

[Second Reprint]

SENATE, No. 1244

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED JANUARY 25, 2018

Sponsored by:

Senator RONALD L. RICE

District 28 (Essex)

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

Codifies the Judiciary's Foreclosure Mediation Program; dedicates monies from foreclosure filing fees and fines.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on March 4, 2019, with amendments.



(Sponsorship Updated As Of: 10/16/2018)

1 AN ACT concerning foreclosure mediation, amending
 2 ¹[N.J.S.22A:2-12 and]¹ P.L.1995, c.244, supplementing Title
 3 2A of the New Jersey Statutes, and dedicating monies from
 4 foreclosure filing fees and fines.

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

8
 9 1. (New section) This act shall be known and may be cited as
 10 the "New Jersey Foreclosure Mediation Act."

11
 12 2. (New section) a. The Legislature finds and declares that
 13 the New Jersey Judiciary established a Foreclosure Mediation
 14 Program in ¹[2009] 2008¹ in response to the increase in residential
 15 foreclosures. This act ensures the continuation of mediation
 16 services provided under that program to assist homeowners and
 17 lenders in pursuing a mutually agreeable alternative to mortgage
 18 foreclosure litigation and to avoid the harmful effects of residential
 19 property foreclosure on homeowners, families, and communities.

20 b. For the purposes of P.L. , c. (C.) (pending before
 21 the Legislature as this bill):

22 ¹"Certification document" means the document that the
 23 homeowner-borrower is required to submit to the court upon the
 24 initiation of foreclosure mediation, pursuant to subsection b. of
 25 section 4 and subsection a. of section 5 of P.L. , c. (C.)
 26 (pending before the Legislature as this bill).¹

27 "Eligible property" means an owner-occupied one- to ¹[three-
 28 family residential property that is the homeowner-borrower's
 29 primary residence] four-dwelling unit residence, one of which is
 30 occupied, or is planned to be occupied, by the homeowner-
 31 borrower, or a member of the homeowner-borrower's immediate
 32 family¹.

33 "Foreclosure Mediation Program" or "mediation program" means
 34 the New Jersey Judiciary's Foreclosure Mediation Program as
 35 authorized by the Supreme Court of New Jersey.

36 "Homeowner-borrower" means the borrower ¹[on a] who
 37 executed the¹ mortgage loan for an eligible property that is subject
 38 to a foreclosure complaint filed by the ¹original residential
 39 mortgage¹ lender or an assignee ¹of the original residential
 40 mortgage lender¹.

41 ¹"Trained foreclosure prevention and default mitigation
 42 counselor" means a housing counselor employed by a housing
 43 counseling agency certified by the United States Department of

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 SCU committee amendments adopted February 7, 2019.

²Senate SBA committee amendments adopted March 4, 2019.

1 Housing and Urban Development, who has successfully completed
2 a foreclosure prevention and default mitigation training course.¹

3
4 3. (New section) ¹**【The】 A**¹ homeowner-borrower shall receive
5 written notice ¹from the residential mortgage lender¹ of the option
6 to participate in the Foreclosure Mediation Program in accordance
7 with the court rules, procedures, and guidelines adopted by the
8 Supreme Court at the time the homeowner-borrower receives a
9 notice of intention to foreclose, pursuant to section 4 of P.L.1995,
10 c.244 (C.2A:50-56). Upon the filing of a mortgage foreclosure
11 complaint against an eligible property, the homeowner-borrower
12 shall again receive written notice of the option to participate in the
13 Foreclosure Mediation Program in accordance with the court rules,
14 procedures, and guidelines adopted by the Supreme Court. The
15 written notice required pursuant to this section shall be available in
16 both English and Spanish.

17
18 4. (New section) a. (1) A court may order mediation
19 whenever a homeowner-borrower files an answer to a foreclosure
20 complaint.

21 (2) Alternatively, the homeowner-borrower may initiate ¹**【the**
22 **process for scheduling mediation by submitting a mediation request**
23 **to the court, along with any other documents required by the**
24 **Supreme Court. The deadline for mediation request submission**
25 **shall be determined by the court rules, procedures, and guidelines**
26 **adopted by the Supreme Court】** mediation in accordance with court
27 rules. The courts shall provide the homeowner-borrower no less
28 than 60 days following receipt of the foreclosure complaint and
29 summons to initiate mediation¹.

30 b. ¹**【After requesting mediation, the homeowner-borrower may**
31 **seek to stay the sheriff's sale in accordance with applicable court**
32 **rules and procedures】** The homeowner-borrower may not
33 participate in mediation unless the certification document required
34 pursuant to section 5 of P.L. , c. (C.) (pending before the
35 Legislature as this bill) is submitted to the court and signed by a
36 trained foreclosure prevention and default mitigation counselor,
37 verifying that the homeowner-borrower is cooperating with the
38 counselor¹.

