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LAW/IS 6/10/10

[First Reprint]
SENATE, No. 250

STATE OF NEW JERSEY
213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Senator JOHN H. ADLER

District 6 (Camden)

Assemblyman JOHN S. WISNIEWSKI

District 19 (Middlesex)

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

Assemblywoman L. GRACE SPENCER

District 29 (Essex and Union)

Co-Sponsored by:

Assemblywoman Greenstein and Assemblyman Diegnan

SYNOPSIS

Provides statute of limitations for residential mortgage foreclosures.

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on May 8, 2008, with amendments.



(Sponsorship Updated As Of: 5/22/2009)

1 AN ACT concerning certain 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. An action to foreclose a residential mortgage shall not be
8 commenced following the earliest of:

9 a. ¹~~Five~~ Six years from the date fixed for the making of the
10 last payment or the maturity date set forth in the mortgage or the
11 note, bond, or other obligation ¹~~executed contemporaneously with~~ secured by
12 the mortgage, whether the date is itself set forth
13 or may be calculated from information contained in the mortgage or
14 note, bond, or other obligation, except that if the date fixed for the
15 making of the last payment or the maturity date has been extended
16 by a ¹~~recorded~~ written instrument, the action to foreclose shall
17 not be commenced after ¹~~five~~ six years from the extended date
18 under the terms of the ¹~~recorded~~ written instrument;

19 b. ¹~~Twenty-five~~ Thirty-six years from the date of recording of
20 the mortgage, or, if the mortgage is not recorded, ¹~~25~~ 36 years
21 from the date of execution, so long as the mortgage itself does not
22 provide for a period of repayment in excess of ¹~~20~~ 30 years; or

23 c. Twenty years from the date on which the debtor defaulted,
24 which default has not been cured, as to any of the obligations or
25 covenants contained in the mortgage or in the note, bond, or other
26 obligation ¹~~executed contemporaneously with~~ secured by the
27 mortgage, except that if the date to perform any of the obligations
28 or covenants has been extended by a ¹~~recorded~~ written
29 instrument ¹~~or payment on account has been made~~, the action to
30 foreclose shall not be commenced after 20 years from the date on
31 which the default ¹~~or payment on account thereof~~ occurred under
32 the terms of the ¹~~recorded~~ written instrument.

33

34 2. This act shall take effect immediately.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted May 8, 2008.

SENATE, No. 250

STATE OF NEW JERSEY

213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Senator JOHN H. ADLER

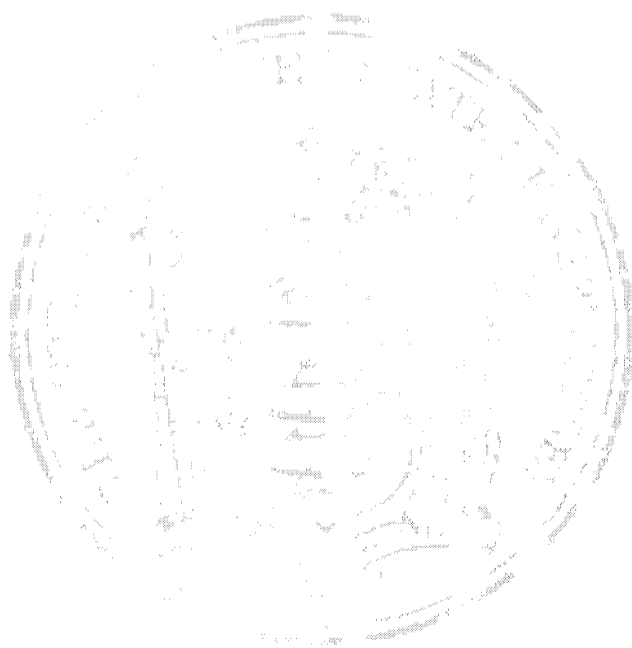
District 6 (Camden)

SYNOPSIS

Provides statute of limitations for residential mortgage foreclosures.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



S250 ADLER

2

1 AN ACT concerning certain 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. An action to foreclose a residential mortgage shall not be
8 commenced following the earliest of:

9 a. Five years from the date fixed for the making of the last
10 payment or the maturity date set forth in the mortgage or the note,
11 bond, or other obligation executed contemporaneously with the
12 mortgage, whether the date is itself set forth or may be calculated
13 from information contained in the mortgage or note, bond, or other
14 obligation, except that if the date fixed for the making of the last
15 payment or the maturity date has been extended by a recorded
16 instrument, the action to foreclose shall not be commenced after
17 five years from the extended date under the terms of the recorded
18 instrument;

