ASSEMBLY, No. 223



STATE OF NEW JERSEY

219th LEGISLATURE



PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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District 28 (Essex)

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SYNOPSIS

Provides forbearance of residential mortgage foreclosures under certain circumstances; places additional requirements on attorneys, residential mortgage lenders, and courts, as part of foreclosure process.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



An Act concerning residential mortgage foreclosures and supplementing P.L.1995, c.244 (C.2A:50-53 et seq.).

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. a. 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 a first mortgage loan that has one or more of the following characteristics:

(1) is an interest only mortgage with a future interest reset rate;

(2) has a reset mortgage interest rate that increases the initial interest rate by two or more percentage points during any period of time;

(3) contains a payment option plan or a "pick a payment" plan;

(4) contains a negative amortization schedule;

(5) 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;

(6) contains an enforceable prepayment penalty; or

(7) 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).

b. A residential mortgage lender 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, if 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 residential mortgage lender 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.

c. Upon serving the summons and complaint in a foreclosure action, the residential mortgage lender 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 residential mortgage lender shall grant the borrower a six-month period of forbearance, beginning on the date the residential mortgage lender receives the borrower's request.

d. The notice of the borrower's right to forbearance shall include the following information:

(1) whether the loan being foreclosed upon 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;

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

e. Upon receipt of a request for forbearance, the residential mortgage lender shall:

(1) 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.

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

f. When a forbearance period is granted by the residential mortgage lender pursuant to this section, the borrower and residential mortgage lender shall participate in the Judiciary's Foreclosure Mediation Program, if 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.

g. 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 residential mortgage lender, in writing, that the borrower will not participate in the Judiciary's Foreclosure Mediation Program or another form of mediation or settlement discussion, the residential mortgage lender shall notify the court, and upon notification, and approval of the court, the period of forbearance shall be deemed to have ended.

h. The provisions of this section shall expire two years following the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill); provided, however, that a forbearance period shall continue for its entire six-month period notwithstanding the expiration of this section.

2. a. In addition to any other requirements under law, regulation or court rule, in all residential mortgage foreclosure actions, an attorney filing a foreclosure complaint shall include a certification of diligent inquiry. The certification of diligent inquiry shall certify:

(1) that the attorney has communicated with an employee or employees of the plaintiff who: (a) personally reviewed the documents being submitted to support the complaint; and (b) confirmed the accuracy of the documents;

(2) the names and titles, and the responsibilities in those titles, of the plaintiff’s employees with whom the attorney communicated pursuant to paragraph (1) of this section;

(3) that the attorney has reviewed the facts of the case and that, based on the information received pursuant to this section and the attorney’s review of the pertinent documents, to the best of the attorney’s knowledge, information and belief there is a reasonable basis for the commencement of the action and that the plaintiff is currently the residential mortgage lender entitled to enforce rights under those documents;

(4) that the attorney is aware that the failure to comply with the provisions of this section may result in the penalties provided for in subsection b. of this section or, where the failure constitutes a violation of the Rules of Professional Conduct, may include sanctions imposed by the Supreme Court of New Jersey; and

(5) that the complaint and all documents annexed thereto: (a) are filed consistent with the requirements of R.1:4-8(a), which prohibits frivolous litigation; (b) include the original promissory note, or a copy, which names the residential mortgage lender as the owner of the note; and (c) contain a detailed methodology used to calculate and compute the amount of principal and interest due from the debtor as stated in the complaint.

b. If the court finds that the plaintiff has failed to comply with the provisions of subsection a. of this section, the court may dismiss the complaint, with or without prejudice, or deny the accrual of any interest, costs, attorney’s fees and other fees relating to the mortgage debt.

3. a. In addition to any other requirements under law, regulation, or court rule, in all residential mortgage foreclosure actions, a residential mortgage lender, as a condition of proceeding with a mortgage foreclosure action, shall provide a certification to the court, which states all of the following:

(1) the lender owns the mortgage and the note evidencing the mortgage debt, and has attached to the certification, or to the attorney’s certification required pursuant to section 2 of this act, the original note which names the plaintiff as the payee on the note;

(2) with respect to any assignment of mortgage, affidavit, or other document purporting to confirm the mortgage debt or default on payments, that the lender has not engaged in any creating, signing, or notarizing, by persons who are without knowledge of the facts being attested to;

(3) the methodology used to calculate and compute the amount of principal and interest due from the debtor as stated in the complaint and any subsequent pleadings or filings with the court that indicate the amount due from the debtor; and

(4) the names of all the parties in interest, including any party whose interest is subordinate to, or affected by, the mortgage foreclosure action and, for each party, a description of the nature of the interest.

b. If the court finds that the plaintiff has failed to comply with the provisions of subsection a. of this section, the court may dismiss the complaint, with or without prejudice, or deny the accrual of any interest, costs, attorney’s fees and other fees relating to the mortgage debt.

