

[First Reprint]

ASSEMBLY, No. 3823

STATE OF NEW JERSEY
217th LEGISLATURE

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Sponsored by:

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SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on December 18, 2017, with amendments.



(Sponsorship Updated As Of: 12/8/2017)

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
3 et 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 which
12 the mortgagee proves, by clear and convincing evidence, that the
13 mortgaged real estate is vacant and has been abandoned or where a
14 notice of violation has been issued pursuant to subsection b. of section
15 1 of P.L.2014, c.35 (C.40:48-2.12s). Where a notice of violation has
16 not been issued pursuant to subsection b. of section 1 of P.L.2014, c.35
17 (C.40:48-2.12s), real property shall be deemed "vacant and
18 abandoned" if the court finds that the mortgaged property is not
19 occupied by a mortgagor or tenant as evidenced by a lease agreement
20 entered into prior to the service of a notice of intention to commence
21 foreclosure according to section 4 of the "Fair Foreclosure Act,"
22 P.L.1995, c.244 (C.2A:50-56), and at least two of the following
23 conditions exist

- 24 (1) overgrown or neglected vegetation;
- 25 (2) the accumulation of newspapers, circulars, flyers or mail on
26 the property;
- 27 (3) disconnected gas, electric, or water utility services to the
28 property;
- 29 (4) the accumulation of hazardous, noxious, or unhealthy
30 substances or materials on the property;
- 31 (5) the accumulation of junk, litter, trash or debris on the 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, or government
36 employees indicating that the residence is vacant and abandoned;
- 37 (9) windows or entrances to the property that are boarded up or
38 closed off or multiple window panes that are damaged, broken and
39 unrepaired;
- 40 (10) doors to the property that are smashed through, broken off,
41 unhinged, or continuously unlocked;
- 42 (11) a risk to the health, safety or welfare of the public, or any
43 adjoining or adjacent property owners, exists due to acts of vandalism,
44 loitering, criminal conduct, or the physical destruction or deterioration
45 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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted December 18, 2017.

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) 'a' certification from 'a member of' the board of a planned
11 real estate development 'in which the residential property is
12 located', as defined under section 1 of P.L.1990, c.55 (C.2A:42-103),
13 'in which the property is located,' stating with specificity that the
14 property has been observed to be abandoned ', that the owner of the
15 property is at least two months in arrears of association fees, and that
16 the member has personal knowledge regarding the contents of the
17 certification' ; or

18 (16) any other reasonable indicia of abandonment.

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

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

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

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

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

44 d. (1) In addition to the service of process required by the Rules
45 of Court, a lender shall establish, for the entry of a residential
46 foreclosure judgment under this section, that a process server has made
47 two unsuccessful attempts to serve the mortgagor or occupant at the
48 residential property, which attempts must be at least 72 hours apart,

1 and during different times of the day, either before noon, between
2 noon and 6 P.M., or between 6 P.M. and 10 P.M.

3 (2) In addition to any notices required to be served by law or the
4 Rules of Court, a lender shall, with any order to show cause served as
5 original service of process or a motion to proceed summarily, serve a
6 notice that the lender is seeking, on the return date of the order to show
7 cause, or on the date fixed by the court, to proceed summarily for entry
8 of a residential foreclosure judgment because the property is vacant
9 and abandoned.

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

14 e. (1) The court may enter a final residential mortgage foreclosure
15 judgment under this section upon a finding, (a) by clear and
16 convincing evidence, that the residential property is vacant and
17 abandoned as defined under subsection a. of this section, and (b) that a
18 review of the pleadings and documents filed with the court, as required
19 by the Rules of Court, supports the entry of a final residential
20 mortgage foreclosure judgment.

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

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

24 (b) the mortgagor or any other defendant has filed an answer,
25 appearance, or other written objection that is not withdrawn and the
26 defenses or objection asserted provide cause to preclude the entry of a
27 final residential mortgage foreclosure judgment. Any such defense or
28 objection shall be accompanied by an affidavit stating that the defense
29 is not made solely for the purpose of delaying the relief requested
30 pursuant to the summary action. ¹ [The defense or objection shall be
31 presented within 30 days of the filing of the service of the application
32 to proceed summarily for foreclosure of "vacant and abandoned"
33 property pursuant to this section.]¹ Any defense or objection that is
34 presented without the affidavit ¹ [, or that is not presented within the
35 30 day time period,]¹ shall not be considered by the court, except for
36 good cause shown.

37 f. If a final residential mortgage foreclosure judgment under this
38 section is not entered on the original or adjourned return date of an
39 order to show cause or the date fixed by the court to proceed
40 summarily, the court may direct that the foreclosure action continue on
41 the normal track for residential mortgage foreclosure actions for
42 properties that are not vacant and abandoned and the notice to cure
43 served with the order to show cause or the order fixing that date for the
44 matter to proceed summarily shall be of no effect.

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

47 h. Nothing in this section is intended to supersede or limit other
48 procedures adopted by the Court to resolve residential mortgage

1 foreclosure actions, including, but not limited to, foreclosure
2 mediation.

