

ASSEMBLY, No. 5664

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 26, 2023

Sponsored by:

Assemblywoman BRITNEE N. TIMBERLAKE

District 34 (Essex and Passaic)

SYNOPSIS

Establishes “Community Wealth Preservation Program”; expands access for certain buyers to purchase property from sheriff’s sales.

CURRENT VERSION OF TEXT

As introduced.



A5664 TIMBERLAKE

2

1 AN ACT concerning sheriff's sales and amending and
2 supplementing P.L.1995, c.244, and amending N.J.S.22A:4-8.

3

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

6

7 1. Section 12 of P.L.1995, c.244 (C.2A:50-64) is amended to
8 read as follows:

9 12. a. With respect to the sale of a mortgaged premises under
10 foreclosure action, each sheriff in this State shall provide for, but
11 not be limited to, the following uniform procedures:

12 (1) Bidding in the name of the assignee of the foreclosing
13 plaintiff.

14 (2) That adjournment of the sale of the foreclosed property shall
15 be in accordance with N.J.S.2A:17-36.

16 (3) (a) The sheriff shall conduct a sale within 150 days of the
17 sheriff's receipt of any writ of execution issued by the court in any
18 foreclosure proceeding.

19 (b) If it becomes apparent that the sheriff cannot comply with
20 the provisions of subparagraph (a) of this paragraph (3), the
21 foreclosing plaintiff may apply to the office for an order appointing
22 a Special Master to hold the foreclosure sale.

23 (c) Upon the foreclosing plaintiff making such application to the
24 office, the office shall issue the appropriate order appointing a
25 Special Master to hold the foreclosure sale. The office may issue
26 the order to appoint a Special Master to hold foreclosure sales for
27 one or more properties within a vicinage.

28 (4) That notice for the sale of a foreclosed upon residential
29 property be mailed to the primary address of the foreclosed upon
30 defendant and to the address of the foreclosed upon residential
31 property. Notice of the sale shall be mailed in an envelope that
32 plainly states on its exterior that the envelope is a notice for the sale
33 of the foreclosed upon residential property.

34 (5) (a) That notice of the final upset price for the sale of a
35 foreclosed upon residential property be provided at least four weeks
36 prior to the sheriff's sale and posted on the Internet website of the
37 sheriff's office and on any other medium used to provide notice of
38 the sheriff's sale. The final upset price provided on the day of the
39 sheriff's sale shall not differ from the final upset price provided in
40 the notice; and

41 (b) Prior to providing the final upset price to the sheriff's office
42 pursuant to subparagraph (a) of this paragraph, the foreclosing
43 plaintiff or agent of the foreclosing plaintiff shall be prohibited
44 from contacting the foreclosed upon defendant, next of kin of the
45 foreclosed upon defendant, or a nonprofit community development
46 corporation to inquire whether the foreclosed upon defendant, next

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 of kin, or nonprofit community development corporation intends to
2 participate in the sheriff's sale for the foreclosed upon property or
3 exercise the provisions of P.L. , c. (C.) (pending before the
4 Legislature as this bill).

5 (6) Prior to the sale of residential property, the foreclosing
6 plaintiff shall disclose, if known, whether the property is vacant,
7 tenant-occupied, or owner-occupied. If the property is vacant, the
8 foreclosing plaintiff shall provide the successful bidder access to
9 the property if the foreclosing plaintiff has such access and may
10 condition access by the successful bidder on being accompanied by
11 a representative of the foreclosing plaintiff.

12 (7) (a) Except as otherwise provided in subparagraphs (b) and
13 (c) of this paragraph, the successful bidder at the sheriff's sale shall
14 pay a 20 percent deposit in either cash or by a certified or cashier's
15 check, made payable to the sheriff of the county in which the sale is
16 conducted, immediately upon the conclusion of the foreclosure sale.

17 (b) In the case of residential property in which the successful
18 bidder is the foreclosed upon defendant, next of kin, tenant,
19 nonprofit community development corporation, or a bidder who
20 shall occupy the property as the bidder's primary residence for a
21 period of at least 84 months, the successful bidder who has fulfilled
22 the requirements set forth in subsection e. of this section shall pay a
23 3.5 percent deposit with the rest of the balance due within 90
24 business days by cash, certified or cashier's check, or by wire
25 transfer, made payable to the sheriff of the county in which the sale
26 is conducted or to the Special Master, if the sheriff cannot comply
27 with the provisions of subparagraph (a) of paragraph (3) of this
28 subsection, immediately upon the conclusion of the foreclosure
29 sale.

30 (c) If the successful bidder cannot satisfy **[this]** the requirement
31 of this paragraph that is applicable to the bidder, or the applicable
32 requirement of this paragraph respectively, the bidder shall be in
33 default and the sheriff shall immediately void the sale and proceed
34 further with the resale of the premises without the necessity of
35 adjourning the sale, without renotification of any party to the
36 foreclosure and without the republication of any sales notice. Upon
37 such resale, the defaulting bidder shall be liable to the foreclosing
38 plaintiff for any additional costs incurred by such default including,
39 but not limited to, any difference between the amount bid by the
40 defaulting bidder and the amount generated for the foreclosing
41 plaintiff at the resale. In the event the plaintiff is the successful
42 bidder at the resale, the plaintiff shall provide a credit for the fair
43 market value of the property foreclosed.

44 **[(5)] (8)** It is permissible, upon consent of the sheriff
45 conducting the sheriff's sale, that it shall not be necessary for an
46 attorney or representative of the person who initiated the

1 foreclosure to be present physically at the sheriff's sale to make a
2 bid. A letter containing bidding instructions may be sent to the
3 sheriff in lieu of an appearance.

4 **[(6)] (9)** That each sheriff's office shall use, and the plaintiff's
5 attorney shall prepare and submit to the sheriff's office, a deed
6 which shall be in substantially the following form:

7 THIS INDENTURE,
8 made this (date) day of (month),
9 (year). Between (name), Sheriff of the County
10 of (name) in the State of New Jersey, party of the first
11 part and (name(s)) party of the
12 second part, witnesseth.

