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P.L. 2023, CHAPTER 255, *approved January 12, 2024*
Assembly, No. 5664 (*Third Reprint*)

1 AN ACT concerning sheriff's sales and amending and
2 supplementing P.L.1995, c.244, and amending N.J.S.22A:4-8.

3

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

6

7 1. Section 12 of P.L.1995, c.244 (C.2A:50-64) is amended to
8 read as follows:

9 12. a. With respect to the sale of a mortgaged premises under
10 foreclosure action, each sheriff in this State shall provide for, but
11 not be limited to, the following uniform procedures:

12 (1) Bidding in the name of the assignee of the foreclosing
13 plaintiff.

14 (2) That adjournment of the sale of the foreclosed property shall
15 be in accordance with N.J.S.2A:17-36.

16 (3) (a) The sheriff shall conduct a sale within 150 days of the
17 sheriff's receipt of any writ of execution issued by the court in any
18 foreclosure proceeding.

19 (b) If it becomes apparent that the sheriff cannot comply with
20 the provisions of subparagraph (a) of this paragraph (3), the
21 foreclosing plaintiff may apply to the office for an order appointing
22 a Special Master to hold the foreclosure sale.

23 (c) Upon the foreclosing plaintiff making such application to the
24 office, the office shall issue the appropriate order appointing a
25 Special Master to hold the foreclosure sale. The office may issue
26 the order to appoint a Special Master to hold foreclosure sales for
27 one or more properties within a vicinage.

28 (4) That notice for the sale of a foreclosed upon residential
29 property be mailed to the primary address of the foreclosed upon
30 defendant and to the address of the foreclosed upon residential
31 property. Notice of the sale shall be mailed in an envelope that
32 plainly states on its exterior that the envelope is a notice for the sale
33 of the foreclosed upon residential property¹. The language used on
34 the exterior of the envelope shall comply with the federal² Fair
35 Debt Collection Practices Act,² 15 U.S.C. s.1692 et seq¹.

36 (5) (a) That notice of the¹ **[final]**¹ upset price for the sale of a
37 foreclosed upon residential property be provided at least four weeks

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:

¹Assembly ACE committee amendments adopted December 11, 2023.

²Assembly AAP committee amendments adopted December 18, 2023.

³Assembly floor amendments adopted December 21, 2023.

1 prior to the sheriff's sale and posted on the Internet website of the
2 sheriff's office and on any other medium used to provide notice of
3 the sheriff's sale. The ¹["final"]¹ upset price provided ¹in the notice
4 shall be a good faith estimate of the upset price¹ on the day of the
5 sheriff's sale ¹["shall not differ from the final upset price provided
6 in the notice"]; however, the upset price on the day of the sheriff's
7 sale shall not increase by more than three percent from the upset
8 price originally provided in the notice. If the sheriff's sale is
9 delayed or postponed, ³or if circumstances occur that require
10 unforeseen advances to protect the borrower or the foreclosed upon
11 residential property in the event of vandalism, weather damage, or
12 other emergency property preservation needs,³ the upset price may
13 be adjusted to reflect ³these costs in³ the latest price¹; and

14 (b) Prior to providing the ¹["final"]¹ upset price to the sheriff's
15 office pursuant to subparagraph (a) of this paragraph, the
16 foreclosing plaintiff or agent of the foreclosing plaintiff shall be
17 prohibited from contacting the foreclosed upon defendant, next of
18 kin of the foreclosed upon defendant, or a nonprofit community
19 development corporation to inquire whether the foreclosed upon
20 defendant, next of kin, or nonprofit community development
21 corporation intends to participate in the sheriff's sale for the
22 foreclosed upon property or exercise the provisions of P.L. _____, c.
23 (C. _____) (pending before the Legislature as this bill)¹. If, after
24 providing notice of the upset price pursuant to subsection a. of this
25 section, the foreclosing plaintiff is informed that the foreclosed
26 upon defendant, next of kin, or nonprofit community development
27 corporation intends to participate in the sheriff's sale or exercise the
28 provisions of P.L. _____, c. (C. _____) (pending before the Legislature
29 as this bill), the foreclosing plaintiff shall not attempt to delay or
30 postpone the sheriff's sale by reason of the foreclosed upon
31 defendant, next of kin, or nonprofit community development
32 corporation's intention to participate in the sheriff's sale or exercise
33 the provisions of P.L. _____, c. (C. _____) (pending before the
34 Legislature as this bill)^{1 3}. Any notice required pursuant to this
35 paragraph shall comply with the federal "Fair Debt Collection
36 Practices Act," 15 U.S.C. s.1692 et seq³.

37 (6) Prior to the sale of residential property, the foreclosing
38 plaintiff shall disclose, if known, whether the property is vacant,
39 tenant-occupied, or owner-occupied. If the property is vacant, the
40 foreclosing plaintiff shall provide the successful bidder access to
41 the property if the foreclosing plaintiff has such access and may
42 condition access by the successful bidder on being accompanied by
43 a representative of the foreclosing plaintiff.

44 (7) (a) Except as otherwise provided in subparagraphs (b) and
45 (c) of this paragraph, the successful bidder at the sheriff's sale shall
46 pay a 20 percent deposit in either cash or by a certified or cashier's

1 check, made payable to the sheriff of the county in which the sale is
2 conducted, immediately upon the conclusion of the foreclosure sale.

3 (b) In the case of residential property in which the successful
4 bidder is the foreclosed upon defendant, next of kin, tenant,
5 nonprofit community development corporation, or a bidder who
6 shall occupy the property as the bidder's primary residence for a
7 period of at least 84 months, the successful bidder who has fulfilled
8 the requirements set forth in subsection e. of this section shall pay a
9 3.5 percent deposit ¹ of the original upset price listed in the notice
10 provided by the foreclosing plaintiff pursuant to subparagraph (a) of
11 paragraph (5) of this subsection, ¹ ³ or the final starting upset price
12 listed for the sale of the property, whichever is less, ³ with the rest
13 of the balance due within 90 business days by cash, certified or
14 cashier's check, or by wire transfer, made payable to the sheriff of
15 the county in which the sale is conducted or to the Special Master,
16 if the sheriff cannot comply with the provisions of subparagraph (a)
17 of paragraph (3) of this subsection, immediately upon the
18 conclusion of the foreclosure sale.

19 (c) If the successful bidder cannot satisfy [this] the requirement
20 of this paragraph that is applicable to the bidder, or the applicable
21 requirement of this paragraph respectively, the bidder shall be in
22 default and the sheriff shall immediately void the sale and proceed
23 further with the resale of the premises without the necessity of
24 adjourning the sale, without renotification of any party to the
25 foreclosure and without the republication of any sales notice. Upon
26 such resale, the defaulting bidder shall be liable to the foreclosing
27 plaintiff for any additional costs incurred by such default including,
28 but not limited to, any difference between the amount bid by the
29 defaulting bidder and the amount generated for the foreclosing
30 plaintiff at the resale. In the event the plaintiff is the successful
31 bidder at the resale, the plaintiff shall provide a credit for the fair
32 market value of the property foreclosed.

33 **[(5)] (8)** It is permissible, upon consent of the sheriff
34 conducting the sheriff's sale, that it shall not be necessary for an
35 attorney or representative of the person who initiated the
36 foreclosure to be present physically at the sheriff's sale to make a
37 bid. A letter containing bidding instructions may be sent to the
38 sheriff in lieu of an appearance.

39 **[(6)] (9)** That each sheriff's office shall use, and the plaintiff's
40 attorney shall prepare and submit to the sheriff's office, a deed
41 which shall be in substantially the following form:

42 THIS INDENTURE,

43 made this (date) day of (month),
44 (year). Between (name), Sheriff of the County
45 of (name) in the State of New Jersey, party of the first

1 part and (name(s)) party of the
2 second part, witnesseth.

3 WHEREAS, on the (date) day of
4 (month), (year), a certain Writ of Execution was issued out of
5 the Superior Court of New Jersey, Chancery Division-
6 (name) County, Docket No. directed and delivered to the
7 Sheriff of the said County of (name) and which said
8 Writ is in the words or to the effect following that is to say:

9 THE STATE OF NEW JERSEY to the Sheriff of the County of
10 (name),

11 Greeting:

12 WHEREAS, on the (date) day of (month),
13 (year), by a certain judgment made in our Superior Court
14 of New Jersey, in a certain cause therein pending, wherein the
15 PLAINTIFF is:

16
17
18

19 and the following named parties are the DEFENDANTS:

20
21
22

23 IT WAS ORDERED AND ADJUDGED that certain mortgaged
24 premises, with the appurtenances in the Complaint, and Amendment
25 to Complaint, if any, in the said cause particularly set forth and
26 described, that is to say: The mortgaged premises are described as
27 set forth upon the RIDER ANNEXED HERETO AND MADE A
28 PART HEREOF.

29 BEING KNOWN AS Tax Lot (number) in
30 Block (number) COMMONLY KNOWN AS
31 (street address)

32 TOGETHER, with all and singular the rights, liberties, privileges,
33 hereditaments and appurtenances thereunto belonging or in anywise
34 appertaining, and the reversion and remainders, rents, issues and
35 profits thereof, and also all the estate, right, title, interest, use,
36 property, claim and demand of the said defendants of, in, to and out
37 of the same, to be sold, to pay and satisfy in the first place unto the
38 plaintiff,

39
40

41 the sum of \$ (amount) being the principal, interest and
42 advances secured by a certain mortgage dated (date,
43 month, year) and given by (name) together with
44 lawful interest from

45
46
47

1 until the same be paid and satisfied and also the costs of the
2 aforesaid plaintiff with interest thereon.

3 AND for that purpose a Writ of Execution should issue, directed to
4 the Sheriff of the County of (name) commanding him to
5 make sale as aforesaid; and that the surplus money arising from
6 such sale, if any there be, should be brought into our said Court, as
7 by the judgment remaining as of record in our said Superior Court
8 of New Jersey, at Trenton, doth and more fully appear; and
9 whereas, the costs and Attorney's fees of the said plaintiff have
10 been duly taxed at the following sum: \$ (amount)

11 THEREFORE, you are hereby commanded that you cause to be
12 made of the premises aforesaid, by selling so much of the same as
13 may be needful and necessary for the purpose, the said sum of
14 \$..... (amount) and the same you do pay to the said plaintiff
15 together with contract and lawful interest thereon as aforesaid, and
16 the sum aforesaid of costs with interest thereon.

17 And that you have the surplus money, if any there be, before our
18 said Superior Court of New Jersey, aforesaid at Trenton, within 30
19 days after pursuant to R.4:59-1(a), to abide the further Order of the
20 said Court, according to judgment aforesaid, and you are to make
21 return at the time and place aforesaid, by certificate under your
22 hand, of the manner in which you have executed this our Writ,
23 together with this Writ, and if no sale, this Writ shall be returnable
24 within **[12]** 24 months.

25 WITNESS, the Honorable (name), Judge of the Superior
26 Court at Trenton, aforesaid, the (date) day of
27 (month), (year).

28 /s/ (Clerk)
29 Superior Court of New Jersey

30 /s/.....
31 Attorney for Plaintiff

32 As by the record of said Writ of Execution in the Office of the
33 Superior Court of New Jersey, at Trenton, in Book
34 (number) of Executions, Page (number) etc., may more fully
35 appear.

36 AND WHEREAS I, the said (name), as such
37 Sheriff as aforesaid did in due form of law, before making such sale
38 give notice of the time **[and]**, place, and **'[final]'** upset price of
39 such sale by public advertisement signed by myself, and set up in
40 my office in the (name) Building in
41 (name) County, being the County in which said real estate is situate
42 and also set up at the premises to be sold at least three weeks next
43 before the time appointed for such sale.

44 I also caused such notice to be published four times in two
45 newspapers designated by me and printed and published in the said
46 County, the County wherein the real estate sold is situate, the same
47 being designated for the publication by the Laws of this State, and

1 circulating in the neighborhood of said real estate, at least once a
 2 week during four consecutive calendar weeks. One of such
 3 newspapers, (name of newspaper) is a newspaper
 4 with circulation in (name of town), the County seat of
 5 said (name) County. The first publication was at least
 6 twenty-one days prior and the last publication not more than eight
 7 days prior to the time appointed for the sale of such real estate, and
 8 by virtue of the said Writ of Execution, I did offer for sale said land
 9 and premises at public vendue at the County (name)
 10 Building in (name of town) on the (date)
 11 day of, (month) (year) at the hour of
 12 (time) in the (a.m. or p.m.).

13 WHEREUPON the said party of the second part bidding
 14 therefore for the same, the sum of \$..... (amount) and no
 15 other person bidding as much I did then and there openly and
 16 publicly in due form of law between the hours of (time)
 17 and (time) in the (a.m. or p.m.), strike off and sell
 18 tracts or parcels of land and premises for the sum of \$
 19 (amount) to the said party of the second part being then and there
 20 the highest bidder for same. And on the (date) of
 21 (month) in the year last aforesaid I did truly report the
 22 said sale to the Superior Court of New Jersey, Chancery Division
 23 and no objection to the said sale having been made, and by
 24 Assignment of Bid filed with the Sheriff of (name)
 25 County said bidder assigned its bid to:

26
 27
 28

29 NOW, THEREFORE, This Indenture witnesseth, that I, the said
 30 (name), as such Sheriff as aforesaid under and by the
 31 virtue of the said Writ of Execution and in execution of the power
 32 and trust in me reposed and also for and in consideration of the said
 33 sum of \$ (amount) therefrom acquit, exonerate and
 34 forever discharge to the said party of the second part, its successors
 35 and assigns, all and singular the said tract or parcel of lands and
 36 premises, with the appurtenances, privileges, and hereditaments
 37 thereunto belonging or in any way appertaining; to have and hold
 38 the same, unto the said party of the second part, its successors and
 39 assigns to its and their only proper use, benefit, and behoof forever,
 40 in as full, ample and beneficial manner as by virtue of said Writ of
 41 Execution I may, can or ought to convey the same.

42 And, I, the said (name), do hereby covenant, promise and
 43 agree, to and with the said party of the second part, its successors
 44 and assigns, that I have not, as such Sheriff as aforesaid, done or
 45 caused, suffered or procured to be done any act, matter or thing
 46 whereby the said premises, or any part thereof, with the

1 appurtenances, are or may be charged or encumbered in estate, title
2 or otherwise.

3 IN WITNESS WHEREOF, I the said (name) as such
4 Sheriff as aforesaid, have hereunto set my hand and seal the day and
5 year aforesaid.

6 Signed, sealed and delivered

7 in the presence of

8

9 Attorney at Law of New Jersey(name) Sheriff

10 STATE OF NEW JERSEY) SS.

11(county)

12 I, (name), Sheriff, of the County of (name),
13 do solemnly swear that the real estate described in this deed made
14 to

15

16

17

18 was by me sold by virtue of a good and subsisting execution (or as
19 the case may be) as is therein recited, that the money ordered to be
20 made has not been to my knowledge or belief paid or satisfied, that
21 the time and place of the same of said real estate were by me duly
22 advertised as required by law, and that the same was cried off and
23 sold to a bona fide purchaser for the best price that could be
24 obtained and the true consideration for this conveyance as set forth
25 in the deed is \$ (amount).

26

27 (name), Sheriff

28 Sworn before me, (name), on this (date) day of
29 (month), (year), and I having examined the deed
30 above mentioned do approve the same and order it to be recorded as
31 a good and sufficient conveyance of the real estate therein
32 described.

33 STATE OF NEW JERSEY) ss.

34 (Name) County) Attorney or Notary Public

35 On this (date) day of (month), (year),
36 before me, the subscriber, (name) personally
37 appeared (name), Sheriff of the County of
38 (name) aforesaid, who is, I am satisfied, the grantor in the within
39 Indenture named, and I having first made known to him the contents
40 thereof, he did thereupon acknowledge that he signed, sealed and
41 delivered the same on his voluntary act and deed, for the uses and
42 purposes therein expressed.

43

44 Attorney or Notary Public

45 b. At the conclusion of the sheriff's sale, the attorney for the
46 plaintiff shall prepare and deliver to the sheriff a deed which shall
47 be in the form provided pursuant to paragraph **[(6)]** (9) of

1 subsection a. of this section for the sheriff's execution and the deed
2 shall be delivered to the sheriff within 10 days of the date of the
3 sale. The sheriff shall be entitled to the authorized fee, as a review
4 fee, even if the plaintiff's attorney prepares the deed.

5 c. (1) The sheriff's office shall, within two weeks of the date
6 of the sale, deliver a fully executed deed to the successful bidder at
7 the sale provided that the bidder pays the balance of the monies due
8 to the Sheriff by either cash or certified or cashier's check. In the
9 event a bid is satisfied after the expiration and additional interest is
10 collected from the successful bidder, the sheriff shall remit to the
11 plaintiff the total amount, less any fees, costs and commissions due
12 the sheriff, along with the additional interest.

13 (2) Notwithstanding the provisions of paragraph (1) of this
14 subsection, in the case of residential property in which the
15 successful bidder is permitted to pay a 3.5 percent deposit upon the
16 conclusion of the foreclosure sale pursuant to ¹【the provisions of
17 this section】 subparagraph (b) of paragraph (7) of subsection a. of
18 this section¹, no interest shall accrue on the balance of the sale of
19 the property until 60 business days have passed following the date
20 of the sale, and thereafter, the successful bidder shall have 30
21 business days to fulfill the balance. If the successful bidder fails to
22 fulfill the balance within this 90 business day period, the bidder
23 shall forfeit the deposit on the property and shall be responsible for
24 the payment of accrued interest incurred as a result of the sale being
25 void, unless the failure to fulfill the balance is due to the bidder's
26 inability to close a mortgage through no fault of their own, which
27 includes, but is not limited to, the appraised value of the property
28 being less than the purchase value of the property or the financial
29 institution denying financing, in which case the bidder shall be
30 refunded the deposit on the property and shall be responsible only
31 for the payment of accrued interest. In addition, if a successful
32 bidder fails to fulfill the balance within this 90 business day period,
33 any subsequent foreclosure sale involving the same residential
34 property and the same foreclosing plaintiff and foreclosed upon
35 defendant shall be subject to the procedures set forth in
36 subparagraph (a) of paragraph ³【(5)】 (7)³ of subsection a. of this
37 section and there shall be no right of first or second refusal pursuant
38 to subsections d. and g. of this section.

39 d. In the case of a foreclosed residential property where the
40 foreclosed upon defendant is an individual and not a corporate
41 entity, if the foreclosed upon defendant, next of kin of the
42 foreclosed upon defendant, or tenant of the foreclosed upon
43 property has secured financing or assets sufficient to meet terms
44 offered by the foreclosing plaintiff or an alternative financial
45 institution to purchase the property, the foreclosed upon defendant,
46 next of kin of the foreclosed upon defendant, or tenant shall have

1 the right of first refusal to purchase the property ¹~~in the amount~~
2 approved for the opening bid of the sheriff's sale at the time of the
3 sale ~~for the original upset price listed in the notice provided~~
4 pursuant to subparagraph a. of paragraph (5) of subsection a. of this
5 section^{1 3}, or at the final starting upset price listed for the sale of the
6 property, whichever is less³. The right of first refusal shall only be
7 made available to the foreclosed upon defendant, next of kin of the
8 foreclosed upon defendant, or tenant for the initial sale of the
9 foreclosed upon property, unless the sale is delayed¹~~[,] or~~¹
10 postponed ¹~~or concludes with the foreclosing plaintiff purchasing~~
11 the property¹, upon which the foreclosed upon defendant, next of
12 kin of the foreclosed upon defendant, or tenant shall ¹~~receive a~~
13 retain the¹ right of first refusal ¹~~for the subsequent sale of the~~
14 foreclosed upon property ~~for the rescheduled date of sale~~¹. Such
15 right shall be deemed exercised if, prior to the opening of the
16 bidding on the foreclosed property, the foreclosed upon defendant,
17 next of kin of the foreclosed upon defendant, or tenant pays a 3.5
18 percent deposit ³ ~~pursuant to the provisions of this section~~¹³ with
19 the rest of the balance due within 90 business days ³, pursuant to the
20 provisions of this section,³ by cash, certified or cashier's check, or
21 by wire transfer, made payable to the sheriff of the county in which
22 the sale is conducted or to the Special Master, if the sheriff cannot
23 comply with the provisions of subparagraph (a) of paragraph (3) of
24 subsection a. of this section.

25 e. A bidder²~~[,]~~² who is permitted to pay a 3.5 percent deposit
26 upon the conclusion of the foreclosure sale pursuant to the
27 provisions of this section²~~[,]~~² may purchase residential property at
28 a sheriff's sale by way of financing if the bidder provides
29 documentation that the bidder has been pre-approved by a financial
30 institution regulated by the Department of Banking and Insurance or
31 by a federal banking agency, as defined by section 3 of the "New
32 Jersey Residential Mortgage Lending Act," P.L.2009, c.53
33 (C.17:11C-53), for financing a residential property.

