**

As reported by the Senate Community and Urban Affairs Committee on June 16, 2016, with amendments.



**(Sponsorship Updated As Of: 10/6/2017)**

1 AN ACT concerning foreclosure of residential properties, amending  
2 P.L.2012, c.70 and supplementing P.L.1995, c.244 (C.2A:50-53  
3 et seq.).

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

7  
8 1. Section 1 of P.L.2012, c.70 (C.2A:50-73) is amended to read as  
9 follows:

10 1. a. For the purposes of this section, "vacant and abandoned"  
11 residential property means residential real estate with respect to which  
12 the mortgagee proves, by clear and convincing evidence, that the  
13 mortgaged real estate is vacant and has been abandoned or where a  
14 notice of violation has been issued pursuant to subsection b. of section  
15 1 of P.L.2014, c.35 (C.40:48-2.12s). Where a notice of violation has  
16 not been issued pursuant to subsection b. of section 1 of P.L.2014, c.35  
17 (C.40:48-2.12s), real property shall be deemed "vacant and  
18 abandoned" if the court finds that the mortgaged property is not  
19 occupied by a mortgagor or tenant as evidenced by a lease agreement  
20 entered into prior to the service of a notice of intention to commence  
21 foreclosure according to section 4 of the "Fair Foreclosure Act,"  
22 P.L.1995, c.244 (C.2A:50-56), and at least two of the following  
23 conditions exist

- 24 (1) overgrown or neglected vegetation;
- 25 (2) the accumulation of newspapers, circulars, flyers or mail on the  
26 property;
- 27 (3) disconnected gas, electric, or water utility services to the  
28 property;
- 29 (4) the accumulation of hazardous, noxious, or unhealthy  
30 substances or materials on the property;
- 31 (5) the accumulation of junk, litter, trash or debris on the property;
- 32 (6) the absence of window treatments such as blinds, curtains or  
33 shutters;
- 34 (7) the absence of furnishings and personal items;
- 35 (8) statements of neighbors, delivery persons, or government  
36 employees indicating that the residence is vacant and abandoned;
- 37 (9) windows or entrances to the property that are boarded up or  
38 closed off or multiple window panes that are damaged, broken and  
39 unrepaired;
- 40 (10) doors to the property that are smashed through, broken off,  
41 unhinged, or continuously unlocked;
- 42 (11) a risk to the health, safety or welfare of the public, or any  
43 adjoining or adjacent property owners, exists due to acts of vandalism,  
44 loitering, criminal conduct, or the physical destruction or deterioration  
45 of the property;

**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 SCU committee amendments adopted June 16, 2016.

1 (12) an uncorrected violation of a municipal building, housing, or  
2 similar code during the preceding year, or an order by municipal  
3 authorities declaring the property to be unfit for occupancy and to  
4 remain vacant and unoccupied;

5 (13) the mortgagee or other authorized party has secured or  
6 winterized the property due to the property being deemed vacant and  
7 unprotected or in danger of freezing;

8 (14) a written statement issued by any mortgagor expressing the  
9 clear intent of all mortgagors to abandon the property;

10 (15) 'a' certification from 'a member of' the board of a planned  
11 real estate development 'in which the residential property is  
12 located', as defined under section 1 of P.L.1990, c.55 (C.2A:42-103),  
13 'in which the property is located,' stating with specificity that the  
14 property has been observed to be abandoned ' , that the owner of the  
15 property is at least two months in arrears of association fees, and that  
16 the member has personal knowledge regarding the contents of the  
17 certification' ; or

18 (16) any other reasonable indicia of abandonment.

19 b. For the purposes of this section, a residential property shall not  
20 be considered "vacant and abandoned" if, on the property:

21 (1) there is an unoccupied building which is undergoing  
22 construction, renovation, or rehabilitation that is proceeding diligently  
23 to completion, and the building is in compliance with all applicable  
24 ordinances, codes, regulations, and statutes;

25 (2) there is a building occupied on a seasonal basis, but otherwise  
26 secure; or

27 (3) there is a building that is secure, but is the subject of a probate  
28 action, action to quiet title, or other ownership dispute.

29 c. In addition to the residential mortgage foreclosure procedures  
30 set out in the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et  
31 seq.), a summary action to foreclose a mortgage debt secured by  
32 residential property that is vacant and abandoned may be brought by a  
33 lender in the Superior Court. In addition, a lender may, at any time  
34 after filing a foreclosure action, file with the court, in accordance with  
35 the Rules Governing the Courts of the State of New Jersey, an  
36 application to proceed in a summary manner because the residential  
37 property that is the subject of the foreclosure action is believed to be  
38 "vacant and abandoned"; provided, however, that this section shall not  
39 apply to a foreclosure of a timeshare interest secured by a mortgage.  
40 The summary action permitted under this section shall only be  
41 available in uncontested actions, as defined pursuant to R.4:64-1(c) of  
42 the Rules 'Governing the Courts of the State of New Jersey' of  
43 Court'.

