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.

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

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

1. The Legislature finds and declares that:

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

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

2. As used in this act:

"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 pursuant to section 3 of this act.

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

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

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

3. a. (1) Except as provided in section 4 of this act, 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 residential mortgage loan, shall grant a residential 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 creditor shall take no further action to pursue foreclosure of the property.

(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 in this section and, upon receipt of written request by the borrower and sufficient documentation evidencing eligibility for forbearance pursuant to this section, within 30 days of the receipt of the summons and complaint, the creditor shall grant the unemployed or underemployed 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) the circumstances provided for in this section under which a borrower 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; and

(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) notwithstanding any other law, rule, or contract provision to the contrary, 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.

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 terminated.

d. Nothing in this section 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.

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

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

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

STATEMENT

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

This bill attempts to avoid more foreclosures and the deleterious effects of foreclosures on neighborhoods and the economy by modifying the foreclosure process through a forbearance period to provide additional time for underwater borrowers to work out loan modifications, while providing an exemption from forbearance periods for lenders that agree to a sustainable mortgage modification.

The bill provides that 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 residential mortgage loan, must grant a residential 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 creditor may not take further action to pursue foreclosure of the property.

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

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

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

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

(2) 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; and

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

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

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

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

The bill requires that when a forbearance period is granted by the creditor pursuant to the bill’s provisions, the borrower and creditor must 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 does not affect the borrower's continued eligibility for forbearance.

The bill also provides that if the borrower ceases to occupy the property at any time during the period of forbearance, 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 must notify the court, and upon notification, and approval of the court, the period of forbearance shall be terminated.

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

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

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