

# SENATE, No. 1435

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED FEBRUARY 27, 2014

**Sponsored by:**

**Senator RONALD L. RICE**

**District 28 (Essex)**

**SYNOPSIS**

Provides foreclosure forbearance for certain residential borrowers and exempts certain lenders that offer sustainable mortgage modifications.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning residential mortgage foreclosures and  
2 supplementing Title 46 of the Revised Statutes.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. The Legislature finds and declares that:

8 a. New Jersey is facing an unprecedented emergency due to the  
9 increasing number of residential mortgage foreclosures in the State.  
10 The growing number of homeowners whose mortgage principal  
11 exceeds their home's value, a situation commonly referred to as  
12 being "underwater," has exacerbated this problem. A vicious cycle  
13 is created in which more foreclosures adversely affect property  
14 values, thereby pushing more mortgages underwater.

15 b. It is reasonable and necessary, in order to avoid more  
16 foreclosures and the deleterious effects of foreclosures on  
17 neighborhoods and the economy, to modify the foreclosure process  
18 through a forbearance period to provide additional time for  
19 underwater borrowers to work out loan modifications, while  
20 providing an exemption from forbearance periods for lenders that  
21 agree to a sustainable mortgage modification of the underwater  
22 mortgage.

23  
24 2. As used in this act:

25 "Forbearance" means a period of six months during which the  
26 creditor shall suspend all efforts to advance any judicial foreclosure  
27 proceedings filed by the creditor against the borrower pursuant to  
28 section 3 of this act.

29 "Principal write-down" means a reduction in the amount of  
30 principal owed on a mortgage note so that the principal amount of  
31 the mortgage does not exceed the property's fair market value. A  
32 principal write-down shall include, but not be limited to, a reduction  
33 in principal conditioned on a shared appreciation agreement in  
34 which the borrower and the creditor share in any appreciation in the  
35 property's value after the date the principal write-down is executed.

36 "Residential borrower" or "borrower" means a borrower: (1)  
37 whose mortgage is the subject of a foreclosure action filed pursuant  
38 to the "Fair Foreclosure Act," P.L.1979, c.244 (C.2A:50-53 et al.),  
39 and is secured by a property that is the borrower's primary  
40 residence for at least two years prior to the borrower being served  
41 the summons and complaint of foreclosure; and (2) that owes a  
42 principal amount, on the mortgage that is the subject of the  
43 foreclosure action, that is in excess of 110% of the fair market value  
44 of the property to which the mortgage is attached.

45 "Sustainable modification" means a loan modification that is  
46 either: (1) a principal write-down; or (2) a reduction in the  
47 borrower's monthly mortgage payment to 30% or less of the  
48 borrower's gross monthly income.

1       3. a. (1) Except as provided in section 4 of this act, a creditor  
2 that files and serves, pursuant to the "Fair Foreclosure Act,"  
3 P.L.1995, c.244 (C.2A:50-53 et al.), a summons and complaint of  
4 foreclosure on a residential mortgage loan, shall grant a residential  
5 borrower a six-month period of forbearance, upon written request of  
6 the borrower, to pursue a loan workout, loan modification,  
7 refinancing, or other alternative through the Judiciary's Foreclosure  
8 Mediation Program, where eligible, or another form of mediation or  
9 settlement discussion. During the six-month forbearance period,  
10 the creditor shall take no further action to pursue foreclosure of the  
11 property.

12       (2) Upon serving the summons and complaint in a foreclosure  
13 action, the creditor shall notify the borrower of the borrower's right  
14 to forbearance as provided in this section and, upon receipt of  
15 written request by the borrower and sufficient documentation  
16 evidencing eligibility for forbearance pursuant to this section,  
17 within 30 days of the receipt of the summons and complaint, the  
18 creditor shall grant the unemployed or underemployed borrower a  
19 six-month period of forbearance, beginning on the date the creditor  
20 receives the borrower's request.

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

23       (a) the circumstances provided for in this section under which a  
24 borrower is eligible to receive forbearance;

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

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

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

31       (a) notwithstanding any other law, rule, or contract provision to  
32 the contrary, suspend all efforts, during the forbearance period, to  
33 advance any judicial proceeding in furtherance of the foreclosure  
34 action; and

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

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

45       c. If the borrower ceases to occupy the property at any time  
46 during the period of forbearance under this section, or if the  
47 borrower affirmatively advises the creditor, in writing, that the  
48 borrower will not participate in the Judiciary's Foreclosure

1 Mediation Program or another form of mediation or settlement  
2 discussion, the creditor shall notify the court, and upon notification,  
3 and approval of the court, the period of forbearance shall be  
4 terminated.

5 d. Nothing in this section shall constitute a limitation on the  
6 ability of the creditor and borrower to participate in the Judiciary's  
7 Foreclosure Mediation Program or another form of mediation or  
8 settlement discussion, or enter into an agreement as a result of that  
9 mediation.

10  
11 4. a. Notwithstanding the provisions of section 3 of this act, a  
12 creditor that is otherwise required to grant a forbearance period  
13 pursuant to that section shall be exempt from that requirement with  
14 respect to a property if the creditor offers the borrower a sustainable  
15 modification of the mortgage loan. If a creditor offers a sustainable  
16 modification, the creditor shall notify the court, and upon  
17 notification, and approval of the court, the creditor shall be exempt  
18 from the requirements of section 3 of this act with respect to that  
19 property.