44 d. (1) In addition to the service of process required by the Rules  
45 of Court, a lender shall establish, for the entry of a residential  
46 foreclosure judgment under this section, that a process server has made  
47 two unsuccessful attempts to serve the mortgagor or occupant at the  
48 residential property, which attempts must be at least 72 hours apart,

1 and during different times of the day, either before noon, between  
2 noon and 6 P.M., or between 6 P.M. and 10 P.M.

3 (2) In addition to any notices required to be served by law or the  
4 Rules of Court, a lender shall, with any order to show cause served as  
5 original service of process or a motion to proceed summarily, serve a  
6 notice that the lender is seeking, on the return date of the order to show  
7 cause, or on the date fixed by the court, to proceed summarily for entry  
8 of a residential foreclosure judgment because the property is vacant  
9 and abandoned.

10 (3) When a property is deemed vacant and abandoned as herein  
11 defined, a lender shall not be required to serve the debtor with the  
12 notice to cure required by section 6 of the "Fair Foreclosure Act,"  
13 P.L.1995, c.244 (C.2A:50-58).

14 e. (1) The court may enter a final residential mortgage  
15 foreclosure judgment under this section upon a finding, (a) by clear  
16 and convincing evidence, that the residential property is vacant and  
17 abandoned as defined under subsection a. of this section, and (b) that a  
18 review of the pleadings and documents filed with the court, as required  
19 by the Rules of Court, supports the entry of a final residential  
20 mortgage foreclosure judgment.

21 (2) A final residential mortgage foreclosure judgment under this  
22 section shall not be entered if the court finds that:

23 (a) the property is not vacant or abandoned; or

24 (b) the mortgagor or any other defendant has filed an answer,  
25 appearance, or other written objection that is not withdrawn and the  
26 defenses or objection asserted provide cause to preclude the entry of a  
27 final residential mortgage foreclosure judgment. Any such defense or  
28 objection shall be accompanied by an affidavit stating that the defense  
29 is not made solely for the purpose of delaying the relief requested  
30 pursuant to the summary action. <sup>1</sup> [The defense or objection shall be  
31 presented within 30 days of the filing of the service of the application  
32 to proceed summarily for foreclosure of "vacant and abandoned"  
33 property pursuant to this section.]<sup>1</sup> Any defense or objection that is  
34 presented without the affidavit <sup>1</sup> [, or that is not presented within the  
35 30 day time period,]<sup>1</sup> shall not be considered by the court, except for  
36 good cause shown.

37 f. If a final residential mortgage foreclosure judgment under this  
38 section is not entered on the original or adjourned return date of an  
39 order to show cause or the date fixed by the court to proceed  
40 summarily, the court may direct that the foreclosure action continue on  
41 the normal track for residential mortgage foreclosure actions for  
42 properties that are not vacant and abandoned and the notice to cure  
43 served with the order to show cause or the order fixing that date for the  
44 matter to proceed summarily shall be of no effect.

45 g. All actions brought to foreclose on real property pursuant to  
46 this section shall proceed in accordance with the Rules of Court.

47 h. Nothing in this section is intended to supersede or limit other  
48 procedures adopted by the Court to resolve residential mortgage

1 foreclosure actions, including, but not limited to, foreclosure  
2 mediation.

3 i. Nothing in this section shall be construed to affect the rights of  
4 a tenant to possession of a leasehold interest under the Anti-Eviction  
5 Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New Jersey  
6 Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et seq.), or  
7 any other applicable law.

8 j. Notwithstanding paragraph (3) of subsection a. of section 12 of  
9 P.L.1995, c.244 (C.2A:50-64) to the contrary, if the court makes a  
10 finding in the foreclosure judgment that the property is vacant and  
11 abandoned, the sheriff shall sell the property within 60 days of the  
12 sheriff's receipt of any writ of execution issued by the court. If it  
13 becomes apparent that the sheriff cannot comply with the provisions of  
14 this subsection, the foreclosing plaintiff may apply to the court for an  
15 order appointing a Special Master or judicial agent to hold the  
16 foreclosure sale.

17 <sup>1</sup>[k. At the time of filing of the application to proceed summarily  
18 for foreclosure of "vacant and abandoned" property pursuant to this  
19 section, the Office of the Superior Court Clerk shall require a fee of  
20 \$1,000 from the plaintiff for the costs associated with the use of the  
21 summary action for each vacant and abandoned property permitted  
22 under this section, which shall be retained by the Administrative  
23 Office of the Courts in a non-lapsing account for use by the Office of  
24 the Superior Court Clerk.]<sup>1</sup>

25 (cf: P.L.2014, c.35, s.3)

26

27 2. (New section) a. When a lender is entitled to pursue a  
28 summary action pursuant to subsection c. of section 1 of P.L.2012,  
29 c.70 (C.2A:50-73), but fails to file an application to proceed in a  
30 summary manner, and the mortgage lien of the lender is superior to all  
31 or part of the lien of a planned real estate development, as defined  
32 under section 1 of P.L.1990, c.55 (C.2A:42-103), then the board of the  
33 planned real estate development may file a motion to compel  
34 <sup>1</sup>[expedited judgment and sale, or in the alternative,]<sup>1</sup> payment of  
35 association fees outstanding since the foreclosure action was filed,  
36 along with ongoing fees, until occupied by a new resident. The motion  
37 shall be accompanied by an affidavit from a person having personal  
38 knowledge of the contents and shall contain the specific facts to  
39 establish that the action is uncontested.

