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[Third Reprint]

ASSEMBLY, No. 4063

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED JUNE 8, 2009

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblywoman MILA M. JASEY

District 27 (Essex)

Assemblywoman ELEASE EVANS

District 35 (Bergen and Passaic)

Co-Sponsored by:

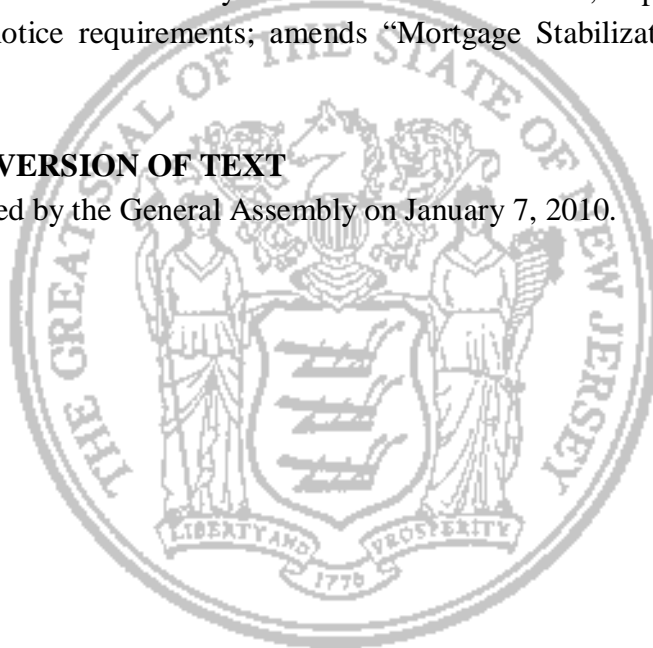
Assemblywomen Spencer, Rodriguez, Senators Rice and Ruiz

SYNOPSIS

Establishes the “New Jersey Foreclosure Fairness Act”; imposes additional foreclosure notice requirements; amends “Mortgage Stabilization and Relief Act.”

CURRENT VERSION OF TEXT

As amended by the General Assembly on January 7, 2010.



(Sponsorship Updated As Of: 1/12/2010)

1 AN ACT concerning foreclosure on residential properties,
2 supplementing and amending various sections of the statutory
3 law.

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

7
8 1. (New section) This act shall be known and may be cited as
9 the “New Jersey Foreclosure Fairness Act.”

10
11 2. (New section) a. A person who takes title, as a result of a
12 sheriff’s sale or deed in lieu of foreclosure, to a residential property
13 containing one or more dwelling units occupied by residential
14 tenants, ¹[shall provide notice, no later than five business days after
15 the sale, via certified and regular mail, to the tenants in
16 substantially the following form], shall provide notice to the
17 tenants, in both English and Spanish, no later than ³[ten] 10³
18 business days after the transfer of title, in accordance with the
19 provisions of subsection c. of this section. The notice shall be in
20 the following form¹ :

21 **NOTICE TO TENANTS**

22 THE FORMER OWNER OF (insert property
23 address) HAS LOST THE PROPERTY AS A RESULT OF A
24 FORECLOSURE. ¹[IF YOU ARE A TENANT AT
25 (insert property address) YOU HAVE THE RIGHT TO REMAIN
26 IN YOUR HOUSE OR APARTMENT. THE NEW OWNER
27 CANNOT FORCE YOU TO MOVE OUT BECAUSE OF THE
28 FORECLOSURE.

29 YOU ARE PROTECTED BY NEW JERSEY’S ANTI-
30 EVICTION ACT, N.J.S.A. 2A:18-61.1 ET SEQ.] FROM THE
31 TIME YOU RECEIVE THIS AND UNTIL FURTHER NOTICE,
32 YOU SHOULD PAY RENT TO(insert name and address of
33 person to whom rent is due) PLEASE SEND RENT BY(insert
34 method of transmission) ON THE(insert day) OF EACH
35 MONTH.

36 WITH LIMITED EXCEPTIONS, THE NEW JERSEY ANTI-
37 EVICTION ACT, N.J.S.A.2A:18-61.1 ET ³[AL.] SEQ.³,
38 PROTECTS YOUR RIGHT TO REMAIN IN YOUR HOME.
39 FORECLOSURE ALONE IS NOT GROUNDS FOR EVICTION
40 OF A TENANT. YOU ARE PROTECTED BY THIS LAW EVEN
41 IF YOU DO NOT HAVE A WRITTEN LEASE.¹

42 THE NEW OWNER CANNOT EVICT YOU WITHOUT

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 AHO committee amendments adopted November 23, 2009.

²Assembly floor amendments adopted December 7, 2009.

³Assembly floor amendments adopted January 7, 2010.

1 "GOOD CAUSE," AS DETERMINED BY A COURT. ¹[THIS
2 MEANS THAT ONLY A SHERIFF'S OFFICER WITH A COURT
3 ORDER MAY REMOVE YOU FROM THE PREMISES, AND
4 ONLY AFTER YOU HAVE BEEN GIVEN THE OPPORTUNITY
5 TO DEFEND YOURSELF AGAINST EVICTION IN COURT.]¹
6 EXAMPLES OF "GOOD CAUSE" ARE FAILURE TO PAY
7 RENT, WILLFULLY DAMAGING THE PREMISES, OR
8 PERSONAL OCCUPANCY BY THE NEW OWNER OF THE
9 HOUSE OR APARTMENT THAT YOU NOW LIVE IN.

10 ¹[IT IS ILLEGAL FOR THE NEW OWNER TO TRY] A
11 RESIDENTIAL TENANT IN NEW JERSEY CAN BE EVICTED
12 ONLY THROUGH A COURT PROCESS. ONLY A COURT
13 OFFICER WITH A COURT ORDER MAY REMOVE YOU
14 FROM THE PREMISES, AND ONLY AFTER YOU HAVE BEEN
15 GIVEN THE OPPORTUNITY TO DEFEND YOURSELF IN
16 COURT.

17 INDIVIDUALS CAN BE SUBJECT TO BOTH CIVIL AND
18 CRIMINAL PENALTIES FOR TRYING¹ TO FORCE YOU TO
19 LEAVE YOUR HOME IN ANY OTHER MANNER, INCLUDING
20 SHUTTING OFF UTILITIES OR ¹OTHER VITAL SERVICE OR¹
21 FAILING TO MAINTAIN THE PREMISES. ¹[IF THE NEW
22 OWNER PRESSURES YOU TO LEAVE, CONSULT WITH AN
23 ATTORNEY OR FILE A COMPLAINT WITH YOUR LOCAL
24 PROSECUTOR.] YOU MAY, HOWEVER, ACCEPT
25 FINANCIAL COMPENSATION FOR LEAVING
26 VOLUNTARILY IF THE NEW OWNER OFFERS SUCH
27 COMPENSATION.

28 IF SOMEONE IS PRESSURING YOU TO LEAVE, CONSULT
29 WITH AN ATTORNEY.¹

30 b. ¹(1)¹ The notice required pursuant to subsection a. of this
31 section shall be printed in no less than ¹[16]14¹ point bold point
32 type ¹[on heavy stock]¹, ¹on paper¹ at least eight and one-half
33 inches by 11 inches in size, and shall contain contact information,
34 including the name, mailing address, e-mail address, and telephone
35 number of the new owner or a person authorized to act on behalf of
36 the new owner.

37 ¹(2) The Department of Community Affairs shall prepare and
38 make available for distribution, both in print and in an easily
39 printable format on the department's Internet website, a notice in
40 English with a Spanish translation that may be used by the new
41 owner or person authorized to act on behalf of the new owner to
42 satisfy the notice requirements of this section.¹

43 c. ²[The] (1) In buildings containing 10 or fewer dwelling
44 units, the² new owner shall make a ¹[diligent] good faith¹ effort to
45 obtain the names ¹[and addresses]¹ of all tenants occupying the
46 property for which a notice is required pursuant to subsection a. of

1 this section. 'The notice shall be addressed to tenants by name;
 2 provided, however, that in the event a good faith search fails to
 3 identify the tenant by name, the new owner shall address the notice
 4 required pursuant to subsection a. of this section to "Tenant."¹ The
 5 new owner shall post the notice ¹[', required pursuant to subsection
 6 a. of this section,]¹ prominently on the front door of each tenant's
 7 unit ¹and send the notice to each tenant via certified and regular
 8 mail¹.

9 ²(2) In a residential property containing more than 10 dwelling
 10 units, the new owner shall provide notice to tenants occupying the
 11 property for which notice is required pursuant to subsection a. of
 12 this section by causing a copy of the notice to be conspicuously
 13 displayed in a prominent place in a common area of each residential
 14 building or structure on the property. If there is no common area,
 15 the notice shall be posted in a conspicuous location in each building
 16 or structure on the premises, including, but not limited to the walls
 17 of the front vestibule or any foyer or hallway near the main entrance
 18 of the building or structure.²

19 d. Any person taking title to the residential property as a result
 20 of a sheriff's sale or deed in lieu of foreclosure ¹, or that person's
 21 agent or employee,¹ shall ¹['include] provide¹ a copy of the notice
 22 as set forth in subsection a. of this section ¹['in any] with the initial
 23 and final¹ written ¹or verbal¹ communication to a tenant for the
 24 purposes of inducing a tenant to vacate the property ¹in accordance
 25 with the provisions of section 3 of P.L. , c. (C ³.³) (pending
 26 before the Legislature as this bill)¹.

