SENATE, No. 344

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)

Senator SHIRLEY K. TURNER
District 15 (Hunterdon and Mercer)

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.

(Sponsorship Updated As Of: 1/27/2022)
AN ACT concerning emergency mortgage relief for residential
property owners and small landlords.

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

1. The Legislature finds and declares that:

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

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

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

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

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

2. As used in this act:

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

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

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

“Impacted homeowner” means an owner or mortgagor of title to a
residential property, which serves as such person’s primary residence,
and who qualifies for a mortgage forbearance pursuant to section 3 of
this act. “Impacted homeowner” shall also include a person who owns
and resides in a residential building in which there is rented or offered
for rent other dwelling units under either a written or oral lease which
building contains no more than four dwelling units.

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

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

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

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

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

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

b. Upon receipt of a written request or verbal authorization for a
mortgage forbearance from an impacted homeowner pursuant to
subsection a. of this section, a creditor shall provide to the impacted
homeowner a mortgage forbearance and confirmation of that
forbearance in writing. No additional documentation shall be required
from the impacted homeowner by the creditor other than the written
request under subsection a. of this section. A creditor shall have 45 days
to approve or deny a request for a forbearance. If the impacted
homeowner is not notified within that time period, the request is deemed
approved. During this period, a creditor shall not institute any
foreclosure proceedings and any proceedings already underway shall be
stayed. If a mortgage forbearance request is denied, the creditor shall
provide an explanation of the reasons for the denial, and, if applicable,
reasonable time to remedy any deficiencies in the request. The
minimum initial mortgage forbearance period of an impacted
homeowner shall be 90 days. An impacted homeowner may request,
and shall be granted, a subsequent forbearance period of at minimum 90
days, for a total minimum of 180. A creditor shall not be prohibited
from offering a more extended forbearance period. Fees, penalties, or
interest, including attorney’s fees beyond the amounts scheduled and
calculated as if the mortgagor made all contractual payments on time
and in full under the terms of the mortgage contract, shall not be
assessed or accrue during and as a result of a mortgage forbearance
granted pursuant to this section. Nothing in this section shall be
construed to impact property tax and insurance obligations of an
impacted homeowner related to any real property in the State. A
creditor that grants a mortgage forbearance pursuant to this section shall
encourage impacted homeowners to seek out United States Department
of Housing and Urban Development certified housing counseling and
shall provide to the property owner confirmation of the approval of the
forbearance, information concerning the process for forbearance, and
information on how to request a subsequent forbearance.

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

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

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

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

(c) order the non-compliant creditor to pay a reasonable counsel fee
in connection with an impacted homeowner whose debt has been
reported to a collection or credit reporting agency, bureau, or data
collection facility;

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

(e) order the non-compliant creditor to take such steps as are
necessary, within 30 days of the order, to rehabilitate the credit record
of an impacted homeowner, with an exact copy provided at no cost to
the homeowner of the efforts made in that regard; and
(f) order the non-compliant creditor to pay an award of damages to
the impacted homeowner not to exceed 25 percent of the debt attempted
to be collected or reported by the non-compliant creditor to the
collection or credit reporting agency, bureau, or data collection facility,
the minimum award being $350.

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

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

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

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

f. An impacted homeowner denied a forbearance under this section
by a creditor licensed by the Department of Banking and Insurance may
file a complaint with the Department of Banking and Insurance. The
department shall investigate the complaint and issue a ruling within 30
days and, if appropriate, the department shall order the creditor to grant
a forbearance to the impacted homeowner pursuant to this section.
During the pendency of any investigation, no notice of foreclosure shall
be filed by any creditor against the same impacted homeowner.

g. To the extent required by the Administrative Director of the
Courts, the creditor shall provide the docket numbers, party names, and
property addresses as to any pending court actions involving any
property granted a forbearance to the Superior Court Clerk’s Office at
least monthly.

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

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

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

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

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

4. This act shall take effect immediately and shall apply retroactively to mortgage payments missed subsequent to March 9, 2020.

STATEMENT

This bill would provide protections to certain homeowners during the COVID-19 pandemic emergency period. Under the bill, “emergency period” means the period during which a public health emergency exists as declared by the Governor in Executive Order No. 103 of 2020, as extended, and the 60 days following the conclusion of this period.

The bill provides that, during the emergency period, a creditor is required to grant a mortgage forbearance to an impacted homeowner if the impacted homeowner submits a written request to the mortgage servicer affirming the following:
(1) the impacted homeowner has suffered a substantial reduction of income resulting from COVID-19 or the Public Health Emergency or State of Emergency declared in response thereto, including a financial hardship from a reduction in hours or loss of employment, or increased costs incurred in necessary child care resulting from the closure of schools or caring for family members who are ill due to COVID-19 or quarantined due to a suspected exposure to COVID-19, or for funeral costs due to COVID-19;

(2) the gross household income of the impacted homeowner does not exceed 150 percent of the area median income after hardship, unless this requirement for eligibility is waived by the mortgage lender; and

(3) the impacted homeowner’s bank accounts collectively contain less than six months’ reserves of the impacted homeowner’s gross household income for 2019.

Upon receipt of a request for a mortgage forbearance from an impacted homeowner, the bill requires a creditor to provide to the impacted homeowner a mortgage forbearance and confirmation of that forbearance in writing. A creditor shall have 45 days to approve or deny a request for a forbearance. If the impacted homeowner is not notified within that time period, the request is deemed approved. During this period, a creditor shall not institute any foreclosure proceedings and any proceedings already underway shall be stayed. If a mortgage forbearance request is denied, the creditor shall provide an explanation of the reasons for the denial, and, if applicable, reasonable time to remedy any deficiencies in the request.

The minimum initial mortgage forbearance period of an impacted homeowner is to be 90 days. An impacted homeowner may request, and is to be granted, a subsequent forbearance period of at minimum 90 days, for a total minimum of 180 days. Fees, penalties, or interest, including attorney’s fees, shall not be assessed or accrue during and as a result of a mortgage forbearance.

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

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

An impacted homeowner denied a forbearance under the bill by a creditor licensed by the Department of Banking and Insurance (“DOBI”), and not a State- or nationally-chartered financial institution, may file a complaint with DOBI. The department would be required to investigate the complaint and issue a ruling without 30 days and, if
appropriate, would order the creditor to grant a forbearance to the
impacted homeowner. During the pendency of any investigation, no
notice of foreclosure shall be filed by any creditor against the same
impacted homeowner.

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

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