19 b. Twenty-five years from the date of recording of the mortgage,
20 or, if the mortgage is not recorded, 25 years from the date of
21 execution, so long as the mortgage itself does not provide for a
22 period of repayment in excess of 20 years; or

23 c. Twenty years from the date on which the debtor defaulted,
24 which default has not been cured, as to any of the obligations or
25 covenants contained in the mortgage or in the note, bond, or other
26 obligation executed contemporaneously with the mortgage, except
27 that if the date to perform any of the obligations or covenants has
28 been extended by a recorded instrument, the action to foreclose
29 shall not be commenced after 20 years from the date on which the
30 default occurred under the terms of the recorded instrument.

31

32 2. This act shall take effect immediately.

33

34

35 *Sponsor's* STATEMENT

36

37 This bill supplements the "Fair Foreclosure Act," P.L.1995,
38 c.244 (C.2A:50-53 et seq.) by applying a statute of limitations to
39 residential mortgage foreclosure actions. The bill is intended to
40 address some of the problems caused by the presence on the record
41 of residential mortgages which have been paid or which are
42 otherwise unenforceable. These mortgages constitute clouds on title
43 which may render real property titles unmarketable and delay real
44 estate transactions.

45 The bill provides that a foreclosure action must be commenced
46 by the earliest of: (1) five years from the date of maturity; (2) 25
47 years from the date of recording or execution, provided that the

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1 mortgage itself does not provide for a period of repayment in excess
2 of 20 years; or (3) 20 years from the date of default by the debtor.
3 Thus, the bill allows title examiners to determine that a mortgage
4 which on its face has matured more than five years ago or which
5 was recorded more than 25 years ago is not a cloud on title because
6 an action can no longer be brought to foreclose it.

7 The bill also codifies the holding in Security National Partners
8 Limited Partnership v. Mahler, 336 N.J. Super. 101 (App. Div.
9 2000), which applied a 20-year statute of limitations to a residential
10 mortgage foreclosure action based on a default due to nonpayment.
11 In its decision, the court noted that since there is no statute of
12 limitations expressly applicable to mortgage foreclosures in these
13 situations, courts have resorted to drawing analogies to adverse
14 possession statutes which bar rights of entry onto land after 20
15 years. This bill would resolve the uncertainties surrounding this
16 area of law by providing a specific statute of limitations of 20 years
17 from the date of the default by the debtor.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 250

STATE OF NEW JERSEY

DATED: OCTOBER 6, 2008

The Assembly Financial Institutions and Insurance Committee reports favorably Senate Bill 250 (1R).

This bill supplements the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.) by applying a statute of limitations to residential mortgage foreclosure actions. The bill is intended to address some of the problems caused by the presence on the record of residential mortgages which have been paid or which are otherwise unenforceable. These mortgages constitute clouds on title which may render real property titles unmarketable and delay real estate transactions.

The bill provides that a foreclosure action must be commenced by the earliest of: (1) six years from the date of maturity on the mortgage or other obligation secured by the mortgage, matching the six-year statute of limitations on actions based on contract law; (2) 36 years from the date of recording or execution of the mortgage, provided the mortgage itself does not provide for a period of repayment in excess of 30 years, again relying upon the six-year statute of limitations for contract law; or (3) 20 years from the date of default by the debtor on the mortgage or other obligation secured by the mortgage, matching the 20-year statute of limitations on adverse possession actions. Thus, the bill allows a determination that certain mortgages are not clouds on title because a party can no longer bring an action to foreclose them beyond the bill's expressly stated statute of limitations, as borrowed from actions in contract law or adverse possession, as applicable.

The bill, in part, codifies the holding in Security National Partners Limited Partnership v. Mahler, 336 N.J. Super. 101 (App. Div. 2000), which applied a 20-year statute of limitations to a residential mortgage foreclosure action based on a default due to nonpayment. In its decision, the court noted that since there is currently no statute of limitations expressly applicable to mortgage foreclosures in these situations, courts have resorted to drawing analogies to adverse possession statutes which bar rights of entry onto land after 20 years. This bill would resolve the uncertainties surrounding this area of law

by providing a specific statute of limitations of 20 years from the date of the default by the debtor.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 250

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 8, 2008

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 250.

This bill, as amended, supplements the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.), by applying a statute of limitations to residential mortgage foreclosure actions. The bill is intended to address some of the problems caused by the presence on the record of residential mortgages which have been paid or which are otherwise unenforceable. These mortgages constitute clouds on title which may render real property titles unmarketable and delay real estate transactions.