13 WHEREAS, on the (date) day of
14 (month), (year), a certain Writ of Execution was issued out of
15 the Superior Court of New Jersey, Chancery Division-
16 (name) County, Docket No. directed and delivered to the
17 Sheriff of the said County of (name) and which said
18 Writ is in the words or to the effect following that is to say:

19 THE STATE OF NEW JERSEY to the Sheriff of the County of
20 (name),
21 Greeting:

22 WHEREAS, on the (date) day of (month),
23 (year), by a certain judgment made in our Superior Court
24 of New Jersey, in a certain cause therein pending, wherein the
25 PLAINTIFF is:

26
27
28

29 and the following named parties are the DEFENDANTS:
30
31
32

33 IT WAS ORDERED AND ADJUDGED that certain mortgaged
34 premises, with the appurtenances in the Complaint, and Amendment
35 to Complaint, if any, in the said cause particularly set forth and
36 described, that is to say: The mortgaged premises are described as
37 set forth upon the RIDER ANNEXED HERETO AND MADE A
38 PART HEREOF.

39 BEING KNOWN AS Tax Lot (number) in
40 Block (number) COMMONLY KNOWN AS
41 (street address)

42 TOGETHER, with all and singular the rights, liberties, privileges,
43 hereditaments and appurtenances thereunto belonging or in anywise
44 appertaining, and the reversion and remainders, rents, issues and
45 profits thereof, and also all the estate, right, title, interest, use,
46 property, claim and demand of the said defendants of, in, to and out

1 of the same, to be sold, to pay and satisfy in the first place unto the
2 plaintiff,

3

4

5 the sum of \$ (amount) being the principal, interest and
6 advances secured by a certain mortgage dated (date,
7 month, year) and given by (name) together with
8 lawful interest from

9

10

11

12 until the same be paid and satisfied and also the costs of the
13 aforesaid plaintiff with interest thereon.

14 AND for that purpose a Writ of Execution should issue, directed to
15 the Sheriff of the County of (name) commanding him to
16 make sale as aforesaid; and that the surplus money arising from
17 such sale, if any there be, should be brought into our said Court, as
18 by the judgment remaining as of record in our said Superior Court
19 of New Jersey, at Trenton, doth and more fully appear; and
20 whereas, the costs and Attorney's fees of the said plaintiff have
21 been duly taxed at the following sum: \$ (amount)

22 THEREFORE, you are hereby commanded that you cause to be
23 made of the premises aforesaid, by selling so much of the same as
24 may be needful and necessary for the purpose, the said sum of
25 \$..... (amount) and the same you do pay to the said plaintiff
26 together with contract and lawful interest thereon as aforesaid, and
27 the sum aforesaid of costs with interest thereon.

28 And that you have the surplus money, if any there be, before our
29 said Superior Court of New Jersey, aforesaid at Trenton, within 30
30 days after pursuant to R.4:59-1(a), to abide the further Order of the
31 said Court, according to judgment aforesaid, and you are to make
32 return at the time and place aforesaid, by certificate under your
33 hand, of the manner in which you have executed this our Writ,
34 together with this Writ, and if no sale, this Writ shall be returnable
35 within **[12]** 24 months.

36 WITNESS, the Honorable (name), Judge of the Superior
37 Court at Trenton, aforesaid, the (date) day of
38 (month), (year).

39 /s/ (Clerk)
40 Superior Court of New Jersey

41 /s/.....

42 Attorney for Plaintiff

43 As by the record of said Writ of Execution in the Office of the
44 Superior Court of New Jersey, at Trenton, in Book
45 (number) of Executions, Page (number) etc., may more fully
46 appear.

1 AND WHEREAS I, the said (name), as such
2 Sheriff as aforesaid did in due form of law, before making such sale
3 give notice of the time **[and]**, place, and final upset price of such
4 sale by public advertisement signed by myself, and set up in my
5 office in the (name) Building in
6 (name) County, being the County in which said real estate is situate
7 and also set up at the premises to be sold at least three weeks next
8 before the time appointed for such sale.

9 I also caused such notice to be published four times in two
10 newspapers designated by me and printed and published in the said
11 County, the County wherein the real estate sold is situate, the same
12 being designated for the publication by the Laws of this State, and
13 circulating in the neighborhood of said real estate, at least once a
14 week during four consecutive calendar weeks. One of such
15 newspapers, (name of newspaper) is a newspaper
16 with circulation in (name of town), the County seat of
17 said (name) County. The first publication was at least
18 twenty-one days prior and the last publication not more than eight
19 days prior to the time appointed for the sale of such real estate, and
20 by virtue of the said Writ of Execution, I did offer for sale said land
21 and premises at public vendue at the County (name)
22 Building in (name of town) on the (date)
23 day of, ... (month) (year) at the hour of
24 (time) in the (a.m. or p.m.).

25 WHEREUPON the said party of the second part bidding
26 therefore for the same, the sum of \$..... (amount) and no
27 other person bidding as much I did then and there openly and
28 publicly in due form of law between the hours of (time)
29 and (time) in the (a.m. or p.m.), strike off and sell
30 tracts or parcels of land and premises for the sum of \$
31 (amount) to the said party of the second part being then and there
32 the highest bidder for same. And on the (date) of
33 (month) in the year last aforesaid I did truly report the
34 said sale to the Superior Court of New Jersey, Chancery Division
35 and no objection to the said sale having been made, and by
36 Assignment of Bid filed with the Sheriff of (name)
37 County said bidder assigned its bid to:

38
39
40

41 NOW, THEREFORE, This Indenture witnesseth, that I, the said
42 (name), as such Sheriff as aforesaid under and by the
43 virtue of the said Writ of Execution and in execution of the power
44 and trust in me reposed and also for and in consideration of the said
45 sum of \$ (amount) therefrom acquit, exonerate and
46 forever discharge to the said party of the second part, its successors

1 and assigns, all and singular the said tract or parcel of lands and
2 premises, with the appurtenances, privileges, and hereditaments
3 thereunto belonging or in any way appertaining; to have and hold
4 the same, unto the said party of the second part, its successors and
5 assigns to its and their only proper use, benefit, and behoof forever,
6 in as full, ample and beneficial manner as by virtue of said Writ of
7 Execution I may, can or ought to convey the same.

