

ASSEMBLY, No. 865

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

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District 28 (Essex)

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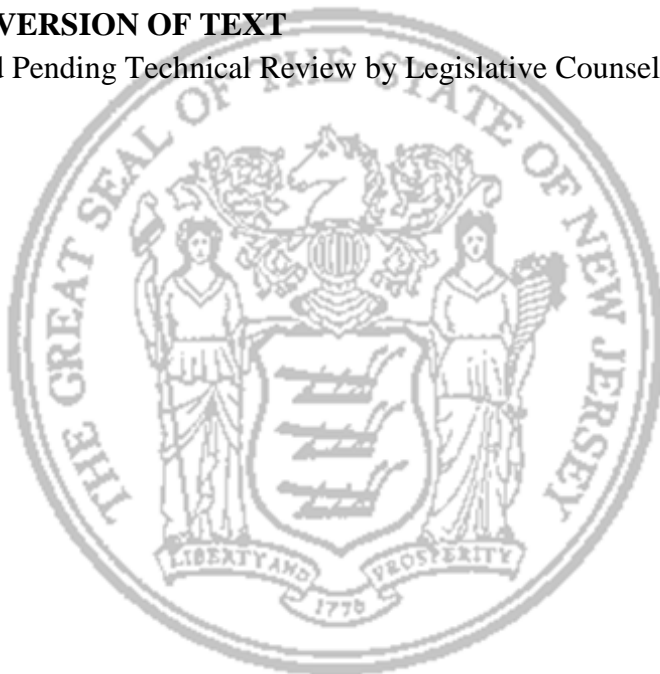
Assemblyman Giblin and Assemblywoman McKnight

SYNOPSIS

Provides forbearance of residential mortgage foreclosures under certain circumstances; places additional requirements on attorneys, residential mortgage lenders, and courts, as part of foreclosure process.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning residential mortgage foreclosures and
2 supplementing P.L.1995, c.244 (C.2A:50-53 et seq.).
3

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

7 1. a. As used in this section:

8 "Forbearance" means a period of six months during which the
9 creditor shall suspend all efforts to advance any judicial foreclosure
10 proceedings filed by the creditor against the borrower.

11 "High risk mortgage" means a first mortgage loan that has one or
12 more of the following characteristics:

13 (1) is an interest only mortgage with a future interest reset rate;

14 (2) has a reset mortgage interest rate that increases the initial
15 interest rate by two or more percentage points during any period of
16 time;

17 (3) contains a payment option plan or a "pick a payment" plan;

18 (4) contains a negative amortization schedule;

19 (5) is a subprime mortgage, which means a consumer credit
20 transaction, secured by the consumer's principal dwelling, with an
21 annual percentage rate that exceeds the average prime offer rate for
22 a comparable transaction, as of the date the interest rate is set, by
23 1.5 or more percentage points for loans secured by a first lien on a
24 dwelling, or by 3.5 or more percentage points for loans secured by a
25 subordinate lien on a dwelling;

26 (6) contains an enforceable prepayment penalty; or

27 (7) is a high cost home loan as defined in section 3 of the "New
28 Jersey Home Ownership Security Act of 2002," P.L.2003, c.64
29 (C.46:10B-24).

30 b. A residential mortgage lender that files and serves, pursuant
31 to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et al.), a
32 summons and complaint of foreclosure on a high risk mortgage
33 loan, shall grant the borrower a six-month period of forbearance,
34 upon written request of the borrower, to pursue a loan workout, loan
35 modification, refinancing, or other alternative through the
36 Judiciary's Foreclosure Mediation Program, if eligible, or another
37 form of mediation or settlement discussion. During the six-month
38 forbearance period, the interest rate on the high risk mortgage loan
39 shall not increase and the creditor shall take no further action to
40 pursue foreclosure of the property. Nothing in this subsection shall
41 constitute a limitation on the ability of the residential mortgage
42 lender and borrower to participate in the Judiciary's Foreclosure
43 Mediation Program or another form of mediation or settlement
44 discussion, or enter into an agreement as a result of that mediation.

