SENATE, No. 2253

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:
Senator RONALD L. RICE
District 28 (Essex)

SYNOPSIS

Provides foreclosure stay of proceedings for certain residential borrowers and exempts certain lenders that offer sustainable mortgage modifications.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning residential mortgage foreclosures and supplementing Title 46 of the Revised Statutes.

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

1. The Legislature finds and declares that:

a. New Jersey is facing an unprecedented emergency due to the increasing number of residential mortgage foreclosures in the State. The growing number of homeowners whose mortgage principal exceeds their home's value, a situation commonly referred to as being "underwater," has exacerbated this problem. A vicious cycle is created in which more foreclosures adversely affect property values, thereby pushing more mortgages underwater.

b. It is reasonable and necessary, in order to avoid more foreclosures and the deleterious effects of foreclosures on neighborhoods and the economy, to modify the foreclosure process through a stay of proceedings to provide additional time for underwater borrowers to work out loan modifications, while providing an exemption from forbearance periods for lenders that agree to a sustainable mortgage modification of the underwater mortgage.

2. As used in this act:

"Principal write-down" means a reduction in the amount of principal owed on a mortgage note so that the principal amount of the mortgage does not exceed the property's fair market value. A principal write-down shall include, but not be limited to, a reduction in principal conditioned on a shared appreciation agreement in which the borrower and the creditor share in any appreciation in the property's value after the date the principal write-down is executed.

"Residential borrower" or "borrower" means a borrower: (1) whose mortgage is the subject of a foreclosure action filed pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et al.), and is secured by a property that is the borrower's primary residence for at least two years prior to the borrower being served the summons and complaint of foreclosure; and (2) that owes a principal amount, on the mortgage that is the subject of the foreclosure action, that is in excess of 110% of the fair market value of the property to which the mortgage is attached.

"Stay of proceedings" means a period of six months during which the creditor shall negotiate with the borrower pursuant to section 3 of this act.

"Sustainable modification" means a loan modification that is either: (1) a principal write-down; or (2) a reduction in the borrower's monthly mortgage payment to 30% or less of the borrower's gross monthly income.

3. a. (1) Except as provided in section 4 of this act, after a creditor files and serves, pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et al.), a summons and complaint of foreclosure on a residential mortgage loan, the court may grant a residential borrower a six-month stay of proceedings, upon written request of the borrower, to pursue a loan workout, loan modification, refinancing, or other alternative through the Judiciary's Foreclosure Mediation Program, where eligible, or another form of mediation or settlement discussion. The court shall grant a stay of proceedings upon motion by the borrower if, (a) both the lender and borrower consent, or (b) the court determines that negotiations during the stay of proceedings could render the foreclosure action moot. During the six-month stay of proceedings, the creditor shall take no further action to pursue foreclosure of the property and shall negotiate with the borrower in good faith.

(2) Upon serving the summons and complaint in a foreclosure action, the creditor shall notify the borrower of the borrower's right to a stay of proceedings, as provided in this section.

(3) The notice of the borrower's right to a stay of proceedings shall include the following information:

(a) the circumstances provided for in this section under which a borrower is eligible to receive a stay of proceedings;

(b) that the borrower has the right to request the a stay of proceedings in writing no later than 30 days after receipt of the summons and complaint; and

(c) the full address and other contact information to which the request for forbearance may be sent.

b. When a stay of proceedings is granted by the court pursuant to subsection a. of this section, the borrower and creditor shall participate in the Judiciary's Foreclosure Mediation Program, where eligible, or another form of mediation or settlement discussion; provided, however, that the inability of the borrower to participate in mediation as a result of circumstances beyond the borrower's control shall not affect the borrower's continued eligibility for a stay of proceedings.

c. If the borrower ceases to occupy the property at any time during a stay of proceedings under this section, or if the borrower affirmatively advises the creditor, in writing, that the borrower will not participate in the Judiciary's Foreclosure Mediation Program or another form of mediation or settlement discussion, the creditor shall notify the court, and upon notification, and approval of the court, the stay of proceedings shall be terminated.

d. Nothing in this section shall constitute a limitation on the ability of the creditor and borrower to participate in the Judiciary's Foreclosure Mediation Program or another form of mediation or settlement discussion, or enter into an agreement as a result of that mediation.

4. a. Notwithstanding the provisions of section 3 of this act, a court shall not grant a stay of proceedings, or shall terminate the stay of proceedings, as applicable, if the creditor offers the borrower a sustainable modification of the mortgage loan. If a creditor offers a sustainable modification, the creditor shall notify the court, and upon notification, and approval of the court, the borrower shall not be eligible for a stay of proceedings.

b. A creditor that offers a sustainable modification, after obtaining approval of the court, shall notify the borrower that is offered the sustainable modification pursuant to subsection a. of this section that the borrower shall be ineligible for a stay of proceedings under section 3 of this act.

5. This bill shall take effect immediately and shall expire three years thereafter; provided, however, that a stay of proceedings shall, subject to the provisions of section 3 of this act, continue for its entire six-month period notwithstanding the expiration of this act.

STATEMENT

This bill establishes a six-month stay of proceedings for foreclosure proceedings related to "underwater" residential mortgage loans. The court would be directed to grant a stay of proceedings if 1) both the lender and borrower consent, or 2) the court determines that negotiations during the stay of proceedings could render the foreclosure action moot. If, however, the creditor offers the borrower a sustainable mortgage modification, the borrower would not be eligible for a stay of proceedings. New Jersey is facing an unprecedented emergency due to the increasing numbers of residential mortgage foreclosures in the State. The growing number of homeowners whose mortgage principal exceeds their home's value, a situation commonly referred to as being "underwater," has exacerbated this problem. A vicious cycle is created in which more foreclosures adversely affect property values, thereby pushing more mortgages underwater.

This bill attempts to avoid more foreclosures and the deleterious effects of foreclosures on neighborhoods and the economy by modifying the foreclosure process through a temporary stay of proceedings to provide additional time for underwater borrowers to work out loan modifications.

The bill also provides that if the borrower ceases to occupy the property at any time during the stay of proceedings, or if the borrower affirmatively advises the creditor, in writing, that the borrower will not participate in the Judiciary's Foreclosure Mediation Program or another form of mediation or settlement discussion, the creditor must notify the court, and upon notification, and approval of the court, the stay of proceedings would be terminated.