8 And, I, the said (name), do hereby covenant, promise and
9 agree, to and with the said party of the second part, its successors
10 and assigns, that I have not, as such Sheriff as aforesaid, done or
11 caused, suffered or procured to be done any act, matter or thing
12 whereby the said premises, or any part thereof, with the
13 appurtenances, are or may be charged or encumbered in estate, title
14 or otherwise.

15 IN WITNESS WHEREOF, I the said (name) as such
16 Sheriff as aforesaid, have hereunto set my hand and seal the day and
17 year aforesaid.

18 Signed, sealed and delivered

19 in the presence of

20

21 Attorney at Law of New Jersey(name) Sheriff

22 STATE OF NEW JERSEY) SS.

23(county)

24 I, (name), Sheriff, of the County of (name),
25 do solemnly swear that the real estate described in this deed made
26 to

27

28

29

30 was by me sold by virtue of a good and subsisting execution (or as
31 the case may be) as is therein recited, that the money ordered to be
32 made has not been to my knowledge or belief paid or satisfied, that
33 the time and place of the same of said real estate were by me duly
34 advertised as required by law, and that the same was cried off and
35 sold to a bona fide purchaser for the best price that could be
36 obtained and the true consideration for this conveyance as set forth
37 in the deed is \$ (amount).

38

39 (name), Sheriff

40 Sworn before me, (name), on this (date) day of
41 (month), (year), and I having examined the deed
42 above mentioned do approve the same and order it to be recorded as
43 a good and sufficient conveyance of the real estate therein
44 described.

45 STATE OF NEW JERSEY) ss.

46 (Name) County) Attorney or Notary Public

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1 On this (date) day of (month), (year),
2 before me, the subscriber, (name) personally
3 appeared (name), Sheriff of the County of
4 (name) aforesaid, who is, I am satisfied, the grantor in the within
5 Indenture named, and I having first made known to him the contents
6 thereof, he did thereupon acknowledge that he signed, sealed and
7 delivered the same on his voluntary act and deed, for the uses and
8 purposes therein expressed.

9
10 Attorney or Notary Public

11 b. At the conclusion of the sheriff's sale, the attorney for the
12 plaintiff shall prepare and deliver to the sheriff a deed which shall
13 be in the form provided pursuant to paragraph **[(6)] (9)** of
14 subsection a. of this section for the sheriff's execution and the deed
15 shall be delivered to the sheriff within 10 days of the date of the
16 sale. The sheriff shall be entitled to the authorized fee, as a review
17 fee, even if the plaintiff's attorney prepares the deed.

18 c. (1) The sheriff's office shall, within two weeks of the date
19 of the sale, deliver a fully executed deed to the successful bidder at
20 the sale provided that the bidder pays the balance of the monies due
21 to the Sheriff by either cash or certified or cashier's check. In the
22 event a bid is satisfied after the expiration and additional interest is
23 collected from the successful bidder, the sheriff shall remit to the
24 plaintiff the total amount, less any fees, costs and commissions due
25 the sheriff, along with the additional interest.

26 (2) Notwithstanding the provisions of paragraph (1) of this
27 subsection, in the case of residential property in which the
28 successful bidder is permitted to pay a 3.5 percent deposit upon the
29 conclusion of the foreclosure sale pursuant to the provisions of this
30 section, no interest shall accrue on the balance of the sale of the
31 property until 60 business days have passed following the date of
32 the sale, and thereafter, the successful bidder shall have 30 business
33 days to fulfill the balance. If the successful bidder fails to fulfill the
34 balance within this 90 business day period, the bidder shall forfeit
35 the deposit on the property and shall be responsible for the payment
36 of accrued interest incurred as a result of the sale being void, unless
37 the failure to fulfill the balance is due to the bidder's inability to
38 close a mortgage through no fault of their own, which includes, but
39 is not limited to, the appraised value of the property being less than
40 the purchase value of the property or the financial institution
41 denying financing, in which case the bidder shall be refunded the
42 deposit on the property and shall be responsible only for the
43 payment of accrued interest. In addition, if a successful bidder fails
44 to fulfill the balance within this 90 business day period, any
45 subsequent foreclosure sale involving the same residential property
46 and the same foreclosing plaintiff and foreclosed upon defendant

1 shall be subject to the procedures set forth in subparagraph (a) of
2 paragraph (5) of subsection a. of this section and there shall be no
3 right of first or second refusal pursuant to subsections d. and g. of
4 this section.

5 d. In the case of a foreclosed residential property where the
6 foreclosed upon defendant is an individual and not a corporate
7 entity, if the foreclosed upon defendant, next of kin of the
8 foreclosed upon defendant, or tenant of the foreclosed upon
9 property has secured financing or assets sufficient to meet terms
10 offered by the foreclosing plaintiff or an alternative financial
11 institution to purchase the property, the foreclosed upon defendant,
12 next of kin of the foreclosed upon defendant, or tenant shall have
13 the right of first refusal to purchase the property in the amount
14 approved for the opening bid of the sheriff's sale at the time of the
15 sale. The right of first refusal shall only be made available to the
16 foreclosed upon defendant, next of kin of the foreclosed upon
17 defendant, or tenant for the initial sale of the foreclosed upon
18 property, unless the sale is delayed, postponed or concludes with
19 the foreclosing plaintiff purchasing the property, upon which the
20 foreclosed upon defendant, next of kin of the foreclosed upon
21 defendant, or tenant shall receive a right of first refusal for the
22 subsequent sale of the foreclosed upon property. Such right shall be
23 deemed exercised if, prior to the opening of the bidding on the
24 foreclosed property, the foreclosed upon defendant, next of kin of
25 the foreclosed upon defendant, or tenant pays a 3.5 percent deposit
26 with the rest of the balance due within 90 business days by cash,
27 certified or cashier's check, or by wire transfer, made payable to the
28 sheriff of the county in which the sale is conducted or to the Special
29 Master, if the sheriff cannot comply with the provisions of
30 subparagraph (a) of paragraph (3) of subsection a. of this section.

