

ASSEMBLY, No. 820

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Assemblywoman BRITNEE N. TIMBERLAKE

District 34 (Essex and Passaic)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Assemblywoman ANGELA V. MCKNIGHT

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Co-Sponsored by:

Assemblymen Mukherji, Stanley, Assemblywoman Reynolds-Jackson and

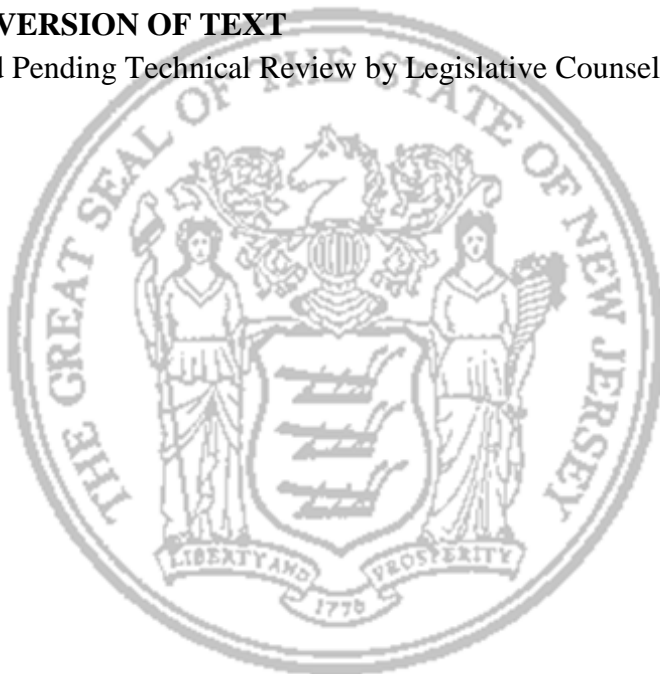
Assemblyman Karabinchak

SYNOPSIS

Provides mortgage payment relief for residential property owners and small landlords during time of coronavirus disease 2019 pandemic.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning emergency mortgage relief for residential
2 property owners and small landlords.

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. The social distancing measures and associated economic
9 pause, that have been necessary to combat the COVID-19
10 pandemic, have also forced many New Jersey residents to endure
11 job losses and prolonged depletions of income;

12 b. As of May 2020, the unemployment rate of the United States
13 exceeded 14 percent, and unemployment rates have remained
14 persistently high in New Jersey and other states;

15 c. The residents of New Jersey have not been able to avoid
16 suffering as a result of the COVID-19 pandemic, as the State is
17 widely reported to have the highest COVID-19-related death rate in
18 the nation, and the economic impact on many State residents
19 appears to be similarly catastrophic;

20 d. This unprecedented situation has made the timely payment
21 of mortgages impossible for many State residents; and

22 e. It is, therefore, necessary and in the public interest for the
23 Legislature to enact temporary measures to protect the State's
24 homeowners and small landlords from foreclosure that are in danger
25 of resulting from this unprecedented emergency.

26

27 2. As used in this act:

28 "COVID-19" means the coronavirus disease 2019, as announced
29 by the World Health Organization on February 11, 2020, and first
30 identified in Wuhan, China.

31 "Creditor" means a person or entity that holds or controls,
32 partially, wholly, indirectly, directly or in a nominee capacity, a
33 mortgage loan securing an owner-occupied residential property,
34 including, but not limited to, an originator, holder, investor,
35 assignee, successor, trust, trustee, nominee holder, or mortgage
36 servicer as defined in section 2 of P.L.2019, c.65 (C.17:16F-28).
37 "Creditor" shall not, however, include any creditor for a mortgage
38 loan that is backed by a shareholder-owned company that operates
39 under a charter of the United States Congress.

40 "Emergency period" means the period during which a public
41 health emergency exists as declared by the Governor in Executive
42 Order No. 103 of 2020, as extended, and the 60 days following the
43 conclusion of this period.

44 "Impacted homeowner" means an owner or mortgagor of title to
45 a residential property, which serves as such person's primary
46 residence, and who qualifies for a mortgage forbearance pursuant to
47 section 3 of this act. "Impacted homeowner" shall also include a
48 person who owns and resides in a residential building in which

1 there is rented or offered for rent other dwelling units under either a
2 written or oral lease which building contains no more than four
3 dwelling units.

