

2A:50-53 to 68

**LEGISLATIVE HISTORY CHECKLIST**  
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NJSA: 2A:50-53 to 68 ("Fair Foreclosure Act")

LAWS OF: 1995 CHAPTER: 244

BILL NO: A1064

SPONSOR(S): Vandervalk

DATE INTRODUCED: January 24, 1994

COMMITTEE: ASSEMBLY Financial Institutions  
SENATE: State Management

AMENDED DURING PASSAGE: Yes Amendments during passage  
Second reprint enacted denoted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: November 14, 1994  
SENATE: June 26, 1995

DATE OF APPROVAL: September 5, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes  
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

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See newspaper clipping:  
"New Foreclosure Act: more complexity, uncertainty," 142 NJLJ 823

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[SECOND REPRINT]  
ASSEMBLY, No. 1064

STATE OF NEW JERSEY

INTRODUCED JANUARY 24, 1994

By Assemblywoman VANDERVALK, Assemblymen ROBERTS,  
Bateman and Lustbader

1 AN ACT concerning mortgage foreclosure <sup>1</sup>, amending various  
2 sections of the New Jersey Statutes<sup>1</sup> and supplementing  
3 Chapter 50 of Title 2A of the New Jersey Statutes.

4

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

7 1. <sup>1</sup>(New section)<sup>1</sup> This act shall be known and may be cited  
8 as the "Fair Foreclosure Act."

9 2. <sup>1</sup>(New section)<sup>1</sup> The Legislature hereby finds and declares  
10 it to be the public policy of this State <sup>2</sup>[that homelessness is to  
11 be prevented;]<sup>2</sup> that homeowners should be given every  
12 opportunity to pay their home mortgages, and thus keep their  
13 homes; <sup>2</sup>[that the State will be benefitted if homeowners keep  
14 their homes and do not become public welfare recipients;]<sup>2</sup> and  
15 that lenders will be benefitted when residential mortgage debtors  
16 cure their defaults and return defaulted residential mortgage  
17 loans to performing status.

18 3. <sup>1</sup>(New section)<sup>1</sup> As used in this act:

19 "Deed in lieu of foreclosure" means a voluntary, knowing and  
20 uncoerced conveyance by the residential mortgage debtor to the  
21 residential mortgage lender of all claim, interest and estate in  
22 the property subject to the mortgage. In order for a conveyance  
23 to be voluntary, the debtor shall have received notice of, and  
24 been fully apprised of the debtor's rights as specified in section 4  
25 of this act. For purposes of this act, "voluntarily surrendered"  
26 has the same meaning as "deed in lieu of foreclosure."

27 "Immediate family" means the debtor, the debtor's spouse, or  
28 the mother, father, sister, brother or child of the debtor or  
29 debtor's spouse.

30 <sup>2</sup>"Non-residential mortgage" means a mortgage, security  
31 interest or the like which is not a residential mortgage. If a  
32 mortgage document includes separate tracts or properties, those  
33 portions of the mortgage document covering the non-residential  
34 tracts or properties shall be a non-residential mortgage.

35 "Obligation" means a promissory note, bond or other similar  
36 evidence of a duty to pay.<sup>2</sup>

37 "Office" means the Office of Foreclosure within the  
38 Administrative Office of the Courts.

39 "Residential mortgage" means a mortgage, security interest or  
40 the like, in which the security is a <sup>2</sup>residential property such as  
41 a<sup>2</sup> house, real property <sup>2</sup>[,] or<sup>2</sup> condominium <sup>2</sup>[, or cooperative

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:

<sup>1</sup> Assembly AFI committee amendments adopted September 29, 1994.

<sup>2</sup> Senate SSM committee amendments adopted May 8, 1995.

1 apartment]<sup>2</sup>, which is occupied, or is to be occupied, by the  
2 debtor, who is a natural person, or a member of the debtor's  
3 immediate family, as that person's <sup>1</sup>[primary]<sup>1</sup> residence. This  
4 act shall apply to all residential mortgages wherever made, which  
5 have as their security such a residence in the State of New  
6 Jersey, provided that the real property which is the subject of the  
7 mortgage shall not have more than four dwelling units, one of  
8 which shall be, or is planned to be, occupied by the debtor or a  
9 member of the debtor's immediate family as the debtor's or  
10 member's <sup>1</sup>[primary]<sup>1</sup> residence at the time the loan is  
11 originated.

12 "Residential mortgage debtor" or "debtor" means any person  
13 shown on the record of the residential mortgage lender as being  
14 obligated to pay the <sup>2</sup>[note] obligation<sup>2</sup> secured by the residential  
15 mortgage.

16 "Residential mortgage lender" or "lender" means any person,  
17 corporation, or other entity which makes or holds a residential  
18 mortgage, and any person, corporation or other entity to which  
19 such residential mortgage is assigned.

20 4. <sup>1</sup>(New section)<sup>1</sup> a. Upon failure to perform any obligation  
21 of a <sup>2</sup>[note or]<sup>2</sup> residential mortgage by the residential mortgage  
22 debtor and before any residential mortgage lender may  
23 accelerate the maturity of any residential mortgage obligation  
24 <sup>2</sup>[or] and<sup>2</sup> commence any foreclosure or other legal action to  
25 take possession of the residential property which is the subject of  
26 the mortgage, the residential mortgage lender shall give the  
27 residential mortgage debtor notice of such intention at least 30  
28 days in advance of such action as provided in this section.

29 b. Notice of intention to take action as specified in subsection  
30 a. of this section shall be in writing, sent to the debtor by  
31 registered or certified mail, return receipt requested, at the  
32 debtor's last known address, and, if different, to the address of  
33 the property which is the subject of the residential mortgage.  
34 The notice is deemed to have been effectuated on the date the  
35 notice is delivered <sup>2</sup>in person or mailed<sup>2</sup> to the party <sup>2</sup>[in person,  
36 the date of the acceptance of the certified or registered mail, or,  
37 if the party refuses to claim or accept delivery of the certified or  
38 registered mail, or if neither the return receipt or the original  
39 envelope is returned to the sender within 15 calendar days of  
40 mailing, the date of the mailing of the notice by ordinary first  
41 class mail. Notice by certified or registered mail and by ordinary  
42 first class mail may be made concurrently]<sup>2</sup>.

43 c. The written notice shall clearly and conspicuously state in a  
44 manner calculated to make the debtor aware of the situation:

- 45 (1) the particular obligation or real estate security interest;  
46 (2) the nature of the default claimed;  
47 (3) the right of the debtor to cure the default as provided in  
48 section 5 of this act;  
49 (4) what performance, including what sum of money, if any,  
50 and interest, shall be tendered to cure the default as of the date  
51 specified under paragraph (5) of this subsection c.;

52 (5) the date by which the debtor shall cure the default to avoid  
53 initiation of foreclosure proceedings, which date shall not be less  
54 than 30 days after the date the notice is <sup>2</sup>[given] effective<sup>2</sup>, and

1 the name and address and phone number of a person to whom the  
2 payment or tender shall be made;

3 (6) that if the debtor does not cure the default by the date  
4 specified under paragraph (5) of this subsection c., the lender may  
5 take steps to terminate the debtor's ownership in the property by  
6 commencing a foreclosure suit in a court of competent  
7 jurisdiction;

8 (7) that if the lender takes the steps indicated pursuant to  
9 paragraph (6) of this subsection c., a debtor shall still have the  
10 right to cure the default pursuant to section 5 of this act, but  
11 that the debtor shall be responsible for the lender's court costs  
12 and attorneys' fees in an amount not to exceed that amount  
13 permitted pursuant to the Rules Governing the Courts of <sup>2</sup>the  
14 State of<sup>2</sup> New Jersey;

15 (8) the right, if any, of the debtor to transfer the real estate  
16 to another person subject to the security interest and that the  
17 transferee may have the right to cure the default as provided in  
18 this act, subject to the mortgage documents;

19 (9) that the debtor is advised to seek counsel from an attorney  
20 of the debtor's own choosing concerning the debtor's residential  
21 mortgage default situation, and that, if the debtor is unable to  
22 obtain an attorney, the debtor may communicate with the New  
23 Jersey Bar Association or Lawyer Referral Service in the county  
24 in which the residential property securing the mortgage loan is  
25 located; and that, if the debtor is unable to afford an attorney,  
26 the debtor may communicate with the Legal Services Office in  
27 the county in which the property is located;

28 (10) the possible availability of financial assistance for curing  
29 a default from programs operated by the State or federal  
30 government or non-profit organizations, if any, as identified by  
31 the Commissioner of Banking. This requirement may be satisfied  
32 by attaching a list of such programs promulgated by the  
33 commissioner; and

34 (11) the name and address of the lender and the telephone  
35 number of a representative of the lender whom the debtor may  
36 contact if the debtor disagrees with the lender's assertion that a  
37 default has occurred or the correctness of the mortgage lender's  
38 calculation of the amount required to cure the default.

39 d. The notice of intention to foreclose required to be provided  
40 pursuant to this section shall not be required if the debtor has  
41 voluntarily surrendered the property which is the subject of the  
42 residential mortgage <sup>2</sup>[prior to the time at which the lender is  
43 permitted to send a notice of intention to foreclose pursuant to  
44 subsection a. of this section]<sup>2</sup>.

45 e. The duty of the lender under this section to serve notice of  
46 intention to foreclose is independent of any other duty to give  
47 notice under the common law, principles of equity, State or  
48 federal statute, or rule of court and of any other right or remedy  
49 the debtor may have as a result of the failure to give such notice.

50 f. Compliance with this section shall be set forth in the  
51 pleadings of any legal action referred to in this section. If the  
52 plaintiff in any complaint seeking foreclosure of a residential  
53 mortgage alleges that the property subject to the residential  
54 mortgage has been abandoned or voluntarily surrendered, the  
55 plaintiff shall plead the specific facts upon which this

1 allegation is based. <sup>2</sup>[The plaintiff shall attach to the complaint  
2 a copy of the notice required to be served together with proof of  
3 service as these are required pursuant to subsections a. and b. of  
4 this section.]<sup>2</sup>

5 5. <sup>1</sup>(New section)<sup>1</sup> a. Notwithstanding the provisions of any  
6 other law to the contrary, as to any residential mortgage for  
7 which a notice of intention to foreclose is required to be given  
8 pursuant to section 4 of this act, whether or not such required  
9 notice was in fact given, the debtor, or anyone authorized to act  
10 on the debtor's behalf, shall have the right at any time, up to the  
11 entry of final judgment <sup>2</sup>or the entry by the office or the court of  
12 an order of redemption pursuant to subsection g. of section 11 of  
13 this act<sup>2</sup>, to cure the default, de-accelerate and reinstate the  
14 residential mortgage by tendering the amount or performance  
15 specified in subsection b. of this section. The payment or tender  
16 shall be made to the <sup>2</sup>[lender, holder or servicing agent] person  
17 designated in the notice pursuant to paragraph (5) of subsection c.  
18 of section 4 of this act<sup>2</sup>. The debtor may exercise the right to  
19 cure a default as to a particular mortgage and reinstate that  
20 mortgage only once every 18 months, provided, however, that this  
21 limitation shall not apply if the mortgage debtor cures a default  
22 by the date specified in paragraph (5) of subsection c. of section 4  
23 of this act. The 18-month time period shall run from the date of  
24 cure and reinstatement.

25 b. To cure a default under this section, a debtor shall:

26 (1) pay or tender to the person identified pursuant to  
27 paragraph (5) of subsection c. of section 4 of this act, in the form  
28 of cash, cashier's check, or certified check, all sums which would  
29 have been due in the absence of default, at the time of payment  
30 or tender;

31 (2) perform any other obligation which the debtor would have  
32 been bound to perform in the absence of default or the exercise  
33 of an acceleration clause, if any;

34 (3) pay or tender court costs, if any, and attorneys' fees in an  
35 amount which shall not exceed the amount permitted under the  
36 Rules Governing the Courts of the State of New Jersey; and

37 (4) pay all contractual late charges, as provided for in the note  
38 or security agreement.

