

CHAPTER 64

AN ACT concerning foreclosure mediation, amending P.L.1995, c.244, supplementing Title 2A of the New Jersey Statutes, and dedicating monies from foreclosure filing fees and fines.

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

C.2A:50-74 Short title.

1. This act shall be known and may be cited as the “New Jersey Foreclosure Mediation Act.”

C.2A:50-75 Findings, declarations relative to foreclosure mediation; definitions.

2. a. The Legislature finds and declares that the New Jersey Judiciary established a Foreclosure Mediation Program in 2008 in response to the increase in residential foreclosures. This act ensures the continuation of mediation services provided under that program to assist homeowners and lenders in pursuing a mutually agreeable alternative to mortgage foreclosure litigation and to avoid the harmful effects of residential property foreclosure on homeowners, families, and communities.

b. For the purposes of P.L.2019, c.64 (C.2A:50-74 et al.):

“Certification document” means the document that the homeowner-borrower is required to submit to the court upon the initiation of foreclosure mediation, pursuant to subsection b. of section 4 and subsection a. of section 5 of P.L.2019, c.64 (C.2A:50-77 and C.2A:50-78).

“Eligible property” means an owner-occupied one- to four-dwelling unit residence, one of which is occupied, or is planned to be occupied, by the homeowner-borrower, or a member of the homeowner-borrower’s immediate family.

“Foreclosure Mediation Program” or “mediation program” means the New Jersey Judiciary's Foreclosure Mediation Program as authorized by the Supreme Court of New Jersey.

“Homeowner-borrower” means the borrower who executed the mortgage loan for an eligible property that is subject to a foreclosure complaint filed by the original residential mortgage lender or an assignee of the original residential mortgage lender.

“Trained foreclosure prevention and default mitigation counselor” means a housing counselor employed by a housing counseling agency certified by the United States Department of Housing and Urban Development, who has successfully completed a foreclosure prevention and default mitigation training course.

C.2A:50-76 Written notice of eligibility to participate.

3. A homeowner-borrower shall receive written notice from the residential mortgage lender of the option to participate in the Foreclosure Mediation Program in accordance with the court rules, procedures, and guidelines adopted by the Supreme Court at the time the homeowner-borrower receives a notice of intention to foreclose, pursuant to section 4 of P.L.1995, c.244 (C.2A:50-56). Upon the filing of a mortgage foreclosure complaint against an eligible property, the homeowner-borrower shall again receive written notice of the option to participate in the Foreclosure Mediation Program in accordance with the court rules, procedures, and guidelines adopted by the Supreme Court. The written notice required pursuant to this section shall be available in both English and Spanish.

C.2A:50-77 Participation in mediation.

4. a. (1) A court may order mediation whenever a homeowner-borrower files an answer to a foreclosure complaint.

(2) Alternatively, the homeowner-borrower may initiate mediation in accordance with court rules. The courts shall provide the homeowner-borrower no less than 60 days following receipt of the foreclosure complaint and summons to initiate mediation.

b. The homeowner-borrower may not participate in mediation unless the certification document required pursuant to section 5 of P.L.2019, c.64 (C.2A:50-78) is submitted to the court and signed by a trained foreclosure prevention and default mitigation counselor, verifying that the homeowner-borrower is cooperating with the counselor.

c. The homeowner-borrower shall not be required to pay any fees to participate in the mediation program.

C.2A:50-78 Certification document; attendance; sanctions, penalties.

5. a. Whenever a homeowner-borrower initiates mediation or is ordered to participate in the mediation program, that homeowner-borrower shall be responsible for submitting a certification document to the court, confirming that they meet the definition of a homeowner-borrower, pursuant to subsection b. of section 2 of P.L.2019, c.64 (C.2A:50-75), and that the property being foreclosed upon continues to be an eligible property pursuant to subsection b. of section 2 of P.L.2019, c.64 (C.2A:50-75). Pursuant to subsection b. of section 4 of P.L.2019, c.64 (C.2A:50-77), the certification document submitted to the court shall also be signed by the trained foreclosure prevention and default mitigation counselor, verifying that the trained foreclosure prevention and default mitigation counselor is counseling the homeowner-borrower.

