

[Second Reprint]

SENATE, No. 1566

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED FEBRUARY 9, 2012

Sponsored by:

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District 20 (Union)

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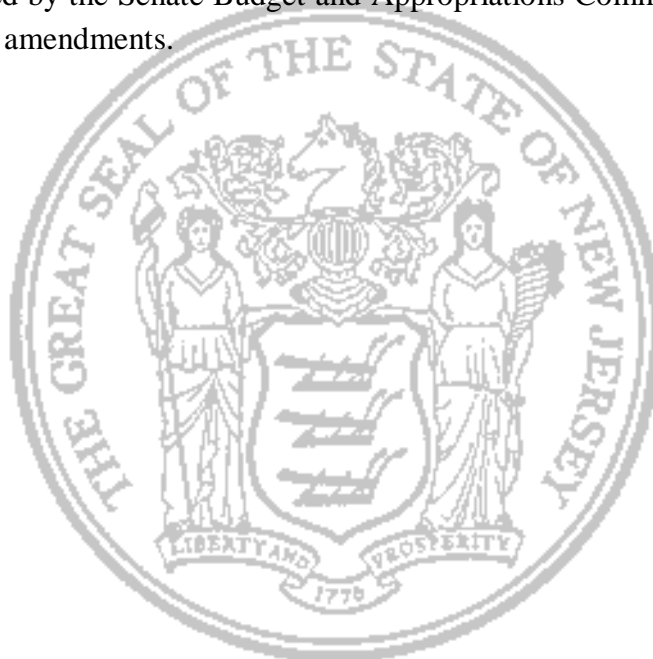
Senators Codey and Stack

SYNOPSIS

Establishes the "New Jersey Residential Foreclosure Transformation Act"; provides expedited process for foreclosing abandoned residential properties.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on March 8, 2012, with amendments.



(Sponsorship Updated As Of: 3/6/2012)

1 AN ACT concerning the foreclosure of residential properties, the
2 transfer and dedication of foreclosed residential properties for
3 affordable housing, and supplementing Title 2A of the New
4 Jersey Statutes and Title 55 of the Revised Statutes.

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

8
9 1. This act shall be known and may be cited as the "New Jersey
10 Residential Foreclosure Transformation Act."

11
12 2. The Legislature finds and declares that:

13 a. In recent years, there has been an enormous expansion in
14 the number of mortgage foreclosure filings in New Jersey and
15 across the nation. The number of mortgage foreclosure actions filed
16 in the New Jersey Courts grew from just over 20,000 in 2005 to
17 more than 51,000 in 2008, 66,000 in 2009, and 58,000 in 2010.

18 b. Preliminary information indicates a decline in the number of
19 residential mortgage foreclosure filings over 2011. However, this
20 decline is largely attributable to actions undertaken by the New
21 Jersey Judiciary which, in December of 2010, suspended the
22 processing of uncontested residential foreclosures by the six biggest
23 lenders in order to address "robo-signing" and other processing
24 irregularities.

25 c. Despite this decline, it has been reported that more than one
26 in 10 New Jersey mortgage loans are already in foreclosure or are
27 90 days or more in arrears. Because of the large number of
28 foreclosures filed during the 2009-2010 period, and the Judiciary's
29 suspension of foreclosure processing, reports indicate that as of
30 August 2011 more than 100,000 residential foreclosure cases were
31 still open. Now that the courts have resumed processing
32 foreclosures for the big six lenders, it is widely believed that
33 foreclosure filings will increase during 2012. This is due in part to
34 the large number of mortgages that are seriously delinquent, more
35 than 90 days past due. Reports have indicated that during the
36 suspension period mortgage lenders were waiting to file more than
37 28,000 additional foreclosures and that another 55,000 mortgage
38 loans were over 90 days delinquent.

39 d. Many of these foreclosed residential properties are vacant,
40 undermining the health, safety, and economic vitality of
41 neighborhoods, depressing their property values, and reducing
42 revenues to municipalities.

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:

¹Senate SEG committee amendments adopted February 16, 2012.