27 e. Service on any tenant of a summons and complaint in an
 28 action to foreclose ¹a mortgage¹ on any residential property by any
 29 person, or ¹['any] the initial¹ written ¹or verbal¹ communication by
 30 ¹['any person] a foreclosing creditor¹ to a tenant in a residential
 31 property ¹subject to ongoing foreclosure proceedings, or any written
 32 or verbal communication¹ that ¹['.]¹ seeks to induce the tenant to
 33 vacate the property prior to the transfer of the property through
 34 sheriff's sale or a deed in lieu of foreclosure, shall include ¹['a copy
 35 of the notice set forth in subsection a. of this section except that the
 36 first sentence shall read:

37 A FORECLOSURE ACTION HAS BEEN INITIATED ON
 38 . (insert address of property) AND THE OWNERSHIP OF THE
 39 PROPERTY MAY CHANGE AS A RESULT] a copy of the notice
 40 ³['set forth in the "Residential Tenants' Rights During Foreclosure"]
 41 regarding residential tenant rights during foreclosure³ as required
 42 by the Rules Governing the Courts of the State of New Jersey, as
 43 adopted by the Supreme Court of New Jersey¹.

44 f. Any person, ¹['their] or that person's¹ agent ¹['.,]¹ or
 45 employee, who violates the provisions of this section shall be

1 subject to the 'same' civil remedies 'as are' provided for in
2 subsection a. of 'section 3 of' P.L.1975, c.311 (C.2A:18-61.6) 'or,
3 at the tenant's sole discretion, damages in the amount of \$2,000 per
4 violation, plus attorney's fees and costs. Nothing in this subsection
5 shall limit the liability, either civil or criminal, of a person, or a
6 person's agent or employee, who violates any other law or
7 regulation'.

8

9 3. (New section) a. No person, '[their] or the person's' agent
10 or employee, who has filed a complaint in an action to foreclose 'a
11 mortgage' on a residential property, 'as described in section 2 of
12 P.L. , c. (C.) (pending before the Legislature as this bill),'
13 or who takes title to '[any] a' residential property as a result of a
14 sheriff's sale or other transaction following the filing of a complaint
15 in an action to foreclose a mortgage on the property shall make any
16 communication to induce the tenant to vacate the property except
17 through a bona fide monetary offer, which shall be made in
18 accordance with the provisions of subsections d. and e. of section 2
19 of P.L. , c. (C.) (pending before the Legislature as this
20 bill). 'A tenant shall have five business days from the date of
21 receipt of any bona fide monetary offer to vacate the property in
22 order to accept or reject the offer. An acceptance of an offer by a
23 tenant shall be in writing, and include an affirmative
24 acknowledgement of the date of receipt of the offer, and an
25 understanding that the tenant had a five-day review period as
26 required by this subsection to accept or reject the offer presented.'

27 b. No person, '[their] or the person's' agent or employee, who
28 has filed a complaint in an action to foreclose 'a mortgage on a
29 residential property, as described in section 2 of P.L. , c. (C.)
30 (pending before the Legislature as this bill), or who takes title to a
31 residential property as a result of a sheriff's sale or other transaction
32 following the filing of a complaint in an action to foreclose a
33 mortgage on the property' shall ' , during the pendency of the
34 foreclosure proceeding or within one year of the transfer of title
35 following such proceeding,' take any action placing pressure on a
36 tenant to accept any offer to vacate the property, including, but not
37 limited to:

38 (1) Mischaracterizing or misrepresenting the rights of the tenant
39 under the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.),
40 or any other State law or municipal ordinance;

41 (2) '[Stating the actions the owner may take against the tenant
42 or implying] Implying' the tenant is obligated to accept an offer or
43 implying consequences against the tenant for failing to accept an
44 offer;

45 (3) Any form of tenant harassment, including, but not limited
46 to ' ,' discontinuance of electricity, heat, or other utilities, failure to

1 maintain the common areas or facilities of the property, or 'any
2 other' failure to '[make repairs in a timely and workmanlike
3 fashion] maintain the premises in a habitable condition';

4 (4) '[Any rent increase in violation of a municipal rent control
5 or rent leveling ordinance, or in the event the property is not subject
6 to rent control, any rent increase in excess of the average of the
7 previous two years' rent increases; provided, however, that the
8 increase is imposed no later than one year after the date the new
9 owner took title to the property] Implementing an increase in rent
10 in excess of any governing municipal rent control or rent leveling
11 ordinance, or in the event the property is not subject to rent control,
12 an increase in rent exceeding the limitation imposed by the Anti-
13 Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.) or any other
14 State or federal law or municipal ordinance'.

15 c. Any person, their agent or employee, who violates the
16 provisions of this section shall be subject to the civil remedies
17 provided for in subsection a. of 'section 3 of' P.L.1975, c.311
18 (C.2A:18-61.6) ' , or, at the tenant's sole discretion, damages in the
19 amount of \$2,000 per violation, plus attorney's fees and costs.
20 Nothing in this subsection shall limit the liability, either civil or
21 criminal, of a person, or a person's agent or employee, who violates
22 any other law or regulation'.

23
24 '[4.Section 15 of P.L.2008, c.127 (C.46:10B-49) is amended to
25 read as follows:

26 15. a. A creditor that institutes a mortgage foreclosure action in
27 the Superior Court of New Jersey shall report to the Department of
28 Banking and Insurance, on a quarterly basis and on a form
29 promulgated by the department, information about the number of
30 mortgage foreclosure actions filed by the creditor in the State.

31 b. The Department of Banking and Insurance shall produce a
32 report, on a quarterly basis; detailing information about mortgage
33 foreclosures filed by creditors in each **[county]** municipality of the
34 State, and shall make the report available to the public on its
35 website. The report shall describe the type of mortgage being
36 foreclosed on based on the following categories:

- 37 (1) prime rate mortgages foreclosed upon;
38 (2) subprime rate mortgages foreclosed upon;
39 (3) fixed rate mortgages foreclosed upon;
40 (4) adjustable rate mortgages foreclosed upon;
41 (5) nonconforming mortgages, as defined by Fannie Mae,
42 Freddie Mac, or their successors;
43 (6) mortgages insured by the Federal Housing Administration
44 foreclosed upon;
45 (7) mortgages insured by the Veteran's Administration
46 foreclosed upon; and

1 (8) any other category of classification the department deems
2 appropriate to effectuate the purpose of this section.

3 c. The Department of Banking and Insurance, pursuant to the
4 "Administrative Procedure Act," P.L.1986, c.410 (C.52:14B-1 et
5 seq.) shall adopt regulations necessary to effectuate the purpose of
6 this section.
7 (cf: P.L.2008, c.127, s.15)]¹

8
9 ¹[5. Section 16 of P.L.2008, c.127 (C.46:10B-50) is amended to
10 read as follows:

11 16. a. (1) A creditor that files, pursuant to the "Fair Foreclosure
12 Act," P.L.1995, c.244 (C.2A:50-53 et al.), a complaint of
13 foreclosure on a high risk mortgage loan, shall grant the borrower a
14 six-month period of forbearance, upon request of the borrower, to
15 pursue a loan workout, loan modification, refinancing, or other
16 alternative through mediation sponsored by the Administrative
17 Office of the Courts. During the six-month forbearance period, the
18 interest rate on the [covered] mortgage loan shall not increase and
19 the creditor shall take no further action to pursue foreclosure of the
20 property. Nothing in this subsection shall constitute a limitation on
21 the ability of the creditor and borrower to participate in mediation
22 sponsored by the Administrative Office of the Courts or enter into
23 an agreement as a result of that mediation pursuant to subsection b.
24 of this section.

25 As used in this section:

26 "Forbearance" means a period of six months during which the
27 judicial foreclosure proceedings filed by the creditor against the
28 borrower are suspended[; however the borrower is obligated to
29 continue making monthly mortgage payments].

30 "High Risk Mortgage" means the first mortgage loan that has one
31 or more of the following characteristics:

32 is an interest only mortgage with a future interest reset rate;
33 has a reset mortgage interest rate that increases the interest rate;
34 contains a payment option plan or a "pick a payment" plan;
35 contains a negative amortization schedule;
36 is a subprime mortgage, which means a consumer credit
37 transaction, secured by the consumer's principal dwelling, with an
38 annual percentage rate that exceeds the average prime offer rate for
39 a comparable transaction, as of the date the interest rate is set, by
40 1.5 or more percentage points for loans secured by a first lien on a
41 dwelling, or by 3.5 or more percentage points for loans secured by a
42 subordinate lien on a dwelling;
43 contains an enforceable prepayment penalty; or
44 is a high cost home loan as defined in section 3 of the "New
45 Jersey Home Ownership Security Act of 2002," P.L.2003, c.64
46 (C.46:10B-24).

1 (2) Upon serving the summons and complaint in a foreclosure
 2 action, the creditor shall notify the borrower of the borrower's right
 3 to forbearance as provided for in this section, and, upon receipt of
 4 written request by the borrower, within 30 days of the receipt of the
 5 summons and complaint, the creditor shall grant the borrower a
 6 period of forbearance, beginning on the date the creditor receives
 7 the borrower's request.

8 (3) The notice of the borrower's right to forbearance shall
 9 include the following information:

10 (a) whether the loan being foreclosed upon is eligible to receive
 11 forbearance;

12 (b) that the borrower has the right to request the period of
 13 forbearance in writing no later than 30 days after receipt of the
 14 summons and complaint;

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

17 (4) Upon receipt of a request for forbearance, the creditor shall
 18 advise the court to place a six-month stay on the foreclosure action.

19 b. Upon filing of a complaint for foreclosure, and the
 20 beginning of the six-month forbearance period, the borrower and
 21 creditor shall participate in mediation sponsored by the
 22 Administrative Office of the Courts; provided, however, that the
 23 inability of the borrower to participate in mediation as a result of
 24 circumstances beyond the borrower's control shall not affect the
 25 borrower's continued eligibility for forbearance.

26 c. If the borrower ceases to occupy the property at any time
 27 subsequent to the period of forbearance under this section, the
 28 creditor may notify the court, and upon notification the period of
 29 forbearance shall be deemed to have ended.

