

P.L. 2019, CHAPTER 132, *approved June 24, 2019*
Senate, No. 362 (*Second Reprint*)

1 AN ACT concerning affordability controls on affordable housing
2 ²[, supplementing P.L.1985, c.222 (C.52:27D-301 et al.)]² and
3 amending P.L.1995, c.244.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 ²[1. (New section) The Legislature finds and declares that:

9 a. Many thousands of New Jersey homeowners are at risk of
10 losing their homes as a result of mortgage foreclosures in the
11 immediate future;

12 b. Foreclosures involve the loss of a family's home, which is
13 often the family's most valuable financial asset, and foreclosures
14 especially undermine the health and economic vitality of the urban
15 neighborhoods in which a disproportionate share of foreclosures
16 take place;

17 c. Some homes subject to foreclosure proceedings contain deed
18 restrictions requiring the homes to be reserved for occupancy by
19 low and moderate income households as affordable housing as part
20 of the constitutional obligation under the Mt. Laurel decisions to
21 provide affordable housing;

22 d. Regulations that permit affordable housing deed restrictions
23 to be extinguished during foreclosure proceedings are inconsistent
24 with the constitutional obligation to provide affordable housing and
25 are particularly detrimental in that they decrease the availability of
26 affordable housing at a time when more and more New Jersey
27 residents are faced with difficult economic conditions; and

28 e. Deed restrictions should survive a foreclosure in order to
29 enhance the ability of New Jersey residents to obtain housing they
30 can afford.]²
31

32 ²[2. (New section) Notwithstanding any rule of the Council on
33 Affordable Housing, the Department of Community Affairs, or the
34 New Jersey Housing and Mortgage Finance Agency to the contrary,
35 a deed restriction which was properly recorded in connection with a
36 property for which a credit against the fair share housing obligation
37 was granted pursuant to P.L.1985, c.222 (C.52:27D-301 et al.) shall
38 not expire, extinguish, or be removed prior to the period of
39 termination for such restriction as a result of the sale of the property
40 through foreclosure proceedings by any creditor.]²

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:

¹Senate floor amendments adopted April 12, 2018.

²Senate amendments adopted in accordance with Governor's recommendations May 30, 2019.

1 ²~~[3.]~~ 1.² Section 4 of P.L.1995, c.244 (C.2A:50-56) is
2 amended to read as follows:

3 4. a. Upon failure to perform any obligation of a residential
4 mortgage by the residential mortgage debtor and before any
5 residential mortgage lender may accelerate the maturity of any
6 residential mortgage obligation and commence any foreclosure or
7 other legal action to take possession of the residential property
8 which is the subject of the mortgage, the residential mortgage
9 lender shall give a notice of intention to: the residential mortgage
10 debtor, and, if the mortgage is secured by a residence for which a
11 restriction on affordability was recorded in the county in which the
12 property is located, the clerk of the municipality in which the
13 subject property is located, the municipal housing liaison, if one has
14 been appointed by the municipality pursuant to the regulations of
15 the Council on Affordable Housing, and the Commissioner of
16 Community Affairs, at least 30 days in advance of such action as
17 provided in this section. For the purposes of this section,
18 “restriction on affordability” means any conditions recorded with a
19 mortgage or a deed which would limit the sale of such property to
20 income qualified households pursuant to the rules adopted to
21 effectuate the “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-
22 301 et al.).

23 b. Notice of intention to take action as specified in subsection
24 a. of this section shall be in writing, sent to the debtor by registered
25 or certified mail, return receipt requested, at the debtor's last known
26 address, and, if different, to the address of the property which is the
27 subject of the residential mortgage. The notice is deemed to have
28 been effectuated on the date the notice is delivered in person or
29 mailed to the party.

