

ASSEMBLY, No. 3455

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

SYNOPSIS

Concerns expedited process for foreclosing vacant and abandoned residential properties in uncontested actions.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning foreclosure of residential properties, amending
2 P.L.2012, c.70 and supplementing P.L.1995, c.244 (C.2A:50-53
3 et seq.).

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

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

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

- 24 (1) overgrown or neglected vegetation;
25 (2) the accumulation of newspapers, circulars, flyers or mail on
26 the property;
27 (3) disconnected gas, electric, or water utility services to the
28 property;
29 (4) the accumulation of hazardous, noxious, or unhealthy
30 substances or materials on the property;
31 (5) the accumulation of junk, litter, trash or debris on the property;
32 (6) the absence of window treatments such as blinds, curtains or
33 shutters;
34 (7) the absence of furnishings and personal items;
35 (8) statements of neighbors, delivery persons, representatives of a
36 common interest community association, or government employees
37 indicating that the residence is vacant and abandoned;
38 (9) windows or entrances to the property that are boarded up or
39 closed off or multiple window panes that are damaged, broken and
40 unrepaired;
41 (10) doors to the property that are smashed through, broken off,
42 unhinged, or continuously unlocked;
43 (11) a risk to the health, safety or welfare of the public, or any
44 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.

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 be brought by a
27 lender in the Superior Court. In addition, a lender may, at any time
28 after filing a foreclosure action, file with the court, in accordance with
29 the Rules Governing the Courts of the State of New Jersey, an
30 application to proceed in a summary manner because the residential
31 property that is the subject of the foreclosure action is believed to be
32 "vacant and abandoned"; provided, however, that this section shall not
33 apply to a foreclosure of a timeshare interest secured by a mortgage.
34 The summary action permitted under this section shall only be
35 available in uncontested actions, as defined pursuant to R.4:64-1(c) of
36 the Rules of Court.

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

44 (2) In addition to any notices required to be served by law or the
45 Rules of Court, a lender shall, with any order to show cause served as
46 original service of process or a motion to proceed summarily, serve a
47 notice that the lender is seeking, on the return date of the order to show
48 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. Any such defense or
21 objection shall be accompanied by an affidavit stating that the defense
22 is not made solely for the purpose of delaying the relief requested
23 pursuant to the summary action. Any defense or objection that is
24 presented without the affidavit shall not be considered by the court,
25 except for good cause shown.

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

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

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

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

45 j. (1) Notwithstanding paragraph (3) of subsection a. of section
46 12 of P.L.1995, c.244 (C.2A:50-64) to the contrary, the sheriff shall
47 sell the property within 90 days of the sheriff's receipt of any writ of
48 execution issued by the court if:

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

3 (b) the court issues an order directing the sheriff to sell the
4 property within 90 days, pursuant to the provisions of subsection k. of
5 this section.

6 (2) If it becomes apparent that the sheriff cannot comply with the
7 provisions of paragraph (1) of this subsection, the foreclosing plaintiff
8 shall apply to the court for an order appointing a Special Master or
9 judicial agent to hold the foreclosure sale, within 90 days of the date of
10 application.

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

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

22 (cf: P.L.2019, c.72, s.1)

23

24 2. (New section) a. When a lender is entitled to pursue a
25 summary action pursuant to subsection c. of section 1 of P.L.2012,
26 c.70 (C.2A:50-73), but fails to file an application to proceed in a
27 summary manner, and the mortgage lien of the lender is superior to all
28 or part of the lien of a planned real estate development, as defined
29 under section 1 of P.L.1990, c.55 (C.2A:42-103), then the board of the
30 planned real estate development may file a motion to compel payment
31 of association fees outstanding since the foreclosure action was filed,
32 along with ongoing fees, until occupied by a new resident. The motion
33 shall be accompanied by an affidavit from a person having personal
34 knowledge of the contents and shall contain the specific facts to
35 establish that the action is uncontested.

36 b. If the motion and affidavit filed pursuant to subsection a. of
37 this section are found to be in compliance with the provisions of that
38 subsection, have been served on the lender, debtor, and other
39 appropriate parties in accordance with the Rules Governing the Courts
40 of the State of New Jersey, and are otherwise satisfactory, the Superior
41 Court shall:

42 (1) enter an order compelling the lender to pay to the association
43 the assessments for periodic payments due for regular and usual
44 operating and common area expenses pursuant to the association's
45 annual budget coming due on or after the thirty-first day following
46 entry of the order to pay; or

47 (2) approve an application for an Order Appointing a Fiscal Agent
48 pursuant to section 3 of P.L. , c. (C.) (pending before the

1 Legislature as this bill) and in accordance with the governing
2 documents of the planned real estate development.

3
4 3. (New section) a. In accordance with N.J.S.2A:17-66 and
5 R.4:53-1 of the Rules Governing the Courts of the State of New
6 Jersey, and in addition to the powers granted to condominium
7 associations pursuant to section 21 of the "Condominium Act,"
8 P.L.1969, c.257 (C.46:8B-21), the board of a planned real estate
9 development, as defined under section 1 of P.L.1990, c.55
10 (C.2A:42-103), may apply to the Superior Court of New Jersey for
11 an Order Appointing a Fiscal Agent over an abandoned or
12 unoccupied unit.

13 b. The fiscal agent shall be authorized to:

14 (1) manage the unit;

15 (2) license the use of the unit;

16 (3) keep the unit insured against loss, damage by fire, or public
17 liability; and

18 (4) repair and otherwise do anything necessary for the care and
19 management of the unit.