30 d. The provisions of this section shall expire two years
 31 following the effective date of [P.L.2008, c.127]
 32 P.L. , c. (C.) (pending before the Legislature as this bill).
 33 (cf: P.L.2008, c.127, s.16)]¹

34
 35 ¹4. Section 15 of P.L.2008, c.127 (C.46:10B-49) is amended to
 36 read as follows:

37 15. a. [A] ²(1)² Except as provided in paragraph (2) of this
 38 subsection, a creditor that institutes a mortgage foreclosure action
 39 in the Superior Court of New Jersey shall report to the Department
 40 of Banking and Insurance, on a quarterly basis and on a form
 41 promulgated by the department, information about the number of
 42 mortgage foreclosure actions filed by the creditor in the State.

43 (2) ²[If, following the effective date of P.L. , c. (C.)]
 44 (pending before the Legislature as this bill),] When² a creditor or
 45 other person is required by any Rule of Court or otherwise by law to
 46 file electronically with the Superior Court of New Jersey ²[a
 47 summons and complaint] pleadings² in an action to foreclose on a

1 mortgage, ²[along with any other information or materials
2 regarding that action as required by that rule or other law, then the
3 department shall not be required to continue to promulgate a form
4 for making reports to the department, and the creditor or other
5 person shall not be required to make any report to the department,
6 as set forth under to paragraph (1) of this subsection.] and the
7 Administrative Office of the Courts is capable of collecting and
8 transmitting the data set forth in paragraphs (1) through (8) of
9 subsection b. of this section in electronic form, the creditor or other
10 person shall transmit the data to the Superior Court, in a manner
11 prescribed by the Superior Court, as part of the pleadings in an
12 action to foreclose a mortgage.² The Administrative Office of the
13 Courts ²[, pursuant to the Rule of Court or other law,]² shall
14 ²[instead]² collect the ²electronically submitted² data ²[required
15 under paragraph (1) of this subsection from each Superior Court, in
16 addition to collecting any other information or materials required by
17 that rule or other law] and transmit it to the Department of Banking
18 and Insurance, which shall produce and make available on its
19 website quarterly reports, as set forth in subsection b. of this
20 section².

21 b. ~~[The]~~ ²[Except as provided herein, the] ~~The~~² Department of
22 Banking and Insurance shall produce a report, on a quarterly basis
23 ~~;~~ ²[;] , detailing information about mortgage foreclosures filed by
24 creditors in each county of the State, and shall make the report
25 available to the public on its website. The report shall describe the
26 type of mortgage being foreclosed on based on the following
27 categories:

- 28 (1) prime rate mortgages foreclosed upon;
- 29 (2) subprime rate mortgages foreclosed upon;
- 30 (3) fixed rate mortgages foreclosed upon;
- 31 (4) adjustable rate mortgages foreclosed upon;
- 32 (5) nonconforming mortgages, as defined by Fannie Mae,
33 Freddie Mac, or their successors;
- 34 (6) mortgages insured by the Federal Housing Administration
35 foreclosed upon;
- 36 (7) mortgages insured by the Veteran's Administration foreclosed
37 upon; and
- 38 (8) any other category of classification the department deems
39 appropriate to effectuate the purpose of this section.

40 ²[If, following the effective date of P.L. , c. (C.)
41 (pending before the Legislature as this bill), the Administrative
42 Office of the Courts collects data on summonses and complaints in
43 actions to foreclose mortgages along with other information and
44 materials pursuant to any Rule of Court or otherwise by law, as set
45 forth under paragraph (2) of subsection a. of this section, and the
46 information collected pursuant to that rule or other law includes at
47 least the information set forth under paragraphs (1) through (7) of

1 this subsection, then the Administrative Office of the Courts, and
2 not the department, shall produce and make publicly available on its
3 Internet website the quarterly report required by this subsection.]²

4 c. The Department of Banking and Insurance, pursuant to the
5 "Administrative Procedure Act," P.L.1986, c.410 (C.52:14B-1 et
6 seq.) shall adopt regulations necessary to effectuate the purpose of
7 this section. Following the enactment of P.L. _____, c. (C. _____)
8 (pending before the Legislature as this bill), the department, in
9 consultation with the Administrative Office of the Courts, shall
10 adopt regulations necessary to effectuate the purpose of this
11 section.¹

12 (cf: P.L.2008, c.127, s.15)

13

14 ¹[6.]^{5.}¹ Section 17 of P.L.2008, c.127 (C.46:10B-51) is
15 amended to read as follows:

16 17. a. (1) A creditor serving a **[notice of intention to foreclose]**
17 summons and complaint in an action to foreclose on a mortgage on
18 residential property in this State shall **[serve]**¹, within 10 days of
19 -serving the summons and complaint,¹ notify the **[public officer]**
20 municipal clerk of the municipality in which the property is located
21 [, or, if the municipality has not designated a public officer
22 pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the municipal
23 clerk with a copy of the notice at the same time it is served on the
24 owner of the] that ¹[a foreclosure complaint has] a summons and
25 ³**[complain] complaint³ in an action to foreclose a mortgage¹ ³has³**
26 been filed against the subject property. The notice ¹shall contain
27 the name and contact information for the representative of the
28 creditor who is responsible for receiving complaints of property
29 maintenance and code violations,¹ may ¹[be effectuated via
30 electronic communication] contain information about more than
31 one property, and shall be provided by mail or electronic
32 communication¹, at the discretion of the municipal clerk¹. If the
33 municipality has appointed a public officer pursuant to P.L.1942,
34 c.112 (C.40:48-2.3 et seq.), the municipal clerk shall forward a
35 copy of the notice to the public officer ¹or shall otherwise provide it
36 to any other local official responsible for administration of any
37 property maintenance or public nuisance code¹.

38 ¹[(2)]¹ In the event that the property being foreclosed is an
39 affordable unit pursuant to the "Fair Housing Act," P.L.1985, c.222
40 (C.52:27D-301 et al.), then the creditor shall identify that the
41 property is subject to the "Fair Housing Act." ¹[[This notice
42 requirement may be effectuated via electronic communication to the
43 municipality at the time the complaint for foreclosure is filed.]¹

44 The ¹[copy served on the public officer or municipal clerk]
45 notice¹ shall ¹also¹ include the ¹street address, lot and block
46 number of the property, and the¹ full name and contact information

1 of an individual located within the State who is authorized to accept
2 service on behalf of the creditor. 'The notice shall be provided to
3 the municipal clerk within 10 days of service of a summons and
4 complaint in an action to foreclose a mortgage against the subject
5 property.'¹

6 '[(3)] (2)' Within 30 days following the effective date of
7 P.L. , c. (C.) (pending before the Legislature as this bill), any
8 creditor that has initiated a foreclosure proceeding on any
9 residential property which is pending in Superior Court shall
10 provide to the municipal clerk of the municipality in which the
11 property is located, a listing of all residential properties in the
12 municipality for which the creditor has foreclosure actions pending
13 by street address and lot and block number. If the municipality has
14 appointed a public officer pursuant to P.L.1942, c.112 (C.40:48-2.3
15 et seq.), the municipal clerk shall forward a copy of the notice to the
16 public officer, or shall otherwise provide it to any other local
17 official responsible for administration of any property maintenance
18 or public nuisance code.'¹

19 b. If the owner of a residential property vacates 'or abandons'
20 any property on which a foreclosure proceeding has been initiated
21 or if a residential property becomes vacant at any point subsequent
22 to the creditor's filing the '[notice of intention to foreclose]
23 summons and complaint in an action to foreclose a mortgage
24 against the subject property'¹, but prior to vesting of title in the
25 creditor or any other third party, and the property is found to be a
26 nuisance or in violation of any applicable State or local code, the
27 local public officer '[or] ,'¹ municipal clerk ' ,'¹ or other authorized
28 municipal official'¹ shall notify the creditor, which shall have the
29 responsibility to abate the nuisance or correct the violation in the
30 same manner and to the same extent as the title owner of the
31 property, to such standard or specification as may be required by
32 '[the public officer or municipal clerk] State law or municipal
33 ordinance'¹.

34 c. If the municipality expends public funds in order to abate a
35 nuisance or correct a violation on a residential property in situations
36 in which the creditor was given notice pursuant to the provisions of
37 subsection b. of this section but failed to abate the nuisance or
38 correct the violation as directed, the '[public officer or municipal
39 clerk] municipality'¹ shall have the same recourse against the
40 creditor as it would have against the title owner of the property,
41 including but not limited to the recourse provided under section 23
42 of P.L.2003, c.210 (C.55:19-100).
43 (cf: P.L.2008, c.127, s.17)

44
45 '6. (New section) The provisions of any regulation, ordinance,
46 rule, or resolution of any municipality, county or other subdivision
47 of the State, or any agency or instrumentality of that municipality,

1 county or other subdivision, relating to foreclosure practices, or the
2 extension, delay, forbearance or imposition of moratorium periods
3 concerning foreclosures, are superseded by the provisions of the
4 “Save New Jersey Homes Act of 2008,” P.L.2008, c.86 (C.46:10B-
5 36 et seq.) and the forbearance and nuisance abatement provisions
6 of the “Mortgage Stabilization and Relief Act,” P.L.2008, c.127
7 (C.55:14K-82 et al.).¹

8
9 7. ¹Section 5 of this¹ act shall take effect ¹[immediately] on
10 the 10th day after the date of enactment, and the remainder of the
11 act shall take effect on the 30th day after the date of enactment¹.

ASSEMBLY, No. 4063

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JUNE 8, 2009

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblywoman MILA M. JASEY

District 27 (Essex)

Assemblywoman ELEASE EVANS

District 35 (Bergen and Passaic)

SYNOPSIS

“New Jersey Foreclosure Fairness Act”; imposes additional foreclosure notice requirements; amends “Mortgage Stabilization and Relief Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/24/2009)

1 AN ACT concerning foreclosure on residential properties,
2 supplementing and amending various sections of the statutory
3 law.

