

ASSEMBLY, No. 2808

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 20, 2020

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen and Passaic)

SYNOPSIS

Requires certification of diligent inquiry in residential mortgage foreclosure actions to be filed by attorneys.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning residential mortgage foreclosures and
2 supplementing P.L.1995, c.244 (C.2A:50-53 et seq.).
3

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

7 1. a. In addition to any other requirements under law,
8 regulation or court rule, in all residential mortgage foreclosure
9 actions, an attorney filing a foreclosure complaint shall include a
10 certification of diligent inquiry. The certification of diligent inquiry
11 shall certify:

12 (1) that the attorney has communicated with an employee or
13 employees of the plaintiff who: (a) personally reviewed the
14 documents being submitted to support the complaint; and (b)
15 confirmed the accuracy of the documents;

16 (2) the names and titles, and the responsibilities in those titles,
17 of the plaintiff's employees with whom the attorney communicated
18 pursuant to paragraph (1) of this section;

19 (3) that the attorney has reviewed the facts of the case and that,
20 based on the information received pursuant to this section and the
21 attorney's review of the pertinent documents, to the best of the
22 attorney's knowledge, information and belief there is a reasonable
23 basis for the commencement of the action and that the plaintiff is
24 currently the residential mortgage lender entitled to enforce rights
25 under those documents; and

26 (4) that the attorney is aware that the failure to comply with the
27 provisions of this section may result in the penalties provided for in
28 subsection b. of this section or, where the failure constitutes a
29 violation of the Rules of Professional Conduct, may include
30 sanctions imposed by the Supreme Court of New Jersey.

31 b. If the court finds that the plaintiff has failed to comply with
32 the provisions of subsection a. of this section, the court may dismiss
33 the complaint, with or without prejudice, or deny the accrual of any
34 interest, costs, attorney's fees and other fees relating to the
35 mortgage debt.
36

37 2. This act shall take effect immediately and shall apply to
38 mortgage foreclosure actions filed on or after the effective date.
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41 STATEMENT

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43 This bill supplements the "Fair Foreclosure Act," P.L.1995,
44 c.244 (C.2A:50-53 et seq.) by codifying aspects of New Jersey
45 Court Rule 4:64-1 regarding certifications of diligent inquiry.
46 Specifically, the bill provides that, in addition to any other
47 requirements under law, regulation or court rule, in all residential
48 mortgage foreclosure actions, an attorney filing a foreclosure

1 complaint shall include a certification of diligent inquiry.

2 The certification of diligent inquiry shall certify:

3 (1) that the attorney has communicated with an employee or
4 employees of the plaintiff who: (a) personally reviewed the
5 documents being submitted to support the complaint; and (b)
6 confirmed the accuracy of the documents;

7 (2) the names and titles, and the responsibilities in those titles,
8 of the plaintiff's employees with whom the attorney communicated;

9 (3) that the attorney has reviewed the facts of the case, and
10 supporting documents, and to the best of the attorney's knowledge,
11 information and belief there is a reasonable basis for the
12 commencement of the action and that the plaintiff is currently the
13 creditor entitled to enforce rights under the documents; and

14 (4) that the attorney is aware that the failure to comply with the
15 provisions of the bill may result in the penalties provided for in the
16 bill or, where the failure constitutes a violation of the Rules of
17 Professional Conduct, may include sanctions imposed by the
18 Supreme Court of New Jersey.

19 The bill also stipulates that the court may, if it finds that the
20 plaintiff has failed to comply with the provisions of the bill, dismiss
21 the complaint or deny the accrual of any interest, costs, attorney's
22 fees and other fees relating to the mortgage debt.