39 c. To cure a default under this section, a debtor shall not be  
40 required to pay any charge, fee or penalty attributable to the  
41 exercise of the right to cure a default as provided for in this act.

42 d. Cure of default reinstates the debtor to the same position  
43 as if the default had not occurred. It nullifies, as of the date of  
44 cure, any acceleration of any obligation under the mortgage, note  
45 or bond arising from the default.

46 e. If default is cured prior to the filing of a foreclosure action,  
47 the lender shall not institute a foreclosure action for that  
48 default. If default is cured after the filing of a foreclosure  
49 action, the lender shall give written notice of the cure to the  
50 court. Upon such notice, the court shall dismiss the action  
51 without prejudice.

52 f. The right to cure a default under this section is independent  
53 of any right of redemption or any other right or remedy under the  
54 common law, principles of equity, State or federal statute, or  
55 rule of court.

1       6. <sup>1</sup>(New section)<sup>1</sup> a. <sup>2</sup>(1)<sup>2</sup> If a plaintiff's action to  
2 foreclose a residential mortgage is uncontested, pursuant to  
3 R.4:64-1(a) of the Rules Governing the Courts of the State of  
4 New Jersey <sup>2</sup>and the plaintiff chooses not to use the optional  
5 procedure for the disposition of foreclosed premises pursuant to  
6 section 11 of this act<sup>2</sup>, a lender shall apply for entry of final  
7 judgment and provide the debtor with a notice, mailed at least 14  
8 calendar days prior to the submission of proper proofs for entry  
9 of a foreclosure judgment, advising that, absent a response from  
10 the debtor pursuant to <sup>2</sup>[subsection b. of this section] paragraph  
11 (2) of this subsection a.<sup>2</sup>, proper proofs will be submitted for  
12 entry of final judgment in the foreclosure action and that upon  
13 entry of final judgment, the debtor shall lose the right, provided  
14 pursuant to section 5 of this act, to cure the default. The manner  
15 and address for mailing and the effective date of the notice shall  
16 be the same as set forth in subsection b. of section 4 of this act.

17       <sup>2</sup>[b.] (2)<sup>2</sup> A debtor may, no later than 10 days after receipt of  
18 the notice required pursuant to subsection a. of this section, mail  
19 to the lender a statement in which the debtor in good faith  
20 certifies as true that there is a reasonable likelihood that the  
21 debtor will be able to provide payment necessary to cure the  
22 default within 45 days of the date the notice required pursuant to  
23 <sup>2</sup>[subsection a. of this section] paragraph (1) of this subsection a.<sup>2</sup>  
24 became effective. This statement shall be sent registered or  
25 certified mail, return receipt requested, to the address of the  
26 lender who gave notice as required pursuant to subsection a. of  
27 this section.

28       <sup>2</sup>[c.] (3)<sup>2</sup> A lender who receives a statement sent by the debtor  
29 pursuant to <sup>2</sup>[subsection b. of this section] paragraph (2) of this  
30 subsection a.<sup>2</sup>, shall not submit proper proofs for entry of final  
31 judgment in foreclosure <sup>1</sup>with a return date<sup>1</sup> earlier than <sup>1</sup>[the  
32 46th day] 46 days<sup>1</sup> after the date the notice required pursuant to  
33 <sup>2</sup>[subsection a. of this section] paragraph (1) of this subsection a.<sup>2</sup>  
34 became effective.

35       <sup>2</sup>b. (1) If a plaintiff's action to foreclose a residential  
36 mortgage is uncontested, pursuant to R.4:64-1(a) of the Rules  
37 Governing the Courts of the State of New Jersey and the lender  
38 chooses to use the optional procedure for the disposition of the  
39 foreclosed premises pursuant to section 11 of this act, the lender  
40 shall provide the debtor with a notice, mailed at least 14 calendar  
41 days prior to filing an affidavit or certification with the office or  
42 court pursuant to subsection f. of section 11 of this act. The  
43 notice shall advise the debtor that, absent a response from the  
44 debtor pursuant to paragraph (2) of this subsection b., the lender  
45 shall file an affidavit or certification with the office or court  
46 requesting the office or court to enter an order of redemption  
47 and that upon the entry of the order of redemption the debtor  
48 shall lose the right provided pursuant to section 5 of this act, to  
49 cure the default. The manner and address for mailing and the  
50 effective date of the notice shall be the same as set forth in  
51 subsection b. of section 4 of this act.

52       (2) A debtor may, no later than 10 days after receipt of the  
53 notice required pursuant to paragraph (1) of this subsection b.,  
54 mail to the lender a statement in which the debtor in good faith

1 certifies as true that there is a reasonable likelihood that the  
 2 debtor will be able to provide payment necessary to cure the  
 3 default within 45 days of the date the notice required pursuant to  
 4 paragraph (1) of this subsection b. became effective. This  
 5 statement shall be sent registered or certified mail, return  
 6 receipt requested, to the address of the lender who gave notice as  
 7 required pursuant to paragraph (1) of this subsection b.

8 (3) A lender who receives a statement sent by the debtor  
 9 pursuant to paragraph (2) of this subsection b., shall not file an  
 10 affidavit or certification with the office or court earlier than 46  
 11 days after the date the notice required pursuant to paragraph (1)  
 12 of this subsection b. became effective.<sup>2</sup>

13 7. <sup>1</sup>(New section)<sup>1</sup> If a debtor is successful in curing the  
 14 default under a repayment plan approved by the United States  
 15 Bankruptcy Court, the residential mortgage relationship between  
 16 the parties is reinstated, and the debtor is restored to the same  
 17 position held before the default or acceleration.

18 8. <sup>1</sup>(New section)<sup>1</sup> Nothing herein is intended to limit or  
 19 modify any provision of federal law regarding notice of the  
 20 availability of homeownership counselling.

21 9. <sup>1</sup>(New section)<sup>1</sup> Waivers by the debtor of rights provided  
 22 pursuant to this act are against public policy, unlawful, and void,  
 23 unless given after default pursuant to a workout agreement in a  
 24 separate written document signed by the debtor.

25 <sup>2</sup>10. (New section) The provisions of sections 1 through 9 of  
 26 this act shall not apply to the foreclosure of a non-residential  
 27 mortgage nor to collection of the obligation by means other than  
 28 enforcing the lender's lien on the residential property. A lender  
 29 shall not be required to foreclose a residential mortgage and a  
 30 non-residential mortgage securing the same obligation in the  
 31 same proceeding.<sup>2</sup>

32 <sup>2</sup>[10.] 11.<sup>2</sup> <sup>1</sup>(New section)<sup>1</sup> a. An optional <sup>2</sup>[sale]  
 33 foreclosure<sup>2</sup> procedure <sup>2</sup>without sale<sup>2</sup> for the disposition of a  
 34 foreclosed premises is hereby established pursuant to subsection  
 35 b. of this section, wherein a lender may<sup>2</sup>[, after entry of final  
 36 judgment in foreclosure,]<sup>2</sup> elect to proceed according the  
 37 provisions of this act <sup>2</sup>[rather than as provided in accordance  
 38 with applicable law governing foreclosure sales and sales of real  
 39 property generally]<sup>2</sup> and <sup>2</sup>R.4:64-1(d) of<sup>2</sup> the Rules Governing  
 40 the Courts of the State of New Jersey.

41 b. Use of the optional <sup>2</sup>[sale]<sup>2</sup> procedure <sup>2</sup>without sale<sup>2</sup>, as  
 42 provided in this section, shall be permitted only when:

43 (1) the debtor has abandoned the property which is the subject  
 44 of the residential mortgage;

45 (2) the debtor has voluntarily surrendered the property which  
 46 is the subject of the residential mortgage by signing a deed in lieu  
 47 of foreclosure in favor of the lender; or

48 (3) there is no equity in the property which is the subject of  
 49 the residential mortgage, as defined in subsection e. of this  
 50 section.

51 c. Pursuant to paragraph (1) of subsection b. of this section,  
 52 and for purposes of this section only, abandonment of the  
 53 property subject to the residential mortgage shall be established  
 54 by an affidavit or certification from an individual having personal

1 knowledge of the contents thereof, setting forth the specific  
2 facts upon which that conclusion is based. The affidavit or  
3 certification shall be submitted to the <sup>2</sup>office or the<sup>2</sup> court at  
4 the same time that the lender <sup>2</sup>[makes application to proceed  
5 with the optional sale procedure established by this section]  
6 applies to the office or the court for the order fixing the amount,  
7 time and place for redemption<sup>2</sup>.

8 d. Pursuant to paragraph (2) of subsection b. of this section  
9 and for purposes of this section only, if the lender receives a deed  
10 in lieu of foreclosure, the conveyance shall be effective only if  
11 the deed clearly and conspicuously provides: that the debtor may,  
12 without penalty, rescind the conveyance within <sup>1</sup>[three] seven<sup>1</sup>  
13 days, excluding Saturdays, Sundays and legal holidays; and that  
14 such rescision is effective upon delivery of a written notice to the  
15 lender or its agent or upon mailing of such notice to the lender or  
16 its agent by certified or registered mail, return receipt requested.

17 e. <sup>1</sup>(1)<sup>1</sup> For purposes of paragraph (3) of subsection b. of this  
18 section, a property subject to a residential mortgage shall be  
19 deemed to have no equity if the total unpaid balance of all  
20 <sup>2</sup>[properly recorded]<sup>2</sup> liens <sup>1</sup>and encumbrances<sup>1</sup> against the  
21 property, including mortgages, tax liens <sup>2</sup>[,] and<sup>2</sup> judgments <sup>2</sup>[in  
22 which execution has issued] actually<sup>2</sup> against the property <sup>2</sup>[not  
23 including similar name judgments<sup>2</sup>], and any other <sup>2</sup>[properly  
24 recorded]<sup>2</sup> lien, is equal to or greater than 92 percent of the fair  
25 market value of the property <sup>1</sup>[as that value is determined by an  
26 appraiser licensed pursuant to P.L.1991, c.68 (C.45:14F-1 et  
27 seq.). A certified copy of the appraisal and an]. An<sup>1</sup> affidavit  
28 setting forth with specificity <sup>1</sup>the fair market value of the  
29 property,<sup>1</sup> the unpaid balance of the obligation, including all  
30 mortgages and liens <sup>1</sup>and the method by which the lender  
31 determined that the property has no equity<sup>1</sup>, shall be <sup>2</sup>[attached  
32 to the petition to proceed with the optional sale procedure  
33 established by this section] submitted to the office or the court  
34 at the time the lender applies for the order fixing the amount,  
35 time and place for redemption<sup>2</sup>.

36 <sup>1</sup>(2) If a lender proceeds with the optional <sup>2</sup>[sale]<sup>2</sup> procedure  
37 under this subsection, and if the debtor has not objected and  
38 requested a public sale pursuant to this section, when the  
39 <sup>2</sup>foreclosed<sup>2</sup> property <sup>2</sup>[in question]<sup>2</sup> is resold by the lender  
40 following <sup>2</sup>[receipt of the order of conveyance as provided  
41 pursuant to subsection l. of this section,] judgment<sup>2</sup> and provided  
42 the resale price received by the lender is in excess of the amount  
43 necessary to repay the debt<sup>2</sup>, interest and reasonable costs<sup>2</sup> of  
44 the lender, <sup>2</sup>[all liens and obligations superior to the lender]<sup>2</sup> and  
45 all carrying charges, including, but not limited to, the  
46 <sup>2</sup>reasonable<sup>2</sup> costs of maintenance and resale, the lender shall  
47 deposit any such excess in accordance with R.4:57 et seq. of the  
48 Rules Governing the Courts of <sup>2</sup>the State of<sup>2</sup> New Jersey.

