

## CHAPTER 86

AN ACT concerning certain residential mortgages, and supplementing Title 46 of the Revised Statutes.

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

C.46:10B-36 Short title.

1. This act shall be known and may be cited as the “Save New Jersey Homes Act of 2008”.

C.46:10B-37 Findings, declarations relative to certain residential mortgages.

2. The Legislature finds and declares that:

a. Many thousands of New Jersey homeowners are at risk of losing their homes as a result of mortgage foreclosures in the immediate future;

b. Foreclosure of a family’s home often represents the loss of the family’s most valuable financial asset, and foreclosures undermine the health and economic vitality of neighborhoods;

c. Foreclosures result in the loss of millions of dollars in assets, not only those of the homeowners who are the victims of foreclosure, but also in terms of the property values of homes located in the vicinity of foreclosed properties, as well as millions in additional costs to state and local government for the loss of property tax revenue;

d. According to a report issued by the U.S. Government Accountability Office (GAO) in October 2007, New Jersey experienced an increase in residential mortgage foreclosure start rates in excess of 50% over the prior two years and the GAO found that defaults and foreclosures on mortgages have a significant economic impact on homeowners, lenders, and neighborhoods;

e. According to a report issued in April 2008 by the State Foreclosure Prevention Working Group, which is composed of banking regulators and attorneys general of 11 states, the collective efforts of mortgage lenders and government officials to address rising foreclosures has not resulted in meaningful improvement in foreclosure prevention, and new approaches, such as targeted efforts to slow down the foreclosure process, are needed to prevent millions of unnecessary foreclosures nationwide;

f. Foreclosures are largely the result of subprime lending practices, which have placed many homeowners in loans that they cannot realistically afford, by using mortgage loan features such as low introductory rates which reset to higher, variable rates, thereby increasing the risk of default for many homeowners in the State who, at an increasing rate, cannot sell their home or refinance their mortgage;

g. Industry analysts estimate that, nationwide, about 1.5 million mortgages are due to reset in 2008, and that as many as three million subprime mortgages could end up in foreclosure over the next several years; and

h. There is a compelling need for the State of New Jersey to address the ongoing economic crisis in the subprime mortgage market and to provide the means by which homeowners can obtain a period of extension to adjust their finances in order to increase their ability to retain their homes, encourage mortgage lenders to modify mortgage loan terms and resolve foreclosure disputes, and protect local governments and neighborhoods from the negative social, economic, and fiscal consequences of foreclosure and abandonment.

C.46:10B-38 Definitions relative to certain residential mortgages.

3. As used in this act:

“Creditor” means a State chartered bank, savings bank, savings and loan association or credit union, any person required to be licensed under the provisions of the “New Jersey Licensed Lenders Act,” P.L.1996, c.157 (C.17:11C-1 et seq.), and any entity acting on behalf of the creditor named in the debt obligation including, but not limited to, servicers.

“Eligible borrower” means a borrower who is obligated to repay a loan secured by an introductory rate mortgage.

“Eligible foreclosed borrower” means a borrower who is obligated to repay a loan secured by an introductory rate mortgage and who receives a notice of intention to foreclose that mortgage pursuant to the “Fair Foreclosure Act,” P.L.1995, c.244 (C.2A:50-53 et al.), except that an “eligible foreclosed borrower” shall not include an eligible borrower who has previously exercised the right to obtain a three-year period of extension pursuant to section 5 of this act.

“Full repayment” means the full repayment of the amounts due under the introductory rate mortgage, including, without limitation, upon the maturity date, a refinancing, or a sale of or other transfer of title to the property.

“Fully indexed rate” means the sum of the current value of the index used for the adjustable rate mortgage and the margin disclosed in the loan agreement.

“Introductory rate mortgage” means a consumer credit transaction in which the loan is secured by a mortgage on real estate in this State upon which there is located a one to four family dwelling which is occupied by the borrower as the borrower’s principal residence, and which provides for: (1) an introductory payment rate option that is set at least 3 percent below the fully indexed rate at the time the loan was originated and payments may adjust by more than 3 percent at the reset date regardless of whether the variable rate index has increased; or (2) an interest rate that may adjust by more than 2 percent at the end of the initial fixed rate period of the loan and which, notwithstanding the payment rate in effect, had an interest rate at origination of more than 200 basis points over the Freddie Mac 30-year conventional interest rate and which provides for an introductory rate that is set below the fully indexed rate at the time the loan was originated and may adjust at the reset date regardless of whether the variable rate index has increased. “Introductory rate mortgage” shall not include: (1) a loan that provides for a fixed rate of interest for the first five years or longer; or (2) a loan that provides for an introductory rate that is set below the fully indexed rate at the time the loan was originated only as a result of the borrower’s payment of bona fide discount points.

