

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

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

KBG:pp

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Legislative History Checklist
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Synopsis: Makes changes in foreclosure practices and allows use of optional foreclosure without sale in certain cases.*

Bill No.: A1064

P.L. 1995, c. 244

Identical to:

Substituted for:

Combined with:

Last Session Bill No.:

See Above Bill(s) for Additional History

NJSA: 2A:50-53 et seq.

Sponsor(s): Vandervalk/Roberts+2

Date Introduced: 01/24/94

Committee Reference:

Statement:

Public Hearing:

Assembly:

Financial Institutions

Yes

No

Senate:

State Management, Investments and Financ

Yes

No

Sponsor Statement: Yes

Fiscal Note: No

Dates of Passage:

Assembly:

11/14/94 (v7-0)
06/29/95 (47-17)

Senate:

06/26/95 (32-6)

Amended During Passage: Yes

Governor's Action:

Veto: No

Date of Veto:

Date of Approval: 09/05/95

Message on Signing: Yes

Additional Information:

ASSEMBLY, No. 1064

STATE OF NEW JERSEY

INTRODUCED JANUARY 24, 1994

By Assemblywoman VANDERVALK

1 **AN ACT** concerning mortgage foreclosure and supplementing
2 Chapter 50 of Title 2A of the New Jersey Statutes.

3

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

6 1. This act shall be known and may be cited as the "Fair
7 Foreclosure Act."

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

16 3. As used in this act:

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

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

28 "Office" means the Office of Foreclosure within the
29 Administrative Office of the Courts.

30 "Residential mortgage" means a mortgage, security interest or
31 the like, in which the security is a house, real property,
32 condominium, or cooperative apartment, which is occupied, or is
33 to be occupied, by the debtor, who is a natural person, or a
34 member of the debtor's immediate family, as that person's
35 primary residence. This act shall apply to all residential
36 mortgages wherever made, which have as their security such a
37 residence in the State of New Jersey, provided that the real
38 property which is the subject of the mortgage shall not have more
39 than four dwelling units, one of which shall be, or is planned to
40 be, occupied by the debtor or a member of the debtor's
41 immediate family as the debtor's or member's primary residence
42 at the time the loan is originated.

43 "Residential mortgage debtor" or "debtor" means any person
44 shown on the record of the residential mortgage lender as being
45 obligated to pay the note secured by the residential mortgage.

1 "Residential mortgage lender" or "lender" means any person,
2 corporation, or other entity which makes or holds a residential
3 mortgage, and any person, corporation or other entity to which
4 such residential mortgage is assigned.

5 4. a. Upon failure to perform any obligation of a note or
6 residential mortgage by the residential mortgage debtor and
7 before any residential mortgage lender may accelerate the
8 maturity of any residential mortgage obligation or commence any
9 foreclosure or other legal action to take possession of the
10 residential property which is the subject of the mortgage, the
11 residential mortgage lender shall give the residential mortgage
12 debtor notice of such intention at least 30 days in advance of
13 such action as provided in this section.

14 b. Notice of intention to take action as specified in subsection
15 a. of this section shall be in writing, sent to the debtor by
16 registered or certified mail, return receipt requested, at the
17 debtor's last known address, and, if different, to the address of
18 the property which is the subject of the residential mortgage.
19 The notice is deemed to have been effectuated on the date the
20 notice is delivered to the party in person, the date of the
21 acceptance of the certified or registered mail, or, if the party
22 refuses to claim or accept delivery of the certified or registered
23 mail, or if neither the return receipt or the original envelope is
24 returned to the sender within 15 calendar days of mailing, the
25 date of the mailing of the notice by ordinary first class mail.
26 Notice by certified or registered mail and by ordinary first class
27 mail may be made concurrently.

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

30 (1) the particular obligation or real estate security interest;
31 (2) the nature of the default claimed;
32 (3) the right of the debtor to cure the default as provided in
33 section 5 of this act;
34 (4) what performance, including what sum of money, if any,
35 and interest, shall be tendered to cure the default as of the date
36 specified under paragraph (5) of this subsection c.;

37 (5) the date by which the debtor shall cure the default to avoid
38 initiation of foreclosure proceedings, which date shall not be less
39 than 30 days after the date the notice is given, and the name and
40 address and phone number of a person to whom the payment or
41 tender shall be made;

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

47 (7) that if the lender takes the steps indicated pursuant to
48 paragraph (6) of this subsection c., a debtor shall still have the
49 right to cure the default pursuant to section 5 of this act, but
50 that the debtor shall be responsible for the lender's court costs
51 and attorneys' fees in an amount not to exceed that amount
52 permitted pursuant to the Rules Governing the Courts of New
53 Jersey;

54 (8) the right, if any, of the debtor to transfer the real estate

1 to another person subject to the security interest and that the
2 transferee may have the right to cure the default as provided in
3 this act, subject to the mortgage documents;

4 (9) that the debtor is advised to seek counsel from an attorney
5 of the debtor's own choosing concerning the debtor's residential
6 mortgage default situation, and that, if the debtor is unable to
7 obtain an attorney, the debtor may communicate with the New
8 Jersey Bar Association or Lawyer Referral Service in the county
9 in which the residential property securing the mortgage loan is
10 located; and that, if the debtor is unable to afford an attorney,
11 the debtor may communicate with the Legal Services Office in
12 the county in which the property is located;

13 (10) the possible availability of financial assistance for curing
14 a default from programs operated by the State or federal
15 government or non-profit organizations, if any, as identified by
16 the Commissioner of Banking. This requirement may be satisfied
17 by attaching a list of such programs promulgated by the
18 commissioner; and

19 (11) the name and address of the lender and the telephone
20 number of a representative of the lender whom the debtor may
21 contact if the debtor disagrees with the lender's assertion that a
22 default has occurred or the correctness of the mortgage lender's
23 calculation of the amount required to cure the default.

24 d. The notice of intention to foreclose required to be provided
25 pursuant to this section shall not be required if the debtor has
26 voluntarily surrendered the property which is the subject of the
27 residential mortgage prior to the time at which the lender is
28 permitted to send a notice of intention to foreclose pursuant to
29 subsection a. of this section.

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

35 f. Compliance with this section shall be set forth in the
36 pleadings of any legal action referred to in this section. If the
37 plaintiff in any complaint seeking foreclosure of a residential
38 mortgage alleges that the property subject to the residential
39 mortgage has been abandoned or voluntarily surrendered, the
40 plaintiff shall plead the specific facts upon which this allegation
41 is based. The plaintiff shall attach to the complaint a copy of the
42 notice required to be served together with proof of service as
43 these are required pursuant to subsections a. and b. of this
44 section.

45 5. a. Notwithstanding the provisions of any other law to the
46 contrary, as to any residential mortgage for which a notice of
47 intention to foreclose is required to be given pursuant to section
48 4 of this act, whether or not such required notice was in fact
49 given, the debtor, or anyone authorized to act on the debtor's
50 behalf, shall have the right at any time, up to the entry of final
51 judgment, to cure the default, de-accelerate and reinstate the
52 residential mortgage by tendering the amount or performance
53 specified in subsection b. of this section. The payment or tender
54 shall be made to the lender, holder or servicing agent. The

1 debtor may exercise the right to cure a default as to a particular
2 mortgage and reinstate that mortgage only once every 18 months,
3 provided, however, that this limitation shall not apply if the
4 mortgage debtor cures a default by the date specified in
5 paragraph (5) of subsection c. of section 4 of this act. The
6 18-month time period shall run from the date of cure and
7 reinstatement.

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

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

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

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

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

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

25 d. Cure of default reinstates the debtor to the same position
26 as if the default had not occurred. It nullifies, as of the date of
27 cure, any acceleration of any obligation under the mortgage, n...
28 or bond arising from the default.

29 e. If default is cured prior to the filing of a foreclosure action,
30 the lender shall not institute a foreclosure action for that
31 default. If default is cured after the filing of a foreclosure
32 action, the lender shall give written notice of the cure to the
33 court. Upon such notice, the court shall dismiss the action
34 without prejudice.

35 f. The right to cure a default under this section is independent
36 of any right of redemption or any other right or remedy under the
37 common law, principles of equity, State or federal statute, or
38 rule of court.

39 6. a. If a plaintiff's action to foreclose a residential mortgage
40 is uncontested, pursuant to R 4:64-1(a) of the Rules Governing
41 the Courts of the State of New Jersey, a lender shall apply for
42 entry of final judgment and provide the debtor with a notice,
43 mailed at least 14 calendar days prior to the submission of proper
44 proofs for entry of a foreclosure judgment, advising that, absent
45 a response from the debtor pursuant to subsection b. of this
46 section, proper proofs will be submitted for entry of final
47 judgment in the foreclosure action and that upon entry of final
48 judgment, the debtor shall lose the right, provided pursuant to
49 section 5 of this act, to cure the default. The manner and
50 address for mailing and the effective date of the notice shall be
51 the same as set forth in subsection b. of section 4 of this act.

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

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

8 c. A lender who receives a statement sent by the debtor
9 pursuant to subsection b. of this section, shall not submit proper
10 proofs for entry of final judgment in foreclosure earlier than the
11 46th day after the date the notice required pursuant to subsection
12 a. of this section became effective.

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

18 8. Nothing herein is intended to limit or modify any provision
19 of federal law regarding notice of the availability of
20 homeownership counselling.

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

25 10. a. An optional sale procedure for the disposition of a
26 foreclosed premises is hereby established pursuant to subsection
27 b. of this section, wherein a lender may, after entry of final
28 judgment in foreclosure, elect to proceed according the
29 provisions of this act rather than as provided in accordance with
30 applicable law governing foreclosure sales and sales of real
31 property generally and the Rules Governing the Courts of the
32 State of New Jersey.

33 b. Use of the optional sale procedure, as provided in this
34 section, shall be permitted only when:

35 (1) the debtor has abandoned the property which is the subject
36 of the residential mortgage;

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

40 (3) there is no equity in the property which is the subject of
41 the residential mortgage, as defined in subsection e. of this
42 section.

43 c. Pursuant to paragraph (1) of subsection b. of this section,
44 and for purposes of this section only, abandonment of the
45 property subject to the residential mortgage shall be established
46 by an affidavit or certification from an individual having personal
47 knowledge of the contents thereof, setting forth the specific
48 facts upon which that conclusion is based. The affidavit or
49 certification shall be submitted to the court at the same time
50 that the lender makes application to proceed with the optional
51 sale procedure established by this section.

52 d. Pursuant to paragraph (2) of subsection b. of this section
53 and for purposes of this section only, if the lender receives a deed
54 in lieu of foreclosure, the conveyance shall be effective only if

1 the deed clearly and conspicuously provides: that the debtor may,
2 without penalty, rescind the conveyance within three days,
3 excluding Saturdays, Sundays and legal holidays; and that such
4 recision is effective upon delivery of a written notice to the
5 lender or its agent or upon mailing of such notice to the lender or
6 its agent by certified or registered mail, return receipt requested.

7 e. For purposes of paragraph (3) of subsection b. of this
8 section, a property subject to a residential mortgage shall be
9 deemed to have no equity if the total unpaid balance of all
10 properly recorded liens against the property, including mortgages,
11 tax liens, judgments in which execution has issued against the
12 property, and any other properly recorded lien, is equal to or
13 greater than 92 percent of the fair market value of the property
14 as that value is determined by an appraiser licensed pursuant to
15 P.L. 1991, c. 68 (C. 45:14F-1 et seq.). A certified copy of the
16 appraisal and an affidavit setting forth with specificity the
17 unpaid balance of the obligation, including all mortgages and
18 liens, shall be attached to the petition to proceed with the
19 optional sale procedure established by this section.

20 f. (1) Following entry of judgment of foreclosure pursuant to
21 section 6 of this act, a lender may elect to proceed with the
22 optional sale procedure by filing a petition and proposed order
23 with the office or the court.

24 (2) The petition shall set forth under oath the facts which the
25 petitioner alleges show that the petitioner is entitled to proceed
26 under one or more paragraphs of subsection b. of this section and
27 shall be supported by the proofs required by this section
28 other proofs as may be required by the office or the court.

29 g. If the office or the court grants the petition to proceed by
30 the optional sale procedure, it shall enter an order fixing the
31 amount, date, and place for redemption, which shall be not less
32 than 45 days nor more than 60 days after the date of the order.
33 The office or the court may grant an extension of time for good
34 cause shown. The order shall provide that:

35 (1) the redeeming defendant pay to the plaintiff's attorney
36 the amount fixed by the office or the court for redemption, which
37 shall be the amount of the judgment together with interest, from
38 the date of the order to the date of redemption, plus all court
39 costs;

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

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

48 h. (1) The order for redemption or notice thereof shall be
49 mailed to each defendant's last known address and, if different,
50 to the address of the property which is the subject of the
51 residential mortgage. The order for redemption or notice thereof
52 shall be sent by ordinary mail and certified mail, return receipt
53 requested, not more than five days after the date the order is
54 issued, except that, as to defendants who were served only by

1 publication and thereafter did not appear in the action, no
2 publication of the order for redemption need be made.

3 (2) The notice shall:

4 (a) inform the defendants that the plaintiff is proceeding
5 under an optional sale procedure authorized by section 10 of
6 P.L. , c. (C.)(now pending before the Legislature as this
7 bill) and set out the steps of the optional sale procedure;

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

11 (c) clearly state that no request for a public sale made after
12 30 days from the date of service will be granted, except for good
13 cause shown.

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

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

44 k. Upon redemption, the plaintiff shall furnish the
45 redemptioner with an appropriate certificate of redemption and
46 the redemptioner shall acquire all rights provided by law and
47 equity but shall not be entitled to a deed or title to the
48 mortgaged premises solely by virtue of the redemption. A
49 redemptioner may proceed to foreclose the redemptioner's
50 interest.

51 l. In the absence of redemption, and on proof of mailing of the
52 order for redemption or notice thereof pursuant to subsection h.
53 of this section and an affidavit of non-redemption, the plaintiff
54 shall be entitled to an order of conveyance awarding possession

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 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 revision 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 entitle 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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47 Makes changes in foreclosure practices and allows use of optional
48 sale procedure 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.

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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 revision 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 entitle 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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47 Makes changes in foreclosure practices and allows use of optional
48 sale procedure in certain cases.

ASSEMBLY AFL COMMITTEE

AMENDMENTS

to

ASSEMBLY, No. 1064

(Sponsored by Assemblywoman VANDERVALK and
Assemblyman ROBERTS)

ADOPTED

SEP 29 1994

REPLACE TITLE TO READ:

← AN ACT concerning mortgage foreclosure¹, amending various
→ sections of the New Jersey Statutes¹ and supplementing Chapter
50 of Title 2A of the New Jersey Statutes.