20 b. A creditor that offers a sustainable modification, after  
21 obtaining approval of the court, shall notify the borrower that is  
22 offered the sustainable modification pursuant to subsection a. of this  
23 section that the borrower shall be ineligible for a forbearance period  
24 pursuant to section 3 of this act.

25  
26 5. This bill shall take effect immediately and shall expire three  
27 years thereafter; provided, however, that a forbearance period shall,  
28 subject to the provisions of section 3 of this act, continue for its  
29 entire six-month period notwithstanding the expiration of this act.

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32 STATEMENT

33  
34 This bill requires creditors seeking to foreclose on an  
35 "underwater" residential mortgage loan to grant a residential  
36 borrower a six-month period of forbearance. If, however, the  
37 creditor offers the borrower a sustainable mortgage modification,  
38 the creditor would then be exempt from the forbearance  
39 requirement with respect to the property. New Jersey is facing an  
40 unprecedented emergency due to the increasing numbers of  
41 residential mortgage foreclosures in the State. The growing number  
42 of homeowners whose mortgage principal exceeds their home's  
43 value, a situation commonly referred to as being "underwater," has  
44 exacerbated this problem. A vicious cycle is created in which more  
45 foreclosures adversely affect property values, thereby pushing more  
46 mortgages underwater.

47 This bill attempts to avoid more foreclosures and the deleterious  
48 effects of foreclosures on neighborhoods and the economy by

1 modifying the foreclosure process through a forbearance period to  
2 provide additional time for underwater borrowers to work out loan  
3 modifications, while providing an exemption from forbearance  
4 periods for lenders that agree to a sustainable mortgage  
5 modification.

6 The bill provides that a creditor that files and serves, pursuant to  
7 the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et al.), a  
8 summons and complaint of foreclosure on a residential mortgage  
9 loan, must grant a residential borrower a six-month period of  
10 forbearance, upon written request of the borrower, to pursue a loan  
11 workout, loan modification, refinancing, or other alternative  
12 through the Judiciary's Foreclosure Mediation Program, where  
13 eligible, or another form of mediation or settlement discussion.  
14 During the six-month forbearance period, the creditor may not take  
15 further action to pursue foreclosure of the property.

16 The bill defines a "residential borrower" or "borrower" as a  
17 borrower: (1) whose mortgage that is the subject of the foreclosure  
18 action is secured by a property that is the borrower's primary  
19 residence for at least two years prior to the borrower being served  
20 the summons and complaint of foreclosure; and (2) that owes a  
21 principal amount, on the mortgage that is the subject of the  
22 foreclosure action, that is in excess of 110% of the fair market value  
23 of the property to which the mortgage is attached.

24 The bill requires the creditor, upon serving the summons and  
25 complaint in a foreclosure action, to notify the borrower of the  
26 borrower's right to forbearance as provided for in the bill and, upon  
27 receipt of written request by the borrower and sufficient  
28 documentation evidencing eligibility for forbearance within 30 days  
29 of the receipt of the summons and complaint, to grant the  
30 unemployed or underemployed borrower a six-month period of  
31 forbearance, beginning on the date the creditor receives the  
32 borrower's request.

33 The notice of the borrower's right to forbearance must include  
34 the following information:

35 (1) the circumstances under which a borrower is eligible to  
36 receive forbearance;

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

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

42 Upon receipt of a request for forbearance, the bill requires the  
43 creditor to:

44 (1) notwithstanding any other law, rule or contract provision to  
45 the contrary, suspend all efforts, during the forbearance period, to  
46 advance any judicial proceeding in furtherance of the foreclosure  
47 action; and

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

3       The bill requires that when a forbearance period is granted by the  
4       creditor pursuant to the bill's provisions, the borrower and creditor  
5       must participate in the Judiciary's Foreclosure Mediation Program,  
6       where eligible, or another form of mediation or settlement  
7       discussion; provided, however, that the inability of the borrower to  
8       participate in mediation as a result of circumstances beyond the  
9       borrower's control does not affect the borrower's continued  
10      eligibility for forbearance.

11      The bill also provides that if the borrower ceases to occupy the  
12      property at any time during the period of forbearance, or if the  
13      borrower affirmatively advises the creditor, in writing, that the  
14      borrower will not participate in the Judiciary's Foreclosure  
15      Mediation Program or another form of mediation or settlement  
16      discussion, the creditor must notify the court, and upon notification,  
17      and approval of the court, the period of forbearance shall be  
18      terminated.

19      The bill also provides that a creditor shall be exempt from the  
20      requirement to provide a forbearance period if the creditor offers  
21      the borrower a sustainable modification of the mortgage loan. A  
22      "sustainable modification" means a loan modification that is either:  
23      (1) a principal write-down so that the mortgage principal does not  
24      exceed the market value of the property; or (2) a reduction in the  
25      borrower's monthly mortgage payment to 30% or less of the  
26      borrower's gross monthly income.

27      If a creditor offers a sustainable modification, the creditor must  
28      notify the court, and upon notification, and approval of the court,  
29      the creditor is exempt from the mortgage forbearance requirements  
30      of the bill with respect to that property. The creditor must notify  
31      the borrower when the creditor is exempt from the forbearance  
32      requirement.

33      The bill provides that the provisions of the bill will expire three  
34      years after enactment; provided, however, a forbearance period will  
35      continue for its entire six-month period, notwithstanding the  
36      expiration of the bill's provisions.