C.46:10B-39 Written notices from creditor to eligible borrower.

4. a. Prior to the date on which the interest rate in effect during the introductory period of an introductory rate mortgage resets to a variable interest rate under the terms of the mortgage, a creditor shall provide a series of written notices, separate and distinct from all other correspondence, to an eligible borrower. The creditor shall provide these notices at 60-day and 30-day intervals prior to the date that the introductory interest rate resets.

b. Each notice required pursuant to subsection a. of this section shall include, in plain language and in at least 14 point bold type:

- (1) the current interest rate under the terms of the introductory rate mortgage;
- (2) the date on which the interest rate resets from a fixed interest rate applicable during the introductory period to a variable interest rate;
- (3) an explanation of how the reset interest rate and monthly payment would be determined;

(4) the best estimate by the creditor of the amount of the monthly payment that will apply after the date of the reset, and the assumptions upon which the estimate is based;

(5) a list of alternatives an eligible borrower may pursue before the date of the reset, including any refinancing of the loan offered by the creditor or any renegotiation of loan terms offered by the creditor;

(6) an explanation of the borrower's right to obtain a period of extension prior to the initial interest rate reset of an introductory rate mortgage pursuant to this act and an explanation of the procedure that a borrower must follow to obtain a period of extension; and

(7) a certification of extension form that can be completed by a borrower in order to obtain a period of extension authorized pursuant to section 5 of this act.

C.46:10B-40 Period of extension; certification.

5. a. Notwithstanding any law or contract right to the contrary, prior to the initial interest rate reset of an introductory rate mortgage, a creditor shall provide an eligible borrower a period of extension for three years as provided in this section, during which the interest rate on the introductory rate mortgage shall not increase above the original introductory rate, provided the eligible borrower completes and returns a certification of extension to the creditor in accordance with the provisions of this section.

b. In order to obtain the period of extension, the eligible borrower shall provide to the creditor, prior to the date that the interest rate resets under the terms of the introductory rate mortgage, a completed certification of extension form signed by the eligible borrower, which contains:

(1) the name of the eligible borrower;

(2) the address of the property; and

(3) an affirmative statement that the eligible borrower:

(a) does not have sufficient monthly income, after deductions for necessary living expenses, to pay the monthly payments that will apply after the date that the interest rate resets;

(b) requests the period of extension;

(c) agrees to continue, during the period of extension, monthly payments, which shall include principal and interest calculated at the introductory rate on the date that the introductory rate mortgage was originated, as well as amounts for taxes, insurance, and any other amounts being paid under the terms of the mortgage prior to the interest rate reset;

(d) agrees to pay the creditor, at the time of the full repayment of the introductory rate mortgage, any interest deferred on account of the period of extension;

(e) agrees to accept the creditor's placement of a modification of mortgage on the property to secure the repayment of the interest deferred on account of the period of extension; and

(f) agrees to sign a modification of mortgage form that contains the terms of the period of extension and any documentation necessary to establish or record the modification of mortgage.

c. An eligible borrower who makes a knowing material misrepresentation in a certification of extension is guilty of a crime of the fourth degree.

d. The creditor, upon receiving the completed certification of extension, shall grant the eligible borrower the three-year period of extension, which shall commence on the date that the introductory rate is due to reset under the terms of the introductory rate mortgage.

e. Within a reasonable amount of time after the receipt of a completed certification of extension from an eligible borrower, a creditor shall provide to the eligible borrower a

written acknowledgment that the certification of extension has been received. The acknowledgment shall contain the following:

(1) the monthly payment amount that is due from the eligible borrower during the period of extension, which shall include principal and interest, calculated at the introductory rate on the date the introductory rate mortgage was originated, as well as amounts for taxes, insurance, and any other amounts being paid under the terms of the mortgage prior to the interest rate reset;

(2) a schedule of payments, indicating the date that the first monthly payment is due and the dates that each subsequent monthly payment is due during the period of extension;

(3) the address to which the eligible borrower shall send the monthly payment; and

(4) a statement of proposed modification of mortgage, which shall include:

(a) a notice to the eligible borrower that the creditor will place a modification of mortgage on the property that is the security for the introductory rate mortgage, to secure the eligible borrower's repayment of the amount of interest deferred by the period of extension; and