4 “Mortgage forbearance” or “forbearance” means a period during
5 which obligations for mortgage principal and interest payments are
6 suspended.

7 “Residential property” means a property located in the State
8 rented or owned for residential purposes; provided, however, that
9 residential property shall be limited to the principal residence of a
10 person or a residential health care facility. “Residential property”
11 shall not include: a residence other than a primary residence of a
12 homeowner; residential property taken in whole or in part as
13 collateral for a commercial loan; or a property subject to
14 condemnation or receivership.

15

16 3. a. During the emergency period, regardless of whether or
17 not the residential property of an impacted homeowner is already
18 the subject of a foreclosure proceeding, a creditor shall grant a
19 mortgage forbearance to an impacted homeowner if the impacted
20 homeowner submits a written request to the mortgage servicer
21 certifying the following:

22 (1) the impacted homeowner has suffered a negative financial
23 impact resulting from COVID-19 or the Public Health Emergency
24 or State of Emergency declared in response thereto, including but
25 not limited to a financial hardship from a reduction in hours or loss
26 of employment, loss of income or increased costs incurred in
27 necessary child care resulting from the closure of schools or caring
28 for family members who are ill due to COVID-19 or quarantined
29 due to a suspected exposure to COVID-19, or for funeral costs due
30 to COVID-19;

31 (2) the gross household income of the impacted homeowner,
32 after hardship, does not exceed 150 percent of the area median
33 income, as defined for New Jersey in guidelines published annually
34 by the United States Department of Housing and Urban
35 Development, unless this requirement for eligibility is waived by
36 the mortgage lender; and

37 (3) if the impacted homeowner possesses one or more bank
38 accounts, those bank accounts collectively contain less than six
39 months’ reserves of the impacted homeowner’s gross household
40 income for 2019. The creditor may require the impacted
41 homeowner to provide a cash asset certification to demonstrate
42 compliance with this paragraph.

43 b. Upon receipt of a written request or verbal authorization for
44 a mortgage forbearance from an impacted homeowner pursuant to
45 subsection a. of this section, a creditor shall provide to the impacted
46 homeowner a mortgage forbearance and confirmation of that
47 forbearance in writing. No additional documentation shall be
48 required from the impacted homeowner by the creditor other than

1 the written request under subsection a. of this section. A creditor
2 shall have 45 days to approve or deny a request for a forbearance.
3 If the impacted homeowner is not notified within that time period,
4 the request is deemed approved. During this period, a creditor shall
5 not institute any foreclosure proceedings and any proceedings
6 already underway shall be stayed upon notice to the court. If a
7 mortgage forbearance request is denied, the creditor shall provide
8 an explanation of the reasons for the denial, and, if applicable,
9 reasonable time to remedy any deficiencies in the request. The
10 minimum initial mortgage forbearance period of an impacted
11 homeowner shall be six months. An impacted homeowner may
12 request, and shall be granted, a subsequent forbearance period of at
13 minimum nine months, for a total minimum of 15 months. A
14 creditor shall not be prohibited from offering a more extended
15 forbearance period. Fees, penalties, or interest, including attorney's
16 fees beyond the amounts scheduled and calculated as if the
17 mortgagor made all contractual payments on time and in full under
18 the terms of the mortgage contract, shall not be assessed or accrue
19 during and as a result of a mortgage forbearance granted pursuant to
20 this section. Nothing in this section shall be construed to impact
21 property tax and insurance obligations of an impacted homeowner
22 related to any real property in the State. A creditor that grants a
23 mortgage forbearance pursuant to this section shall encourage
24 impacted homeowners to seek out United States Department of
25 Housing and Urban Development certified housing counseling and
26 shall provide to the property owner confirmation of the approval of
27 the forbearance, information concerning the process for
28 forbearance, and information on how to request a subsequent
29 forbearance.

30 c. (1) Consistent with the provisions of 15 U.S.C. s.1681s-
31 2(a)(1)(F), a creditor shall not furnish negative mortgage payment
32 information to a debt collector or credit reporting agency related to
33 mortgage payments subject to a mortgage forbearance under this
34 section.

