

**SENATE, No. 4185**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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INTRODUCED MARCH 3, 2025

**Sponsored by:**

**Senator BENJIE E. WIMBERLY**

**District 35 (Bergen and Passaic)**

**SYNOPSIS**

Concerns expedited process for foreclosing vacant and abandoned residential properties in uncontested actions.

**CURRENT VERSION OF TEXT**

As introduced.



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2

1 AN ACT concerning foreclosure of residential properties, amending  
2 P.L.2012, c.70 and supplementing P.L.1995, c.244 (C.2A:50-53 et  
3 seq.).

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

7  
8 1. Section 1 of P.L.2012, c.70 (C.2A:50-73) is amended to read as  
9 follows:

10 1. a. For the purposes of this section, "vacant and abandoned"  
11 residential property means residential real estate with respect to  
12 which the mortgagee proves, by clear and convincing evidence, that  
13 the mortgaged real estate is vacant and has been abandoned or where  
14 a notice of violation has been issued pursuant to section 3 of  
15 P.L.2021, c.444 (C.40:48-2.12s3). Where a notice of violation has  
16 not been issued pursuant to section 3 of P.L.2021, c.444 (C.40:48-  
17 2.12s3), real property shall be deemed "vacant and abandoned" if the  
18 court finds that the mortgaged property is not occupied by a  
19 mortgagor or tenant as evidenced by a lease agreement entered into  
20 prior to the service of a notice of intention to commence foreclosure  
21 according to section 4 of the "Fair Foreclosure Act," P.L.1995, c.244  
22 (C.2A:50-56), and at least two of the following conditions exist:

- 23 (1) overgrown or neglected vegetation;
- 24 (2) the accumulation of newspapers, circulars, flyers or mail on  
25 the property;
- 26 (3) disconnected gas, electric, or water utility services to the  
27 property;
- 28 (4) the accumulation of hazardous, noxious, or unhealthy  
29 substances or materials on the property;
- 30 (5) the accumulation of junk, litter, trash or debris on the  
31 property;
- 32 (6) the absence of window treatments such as blinds, curtains or  
33 shutters;
- 34 (7) the absence of furnishings and personal items;
- 35 (8) statements of neighbors, delivery persons, representatives of  
36 a common interest community association, or government employees  
37 indicating that the residence is vacant and abandoned;
- 38 (9) windows or entrances to the property that are boarded up or  
39 closed off or multiple window panes that are damaged, broken and  
40 unrepaired;
- 41 (10) doors to the property that are smashed through, broken off,  
42 unhinged, or continuously unlocked;
- 43 (11) a risk to the health, safety or welfare of the public, or any  
44 adjoining or adjacent property owners, exists due to acts of  
45 vandalism, loitering, criminal conduct, or the physical destruction or  
46 deterioration of the property;

**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.

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1 (12) an uncorrected violation of a municipal building, housing, or  
2 similar code during the preceding year, or an order by municipal  
3 authorities declaring the property to be unfit for occupancy and to  
4 remain vacant and unoccupied;

5 (13) the mortgagee or other authorized party has secured or  
6 winterized the property due to the property being deemed vacant and  
7 unprotected or in danger of freezing;

8 (14) a written statement issued by any mortgagor expressing the  
9 clear intent of all mortgagors to abandon the property;

10 (15) any other reasonable indicia of abandonment.

11 b. For the purposes of this section, a residential property shall  
12 not be considered "vacant and abandoned" if, on the property:

13 (1) there is an unoccupied building which is undergoing  
14 construction, renovation, or rehabilitation that is proceeding  
15 diligently to completion, and the building is in compliance with all  
16 applicable ordinances, codes, regulations, and statutes;

17 (2) there is a building occupied on a seasonal basis, but otherwise  
18 secure; or

19 (3) there is a building that is secure, but is the subject of a probate  
20 action, action to quiet title, or other ownership dispute.

21 c. In addition to the residential mortgage foreclosure procedures  
22 set out in the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et  
23 seq.), a summary action to foreclose a mortgage debt secured by  
24 residential property that is vacant and abandoned may be brought by  
25 a lender in the Superior Court. In addition, a lender may, at any time  
26 after filing a foreclosure action, file with the court, in accordance  
27 with the Rules Governing the Courts of the State of New Jersey, an  
28 application to proceed in a summary manner because the residential  
29 property that is the subject of the foreclosure action is believed to be  
30 "vacant and abandoned"; provided, however, that this section shall  
31 not apply to a foreclosure of a timeshare interest secured by a  
32 mortgage. The summary action permitted under this section shall only  
33 be available in uncontested actions, as defined pursuant to R.4:64-1(c)  
34 of the Rules of Court.