49 (3) Upon deposit of any such excess with the Superior Court,  
50 the lender shall notify the debtor and any lien holder who held a  
51 lien junior to the lender and whose lien was lost <sup>2</sup>in whole or in  
52 part<sup>2</sup> as a result of the foreclosure. Such notification shall be by  
53 certified mail, return receipt requested, to the last known  
54 address of the debtor and such lien holders. The debtor and the



1 lien holders shall then have six months to make an application to  
2 the Superior Court, in the form of an application for surplus  
3 funds, upon appropriate notice to all other parties in interest, to  
4 seek an order for turnover of the excess funds.<sup>1</sup> <sup>2</sup>Failure of a  
5 lender to comply with the provisions of paragraphs (2) and (3) of  
6 this subsection e. shall not affect title to the foreclosed  
7 property.<sup>2</sup>

8 f. (1) <sup>2</sup>[Following entry of judgment of foreclosure pursuant to  
9 section 6 of this act] In accordance with the provisions of  
10 R.4:64-1(d) of the Rules Governing the Courts of the State of  
11 New Jersey, and subject to compliance with the provisions of this  
12 act<sup>2</sup>, a lender may elect to proceed with the optional <sup>2</sup>[sale]<sup>2</sup>  
13 procedure by filing <sup>2</sup>[a petition and proposed order] an affidavit  
14 or certification<sup>2</sup> with the office or the court.

15 (2) The <sup>2</sup>[petition] affidavit or certification<sup>2</sup> shall set forth  
16 <sup>2</sup>[under oath]<sup>2</sup> the facts which the <sup>2</sup>[petitioner] lender<sup>2</sup> alleges  
17 show that the <sup>2</sup>[petitioner] it<sup>2</sup> is entitled to proceed under one or  
18 more paragraphs of subsection b. of this section and shall be  
19 supported by the proofs required by this section and such other  
20 proofs as may be required by the office or the court.

21 g. <sup>2</sup>[If the office or the court grants the petition to proceed by  
22 the optional sale procedure, it shall] In accordance with the  
23 provisions of R.4:64-1(d) of the Rules Governing the Courts of  
24 the State of New Jersey, and subject to compliance with the  
25 provisions of this act, the office or the court may<sup>2</sup> enter an order  
26 fixing the amount, <sup>2</sup>[date] time<sup>2</sup>, and place for redemption, which  
27 shall be not less than 45 days nor more than 60 days after the  
28 date of the order. The office or the court may grant an extension  
29 of time for good cause shown. The order shall provide that:

30 (1) the redeeming defendant pay to the plaintiff's attorney  
31 the amount fixed by the office or the court for redemption,  
32 <sup>2</sup>[which shall be the amount of the judgment]<sup>2</sup> together with  
33 interest <sup>2</sup>[, from the date of the order]<sup>2</sup> to the date of  
34 redemption, plus all court costs;

35 (2) redemption shall be by cash, cashier's check or certified  
36 check and made at the office of the plaintiff's attorney, if such  
37 office is located in the county where the property is situated, or  
38 at such other place as designated by the office or the court,  
39 between the hours of 9:00 a.m. and 4:00 p.m. of the date set by  
40 the office or the court in the order; and

41 (3) in the absence of redemption, the defendants shall stand  
42 absolutely debarred and foreclosed from all equity of redemption.

43 h. (1) The order for redemption or notice thereof shall be  
44 mailed to each defendant's last known address and, if different,  
45 <sup>2</sup>also<sup>2</sup> to the address of the property <sup>2</sup>[which is the subject of the  
46 residential mortgage] being foreclosed<sup>2</sup>. The order for  
47 redemption or notice thereof shall be sent by ordinary mail and  
48 certified mail, return receipt requested, <sup>2</sup>[not more than five]  
49 within 20<sup>2</sup> days after the date the order is <sup>2</sup>[issued] entered<sup>2</sup>,  
50 except that, as to defendants <sup>2</sup>whose addresses are unknown and<sup>2</sup>  
51 who were served <sup>2</sup>[only]<sup>2</sup> by publication <sup>2</sup>[and thereafter did not  
52 appear in the action]<sup>2</sup>, no <sup>2</sup>further<sup>2</sup> publication of the order for  
53 redemption <sup>2</sup>or notice thereof<sup>2</sup> need be made.

54 (2) The notice shall:

1 (a) inform the defendants that the plaintiff is proceeding  
2 under an optional <sup>2</sup>[sale]<sup>2</sup> procedure authorized by section <sup>2</sup>[10]  
3 11<sup>2</sup> of <sup>1</sup>[P.L. , c. (C. )](now pending before the  
4 Legislature as this bill)] this act<sup>1</sup> and set out the steps of the  
5 optional <sup>2</sup>[sale]<sup>2</sup> procedure;

6 (b) inform all defendants of the terms and conditions under  
7 which a defendant may request a public sale of the mortgaged  
8 premises pursuant to subsection i. of this section; and

9 (c) clearly state that no request for a public sale made after  
10 30 days from the date of service will be granted, except for good  
11 cause shown.

12 i. In any matter in which the office or the court has issued an  
13 order for redemption and the lender is permitted to proceed by  
14 the optional <sup>2</sup>[sale]<sup>2</sup> procedure, a defendant who wishes to object  
15 to the optional <sup>2</sup>[sale]<sup>2</sup> procedure and request a public sale with  
16 respect to the mortgaged premises being foreclosed<sup>2</sup>, shall  
17 submit to the office or the court a written request for a public  
18 sale within 30 days of the date the order or notice thereof is  
19 served. If a defendant requests a public sale within the required  
20 time period, and subject to compliance with the provisions of  
21 this act,<sup>2</sup> the office or court shall <sup>2</sup>[order a public sale which  
22 shall be held in accordance with applicable law governing  
23 foreclosure sales and sales of real property generally and the  
24 Rules Governing the Courts of the State of New Jersey] enter a  
25 judgment of foreclosure which provides for a public sale of the  
26 premises in accordance with applicable law<sup>2</sup>. Any such defendant  
27 who requests a public sale, other than a natural person who is the  
28 owner or a voluntary transferee from that owner, shall be  
29 required to post a cash deposit or bond prior to the <sup>2</sup>[return]<sup>2</sup>  
30 date <sup>2</sup>[of the petition to proceed by optional sale procedure] fixed  
31 for redemption<sup>2</sup>. This cash deposit or bond shall be in an amount  
32 which is 10% of the <sup>2</sup>[plaintiff's judgment] amount found due in  
33 the order fixing the amount, time and place for redemption<sup>2</sup> and  
34 shall be held to secure the plaintiff against <sup>1</sup>any<sup>1</sup> additional  
35 interest and costs, as well as any deficiency, as a result of the  
36 public sale. The office or the court may dispense with this  
37 requirement for good cause shown. The defendant who requests a  
38 public sale, other than a natural person who is the owner or a  
39 voluntary transferee from that owner, shall pay all expenses and  
40 costs associated with the public sale, including, but not limited  
41 to, all sheriff's fees and commissions.

42 j. In the event of any dispute among defendants over the right  
43 to redeem, the court shall enter such order as is necessary to  
44 secure the plaintiff pending the resolution of the dispute,  
45 including, but not limited to, payment of plaintiff's additional  
46 interest and costs which accrue as a result of the dispute.

47 k. Upon redemption, the plaintiff shall furnish the  
48 redemptioner with an appropriate certificate of redemption and  
49 the redemptioner shall acquire all rights provided by law and  
50 equity but shall not be entitled to a deed or title to the  
51 mortgaged premises solely by virtue of the redemption. A  
52 redemptioner in proper cases<sup>2</sup> may proceed to foreclose the  
53 redemptioner's interest.

54 l. In the absence of redemption, and on proof of mailing of the

1 order for redemption or notice thereof pursuant to subsection h.  
2 of this section and an affidavit of non-redemption, the plaintiff  
3 shall be entitled to <sup>2</sup>[an order of conveyance] a judgment<sup>2</sup>  
4 <sup>2</sup>[awarding possession and barring] debarring<sup>2</sup> and foreclosing  
5 <sup>2</sup>the<sup>2</sup> equity of redemption of <sup>2</sup>[any defendant] the defendants  
6 and each of them<sup>2</sup> and any person claiming by, through or under  
7 them, and adjudging the plaintiff be vested with a valid and  
8 indefeasible estate in the mortgaged premises. <sup>2</sup>[The order of  
9 conveyance] Anything to the contrary notwithstanding,  
10 redemption shall be permitted at any time up until the entry of  
11 judgment including the whole of the last day upon which judgment  
12 is entered. A certified copy of the judgment<sup>2</sup> shall be accepted  
13 for recording <sup>2</sup>[as a deed]<sup>2</sup> by the county recording officer  
14 pursuant to P.L.1939, c.170 (C.46:16-1.1)

15 m. Upon entry of <sup>2</sup>[an order of conveyance] a judgment<sup>2</sup>  
16 vesting title in the plaintiff pursuant to subsection <sup>2</sup>[k.] l.<sup>2</sup> of this  
17 section, the debt which was secured by the foreclosed mortgage  
18 shall be deemed satisfied, and the plaintiff shall not be permitted  
19 to institute any further or contemporaneous action for the  
20 collection of the debt.

21 <sup>2</sup>[11.] 12.<sup>2</sup> (New section) a. With respect to the sale of a  
22 mortgaged premises under foreclosure action, each Sheriff in this  
23 State shall provide for, but not be limited to, the following  
24 uniform procedures:

25 (1) Bidding in the name of the assignee of the foreclosing  
26 plaintiff.

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

29 (3) <sup>2</sup>(a) The sheriff shall schedule a sale date within 120 days  
30 of the sheriff's receipt of any writ of execution issued by the  
31 court in any foreclosure proceeding.

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

36 (c) Upon the foreclosing plaintiff making such application to  
37 the office, the office shall issue the appropriate order appointing  
38 a Special Master to hold the foreclosure sale.

39 (4)<sup>2</sup> That the successful bidder at the sheriff's sale shall pay a  
40 20 percent deposit in either cash or by a certified or cashier's  
41 check, made payable to the sheriff of the county in which the  
42 sale is conducted, immediately upon the conclusion of the  
43 foreclosure sale. If the successful bidder cannot satisfy this  
44 requirement, the bidder shall be in default and the sheriff shall  
45 immediately void the sale and proceed further with the resale of  
46 the premises without the necessity of adjourning the sale, without  
47 renotification of any party to the foreclosure and without the  
48 republication of any sales notice. Upon such resale, the  
49 defaulting bidder shall be liable to the foreclosing plaintiff for  
50 any additional costs incurred by such default including, but not  
51 limited to, any difference between the amount bid by the  
52 defaulting bidder and the amount generated for the foreclosing  
53 plaintiff at the resale. In the event the plaintiff is the successful  
54 bidder at the resale, the plaintiff shall provide a credit for the  
55 fair market value of the property foreclosed.

1 2[(4) That] (5) It is permissible, upon consent of the sheriff  
2 conducting the sheff's sale, that<sup>2</sup> it shall not be necessary for  
3 an attorney or representative of the person which initiated the  
4 foreclosure to be present physically at the sheriff's sale to make  
5 a bid. A letter containing bidding instructions may be sent to the  
6 sheriff in lieu of an appearance.

7 2[(5)] (6)<sup>2</sup> That each sheriff's office shall use a deed which  
8 shall be in substantially the following form:

9  
10 THIS INDENTURE,

11  
12  
13 made this (date) day of (month), (year). Between  
14 (name) , Sheriff of the County of (name) , in the  
15 State of New Jersey, party of the first part  
16 and (name(s))

17  
18  
19  
20 party of the second part, witnesseth.

