

SENATE, No. 2102

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:
Senator JAMES W. HOLZAPFEL
District 10 (Ocean)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 17 of P.L.2008, c.127 (C.46:10B-51) is amended to
8 read as follows:

9 17. a. (1) A creditor serving a summons and complaint in an
10 action to foreclose on a mortgage on residential property in this
11 State shall, within 10 days of serving the summons and complaint,
12 notify the municipal clerk and the mayor or other chief executive
13 officer of the municipality in which the property is located that a
14 summons and complaint in an action to foreclose on a mortgage has
15 been filed against the subject property. The notice shall contain the
16 full name, address, and telephone number for the representative of
17 the creditor who is responsible for receiving complaints of property
18 maintenance and code violations and the full name and contact
19 information for any person or entity retained by the creditor or a
20 representative of the creditor to be responsible for any care,
21 maintenance, security or upkeep of the property. The notice may
22 contain information about more than one property, and shall be
23 provided by mail or electronic communication, at the discretion of
24 the municipal clerk. In the event the creditor that has served a
25 summons and complaint in an action to foreclose on a residential
26 property is located out-of-State, the notice shall also contain the full
27 name, address, and telephone number of an in-State representative
28 or agent who shall be responsible for the care, maintenance,
29 security, and upkeep of the exterior of the property if it becomes
30 vacant and abandoned. If the municipality has appointed a public
31 officer pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the
32 municipal clerk shall forward a copy of the notice to the public
33 officer or shall otherwise provide it to any other local official
34 responsible for administration of any property maintenance or
35 public nuisance code.

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

40 The notice shall also include the street address, lot and block
41 number of the property, and the full name, address, and telephone
42 number of an individual located within the State who is authorized
43 to accept service on behalf of the creditor. The notice shall be
44 provided to the municipal clerk and the mayor or other chief
45 executive officer within 10 days of service of a summons and

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 complaint in an action to foreclose on a mortgage against the
2 subject property.

3 If there is any change in the name, address, or telephone number
4 for a representative, agent, or individual authorized to accept
5 service on behalf of a creditor required to be provided in a notice
6 pursuant to this paragraph following the filing of the summons and
7 complaint, the creditor shall provide a notice to the applicable
8 municipal clerk containing the updated name, address, or telephone
9 number within 10 days of the change in that information.

10 (2) Within 30 days following the effective date of P.L.2009,
11 c.296 (C.2A:50-69 et al.), any creditor that has initiated a
12 foreclosure proceeding on any residential property which is pending
13 in Superior Court shall provide to the municipal clerk of the
14 municipality in which the property is located, a listing of all
15 residential properties in the municipality for which the creditor has
16 foreclosure actions pending by street address and lot and block
17 number. If the municipality has appointed a public officer pursuant
18 to P.L.1942, c.112 (C.40:48-2.3 et seq.), the municipal clerk shall
19 forward a copy of the notice to the public officer, or shall otherwise
20 provide it to any other local official responsible for administration
21 of any property maintenance or public nuisance code.

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

43 c. If the municipality expends public funds in order to abate a
44 nuisance or correct a violation on a residential property in situations
45 in which the creditor was given notice pursuant to the provisions of
46 subsection b. of this section but failed to abate the nuisance or
47 correct the violation as directed, the municipality shall have the
48 same recourse against the creditor as it would have against the title

1 owner of the property, including but not limited to the recourse
2 provided under section 23 of P.L.2003, c.210 (C.55:19-100).

3 d. A creditor that institutes a foreclosure proceeding on
4 residential property pursuant to the "Fair Foreclosure Act,"
5 P.L.1995, c.244 (C.2A:50-53 et seq.), shall file with the summons
6 and complaint in Superior Court, and with the lis pendens filed with
7 the office of the county clerk or register of deeds and mortgages,
8 the following information:

9 (1) the full name, address, and telephone number for the
10 representative of the creditor and any servicer who is responsible
11 for receiving complaints of property maintenance and code
12 violations pursuant to subsection b. of this section;

13 (2) if the creditor or servicer is located out-of-State, the full
14 name, address, and telephone number of an in-State representative
15 or agent who shall be responsible for the care, maintenance,
16 security, and upkeep of the property if it becomes vacant and
17 abandoned ; and

18 (3) if there is any change in the information required to be filed
19 pursuant to paragraph (1) or (2) of this subsection following the
20 filing of the summons and complaint or the lis pendens, the updated
21 name, address, or telephone number, to be filed with the Superior
22 Court, the office of the county clerk or register of deeds and
23 mortgages, and all other parties, within 10 days of the change in
24 that information.