34 (1) A bidder who is permitted to pay a 3.5 percent deposit upon
35 the conclusion of the foreclosure sale pursuant to the provisions of
36 this section and intends to finance the purchase of residential
37 property at a sale shall be:

38 (a) ³preapproved for the amount of the original upset price listed
39 in the notice provided pursuant to subparagraph a. of paragraph (5)
40 of subsection a. of this section or the final starting upset price listed
41 for the sheriff's sale of the property, whichever is less;

42 (b)³ limited to submitting bids no higher than the amount for
43 which the bidder has been pre-approved for financing; and

44 ³~~(b)~~ (c)³ if the bidder is an individual, required to present
45 current and valid photo identification that substantially conforms to

1 the name and information contained on the financing pre-approval
2 forms obtained by the bidder.

3 (2) ³[To be] A tenant or³ a successful bidder ³[who is not the
4 plaintiff, and]³ who intends to occupy the property ³for 84 months,³
5 and ³[finance] finances³ the purchase of the property ³[, the
6 bidder] and pays a 3.5 percent deposit pursuant to the provisions of
7 this section,³ shall have received eight hours of homebuyer
8 education and counseling through a United States Department of
9 Housing and Urban Development (HUD) certified housing
10 counseling agency, and shall present a certificate of completion or
11 proof of enrollment in that program to the sheriff.

12 (3) To ensure that the provisions of this section only apply to a
13 foreclosed upon defendant or next of kin of the foreclosed upon
14 defendant who has entered foreclosure proceedings due to
15 circumstances outside of the foreclosed upon defendant's control,
16 subsections d. through f. of this section shall only apply to a
17 foreclosed upon defendant or next of kin of the foreclosed upon
18 defendant that demonstrates to the foreclosing plaintiff that the
19 foreclosed upon defendant experienced:

20 (a) financial hardship;

21 (b) a physical or mental illness preventing the foreclosed upon
22 defendant from earning an income;

23 (c) divorce or legal separation;

24 (d) proof of death of the foreclosed upon defendant, or the
25 foreclosed upon defendant's spouse, or child; or

26 (e) predatory loan practices.

27 Any information provided under this paragraph shall be provided
28 at the request of the foreclosing plaintiff prior to the date of sale for
29 the foreclosing property and shall not conflict with subparagraph
30 (b) of paragraph (5) of subsection a. of this section.

31 (4) If a bidder intending to finance the purchase of the
32 residential property is a current tenant, the tenant shall provide
33 documentation confirming:

34 (a) that the tenant has resided at the property for at least a year;
35 and

36 (b) that the tenant is not in arrears with rent payments as of the
37 date the foreclosed upon defendant received a notice of foreclosure
38 from the foreclosing plaintiff.

39 (5) To prove the residency requirement pursuant to
40 subparagraph (a) of paragraph (4) of this subsection, the tenant shall
41 also be required to present at least two current and valid forms of
42 identification that substantially conform to the name and property
43 address contained in the tenant's lease agreement, which shall
44 include but not be limited to:

45 (a) a driver's license issued by the New Jersey Motor Vehicle
46 Commission;

- 1 (b) a utility bill;
- 2 (c) a checking or savings account statement from a bank or credit
3 union issued at least 60 days prior to submitting documentation
4 required pursuant to this subparagraph;
- 5 (d) a statement, receipt, or letter of correspondence from a
6 federal, State, or local government office delivered at least one year
7 prior to submitting documentation required pursuant to this
8 subparagraph; or
- 9 (e) any other form of identification that the sheriff deems valid
10 pursuant to this paragraph.
- 11 (6) A tenant shall be allowed to purchase residential property
12 pursuant to this subsection if a foreclosed upon defendant or next of
13 kin of the foreclosed upon defendant decides not to participate in
14 the sheriff's sale ³ [, enter into an agreement with a nonprofit
15 community development corporation pursuant to subsection f. of
16 this section,]³ or ³ [fail to secure financing or assets sufficient to
17 meet the terms offered by the foreclosing plaintiff or an alternative
18 financial institution to purchase the property] exercise the
19 provisions of P.L. , c. (C.) (pending before the Legislature
20 as this bill)³. A tenant shall have up to ² [45] 90 business² days to
21 purchase the residential property after successfully bidding for the
22 property.
- 23 (7) With exception to the foreclosed upon defendant, the
24 foreclosed upon defendant's next of kin, or a nonprofit community
25 development corporation, an individual bidder purchasing
26 residential property in a sheriff's sale pursuant to this subsection
27 shall be required ¹ [by the financial institution]¹ to occupy the
28 property as the bidder's primary residence for a fixed term of at
29 least 84 months after taking possession. The deed for the property
30 shall clearly state that the property may not be sold for 84 months
31 from the date of the sheriff's sale, except pursuant to the exceptions
32 permitting a successful bidder to vacate the property prior to
33 residing in the property for 84 months in paragraph (8) of this
34 subsection.
- 35 (8) With exception to the foreclosed upon defendant, the
36 foreclosed upon defendant's next of kin, or a nonprofit community
37 development corporation, a successful individual bidder who
38 finances the purchase pursuant to this subsection and does not
39 occupy the residence for a period of at least 84 months shall be
40 assessed a fine by a court of competent jurisdiction up to \$100,000
41 for the first violation, and \$500,000 thereafter for each subsequent
42 violation. These penalties shall not be assessed against a bidder
43 who finances the purchase with good faith and intent and is
44 thereafter required to vacate the property prior to residing in the
45 property for 84 months due to:
- 46 (a) death of the bidder or the bidder's spouse or child;

- 1 (b) disability of the bidder or a member of the bidder's
2 household;
- 3 (c) divorce;
- 4 (d) legal separation;
- 5 (e) military deployment;
- 6 (f) a change in employment of the bidder or a member of the
7 bidder's household that results in a reduction in income or a need to
8 move out-of-state;
- 9 (g) a change in the number of permanent residents of the
10 household due to: the birth or adoption of a child; or the permanent
11 relocation of an elder into the household, as proved by a note from
12 the doctor or social worker of the elder;
- 13 (h) a need to move to care for a family member for a period of
14 at least six months, as evidenced by: an address change; and a note
15 from the family member in need of care, the doctor of the family
16 member, or the social worker for the family member; or
- 17 (i) foreclosure.
- 18 ³A bidder who finances the purchase of the residential property
19 in good faith and intent and is thereafter required to vacate the
20 property prior to residing in the property for 84 months pursuant to
21 paragraph (8) of this subsection shall retain the deed to the property
22 until the deed is transferred.³
- 23 In the event of the death of a successful bidder, the property may
24 be transferred to another owner in accordance with applicable laws
25 governing estate, inheritance, and probate matters and the
26 occupancy requirement shall be extinguished.
- 27 ³A fraudulent violation of subparagraphs (a) through (i) of this
28 paragraph by a bidder shall be an unlawful practice and a violation
29 of P.L.1960, c.39 (C.56:8-1 et seq.).³
- 30 f. If the foreclosed upon defendant, next of kin of the
31 foreclosed upon defendant, or tenant of the foreclosed upon
32 property fails to secure financing or assets sufficient to meet the
33 terms offered by the foreclosing plaintiff or an alternative financial
34 institution to purchase the residential property, the foreclosed upon
35 defendant, next of kin of the foreclosed upon defendant, or tenant
36 may request that a nonprofit community development corporation
37 purchase the property. If the nonprofit community development
38 corporation agrees in writing to purchase the property ²~~from~~ ²for²
39 the foreclosed upon defendant, next of kin of the foreclosed upon
40 defendant, or tenant ³to reside in³, the corporation shall:
- 41 (1) allow the foreclosed upon defendant, next of kin of the
42 foreclosed upon defendant, or tenant to reside at the property for a
43 period of time as agreed upon in paragraph (2) of this subsection;
44 and
- 45 (2) negotiate with the foreclosed upon defendant, next of kin of
46 the foreclosed upon defendant, or tenant on an affordable lease

1 schedule that shall include an option to purchase the property from
2 the corporation.

3 g. In the case of a foreclosed residential property, a nonprofit
4 community development corporation, that has a written agreement
5 with a foreclosed upon defendant, next of kin of the foreclosed
6 upon defendant, or tenant of the foreclosed upon property pursuant
7 to subsection f. of this section, shall have a right of second refusal
8 to purchase the property which is subordinate to the first right of
9 refusal provided to a foreclosed upon defendant, next of kin of the
10 foreclosed upon defendant, or tenant pursuant to subsection d. of
11 this section. If the foreclosed upon defendant, next of kin of the
12 foreclosed upon defendant, or tenant decides not to participate in
13 the sheriff's sale, enter into an agreement with the corporation
14 pursuant to subsection f. of this section, or ²~~fail~~ fails² to secure
15 financing or assets sufficient to meet the terms offered by the
16 foreclosing plaintiff or an alternative financial institution to
17 purchase the property, a nonprofit community development
18 corporation shall have the right of second refusal to purchase the
19 property in the amount approved for the ³~~opening bid~~ final
20 starting upset price on the day³ of the sheriff's sale at the time of
21 the sale. Such right shall be deemed exercised if, prior to the
22 opening of the bidding on the foreclosed property, the corporation
23 pays a 3.5 percent deposit with the rest of the balance due within 90
24 business days by cash, certified or cashier's check, or by wire
25 transfer, made payable to the sheriff of the county in which the sale
26 is conducted or to the Special Master, if the sheriff cannot comply
27 with the provisions of subparagraph (a) of paragraph (3) of
28 subsection a. of this section. A nonprofit community development
29 corporation shall only have a right of second refusal to purchase the
30 property if it satisfies the requirements set forth in subsection h. of
31 this section and fulfills the conditions set forth in subsection j. of
32 this section.

33 h. (1) If a foreclosed upon defendant, next of kin of the
34 foreclosed upon defendant, or tenant of the foreclosed upon
35 property does not participate in the sheriff's sale, secure financing
36 or assets sufficient to meet the terms offered by the foreclosing
37 plaintiff or an alternative financial institution, or enter into
38 agreement with a nonprofit community development corporation
39 pursuant to subsection f. of this section, the nonprofit community
40 development corporation may enter a bid for the foreclosed upon
41 residential property.

42 (2) A nonprofit community development corporation intending
43 to bid in a sheriff's sale for residential property and pay a 3.5
44 percent deposit as permitted by this section shall, on the date of the
45 sheriff's sale, register its participation with the sheriff or Special
46 Master if the sheriff cannot comply with the provisions of
47 paragraph (3) of subsection a. of this section. In registering its

1 participation in the sale, a corporation shall provide the most recent
2 form 1023 filing provided to the United States Internal Revenue
3 Service, stating the corporation's mission includes community
4 revitalization and the creation or preservation of affordable housing
5 through the restoration of vacant and abandoned property.

6 i. (1) If more than one nonprofit community development
7 corporation seeks to exercise the right of second refusal, the right
8 shall belong in the first instance to a nonprofit community
9 development corporation that fulfills the conditions set forth in
10 subsection f. of this section. If no such nonprofit community
11 development corporation exists, priority shall belong to the
12 nonprofit community development corporation that first registers its
13 participation in the foreclosure sale pursuant to paragraph (2) of
14 subsection h. of this section.

15 (2) If an individual or nonprofit community development
16 corporation exercises a right of first or second refusal pursuant to
17 subsection d. or f. of this section, the foreclosure sale shall be
18 deemed concluded and the person or corporation shall be deemed to
19 be the successful bidder and shall be subject to the applicable
20 provisions and procedures of this section.

21 j. (1) A nonprofit community development corporation that
22 successfully bids on the purchase of a residential property in a
23 sheriff's sale and satisfies the conditions set forth in subsection h.
24 of this section shall be subject to the fines assessed pursuant to
25 paragraph (3) of this subsection if the nonprofit corporation does
26 not:

27 (a) restore as need be and sell the property to a household
28 earning no more than 120 percent below area median income or rent
29 the property as an affordable housing unit to a household who earns
30 no more than 100 percent below area median income, if the
31 property is vacant or abandoned at the time of the sheriff's sale; or

32 (b) if the property is occupied at the time of sale by either a
33 tenant or the foreclosed upon defendant with whom the nonprofit
34 community development corporation does not already have an
35 agreement pursuant to subsection f. of this section, the nonprofit
36 community development corporation shall negotiate in good faith
37 with the foreclosed upon defendant or tenant on an affordable lease
38 schedule that will allow the foreclosed upon defendant or tenant to
39 continue to occupy the property should the foreclosed upon
40 defendant or tenant desire to do so. If after 120 business days the
41 foreclosed upon defendant or tenant does not respond to the
42 requests of the nonprofit community development corporation to
43 negotiate, the corporation may bring an action in a court of
44 competent jurisdiction to remove the foreclosed upon defendant or
45 tenant. If removal has successfully occurred, the nonprofit
46 community development corporation shall comply with the

1 requirements of subparagraph (a) of paragraph (1) of this
2 subsection.

3 (2) A nonprofit community development corporation that
4 successfully bids on the purchase of a residential property and
5 satisfies the conditions set forth in subsection f. of this section shall
6 ensure that, in any future sale of the property pursuant to
7 subparagraph (a) of paragraph (1) of this subsection, the property be
8 subject to a renewable deed restriction, with the minimum number
9 of affordability years being 30 years and with the option to renew,
10 requiring any future property owner to sell the property to a
11 household earning no more than 120 percent below area median
12 income or rent the property as an affordable housing unit to a
13 household who earns no more than 100 percent below area median
14 income.

15 (3) A nonprofit community development corporation that
16 successfully bids on and completes the purchase of a residential
17 property in a sheriff's sale and satisfies the conditions set forth in
18 subsection f. of this section and fails to meet the requirements of
19 this subsection shall be assessed a fine by a court of competent
20 jurisdiction of up to \$100,000 for the first violation, and \$500,000
21 thereafter for each subsequent violation. If the 'appropriate'
22 sheriff's office', county administrative agent, or affordable housing
23 administrative agent that is hired by the county' determines based
24 upon its oversight that there has been a violation of this subsection,
25 the sheriff's office', county administrative agent, or affordable
26 housing administrative agent' shall bring an action in a court of
27 competent jurisdiction so that the sheriff's office', county
28 administrative agent, or affordable housing administrative agent'
29 can pursue enforcement of penalties for the violation. If the
30 nonprofit community development corporation dissolves, the deed
31 of the residential property shall be transferred to another nonprofit
32 community development corporation who shall be bound by the
33 requirements of this subsection.

34 k. In the case of a residential property for which the successful
35 bidder is subject to the occupancy requirement pursuant to
36 paragraphs (7) and (8) of subsection e. of this section, the
37 appropriate sheriff's office, county administrative agent, or
38 affordable housing administrative agent that is hired by the county
39 shall oversee the occupancy of the property, which may include the
40 mailing of a questionnaire to the successful bidder within 84
41 months following the sale or requiring the bidder to respond to
42 questions and submit documentation evidencing the bidder's
43 continued residence at the property using the proof of residency
44 documents provided pursuant to paragraph (5) of subsection e. of
45 this section. If the appropriate sheriff's office, county
46 administrative agent, or affordable housing administrative agent

1 that is hired by the county determines based upon its oversight that
2 there has been an occupancy violation, the sheriff's office, county
3 administrative agent, or affordable housing administrative agent
4 hired by the county shall refer the matter to the county counsel's
5 office to bring an action in a court of competent jurisdiction so that
6 the sheriff's office can pursue enforcement of penalties for the
7 violation.

8 l. Each sheriff's office shall maintain information, written in
9 plain language, regarding the program to finance the purchase of
10 residential property in a foreclosure sale in accordance with this
11 section on its Internet website, and in any other medium used by the
12 office to advertise a foreclosure sale, in a manner that is accessible
13 to the public. Additionally, each sheriff's office shall display
14 information, written in plain language, regarding the Community
15 Wealth Preservation Program in its office in a manner that is
16 conspicuous to the public. The information posted on a sheriff's
17 Internet website or displayed in a sheriff's office concerning the
18 program shall further contain language notifying the public that the
19 program shall exclude those purchasing property for investment
20 purposes. For any county in which the primary language of 10
21 percent or more of the residents is a language other than English,
22 the sheriff's office shall provide the information required by this
23 subsection in that other language or languages in addition to
24 English. The alternate language shall be determined based on
25 information from the latest federal decennial census.

26 m. Any sheriff's sales conducted virtually shall be subject to the
27 provisions of P.L. , c. (C.) (pending before the Legislature
28 as this bill).

29 n. Any penalty imposed pursuant to this section may be
30 recovered with costs in a summary proceeding commenced by the
31 appropriate sheriff's office pursuant to the "Penalty Enforcement
32 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Fifty percent
33 of any monies collected pursuant to this section shall be forwarded
34 to the municipality in which the foreclosed upon property is located
35 to be deposited in the affordable housing trust fund of the
36 municipality for use on low income housing or moderate income
37 housing needs as defined in section 4 of P.L.1985, c.222
38 (C.52:27D-304), to the extent the municipality maintains such a
39 fund, and if the municipality does not maintain such a fund, to the
40 State Treasurer, and shall annually be appropriated to the "New
41 Jersey Affordable Housing Trust Fund," section 20 of P.L.1985,
42 c.222 (C.52:27D-320) for the purpose of developing and supporting
43 housing programs that create for-sale and rental affordable housing.
44 The remaining 50 percent of any monies collected pursuant to this
45 section shall provide for administrative and enforcement costs,
46 including costs incurred by the appropriate sheriff's office, county

1 administrative agent, or county counsel's office, necessary to
 2 effectuate the purposes of this section.

3 o. The provisions of P.L. , c. (C.) (pending before the
 4 Legislature as this bill) shall only apply to residential property as
 5 defined pursuant to subsection p. of this section.

6 p. As used in this section:

7 "Area median income" means the midpoint of a region's
 8 household income distribution, as determined by the United States
 9 Department of Housing and Urban Development.

10 "Community Wealth Preservation Program" means the program
 11 created by P.L. , c. (C.) (pending before the Legislature as
 12 this bill) to assist prospective owner-occupants, nonprofit
 13 community development corporations, foreclosed upon defendants,
 14 next of kin of foreclosed upon defendants, and tenants of foreclosed
 15 upon defendants in purchasing and financing foreclosed upon
 16 residential properties in sheriff's sales with an initial 3.5 percent
 17 deposit.

18 "Nonprofit community development corporation" means a not-
 19 for-profit organization, whose mission includes community
 20 revitalization through the restoration of vacant and abandoned
 21 property to create or preserve affordable housing, as indicated in the
 22 corporation's most recent form 1023 filing provided to the United
 23 States Internal Revenue Service.

24 "Residential property" means real property located in this State
 25 ²[in which people reside or dwell as their primary residence,]
 26 which is utilized as a primary residence or dwelling,² and shall not
 27 include ²any real² property which is ²[used] acquired² for
 28 investment, commercial, or business purposes or ²[residential]
 29 real² property containing more than four residential units.

30 "Upset price" means the minimum amount that a foreclosed upon
 31 property shall be sold for in a sheriff's sale as determined by the
 32 foreclosing plaintiff.

33 (cf: P.L.2019, c.71, s.1)

34

35 2. N.J.S.22A:4-8 is amended to read as follows:

36 22A:4-8. For the services hereinafter enumerated sheriffs and
 37 other officers shall receive the following fees:

38 In addition to the mileage allowed by law, for serving every
 39 summons and complaint, attachment or any mesne process issuing out
 40 of the Superior Court, the sheriff or other officer serving such process
 41 shall, for the first defendant or party on whom such process is served,
 42 be allowed \$22.00 and, for service on the second defendant named
 43 therein, \$20.00, and for serving such process on any other defendant or
 44 defendants named therein, \$16.00 each, and no more. If a man and his
 45 wife be named in such process they shall be considered as one
 46 defendant, except where they are living separate and apart.

1 Serving summons and complaint in matrimonial actions, in
2 addition to mileage, \$22.00.

3 Serving capias ad respondendum, capias ad satisfaciendum,
4 warrant of commitment, writ of ne exeat, in addition to mileage,
5 \$48.00.

6 Serving order to summon juries and return, \$8.00.

7 Serving every execution against goods or lands and making an
8 inventory and return, in addition to mileage, \$48.00.

9 For returning every writ, \$2.00.

10 Executing every writ of possession and return, in addition to
11 mileage, \$48.00.

12 Executing every writ of attachment, sequestration or replevin
13 issuing out of any of the courts, in addition to mileage, \$48.00.

14 For serving each out-of-State paper, in addition to the mileage
15 allowed by law, \$25.00 for the first defendant on whom such paper is
16 served, \$20.00 for service on the second defendant named therein, and
17 \$16.00 for serving such paper on any other defendant or defendants
18 named therein. If a man and wife be named in such paper, they shall be
19 considered as one defendant, except where they are living separate and
20 apart.

21 For serving or executing any process or papers where mileage is
22 allowed by law, the officer shall receive mileage actually traveled to
23 and from the courthouse, at the rate per mile of \$0.16.