4. In addition to any other requirements under law, regulation, or court rule, in all residential mortgage foreclosure actions, a court shall:

a. allow an evidentiary hearing for any debtor that requests an evidentiary hearing;

b. allow plaintiffs to place on the record only evidence that is admissible according to court rule and relevant case law; and

c. ensure that the plaintiff in the action owns the mortgage and the note and, in the case of a party that is a foreign trust claiming interest in the note, through participation in a mortgage-backed security or otherwise, the court shall not proceed with the foreclosure action if the foreign trust is not registered to do business in New Jersey.

5. This act shall take effect on the 90th day next following enactment.

STATEMENT

This bill provides that a residential mortgage lender 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, as defined in the bill, 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, if 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.

The bill provides that upon serving the summons and complaint in a foreclosure action, the residential mortgage lender shall notify the borrower of the borrower's right to forbearance, and, upon receipt of written request by the borrower, within 30 days of the receipt of the summons and complaint, the residential mortgage lender shall grant the borrower a six-month period of forbearance, beginning on the date the residential mortgage lender receives the borrower's request.

Upon receipt of a request for forbearance, the residential mortgage lender shall:

(1) 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 also provides that when a forbearance period is granted by the residential mortgage lender, the borrower and residential mortgage lender shall participate in the Judiciary's Foreclosure Mediation Program, if eligible, or another form of mediation or settlement discussion.

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

The provisions of the bill relating to the six-month period of forbearance shall expire two years following the effective date of the bill. However, a forbearance period shall continue for its entire six-month period notwithstanding the expiration of the bill’s provisions.

The bill also provides that in addition to any other requirements under law, regulation or court rule, in all residential mortgage foreclosure actions, an attorney filing a foreclosure complaint shall include a certification of diligent inquiry. The certification of diligent inquiry shall certify:

(1) that the attorney has communicated with an employee or employees of the plaintiff who: (a) personally reviewed the documents being submitted to support the complaint; and (b) confirmed the accuracy of the documents;

(2) the names and titles, and the responsibilities in those titles, of the plaintiff’s employees with whom the attorney communicated;

(3) that the attorney has reviewed the facts of the case and that, based on the information received pursuant to this section and the attorney’s review of the pertinent documents, to the best of the attorney’s knowledge, information and belief there is a reasonable basis for the commencement of the action and that the plaintiff is currently the residential mortgage lender entitled to enforce rights under those documents;

(4) that the attorney is aware that the failure to comply with these provisions may result in the penalties provided for in the bill or, where the failure constitutes a violation of the Rules of Professional Conduct, may include sanctions imposed by the Supreme Court of New Jersey; and

(5) that the complaint and all documents annexed thereto, comport with the requirements of R.1:4-8(a), which prohibits frivolous litigation, and include the original promissory note, or a copy, and a detailed methodology used to compute the debt.

The bill also stipulates that the court may, if it finds that the plaintiff has failed to comply with the provisions of the bill relating to the certificate of diligent inquiry, dismiss the complaint, with or without prejudice, or deny the accrual of any interest, costs, attorney’s fees and other fees relating to the mortgage debt.

The bill also provides, that in addition to any other requirements under law, regulation, or court rule, in all residential mortgage foreclosure actions, a residential mortgage lender, as a condition of proceeding with a mortgage foreclosure action, shall provide a certification to the court, which states all of the following:

(1) the lender owns the mortgage and the note evidencing the mortgage debt, and has attached to the certification, the original note which names the plaintiff as the payee on the note;

(2) in the case of an assignment of mortgage, an affidavit, or any other document purporting to confirm the mortgage debt or default on payments, that the lender has not engaged in any creating, signing, or notarizing, by persons who are without knowledge of the facts being attested to;

(3) the methodology used to calculate and compute the amount of principal and interest due from the debtor as stated in the complaint and any subsequent pleadings or filings with the court that indicate the amount due from the debtor; and

(4) the names of all the parties in interest, including any party whose interest is subordinate to, or affected by, the mortgage foreclosure action and, for each party, a description of the nature of the interest.

The bill also stipulates that if the court finds that the plaintiff has failed to comply with the provisions of the bill relating to the certification by the residential mortgage lender, the court may dismiss the complaint, with or without prejudice, or deny the accrual of any interest, costs, attorney’s fees and other fees relating to the mortgage debt.

The bill also provides that in addition to any other requirements under law, regulation, or court rule, in all residential mortgage foreclosure actions, a court shall:

(1) allow an evidentiary hearing for any debtor that requests an evidentiary hearing;

(2) allow plaintiffs to place on the record only evidence that is admissible according to court rule and relevant case law; and

(3) ensure that the plaintiff in the action owns the mortgage and the note and, in the case of a party that is a foreign trust claiming interest in the note, through participation in a mortgage-backed security or otherwise, the court shall not proceed with the foreclosure action if the foreign trust is not registered to do business in New Jersey.