35 (2) In response to a complaint to the Attorney General from an
36 impacted homeowner, or on the Attorney General's independent
37 initiative, the Attorney General may bring an action alleging a
38 creditor has violated the provisions of this subsection. Upon a
39 finding that non-compliance by a creditor with this section has
40 occurred, a court of competent jurisdiction may:

41 (a) order the non-compliant creditor to retract the debt reported
42 to the collection or credit reporting agency, bureau, or data
43 collection facility;

44 (b) impose a fine on the non-compliant creditor, not to exceed
45 \$5,000 per violation;

46 (c) order the non-compliant creditor to pay a reasonable counsel
47 fee in connection with an impacted homeowner whose debt has

1 been reported to a collection or credit reporting agency, bureau, or
2 data collection facility;

3 (d) provide a copy of the order immediately at the request of and
4 at no cost to the impacted homeowner;

5 (e) order the non-compliant creditor to take such steps as are
6 necessary, within 30 days of the order, to rehabilitate the credit
7 record of an impacted homeowner, with an exact copy provided at
8 no cost to the homeowner of the efforts made in that regard; and

9 (f) order the non-compliant creditor to pay an award of damages
10 to the impacted homeowner not to exceed 25 percent of the debt
11 attempted to be collected or reported by the non-compliant creditor
12 to the collection or credit reporting agency, bureau, or data
13 collection facility, the minimum award being \$350.

14 d. During the emergency period and during any period of
15 mortgage forbearance granted pursuant to this section, a creditor
16 shall not, for the purposes of foreclosure of a residential property
17 that has received a forbearance that is not vacant, abandoned or
18 otherwise subject to P.L.2003, c.210 (C.55:19-78 et seq.):

19 (1) send an impacted homeowner a notice of intention to
20 foreclose pursuant to section 4 of P.L.1995, c.244 (C.2A:50-56); or

21 (2) otherwise initiate the foreclosure process.

22 A deadline or time period for action by a party to the foreclosure
23 process for a residential property filed prior to the effective date of
24 this act shall be tolled until the end of the emergency period.

25 e. Notwithstanding the provisions of any law, rule, or
26 regulation to the contrary, the repayment period of any mortgage
27 subject to the forbearance established pursuant to this section shall
28 be extended by the number of months the forbearance is in effect.
29 The payments not made during the months of the forbearance shall
30 instead be due on a monthly basis during the period constituting an
31 extension of the mortgage, unless the property owner has chosen to
32 make these payments earlier. During the time of the forbearance,
33 and during the period constituting an extension of the mortgage, all
34 terms and conditions of the original mortgage, except with regard to
35 default and delinquency during forbearance, shall continue without
36 modification, and there shall be no fees assessed, including
37 attorney's fees, related to the forbearance or late payment, or
38 penalty for early repayment. An impacted homeowner shall have
39 the option to discontinue the mortgage forbearance at any time at
40 the election of the impacted homeowner upon written consent and a
41 written statement that they would have the rights provided herein
42 and knowingly waive those rights.

43 f. An impacted homeowner denied a forbearance under this
44 section by a creditor licensed by the Department of Banking and
45 Insurance may file a complaint with the Department of Banking and
46 Insurance. The department shall investigate the complaint, notify
47 the court upon initiation and completion of the investigation, and
48 issue a ruling within 30 days and, if appropriate, the department

1 shall order the creditor to grant a forbearance to the impacted
2 homeowner pursuant to this section. During the pendency of any
3 investigation, no notice of intent to foreclose shall be sent by any
4 creditor to the impacted homeowner, no foreclosure proceeding
5 shall be initiated against the same impacted homeowner, and any
6 pending foreclosure shall be stayed.

7 g. To the extent required by the Administrative Director of the
8 Courts, the creditor and the department shall provide, in accordance
9 with subsections b. and f. of this section, the docket numbers, party
10 names, and property addresses as to any pending court actions
11 involving any impacted homeowner requesting or denied a
12 forbearance to the Superior Court Clerk's Office at least monthly.