REPLACE SECTION 1 TO READ:

1. ¹[New section]¹ This act shall be known and may be cited
as the "Fair Foreclosure Act."

REPLACE SECTION 2 TO READ:

2. ¹[New section]¹ The Legislature hereby finds and declares
it to be the public policy of this State that homelessness is to be
prevented: that homeowners should be given every opportunity to
pay their home mortgages, and thus keep their homes; that the
State will be benefitted if homeowners keep their homes and do
not become public welfare recipients; and that lenders will
benefited when residential mortgage debtors cure their defaults
and return defaulted residential mortgage loans to performing
status.

REPLACE SECTION 3 TO READ:

3. ¹[New section]¹ As used in this act:

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

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

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

"Residential mortgage" means a mortgage, security interest or
the like, in which the security is a house, real property,
condominium, or cooperative apartment, which is occupied, or is
to be occupied, by the debtor, who is a natural person, or a
¹[primary]¹ member of the debtor's immediate family, as that person's
residence. This act shall apply to all residential
mortgages wherever made, which have as their security

such a residence in the State of New Jersey, provided that the real property which is the subject of the mortgage shall not have more than four dwelling units, one of which shall be, or is planned to be, occupied by the debtor or a member of the debtor's immediate family as the debtor's or member's ¹[primary]¹ residence at the time the loan is originated.

"Residential mortgage debtor" or "debtor" means any person shown on the record of the residential mortgage lender as being obligated to pay the note secured by the residential mortgage.

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

REPLACE SECTION 4 TO READ:

4. ¹[New section]¹ a. Upon failure to perform any obligation of a note or residential mortgage by the residential mortgage debtor and before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation or commence any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage, the residential mortgage lender shall give the residential mortgage debtor notice of such intention at least 30 days in advance of such action as provided in this section.

b. Notice of intention to take action as specified in subsection a. of this section shall be in writing, sent to the debtor by registered or certified mail, return receipt requested, at the debtor's last known address, and, if different, to the address of the property which is the subject of the residential mortgage. The notice is deemed to have been effectuated on the date the notice is delivered to the party in person, the date of the acceptance of the certified or registered mail, or, if the party refuses to claim or accept delivery of the certified or registered mail, or if neither the return receipt or the original envelope is returned to the sender within 15 calendar days of mailing, the date of the mailing of the notice by ordinary first class mail. Notice by certified or registered mail and by ordinary first class mail may be made concurrently.

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

(1) the particular obligation or real estate security interest;

(2) the nature of the default claimed;

(3) the right of the debtor to cure the default as provided in section 5 of this act;

(4) what performance, including what sum of money, if any, and interest, shall be tendered to cure the default as of the date specified under paragraph (5) of this subsection c.;

(5) the date by which the debtor shall cure the default to avoid initiation of foreclosure proceedings, which date shall not be less than 30 days after the date the notice is given, and the name and address and phone number of a person to whom the payment or tender shall be made;

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

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

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

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

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

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

d. The notice of intention to foreclose required to be provided pursuant to this section shall not be required if the debtor has voluntarily surrendered the property which is the subject of the residential mortgage prior to the time at which the lender is permitted to send a notice of intention to foreclose pursuant to subsection a. of this section.

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

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

is based. The plaintiff shall attach to the complaint a copy of the notice required to be served together with proof of service as these are required pursuant to subsections a. and b. of this section.

REPLACE SECTION 5 TO READ:

5. ¹(New section)¹ a. Notwithstanding the provisions of any other law to the contrary, as to any residential mortgage for which a notice of intention to foreclose is required to be given pursuant to section 4 of this act, whether or not such required notice was in fact given, the debtor, or anyone authorized to act on the debtor's behalf, shall have the right at any time, up to the entry of final judgment, to cure the default, de-accelerate and reinstate the residential mortgage by tendering the amount or performance specified in subsection b. of this section. The payment or tender shall be made to the lender, holder or servicing agent. The debtor may exercise the right to cure a default as to a particular mortgage and reinstate that mortgage only once every 18 months, provided, however, that this limitation shall not apply if the mortgage debtor cures a default by the date specified in paragraph (5) of subsection c. of section 4 of this act. The 18-month time period shall run from the date of cure and reinstatement.

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

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

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

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

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

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

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

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

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

REPLACE SECTION 6 TO READ:

6. ¹(New section)¹ a. If a plaintiff's action to foreclose a residential mortgage is uncontested, pursuant to R.4:64-1(a) of the Rules Governing the Courts of the State of New Jersey, a lender shall apply for entry of final judgment and provide the debtor with a notice, mailed at least 14 calendar days prior to the submission of proper proofs for entry of a foreclosure judgment, advising that, absent a response from the debtor pursuant to subsection b. of this section, proper proofs will be submitted for entry of final judgment in the foreclosure action and that upon entry of final judgment, the debtor shall lose the right, provided pursuant to section 5 of this act, to cure the default. The manner and address for mailing and the effective date of the notice shall be the same as set forth in subsection b. of section 4 of this act.

b. A debtor may, no later than 10 days after receipt of the notice required pursuant to subsection a. of this section, 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 the notice required pursuant to subsection a. of this section became effective. This statement shall be sent registered or certified mail, return receipt requested, to the address of the lender who gave notice ~~in~~ required pursuant to subsection a. of this section.

c. A lender who receives a statement sent by the debtor pursuant to subsection b. of this section, shall not submit proper proofs for entry of final judgment in foreclosure ¹with a return date¹ earlier than ¹[the 46th day] 46 days¹ after the date the notice required pursuant to subsection a. of this section became effective.

REPLACE SECTION 7 TO READ:

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

REPLACE SECTION 8 TO READ:

8. ¹(New section)¹ Nothing herein is intended to limit or modify any provision of federal law regarding notice of the availability of homeownership counselling.

REPLACE SECTION 9 TO READ:

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

REPLACE SECTION 10 TO READ:

10. ¹(New section)¹ a. An optional sale procedure for the disposition of a foreclosed premises is hereby established pursuant to subsection b. of this section, wherein a lender may, after entry of final judgment in foreclosure, elect to proceed according the provisions of this act rather than as provided in accordance with applicable law governing foreclosure sales and sales of real property generally and the Rules Governing the Courts of the State of New Jersey.

b. Use of the optional sale procedure, as provided in this section, shall be permitted only when:

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

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

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

c. Pursuant to paragraph (1) of subsection b. of this section, and for purposes of this section only, abandonment of the property subject to the residential mortgage shall be established by an affidavit or certification from an individual having personal knowledge of the contents thereof, setting forth the specific facts upon which that conclusion is based. The affidavit or certification shall be submitted to the court at the same time that the lender makes application to proceed with the optional sale procedure established by this section.

d. Pursuant to paragraph (2) of subsection b. of this section and for purposes of this section only, if the lender receives a deed in lieu of foreclosure, the conveyance shall be effective only if the deed clearly and conspicuously provides: that the debtor may, without penalty, rescind the conveyance within ¹[three] seven¹ days, excluding Saturdays, Sundays and legal holidays; and that such rescission is effective upon delivery of a written notice to ... lender or its agent or upon mailing of such notice to the lender or its agent by certified or registered mail, return receipt requested.

e. ¹⁽¹⁾¹ For purposes of paragraph (3) of subsection b. of this section, a property subject to a residential mortgage shall be deemed to have no equity if the total unpaid balance of all properly recorded liens 1and encumbrances¹ against the property, including mortgages, tax liens, judgments in which execution has issued against the property, and any other properly recorded lien, is equal to or greater than 92 percent of the fair market value of the property ¹[as that value is determined by an appraiser licensed pursuant to P.L. 1991, c. 68 (C. 45:14F-1 et seq.). A certified copy of the appraisal and an] An¹ affidavit setting forth with specificity 1the fair market value of the property¹, the unpaid balance of the obligation, including all mortgages and liens 1and the method by which the lender determined that the property has no equity¹, shall be attached to the petition to proceed with the optional sale procedure established by this section.

1(2) If a lender proceeds with the optional sale procedure under this subsection, and if the debtor has not objected and requested a public sale pursuant to this section, when the property in question is resold by the lender following receipt of the order of conveyance as provided pursuant to subsection l. of this section.

✓

'in accordance with
P.L. 47-57 et seq. of the
Public Credit Act, the
Court of New Jersey, ✓

and provided the resale price received by the lender is in excess of the amount necessary to repay the debt of the lender, all liens and obligations superior to the lender and all carrying charges, including, but not limited to, the costs of maintenance and resale, the lender shall deposit any such excess with the Trust Fund of the Superior Court of New Jersey.

(3) Upon deposit of any such excess with the Trust Fund of the Superior Court, the lender shall notify the debtor and any lien holder who held a lien junior to the lender and whose lien was lost as a result of the foreclosure. Such notification shall be by certified mail, return receipt requested, to the last known address of the debtor and such lien holders. The debtor and the lien holders shall then have six months to make an application to the Superior Court, in the form of an application for surplus funds, upon appropriate notice to all other parties in interest, to seek an order for turnover of the excess funds.¹

f. (1) Following entry of judgment of foreclosure pursuant to section 6 of this act, a lender may elect to proceed with the optional sale procedure by filing a petition and proposed order with the office or the court.

(2) The petition shall set forth under oath the facts which the petitioner alleges show that the petitioner is entitled to proceed under one or more paragraphs of subsection b. of this section and shall be supported by the proofs required by this section and such other proofs as may be required by the office or the court.

g. If the office or the court grants the petition to proceed by the optional sale procedure, it shall enter an order fixing the amount, date, and place for redemption, which shall be not less than 45 days nor more than 60 days after the date of the order. The office or the court may grant an extension of time for good cause shown. The order shall provide that:

(1) the redeeming defendant pay to the plaintiff's attorney the amount fixed by the office or the court for redemption, which shall be the amount of the judgment together with interest, from the date of the order to the date of redemption, plus all court costs;

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

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

h. (1) The order for redemption or notice thereof shall be mailed to each defendant's last known address and, if different, to the address of the property which is the subject of the residential mortgage. The order for redemption or notice thereof shall be sent by ordinary mail and certified mail, return receipt requested, not more than five days after the date the order is issued, except that, as to defendants who were served only by publication and thereafter did not appear in the action, no publication of the order for redemption need be made.

(2) The notice shall:

(a) inform the defendants that the plaintiff is proceeding under an optional sale procedure authorized by section 10 of [P.L. , c. (C.) (now pending before the Legislature as this bill)] this act¹ and set out the steps of the optional sale procedure;

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

(c) 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.

i. In any matter in which the office or the court has issued an order for redemption and the lender is permitted to proceed by the optional sale procedure, a defendant who wishes to object to the optional sale procedure and request a public sale with respect to the mortgaged premises, shall submit to the office or the court a written request for a public sale within 30 days of the date the order or notice thereof is served. If a defendant requests a public sale within the required time period, the office or court shall order a public sale which shall be held in accordance with applicable law governing foreclosure sales and sales of real property generally and the Rules Governing the Courts of the State of New Jersey. Any such defendant who requests a public sale, other than a natural person who is the owner or a voluntary transferee from that owner, shall be required to post a cash deposit or bond prior to the return date of the petition to proceed by optional sale procedure. This cash deposit or bond shall be in an amount which is 10% of the plaintiff's judgment and shall be held to secure the plaintiff against ¹any¹ additional interest and costs, as well as any deficiency, as a result of the public sale. The office or the court may dispense with this requirement for good cause shown. The defendant who requests a public sale, other than a natural person who is the owner or a voluntary transferee from that owner, shall pay all expenses and costs associated with the public sale, including, but not limited to, all sheriff's fees and commissions.

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

k. Upon redemption, the plaintiff shall furnish the redemptioner with an appropriate certificate of redemption and the redemptioner shall acquire all rights provided by law and equity but shall not be entitled to a deed or title to the mortgaged premises solely by virtue of the redemption. A redemptioner may proceed to foreclose the redemptioner's interest.

l. In the absence of redemption, and on proof of mailing of the order for redemption or notice thereof pursuant to subsection h. of this section and an affidavit of non-redemption, the plaintiff shall be entitled to an order of conveyance awarding possession and barring and foreclosing equity of redemption of any defendant and any person claiming by, through or under

them, and adjudging the plaintiff be vested with a valid and indefeasible estate in the mortgaged premises. The order of conveyance shall be accepted for recording as a deed by the county recording officer pursuant to P.L.1939, c.170 (L.46:16-1.1)

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

INSERT NEW SECTIONS 11 THROUGH 15 TO READ:

111. (New section) a. With respect to the sale of a mortgaged premises under foreclosure action, each Sheriff in this State shall provide for, but not be limited to, the following uniform procedures:

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

(2) That adjournment of the sale of the foreclosed property shall be in accordance with N.J.S.2A:47-36.

(3) That the successful bidder at the Sheriff's sale shall 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. If the successful bidder cannot satisfy this requirement, the bidder shall be in default and the Sheriff shall immediately void the sale and proceed further with the resale of the premises without the necessity of adjourning the sale, without renomination of any party to the foreclosure and without the republication of any sales notice. Upon such resale, the defaulting bidder shall be liable to the foreclosing plaintiff for any additional costs incurred by such default 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 shall provide a credit for the fair market value of the property foreclosed.

(4) That it shall not be necessary for an attorney or representative of the person which initiated the foreclosure to be present physically 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.

(5) That each Sheriff's Office shall use a deed which shall be in substantially the following form:

THIS INDENTURE,

made this (sixth) day of (month), in the year of our Lord (year)
(date written out) Between (name), Sheriff of the
County of (name), in the State of New Jersey, party of the
first part and (name)

✓ close space
Add add.
look underlined
100%

←party of the second part, witnesseth.

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

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

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

✓ fix
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and the following named parties are the DEFENDANTS:

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

BEING KNOWN AS Tax Lot (number) in Block (number)
 COMMONLY KNOWN AS (street address) TOGETHER, with all
 and singular the rights, liberties, privileges, hereditaments and
 appurtenances thereunto belonging or in anywise appertaining,
 and the reversion and remainders, rents, issues and profits
 thereof, and also all the estate, right, title, interest, use,
 property, claim and demand of the said defendants of, in, to
 and out of the same, to be sold, to pay and satisfy in the first
 place unto the plaintiff.

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

✓
fix spacing?

