

CHAPTER 132
(CORRECTED COPY)

AN ACT concerning affordability controls on affordable housing and amending P.L.1995, c.244.

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

1. 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 a notice of intention, which shall include a notice of the right to cure the default as provided in section 5 of P.L.1995, c.244 (C.2A:50-57), to: the residential mortgage debtor, and, if the mortgage is secured by a residence for which a restriction on affordability was recorded in the county in which the property is located, the clerk of the municipality in which the subject property is located, the municipal housing liaison, if one has been appointed by the municipality pursuant to the regulations of the Council on Affordable Housing, and the Commissioner of Community Affairs, at least 30 days, but not more than 180 days, in advance of such action as provided in this section. For the purposes of this section, "restriction on affordability" means any conditions recorded with a mortgage or a deed which would limit the sale of such property to income qualified households pursuant to the rules adopted to effectuate the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

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 and, if the property is subject to restrictions on affordability, the address and phone number of the municipal affordable housing liaison and of the New Jersey Housing and Mortgage Finance Agency. 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;

(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;

(13) that the debtor is entitled to housing counseling, at no cost to the debtor, through the Foreclosure Mediation Program established by the New Jersey Judiciary, including information on how to contact the program;

(14) that if the property which is the subject of the mortgage has more than one dwelling unit but less than five, one of which is occupied by the debtor or a member of the debtor's immediate family as the debtor's or member's residence at the time the loan is originated, and is not properly maintained and meets the necessary conditions for receivership eligibility, established pursuant to section 4 of the "Multifamily Housing Preservation and Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential mortgage lender shall file an order to show cause to appoint a receiver; and

(15) that the lender is either licensed in accordance with the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89) or exempt from licensure under the act in accordance with applicable law.

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.

g. If more than 180 days have elapsed since the date the notice required pursuant to this section is sent, and any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage has not yet been commenced, the lender shall send a new written notice at least 30 days, but not more than 180 days, in advance of that action.

h. If the property which is the subject of the notice of intention to foreclose has more than one dwelling unit but less than five, one of which is occupied by the debtor or a member of the debtor's immediate family as the debtor's or member's residence at the time the loan is originated, and is not properly maintained and meets the necessary conditions for receivership eligibility, established pursuant to section 4 of the "Multifamily Housing Preservation and Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential mortgage lender shall file an order to show cause to appoint a receiver.

2. Section 11 of P.L.1995, c.244 (C.2A:50-63) is amended to read as follows:

C.2A:50-63 Optional foreclosure procedure.

11. a. An optional foreclosure procedure without sale for the disposition of a foreclosed premises is hereby established pursuant to subsection b. of this section, wherein a lender may elect to proceed according to the provisions of this act and R.4:64-1(d) of the Rules Governing the Courts of the State of New Jersey.

b. Use of the optional procedure without sale, 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 office or the court at the same time that the lender applies to the office or the court for the order fixing the amount, time and place for redemption.

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 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 by certified or registered mail, return receipt requested.

e. (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 liens and encumbrances against the property, including mortgages, tax liens and judgments actually against the property (not including similar name judgments), and any other lien, is equal to or greater than 92 percent of the fair market value of the property. An affidavit setting forth with specificity the fair market value of the property, the unpaid balance of the obligation, including all mortgages and liens and the method by which the lender determined that the property has no equity, shall be submitted to the office or the court at the time the lender applies for the order fixing the amount, time and place for redemption.

(2) If a lender proceeds with the optional procedure under this subsection, and if the debtor has not objected and requested a public sale pursuant to this section, when the foreclosed property is resold by the lender following judgment and provided the resale price received by the lender is in excess of the amount necessary to repay the debt, interest and reasonable costs of the lender, and all carrying charges, including, but not limited to, the reasonable 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 the State of 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 in whole or in part 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. Failure of a lender to comply with the provisions of paragraphs (2) and (3) of this subsection e. shall not affect title to the foreclosed property.

f. (1) 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, a lender may elect to proceed with the optional procedure by filing an affidavit or certification with the office or the court.

(2) The affidavit or certification shall set forth the facts which the lender alleges show that it 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. 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 may enter an order fixing the amount, time, 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, together with interest 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, also to the address of the property being foreclosed. The order for redemption or notice thereof shall be sent by ordinary mail and certified mail, return receipt requested, within 20 days after the date the order is entered, except that, as to defendants whose addresses are unknown and who were served by publication, no further publication of the order for redemption or notice thereof need be made.

(2) The notice shall:

(a) inform the defendants that the plaintiff is proceeding under an optional procedure authorized by section 11 of this act and set out the steps of the optional 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 procedure, a defendant who wishes to object to the optional procedure and request a public sale with respect to the mortgaged premises being foreclosed, 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, and subject to compliance with the provisions of this act, the office or court shall enter a judgment of foreclosure which provides for a public sale of the premises in accordance with applicable law. 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 date fixed for redemption. This cash deposit or bond shall be in an amount which is 10% of the amount found due in the order fixing the amount, time and place for redemption and shall be held to secure the plaintiff against any 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 in proper cases 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 a judgment debarring and foreclosing the equity of redemption of the defendants and each of them 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. 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 judgment shall be accepted for recording by the county recording officer pursuant to P.L.1939, c.170 (C.46:16-1.1).

m. Upon entry of a judgment vesting title in the plaintiff pursuant to subsection l. 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.

3. This act shall take effect immediately.

Approved June 24, 2019.