

# ASSEMBLY, No. 4412

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED SEPTEMBER 13, 2018

**Sponsored by:**

**Assemblywoman BRITNEE N. TIMBERLAKE**

**District 34 (Essex and Passaic)**

**Assemblywoman CLEOPATRA G. TUCKER**

**District 28 (Essex)**

**Assemblywoman VERLINA REYNOLDS-JACKSON**

**District 15 (Hunterdon and Mercer)**

**Co-Sponsored by:**

**Assemblymen Caputo, Giblin, Assemblywomen Sumter, McKnight and  
Assemblyman Wimberly**

**SYNOPSIS**

Revises sheriff's procedures for residential mortgage foreclosure sales.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 9/25/2018)**

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2

1 AN ACT concerning the procedures for sheriff's sales and amending  
2 P.L.1995, c.244.

3

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

6

7 1. Section 12 of P.L.1995, c.244 (C.2A:50-64) is amended to  
8 read as follows:

9 12. a. With respect to the sale of a mortgaged premises under  
10 foreclosure action, each sheriff in this State shall provide for, but  
11 not be limited to, the following uniform procedures:

12 (1) Bidding in the name of the assignee of the foreclosing  
13 plaintiff.

14 (2) That adjournment of the sale of the foreclosed property shall  
15 be in accordance with N.J.S.2A:17-36.

16 (3) (a) The sheriff shall schedule a sale date within 120 days of  
17 the sheriff's receipt of any writ of execution issued by the court in  
18 any foreclosure proceeding.

19 (b) If it becomes apparent that the sheriff cannot comply with  
20 the provisions of subparagraph (a) of this paragraph (3), the  
21 foreclosing plaintiff may apply to the office for an order appointing  
22 a Special Master to hold the foreclosure sale.

23 (c) Upon the foreclosing plaintiff making such application to the  
24 office, the office shall issue the appropriate order appointing a  
25 Special Master to hold the foreclosure sale.

26 (4) **[That]** Except as otherwise provided in this paragraph with  
27 respect to residential property, that the successful bidder at the  
28 sheriff's sale shall pay a 20 percent deposit in either cash or by a  
29 certified or cashier's check, made payable to the sheriff of the  
30 county in which the sale is conducted, immediately upon the  
31 conclusion of the foreclosure sale. In the case of residential  
32 property, the successful bidder shall pay a 3.5 percent deposit in  
33 either cash or by certified or cashier's check, made payable to the  
34 sheriff of the county in which the sale is conducted, immediately  
35 upon the conclusion of the foreclosure sale. If the successful bidder  
36 cannot satisfy this requirement, the bidder shall be in default and  
37 the sheriff shall immediately void the sale and proceed further with  
38 the resale of the premises without the necessity of adjourning the  
39 sale, without renotification of any party to the foreclosure and  
40 without the republication of any sales notice. Upon such resale, the  
41 defaulting bidder shall be liable to the foreclosing plaintiff for any  
42 additional costs incurred by such default including, but not limited  
43 to, any difference between the amount bid by the defaulting bidder  
44 and the amount generated for the foreclosing plaintiff at the resale.  
45 In the event the plaintiff is the successful bidder at the resale, the

**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.**

1 plaintiff shall provide a credit for the fair market value of the  
2 property foreclosed.

3 (5) It is permissible, upon consent of the sheriff conducting the  
4 sheriff's sale, that it shall not be necessary for an attorney or  
5 representative of the person who initiated the foreclosure to be  
6 present physically at the sheriff's sale to make a bid. A letter  
7 containing bidding instructions may be sent to the sheriff in lieu of  
8 an appearance.

9 (6) That each sheriff's office shall use a deed which shall be in  
10 substantially the following form:

11 THIS INDENTURE,  
12 made this ..... (date) day of ..... (month), .....  
13 (year). Between ..... (name), Sheriff of the County  
14 of ..... (name) in the State of New Jersey, party of the first  
15 part and ..... (name(s)) party of the  
16 second part, witnesseth.

