

LEGISLATIVE HISTORY CHECKLIST

SA 2A:50-2 to 2A:50-10; 2A:50-22 (Mortgages--permits mortgagor to dispute the amount of deficiency)

LAWS OF 1979 CHAPTER 286

Bill No. 5732

Sponsor(s) J. Russo

Date Introduced Jan. 26, 1978

Committee: Assembly Judiciary, Law, Public Safety and Defense

Senate Judiciary

Amended during passage Xxx 0

Date of Passage: Assembly June 11, 1979

Senate April 20, 1978

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Following statements are attached if available:

Sponsor statement	Yes	Xx (Below)
Committee Statement:	Assembly	Xx
	Senate	Xxx No
Fiscal Note	Xxx	No
Veto message	Xxx	No
Message on signing	Xxx	No
Following were printed:		
Reports	Xxx	No
Hearings	Xxx	No

Sponsor's statement:

This bill eliminates the difference between bonds and notes secured by residential real estate mortgages. It extends present law to allow a mortgagor to dispute the amount of a deficiency in a foreclosure in the case where a note is involved as well as those where a bond is involved.

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CHAPTER 286 LAWS OF N. J. 1979
APPROVED 1-14-80

SENATE, No. 732

STATE OF NEW JERSEY

INTRODUCED JANUARY 26, 1978

By Senator J. RUSSO

Referred to Committee on Judiciary

AN ACT concerning civil actions for the collection of bonds or notes secured by mortgages, amending sections 2A:50-2 to 2A:50-10, inclusive and section 2A:50-22 of the New Jersey Statutes, and supplementing chapter 50 of the New Jersey Statutes.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. N. J. S. 2A:50-2 is amended to read as follows:

2 2A:50-2. **[**Where both a bond and a mortgage have been given
3 for the same debt**]** *Except as otherwise provided*, all proceedings
4 to collect **[the]** any debt secured by a mortgage on real property,
5 shall be as follows:

6 First, a foreclosure of the mortgage; and

7 Second, an action on the bond or note for any deficiency, if, at the
8 sale in the foreclosure proceeding, the mortgaged premises do not
9 bring an amount sufficient to satisfy the debt, interest and costs.

10 The action **[on the bond]** for any deficiency shall be commenced
11 within 3 months from the date of the sale or, if confirmation is or
12 was required, from the date of the confirmation of the sale of the
13 mortgaged premises. In such action judgment shall be rendered
14 and execution issued only for the balance due on the debt and
15 interest and costs of the action.

16 No action shall be instituted against any person answerable on
17 the bond or note unless he has been made a party in the action to
18 foreclose the mortgage.

1 2. N. J. S. 2A:50-3 is amended to read as follows:

2 2A:50-3. The obligor in any bond or note specified in section
3 2A:50-2 of this Title, with respect to any bond given after March
4 29, 1933, and with respect to any note given after the effective date
5 of this amendatory act may file an answer in the action **[on the**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

6 bond] *for deficiency*, disputing the amount of the deficiency sued
 7 for. In that event both parties may introduce[, in] evidence [at
 8 the trial of the action on the bond, testimony] as to the fair market
 9 value of the mortgaged premises at the time of the sale thereof in
 10 the foreclosure action, and the court, with or without a jury, shall
 11 determine the amount of such deficiency, by deducting from the
 12 debt secured [by the bond and mortgage] the amount determined
 13 as the fair market value of the premises. If all parties to the
 14 action shall so agree, the court may accept as the fair market
 15 value of the mortgaged premises the value fixed by three ap-
 16 praisers, to be named by agreement of all the parties to the action,
 17 which agreement shall be evidenced by a stipulation to be filed in
 18 the action.

1 3. N. J. S. 2A :50-4 is amended to read as follows:

2 2A :50-4. If, after the foreclosure and sale of mortgaged
 3 premises, the person entitled to the debt shall recover a judgment
 4 in an action on the bond *or note* for any balance of debt, such re-
 5 covery shall open the foreclosure and sale of the premises, and the
 6 person against whom the judgment has been recovered may redeem
 7 the property by paying the full amount of money for which the
 8 judgment in the foreclosure action was granted, with interest to be
 9 computed from the date of the judgment in the foreclosure action,
 10 and all costs of the action [on the bond] *for deficiency*, and all
 11 reasonable expenses which the purchaser may have incurred in the
 12 meantime for taxes, assessments, other prior liens, necessary re-
 13 pairs upon the premises and interest on same, after deducting from
 14 the amount thereof such income as the holder may have derived
 15 from the possession of the premises, either as rent or otherwise.