30 c. The written notice shall clearly and conspicuously state in a
31 manner calculated to make the debtor aware of the situation:

- 32 (1) the particular obligation or real estate security interest;
33 (2) the nature of the default claimed;
34 (3) the right of the debtor to cure the default as provided in
35 section 5 of this act;
36 (4) what performance, including what sum of money, if any, and
37 interest, shall be tendered to cure the default as of the date specified
38 under paragraph (5) of this subsection c.;
39 (5) the date by which the debtor shall cure the default to avoid
40 initiation of foreclosure proceedings, which date shall not be less
41 than 30 days after the date the notice is effective, and the name and
42 address and phone number of a person to whom the payment or
43 tender shall be made;
44 (6) that if the debtor does not cure the default by the date
45 specified under paragraph (5) of this subsection c., the lender may
46 take steps to terminate the debtor's ownership in the property by
47 commencing a foreclosure suit in a court of competent jurisdiction;

1 (7) that if the lender takes the steps indicated pursuant to
2 paragraph (6) of this subsection c., a debtor shall still have the right
3 to cure the default pursuant to section 5 of this act, but that the
4 debtor shall be responsible for the lender's court costs and attorneys'
5 fees in an amount not to exceed that amount permitted pursuant to
6 the Rules Governing the Courts of the State of New Jersey;

7 (8) the right, if any, of the debtor to transfer the real estate to
8 another person subject to the security interest and that the transferee
9 may have the right to cure the default as provided in this act,
10 subject to the mortgage documents;

11 (9) that the debtor is advised to seek counsel from an attorney of
12 the debtor's own choosing concerning the debtor's residential
13 mortgage default situation, and that, if the debtor is unable to obtain
14 an attorney, the debtor may communicate with the New Jersey Bar
15 Association or Lawyer Referral Service in the county in which the
16 residential property securing the mortgage loan is located; and that,
17 if the debtor is unable to afford an attorney, the debtor may
18 communicate with the Legal Services Office in the county in which
19 the property is located;

20 (10) the possible availability of financial assistance for curing a
21 default from programs operated by the State or federal government
22 or nonprofit organizations, if any, as identified by the
23 Commissioner of Banking and Insurance and, if the property is
24 subject to restrictions on affordability, the address and phone
25 number of the municipal affordable housing liaison and of the New
26 Jersey Housing and Mortgage Finance Agency. This requirement
27 shall be satisfied by attaching a list of such programs promulgated
28 by the commissioner; and

29 (11) the name and address of the lender and the telephone
30 number of a representative of the lender whom the debtor may
31 contact if the debtor disagrees with the lender's assertion that a
32 default has occurred or the correctness of the mortgage lender's
33 calculation of the amount required to cure the default.

34 d. The notice of intention to foreclose required to be provided
35 pursuant to this section shall not be required if the debtor has
36 voluntarily surrendered the property which is the subject of the
37 residential mortgage.

38 e. The duty of the lender under this section to serve notice of
39 intention to foreclose is independent of any other duty to give
40 notice under the common law, principles of equity, State or federal
41 statute, or rule of court and of any other right or remedy the debtor
42 may have as a result of the failure to give such notice.

43 f. Compliance with this section shall be set forth in the
44 pleadings of any legal action referred to in this section. If the
45 plaintiff in any complaint seeking foreclosure of a residential
46 mortgage alleges that the property subject to the residential
47 mortgage has been abandoned or voluntarily surrendered, the

1 plaintiff shall plead the specific facts upon which this allegation is
2 based.
3 (cf: P.L.2003, c.298, s.1)

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5 ²~~4.~~² Section 11 of P.L.1995, c.244 (C.2A:50-63) is
6 amended to read as follows:

7 11. a. An optional foreclosure procedure without sale for the
8 disposition of a foreclosed premises is hereby established pursuant
9 to subsection b. of this section, wherein a lender may elect to
10 proceed according to the provisions of this act and R.4:64-1(d) of
11 the Rules Governing the Courts of the State of New Jersey.

12 b. Use of the optional procedure without sale, as provided in
13 this section, shall be permitted only ¹~~when~~ ²~~if there are no~~
14 ~~recorded restrictions on affordability on the property, as defined in~~
15 ~~section 4 of P.L.1995, c.244 (C.2A:50-56), and either¹~~ ~~when²:~~

16 (1) the debtor has abandoned the property which is the subject
17 of the residential mortgage;

18 (2) the debtor has voluntarily surrendered the property which is
19 the subject of the residential mortgage by signing a deed in lieu of
20 foreclosure in favor of the lender; ~~or~~ ¹~~or~~

21 (3) there is no equity in the property which is the subject of the
22 residential mortgage, as defined in subsection e. of this section ¹~~:~~
23 ~~or~~

24 (4) ~~there are no recorded restrictions on affordability on the~~
25 ~~property, as defined in section 4 of P.L.1995, c.244 (C.2A:50-56)~~ ¹.