24 The sheriff shall be entitled to retain out of all moneys collected or
25 received by him on a forfeited recognizance, whether before or after
26 execution, or from amercements, or from fines and costs on
27 conviction, on indictment or otherwise, whether such moneys are
28 payable to the State or to the county treasurer of the county wherein
29 conviction was had, **[5%]** five percent.

30 For transporting each offender to the State Prison, per mile, but not
31 less than \$3.00 for each offender, to be certified by the keeper of the
32 prison and the certificate to be delivered to the county treasurer of the
33 county where the conviction was had, \$0.23.

34

35 EXECUTION SALES

36

37 **[When]** ¹Except as to sales conducted in accordance with
38 section 12 of P.L.1995, c.244 (C.2A:50-64), when a sale is made by
39 virtue of an execution the sheriff shall be entitled to charge the
40 following fees: On all sums not exceeding \$5,000.00, **[6%]** 10
41 percent; on all sums exceeding \$5,000.00 on such excess, **[4%]** five
42 percent; the minimum fee to be charged for a sale by virtue of an
43 execution, **[\$50.00]** \$150.00. **When sales are]** On a sale¹ conducted
44 in accordance with section 12 of P.L.1995, c.244 (C.2A:50-64), the
45 sheriff shall be entitled to charge six percent on a sale by virtue of an

1 execution ¹; however, if a sale reverts to the foreclosing plaintiff, the
2 fee to be charged on a sale by virtue of an execution shall be \$150.00.

3 When a sale is made by virtue of an execution and is not conducted
4 in accordance with section 12 of P.L.1995, c.244 (C.2A:50-64), the
5 sheriff shall be entitled to charge the following fees:

6 On all sums not exceeding \$5,000.00, 10 percent; on all sums
7 exceeding \$5,000.00 on such excess, five percent; the minimum fee to
8 be charged for a sale by virtue of an execution, \$150.00. ¹ ²However, if
9 a sale reverts to the foreclosing plaintiff, the fee to be charged on a
10 sale by virtue of an execution shall be \$150.00. ²

11 On an execution against wages, commissions and salaries, the
12 sheriff shall charge the same percentage fees on all sums collected as
13 those percentage fees applicable in cases wherein an execution sale is
14 consummated.

15 When the execution is settled without actual sale and such
16 settlement is made manifest to the officer, the officer shall receive
17 **[1/2]** one-half of the amount of percentage allowed herein in case of
18 sale.

19 Making statement of execution, sales and execution fees, \$10.00.

20 Advertising the property for sale, provided the sheriff or deputy
21 sheriff attend in pursuance of the advertisement, \$20.00.

22 Posting property for sale, \$20.00. For the crier of the vendue, when
23 the sheriff proceeds to sell, for every day he shall be actually
24 employed in such sale, \$5.00.

25 Every adjournment of a sale, but no more than one adjournment
26 shall be allowed, and if the sheriff shall have several executions
27 against a defendant, he shall only be allowed for advertising, attending
28 and adjourning, as if he had but one execution, \$28.00.

29 Drawing and making a deed to a purchaser of real property,
30 \$75.00.

31 Drawing and making a bill of sale to the purchaser of personal
32 property when such bill of sale is required or demanded, \$20.00.

33 When more than one execution shall be issued out of the Superior
34 Court upon any judgment, each sheriff to whom such execution shall
35 be directed and delivered shall be entitled to collect and receive from
36 the defendant named in such execution the fees allowed by law for
37 making a levy and return and statement thereon, or for such other
38 services as may be actually performed by him, and the sheriff who
39 shall collect the amount named in said execution or any part thereof,
40 shall be entitled to the legal percentage upon whatever amount may be
41 so collected by him, but in case any such judgment shall be settled
42 between the parties and the amount due thereon shall not be collected
43 by either sheriff, then the percentage on the amount collected which
44 would be due the sheriff thereon in case only one execution had been
45 issued shall be equally divided among the several sheriffs in whose
46 hands an execution in the same cause may have been placed.

1 The sheriff shall file his taxed bill of costs with the clerk of the
2 court out of which execution issued, within such time as the court shall
3 direct by general rule or special order, or, in default thereof, he shall
4 not be entitled to any costs. If any sheriff shall charge in such bill of
5 costs for services not done, or allowed by law, or shall take any greater
6 fee or reward for any services by him done than is or shall be allowed
7 by law, he shall be liable for the damages sustained by the party
8 aggrieved including a penalty of \$30.00, to be recovered in a summary
9 manner, in the action or proceeding wherein the execution was issued
10 or otherwise.

11 (cf: P.L.2001, c.370, s.5)

12

13 3. (New section) a. In situations in which a creditor has
14 instituted a foreclosure proceeding pursuant to the “Fair Foreclosure
15 Act,” P.L.1995, c.244 (C.2A:50-53 et seq.) and a creditor employs
16 an agent to be responsible for the care, maintenance, security, and
17 upkeep of the property if it becomes vacant and abandoned, the
18 creditor and agent who peacefully enter the property and exercise
19 reasonable care in doing so, shall be immune from liability, before
20 and after the bid, for any damage to the property or any person
21 entering the property.

22 b. Persons bidding on the property shall not enter the property
23 prior to the time of sale of the property to the successful bidder.

24

25 4. This act shall take effect immediately.

26

27

28

29

30 Establishes “Community Wealth Preservation Program”; expands
31 access for certain buyers to purchase property from sheriff’s sales.

ASSEMBLY, No. 5664

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 26, 2023

Sponsored by:

Assemblywoman BRITNEE N. TIMBERLAKE
District 34 (Essex and Passaic)

Co-Sponsored by:

Assemblywoman Piperno

SYNOPSIS

Establishes “Community Wealth Preservation Program”; expands access for certain buyers to purchase property from sheriff’s sales.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/11/2023)

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2

1 AN ACT concerning sheriff's sales and amending and
2 supplementing P.L.1995, c.244, and amending N.J.S.22A:4-8.

3

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

6

7 1. Section 12 of P.L.1995, c.244 (C.2A:50-64) is amended to
8 read as follows:

9 12. a. With respect to the sale of a mortgaged premises under
10 foreclosure action, each sheriff in this State shall provide for, but
11 not be limited to, the following uniform procedures:

12 (1) Bidding in the name of the assignee of the foreclosing
13 plaintiff.

14 (2) That adjournment of the sale of the foreclosed property shall
15 be in accordance with N.J.S.2A:17-36.

16 (3) (a) The sheriff shall conduct a sale within 150 days of the
17 sheriff's receipt of any writ of execution issued by the court in any
18 foreclosure proceeding.

19 (b) If it becomes apparent that the sheriff cannot comply with
20 the provisions of subparagraph (a) of this paragraph (3), the
21 foreclosing plaintiff may apply to the office for an order appointing
22 a Special Master to hold the foreclosure sale.

23 (c) Upon the foreclosing plaintiff making such application to the
24 office, the office shall issue the appropriate order appointing a
25 Special Master to hold the foreclosure sale. The office may issue
26 the order to appoint a Special Master to hold foreclosure sales for
27 one or more properties within a vicinage.

28 (4) That notice for the sale of a foreclosed upon residential
29 property be mailed to the primary address of the foreclosed upon
30 defendant and to the address of the foreclosed upon residential
31 property. Notice of the sale shall be mailed in an envelope that
32 plainly states on its exterior that the envelope is a notice for the sale
33 of the foreclosed upon residential property.

34 (5) (a) That notice of the final upset price for the sale of a
35 foreclosed upon residential property be provided at least four weeks
36 prior to the sheriff's sale and posted on the Internet website of the
37 sheriff's office and on any other medium used to provide notice of
38 the sheriff's sale. The final upset price provided on the day of the
39 sheriff's sale shall not differ from the final upset price provided in
40 the notice; and

41 (b) Prior to providing the final upset price to the sheriff's office
42 pursuant to subparagraph (a) of this paragraph, the foreclosing
43 plaintiff or agent of the foreclosing plaintiff shall be prohibited
44 from contacting the foreclosed upon defendant, next of kin of the
45 foreclosed upon defendant, or a nonprofit community development
46 corporation to inquire whether the foreclosed upon defendant, next

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 of kin, or nonprofit community development corporation intends to
2 participate in the sheriff's sale for the foreclosed upon property or
3 exercise the provisions of P.L. , c. (C.) (pending before the
4 Legislature as this bill).

5 (6) Prior to the sale of residential property, the foreclosing
6 plaintiff shall disclose, if known, whether the property is vacant,
7 tenant-occupied, or owner-occupied. If the property is vacant, the
8 foreclosing plaintiff shall provide the successful bidder access to
9 the property if the foreclosing plaintiff has such access and may
10 condition access by the successful bidder on being accompanied by
11 a representative of the foreclosing plaintiff.

12 (7) (a) Except as otherwise provided in subparagraphs (b) and
13 (c) of this paragraph, the successful bidder at the sheriff's sale shall
14 pay a 20 percent deposit in either cash or by a certified or cashier's
15 check, made payable to the sheriff of the county in which the sale is
16 conducted, immediately upon the conclusion of the foreclosure sale.

17 (b) In the case of residential property in which the successful
18 bidder is the foreclosed upon defendant, next of kin, tenant,
19 nonprofit community development corporation, or a bidder who
20 shall occupy the property as the bidder's primary residence for a
21 period of at least 84 months, the successful bidder who has fulfilled
22 the requirements set forth in subsection e. of this section shall pay a
23 3.5 percent deposit with the rest of the balance due within 90
24 business days by cash, certified or cashier's check, or by wire
25 transfer, made payable to the sheriff of the county in which the sale
26 is conducted or to the Special Master, if the sheriff cannot comply
27 with the provisions of subparagraph (a) of paragraph (3) of this
28 subsection, immediately upon the conclusion of the foreclosure
29 sale.

30 (c) If the successful bidder cannot satisfy **[this]** the requirement
31 of this paragraph that is applicable to the bidder, or the applicable
32 requirement of this paragraph respectively, the bidder shall be in
33 default and the sheriff shall immediately void the sale and proceed
34 further with the resale of the premises without the necessity of
35 adjourning the sale, without renotification of any party to the
36 foreclosure and without the republication of any sales notice. Upon
37 such resale, the defaulting bidder shall be liable to the foreclosing
38 plaintiff for any additional costs incurred by such default including,
39 but not limited to, any difference between the amount bid by the
40 defaulting bidder and the amount generated for the foreclosing
41 plaintiff at the resale. In the event the plaintiff is the successful
42 bidder at the resale, the plaintiff shall provide a credit for the fair
43 market value of the property foreclosed.

44 **[(5)] (8)** It is permissible, upon consent of the sheriff
45 conducting the sheriff's sale, that it shall not be necessary for an
46 attorney or representative of the person who initiated the

1 foreclosure to be present physically at the sheriff's sale to make a
2 bid. A letter containing bidding instructions may be sent to the
3 sheriff in lieu of an appearance.

4 **[(6)] (9)** That each sheriff's office shall use, and the plaintiff's
5 attorney shall prepare and submit to the sheriff's office, a deed
6 which shall be in substantially the following form:

7 THIS INDENTURE,
8 made this (date) day of (month),
9 (year). Between (name), Sheriff of the County
10 of (name) in the State of New Jersey, party of the first
11 part and (name(s)) party of the
12 second part, witnesseth.

13 WHEREAS, on the (date) day of
14 (month), (year), a certain Writ of Execution was issued out of
15 the Superior Court of New Jersey, Chancery Division-
16 (name) County, Docket No. directed and delivered to the
17 Sheriff of the said County of (name) and which said
18 Writ is in the words or to the effect following that is to say:

19 THE STATE OF NEW JERSEY to the Sheriff of the County of
20 (name),
21 Greeting:

22 WHEREAS, on the (date) day of (month),
23 (year), by a certain judgment made in our Superior Court
24 of New Jersey, in a certain cause therein pending, wherein the
25 PLAINTIFF is:

26
27
28

29 and the following named parties are the DEFENDANTS:
30
31
32

33 IT WAS ORDERED AND ADJUDGED that certain mortgaged
34 premises, with the appurtenances in the Complaint, and Amendment
35 to Complaint, if any, in the said cause particularly set forth and
36 described, that is to say: The mortgaged premises are described as
37 set forth upon the RIDER ANNEXED HERETO AND MADE A
38 PART HEREOF.

39 BEING KNOWN AS Tax Lot (number) in
40 Block (number) COMMONLY KNOWN AS
41 (street address)

42 TOGETHER, with all and singular the rights, liberties, privileges,
43 hereditaments and appurtenances thereunto belonging or in anywise
44 appertaining, and the reversion and remainders, rents, issues and
45 profits thereof, and also all the estate, right, title, interest, use,
46 property, claim and demand of the said defendants of, in, to and out

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1 of the same, to be sold, to pay and satisfy in the first place unto the
2 plaintiff,
3
4
5 the sum of \$ (amount) being the principal, interest and
6 advances secured by a certain mortgage dated (date,
7 month, year) and given by (name) together with
8 lawful interest from
9
10
11
12 until the same be paid and satisfied and also the costs of the
13 aforesaid plaintiff with interest thereon.
14 AND for that purpose a Writ of Execution should issue, directed to
15 the Sheriff of the County of (name) commanding him to
16 make sale as aforesaid; and that the surplus money arising from
17 such sale, if any there be, should be brought into our said Court, as
18 by the judgment remaining as of record in our said Superior Court
19 of New Jersey, at Trenton, doth and more fully appear; and
20 whereas, the costs and Attorney's fees of the said plaintiff have
21 been duly taxed at the following sum: \$ (amount)
22 THEREFORE, you are hereby commanded that you cause to be
23 made of the premises aforesaid, by selling so much of the same as
24 may be needful and necessary for the purpose, the said sum of
25 \$..... (amount) and the same you do pay to the said plaintiff
26 together with contract and lawful interest thereon as aforesaid, and
27 the sum aforesaid of costs with interest thereon.
28 And that you have the surplus money, if any there be, before our
29 said Superior Court of New Jersey, aforesaid at Trenton, within 30
30 days after pursuant to R.4:59-1(a), to abide the further Order of the
31 said Court, according to judgment aforesaid, and you are to make
32 return at the time and place aforesaid, by certificate under your
33 hand, of the manner in which you have executed this our Writ,
34 together with this Writ, and if no sale, this Writ shall be returnable
35 within **[12]** 24 months.
36 WITNESS, the Honorable (name), Judge of the Superior
37 Court at Trenton, aforesaid, the (date) day of
38 (month), (year).
39 /s/ (Clerk)
40 Superior Court of New Jersey
41 /s/.....
42 Attorney for Plaintiff
43 As by the record of said Writ of Execution in the Office of the
44 Superior Court of New Jersey, at Trenton, in Book
45 (number) of Executions, Page (number) etc., may more fully
46 appear.

1 AND WHEREAS I, the said (name), as such
2 Sheriff as aforesaid did in due form of law, before making such sale
3 give notice of the time **[and]**, place, and final upset price of such
4 sale by public advertisement signed by myself, and set up in my
5 office in the (name) Building in
6 (name) County, being the County in which said real estate is situate
7 and also set up at the premises to be sold at least three weeks next
8 before the time appointed for such sale.

9 I also caused such notice to be published four times in two
10 newspapers designated by me and printed and published in the said
11 County, the County wherein the real estate sold is situate, the same
12 being designated for the publication by the Laws of this State, and
13 circulating in the neighborhood of said real estate, at least once a
14 week during four consecutive calendar weeks. One of such
15 newspapers, (name of newspaper) is a newspaper
16 with circulation in (name of town), the County seat of
17 said (name) County. The first publication was at least
18 twenty-one days prior and the last publication not more than eight
19 days prior to the time appointed for the sale of such real estate, and
20 by virtue of the said Writ of Execution, I did offer for sale said land
21 and premises at public vendue at the County (name)
22 Building in (name of town) on the (date)
23 day of, ... (month) (year) at the hour of
24 (time) in the (a.m. or p.m.).

25 WHEREUPON the said party of the second part bidding
26 therefore for the same, the sum of \$..... (amount) and no
27 other person bidding as much I did then and there openly and
28 publicly in due form of law between the hours of (time)
29 and (time) in the (a.m. or p.m.), strike off and sell
30 tracts or parcels of land and premises for the sum of \$
31 (amount) to the said party of the second part being then and there
32 the highest bidder for same. And on the (date) of
33 (month) in the year last aforesaid I did truly report the
34 said sale to the Superior Court of New Jersey, Chancery Division
35 and no objection to the said sale having been made, and by
36 Assignment of Bid filed with the Sheriff of (name)
37 County said bidder assigned its bid to:

38
39
40

41 NOW, THEREFORE, This Indenture witnesseth, that I, the said
42 (name), as such Sheriff as aforesaid under and by the
43 virtue of the said Writ of Execution and in execution of the power
44 and trust in me reposed and also for and in consideration of the said
45 sum of \$ (amount) therefrom acquit, exonerate and
46 forever discharge to the said party of the second part, its successors

1 and assigns, all and singular the said tract or parcel of lands and
2 premises, with the appurtenances, privileges, and hereditaments
3 thereunto belonging or in any way appertaining; to have and hold
4 the same, unto the said party of the second part, its successors and
5 assigns to its and their only proper use, benefit, and behoof forever,
6 in as full, ample and beneficial manner as by virtue of said Writ of
7 Execution I may, can or ought to convey the same.

8 And, I, the said (name), do hereby covenant, promise and
9 agree, to and with the said party of the second part, its successors
10 and assigns, that I have not, as such Sheriff as aforesaid, done or
11 caused, suffered or procured to be done any act, matter or thing
12 whereby the said premises, or any part thereof, with the
13 appurtenances, are or may be charged or encumbered in estate, title
14 or otherwise.

15 IN WITNESS WHEREOF, I the said (name) as such
16 Sheriff as aforesaid, have hereunto set my hand and seal the day and
17 year aforesaid.

18 Signed, sealed and delivered

19 in the presence of

20

21 Attorney at Law of New Jersey(name) Sheriff

22 STATE OF NEW JERSEY) SS.

23(county)

24 I, (name), Sheriff, of the County of (name),
25 do solemnly swear that the real estate described in this deed made
26 to

27

28

29

30 was by me sold by virtue of a good and subsisting execution (or as
31 the case may be) as is therein recited, that the money ordered to be
32 made has not been to my knowledge or belief paid or satisfied, that
33 the time and place of the same of said real estate were by me duly
34 advertised as required by law, and that the same was cried off and
35 sold to a bona fide purchaser for the best price that could be
36 obtained and the true consideration for this conveyance as set forth
37 in the deed is \$ (amount).

38

39 (name), Sheriff

40 Sworn before me, (name), on this (date) day of
41 (month), (year), and I having examined the deed
42 above mentioned do approve the same and order it to be recorded as
43 a good and sufficient conveyance of the real estate therein
44 described.

45 STATE OF NEW JERSEY) ss.

46 (Name) County) Attorney or Notary Public

1 On this (date) day of (month), (year),
2 before me, the subscriber, (name) personally
3 appeared (name), Sheriff of the County of
4 (name) aforesaid, who is, I am satisfied, the grantor in the within
5 Indenture named, and I having first made known to him the contents
6 thereof, he did thereupon acknowledge that he signed, sealed and
7 delivered the same on his voluntary act and deed, for the uses and
8 purposes therein expressed.

9
10 Attorney or Notary Public

11 b. At the conclusion of the sheriff's sale, the attorney for the
12 plaintiff shall prepare and deliver to the sheriff a deed which shall
13 be in the form provided pursuant to paragraph **[(6)] (9)** of
14 subsection a. of this section for the sheriff's execution and the deed
15 shall be delivered to the sheriff within 10 days of the date of the
16 sale. The sheriff shall be entitled to the authorized fee, as a review
17 fee, even if the plaintiff's attorney prepares the deed.

18 c. (1) The sheriff's office shall, within two weeks of the date
19 of the sale, deliver a fully executed deed to the successful bidder at
20 the sale provided that the bidder pays the balance of the monies due
21 to the Sheriff by either cash or certified or cashier's check. In the
22 event a bid is satisfied after the expiration and additional interest is
23 collected from the successful bidder, the sheriff shall remit to the
24 plaintiff the total amount, less any fees, costs and commissions due
25 the sheriff, along with the additional interest.

26 (2) Notwithstanding the provisions of paragraph (1) of this
27 subsection, in the case of residential property in which the
28 successful bidder is permitted to pay a 3.5 percent deposit upon the
29 conclusion of the foreclosure sale pursuant to the provisions of this
30 section, no interest shall accrue on the balance of the sale of the
31 property until 60 business days have passed following the date of
32 the sale, and thereafter, the successful bidder shall have 30 business
33 days to fulfill the balance. If the successful bidder fails to fulfill the
34 balance within this 90 business day period, the bidder shall forfeit
35 the deposit on the property and shall be responsible for the payment
36 of accrued interest incurred as a result of the sale being void, unless
37 the failure to fulfill the balance is due to the bidder's inability to
38 close a mortgage through no fault of their own, which includes, but
39 is not limited to, the appraised value of the property being less than
40 the purchase value of the property or the financial institution
41 denying financing, in which case the bidder shall be refunded the
42 deposit on the property and shall be responsible only for the
43 payment of accrued interest. In addition, if a successful bidder fails
44 to fulfill the balance within this 90 business day period, any
45 subsequent foreclosure sale involving the same residential property
46 and the same foreclosing plaintiff and foreclosed upon defendant

1 shall be subject to the procedures set forth in subparagraph (a) of
2 paragraph (5) of subsection a. of this section and there shall be no
3 right of first or second refusal pursuant to subsections d. and g. of
4 this section.