35 d. (1) In addition to the service of process required by the Rules  
36 of Court, a lender shall establish, for the entry of a residential  
37 foreclosure judgment under this section, that a process server has  
38 made two unsuccessful attempts to serve the mortgagor or occupant  
39 at the residential property, which attempts must be at least 72 hours  
40 apart, and during different times of the day, either before noon,  
41 between noon and 6 P.M., or between 6 P.M. and 10 P.M.

42 (2) In addition to any notices required to be served by law or the  
43 Rules of Court, a lender shall, with any order to show cause served  
44 as original service of process or a motion to proceed summarily, serve  
45 a notice that the lender is seeking, on the return date of the order to  
46 show cause, or on the date fixed by the court, to proceed summarily  
47 for entry of a residential foreclosure judgment because the property  
48 is vacant and abandoned.

1 (3) When a property is deemed vacant and abandoned as herein  
2 defined, a lender shall not be required to serve the debtor with the  
3 notice to cure required by section 6 of the "Fair Foreclosure Act,"  
4 P.L.1995, c.244 (C.2A:50-58).

5 e. (1) The court may enter a final residential mortgage foreclosure  
6 judgment under this section upon a finding, (a) by clear and  
7 convincing evidence, that the residential property is vacant and  
8 abandoned as defined under subsection a. of this section, and (b) that  
9 a review of the pleadings and documents filed with the court, as  
10 required by the Rules of Court, supports the entry of a final  
11 residential mortgage foreclosure judgment.

12 (2) A final residential mortgage foreclosure judgment under this  
13 section shall not be entered if the court finds that:

14 (a) the property is not vacant or abandoned; or

15 (b) the mortgagor or any other defendant has filed an answer,  
16 appearance, or other written objection that is not withdrawn and the  
17 defenses or objection asserted provide cause to preclude the entry of  
18 a final residential mortgage foreclosure judgment. Any such defense  
19 or objection shall be accompanied by an affidavit stating that the defense  
20 is not made solely for the purpose of delaying the relief requested  
21 pursuant to the summary action. Any defense or objection that is  
22 presented without the affidavit shall not be considered by the court,  
23 except for good cause shown.

24 f. If a final residential mortgage foreclosure judgment under this  
25 section is not entered on the original or adjourned return date of an  
26 order to show cause or the date fixed by the court to proceed  
27 summarily, the court may direct that the foreclosure action continue  
28 on the normal track for residential mortgage foreclosure actions for  
29 properties that are not vacant and abandoned and the notice to cure  
30 served with the order to show cause or the order fixing that date for  
31 the matter to proceed summarily shall be of no effect.

32 g. All actions brought to foreclose on real property pursuant to  
33 this section shall proceed in accordance with the Rules of Court.

34 h. Nothing in this section is intended to supersede or limit other  
35 procedures adopted by the Court to resolve residential mortgage  
36 foreclosure actions, including, but not limited to, foreclosure  
37 mediation.

38 i. Nothing in this section shall be construed to affect the rights  
39 of a tenant to possession of a leasehold interest under the Anti-  
40 Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New Jersey  
41 Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et seq.), or  
42 any other applicable law.

43 j. (1) Notwithstanding paragraph (3) of subsection a. of section 12  
44 of P.L.1995, c.244 (C.2A:50-64) to the contrary, the sheriff shall sell  
45 the property within 90 days of the sheriff's receipt of any writ of  
46 execution issued by the court if:

47 (a) the court makes a finding in the foreclosure judgment that the  
48 property is vacant and abandoned; or

1 (b) the court issues an order directing the sheriff to sell the  
2 property within 90 days, pursuant to the provisions of subsection k.  
3 of this section.

4 (2) If it becomes apparent that the sheriff cannot comply with the  
5 provisions of paragraph (1) of this subsection, the foreclosing  
6 plaintiff shall apply to the court for an order appointing a Special  
7 Master or judicial agent to hold the foreclosure sale within 90 days  
8 of the date of application.

9 k. (1) Following issuance of a foreclosure judgment, in which  
10 the court did not make a finding that the property is vacant and  
11 abandoned, a foreclosing plaintiff may make application to the court  
12 for the property to be sold by the sheriff within 90 days of the date of  
13 application. The application shall include a certification that the  
14 mortgaged real estate is vacant and abandoned.

