ASSEMBLY, No. 436

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Assemblyman GREGORY P. MCGUCKIN
District 10 (Ocean)
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SYNOPSIS

Requires mortgage lenders to maintain vacant, age-restricted dwelling units during foreclosure.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 2/3/2020)

AN ACT concerning certain age-restricted dwelling units during foreclosure and amending P.L.2008, c.127 and P.L.2012, c.70.

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

1. Section 17 of P.L.2008, c.127 (C.46:10B-51) is amended to read as follows:

17. a. (1) A creditor serving a summons and complaint in an action to foreclose on a mortgage on residential property in this State shall, within 10 days of serving the summons and complaint, notify the municipal clerk of the municipality in which the property is located that a summons and complaint in an action to foreclose on a mortgage has been filed against the subject property. The notice shall contain the name and contact information for the representative of the creditor who is responsible for receiving complaints of property maintenance and code violations, may contain information about more than one property, and shall be provided by mail or electronic communication, at the discretion of the municipal clerk. In the event the creditor that has served a summons and complaint in an action to foreclose on a residential property is located out-of-State, the notice shall also contain the full name and contact information of an in-State representative or agent who shall be responsible for the care, maintenance, security, and upkeep of the exterior of the property if it becomes vacant and abandoned. If the municipality has appointed a public officer pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the municipal clerk shall forward a copy of the notice to the public officer or shall otherwise provide it to any other local official responsible for administration of any property maintenance or public nuisance code.

In the event that the property being foreclosed on is an affordable unit pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), then the creditor shall identify that the property is subject to the "Fair Housing Act."

The notice shall also include the street address, lot and block number of the property, and the full name and contact information of an individual located within the State who is authorized to accept service on behalf of the creditor. The notice shall be provided to the municipal clerk within 10 days of service of a summons and complaint in an action to foreclose on a mortgage against the subject property.

(2) Within 30 days following the effective date of P.L.2009, c.296 (C.2A:50-69 et al.), any creditor that has initiated a foreclosure proceeding on any residential property which is pending

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 <u>thus</u> is new matter.

in Superior Court shall provide to the municipal clerk of the municipality in which the property is located, a listing of all residential properties in the municipality for which the creditor has foreclosure actions pending by street address and lot and block number. If the municipality has appointed a public officer pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the municipal clerk shall forward a copy of the notice to the public officer, or shall otherwise provide it to any other local official responsible for administration of any property maintenance or public nuisance code.

b. If the owner of a residential property vacates or abandons any property on which a foreclosure proceeding has been initiated or if a residential property becomes vacant at any point subsequent to the creditor's filing the summons and complaint in an action to foreclose on a mortgage against the subject property, but prior to vesting of title in the creditor or any other third party, and the exterior of the property is found to be a nuisance or in violation of any applicable State or local code, the local public officer, municipal clerk, or other authorized municipal official shall notify the creditor or the representative or agent of an out-of-State creditor, as applicable, which shall have the responsibility to abate the nuisance or correct the violation in the same manner and to the same extent as the title owner of the property, to such standard or specification as may be required by State law or municipal ordinance. The municipality shall include a description of the conditions that gave rise to the violation with the notice of violation and shall provide a period of not less than 30 days from the creditor’s receipt of the notice for the creditor to remedy the violation. If the creditor fails to remedy the violation within that time period, the municipality may impose penalties allowed for the violation of municipal ordinances pursuant to R.S.40:49-5.

c. If the municipality expends public funds in order to abate a nuisance or correct a violation on a residential property in situations in which the creditor was given notice pursuant to the provisions of subsection b. of this section but failed to abate the nuisance or correct the violation as directed, the municipality shall have the same recourse against the creditor as it would have against the title owner of the property, including but not limited to the recourse provided under section 23 of P.L.2003, c.210 (C.55:19-100).

<u>d. If the owner of a dwelling unit in an age-restricted community vacates or abandons a unit on which a foreclosure proceeding has been initiated or if a unit becomes vacant at any point subsequent to the creditor’s filing the summons and complaint in an action to foreclose on a mortgage against the unit, but prior to vesting of title in the creditor or any other third party, a representative of the community may notify the creditor of the vacancy, and the creditor, in addition to any responsibilities that may be applicable pursuant to the provisions of subsections a., b., and c. of this section, shall have the responsibility, in the same</u>

manner and to the same extent as the title owner of the unit pursuant to the bylaws, rules, and regulations of the community, to:

(1) pay the unit's monthly maintenance fee and the unit's share of any other common expenses of administering, maintaining, or operating the community; and

(2) maintain the unit.