21  
22 WHEREAS, on the (date) day of (month), (year), a  
23 certain Writ of Execution was issued out of the  
24 Superior Court of New Jersey, Chancery Division-  
25 (name) County, Docket No. directed and  
26 delivered to the Sheriff of the said County of  
27 (name) and which said Writ is in the words or to  
28 the effect following that is to say:

29 THE STATE OF NEW JERSEY to the Sheriff of the County  
30 of (name) ,

31 Greeting:

32  
33 WHEREAS, on the (date) day of (month), (year), by a  
34 certain judgment made in our Superior Court of New  
35 Jersey, in a certain cause therein pending, wherein the  
36 PLAINTIFF is:

37  
38  
39  
40 and the following named parties are the DEFENDANTS:

41  
42  
43  
44 IT WAS ORDERED AND ADJUDGED that certain mortgaged  
45 premises, with the appurtenances in the Complaint, and  
46 Amendment to Complaint, if any, in the said cause  
47 particularly set forth and described, that is to say:  
48 The mortgaged premises are described as set forth upon  
49 the RIDER ANNEXED HERETO AND MADE A PART HEREOF.

50  
51 BEING KNOWN AS Tax Lot (number) in Block  
52 (number) COMMONLY KNOWN AS (street address) .

53  
54

1 TOGETHER, with all and singular the rights, liberties,  
 2 privileges, hereditaments and appurtenances thereunto  
 3 belonging or in anywise appertaining, and the reversion  
 4 and remainders, rents, issues and profits thereof, and  
 5 also all the estate, right, title, interest, use,  
 6 property, claim and demand of the said defendants of,  
 7 in, to and out of the same, to be sold, to pay and  
 8 satisfy in the first place unto the plaintiff,

9  
 10  
 11 the sum of \$ (amount) being the principal, interest  
 12 and advances secured by a certain mortgage dated (date,  
 13 month, year) and given by (name) together  
 14 with lawful interest from

15  
 16  
 17  
 18 until the same be paid and satisfied and also the costs  
 19 of the aforesaid plaintiff with interest thereon.

20  
 21 AND for that purpose a Writ of Execution should issue,  
 22 directed to the Sheriff of the County of (name)  
 23 commanding him to make sale as aforesaid; and that the  
 24 surplus money arising from such sale, if any there be,  
 25 should be brought into our said Court, as by the  
 26 judgment remaining as of record in our said Superior  
 27 Court of New Jersey, at Trenton, doth and more fully  
 28 appear; and whereas, the costs and Attorney's fees of  
 29 the said plaintiff have been fully taxed at the  
 30 following sum: \$ (amount)

31  
 32 THEREFORE, you are hereby commanded that you cause to  
 33 be made of the premises aforesaid, by selling so much  
 34 of the same as may be needful and necessary for the  
 35 purpose, the said sum of \$ (amount) and the same you  
 36 do pay to the said plaintiff together with contract and  
 37 lawful interest thereon as aforesaid, and the sum  
 38 aforesaid of costs with interest thereon.

39  
 40 And that you have the surplus money, if any there be,  
 41 before our said Superior Court of New Jersey, aforesaid  
 42 at Trenton, within 30 days after pursuant to  
 43 R.4:59-1(a), to abide the further Order of the said  
 44 Court, according to judgment aforesaid, and you are to  
 45 make return at the time and place aforesaid, by  
 46 certificate under your hand, of the manner in which you  
 47 have executed this our Writ, together with this Writ,  
 48 and if no sale, this Writ shall be returnable within 12  
 49 months.

50  
 51 WITNESS, the Honorable (name), Judge of the  
 52 Superior Court at Trenton, aforesaid, the (date) day  
 53 of (month), (year).

54 Attorneys /s/ \_\_\_\_\_, Clerk  
 55 Superior Court of New Jersey

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

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

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

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

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

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

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

Signed, sealed and delivered  
in the presence of

\_\_\_\_\_ L.S.)  
(Signature of Sheriff), Sheriff

State of New Jersey) ss  
County)

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

was by me sold by virtue of a good and subsisting execution (or as the case may be) as is therein recited, that the money ordered to be made has not been to my knowledge or belief paid or satisfied, that the time and place of the same of said real estate were by me duly advertised as required by law, and that the same was cried off and sold to a bonafide purchaser for

1 the best price that could be obtained and the true  
2 consideration for this conveyance as set forth in the  
3 deed is \$ (amount).

4  
5 (Name of Sheriff), Sheriff

6  
7 Sworn before me, (name) , on this (date) day of  
8 (month), (year), and I having examined the deed above  
9 mentioned do approve the same and order it to be  
10 recorded as a good and sufficient conveyance of the  
11 real estate therein described.

12  
13  
14  
15 (Attorney or Notary Public)

16 STATE OF NEW JERSEY) ss.  
17 (Name) County)

18 On this (date) day of (month), (year), before me, the  
19 subscriber, (name) personally appeared (name) ,  
20 Sheriff of the County of (name) aforesaid, who is,  
21 I am satisfied, the grantor in the within Indenture  
22 named, and I having first made known to him the  
23 contents thereof, he did thereupon acknowledge that he  
24 signed, sealed and delivered the same on his voluntary  
25 act and deed, for the uses and purposes therein  
26 expressed.

27  
28  
29 (Attorney or Notary Public)

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32  
33 b. At the conclusion of the sheriff's sale, the attorney for the  
34 plaintiff may prepare and deliver to the sheriff a deed in the  
35 form provided pursuant to paragraph (5) of subsection a. of this  
36 section for the sheriff's execution and the deed shall be delivered  
37 to the sheriff within 10 days of the date of the sale. The sheriff  
38 shall be entitled to the authorized fee, as a review fee, even if  
39 the plaintiff's attorney prepares the deed.

40 c. The sheriff's office shall, within two weeks of the date of  
41 the sale, deliver a fully executed deed to the successful bidder at  
42 the sale provided that the bidder pays the balance of the monies  
43 due to the Sheriff by either cash or certified or cashier's check.  
44 In the event a bid is satisfied after the expiration and additional  
45 interest is collected from the successful bidder, the sheriff shall  
46 remit to the plaintiff the total amount, less any fees, costs and  
47 commissions due the sheriff, along with the additional interest.<sup>1</sup>

48 <sup>2</sup>[<sup>1</sup>12.] <sup>2</sup>13.<sup>2</sup> (New section) Any judgment creditor shall, upon  
49 entry of judgment in the office of the Clerk of the Superior  
50 Court, provide the Court with its current address for service. If  
51 the judgment creditor's address for service changes, it shall be  
52 incumbent upon the judgment creditor to effect a change of  
53 address for service by filing an appropriate form with the court in  
54 a timely manner. If any judgment creditor fails to provide the



1 Court with a current or change of address for service, in any  
2 foreclosure proceeding, the plaintiff may, without having to first  
3 make a more diligent inquiry or publish notice in a newspaper,  
4 serve the judgment creditor by ordinary mail and certified mail  
5 at the address that is reflected in the records of the Clerk of the  
6 Superior Court. The judgment creditor shall, if known, provide  
7 the Clerk of the Court with the judgment creditor's social  
8 security number or tax payer identification number.<sup>1</sup>

9 <sup>2</sup>[113.] <sup>14.</sup><sup>2</sup> N.J.S.2A:17-36 is amended to read as follows:

10 2A:17-36. Adjournments of sale of real estate. A sheriff or  
11 other officer selling real estate by virtue of an execution may  
12 make [2] two adjournments of the sale, and no more, to any time,  
13 not exceeding [1 month] 14 calendar days for each adjournment.  
14 However, a court of competent jurisdiction may, for cause, order  
15 further adjournments.<sup>1</sup>

16 (cf: N.J.S.2A:17-36)

17 <sup>2</sup>[114.] <sup>15.</sup><sup>2</sup> (New section) a. The United States Attorney for  
18 the District of New Jersey may send a letter to the Clerk of the  
19 Superior Court of New Jersey which notes the appearance of the  
20 Attorney General of the United States and states that neither an  
21 answer will be filed nor a default opposed. This letter shall be  
22 accepted by the Clerk of the Superior Court of New Jersey in lieu  
23 of an appearance by the Attorney General of the United States.  
24 The acceptance by the Clerk shall allow the foreclosing plaintiff  
25 to proceed as if the United States had filed a non-contesting  
26 answer.

27 b. The Attorney General of New Jersey may send a letter to  
28 the Clerk of the Superior Court of New Jersey which notes the  
29 appearance of the Attorney General of New Jersey and states  
30 that neither an answer will be filed nor a default opposed. This  
31 letter shall be accepted by the Clerk of the Superior Court of  
32 New Jersey in lieu of an appearance by the Attorney General of  
33 New Jersey. The acceptance by the Clerk shall allow the  
34 foreclosing plaintiff to proceed as if the State of New Jersey had  
35 filed a non-contesting answer.<sup>1</sup>

36 <sup>2</sup>[115.] <sup>16.</sup><sup>2</sup> N.J.S.2A:15-11 is amended to read as follows:

37 2A:15-11. Notice of lis pendens. No notice of lis pendens  
38 shall be effective after [3] five years from the date of its filing.<sup>1</sup>  
39 (cf: N.J.S.2A:15-11)

40 <sup>1</sup>[11.] <sup>2</sup>[16.] <sup>17.</sup><sup>2</sup> (New section)<sup>1</sup> In the absence of an express  
41 agreement between the parties to the contrary, a debtor may  
42 tender, and a lender may accept, partial payment of any sum  
43 owing and due without either party waiving any rights.

44 <sup>1</sup>[12.] <sup>2</sup>[17.] <sup>18.</sup><sup>2</sup> (New section)<sup>1</sup> The Attorney General<sup>1</sup>,in  
45 consultation with the Commissioner of Banking,<sup>1</sup> shall  
46 promulgate regulations pursuant to the "Administrative  
47 Procedure Act," P.L.1968, c.410 (C.52:14A-1 et seq.) necessary  
48 to implement this act, including, but not limited to, regulations  
49 governing the form and content of notices of intention to  
50 foreclose.

51 <sup>1</sup>[13.] <sup>2</sup>[18.1] <sup>19.</sup><sup>2</sup> This act shall take effect on the 90th day  
52 after enactment and shall apply to foreclosure actions  
53 commenced on or after the effective date.

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2

3 **Makes changes in foreclosure practices and allows use of optional**

4 **foreclosure procedure without sale in certain cases.**

(1994)

1 and barring and foreclosing equity of redemption of any  
2 defendant and any person claiming by, through or under them, and  
3 adjudging the plaintiff be vested with a valid and indefeasible  
4 estate in the mortgaged premises. The order of conveyance shall  
5 be accepted for recording as a deed by the county recording  
6 officer pursuant to P.L.1939, c.170 (C.46:16-1.1)

7 m. Upon entry of an order of conveyance vesting title in the  
8 plaintiff pursuant to subsection k. of this section, the debt which  
9 was secured by the foreclosed mortgage shall be deemed  
10 satisfied, and the plaintiff shall not be permitted to institute any  
11 further or contemporaneous action for the collection of the debt.

12 11. In the absence of an express agreement between the  
13 parties to the contrary, a debtor may tender, and a lender may  
14 accept, partial payment of any sum owing and due without either  
15 party waiving any rights.

16 12. The Attorney General shall promulgate regulations  
17 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
18 (C.52:14A-1 et seq.) necessary to implement this act, including,  
19 but not limited to, regulations governing the form and content of  
20 notices of intention to foreclose.

21 13. This act shall take effect on the 90th day after enactment  
22 and shall apply to foreclosure actions commenced on or after the  
23 effective date.