(b) an explanation of the method the creditor will use to calculate the amount of the interest deferred by the period of extension.

f. (1) A creditor who grants a period of extension to an eligible borrower shall have the right to record a modification of mortgage on the eligible borrower's property in the public records in the county in which the property is located to secure the eligible borrower's repayment of the amount of interest deferred by the period of extension. The modification of mortgage shall be effective from the date that it is executed. Notwithstanding any law to the contrary, the modification of mortgage shall have the same priority as the lien of the introductory rate mortgage. Upon payment by the eligible borrower of the total amount of interest deferred pursuant to the period of extension, which shall only be due upon full repayment of the introductory rate mortgage, the creditor shall provide the eligible borrower with a recordable satisfaction of the modification of mortgage, or otherwise cause the modification of mortgage to be discharged of record.

(2) If an eligible borrower fails to return to a creditor, who has a right to record a modification of mortgage pursuant to paragraph (1) of this subsection, a properly executed modification of mortgage or any other documentation necessary to establish or record the modification of mortgage, within 30 days from the borrower's receipt from the creditor of a modification of mortgage form, the creditor may record the eligible borrower's certification of extension in place of the modification of mortgage. Notwithstanding any other law to the contrary, the certification of extension shall have the same priority as the lien of the introductory rate mortgage. Upon payment by the eligible borrower of the total amount of interest deferred pursuant to the period of extension, the creditor shall provide the eligible borrower with a recordable satisfaction of the certification of extension, or otherwise cause the certification of extension to be discharged of record.

g. A creditor shall not require an eligible borrower to limit or waive the rights of the borrower to bring any claims, defenses, demands, proceedings, actions, or causes of action against the creditor as a condition of accepting an offer of any loss mitigation activities made available by the "Save New Jersey Homes Act of 2008," P.L.2008, c.86 (C.46:10B-36 et seq.).

h. An eligible borrower who has been granted a period of extension shall forfeit all rights concerning deferment of interest payments provided by this act if the eligible borrower fails to make payments under the schedule of payments set forth in the creditor's acknowledgment of the period of extension or fails to comply with the terms of any

modification of mortgage entered into between the creditor and the eligible borrower relating to the period of extension, such that the modification of mortgage becomes 60 days delinquent.

C.46:10B-41 Notice sent to eligible foreclosed borrower.

6. a. A creditor that issues to an eligible foreclosed borrower a notice of intention to foreclose an introductory rate mortgage pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et al.), shall send to the eligible foreclosed borrower a series of written notices, by regular and registered mail, separate and distinct from all other correspondence. The notices shall include in plain language and in at least 14 point bold type:

(1) A statement that the information in the notice is being provided as required by the "Save New Jersey Homes Act of 2008," P.L.2008, c.86 (C.46:10B-36 et seq.), which was enacted by the New Jersey Legislature and which provides certain rights to borrowers whose homes are the subject of a mortgage foreclosure action;

(2) A list of alternatives to foreclosure that an eligible foreclosed borrower may pursue, including any refinancing of the loan offered by the creditor and any renegotiation of loan terms offered by the creditor;

(3) An explanation of the eligible foreclosed borrower's right to obtain a period of extension for three years pursuant to the "Save New Jersey Homes Act of 2008," P.L.2008, c.86 (C.46:10B-36 et seq.), and an explanation of the procedure that an eligible foreclosed borrower must follow to obtain a period of extension;

(4) A statement that the notice should be read carefully and that the eligible foreclosed borrower may wish to consult with an attorney to understand the rights that may be available under the "Save New Jersey Homes Act of 2008," P.L.2008, c.86 (C.46:10B-36 et seq.); and

(5) A certification of extension form that can be completed by an eligible foreclosed borrower in order to obtain the period of extension authorized pursuant to section 7 of this act.

b. The notices required pursuant to subsection a. of this section shall be sent at the following intervals:

(1) within 10 days of issuing the notice of intention; and

(2) at the time that the creditor applies for entry of final judgment of foreclosure pursuant to section 6 of P.L.1995, c.244 (C.2A:50-58).

c. The notices shall be sent in envelopes that state the following information on the outside front portion of the envelope: "The New Jersey Legislature has enacted the Save New Jersey Homes Act of 2008, which may help you save your home from foreclosure. Details as to the rights you may have to obtain a period of extension of foreclosure under this new law are contained within. Please read the contents carefully. You may wish to consult with an attorney to understand your rights under this new law."