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

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

there be

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

And that you have the surplus money, if any there be, before our said Superior Court of New Jersey, aforesaid at Trenton, within 30 days after pursuant to Rules of the Court 4:09-1(a), to abide the further Order of the said Court, according to judgment aforesaid, and you are to make return at the time and place of aforesaid, by certificate under your hand, of the manner in which you have executed this our Writ, together with this Writ, and if no sale, this Writ shall be returnable within 12 months.

WITNESS, the Honorable (name), Judge of the Superior Court at Trenton, aforesaid, the (date), day of (month), in the year of our Lord (year)

(year), (date written out)

/s/ Clerk
Superior Court of New Jersey

Attorneys for the Plaintiff put to same seal,
By (signature)
for the Firm

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 wherein the 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.

(name of
newspaper)

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 at least once a week during the four consecutive calendar weeks. One of such newspapers is a newspaper ~~printed and published in [name]~~, 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) on the (date) day of (month) (year written out) at the hour of (time) in the (a.m. or P.m.)

A

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), 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:

✓ 11. + 1/2 : 11 a.m. 11/18/

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 \$ 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

 ✓
 ✓
 ✓

State of New Jersey) ss

(name) County I, (name), Sheriff, of the County of _____, ✓
 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 the best
 price that could be obtained and the true consideration for this conveyance
 as set forth in the deed is \$(amount))

(Name of Sheriff), Sheriff

Sworn before me on this day of A.D. (year), and I having
 examined the deed above mentioned do approve the same and order it to be
 recorded as a good and sufficient conveyance of the real estate therein
 described.

(Attorney or Notary Public) ✓

STATE OF NEW JERSEY) ss.

(name) County

On this day of in the year of our Lord, ✓
(year written out) before me, the
subscriber, personally appeared , Sheriff of the
County of aforesaid, who is, I am satisfied, the grantor
in the within Indenture named, and I having first made known to
him the contents thereof, he did thereupon acknowledge that he
signed, sealed and delivered the same on his voluntary act and
deed, for the uses and purposes therein expressed.

(Attorney or Notary Public) ✓

b. At the conclusion of the Sheriff's sale, the attorney for the
 plaintiff may prepare and deliver to the Sheriff a ✓

deed in the form provided pursuant to paragraph (5) of subsection a. of this section for the Sheriff's execution and the deed shall be delivered to the Sheriff within 10 days of the date of the sale. The Sheriff shall be entitled to the authorized fee, as a review fee, even if the plaintiff's attorney prepares the deed.

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

1/12. (New section) Any judgment creditor shall, upon entry of judgment in the office of the Clerk of the Superior Court, provide the Court with its current address for service. If the judgment creditor's address for service changes, it shall be incumbent upon the judgment creditor to effect a change of address for service by filing an appropriate form with the court in a timely manner. If any judgment creditor fails to provide the Court with a current or change of address for service, in any foreclosure proceeding, the plaintiff may, without having to first make a more diligent inquiry or publish notice in a newspaper, serve the judgment creditor by ordinary mail and certified mail at the address that is reflected in the records of the Clerk of the Superior Court. The judgment creditor shall, if known, provide the Clerk of the Court with the judgment creditor's social security number or tax payer identification number.¹

1/13. N.J.S.2A:17-36 is amended to read as follows:

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

1/14. (New section) The United States Attorney for the District of New Jersey may send a letter to the Clerk of the Superior Court of New Jersey which notes the appearance of the Attorney General of the United States and states that neither an answer will be filed nor default opposed. Such letter shall be accepted by the Clerk of the Superior Court of New Jersey in lieu of an appearance by the Attorney General of the United States. Such acceptance by the Clerk shall allow the foreclosing plaintiff to proceed as if the United States had filed a non-contesting answer.

b. The Attorney General of New Jersey may send a letter to the Clerk of the Superior Court of New Jersey which notes the appearance of the Attorney General of New Jersey and states that neither an answer will be filed nor default opposed. Such letter shall be accepted by the Clerk of the Superior Court of New Jersey in lieu of an appearance by the Attorney General of New Jersey. Such acceptance by the Clerk shall allow the foreclosing plaintiff to proceed as if the State of New Jersey had filed a non-contesting answer.¹

Notice of lis pendens.

115. ~~§ 1A:15-11~~ is amended to read as follows:

2A:15-11. No notice of lis pendens shall be effective after [3].

five - 5 years from the date of its filing.¹

REPLACE SECTION 11 TO READ:

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

REPLACE SECTION 12 TO READ:

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

REPLACE SECTION 13 TO READ:

¹[13.] 18. (New section)¹ This act shall take effect on the 90th day after enactment and shall apply to foreclosure actions commenced on or after the effective date.

RENUMBER

1

AS SECTION 12

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 revision 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 entitle 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.

[FIRST REPRINT]
ASSEMBLY, No. 1064

STATE OF NEW JERSEY

INTRODUCED JANUARY 24, 1994

By Assemblywoman VANDERVALK and
Assemblyman ROBERTS

1 AN ACT concerning mortgage foreclosure ¹, amending various
2 sections of the New Jersey Statutes¹ 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 1.¹(New section)¹ This act shall be known and may be cited
8 as the "Fair Foreclosure Act."

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

18 3.¹(New section)¹ 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
21 the residential mortgage lender of all claim, interest and
22 estate in the property subject to the mortgage. In order for a
23 conveyance to be voluntary, the debtor shall have received
24 notice of, and been fully apprised of the debtor's rights as
25 specified in section 4 of this act. For purposes of this act,
26 "voluntarily surrendered" has the same meaning as "deed in
27 lieu of foreclosure."

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

31 "Office" means the Office of Foreclosure within the
32 Administrative Office of the Courts.

33 "Residential mortgage" means a mortgage, security interest or
34 the like, in which the security is a house, real property,
35 condominium, or cooperative apartment, which is occupied, or
36 is to be occupied, by the debtor, who is a natural person, or a
37 member of the debtor's immediate family, as that person's
38 ¹[primary]¹ residence. This act shall apply to all residential
39 mortgages wherever made, which have as their security such a
40 residence in the State of New Jersey, provided that the real
41 property which is the subject of the mortgage shall not have
42 more than four dwelling units, one of which shall be, or is
43 planned to be, occupied by the debtor or a member of the
44 debtor's

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:
¹ Assembly AFI committee amendments adopted September 29, 1994.

1 immediate family as the debtor's or member's ¹[primary]¹
2 residence at the time the loan is originated.

3 "Residential mortgage debtor" or "debtor" means any person
4 shown on the record of the residential mortgage lender as being
5 obligated to pay the note secured by the residential mortgage.

6 "Residential mortgage lender" or "lender" means any person,
7 corporation, or other entity which makes or holds a residential
8 mortgage, and any person, corporation or other entity to which
9 such residential mortgage is assigned.

10 4. ¹(New section)¹ a. Upon failure to perform any obligation
11 of a note or residential mortgage by the residential mortgage
12 debtor and before any residential mortgage lender may
13 accelerate the maturity of any residential mortgage obligation or
14 commence any foreclosure or other legal action to take
15 possession of the residential property which is the subject of the
16 mortgage, the residential mortgage lender shall give the
17 residential mortgage debtor notice of such intention at least 30
18 days in advance of such action as provided in this section.

19 b. Notice of intention to take action as specified in subsection
20 a. of this section shall be in writing, sent to the debtor by
21 registered or certified mail, return receipt requested, at the
22 debtor's last known address, and, if different, to the address of
23 the property which is the subject of the residential mortgage.
24 The notice is deemed to have been effectuated on the date the
25 notice is delivered to the party in person, the ~~date~~ of the
26 acceptance of the certified or registered mail, or, if the party
27 refuses to claim or accept delivery of the certified or registered
28 mail, or if neither the return receipt or the original envelope is
29 returned to the sender within 15 calendar days of mailing, the
30 date of the mailing of the notice by ordinary first class mail.
31 Notice by certified or registered mail and by ordinary first class
32 mail may be made concurrently.

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

35 (1) the particular obligation or real estate security interest;

36 (2) the nature of the default claimed;

37 (3) the right of the debtor to cure the default as provided in
38 section 5 of this act;

39 (4) what performance, including what sum of money, if any,
40 and interest, shall be tendered to cure the default as of the date
41 specified under paragraph (5) of this subsection c.;

42 (5) the date by which the debtor shall cure the default to avoid
43 initiation of foreclosure proceedings, which date shall not be less
44 than 30 days after the date the notice is given, and the name and
45 address and phone number of a person to whom the payment or
46 tender shall be made;

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

52 (7) that if the lender takes the steps indicated pursuant to
53 paragraph (6) of this subsection c., a debtor shall still have the
54 right to cure the default pursuant to section 5 of this act, but

1 that the debtor shall be responsible for the lender's court costs
2 and attorneys' fees in an amount not to exceed that amount
3 permitted pursuant to the Rules Governing the Courts of New
4 Jersey;

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

9 (9) that the debtor is advised to seek counsel from an attorney
10 of the debtor's own choosing concerning the debtor's residential
11 mortgage default situation, and that, if the debtor is unable to
12 obtain an attorney, the debtor may communicate with the New
13 Jersey Bar Association or Lawyer Referral Service in the county
14 in which the residential property securing the mortgage loan is
15 located; and that, if the debtor is unable to afford an attorney,
16 the debtor may communicate with the Legal Services Office in
17 the county in which the property is located;

18 (10) the possible availability of financial assistance for curing
19 a default from programs operated by the State or federal
20 government or non-profit organizations, if any, as identified by
21 the Commissioner of Banking. This requirement may be satisfied
22 by attaching a list of such programs promulgated by the
23 commissioner; and

24 (11) the name and address of the lender and the telephone
25 number of a representative of the lender whom the debtor may
26 contact if the debtor disagrees with the lender's assertion that a
27 default has occurred or the correctness of the lender's
28 calculation of the amount required to cure the default.

29 d. The notice of intention to foreclose required to be provided
30 pursuant to this section shall not be required if the debtor has
31 voluntarily surrendered the property which is the subject of the
32 residential mortgage prior to the time at which the lender is
33 permitted to send a notice of intention to foreclose pursuant to
34 subsection a. of this section.

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

40 f. Compliance with this section shall be set forth in the
41 pleadings of any legal action referred to in this section. If the
42 plaintiff in any complaint seeking foreclosure of a residential
43 mortgage alleges that the property subject to the residential
44 mortgage has been abandoned or voluntarily surrendered, the
45 plaintiff shall plead the specific facts upon which this allegation
46 is based. The plaintiff shall attach to the complaint a copy of the
47 notice required to be served together with proof of service as
48 these are required pursuant to subsections a. and b. of this
49 section.

50 5. ¹(New section)¹ a. Notwithstanding the provisions of any
51 other law to the contrary, as to any residential mortgage for
52 which a notice of intention to foreclose is required to be given
53 pursuant to section 4 of this act, whether or not such required
54 notice was in fact given, the debtor, or anyone authorized to act

1 on the debtor's behalf, shall have the right at any time, up to the
2 entry of final judgment, to cure the default, de-accelerate and
3 reinstate the residential mortgage by tendering the amount or
4 performance specified in subsection b. of this section. The
5 payment or tender shall be made to the lender, holder or
6 servicing agent. The debtor may exercise the right to cure a
7 default as to a particular mortgage and reinstate that mortgage
8 only once every 18 months, provided, however, that this
9 limitation shall not apply if the mortgage debtor cures a default
10 by the date specified in paragraph (5) of subsection c. of section 4
11 of this act. The 18-month time period shall run from the date of
12 cure and reinstatement.

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

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

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

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

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

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

30 d. Cure of default reinstates the debtor to the same position
31 as if the default had not occurred. It nullifies, as of the date of
32 cure, any acceleration of any obligation under the mortgage, note
33 or bond arising from the default.

34 e. If default is cured prior to the filing of a foreclosure action,
35 the lender shall not institute a foreclosure action for that
36 default. If default is cured after the filing of a foreclosure
37 action, the lender shall give written notice of the cure to the
38 court. Upon such notice, the court shall dismiss the action
39 without prejudice.

40 f. The right to cure a default under this section is independent
41 of any right of redemption or any other right or remedy under the
42 common law, principles of equity, State or federal statute, or
43 rule of court.

44 6. 1(New section)¹ a. If a plaintiff's action to foreclose a
45 residential mortgage is uncontested, pursuant to R. 4:64-1(a) of
46 the Rules Governing the Courts of the State of New Jersey, a
47 lender shall apply for entry of final judgment and provide the
48 debtor with a notice, mailed at least 14 calendar days prior to the
49 submission of proper proofs for entry of a foreclosure judgment,
50 advising that, absent a response from the debtor pursuant to
51 subsection b. of this section, proper proofs will be submitted for
52 entry of final judgment in the foreclosure action and that upon
53 entry of final judgment, the debtor shall lose the right, provided
54 pursuant to section 5 of this act, to cure the default. The manner

1 and address for mailing and the effective date of the notice shall
2 be the same as set forth in subsection b. of section 4 of this act.

3 b. A debtor may, no later than 10 days after receipt of the
4 notice required pursuant to subsection a. of this section, mail to
5 the lender a statement in which the debtor in good faith certifies
6 as true that there is a reasonable likelihood that the debtor will
7 be able to provide payment necessary to cure the default within
8 45 days of the date the notice required pursuant to subsection a.
9 of this section became effective. This statement shall be sent
10 registered or certified mail, return receipt requested, to the
11 address of the lender who gave notice as required pursuant to
12 subsection a. of this section.

13 c. A lender who receives a statement sent by the debtor
14 pursuant to subsection b. of this section, shall not submit proper
15 proofs for entry of final judgment in foreclosure ¹with a return
16 date¹ earlier than ¹[the 46th day] 46 days¹ after the date the
17 notice required pursuant to subsection a. of this section became
18 effective.

19 7. ¹(New section)¹ If a debtor is successful in curing the
20 default under a repayment plan approved by the United States
21 Bankruptcy Court, the residential mortgage relationship between
22 the parties is reinstated, and the debtor is restored to the same
23 position held before the default or acceleration.

24 8. ¹(New section)¹ Nothing herein is intended to limit or
25 modify any provision of federal law regarding notice of the
26 availability of homeownership counselling.

27 9. ¹(New section)¹ Waivers by the debtor of rights provided
28 pursuant to this act are against public policy, unlawful, and void,
29 unless given after default pursuant to a workout agreement in a
30 separate written document signed by the debtor.