5 d. In the case of a foreclosed residential property where the
6 foreclosed upon defendant is an individual and not a corporate
7 entity, if the foreclosed upon defendant, next of kin of the
8 foreclosed upon defendant, or tenant of the foreclosed upon
9 property has secured financing or assets sufficient to meet terms
10 offered by the foreclosing plaintiff or an alternative financial
11 institution to purchase the property, the foreclosed upon defendant,
12 next of kin of the foreclosed upon defendant, or tenant shall have
13 the right of first refusal to purchase the property in the amount
14 approved for the opening bid of the sheriff's sale at the time of the
15 sale. The right of first refusal shall only be made available to the
16 foreclosed upon defendant, next of kin of the foreclosed upon
17 defendant, or tenant for the initial sale of the foreclosed upon
18 property, unless the sale is delayed, postponed or concludes with
19 the foreclosing plaintiff purchasing the property, upon which the
20 foreclosed upon defendant, next of kin of the foreclosed upon
21 defendant, or tenant shall receive a right of first refusal for the
22 subsequent sale of the foreclosed upon property. Such right shall be
23 deemed exercised if, prior to the opening of the bidding on the
24 foreclosed property, the foreclosed upon defendant, next of kin of
25 the foreclosed upon defendant, or tenant pays a 3.5 percent deposit
26 with the rest of the balance due within 90 business days by cash,
27 certified or cashier's check, or by wire transfer, made payable to the
28 sheriff of the county in which the sale is conducted or to the Special
29 Master, if the sheriff cannot comply with the provisions of
30 subparagraph (a) of paragraph (3) of subsection a. of this section.

31 e. A bidder, who is permitted to pay a 3.5 percent deposit upon
32 the conclusion of the foreclosure sale pursuant to the provisions of
33 this section, may purchase residential property at a sheriff's sale by
34 way of financing if the bidder provides documentation that the
35 bidder has been pre-approved by a financial institution regulated by
36 the Department of Banking and Insurance or by a federal banking
37 agency, as defined by section 3 of the "New Jersey Residential
38 Mortgage Lending Act," P.L.2009, c.53 (C.17:11C-53), for
39 financing a residential property.

40 (1) A bidder who is permitted to pay a 3.5 percent deposit upon
41 the conclusion of the foreclosure sale pursuant to the provisions of
42 this section and intends to finance the purchase of residential
43 property at a sale shall be:

44 (a) limited to submitting bids no higher than the amount for
45 which the bidder has been pre-approved for financing; and

1 (b) if the bidder is an individual, required to present current and
2 valid photo identification that substantially conforms to the name
3 and information contained on the financing pre-approval forms
4 obtained by the bidder.

5 (2) To be a successful bidder who is not the plaintiff, and who
6 intends to occupy the property and finance the purchase of the
7 property, the bidder shall have received eight hours of homebuyer
8 education and counseling through a United States Department of
9 Housing and Urban Development (HUD) certified housing
10 counseling agency, and shall present a certificate of completion or
11 proof of enrollment in that program to the sheriff.

12 (3) To ensure that the provisions of this section only apply to a
13 foreclosed upon defendant or next of kin of the foreclosed upon
14 defendant who has entered foreclosure proceedings due to
15 circumstances outside of the foreclosed upon defendant's control,
16 subsections d. through f. of this section shall only apply to a
17 foreclosed upon defendant or next of kin of the foreclosed upon
18 defendant that demonstrates to the foreclosing plaintiff that the
19 foreclosed upon defendant experienced:

20 (a) financial hardship;

21 (b) a physical or mental illness preventing the foreclosed upon
22 defendant from earning an income;

23 (c) divorce or legal separation;

24 (d) proof of death of the foreclosed upon defendant, or the
25 foreclosed upon defendant's spouse, or child; or

26 (e) predatory loan practices.

27 Any information provided under this paragraph shall be provided
28 at the request of the foreclosing plaintiff prior to the date of sale for
29 the foreclosing property and shall not conflict with subparagraph
30 (b) of paragraph (5) of subsection a. of this section.

31 (4) If a bidder intending to finance the purchase of the
32 residential property is a current tenant, the tenant shall provide
33 documentation confirming:

34 (a) that the tenant has resided at the property for at least a year;
35 and

36 (b) that the tenant is not in arrears with rent payments as of the
37 date the foreclosed upon defendant received a notice of foreclosure
38 from the foreclosing plaintiff.

39 (5) To prove the residency requirement pursuant to
40 subparagraph (a) of paragraph (4) of this subsection, the tenant shall
41 also be required to present at least two current and valid forms of
42 identification that substantially conform to the name and property
43 address contained in the tenant's lease agreement, which shall
44 include but not be limited to:

45 (a) a driver's license issued by the New Jersey Motor Vehicle
46 Commission;

1 (b) a utility bill;

2 (c) a checking or savings account statement from a bank or credit
3 union issued at least 60 days prior to submitting documentation
4 required pursuant to this subparagraph;

5 (d) a statement, receipt, or letter of correspondence from a
6 federal, State, or local government office delivered at least one year
7 prior to submitting documentation required pursuant to this
8 subparagraph; or

9 (e) any other form of identification that the sheriff deems valid
10 pursuant to this paragraph.

11 (6) A tenant shall be allowed to purchase residential property
12 pursuant to this subsection if a foreclosed upon defendant or next of
13 kin of the foreclosed upon defendant decides not to participate in
14 the sheriff's sale, enter into an agreement with a nonprofit
15 community development corporation pursuant to subsection f. of
16 this section, or fail to secure financing or assets sufficient to meet
17 the terms offered by the foreclosing plaintiff or an alternative
18 financial institution to purchase the property. A tenant shall have
19 up to 45 days to purchase the residential property after successfully
20 bidding for the property.

21 (7) With exception to the foreclosed upon defendant, the
22 foreclosed upon defendant's next of kin, or a nonprofit community
23 development corporation, an individual bidder purchasing
24 residential property in a sheriff's sale pursuant to this subsection
25 shall be required by the financial institution to occupy the property
26 as the bidder's primary residence for a fixed term of at least 84
27 months after taking possession. The deed for the property shall
28 clearly state that the property may not be sold for 84 months from
29 the date of the sheriff's sale, except pursuant to the exceptions
30 permitting a successful bidder to vacate the property prior to
31 residing in the property for 84 months in paragraph (8) of this
32 subsection.

33 (8) With exception to the foreclosed upon defendant, the
34 foreclosed upon defendant's next of kin, or a nonprofit community
35 development corporation, a successful individual bidder who
36 finances the purchase pursuant to this subsection and does not
37 occupy the residence for a period of at least 84 months shall be
38 assessed a fine by a court of competent jurisdiction up to \$100,000
39 for the first violation, and \$500,000 thereafter for each subsequent
40 violation. These penalties shall not be assessed against a bidder
41 who finances the purchase with good faith and intent and is
42 thereafter required to vacate the property prior to residing in the
43 property for 84 months due to:

44 (a) death of the bidder or the bidder's spouse or child;

45 (b) disability of the bidder or a member of the bidder's
46 household;

- 1 (c) divorce;
- 2 (d) legal separation;
- 3 (e) military deployment;
- 4 (f) a change in employment of the bidder or a member of the
5 bidder's household that results in a reduction in income or a need to
6 move out-of-state;
- 7 (g) a change in the number of permanent residents of the
8 household due to: the birth or adoption of a child; or the permanent
9 relocation of an elder into the household, as proved by a note from
10 the doctor or social worker of the elder;
- 11 (h) a need to move to care for a family member for a period of
12 at least six months, as evidenced by: an address change; and a note
13 from the family member in need of care, the doctor of the family
14 member, or the social worker for the family member; or
- 15 (i) foreclosure.

16 In the event of the death of a successful bidder, the property may
17 be transferred to another owner in accordance with applicable laws
18 governing estate, inheritance, and probate matters and the
19 occupancy requirement shall be extinguished.

20 f. If the foreclosed upon defendant, next of kin of the
21 foreclosed upon defendant, or tenant of the foreclosed upon
22 property fails to secure financing or assets sufficient to meet the
23 terms offered by the foreclosing plaintiff or an alternative financial
24 institution to purchase the residential property, the foreclosed upon
25 defendant, next of kin of the foreclosed upon defendant, or tenant
26 may request that a nonprofit community development corporation
27 purchase the property. If the nonprofit community development
28 corporation agrees in writing to purchase the property from the
29 foreclosed upon defendant, next of kin of the foreclosed upon
30 defendant, or tenant, the corporation shall:

31 (1) allow the foreclosed upon defendant, next of kin of the
32 foreclosed upon defendant, or tenant to reside at the property for a
33 period of time as agreed upon in paragraph (2) of this subsection;
34 and

35 (2) negotiate with the foreclosed upon defendant, next of kin of
36 the foreclosed upon defendant, or tenant on an affordable lease
37 schedule that shall include an option to purchase the property from
38 the corporation.

39 g. In the case of a foreclosed residential property, a nonprofit
40 community development corporation, that has a written agreement
41 with a foreclosed upon defendant, next of kin of the foreclosed
42 upon defendant, or tenant of the foreclosed upon property pursuant
43 to subsection f. of this section, shall have a right of second refusal
44 to purchase the property which is subordinate to the first right of
45 refusal provided to a foreclosed upon defendant, next of kin of the
46 foreclosed upon defendant, or tenant pursuant to subsection d. of

1 this section. If the foreclosed upon defendant, next of kin of the
2 foreclosed upon defendant, or tenant decides not to participate in
3 the sheriff's sale, enter into an agreement with the corporation
4 pursuant to subsection f. of this section, or fail to secure financing
5 or assets sufficient to meet the terms offered by the foreclosing
6 plaintiff or an alternative financial institution to purchase the
7 property, a nonprofit community development corporation shall
8 have the right of second refusal to purchase the property in the
9 amount approved for the opening bid of the sheriff's sale at the time
10 of the sale. Such right shall be deemed exercised if, prior to the
11 opening of the bidding on the foreclosed property, the corporation
12 pays a 3.5 percent deposit with the rest of the balance due within 90
13 business days by cash, certified or cashier's check, or by wire
14 transfer, made payable to the sheriff of the county in which the sale
15 is conducted or to the Special Master, if the sheriff cannot comply
16 with the provisions of subparagraph (a) of paragraph (3) of
17 subsection a. of this section. A nonprofit community development
18 corporation shall only have a right of second refusal to purchase the
19 property if it satisfies the requirements set forth in subsection h. of
20 this section and fulfills the conditions set forth in subsection j. of
21 this section.

22 h. (1) If a foreclosed upon defendant, next of kin of the
23 foreclosed upon defendant, or tenant of the foreclosed upon
24 property does not participate in the sheriff's sale, secure financing
25 or assets sufficient to meet the terms offered by the foreclosing
26 plaintiff or an alternative financial institution, or enter into
27 agreement with a nonprofit community development corporation
28 pursuant to subsection f. of this section, the nonprofit community
29 development corporation may enter a bid for the foreclosed upon
30 residential property.

31 (2) A nonprofit community development corporation intending
32 to bid in a sheriff's sale for residential property and pay a 3.5
33 percent deposit as permitted by this section shall, on the date of the
34 sheriff's sale, register its participation with the sheriff or Special
35 Master if the sheriff cannot comply with the provisions of
36 paragraph (3) of subsection a. of this section. In registering its
37 participation in the sale, a corporation shall provide the most recent
38 form 1023 filing provided to the United States Internal Revenue
39 Service, stating the corporation's mission includes community
40 revitalization and the creation or preservation of affordable housing
41 through the restoration of vacant and abandoned property.

42 i. (1) If more than one nonprofit community development
43 corporation seeks to exercise the right of second refusal, the right
44 shall belong in the first instance to a nonprofit community
45 development corporation that fulfills the conditions set forth in
46 subsection f. of this section. If no such nonprofit community

1 development corporation exists, priority shall belong to the
2 nonprofit community development corporation that first registers its
3 participation in the foreclosure sale pursuant to paragraph (2) of
4 subsection h. of this section.

5 (2) If an individual or nonprofit community development
6 corporation exercises a right of first or second refusal pursuant to
7 subsection d. or f. of this section, the foreclosure sale shall be
8 deemed concluded and the person or corporation shall be deemed to
9 be the successful bidder and shall be subject to the applicable
10 provisions and procedures of this section.

11 j. (1) A nonprofit community development corporation that
12 successfully bids on the purchase of a residential property in a
13 sheriff's sale and satisfies the conditions set forth in subsection h.
14 of this section shall be subject to the fines assessed pursuant to
15 paragraph (3) of this subsection if the nonprofit corporation does
16 not:

17 (a) restore as need be and sell the property to a household
18 earning no more than 120 percent below area median income or rent
19 the property as an affordable housing unit to a household who earns
20 no more than 100 percent below area median income, if the
21 property is vacant or abandoned at the time of the sheriff's sale; or

22 (b) if the property is occupied at the time of sale by either a
23 tenant or the foreclosed upon defendant with whom the nonprofit
24 community development corporation does not already have an
25 agreement pursuant to subsection f. of this section, the nonprofit
26 community development corporation shall negotiate in good faith
27 with the foreclosed upon defendant or tenant on an affordable lease
28 schedule that will allow the foreclosed upon defendant or tenant to
29 continue to occupy the property should the foreclosed upon
30 defendant or tenant desire to do so. If after 120 business days the
31 foreclosed upon defendant or tenant does not respond to the
32 requests of the nonprofit community development corporation to
33 negotiate, the corporation may bring an action in a court of
34 competent jurisdiction to remove the foreclosed upon defendant or
35 tenant. If removal has successfully occurred, the nonprofit
36 community development corporation shall comply with the
37 requirements of subparagraph (a) of paragraph (1) of this
38 subsection.

39 (2) A nonprofit community development corporation that
40 successfully bids on the purchase of a residential property and
41 satisfies the conditions set forth in subsection f. of this section shall
42 ensure that, in any future sale of the property pursuant to
43 subparagraph (a) of paragraph (1) of this subsection, the property be
44 subject to a renewable deed restriction, with the minimum number
45 of affordability years being 30 years and with the option to renew,
46 requiring any future property owner to sell the property to a

1 household earning no more than 120 percent below area median
2 income or rent the property as an affordable housing unit to a
3 household who earns no more than 100 percent below area median
4 income.

5 (3) A nonprofit community development corporation that
6 successfully bids on and completes the purchase of a residential
7 property in a sheriff's sale and satisfies the conditions set forth in
8 subsection f. of this section and fails to meet the requirements of
9 this subsection shall be assessed a fine by a court of competent
10 jurisdiction of up to \$100,000 for the first violation, and \$500,000
11 thereafter for each subsequent violation. If the sheriff's office
12 determines based upon its oversight that there has been a violation
13 of this subsection, the sheriff's office shall bring an action in a
14 court of competent jurisdiction so that the sheriff's office can
15 pursue enforcement of penalties for the violation. If the nonprofit
16 community development corporation dissolves, the deed of the
17 residential property shall be transferred to another nonprofit
18 community development corporation who shall be bound by the
19 requirements of this subsection.

20 k. In the case of a residential property for which the successful
21 bidder is subject to the occupancy requirement pursuant to
22 paragraphs (7) and (8) of subsection e. of this section, the
23 appropriate sheriff's office, county administrative agent, or
24 affordable housing administrative agent that is hired by the county
25 shall oversee the occupancy of the property, which may include the
26 mailing of a questionnaire to the successful bidder within 84
27 months following the sale or requiring the bidder to respond to
28 questions and submit documentation evidencing the bidder's
29 continued residence at the property using the proof of residency
30 documents provided pursuant to paragraph (5) of subsection e. of
31 this section. If the appropriate sheriff's office, county
32 administrative agent, or affordable housing administrative agent
33 that is hired by the county determines based upon its oversight that
34 there has been an occupancy violation, the sheriff's office, county
35 administrative agent, or affordable housing administrative agent
36 hired by the county shall refer the matter to the county counsel's
37 office to bring an action in a court of competent jurisdiction so that
38 the sheriff's office can pursue enforcement of penalties for the
39 violation.

40 l. Each sheriff's office shall maintain information, written in
41 plain language, regarding the program to finance the purchase of
42 residential property in a foreclosure sale in accordance with this
43 section on its Internet website, and in any other medium used by the
44 office to advertise a foreclosure sale, in a manner that is accessible
45 to the public. Additionally, each sheriff's office shall display
46 information, written in plain language, regarding the Community

1 Wealth Preservation Program in its office in a manner that is
2 conspicuous to the public. The information posted on a sheriff's
3 Internet website or displayed in a sheriff's office concerning the
4 program shall further contain language notifying the public that the
5 program shall exclude those purchasing property for investment
6 purposes. For any county in which the primary language of 10
7 percent or more of the residents is a language other than English,
8 the sheriff's office shall provide the information required by this
9 subsection in that other language or languages in addition to
10 English. The alternate language shall be determined based on
11 information from the latest federal decennial census.

12 m. Any sheriff's sales conducted virtually shall be subject to the
13 provisions of P.L. , c. (C.) (pending before the Legislature
14 as this bill).

15 n. Any penalty imposed pursuant to this section may be
16 recovered with costs in a summary proceeding commenced by the
17 appropriate sheriff's office pursuant to the "Penalty Enforcement
18 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Fifty percent
19 of any monies collected pursuant to this section shall be forwarded
20 to the municipality in which the foreclosed upon property is located
21 to be deposited in the affordable housing trust fund of the
22 municipality for use on low income housing or moderate income
23 housing needs as defined in section 4 of P.L.1985, c.222
24 (C.52:27D-304), to the extent the municipality maintains such a
25 fund, and if the municipality does not maintain such a fund, to the
26 State Treasurer, and shall annually be appropriated to the "New
27 Jersey Affordable Housing Trust Fund," section 20 of P.L.1985,
28 c.222 (C.52:27D-320) for the purpose of developing and supporting
29 housing programs that create for-sale and rental affordable housing.
30 The remaining 50 percent of any monies collected pursuant to this
31 section shall provide for administrative and enforcement costs,
32 including costs incurred by the appropriate sheriff's office, county
33 administrative agent, or county counsel's office, necessary to
34 effectuate the purposes of this section.

35 o. The provisions of P.L. , c. (C.) (pending before the
36 Legislature as this bill) shall only apply to residential property as
37 defined pursuant to subsection p. of this section.

38 p. As used in this section:

39 "Area median income" means the midpoint of a region's
40 household income distribution, as determined by the United States
41 Department of Housing and Urban Development.

42 "Community Wealth Preservation Program" means the program
43 created by P.L. , c. (C.) (pending before the Legislature as
44 this bill) to assist prospective owner-occupants, nonprofit
45 community development corporations, foreclosed upon defendants,
46 next of kin of foreclosed upon defendants, and tenants of foreclosed

1 upon defendants in purchasing and financing foreclosed upon
2 residential properties in sheriff's sales with an initial 3.5 percent
3 deposit.

4 "Nonprofit community development corporation" means a not-
5 for-profit organization, whose mission includes community
6 revitalization through the restoration of vacant and abandoned
7 property to create or preserve affordable housing, as indicated in the
8 corporation's most recent form 1023 filing provided to the United
9 States Internal Revenue Service.

10 "Residential property" means real property located in this State
11 in which people reside or dwell as their primary residence, and shall
12 not include property which is used for investment, commercial, or
13 business purposes or residential property containing more than four
14 residential units.

15 "Upset price" means the minimum amount that a foreclosed upon
16 property shall be sold for in a sheriff's sale as determined by the
17 foreclosing plaintiff.

18 (cf: P.L.2019, c.71, s.1)

19

20 2. N.J.S.22A:4-8 is amended to read as follows:

21 22A:4-8. For the services hereinafter enumerated sheriffs and
22 other officers shall receive the following fees:

23 In addition to the mileage allowed by law, for serving every
24 summons and complaint, attachment or any mesne process issuing
25 out of the Superior Court, the sheriff or other officer serving such
26 process shall, for the first defendant or party on whom such process
27 is served, be allowed \$22.00 and, for service on the second
28 defendant named therein, \$20.00, and for serving such process on
29 any other defendant or defendants named therein, \$16.00 each, and
30 no more. If a man and his wife be named in such process they shall
31 be considered as one defendant, except where they are living
32 separate and apart.

33 Serving summons and complaint in matrimonial actions, in
34 addition to mileage, \$22.00.

35 Serving capias ad respondendum, capias ad satisfaciendum,
36 warrant of commitment, writ of ne exeat, in addition to mileage,
37 \$48.00.