17 WHEREAS, on the ..... (date) day of .....  
18 (month), ..... (year), a certain Writ of Execution was issued out of  
19 the Superior Court of New Jersey, Chancery Division- .....  
20 (name) County, Docket No. .... directed and delivered to the  
21 Sheriff of the said County of ..... (name) and which said  
22 Writ is in the words or to the effect following that is to say:

23 THE STATE OF NEW JERSEY to the Sheriff of the County of  
24 ..... (name),

25 Greeting:

26 WHEREAS, on the ..... (date) day of ..... (month),  
27 ..... (year), by a certain judgment made in our Superior Court  
28 of New Jersey, in a certain cause therein pending, wherein the  
29 PLAINTIFF is:

30 .....  
31 .....  
32 .....

33 and the following named parties are the DEFENDANTS:

34 .....  
35 .....  
36 .....

37 IT WAS ORDERED AND ADJUDGED that certain mortgaged  
38 premises, with the appurtenances in the Complaint, and Amendment  
39 to Complaint, if any, in the said cause particularly set forth and  
40 described, that is to say: The mortgaged premises are described as  
41 set forth upon the RIDER ANNEXED HERETO AND MADE A  
42 PART HEREOF.

43 BEING KNOWN AS Tax Lot ..... (number) in Block .....  
44 (number) COMMONLY KNOWN AS (street address)  
45 .....

46 TOGETHER, with all and singular the rights, liberties, privileges,  
47 hereditaments and appurtenances thereunto belonging or in anywise  
48 appertaining, and the reversion and remainders, rents, issues and

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1 profits thereof, and also all the estate, right, title, interest, use,  
2 property, claim and demand of the said defendants of, in, to and out  
3 of the same, to be sold, to pay and satisfy in the first place unto the  
4 plaintiff,

5 .....

6 .....

7 the sum of \$ ..... (amount) being the principal, interest and  
8 advances secured by a certain mortgage dated ..... (date,  
9 month, year) and given by ..... (name) together with  
10 lawful interest from

11 .....

12 .....

13 .....

14 until the same be paid and satisfied and also the costs of the  
15 aforesaid plaintiff with interest thereon.

16 AND for that purpose a Writ of Execution should issue, directed to  
17 the Sheriff of the County of ..... (name) commanding him to  
18 make sale as aforesaid; and that the surplus money arising from  
19 such sale, if any there be, should be brought into our said Court, as  
20 by the judgment remaining as of record in our said Superior Court  
21 of New Jersey, at Trenton, doth and more fully appear; and  
22 whereas, the costs and Attorney's fees of the said plaintiff have  
23 been duly taxed at the following sum: \$ ..... (amount)

24 THEREFORE, you are hereby commanded that you cause to be  
25 made of the premises aforesaid, by selling so much of the same as  
26 may be needful and necessary for the purpose, the said sum of  
27 \$..... (amount) and the same you do pay to the said plaintiff  
28 together with contract and lawful interest thereon as aforesaid, and  
29 the sum aforesaid of costs with interest thereon.

30 And that you have the surplus money, if any there be, before our  
31 said Superior Court of New Jersey, aforesaid at Trenton, within 30  
32 days after pursuant to R.4:59-1(a), to abide the further Order of the  
33 said Court, according to judgment aforesaid, and you are to make  
34 return at the time and place aforesaid, by certificate under your  
35 hand, of the manner in which you have executed this our Writ,  
36 together with this Writ, and if no sale, this Writ shall be returnable  
37 within 12 months.

38 WITNESS, the Honorable ..... (name), Judge of the Superior  
39 Court at Trenton, aforesaid, the ..... (date) day of .....  
40 (month), ..... (year).

41 /s/ ..... (Clerk)

42 Superior Court of New Jersey

43 /s/.....

44 Attorney for Plaintiff

45 As by the record of said Writ of Execution in the Office of the  
46 Superior Court of New Jersey, at Trenton, in Book .....  
47 (number) of Executions, Page ..... (number) etc., may more fully  
48 appear.

