

ASSEMBLY, No. 5005

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 7, 2019

Sponsored by:

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District 2 (Atlantic)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

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Assemblyman Mazzeo

SYNOPSIS

Requires foreclosing plaintiff to make application to court to enforce sale of vacant and abandoned residential property when sheriff cannot conduct timely sale.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/15/2019)

1 AN ACT concerning certain foreclosure sales and amending
2 P.L.2012, c.70.

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

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

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

23 (1) overgrown or neglected vegetation;

24 (2) the accumulation of newspapers, circulars, flyers or mail on
25 the property;

26 (3) disconnected gas, electric, or water utility services to the
27 property;

28 (4) the accumulation of hazardous, noxious, or unhealthy
29 substances or materials on the property;

30 (5) the accumulation of junk, litter, trash or debris on the
31 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
44 vandalism, loitering, criminal conduct, or the physical destruction
45 or deterioration 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.

1 (12) an uncorrected violation of a municipal building, housing,
2 or 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
7 and 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) any other reasonable indicia of abandonment.

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

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

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

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

21 c. In addition to the residential mortgage foreclosure
22 procedures set out in the "Fair Foreclosure Act," P.L.1995, c.244
23 (C.2A:50-53 et seq.), a summary action to foreclose a mortgage
24 debt secured by residential property that is vacant and abandoned
25 may be brought by a lender in the Superior Court. In addition, a
26 lender may, at any time after filing a foreclosure action, file with
27 the court, in accordance with the Rules Governing the Courts of the
28 State of New Jersey, an application to proceed in a summary
29 manner because the residential property that is the subject of the
30 foreclosure action is believed to be "vacant and abandoned";
31 provided, however, that this section shall not apply to a foreclosure
32 of a timeshare interest secured by a mortgage.

33 d. (1) In addition to the service of process required by the
34 Rules of Court, a lender shall establish, for the entry of a residential
35 foreclosure judgment under this section, that a process server has
36 made two unsuccessful attempts to serve the mortgagor or occupant
37 at the residential property, which attempts must be at least 72 hours
38 apart, and during different times of the day, either before noon,
39 between noon and 6 P.M., or between 6 P.M. and 10 P.M.

40 (2) In addition to any notices required to be served by law or the
41 Rules of Court, a lender shall, with any order to show cause served
42 as original service of process or a motion to proceed summarily,
43 serve a notice that the lender is seeking, on the return date of the
44 order to show cause, or on the date fixed by the court, to proceed
45 summarily for entry of a residential foreclosure judgment because
46 the property is vacant and abandoned.

47 (3) When a property is deemed vacant and abandoned as herein
48 defined, a lender shall not be required to serve the debtor with the

1 notice to cure required by section 6 of the "Fair Foreclosure Act,"
2 P.L.1995, c.244 (C.2A:50-58).

3 e. (1) The court may enter a final residential mortgage
4 foreclosure judgment under this section upon a finding, (a) by clear
5 and convincing evidence, that the residential property is vacant and
6 abandoned as defined under subsection a. of this section, and (b)
7 that a review of the pleadings and documents filed with the court, as
8 required by the Rules of Court, supports the entry of a final
9 residential mortgage foreclosure judgment.

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

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

13 (b) the mortgagor or any other defendant has filed an answer,
14 appearance, or other written objection that is not withdrawn and the
15 defenses or objection asserted provide cause to preclude the entry of
16 a final residential mortgage foreclosure judgment.

17 f. If a final residential mortgage foreclosure judgment under
18 this section is not entered on the original or adjourned return date of
19 an order to show cause or the date fixed by the court to proceed
20 summarily, the court may direct that the foreclosure action continue
21 on the normal track for residential mortgage foreclosure actions for
22 properties that are not vacant and abandoned and the notice to cure
23 served with the order to show cause or the order fixing that date for
24 the matter to proceed summarily shall be of no effect.

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

27 h. Nothing in this section is intended to supersede or limit other
28 procedures adopted by the Court to resolve residential mortgage
29 foreclosure actions, including, but not limited to, foreclosure
30 mediation.

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

36 j. Notwithstanding paragraph (3) of subsection a. of section 12
37 of P.L.1995, c.244 (C.2A:50-64) to the contrary, if the court makes
38 a finding in the foreclosure judgment that the property is vacant and
39 abandoned, the sheriff shall sell the property within 60 days of the
40 sheriff's receipt of any writ of execution issued by the court. If it
41 becomes apparent that the sheriff cannot comply with the provisions
42 of this subsection, the foreclosing plaintiff **【may】** shall apply to the
43 court for an order appointing a Special Master or judicial agent to
44 hold the foreclosure sale , within 60 days of the date of application.
45 (cf: P.L.2014, c.35, s.3)

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47 2. This act shall take effect immediately.

STATEMENT

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3 This bill amends the summary action foreclosure process under
4 the “Fair Foreclosure Act,” to ensure that foreclosure sales of
5 vacant and abandoned properties are conducted within 60 days of a
6 foreclosure judgment. Under current law, if the court makes a
7 finding in a foreclosure judgment that the property is vacant and
8 abandoned, the sheriff is required to sell the property within 60 days
9 of the sheriff's receipt of any writ of execution issued by the court.
10 The law further provides that if it becomes apparent the sheriff
11 cannot comply with that provision, the foreclosing plaintiff may
12 apply to the court for an order appointing a Special Master or
13 judicial agent to hold the foreclosure sale.

14 This bill amends current law to provide that when a sheriff
15 cannot conduct a sale within 60 days, the foreclosing plaintiff will
16 be required to apply to the court for an order appointing a Special
17 Master or judicial agent to hold the foreclosure sale. The bill
18 provides that the foreclosure sale would be held within 60 days of
19 the date of application to the court.