24  
25  
26 *SPONSORS'* STATEMENT

27  
28 This bill, the "Fair Foreclosure Act," would provide additional  
29 protection for homeowners at risk of foreclosure on their homes  
30 because of defaults in the mortgage payments. The bill requires  
31 residential mortgage lenders to provide residential mortgage  
32 debtors with a notice at least 30 days prior to taking any legal  
33 action to take possession of the mortgaged property and by giving  
34 mortgage debtors a statutory right, not currently available, to  
35 cure a default by paying all amounts due under the mortgage  
36 payment schedule and, if applicable, other court costs and  
37 attorneys' fees in an amount not to exceed the amount permitted  
38 pursuant to the Rules Governing the Courts of New Jersey.

39 More specifically, the bill provides that before accelerating the  
40 mortgage loan or taking any other legal action to take possession  
41 of the residential property which is the subject of the mortgage,  
42 the lender is required to give the debtor a warning notice at least  
43 30 days in advance, providing the debtor with the following  
44 information: the particular obligation or real estate security  
45 interest; the nature of the default claimed; the right of the  
46 debtor to cure the default; what performance is required by the  
47 debtor to cure the default; the date by which such cure must take  
48 place without the lender taking further legal steps to take  
49 possession of the property; that if the debtor does not cure the  
50 default by the time specified, the right to cure will still be  
51 present but additional costs are likely to be incurred by the  
52 debtor; advice to seek counsel; the name and phone number of the  
53 person whom the debtor can contact to dispute a lender's  
54 assertion that default has occurred or the correctness of the

1 lender's calculation of the amount required to cure a default.

2 Under the bill, a debtor would have the statutory right to  
3 "cure" a mortgage default and reinstate a mortgage at any time  
4 after default and up to a time just prior to entry of final  
5 judgment of foreclosure. The debtor would be able to cure the  
6 default and reinstate the mortgage by paying all sums in arrears,  
7 performing any other obligation the debtor would have been  
8 required to perform under the mortgage, paying the lender's  
9 court costs and attorneys' fees, if any, in an amount which does  
10 not exceed the amount permitted under the Rules Governing the  
11 Courts of the State of New Jersey, and pay all contractual late  
12 charges as provided for in the note or security agreements.

13 The bill provides that once a lender's action to foreclose is  
14 uncontested, the lender is to apply for entry of final judgment  
15 and send a notice to this effect at least 14 days prior to  
16 submitting proper proofs for entry of a foreclosure judgment.  
17 The notice also informs a debtor that the debtor has a final  
18 chance to cure the default. A debtor has 10 days after receipt of  
19 the notice concerning final judgment to inform the lender that  
20 the debtor believes, in good faith, that within 45 days the debtor  
21 will be able to cure the default. Upon receipt of this notice by  
22 the lender, the lender has to give the debtor 45 days to cure the  
23 default. Absent a cure, the lender may submit proper proofs for  
24 foreclosure judgment on the 46th day following receipt of the  
25 notice from the debtor.

26 Under the bill, lenders are provided an optional sale procedure  
27 once entry of final judgment has taken place. This option may be  
28 instituted after entry of final judgment and if one of the three  
29 following conditions is present: (1) the property has been  
30 abandoned; (2) the lender has received a deed in lieu of  
31 foreclosure; or (3) the property has no net worth. With respect to  
32 instituting this option, upon acceptance of a deed in lieu of  
33 foreclosure, the conveyance will be effective only if the deed  
34 clearly and conspicuously provides that the debtor may rescind  
35 the conveyance within three days, excluding Saturdays, Sundays,  
36 and legal holidays and that such rescision is effective upon  
37 delivery of a written notice to the lender or its agent or upon  
38 mailing of such notice to the lender or its agent. With respect to  
39 net worth, "no net worth" means that the total unpaid balance of  
40 all properly recorded liens against the property is equal to or  
41 greater than 92 percent of the fair market value of the property  
42 as that value is determined by an appraiser licensed pursuant to  
43 P.L.1991, c.68 (C.45:14F-1 et seq.).

44 If the lender decides to take action under the alternative sale  
45 procedure, the lender must file a petition and proposed order with  
46 the Office of Foreclosure or the court with the facts which  
47 provide the basis for the lender's action.

48 If the petition is granted, the office or the court will issue an  
49 order for redemption fixing the amount, date, and place for  
50 redemption. The date fixed for redemption shall be not less than  
51 45 days nor more than 60 days after the date of the order. The  
52 order or a notice of it is to be sent not more than five days after  
53 the date the order for redemption is issued to each defendant  
54 informing them: (1) that the plaintiff is proceeding under an

1 optional sale procedure; (2) of the steps in that procedure; and  
2 (3) that a defendant may request a public sale of the mortgaged  
3 premises by submitting such request in writing to the office or  
4 the court not later than 30 days after receipt of the notice of the  
5 redemption order. If a request for a public sale is received by the  
6 office or the court within the time permitted, the office or the  
7 court will order a public sale which will be held in accordance  
8 with applicable law governing foreclosure sales and sales of real  
9 property generally. Any defendant, other than a natural person  
10 who is the debtor or a voluntary transferee from that debtor, who  
11 requests a public sale, is required under the bill to post a bond or  
12 cash deposit in an amount which is 10 per cent of the amount  
13 fixed in the redemption order.

14 Upon redemption, the redemptioner will be furnished with a  
15 certificate of redemption and acquire all rights provided by law  
16 and equity but will not be entitled to a deed or title to the  
17 mortgaged premises. The redemptioner may proceed to foreclose  
18 the redemptioner's interest.

19 If the mortgaged premises is not redeemed, upon proof of  
20 mailing of the order of redemption and an affidavit of  
21 non-redemption, the plaintiff is entitled to an order of conveyance  
22 awarding possession and barring and foreclosing equity of  
23 redemption of any defendant. This order of conveyance will be  
24 accepted for recording as a deed by the county recording officer  
25 in the county of the premises being conveyed.

26 Once the order of conveyance has been entered, the debt which  
27 was secured by the foreclosed mortgage is considered satisfied  
28 and no further action may be taken by the plaintiff for the  
29 collection of the debt.

30 This bill is intended to advance the public policies of the State  
31 by giving debtors every opportunity to pay their home mortgages,  
32 and thus keep their homes, and that lenders will be benefitted  
33 when debtors cure their defaults and return the residential  
34 mortgage loan to performing status. In situations in which the  
35 property has been abandoned, the lender has received a deed in  
36 lieu of foreclosure or there is no equity remaining in the  
37 property, the bill will benefit communities and the economy by  
38 providing an optional sale procedure that will eliminate  
39 unnecessary costs and delays caused by sheriff's sales. Even  
40 under the optional sale procedure, debtors are provided with  
41 additional protection in that a timely request that the mortgaged  
42 premises go to public sale will be honored.

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48 Makes changes in foreclosure practices and allows use of optional  
sale procedure in certain cases.

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1064**

with committee amendments

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 29, 1994

The Assembly Financial Institutions Committee reports favorably and with committee amendments Assembly, No. 1064.

This bill, the "Fair Foreclosure Act," as amended, would provide additional protection for homeowners at risk of foreclosure on their homes because of a default in mortgage payments, and advances the public policies of the State by giving debtors every opportunity to pay their home mortgages, and thus keep their homes. The bill requires residential mortgage lenders to provide residential mortgage debtors with a notice at least 30 days prior to taking any legal action to take possession of the mortgaged property and gives mortgage debtors a statutory right, not currently available, to cure a default by paying all amounts due under the mortgage payment schedule and, if applicable, other court costs and attorneys' fees in an amount not to exceed the amount permitted pursuant to the Rules Governing the Courts of New Jersey.

More specifically, the bill provides that before accelerating the mortgage loan or taking any other legal action to take possession of the residential property which is the subject of the mortgage, the lender is required to give the debtor a warning notice at least 30 days in advance, providing the debtor with the following information: the particular obligation or real estate security interest; the nature of the default claimed; the right of the debtor to cure the default; what performance is required by the debtor to cure the default; the date by which such cure must take place without the lender taking further legal steps to take possession of the property; that if the debtor does not cure the default by the time specified, the right to cure will still be present but additional costs are likely to be incurred by the debtor; advice to seek counsel; and the name and phone number of the person whom the debtor can contact to dispute a lender's assertion that default has occurred or the correctness of the lender's calculation of the amount required to cure a default.

Under the bill, a debtor would have the statutory right to "cure" a mortgage default and reinstate a mortgage at any time after default and up to a time just prior to entry of final judgment of foreclosure. The debtor would be able to cure the default and reinstate the mortgage by paying all sums in arrears, performing any other obligation the debtor would have been required to perform under the mortgage, paying the lender's court costs and attorneys' fees, if any, in an amount which does not exceed the amount permitted under the Rules Governing the Courts of the State of New Jersey, and paying all contractual late charges as provided for in the note or security agreements.

The bill provides that once a lender's action to foreclose is uncontested, the lender is to apply for entry of final judgment and send a notice to this effect at least 14 days prior to submitting proper proofs for entry of a foreclosure judgment. The notice also informs a debtor that the debtor has a final chance to cure the default. A debtor has 10 days after receipt of the notice concerning final judgment to inform the lender that the debtor believes, in good faith, that within 45 days the debtor will be able to cure the default. Upon receipt of this notice by the lender, the lender is required to give the debtor 45 days to cure the default. If a notice is not received from the debtor, the lender may submit proper proofs for entry of a foreclosure judgment on the 15th day after mailing the notice concerning such submission. If a notice is received, the lender may submit proper proofs for entry of final judgment, but the return date shall not be earlier than the 46th day after the date the notice is sent informing the debtor of the lender's intended action regarding entry of final judgment.

Under the bill, lenders are provided an optional sale procedure once entry of final judgment has taken place. This option may be instituted after entry of final judgment and if one of the three following conditions is present: (1) the property has been abandoned; (2) the lender has received a deed in lieu of foreclosure; or (3) the property has no equity.

With respect to instituting this option: 1) abandonment of the property is to be established by an affidavit or certification from an individual having personal knowledge of the contents thereof, which affidavit or certification is to be submitted to the court at the same time application to proceed with the alternative sale procedure is made; 2) upon acceptance of a deed in lieu of foreclosure, the conveyance will be effective only if the deed clearly and conspicuously provides that the debtor may rescind the conveyance within seven days, excluding Saturdays, Sundays, and legal holidays and that such rescission is effective upon delivery of a written notice to the lender or its agent or upon mailing of such notice to the lender or its agent; 3) with respect to net worth, "no net worth" means that the total unpaid balance of all properly recorded liens against the property is equal to or greater than 92 percent of the fair market value of the property. A lender is required to attach an affidavit to the petition to proceed with the optional sale procedure which sets forth with specificity the fair market value of the property, the unpaid balance of the obligation and the method by which the lender determined that the property has no equity.

If the lender decides to take action under the alternative sale procedure, the lender must file a petition and proposed order with the Office of Foreclosure or the court with the facts which provide the basis for the lender's action.

If the petition is granted, the office or the court will issue an order for redemption fixing the amount, date, and place for redemption. The date fixed for redemption shall be not less than 45 days nor more than 60 days after the date of the order. The order or a notice of it is to be sent not more than five days after the date the order for redemption is issued to each defendant informing them: (1) that the plaintiff is proceeding under an optional sale procedure; (2) of the terms and conditions under which a defendant

may request a public sale of the mortgaged premises; and (3) clearly state that no request for a public sale made after 30 days from the date of service will be granted, except for good cause shown. If a request for a public sale is received by the office or the court within the time permitted, the office or the court will order a public sale which will be held in accordance with applicable law governing foreclosure sales and sales of real property generally. Any defendant, other than a natural person who is the debtor or a voluntary transferee from that debtor, who requests a public sale, is required under the bill to post a bond or cash deposit in an amount which is 10 per cent of the amount fixed in the redemption order.