C.46:10B-42 Period of extension for eligible foreclosed borrower.

7. a. Notwithstanding any law or contract right to the contrary, a creditor shall provide an eligible foreclosed borrower a period of extension for three years as provided in this section, during which foreclosure proceedings pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et al.) shall be suspended and the eligible foreclosed borrower shall continue to pay monthly payments, which shall include principal and interest, calculated at the introductory rate on the date that the introductory rate mortgage was originated, as well as amounts for taxes, insurance, and any other amounts being paid under the terms of the mortgage prior to the interest rate reset, provided the eligible foreclosed borrower completes

and returns a certification of extension to the creditor in accordance with the provisions of this section.

b. In order to obtain the period of extension, the eligible foreclosed borrower shall provide to the creditor, no later than 90 days from the date that the creditor sends the notice required pursuant to paragraph (2) of subsection b. of section 6 of this act, a completed certification of extension form signed by the eligible foreclosed borrower, which contains:

- (1) the name of the eligible foreclosed borrower;
- (2) the address of the property; and
- (3) an affirmative statement that the eligible foreclosed borrower:

(a) requests the period of extension;

(b) agrees to continue, during the period of extension, monthly payments which shall include principal and interest, calculated at the introductory rate on the date that the introductory rate mortgage was originated, as well as amounts for taxes, insurance, and any other amounts being paid under the terms of the mortgage prior to the interest rate reset;

(c) agrees to pay the creditor, at the time of full repayment of the introductory rate mortgage:

- (i) any interest deferred on account of the period of extension;
- (ii) any fees and costs incurred by the creditor in connection with the foreclosure proceeding; and
- (iii) any arrearages owed to the creditor for monthly principal and interest payments, homeowners insurance payments, property tax payments, and any other payments that the eligible foreclosed borrower was required to pay, but failed to pay, under the terms of the introductory rate mortgage;

(d) agrees to accept the creditor's placement of a modification of mortgage on the property to secure the repayment of amounts owed pursuant to subparagraph (c) of this paragraph; and

(e) agrees to sign a modification of mortgage form that contains the terms of the period of extension and any documentation necessary to establish or record the modification of mortgage.

c. The creditor, upon receiving the completed certification of extension within the time period specified in subsection b. of this section, shall:

(1) grant the eligible foreclosed borrower the three-year period of extension, which shall commence no later than 30 days from the date that the creditor receives the eligible foreclosed borrower's completed certification of extension; and

(2) suspend the foreclosure proceeding that the creditor initiated pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et al.).

A creditor may grant relief pursuant to paragraphs (1) and (2) of this subsection, upon receipt of a completed certification of extension from an eligible foreclosed borrower after the time period specified in subsection b. of this section, in the sole discretion of the creditor.

d. Within a reasonable period of time after the receipt of a completed certification of extension from an eligible foreclosed borrower within the time period specified in subsection b. of this section, a creditor shall provide to the eligible foreclosed borrower a written acknowledgment that the certification of extension has been received. The acknowledgment shall contain the following:

(1) a statement that the foreclosure proceeding initiated pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et al.) will be suspended during the period of extension;

(2) the monthly payment amount that is due from the eligible foreclosed borrower during the period of extension, which shall include principal and interest, calculated at the

introductory rate, on the date the introductory mortgage rate was originated, as well as amounts for taxes, insurance, and any other amounts being paid under the terms of the mortgage prior to the interest rate reset;

(3) a schedule of payments, indicating the date that the first monthly payment is due and the dates that each subsequent monthly payment is due during the period of extension;

(4) the address to which the eligible foreclosed borrower shall send the monthly payment; and

(5) a statement of proposed modification of mortgage, which shall include:

(a) a notice to the eligible foreclosed borrower that the creditor will place a modification of mortgage on the property that is the security for the introductory rate mortgage, to secure the eligible foreclosed borrower's repayment of the amounts provided for in paragraph (1) of subsection e. of this section; and

(b) an explanation of the method the creditor will use to calculate the amount of the interest deferred by the period of extension, and the amounts provided for in paragraph (1) of subsection e. of this section, for which repayment is secured by the modification of mortgage.

e. (1) A creditor that grants a period of extension to an eligible foreclosed borrower shall have the right to record a modification of mortgage on the eligible foreclosed borrower's property to secure the eligible foreclosed borrower's repayment of:

(a) the amount of interest deferred by the period of extension;

(b) any fees and costs already incurred in connection with the foreclosure proceeding; and

(c) any arrearages owed to the creditor for monthly payments of principal and interest, homeowner insurance payments, property tax payments, or any other payments that the eligible foreclosed borrower was required to pay, but failed to pay, under the terms of the introductory rate mortgage.