39 c. The homeowner-borrower shall not be required to pay any
40 fees to participate in the mediation program.

41
42 5. (New section) a. Whenever a ¹**【person submits a】**
43 homeowner-borrower initiates¹ mediation ¹**【request】**¹ or is ordered
44 to participate in the mediation program, that ¹**【person may】**
45 homeowner-borrower shall¹ be responsible for submitting a
46 certification document to the court, confirming that they meet the
47 definition of a homeowner-borrower ¹, pursuant to subsection b. of

1 section 2 of P.L. , c. (C.) (pending before the Legislature
2 as this bill),¹ and that the property being foreclosed upon continues
3 to be an eligible property pursuant to subsection b. of section 2 of
4 P.L. , c. (C.) (pending before the Legislature as this bill).
5 ¹Pursuant to subsection b. of section 4 of P.L. , c. (C.)
6 (pending before the Legislature as this bill), the certification
7 document submitted to the court shall also be signed by the trained
8 foreclosure prevention and default mitigation counselor, verifying
9 that the trained foreclosure prevention and default mitigation
10 counselor is counseling the homeowner-borrower.¹

11 b. Each party shall participate in foreclosure mediation ¹["in
12 good faith. A good faith effort includes, but is not limited to, the
13 mortgage lender or its servicer attending] , and shall attend¹ the
14 mediation session in person or by telephone through a person with
15 the authority to consider alternatives to foreclosure so that the
16 parties may reach a mutually acceptable loan modification, loan
17 workout, refinancing agreement, or other resolution. If any party or
18 attorney for a party fails to attend a mediation session ¹["or to make
19 a good faith effort to mediate"]¹, the court, in addition to any
20 sanction the court deems appropriate, may sanction a party or
21 attorney for a violation of this subsection with a civil penalty of up
22 to \$1,000 or allow a party to recover reasonable attorney's fees or
23 litigation expenses, or both. In determining the type of sanction to
24 impose against a party, the court may consider whether the conduct
25 was intentional and whether the party has engaged in a pattern of
26 similar conduct with respect to the current complaint or any
27 previous complaints.

28
29 ¹6. (New section) The Judiciary shall record the result of each
30 foreclosure mediation session, and compile this information into an
31 accessible format so that the frequency of the program's success
32 can be identified, and shall publish the compiled information on the
33 Judiciary's Internet website. The information shall include the
34 aggregate data regarding: the number of cases in mediation; the
35 number of mediation sessions held; the number of mediation
36 sessions that did not go forward because either party did not
37 participate; the number of successful mediations delineated by loan
38 modification, forbearance, deed in lieu of foreclosure, short sale
39 agreement, or other agreement resulting in the dismissal of the
40 complaint for foreclosure; and the number of homeowners against
41 whom another complaint for foreclosure was not filed in the
42 following two years. The information published on the Judiciary's
43 Internet website shall be updated at least annually. However, the
44 first report shall be published two years after the effective date of
45 P.L. , c. (C.) (pending before the Legislature as this bill).¹

1 ¹**[6.] 7.**¹ (New section) There is created in the General Fund a
2 dedicated, non-lapsing fund to be known as the “Foreclosure
3 Mediation Fund,” to be held separate and apart from all other funds
4 of the State. The fund shall be administered by the Administrative
5 Office of the Courts. In each action for foreclosure, the plaintiff
6 shall pay ¹**[\$50]** ²**[\$75]**¹ **\$155**² to the clerk of the court in addition
7 to the fee associated with the filing of the first paper ¹. Of that
8 ²**[\$75]** **\$155**² payment¹, ²**[\$50]**¹ **\$60**² and all monies collected
9 from each civil penalty imposed for violations of subsection b. of
10 section 5 of P.L. , c. (C.) (pending before the Legislature
11 as this bill), shall be deposited in the fund. The monies shall be
12 appropriated annually by the Legislature to the Administrative
13 Office of the Courts for the purposes of the operation of the
14 Foreclosure Mediation Program ¹, including the compensation of
15 mediators,¹ and to enhance the integrity of the mortgage foreclosure
16 review process. All interest or other income earned on monies
17 deposited into the fund, and any monies that may be appropriated or
18 otherwise become available for the purpose of the fund, shall be
19 credited and deposited into the fund. ¹The remaining ²**[\$25]** **\$95**²
20 collected from each filing fee shall be used to reimburse trained
21 foreclosure prevention and default mitigation counselors for their
22 services, pursuant to P.L. , c. (C.) pending before the
23 Legislature as this bill).¹

24
25 ¹**[7.] 8.**¹ Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended
26 to read as follows:

27 4. a. Upon failure to perform any obligation of a residential
28 mortgage by the residential mortgage debtor and before any
29 residential mortgage lender may accelerate the maturity of any
30 residential mortgage obligation and commence any foreclosure or
31 other legal action to take possession of the residential property
32 which is the subject of the mortgage, the residential mortgage
33 lender shall give the residential mortgage debtor notice of such
34 intention at least 30 days in advance of such action as provided in
35 this section.