²Senate SBA committee amendments adopted March 8, 2012.

1 e. It is the public policy of this State to encourage the
2 production of low-income and moderate-income housing to serve
3 the general welfare of all the State's residents.

4 f. The availability of tens of thousands of foreclosed
5 residential properties presents a unique opportunity for the State to
6 facilitate the purchase and dedication, or the rental, of housing units
7 for low-income and moderate-income residents.

8 g. Establishment of a temporary State entity dedicated to the
9 purpose of identifying foreclosed residential properties and
10 facilitating their purchase and dedication for occupancy or their
11 rental, including but not limited to low-income and moderate-
12 income families, is in the public interest of the State.

13

14 3. As used in this act:

15 "Affordable" means a sales price or rent within the means of a
16 low or moderate income household.

17 "Agency" means the New Jersey Housing and Mortgage Finance
18 Agency established pursuant to section 4 of P.L.1983, c.530
19 (C.55:14K-4).

20 "Community development corporation" means a nonprofit
21 community development corporation established pursuant to Title
22 15 of the Revised Statutes, Title 15A of the New Jersey Statutes, or
23 other law of this State, with a focus on producing and operating
24 affordable housing or housing with on-site social services for
25 individuals with special needs.

26 "Community development financial institution" means an entity
27 designated and certified by the United States Department of the
28 Treasury as a Community Development Financial Institution
29 pursuant to ¹[12 CFR 1805] 12 CFR Part 1805¹.

30 "Contractor" means a qualified community development
31 financial institution that enters into a contract or loan with the
32 corporation pursuant to section 7 of this act.

33 "Corporation" means the "New Jersey Foreclosure Relief
34 Corporation" established pursuant to this act.

35 "Eligible property" means any residential property that is owned
36 by an institutional lender as the result of a mortgage foreclosure.

37 ²"Individuals with special needs" means individuals with mental
38 illness, physical or developmental disabilities, victims of domestic
39 violence, ex-offenders, youth aging out of foster care, disabled and
40 homeless veterans, individuals and households who are homeless,
41 individuals with AIDS/HIV, and individuals in other emerging
42 special needs groups identified by State agencies. Individuals shall
43 be at least 18 years of age if not part of a household.²

44 "Institutional lender" or "lender" means any lawfully constituted
45 mortgage lender, mortgage investor, or mortgage loan servicer that
46 owns an eligible property including, but not limited to any agency
47 or instrumentality of the United States, including, but not limited to,
48 the Government National Mortgage Association, the Federal Home

1 Loan Mortgage Corporation, the Federal National Mortgage
2 Association, the Federal Housing Administration, the Small
3 Business Administration, the Resolution **'[Trust] Funding'**
4 Corporation, and the Federal Deposit Insurance Corporation.

5 "Intercreditor agreement" means an agreement among creditors
6 that sets forth the various lien positions and the rights and liabilities
7 of each creditor and its impacts on the other creditors.

8 "Low-income" means 50 percent or less of the median gross
9 household income for households of the same size within the
10 housing region in which the household is located, based upon the
11 United States Department of Housing and Urban Development's
12 (HUD) Section 8 Income Limits (uncapped) averaged across
13 counties for the housing region.

14 "Low-income housing" means housing affordable according to
15 United States Department of Housing and Urban Development or
16 other recognized standards for home ownership and rental costs,
17 and occupied or reserved for occupancy by households with a gross
18 household income equal to 50 percent or less of the median gross
19 household income for households of the same size within the
20 housing region in which the housing is located.

21 "Market-rate units" means housing not restricted to low- and
22 moderate-income households that may sell or rent at any price.

23 "Moderate-income" means more than 50 percent but less than 80
24 percent of the median gross household income for households of the
25 same size within the housing region in which the household is
26 located, based upon the United States Department of Housing and
27 Urban Development's (HUD's) Section 8 Income Limits (uncapped)
28 averaged across counties for the housing region.