(2) The modification of mortgage shall be effective from the date that it is executed. Notwithstanding any other law to the contrary, the modification of mortgage shall have the same priority as the lien of the introductory rate mortgage. Upon payment by the eligible foreclosed borrower of the total amount of interest deferred pursuant to the period of extension, and any other amounts representing the arrearages for which the modification of mortgage secures repayment pursuant to this act, which shall only be due upon full repayment of the introductory rate mortgage, the creditor shall provide the eligible foreclosed borrower with a recordable satisfaction of the modification of mortgage, or otherwise cause the modification of mortgage to be discharged of record.

(3) If an eligible foreclosed borrower fails to return to a creditor, who has a right to record a modification of mortgage pursuant to paragraph (1) of this subsection, a properly executed modification of mortgage or any other documentation necessary to establish or record the modification of mortgage within 30 days from the borrower's receipt from the creditor of a modification of mortgage form, the creditor may record the eligible foreclosed borrower's certification of extension in place of the modification of mortgage. Notwithstanding any other law to the contrary, the certification of extension shall have the same priority as the lien of the introductory rate mortgage. Upon payment by the eligible foreclosed borrower of the total amount of interest deferred pursuant to the period of extension, and any other amounts representing the arrearages for which the certification of extension secures repayment pursuant to this act, the creditor shall provide the eligible foreclosed borrower with a recordable satisfaction of the certification of extension, or otherwise cause the certification of extension to be discharged of record.

f. A creditor shall not require an eligible foreclosed borrower to limit or waive the rights of the borrower to bring any claims, defenses, demands, proceedings, actions, or causes of action against the creditor as a condition of accepting an offer of any loss mitigation activities made available by the "Save New Jersey Homes Act of 2008," P.L.2008, c.86 (C.46:10B-36 et seq.).

g. An eligible foreclosed borrower who has been granted a period of extension shall forfeit all rights concerning deferment of interest payments, suspension of foreclosure, and deferment of payment of amounts secured by a modification of mortgage, provided by the provisions of this act if the eligible foreclosed borrower fails to make payments under the schedule of payments as set forth in the creditor's acknowledgment of the period of extension or fails to comply with the terms of the modification of mortgage entered into between the creditor and the eligible foreclosed borrower relating to the period of extension, such that the modification of mortgage becomes 60 days delinquent.

h. A court shall not approve an entry of final judgment in a foreclosure proceeding commenced pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et al.) as to an introductory rate mortgage unless the court is satisfied from the pleadings and certifications on file with the court that notice of the availability of the period of extension was provided to the eligible foreclosed borrower in accordance with the provisions of this act.

#### C.46:10B-43 Violations, penalties.

8. a. Any person who willfully violates any provision of this act shall be liable to a penalty of not more than \$10,000 for the first offense, and not more than \$20,000 for the second and subsequent offense, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), except that immaterial errors in a notice required to be provided by a creditor pursuant to this act, shall not constitute a violation of this act.

b. If a creditor violates any provision of this act, an eligible borrower, an eligible foreclosed borrower, or the Attorney General may bring an action to enforce compliance by a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

#### C.46:10B-44 Creditor's failure to fulfill obligation.

9. Failure of a creditor to fulfill any obligation under this act shall not be considered to be the exercise of a power, right, benefit, or privilege under the parity provisions of P.L.1981, c.163 (C.17:9A-24b1), section 48 of P.L.1963, c.144 (C.17:12B-48), or section 12 of P.L.1984, c.171 (C.17:13-90), and it shall not be a defense to a violation of this act that the failure to fulfill any provision of the act is an exercise of such a power, right, benefit, or privilege.

#### C.46:10B-45 Liberal construction.

10. This act shall be liberally construed to effectuate the purposes of the act.

#### C.46:10B-46 Severability.

11. If any section, subsection, paragraph, sentence or other part of this act is adjudged unconstitutional or invalid, the judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its effect to the section, subsection, paragraph, sentence



or other part of this act directly involved in the controversy in which the judgment shall have been rendered.

C.46:10B-47 Regulations.

12. The Attorney General, in consultation with the Department of Banking and Insurance shall adopt regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate the purposes of this act.

C.46:10B-48 Effective date; term.

13. This act shall take effect immediately, and remain in effect until January 1, 2011.

Approved September 15, 2008.