31 10. ¹(New section)¹ a. An optional sale procedure for the
32 disposition of a foreclosed premises is hereby established
33 pursuant to subsection b. of this section, wherein a lender may,
34 after entry of final judgment in foreclosure, elect to proceed
35 according the provisions of this act rather than as provided in
36 accordance with applicable law governing foreclosure sales and
37 sales of real property generally and the Rules Governing the
38 Courts of the State of New Jersey.

39 b. Use of the optional sale procedure, as provided in this
40 section, shall be permitted only when:

41 (1) the debtor has abandoned the property which is the subject
42 of the residential mortgage;

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

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

49 c. Pursuant to paragraph (1) of subsection b. of this section,
50 and for purposes of this section only, abandonment of the
51 property subject to the residential mortgage shall be established
52 by an affidavit or certification from an individual having personal
53 knowledge of the contents thereof, setting forth the specific
54 facts upon which that conclusion is based. The affidavit or

1 certification shall be submitted to the court at the same time
2 that the lender makes application to proceed with the optional
3 sale procedure established by this section.

4 d. Pursuant to paragraph (2) of subsection b. of this section
5 and for purposes of this section only, if the lender receives a deed
6 in lieu of foreclosure, the conveyance shall be effective only if
7 the deed clearly and conspicuously provides: that the debtor may,
8 without penalty, rescind the conveyance within 1[three] seven¹
9 days, excluding Saturdays, Sundays and legal holidays; and that
10 such rescission is effective upon delivery of a written notice to the
11 lender or its agent or upon mailing of such notice to the lender or
12 its agent by certified or registered mail, return receipt requested.

13 e. 1(1)¹ For purposes of paragraph (3) of subsection b. of this
14 section, a property subject to a residential mortgage shall be
15 deemed to have no equity if the total unpaid balance of all
16 properly recorded liens 1and encumbrances¹ against the property,
17 including mortgages, tax liens, judgments in which execution has
18 issued against the property, and any other properly recorded lien,
19 is equal to or greater than 92 percent of the fair market value of
20 the property 1[as that value is determined by an appraiser
21 licensed pursuant to P.L. 1991, c. 68 (C. 45:14F-1 et seq.). A
22 certified copy of the appraisal and an 1An¹ affidavit setting
23 forth with specificity 1the fair market value of the property,¹
24 the unpaid balance of the obligation, including all mortgages and
25 liens 1and the method by which the lender determined that the
26 property has no equity¹, shall be attach to the petition to
27 proceed with the optional sale procedure established by this
28 section.

29 1(2) If a lender proceeds with the optional sale procedure
30 under this subsection, and if the debtor has not objected and
31 requested a public sale pursuant to this section, when the
32 property in question is resold by the lender following receipt of
33 the order of conveyance as provided pursuant to subsection l. of
34 this section, and provided the resale price received by the lender
35 is in excess of the amount necessary to repay the debt of the
36 lender, all liens and obligations superior to the lender and all
37 carrying charges, including, but not limited to, the costs of
38 maintenance and resale, the lender shall deposit any such excess
39 in accordance with R.4:57 et seq. of the Rules Governing the
40 Courts of New Jersey.

41 (3) Upon deposit of any such excess with the Superior Court,
42 the lender shall notify the debtor and any lien holder who held a
43 lien junior to the lender and whose lien was lost as a result of the
44 foreclosure. Such notification shall be by certified mail, return
45 receipt requested, to the last known address of the debtor and
46 such lien holders. The debtor and the lien holders shall then have
47 six months to make an application to the Superior Court, in the
48 form of an application for surplus funds, upon appropriate notice
49 to all other parties in interest, to seek an order for turnover of
50 the excess funds.¹

51 f. (1) Following entry of judgment of foreclosure pursuant to
52 section 6 of this act, a lender may elect to proceed with the
53 optional sale procedure by filing a petition and proposed order
54 with the office or the court.

1 (2) The petition shall set forth under oath the facts which the
2 petitioner alleges show that the petitioner is entitled to proceed
3 under one or more paragraphs of subsection b. of this section and
4 shall be supported by the proofs required by this section and such
5 other proofs as may be required by the office or the court.

6 g. If the office or the court grants the petition to proceed by
7 the optional sale procedure, it shall enter an order fixing the
8 amount, date, and place for redemption, which shall be not less
9 than 45 days nor more than 60 days after the date of the order.
10 The office or the court may grant an extension of time for good
11 cause shown. The order shall provide that:

12 (1) the redeeming defendant pay to the plaintiff's attorney
13 the amount fixed by the office or the court for redemption, which
14 shall be the amount of the judgment together with interest, from
15 the date of the order to the date of redemption, plus all court
16 costs;

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

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

25 h. (1) The order for redemption or notice thereof shall be
26 mailed to each defendant's last known address and, if different,
27 to the address of the property which is the subject of the
28 residential mortgage. The order for redemption or notice thereof
29 shall be sent by ordinary mail and certified mail, return receipt
30 requested, not more than five days after the date the order is
31 issued, except that, as to defendants who were served only by
32 publication and thereafter did not appear in the action, no
33 publication of the order for redemption need be made.

34 (2) The notice shall:

35 (a) inform the defendants that the plaintiff is proceeding
36 under an optional sale procedure authorized by section 10 of
37 [P.L. , c. (C.)](now pending before the Legislature as
38 this bill) this act¹ and set out the steps of the optional sale
39 procedure;

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

43 (c) clearly state that no request for a public sale made after
44 30 days from the date of service will be granted, except for good
45 cause shown.

46 i. In any matter in which the office or the court has issued an
47 order for redemption and the lender is permitted to proceed by
48 the optional sale procedure, a defendant who wishes to object to
49 the optional sale procedure and request a public sale with respect
50 to the mortgaged premises, shall submit to the office or the court
51 a written request for a public sale within 30 days of the date the
52 order or notice thereof is served. If a defendant requests a public
53 sale within the required time period, the office or court shall
54 order a public sale which shall be held in accordance with

1 applicable law governing foreclosure sales and sales of real
2 property generally and the Rules Governing the Courts of the
3 State of New Jersey. Any such defendant who requests a public
4 sale, other than a natural person who is the owner or a voluntary
5 transferee from that owner, shall be required to post a cash
6 deposit or bond prior to the return date of the petition to proceed
7 by optional sale procedure. This cash deposit or bond shall be in
8 an amount which is 10% of the plaintiff's judgment and shall be
9 held to secure the plaintiff against ¹any¹ additional interest and
10 costs, as well as any deficiency, as a result of the public sale.
11 The office or the court may dispense with this requirement for
12 good cause shown. The defendant who requests a public sale,
13 other than a natural person who is the owner or a voluntary
14 transferee from that owner, shall pay all expenses and costs
15 associated with the public sale, including, but not limited to, all
16 sheriff's fees and commissions.

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

22 k. Upon redemption, the plaintiff shall furnish the
23 redemptioner with an appropriate certificate of redemption and
24 the redemptioner shall acquire all rights provided by law and
25 equity but shall not be entitled to a deed or title to the
26 mortgaged premises solely by virtue of the redemption. A
27 redemptioner may proceed to foreclose the redemptioner's
28 interest.

29 l. In the absence of redemption, and on proof of mailing of the
30 order for redemption or notice thereof pursuant to subsection h.
31 of this section and an affidavit of non-redemption, the plaintiff
32 shall be entitled to an order of conveyance awarding possession
33 and barring and foreclosing equity of redemption of any
34 defendant and any person claiming by, through or under them, and
35 adjudging the plaintiff be vested with a valid and indefeasible
36 estate in the mortgaged premises. The order of conveyance shall
37 be accepted for recording as a deed by the county recording
38 officer pursuant to P.L.1939, c.170 (C.46:16-1.1)

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

44 11. (New section) a. With respect to the sale of a mortgaged
45 premises under foreclosure action, each Sheriff in this State shall
46 provide for, but not be limited to, the following uniform
47 procedures:

48 (1) Bidding in the name of the assignee of the foreclosing
49 plaintiff.

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

52 (3) That the successful bidder at the sheriff's sale shall pay a
53 20 percent deposit in either cash or by a certified or cashier's
54 check, made payable to the sheriff of the county in which the

1 sale is conducted, immediately upon the conclusion of the
2 foreclosure sale. If the successful bidder cannot satisfy this
3 requirement, the bidder shall be in default and the sheriff shall
4 immediately void the sale and proceed further with the resale of
5 the premises without the necessity of adjourning the sale, without
6 renotification of any party to the foreclosure and without the
7 republication of any sales notice. Upon such resale, the
8 defaulting bidder shall be liable to the foreclosing plaintiff for
9 any additional costs incurred by such default including, but not
10 limited to, any difference between the amount bid by the
11 defaulting bidder and the amount generated for the foreclosing
12 plaintiff at the resale. In the event the plaintiff is the successful
13 bidder at the resale, the plaintiff shall provide a credit for the
14 fair market value of the property foreclosed.

15 (4) That it shall not be necessary for an attorney or
16 representative of the person which initiated the foreclosure to be
17 present physically at the sheriff's sale to make a bid. A letter
18 containing bidding instructions may be sent to the sheriff in lieu
19 of an appearance.

20 (5) That each sheriff's office shall use a deed which shall be in
21 substantially the following form:

22 THIS INDENTURE,

26 made this (date) day of (month), (year). Between
27 (name) , Sheriff of the County of (name) , ... the
28 State of New Jersey, party of the first part
29 and (name(s))

33 party of the second part, witnesseth.

35 WHEREAS, on the (date) day of (month), (year), a
36 certain Writ of Execution was issued out of the
37 Superior Court of New Jersey, Chancery Division-
38 (name) County, Docket No. directed and
39 delivered to the Sheriff of the said County of
40 (name) and which said Writ is in the words or to
41 the effect following that is to say:

42 THE STATE OF NEW JERSEY to the Sheriff of the County
43 of (name) ,

44 Greeting:

46 WHEREAS, on the (date) day of (month), (year), by a
47 certain judgment made in our Superior Court of New
48 Jersey, in a certain cause therein pending, wherein the
49 PLAINTIFF is:

53 and the following named parties are the DEFENDANTS:

1 IT WAS ORDERED AND ADJUDGED that certain mortgaged
2 premises, with the appurtenances in the Complaint, and
3 Amendment to Complaint, if any, in the said cause
4 particularly set forth and described, that is to say:
5 The mortgaged premises are described as set forth upon
6 the RIDER ANNEXED HERETO AND MADE A PART HEREOF.

7
8 BEING KNOWN AS Tax Lot (number) in Block
9 (number) COMMONLY KNOWN AS (street address) .

10
11 TOGETHER, with all and singular the rights, liberties,
12 privileges, hereditaments and appurtenances thereunto
13 belonging or in anywise appertaining, and the reversion
14 and remainders, rents, issues and profits thereof, and
15 also all the estate, right, title, interest, use,
16 property, claim and demand of the said defendants of,
17 in, to and out of the same, to be sold, to pay and
18 satisfy in the first place unto the plaintiff,

19
20
21 the sum of \$ (amount) being the principal, interest
22 and advances secured by a certain mortgage dated (date,
23 month, year) and given by (name) together
24 with lawful interest from

25
26
27
28 until the same be paid and satisfied and also the costs
29 of the aforesaid plaintiff with interest thereon.

30
31 AND for that purpose a Writ of Execution should issue,
32 directed to the Sheriff of the County of (name)
33 commanding him to make sale as aforesaid; and that the
34 surplus money arising from such sale, if any there be,
35 should be brought into our said Court, as by the
36 judgment remaining as of record in our said Superior
37 Court of New Jersey, at Trenton, doth and more fully
38 appear; and whereas, the costs and Attorney's fees of
39 the said plaintiff have been fully taxed at the
40 following sum: \$ (amount)

41
42 THEREFORE, you are hereby commanded that you cause to
43 be made of the premises aforesaid, by selling so much
44 of the same as may be needful and necessary for the
45 purpose, the said sum of \$ (amount) and the same you
46 do pay to the said plaintiff together with contract and
47 lawful interest thereon as aforesaid, and the sum
48 aforesaid of costs with interest thereon.

49
50 And that you have the surplus money, if any there be,
51 before our said Superior Court of New Jersey, aforesaid
52 at Trenton, within 30 days after pursuant to
53 R.4:59-1(a), to abide the further Order of the said
54 Court, according to judgment aforesaid, and you are to
55 make return at the time and place aforesaid, by

1 certificate under your hand, of the manner in which you
2 have executed this our Writ, together with this Writ,
3 and if no sale, this Writ shall be returnable within 12
4 months.

5 WITNESS, the Honorable (name), Judge of the
6 Superior Court at Trenton, aforesaid, the (date) day
7 of (month), (year).

8 Attorneys /s/ , Clerk
9 Superior Court of New Jersey

10
11
12
13
14 As by the record of said Writ of Execution in the
15 Office of the Superior Court of New Jersey, at Trenton,
16 in Book (number) of Executions, Page (number) etc.,
17 may more fully appear.

18
19 AND WHEREAS I, the said (name), as such
20 Sheriff as aforesaid did in due form of law, before
21 making such sale give notice of the time and place of
22 such sale by public advertisement signed by myself, and
23 set up in my office in the (name) Building in
24 (name) County, being the County in which said real
25 estate is situate and also set up at the premises to be
26 sold at least three weeks next before the time
27 appointed for such sale.

28
29 I also caused such notice to be published four times
30 in two newspapers designated by me and printed and
31 published in the said County, the County wherein the
32 real estate sold is situate, the same being designated
33 for the publication by the Laws of this State, and
34 circulating in the neighborhood of said real estate, at
35 least once a week during four consecutive calendar
36 weeks. One of such newspapers, (name of newspaper) is
37 a newspaper with circulation in (name of town), the
38 County seat of said (name) County. The first
39 publication was at least twenty-one days prior and the
40 last publication not more than eight days prior to the
41 time appointed for the sale of such real estate, and by
42 virtue of the said Writ of Execution, I did offer for
43 sale said land and premises at public vendue at the
44 County (name) Building in (name of town) on
45 the (date) day of (month) (year) at the hour of
46 (time) in the (a.m. or p.m.).

47
48 WHEREUPON the said party of the second part bidding
49 therefore for the same, the sum of \$ (amount) and no
50 other person bidding as much I did then and there
51 openly and publicly in due form of law between the
52 hours of (time) and (time) in the (a.m. or p.m.),
53 strike off and sell tracts or parcels of land and

1 premises for the sum of \$ (amount) to the said party
2 of the second part being then and there the highest
3 bidder for same. And on the (date) of (month) in
4 the year last aforesaid I did truly report the said
5 sale to the Superior Court of New Jersey, Chancery
6 Division and no objection to the said sale having been
7 made, and by Assignment of Bid filed with the Sheriff
8 of (name) County said bidder assigned its bid to:

9

10

11

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

28

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

37

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

41

42

43 Signed, sealed and delivered
44 in the presence of

45

46

47

L.S.)