31 e. A bidder, who is permitted to pay a 3.5 percent deposit upon
32 the conclusion of the foreclosure sale pursuant to the provisions of
33 this section, may purchase residential property at a sheriff's sale by
34 way of financing if the bidder provides documentation that the
35 bidder has been pre-approved by a financial institution regulated by
36 the Department of Banking and Insurance or by a federal banking
37 agency, as defined by section 3 of the "New Jersey Residential
38 Mortgage Lending Act," P.L.2009, c.53 (C.17:11C-53), for
39 financing a residential property.

40 (1) A bidder who is permitted to pay a 3.5 percent deposit upon
41 the conclusion of the foreclosure sale pursuant to the provisions of
42 this section and intends to finance the purchase of residential
43 property at a sale shall be:

44 (a) limited to submitting bids no higher than the amount for
45 which the bidder has been pre-approved for financing; and

1 (b) if the bidder is an individual, required to present current and
2 valid photo identification that substantially conforms to the name
3 and information contained on the financing pre-approval forms
4 obtained by the bidder.

5 (2) To be a successful bidder who is not the plaintiff, and who
6 intends to occupy the property and finance the purchase of the
7 property, the bidder shall have received eight hours of homebuyer
8 education and counseling through a United States Department of
9 Housing and Urban Development (HUD) certified housing
10 counseling agency, and shall present a certificate of completion or
11 proof of enrollment in that program to the sheriff.

12 (3) To ensure that the provisions of this section only apply to a
13 foreclosed upon defendant or next of kin of the foreclosed upon
14 defendant who has entered foreclosure proceedings due to
15 circumstances outside of the foreclosed upon defendant's control,
16 subsections d. through f. of this section shall only apply to a
17 foreclosed upon defendant or next of kin of the foreclosed upon
18 defendant that demonstrates to the foreclosing plaintiff that the
19 foreclosed upon defendant experienced:

20 (a) financial hardship;

21 (b) a physical or mental illness preventing the foreclosed upon
22 defendant from earning an income;

23 (c) divorce or legal separation;

24 (d) proof of death of the foreclosed upon defendant, or the
25 foreclosed upon defendant's spouse, or child; or

26 (e) predatory loan practices.

27 Any information provided under this paragraph shall be provided
28 at the request of the foreclosing plaintiff prior to the date of sale for
29 the foreclosing property and shall not conflict with subparagraph
30 (b) of paragraph (5) of subsection a. of this section.

31 (4) If a bidder intending to finance the purchase of the
32 residential property is a current tenant, the tenant shall provide
33 documentation confirming:

34 (a) that the tenant has resided at the property for at least a year;
35 and

36 (b) that the tenant is not in arrears with rent payments as of the
37 date the foreclosed upon defendant received a notice of foreclosure
38 from the foreclosing plaintiff.

39 (5) To prove the residency requirement pursuant to
40 subparagraph (a) of paragraph (4) of this subsection, the tenant shall
41 also be required to present at least two current and valid forms of
42 identification that substantially conform to the name and property
43 address contained in the tenant's lease agreement, which shall
44 include but not be limited to:

45 (a) a driver's license issued by the New Jersey Motor Vehicle
46 Commission;

1 **(b) a utility bill;**

2 **(c) a checking or savings account statement from a bank or credit**
3 **union issued at least 60 days prior to submitting documentation**
4 **required pursuant to this subparagraph;**

5 **(d) a statement, receipt, or letter of correspondence from a**
6 **federal, State, or local government office delivered at least one year**
7 **prior to submitting documentation required pursuant to this**
8 **subparagraph; or**

9 **(e) any other form of identification that the sheriff deems valid**
10 **pursuant to this paragraph.**

11 **(6) A tenant shall be allowed to purchase residential property**
12 **pursuant to this subsection if a foreclosed upon defendant or next of**
13 **kin of the foreclosed upon defendant decides not to participate in**
14 **the sheriff's sale, enter into an agreement with a nonprofit**
15 **community development corporation pursuant to subsection f. of**
16 **this section, or fail to secure financing or assets sufficient to meet**
17 **the terms offered by the foreclosing plaintiff or an alternative**
18 **financial institution to purchase the property. A tenant shall have**
19 **up to 45 days to purchase the residential property after successfully**
20 **bidding for the property.**

21 **(7) With exception to the foreclosed upon defendant, the**
22 **foreclosed upon defendant's next of kin, or a nonprofit community**
23 **development corporation, an individual bidder purchasing**
24 **residential property in a sheriff's sale pursuant to this subsection**
25 **shall be required by the financial institution to occupy the property**
26 **as the bidder's primary residence for a fixed term of at least 84**
27 **months after taking possession. The deed for the property shall**
28 **clearly state that the property may not be sold for 84 months from**
29 **the date of the sheriff's sale, except pursuant to the exceptions**
30 **permitting a successful bidder to vacate the property prior to**
31 **residing in the property for 84 months in paragraph (8) of this**
32 **subsection.**

33 **(8) With exception to the foreclosed upon defendant, the**
34 **foreclosed upon defendant's next of kin, or a nonprofit community**
35 **development corporation, a successful individual bidder who**
36 **finances the purchase pursuant to this subsection and does not**
37 **occupy the residence for a period of at least 84 months shall be**
38 **assessed a fine by a court of competent jurisdiction up to \$100,000**
39 **for the first violation, and \$500,000 thereafter for each subsequent**
40 **violation. These penalties shall not be assessed against a bidder**
41 **who finances the purchase with good faith and intent and is**
42 **thereafter required to vacate the property prior to residing in the**
43 **property for 84 months due to:**

44 **(a) death of the bidder or the bidder's spouse or child;**

45 **(b) disability of the bidder or a member of the bidder's**
46 **household;**