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

7
8 1. (New section) This act shall be known and may be cited as
9 the "New Jersey Foreclosure Fairness Act."

10
11 2. (New section) a. A person who takes title, as a result of a
12 sheriff's sale or deed in lieu of foreclosure, to a residential property
13 containing one or more dwelling units occupied by residential
14 tenants, shall provide notice, no later than five business days after
15 the sale, via certified and regular mail, to the tenants in
16 substantially the following form:

17
18 **NOTICE TO TENANTS**

19 THE FORMER OWNER OF (insert property
20 address) HAS LOST THE PROPERTY AS A RESULT OF A
21 FORECLOSURE. IF YOU ARE A TENANT AT
22 (insert property address) YOU HAVE THE RIGHT TO REMAIN
23 IN YOUR HOUSE OR APARTMENT. THE NEW OWNER
24 CANNOT FORCE YOU TO MOVE OUT BECAUSE OF THE
25 FORECLOSURE.

26 YOU ARE PROTECTED BY NEW JERSEY'S ANTI-
27 EVICTION ACT, N.J.S.A. 2A:18-61.1 ET SEQ. THE NEW
28 OWNER CANNOT EVICT YOU WITHOUT "GOOD CAUSE,"
29 AS DETERMINED BY A COURT. THIS MEANS THAT ONLY
30 A SHERIFF'S OFFICER WITH A COURT ORDER MAY
31 REMOVE YOU FROM THE PREMISES, AND ONLY AFTER
32 YOU HAVE BEEN GIVEN THE OPPORTUNITY TO DEFEND
33 YOURSELF AGAINST EVICTION IN COURT. EXAMPLES OF
34 "GOOD CAUSE" ARE FAILURE TO PAY RENT, WILLFULLY
35 DAMAGING THE PREMISES, OR PERSONAL OCCUPANCY
36 BY THE NEW OWNER OF THE HOUSE OR APARTMENT
37 THAT YOU NOW LIVE IN.

38 IT IS ILLEGAL FOR THE NEW OWNER TO TRY TO FORCE
39 YOU TO LEAVE YOUR HOME IN ANY OTHER MANNER,
40 INCLUDING SHUTTING OFF UTILITIES OR FAILING TO
41 MAINTAIN THE PREMISES. IF THE NEW OWNER
42 PRESSURES YOU TO LEAVE, CONSULT WITH AN
43 ATTORNEY OR FILE A COMPLAINT WITH YOUR LOCAL
44 PROSECUTOR.

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 b. The notice required pursuant to subsection a. of this section
2 shall be printed in no less than 16 point bold point type on heavy
3 stock, at least eight and one-half inches by 11 inches in size, and
4 shall contain contact information, including the name, mailing
5 address, e-mail address, and telephone number of the new owner or
6 a person authorized to act on behalf of the new owner.

7 c. The new owner shall make a diligent effort to obtain the
8 names and addresses of all tenants occupying the property for which
9 a notice is required pursuant to subsection a. of this section. The
10 new owner shall post the notice, required pursuant to subsection a.
11 of this section, prominently on the front door of each tenant's unit.

12 d. Any person taking title to the residential property as a result
13 of a sheriff's sale or deed in lieu of foreclosure shall include a copy
14 of the notice as set forth in subsection a. of this section in any
15 written communication to a tenant for the purposes of inducing a
16 tenant to vacate the property.

17 e. Service on any tenant of a summons and complaint in an
18 action to foreclose on any residential property by any person, or any
19 written communication by any person to a tenant in a residential
20 property that seeks to induce the tenant to vacate the property prior
21 to the transfer of the property through sheriff's sale or a deed in lieu
22 of foreclosure, shall include a copy of the notice set forth in
23 subsection a. of this section, except that the first sentence shall
24 read:

25
26 A FORECLOSURE ACTION HAS BEEN INITIATED ON
27 (insert address of property) AND THE OWNERSHIP OF THE
28 PROPERTY MAY CHANGE AS A RESULT.

29 f. Any person, their agent, or employee, who violates the
30 provisions of this section shall be subject to the civil remedies
31 provided for in subsection a. of P.L.1975, c.311 (C.2A:18-61.6).

32

33 3. (New section) a. No person, their agent or employee, who
34 has filed a complaint in an action to foreclose on a residential
35 property, or who takes title to any residential property as a result of
36 a sheriff's sale or other transaction following the filing of a
37 complaint in an action to foreclose a mortgage on the property shall
38 make any communication to induce the tenant to vacate the property
39 except through a bona fide monetary offer, which shall be made in
40 accordance with the provisions of subsections d. and e. of section 2
41 of P.L. , c. (C.) (pending before the Legislature as this
42 bill).

43 b. No person, their agent or employee, who has filed a
44 complaint in an action to foreclose shall take any action placing
45 pressure on a tenant to accept any offer to vacate the property,
46 including, but not limited to:

1 (1) Mischaracterizing or misrepresenting the rights of the tenant
2 under the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.),
3 or any other State law or municipal ordinance;

4 (2) Stating the actions the owner may take against the tenant or
5 implying the tenant is obligated to accept an offer or implying
6 consequences against the tenant for failing to accept an offer;

7 (3) Any form of tenant harassment, including, but not limited to
8 discontinuance of electricity, heat, or other utilities, failure to
9 maintain the common areas or facilities of the property, or failure to
10 make repairs in a timely and workmanlike fashion;

11 (4) Any rent increase in violation of a municipal rent control or
12 rent leveling ordinance, or in the event the property is not subject to
13 rent control, any rent increase in excess of the average of the
14 previous two years' rent increases; provided, however, that the
15 increase is imposed no later than one year after the date the new
16 owner took title to the property.

17 c. Any person, their agent or employee, who violates the
18 provisions of this section shall be subject to the civil remedies
19 provided for in subsection a. of P.L.1975, c.311 (C.2A:18-61.6).

20

21 4. Section 15 of P.L.2008, c.127 (C.46:10B-49) is amended to
22 read as follows:

23 15. a. A creditor that institutes a mortgage foreclosure action in
24 the Superior Court of New Jersey shall report to the Department of
25 Banking and Insurance, on a quarterly basis and on a form
26 promulgated by the department, information about the number of
27 mortgage foreclosure actions filed by the creditor in the State.

28 b. The Department of Banking and Insurance shall produce a
29 report, on a quarterly basis; detailing information about mortgage
30 foreclosures filed by creditors in each **[county]** municipality of the
31 State, and shall make the report available to the public on its
32 website. The report shall describe the type of mortgage being
33 foreclosed on based on the following categories:

34 (1) prime rate mortgages foreclosed upon;

35 (2) subprime rate mortgages foreclosed upon;

36 (3) fixed rate mortgages foreclosed upon;

37 (4) adjustable rate mortgages foreclosed upon;

38 (5) nonconforming mortgages, as defined by Fannie Mae,
39 Freddie Mac, or their successors;

40 (6) mortgages insured by the Federal Housing Administration
41 foreclosed upon;

42 (7) mortgages insured by the Veteran's Administration
43 foreclosed upon; and

44 (8) any other category of classification the department deems
45 appropriate to effectuate the purpose of this section.

46 c. The Department of Banking and Insurance, pursuant to the
47 "Administrative Procedure Act," P.L.1986, c.410 (C.52:14B-1 et

1 seq.) shall adopt regulations necessary to effectuate the purpose of
2 this section.

3 (cf: P.L.2008, c.127, s.15)

4

5 5. Section 16 of P.L.2008, c.127 (C.46:10B-50) is amended to
6 read as follows:

7 16. a. (1) A creditor that files, pursuant to the "Fair Foreclosure
8 Act," P.L.1995, c.244 (C.2A:50-53 et al.), a complaint of
9 foreclosure on a high risk mortgage loan, shall grant the borrower a
10 six-month period of forbearance, upon request of the borrower, to
11 pursue a loan workout, loan modification, refinancing, or other
12 alternative through mediation sponsored by the Administrative
13 Office of the Courts. During the six-month forbearance period, the
14 interest rate on the **[covered]** mortgage loan shall not increase and
15 the creditor shall take no further action to pursue foreclosure of the
16 property. Nothing in this subsection shall constitute a limitation on
17 the ability of the creditor and borrower to participate in mediation
18 sponsored by the Administrative Office of the Courts or enter into
19 an agreement as a result of that mediation pursuant to subsection b.
20 of this section.

21 As used in this section:

22 "Forbearance" means a period of six months during which the
23 judicial foreclosure proceedings filed by the creditor against the
24 borrower are suspended**;** however the borrower is obligated to
25 continue making monthly mortgage payments**].**

26 "High Risk Mortgage" means the first mortgage loan that has one
27 or more of the following characteristics:

28 is an interest only mortgage with a future interest reset rate;

29 has a reset mortgage interest rate that increases the interest rate;

30 contains a payment option plan or a "pick a payment" plan;

31 contains a negative amortization schedule;

32 is a subprime mortgage, which means a consumer credit
33 transaction, secured by the consumer's principal dwelling, with an
34 annual percentage rate that exceeds the average prime offer rate for
35 a comparable transaction, as of the date the interest rate is set, by
36 1.5 or more percentage points for loans secured by a first lien on a
37 dwelling, or by 3.5 or more percentage points for loans secured by a
38 subordinate lien on a dwelling;

39 contains an enforceable prepayment penalty; or

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

43 (2) Upon serving the summons and complaint in a foreclosure
44 action, the creditor shall notify the borrower of the borrower's right
45 to forbearance as provided for in this section, and, upon receipt of
46 written request by the borrower, within 30 days of the receipt of the
47 summons and complaint, the creditor shall grant the borrower a

1 period of forbearance, beginning on the date the creditor receives
2 the borrower's request.