(Signature of Sheriff), Sheriff

48

49

50 State of New Jersey) ss
51 County)

52

53

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

1 was by me sold by virtue of a good and subsisting
2 execution (or as the case may be) as is therein
3 recited, that the money ordered to be made has not been
4 to my knowledge or belief paid or satisfied, that the
5 time and place of the same of said real estate were by
6 me duly advertised as required by law, and that the
7 same was cried off and sold to a bonafide purchaser for
8 the best price that could be obtained and the true
9 consideration for this conveyance as set forth in the
10 deed is \$ (amount).

11

12

(Name of Sheriff), Sheriff

13

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

19

20

21

(Attorney or Notary Public)

22

23

STATE OF NEW JERSEY) ss.

24

(Name) County)

25

26

27

28

29

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37

38

39

(Attorney or Notary Public)

40 b. At the conclusion of the sheriff's sale, the attorney for the
41 plaintiff may prepare and deliver to the sheriff a deed in the
42 form provided pursuant to paragraph (5) of subsection a. of this
43 section for the sheriff's execution and the deed shall be delivered
44 to the sheriff within 10 days of the date of the sale. The sheriff
45 shall be entitled to the authorized fee, as a review fee, even if
46 the plaintiff's attorney prepares the deed.

47

48

49

50

51

52

53

54

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

1 112. (New section) Any judgment creditor shall, upon entry of
2 judgment in the office of the Clerk of the Superior Court, provide
3 the Court with its current address for service. If the judgment
4 creditor's address for service changes, it shall be incumbent upon
5 the judgment creditor to effect a change of address for service
6 by filing an appropriate form with the court in a timely manner.
7 If any judgment creditor fails to provide the Court with a current
8 or change of address for service, in any foreclosure proceeding,
9 the plaintiff may, without having to first make a more diligent
10 inquiry or publish notice in a newspaper, serve the judgment
11 creditor by ordinary mail and certified mail at the address that is
12 reflected in the records of the Clerk of the Superior Court. The
13 judgment creditor shall, if known, provide the Clerk of the Court
14 with the judgment creditor's social security number or tax payer
15 identification number.¹

16 113. N.J.S.2A:17-36 is amended to read as follows:

17 2A:17-36. Adjournments of sale of real estate. A sheriff or
18 other officer selling real estate by virtue of an execution may
19 make [2] two adjournments of the sale, and no more, to any time,
20 not exceeding [1 month] 14 calendar days for each adjournment.
21 However, a court of competent jurisdiction may, for cause, order
22 further adjournments.¹

23 (cf: N.J.S.2A:17-36;

24 114. (New section) a. The United States Attorney for the
25 District of New Jersey may send a letter to the Clerk of the
26 Superior Court of New Jersey which notes the appearance of the
27 Attorney General of the United States and states that neither an
28 answer will be filed nor a default opposed. This letter shall be
29 accepted by the Clerk of the Superior Court of New Jersey in lieu
30 of an appearance by the Attorney General of the United States.
31 The acceptance by the Clerk shall allow the foreclosing plaintiff
32 to proceed as if the United States had filed a non-contesting
33 answer.

34 b. The Attorney General of New Jersey may send a letter to
35 the Clerk of the Superior Court of New Jersey which notes the
36 appearance of the Attorney General of New Jersey and states
37 that neither an answer will be filed nor a default opposed. This
38 letter shall be accepted by the Clerk of the Superior Court of
39 New Jersey in lieu of an appearance by the Attorney General of
40 New Jersey. The acceptance by the Clerk shall allow the
41 foreclosing plaintiff to proceed as if the State of New Jersey had
42 filed a non-contesting answer.¹

43 115. N.J.S.2A:15-11 is amended to read as follows:

44 2A:15-11. Notice of lis pendens. No notice of lis pendens
45 shall be effective after [3] five years from the date of its filing.¹
46 (cf: N.J.S.2A:15-11)

47 1[11.] 16. (New section)¹ In the absence of an express
48 agreement between the parties to the contrary, a debtor may
49 tender, and a lender may accept, partial payment of any sum
50 owing and due without either party waiving any rights.

51 1[12.] 17. (New section)¹ The Attorney General 1,in
52 consultation with the Commissioner of Banking,¹ shall
53 promulgate regulations pursuant to the "Administrative
54 Procedure Act," P.L.1968, c.410 (C.52:14A-1 et seq.) necessary

1 to implement this act, including, but not limited to, regulations
2 governing the form and content of notices of intention to
3 foreclose.

4 1[13.] 18.¹ This act shall take effect on the 90th day after
5 enactment and shall apply to foreclosure actions commenced on
6 or after the effective date.

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

ADOPTED

MAY 8 1995

AMENDMENTS

to

ASSEMBLY, No. 1064(1R)

(Sponsored by Assemblywoman VANDERVALK and
Assemblyman ROBERTS)

REPLACE SECTION 2 TO READ:

2. ¹New section¹ The Legislature hereby finds and declares it to be the public policy of this State ²[that homelessness is to be prevented;]² that homeowners should be given every opportunity to pay their home mortgages, and thus keep their homes; ²[that the State will be benefitted if homeowners keep their homes and do not become public welfare recipients;]² and that lenders will be benefited when residential mortgage debtors cure their defaults and return defaulted residential mortgage loans to performing status.

REPLACE SECTION 3 TO READ:

3. ¹New section¹ As used in this act

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

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

²Non-residential mortgage means a mortgage, security interest or the like which is not a residential mortgage. If a mortgage document includes separate tracts or properties, those portions of the mortgage document covering the non-residential tracts or properties shall be a non-residential mortgage.

"Obligation" means a promissory note, bond or other similar evidence of a duty to pay.²

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

"Residential mortgage" means a mortgage, security interest or the like, in which the security is a ²residential property such as a² house, real property ²[.] or² condominium ²[. or cooperative apartment]², which is occupied, or is to be occupied, by the debtor, who is a natural person, or a member of the debtor's immediate family, as that person's ¹primary¹ residence. This act shall apply to all residential mortgages wherever made, which have as their security such a residence in the State of New Jersey, provided that the real property which is the subject of the

mortgage shall not have more than four dwelling units, one of which shall be, or is planned to be, occupied by the debtor or a member of the debtor's immediate family as the debtor's or member's ¹[primary]¹ residence at the time the loan is originated.

"Residential mortgage debtor" or "debtor" means any person shown on the record of the residential mortgage lender as being obligated to pay the ²[note] obligation² secured by the residential mortgage.

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

REPLACE SECTION 4 TO READ:

4. ¹(New section)¹ a. Upon failure to perform any obligation of a ²[note or]² residential mortgage by the residential mortgage debtor and before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation ²[or] and² commence any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage, the residential mortgage lender shall give the residential mortgage debtor notice of such intention at least 30 days in advance of such action as provided in this section.

b. Notice of intention to take action as specified in subsection a. of this section shall be in writing, sent to the debtor by registered or certified mail, return receipt requested, at the debtor's last known address, and, if different, to the address of the property which is the subject of the residential mortgage. The notice is deemed to have been effectuated on the date the notice is delivered ²in person or mailed² to the party ²[in person, the date of the acceptance of the certified or registered mail, or, if the party refuses to claim or accept delivery of the certified or registered mail, or if neither the return receipt or the original envelope is returned to the sender within 15 calendar days of mailing, the date of the mailing of the notice by ordinary first class mail. Notice by certified or registered mail and by ordinary first class mail may be made concurrently]².

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

- (1) the particular obligation or real estate security interest;
- (2) the nature of the default claimed;
- (3) the right of the debtor to cure the default as provided in section 5 of this act;
- (4) what performance, including what sum of money, if any, and interest, shall be tendered to cure the default as of the date specified under paragraph (5) of this subsection c.;
- (5) the date by which the debtor shall cure the default to avoid initiation of foreclosure proceedings, which date shall not be less than 30 days after the date the notice is ²[given] effective², and the name and address and phone number of a person to whom the payment or tender shall be made;

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

(7) that if the lender takes the steps indicated pursuant to paragraph (6) of this subsection c., a debtor shall still have the right to cure the default pursuant to section 5 of this act, but that the debtor shall be responsible for the lender's court costs and attorneys' fees in an amount not to exceed that amount permitted pursuant to the Rules Governing the Courts of ²the State of² New Jersey;

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

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

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

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

d. The notice of intention to foreclose required to be provided pursuant to this section shall not be required if the debtor has voluntarily surrendered the property which is the subject of the residential mortgage ²[prior to the time at which the lender is permitted to send a notice of intention to foreclose pursuant to subsection a. of this section].²

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

f. Compliance with this section shall be set forth in the pleadings of any legal action referred to in this section. If the plaintiff in any complaint seeking foreclosure of a residential mortgage alleges that the property subject to the residential mortgage has been abandoned or voluntarily surrendered, the plaintiff shall plead the specific facts upon which this allegation is based. ²[The plaintiff shall attach to the complaint a copy of the notice required to be served together with proof of service as these are required pursuant to subsections a. and b. of this section.]²

REPLACE SECTION 5 TO READ:

5. 1(New section)1 a. Notwithstanding the provisions of any other law to the contrary, as to any residential mortgage for which a notice of intention to foreclose is required to be given pursuant to section 4 of this act, whether or not such required notice was in fact given, the debtor, or anyone authorized to act on the debtor's behalf, shall have the right at any time, up to the entry of final judgment 2or the entry by the office or the court of an order of redemption pursuant to subsection g. of section 11 of this act², to cure the default, de-accelerate and reinstate the residential mortgage by tendering the amount or performance specified in subsection b. of this section. The payment or tender shall be made to the 2[lender, holder or servicing agent] person designated in the notice pursuant to paragraph (5) of subsection c. of section 4 of this act². The debtor may exercise the right to cure a default as to a particular mortgage and reinstate that mortgage only once every 18 months, provided, however, that this limitation shall not apply if the mortgage debtor cures a default by the date specified in paragraph (5) of subsection c. of section 4 of this act. The 18-month time period shall run from the date of cure and reinstatement.

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

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

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

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

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

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

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

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

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

REPLACE SECTION 6 TO READ:

6. 1(New section)¹ a. 2(1)² If a plaintiff's action to foreclose a residential mortgage is uncontested, pursuant to R. 4:64-1(a) of the Rules Governing the Courts of the State of New Jersey 2and the plaintiff chooses not to use the optional procedure for the disposition of foreclosed premises pursuant to section 11 of this act², a lender shall apply for entry of final judgment and provide the debtor with a notice, mailed at least 14 calendar days prior to the submission of proper proofs for entry of a foreclosure judgment, advising that, absent a response from the debtor pursuant to 2[subsection b. of this section] paragraph (2) of this subsection a.², proper proofs will be submitted for entry of final judgment in the foreclosure action and that upon entry of final judgment, the debtor shall lose the right, provided pursuant to section 5 of this act, to cure the default. The manner and address for mailing and the effective date of the notice shall be the same as set forth in subsection b. of section 4 of this act.

2[b.] (2)² A debtor may, no later than 10 days after receipt of the notice required pursuant to subsection a. of this section, 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 the notice required pursuant to 2[subsection a. of this section] paragraph (1) of this subsection a.² became effective. This statement shall be sent registered or certified mail, return receipt requested, to the address ... the lender who gave notice as required pursuant to subsection a. of this section.

2[c.] (3)² A lender who receives a statement sent by the debtor pursuant to 2[subsection b. of this section] paragraph (2) of this subsection a.², shall not submit proper proofs for entry of final judgment in foreclosure 1with a return date¹ earlier than 1[the 46th day] 46 days¹ after the date the notice required pursuant to 2[subsection a. of this section] paragraph (1) of this subsection a.² became effective.

2b. (1) If a plaintiff's action to foreclose a residential mortgage is uncontested, pursuant to R. 4:64-1(a) of the Rules Governing the Courts of the State of New Jersey and the lender chooses to use the optional procedure for the disposition of the foreclosed premises pursuant to section 11 of this act, the lender shall provide the debtor with a notice, mailed at least 14 calendar days prior to filing an affidavit or certification with the office or court pursuant to subsection f. of section 11 of this act. The notice shall advise the debtor that, absent a response from the debtor pursuant to paragraph (2) of this subsection b., 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 provided pursuant to section 5 of this act, to cure the default. The manner and address for mailing and the effective date of the notice shall be the same as set forth in subsection b. of section 4 of this act.

(2) A debtor may, no later than 10 days after receipt of the notice required pursuant to paragraph (1) of this subsection b., 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 the notice required pursuant to paragraph (1) of this subsection b. became effective. This statement shall be sent registered or certified mail, return receipt requested, to the address of the lender who gave notice as required pursuant to paragraph (1) of this subsection b.

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

INSERT NEW SECTION 10 TO READ AS FOLLOWS:

210. (New section) The provisions of sections 1 through 9 of this act shall not apply to the foreclosure of a non-residential mortgage nor to collection of the obligation by means other than enforcing the lender's lien on the residential property. A lender shall not be required to foreclose a residential mortgage and a non-residential mortgage securing the same obligation in the same proceeding.²

REPLACE SECTION 10 TO READ:

2[10.] 11.² 1(New section)¹ a. An optional 2[sale] foreclosure² procedure 2without sale² for disposition of a foreclosed premises is hereby established pursuant to subsection b. of this section, wherein a lender may²[l. after entry of final judgment in foreclosure,¹] elect to proceed according the provisions of this act 2[rather than as provided in accordance with applicable law governing foreclosure sales and sales of real property generally]² and 2R.4:64-1(d) of² the Rules Governing the Courts of the State of New Jersey.

b. Use of the optional 2[sale]² procedure 2without sale², as provided in this section, shall be permitted only when:

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

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

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

c. Pursuant to paragraph (1) of subsection b. of this section, and for purposes of this section only, abandonment of the property subject to the residential mortgage shall be established by an affidavit or certification from an individual having personal knowledge of the contents thereof, setting forth the specific facts upon which that conclusion is based. The affidavit or certification shall be submitted to the 2office or the² court at the same time that the lender 2[makes application to proceed with the optional sale procedure established by this section] applies to the office or the court for the order fixing the amount, time and place for redemption².

d. Pursuant to paragraph (2) of subsection b. of this section and for purposes of this section only, if the lender receives a deed in lieu of foreclosure, the conveyance shall be effective only if the deed clearly and conspicuously provides: that the debtor may, without penalty, rescind the conveyance within ¹[three] seven¹ 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 by certified or registered mail, return receipt requested.

e. ¹(1)¹ For purposes of paragraph (3) of subsection b. of this section, a property subject to a residential mortgage shall be deemed to have no equity if the total unpaid balance of all ²[properly recorded]² liens ¹and encumbrances¹ against the property, including mortgages, tax liens ²[,] and² judgments ²[in which execution has issued] actually² against the property ²(not including similar name judgments)², and any other ²[properly recorded]² lien, is equal to or greater than 92 percent of the fair market value of the property ¹[as that value is determined by an appraiser licensed pursuant to P.L. 1991, c. 68 (C. 45:14F-1 et seq.). A certified copy of the appraisal and an] An¹ affidavit setting forth with specificity ¹the fair market value of the property,¹ the unpaid balance of the obligation, including all mortgages and liens ¹and the method by which the lender determined that the property has no equity¹, shall be ²[attached to the petition to proceed with the optional sale procedure established by this section] su¹ to the office or the court at the time the lender applies for the order fixing the amount, time and place for redemption².