1       AND WHEREAS I, the said ..... (name), as such  
2 Sheriff as aforesaid did in due form of law, before making such sale  
3 give notice of the time and place of such sale by public  
4 advertisement signed by myself, and set up in my office in the  
5 ..... (name) Building in ..... (name) County,  
6 being the County in which said real estate is situate and also set up  
7 at the premises to be sold at least three weeks next before the time  
8 appointed for such sale.

9       I also caused such notice to be published four times in two  
10 newspapers designated by me and printed and published in the said  
11 County, the County wherein the real estate sold is situate, the same  
12 being designated for the publication by the Laws of this State, and  
13 circulating in the neighborhood of said real estate, at least once a  
14 week during four consecutive calendar weeks. One of such  
15 newspapers, ..... (name of newspaper) is a newspaper  
16 with circulation in ..... (name of town), the County seat of  
17 said ..... (name) County. The first publication was at least  
18 twenty-one days prior and the last publication not more than eight  
19 days prior to the time appointed for the sale of such real estate, and  
20 by virtue of the said Writ of Execution, I did offer for sale said land  
21 and premises at public vendue at the County ..... (name)  
22 Building in ..... (name of town) on the ..... (date)  
23 day of ....., .... (month) (year) at the hour of .....  
24 (time) in the ..... (a.m. or p.m.).

25       WHEREUPON the said party of the second part bidding  
26 therefore for the same, the sum of \$..... (amount) and no  
27 other person bidding as much I did then and there openly and  
28 publicly in due form of law between the hours of ..... (time)  
29 and ..... (time) in the ..... (a.m. or p.m.), strike off and sell  
30 tracts or parcels of land and premises for the sum of \$ .....  
31 (amount) to the said party of the second part being then and there  
32 the highest bidder for same. And on the ..... (date) of  
33 ..... (month) in the year last aforesaid I did truly report the  
34 said sale to the Superior Court of New Jersey, Chancery Division  
35 and no objection to the said sale having been made, and by  
36 Assignment of Bid filed with the Sheriff of ..... (name)  
37 County said bidder assigned its bid to:

38 .....  
39 .....  
40 .....

41       NOW, THEREFORE, This Indenture witnesseth, that I, the said  
42 ..... (name), as such Sheriff as aforesaid under and by the  
43 virtue of the said Writ of Execution and in execution of the power  
44 and trust in me reposed and also for and in consideration of the said  
45 sum of \$ ..... (amount) therefrom acquit, exonerate and  
46 forever discharge to the said party of the second part, its successors  
47 and assigns, all and singular the said tract or parcel of lands and  
48 premises, with the appurtenances, privileges, and hereditaments

1 thereunto belonging or in any way appertaining; to have and hold  
2 the same, unto the said party of the second part, its successors and  
3 assigns to its and their only proper use, benefit, and behoof forever,  
4 in as full, ample and beneficial manner as by virtue of said Writ of  
5 Execution I may, can or ought to convey the same.

6 And, I, the said ..... (name), do hereby covenant, promise and  
7 agree, to and with the said party of the second part, its successors  
8 and assigns, that I have not, as such Sheriff as aforesaid, done or  
9 caused, suffered or procured to be done any act, matter or thing  
10 whereby the said premises, or any part thereof, with the  
11 appurtenances, are or may be charged or encumbered in estate, title  
12 or otherwise.

13 IN WITNESS WHEREOF, I the said ..... (name) as such  
14 Sheriff as aforesaid, have hereunto set my hand and seal the day and  
15 year aforesaid.

16 Signed, sealed and delivered

17 in the presence of

18

19 .....

20 Attorney at Law of New Jersey .....(name) Sheriff

21

22 STATE OF NEW JERSEY) SS.

23 .....(county )

24 I, ..... (name), Sheriff, of the County of ..... (name),  
25 do solemnly swear that the real estate described in this deed made  
26 to

27 .....

28 .....

29 .....