13 h. Notwithstanding anything to the contrary in this section, to
14 the extent that the application of any provision of this section would
15 conflict with federal laws and guidelines, such provision shall not
16 apply to, and does not affect, any mortgage loans made, insured, or
17 securitized by any agency or instrumentality of the United States,
18 any government sponsored enterprise, or a federal home loan bank,
19 or the rights and obligations of any lender, issuer, servicer or trustee
20 of such obligations, including servicers for the Government
21 National Mortgage Association or other loans governed by the
22 federal "Coronavirus Aid, Relief, and Economic Security Act,"
23 Pub.L.116-136.

24 i. It shall be an unlawful discrimination in violation of the
25 "New Jersey Law Against Discrimination," P.L.1945, c.169
26 (C.10:5-1 et seq.) for a creditor to discriminate in application of the
27 provisions of this section on any basis protected by subsection g. of
28 section 11 of P.L.1945, c.169 (C.10:5-12).

29 j. This section shall not be construed to prohibit a creditor
30 from considering an oral or electronic request for a mortgage
31 forbearance instead of a written request submitted pursuant to
32 subsection a. of this section.

33 k. The Department of Banking and Insurance shall post
34 information about the forbearance program on the department's
35 Internet website. Within 60 days of the enactment of this act, the
36 Department of Banking and Insurance shall provide notice of the
37 enactment of this act to known creditors and develop a form for
38 creditors to use, in the five most common languages spoken in the
39 State, to notify mortgagors of their rights under this act. Within 90
40 days of the enactment of this act, creditors shall provide such notice
41 to mortgagors about the right of impacted homeowners to file for a
42 forbearance.

43 l. Nothing in this act shall be construed as limiting the ability
44 of a creditor and impacted homeowner to participate in a mediation
45 process sponsored by the Administrative Office of the Courts in
46 accordance with the requirements of any such mediation program.

STATEMENT

The minimum initial mortgage forbearance period of an impacted homeowner would be six months. An impacted homeowner would be able to obtain a subsequent forbearance period of at minimum nine months, for a total minimum of 15 months. Fees, penalties, or interest,

1 including attorney's fees, would not be assessed or accrue during and
2 as a result of a mortgage forbearance.

3 The bill prohibits a creditor from furnishing negative mortgage
4 payment information to a debt collector or credit reporting agency
5 related to mortgage payments subject to a mortgage forbearance under
6 the bill. In response to a complaint to the Attorney General from an
7 impacted homeowner, the Attorney General may bring an action
8 alleging a creditor has violated this prohibition.

9 Under the bill, the repayment period of any mortgage subject to the
10 forbearance would be extended by the number of months the
11 forbearance is in effect. The payments not made during the months of
12 the forbearance would instead be due on a monthly basis during the
13 period constituting an extension of the mortgage, unless the property
14 owner chooses to make these payments earlier.

15 An impacted homeowner denied a forbearance under the bill by a
16 creditor licensed by the Department of Banking and Insurance
17 ("DOBI"), and not a State- or nationally-chartered financial institution,
18 may file a complaint with DOBI. The department would be required
19 to investigate the complaint, notify the court upon initiation and
20 completion of the investigation, and issue a ruling without 30 days
21 and, if appropriate, would order the creditor to grant a forbearance to
22 the impacted homeowner. During the pendency of any investigation,
23 no notice of foreclosure would be sent to the impacted homeowner, no
24 foreclosure proceeding would be initiated against that homeowner, and
25 any pending foreclosure would be stayed.

26 To the extent required by the Administrative Director of the
27 Courts, the creditor and the department would be required to provide
28 on at least a monthly basis, the docket numbers, party names, and
29 property addresses as to any pending court actions involving any
30 impacted homeowner requesting or denied a forbearance.

31 Information about the forbearance program would be posted on the
32 Internet website of the Department of Banking and Insurance. Within
33 60 days of the enactment of this act, the Department of Banking and
34 Insurance would provide notice of the enactment of this act to known
35 creditors and develop a form for creditors to use, in the five most
36 common languages spoken in the State, to notify mortgagors of their
37 rights under this act. Within 90 days of the enactment of this act,
38 creditors would provide such notice to mortgagors about the right of
39 impacted homeowners to file for a forbearance.

40 This bill would take effect immediately and would apply
41 retroactively to mortgage payments missed subsequent to March 9,
42 2020.