b. Each party shall participate in foreclosure mediation, and shall attend the mediation session in person or by telephone through a person with the authority to consider alternatives to foreclosure so that the parties may reach a mutually acceptable loan modification, loan workout, refinancing agreement, or other resolution. If any party or attorney for a party fails to attend a mediation session, the court, in addition to any sanction the court deems appropriate, may sanction a party or attorney for a violation of this subsection with a civil penalty of up to \$1,000 or allow a party to recover reasonable attorney's fees or litigation expenses, or both. In determining the type of sanction to impose against a party, the court may consider whether the conduct was intentional and whether the party has engaged in a pattern of similar conduct with respect to the current complaint or any previous complaints.

C.2A:50-79 Recording of results, publication on website.

6. The Judiciary shall record the result of each foreclosure mediation session, and compile this information into an accessible format so that the frequency of the program's success can be identified, and shall publish the compiled information on the Judiciary's Internet website. The information shall include the aggregate data regarding: the number of cases in mediation; the number of mediation sessions held; the number of mediation sessions that did not go forward because either party did not participate; the number of successful mediations delineated by loan modification, forbearance, deed in lieu of foreclosure, short sale agreement, or other agreement resulting in the dismissal of the complaint for foreclosure; and the number of homeowners against whom another complaint for foreclosure was not filed in the following two years. The information published on the Judiciary's Internet website shall be updated at least annually. However, the first report shall be published two years after the effective date of P.L.2019, c.64 (C.2A:50-74 et al.).

C.2A:50-80 “Foreclosure Mediation Fund.”

7. There is created in the General Fund a dedicated, non-lapsing fund to be known as the “Foreclosure Mediation Fund,” to be held separate and apart from all other funds of the State. The fund shall be administered by the Administrative Office of the Courts. In each action for foreclosure, the plaintiff shall pay \$155 to the clerk of the court in addition to the fee associated with the filing of the first paper. Of that \$155 payment, \$60 and all monies collected from each civil penalty imposed for violations of subsection b. of section 5 of P.L.2019, c.64 (C.2A:50-78), shall be deposited in the fund. The monies shall be appropriated annually by the Legislature to the Administrative Office of the Courts for the purposes of the operation of the Foreclosure Mediation Program, including the compensation of mediators, and to enhance the integrity of the mortgage foreclosure review process. All interest or other income earned on monies deposited into the fund, and any monies that may be appropriated or otherwise become available for the purpose of the fund, shall be credited and deposited into the fund. The remaining \$95 collected from each filing fee shall be used to reimburse trained foreclosure prevention and default mitigation counselors for their services, pursuant to P.L.2019, c.64 (C.2A:50-74 et al.).

8. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read as follows:

C.2A:50-56 Notice of intention to foreclose.

4. a. Upon failure to perform any obligation of a residential mortgage by the residential mortgage debtor and before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation and 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 in person or mailed to the party.

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 P.L.1995, c.244 (C.2A:50-57);
- (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 effective, 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 P.L.1995, c.244 (C.2A:50-57), 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 the State 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 P.L.1995, c.244 (C.2A:50-53 et seq.), 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 nonprofit organizations, if any, as identified by the Commissioner of Banking and Insurance. This requirement shall be satisfied by attaching a list of such programs promulgated by the commissioner;

(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; and

(12) that if the lender takes the steps indicated pursuant to paragraph (6) of this subsection, the debtor has the option to participate in the Foreclosure Mediation Program following the filing of a mortgage foreclosure complaint by initiating mediation pursuant to paragraph (2) of subsection a. of section 4 of P.L.2019, c.64 (C.2A:50-77). Notice of the option to participate in the Foreclosure Mediation Program shall adhere to the requirements of section 3 of P.L.2019, c.64 (C.2A:50-76) and any court rules, procedures, or guidelines adopted by the Supreme Court.

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.

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.

9. This act shall take effect on the first day of the seventh month next following enactment.

Approved April 29, 2019.