26 c. Pursuant to paragraph (1) of subsection b. of this section,
27 and for purposes of this section only, abandonment of the property
28 subject to the residential mortgage shall be established by an
29 affidavit or certification from an individual having personal
30 knowledge of the contents thereof, setting forth the specific facts
31 upon which that conclusion is based. The affidavit or certification
32 shall be submitted to the office or the court at the same time that the
33 lender applies to the office or the court for the order fixing the
34 amount, time and place for redemption.

35 d. Pursuant to paragraph (2) of subsection b. of this section and
36 for purposes of this section only, if the lender receives a deed in
37 lieu of foreclosure, the conveyance shall be effective only if the
38 deed clearly and conspicuously provides: that the debtor may,
39 without penalty, rescind the conveyance within seven days,
40 excluding Saturdays, Sundays and legal holidays; and that such
41 ~~recision~~ rescission is effective upon delivery of a written notice
42 to the lender or its agent or upon mailing of such notice to the
43 lender or its agent by certified or registered mail, return receipt
44 requested.

45 e. (1) For purposes of paragraph (3) of subsection b. of this
46 section, a property subject to a residential mortgage shall be
47 deemed to have no equity if the total unpaid balance of all liens and

1 encumbrances against the property, including mortgages, tax liens
2 and judgments actually against the property (not including similar
3 name judgments), and any other lien, is equal to or greater than 92
4 percent of the fair market value of the property. An affidavit setting
5 forth with specificity the fair market value of the property, the
6 unpaid balance of the obligation, including all mortgages and liens
7 and the method by which the lender determined that the property
8 has no equity, shall be submitted to the office or the court at the
9 time the lender applies for the order fixing the amount, time and
10 place for redemption.

11 (2) If a lender proceeds with the optional procedure under this
12 subsection, and if the debtor has not objected and requested a public
13 sale pursuant to this section, when the foreclosed property is resold
14 by the lender following judgment and provided the resale price
15 received by the lender is in excess of the amount necessary to repay
16 the debt, interest and reasonable costs of the lender, and all carrying
17 charges, including, but not limited to, the reasonable costs of
18 maintenance and resale, the lender shall deposit any such excess in
19 accordance with R.4:57 et seq. of the Rules Governing the Courts of
20 the State of New Jersey.

21 (3) Upon deposit of any such excess with the Superior Court,
22 the lender shall notify the debtor and any lien holder who held a
23 lien junior to the lender and whose lien was lost in whole or in part
24 as a result of the foreclosure. Such notification shall be by certified
25 mail, return receipt requested, to the last known address of the
26 debtor and such lien holders. The debtor and the lien holders shall
27 then have six months to make an application to the Superior Court,
28 in the form of an application for surplus funds, upon appropriate
29 notice to all other parties in interest, to seek an order for turnover of
30 the excess funds. Failure of a lender to comply with the provisions
31 of paragraphs (2) and (3) of this subsection e. shall not affect title to
32 the foreclosed property.

33 f. (1) In accordance with the provisions of R.4:64-1(d) of the
34 Rules Governing the Courts of the State of New Jersey, and subject
35 to compliance with the provisions of this act, a lender may elect to
36 proceed with the optional procedure by filing an affidavit or
37 certification with the office or the court.

38 (2) The affidavit or certification shall set forth the facts which
39 the lender alleges show that it is entitled to proceed under one or
40 more paragraphs of subsection b. of this section and shall be
41 supported by the proofs required by this section and such other
42 proofs as may be required by the office or the court.

43 g. In accordance with the provisions of R.4:64-1(d) of the
44 Rules Governing the Courts of the State of New Jersey, and subject
45 to compliance with the provisions of this act, the office or the court
46 may enter an order fixing the amount, time, and place for
47 redemption, which shall be not less than 45 days nor more than 60
48 days after the date of the order. The office or the court may grant

1 an extension of time for good cause shown. The order shall provide
2 that:

3 (1) the redeeming defendant pay to the plaintiff's attorney the
4 amount fixed by the office or the court for redemption, together
5 with interest to the date of redemption, plus all court costs;

6 (2) redemption shall be by cash, cashier's check or certified
7 check and made at the office of the plaintiff's attorney, if such
8 office is located in the county where the property is situated, or at
9 such other place as designated by the office or the court, between
10 the hours of 9:00 a.m. and 4:00 p.m. of the date set by the office or
11 the court in the order; and

12 (3) in the absence of redemption, the defendants shall stand
13 absolutely debarred and foreclosed from all equity of redemption.