Upon redemption, the redemptioner will be furnished with a certificate of redemption and acquire all rights provided by law and equity but will not be entitled to a deed or title to the mortgaged premises. The redemptioner may proceed to foreclose the redemptioner's interest.

If the mortgaged premises is not redeemed, upon proof of mailing of the order of redemption and an affidavit of non-redemption, the plaintiff is entitled to an order of conveyance awarding possession and barring and foreclosing equity of redemption of any defendant. This order of conveyance will be accepted for recording as a deed by the county recording officer in the county of the premises being conveyed.

Once the order of conveyance has been entered, the debt which was secured by the foreclosed mortgage is considered satisfied and no further action may be taken by the plaintiff for the collection of the debt.

If the optional sale procedure results in an order of conveyance to the mortgage lender and upon the resale of the property by the mortgage lender, the price received is greater than that required to repay the debt of the mortgage lender, all liens superior to the mortgage lender and all carrying charges, the mortgage lender is to deposit such excess with the Superior Court of New Jersey where it will be available for the mortgage debtor and any junior lien holder upon application to the Superior Court for surplus funds.

Under the bill, the following uniform procedures are established with respect to the conduct of a sheriff's sale:

a. Bidding in the name of the assignee of the foreclosing plaintiff.

b. Adjournment of the sale of the foreclosed property is to be in accordance with N.J.S.2A:17-36.

c. The successful bidder at the sheriff's sale is to pay a 20 percent deposit in either cash or by a certified or cashier's check made payable to the sheriff of the county in which the sale is conducted, immediately upon the conclusion of the foreclosure sale. Current law requires only a 10% deposit. If the successful bidder cannot satisfy this requirement, the bidder shall be in default and the sheriff is to immediately void the sale and proceed with the resale of the premises without adjourning the sale, renotifying any party to the foreclosure or republishing any sales notice. Upon the resale, the defaulting bidder would be liable to the foreclosing plaintiff for any additional costs incurred including, but not limited



to, any difference between the amount bid by the defaulting bidder and the amount generated for the foreclosing plaintiff at the resale. In the event the plaintiff is the successful bidder at the resale, the plaintiff is to provide a credit for the fair market value of the property foreclosed.

d. It is not necessary for an attorney or representative of the institution which initiated the foreclosure to be present at the sheriff's sale to make a bid. A letter containing bidding instructions may be sent to the sheriff in lieu of an appearance.

e. Each sheriff's office is to use the standardized deed form printed in the bill.

f. The sheriff's office is to deliver a fully executed deed to the successful bidder at the sale within two weeks of the date of the sale, provided however, that the bidder pays the balance due within that time period. If a bid is satisfied after the expiration date and additional interest is collected, the plaintiff shall receive the total amount, less any fees, costs and commissions due the sheriff, along with the additional interest.

The bill requires judgment creditors to provide a current address, and any changes, along with its social security number or tax payer identification number to the Clerk of the Superior Court. Whatever address is on the record can be used by a plaintiff without the plaintiff having to make a more diligent inquiry or publishing a notice in a newspaper.

The bill further provides that where the United States Attorney General or the Attorney General of New Jersey receives notice with respect to a foreclosure proceeding, a letter indicating that an answer will not be filed or a default opposed may be sent to the Clerk of the Superior Court. This letter may be accepted in lieu of an appearance and shall allow the foreclosing plaintiff to proceed as if a non-contesting answer had been filed.

The bill amends current law to provide that a notice of lis pendens is effective for five years instead of three, and decreases the period of time for an adjournment of a sheriff's sale from one month to 14 calendar days.

The committee amended the bill in the following manner:

a. Deleted the word "primary" in relation to residence under the definition of residential mortgage;

b. Changed the wording with respect to a 45-day period as a final opportunity for curing a default once a foreclosure process has resulted in a no contest, and prior to the entry of final judgment;

c. Deleted the requirement regarding properties with no equity that the fair market value must be established by a licensed appraiser and instead requires the lender to attach to its optional sale procedure petition an affidavit stating the fair market value of the property, the unpaid balance of the obligation and the method by which the lender determined that the property has no equity;

d. Established certain uniform procedures with respect to sheriff's sales of foreclosed properties, including the use of a standard deed form.

e. Changed the period for adjournment of a sheriff's sale from one month to 14 calendar days.

f. Permits a foreclosing plaintiff to proceed as if a non-contesting answer has been filed if either the United States or New Jersey Attorney General, whichever is named in the action, formally declines in writing to file an answer and indicates that it will not oppose default.

g. Changed from three to five the number of years a lis pendens notice is effective.

h. Changed from three to seven, the number of days within which a debtor may rescind a deed in lieu of foreclosure given to the lender.

SENATE STATE MANAGEMENT, INVESTMENTS AND  
FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]  
ASSEMBLY, No. 1064

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 8, 1995

The Senate State Management, Investments and Financial Institutions Committee reports favorably and with committee amendments Assembly Bill No. 1064(1R).

This bill, the "Fair Foreclosure Act," as amended, would provide additional protection for homeowners at risk of foreclosure on their homes because of a default in mortgage payments, and advances the public policies of the State by giving debtors every opportunity to pay their home mortgages, and thus keep their homes. The bill requires residential mortgage lenders to provide residential mortgage debtors with a notice at least 30 days prior to taking any legal action to take possession of the mortgaged property and gives mortgage debtors a statutory right, not currently available, to cure a default by paying all amounts due under the mortgage payment schedule and, if applicable, other court costs and attorneys' fees in an amount not to exceed the amount permitted pursuant to the Rules Governing the Courts of New Jersey.

More specifically, the bill provides that before accelerating the mortgage loan and taking any other legal action to take possession of the residential property, the lender is required to give the debtor a warning notice at least 30 days in advance, providing the debtor with the following information: the particular obligation or real estate security interest; the nature of the default claimed; the right of the debtor to cure the default; what performance is required by the debtor to cure the default; the date by which such cure must take place without the lender taking further legal steps to take possession of the property; that if the debtor does not cure the default by the time specified, the right to cure will still be present but additional costs are likely to be incurred by the debtor; advice to seek counsel; and the name and phone number of the person whom the debtor can contact to dispute a lender's assertion that default has occurred or the correctness of the lender's calculation of the amount required to cure a default.

Under the bill, a debtor would have the statutory right to "cure" a mortgage default and reinstate a mortgage at any time after default and up to a time just prior to entry of final judgment of foreclosure or, if the lender is proceeding under the alternative foreclosure option without sale, up to the time the court or office of foreclosure enters an order fixing the amount, time and place for redemption. The debtor would be able to cure the default and

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reinstate the mortgage by paying all sums in arrears, performing any other obligation the debtor would have been required to perform under the mortgage, paying the lender's court costs and attorneys' fees, if any, in an amount which does not exceed the amount permitted under the Rules Governing the Courts of the State of New Jersey, and paying all contractual late charges as provided for in the note or security agreements.

The bill provides that once a lender's action to foreclose is uncontested and if the lender chooses not to use the optional procedure for the disposition of foreclosed premises, the lender is to apply for entry of final judgment and send a notice to this effect at least 14 days prior to submitting proper proofs for entry of a foreclosure judgment. The notice also informs a debtor that the debtor has a final chance to cure the default. A debtor has 10 days after receipt of the notice concerning final judgment to inform the lender that the debtor believes, in good faith, that within 45 days the debtor will be able to cure the default. Upon receipt of this notice by the lender, the lender is required to give the debtor 45 days to cure the default. If a notice is not received from the debtor, the lender may submit proper proofs for entry of a foreclosure judgment on the 15th day after mailing the notice concerning such submission. If a notice is received, the lender may submit proper proofs for entry of final judgment, but the return date shall not be earlier than the 46th day after the date the notice is sent informing the debtor of the lender's intended action regarding entry of final judgment.

The bill provides that once a lender's action to foreclose is uncontested and the lender chooses to use the optional procedure, the lender is to provide the debtor with a notice, mailed at least 14 calendar days prior to filing an affidavit or certification with the office or court, advising the debtor that, absent a timely response from the debtor, the lender shall file an affidavit or certification with the office or court requesting the office or court to enter an order of redemption and that upon the entry of the order of redemption the debtor shall lose the right to cure the default. A debtor may, no later than 10 days after receipt of the notice, mail to the lender a statement in which the debtor in good faith certifies as true that there is a reasonable likelihood that the debtor will be able to provide payment necessary to cure the default within 45 days of the date of the notice. A lender who receives this statement shall not file an affidavit or certification with the office or court earlier than 46 days after the date the notice sent to the debtor became effective.

The bill provides that once a lender's action to foreclose is uncontested, the lender may elect to proceed with an optional foreclosure procedure without sale, if the one or more of the following conditions exist: (1) the property has been abandoned; (2) the lender has received a deed in lieu of foreclosure; or (3) the property has no equity.

With respect to proceeding with this option: 1) abandonment of the property is to be established by an affidavit or certification from an individual having personal knowledge of the contents thereof, which affidavit or certification is to be submitted to the

court at the same time application to proceed with the alternative sale procedure is made; 2) upon acceptance of a deed in lieu of foreclosure, the conveyance will be effective only if the deed clearly and conspicuously provides that the debtor may rescind the conveyance within seven days, excluding Saturdays, Sundays, and legal holidays and that such rescision is effective upon delivery of a written notice to the lender or its agent or upon mailing of such notice to the lender or its agent; 3) with respect to net worth, "no net worth" means that the total unpaid balance of all liens against the property is equal to or greater than 92 percent of the fair market value of the property. A lender is required to attach an affidavit to the petition to proceed with the optional procedure which sets forth with specificity the fair market value of the property, the unpaid balance of the obligation and the method by which the lender determined that the property has no equity.

If the lender wants to use the optional procedure, the lender is to file an affidavit or certification with the office or court setting forth the facts which the lender alleges show that it is entitled to proceed under one or more of the conditions above and to provide the court or office with proofs required by the act and the court or office.

The office or the court may enter an order fixing the amount, time, and place for redemption. The time fixed for redemption shall be not less than 45 days nor more than 60 days after the date of the order. The order or a notice of it is to be sent within 20 days after the date the order for redemption is entered to each defendant informing them: (1) that the plaintiff is proceeding under an optional procedure; (2) of the terms and conditions under which a defendant may request a public sale of the mortgaged premises; and (3) clearly state that no request for a public sale made more than 30 days after the date of service will be granted, except for good cause shown. If a request for a public sale is received by the office or the court within the time permitted, the office or the court will order a public sale which will be held in accordance with applicable law governing foreclosure sales and sales of real property generally. Any defendant, other than a natural person who is the debtor or a voluntary transferee from that debtor, who requests a public sale, is required to post a bond or cash deposit in an amount which is 10 per cent of the amount fixed in the order of redemption.

Upon redemption, the redemptioner will be furnished with a certificate of redemption and acquire all rights provided by law and equity but will not be entitled to a deed or title to the mortgaged premises. The redemptioner in proper cases may proceed to foreclose the redemptioner's interest.

If the mortgaged premises is not redeemed, upon proof of mailing of the order of redemption and an affidavit of non-redemption, the plaintiff is entitled to a judgment debarring and foreclosing the equity of redemption of the defendants and each of them. A certified copy of the judgment shall be accepted for recording by the county recording officer in the county in which the property is located.

Once the judgment has been entered, the debt which was secured by the foreclosed mortgage is considered satisfied and no further action may be taken by the plaintiff for the collection of the debt.

If the optional sale procedure results in judgment vesting title in the lender and upon the resale of the property by the lender, the price received is greater than that required to repay the debt, interest and costs of the mortgage lender, including all carrying charges and costs of maintenance and resale, the mortgage lender is to deposit such excess with the Superior Court of New Jersey where it will be available for the mortgage debtor and any junior lien holder upon application to the Superior Court for surplus funds.