29 "Moderate-income housing" means housing affordable according
30 to United States Department of Housing and Urban Development or
31 other recognized standards for home ownership and rental costs and
32 occupied or reserved for occupancy by households with a gross
33 household income equal to more than 50 percent but less than 80
34 percent of the median gross household income for households of the
35 same size within the housing region in which the housing is located.

36 "Permanent supportive housing" means **'[affordable housing**
37 **dedicated for persons with developmental disabilities or mental**
38 **illness, designed as permanent housing, and regulated by the New**
39 **Jersey Department of Human Services] a permanent lease based**
40 **housing unit that provides access to supportive services for**
41 **individuals with special needs and households with individuals with**
42 **special needs who can benefit from housing with services.'**¹

43 "Qualified community development financial institution" means
44 a community development financial institution that has a minimum
45 of \$50 million in assets under management and a minimum of 2
46 years' experience in the financing and acquisition of real estate for
47 affordable housing.

1 "Qualifying household" means a very-low, low-, or moderate-
2 income household, the head of which certifies in writing that the
3 household intends to occupy the property as a principal residence
4 for at least 12 months.

5 "Supportive shared living housing" means permanent lease-based
6 supportive housing that provides access to supportive services to
7 individuals with special needs who maintain separate leases for
8 bedrooms and share common living space.

9 "Very-low-income" means 30 percent or less of the median gross
10 household income for households of the same size within the
11 housing region in which the household is located, based upon the
12 United States Department of Housing and Urban Development's
13 (HUD) Section 8 Income Limits (uncapped) averaged across
14 counties for the housing region.

15 "Very-low-income housing" means housing affordable to,
16 according to United States Department of Housing and Urban
17 Development or other recognized standards for home ownership
18 and rental costs, and occupied by, or reserved for occupancy by,
19 households with a gross household income equal to 30 percent or
20 less of the median gross household income for households of the
21 same size within the housing region in which the housing is located.

22

23 4. a. There is established in the New Jersey Housing and
24 Mortgage Finance Agency the "New Jersey Foreclosure Relief
25 Corporation."

26 b. The corporation shall constitute a body corporate and politic
27 and an instrumentality exercising public and essential governmental
28 functions, and the exercise by the corporation of the powers
29 conferred by this act shall be deemed and held to be an essential
30 governmental function of the State.

31 c. The corporation shall be governed by a seven-member
32 board, consisting of the Commissioner of Community Affairs, the
33 Executive Director of the New Jersey Housing and Mortgage
34 Finance Agency, the Commissioner of Banking and Insurance, and
35 the State Treasurer, who shall be members ex officio, and three
36 members appointed by the Governor. Each ex officio member of
37 the board may designate an officer or employee of his department to
38 represent him at meetings of the board, and each such designee may
39 lawfully vote and otherwise act on behalf of the member for whom
40 he constitutes the designee. Any such designation shall be in
41 writing delivered to the secretary of the board and shall continue in
42 effect until revoked or amended by writing delivered to the
43 secretary of the board.

44 d. The three members appointed by the Governor shall be
45 residents of the State and shall have knowledge in the areas of 'real
46 estate.' housing design, construction, or operation; mortgage
47 banking, finance and foreclosure; or community development. Of
48 the three members appointed by the Governor, one shall be a

1 nominee of the Senate President and one shall be a nominee of the
2 Speaker of the General Assembly. ¹At least one of the members
3 appointed by the Governor shall hold a license as a real estate
4 broker, broker-salesperson, salesperson, or referral agent under the
5 provisions of R.S.45:15-1 et seq.¹ No more than two of the
6 members appointed by the Governor shall be members of the same
7 political party. The members shall serve for two-year terms. Each
8 member shall hold office for the term of his appointment and until
9 the appointment of his successor. A member of the board shall be
10 eligible for reappointment. A member of the board may be removed
11 from office by the Governor, for cause, after a public hearing and
12 may be suspended by the Governor pending the completion of such
13 a hearing.

14 e. (1) The Executive Director of the New Jersey Housing and
15 Mortgage Finance Agency shall be the chairperson of the board.
16 The chairperson shall appoint the secretary to the board. The
17 chairperson shall convene an organizational meeting of the board as
18 soon as possible after the appointment of its members.