3 (3) The notice of the borrower's right to forbearance shall
4 include the following information:

5 (a) whether the loan being foreclosed upon is eligible to receive
6 forbearance;

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

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

12 (4) Upon receipt of a request for forbearance, the creditor shall
13 advise the court to place a six-month stay on the foreclosure action.

14 b. Upon filing of a complaint for foreclosure, and the
15 beginning of the six-month forbearance period, the borrower and
16 creditor shall participate in mediation sponsored by the
17 Administrative Office of the Courts; provided, however, that the
18 inability of the borrower to participate in mediation as a result of
19 circumstances beyond the borrower's control shall not affect the
20 borrower's continued eligibility for forbearance.

21 c. If the borrower ceases to occupy the property at any time
22 subsequent to the period of forbearance under this section, the
23 creditor may notify the court, and upon notification the period of
24 forbearance shall be deemed to have ended.

25 d. The provisions of this section shall expire two years
26 following the effective date of [P.L.2008, c.127]
27 P.L. , c. (C.) (pending before the Legislature as this bill).
28 (cf: P.L.2008, c.127, s.16)
29

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

32 17. a. (1) A creditor serving a [notice of intention to foreclose]
33 summons and complaint in an action to foreclose on a mortgage on
34 residential property in this State shall [serve] notify the [public
35 officer] municipal clerk of the municipality in which the property is
36 located[, or, if the municipality has not designated a public officer
37 pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the municipal
38 clerk with a copy of the notice at the same time it is served on the
39 owner of the] that a foreclosure complaint has been filed against
40 the subject property. The notice may be effectuated via electronic
41 communication. If the municipality has appointed a public officer
42 pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the municipal
43 clerk shall forward a copy of the notice to the public officer.

44 (2) In the event that the property being foreclosed is an
45 affordable unit pursuant to the "Fair Housing Act," P.L.1985, c.222
46 (C.52:27D-301 et al.), then the creditor shall identify that the
47 property is subject to the "Fair Housing Act." This notice

1 requirement may be effectuated via electronic communication to the
2 municipality at the time the complaint for foreclosure is filed. The
3 copy served on the public officer or municipal clerk shall include
4 the full name and contact information of an individual located
5 within the State who is authorized to accept service on behalf of the
6 creditor.

7 (3) Within 30 days following the effective date of P.L. _____, c.
8 (C. _____) (pending before the Legislature as this bill), any creditor that
9 has initiated a foreclosure proceeding on any residential property
10 which is pending in Superior Court shall provide to the municipal
11 clerk of the municipality in which the property is located, a listing
12 of all residential properties in the municipality for which the
13 creditor has foreclosure actions pending by street address and lot
14 and block number.

15 b. If the owner of a residential property vacates any property
16 on which a foreclosure proceeding has been initiated or if a
17 residential property becomes vacant at any point subsequent to the
18 creditor's filing the notice of intention to foreclose, but prior to
19 vesting of title in the creditor or any other third party, and the
20 property is found to be a nuisance or in violation of any applicable
21 State or local code, the local public officer or municipal clerk shall
22 notify the creditor, which shall have the responsibility to abate the
23 nuisance or correct the violation in the same manner and to the
24 same extent as the title owner of the property, to such standard or
25 specification as may be required by the public officer or municipal
26 clerk.

27 c. If the municipality expends public funds in order to abate a
28 nuisance or correct a violation on a residential property in situations
29 in which the creditor was given notice pursuant to the provisions of
30 subsection b. of this section but failed to abate the nuisance or
31 correct the violation as directed, the public officer or municipal
32 clerk shall have the same recourse against the creditor as it would
33 have against the title owner of the property, including but not
34 limited to the recourse provided under section 23 of P.L.2003, c.210
35 (C.55:19-100).

36 (cf: P.L.2008, c.127, s.17)

37

38 7. This act shall take effect immediately.

39

40

41

STATEMENT

42

43 This bill imposes additional requirements on lenders seeking to
44 foreclose on a residential mortgage property and take title to the
45 property. The bill requires persons taking title to a property
46 through sheriff's sale or deed in lieu of foreclosure to send notice to
47 any tenants at the property that ownership has changed and that the
48 tenants are not required to vacate the premises unless the new

1 owner files an eviction complaint in Superior Court and obtains a
2 court order requiring the tenant to move. A new owner who does
3 not provide the notice to the residential tenant is liable to the tenant
4 in a civil action for triple damages plus attorney's fees and costs.

5 The new owner must include the notice in any communication
6 with the tenant which seeks to induce the tenants to vacate the
7 property. The new owner of the property must make a diligent
8 effort to obtain the names and addresses of all tenants occupying
9 the property. If enacted, this legislation would prohibit the new
10 owner from harassing a tenant or mischaracterizing the right of the
11 tenant to remain in the property under any federal, State, or local
12 law.

13 The bill amends the "Mortgage Stabilization and Relief Act,"
14 P.L.2008, c.127, to require a lender that files a foreclosure
15 complaint to provide to the municipal clerk of the municipality
16 where the property is located a list detailing the location of all
17 property the creditor is foreclosing on within the municipality and
18 the status of each action. Current law requires the Department of
19 Banking and Insurance to provide detailed information on
20 residential foreclosures, arranged by county. The bill requires that
21 this information be arranged by municipality and include the
22 disposition of all foreclosure actions initiated by the creditor within
23 the municipality. Information sent to the municipal clerk by the
24 creditor may be provided by way of electronic communication.

25 The bill permits a borrower whose property is subject to a
26 foreclosure complaint to request, in writing, a period of
27 forbearance, within 30 days of being served with the foreclosure
28 complaint. The forbearance period shall last six months, during
29 which time no action shall be taken by the lender to foreclose on the
30 property. The lender must provide the borrower with information
31 about the forbearance period, including the address to which any
32 request for forbearance may be sent. The bill states that failure of
33 the borrower to participate in court sponsored mediation, due to
34 circumstances beyond the borrower's control, will not inhibit the
35 borrower's continued eligibility for forbearance. The bill extends
36 the term for which a period of forbearance is offered from January
37 9, 2011 to two years following the effective date of the bill.

38 The bill further amends the Mortgage Stabilization and Relief
39 Act to require that a creditor serving a complaint for foreclosure on
40 a property that is an affordable housing unit pursuant to the Fair
41 Housing Act notify the municipality, via electronic communication,
42 that the property is an designated as affordable housing.

ASSEMBLY HOUSING AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4063

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 23, 2009

The Assembly Housing and Local Government Committee reports favorably and with committee amendments Assembly Bill No.4063.

As amended by the committee, this bill, titled the "New Jersey Foreclosure Fairness Act," requires persons taking title to a residential property through sheriff's sale or deed in lieu of foreclosure to send notice to any tenants at the property that ownership has changed and that the tenants are not required to vacate the premises because of the foreclosure. The notice provisions of the bill apply to any residential property containing a dwelling unit occupied by a residential tenant.

The notice served by the new owner shall be in writing, and provided in both English and Spanish. The notice also shall be posted prominently on the front door of each tenant's unit, and sent to each tenant via certified and regular mail.

To assist new owners regarding their notice obligations, the Department of Community Affairs shall prepare the notice and make it available for distribution, both in print and in an easily printable format on the department's Internet website.

The contents of the notice shall include contact information for the person to whom future rent is due, a basic explanation of rights available to the tenant under the State's "anti-eviction act," P.L.1974, c.49 (C.2A:18-61.1 et seq.), and advises the tenant to consult with an attorney in the event the new owner or another person is pressuring the tenant to vacate the premises.

With respect to service on any tenant of a summons and complaint to foreclose on a mortgage on the property, or the initial communication by a foreclosing creditor to a tenant on a property subject to an ongoing foreclosure proceeding that seeks to induce the tenant to vacate prior to the transfer of property, a similar notice shall be required. This notice shall additionally indicate that a foreclosure action has been initiated on the property, and include information about remaining current with respect to future rent payments.

The bill provides that a person who has filed a complaint in an action to foreclose, or that person's agent or employee, shall not make any communication to induce the tenant to vacate the property, except

through a bona fide monetary offer. A tenant shall have five business days from the date of receipt of any such offer in order to accept or reject the offer. An acceptance of an offer by a tenant shall be in writing, and include an affirmative acknowledgment of the date of receipt of the offer, and an understanding that the tenant had a five-day review period to accept or reject the offer presented.

The bill also provides that the person, or that person's agent or employee, shall not take any action placing pressure on a tenant to accept any offer to vacate the property, including, but not limited to: (1) mischaracterizing or misrepresenting the rights of the tenant under the "anti-eviction act," P.L.1974, c.49 (C.2A:18-61.1 et seq.), or any other State law or municipal ordinance; (2) stating actions the owner may take against the tenant, implying the tenant is obligated to accept the offer, or implying consequences against the tenant for failing to accept the offer; and (3) any form of harassment, such as discontinuance of utilities or failure to maintain the premises in a habitable condition.

Any person, including that person's agent or employee, who violates the provisions of the bill with respect to the tenant notice requirements or the treatment of tenants shall be subject to the same civil remedy, being triple damages, as provided for in subsection a. of section 3 of P.L.1975, c.311 (C.2A:18-61.6), or at the sole discretion of the victimized tenant, damages in the amount of \$2,000, plus attorney's fees and costs.

The bill also makes several amendments to, and supplements, the "Mortgage Stabilization and Relief Act," P.L.2008, c.127 (C.55:14K-82 et al.). The bill requires that a creditor serving a summons and complaint in an action to foreclose on a mortgage on a residential property shall, within 10 days of serving the summons and complaint, notify the municipal clerk of the municipality in which the property is located, and the clerk shall in turn forward the notice to the municipality's public officer, if one has been appointed pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), or other appropriate official. The notice shall contain the name and contact information for the representative of the creditor who is responsible for receiving property maintenance and code violations, and shall be provided by mail or electronically, at the discretion of the municipal clerk. Additionally, within 30 days of the effective date of the bill, any creditor that initiated foreclosure proceedings that are pending in Superior Court shall provide the municipal clerk a listing of all residential properties in the municipality for which the creditor has those foreclosure actions pending. This information shall be similarly forwarded by the municipal clerk to the municipality's public officer or other local official.