Under the bill, the following uniform procedures are established with respect to the conduct of a sheriff's sale:

a. Bidding in the name of the assignee of the foreclosing plaintiff.

b. Adjournment of the sale of the foreclosed property is to be in accordance with N.J.S.2A:17-36.

c. The sheriff is to schedule a sale date within 120 days of receipt of a Writ of Execution issued by the Court in a foreclosure proceeding. If it becomes apparent that this time limit cannot be met, the foreclosing plaintiff is permitted to apply to the Office of Foreclosure for an order appointing a Special Master to hold the foreclosure sale. Upon making such an application, the office is required to issue the appropriate order appointing a Special Master to hold the foreclosure sale.

d. The successful bidder at the sheriff's sale is to pay a 20 percent deposit in either cash or by a certified or cashier's check made payable to the sheriff of the county in which the sale is conducted, immediately upon the conclusion of the foreclosure sale. Current law requires only a 10% deposit. If the successful bidder cannot satisfy this requirement, the bidder shall be in default and the sheriff is to immediately void the sale and proceed with the resale of the premises without adjourning the sale, renotifying any party to the foreclosure or republishing any sales notice. Upon the resale, the defaulting bidder would be liable to the foreclosing plaintiff for any additional costs incurred including, but not limited to, any difference between the amount bid by the defaulting bidder and the amount generated for the foreclosing plaintiff at the resale. In the event the plaintiff is the successful bidder at the resale, the plaintiff is to provide a credit for the fair market value of the property foreclosed.

e. If the sheriff conducting the sale consents, it is not necessary for an attorney or representative of the institution which initiated the foreclosure to be present at the sheriff's sale to make a bid. A letter containing bidding instructions may be sent to the sheriff in lieu of an appearance.

f. Each sheriff's office is to use the standardized deed form printed in the bill.

g. The sheriff's office is to deliver a fully executed deed to the successful bidder at the sale within two weeks of the date of the sale, provided however, that the bidder pays the balance due within that time period. If a bid is satisfied after the expiration

date and additional interest is collected, the plaintiff shall receive the total amount, less any fees, costs and commissions due the sheriff, along with the additional interest.

The bill requires judgment creditors to provide a current address, and any changes, along with its social security number or tax payer identification number to the Clerk of the Superior Court. Whatever address is on the record can be used by a plaintiff without the plaintiff having to make a more diligent inquiry or publishing a notice in a newspaper.

The bill further provides that where the United States Attorney General or the Attorney General of New Jersey receives notice with respect to a foreclosure proceeding, a letter indicating that an answer will not be filed or a default opposed may be sent to the Clerk of the Superior Court. This letter may be accepted in lieu of an appearance and shall allow the foreclosing plaintiff to proceed as if a non-contesting answer had been filed.

The bill amends current law to provide that a notice of lis pendens is effective for five years instead of three, and decreases the period of time for an adjournment of a sheriff's sale from one month to 14 calendar days.

Amendments to the bill do the following:

a. Remove cooperative apartment from the definition of residential mortgage; add definitions for "non-residential mortgage" and "obligation;" and clarify the definition of property to which a residential mortgage applies.

b. Clarify and simplify the date on which a notice of intention to foreclose is effective, which is the date it is served in person or mailed to the debtor;

c. Remove the requirement to attach to the complaint a copy of the notice of intent to foreclose together with proof of service;

d. Clarify the time up to which a debtor has the right to cure a default which is up to the time of entry of final judgment in a regular foreclosure proceeding and under the optional procedure without sale, is up to the time the Office of Foreclosure or court enters a judgment fixing the amount, time and place for redemption.

e. Provide for notification to the debtor prior to filing an affidavit or certification requesting the office or court to enter an order of redemption and a final opportunity for the debtor to cure the default before an order of redemption is entered, at which time the debtor loses the right to cure.

f. Make certain procedural and technical changes to section 11 which is the section providing for the optional foreclosure procedure without sale;

g. Add a requirement that the sheriff, upon receipt of a Writ of Execution from a court, is to schedule a sale within 120 days. If it becomes apparent that this deadline cannot be met, the lender is permitted to apply to the Office of Foreclosure to have the sale take place under a Special Master appointed by the office. Once application has been made to the Office of Foreclosure, the office is to appoint a Special Master to conduct the sale; and

h. Make the right of the attorney representing the plaintiff in foreclosure not to appear in person at the sheriff's sale conditional upon consent of the sheriff.

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## OFFICE OF THE GOVERNOR NEWS RELEASE

**CN-001**      **JAYNE REBOVICH**

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**RELEASE: SEPT. 6, 1995**

**JENNIFER ZIMA, BANKING DEPT.  
609-633-7910**

Gov. Christie Whitman has signed legislation to increase protections to homeowners facing foreclosure of their property while at the same time expediting the foreclosure process once a final judgment has been obtained by the lender.

A-1064, sponsored by Assemblywoman Charlotte Vandervalk (R-Bergen) and Assemblyman Joseph Roberts (D-Camden/Gloucester), gives homeowners the right to reinstate their mortgages by paying all missed payments, the lenders' legal fees, and late charges prior to the entry of final judgment. Under current law, homeowners do not have this right once lenders have declared them in default and demanded payment of the loan's entire outstanding balance.

Lenders who wish to institute foreclosure proceedings are required by the bill to first provide the debtor with at least 30 days' notice of specific information including the debtor's rights, the right to pay the debt to avoid foreclosure, and the lender's intention to begin foreclosure proceedings if the money owed is not paid.

The bill also speeds up the foreclosure process by providing for an optional foreclosure without sale to be used under certain circumstances.

"This legislation will help lenders to complete the residential foreclosure process in a more timely manner, bringing New Jersey in line with its neighboring states," said Gov. Whitman. According to the Federal National Mortgage Corporation (Freddie Mac), New Jersey ranks last among all 50 states for average time needed to complete a residential foreclosure action.

Banking Commissioner Elizabeth Randall also praised enactment of this legislation. "Expediting the foreclosure process will encourage financial institutions to increase their residential mortgage lending in New Jersey, thereby fulfilling Gov. Whitman's commitment to opening New Jersey for business," concluded Randall.

The optional foreclosure process may be used if the property has been abandoned, the lender has received a deed in lieu of foreclosure, or the property has no equity. A lender who opts for this procedure may bypass the sheriff's sale entirely and dispose of the property privately. The property owner or junior lienholders may object to the sale and request that a public sale be held.

For lenders who do not follow the optional foreclosure procedure, the bill expedites sheriff's sales. If the sheriff does not schedule a sale within 120 days of receiving a writ of execution from the court in a foreclosure proceeding, the creditor may request that the Office of Foreclosure appoint a Special Master to hold the sale. The bill also sets forth uniform procedures for sheriff's sales and provides a uniform deed to be used in such sales.



## IN PRACTICE

## MORTGAGE LENDING

By MYRON C. WEINSTEIN

## New Foreclosure Act: More Complexity, Uncertainty

You've heard the adage: "If it ain't broke don't fix it." New Jersey's Fair Foreclosure Act,<sup>1</sup> which becomes effective today, will prove the truth of the old saw for years to come.

After six years of record-breaking foreclosures, and with New Jersey's foreclosure process now up to date at the state and local levels, we now have a statute designed to save us time. But save us time it will not.

The fact is that New Jersey's foreclosure process is doing fine. It is rolling along in an efficient and effective manner, having adjusted superbly to the deluge of cases.

According to Jim Colasurdo, chief of the Office of Foreclosure in Trenton, foreclosure judgments are entered almost the day they come in. There are no delays at the state level and relatively short delays, if any, at the county sheriffs' level.

What, then, is the impact of this new legislation?

The probable result will be more complexity and substantial uncertainty. The statute will not save time and only in rare instances will it appreciably benefit mortgagors. Because mortgagors typically do not have funds to make up arrearages in lump sum payments, they must ordinarily rely on work-out agreements. And in such cases, provisions of the new act may be waived.

## Virtual Grab Bag

This is the most comprehensive change in foreclosure practice in New Jersey since 1820, and it certainly is the most unwelcome. The act, L.1995, c.244, is a virtual grab bag of ambiguities, and an article could be written about each of its 19 sections, all of which should be read carefully. A sampler:

Section 4, which requires a notice of intention to foreclose containing no fewer than 11 particulars, will become a blueprint for affirmative defenses by mortgagors, who probably will file contested answers at a very rapid rate.

In all probability, the act will be deemed procedural and therefore not violative of antecedent mortgage contracts. However, some of the act's provisions — such as the right to cure and reinstate the loan — may be deemed substantive by the courts and therefore unconstitutional as to antecedent contracts.

The act is destined to become controversial. Even before its inception, an issue has been raised about whether foreclosure complaints can be filed during December and whether a residential mortgage foreclosure moratorium is mandated by the act.

As the argument goes, the act is not effective until Dec. 4, 1995, and thus it would be erroneous to send a notice of

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intention before that date. The mailing of the notice is a condition precedent to the filing of the complaint. In other words, how can you give a debtor rights and require compliance with a law that has not come into being?

## Faulty Argument

This argument is fallacious. The act provides that it "shall apply to foreclosure actions commenced on or after the effective date." The word "on" would be meaningless if the statute did not intend that a foreclosure action could actually be commenced — filed — on the effective date. For an action to be filed on the effective date, the act must implicitly permit a notice of intention to be mailed to the debtor before Dec. 4, 1995.<sup>2</sup>

Initially, the act requires that a written notice of intention to foreclose be mailed to the debtor, by registered or certified mail, return receipt requested, at least 30 days before the filing of the complaint, unless the debtor has given a deed in lieu of foreclosure to the lender. A statement in the pleadings setting forth compliance with Section 4, the notice of intention section, is required.

The act permits the debtor to cure a mortgage default before the entry of the foreclosure judgment. It is an unlimited right if exercised before the filing of the complaint, otherwise once every 18 months calculated from the date of cure, by paying all arrearages, late fees, costs, if any, and attorneys' fees.

The act requires that a 14-calendar-day notice of judgment be sent to the debtor by registered or certified mail, return receipt requested. Within 10 days after receipt, the debtor may mail a statement to the lender, by certified mail, return receipt requested, that there is a reasonable likelihood that the debtor will be able to cure the default within 45 days from the date of notice's mailing. If such a statement is sent by the debtor, the plaintiff cannot submit proper proofs for judgment until 46 days after the date of mailing.

The act also establishes an optional foreclosure procedure without sale, a major innovation in foreclosure practice in the United States, where the mortgaged premises has no equity, has been abandoned, or where the debtor has given a deed in lieu of foreclosure to the lender. The latter two grounds must be specifically pleaded.

Where judgment is entered under the optional procedure, the debt is deemed satisfied, a deficiency action is waived and, if the no-equity grounds for the optional procedure were used, any surplus on resale by the lender must be paid into court, subject to a surplus moneys action by any person in interest for a period of six months.

The act provides for uniform sheriff's sale procedures in all foreclosure actions, a uniform sheriff's deed, the preparation of the sheriff's deed by the plaintiff's attorney, the delivery of a fully executed sheriff's deed within two weeks, and the appointment of a special master by the Office of Foreclosure to hold the

foreclosure sale if it becomes apparent that the sheriff cannot schedule a sale within 120 days after receipt of a writ of execution.

The act requires a judgment creditor, upon entry of judgment, to provide the clerk with its current address for service and changes of address. Failure to do so will permit the plaintiff, in a foreclosure

that neither an answer will be filed nor a default opposed shall permit the plaintiff to proceed as if the state and United States had filed non-contesting answers; that a lis pendens shall have a 5-year duration after its date of filing; that acceptance of partial payments by the lender from the debtor shall not be deemed a waiver of rights by either party; and that the attorney general, in consultation with the banking commissioner, may promulgate regulations implementing the act.