38 Serving order to summon juries and return, \$8.00.

39 Serving every execution against goods or lands and making an
40 inventory and return, in addition to mileage, \$48.00.

41 For returning every writ, \$2.00.

42 Executing every writ of possession and return, in addition to
43 mileage, \$48.00.

44 Executing every writ of attachment, sequestration or replevin
45 issuing out of any of the courts, in addition to mileage, \$48.00.

1 For serving each out-of-State paper, in addition to the mileage
2 allowed by law, \$25.00 for the first defendant on whom such paper
3 is served, \$20.00 for service on the second defendant named
4 therein, and \$16.00 for serving such paper on any other defendant
5 or defendants named therein. If a man and wife be named in such
6 paper, they shall be considered as one defendant, except where they
7 are living separate and apart.

8 For serving or executing any process or papers where mileage is
9 allowed by law, the officer shall receive mileage actually traveled
10 to and from the courthouse, at the rate per mile of \$0.16.

11 The sheriff shall be entitled to retain out of all moneys collected
12 or received by him on a forfeited recognizance, whether before or
13 after execution, or from amercements, or from fines and costs on
14 conviction, on indictment or otherwise, whether such moneys are
15 payable to the State or to the county treasurer of the county wherein
16 conviction was had, **[5%]** five percent.

17 For transporting each offender to the State Prison, per mile, but
18 not less than \$3.00 for each offender, to be certified by the keeper
19 of the prison and the certificate to be delivered to the county
20 treasurer of the county where the conviction was had, \$0.23.

21

22 EXECUTION SALES

23

24 **[When]** Except as to sales conducted in accordance with section
25 12 of P.L.1995, c.244 (C.2A:50-64), when a sale is made by virtue
26 of an execution the sheriff shall be entitled to charge the following
27 fees: On all sums not exceeding \$5,000.00, **[6%]** 10 percent; on all
28 sums exceeding \$5,000.00 on such excess, **[4%]** five percent; the
29 minimum fee to be charged for a sale by virtue of an execution,
30 **[\$50.00]** \$150.00. When sales are conducted in accordance with
31 section 12 of P.L.1995, c.244 (C.2A:50-64), the sheriff shall be
32 entitled to charge six percent on a sale by virtue of an execution.

33 On an execution against wages, commissions and salaries, the
34 sheriff shall charge the same percentage fees on all sums collected
35 as those percentage fees applicable in cases wherein an execution
36 sale is consummated.

37 When the execution is settled without actual sale and such
38 settlement is made manifest to the officer, the officer shall receive
39 **[1/2]** one-half of the amount of percentage allowed herein in case
40 of sale.

41 Making statement of execution, sales and execution fees, \$10.00.

42 Advertising the property for sale, provided the sheriff or deputy
43 sheriff attend in pursuance of the advertisement, \$20.00.

44 Posting property for sale, \$20.00. For the crier of the
45 vendue, when the sheriff proceeds to sell, for every day he shall be
46 actually employed in such sale, \$5.00.

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1 Every adjournment of a sale, but no more than one adjournment
2 shall be allowed, and if the sheriff shall have several executions
3 against a defendant, he shall only be allowed for advertising,
4 attending and adjourning, as if he had but one execution, \$28.00.

5 Drawing and making a deed to a purchaser of real property,
6 \$75.00.

7 Drawing and making a bill of sale to the purchaser of personal
8 property when such bill of sale is required or demanded, \$20.00.

9 When more than one execution shall be issued out of the
10 Superior Court upon any judgment, each sheriff to whom such
11 execution shall be directed and delivered shall be entitled to collect
12 and receive from the defendant named in such execution the fees
13 allowed by law for making a levy and return and statement thereon,
14 or for such other services as may be actually performed by him, and
15 the sheriff who shall collect the amount named in said execution or
16 any part thereof, shall be entitled to the legal percentage upon
17 whatever amount may be so collected by him, but in case any such
18 judgment shall be settled between the parties and the amount due
19 thereon shall not be collected by either sheriff, then the percentage
20 on the amount collected which would be due the sheriff thereon in
21 case only one execution had been issued shall be equally divided
22 among the several sheriffs in whose hands an execution in the same
23 cause may have been placed.

24 The sheriff shall file his taxed bill of costs with the clerk of the
25 court out of which execution issued, within such time as the court
26 shall direct by general rule or special order, or, in default thereof,
27 he shall not be entitled to any costs. If any sheriff shall charge in
28 such bill of costs for services not done, or allowed by law, or shall
29 take any greater fee or reward for any services by him done than is
30 or shall be allowed by law, he shall be liable for the damages
31 sustained by the party aggrieved including a penalty of \$30.00, to
32 be recovered in a summary manner, in the action or proceeding
33 wherein the execution was issued or otherwise.

34 (cf: P.L.2001, c.370, s.5)

35

36 3. (New section) a. In situations in which a creditor has
37 instituted a foreclosure proceeding pursuant to the "Fair Foreclosure
38 Act," P.L.1995, c.244 (C.2A:50-53 et seq.) and a creditor employs
39 an agent to be responsible for the care, maintenance, security, and
40 upkeep of the property if it becomes vacant and abandoned, the
41 creditor and agent who peacefully enter the property and exercise
42 reasonable care in doing so, shall be immune from liability, before
43 and after the bid, for any damage to the property or any person
44 entering the property.

45 b. Persons bidding on the property shall not enter the property
46 prior to the time of sale of the property to the successful bidder.

1 4. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 This bill establishes the “Community Wealth Preservation
7 Program” and expands access for certain buyers to purchase
8 property from sheriff’s sales.

9 Under the bill, a defendant in a foreclosure proceeding, next of
10 kin of the foreclosed upon defendant, tenant of the foreclosed upon
11 defendant, nonprofit community development corporation, or bidder
12 who shall occupy the property for at least 84 months, will have up
13 to 90 business days to complete the sale of a foreclosing property,
14 with no interest accruing on the balance of the sale for 60 business
15 days following the sale. If the successful bidder does not pay the
16 balance within this 90 business day period, the bidder would forfeit
17 the deposit on the property and be responsible for the payment of
18 accrued interest and fees or penalties incurred as a result of the sale
19 being void, unless the failure to fulfill the balance is due to the
20 bidder’s inability to close a mortgage through no fault of the
21 bidder’s own.

22 Under the bill, a foreclosed upon defendant, next of kin of the
23 foreclosed upon defendant, tenant of the foreclosed upon defendant,
24 nonprofit community development corporation, or bidder may
25 purchase property in a sheriff’s sale by way of financing if the
26 bidder provides documentation that the bidder has been pre-
27 approved by a financial institution for financing the property. A
28 bidder, other than the foreclosed upon defendant, the foreclosed
29 upon defendant’s next of kin, or nonprofit community development
30 corporation may only use the financing option if the property will
31 be the bidder’s primary residence.

32 In the case of a foreclosed residential property where the
33 foreclosed upon defendant is an individual and not a corporate
34 entity, if the foreclosed upon defendant, next of kin of the
35 foreclosed upon defendant, or tenant of the foreclosed upon
36 property has secured financing or assets sufficient to meet terms
37 offered by the foreclosing plaintiff or an alternative financial
38 institution to purchase the property, the foreclosed upon defendant,
39 next of kin of the foreclosed upon defendant, or tenant will have the
40 right of first refusal to purchase the property in the amount
41 approved for the opening bid of the sheriff’s sale at the time of the
42 sale. The right of first refusal will only be made available to the
43 foreclosed upon defendant, next of kin of the foreclosed upon
44 defendant, or tenant for the initial sale of the foreclosed upon
45 property, unless the sale is delayed, postponed or concludes with
46 the foreclosing plaintiff purchasing the property, upon which the

1 foreclosed upon defendant, next of kin of the foreclosed upon
2 defendant, or tenant will receive a right of first refusal for the
3 subsequent sale of the foreclosed upon property. Such right will be
4 deemed exercised if, prior to the opening of the bidding on the
5 foreclosed property, the foreclosed upon defendant, next of kin of
6 the foreclosed upon defendant, or tenant pays a 3.5 percent deposit
7 with the rest of the balance due within 90 business days by cash,
8 certified or cashier's check, or by wire transfer, made payable to the
9 sheriff of the county in which the sale is conducted.

10 If the foreclosed upon defendant, next of kin of the foreclosed
11 upon defendant, or tenant of the foreclosed upon property fails to
12 secure financing or assets sufficient to meet the terms offered by the
13 foreclosing plaintiff or an alternative financial institution to
14 purchase the residential property, the foreclosed upon defendant,
15 next of kin of the foreclosed upon defendant, or tenant may request
16 that a nonprofit community development corporation purchase the
17 property. If the nonprofit community development corporation
18 agrees in writing to purchase the property from the foreclosed upon
19 defendant, next of kin of the foreclosed upon defendant, or tenant,
20 the corporation will have a right of second refusal to purchase the
21 property which is subordinate to the first right of refusal provided to
22 a foreclosed upon defendant, next of kin of the foreclosed upon
23 defendant, or tenant. If the foreclosed upon defendant, next of kin
24 of the foreclosed upon defendant, or tenant decides not to
25 participate in the sheriff's sale, enter into an agreement with the
26 corporation, or fail to secure financing or assets sufficient to meet
27 the terms offered by the foreclosing plaintiff or an alternative
28 financial institution to purchase the property, a nonprofit
29 community development corporation will have the right of second
30 refusal to purchase the property in the amount approved for the
31 opening bid of the sheriff's sale at the time of the sale. The right
32 shall be deemed exercised if, prior to the opening of the bidding on
33 the foreclosed property, the corporation pays a 3.5 percent deposit
34 with the rest of the balance due within 90 business days by cash,
35 certified or cashier's check, or by wire transfer, made payable to the
36 sheriff of the county in which the sale is conducted or to the Special
37 Master, if the sheriff cannot conduct the sale. A nonprofit
38 community development corporation will only have a right of
39 second refusal to purchase the property if it satisfies certain
40 conditions set forth within the bill.

41 With the exception of sales conducted pursuant to the
42 Community Wealth Preservation Program, the bill increases the fee
43 to be charged by virtue of an execution sale from 4 to 5 percent, or
44 6 percent to 10 percent, depending on whether the sum involved is
45 greater than or less than \$5,000, respectively. The bill also

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22

1 increases the minimum fee to be charged by virtue of an execution
2 sale from \$50 to \$150.

3 Finally, the bill provides creditors and creditors' agents with
4 immunity from liability for damages to certain vacant and
5 abandoned property so long as reasonable care is exercised, and
6 clarifies that bidders are not authorized to enter the property prior to
7 the time of sale.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 5664

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2023

The Assembly Commerce and Economic Development Committee reports favorably and with committee amendments Assembly Bill No. 5664.

As amended, this bill establishes the “Community Wealth Preservation Program” and expands access for certain buyers to purchase property from sheriff’s sales.

Under the bill, a defendant in a foreclosure proceeding, next of kin of the foreclosed upon defendant, tenant of the foreclosed upon defendant, nonprofit community development corporation, or bidder who shall occupy the property for at least 84 months, will have up to 90 business days to complete the sale of a foreclosing property, with no interest accruing on the balance of the sale for 60 business days following the sale. If the successful bidder does not pay the balance within this 90 business day period, the bidder would forfeit the deposit on the property and be responsible for the payment of accrued interest and fees or penalties incurred as a result of the sale being void, unless the failure to fulfill the balance is due to the bidder’s inability to close a mortgage through no fault of the bidder’s own.

Under the bill, a foreclosed upon defendant, next of kin of the foreclosed upon defendant, tenant of the foreclosed upon defendant, nonprofit community development corporation, or bidder may purchase property in a sheriff’s sale by way of financing if the bidder provides documentation that the bidder has been pre-approved by a financial institution for financing the property. A bidder, other than the foreclosed upon defendant, the foreclosed upon defendant’s next of kin, or nonprofit community development corporation may only use the financing option if the property will be the bidder’s primary residence.

In the case of a foreclosed residential property where the foreclosed upon defendant is an individual and not a corporate entity, if the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant of the foreclosed upon property has secured financing or assets sufficient to meet terms offered by the foreclosing plaintiff or an alternative financial institution to purchase the property,

the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant will have the right of first refusal to purchase the property for the original upset price listed in the notice provided by the foreclosing plaintiff before the time of sale. The right of first refusal will only be made available to the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant for the initial sale of the foreclosed upon property, unless the sale is delayed or postponed, upon which the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant will retain the right of first refusal for the rescheduled date of sale of the foreclosed upon property. Such right will be deemed exercised if, prior to the opening of the bidding on the foreclosed property, the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant pays a 3.5 percent deposit with the rest of the balance due within 90 business days by cash, certified or cashier's check, or by wire transfer, made payable to the sheriff of the county in which the sale is conducted.

If the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant of the foreclosed upon property fails to secure financing or assets sufficient to meet the terms offered by the foreclosing plaintiff or an alternative financial institution to purchase the residential property, the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant may request that a nonprofit community development corporation purchase the property. If the nonprofit community development corporation agrees in writing to purchase the property from the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant, the corporation will have a right of second refusal to purchase the property which is subordinate to the first right of refusal provided to a foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant. If the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant decides not to participate in the sheriff's sale, enter into an agreement with the corporation, or fail to secure financing or assets sufficient to meet the terms offered by the foreclosing plaintiff or an alternative financial institution to purchase the property, a nonprofit community development corporation will have the right of second refusal to purchase the property in the amount approved for the opening bid of the sheriff's sale at the time of the sale. The right shall be deemed exercised if, prior to the opening of the bidding on the foreclosed property, the corporation pays a 3.5 percent deposit with the rest of the balance due within 90 business days by cash, certified or cashier's check, or by wire transfer, made payable to the sheriff of the county in which the sale is conducted or to the Special Master, if the sheriff cannot conduct the sale. A nonprofit community development corporation will only have a right of second refusal to purchase the property if it satisfies certain conditions set forth within the bill.

The bill additionally provides that, on sales conducted pursuant to the Community Wealth Preservation Program, a sheriff will be entitled

to charge six percent on sales made by virtue of an execution. However, the bill provides that if a sale conducted pursuant to the Community Wealth Preservation Program results in the property reverting back to the foreclosing plaintiff, a sheriff will only be entitled to charge a flat fee of \$150.

For other sales made by virtue of an execution, the bill increases the fee to be charged by virtue of an execution sale from 4 to 5 percent, or 6 percent to 10 percent, depending on whether the sum involved is greater than or less than \$5,000, respectively. The bill also increases the minimum fee to be charged by virtue of an execution sale from \$50 to \$150.

Finally, the bill provides creditors and creditors' agents with immunity from liability for damages to certain vacant and abandoned property so long as reasonable care is exercised, and clarifies that bidders are not authorized to enter the property prior to the time of sale.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) allow the upset price to be adjusted, with conditions, from the time a foreclosing plaintiff provides notice up to the date of sale;

(2) establish that a foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant will have a right of first refusal to purchase the property for the original upset price listed in the notice provided by the foreclosing plaintiff;

(3) clarify that a right of first refusal will not extend to sales of real estate-owned property;

(4) clarify the fee structure for sheriffs on sales made by virtue of an execution and establish a flat fee for sales that revert back to the foreclosing plaintiff;

(5) require the language used for the envelope the notice is being delivered comply with the federal "Fair Debt Collection Practice Act";

(6) remove requirement that a financial institution enforce a successful bidder's 84 occupancy requirement; and

(7) make certain conforming and technical changes.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 5664

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 18, 2023

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 5664 (1R).

As amended, this bill establishes the “Community Wealth Preservation Program” and expands access for certain buyers to purchase property from sheriff’s sales.

Under the bill, a defendant in a foreclosure proceeding, next of kin of the foreclosed upon defendant, tenant of the foreclosed upon defendant, nonprofit community development corporation, or bidder who shall occupy the property for at least 84 months, will have up to 90 business days to complete the sale of a foreclosing property, with no interest accruing on the balance of the sale for 60 business days following the sale. If the successful bidder does not pay the balance within this 90 business day period, the bidder would forfeit the deposit on the property and be responsible for the payment of accrued interest and fees or penalties incurred as a result of the sale being void, unless the failure to fulfill the balance is due to the bidder’s inability to close a mortgage through no fault of the bidder’s own.

Under the bill, a foreclosed upon defendant, next of kin of the foreclosed upon defendant, tenant of the foreclosed upon defendant, nonprofit community development corporation, or bidder may purchase property in a sheriff’s sale by way of financing if the bidder provides documentation that the bidder has been pre-approved by a financial institution for financing the property. A bidder, other than the foreclosed upon defendant, the foreclosed upon defendant’s next of kin, or nonprofit community development corporation may only use the financing option if the property will be the bidder’s primary residence.

In the case of a foreclosed residential property where the foreclosed upon defendant is an individual and not a corporate entity, if the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant of the foreclosed upon property has secured financing or assets sufficient to meet terms offered by the foreclosing plaintiff or an alternative financial institution to purchase the property, the foreclosed upon defendant, next of kin of the foreclosed upon

defendant, or tenant will have the right of first refusal to purchase the property for the original upset price listed in the notice provided by the foreclosing plaintiff before the time of sale. The right of first refusal will only be made available to the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant for the initial sale of the foreclosed upon property, unless the sale is delayed or postponed, upon which the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant will retain the right of first refusal for the rescheduled date of sale of the foreclosed upon property. Such right will be deemed exercised if, prior to the opening of the bidding on the foreclosed property, the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant pays a 3.5 percent deposit with the rest of the balance due within 90 business days by cash, certified or cashier's check, or by wire transfer, made payable to the sheriff of the county in which the sale is conducted.

If the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant of the foreclosed upon property fails to secure financing or assets sufficient to meet the terms offered by the foreclosing plaintiff or an alternative financial institution to purchase the residential property, the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant may request that a nonprofit community development corporation purchase the property. If the nonprofit community development corporation agrees in writing to purchase the property for the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant, the corporation will have a right of second refusal to purchase the property which is subordinate to the first right of refusal provided to a foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant. If the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant decides not to participate in the sheriff's sale, enter into an agreement with the corporation, or fail to secure financing or assets sufficient to meet the terms offered by the foreclosing plaintiff or an alternative financial institution to purchase the property, a nonprofit community development corporation will have the right of second refusal to purchase the property in the amount approved for the opening bid of the sheriff's sale at the time of the sale. The right shall be deemed exercised if, prior to the opening of the bidding on the foreclosed property, the corporation pays a 3.5 percent deposit with the rest of the balance due within 90 business days by cash, certified or cashier's check, or by wire transfer, made payable to the sheriff of the county in which the sale is conducted or to the Special Master, if the sheriff cannot conduct the sale. A nonprofit community development corporation will only have a right of second refusal to purchase the property if it satisfies certain conditions set forth within the bill.

The bill additionally provides that, on sales conducted pursuant to the "Community Wealth Preservation Program," a sheriff will be entitled to charge six percent on sales made by virtue of an execution.

However, the bill provides that if a sale conducted pursuant to the “Community Wealth Preservation Program” results in the property reverting back to the foreclosing plaintiff, a sheriff will only be entitled to charge a flat fee of \$150.

For other sales made by virtue of an execution, the bill increases the fee to be charged by virtue of an execution sale from 4 to 5 percent, or 6 percent to 10 percent, depending on whether the sum involved is greater than or less than \$5,000, respectively. The bill also increases the minimum fee to be charged by virtue of an execution sale from \$50 to \$150 and provides that if a sale results in the property reverting back to the foreclosing plaintiff, a sheriff will only be entitled to charge a flat fee of \$150.

Finally, the bill provides creditors and creditors’ agents with immunity from liability for damages to certain vacant and abandoned property so long as reasonable care is exercised, and clarifies that bidders are not authorized to enter the property prior to the time of sale.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) establish a flat fee for certain execution sales that revert back to the foreclosing plaintiff;

(2) revise the term “residential property” to mean real property located in this State which is utilized as a primary residence or dwelling, and shall not include any real property which is acquired for investment, commercial, or business purposes or residential real property containing more than four residential units; and

(3) make certain technical changes.

FISCAL IMPACT:

Fiscal information for this bill is currently unavailable.

