

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3366

STATE OF NEW JERSEY

DATED: JUNE 18, 2018

The Assembly Financial Institutions and Insurance Committee reports favorably Assembly Bill No. 3366.

This bill, which supplements the “Fair Foreclosure Act,” P.L.1995, c.244 (C.2A:50-53 et seq.), addresses situations in which a residential mortgage lender forecloses on a residential property, buys the property at the resulting sheriff’s sale, and subsequently seeks to sell the property (commonly known as a “Real Estate Owned” or “REO” property) through a contract with a new purchaser. In these transactions, issues have arisen with respect to the seller’s failure to deliver marketable and insurable title at closing, thereby breaching the contract and leaving the new purchaser with “out of pocket” expenses incurred in connection with the purchase of the property, such as costs for surveys, title searches, and home inspections.

Accordingly, the bill provides certain protections to a purchaser in these situations by requiring that a real estate contract of sale between a seller who takes title to a residential property as a result of a sheriff’s sale pursuant to the provisions of the “Fair Foreclosure Act,” and a purchaser, shall provide that:

(1) the seller shall provide marketable and insurable title to the purchaser;

(2) any failure of the seller to satisfy the requirement of providing marketable and insurable title pursuant to paragraph (1) shall constitute a breach of contract; and

(3) in the event of a breach of contract pursuant to paragraph (2), in addition to any other remedies that the purchaser may have, the seller shall return to the purchaser any deposit money paid by the purchaser and shall reimburse the purchaser for any expenses incurred by the purchaser in connection with the purchase of the property.

The bill provides that any provision in a real estate contract of sale that is subject to this bill, that is not in compliance with the requirements of the bill, or that attempts to limit any obligation of the seller as set forth in the bill, shall be null and void and unenforceable as a matter of law.

The bill defines “seller of residential property” to mean any residential mortgage lender who has taken title to a residential property as a result of a purchase at a sheriff’s sale pursuant to the provisions of

the “Fair Foreclosure Act,” or any person or entity who has taken title to the residential property through an assignment or conveyance from the residential mortgage lender. This definition recognizes that, as a common practice, residential mortgage lenders use other companies to whom they have assigned or conveyed title, to sell REO properties on their behalf.