30 was by me sold by virtue of a good and subsisting execution (or as  
31 the case may be) as is therein recited, that the money ordered to be  
32 made has not been to my knowledge or belief paid or satisfied, that  
33 the time and place of the same of said real estate were by me duly  
34 advertised as required by law, and that the same was cried off and  
35 sold to a bona fide purchaser for the best price that could be  
36 obtained and the true consideration for this conveyance as set forth  
37 in the deed is \$ ..... (amount).

38 .....

39 ..... (name), Sheriff

40 Sworn before me, ..... (name), on this ..... (date) day of  
41 ..... (month), ..... (year), and I having examined the deed  
42 above mentioned do approve the same and order it to be recorded as  
43 a good and sufficient conveyance of the real estate therein  
44 described.

45 STATE OF NEW JERSEY) ss. ....

46 ..... (Name) County) Attorney or Notary Public

47 On this ..... (date) day of ..... (month), ..... (year),  
48 before me, the subscriber, ..... (name) personally

1 appeared ..... (name), Sheriff of the County of .....  
2 (name) aforesaid, who is, I am satisfied, the grantor in the within  
3 Indenture named, and I having first made known to him the contents  
4 thereof, he did thereupon acknowledge that he signed, sealed and  
5 delivered the same on his voluntary act and deed, for the uses and  
6 purposes therein expressed.

7

8

.....

9

Attorney or Notary Public

10 b. At the conclusion of the sheriff's sale, the attorney for the  
11 plaintiff may prepare and deliver to the sheriff a deed in the form  
12 provided pursuant to paragraph (5) of subsection a. of this section  
13 for the sheriff's execution and the deed shall be delivered to the  
14 sheriff within 10 days of the date of the sale. The sheriff shall be  
15 entitled to the authorized fee, as a review fee, even if the plaintiff's  
16 attorney prepares the deed.

17 c. (1) The sheriff's office shall, within two weeks of the date of  
18 the sale, deliver a fully executed deed to the successful bidder at the  
19 sale provided that the bidder pays the balance of the monies due to  
20 the Sheriff by either cash or certified or cashier's check. In the  
21 event a bid is satisfied after the expiration and additional interest is  
22 collected from the successful bidder, the sheriff shall remit to the  
23 plaintiff the total amount, less any fees, costs and commissions due  
24 the sheriff, along with the additional interest.

25 (2) In the case of residential property, no interest shall accrue on  
26 the balance of the sale of the property until 60 days have passed  
27 following the date of the sale, and thereafter, the successful bidder  
28 shall have 30 days to fulfill the balance. If the successful bidder  
29 fails to fulfill the balance within this 90 day period, the bidder shall  
30 forfeit the deposit on the property and shall be responsible for the  
31 payment of accrued interest and any fees or penalties incurred as a  
32 result of the sale being void.

33 d. The sheriff's office shall, prior to completion of a sale of  
34 residential property, require that the foreclosing plaintiff disclose  
35 whether the property is vacant, tenant-occupied, or owner-occupied.  
36 If the property is vacant, the sheriff's office shall provide the  
37 successful bidder access to the property.

38 e. A bidder may purchase residential property at a sheriff's sale  
39 by way of financing if the bidder provides documentation that the  
40 bidder has been pre-approved by a financial institution on the New  
41 Jersey Housing and Mortgage Finance Agency's participating  
42 lender list for financing the property.

43 (1) A bidder who intends to finance the purchase of residential  
44 property at a sale shall be:

45 (a) limited to submitting bids no higher than the amount for  
46 which the bidder has been pre-approved for financing; and

1       **(b) required to present current and valid photo identification that**  
2 **substantially conforms to the name and information contained on**  
3 **the financing pre-approval forms obtained by the bidder.**

4       **(2) A bidder purchasing residential property in a sheriff's sale**  
5 **pursuant to this subsection shall be required by the financial**  
6 **institution to occupy the property as the bidder's primary residence**  
7 **for a fixed term, of at least 48 months and not to exceed 72 months,**  
8 **after taking possession.**