45 c. Upon serving the summons and complaint in a foreclosure
46 action, the residential mortgage lender shall notify the borrower of
47 the borrower's right to forbearance as provided for in this section,
48 and, upon receipt of written request by the borrower, within 30 days

1 of the receipt of the summons and complaint, the residential
2 mortgage lender shall grant the borrower a six-month period of
3 forbearance, beginning on the date the residential mortgage lender
4 receives the borrower's request.

5 d. The notice of the borrower's right to forbearance shall
6 include the following information:

7 (1) whether the loan being foreclosed upon is eligible to receive
8 forbearance;

9 (2) that the borrower has the right to request the period of
10 forbearance in writing no later than 30 days after receipt of the
11 summons and complaint;

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

14 e. Upon receipt of a request for forbearance, the residential
15 mortgage lender shall:

16 (1) suspend all efforts, during the forbearance period, to
17 advance any judicial proceeding in furtherance of the foreclosure
18 action; and

19 (2) notify the court that a forbearance has been granted with the
20 dates that the forbearance period will begin and end.

21 Nothing herein shall preclude the residential mortgage lender and
22 borrower from participating in mediation or settlement discussions,
23 including the Judiciary's Foreclosure Mediation Program.

24 f. When a forbearance period is granted by the residential
25 mortgage lender pursuant to this section, the borrower and
26 residential mortgage lender shall participate in the Judiciary's
27 Foreclosure Mediation Program, if eligible, or another form of
28 mediation or settlement discussion; provided, however, that the
29 inability of the borrower to participate in mediation as a result of
30 circumstances beyond the borrower's control shall not affect the
31 borrower's continued eligibility for forbearance.

32 g. If the borrower ceases to occupy the property at any time
33 during the period of forbearance under this section, or if the
34 borrower affirmatively advises the residential mortgage lender, in
35 writing, that the borrower will not participate in the Judiciary's
36 Foreclosure Mediation Program or another form of mediation or
37 settlement discussion, the residential mortgage lender shall notify
38 the court, and upon notification, and approval of the court, the
39 period of forbearance shall be deemed to have ended.

40 h. The provisions of this section shall expire two years
41 following the effective date of P.L. , c. (C.) (pending
42 before the Legislature as this bill); provided, however, that a
43 forbearance period shall continue for its entire six-month period
44 notwithstanding the expiration of this section.

45

46 2. a. In addition to any other requirements under law,
47 regulation or court rule, in all residential mortgage foreclosure
48 actions, an attorney filing a foreclosure complaint shall include a

1 certification of diligent inquiry. The certification of diligent inquiry
2 shall certify:

3 (1) that the attorney has communicated with an employee or
4 employees of the plaintiff who: (a) personally reviewed the
5 documents being submitted to support the complaint; and (b)
6 confirmed the accuracy of the documents;

7 (2) the names and titles, and the responsibilities in those titles,
8 of the plaintiff's employees with whom the attorney communicated
9 pursuant to paragraph (1) of this section;

10 (3) that the attorney has reviewed the facts of the case and that,
11 based on the information received pursuant to this section and the
12 attorney's review of the pertinent documents, to the best of the
13 attorney's knowledge, information and belief there is a reasonable
14 basis for the commencement of the action and that the plaintiff is
15 currently the residential mortgage lender entitled to enforce rights
16 under those documents;

17 (4) that the attorney is aware that the failure to comply with the
18 provisions of this section may result in the penalties provided for in
19 subsection b. of this section or, where the failure constitutes a
20 violation of the Rules of Professional Conduct, may include
21 sanctions imposed by the Supreme Court of New Jersey; and

22 (5) that the complaint and all documents annexed thereto: (a) are
23 filed consistent with the requirements of R.1:4-8(a), which prohibits
24 frivolous litigation; (b) include the original promissory note, or a
25 copy, which names the residential mortgage lender as the owner of
26 the note; and (c) contain a detailed methodology used to calculate
27 and compute the amount of principal and interest due from the
28 debtor as stated in the complaint.

29 b. If the court finds that the plaintiff has failed to comply with
30 the provisions of subsection a. of this section, the court may dismiss
31 the complaint, with or without prejudice, or deny the accrual of any
32 interest, costs, attorney's fees and other fees relating to the
33 mortgage debt.