- 1 (c) divorce;
 - 2 (d) legal separation;
 - 3 (e) military deployment;
 - 4 (f) a change in employment of the bidder or a member of the
5 bidder's household that results in a reduction in income or a need to
6 move out-of-state;
 - 7 (g) a change in the number of permanent residents of the
8 household due to: the birth or adoption of a child; or the permanent
9 relocation of an elder into the household, as proved by a note from
10 the doctor or social worker of the elder;
 - 11 (h) a need to move to care for a family member for a period of
12 at least six months, as evidenced by: an address change; and a note
13 from the family member in need of care, the doctor of the family
14 member, or the social worker for the family member; or
 - 15 (i) foreclosure.
- 16 In the event of the death of a successful bidder, the property may
17 be transferred to another owner in accordance with applicable laws
18 governing estate, inheritance, and probate matters and the
19 occupancy requirement shall be extinguished.
- 20 f. If the foreclosed upon defendant, next of kin of the
21 foreclosed upon defendant, or tenant of the foreclosed upon
22 property fails to secure financing or assets sufficient to meet the
23 terms offered by the foreclosing plaintiff or an alternative financial
24 institution to purchase the residential property, the foreclosed upon
25 defendant, next of kin of the foreclosed upon defendant, or tenant
26 may request that a nonprofit community development corporation
27 purchase the property. If the nonprofit community development
28 corporation agrees in writing to purchase the property from the
29 foreclosed upon defendant, next of kin of the foreclosed upon
30 defendant, or tenant, the corporation shall:
- 31 (1) allow the foreclosed upon defendant, next of kin of the
32 foreclosed upon defendant, or tenant to reside at the property for a
33 period of time as agreed upon in paragraph (2) of this subsection;
34 and
- 35 (2) negotiate with the foreclosed upon defendant, next of kin of
36 the foreclosed upon defendant, or tenant on an affordable lease
37 schedule that shall include an option to purchase the property from
38 the corporation.
- 39 g. In the case of a foreclosed residential property, a nonprofit
40 community development corporation, that has a written agreement
41 with a foreclosed upon defendant, next of kin of the foreclosed
42 upon defendant, or tenant of the foreclosed upon property pursuant
43 to subsection f. of this section, shall have a right of second refusal
44 to purchase the property which is subordinate to the first right of
45 refusal provided to a foreclosed upon defendant, next of kin of the
46 foreclosed upon defendant, or tenant pursuant to subsection d. of

1 this section. If the foreclosed upon defendant, next of kin of the
2 foreclosed upon defendant, or tenant decides not to participate in
3 the sheriff's sale, enter into an agreement with the corporation
4 pursuant to subsection f. of this section, or fail to secure financing
5 or assets sufficient to meet the terms offered by the foreclosing
6 plaintiff or an alternative financial institution to purchase the
7 property, a nonprofit community development corporation shall
8 have the right of second refusal to purchase the property in the
9 amount approved for the opening bid of the sheriff's sale at the time
10 of the sale. Such right shall be deemed exercised if, prior to the
11 opening of the bidding on the foreclosed property, the corporation
12 pays a 3.5 percent deposit with the rest of the balance due within 90
13 business days by cash, certified or cashier's check, or by wire
14 transfer, made payable to the sheriff of the county in which the sale
15 is conducted or to the Special Master, if the sheriff cannot comply
16 with the provisions of subparagraph (a) of paragraph (3) of
17 subsection a. of this section. A nonprofit community development
18 corporation shall only have a right of second refusal to purchase the
19 property if it satisfies the requirements set forth in subsection h. of
20 this section and fulfills the conditions set forth in subsection j. of
21 this section.

22 h. (1) If a foreclosed upon defendant, next of kin of the
23 foreclosed upon defendant, or tenant of the foreclosed upon
24 property does not participate in the sheriff's sale, secure financing
25 or assets sufficient to meet the terms offered by the foreclosing
26 plaintiff or an alternative financial institution, or enter into
27 agreement with a nonprofit community development corporation
28 pursuant to subsection f. of this section, the nonprofit community
29 development corporation may enter a bid for the foreclosed upon
30 residential property.

31 (2) A nonprofit community development corporation intending
32 to bid in a sheriff's sale for residential property and pay a 3.5
33 percent deposit as permitted by this section shall, on the date of the
34 sheriff's sale, register its participation with the sheriff or Special
35 Master if the sheriff cannot comply with the provisions of
36 paragraph (3) of subsection a. of this section. In registering its
37 participation in the sale, a corporation shall provide the most recent
38 form 1023 filing provided to the United States Internal Revenue
39 Service, stating the corporation's mission includes community
40 revitalization and the creation or preservation of affordable housing
41 through the restoration of vacant and abandoned property.

42 i. (1) If more than one nonprofit community development
43 corporation seeks to exercise the right of second refusal, the right
44 shall belong in the first instance to a nonprofit community
45 development corporation that fulfills the conditions set forth in
46 subsection f. of this section. If no such nonprofit community

1 development corporation exists, priority shall belong to the
2 nonprofit community development corporation that first registers its
3 participation in the foreclosure sale pursuant to paragraph (2) of
4 subsection h. of this section.

5 (2) If an individual or nonprofit community development
6 corporation exercises a right of first or second refusal pursuant to
7 subsection d. or f. of this section, the foreclosure sale shall be
8 deemed concluded and the person or corporation shall be deemed to
9 be the successful bidder and shall be subject to the applicable
10 provisions and procedures of this section.

11 j. (1) A nonprofit community development corporation that
12 successfully bids on the purchase of a residential property in a
13 sheriff's sale and satisfies the conditions set forth in subsection h.
14 of this section shall be subject to the fines assessed pursuant to
15 paragraph (3) of this subsection if the nonprofit corporation does
16 not:

17 (a) restore as need be and sell the property to a household
18 earning no more than 120 percent below area median income or rent
19 the property as an affordable housing unit to a household who earns
20 no more than 100 percent below area median income, if the
21 property is vacant or abandoned at the time of the sheriff's sale; or

22 (b) if the property is occupied at the time of sale by either a
23 tenant or the foreclosed upon defendant with whom the nonprofit
24 community development corporation does not already have an
25 agreement pursuant to subsection f. of this section, the nonprofit
26 community development corporation shall negotiate in good faith
27 with the foreclosed upon defendant or tenant on an affordable lease
28 schedule that will allow the foreclosed upon defendant or tenant to
29 continue to occupy the property should the foreclosed upon
30 defendant or tenant desire to do so. If after 120 business days the
31 foreclosed upon defendant or tenant does not respond to the
32 requests of the nonprofit community development corporation to
33 negotiate, the corporation may bring an action in a court of
34 competent jurisdiction to remove the foreclosed upon defendant or
35 tenant. If removal has successfully occurred, the nonprofit
36 community development corporation shall comply with the
37 requirements of subparagraph (a) of paragraph (1) of this
38 subsection.