¹(2) If a lender proceeds with the optional ²[sale]² procedure under this subsection, and if the debtor has not objected and requested a public sale pursuant to this section, when the ²foreclosed² property ²[in question]² is resold by the lender following ²[receipt of the order of conveyance as provided pursuant to subsection l. of this section.] judgment² and provided the resale price received by the lender is in excess of the amount necessary to repay the debt ², interest and reasonable costs² of the lender, ²[all liens and obligations superior to the lender]² and all carrying charges, including, but not limited to, the ²reasonable² costs of maintenance and resale, the lender shall deposit any such excess in accordance with R.4:57 et seq. of the Rules Governing the Courts of ²the State of² New Jersey.

(3) Upon deposit of any such excess with the Superior Court, the lender shall notify the debtor and any lien holder who held a lien junior to the lender and whose lien was lost ²in whole or in part² as a result of the foreclosure. Such notification shall be by certified mail, return receipt requested, to the last known address of the debtor and such lien holders. The debtor and the lien holders shall then have six months to make an application to the Superior Court, in the form of an application for surplus funds, upon appropriate notice to all other parties in interest, to seek an order for turnover of the excess funds.¹ ²Failure of a lender to comply with the provisions of paragraphs (2) and (3) of this subsection e. shall not affect title to the foreclosed property².

f. (1) ~~2[Following entry of judgment of foreclosure pursuant to section 6 of this act] In accordance with the provisions of R.4:64-1(d) of the Rules Governing the Courts of the State of New Jersey, and subject to compliance with the provisions of this act², a lender may elect to proceed with the optional 2[sale]² procedure by filing 2[a petition and proposed order] an affidavit or certification² with the office or the court.~~

(2) The ~~2[petition] affidavit or certification²~~ shall set forth ~~2[under oath]²~~ the facts which the ~~2[petitioner]~~ ~~lender²~~ alleges show that the ~~2[petitioner]~~ ~~it²~~ is entitled to proceed under one or more paragraphs of subsection b. of this section and shall be supported by the proofs required by this section and such other proofs as may be required by the office or the court.

g. ~~2[If the office or the court grants the petition to proceed by the optional sale procedure, it shall] In accordance with the provisions of R.4:64-1(d) of the Rules Governing the Courts of the State of New Jersey, and subject to compliance with the provisions of this act, the office or the court may² enter an order fixing the amount, 2[date] time², and place for redemption, which shall be not less than 45 days nor more than 60 days after the date of the order. The office or the court may grant an extension of time for good cause shown. The order shall provide that:~~

(1) the redeeming defendant pay to the plaintiff's attorney the amount fixed by the office or the court for redemption, ~~2[which shall be the amount of the judgment]²~~ together with interest ~~2[, from the date of the order]²~~ ~~the~~ date of redemption, plus all court costs;

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

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

h. (1) The order for redemption or notice thereof shall be mailed to each defendant's last known address and, if different, ~~22~~ to the address of the property ~~2[which is the subject of the residential mortgage] being foreclosed²~~. The order for redemption or notice thereof shall be sent by ordinary mail and certified mail, return receipt requested, ~~2[not more than five]~~ ~~within 20²~~ days after the date the order is ~~2[issued]~~ ~~entered²~~, except that, as to defendants ~~2[whose addresses are unknown and]~~ who were served ~~2[only]²~~ by publication ~~2[and thereafter did not appear in the action]²~~, no ~~2[further]²~~ publication of the order for redemption ~~2[or notice thereof]²~~ need be made.

(2) The notice shall:

(a) inform the defendants that the plaintiff is proceeding under an optional ~~2[sale]²~~ procedure authorized by section ~~2[10]~~ ~~11²~~ of ~~1[P.L. , c.](now pending before the Legislature as this bill)]~~ ~~this act¹~~ and set out the steps of the optional ~~2[sale]²~~ procedure;

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

(c) 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.

i. In any matter in which the office or the court has issued an order for redemption and the lender is permitted to proceed by the optional ^{2[sale]}² procedure, a defendant who wishes to object to the optional ^{2[sale]}² procedure and request a public sale with respect to the mortgaged premises ²being foreclosed², shall submit to the office or the court a written request for a public sale within 30 days of the date the order or notice thereof is served. If a defendant requests a public sale within the required time period, ²and subject to compliance with the provisions of this act,² the office or court shall ²[order a public sale which shall be held in accordance with applicable law governing foreclosure sales and sales of real property generally and the Rules Governing the Courts of the State of New Jersey] enter a judgment of foreclosure which provides for a public sale of the premises in accordance with applicable law². Any such defendant who requests a public sale, other than a natural person who is the owner or a voluntary transferee from that owner, shall be required to post a cash deposit or bond prior to the ²[return]² date ²[of the petition to proceed by optional sale procedure] fixed for redemption². This cash deposit or bond shall be in a ².....² which is 10% of the ²[plaintiff's judgment] amount found due in the order fixing the amount, time and place for redemption² and shall be held to secure the plaintiff against ¹any¹ additional interest and costs, as well as any deficiency, as a result of the public sale. The office or the court may dispense with this requirement for good cause shown. The defendant who requests a public sale, other than a natural person who is the owner or a voluntary transferee from that owner, shall pay all expenses and costs associated with the public sale, including, but not limited to, all sheriff's fees and commissions.

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

k. Upon redemption, the plaintiff shall furnish the redemptioner with an appropriate certificate of redemption and the redemptioner shall acquire all rights provided by law and equity but shall not be entitled to a deed or title to the mortgaged premises solely by virtue of the redemption. A redemptioner ²in proper cases² may proceed to foreclose the redemptioner's interest.

l. In the absence of redemption, and on proof of mailing of the order for redemption or notice thereof pursuant to subsection h. of this section and an affidavit of non-redemption, the plaintiff shall be entitled to ²[an order of conveyance] a judgment²

²[awarding possession and barring] debarring² and foreclosing ²the² equity of redemption of ²[any defendant] the defendants and each of them² and any person claiming by, through or under them, and adjudging the plaintiff be vested with a valid and indefeasible estate in the mortgaged premises. ²[The order of conveyance] Anything to the contrary notwithstanding, redemption shall be permitted at any time up until the entry of judgment including the whole of the last day upon which judgment is entered. A certified copy of the judgment² shall be accepted for recording ²[as a deed]² by the county recording officer pursuant to P.L.1939, c.170 (C.46:16-1.1)

m. Upon entry of ²[an order of conveyance] a judgment² vesting title in the plaintiff pursuant to subsection ²[k.] 1² of this section, the debt which was secured by the foreclosed mortgage shall be deemed satisfied, and the plaintiff shall not be permitted to institute any further or contemporaneous action for the collection of the debt.

REPLACE SECTION 11 TO READ:

²[11.] 12.² (New section) a. With respect to the sale of a mortgaged premises under foreclosure action, each Sheriff in this State shall provide for, but not be limited to, the following uniform procedures:

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

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

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

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

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

(4)² That the successful bidder at the sheriff's sale shall 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. If the successful bidder cannot satisfy this requirement, the bidder shall be in default and the sheriff shall immediately void the sale and proceed further with the resale of the premises without the necessity of adjourning the sale, without renotification of any party to the foreclosure and without the republication of any sales notice. Upon such resale, the defaulting bidder shall be liable to the foreclosing plaintiff for any additional costs incurred by such default 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 shall provide a credit for the fair market value of the property foreclosed.

2[(4) (5)] It is permissible, upon consent of the sheriff conducting the sheriff's sale, that² it shall not be necessary for an attorney or representative of the person which initiated the foreclosure to be present physically 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.

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

THIS INDENTURE,

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

party of the second part, witnesseth.

WHEREAS, on the (date) day of (month), (year), a certain Writ of Execution was issued out of the Superior Court of New Jersey, Chancery Division-
(name) County, Docket No. directed and delivered to the Sheriff of the said County of (name) and which said Writ is in the words or to the effect following that is to say:
THE STATE OF NEW JERSEY to the Sheriff of the County of (name),
Greeting:

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

and the following named parties are the DEFENDANTS:

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

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

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

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

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

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

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

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

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

Attorneys

/s/ , Clerk
Superior Court of New Jersey

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 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:

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 otherwises.

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

(Name of Sheriff), Sheriff

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

(Attorney or Notary Public)

STATE OF NEW JERSEY) ss.

(Name) County)

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

(Attorney or Notary Public)

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

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

RENUMBER SECTIONS 12 THROUGH 18 AS SECTIONS 13
THROUGH 19

REPLACE SYNOPSIS TO READ:

Makes changes in foreclosure practices and allows use of optional
foreclosure procedure without sale in certain cases.

SENATE STATE MANAGEMENT, INVESTMENTS AND
FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

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[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

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 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 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 entitle 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.

[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 ¹, amending various
2 sections of the New Jersey Statutes¹ 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 1.¹(New section)¹ This act shall be known and may be cited
8 as the "Fair Foreclosure Act."

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

18 3.¹(New section)¹ 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 2."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.²

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 ²residential property such as
41 a² house, real property ²[,] or² condominium ²[, 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:

¹ Assembly AFI committee amendments adopted September 29, 1994.

² Senate SSM committee amendments adopted May 8, 1995.

1 apartment]², 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 ¹[primary]¹ 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 ¹[primary]¹ 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 ²[note] obligation² 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. ¹(New section)¹ a. Upon failure to perform any obligation
21 of a ²[note or]² 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 ²[or] and² 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 ²in person or mailed² to the party ²[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]².

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 ²[given] effective², 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 ²the
14 State of² 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 ²[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]².

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. 2[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.]²

5 5. ¹New section¹ 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 ²or the entry by the office or the court of
an order of redemption pursuant to subsection g. of section 11 of
this act², to cure the default, de-accelerate and reinstate the
12 residential mortgage by tendering the amount or performance
13 specified in subsection b. of this section. The payment or tender
14 shall be made to the ²[lender, holder or servicing agent] person
designated in the notice pursuant to paragraph (5) of subsection c.
of section 4 of this act². The debtor may exercise the right to
15 cure a default as to a particular mortgage and reinstate that
16 mortgage only once every 18 months, provided, however, that this
17 limitation shall not apply if the mortgage debtor cures a default
18 by the date specified in paragraph (5) of subsection c. of section 4
19 of this act. The 18-month time period shall run from the date of
20 cure and reinstatement.

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

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

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

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

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

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

38 d. Cure of default reinstates the debtor to the same position
39 as if the default had not occurred. It nullifies, as of the date of
40 cure, any acceleration of any obligation under the mortgage, note
41 or bond arising from the default.

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

48 f. The right to cure a default under this section is independent
49 of any right of redemption or any other right or remedy under the
50 common law, principles of equity, State or federal statute, or
51 rule of court.

1 6. 1(New section)¹ a. 2(1)² 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 2and the plaintiff chooses not to use the optional
5 procedure for the disposition of foreclosed premises pursuant to
6 section 11 of this act², 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 2[subsection b. of this section] paragraph
11 (2) of this subsection a.², 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 2[b.] (2)² 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 2[subsection a. of this section] paragraph (1) of this subsection a.²
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 2[c.] (3)² A lender who receives a statement sent by the debtor
29 pursuant to 2[subsection b. of this section] paragraph (2) of this
30 subsection a.², shall not submit proper proofs for entry of final
31 judgment in foreclosure 1with a return date¹ earlier than 1[the
32 46th day] 46 days¹ after the date the notice required pursuant to
33 2[subsection a. of this section] paragraph (1) of this subsection a.²
34 became effective.

35 2b. (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.²

13 7. ¹(New section)¹ 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. ¹(New section)¹ 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. ¹(New section)¹ 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.

25 ²10. (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.²

32 ²[10.] ^{11.}² ¹(New section)¹ a. An optional ²[sale]
33 foreclosure² procedure ²without sale² for the disposition of a
34 foreclosed premises is hereby established pursuant to subsection
35 b. of this section, wherein a lender may²[l, after entry of final
36 judgment in foreclosure,]² elect to proceed according the
37 provisions of this act ²[rather than as provided in accordance
38 with applicable law governing foreclosure sales and sales of real
39 property generally]² and ²R.4:64-1(d) of² the Rules Governing
40 the Courts of the State of New Jersey.

41 b. Use of the optional ²[sale]² procedure ²without sale², 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 ²office or the² court at
4 the same time that the lender ²[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 redemption².

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 ¹[three] seven¹
13 days, excluding Saturdays, Sundays and legal holidays; and that
14 such rescission 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. ¹⁽¹⁾¹ 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 ²[properly recorded]² liens ¹and encumbrances¹ against the
21 property, including mortgages, tax liens ²[,] and² judgments ²[in
22 which execution has issued] actually² against the property ²(not
23 including similar name judgments)², and any other ²[properly
24 recorded]² lien, is equal to or greater than 92 percent of the fair
25 market value of the property ¹[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]. An¹ affidavit
28 setting forth with specificity ¹the fair market value of the
29 property,¹ the unpaid balance of the obligation, including all
30 mortgages and liens ¹and the method by which the lender
31 determined that the property has no equity¹, shall be ²[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 redemption².