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

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

- 45 (1) the particular obligation or real estate security interest;
46 (2) the nature of the default claimed;

- 1 (3) the right of the debtor to cure the default as provided in
2 section 5 of **【this act】** P.L.1995, c.244 (C.2A:50-57);
- 3 (4) what performance, including what sum of money, if any, and
4 interest, shall be tendered to cure the default as of the date specified
5 under paragraph (5) of this subsection c.;
- 6 (5) the date by which the debtor shall cure the default to avoid
7 initiation of foreclosure proceedings, which date shall not be less
8 than 30 days after the date the notice is effective, and the name and
9 address and phone number of a person to whom the payment or
10 tender shall be made;
- 11 (6) that if the debtor does not cure the default by the date
12 specified under paragraph (5) of this subsection c., the lender may
13 take steps to terminate the debtor's ownership in the property by
14 commencing a foreclosure suit in a court of competent jurisdiction;
- 15 (7) that if the lender takes the steps indicated pursuant to
16 paragraph (6) of this subsection c., a debtor shall still have the right
17 to cure the default pursuant to section 5 of **【this act】**
18 P.L.1995, c.244 ¹**【(C.2A:50-57) (C.2A:50-57)**¹, but that the debtor
19 shall be responsible for the lender's court costs and attorneys' fees
20 in an amount not to exceed that amount permitted pursuant to the
21 Rules Governing the Courts of the State of New Jersey;
- 22 (8) the right, if any, of the debtor to transfer the real estate to
23 another person subject to the security interest and that the transferee
24 may have the right to cure the default as provided in **【this act】**
25 P.L.1995, c.244 (C.2A:50-53 et seq.), subject to the mortgage
26 documents;
- 27 (9) that the debtor is advised to seek counsel from an attorney of
28 the debtor's own choosing concerning the debtor's residential
29 mortgage default situation, and that, if the debtor is unable to obtain
30 an attorney, the debtor may communicate with the New Jersey Bar
31 Association or Lawyer Referral Service in the county in which the
32 residential property securing the mortgage loan is located; and that,
33 if the debtor is unable to afford an attorney, the debtor may
34 communicate with the Legal Services Office in the county in which
35 the property is located;
- 36 (10) the possible availability of financial assistance for curing a
37 default from programs operated by the State or federal government
38 or nonprofit organizations, if any, as identified by the
39 Commissioner of Banking and Insurance. This requirement shall be
40 satisfied by attaching a list of such programs promulgated by the
41 commissioner; **【and】**
- 42 (11) the name and address of the lender and the telephone
43 number of a representative of the lender whom the debtor may
44 contact if the debtor disagrees with the lender's assertion that a
45 default has occurred or the correctness of the mortgage lender's
46 calculation of the amount required to cure the default; and

1 (12) that if the lender takes the steps indicated pursuant to
2 paragraph (6) of this subsection, the debtor has the option to
3 participate in the Foreclosure Mediation Program ¹by submitting a
4 mediation request to the court ¹following the filing of a mortgage
5 foreclosure complaint ¹by initiating mediation pursuant to
6 paragraph (2) of subsection a. of section 4 of P.L. , c. (C.)
7 (pending before the Legislature as this bill) ¹. Notice of the option
8 to participate in the Foreclosure Mediation Program shall adhere to
9 the requirements of section 3 of P.L. , c. (C.) (pending
10 before the Legislature as this bill) and any court rules, procedures,
11 or guidelines adopted by the Supreme Court.

12 d. The notice of intention to foreclose required to be provided
13 pursuant to this section shall not be required if the debtor has
14 voluntarily surrendered the property which is the subject of the
15 residential mortgage.

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

21 f. Compliance with this section shall be set forth in the
22 pleadings of any legal action referred to in this section. If the
23 plaintiff in any complaint seeking foreclosure of a residential
24 mortgage alleges that the property subject to the residential
25 mortgage has been abandoned or voluntarily surrendered, the
26 plaintiff shall plead the specific facts upon which this allegation is
27 based.

28 (cf: P.L.2003, c.298, s.1)

29

30 ¹[8.] 9. ¹This act shall take effect ¹immediately on the first
31 day of the seventh month next following enactment ¹.