9       **(3) A successful bidder who finances the purchase and does not**  
10 **occupy the residence for a period of at least 48 months shall be**  
11 **assessed a fine of a minimum of \$100,000 and up to \$500,000 for**  
12 **the first violation, and \$500,000 thereafter for each subsequent**  
13 **violation. These penalties shall not be assessed against a bidder**  
14 **who finances the purchase in good faith and is thereafter required to**  
15 **vacate the property prior to residing in the property for 48 months**  
16 **due to necessity, including but not limited to, military deployment**  
17 **or foreclosure.**

18       **f. In the case of residential property, to be a successful bidder**  
19 **who is not the plaintiff, and who intends to occupy the property,**  
20 **and finance the purchase of the property, the bidder shall have**  
21 **received eight hours of homebuyer education and counseling**  
22 **through a program provided by the United States Department of**  
23 **Housing and Urban Development (HUD), and shall present**  
24 **certification of completion of that program at the time of purchase.**

25       **g. In the case of a residential property that is financed pursuant**  
26 **to subsection e. of this section, the sheriff's office shall mail a**  
27 **questionnaire to the successful bidder 48 months following the sale,**  
28 **which shall require the bidder to respond to questions and submit**  
29 **documentation evidencing the bidder's continued residence at the**  
30 **property.**

31       **h. Any penalty imposed pursuant to this section may be**  
32 **recovered with costs in a summary proceeding commenced by the**  
33 **New Jersey Housing and Mortgage Finance Agency in the**  
34 **Department of Community Affairs pursuant to the "Penalty**  
35 **Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).**  
36 **Fifty percent of any monies collected pursuant to this section shall**  
37 **be forwarded to the State Treasurer, and shall annually be**  
38 **appropriated to the "New Jersey Affordable Housing Trust Fund,"**  
39 **P.L.1985, c.222 (C.52:27D-320) for the purpose of developing and**  
40 **supporting housing programs that create for-sale affordable housing**  
41 **for the workforce. The remaining 50 percent of any monies**  
42 **collected pursuant to this section shall provide for administrative**  
43 **and enforcement costs, including costs incurred by the sheriff's**  
44 **office, necessary to effectuate the purposes of this section.**

45       **i. As used in this section:**

46       **"Residential property" means real property located in this State**  
47 **in which people reside or dwell as their primary residence as**

1 distinguished from property which is used for investment,  
2 commercial, or business purposes.

3 (cf: P.L.1995, c.244, s.12)

4

5 2. This act shall take effect immediately.

6

7

8

STATEMENT

9

10 This bill revises sheriff's procedures for the sale of residential  
11 foreclosure properties. The bill reduces the deposit required at the  
12 time of a sheriff's sale for residential property from 20 percent to  
13 3.5 percent. Current law provides that all bidders on properties for  
14 sale at sheriff's sales are required to deposit 20 percent of the  
15 purchase price of the property.

16 Under the bill, the successful bidder on residential property will  
17 have up to 90 days to complete the sale, with no interest accruing  
18 on the balance of the sale for 60 days following the sale.

19 The bill provides the sheriff require the foreclosing plaintiff to  
20 disclose whether the property is vacant, tenant-occupied, or owner-  
21 occupied.

22 Under the bill, a bidder may purchase property in a sheriff's sale  
23 by way of financing if the bidder provides documentation that the  
24 bidder has been pre-approved by an appropriate financial institution  
25 for financing the property. A bidder may only use the financing  
26 option if the property will be the bidder's primary residence. If a  
27 successful bidder finances the property and does not use the  
28 property as a primary residence, the bidder will be subject to a fine  
29 of a minimum of \$100,000. However, there are exceptions to the  
30 penalties if the bidder must vacate the property due to necessity,  
31 including but not limited to, military deployment.

32 Finally, to be a successful bidder on a residential property the  
33 bidder, who is not the plaintiff, who intends to occupy the property,  
34 and finance the purchase of the property, to be a successful bidder,  
35 shall have received eight hours of training provided by the United  
36 States Department of Housing and Urban Development (HUD), and  
37 shall present certification of completion of that training at the time  
38 of purchase.

39 It is the sponsor's hope that this bill will assist individuals  
40 seeking to hold stake in a community through homeownership.