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 5664

with Assembly Floor Amendments
(Proposed by Assemblywoman TIMBERLAKE)

ADOPTED: DECEMBER 21, 2023

This floor amendment:

(1) requires that if a sheriff's sale is delayed or postponed, or if circumstances occur that require unforeseen advances to protect the borrower or the foreclosed upon residential property in the event of vandalism, weather damage, or other emergency property preservation needs, the upset price may be adjusted to reflect these costs in the latest price;

(2) requires notices written by a foreclosing plaintiff regarding the upset price for the sale of a foreclosed upon residential property be compliant with the federal "Fair Debt Collection Practices Act;"

(3) requires that a successful bidder who fails to pay the remaining balance within a 90 business day period will be subject to paying a 20 percent deposit in any subsequent foreclosure sale involving the same residential property and the same foreclosing plaintiff and foreclosed upon defendant;

(4) allows a foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant to have the right of first refusal to purchase the property for the original upset price listed in the notice or for the final starting upset price listed for the sale of the property, whichever is less;

(5) requires a bidder who intends to finance the purchase of the foreclosed residential property to be preapproved for a loan amount that matches the original upset price listed in the notice provided by the foreclosing plaintiff or the final starting upset price listed for the sale of the property, whichever is less;

(6) requires a tenant and an individual bidder subject to the 84 month requirement to receive homebuyer education and counseling through the United States Department of Housing and Urban Development (HUD);

(7) clarifies title for an individual bidder who is required to reside in the residential property for 84 months but must vacate the property due to foreclosure;

(8) states that an individual bidder who fraudulently asserts an exception to the 84 month requirement will be in violation of the "Consumer Fraud Act;"

(9) allows a tenant to have up to 90 business days to purchase a foreclosed residential property after successfully bidding for the property;

(10) clarifies that a nonprofit community development corporation has an option to purchase the foreclosed upon residential property for the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant to reside in; and

(11) makes certain technical changes.

SENATE, No. 4240

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED DECEMBER 14, 2023

Sponsored by:

Senator ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Establishes “Community Wealth Preservation Program”; expands access for certain buyers to purchase property from sheriff’s sales.

CURRENT VERSION OF TEXT

As introduced.



S4240 ZWICKER

2

1 AN ACT concerning sheriff's sales and amending and
2 supplementing P.L.1995, c.244, and amending N.J.S.22A:4-8.

3

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

6

7 1. Section 12 of P.L.1995, c.244 (C.2A:50-64) is amended to
8 read as follows:

9 12. a. With respect to the sale of a mortgaged premises under
10 foreclosure action, each sheriff in this State shall provide for, but
11 not be limited to, the following uniform procedures:

12 (1) Bidding in the name of the assignee of the foreclosing
13 plaintiff.

14 (2) That adjournment of the sale of the foreclosed property shall
15 be in accordance with N.J.S.2A:17-36.

16 (3) (a) The sheriff shall conduct a sale within 150 days of the
17 sheriff's receipt of any writ of execution issued by the court in any
18 foreclosure proceeding.

19 (b) If it becomes apparent that the sheriff cannot comply with
20 the provisions of subparagraph (a) of this paragraph (3), the
21 foreclosing plaintiff may apply to the office for an order appointing
22 a Special Master to hold the foreclosure sale.

23 (c) Upon the foreclosing plaintiff making such application to the
24 office, the office shall issue the appropriate order appointing a
25 Special Master to hold the foreclosure sale. The office may issue
26 the order to appoint a Special Master to hold foreclosure sales for
27 one or more properties within a vicinage.

28 (4) That notice for the sale of a foreclosed upon residential
29 property be mailed to the primary address of the foreclosed upon
30 defendant and to the address of the foreclosed upon residential
31 property. Notice of the sale shall be mailed in an envelope that
32 plainly states on its exterior that the envelope is a notice for the sale
33 of the foreclosed upon residential property.

34 (5) (a) That notice of the final upset price for the sale of a
35 foreclosed upon residential property be provided at least four weeks
36 prior to the sheriff's sale and posted on the Internet website of the
37 sheriff's office and on any other medium used to provide notice of
38 the sheriff's sale. The final upset price provided on the day of the
39 sheriff's sale shall not differ from the final upset price provided in
40 the notice; and

41 (b) Prior to providing the final upset price to the sheriff's office
42 pursuant to subparagraph (a) of this paragraph, the foreclosing
43 plaintiff or agent of the foreclosing plaintiff shall be prohibited
44 from contacting the foreclosed upon defendant, next of kin of the
45 foreclosed upon defendant, or a nonprofit community development
46 corporation to inquire whether the foreclosed upon defendant, next
47 of kin, or nonprofit community development corporation intends to

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.

S4240 ZWICKER

1 participate in the sheriff's sale for the foreclosed upon property or
2 exercise the provisions of P.L. , c. (C.) (pending before the
3 Legislature as this bill).

4 (6) Prior to the sale of residential property, the foreclosing
5 plaintiff shall disclose, if known, whether the property is vacant,
6 tenant-occupied, or owner-occupied. If the property is vacant, the
7 foreclosing plaintiff shall provide the successful bidder access to
8 the property if the foreclosing plaintiff has such access and may
9 condition access by the successful bidder on being accompanied by
10 a representative of the foreclosing plaintiff.

11 (7) (a) Except as otherwise provided in subparagraphs (b) and
12 (c) of this paragraph, the successful bidder at the sheriff's sale shall
13 pay a 20 percent deposit in either cash or by a certified or cashier's
14 check, made payable to the sheriff of the county in which the sale is
15 conducted, immediately upon the conclusion of the foreclosure sale.

16 (b) In the case of residential property in which the successful
17 bidder is the foreclosed upon defendant, next of kin, tenant,
18 nonprofit community development corporation, or a bidder who
19 shall occupy the property as the bidder's primary residence for a
20 period of at least 84 months, the successful bidder who has fulfilled
21 the requirements set forth in subsection e. of this section shall pay a
22 3.5 percent deposit with the rest of the balance due within 90
23 business days by cash, certified or cashier's check, or by wire
24 transfer, made payable to the sheriff of the county in which the sale
25 is conducted or to the Special Master, if the sheriff cannot comply
26 with the provisions of subparagraph (a) of paragraph (3) of this
27 subsection, immediately upon the conclusion of the foreclosure
28 sale.

29 (c) If the successful bidder cannot satisfy **[this]** the requirement
30 of this paragraph that is applicable to the bidder, or the applicable
31 requirement of this paragraph respectively, the bidder shall be in
32 default and the sheriff shall immediately void the sale and proceed
33 further with the resale of the premises without the necessity of
34 adjourning the sale, without renotification of any party to the
35 foreclosure and without the republication of any sales notice. Upon
36 such resale, the defaulting bidder shall be liable to the foreclosing
37 plaintiff for any additional costs incurred by such default including,
38 but not limited to, any difference between the amount bid by the
39 defaulting bidder and the amount generated for the foreclosing
40 plaintiff at the resale. In the event the plaintiff is the successful
41 bidder at the resale, the plaintiff shall provide a credit for the fair
42 market value of the property foreclosed.

43 **[(5)] (8)** It is permissible, upon consent of the sheriff
44 conducting the sheriff's sale, that it shall not be necessary for an
45 attorney or representative of the person who initiated the
46 foreclosure to be present physically at the sheriff's sale to make a
47 bid. A letter containing bidding instructions may be sent to the
48 sheriff in lieu of an appearance.

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1 **[(6)] (9)** That each sheriff's office shall use, and the plaintiff's
2 attorney shall prepare and submit to the sheriff's office, a deed
3 which shall be in substantially the following form:

4 THIS INDENTURE,
5 made this (date) day of (month),
6 (year). Between (name), Sheriff of the County
7 of (name) in the State of New Jersey, party of the first
8 part and (name(s)) party of the
9 second part, witnesseth.

10 WHEREAS, on the (date) day of
11 (month), (year), a certain Writ of Execution was issued out of
12 the Superior Court of New Jersey, Chancery Division-
13 (name) County, Docket No. directed and delivered to the
14 Sheriff of the said County of (name) and which said
15 Writ is in the words or to the effect following that is to say:

16 THE STATE OF NEW JERSEY to the Sheriff of the County of
17 (name),

18 Greeting:

19 WHEREAS, on the (date) day of (month),
20 (year), by a certain judgment made in our Superior Court
21 of New Jersey, in a certain cause therein pending, wherein the
22 PLAINTIFF is:

23
24
25

26 and the following named parties are the DEFENDANTS:

27
28
29

30 IT WAS ORDERED AND ADJUDGED that certain mortgaged
31 premises, with the appurtenances in the Complaint, and Amendment
32 to Complaint, if any, in the said cause particularly set forth and
33 described, that is to say: The mortgaged premises are described as
34 set forth upon the RIDER ANNEXED HERETO AND MADE A
35 PART HEREOF.

36 BEING KNOWN AS Tax Lot (number) in
37 Block (number) COMMONLY KNOWN AS
38 (street address)

39 TOGETHER, with all and singular the rights, liberties, privileges,
40 hereditaments and appurtenances thereunto belonging or in anywise
41 appertaining, and the reversion and remainders, rents, issues and
42 profits thereof, and also all the estate, right, title, interest, use,
43 property, claim and demand of the said defendants of, in, to and out
44 of the same, to be sold, to pay and satisfy in the first place unto the
45 plaintiff,

46
47

1 the sum of \$ (amount) being the principal, interest and
2 advances secured by a certain mortgage dated (date,
3 month, year) and given by (name) together with
4 lawful interest from

5
6
7

8 until the same be paid and satisfied and also the costs of the
9 aforesaid plaintiff with interest thereon.

10 AND for that purpose a Writ of Execution should issue, directed to
11 the Sheriff of the County of (name) commanding him to
12 make sale as aforesaid; and that the surplus money arising from
13 such sale, if any there be, should be brought into our said Court, as
14 by the judgment remaining as of record in our said Superior Court
15 of New Jersey, at Trenton, doth and more fully appear; and
16 whereas, the costs and Attorney's fees of the said plaintiff have
17 been duly taxed at the following sum: \$ (amount)

18 THEREFORE, you are hereby commanded that you cause to be
19 made of the premises aforesaid, by selling so much of the same as
20 may be needful and necessary for the purpose, the said sum of
21 \$..... (amount) and the same you do pay to the said plaintiff
22 together with contract and lawful interest thereon as aforesaid, and
23 the sum aforesaid of costs with interest thereon.

24 And that you have the surplus money, if any there be, before our
25 said Superior Court of New Jersey, aforesaid at Trenton, within 30
26 days after pursuant to R.4:59-1(a), to abide the further Order of the
27 said Court, according to judgment aforesaid, and you are to make
28 return at the time and place aforesaid, by certificate under your
29 hand, of the manner in which you have executed this our Writ,
30 together with this Writ, and if no sale, this Writ shall be returnable
31 within **[12]** 24 months.

32 WITNESS, the Honorable (name), Judge of the Superior
33 Court at Trenton, aforesaid, the (date) day of
34 (month), (year).

35 /s/ (Clerk)
36 Superior Court of New Jersey

37 /s/.....
38 Attorney for Plaintiff

39 As by the record of said Writ of Execution in the Office of the
40 Superior Court of New Jersey, at Trenton, in Book
41 (number) of Executions, Page (number) etc., may more fully
42 appear.

43 AND WHEREAS I, the said (name), as such
44 Sheriff as aforesaid did in due form of law, before making such sale
45 give notice of the time **[and]**, place, and final upset price of such
46 sale by public advertisement signed by myself, and set up in my
47 office in the (name) Building in
48 (name) County, being the County in which said real estate is situate

1 and also set up at the premises to be sold at least three weeks next
2 before the time appointed for such sale.

3 I also caused such notice to be published four times in two
4 newspapers designated by me and printed and published in the said
5 County, the County wherein the real estate sold is situate, the same
6 being designated for the publication by the Laws of this State, and
7 circulating in the neighborhood of said real estate, at least once a
8 week during four consecutive calendar weeks. One of such
9 newspapers, (name of newspaper) is a newspaper
10 with circulation in (name of town), the County seat of
11 said (name) County. The first publication was at least
12 twenty-one days prior and the last publication not more than eight
13 days prior to the time appointed for the sale of such real estate, and
14 by virtue of the said Writ of Execution, I did offer for sale said land
15 and premises at public vendue at the County (name)
16 Building in (name of town) on the (date)
17 day of, (month) (year) at the hour of
18 (time) in the (a.m. or p.m.).

19 WHEREUPON the said party of the second part bidding
20 therefore for the same, the sum of \$..... (amount) and no
21 other person bidding as much I did then and there openly and
22 publicly in due form of law between the hours of (time)
23 and (time) in the (a.m. or p.m.), strike off and sell
24 tracts or parcels of land and premises for the sum of \$
25 (amount) to the said party of the second part being then and there
26 the highest bidder for same. And on the (date) of
27 (month) in the year last aforesaid I did truly report the
28 said sale to the Superior Court of New Jersey, Chancery Division
29 and no objection to the said sale having been made, and by
30 Assignment of Bid filed with the Sheriff of (name)
31 County said bidder assigned its bid to:

32
33
34

35 NOW, THEREFORE, This Indenture witnesseth, that I, the said
36 (name), as such Sheriff as aforesaid under and by the
37 virtue of the said Writ of Execution and in execution of the power
38 and trust in me reposed and also for and in consideration of the said
39 sum of \$ (amount) therefrom acquit, exonerate and
40 forever discharge to the said party of the second part, its successors
41 and assigns, all and singular the said tract or parcel of lands and
42 premises, with the appurtenances, privileges, and hereditaments
43 thereunto belonging or in any way appertaining; to have and hold
44 the same, unto the said party of the second part, its successors and
45 assigns to its and their only proper use, benefit, and behoof forever,
46 in as full, ample and beneficial manner as by virtue of said Writ of
47 Execution I may, can or ought to convey the same.

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1 And, I, the said (name), do hereby covenant, promise and
2 agree, to and with the said party of the second part, its successors
3 and assigns, that I have not, as such Sheriff as aforesaid, done or
4 caused, suffered or procured to be done any act, matter or thing
5 whereby the said premises, or any part thereof, with the
6 appurtenances, are or may be charged or encumbered in estate, title
7 or otherwise.

8 IN WITNESS WHEREOF, I the said (name) as such
9 Sheriff as aforesaid, have hereunto set my hand and seal the day and
10 year aforesaid.

11 Signed, sealed and delivered

12 in the presence of

13

14 Attorney at Law of New Jersey(name) Sheriff

15 STATE OF NEW JERSEY) SS.

16(county)

17 I, (name), Sheriff, of the County of (name),
18 do solemnly swear that the real estate described in this deed made
19 to

20

21

22

23 was by me sold by virtue of a good and subsisting execution (or as
24 the case may be) as is therein recited, that the money ordered to be
25 made has not been to my knowledge or belief paid or satisfied, that
26 the time and place of the same of said real estate were by me duly
27 advertised as required by law, and that the same was cried off and
28 sold to a bona fide purchaser for the best price that could be
29 obtained and the true consideration for this conveyance as set forth
30 in the deed is \$ (amount).

31

32 (name), Sheriff

33 Sworn before me, (name), on this (date) day of
34 (month), (year), and I having examined the deed
35 above mentioned do approve the same and order it to be recorded as
36 a good and sufficient conveyance of the real estate therein
37 described.

38 STATE OF NEW JERSEY) ss.

39 (Name) County) Attorney or Notary Public

40 On this (date) day of (month), (year),
41 before me, the subscriber, (name) personally
42 appeared (name), Sheriff of the County of
43 (name) aforesaid, who is, I am satisfied, the grantor in the within
44 Indenture named, and I having first made known to him the contents
45 thereof, he did thereupon acknowledge that he signed, sealed and
46 delivered the same on his voluntary act and deed, for the uses and
47 purposes therein expressed.

48

1 Attorney or Notary Public

2 b. At the conclusion of the sheriff's sale, the attorney for the
3 plaintiff shall prepare and deliver to the sheriff a deed which shall
4 be in the form provided pursuant to paragraph ~~[(6)]~~ (9) of
5 subsection a. of this section for the sheriff's execution and the deed
6 shall be delivered to the sheriff within 10 days of the date of the
7 sale. The sheriff shall be entitled to the authorized fee, as a review
8 fee, even if the plaintiff's attorney prepares the deed.

9 c. (1) The sheriff's office shall, within two weeks of the date
10 of the sale, deliver a fully executed deed to the successful bidder at
11 the sale provided that the bidder pays the balance of the monies due
12 to the Sheriff by either cash or certified or cashier's check. In the
13 event a bid is satisfied after the expiration and additional interest is
14 collected from the successful bidder, the sheriff shall remit to the
15 plaintiff the total amount, less any fees, costs and commissions due
16 the sheriff, along with the additional interest.

17 (2) Notwithstanding the provisions of paragraph (1) of this
18 subsection, in the case of residential property in which the
19 successful bidder is permitted to pay a 3.5 percent deposit upon the
20 conclusion of the foreclosure sale pursuant to the provisions of this
21 section, no interest shall accrue on the balance of the sale of the
22 property until 60 business days have passed following the date of
23 the sale, and thereafter, the successful bidder shall have 30 business
24 days to fulfill the balance. If the successful bidder fails to fulfill the
25 balance within this 90 business day period, the bidder shall forfeit
26 the deposit on the property and shall be responsible for the payment
27 of accrued interest incurred as a result of the sale being void, unless
28 the failure to fulfill the balance is due to the bidder's inability to
29 close a mortgage through no fault of their own, which includes, but
30 is not limited to, the appraised value of the property being less than
31 the purchase value of the property or the financial institution
32 denying financing, in which case the bidder shall be refunded the
33 deposit on the property and shall be responsible only for the
34 payment of accrued interest. In addition, if a successful bidder fails
35 to fulfill the balance within this 90 business day period, any
36 subsequent foreclosure sale involving the same residential property
37 and the same foreclosing plaintiff and foreclosed upon defendant
38 shall be subject to the procedures set forth in subparagraph (a) of
39 paragraph (5) of subsection a. of this section and there shall be no
40 right of first or second refusal pursuant to subsections d. and g. of
41 this section.

42 d. In the case of a foreclosed residential property where the
43 foreclosed upon defendant is an individual and not a corporate
44 entity, if the foreclosed upon defendant, next of kin of the
45 foreclosed upon defendant, or tenant of the foreclosed upon
46 property has secured financing or assets sufficient to meet terms
47 offered by the foreclosing plaintiff or an alternative financial
48 institution to purchase the property, the foreclosed upon defendant,

1 next of kin of the foreclosed upon defendant, or tenant shall have
2 the right of first refusal to purchase the property in the amount
3 approved for the opening bid of the sheriff's sale at the time of the
4 sale. The right of first refusal shall only be made available to the
5 foreclosed upon defendant, next of kin of the foreclosed upon
6 defendant, or tenant for the initial sale of the foreclosed upon
7 property, unless the sale is delayed, postponed or concludes with
8 the foreclosing plaintiff purchasing the property, upon which the
9 foreclosed upon defendant, next of kin of the foreclosed upon
10 defendant, or tenant shall receive a right of first refusal for the
11 subsequent sale of the foreclosed upon property. Such right shall be
12 deemed exercised if, prior to the opening of the bidding on the
13 foreclosed property, the foreclosed upon defendant, next of kin of
14 the foreclosed upon defendant, or tenant pays a 3.5 percent deposit
15 with the rest of the balance due within 90 business days by cash,
16 certified or cashier's check, or by wire transfer, made payable to the
17 sheriff of the county in which the sale is conducted or to the Special
18 Master, if the sheriff cannot comply with the provisions of
19 subparagraph (a) of paragraph (3) of subsection a. of this section.

20 e. A bidder, who is permitted to pay a 3.5 percent deposit upon
21 the conclusion of the foreclosure sale pursuant to the provisions of
22 this section, may purchase residential property at a sheriff's sale by
23 way of financing if the bidder provides documentation that the
24 bidder has been pre-approved by a financial institution regulated by
25 the Department of Banking and Insurance or by a federal banking
26 agency, as defined by section 3 of the "New Jersey Residential
27 Mortgage Lending Act," P.L.2009, c.53 (C.17:11C-53), for
28 financing a residential property.

29 (1) A bidder who is permitted to pay a 3.5 percent deposit upon
30 the conclusion of the foreclosure sale pursuant to the provisions of
31 this section and intends to finance the purchase of residential
32 property at a sale shall be:

33 (a) limited to submitting bids no higher than the amount for
34 which the bidder has been pre-approved for financing; and

35 (b) if the bidder is an individual, required to present current and
36 valid photo identification that substantially conforms to the name
37 and information contained on the financing pre-approval forms
38 obtained by the bidder.

39 (2) To be a successful bidder who is not the plaintiff, and who
40 intends to occupy the property and finance the purchase of the
41 property, the bidder shall have received eight hours of homebuyer
42 education and counseling through a United States Department of
43 Housing and Urban Development (HUD) certified housing
44 counseling agency, and shall present a certificate of completion or
45 proof of enrollment in that program to the sheriff.

46 (3) To ensure that the provisions of this section only apply to a
47 foreclosed upon defendant or next of kin of the foreclosed upon
48 defendant who has entered foreclosure proceedings due to

1 circumstances outside of the foreclosed upon defendant's control,
2 subsections d. through f. of this section shall only apply to a
3 foreclosed upon defendant or next of kin of the foreclosed upon
4 defendant that demonstrates to the foreclosing plaintiff that the
5 foreclosed upon defendant experienced:

- 6 (a) financial hardship;
- 7 (b) a physical or mental illness preventing the foreclosed upon
8 defendant from earning an income;
- 9 (c) divorce or legal separation;
- 10 (d) proof of death of the foreclosed upon defendant, or the
11 foreclosed upon defendant's spouse, or child; or
- 12 (e) predatory loan practices.