As per the existing provisions of the "Mortgage Stabilization and Relief Act," any creditor involved in a foreclosure proceeding, prior to the vesting of title with that creditor, shall have responsibility to abate

or correct any property maintenance or code violations on a property that is vacated or abandoned following notification by the municipal clerk, municipal public officer or other local official.

Finally, the bill provides that any regulation, ordinance, rule, or resolution of any municipality, county or other subdivision of the State, or any agency or instrumentality of that municipality, county or other subdivision, relating to foreclosure practices, or the extension, delay, forbearance or imposition of moratorium periods concerning foreclosures, are superseded by the provisions of the “Save New Jersey Homes Act of 2008,” P.L.2008, c.86 (C.46:10B-36 et seq.), and the forbearance and nuisance abatement provisions of the aforementioned “Mortgage Stabilization and Relief Act.”

COMMITTEE AMENDMENTS

The committee amended section 2 of the bill to clarify the definition of a “dwelling,” to expand the language of the notice to tenants regarding a foreclosure, and to revise the process for serving the notice.

The committee amended section 3 of the bill to revise the procedure for making a tenant a monetary offer to vacate a dwelling after the foreclosure of a mortgage on a residential property.

The committee omitted sections 4 and 5 of the bill as introduced and inserted new sections which further clarify the procedure for the filing of summonses and complaints in an action to foreclose a mortgage, both electronically and with the municipal clerk.

The committee inserted a new section 6 into the bill, which provides that that any regulation, ordinance, rule, or resolution of any municipality, county or other subdivision of the State, or any agency or instrumentality of that municipality, county or other subdivision, relating to foreclosure practices, or the extension, delay, forbearance or imposition of moratorium periods concerning foreclosures, are superseded by the provisions of the “Save New Jersey Homes Act of 2008,” P.L.2008, c.86 (C.46:10B-36 et seq.), and the forbearance and nuisance abatement provisions of the aforementioned “Mortgage Stabilization and Relief Act.”

The committee inserted a new section 4 into the bill, which provides that, at the time that, by law or court rule, summons and complaints are electronically file, responsibility for collecting and disseminating data pursuant to section 15 of P.L.2007, c.127 (C.46:10B-49), shall shift to the Administrative Office of the Courts.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 4063

with Assembly Floor Amendments
(Proposed by Assemblywoman WATSON COLEMAN)

ADOPTED: DECEMBER 7, 2009

These floor amendments modify section 2 of A-4063 (1R) to change the notice requirements for a creditor taking possession and title in a foreclosure action. The bill requires notice to individual tenants in the event that a creditor or other new owner takes possession in a foreclosure action only in buildings containing 10 or fewer units. In buildings containing more than 10 units, the new owner must provide notice to tenants in a conspicuous location, such as an entrance or other common area in the buildings. It is the sponsor's understanding that these modifications to subsection c. of section 2 do not affect subsection e. of this section, and that any tenants who are induced to vacate the dwelling will receive the a copy of the notice set forth in the "Residential Tenants' Rights During Foreclosure," regardless of building size.

These floor amendments would also modify section 15 of P.L.2008, c.127 (C.46:10B-49). As amended, this section provides that creditors will continue to be required to report the mortgage data set forth in paragraphs (1) through (8) of subsection b. of section 15 of P.L.2008, c.127 (C.46:10B-49) to the Department of Banking and Insurance on a quarterly basis until such time that: (1) the Judiciary requires that creditors electronically file pleadings in mortgage foreclosure actions and (2) the Administrative Office of the Courts is capable of electronically collecting the required data and transmitting it to the Department of Banking and Insurance so that the department can fulfill its reporting duties under P.L.2008, c.127. Once the necessary level of automation is available, this cooperative process will provide for the most efficient collection and reporting of the required data for both State government and mortgage creditors.

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 4063

with Assembly Floor Amendments
(Proposed by Assemblywoman WATSON COLEMAN)

ADOPTED: JANUARY 7, 2010

These Assembly amendments modify A-4063 to make technical corrections and to clarify an ambiguity in the notice provisions contained in subsection e. of section 2 of the bill.

These Assembly amendments make the bill identical to S3059(1R).

SENATE, No. 3059

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED NOVEMBER 23, 2009

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

SYNOPSIS

Establishes the “New Jersey Foreclosure Fairness Act”; imposes additional foreclosure notice requirements; amends “Mortgage Stabilization and Relief Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning foreclosure on residential properties,
2 supplementing and amending various sections of the statutory
3 law.

4

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

7

8 1. (New section) This act shall be known and may be cited as
9 the "New Jersey Foreclosure Fairness Act."

10

11 2. (New section) a. A person who takes title, as a result of a
12 sheriff's sale or deed in lieu of foreclosure, to a residential property
13 containing a dwelling, as defined in section 103(v) of the Truth in
14 Lending Act, Pub.L.90-321 (15 U.S.C. s.1602(v)), with one to four
15 family housing units or individual units of condominiums or
16 cooperatives, and which is occupied by residential tenants, shall
17 provide notice to the tenants, in both English and Spanish, no later
18 than 10 business days after the transfer of title, in accordance with
19 the provisions of subsection c. of this section. The notice shall be
20 in the following form:

21

22 NOTICE TO TENANTS

23 THE FORMER OWNER OF (insert property
24 address) HAS LOST THE PROPERTY AS A RESULT OF A
25 FORECLOSURE.

26 FROM THE TIME YOU RECEIVE THIS AND UNTIL
27 FURTHER NOTICE, YOU SHOULD PAY RENT TO(insert
28 name and address of person to whom rent is due) PLEASE SEND
29 RENT BY(insert method of transmission) ON THE
30(insert day) OF EACH MONTH.

31 WITH LIMITED EXCEPTIONS, THE NEW JERSEY ANTI-
32 EVICTION ACT, N.J.S.A.2A:18-61.1 ET SEQ., PROTECTS
33 YOUR RIGHT TO REMAIN IN YOUR HOME. FORECLOSURE
34 ALONE IS NOT GROUNDS FOR EVICTION OF A TENANT.
35 YOU ARE PROTECTED BY THIS LAW EVEN IF YOU DO NOT
36 HAVE A WRITTEN LEASE.

37 THE NEW OWNER CANNOT EVICT YOU WITHOUT
38 "GOOD CAUSE," AS DETERMINED BY A COURT.
39 EXAMPLES OF "GOOD CAUSE" ARE FAILURE TO PAY
40 RENT, WILLFULLY DAMAGING THE PREMISES, OR
41 PERSONAL OCCUPANCY BY THE NEW OWNER OF THE
42 HOUSE OR APARTMENT THAT YOU NOW LIVE IN.

43 A RESIDENTIAL TENANT IN NEW JERSEY CAN BE
44 EVICTED ONLY THROUGH A COURT PROCESS. ONLY A
45 COURT OFFICER WITH A COURT ORDER MAY REMOVE

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 YOU FROM THE PREMISES, AND ONLY AFTER YOU HAVE
2 BEEN GIVEN THE OPPORTUNITY TO DEFEND YOURSELF
3 IN COURT.

4 INDIVIDUALS CAN BE SUBJECT TO BOTH CIVIL AND
5 CRIMINAL PENALTIES FOR TRYING TO FORCE YOU TO
6 LEAVE YOUR HOME IN ANY OTHER MANNER, INCLUDING
7 BY SHUTTING OFF UTILITIES OR OTHER VITAL SERVICE
8 OR FAILING TO MAINTAIN THE PREMISES. YOU MAY,
9 HOWEVER, ACCEPT FINANCIAL COMPENSATION FOR
10 LEAVING VOLUNTARILY IF THE NEW OWNER OFFERS
11 SUCH COMPENSATION.

12 IF SOMEONE IS PRESSURING YOU TO LEAVE, CONSULT
13 WITH AN ATTORNEY.

14 b. (1) The notice required pursuant to subsection a. of this
15 section shall be printed in no less than 14 point bold type, on paper
16 at least eight and one-half inches by 11 inches in size, and shall
17 contain contact information, including the name, mailing address, e-
18 mail address, and telephone number of the new owner or a person
19 authorized to act on behalf of the new owner.

20 (2) The Department of Community Affairs shall prepare and
21 make available for distribution, both in print and in an easily
22 printable format on the department's Internet website, a notice in
23 English with a Spanish translation that may be used by the new
24 owner or person authorized to act on behalf of the new owner to
25 satisfy the notice requirements of this section.

26 c. The new owner shall make a good faith effort to obtain the
27 names of all tenants occupying the property for which a notice is
28 required pursuant to subsection a. of this section. The notice shall
29 be addressed to tenants by name; provided, however, that in the
30 event a good faith search fails to identify the tenant by name, the
31 new owner shall address the notice required pursuant to subsection
32 a. of this section to "Tenant." The new owner shall post the notice
33 prominently on the front door of each tenant's unit and send the
34 notice to each tenant via certified and regular mail.

35 d. Any person taking title to the residential property as a result
36 of a sheriff's sale or deed in lieu of foreclosure, or that person's
37 agent or employee, shall provide a copy of the notice as set forth in
38 subsection a. of this section with the initial and final written or
39 verbal communication to a tenant for the purpose of inducing a
40 tenant to vacate the property in accordance with the provisions of
41 section 3 of P.L. , c. (C) (pending before the Legislature as
42 this bill).