39 (2) A nonprofit community development corporation that
40 successfully bids on the purchase of a residential property and
41 satisfies the conditions set forth in subsection f. of this section shall
42 ensure that, in any future sale of the property pursuant to
43 subparagraph (a) of paragraph (1) of this subsection, the property be
44 subject to a renewable deed restriction, with the minimum number
45 of affordability years being 30 years and with the option to renew,
46 requiring any future property owner to sell the property to a

1 household earning no more than 120 percent below area median
2 income or rent the property as an affordable housing unit to a
3 household who earns no more than 100 percent below area median
4 income.

5 (3) A nonprofit community development corporation that
6 successfully bids on and completes the purchase of a residential
7 property in a sheriff's sale and satisfies the conditions set forth in
8 subsection f. of this section and fails to meet the requirements of
9 this subsection shall be assessed a fine by a court of competent
10 jurisdiction of up to \$100,000 for the first violation, and \$500,000
11 thereafter for each subsequent violation. If the sheriff's office
12 determines based upon its oversight that there has been a violation
13 of this subsection, the sheriff's office shall bring an action in a
14 court of competent jurisdiction so that the sheriff's office can
15 pursue enforcement of penalties for the violation. If the nonprofit
16 community development corporation dissolves, the deed of the
17 residential property shall be transferred to another nonprofit
18 community development corporation who shall be bound by the
19 requirements of this subsection.

20 k. In the case of a residential property for which the successful
21 bidder is subject to the occupancy requirement pursuant to
22 paragraphs (7) and (8) of subsection e. of this section, the
23 appropriate sheriff's office, county administrative agent, or
24 affordable housing administrative agent that is hired by the county
25 shall oversee the occupancy of the property, which may include the
26 mailing of a questionnaire to the successful bidder within 84
27 months following the sale or requiring the bidder to respond to
28 questions and submit documentation evidencing the bidder's
29 continued residence at the property using the proof of residency
30 documents provided pursuant to paragraph (5) of subsection e. of
31 this section. If the appropriate sheriff's office, county
32 administrative agent, or affordable housing administrative agent
33 that is hired by the county determines based upon its oversight that
34 there has been an occupancy violation, the sheriff's office, county
35 administrative agent, or affordable housing administrative agent
36 hired by the county shall refer the matter to the county counsel's
37 office to bring an action in a court of competent jurisdiction so that
38 the sheriff's office can pursue enforcement of penalties for the
39 violation.

40 l. Each sheriff's office shall maintain information, written in
41 plain language, regarding the program to finance the purchase of
42 residential property in a foreclosure sale in accordance with this
43 section on its Internet website, and in any other medium used by the
44 office to advertise a foreclosure sale, in a manner that is accessible
45 to the public. Additionally, each sheriff's office shall display
46 information, written in plain language, regarding the Community

1 Wealth Preservation Program in its office in a manner that is
2 conspicuous to the public. The information posted on a sheriff's
3 Internet website or displayed in a sheriff's office concerning the
4 program shall further contain language notifying the public that the
5 program shall exclude those purchasing property for investment
6 purposes. For any county in which the primary language of 10
7 percent or more of the residents is a language other than English,
8 the sheriff's office shall provide the information required by this
9 subsection in that other language or languages in addition to
10 English. The alternate language shall be determined based on
11 information from the latest federal decennial census.

12 m. Any sheriff's sales conducted virtually shall be subject to the
13 provisions of P.L. , c. (C.) (pending before the Legislature
14 as this bill).

15 n. Any penalty imposed pursuant to this section may be
16 recovered with costs in a summary proceeding commenced by the
17 appropriate sheriff's office pursuant to the "Penalty Enforcement
18 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Fifty percent
19 of any monies collected pursuant to this section shall be forwarded
20 to the municipality in which the foreclosed upon property is located
21 to be deposited in the affordable housing trust fund of the
22 municipality for use on low income housing or moderate income
23 housing needs as defined in section 4 of P.L.1985, c.222
24 (C.52:27D-304), to the extent the municipality maintains such a
25 fund, and if the municipality does not maintain such a fund, to the
26 State Treasurer, and shall annually be appropriated to the "New
27 Jersey Affordable Housing Trust Fund," section 20 of P.L.1985,
28 c.222 (C.52:27D-320) for the purpose of developing and supporting
29 housing programs that create for-sale and rental affordable housing.
30 The remaining 50 percent of any monies collected pursuant to this
31 section shall provide for administrative and enforcement costs,
32 including costs incurred by the appropriate sheriff's office, county
33 administrative agent, or county counsel's office, necessary to
34 effectuate the purposes of this section.

35 o. The provisions of P.L. , c. (C.) (pending before the
36 Legislature as this bill) shall only apply to residential property as
37 defined pursuant to subsection p. of this section.

38 p. As used in this section:

39 "Area median income" means the midpoint of a region's
40 household income distribution, as determined by the United States
41 Department of Housing and Urban Development.

42 "Community Wealth Preservation Program" means the program
43 created by P.L. , c. (C.) (pending before the Legislature as
44 this bill) to assist prospective owner-occupants, nonprofit
45 community development corporations, foreclosed upon defendants,
46 next of kin of foreclosed upon defendants, and tenants of foreclosed

1 upon defendants in purchasing and financing foreclosed upon
2 residential properties in sheriff's sales with an initial 3.5 percent
3 deposit.

4 "Nonprofit community development corporation" means a not-
5 for-profit organization, whose mission includes community
6 revitalization through the restoration of vacant and abandoned
7 property to create or preserve affordable housing, as indicated in the
8 corporation's most recent form 1023 filing provided to the United
9 States Internal Revenue Service.