## Loose Terminology

The act applies to a "residential mortgage," the security for which is residential property (such as a house, real property, or condominium), not a cooperative apartment, occupied as a residence by the "debtor," who must be a natural not a corporate person, or a member of the debtor's immediate family. The real property securing the residential mortgage must not have more than four dwelling units. One of those, at the time the loan is originated, shall be or is planned to be occupied as a residence by the debtor or a member of the debtor's immediate family. This is loose terminology that may prove difficult for mortgagees.

Conceivably, the act could apply to vacant land "planned to be occupied as a residence" by the debtor. To make things

**This is the most comprehensive change in foreclosure practice in New Jersey since 1820, and it certainly is the most unwelcome.**

action, to serve the creditor by certified and ordinary mail at the address in the clerk's records without further diligent inquiry or publication.

The act also provides that there be a reduction in the two, discretionary sheriff's adjournments to 14 calendar days each; that receipt by the clerk of a letter by the attorney general of New Jersey or U.S. attorney for the District of New Jersey noting their appearance and stating

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# MORTGAGE LENDING

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even trickier, "immediate family" is defined by the act to mean the debtor, the debtor's spouse, or the mother, father, sister, brother or child of the debtor or debtor's spouse.

Thus, the act will not apply where the debtor is a corporation, where the mortgaged premises consist of more than four dwelling units, or where neither the debtor nor the debtor's immediate family resides in the property or intends to reside in the property at the time the loan is originated. In situations where the loan and mortgage are not closed contemporaneously, it may be difficult to determine the debtor's intentions and whether the act applies.

Presumably, it is the occupation or intention to occupy the premises as a residence by the debtor (or the debtor's immediate family) at the time the loan is "originated" that controls, not later use or intention with respect to the premises by the debtor or successor owner.

It is assumed that the act does apply to a debtor's vacation residence where the act's requirements have otherwise been met, as the term "primary" was deleted from "primary residence" in the final version of the bill.

## Critical Flaw in Definition of 'Debtor'

The fundamental flaw in the statutory scheme is the central term "debtor," around which all of the statutory blessings revolve. The term "debtor" is defined as "any" person shown on the record of the lender as obligated to pay the secured obligation. Thus, a debtor would include the original obligor, and, in the writer's opinion, a co-signer, indorser, surety and assuming grantee. I believe that "debtor" should not be construed to include "guarantor," as the contract of the guarantor is entirely collateral.

The Office of Foreclosure has advised, however, where a corporate officer secures a corporate debt with a mortgage on the officer's residence, and signs a guaranty, the office will require compliance with the act in order to process plaintiff's judgment papers.

The term "obligation" is defined by the act as a promissory note, bond or other similar evidence of a "duty to pay." Thus, under a literal reading of the act, it is unlikely that a default for failure to perform a nonmonetary obligation can be enforced as a default.

The irony here is that the debtor, the person continuously referred to under the act for required notices, rights and the like, may not even be the mortgagor or may be the original mortgagor now out of title — a person having absolutely no title interest in the mortgaged premises. The debtor, or original obligor, may be a totally unnecessary party and may not be joined in the foreclosure action.

Yet, this nonparty is the very person under the act who must receive all required notices and rights. Failure to notice such a person in a foreclosure action in which the person may not even be a party, and may not affect any interest of the person, will presumably void the foreclosure.

Moreover, if the original debtor-mortgagor has died, who is the "debtor" under the act? The act does not address that problem. The Office of Foreclosure has advised that where the debtor has died, the personal representative of the estate must be noticed under the act in

order for the office to process judgment papers.

It is anomalous that the term "debtor" is defined in terms of the secured "obligation," the personal instrument, and not in terms of the mortgage to be foreclosed which is, after all, the ultimate focus of the "Fair Foreclosure Act."

The best practice from a lender's standpoint is not to commingle residential and non-residential tracts in a single mortgage but to have separate mortgages executed for each.

The act contains a novel section, Section 13, dealing with Superior Court judgment creditors. The act provides that

***This is a sad day for equity jurisprudence and for the judges who will inevitably be called on to unravel the act's ambiguities and inequities.***

The personal obligation secured by the mortgage, if there ever was one, may be wholly unenforceable. The original mortgagor or other obligor may have been discharged in bankruptcy, so that there may be no person capable of meeting the criteria of debtor under the act — i.e. a person obligated to pay the note or bond. This is a serious shortcoming. In fact, there need not be a personal obligation or a debtor to have a valid mortgage in New Jersey or anywhere else.

The residential mortgage lender under the act is under absolutely no obligation to give required notices and rights to "all" debtors (as the act says "any" debtor) or even to any one person in title. The "debtor" may, in fact, be a corporation, or defunct corporation, while the mortgagor may be a living, breathing person. The actual title holders, the persons who would most benefit from the various rights and notices under the act, may be several steps removed from the original mortgagor. Oddly enough, the term "mortgagor" does not appear in the act, and "owner" only appears in Section 10, although the act was presumably passed for their benefit.

One can certainly question the workability of a mortgage foreclosure statute that is critically tied to the debtor and personal obligation, instead of to the mortgagor (and title holder) and the mortgage. The act leaves in limbo the rights of all persons in interest who do not technically meet the act's definition of "debtor." This is a sad day for equity jurisprudence and for the judges who will inevitably be called upon to unravel the act's many ambiguities and inequities.

The act makes it clear that if a mortgage covers several tracts, the mortgage is considered a "non-residential mortgage" as to the non-residential tracts. Section 10 also provides that a lender shall not be required to foreclose a residential and non-residential mortgage securing the same obligation in the same proceeding. This means that a lender may enforce a single mortgage against residential and non-residential tracts in separate actions. Under current law, such a practice would offend the entire controversy doctrine.

## Residential v. Nonresidential Tracts

This creates the anomaly of requiring the plaintiff to comply with the act for residential, but not non-residential, tracts. It would have made more sense to require compliance with the act if any one of the mortgage tracts is residential.

"[a]ny judgment creditor" entering a judgment in the Superior Court Clerk's Office shall (a) provide the court with its current address for service, (b) provide the clerk with the judgment creditor's (obviously this should be judgment "debtor's") Social Security number or taxpayer identification number, if known, and (c) notify the court of a change of address for service by filing "in a timely manner" an appropriate form with the court.

If the judgment creditor fails to provide a current or change of address for service, the plaintiff "in any foreclosure proceeding" may serve the creditor by

ordinary and certified mail at the address reflected in the records of the Superior Court clerk, without first making a more diligent inquiry or publishing a notice in the newspaper.

This section is of doubtful constitutional validity and should not be followed. The state Supreme Court in *New Brunswick Savings Bank v. Markowski*, 123 N.J. 402 (1991) has already held that a judgment creditor possesses a property right entitled to due process protection comparable to that of a mortgage creditor.

Will the Fair Foreclosure Act be a panacea to mortgagors. Probably not. With respect to the debtor's principal residence, any right to cure that a debtor can secure under the new act, the debtor can secure, plus more, in a Chapter 13 bankruptcy proceeding.

Lenders, faced with the prospect of the act, will either be less flexible in granting discretionary workouts to debtors, forcing debtors to exercise their statutory rights; require debtors to first waive their statutory rights as a condition to granting discretionary workouts; and institute foreclosure more quickly to precipitate an earlier cure or an earlier exhaustion of debtors' statutory rights. Thus, the net result which is not likely to significantly alter the plight of mortgagors in New Jersey is more certain to add another layer of complexity to a process already fraught with too much complexity. ■

## Endnotes

1. The statute, L.1995, c.244, becomes effective with respect to residential mortgage foreclosure actions commenced on or after Dec. 4, 1995.

2. While Assembly Bill No. 1064 is stamped "Approved 9/6/95," it was actually signed by the governor on Sept. 5, 1995, making Dec. 4, 1995 (90 days after its enactment) the effective date.

# LITIGATION

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*Brill*, slip op. at 15. The court must concern itself not merely with the existence of any evidence favoring the nonmovant, it must necessarily evaluate the magnitude of the evidence in order to determine whether it could, to a rational jury, be sufficient to meet the nonmovant's burden of proof at trial. Thus, if there is a disputed fact which, even if resolved in the nonmovant's favor, would still not be enough to rationally carry the burden of proof at trial, summary judgment should be granted.

Second, adding the burden of proof into the summary judgment analysis can have a great impact on the motion's chances for success, especially with respect to causes of action requiring proof by clear and convincing evidence. In deciding a summary judgment motion involving such claims, the trial court must not simply determine whether the nonmovant's version of the evidence could, in the minds of a reasonable jury, tip the scales in the nonmovant's favor, but must judge that evidence in light of the stricter clear and convincing test. Thus, for example, where a plaintiff faces a summary judgment motion on its fraud claim, if nothing else, the new standard should force the plaintiff to put all its evidence on the table, and not hold back its best evidence for trial.

In fact, under the new summary judgment analysis, even where the preponderance of the evidence standard

applies, the nonmovant should be prone to come forward with much more of its evidence than in the past, because now it must do more than merely create reasonable doubt as to a factual issue. Many practitioners may recall having made a summary judgment motion not to end a case but to get to the bottom of it. At a minimum, the new summary judgment standard, with its added burden on the nonmovant, should help accomplish that objective.

It is impossible to ascertain whether the new standard, coupled with the Supreme Court's recent encouragement will, in practice, have a significant impact on the way trial judges view motions for summary judgment. We have already learned, however, of one trial court at oral argument on a summary judgment motion raising, sua sponte, the issue of *Brill* and asking the litigants to assess its impact. Because the new standard mirrors that followed under Rule 4:37-2(b), trial judges are fully familiar with it and should have no difficulty applying it. Only time will tell whether the *Brill* standard will result in summary judgment being granted with greater frequency. The message, however, is clear. The Supreme Court wants trial judges to be more vigilant in granting summary judgment motions. The ever-present "issue of fact," in and of itself, is not to be considered fatal to the summary judgment motion. Summary judgment should no longer be the disfavored method of resolving litigation. ■

## Give and take in foreclosure revisions

By DAN WEISSMAN

Gov. Christie Whitman yesterday signed legislation that revamps the state's foreclosure laws by cutting to less than half the time it takes a bank to go from final judgment to sale of a residential property.

But the legislation, A-1064, sponsored by Assemblywoman Charlotte Vandervalk (R-Bergen) also gives homeowners who fall behind on mortgage payments more options to keep their homes by paying off the amount they are in default.

Under existing law, a homeowner could be required to satisfy the entire outstanding mortgage to avoid foreclosure.

The measure, which sailed through the Legislature with minimal opposition, was pushed by the state's banks and mortgage lenders, who said the foreclosure system took an average of 270 days to complete, making it the slowest in the nation. The changes will cut the time between a final judgment and a foreclosure sale to 120 days.

The legislation was also supported by consumer groups because of the broader rights it gives to homeowners facing foreclosure.

The most vigorous opposition came from the state's sheriffs, who complained that provisions of the legislation threatened to turn them into unpaid deputies for the banks and took away their options to give homeowners facing eviction time to clear up their debts and redeem their homes.

"I'm glad this legislation is finally enacted," Vandervalk said. "It's been in the works three years."

Assemblyman Joseph Roberts (D-Camden), who cosponsored the legislation, said the provisions giving home-

owners more options to avoid foreclosure will reduce the problem of homelessness.

Whitman, in a prepared statement, said, "this legislation will help lenders complete the residential foreclosure process in a more timely manner, bringing New Jersey in line with its neighboring states."

She said that according to the Federal National Mortgage Corp. (Freddie Mac), New Jersey ranks last among the 50 states for the time needed to complete a residential foreclosure.

Banking Commissioner Elizabeth Randall said that by expediting the foreclosure process, bankers will encourage lenders to increase their mortgage lending in New Jersey.