16 An action for redemption of the premises shall be brought within
 17 6 months after the entry of the judgment for the balance of the
 18 debt.

1 4. N. J. S. 2A :50-5 is amended to read as follows:

2 2A :50-5. Where an action has been brought [on a bond] for a
 3 deficiency as provided by section 2A :50-2 of this Title, and where
 4 the party or parties liable [on the bond, or otherwise,] for such
 5 deficiency shall have answered disputing the amount of the de-
 6 ficiency as provided by section 2A :50-3 of this Title, the effect of
 7 such answer shall be to terminate any right to redeem from fore-
 8 closure sale as provided by section 2A :50-4 of this Title, and the
 9 recovery [on the bond] *for the deficiency* shall not open the fore-
 10 closure and sale of the premises as provided by said section
 11 2A :50-4.

1 5. N. J. S. 2A:50-6 is amended to read as follows:

2 2A:50-6. No judgment shall be entered by confession on any
3 bond *or note* where a mortgage on real estate has been or may be
4 given for the same debt or in any action on the bond *or note*, unless,
5 prior to the entry of the judgment, if by confession, or prior to the
6 commencement of the action [on the bond], if the proceeding be
7 by action, there shall be filed in the office of the clerk or register
8 of deeds and mortgages as the case may be, of the county, in which
9 the real estate described in the mortgage is situate a written notice
10 of the proposed judgment or action, setting forth the court in which
11 it is proposed to enter the judgment or begin the action, the names
12 of the parties to the bond *or note* and to the judgment or action,
13 the book and page of the record of the mortgage, together with a
14 description of the real estate described therein.

1 6. N. J. S. 2A:50-7 is amended to read as follows:

2 2A:50-7. The county clerk or register of deeds and mortgages,
3 as the case may be, shall forthwith record the notice required to
4 be given by section 2A:50-6 of this Title, together with the time
5 of the filing thereof, in the book by him kept for the record of
6 notices of *lis pendens*.

7 For the filing and recording of such notice the clerk or register
8 shall receive the fees provided by [section 22:4-4 of the Revised
9 Statutes (Title, Fees and Costs)] *P. L. 1965, c. 123, s. 2*
10 (*C. 22A:4-4.1*), which fees shall be included with the other costs
11 to be taxed and recovered in the judgment or action [on the bond]
12 *for deficiency*.

1 7. N. J. S. 2A:50-8 is amended to read as follows:

2 2A:50-8. [Where a bond and mortgage have been or shall be
3 given for the same debt] *When any debt is evidenced by a bond*
4 *or a note and is secured by a mortgage on real property and*
5 *the lien of the mortgage has been or shall be extinguished by the*
6 *foreclosure of a prior mortgage and sale of the mortgaged*
7 *premises, action on the bond or note shall be commenced within 1*
8 *year of the sale or, if confirmation was or is required, from the*
9 *date of confirmation of the sale. All such actions not commenced*
10 *within said period shall be thereafter completely and forever*
11 *barred for lapse of time. However, the time during which any*
12 *application for surplus moneys arising from the foreclosure of*
13 *such prior mortgage shall be in litigation shall not be taken or*
14 *computed as part of any such period of 1 year.*

1 8. N. J. S. 2A:50-9 is amended to read as follows:

2 2A:50-9. The recovery of a judgment in an action [on any
3 bond] pursuant to section 2A:50-8 shall not open the foreclosure
4 and sale of the mortgaged premises or result in any right of re-
5 demption.

1 9. N. J. S. 2A:50-10 is amended to read as follows:

2 2A:50-10. No judgment shall be entered by confession or in any
3 action upon any bond *or note* pursuant to section 2A:50-8 unless
4 prior to the entry of the judgment, if by confession, or prior to
5 the commencement of the action on the bond *or note*, if the pro-
6 ceeding be by action, there shall be filed and recorded in the office
7 of the clerk or register of deeds and mortgages as the case may
8 be, of the county, in which the mortgaged premises are situate, a
9 written notice to the same effect and in the same manner as is
10 required by sections 2A:50-6 and 2A:50-7 of this Title.