10 "Residential property" means real property located in this State
11 in which people reside or dwell as their primary residence, and shall
12 not include property which is used for investment, commercial, or
13 business purposes or residential property containing more than four
14 residential units.

15 "Upset price" means the minimum amount that a foreclosed upon
16 property shall be sold for in a sheriff's sale as determined by the
17 foreclosing plaintiff.

18 (cf: P.L.2019, c.71, s.1)

19

20 2. N.J.S.22A:4-8 is amended to read as follows:

21 22A:4-8. For the services hereinafter enumerated sheriffs and
22 other officers shall receive the following fees:

23 In addition to the mileage allowed by law, for serving every
24 summons and complaint, attachment or any mesne process issuing
25 out of the Superior Court, the sheriff or other officer serving such
26 process shall, for the first defendant or party on whom such process
27 is served, be allowed \$22.00 and, for service on the second
28 defendant named therein, \$20.00, and for serving such process on
29 any other defendant or defendants named therein, \$16.00 each, and
30 no more. If a man and his wife be named in such process they shall
31 be considered as one defendant, except where they are living
32 separate and apart.

33 Serving summons and complaint in matrimonial actions, in
34 addition to mileage, \$22.00.

35 Serving capias ad respondendum, capias ad satisfaciendum,
36 warrant of commitment, writ of ne exeat, in addition to mileage,
37 \$48.00.

38 Serving order to summon juries and return, \$8.00.

39 Serving every execution against goods or lands and making an
40 inventory and return, in addition to mileage, \$48.00.

41 For returning every writ, \$2.00.

42 Executing every writ of possession and return, in addition to
43 mileage, \$48.00.

44 Executing every writ of attachment, sequestration or replevin
45 issuing out of any of the courts, in addition to mileage, \$48.00.

1 For serving each out-of-State paper, in addition to the mileage
2 allowed by law, \$25.00 for the first defendant on whom such paper
3 is served, \$20.00 for service on the second defendant named
4 therein, and \$16.00 for serving such paper on any other defendant
5 or defendants named therein. If a man and wife be named in such
6 paper, they shall be considered as one defendant, except where they
7 are living separate and apart.

8 For serving or executing any process or papers where mileage is
9 allowed by law, the officer shall receive mileage actually traveled
10 to and from the courthouse, at the rate per mile of \$0.16.

11 The sheriff shall be entitled to retain out of all moneys collected
12 or received by him on a forfeited recognizance, whether before or
13 after execution, or from amercements, or from fines and costs on
14 conviction, on indictment or otherwise, whether such moneys are
15 payable to the State or to the county treasurer of the county wherein
16 conviction was had, **[5%]** five percent.

17 For transporting each offender to the State Prison, per mile, but
18 not less than \$3.00 for each offender, to be certified by the keeper
19 of the prison and the certificate to be delivered to the county
20 treasurer of the county where the conviction was had, \$0.23.

21

22 EXECUTION SALES

23

24 **[When]** Except as to sales conducted in accordance with section
25 12 of P.L.1995, c.244 (C.2A:50-64), when a sale is made by virtue
26 of an execution the sheriff shall be entitled to charge the following
27 fees: On all sums not exceeding \$5,000.00, **[6%]** 10 percent; on all
28 sums exceeding \$5,000.00 on such excess, **[4%]** five percent; the
29 minimum fee to be charged for a sale by virtue of an execution,
30 **[\$50.00]** \$150.00. When sales are conducted in accordance with
31 section 12 of P.L.1995, c.244 (C.2A:50-64), the sheriff shall be
32 entitled to charge six percent on a sale by virtue of an execution.

33 On an execution against wages, commissions and salaries, the
34 sheriff shall charge the same percentage fees on all sums collected
35 as those percentage fees applicable in cases wherein an execution
36 sale is consummated.

37 When the execution is settled without actual sale and such
38 settlement is made manifest to the officer, the officer shall receive
39 **[1/2]** one-half of the amount of percentage allowed herein in case
40 of sale.

41 Making statement of execution, sales and execution fees, \$10.00.

42 Advertising the property for sale, provided the sheriff or deputy
43 sheriff attend in pursuance of the advertisement, \$20.00.

44 Posting property for sale, \$20.00. For the crier of the
45 vendue, when the sheriff proceeds to sell, for every day he shall be
46 actually employed in such sale, \$5.00.

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1 Every adjournment of a sale, but no more than one adjournment
2 shall be allowed, and if the sheriff shall have several executions
3 against a defendant, he shall only be allowed for advertising,
4 attending and adjourning, as if he had but one execution, \$28.00.

5 Drawing and making a deed to a purchaser of real property,
6 \$75.00.

7 Drawing and making a bill of sale to the purchaser of personal
8 property when such bill of sale is required or demanded, \$20.00.

9 When more than one execution shall be issued out of the
10 Superior Court upon any judgment, each sheriff to whom such
11 execution shall be directed and delivered shall be entitled to collect
12 and receive from the defendant named in such execution the fees
13 allowed by law for making a levy and return and statement thereon,
14 or for such other services as may be actually performed by him, and
15 the sheriff who shall collect the amount named in said execution or
16 any part thereof, shall be entitled to the legal percentage upon
17 whatever amount may be so collected by him, but in case any such
18 judgment shall be settled between the parties and the amount due
19 thereon shall not be collected by either sheriff, then the percentage
20 on the amount collected which would be due the sheriff thereon in
21 case only one execution had been issued shall be equally divided
22 among the several sheriffs in whose hands an execution in the same
23 cause may have been placed.

24 The sheriff shall file his taxed bill of costs with the clerk of the
25 court out of which execution issued, within such time as the court
26 shall direct by general rule or special order, or, in default thereof,
27 he shall not be entitled to any costs. If any sheriff shall charge in
28 such bill of costs for services not done, or allowed by law, or shall
29 take any greater fee or reward for any services by him done than is
30 or shall be allowed by law, he shall be liable for the damages
31 sustained by the party aggrieved including a penalty of \$30.00, to
32 be recovered in a summary manner, in the action or proceeding
33 wherein the execution was issued or otherwise.