15 (2) Upon application that meets the criteria set forth in paragraph  
16 (1) of this subsection, the court shall issue an order directing the  
17 sheriff to sell the property in accordance with the provisions of  
18 subsection j. of this section. A hearing shall not be required unless  
19 the application is contested.

20 (cf: P.L.2021, c.444, s.4)

21

22 2. (New section) a. When a lender is entitled to pursue a summary  
23 action pursuant to subsection c. of section 1 of P.L.2012, c.70 (C.2A:50-  
24 73), but fails to file an application to proceed in a summary manner, and  
25 the mortgage lien of the lender is superior to all or part of the lien of a  
26 planned real estate development, as defined under section 1 of P.L.1990,  
27 c.55 (C.2A:42-103), then the board of the planned real estate  
28 development may file a motion to compel payment of association fees  
29 outstanding since the foreclosure action was filed, along with ongoing  
30 fees, until occupied by a new resident. The motion shall be  
31 accompanied by an affidavit from a person having personal knowledge  
32 of the contents and shall contain the specific facts to establish that the  
33 action is uncontested.

34 b. If the motion and affidavit filed pursuant to subsection a. of this  
35 section are found to be in compliance with the provisions of that  
36 subsection, have been served on the lender, debtor, and other  
37 appropriate parties in accordance with the Rules Governing the Courts  
38 of the State of New Jersey, and are otherwise satisfactory, the Superior  
39 Court shall:

40 (1) enter an order compelling the lender to pay to the association the  
41 assessments for periodic payments due for regular and usual operating  
42 and common area expenses pursuant to the association's annual budget  
43 coming due on or after the thirty-first day following entry of the order  
44 to pay; or

45 (2) approve an application for an Order Appointing a Fiscal Agent  
46 pursuant to section 3 of P.L. , c. (C. ) (pending before the  
47 Legislature as this bill) and in accordance with the governing documents  
48 of the planned real estate development.

1       3. (New section) a. In accordance with N.J.S.2A:17-66 and  
2 R.4:53-1 of the Rules Governing the Courts of the State of New  
3 Jersey, and in addition to the powers granted to condominium  
4 associations pursuant to section 21 of the “Condominium Act,”  
5 P.L.1969, c.257 (C.46:8B-21), the board of a planned real estate  
6 development, as defined under section 1 of P.L.1990, c.55 (C.2A:42-  
7 103), may apply to the Superior Court of New Jersey for an Order  
8 Appointing a Fiscal Agent over an abandoned or unoccupied unit.

9       b. The fiscal agent shall be authorized to:

10       (1) manage the unit;

11       (2) license the use of the unit;

12       (3) keep the unit insured against loss, damage by fire, or public  
13 liability; and

14       (4) repair and otherwise do anything necessary for the care and  
15 management of the unit.

16       c. The fiscal agent shall be authorized to:

17       (1) demand, collect and receive from any licensee of the unit or  
18 any portion of the unit, or any person liable for the unit, any payment  
19 due from any licensee of the unit;

20       (2) institute all legal proceedings necessary for the protection of  
21 the unit, or to recover possession of the unit or any part of the unit,  
22 and to institute actions for the collection of payments due, and to  
23 institute summary proceedings for the removal of any licensee; and

24       (3) retain legal counsel to render legal advice and to provide legal  
25 services as may be necessary in the performance of its duties.

26       d. The anti-eviction provisions of P.L.1974, c.49 (C.2A:18-61.1  
27 et seq.) shall not apply to any licensee of a unit that consists of one  
28 single dwelling. In the license agreement, the fiscal agent shall  
29 include prominent notice to the licensee indicating the following:

30       (1) the anti-eviction provisions of P.L.1974, c.49 (C.2A:18-61.1  
31 et seq.) shall not apply to the licensee;

32       (2) a tenancy is not created by the license agreement; and

33       (3) the licensee understands and agrees that this license  
34 agreement may be terminated for any reason or no reason at all and  
35 that the licensee will be required and mandated to vacate the unit  
36 including the licensee’s belongings and personal effects on demand  
37 of the fiscal agent without regard to any of the anti-eviction  
38 provisions of P.L.1974, c.49 (C.2A:18-61.1 et seq.). The fiscal agent  
39 shall make an accommodation for the licensee of no less than 120  
40 hours to fully and completely vacate. However, such accommodation  
41 shall not be considered a waiver, and shall not be considered to create  
42 a tenancy.