20 c. The fiscal agent shall be authorized to:

21 (1) demand, collect and receive from any licensee of the unit or
22 any portion of the unit, or any person liable for the unit, any
23 payment due from any licensee of the unit;

24 (2) institute all legal proceedings necessary for the protection of
25 the unit, or to recover possession of the unit or any part of the unit,
26 and to institute actions for the collection of payments due, and to
27 institute summary proceedings for the removal of any licensee; and

28 (3) retain legal counsel to render legal advice and to provide
29 legal services as may be necessary in the performance of its duties.

30 d. The anti-eviction provisions of P.L.1974, c.49 (C.2A:18-
31 61.1 et seq.) shall not apply to any licensee of a unit that consists of
32 one single dwelling. In the license agreement, the fiscal agent shall
33 include prominent notice to the licensee indicating the following:

34 (1) the anti-eviction provisions of P.L.1974, c.49 (C.2A:18-61.1
35 et seq.) shall not apply to the licensee;

36 (2) a tenancy is not created by the license agreement; and

37 (3) the licensee understands and agrees that this license
38 agreement may be terminated for any reason or no reason at all and
39 that the licensee will be required and mandated to vacate the unit
40 including the licensee's belongings and personal effects on demand
41 of the fiscal agent without regard to any of the anti-eviction
42 provisions of P.L.1974, c.49 (C.2A:18-61.1 et seq.). The fiscal
43 agent shall make an accommodation for the licensee of no less than
44 120 hours to fully and completely vacate. However, such
45 accommodation shall not be considered a waiver, and shall not be
46 considered to create a tenancy.

47 e. Any licensee placed by the fiscal agent in the unit or any
48 other person that may be in possession of the unit shall pay to the

1 fiscal agent any payment due pursuant to any license agreement
2 issued by the fiscal agent.

3 f. Neither the title owner of a unit, nor its agent, employee,
4 heir or devisee shall be entitled to receive or collect any payment
5 due pursuant to any license agreement issued by the fiscal agent.

6 g. Upon receipt, the fiscal agent shall deposit payments in a
7 banking institution in its name as the fiscal agent and shall pay the
8 association the following charges:

9 (1) 10 percent of the payment due pursuant to any license
10 agreement issued by the fiscal agent to reimburse the association for
11 the purposes of managing receivership;

12 (2) current maintenance fees on a monthly basis; and

13 (3) any prior past due maintenance fees, assessments, late
14 charges, interest and reasonable counsel fees and cost, until paid in
15 full.

16 h. Upon application of the license fee or any other payments as
17 set forth in subsection g. of this section, including, but not limited
18 to, reimbursement to the receiver of any and all costs incurred to
19 rehabilitate the unit to make it habitable, and once the license fee or
20 other payments satisfy in full the underlying debt due to the
21 association for delinquent fees and charges assessed to the unit,
22 further monthly payments shall be applied on a pro rata basis to:

23 (1) the association to satisfy monthly maintenance fees or
24 assessments as may be applicable; and

25 (2) monthly mortgage debt payment amortization, except that
26 the payment shall not include any acceleration of principal or
27 interest due to a default under the terms of the loan.

28 i. As used in this section:

29 “Fiscal agent” means a receiver, trustee, or other fiscal agent
30 authorized pursuant to this section to manage a unit.

31 “Unit” means a unit, home, or lot as defined in the applicable
32 governing documents of a planned real estate development.

33

34 4. This act shall take effect on the 90th day next following
35 enactment.

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STATEMENT

39

40 This bill would revise the existing expedited process for
41 mortgage lenders to foreclose vacant and abandoned residential
42 properties, and would enhance the remedies available to common
43 interest communities with respect to the foreclosure of vacant and
44 abandoned units.

45 With respect to the expedited vacant and abandoned residential
46 property foreclosure process, the bill provides that such process
47 only remains available to a residential mortgage lender if the
48 foreclosure action is uncontested. The bill also requires any

1 defense or objection to an application to proceed in this expedited
2 manner to be accompanied by an affidavit stating that the defense or
3 objection is not made solely for the purpose of delaying the
4 expedited foreclosure action. Any defense or objection that is
5 presented without the affidavit would not be considered by the
6 court, except for good cause shown.

7 With respect to the remedies available to common interest
8 communities, the bill provides that, when a lender is entitled to
9 proceed through the expedited foreclosure process, but has not done
10 so, the board of the community may file with the Superior Court a
11 motion to compel the lender to pay association fees. The bill
12 requires the motion to be accompanied by an affidavit from a
13 person having personal knowledge of the contents and to contain
14 the facts necessary to establish that the action is uncontested. If the
15 motion complies with these requirements, the Superior Court may
16 either enter an order compelling the lender to pay to the planned
17 real estate development the association fees coming due on or after
18 the thirty-first day following entry of the order to pay, or,
19 alternatively, approve an application for the appointment of a fiscal
20 agent.

21 The bill also allows the board of any common interest
22 community to apply to the Superior Court for the appointment of a
23 fiscal agent over an abandoned or unoccupied unit. The fiscal agent
24 would be responsible for maintaining the unit and paying, through a
25 licensee or otherwise, association fees and assessments for benefits
26 such as utilities, common element expenses, amortization of
27 common elements, administrative costs, and maintenance of the
28 physical structure in order to protect, preserve, and maintain the
29 unit for the benefit of the community, the unit owners in the
30 community, and any others with an interest in the unit, including,
31 without limitation, mortgage holders. However, a licensee would
32 not obtain anti-eviction protections as a consequence of the license
33 agreement. The fiscal agent may terminate the license agreement
34 for any reason or no reason at all. The fiscal agent may make an
35 accommodation, allowing the licensee up to 72 hours to vacate.
36 However, such accommodation would not create a tenancy.