

CHAPTER 84

AN ACT concerning the dissemination of certain mortgage information and the mortgage foreclosure forbearance period, amending P.L.2008, c.127 and repealing section 18 of P.L.2008, c.127.

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

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

C.46:10B-50 Six-month forbearance period before foreclosure; definitions.

16. a. (1) A creditor that files and serves, pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et al.), a summons and complaint of foreclosure on a high risk mortgage loan, shall grant the borrower a six-month period of forbearance, upon written request of the borrower, to pursue a loan workout, loan modification, refinancing, or other alternative through the Judiciary's Foreclosure Mediation Program, where eligible, or another form of mediation or settlement discussion. During the six-month forbearance period, the interest rate on the high risk mortgage loan shall not increase and the creditor shall take no further action to pursue foreclosure of the property. Nothing in this subsection shall constitute a limitation on the ability of the creditor and borrower to participate in the Judiciary's Foreclosure Mediation Program or another form of mediation or settlement discussion, or enter into an agreement as a result of that mediation.

As used in this section:

"Forbearance" means a period of six months during which the creditor shall suspend all efforts to advance any judicial foreclosure proceedings filed by the creditor against the borrower.

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

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

has a reset mortgage interest rate that increases the initial interest rate by two or more percentage points;

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

contains a negative amortization schedule;

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

contains an enforceable prepayment penalty; or

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

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

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

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

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

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

(4) Upon receipt of a request for forbearance, the creditor shall:

(a) suspend all efforts, during the forbearance period, to advance any judicial proceeding in furtherance of the foreclosure action; and

(b) notify the court that a forbearance has been granted with the dates that the forbearance period will begin and end.

Nothing herein shall preclude the creditor and borrower from participating in mediation or settlement discussions, including the Judiciary's Foreclosure Mediation Program.

b. When a forbearance period is granted by the creditor pursuant to subsection a. of this section, the borrower and creditor shall participate in the Judiciary's Foreclosure Mediation Program, where eligible, or another form of mediation or settlement discussion; provided, however, that the inability of the borrower to participate in mediation as a result of circumstances beyond the borrower's control shall not affect the borrower's continued eligibility for forbearance.

c. If the borrower ceases to occupy the property at any time during the period of forbearance under this section, or if the borrower affirmatively advises the creditor, in writing, that the borrower will not participate in the Judiciary's Foreclosure Mediation Program or another form of mediation or settlement discussion, the creditor shall notify the court, and upon notification, and approval of the court, the period of forbearance shall be deemed to have ended.

d. The provisions of this section shall expire two years following the effective date of P.L.2009, c.84; provided, however, that a forbearance period shall continue for its entire six-month period notwithstanding the expiration of this section.

Repealer.

2. Section 18 of P.L.2008, c.127 (C.46:10B-52) is repealed.

3. This act shall take effect immediately and section 2 shall be retroactive to January 9, 2009.

Approved July 2, 2009.