40 b. If the motion and affidavit filed pursuant to subsection a. of  
41 this section are found to be in compliance with the provisions of that  
42 subsection, have been served on the lender, debtor <sup>1,1</sup> and other  
43 appropriate parties in accordance with the Rules Governing the Courts  
44 of the State of New Jersey, and are otherwise satisfactory, the Superior  
45 Court shall:

46 (1) enter an order compelling the lender to <sup>1</sup>[file an application to  
47 proceed in a summary manner in accordance with subsection c. of  
48 section 1 of P.L.2012, c.70 (C.2A:50-73) within 30 days or, if the

1 lender declines to file such a motion, to<sup>1</sup> pay to the association the  
2 assessments for periodic payments due for regular and usual operating  
3 and common area expenses pursuant to the association's annual budget  
4 coming due on or after the thirty-first day following entry of the order  
5 to pay; or

6 (2) approve an application for an Order Appointing a Fiscal Agent  
7 pursuant to section 3 of P.L. , c. (C. ) (pending before the  
8 Legislature as this bill) and in accordance with the governing  
9 documents of the planned real estate development.

10

11 3. (New section) a. In accordance with N.J.S.2A:17-66 and  
12 R.4:53-1 of the Rules Governing the Courts of the State of New  
13 Jersey, and in addition to the powers granted to condominium  
14 associations pursuant to section 21 of the "Condominium Act,"  
15 P.L.1969, c.257 (C.46:8B-21), the board of a planned real estate  
16 development, as defined under section 1 of P.L.1990,  
17 c.55 (C.2A:42-103), may apply to the Superior Court of New Jersey  
18 for an Order Appointing a Fiscal Agent over an abandoned or  
19 unoccupied unit.

20 b. The fiscal agent shall be authorized to:

21 (1) manage the unit;

22 (2) license the use of the unit;

23 (3) keep the unit insured against loss, damage by fire, or public  
24 liability; and

25 (4) repair and otherwise do anything necessary for the care and  
26 management of the unit.

27 c. The fiscal agent shall be authorized to:

28 (1) demand, collect and receive from any licensee of the unit or  
29 any portion of the unit, or any person liable for the unit, any  
30 payment due from any licensee of the unit;

31 (2) institute all legal proceedings necessary for the protection of  
32 the unit, or to recover possession of the unit or any part of the unit,  
33 and to institute actions for the collection of payments due, and to  
34 institute summary proceedings for the removal of any licensee; and

35 (3) retain legal counsel to render legal advice and to provide  
36 legal services as may be necessary in the performance of its duties.

37 d. The anti-eviction provisions of P.L.1974, c.49 (C.2A:18-  
38 61.1 et seq.) shall not apply to any licensee of a unit that consists of  
39 one single dwelling.

40 e. Any licensee placed by the fiscal agent in the unit or any  
41 other person that may be in possession of the unit shall pay to the  
42 fiscal agent any payment due pursuant to any license agreement  
43 issued by the fiscal agent.

44 f. Neither the title owner of a unit, nor its agent, employee,  
45 heir or devisee shall be entitled to receive or collect any payment  
46 due pursuant to any license agreement issued by the fiscal agent.

1 g. Upon receipt, the fiscal agent shall deposit payments in a  
2 banking institution in its name as the fiscal agent and shall pay the  
3 association the following charges:

4 (1) 10 percent of the payment due pursuant to any license  
5 agreement issued by the fiscal agent to reimburse the association for  
6 the purposes of managing receivership;

7 (2) current maintenance fees on a monthly basis; and

8 (3) any prior past due maintenance fees, assessments, late  
9 charges, interest and reasonable counsel fees and cost, until paid in  
10 full.

11 h. Upon application of the rent or any other payments as set  
12 forth in subsection g. of this section, including, but not limited to,  
13 reimbursement to the receiver of any and all costs incurred to  
14 rehabilitate the unit to make it habitable, and once the rent or other  
15 payments satisfy in full the underlying debt due to the association  
16 for delinquent fees and charges assessed to the unit, further monthly  
17 payments shall be applied on a pro rata basis to:

18 (1) the association to satisfy monthly maintenance fees or  
19 assessments as may be applicable; and

20 (2) monthly mortgage debt payment amortization, except that  
21 the payment shall not include any acceleration of principal or  
22 interest due to a default under the terms of the loan.

23 i. As used in this section:

24 “Fiscal agent” means a receiver, trustee, or other fiscal agent  
25 authorized pursuant to this section to manage a unit.

26 “Unit” means a unit, home, or lot as defined in the applicable  
27 governing documents of a planned real estate development.

28

29 4. This act shall take effect on the 90<sup>th</sup> day next following  
30 enactment.