34

35 3. a. In addition to any other requirements under law,
36 regulation, or court rule, in all residential mortgage foreclosure
37 actions, a residential mortgage lender, as a condition of proceeding
38 with a mortgage foreclosure action, shall provide a certification to
39 the court, which states all of the following:

40 (1) the lender owns the mortgage and the note evidencing the
41 mortgage debt, and has attached to the certification, or to the
42 attorney's certification required pursuant to section 2 of this act, the
43 original note which names the plaintiff as the payee on the note;

44 (2) with respect to any assignment of mortgage, affidavit, or
45 other document purporting to confirm the mortgage debt or default
46 on payments, that the lender has not engaged in any creating,
47 signing, or notarizing, by persons who are without knowledge of the
48 facts being attested to;

1 (3) the methodology used to calculate and compute the amount
2 of principal and interest due from the debtor as stated in the
3 complaint and any subsequent pleadings or filings with the court
4 that indicate the amount due from the debtor; and

5 (4) the names of all the parties in interest, including any party
6 whose interest is subordinate to, or affected by, the mortgage
7 foreclosure action and, for each party, a description of the nature of
8 the interest.

9 b. If the court finds that the plaintiff has failed to comply with
10 the provisions of subsection a. of this section, the court may dismiss
11 the complaint, with or without prejudice, or deny the accrual of any
12 interest, costs, attorney's fees and other fees relating to the
13 mortgage debt.

14
15 4. In addition to any other requirements under law, regulation,
16 or court rule, in all residential mortgage foreclosure actions, a court
17 shall:

18 a. allow an evidentiary hearing for any debtor that requests an
19 evidentiary hearing;

20 b. allow plaintiffs to place on the record only evidence that is
21 admissible according to court rule and relevant case law; and

22 c. ensure that the plaintiff in the action owns the mortgage and
23 the note and, in the case of a party that is a foreign trust claiming
24 interest in the note, through participation in a mortgage-backed
25 security or otherwise, the court shall not proceed with the
26 foreclosure action if the foreign trust is not registered to do business
27 in New Jersey.

28
29 5. This act shall take effect on the 90th day next following
30 enactment.

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33 STATEMENT

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35 This bill provides that a residential mortgage lender that files and
36 serves, pursuant to the "Fair Foreclosure Act," P.L.1995, c.244
37 (C.2A:50-53 et al.), a summons and complaint of foreclosure on a
38 high risk mortgage loan, as defined in the bill, shall grant the
39 borrower a six-month period of forbearance, upon written request of
40 the borrower, to pursue a loan workout, loan modification,
41 refinancing, or other alternative through the Judiciary's Foreclosure
42 Mediation Program, if eligible, or another form of mediation or
43 settlement discussion. During the six-month forbearance period,
44 the interest rate on the high risk mortgage loan shall not increase
45 and the creditor shall take no further action to pursue foreclosure of
46 the property.

47 The bill provides that upon serving the summons and complaint
48 in a foreclosure action, the residential mortgage lender shall notify

1 the borrower of the borrower's right to forbearance, and, upon
2 receipt of written request by the borrower, within 30 days of the
3 receipt of the summons and complaint, the residential mortgage
4 lender shall grant the borrower a six-month period of forbearance,
5 beginning on the date the residential mortgage lender receives the
6 borrower's request.

7 Upon receipt of a request for forbearance, the residential
8 mortgage lender shall:

9 (1) suspend all efforts, during the forbearance period, to
10 advance any judicial proceeding in furtherance of the foreclosure
11 action; and

12 (2) notify the court that a forbearance has been granted with the
13 dates that the forbearance period will begin and end.

14 The bill also provides that when a forbearance period is granted
15 by the residential mortgage lender, the borrower and residential
16 mortgage lender shall participate in the Judiciary's Foreclosure
17 Mediation Program, if eligible, or another form of mediation or
18 settlement discussion.

19 If the borrower ceases to occupy the property at any time during
20 the period of forbearance, or if the borrower affirmatively advises
21 the residential mortgage lender, in writing, that the borrower will
22 not participate in the Judiciary's Foreclosure Mediation Program or
23 another form of mediation or settlement discussion, the residential
24 mortgage lender shall notify the court, and upon notification, and
25 approval of the court, the period of forbearance shall be deemed to
26 have ended.