14 h. (1) The order for redemption or notice thereof shall be
15 mailed to each defendant's last known address and, if different, also
16 to the address of the property being foreclosed. The order for
17 redemption or notice thereof shall be sent by ordinary mail and
18 certified mail, return receipt requested, within 20 days after the date
19 the order is entered, except that, as to defendants whose addresses
20 are unknown and who were served by publication, no further
21 publication of the order for redemption or notice thereof need be
22 made.

23 (2) The notice shall:

24 (a) inform the defendants that the plaintiff is proceeding under
25 an optional procedure authorized by section 11 of this act and set
26 out the steps of the optional procedure;

27 (b) inform all defendants of the terms and conditions under
28 which a defendant may request a public sale of the mortgaged
29 premises pursuant to subsection i. of this section; and

30 (c) clearly state that no request for a public sale made after 30
31 days from the date of service will be granted, except for good cause
32 shown.

33 i. In any matter in which the office or the court has issued an
34 order for redemption and the lender is permitted to proceed by the
35 optional procedure, a defendant who wishes to object to the optional
36 procedure and request a public sale with respect to the mortgaged
37 premises being foreclosed, shall submit to the office or the court a
38 written request for a public sale within 30 days of the date the order
39 or notice thereof is served. If a defendant requests a public sale
40 within the required time period, and subject to compliance with the
41 provisions of this act, the office or court shall enter a judgment of
42 foreclosure which provides for a public sale of the premises in
43 accordance with applicable law. Any such defendant who requests
44 a public sale, other than a natural person who is the owner or a
45 voluntary transferee from that owner, shall be required to post a
46 cash deposit or bond prior to the date fixed for redemption. This
47 cash deposit or bond shall be in an amount which is 10% of the
48 amount found due in the order fixing the amount, time and place for

1 redemption and shall be held to secure the plaintiff against any
2 additional interest and costs, as well as any deficiency, as a result of
3 the public sale. The office or the court may dispense with this
4 requirement for good cause shown. The defendant who requests a
5 public sale, other than a natural person who is the owner or a
6 voluntary transferee from that owner, shall pay all expenses and
7 costs associated with the public sale, including, but not limited to,
8 all sheriff's fees and commissions.

9 j. In the event of any dispute among defendants over the right
10 to redeem, the court shall enter such order as is necessary to secure
11 the plaintiff pending the resolution of the dispute, including, but not
12 limited to, payment of plaintiff's additional interest and costs which
13 accrue as a result of the dispute.

14 k. Upon redemption, the plaintiff shall furnish the
15 redemptioner with an appropriate certificate of redemption and the
16 redemptioner shall acquire all rights provided by law and equity but
17 shall not be entitled to a deed or title to the mortgaged premises
18 solely by virtue of the redemption. A redemptioner in proper cases
19 may proceed to foreclose the redemptioner's interest.

20 l. In the absence of redemption, and on proof of mailing of the
21 order for redemption or notice thereof pursuant to subsection h. of
22 this section and an affidavit of non-redemption, the plaintiff shall be
23 entitled to a judgment debarring and foreclosing the equity of
24 redemption of the defendants and each of them and any person
25 claiming by, through or under them, and adjudging the plaintiff be
26 vested with a valid and indefeasible estate in the mortgaged
27 premises. Anything to the contrary notwithstanding, redemption
28 shall be permitted at any time up until the entry of judgment
29 including the whole of the last day upon which judgment is entered.
30 A certified copy of the judgment shall be accepted for recording by
31 the county recording officer pursuant to P.L.1939, c.170 (C.46:16-
32 1.1).

33 m. Upon entry of a judgment vesting title in the plaintiff
34 pursuant to subsection l. of this section, the debt which was secured
35 by the foreclosed mortgage shall be deemed satisfied, and the
36 plaintiff shall not be permitted to institute any further or
37 contemporaneous action for the collection of the debt.

38 (cf: P.L.1995, c.244, s.11)

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40 ²[5.] 3.² This act shall take effect immediately.

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45 Provides that deed restrictions on affordable housing units are
46 not extinguished by foreclosure proceedings.