13 Any information provided under this paragraph shall be provided
14 at the request of the foreclosing plaintiff prior to the date of sale for
15 the foreclosing property and shall not conflict with subparagraph
16 (b) of paragraph (5) of subsection a. of this section.

17 (4) If a bidder intending to finance the purchase of the
18 residential property is a current tenant, the tenant shall provide
19 documentation confirming:

- 20 (a) that the tenant has resided at the property for at least a year;
21 and
- 22 (b) that the tenant is not in arrears with rent payments as of the
23 date the foreclosed upon defendant received a notice of foreclosure
24 from the foreclosing plaintiff.

25 (5) To prove the residency requirement pursuant to
26 subparagraph (a) of paragraph (4) of this subsection, the tenant shall
27 also be required to present at least two current and valid forms of
28 identification that substantially conform to the name and property
29 address contained in the tenant's lease agreement, which shall
30 include but not be limited to:

- 31 (a) a driver's license issued by the New Jersey Motor Vehicle
32 Commission;
- 33 (b) a utility bill;
- 34 (c) a checking or savings account statement from a bank or credit
35 union issued at least 60 days prior to submitting documentation
36 required pursuant to this subparagraph;
- 37 (d) a statement, receipt, or letter of correspondence from a
38 federal, State, or local government office delivered at least one year
39 prior to submitting documentation required pursuant to this
40 subparagraph; or

41 (e) any other form of identification that the sheriff deems valid
42 pursuant to this paragraph.

43 (6) A tenant shall be allowed to purchase residential property
44 pursuant to this subsection if a foreclosed upon defendant or next of
45 kin of the foreclosed upon defendant decides not to participate in
46 the sheriff's sale, enter into an agreement with a nonprofit
47 community development corporation pursuant to subsection f. of
48 this section, or fail to secure financing or assets sufficient to meet

1 the terms offered by the foreclosing plaintiff or an alternative
2 financial institution to purchase the property. A tenant shall have
3 up to 45 days to purchase the residential property after successfully
4 bidding for the property.

5 (7) With exception to the foreclosed upon defendant, the
6 foreclosed upon defendant's next of kin, or a nonprofit community
7 development corporation, an individual bidder purchasing
8 residential property in a sheriff's sale pursuant to this subsection
9 shall be required by the financial institution to occupy the property
10 as the bidder's primary residence for a fixed term of at least 84
11 months after taking possession. The deed for the property shall
12 clearly state that the property may not be sold for 84 months from
13 the date of the sheriff's sale, except pursuant to the exceptions
14 permitting a successful bidder to vacate the property prior to
15 residing in the property for 84 months in paragraph (8) of this
16 subsection.

17 (8) With exception to the foreclosed upon defendant, the
18 foreclosed upon defendant's next of kin, or a nonprofit community
19 development corporation, a successful individual bidder who
20 finances the purchase pursuant to this subsection and does not
21 occupy the residence for a period of at least 84 months shall be
22 assessed a fine by a court of competent jurisdiction up to \$100,000
23 for the first violation, and \$500,000 thereafter for each subsequent
24 violation. These penalties shall not be assessed against a bidder
25 who finances the purchase with good faith and intent and is
26 thereafter required to vacate the property prior to residing in the
27 property for 84 months due to:

28 (a) death of the bidder or the bidder's spouse or child;

29 (b) disability of the bidder or a member of the bidder's
30 household;

31 (c) divorce;

32 (d) legal separation;

33 (e) military deployment;

34 (f) a change in employment of the bidder or a member of the
35 bidder's household that results in a reduction in income or a need to
36 move out-of-state;

37 (g) a change in the number of permanent residents of the
38 household due to: the birth or adoption of a child; or the permanent
39 relocation of an elder into the household, as proved by a note from
40 the doctor or social worker of the elder;

41 (h) a need to move to care for a family member for a period of
42 at least six months, as evidenced by: an address change; and a note
43 from the family member in need of care, the doctor of the family
44 member, or the social worker for the family member; or

45 (i) foreclosure.

46 In the event of the death of a successful bidder, the property may
47 be transferred to another owner in accordance with applicable laws

1 governing estate, inheritance, and probate matters and the
2 occupancy requirement shall be extinguished.

3 f. If the foreclosed upon defendant, next of kin of the
4 foreclosed upon defendant, or tenant of the foreclosed upon
5 property fails to secure financing or assets sufficient to meet the
6 terms offered by the foreclosing plaintiff or an alternative financial
7 institution to purchase the residential property, the foreclosed upon
8 defendant, next of kin of the foreclosed upon defendant, or tenant
9 may request that a nonprofit community development corporation
10 purchase the property. If the nonprofit community development
11 corporation agrees in writing to purchase the property from the
12 foreclosed upon defendant, next of kin of the foreclosed upon
13 defendant, or tenant, the corporation shall:

14 (1) allow the foreclosed upon defendant, next of kin of the
15 foreclosed upon defendant, or tenant to reside at the property for a
16 period of time as agreed upon in paragraph (2) of this subsection;
17 and

18 (2) negotiate with the foreclosed upon defendant, next of kin of
19 the foreclosed upon defendant, or tenant on an affordable lease
20 schedule that shall include an option to purchase the property from
21 the corporation.

22 g. In the case of a foreclosed residential property, a nonprofit
23 community development corporation, that has a written agreement
24 with a foreclosed upon defendant, next of kin of the foreclosed
25 upon defendant, or tenant of the foreclosed upon property pursuant
26 to subsection f. of this section, shall have a right of second refusal
27 to purchase the property which is subordinate to the first right of
28 refusal provided to a foreclosed upon defendant, next of kin of the
29 foreclosed upon defendant, or tenant pursuant to subsection d. of
30 this section. If the foreclosed upon defendant, next of kin of the
31 foreclosed upon defendant, or tenant decides not to participate in
32 the sheriff's sale, enter into an agreement with the corporation
33 pursuant to subsection f. of this section, or fail to secure financing
34 or assets sufficient to meet the terms offered by the foreclosing
35 plaintiff or an alternative financial institution to purchase the
36 property, a nonprofit community development corporation shall
37 have the right of second refusal to purchase the property in the
38 amount approved for the opening bid of the sheriff's sale at the time
39 of the sale. Such right shall be deemed exercised if, prior to the
40 opening of the bidding on the foreclosed property, the corporation
41 pays a 3.5 percent deposit with the rest of the balance due within 90
42 business days by cash, certified or cashier's check, or by wire
43 transfer, made payable to the sheriff of the county in which the sale
44 is conducted or to the Special Master, if the sheriff cannot comply
45 with the provisions of subparagraph (a) of paragraph (3) of
46 subsection a. of this section. A nonprofit community development
47 corporation shall only have a right of second refusal to purchase the
48 property if it satisfies the requirements set forth in subsection h. of

1 this section and fulfills the conditions set forth in subsection j. of
2 this section.

3 h. (1) If a foreclosed upon defendant, next of kin of the
4 foreclosed upon defendant, or tenant of the foreclosed upon
5 property does not participate in the sheriff's sale, secure financing
6 or assets sufficient to meet the terms offered by the foreclosing
7 plaintiff or an alternative financial institution, or enter into
8 agreement with a nonprofit community development corporation
9 pursuant to subsection f. of this section, the nonprofit community
10 development corporation may enter a bid for the foreclosed upon
11 residential property.

12 (2) A nonprofit community development corporation intending
13 to bid in a sheriff's sale for residential property and pay a 3.5
14 percent deposit as permitted by this section shall, on the date of the
15 sheriff's sale, register its participation with the sheriff or Special
16 Master if the sheriff cannot comply with the provisions of
17 paragraph (3) of subsection a. of this section. In registering its
18 participation in the sale, a corporation shall provide the most recent
19 form 1023 filing provided to the United States Internal Revenue
20 Service, stating the corporation's mission includes community
21 revitalization and the creation or preservation of affordable housing
22 through the restoration of vacant and abandoned property.

23 i. (1) If more than one nonprofit community development
24 corporation seeks to exercise the right of second refusal, the right
25 shall belong in the first instance to a nonprofit community
26 development corporation that fulfills the conditions set forth in
27 subsection f. of this section. If no such nonprofit community
28 development corporation exists, priority shall belong to the
29 nonprofit community development corporation that first registers its
30 participation in the foreclosure sale pursuant to paragraph (2) of
31 subsection h. of this section.

32 (2) If an individual or nonprofit community development
33 corporation exercises a right of first or second refusal pursuant to
34 subsection d. or f. of this section, the foreclosure sale shall be
35 deemed concluded and the person or corporation shall be deemed to
36 be the successful bidder and shall be subject to the applicable
37 provisions and procedures of this section.

38 j. (1) A nonprofit community development corporation that
39 successfully bids on the purchase of a residential property in a
40 sheriff's sale and satisfies the conditions set forth in subsection h.
41 of this section shall be subject to the fines assessed pursuant to
42 paragraph (3) of this subsection if the nonprofit corporation does
43 not:

44 (a) restore as need be and sell the property to a household
45 earning no more than 120 percent below area median income or rent
46 the property as an affordable housing unit to a household who earns
47 no more than 100 percent below area median income, if the
48 property is vacant or abandoned at the time of the sheriff's sale; or

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1 **(b) if the property is occupied at the time of sale by either a**
2 **tenant or the foreclosed upon defendant with whom the nonprofit**
3 **community development corporation does not already have an**
4 **agreement pursuant to subsection f. of this section, the nonprofit**
5 **community development corporation shall negotiate in good faith**
6 **with the foreclosed upon defendant or tenant on an affordable lease**
7 **schedule that will allow the foreclosed upon defendant or tenant to**
8 **continue to occupy the property should the foreclosed upon**
9 **defendant or tenant desire to do so. If after 120 business days the**
10 **foreclosed upon defendant or tenant does not respond to the**
11 **requests of the nonprofit community development corporation to**
12 **negotiate, the corporation may bring an action in a court of**
13 **competent jurisdiction to remove the foreclosed upon defendant or**
14 **tenant. If removal has successfully occurred, the nonprofit**
15 **community development corporation shall comply with the**
16 **requirements of subparagraph (a) of paragraph (1) of this**
17 **subsection.**

18 **(2) A nonprofit community development corporation that**
19 **successfully bids on the purchase of a residential property and**
20 **satisfies the conditions set forth in subsection f. of this section shall**
21 **ensure that, in any future sale of the property pursuant to**
22 **subparagraph (a) of paragraph (1) of this subsection, the property be**
23 **subject to a renewable deed restriction, with the minimum number**
24 **of affordability years being 30 years and with the option to renew,**
25 **requiring any future property owner to sell the property to a**
26 **household earning no more than 120 percent below area median**
27 **income or rent the property as an affordable housing unit to a**
28 **household who earns no more than 100 percent below area median**
29 **income.**

30 **(3) A nonprofit community development corporation that**
31 **successfully bids on and completes the purchase of a residential**
32 **property in a sheriff's sale and satisfies the conditions set forth in**
33 **subsection f. of this section and fails to meet the requirements of**
34 **this subsection shall be assessed a fine by a court of competent**
35 **jurisdiction of up to \$100,000 for the first violation, and \$500,000**
36 **thereafter for each subsequent violation. If the sheriff's office**
37 **determines based upon its oversight that there has been a violation**
38 **of this subsection, the sheriff's office shall bring an action in a**
39 **court of competent jurisdiction so that the sheriff's office can**
40 **pursue enforcement of penalties for the violation. If the nonprofit**
41 **community development corporation dissolves, the deed of the**
42 **residential property shall be transferred to another nonprofit**
43 **community development corporation who shall be bound by the**
44 **requirements of this subsection.**

45 **k. In the case of a residential property for which the successful**
46 **bidder is subject to the occupancy requirement pursuant to**
47 **paragraphs (7) and (8) of subsection e. of this section, the**
48 **appropriate sheriff's office, county administrative agent, or**

1 affordable housing administrative agent that is hired by the county
2 shall oversee the occupancy of the property, which may include the
3 mailing of a questionnaire to the successful bidder within 84
4 months following the sale or requiring the bidder to respond to
5 questions and submit documentation evidencing the bidder's
6 continued residence at the property using the proof of residency
7 documents provided pursuant to paragraph (5) of subsection e. of
8 this section. If the appropriate sheriff's office, county
9 administrative agent, or affordable housing administrative agent
10 that is hired by the county determines based upon its oversight that
11 there has been an occupancy violation, the sheriff's office, county
12 administrative agent, or affordable housing administrative agent
13 hired by the county shall refer the matter to the county counsel's
14 office to bring an action in a court of competent jurisdiction so that
15 the sheriff's office can pursue enforcement of penalties for the
16 violation.

17 l. Each sheriff's office shall maintain information, written in
18 plain language, regarding the program to finance the purchase of
19 residential property in a foreclosure sale in accordance with this
20 section on its Internet website, and in any other medium used by the
21 office to advertise a foreclosure sale, in a manner that is accessible
22 to the public. Additionally, each sheriff's office shall display
23 information, written in plain language, regarding the Community
24 Wealth Preservation Program in its office in a manner that is
25 conspicuous to the public. The information posted on a sheriff's
26 Internet website or displayed in a sheriff's office concerning the
27 program shall further contain language notifying the public that the
28 program shall exclude those purchasing property for investment
29 purposes. For any county in which the primary language of 10
30 percent or more of the residents is a language other than English,
31 the sheriff's office shall provide the information required by this
32 subsection in that other language or languages in addition to
33 English. The alternate language shall be determined based on
34 information from the latest federal decennial census.

35 m. Any sheriff's sales conducted virtually shall be subject to the
36 provisions of P.L. , c. (C.) (pending before the Legislature
37 as this bill).

38 n. Any penalty imposed pursuant to this section may be
39 recovered with costs in a summary proceeding commenced by the
40 appropriate sheriff's office pursuant to the "Penalty Enforcement
41 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Fifty percent
42 of any monies collected pursuant to this section shall be forwarded
43 to the municipality in which the foreclosed upon property is located
44 to be deposited in the affordable housing trust fund of the
45 municipality for use on low income housing or moderate income
46 housing needs as defined in section 4 of P.L.1985, c.222
47 (C.52:27D-304), to the extent the municipality maintains such a
48 fund, and if the municipality does not maintain such a fund, to the

1 State Treasurer, and shall annually be appropriated to the “New
2 Jersey Affordable Housing Trust Fund,” section 20 of P.L.1985,
3 c.222 (C.52:27D-320) for the purpose of developing and supporting
4 housing programs that create for-sale and rental affordable housing.
5 The remaining 50 percent of any monies collected pursuant to this
6 section shall provide for administrative and enforcement costs,
7 including costs incurred by the appropriate sheriff’s office, county
8 administrative agent, or county counsel’s office, necessary to
9 effectuate the purposes of this section.

10 o. The provisions of P.L. , c. (C.) (pending before the
11 Legislature as this bill) shall only apply to residential property as
12 defined pursuant to subsection p. of this section.

13 p. As used in this section:

14 “Area median income” means the midpoint of a region’s
15 household income distribution, as determined by the United States
16 Department of Housing and Urban Development.

17 “Community Wealth Preservation Program” means the program
18 created by P.L. , c. (C.) (pending before the Legislature as
19 this bill) to assist prospective owner-occupants, nonprofit
20 community development corporations, foreclosed upon defendants,
21 next of kin of foreclosed upon defendants, and tenants of foreclosed
22 upon defendants in purchasing and financing foreclosed upon
23 residential properties in sheriff’s sales with an initial 3.5 percent
24 deposit.

25 “Nonprofit community development corporation” means a not-
26 for-profit organization, whose mission includes community
27 revitalization through the restoration of vacant and abandoned
28 property to create or preserve affordable housing, as indicated in the
29 corporation’s most recent form 1023 filing provided to the United
30 States Internal Revenue Service.

31 “Residential property” means real property located in this State
32 in which people reside or dwell as their primary residence, and shall
33 not include property which is used for investment, commercial, or
34 business purposes or residential property containing more than four
35 residential units.

36 “Upset price” means the minimum amount that a foreclosed upon
37 property shall be sold for in a sheriff’s sale as determined by the
38 foreclosing plaintiff.

39 (cf: P.L.2019, c.71, s.1)

40

41 2. N.J.S.22A:4-8 is amended to read as follows:

42 22A:4-8. For the services hereinafter enumerated sheriffs and
43 other officers shall receive the following fees:

44 In addition to the mileage allowed by law, for serving every
45 summons and complaint, attachment or any mesne process issuing
46 out of the Superior Court, the sheriff or other officer serving such
47 process shall, for the first defendant or party on whom such process
48 is served, be allowed \$22.00 and, for service on the second

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1 defendant named therein, \$20.00, and for serving such process on
2 any other defendant or defendants named therein, \$16.00 each, and
3 no more. If a man and his wife be named in such process they shall
4 be considered as one defendant, except where they are living
5 separate and apart.

6 Serving summons and complaint in matrimonial actions, in
7 addition to mileage, \$22.00.

8 Serving capias ad respondendum, capias ad satisfaciendum,
9 warrant of commitment, writ of ne exeat, in addition to mileage,
10 \$48.00.

11 Serving order to summon juries and return, \$8.00.

12 Serving every execution against goods or lands and making an
13 inventory and return, in addition to mileage, \$48.00.

14 For returning every writ, \$2.00.

15 Executing every writ of possession and return, in addition to
16 mileage, \$48.00.

17 Executing every writ of attachment, sequestration or replevin
18 issuing out of any of the courts, in addition to mileage, \$48.00.

19 For serving each out-of-State paper, in addition to the mileage
20 allowed by law, \$25.00 for the first defendant on whom such paper
21 is served, \$20.00 for service on the second defendant named
22 therein, and \$16.00 for serving such paper on any other defendant
23 or defendants named therein. If a man and wife be named in such
24 paper, they shall be considered as one defendant, except where they
25 are living separate and apart.

26 For serving or executing any process or papers where mileage is
27 allowed by law, the officer shall receive mileage actually traveled
28 to and from the courthouse, at the rate per mile of \$0.16.

29 The sheriff shall be entitled to retain out of all moneys collected
30 or received by him on a forfeited recognizance, whether before or
31 after execution, or from amercements, or from fines and costs on
32 conviction, on indictment or otherwise, whether such moneys are
33 payable to the State or to the county treasurer of the county wherein
34 conviction was had, **【5%】** five percent.

35 For transporting each offender to the State Prison, per mile, but
36 not less than \$3.00 for each offender, to be certified by the keeper
37 of the prison and the certificate to be delivered to the county
38 treasurer of the county where the conviction was had, \$0.23.

39

40 EXECUTION SALES

41

42 **【When】** Except as to sales conducted in accordance with section
43 12 of P.L.1995, c.244 (C.2A:50-64), when a sale is made by virtue
44 of an execution the sheriff shall be entitled to charge the following
45 fees: On all sums not exceeding \$5,000.00, **【6%】** 10 percent; on all
46 sums exceeding \$5,000.00 on such excess, **【4%】** five percent; the
47 minimum fee to be charged for a sale by virtue of an execution,
48 **【\$50.00】** \$150.00. When sales are conducted in accordance with

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1 section 12 of P.L.1995, c.244 (C.2A:50-64), the sheriff shall be
2 entitled to charge six percent on a sale by virtue of an execution.

3 On an execution against wages, commissions and salaries, the
4 sheriff shall charge the same percentage fees on all sums collected
5 as those percentage fees applicable in cases wherein an execution
6 sale is consummated.

7 When the execution is settled without actual sale and such
8 settlement is made manifest to the officer, the officer shall receive
9 **[1/2]** one-half of the amount of percentage allowed herein in case
10 of sale.

11 Making statement of execution, sales and execution fees, \$10.00.

12 Advertising the property for sale, provided the sheriff or deputy
13 sheriff attend in pursuance of the advertisement, \$20.00.

14 Posting property for sale, \$20.00. For the crier of the
15 vendue, when the sheriff proceeds to sell, for every day he shall be
16 actually employed in such sale, \$5.00.

17 Every adjournment of a sale, but no more than one adjournment
18 shall be allowed, and if the sheriff shall have several executions
19 against a defendant, he shall only be allowed for advertising,
20 attending and adjourning, as if he had but one execution, \$28.00.

21 Drawing and making a deed to a purchaser of real property,
22 \$75.00.

23 Drawing and making a bill of sale to the purchaser of personal
24 property when such bill of sale is required or demanded, \$20.00.

25 When more than one execution shall be issued out of the
26 Superior Court upon any judgment, each sheriff to whom such
27 execution shall be directed and delivered shall be entitled to collect
28 and receive from the defendant named in such execution the fees
29 allowed by law for making a levy and return and statement thereon,
30 or for such other services as may be actually performed by him, and
31 the sheriff who shall collect the amount named in said execution or
32 any part thereof, shall be entitled to the legal percentage upon
33 whatever amount may be so collected by him, but in case any such
34 judgment shall be settled between the parties and the amount due
35 thereon shall not be collected by either sheriff, then the percentage
36 on the amount collected which would be due the sheriff thereon in
37 case only one execution had been issued shall be equally divided
38 among the several sheriffs in whose hands an execution in the same
39 cause may have been placed.