36 ¹⁽²⁾ If a lender proceeds with the optional ²[sale]² 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 ²foreclosed² property ²[in question]² is resold by the lender
40 following ²[receipt of the order of conveyance as provided
41 pursuant to subsection l. of this section,] judgment² and provided
42 the resale price received by the lender is in excess of the amount
43 necessary to repay the debt², interest and reasonable costs² of
44 the lender, ²[all liens and obligations superior to the lender]² and
45 all carrying charges, including, but not limited to, the
46 ²reasonable² 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 ²the State of² 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 ²in whole or in
52 part² 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.¹ ²Failure 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.²

8 f. (1) ²[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 act², a lender may elect to proceed with the optional ²[sale]²
13 procedure by filing ²[a petition and proposed order] an affidavit
14 or certification² with the office or the court.

15 (2) The ²[petition] affidavit or certification² shall set forth
16 ²[under oath]² the facts which the ²[petitioner] lender² alleges
17 show that the ²[petitioner] it² 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. ²[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 may² enter an order
26 fixing the amount, ²[date] time², 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 ²[which shall be the amount of the judgment]² together with
33 interest ²[, from the date of the order]² 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 ²also² to the address of the property ²[which is the subject of the
46 residential mortgage] being foreclosed². The order for
47 redemption or notice thereof shall be sent by ordinary mail and
48 certified mail, return receipt requested, ²[not more than five]
49 within 20² days after the date the order is ²[issued] entered²,
50 except that, as to defendants ²whose addresses are unknown and²
51 who were served ²[only]² by publication ²[and thereafter did not
52 appear in the action]², no ²further² publication of the order for
53 redemption ²or notice thereof² need be made.

54 (2) The notice shall:

1 (a) inform the defendants that the plaintiff is proceeding
2 under an optional ^{2[sale]}² procedure authorized by section ^{2[10]}
3 11² of ^{1[P.L. , c. (C.)](now pending before the}
4 Legislature as this bill)] this act¹ and set out the steps of the
5 optional ^{2[sale]}² 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 ^{2[sale]}² procedure, a defendant who wishes to object
15 to the optional ^{2[sale]}² procedure and request a public sale with
16 respect to the mortgaged premises ²being foreclosed², 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, ²and subject to compliance with the provisions of
21 this act,² the office or court shall ²[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 law². 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 ²[return]²
30 date ²[of the petition to proceed by optional sale procedure] fixed
31 ^{for redemption}². This cash deposit or bond shall be in an amount
32 which is 10% of the ²[plaintiff's judgment] amount found due in
33 ^{the order fixing the amount, time and place for redemption}² and
34 shall be held to secure the plaintiff against ¹any¹ 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 ²in proper cases² 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 ²[an order of conveyance] a judgment²
4 ²[awarding possession and barring] debarring² and foreclosing
5 ²the² equity of redemption of ²[any defendant] the defendants
6 and each of them² 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. ²[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 judgment² shall be accepted
13 for recording ²[as a deed]² by the county recording officer
14 pursuant to P.L.1939, c.170 (C.46:16-1.1)

15 m. Upon entry of ²[an order of conveyance] a judgment²
16 vesting title in the plaintiff pursuant to subsection ²[k.] l.² 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 ²[11.] 12.² (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) ²(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)² 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 shefiff's sale, that² 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)² That each sheriff's office shall use a deed which
8 shall be in substantially the following form:

9
10 THIS INDENTURE,

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

16
17
18
19 party of the second part, witnesseth.

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

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

34
35
36 and the following named parties are the DEFENDANTS:

37
38
39
40 IT WAS ORDERED AND ADJUDGED that certain mortgaged
41 premises, with the appurtenances in the Complaint, and
42 Amendment to Complaint, if any, in the said cause
43 particularly set forth and described, that is to say:
44 The mortgaged premises are described as set forth upon
45 the RIDER ANNEXED HERETO AND MADE A PART HEREOF.

46
47
48
49
50 BEING KNOWN AS Tax Lot (number) in Block
51 (number) COMMONLY KNOWN AS (street address) .

52
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,

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

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

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)

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.

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.

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

1

2

3

4

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

9

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

19

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

38

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

53

54

1

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

18

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

27

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

31

32

33

34 Signed, sealed and delivered
35 in the presence of

36

37 L.S.)

38 (Signature of Sheriff), Sheriff

39

40 State of New Jersey) ss
41 County)

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

45

46

47

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

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.¹

9 ^{2[113.] 14.}² 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.¹

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

17 ^{2[114.] 15.}² (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.¹

36 ^{2[115.] 16.}² 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.¹
39 (cf: N.J.S.2A:15-11)

40 ^{1[11.] 2[16.] 17.}² (New section)¹ 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 ^{1[12.] 2[17.] 18.}² (New section)¹ The Attorney General^{1,in}
45 consultation with the Commissioner of Banking,¹ 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 ^{1[13.] 2[18.] 19.}² 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.

1

2

3 Makes changes in foreclosure practices and allows use of optional
4 foreclosure procedure without sale in certain cases.

Title 2A.
Chapter 50.
Article 5 (New)
Foreclosure of
Residential
Mortgages.
§§1-13,15,17,18
C.2A:50-53 to
2A:50-68
§19-Note to
§§1-18

P.L.1995, CHAPTER 244, approved September 5, 1995

1994 Assembly No. 1064 (Second Reprint)

1 **AN ACT** concerning mortgage foreclosure ¹, amending various
2 sections of the New Jersey Statutes¹ 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 1.¹(New section)¹ This act shall be known and may be cited
8 as the "Fair Foreclosure Act."

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

18 3. ¹(New section)¹ 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 ²"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.²

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 ²residential property such as
41 a² house, real property ²[.] or² condominium ²[.], 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:
¹ Assembly AFI committee amendments adopted September 29, 1994.
² Senate SSM committee amendments adopted May 8, 1995.

1 apartment]², 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, or that person's ¹[primary]¹ 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 ¹[primary]¹ 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 ²[note] obligation² 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 1.¹(New section)¹ a. Upon failure to perform any obligation
21 of a ²[note or]² 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 ²[or] and² 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 ²in person or mailed² to the party ²[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]².

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 ²[given] effective², 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 ²the
14 State of² 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 ²[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]².

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. 2[The plaintiff shall attach to the complaint
2 a copy of the notice required to be served together with proof of
3 service as those are required pursuant to subsections a. and b. of
4 this section.]

5 5. 1(New section)¹ 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 2~~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~~², 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 2[lender, holder or servicing agent] person
17 designated in the notice pursuant to paragraph (5) of subsection c.
18 of section 4 of this act². 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. 1(New section)¹ a. 2(1)² 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 2and the plaintiff chooses not to use the optional
5 procedure for the disposition of foreclosed premises pursuant to
6 section 11 of this act², 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 2[subsection b. of this section] paragraph
11 (2) of this subsection a.², 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 2[b.] 2² 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 2[subsection a. of this section] paragraph (1) of this subsection a.²
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 2[c.] 3² A lender who receives a statement sent by the debtor
29 pursuant to 2[subsection b. of this section] paragraph (2) of this
30 subsection a.², shall not submit proper proofs for entry of final
31 judgment in foreclosure 1with a return date¹ earlier than 1[the
32 46th day] 46 days¹ after the date the notice required pursuant to
33 2[subsection a. of this section] paragraph (1) of this subsection a.²
34 became effective.

35 2b. (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 15 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.²

13 7. ¹(New section)¹ 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. ¹(New section)¹ 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. ¹(New section)¹ 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 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.²

32 2[10.] 11.² ¹(New section)¹ a. An optional 2[sale]
33 foreclosure² procedure 2without sale² for the disposition of a
34 foreclosed premises is hereby established pursuant to subsection
35 b. of this section, wherein a lender may²[, after entry of final
36 judgment in foreclosure.]² elect to proceed according the
37 provisions of this act 2[rather than as provided in accordance
38 with applicable law governing foreclosure sales and sales of real
39 property generally]² and 2R.4:64-1(d) of² the Rules Governing
40 the Courts of the State of New Jersey.

41 b. Use of the optional 2[sale]² procedure 2without sale², 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 ²office or the² court at
4 the same time that the lender ²[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 redemption².

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 ¹[three] seven¹
13 days, excluding Saturdays, Sundays and legal holidays; and that
14 such rescission 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. ¹(1)¹ 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 ²[properly recorded]² liens ¹and encumbrances¹ against the
21 property, including mortgages, tax liens ²[,] and² judgments ²[in
22 which execution has issued] actually² against the property ²[not
23 including similar name judgments]², and any other ²[properly
24 recorded]² lien, is equal to or greater than 92 percent of the fair
25 market value of the property ¹[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] An¹ affidavit
28 setting forth with specificity ¹the fair market value of the
29 property.¹ the unpaid balance of the obligation, including all
30 mortgages and liens ¹and the method by which the lender
31 determined that the property has no equity¹, shall be ²[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 redemption².

36 ¹(2) If a lender proceeds with the optional ²[sale]² 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 ²foreclosed² property ²[in question]² is resold by the lender
40 following ²[receipt of the order of conveyance as provided
41 pursuant to subsection l. of this section,] judgment² and provided
42 the resale price received by the lender is in excess of the amount
43 necessary to repay the debt², interest and reasonable costs² of
44 the lender, ²[all liens and obligations superior to the lender]² and
45 all carrying charges, including, but not limited to, the
46 ²reasonable² 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 ²the State of² 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 ²in whole or in
52 part² 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.¹ ²Failure 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.²

8 f. (1) ²[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 act², a lender may elect to proceed with the optional ²[sale]²
13 procedure by filing ²[a petition and proposed order] an affidavit
14 or certification² with the office or the court.

15 (2) The ²[petition] affidavit or certification² shall set forth
16 ²[under oath]² the facts which the ²[petitioner] lender² alleges
17 show that the ²[petitioner] it² 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. ²[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 may² enter an order
26 fixing the amount, ²[date] time², 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 ²[which shall be the amount of the judgment]² together with
33 interest ²[, from the date of the order]² 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 ²also² to the address of the property ²[which is the subject of the
46 residential mortgage] being foreclosed². The order for
47 redemption or notice thereof shall be sent by ordinary mail and
48 certified mail, return receipt requested, ²[not more than five]
49 within ²20² days after the date the order is ²[issued]² entered²,
50 except that, as to defendants ²whose addresses are unknown and²
51 who were served ²[only]² by publication ²[and thereafter did not
52 appear in the action]², no ²further² publication of the order for
53 redemption ²or notice thereof² need be made.

54 (2) The notice shall:

1 (a) inform the defendants that the plaintiff is proceeding
2 under an optional ^{2[sale]}² procedure authorized by section ^{2[10]}
3 11² of ^{1[P.L. , C.](now pending before the}
4 Legislature as this bill)] this act¹ and set out the steps of the
5 optional ^{2[sale]}² 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 ^{2[sale]}² procedure, a defendant who wishes to object
15 to the optional ^{2[sale]}² procedure and request a public sale with
16 respect to the mortgaged premises 2being foreclosed², 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, 2and subject to compliance with the provisions of
21 this act,² the office or court shall 2order 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 Jerseyenter a
25 judgment of foreclosure which provides for a public sale of the
26 premises in accordance with applicable law². 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 ^{2[return]}²
30 date 2[of the petition to proceed by optional sale procedure] fixed
31 for redemption². This cash deposit or bond shall be in an amount
32 which is 10% of the 2[plaintiff's judgment] amount found due in
33 the order fixing the amount, time and place for redemption² and
34 shall be held to secure the plaintiff against 1any¹ 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 2in proper cases² 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 2[an order of conveyance] a judgment²
4 2[awarding possession and barring] debarring and foreclosing
5 2the² equity in redemption of 2[any defendant] the defendants
6 and each of them² 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. 2[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 judgment² shall be accepted
13 for recording 2[as a deed]² by the county recording officer
14 pursuant to P.L. 1939, c.170 (C.46:16-1.1)

15 m. Upon entry of 2[an order of conveyance] a judgment²
16 vesting title in the plaintiff pursuant to subsection 2[k.] l.² 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 2[11.] 12. (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) 2(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)² 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 sheriff's sale, that² 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)² 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

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

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

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

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).

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.

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

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

1
2
3
4

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

9

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

19

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

38

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

53

54

1
2 NOW, THEREFORE, This Indenture witnesseth, that I,
3 the said (name) , as such Sheriff as aforesaid
4 under and by the virtue of the said Writ of Execution
5 and in execution of the power and trust in me reposed
6 and also for and in consideration of the said sum of \$
7 (amount) therefrom acquit, exonerate and forever
8 discharge to the said party of the second part, its
9 successors and assigns, all and singular the said tract
10 or parcel of lands and premises, with the
11 appurtenances, privileges, and hereditaments thereunto
12 belonging or in any way appertaining; to have and hold
13 the same, unto the said party of the second part, its
14 successors and assigns to its and their only proper
15 use, benefit, and behoof forever, in as full, ample and
16 beneficial manner as by virtue of said Writ of
17 Execution I may, can or ought to convey the same.

18
19 And, I, the said (name) , do hereby, covenant,
20 promise and agree, to and with the said party of the
21 second part, its successors and assigns, that I have
22 not, as such Sheriff as aforesaid, done or caused,
23 suffered or procured to be done any act, matter or
24 thing whereby the said premises, or any part thereof,
25 with the appurtenances, are or may be charged or
26 encumbered in estate, title or otherwise.

27
28 IN WITNESS WHEREOF, I the said (name) as such
29 Sheriff as aforesaid, have hereunto set my hand and
30 seal the day and year aforesaid.

31

32

33

34 Signed, sealed and delivered
35 in the presence of

36

L.S.)

(Signature of Sheriff), Sheriff

37
38 State of New Jersey} ss
39 County}

40
41 I, (name) , Sheriff, of the
42 County of (name) , do solemnly swear that the real
43 estate described in this deed made to

44

45

46

47

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

30

31

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.¹

48 ²[¹12.] 13.² (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.¹

9 ~~2[13.] 14.~~² 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.¹

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

17 ~~2[14.] 15.~~² (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.¹

36 ~~2[15.] 16.~~² 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.¹
39 (cf: N.J.S.2A:15-11)

40 ~~1[11.] 2[16.] 17.~~² (New section)¹ 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 ~~1[12.] 2[17.] 18.~~² (New section)¹ The Attorney General¹ in
45 consultation with the Commissioner of Banking¹ 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 ~~1[13.] 2[18.] 19.~~² 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

- 1
- 2
- 3 Makes changes in foreclosure practices and allows use of optional
4 foreclosure procedure without sale in certain cases.

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OFFICE OF THE GOVERNOR NEWS RELEASE

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TRENTON, NJ 08625

RELEASE: SEPT. 6, 1995

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.

