

ASSEMBLY, No. 5684

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 12, 2021

Sponsored by:

Assemblywoman BRITNEE N. TIMBERLAKE

District 34 (Essex and Passaic)

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District 27 (Essex and Morris)

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

Co-Sponsored by:

Assemblymen Mukherji and Stanley

SYNOPSIS

Provides mortgage payment relief for residential property owners during time of coronavirus disease 2019 pandemic.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/2/2021)

1 AN ACT concerning emergency mortgage relief for residential
2 property owners.

3

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

6

7 1. The Legislature finds and declares that:

8 a. The social distancing measures and associated economic
9 pause, that have been necessary to combat the COVID-19
10 pandemic, have also forced many New Jersey residents to endure
11 job losses and prolonged depletions of income;

12 b. As of May 2020, the unemployment rate of the United States
13 exceeded 14 percent, and unemployment rates have remained
14 persistently high in New Jersey and other states;

15 c. The residents of New Jersey have not been able to avoid
16 suffering as a result of the COVID-19 pandemic, as the State is
17 widely reported to have the highest COVID-19-related death rate in
18 the nation, and the economic impact on many State residents
19 appears to be similarly catastrophic;

20 d. This unprecedented situation has made the timely payment
21 of mortgages impossible for many State residents; and

22 e. It is, therefore, necessary and in the public interest for the
23 Legislature to enact temporary measures to protect the State's
24 homeowners from foreclosure that are in danger of resulting from
25 this unprecedented emergency.

26

27 2. As used in this act:

28 "COVID-19" means the coronavirus disease 2019, as announced
29 by the World Health Organization on February 11, 2020, and first
30 identified in Wuhan, China.

31 "Creditor" means a person or entity that holds or controls,
32 partially, wholly, indirectly, directly or in a nominee capacity, a
33 mortgage loan securing an owner-occupied residential property,
34 including, but not limited to, an originator, holder, investor,
35 assignee, successor, trust, trustee, nominee holder, or mortgage
36 servicer as defined in section 2 of P.L.2019, c.65 (C.17:16F-28).

37 "Emergency period" means the period during which a public
38 health emergency exists as declared by the Governor in Executive
39 Order No. 103 of 2020, as extended, and the 60 days following the
40 conclusion of this period.

41 "Impacted homeowner" means an owner or mortgagor of title to
42 a residential property, which serves as such person's primary
43 residence, and who qualifies for a mortgage forbearance pursuant to
44 section 3 of this act.

45 "Mortgage forbearance" or "forbearance" means a period during
46 which obligations for mortgage principal and interest payments are
47 suspended.

1 “Residential property” means a property located in the State
2 rented or owned for residential purposes; provided, however, that
3 residential property shall be limited to the principal residence of a
4 person or a residential health care facility. “Residential property”
5 shall not include: a residence other than a primary residence of a
6 homeowner; residential property taken in whole or in part as
7 collateral for a commercial loan; or a property subject to
8 condemnation or receivership.

9
10 3. a. During the emergency period, regardless of whether or
11 not the residential property of an impacted homeowner is already
12 the subject of a foreclosure proceeding, a creditor shall grant a
13 mortgage forbearance to an impacted homeowner if the impacted
14 homeowner submits a written request to the mortgage servicer
15 certifying the following:

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

25 (2) the gross household income of the homeowner, after
26 hardship, does not exceed 150 percent of the area median income,
27 as defined for New Jersey in guidelines published annually by the
28 United States Department of Housing and Urban Development,
29 unless this requirement for eligibility is waived by the mortgage
30 lender; and

31 (3) if the impacted homeowner possesses one or more bank
32 accounts, those bank accounts collectively contain less than six
33 months’ reserves of the impacted homeowner’s gross household
34 income for 2019. The creditor may require the impacted
35 homeowner to provide a cash asset certification to demonstrate
36 compliance with this paragraph.