34 (cf: P.L.2001, c.370, s.5)

35
36 3. (New section) a. In situations in which a creditor has
37 instituted a foreclosure proceeding pursuant to the "Fair Foreclosure
38 Act," P.L.1995, c.244 (C.2A:50-53 et seq.) and a creditor employs
39 an agent to be responsible for the care, maintenance, security, and
40 upkeep of the property if it becomes vacant and abandoned, the
41 creditor and agent who peacefully enter the property and exercise
42 reasonable care in doing so, shall be immune from liability, before
43 and after the bid, for any damage to the property or any person
44 entering the property.

45 b. Persons bidding on the property shall not enter the property
46 prior to the time of sale of the property to the successful bidder.

1 4. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 This bill establishes the “Community Wealth Preservation
7 Program” and expands access for certain buyers to purchase
8 property from sheriff’s sales.

9 Under the bill, a defendant in a foreclosure proceeding, next of
10 kin of the foreclosed upon defendant, tenant of the foreclosed upon
11 defendant, nonprofit community development corporation, or bidder
12 who shall occupy the property for at least 84 months, will have up
13 to 90 business days to complete the sale of a foreclosing property,
14 with no interest accruing on the balance of the sale for 60 business
15 days following the sale. If the successful bidder does not pay the
16 balance within this 90 business day period, the bidder would forfeit
17 the deposit on the property and be responsible for the payment of
18 accrued interest and fees or penalties incurred as a result of the sale
19 being void, unless the failure to fulfill the balance is due to the
20 bidder’s inability to close a mortgage through no fault of the
21 bidder’s own.

22 Under the bill, a foreclosed upon defendant, next of kin of the
23 foreclosed upon defendant, tenant of the foreclosed upon defendant,
24 nonprofit community development corporation, or bidder may
25 purchase property in a sheriff’s sale by way of financing if the
26 bidder provides documentation that the bidder has been pre-
27 approved by a financial institution for financing the property. A
28 bidder, other than the foreclosed upon defendant, the foreclosed
29 upon defendant’s next of kin, or nonprofit community development
30 corporation may only use the financing option if the property will
31 be the bidder’s primary residence.

32 In the case of a foreclosed residential property where the
33 foreclosed upon defendant is an individual and not a corporate
34 entity, if the foreclosed upon defendant, next of kin of the
35 foreclosed upon defendant, or tenant of the foreclosed upon
36 property has secured financing or assets sufficient to meet terms
37 offered by the foreclosing plaintiff or an alternative financial
38 institution to purchase the property, the foreclosed upon defendant,
39 next of kin of the foreclosed upon defendant, or tenant will have the
40 right of first refusal to purchase the property in the amount
41 approved for the opening bid of the sheriff’s sale at the time of the
42 sale. The right of first refusal will only be made available to the
43 foreclosed upon defendant, next of kin of the foreclosed upon
44 defendant, or tenant for the initial sale of the foreclosed upon
45 property, unless the sale is delayed, postponed or concludes with
46 the foreclosing plaintiff purchasing the property, upon which the

1 foreclosed upon defendant, next of kin of the foreclosed upon
2 defendant, or tenant will receive a right of first refusal for the
3 subsequent sale of the foreclosed upon property. Such right will be
4 deemed exercised if, prior to the opening of the bidding on the
5 foreclosed property, the foreclosed upon defendant, next of kin of
6 the foreclosed upon defendant, or tenant pays a 3.5 percent deposit
7 with the rest of the balance due within 90 business days by cash,
8 certified or cashier's check, or by wire transfer, made payable to the
9 sheriff of the county in which the sale is conducted.

10 If the foreclosed upon defendant, next of kin of the foreclosed
11 upon defendant, or tenant of the foreclosed upon property fails to
12 secure financing or assets sufficient to meet the terms offered by the
13 foreclosing plaintiff or an alternative financial institution to
14 purchase the residential property, the foreclosed upon defendant,
15 next of kin of the foreclosed upon defendant, or tenant may request
16 that a nonprofit community development corporation purchase the
17 property. If the nonprofit community development corporation
18 agrees in writing to purchase the property from the foreclosed upon
19 defendant, next of kin of the foreclosed upon defendant, or tenant,
20 the corporation will have a right of second refusal to purchase the
21 property which is subordinate to the first right of refusal provided to
22 a foreclosed upon defendant, next of kin of the foreclosed upon
23 defendant, or tenant. If the foreclosed upon defendant, next of kin
24 of the foreclosed upon defendant, or tenant decides not to
25 participate in the sheriff's sale, enter into an agreement with the
26 corporation, or fail to secure financing or assets sufficient to meet
27 the terms offered by the foreclosing plaintiff or an alternative
28 financial institution to purchase the property, a nonprofit
29 community development corporation will have the right of second
30 refusal to purchase the property in the amount approved for the
31 opening bid of the sheriff's sale at the time of the sale. The right
32 shall be deemed exercised if, prior to the opening of the bidding on
33 the foreclosed property, the corporation pays a 3.5 percent deposit
34 with the rest of the balance due within 90 business days by cash,
35 certified or cashier's check, or by wire transfer, made payable to the
36 sheriff of the county in which the sale is conducted or to the Special
37 Master, if the sheriff cannot conduct the sale. A nonprofit
38 community development corporation will only have a right of
39 second refusal to purchase the property if it satisfies certain
40 conditions set forth within the bill.

41 With the exception of sales conducted pursuant to the
42 Community Wealth Preservation Program, the bill increases the fee
43 to be charged by virtue of an execution sale from 4 to 5 percent, or
44 6 percent to 10 percent, depending on whether the sum involved is
45 greater than or less than \$5,000, respectively. The bill also

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1 increases the minimum fee to be charged by virtue of an execution
2 sale from \$50 to \$150.

3 Finally, the bill provides creditors and creditors' agents with
4 immunity from liability for damages to certain vacant and
5 abandoned property so long as reasonable care is exercised, and
6 clarifies that bidders are not authorized to enter the property prior to
7 the time of sale.