40 The sheriff shall file his taxed bill of costs with the clerk of the
41 court out of which execution issued, within such time as the court
42 shall direct by general rule or special order, or, in default thereof,
43 he shall not be entitled to any costs. If any sheriff shall charge in
44 such bill of costs for services not done, or allowed by law, or shall
45 take any greater fee or reward for any services by him done than is
46 or shall be allowed by law, he shall be liable for the damages
47 sustained by the party aggrieved including a penalty of \$30.00, to

1 be recovered in a summary manner, in the action or proceeding
2 wherein the execution was issued or otherwise.

3 (cf: P.L.2001, c.370, s.5)

4

5 3. (New section) a. In situations in which a creditor has
6 instituted a foreclosure proceeding pursuant to the “Fair Foreclosure
7 Act,” P.L.1995, c.244 (C.2A:50-53 et seq.) and a creditor employs
8 an agent to be responsible for the care, maintenance, security, and
9 upkeep of the property if it becomes vacant and abandoned, the
10 creditor and agent who peacefully enter the property and exercise
11 reasonable care in doing so, shall be immune from liability, before
12 and after the bid, for any damage to the property or any person
13 entering the property.

14 b. Persons bidding on the property shall not enter the property
15 prior to the time of sale of the property to the successful bidder.

16

17 4. This act shall take effect immediately.

18

19

20

STATEMENT

21

22 This bill establishes the “Community Wealth Preservation
23 Program” and expands access for certain buyers to purchase
24 property from sheriff’s sales.

25 Under the bill, a defendant in a foreclosure proceeding, next of
26 kin of the foreclosed upon defendant, tenant of the foreclosed upon
27 defendant, nonprofit community development corporation, or bidder
28 who shall occupy the property for at least 84 months, will have up
29 to 90 business days to complete the sale of a foreclosing property,
30 with no interest accruing on the balance of the sale for 60 business
31 days following the sale. If the successful bidder does not pay the
32 balance within this 90 business day period, the bidder would forfeit
33 the deposit on the property and be responsible for the payment of
34 accrued interest and fees or penalties incurred as a result of the sale
35 being void, unless the failure to fulfill the balance is due to the
36 bidder’s inability to close a mortgage through no fault of the
37 bidder’s own.

38 Under the bill, a foreclosed upon defendant, next of kin of the
39 foreclosed upon defendant, tenant of the foreclosed upon defendant,
40 nonprofit community development corporation, or bidder may
41 purchase property in a sheriff’s sale by way of financing if the
42 bidder provides documentation that the bidder has been pre-
43 approved by a financial institution for financing the property. A
44 bidder, other than the foreclosed upon defendant, the foreclosed
45 upon defendant’s next of kin, or nonprofit community development
46 corporation may only use the financing option if the property will
47 be the bidder’s primary residence.

1 In the case of a foreclosed residential property where the
2 foreclosed upon defendant is an individual and not a corporate
3 entity, if the foreclosed upon defendant, next of kin of the
4 foreclosed upon defendant, or tenant of the foreclosed upon
5 property has secured financing or assets sufficient to meet terms
6 offered by the foreclosing plaintiff or an alternative financial
7 institution to purchase the property, the foreclosed upon defendant,
8 next of kin of the foreclosed upon defendant, or tenant will have the
9 right of first refusal to purchase the property in the amount
10 approved for the opening bid of the sheriff's sale at the time of the
11 sale. The right of first refusal will only be made available to the
12 foreclosed upon defendant, next of kin of the foreclosed upon
13 defendant, or tenant for the initial sale of the foreclosed upon
14 property, unless the sale is delayed, postponed or concludes with
15 the foreclosing plaintiff purchasing the property, upon which the
16 foreclosed upon defendant, next of kin of the foreclosed upon
17 defendant, or tenant will receive a right of first refusal for the
18 subsequent sale of the foreclosed upon property. Such right will be
19 deemed exercised if, prior to the opening of the bidding on the
20 foreclosed property, the foreclosed upon defendant, next of kin of
21 the foreclosed upon defendant, or tenant pays a 3.5 percent deposit
22 with the rest of the balance due within 90 business days by cash,
23 certified or cashier's check, or by wire transfer, made payable to the
24 sheriff of the county in which the sale is conducted.

25 If the foreclosed upon defendant, next of kin of the foreclosed
26 upon defendant, or tenant of the foreclosed upon property fails to
27 secure financing or assets sufficient to meet the terms offered by the
28 foreclosing plaintiff or an alternative financial institution to
29 purchase the residential property, the foreclosed upon defendant,
30 next of kin of the foreclosed upon defendant, or tenant may request
31 that a nonprofit community development corporation purchase the
32 property. If the nonprofit community development corporation
33 agrees in writing to purchase the property from the foreclosed upon
34 defendant, next of kin of the foreclosed upon defendant, or tenant,
35 the corporation will have a right of second refusal to purchase the
36 property which is subordinate to the first right of refusal provided to
37 a foreclosed upon defendant, next of kin of the foreclosed upon
38 defendant, or tenant. If the foreclosed upon defendant, next of kin
39 of the foreclosed upon defendant, or tenant decides not to
40 participate in the sheriff's sale, enter into an agreement with the
41 corporation, or fail to secure financing or assets sufficient to meet
42 the terms offered by the foreclosing plaintiff or an alternative
43 financial institution to purchase the property, a nonprofit
44 community development corporation will have the right of second
45 refusal to purchase the property in the amount approved for the
46 opening bid of the sheriff's sale at the time of the sale. The right
47 shall be deemed exercised if, prior to the opening of the bidding on
48 the foreclosed property, the corporation pays a 3.5 percent deposit

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1 with the rest of the balance due within 90 business days by cash,
2 certified or cashier's check, or by wire transfer, made payable to the
3 sheriff of the county in which the sale is conducted or to the Special
4 Master, if the sheriff cannot conduct the sale. A nonprofit
5 community development corporation will only have a right of
6 second refusal to purchase the property if it satisfies certain
7 conditions set forth within the bill.

8 With the exception of sales conducted pursuant to the
9 Community Wealth Preservation Program, the bill increases the fee
10 to be charged by virtue of an execution sale from 4 to 5 percent, or
11 6 percent to 10 percent, depending on whether the sum involved is
12 greater than or less than \$5,000, respectively. The bill also
13 increases the minimum fee to be charged by virtue of an execution
14 sale from \$50 to \$150.

15 Finally, the bill provides creditors and creditors' agents with
16 immunity from liability for damages to certain vacant and
17 abandoned property so long as reasonable care is exercised, and
18 clarifies that bidders are not authorized to enter the property prior to
19 the time of sale.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 4240

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 4, 2024

The Senate Community and Urban Affairs Committee reports favorably and with committee amendments Senate Bill No. 4240.

As amended and reported, this bill establishes the “Community Wealth Preservation Program” and expands access for certain buyers to purchase property from sheriff’s sales.

Current law requires that a successful bidder at a sheriff’s sale pay a 20 percent deposit immediately upon the conclusion of the foreclosure sale. Under the bill, a defendant in a foreclosure proceeding, next of kin of the foreclosed upon defendant, tenant of the foreclosed upon defendant, nonprofit community development corporation, or bidder who has occupied the property for at least 84 months, is required to pay a 3.5 percent deposit immediately, and is permitted up to 90 business days to complete the sale of a foreclosing property, with no interest accruing on the balance of the sale for 60 business days following the sale. If the successful bidder does not pay the balance within this 90-business day period, the bidder would forfeit the deposit on the property and be responsible for the payment of accrued interest and fees or penalties incurred as a result of the sale being void, unless the failure to fulfill the balance is due to the bidder’s inability to close a mortgage through no fault of the bidder’s own, as provided in the bill.

Under the bill, a foreclosed upon defendant, next of kin of the foreclosed upon defendant, tenant of the foreclosed upon defendant, nonprofit community development corporation, or bidder that is permitted to pay a 3.5 percent deposit upon conclusion of the foreclosure sale and intends to finance the purchase:

(1) is permitted to do so if the bidder provides documentation that the bidder has been pre-approved by a financial institution for financing the property in the amount of the sale;

(2) is limited in bidding to the amount for which the bidder was pre-approved; and

(3) is required by the bill to provide identification, as described in the bill, as proof the residence will be the bidder’s primary residence;

A tenant or successful bidder intending to occupy the property for 84 months and finance the purchase of the property is required to

receive a homebuyer education and counseling course through the United States Department of Housing and Urban Development (HUD).

In the case of a foreclosed upon residential property where the foreclosed upon defendant is an individual and not a corporate entity, if the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant of the foreclosed upon property has secured financing or assets sufficient to meet terms offered by the foreclosing plaintiff, or an alternative financial institution, to purchase the property, the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant will have the right of first refusal to purchase the property for the original upset price listed in the notice provided by the foreclosing plaintiff before the time of sale. The right of first refusal will only be made available to the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant for the initial sale of the foreclosed upon property, unless the sale is delayed or postponed, upon which the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant will retain the right of first refusal for the rescheduled date of sale of the foreclosed upon property. Such right will be deemed exercised if, prior to the opening of the bidding on the foreclosed property, the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant pays a 3.5 percent deposit with the rest of the balance due within 90 business days.

If the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant of the foreclosed upon property fails to secure financing or assets sufficient to meet the terms offered by the foreclosing plaintiff or an alternative financial institution to purchase the residential property, the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant may request that a nonprofit community development corporation purchase the property. If the nonprofit community development corporation agrees in writing to purchase the property for the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant to reside in, the corporation will have a right of second refusal to purchase the property that is subordinate to the first right of refusal provided to a foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant. Under certain circumstances provided for in the bill, a nonprofit community development corporation will have the right of second refusal to purchase the property in the amount approved for the opening bid of the sheriff's sale at the time of the sale. The right shall be deemed exercised if, prior to the opening of the bidding on the foreclosed property, the corporation pays a 3.5 percent deposit with the rest of the balance due within 90 business days, as prescribed by the bill. A nonprofit community development corporation will only have a right of second refusal to purchase the property if it satisfies certain conditions set forth within the bill.

The bill additionally provides that, on sales conducted pursuant to the “Community Wealth Preservation Program,” a sheriff will be entitled to charge six percent on sales made by virtue of an execution. However, the bill provides that if a sale conducted pursuant to the “Community Wealth Preservation Program” results in the property reverting back to the foreclosing plaintiff, a sheriff will only be entitled to charge a flat fee of \$150.

For other sales made by virtue of an execution, the bill increases the fee to be charged by virtue of an execution sale from four percent to five percent for sums involved that are greater than \$5,000, and from six percent to 10 percent for sums involved that are less than \$5,000. The bill also increases the minimum fee to be charged by virtue of an execution sale from \$50 to \$150 and provides that if a sale results in the property reverting back to the foreclosing plaintiff, a sheriff will only be entitled to charge a flat fee of \$150.

Finally, the bill provides creditors and creditors’ agents with immunity from liability for damages to certain vacant and abandoned property so long as reasonable care is exercised, and clarifies that bidders are not authorized to enter the property prior to the time of sale.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) require notices written by a foreclosing plaintiff regarding the upset price for the sale of a foreclosed upon residential property be compliant with the federal “Fair Debt Collection Practices Act;”

(2) require that if a sheriff’s sale is delayed or postponed, or if circumstances occur that require unforeseen advances to protect the borrower or the foreclosed upon residential property in certain events, the upset price be permitted to be adjusted to reflect these costs in the latest price;

(3) allow a foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant to have the right of first refusal to purchase the property for the original upset price listed in the notice or for the final starting upset price listed for the sale of the property, whichever is less;

(4) require a bidder who intends to finance the purchase of the foreclosed residential property to be preapproved for a loan amount that matches the original upset price listed in the notice provided by the foreclosing plaintiff or the final starting upset price listed for the sale of the property, whichever is less;

(5) require a tenant and an individual bidder subject to the 84-month requirement to receive homebuyer education and counseling through the United States Department of Housing and Urban Development (HUD);

(6) specify when title transfers for an individual bidder who finances the purchase of the property, and, in good faith, intends to

reside in the property for 84 months, but is required to vacate the property due to foreclosure for the reasons prescribed in the bill;

(7) require that an individual bidder who fraudulently asserts an exception to the 84-month requirement contained in the bill will be in violation of the “Consumer Fraud Act;”

(8) allow a tenant to have up to 90 business days, instead of 45 days, to purchase a foreclosed upon residential property after successfully bidding for the property;

(9) specify the circumstances under which a nonprofit community development corporation has an option to purchase the foreclosed upon residential property, upon request, for, not from, the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or for tenant to reside in;

(10) specify that if the nonprofit community development corporation purchases the property pursuant to the right of second refusal, as provided in the bill, that the purchase price is to be the final starting upset price on the day of the sheriff’s sale at the time of the sale;

(11) specify that if a sale results in the property reverting back to the foreclosing plaintiff, a sheriff will only be entitled to charge a flat fee of \$150; and

(12) make certain technical changes.

Governor Murphy Signs Legislation Establishing Community Wealth Preservation Program

01/12/2024

Legislation Creates Homeownership Opportunities for New Jersey Residents

TRENTON – Governor Phil Murphy today signed [A5664/S4240](#), establishing a Community Wealth Preservation Program to promote equity and fairness in foreclosure sales by providing opportunities for foreclosed-upon residents and their next of kin, tenants, and other prospective owner-occupants – along with nonprofit community development corporations – to purchase and finance a foreclosed-upon home.

The current foreclosure market favors investment companies that can afford to purchase foreclosed-upon properties and sell them at a profit. The legislation helps to level the playing field, support affordable homeownership, and empower those with a vested interest in the community to purchase property.

"For too many, the dream of homeownership feels far out of reach," **said Governor Murphy**. "With today's bill signing, we are creating a new avenue to homeownership for individuals and families throughout New Jersey, giving many the opportunity to remain in the homes and communities they cherish while also protecting our neighborhoods from rapid investment-driven homebuying."

"This new law shows that New Jersey is continuing to find creative ways to create affordable homeownership opportunities for families and, in the process, ensure more homes stay owned by local residents," **said New Jersey Department of Community Affairs Acting Commissioner Jacquelyn A. Suárez**. "With the Community Wealth Preservation Program is now much easier for all residents to buy a home to live in at a sheriff's sale because of the lower deposit required and the extra time to come up with money for the remaining balance. Rather than corporations and investors buying the homes to rent or flip for profit, everyday families now have a better opportunity of purchasing a house they can call home for generations to come."

Then-Assemblywoman, now-Senator Britnee Timberlake championed this legislation in the Legislature. Additional primary sponsors include Senators Andrew Zwicker and Shirley Turner and Assemblymembers Shanique Speight, Shavonda Sumter, and Benjie Wimberly.

"New Jersey is consistently in the top three in the nation with the highest foreclosures. Our state also has the widest racial wealth gap in the country. Black and brown wealth is hemorrhaging through the loss of foreclosed property, and the people who live in the community often do not have deep enough pockets to even participate in the foreclosure process. This bill is a creative opportunity for families to save their wealth at the time of a foreclosure sale by using financing," **said Senator Britnee Timberlake**. "This legislation also levels the playing field for renters, affordable housing non-profit developers and people who want to purchase an abandoned home to restore and live in or to create affordability. This is what equity in systems look like."

"Community wealth preservation represents an important way of ensuring affordable housing opportunities remain with the local community, stabilizing neighborhoods, and improving lives, all the while making a variety of other positive impacts that will boost our towns economically and socially and keep them viable for future generations to come," **said Senator Andrew Zwicker**.

"Too often foreclosed properties are bought up by real estate investors and developers only looking to make a profit," **said Senator Shirley Turner**. "This legislation will help to keep property ownership within the community. By creating pathways for owners, tenants and local organizations to make purchases at sheriff's sales we can help to keep money in the community and keep people in their homes."

"The current process for buying foreclosed houses favors companies that have the money to purchase property at sheriff sales and resell it for a profit," **said Assemblywoman Shanique Speight**. "By enacting the changes detailed in this bill, we can give people vested in their community a better chance of securing a home at these sales."

"Home ownership is an important way to build generational wealth, and this bill combats housing insecurity," **said Assemblywoman Shavonda Sumter**. "The trauma of losing the family home due to foreclosure leaves a lasting emotional scar. This bill makes it easier for families to support one another, buy that home at a sheriff's sale and keep it in the family."

"We need to make housing affordable and accessible, especially in Black and brown neighborhoods and the 'Community Wealth Preservation Program' does that. This legislation provides an opportunity for many New Jerseyans who want to own a home and join a community," **said Assemblyman Benjie Wimberly**. "We're removing barriers that stand in the way of a potential homeowner's success at sheriff sales."

"Today we are taking a major step to address NJ's enormous racial wealth gap, the largest in the nation," **said Staci Berger, president and chief executive officer of the Housing and Community Development Network of NJ**. "The Community Wealth Preservation Program will help to HouseNJ by preventing the loss of a family's greatest asset — their home. This landmark legislation, which has been persistently championed by Senator Britnee N. Timberlake during her time in the Assembly, allows relatives to keep their home within the family when possible, and allows nonprofit developers to help keep the property affordable when not. NJ needs to do everything we can to prevent foreclosures, which contribute to racial wealth disparity, and provide people with safe and stable housing. We thank all the sponsors including Senators Timberlake and Andrew Zwicker, our legislative leaders, and Governor Phil Murphy for their leadership and commitment to bring this generational wealth building tool to New Jerseyans."

"The bill puts the interests and wellbeing of people before corporate real estate interests and protects families and communities from the disruption and devastation caused by foreclosure," **said New Jersey Citizen Action's Financial Justice Program Director, Beverly Brown Ruggia**. "The legislation is an important step toward reversing the devastating impact of the great recession and foreclosure crisis on black and brown families in New Jersey. It will help ensure that the chain of generational wealth building through home ownership isn't broken when a family falls on hard times. We want to especially thank Senator Britnee Timberlake for championing this bill, and Governor Murphy for signing it into law."

"We are pleased to see Governor Murphy sign this critical piece of legislation into law. Providing expanded opportunities for Black and Brown communities to retain wealth through homeownership is vital. Closing the racial wealth gap in New Jersey will require more work, but the Community Wealth Preservation Act will create a desperately needed pathway is a great step in the right direction. We commend Senator Timberlake for her leadership and advocacy in championing this bill," **said James Williams, Director of Racial Justice Policy at the Fair Share Housing Center**.

"This legislation is an important step in addressing New Jersey's racial wealth gap by preserving housing wealth in families and communities rather than turning it over to outside investors," **said Laura Sullivan, Director of the Economic Justice Program at the New Jersey Institute for Social Justice**. "This new policy is especially important in New Jersey where people of color face some of the worst racial wealth disparities and are most vulnerable to foreclosure."

Press Pool Coverage: Governor Murphy Signs Legislation Establishing the Community Wealth Preservation Program

01/12/2024

PRINT

Gov. Phil Murphy signed a bill (A5664) during a private ceremony in his office at the Statehouse in Trenton Friday morning. He was joined by eight people — lawmakers who sponsored the legislation and housing advocates.

The bill Murphy signed into law creates the Community Wealth Preservation Program, and makes it easier for families to acquire properties at a sheriff's sale. A similar bill was conditionally vetoed by Murphy, and then-Assemblywoman Britnee Timberlake introduced the overhauled version.

"We know that owning a home is the biggest aspect of the wealth gap," he said.

Murphy said the new law will get "safe affordable housing into the hands of folks who deserve it."

"It will rebalance the man on the street versus the big corporations that's vacuuming up city blocks and flipping them to turn a profit," he said.

Assemblywoman Shavonda Sumter pointed out that the bill passed with bipartisan support. Timberlake said she got it out of committee with bipartisan support as well.

"You have to acknowledge it when you get something that's bipartisan," he said.

Murphy added that this legislation has "legs for many decades to come."

The morning signing is one of four bills Murphy is set to sign Friday. Of the more than 100 bills on his desk, private ceremonies and public events are only being held for about 11 signings, he said.

He took photos with Sens. Shirley Turner and Timberlake, and Assemblywomen Shanique Speight & Sumter. Asm. Benjie Wimberly was not present at the signing.

"Big, big day," he said, congratulating the advocates and lawmakers.

He signed the bill at his desk and gave out eight pens:

1. Senator Britnee Timberlake
 2. Senator Shirley Turner
 3. Assemblywoman Shanique Speight
 4. Assemblywoman Shavonda Sumter
 5. Staci Berger, President and CEO, Housing & Community Development Network of New Jersey
 6. James Williams, Director of Racial Justice Policy, Fair Share Housing Center
 7. Beverly Brown Ruggia, Financial Justice Organizer, New Jersey Citizen Action
 8. Matthew Hersh, Director of policy & advocacy, Housing & Community Development Network of NJ.
- Sophie Nieto-Muñoz, NJ Monitor

PHOTO

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Rich Hundley, New Jersey Governor's Office