The bill provides that a foreclosure action must be commenced by the earliest of: (1) six years from the date of maturity on the mortgage or other obligation secured by the mortgage, matching the six-year statute of limitations on actions based on contract law; (2) 36 years from the date of recording or execution of the mortgage, provided the mortgage itself does not provide for a period of repayment in excess of 30 years, again relying upon the six-year statute of limitations for contract law; or (3) 20 years from the date of default by the debtor on the mortgage or other obligation secured by the mortgage, matching the 20-year statute of limitations on adverse possession actions. Thus, the bill allows a determination that certain mortgages are not clouds on title because a party can no longer bring an action to foreclose them beyond the bill's expressly stated statute of limitations, as borrowed from actions in contract law or adverse possession, as applicable.

The bill, in part, codifies the holding in Security National Partners Limited Partnership v. Mahler, 336 N.J. Super. 101 (App. Div. 2000), which applied a 20-year statute of limitations to a residential mortgage foreclosure action based on a default due to nonpayment. In its decision, the court noted that since there is currently no statute of limitations expressly applicable to mortgage foreclosures in these situations, courts have resorted to drawing analogies to adverse possession statutes which bar rights of entry onto land after 20 years. This bill would resolve the uncertainties surrounding this area of law by providing a specific statute of limitations of 20 years from the date of the default by the debtor.

The committee amendments to the bill:

- Provide that a residential mortgage foreclosure shall commence by the earliest of three events: 1) six years from the date of maturity of the mortgage or other obligation secured by the mortgage (up from five years); 2) 36 years from the date of recording or execution of the mortgage (up from 25 years); or 3) 20 years from the date of default by the debtor on the mortgage or other obligation secured by the mortgage; and

- Permit the measuring of the statute of limitations from the terms of a written instrument, whether or not recorded.

This bill was pre-filed for introduction in the 2008-2009 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

ASSEMBLY, No. 3269

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED OCTOBER 6, 2008

Sponsored by:

Assemblyman JOHN S. WISNIEWSKI

District 19 (Middlesex)

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

Assemblywoman L. GRACE SPENCER

District 29 (Essex and Union)

Co-Sponsored by:

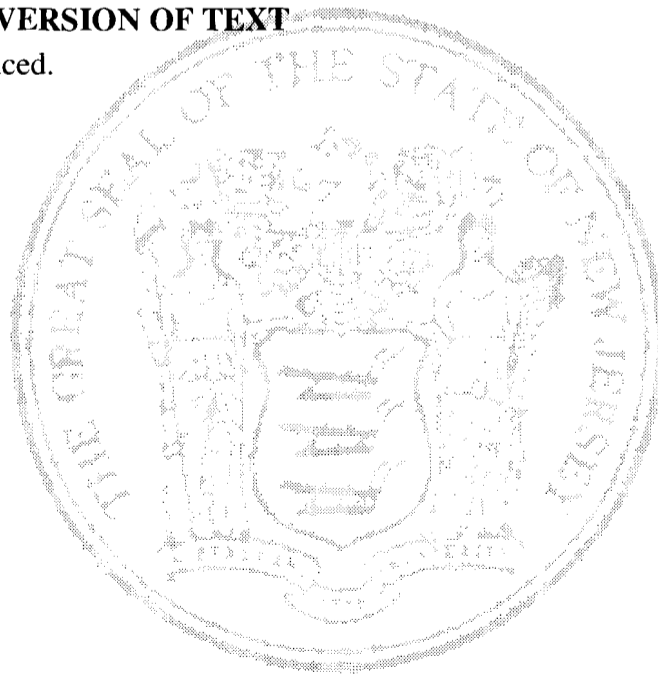
Assemblywoman Greenstein and Assemblyman Diegnan

SYNOPSIS

Provides statute of limitations for residential mortgage foreclosures.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/22/2009)

1 AN ACT concerning certain 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. An action to foreclose a residential mortgage shall not be
8 commenced following the earliest of:

9 a. Six years from the date fixed for the making of the last
10 payment or the maturity date set forth in the mortgage or the note,
11 bond, or other obligation secured by the mortgage, whether the date
12 is itself set forth or may be calculated from information contained
13 in the mortgage or note, bond, or other obligation, except that if the
14 date fixed for the making of the last payment or the maturity date
15 has been extended by a written instrument, the action to foreclose
16 shall not be commenced after six years from the extended date
17 under the terms of the written instrument;