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

8 j. Notwithstanding paragraph (3) of subsection a. of section 12 of
9 P.L.1995, c.244 (C.2A:50-64) to the contrary, if the court makes a
10 finding in the foreclosure judgment that the property is vacant and
11 abandoned, the sheriff shall sell the property within 60 days of the
12 sheriff's receipt of any writ of execution issued by the court. If it
13 becomes apparent that the sheriff cannot comply with the provisions of
14 this subsection, the foreclosing plaintiff may apply to the court for an
15 order appointing a Special Master or judicial agent to hold the
16 foreclosure sale.

17 ¹[k. At the time of filing of the application to proceed summarily
18 for foreclosure of "vacant and abandoned" property pursuant to this
19 section, the Office of the Superior Court Clerk shall require a fee of
20 \$1,000 from the plaintiff for the costs associated with the use of the
21 summary action for each vacant and abandoned property permitted
22 under this section, which shall be retained by the Administrative
23 Office of the Courts in a non-lapsing account for use by the Office of
24 the Superior Court Clerk.]¹

25 (cf: P.L.2014, c.35, s.3)

26

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

40 b. If the motion and affidavit filed pursuant to subsection a. of this
41 section are found to be in compliance with the provisions of that
42 subsection, have been served on the lender, debtor ^{1,1} and other
43 appropriate parties in accordance with the Rules Governing the Courts
44 of the State of New Jersey, and are otherwise satisfactory, the Superior
45 Court shall:

46 (1) enter an order compelling the lender to ¹[file an application to
47 proceed in a summary manner in accordance with subsection c. of
48 section 1 of P.L.2012, c.70 (C.2A:50-73) within 30 days or, if the

1 lender declines to file such a motion, to¹ pay to the association the
2 assessments for periodic payments due for regular and usual operating
3 and common area expenses pursuant to the association's annual budget
4 coming due on or after the thirty-first day following entry of the order
5 to pay; or

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

10

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

20 b. The fiscal agent shall be authorized to:

21 (1) manage the unit;

22 (2) license the use of the unit;

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

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

27 c. The fiscal agent shall be authorized to:

28 (1) demand, collect and receive from any licensee of the unit or
29 any portion of the unit, or any person liable for the unit, any
30 payment due from any licensee of the unit;

31 (2) institute all legal proceedings necessary for the protection of
32 the unit, or to recover possession of the unit or any part of the unit,
33 and to institute actions for the collection of payments due, and to
34 institute summary proceedings for the removal of any licensee; and

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

37 d. The anti-eviction provisions of P.L.1974, c.49 (C.2A:18-61.1
38 et seq.) shall not apply to any licensee of a unit that consists of one
39 single dwelling. ¹In the license agreement, the fiscal agent shall
40 include prominent notice to the licensee indicating the following:

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

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

44 (3) the licensee understands and agrees that this license
45 agreement may be terminated for any reason or no reason at all and
46 that the licensee will be required and mandated to vacate the unit
47 including the licensee's belongings and personal effects on demand
48 of the fiscal agent without regard to any of the anti-eviction

1 provisions of P.L.1974, c.49 (C.2A:18-61.1 et seq.). The fiscal
2 agent shall make an accommodation for the licensee of no less than
3 120 hours to fully and completely vacate. However, such
4 accommodation shall not be considered a waiver, and shall not be
5 considered to create a tenancy.¹

6 e. Any licensee placed by the fiscal agent in the unit or any
7 other person that may be in possession of the unit shall pay to the
8 fiscal agent any payment due pursuant to any license agreement
9 issued by the fiscal agent.

10 f. Neither the title owner of a unit, nor its agent, employee, heir
11 or devisee shall be entitled to receive or collect any payment due
12 pursuant to any license agreement issued by the fiscal agent.

13 g. Upon receipt, the fiscal agent shall deposit payments in a
14 banking institution in its name as the fiscal agent and shall pay the
15 association the following charges:

16 (1) 10 percent of the payment due pursuant to any license
17 agreement issued by the fiscal agent to reimburse the association for
18 the purposes of managing receivership;

19 (2) current maintenance fees on a monthly basis; and

20 (3) any prior past due maintenance fees, assessments, late
21 charges, interest and reasonable counsel fees and cost, until paid in
22 full.

23 h. Upon application of the ¹**[rent]** license fee¹ or any other
24 payments as set forth in subsection g. of this section, including, but
25 not limited to, reimbursement to the receiver of any and all costs
26 incurred to rehabilitate the unit to make it habitable, and once the
27 ¹**[rent]** license fee¹ or other payments satisfy in full the underlying
28 debt due to the association for delinquent fees and charges assessed
29 to the unit, further monthly payments shall be applied on a pro rata
30 basis to:

31 (1) the association to satisfy monthly maintenance fees or
32 assessments as may be applicable; and

33 (2) monthly mortgage debt payment amortization, except that
34 the payment shall not include any acceleration of principal or
35 interest due to a default under the terms of the loan.

36 i. As used in this section:

37 “Fiscal agent” means a receiver, trustee, or other fiscal agent
38 authorized pursuant to this section to manage a unit.

39 “Unit” means a unit, home, or lot as defined in the applicable
40 governing documents of a planned real estate development.

41

42 4. This act shall take effect on the 90th day next following
43 enactment.