43 e. Service on any tenant of a summons and complaint in an
44 action to foreclose a mortgage on any residential property by any
45 person, or the initial written or verbal communication by a
46 foreclosing creditor to a tenant in a residential property subject to
47 ongoing foreclosure proceedings, or any written or verbal
48 communication that seeks to induce the tenant to vacate the

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1 property prior to the transfer of the property through sheriff's sale
2 or a deed in lieu of foreclosure, shall include a copy of the notice
3 regarding residential tenant rights during foreclosure, as required by
4 the Rules Governing the Courts of the State of New Jersey adopted
5 by the Supreme Court of New Jersey.

6 f. Any person, or that person's agent or employee, who violates
7 the provisions of this section shall be subject to the same civil
8 remedies as are provided for in subsection a. of section 3 of
9 P.L.1975, c.311 (C.2A:18-61.6), or, at the tenant's sole discretion,
10 damages in the amount of \$2,000 per violation, plus attorney's fees
11 and costs. Nothing in this subsection shall limit the liability, either
12 civil or criminal, of a person, or a person's agent or employee, who
13 violates any other law or regulation.

14

15 3. (New section) a. No person, or the person's agent or
16 employee, who has filed a complaint in an action to foreclose a
17 mortgage on a residential property, as described in section 2 of
18 P.L. , c. (C.) (pending before the Legislature as this bill), or
19 who takes title to a residential property as a result of a sheriff's sale
20 or other transaction following the filing of a complaint in an action
21 to foreclose a mortgage on the property shall make any
22 communication to induce the tenant to vacate the property except
23 through a bona fide monetary offer, which shall be made in
24 accordance with the provisions of subsections d. and e. of section 2
25 of P.L. , c. (C.) (pending before the Legislature as this
26 bill). A tenant shall have five business days from the date of receipt
27 of any bona fide monetary offer to vacate the property in order to
28 accept or reject the offer. An acceptance of an offer by a tenant
29 shall be in writing, and include an affirmative acknowledgement of
30 the date of receipt of the offer, and an understanding that the tenant
31 had a five-day review period as required by this subsection to
32 accept or reject the offer presented.

33 b. No person, or the person's agent or employee, who has filed
34 a complaint in an action to foreclose a mortgage on a residential
35 property, as described in section 2 of P.L. , c. (C.)
36 (pending before the Legislature as this bill), or who takes title to a
37 residential property as a result of a sheriff's sale or other transaction
38 following the filing of a complaint in an action to foreclose a
39 mortgage on the property shall, during the pendency of the
40 foreclosure proceeding or within one year of the transfer of title
41 following such proceeding, take any action placing pressure on a
42 tenant to accept any offer to vacate the property, including, but not
43 limited to:

44 (1) Mischaracterizing or misrepresenting the rights of the tenant
45 under the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.),
46 or any other State law or municipal ordinance;

1 (2) Implying the tenant is obligated to accept an offer or
2 implying consequences against the tenant for failing to accept an
3 offer;

4 (3) Any form of tenant harassment, including, but not limited to,
5 discontinuance of electricity, heat, or other utilities, failure to
6 maintain the common areas or facilities of the property, or any other
7 failure to maintain the premises in a habitable condition;

8 (4) Implementing an increase in rent in excess of any governing
9 municipal rent control or rent leveling ordinance, or in the event the
10 property is not subject to rent control, an increase in rent exceeding
11 the limitations imposed by the Anti-Eviction Act, P.L.1974, c.49
12 (C.2A:18-61.1 et seq.) or any other State or federal law or
13 municipal ordinance.

14 c. Any person, or that person's agent or employee, who
15 violates the provisions of this section shall be subject to the same
16 civil remedies as are provided for in subsection a. of section 3 of
17 P.L.1975, c.311 (C.2A:18-61.6), or, at the tenant's sole discretion,
18 damages in the amount of \$2,000 per violation, plus attorney's fees
19 and costs. Nothing in this subsection shall limit the liability, either
20 civil or criminal, of a person, or a person's agent or employee, who
21 violates any other law or regulation.

22

23 4. Section 15 of P.L.2008, c.127 (C.46:10B-49) is amended to
24 read as follows:

25 15. a. **[A]** Except as provided in paragraph (2) of this
26 subsection, a creditor that institutes a mortgage foreclosure action
27 in the Superior Court of New Jersey shall report to the Department
28 of Banking and Insurance, on a quarterly basis and on a form
29 promulgated by the department, information about the number of
30 mortgage foreclosure actions filed by the creditor in the State.

31 (2) If, following the effective date of P.L. , c. (C.)
32 (pending before the Legislature as this bill), a creditor or other
33 person is required by any Rule of Court or otherwise by law to file
34 electronically with the Superior Court of New Jersey a summons
35 and complaint in an action to foreclose a mortgage, along with any
36 other information or materials regarding that action as required by
37 that rule or other law, then the department shall not be required to
38 continue to promulgate a form for making reports to the department,
39 and the creditor or other person shall not be required to make any
40 report to the department, as set forth under to paragraph (1) of this
41 subsection. The Administrative Office of the Courts, pursuant to
42 the Rule of Court or other law, shall instead collect the data
43 required under paragraph (1) of this subsection from each Superior
44 Court, in addition to collecting any other information or materials
45 required by that rule or other law.

46 b. **[The]** Except as provided herein, the Department of
47 Banking and Insurance shall produce a report, on a quarterly basis
48 **[;]** , detailing information about mortgage foreclosures filed by

1 creditors in each county of the State, and shall make the report
2 available to the public on its website. The report shall describe the
3 type of mortgage being foreclosed on based on the following
4 categories:

- 5 (1) prime rate mortgages foreclosed upon;
- 6 (2) subprime rate mortgages foreclosed upon;
- 7 (3) fixed rate mortgages foreclosed upon;
- 8 (4) adjustable rate mortgages foreclosed upon;
- 9 (5) nonconforming mortgages, as defined by Fannie Mae,
10 Freddie Mac, or their successors;
- 11 (6) mortgages insured by the Federal Housing Administration
12 foreclosed upon;
- 13 (7) mortgages insured by the Veteran's Administration
14 foreclosed upon; and
- 15 (8) any other category of classification the department deems
16 appropriate to effectuate the purpose of this section.

17 If, following the effective date of P.L. , c. (C.) (pending
18 before the Legislature as this bill), the Administrative Office of the
19 Courts collects data on summonses and complaints in actions to
20 foreclose mortgages along with other information and materials
21 pursuant to any Rule of Court or otherwise by law, as set forth
22 under paragraph (2) of subsection a. of this section, and the
23 information collected pursuant to that rule or other law includes at
24 least the information set forth under paragraphs (1) through (7) of
25 this subsection, then the Administrative Office of the Courts, and
26 not the department, shall produce and make publicly available on its
27 Internet website the quarterly report required by this subsection.

28 c. The Department of Banking and Insurance, pursuant to the
29 "Administrative Procedure Act," P.L.1986, c.410 (C.52:14B-1 et
30 seq.) shall adopt regulations necessary to effectuate the purpose of
31 this section. Following the enactment of P.L. , c. (C.)
32 (pending before the Legislature as this bill), the department, in
33 consultation with the Administrative Office of the Courts, shall
34 adopt regulations necessary to effectuate the purpose of this section.
35 (cf: P.L.2008, c.127, s.15)

36
37 5. Section 17 of P.L.2008, c.127 (C.46:10B-51) is amended to
38 read as follows:

39 17. a. (1) A creditor serving a **notice of intention to foreclose**
40 summons and complaint in an action to foreclose on a mortgage on
41 residential property in this State shall **serve** , within 10 days of
42 serving the summons and complaint, notify the public officer
43 municipal clerk of the municipality in which the property is located
44 **[**, or, if the municipality has not designated a public officer
45 pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the municipal
46 clerk, with a copy of the notice at the same time it is served on the
47 owner of the **]** that a summons and complaint in an action to

1 foreclose a mortgage has been filed against the subject property.
2 The notice shall contain the name and contact information for the
3 representative of the creditor who is responsible for receiving
4 complaints of property maintenance and code violations, may
5 contain information about more than one property, and shall be
6 provided by mail or electronic communication, at the discretion of
7 the municipal clerk. If the municipality has appointed a public
8 officer pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the
9 municipal clerk shall forward a copy of the notice to the public
10 officer or shall otherwise provide it to any other local official
11 responsible for administration of any property maintenance or
12 public nuisance code.

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

17 The **【copy served on the public officer or municipal clerk】**
18 notice shall also include the street address, lot and block number of
19 the property, and the full name and contact information of an
20 individual located within the State who is authorized to accept
21 service on behalf of the creditor. The notice shall be provided to
22 the municipal clerk within 10 days of service of a summons and
23 complaint in an action to foreclose a mortgage against the subject
24 property.

25 (2) Within 30 days following the effective date of
26 P.L. , c. (C.) (pending before the Legislature as this bill), any
27 creditor that has initiated a foreclosure proceeding on any
28 residential property which is pending in Superior Court shall
29 provide to the municipal clerk of the municipality in which the
30 property is located, a listing of all residential properties in the
31 municipality for which the creditor has foreclosure actions pending
32 by street address and lot and block number. If the municipality has
33 appointed a public officer pursuant to P.L.1942, c.112 (C.40:48-2.3
34 et seq.), the municipal clerk shall forward a copy of the notice to the
35 public officer, or shall otherwise provide it to any other local
36 official responsible for administration of any property maintenance
37 or public nuisance code.

38 b. If the owner of a residential property vacates or abandons any
39 property on which a foreclosure proceeding has been initiated or if
40 a residential property becomes vacant at any point subsequent to the
41 creditor's filing the **【notice of intention to foreclose】 summons and**
42 complaint in an action to foreclose a mortgage against the subject
43 property, but prior to vesting of title in the creditor or any other
44 third party, and the property is found to be a nuisance or in
45 violation of any applicable State or local code, the local public
46 officer **【or】** , municipal clerk , or other authorized municipal
47 official shall notify the creditor, which shall have the responsibility
48 to abate the nuisance or correct the violation in the same manner

1 and to the same extent as the title owner of the property, to such
2 standard or specification as may be required by [the public officer
3 or municipal clerk] State law or municipal ordinance.