43       e. Any licensee placed by the fiscal agent in the unit or any other  
44 person that may be in possession of the unit shall pay to the fiscal  
45 agent any payment due pursuant to any license agreement issued by  
46 the fiscal agent.

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- 1 f. Neither the title owner of a unit, nor its agent, employee, heir  
2 or devisee shall be entitled to receive or collect any payment due  
3 pursuant to any license agreement issued by the fiscal agent.
- 4 g. Upon receipt, the fiscal agent shall deposit payments in a  
5 banking institution in its name as the fiscal agent and shall pay the  
6 association the following charges:
- 7 (1) 10 percent of the payment due pursuant to any license  
8 agreement issued by the fiscal agent to reimburse the association for  
9 the purposes of managing receivership;
- 10 (2) current maintenance fees on a monthly basis; and
- 11 (3) any prior past due maintenance fees, assessments, late  
12 charges, interest and reasonable counsel fees and cost, until paid in  
13 full.
- 14 h. Upon application of the license fee or any other payments as  
15 set forth in subsection g. of this section, including, but not limited to,  
16 reimbursement to the receiver of any and all costs incurred to  
17 rehabilitate the unit to make it habitable, and once the license fee or  
18 other payments satisfy in full the underlying debt due to the  
19 association for delinquent fees and charges assessed to the unit,  
20 further monthly payments shall be applied on a pro rata basis to:
- 21 (1) the association to satisfy monthly maintenance fees or  
22 assessments as may be applicable; and
- 23 (2) monthly mortgage debt payment amortization, except that the  
24 payment shall not include any acceleration of principal or interest due  
25 to a default under the terms of the loan.
- 26 i. As used in this section:
- 27 "Fiscal agent" means a receiver, trustee, or other fiscal agent  
28 authorized pursuant to this section to manage a unit.
- 29 "Unit" means a unit, home, or lot as defined in the applicable  
30 governing documents of a planned real estate development.

31  
32 4. This act shall take effect on the 90th day next following  
33 enactment.

34  
35  
36 STATEMENT

37  
38 This bill would revise the existing expedited process for mortgage  
39 lenders to foreclose vacant and abandoned residential properties, and  
40 would enhance the remedies available to common interest  
41 communities with respect to the foreclosure of vacant and abandoned  
42 units.

43 With respect to the expedited vacant and abandoned residential  
44 property foreclosure process, the bill provides that such process only  
45 remains available to a residential mortgage lender if the foreclosure  
46 action is uncontested. The bill also requires any defense or objection  
47 to an application to proceed in this expedited manner to be  
48 accompanied by an affidavit stating that the defense or objection is

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1 not made solely for the purpose of delaying the expedited foreclosure  
2 action. Any defense or objection that is presented without the  
3 affidavit would not be considered by the court, except for good cause  
4 shown.

5 With respect to the remedies available to common interest  
6 communities, the bill provides that, when a lender is entitled to  
7 proceed through the expedited foreclosure process, but has not done  
8 so, the board of the community may file with the Superior Court a  
9 motion to compel the lender to pay association fees. The bill requires  
10 the motion to be accompanied by an affidavit from a person having  
11 personal knowledge of the contents and to contain the facts necessary  
12 to establish that the action is uncontested. If the motion complies  
13 with these requirements, the Superior Court may either enter an order  
14 compelling the lender to pay to the planned real estate development  
15 the association fees coming due on or after the thirty-first day  
16 following entry of the order to pay, or, alternatively, approve an  
17 application for the appointment of a fiscal agent.

18 The bill also allows the board of any common interest community  
19 to apply to the Superior Court for the appointment of a fiscal agent  
20 over an abandoned or unoccupied unit. The fiscal agent would be  
21 responsible for maintaining the unit and paying, through a licensee  
22 or otherwise, association fees and assessments for benefits such as  
23 utilities, common element expenses, amortization of common  
24 elements, administrative costs, and maintenance of the physical  
25 structure in order to protect, preserve, and maintain the unit for the  
26 benefit of the community, the unit owners in the community, and any  
27 others with an interest in the unit, including, without limitation,  
28 mortgage holders. However, a licensee would not obtain anti-  
29 eviction protections as a consequence of the license agreement. The  
30 fiscal agent may terminate the license agreement for any reason or no  
31 reason at all. The fiscal agent may make an accommodation,  
32 allowing the licensee up to 72 hours to vacate. However, such  
33 accommodation would not create a tenancy.