

[Third Reprint]

**SENATE, No. 3413**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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INTRODUCED JANUARY 31, 2019

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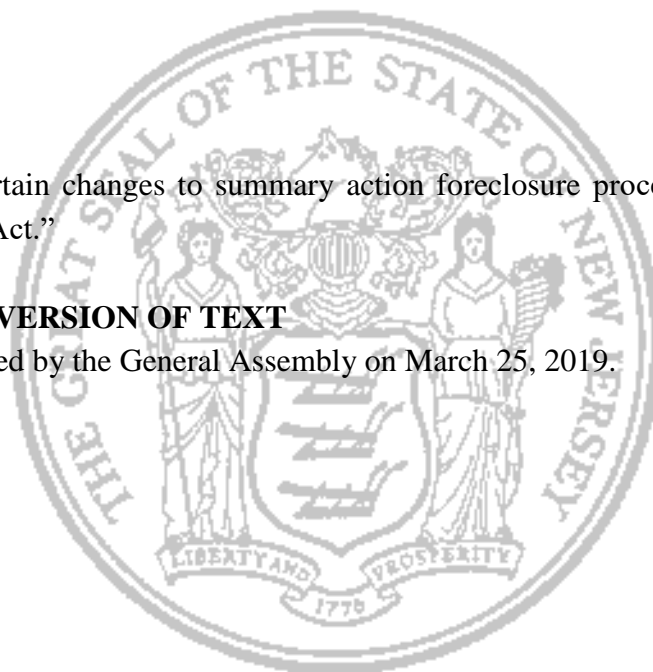
**Assemblymen Mazzeo and McKeon**

**SYNOPSIS**

Makes certain changes to summary action foreclosure process under “Fair Foreclosure Act.”

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on March 25, 2019.



**(Sponsorship Updated As Of: 3/26/2019)**

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

3

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

6

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

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

23 (1) overgrown or neglected vegetation;

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

31 (6) the absence of window treatments such as blinds, curtains or  
32 shutters;

33 (7) the absence of furnishings and personal items;

34 (8) statements of neighbors, delivery persons, representatives of a  
35 common interest community association, or government employees  
36 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 vandalism,

**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:

<sup>1</sup>Senate SCU committee amendments adopted February 7, 2019.

<sup>2</sup>Senate floor amendments adopted February 21, 2019.

<sup>3</sup>Assembly floor amendments adopted March 25, 2019.

1 loitering, criminal conduct, or the physical destruction or deterioration  
2 of the property;

3 (12) an uncorrected violation of a municipal building, housing, or  
4 similar code during the preceding year, or an order by municipal  
5 authorities declaring the property to be unfit for occupancy and to  
6 remain vacant and unoccupied;

7 (13) the mortgagee or other authorized party has secured or  
8 winterized the property due to the property being deemed vacant and  
9 unprotected or in danger of freezing;

10 (14) a written statement issued by any mortgagor expressing the  
11 clear intent of all mortgagors to abandon the property;

12 (15) any other reasonable indicia of abandonment.

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

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

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

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

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

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

43 (2) In addition to any notices required to be served by law or the  
44 Rules of Court, a lender shall, with any order to show cause served as  
45 original service of process or a motion to proceed summarily, serve a  
46 notice that the lender is seeking, on the return date of the order to show  
47 cause, or on the date fixed by the court, to proceed summarily for entry

1 of a residential foreclosure judgment because the property is vacant  
2 and abandoned.

3 (3) When a property is deemed vacant and abandoned as herein  
4 defined, a lender shall not be required to serve the debtor with the  
5 notice to cure required by section 6 of the "Fair Foreclosure Act,"  
6 P.L.1995, c.244 (C.2A:50-58).

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

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

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

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

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

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

31 h. Nothing in this section is intended to supersede or limit other  
32 procedures adopted by the Court to resolve residential mortgage  
33 foreclosure actions, including, but not limited to, foreclosure  
34 mediation.

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

40 j. <sup>1</sup>(1)<sup>1</sup> Notwithstanding paragraph (3) of subsection a. of section  
41 12 of P.L.1995, c.244 (C.2A:50-64) to the contrary, <sup>1</sup>[if the court  
42 makes a finding in the foreclosure judgment that the property is vacant  
43 and abandoned,]<sup>1</sup> the sheriff shall sell the property within <sup>3</sup>[60]<sup>3</sup> 90<sup>3</sup>  
44 days of the sheriff's receipt of any writ of execution issued by the court  
45 <sup>1</sup>if:

46 (a) the court makes a finding in the foreclosure judgment that the  
47 property is vacant and abandoned; or

1        (b) the court issues an order directing the sheriff to sell the  
2 property within <sup>3</sup>[60] 90<sup>3</sup> days, pursuant to the provisions of  
3 subsection k. of this section<sup>1</sup>.

4        <sup>1</sup>(2)<sup>1</sup> If it becomes apparent that the sheriff cannot comply with the  
5 provisions of <sup>1</sup>paragraph (1) of<sup>1</sup> this subsection, the foreclosing  
6 plaintiff **[may]** shall apply to the court for an order appointing a  
7 Special Master or judicial agent to hold the foreclosure sale , within  
8 <sup>3</sup>[60] 90<sup>3</sup> days of the date of application.

9        <sup>1</sup>k. (1) Following issuance of a foreclosure judgment, in which the  
10 court did not make a finding that the property is vacant and  
11 abandoned, a foreclosing plaintiff may make application to the court  
12 for the property to be sold by the sheriff within <sup>3</sup>[60] 90<sup>3</sup> days of the  
13 date of application. The application shall include a certification that  
14 the mortgaged real estate is vacant and abandoned.

15        (2) Upon application that meets the criteria set forth in paragraph  
16 (1) of this subsection, the court shall issue an order directing the  
17 sheriff to sell the property in accordance with the provisions of  
18 subsection j. of this section. A hearing shall not be required unless the  
19 application is contested.<sup>1</sup>

20 (cf: P.L.2014, c.35, s.3)

21

22        2. This act shall take effect <sup>3</sup>**[immediately]** on the 30th day next  
23 following the date of enactment<sup>3</sup>.