4 c. If the municipality expends public funds in order to abate a
5 nuisance or correct a violation on a residential property in situations
6 in which the creditor was given notice pursuant to the provisions of
7 subsection b. of this section but failed to abate the nuisance or
8 correct the violation as directed, the [public officer or municipal
9 clerk] municipality shall have the same recourse against the
10 creditor as it would have against the title owner of the property,
11 including but not limited to the recourse provided under section 23
12 of P.L.2003, c.210 (C.55:19-100).

13 (cf: P.L.2008, c.127, s.17)

14

15 6. (New section) The provisions of any regulation, ordinance,
16 rule, or resolution of any municipality, county or other subdivision
17 of the State, or any agency or instrumentality of that municipality,
18 county or other subdivision, relating to foreclosure practices, or the
19 extension, delay, forbearance or imposition of moratorium periods
20 concerning foreclosures, are superseded by the provisions of the
21 “Save New Jersey Homes Act of 2008,” P.L.2008, c.86 (C.46:10B-
22 36 et seq.) and the forbearance and nuisance abatement provisions
23 of the “Mortgage Stabilization and Relief Act,” P.L.2008, c.127
24 (C.55:14K-82 et al.).

25

26 7. Section 5 of this act shall take effect on the 10th day after the
27 date of enactment, and the remainder of the act shall take effect on
28 the 30th day after the date of enactment.

29

30

31 STATEMENT

32

33 This bill, titled the “New Jersey Foreclosure Fairness Act,”
34 requires persons taking title to a residential property through
35 sheriff’s sale or deed in lieu of foreclosure to send notice to any
36 tenants at the property that ownership has changed and that the
37 tenants are not required to vacate the premises because of the
38 foreclosure. As defined in the bill, a “residential property” is
39 limited to a property containing a dwelling, as defined in section
40 103(v) of the Truth in Lending Act, Pub.L.90-321 (15 U.S.C.
41 s.1602(v)), with one to four family housing units or individual units
42 of condominiums or cooperatives.

43 The notice by the new owner shall be in writing, and provided in
44 both English and Spanish. The notice shall be posted prominently
45 on the front door of each tenant’s unit, and sent to each tenant via
46 certified and regular mail.

47 To assist new owners regarding their notice obligations, the
48 Department of Community Affairs shall prepare and make available

1 for distribution, both in print and in an easily printable format on
2 the department's Internet website, a notice in English with a
3 Spanish translation that may be used by new owners to satisfy the
4 notice requirements of the bill.

5 The contents of the notice shall include contact information for
6 the person to whom future rent is due, a basic explanation of rights
7 available to the tenant under the State's "anti-eviction act,"
8 P.L.1974, c.49 (C.2A:18-61.1 et seq.), and advises the tenant to
9 consult with an attorney in the event the new owner or another
10 person is pressuring the tenant to vacate the premises.

11 With respect to service on any tenant of a summons and
12 complaint to foreclose a mortgage on the property, or the initial
13 communication by a foreclosing creditor to a tenant on a property
14 subject to an ongoing foreclosure proceeding that seeks to induce
15 the tenant to vacate prior to the transfer of property, a different
16 notice shall be required. The notice required in this instance shall
17 be the notice regarding residential tenant rights during foreclosure,
18 as required by the Rules Governing the Courts of the State of New
19 Jersey, as adopted by the Supreme Court of New Jersey.

20 The bill provides that a person who has filed a complaint in an
21 action to foreclose, or that person's agent or employee, shall not
22 make any communication to induce the tenant to vacate the
23 property, except through a bona fide monetary offer. A tenant shall
24 have five business days from the date of receipt of any such offer in
25 order to accept or reject the offer. An acceptance of an offer by a
26 tenant shall be in writing, and include an affirmative
27 acknowledgment of the date of receipt of the offer, and an
28 understanding that the tenant had a five-day review period to accept
29 or reject the offer presented.

30 The bill also provides that the person, or that person's agent or
31 employee, shall not take any action placing pressure on a tenant to
32 accept any offer to vacate the property, including, but not limited
33 to: (1) mischaracterizing or misrepresenting the rights of the tenant
34 under the "anti-eviction act," P.L.1974, c.49 (C.2A:18-61.1 et seq.),
35 or any other State law or municipal ordinance; (2) stating actions
36 the owner may take against the tenant, implying the tenant is
37 obligated to accept the offer, or implying consequences against the
38 tenant for failing to accept the offer; and (3) any form of
39 harassment, such as discontinuance of utilities or failure to maintain
40 the premises in a habitable condition.

41 Any person, including that person's agent or employee, who
42 violates the provisions of the bill with respect to the tenant notice
43 requirements or the treatment of tenants shall be subject to the same
44 civil remedy, being triple damages, as provided for in subsection a.
45 of section 3 of P.L.1975, c.311 (C.2A:18-61.6), or at the sole
46 discretion of the victimized tenant, damages in the amount of
47 \$2,000, plus attorney's fees and costs.

1 The bill also makes amendments to, and supplements, the
2 “Mortgage Stabilization and Relief Act,” P.L.2008, c.127
3 (C.55:14K-82 et al.).

4 Under that act, the Department of Banking and Insurance is
5 required to periodically collect information from creditors and
6 produce reports concerning foreclosure activities on a quarterly
7 basis. However, the bill provides that if, following its effective
8 date, a creditor or other person is required by any Rule of Court or
9 otherwise by law to file electronically with the Superior Court a
10 summons and complaint in an action to foreclose a mortgage, along
11 with any other information or materials regarding that action as
12 required by that rule or other law, and this information is at least as
13 comprehensive as that currently reported by the department, then
14 the Administrative Office of the Courts, and not the department,
15 shall be responsible for producing the quarterly report.

16 The bill also requires that a creditor serving a summons and
17 complaint in an action to foreclose a mortgage on a residential
18 property shall, within 10 days of serving the summons and
19 complaint, notify the municipal clerk of the municipality in which
20 the property is located, and the clerk shall in turn forward the notice
21 to the municipality’s public officer, if one has been appointed
22 pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), or other
23 appropriate official. The notice shall contain the name and contact
24 information for the representative of the creditor who is responsible
25 for receiving property maintenance and code violations, and shall
26 be provided via written or electronic communication, at the
27 discretion of the municipal clerk. Additionally, within 30 days of
28 the effective date of the bill, any creditor that initiated foreclosure
29 proceedings that are pending in Superior Court shall provide the
30 municipal clerk a listing of all residential properties in the
31 municipality for which the creditor has those foreclosure actions
32 pending. This information shall be similarly forwarded by the
33 municipal clerk to the municipality’s public officer or other local
34 official.

35 As per the existing provisions of the “Mortgage Stabilization and
36 Relief Act,” any creditor involved in a foreclosure proceeding, prior
37 to the vesting of title with that creditor, shall have responsibility to
38 abate or correct any property maintenance or code violations on a
39 property that is vacated or abandoned following notification by the
40 municipal clerk, municipal public officer or other local official.

41 Finally, the bill provides that any regulation, ordinance, rule, or
42 resolution of any municipality, county or other subdivision of the
43 State, or any agency or instrumentality of that municipality, county
44 or other subdivision, relating to foreclosure practices, or the
45 extension, delay, forbearance or imposition of moratorium periods
46 concerning foreclosures, are superseded by the provisions of the
47 “Save New Jersey Homes Act of 2008,” P.L.2008, c.86 (C.46:10B-

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11

- 1 36 et seq.), and the forbearance and nuisance abatement provisions
- 2 of the aforementioned "Mortgage Stabilization and Relief Act."

STATEMENT TO
SENATE, No. 3059

with Senate Floor Amendments
(Proposed by Senator RICE)

ADOPTED: DECEMBER 10, 2009

These floor amendments would modify section 2 and section 4 of S-3059. The amendments would broaden the class of dwelling units to which this legislation is applicable by removing the reference in section 2 to the definition of "dwelling" contained in the federal Truth in Lending Act at 15 U.S.C. s.1602(v).

The changes to section 2 would also alter the notice requirements for a creditor taking possession and title in a foreclosure action. The bill, as amended, would require notice to individual tenants in the event that a creditor or other new owner takes possession in a foreclosure action only in buildings containing 10 or fewer units. In buildings containing more than 10 units, the new owner must provide notice to tenants in a conspicuous location, such as an entrance or other common area in the buildings. It is the sponsor's understanding that these modifications to subsection c. of section 2, providing different notice requirements based on the number of units in a building, do not affect the universal requirements of subsections d. and e. of this section. The Senate wishes to clarify an inadvertent omission in the statement for the Assembly floor amendments to A-4063(1R) of 2009. Pursuant to this bill, as amended, any tenant who receives a written or verbal communication for the purposes of inducing the tenant to vacate the dwelling will, pursuant to subsection d., receive a copy of the notice provided for in subsection a. of section 2 and a copy of the notice regarding residential tenant rights during foreclosure as provided for in subsection e., regardless of building size.

These floor amendments would also modify section 15 of P.L.2008, c.127 (C.46:10B-49). As amended, this section provides that creditors will continue to be required to report the mortgage data set forth in paragraphs (1) through (8) of subsection b. of section 15 of P.L.2008, c.127 (C.46:10B-49) to the Department of Banking and Insurance on a quarterly basis until such time that: (1) the Judiciary requires that creditors electronically file pleadings in mortgage foreclosure actions and (2) the Administrative Office of the Courts is capable of electronically collecting the required data and transmitting it to the Department of Banking and Insurance so that the department can fulfill its reporting duties under P.L.2008, c.127. Once the necessary level of automation is available, this cooperative process is intended to provide for the most efficient collection and reporting of the required data for both State government and mortgage creditors.