18 b. Thirty-six years from the date of recording of the mortgage,
19 or, if the mortgage is not recorded, 36 years from the date of
20 execution, so long as the mortgage itself does not provide for a
21 period of repayment in excess of 30 years; or

22 c. Twenty years from the date on which the debtor defaulted,
23 which default has not been cured, as to any of the obligations or
24 covenants contained in the mortgage or in the note, bond, or other
25 obligation secured by the mortgage, except that if the date to
26 perform any of the obligations or covenants has been extended by a
27 written instrument or payment on account has been made, the action
28 to foreclose shall not be commenced after 20 years from the date on
29 which the default or payment on account thereof occurred under the
30 terms of the written instrument.

31

32 2. This act shall take effect immediately.

33

34

35 *Sponsor's* STATEMENT

36

37 This bill supplements the "Fair Foreclosure Act," P.L.1995,
38 c.244 (C.2A:50-53 et seq.) by applying a statute of limitations to
39 residential mortgage foreclosure actions. The bill is intended to
40 address some of the problems caused by the presence on the record
41 of residential mortgages which have been paid or which are
42 otherwise unenforceable. These mortgages constitute clouds on title
43 which may render real property titles unmarketable and delay real
44 estate transactions.

45 The bill provides that a foreclosure action must be commenced
46 by the earliest of: (1) six years from the date of maturity on the
47 mortgage or other obligation secured by the mortgage, matching the
48 six-year statute of limitations on actions based on contract law; (2)

1 36 years from the date of recording or execution of the mortgage,
2 provided the mortgage itself does not provide for a period of
3 repayment in excess of 30 years, again relying upon the six-year
4 statute of limitations for contract law; or (3) 20 years from the date
5 of default by the debtor on the mortgage or other obligation secured
6 by the mortgage, matching the 20-year statute of limitations on
7 adverse possession actions. Thus, the bill allows a determination
8 that certain mortgages are not clouds on title because a party can no
9 longer bring an action to foreclose them beyond the bill's expressly
10 stated statute of limitations, as borrowed from actions in contract
11 law or adverse possession, as applicable.

12 The bill, in part, codifies the holding in Security National
13 Partners Limited Partnership v. Mahler, 336 N.J. Super. 101 (App.
14 Div. 2000), which applied a 20-year statute of limitations to a
15 residential mortgage foreclosure action based on a default due to
16 nonpayment. In its decision, the court noted that since there is
17 currently no statute of limitations expressly applicable to mortgage
18 foreclosures in these situations, courts have resorted to drawing
19 analogies to adverse possession statutes which bar rights of entry
20 onto land after 20 years. This bill would resolve the uncertainties
21 surrounding this area of law by providing a specific statute of
22 limitations of 20 years from the date of the default by the debtor.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3269

STATE OF NEW JERSEY

DATED: OCTOBER 6, 2008

The Assembly Financial Institutions and Insurance Committee reports favorably Assembly Bill No. 3269.

This bill supplements the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.) by applying a statute of limitations to residential mortgage foreclosure actions. The bill is intended to address some of the problems caused by the presence on the record of residential mortgages which have been paid or which are otherwise unenforceable. These mortgages constitute clouds on title which may render real property titles unmarketable and delay real estate transactions.

The bill provides that a foreclosure action must be commenced by the earliest of: (1) six years from the date of maturity on the mortgage or other obligation secured by the mortgage, matching the six-year statute of limitations on actions based on contract law; (2) 36 years from the date of recording or execution of the mortgage, provided the mortgage itself does not provide for a period of repayment in excess of 30 years, again relying upon the six-year statute of limitations for contract law; or (3) 20 years from the date of default by the debtor on the mortgage or other obligation secured by the mortgage, matching the 20-year statute of limitations on adverse possession actions. Thus, the bill allows a determination that certain mortgages are not clouds on title because a party can no longer bring an action to foreclose them beyond the bill's expressly stated statute of limitations, as borrowed

The bill, in part, codifies the holding in Security National Partners Limited Partnership v. Mahler, 336 N.J. Super. 101 (App. Div. 2000), which applied a 20-year statute of limitations to a residential mortgage foreclosure action based on a default due to nonpayment. In its decision, the court noted that since there is currently no statute of limitations expressly applicable to mortgage foreclosures in these situations, courts have resorted to drawing analogies to adverse possession statutes which bar rights of entry onto land after 20 years. This bill would resolve the uncertainties surrounding this area of law by providing a specific statute of limitations of 20 years from the date of the default by the debtor.