

ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 4034 and 4226

STATE OF NEW JERSEY

DATED: JUNE 16, 2020

The Assembly Housing Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 4034 and 4226.

This Assembly Committee Substitute would provide protections to certain homeowners, tenants, and landlords during the COVID-19 pandemic emergency period. Under the bill, “emergency period” means the period during which a public health emergency exists as declared by the Governor in Executive Order No. 103 of 2020, as extended.

The bill provides that, during the emergency period, a creditor is required to grant a mortgage forbearance to an impacted homeowner if the impacted homeowner submits a written request to the creditor affirming the following:

(1) the mortgage loan on residential property for which a mortgage forbearance is being requested was current with respect to payments as of February 1, 2020;

(2) the impacted homeowner has suffered a negative financial impact resulting from COVID-19 or the Public Health Emergency or State of Emergency declared in response thereto, including but not limited to a financial hardship from a reduction in hours or loss of employment, loss of income or increased costs incurred in necessary child care resulting from the closure of schools or caring for family members who are ill due to COVID-19 or quarantined due to a suspected exposure to COVID-19, or for funeral costs due to COVID-19;

(3) the gross household income of the homeowner does not exceed \$150,000 after hardship, unless this requirement for eligibility is waived by the mortgage lender; and

(4) the impacted homeowner’s bank accounts collectively contain less than six months’ reserves of the impacted homeowner’s gross household income for 2019.

Upon receipt of a written request for a mortgage forbearance from an impacted homeowner, the bill requires a creditor to provide to the impacted homeowner with a mortgage forbearance and confirmation of that forbearance in writing.

The minimum initial mortgage forbearance period of an impacted homeowner is to be 90 days. An impacted homeowner

may request, and is to be granted, a subsequent forbearance period of at minimum 90 days, for a total of at minimum 180 days. Fees, penalties, or interest, including attorney's fees, shall not be assessed or accrue during and as a result of a mortgage forbearance.

Consistent with federal law, the bill provides that a creditor shall not furnish negative mortgage payment information to a debt collector or credit reporting agency related to mortgage payments subject to a mortgage forbearance under the bill. An impacted homeowner or the Attorney General may bring an action alleging a creditor has violated this prohibition.

Under the bill, the repayment period of any mortgage subject to the forbearance would be extended by the number of months the forbearance is in effect. The payments not made during the months of the forbearance would instead be due on a monthly basis during the period constituting an extension of the mortgage, unless the property owner chooses to make these payments earlier.

An impacted homeowner denied a forbearance under the bill by a creditor licensed by the Department of Banking and Insurance ("DOBI") may file a complaint with DOBI. The department would be required to investigate the complaint and, if appropriate, would order the creditor to grant a forbearance to the impacted homeowner.

The bill also provides that, prior to the 60th day next following the end of the emergency period, a landlord or owner of a residential property would not, for the purposes of a non-essential eviction for a residential property:

- (1) terminate a tenancy;
- (2) file a summary dispossession action; or
- (3) send any notice, including a notice to quit, requesting or demanding that a tenant of a residential property vacate the premises.

Prior to the 60th day next following the end of the emergency period, the bill requires that a court having jurisdiction over an action for summary dispossession would not, in a non-essential eviction for a residential property:

- (1) accept for filing a summons or complaint;
- (2) enter a judgment or default judgment for a plaintiff for possession of a residential property;
- (3) issue warrant of removal;
- (4) deny, upon the request of a defendant, a stay of execution, or upon the request by a party, a continuance of a summary dispossession case; or
- (5) schedule a court event, including a summary dispossession trial.

The bill also provides that, prior to the 60th day next following the end of the emergency period, a landlord shall not impose a late fee for non-payment of rent for a residential property.

Consistent with federal law, a landlord is required not to furnish rental payment data to a collection or credit reporting agency related to the non-payment of rent during the emergency period and the 60 days next following the end of the emergency period. The bill further prohibits landlords from refusing to rent to a tenant or submit the tenant's information for placement on a list for the use of other landlords because of any record or information reflecting the tenant's non-payment of rent during the emergency period and the 60 days next following the end of the emergency period.

Under the bill, a tenant or the Attorney General may bring an action alleging a landlord has violated prohibition on the furnishing of information to a collection or credit reporting agency.