LEGISLATIVE INDEX

A1041 (A1734) Solomon, Mikulak
Jan. 20—Provides convicted sex offenders be tested for AIDS.
Jan. 20, 1994—Judiciary, Law & Public Safety Com.

A1042 (A2970) Stuhltrager, Senator Inverso
Jan. 20—Permits employees of Admin. Office of the Courts engage in outside employment.
Mar. 10, 1994—Passed in Assembly. (75-0)
June 20, 1994—Substituted for S804.
June 20, 1994—Passed in Senate. (39-0)
Aug. 3, 1994—Approved, Chapter 86, 1994.

A1043 (A2260) Stuhltrager
Jan. 20—Enacts new chapter in criminal code pertaining to material witnesses.
Mar. 15, 1994—Passed in Assembly. (75-0)
Sep. 19, 1994—Passed in Senate. (38-0)
Oct. 26, 1994—Approved, Chapter 126, 1994.

A1044 (A352) Felice
Jan. 20—Estab. three subsidiary admin. under control of NJ Transport, Toll Rd., Trust Fd. Auth.
Jan. 20, 1994—Transportation & Comm. Com.

A1045 (A771) Felice
Jan. 20—Requires free AZT treatment to emerg. vol. diagnosed with AIDS or HIV.
Jan. 20, 1994—Health & Human Svcs. Com.

A1046 (A776) Felice
Jan. 20—Provides benefits under PAAD prog. are last resource benefits.
Jan. 20, 1994—Policy & Rules Com.

A1047 (A774) Felice
Jan. 20—Provides for tuition free courses for St. college employees.
Jan. 20, 1994—Education Com.

A1048 (A779) Felice
Jan. 20—Permits certain members of TPAF, PERS purchase credit for certain service.
Jan. 20, 1994—State Government Com.

A1049 (A348) Felice
Jan. 20—The "Vocational Student Opportunities Act."
Jan. 20, 1994—Education Com.

A1050 (A767) Felice
Jan. 20—Includes noise-as criteria for airport hazards.
Jan. 20, 1994—Environment & Energy Com.

A1051 (A781) Felice
Jan. 20—Estab. "Foster Care Enrichment Fund;" \$750,000.
Jan. 20, 1994—Senior Crt. & Social Svcs. Com.

A1052 (A2648) Felice
Jan. 20—Prohibits use of unlic. persons performing optometry or ophthalmic functions.
Jan. 20, 1994—Health & Human Svcs. Com.

A1053 (A1908) Felice
Mar. 24, 1995—See A159.

A1054 (A2387) Felice
Jan. 20—Provides Legislature members have access to info. held by St. agencies.
Jan. 20, 1994—State Government Com.

A1055 (A3008) Felice, Mikulak
Jan. 20—Exempts teaching hosp. from CON requirement for cardiac cath. svcs.
Jan. 20, 1994—Health & Human Svcs. Com.

A1056 (A772) Felice, Crecco, Gregg, Heck, Gregory-Scoochi
Jan. 20—Concerns crime of endangering the welfare of a child.
Jan. 20, 1994—Judiciary, Law & Public Safety Com.
June 13, 1994—Reported, 2nd reading.
June 20, 1994—Passed in Assembly. (75-0)
June 20, 1994—Received in Senate.
June 20, 1994—Judiciary Com.
Nov. 10, 1994—Reported, 2nd reading.

A1057 (A344) Felice
Mar. 24, 1995—See A159.

A1058 Withdrawn from the files.

A1059 (A2969) Crecco, Warsh, Mikulak
Jan. 18—Enables certain local gov. retirees receive paid health benefits.
Feb. 17, 1994—Passed in Assembly. (73-2)
Mar. 31, 1994—Passed in Senate. (35-0)
May 16, 1994—Returned by Governor with recommended amendment.
May 16, 1994—Amended as recommended.
May 16, 1994—Re-enacted in Assembly. (65-0)
May 23, 1994—Re-enacted in Senate. (23-8)
May 26, 1994—Approved, Chapter 34, 1994.

A1060 (A350) Felice
Jan. 20—Mandates newspapers sold in N.J. utilize newsprint with recycled paper content.
Jan. 20, 1994—Solid & Hazardous Waste Com.

A1061 (A1948) Lustbader, Lance
Jan. 18—Makes certain changes in absentee ballots, paper ballots & nominating petitions.
Feb. 17, 1994—Passed Assembly, amended. (76-0)
May 23, 1994—Passed in Senate, amended. (37-0)
June 16, 1994—Sen. amend. passed Assemb. (76-0)
July 22, 1994—Approved, Chapter 77, 1994.

A1062 Zangari, Impreduto
Jan. 24—Requires gift certificate to be valid until redeemed.
Jan. 24, 1994—Commerce & Regulated Profs. Com.
Mar. 28, 1994—Reported w/amend., 2nd reading.
May 9, 1994—Passed Assembly, amended. (51-14)
May 12, 1994—Received in Senate.
May 12, 1994—Commerce Com.
Mar. 13, 1995—Reported w/amend., 2nd reading.

A1063 (A2911) Doria, Rocco
Jan. 24—Establishes N.J. Health Services Research Institute.
Jan. 24, 1994—Education Com.

A1064 Vandervalk, Roberts, Bateman, Lustbader
Jan. 24—Makes changes in mortgage foreclosure practices.
Nov. 14, 1994—Passed Assembly, amended. (67-0)
June 26, 1995—Passed in Senate, amended. (32-6)
June 29, 1995—Sen. amend. passed Assemb. (47-17)
Sep. 5, 1995—Approved, Chapter 244, 1995.

A1065 J. Smith, Oros, Arnone, Azzolina, Farragher, Haines, T. Smith, Wolfe, Corodemus, Cottrell, Kramer, Lance, Mikulak, Warsh, Wright, Malone; Senators Ciesla, Kyriilos
Jan. 24—Approp. \$20,504,000 for Green Acres projects in central Jersey.
Mar. 10, 1994—Passed in Assembly. (74-0)
May 12, 1994—Substituted for S593.
May 12, 1994—Passed in Senate. (34-0)
June 23, 1994—Approved, Chapter 51, 1994.

A1066 Gaffney, Geist, LoBiondo, Solomon, Stuhltrager, Collins, Cottrell, Rocco, Malone; Senators Gormley, Matheusser
Jan. 24—Approp. \$9,394,625 for Green Acres projects in southern Jersey.
Mar. 10, 1994—Passed in Assembly. (74-0)
May 12, 1994—Substituted for S594.
May 12, 1994—Passed in Senate. (36-0)
June 21, 1994—Approved, Chapter 45, 1994.

A1067 Murphy, Vandervalk, Augustine, Bagger, Felice, Frelinghuysen, Garrett, Heck, Kamen, Lance, Rooney, Roma, Crecco; Senators Martin, Kosco
Jan. 24—Approp. \$17,655,000 for Green Acres projects in north, central Jersey.
Mar. 10, 1994—Passed in Assembly. (76-0)
May 12, 1994—Substituted for S595.
May 12, 1994—Passed in Senate. (35-0)
June 9, 1994—Approved, Chapter 37, 1994.

A1068 Ogden, Haytalian, Augustine, Bagger, Farragher, Felice, Gaffney, Geist, Haines, Kramer, Kelly, Lance, Moran, Roma, Russo, J. Smith, Wolfe, Wright, DiGaetano, Arnone, Azzolina, Connell, Connors, Gibson, LoBiondo; Senators Kyriilos, Martin
Jan. 24—Approp. \$16,217,675 to acquire lands for recreation, conservation.
Mar. 10, 1994—Passed in Assembly. (76-0)
May 12, 1994—Substituted for S596.
May 12, 1994—Passed in Senate. (36-0)
June 9, 1994—Approved, Chapter 38, 1994.

A1069 Suliga, Cohen
Jan. 24—Prohibits construction of a major haz. waste disposal fac. pending DEP study.
Jan. 24, 1994—Solid & Hazardous Waste Com.

A1070 Bagger-Pascelli; Senators LaRossa, Inverso
Jan. 24—Amends St. requirements for tax exemption of low inc. housing proj. by non profit sponsors to comport with fed. requirements.
May 9, 1994—Passed in Assembly. (71-0)
June 20, 1994—Substituted for S1120.
June 20, 1994—Passed in Senate. (40-0)
Aug. 3, 1994—Approved, Chapter 87, 1994.

A1071 - A1072 Withdrawn from the files.

A1073 (A2556) Wolfe, V. Haines, Turner, T. Smith, Azzolina, Cottrell, Kramer, Gregory-Scoochi, Heck, Malone, J. Smith
Jan. 24—Clarifies definition of "physical force" as an element of sex assault.
Jan. 24, 1994—Judiciary, Law & Public Safety Com.
June 13, 1994—Reported w/amend., 2nd reading.
June 20, 1994—Passed Assembly, amended. (73-0)
June 20, 1994—Received in Senate.
June 20, 1994—Judiciary Com.
Oct. 13, 1994—Reported, 2nd reading.

A1074 (A2701) Farragher, Bagger
Jan. 24—Concerns delinquent charges on late premium payments in commercial insur.
Jan. 10, 1995—Passed Assembly, amended. (49-19)
Dec. 21, 1995—Passed in Senate. (32-7)
Jan. 5, 1996—Approved, Chapter 348, 1995.

A1075 - A1076 Withdrawn from the files.

A1077 (A2360) Farragher
Jan. 24—Permits domestic insurers hold certain securities out of St. as part of custodial or trust acct.
Nov. 14, 1994—Passed Assembly, amended. (68-0)
June 22, 1995—Passed in Senate. (38-0)
July 24, 1995—Approved, Chapter 182, 1995.

A1078 (A2595) Farragher, Arnone
Jan. 24—Provides additional retirement benefits for SPRS members who retire in 1994.
Jan. 24, 1994—State Government Com.

A1079 (A2460) Farragher, Arnone
Jan. 24—Requires new impact statement prior to DEP approval to operate previously closed sanitary landfill fac.
Jan. 24, 1994—Solid & Hazardous Waste Com.

A1080 Augustine
Jan. 24—Concerns the safety of public transportation passengers.
Jan. 24, 1994—Transportation & Comm. Com.

A1081 (A2977) Felice; Senator Bassano
Jan. 24—Clarifies loss ratio requirements for individual insur. carriers.
June 27, 1994—Passed Assembly, amended. (76-0)
June 30, 1994—Substituted for S937.
June 30, 1994—Passed in Senate. (39-0)
Aug. 11, 1994—Approved, Chapter 102, 1994.

A1082 (A899) Stuhltrager, Collins
Jan. 24—Provides services for communication handicapped in private schools.
Jan. 24, 1994—Education Com.

A1083 (A892) Stuhltrager, Collins
Jan. 24—Provides for mapping envir. sensitive areas.
Jan. 24, 1994—Solid & Hazardous Waste Com.

A1084 (A895) Stuhltrager, Collins
Jan. 24—Regulates materials that may be used on MV windows & windshields.
Jan. 24, 1994—Judiciary, Law & Public Safety Com.

A1085 (A268) Stuhltrager, Collins
Jan. 24—Requires DOL preserve records of disputed compensation claims.
Jan. 24, 1994—Labor Com.

A1086 Doria, Romano, Charles, Garcia, Quigley, Impreduto, Cohen, Suliga; Senators LaRossa, Kenny
Jan. 24—Approp. \$11,277,000 for Green Acres projects in northeast Jersey.
Mar. 10, 1994—Passed in Assembly. (76-0)
May 12, 1994—Substituted for S597.
May 12, 1994—Passed in Senate. (34-0)
June 23, 1994—Approved, Chapter 52, 1994.

A1087 (A1944) Stuhltrager, Collins, Mikulak
Jan. 24—Concerns residency requirements for mun. and county officers, employees.
Jan. 24, 1994—Local Government Com.

A1088 (A561) Rooney
Jan. 24—Expands propositions co. or mun. may submit in a nonbinding referendum.
Jan. 24, 1994—Local Government Com.

A1089 (A822) Rooney
Jan. 24—Permits publication of legal advertisements in "free" newspapers.
Jan. 24, 1994—Local Government Com.

A1090 (A558) Rooney
Jan. 24—Provides for roll-back taxes when watershed prop. is devoted to other uses.
Jan. 24, 1994—Environment & Energy Com.

A1091 (A827) Rooney
Jan. 24—Requires gov. entities purchasing elect. powered devices have them labeled with component efficiency rating.
Jan. 24, 1994—Environment & Energy Com.

A1092 (A2046) Rooney
Jan. 24—The "County & Municipal Waste Reduction Act."
Jan. 24, 1994—Solid & Hazardous Waste Com.

A1093 (A835) Rooney
Jan. 24—Removes co. super. of schools from bds. of co. vocat. schools.
Jan. 24, 1994—Education Com.

A1094 (A2261) Rooney
Jan. 24—Requires public office candidates disclose criminal records.
Jan. 24, 1994—State Government Com.
Apr. 25, 1994—Reported, 2nd reading.

A1095 (A2710) Rooney
Jan. 24—Limits filing tax appeal when assessment appealed previously.
Jan. 24, 1994—Local Government Com.

A1096 (A1653) Rooney
Jan. 24—Requires notification of municipality by public utilities.
Jan. 24, 1994—Environment & Energy Com.

A1097 Lustbader
Apr. 25, 1994—See A426.

A1098 Withdrawn from the files.

A1099 Rooney
Jan. 24—Requires additional penalties to pay cost of police, rescue squad.
Jan. 24, 1994—Judiciary, Law & Public Safety Com.

A1100 (A2735) Ogden; Senator DiFrancesco
Jan. 24—Extends hours for sale of alco. bev. by nonprofit theater groups.
Feb. 17, 1994—Passed Assembly, amended. (67-7)
Mar. 3, 1994—Substituted for S583.
Mar. 3, 1994—Passed in Senate. (39-0)
Apr. 11, 1994—Approved, Chapter 18, 1994.

A1101 (A2956) Ogden
June 16, 1994—Substituted by S146.

A1102 (A3017) Ogden, Romano; Senator Bassano
Jan. 24—Permits use of school buses for transport of a handicapped adult.
June 27, 1994—Passed Assembly, amended. (72-0)
Oct. 20, 1994—Substituted for S738.
Oct. 27, 1994—Passed in Senate, amended. (38-0)
Nov. 14, 1994—Sen. amend. passed Assemb. (67-0)
Dec. 20, 1994—Approved, Chapter 172, 1994.