27 The provisions of the bill relating to the six-month period of
28 forbearance shall expire two years following the effective date of
29 the bill. However, a forbearance period shall continue for its entire
30 six-month period notwithstanding the expiration of the bill's
31 provisions.

32 The bill also provides that in addition to any other requirements
33 under law, regulation or court rule, in all residential mortgage
34 foreclosure actions, an attorney filing a foreclosure complaint shall
35 include a certification of diligent inquiry. The certification of
36 diligent inquiry shall certify:

37 (1) that the attorney has communicated with an employee or
38 employees of the plaintiff who: (a) personally reviewed the
39 documents being submitted to support the complaint; and (b)
40 confirmed the accuracy of the documents;

41 (2) the names and titles, and the responsibilities in those titles,
42 of the plaintiff's employees with whom the attorney communicated;

43 (3) that the attorney has reviewed the facts of the case and that,
44 based on the information received pursuant to this section and the
45 attorney's review of the pertinent documents, to the best of the
46 attorney's knowledge, information and belief there is a reasonable
47 basis for the commencement of the action and that the plaintiff is

1 currently the residential mortgage lender entitled to enforce rights
2 under those documents;

3 (4) that the attorney is aware that the failure to comply with
4 these provisions may result in the penalties provided for in the bill
5 or, where the failure constitutes a violation of the Rules of
6 Professional Conduct, may include sanctions imposed by the
7 Supreme Court of New Jersey; and

8 (5) that the complaint and all documents annexed thereto,
9 comport with the requirements of R.1:4-8(a), which prohibits
10 frivolous litigation, and include the original promissory note, or a
11 copy, and a detailed methodology used to compute the debt.

12 The bill also stipulates that the court may, if it finds that the
13 plaintiff has failed to comply with the provisions of the bill relating
14 to the certificate of diligent inquiry, dismiss the complaint, with or
15 without prejudice, or deny the accrual of any interest, costs,
16 attorney's fees and other fees relating to the mortgage debt.

17 The bill also provides, that in addition to any other requirements
18 under law, regulation, or court rule, in all residential mortgage
19 foreclosure actions, a residential mortgage lender, as a condition of
20 proceeding with a mortgage foreclosure action, shall provide a
21 certification to the court, which states all of the following:

22 (1) the lender owns the mortgage and the note evidencing the
23 mortgage debt, and has attached to the certification, the original
24 note which names the plaintiff as the payee on the note;

25 (2) in the case of an assignment of mortgage, an affidavit, or any
26 other document purporting to confirm the mortgage debt or default
27 on payments, that the lender has not engaged in any creating,
28 signing, or notarizing, by persons who are without knowledge of the
29 facts being attested to;

30 (3) the methodology used to calculate and compute the amount
31 of principal and interest due from the debtor as stated in the
32 complaint and any subsequent pleadings or filings with the court
33 that indicate the amount due from the debtor; and

34 (4) the names of all the parties in interest, including any party
35 whose interest is subordinate to, or affected by, the mortgage
36 foreclosure action and, for each party, a description of the nature of
37 the interest.

38 The bill also stipulates that if the court finds that the plaintiff has
39 failed to comply with the provisions of the bill relating to the
40 certification by the residential mortgage lender, the court may
41 dismiss the complaint, with or without prejudice, or deny the
42 accrual of any interest, costs, attorney's fees and other fees relating
43 to the mortgage debt.

44 The bill also provides that in addition to any other requirements
45 under law, regulation, or court rule, in all residential mortgage
46 foreclosure actions, a court shall:

47 (1) allow an evidentiary hearing for any debtor that requests an
48 evidentiary hearing;

1 (2) allow plaintiffs to place on the record only evidence that is
2 admissible according to court rule and relevant case law; and
3 (3) ensure that the plaintiff in the action owns the mortgage and
4 the note and, in the case of a party that is a foreign trust claiming
5 interest in the note, through participation in a mortgage-backed
6 security or otherwise, the court shall not proceed with the
7 foreclosure action if the foreign trust is not registered to do business
8 in New Jersey.