1 10. N. J. S. 2A:50-22 is amended to read as follows:

2 2A:50-22. No action to enforce an agreement, express or implied,
3 to assume *or guarantee* the payment of any mortgage, or of any
4 bond *or note* secured by a mortgage, shall be maintained against
5 a person making such agreement unless the mortgage shall have
6 been first foreclosed, or extinguished by the foreclosure of a prior
7 mortgage or lien, provided no such action may be maintained
8 unless:

9 a. The person making such agreement was made a party de-
10 fendant in the foreclosure action, and

11 b. The action is commenced within 3 months from the date of
12 sale, or if confirmation was or is required, from the date of the
13 confirmation of the sale of the mortgaged premises, in the fore-
14 closure action or in the case of the extinguishment of the mortgage
15 lien by the foreclosure of a prior mortgage or lien, then within 12
16 months from the date of such extinguishment, and

17 c. A notice of intention to bring the action, is filed in the office
18 of the register or the clerk as the case may be, of the county wherein
19 the mortgaged premises are located, before the commencement of
20 the action, and

21 d. The plaintiff shall in his complaint offer to credit upon the
22 indebtedness the fair market value, which shall be specified, of
23 the mortgaged premises as of the date of the sale in the foreclosure
24 suit, in any case where the plaintiff was the purchaser of the mort-
25 gaged premises at such sale, and in such case the defendant may
26 contest, in the action, the amount of such fair market value; and

27 e. The plaintiff shall join in the action any and all persons within
28 the jurisdiction of the State of New Jersey alleged to be liable

29 upon the note or as obligors upon the bond and upon any other
30 agreement of assumption of payment of the same note or bond,
31 express or implied, and upon any and all agreements or covenants
32 to pay the same note or bond, or any moneys alleged to be due
33 thereon, as principal, guarantor, surety or otherwise, whether such
34 persons are alleged to be liable directly, indirectly, jointly, sev-
35 erally, or in the alternative.

1 11. (New section) In the case of a mortgage given to secure a
2 debt evidenced by a note, where foreclosure proceedings are insti-
3 tuted within the time prescribed by the Statute of Limitations,
4 action on the note for any deficiency may be commenced within
5 the 3-month period provided by N. J. S. 2A:50-2, regardless of
6 whether said action would otherwise be barred for lapse of time.

1 12. (New section) Any express agreement made or entered into
2 by a borrower at the time of or in connection with the making of
3 or renewal of any loan secured by a mortgage, or thereafter,
4 whereby the borrower agrees to waive the rights, or privileges con-
5 ferred, upon him by chapter 50 of Title 2A of the New Jersey
6 Statutes shall be void and of no effect.

1 13. (New section) This act shall not apply to proceedings to
2 collect a debt evidenced by a note and secured by a mortgage on
3 real property in the following instances:

4 a. Where the debt secured is for a business or commercial
5 purpose other than a two-family, three-family or four-family
6 residence in which the owner or his immediate family resides;

7 b. Where the mortgaged property is other than a one-family,
8 two-family, three-family or four-family dwelling in which the
9 owner or his immediate family resides at the time institution of
10 proceedings to collect the debt;

11 c. Where a banking institution, savings and loan association or
12 building and loan association, operating pursuant to State or
13 Federal law, is the lender or his assignee and the mortgage is not
14 the primary security for the debt, as evidence by (1) the financial
15 condition of one or more persons directly or indirectly liable on
16 the note, or (2) the giving of collateral in addition to the mortgage
17 as security for the debt;

18 d. Where a banking institution, savings and loan association,
19 or building and loan association, operating pursuant to State or
20 Federal law, is the lender, and the mortgage is given to secure
21 payment of a loan evidenced by a note, and where the mortgage
22 so given is subject to the lien or liens of a prior mortgage or mort-
23 gages not held by such institution or association or by any holder

24 in which such institution or association has an interest or with
25 which such institution or association has an affiliation.

1 14. (New section) If any provision or section of this act shall be
2 held to be unconstitutional, said provision or section shall be
3 excinded and the remainder of the provisions and sections of the
4 act as amended or supplemented shall be and remain valid with
5 the same effect as if said provision so held to be unconstitutional
6 had never been a part of the act.

1 15. This act shall take effect on the first day of the calendar
2 month next following the ninetieth day after enactment.

STATEMENT

This bill eliminates the difference between bonds and notes secured by residential real estate mortgages. It extends present law to allow a mortgagor to dispute the amount of a deficiency in a foreclosure in the case where a note is involved as well as those where a bond is involved.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO
SENATE, No. 732

STATE OF NEW JERSEY

DATED: SEPTEMBER 18, 1978

Under present law, a mortgagor can dispute the amount of a deficiency in a foreclosure where a bond is involved. This bill would extend present law to cases where a note is involved. The bill applies to bonds and notes secured by residential real estate mortgages.