25 e. If the owner of a dwelling unit in an age-restricted
26 community vacates or abandons a unit on which a foreclosure
27 proceeding has been initiated or if a unit becomes vacant at any
28 point subsequent to the creditor's filing the summons and complaint
29 in an action to foreclose on a mortgage against the unit, but prior to
30 vesting of title in the creditor or any other third party, a
31 representative of the community may notify the creditor of the
32 vacancy, and the creditor, in addition to any responsibilities that
33 may be applicable pursuant to the provisions of subsections a., b.,
34 and c. of this section, shall have the responsibility, in the same
35 manner and to the same extent as the title owner of the unit
36 pursuant to the bylaws, rules, and regulations of the community, to:

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

40 (2) maintain the unit.

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

46 f. If the creditor, subsequent to receipt of notice from the
47 community pursuant to subsection e. of this section, fails to pay the
48 monthly maintenance fee or other common expenses or fails to

1 maintain the dwelling unit pursuant to the bylaws, rules, and
2 regulations of the community, the community shall have the same
3 recourse against the creditor as it would have against the title owner
4 of the unit pursuant to the bylaws, rules, and regulations of the
5 community.

6 g. For the purposes of subsections e. and f. of this section,
7 “age-restricted community” or “community” means a community
8 that complies with the “housing for older persons” exception from
9 the federal “Fair Housing Amendments Act of 1988,” Pub.L.100-
10 430 (42 U.S.C. ss.3601 et seq.) for that community as set forth in
11 section 100.301 of title 24, Code of Federal Regulations.

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

15 (cf: P.L.2019, c.66, s.2)

16
17 2. Section 1 of P.L.2012, c.70 (C.2A:50-73) is amended to read
18 as follows:

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

33 (1) overgrown or neglected vegetation;

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

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

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

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

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

44 (7) the absence of furnishings and personal items;

45 (8) statements of neighbors, delivery persons, representatives of
46 a common interest community association, or government
47 employees indicating that the residence is vacant and abandoned;

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

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

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

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

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

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

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

24 (16) any other reasonable indicia of abandonment.

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

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

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

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

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

47 d. (1) In addition to the service of process required by the
48 Rules of Court, a lender shall establish, for the entry of a residential

1 foreclosure judgment under this section, that a process server has
2 made two unsuccessful attempts to serve the mortgagor or occupant
3 at the residential property, which attempts must be at least 72 hours
4 apart, and during different times of the day, either before noon,
5 between noon and 6 P.M., or between 6 P.M. and 10 P.M.

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

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

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

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

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

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

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

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

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

45 i. Nothing in this section shall be construed to affect the rights
46 of a tenant to possession of a leasehold interest under the Anti-
47 Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New

1 Jersey Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-
2 69 et seq.), or any other applicable law.

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

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

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

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

17 k. (1) Following issuance of a foreclosure judgment, in which
18 the court did not make a finding that the property is vacant and
19 abandoned, a foreclosing plaintiff may make application to the
20 court for the property to be sold by the sheriff within 90 days of the
21 date of application. The application shall include a certification that
22 the mortgaged real estate is vacant and abandoned.

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

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

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

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33

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STATEMENT

35

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

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

46 The creditor, in addition to any other applicable responsibilities
47 under the current provisions of section 17 of P.L.2008, c.127
48 (C.46:10B-51) with respect to maintaining residential property, shall

1 have the responsibility, in the same manner and to the same extent as
2 the title owner of the unit pursuant to the bylaws, rules, and regulations
3 of the community, to: (1) pay the unit's monthly maintenance fee and
4 the unit's share of any other common expenses of administering,
5 maintaining, or operating the community; and (2) maintain the unit.
6 The creditor may recover, against the title owner in the foreclosure or
7 any other action, any outstanding fees paid or expenses incurred
8 toward the maintenance of a vacant or abandoned property.

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

16 The bill adds the nonpayment of any condominium or age-
17 restricted community unit's monthly maintenance fee and common
18 expenses for administering, maintaining, or operating the community
19 or maintenance of the unit to the list of conditions indicating that a
20 property is vacant and abandoned pursuant to P.L.2012, c.70
21 (C.2A:50-73).