Additionally, the bill provides that, in order to avoid mass evictions and widespread homelessness following the conclusion of the moratorium on evictions required under the bill, a landlord shall offer each tenant of the properties owned by the landlord the ability to enter into an agreement, which shall be an addendum to the lease agreement, for the repayment of any partial or full rent payments not made during the emergency period and the 60 days next following the end of the emergency period, provided the tenant's rent payments were current including payments held in escrow as of the effective date of Executive Order No. 106 of 2020.

The bill prohibits a tenant from accepting an offer from a landlord if the tenant's gross household income exceeds \$150,000 after hardship unless the landlord makes an exception; or the tenant possesses one or more bank accounts that collectively contain reserves equaling six months' or more of the tenant's gross household income for 2019. During the repayment period, a landlord would be prohibited from imposing any late fees or any other fees, including attorney's fees, for rent payments not made during the emergency period and the 60 days next following the end of the emergency period.

Additionally, the bill requires the Department of Community Affairs to prepare and make available on its Internet website a statement of the rights and responsibilities of impacted tenants and landlords for the repayment of missed rent payments and an explanation of, and model template for, the default repayment plans available pursuant to the bill. This statement and templates shall be printed in the English, Spanish, Arabic, French, Russian, Korean, Chinese, and Vietnamese languages. Under the bill, every landlord is required to distribute one copy of the statement and templates prepared and made available to each of their impacted tenants within 10 business days after it has been made available by the department, and landlords may not demand payment of unpaid rent until after the statement and templates have been distributed to each impacted tenant. If a landlord fails to comply with this distribution requirement, this failure may be used by the impacted tenant as an

affirmative defense to liability for payment of the applicable interest due in any monetary judgment action against the tenant, if brought by the landlord to recover rent due during the emergency period.

The bill provides that, within 10 business days following the conclusion of the 60 days next following the end of the emergency period, a landlord is required to calculate all partial or full rent payments legally owed and not made during the emergency period and the 60 days next following the end of the emergency period by each impacted tenant liable for rent repayment pursuant to the bill. After determining the amount of the missed payments and applying all credits, if any, due to the impacted tenant, the landlord is required to provide each impacted tenant with a written notice, using the template to be prepared and made available on its website by the department, of the amount owed by the impacted tenant in a form that specifies, in detail, the amount claimed to be due and an itemization of all credits to which the impacted tenant is entitled. All amounts shall be legal and in compliance with all applicable laws, including local rent control ordinances.

If the impacted tenant does not agree with the amount claimed due, the notice shall provide that the impacted tenant shall notify the landlord within 25 days after the date on which the rent and arrearage repayments are to commence; provided, however, that the impacted tenant shall still begin repayment of missed rent pursuant to the repayment agreement. The impacted tenant may assert any and all additional objections to the amount claimed due, including diminished habitability, payment by the impacted tenant or by others on behalf of the tenant, or other legal and equitable setoffs or defenses. If the landlord fails to demonstrate the correctness of the amount assessed of rent due and owing by the impacted tenant, then the landlord shall refund any incorrectly assessed amount paid by the tenant plus a penalty of 20 percent of such amount.

Any unpaid rent during the emergency period is to be paid in accordance with whichever repayment plan set forth below results in the lowest average monthly payments for the impacted tenant, or a plan agreed to between the landlord and tenant as long as that plan has lower monthly payments than either option set forth below.

(1) Repayment Plan A would provide that any unpaid rent during the emergency period would be repaid in equal installments over the remainder of the lease and would constitute no more than 10 percent of the impacted tenant's net household income after taxes.

(2) Repayment Plan B would provide a tenant with six months to repay each month's rent that was unpaid, whether in full or in part, during the emergency period. The surrender of property by the impacted tenant would not relieve the impacted tenant from the

obligation to pay any rent missed during the emergency period or restrict a landlord's ability to recover such rent.

The bill provides that it would be unlawful discrimination in violation of the "New Jersey Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) for a creditor or landlord to discriminate in application of the bill because of an impacted homeowners' or tenant's race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, or source of lawful income used for rental or mortgage payments.

This bill would take effect immediately and would apply retroactively to rent and mortgage payments missed subsequent to March 9, 2020.