37 b. Upon receipt of a written request or verbal authorization for
38 a mortgage forbearance from an impacted homeowner pursuant to
39 subsection a. of this section, a creditor shall provide to the impacted
40 homeowner a mortgage forbearance and confirmation of that
41 forbearance in writing. No additional documentation shall be
42 required from the impacted homeowner by the creditor other than
43 the written request under subsection a. of this section. The
44 minimum initial mortgage forbearance period of an impacted
45 homeowner shall be 90 days. An impacted homeowner may
46 request, and shall be granted, a subsequent forbearance period of at
47 minimum 90 days, for a total minimum of 180 days. A creditor
48 shall not be prohibited from offering a more extended forbearance

1 period. Fees, penalties, or interest, including attorney's fees beyond
2 the amounts scheduled and calculated as if the mortgagor made all
3 contractual payments on time and in full under the terms of the
4 mortgage contract, shall not be assessed or accrue during and as a
5 result of a mortgage forbearance granted pursuant to this section.
6 Nothing in this section shall be construed to impact property tax
7 and insurance obligations of an owner related to any real property
8 in the State. A mortgagee that grants a mortgage forbearance
9 pursuant to this section shall encourage owners to seek out United
10 States Department of Housing and Urban Development certified
11 housing counseling and shall provide to the property owner
12 confirmation of the approval of the forbearance, information
13 concerning the process for forbearance, and information on how to
14 request a subsequent forbearance.

15 c. (1) Consistent with the provisions of 15 U.S.C. s.1681s-
16 2(a)(1)(F), a creditor shall not furnish negative mortgage payment
17 information to a debt collector or credit reporting agency related to
18 mortgage payments subject to a mortgage forbearance under this
19 section.

20 (2) In response to a complaint to the Attorney General from an
21 impacted homeowner, or on the Attorney General's independent
22 initiative, the Attorney General may bring an action alleging a
23 creditor has violated the provisions of this subsection. Upon a
24 finding that non-compliance by a creditor with this section has
25 occurred, a court of competent jurisdiction may:

26 (a) order the non-compliant creditor to retract the debt reported
27 to the collection or credit reporting agency, bureau, or data
28 collection facility;

29 (b) impose a fine on the non-compliant creditor, not to exceed
30 \$5,000 per violation;

31 (c) order the non-compliant creditor to pay a reasonable counsel
32 fee in connection with an impacted homeowner whose debt has
33 been reported to a collection or credit reporting agency, bureau, or
34 data collection facility;

35 (d) provide a copy of the order immediately at the request of and
36 at no cost to the impacted homeowner;

37 (e) order the non-compliant creditor to take such steps as are
38 necessary, within 30 days of the order, to rehabilitate the credit
39 record of an impacted homeowner, with an exact copy provided at
40 no cost to the homeowner of the efforts made in that regard; and

41 (f) order the non-compliant creditor to pay an award of damages
42 to the impacted homeowner not to exceed 25 percent of the debt
43 attempted to be collected or reported by the non-compliant creditor
44 to the collection or credit reporting agency, bureau, or data
45 collection facility, the minimum award being \$350.

46 d. During the emergency period and during any period of
47 mortgage forbearance granted pursuant to this section, a creditor
48 shall not, for the purposes of foreclosure of a residential property

1 that has received a forbearance that is not vacant, abandoned or
2 otherwise subject to P.L.2003, c.210 (C.55:19-78 et seq.):

3 (1) send an impacted homeowner a notice of intention to
4 foreclose pursuant to section 4 of P.L.1995, c.244 (C.2A:50-56); or

5 (2) otherwise initiate the foreclosure process.

6 A deadline or time period for action by a party to the foreclosure
7 process for a residential property filed prior to the effective date of
8 this act shall be tolled until the end of the emergency period.

9 e. Notwithstanding the provisions of any law, rule, or
10 regulation to the contrary, the repayment period of any mortgage
11 subject to the forbearance established pursuant to this section shall
12 be extended by the number of months the forbearance is in effect.
13 The payments not made during the months of the forbearance shall
14 instead be due on a monthly basis during the period constituting an
15 extension of the mortgage, unless the property owner has chosen to
16 make these payments earlier. During the time of the forbearance,
17 and during the period constituting an extension of the mortgage, all
18 terms and conditions of the original mortgage, except with regard to
19 default and delinquency during forbearance, shall continue without
20 modification, and there shall be no fees assessed, including
21 attorney's fees, related to the forbearance or late payment, or
22 penalty for early repayment. An impacted homeowner shall have
23 the option to discontinue the mortgage forbearance at any time at
24 the election of the impacted homeowner upon written consent and a
25 written statement that they would have the rights provided herein
26 and knowingly waive those rights.