A creditor that shall abate a nuisance or correct a violation pursuant to this subsection to such standards or specification as may be required by State law or municipal ordinance shall be permitted to include the expense of abatement or correction in any foreclosure or other action against the title owner.

e. If the creditor, subsequent to receipt of notice from the community pursuant to subsection d. of this section, fails to pay the monthly maintenance fee or other common expenses or fails to maintain the dwelling unit pursuant to the bylaws, rules, and regulations of the community, the community shall have the same recourse against the creditor as it would have against the title owner of the unit pursuant to the bylaws, rules, and regulations of the community.

f. For the purposes of subsections d. and e. of this section, "age-restricted community" or "community" means a community that complies with the "housing for older persons" exception from the federal "Fair Housing Amendments Act of 1988," Pub.L.100-430 (42 U.S.C. ss.3601 et seq.) for that community as set forth in section 100.301 of title 24, Code of Federal Regulations.

g. The title owner shall maintain a vacant residential property purchased or acquired by that owner at a foreclosure sale or by deed in lieu of foreclosure.

(cf: P.L.2014, c.35, s.2)

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

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

(1) overgrown or neglected vegetation;

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

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

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

(5) the accumulation of junk, litter, trash or debris on the property;

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

(7) the absence of furnishings and personal items;

(8) statements of neighbors, delivery persons, or government employees indicating that the residence is vacant and abandoned;

(9) windows or entrances to the property that are boarded up or closed off or multiple window panes that are damaged, broken and unrepaired;

(10) doors to the property that are smashed through, broken off, unhinged, or continuously unlocked;

(11) a risk to the health, safety or welfare of the public, or any adjoining or adjacent property owners, exists due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property;

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

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

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

(15) nonpayment of a condominium or age-restricted community unit's monthly maintenance fee and the unit's share of any other common expenses for administering, maintaining, or operating the community or for failure to maintain the dwelling unit pursuant to the bylaws, rules, and regulations of the community;

(16) any other reasonable indicia of abandonment.

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

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

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

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

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

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

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

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

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

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

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

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

f. If a final residential mortgage foreclosure judgment under this section is not entered on the original or adjourned return date of an order to show cause or the date fixed by the court to proceed summarily, the court may direct that the foreclosure action continue

on the normal track for residential mortgage foreclosure actions for properties that are not vacant and abandoned and the notice to cure served with the order to show cause or the order fixing that date for the matter to proceed summarily shall be of no effect.

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

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

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

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

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

3. This act shall take effect on the 90th day next following enactment.

STATEMENT

This bill places certain obligations on creditors to maintain vacant dwelling units in age-restricted communities during foreclosure.

The bill provides that if the owner of a dwelling unit in an age-restricted community vacates or abandons a unit on which a foreclosure proceeding has been initiated or if a unit becomes vacant at any point subsequent to the creditor’s filing the summons and complaint in an action to foreclose on a mortgage against the unit, but prior to vesting of title in the creditor or any other third party, a representative of the community may notify the creditor of the vacancy.

The creditor, in addition to any other applicable responsibilities under the current provisions of section 17 of P.L.2008, c.127 (C.46:10B-51) with respect to maintaining residential property, would then have the responsibility, in the same manner and to the same extent as the title owner of the unit pursuant to the bylaws,

rules, and regulations of the community, to: (1) pay the unit's monthly maintenance fee and the unit's share of any other common expenses of administering, maintaining, or operating the community; and (2) maintain the unit. If the creditor is required to pay any outstanding fees or incurs expenses towards the maintenance of a vacant or abandoned property, the creditor may include these costs in any foreclosure or other action against the title owner.

If the creditor, subsequent to receipt of notice from the community, fails to pay the monthly maintenance fee or other common expenses, or fails to maintain the dwelling unit pursuant to the bylaws, rules, and regulations of the community, the community shall have the same recourse against the creditor as it would have against the title owner of the unit pursuant to the bylaws, rules, and regulations of the community.

The bill provides that the nonpayment of any condominium or age-restricted community unit's monthly maintenance fee and the unit's share of any other common expenses would be an indicia of vacancy or abandonment under section 1 of P.L.2012, c.70 (C.2A:50-73).