27 f. An impacted homeowner denied a forbearance under this
28 section by a creditor licensed by the Department of Banking and
29 Insurance may file a complaint with the Department of Banking and
30 Insurance. The department shall investigate the complaint and, if
31 appropriate, shall order the creditor to grant a forbearance to the
32 impacted homeowner pursuant to this section.

33 g. (1) To the extent required by the Administrative Director of
34 the Courts, the creditor shall provide the docket numbers, party
35 names, and property addresses as to any pending court actions
36 involving any property granted a forbearance to the Superior Court
37 Clerk's Office at least monthly.

38 (2) The creditor shall submit information on all forbearances
39 that the creditor has provided within the State to the Department of
40 Banking and Insurance on a monthly basis, or on any alternative
41 schedule directed by the Department of Banking and Insurance,
42 after removing all personally-identifiable information. This
43 information shall be submitted in accordance with any
44 specifications required by the Department of Banking and
45 Insurance, and, to the extent required by the Department of Banking
46 and Insurance, shall be deemed to be government records and
47 subject to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.),
48 commonly known as the open public records act.

1 h. Notwithstanding anything to the contrary in this section, to
2 the extent that the application of any provision of this section would
3 conflict with federal laws and guidelines, such provision shall not
4 apply to, and does not affect, any mortgage loans made, insured, or
5 securitized by any agency or instrumentality of the United States,
6 any government sponsored enterprise, or a federal home loan bank,
7 or the rights and obligations of any lender, issuer, servicer or trustee
8 of such obligations, including servicers for the Government
9 National Mortgage Association or other loans governed by the
10 federal “Coronavirus Aid, Relief, and Economic Security Act,”
11 Pub.L.116-136.

12 i. It shall be an unlawful discrimination in violation of the
13 “New Jersey Law Against Discrimination,” P.L.1945, c.169
14 (C.10:5-1 et seq.) for a creditor to discriminate in application of the
15 provisions of this section on any basis protected by subsection g. of
16 section 11 of P.L.1945, c.169 (C.10:5-12).

17 j. This section shall not be construed to prohibit a creditor
18 from considering an oral or electronic request for a mortgage
19 forbearance instead of a written request submitted pursuant to
20 subsection a. of this section.

21
22 4. This act shall take effect immediately and shall apply
23 retroactively to mortgage payments missed subsequent to March 9,
24 2020.

25 26 27 STATEMENT

28
29 This bill would provide protections to certain homeowners
30 during the COVID-19 pandemic emergency period. Under the bill,
31 “emergency period” means the period during which a public health
32 emergency exists as declared by the Governor in Executive Order
33 No. 103 of 2020, as extended, and the 60 days following the
34 conclusion of this period.

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

39 (1) the impacted homeowner has suffered a substantial reduction
40 of income resulting from COVID-19 or the Public Health
41 Emergency or State of Emergency declared in response thereto,
42 including a financial hardship from a reduction in hours or loss of
43 employment, or increased costs incurred in necessary child care
44 resulting from the closure of schools or caring for family members
45 who are ill due to COVID-19 or quarantined due to a suspected
46 exposure to COVID-19, or for funeral costs due to COVID-19;

1 (2) the gross household income of the homeowner does not exceed
2 150 percent of the area median income after hardship, unless this
3 requirement for eligibility is waived by the mortgage lender; and

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

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

11 The minimum initial mortgage forbearance period of an
12 impacted homeowner is to be 90 days. An impacted homeowner
13 may request, and is to be granted, a subsequent forbearance period
14 of at minimum 90 days, for a total minimum of 180 days. Fees,
15 penalties, or interest, including attorney's fees, shall not be assessed
16 or accrue during and as a result of a mortgage forbearance.

17 The bill prohibits a creditor from furnishing negative mortgage
18 payment information to a debt collector or credit reporting agency
19 related to mortgage payments subject to a mortgage forbearance
20 under the bill. In response to a complaint to the Attorney General
21 from an impacted homeowner, the Attorney General may bring an
22 action alleging a creditor has violated this prohibition.

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

29 An impacted homeowner denied a forbearance under the bill by a
30 creditor licensed by the Department of Banking and Insurance
31 ("DOBI"), and not a State- or nationally-chartered financial
32 institution, may file a complaint with DOBI. The department would
33 be required to investigate the complaint and, if appropriate, would
34 order the creditor to grant a forbearance to the impacted
35 homeowner.

36 This bill would take effect immediately and would apply
37 retroactively to mortgage payments missed subsequent to March 9,
38 2020.