19 (2) The board shall have the exclusive authority to approve all
20 financial transactions of the corporation, to approve minutes of
21 board meetings, and to make determinations concerning the
22 corporation's governing structure.

23 (3) The secretary to the board shall deliver a true copy of the
24 minutes of every board meeting to the Governor. No action taken at
25 a board meeting shall have force or effect until the Governor
26 approves the action or fails to veto the action within 10 business
27 days after a true copy of the minutes were delivered. During that
28 10-day period, the Governor may render any action taken by the
29 board or any member thereof null and void by returning a copy of
30 the minutes with a veto of the action to the board.

31 f. The corporation shall use employees (selected by the board)
32 of the agency and the agency shall provide such personnel to the
33 corporation for its use. In addition to persons otherwise employed
34 by the agency, the agency shall employ, and shall provide to the
35 corporation, such persons as the corporation may request from time
36 to time. Agency employees provided to the corporation shall be
37 subject to the direction and control of the corporation and any of
38 them may be returned to the agency at any time by the corporation
39 in the discretion of the corporation. The corporation may use
40 administrative services of the agency and, if it does so, shall
41 reimburse the agency for the actual costs of providing such
42 services.

43 g. With the agreement of an executive department or other
44 executive agency, the corporation may utilize the personnel of that
45 department or agency on a reimbursable basis to cover actual and
46 reasonable expenses.

47 h. (1) On or before the last day of March in each year, the
48 corporation shall make an annual report of its activities for the

1 preceding calendar year, and its planned activities for the current
2 and following calendar year, to the Governor and to the Legislature.

3 (2) Each annual report shall set forth the current nature and
4 extent of foreclosure activity in New Jersey and shall depict
5 changes in foreclosure activity from the prior calendar year. The
6 report shall set forth a complete operating and financial statement
7 covering the corporation's operations, transactions and holdings
8 during the preceding year, including but not limited to:

9 (a) the total number of re-capitalized market rate units.

10 (b) the total numbers of very-low-income, low-income, and
11 moderate-income units that were produced for sale and for rental in
12 the preceding year pursuant to this act, their locations by
13 municipality, and the sources of financing used.

14 (3) The corporation shall cause an audit of its books and
15 accounts to be made at least once in each year by certified public
16 accountants. The cost of the audit shall be considered an expense of
17 the corporation and a copy thereof shall be filed with the State
18 Treasurer.

19 (4) The corporation shall provide copies of its annual reports
20 and audits to the agency and the agency shall display the
21 corporation's annual reports and audits on the agency's website.

22 i. The corporation shall cease its operations on December 31,
23 2017. On that date, any assets, liabilities, properties, or funds held
24 by the corporation shall transfer to the agency. The corporation
25 shall expire upon transmittal of the 2017 annual report.

26

27 5. The corporation shall have the following powers:

28 a. To adopt, alter, and use a corporate seal.

29 b. To enter into contracts and modify, or consent to the
30 modification of, any contract or agreement to which the corporation
31 is a party or in which the corporation has an interest under this act,
32 with or without public bidding, notwithstanding the provisions of
33 any other law.

34 c. To make advance, progress, or other payments.

35 d. To acquire, hold, lease, mortgage, maintain, or dispose of, at
36 public or private sale, real and personal property, using any legally
37 available private sector methods including without limitation,
38 securitization of debt or equity, limited partnerships, mortgage
39 investment conduits, and real estate investment trusts, and
40 otherwise exercise all the usual incidents of ownership of property
41 necessary and convenient to the operations of the corporation.

42 e. To sue and be sued in its corporate capacity in any court of
43 competent jurisdiction.

44 f. To exercise any other power established under this section
45 and such incidental powers as are necessary to carry out its duties
46 and functions under this section. The corporation may indemnify
47 the directors, officers, and employees of the corporation on such
48 terms as the corporation deems proper against any liability under

1 any civil suit pursuant to any statute or pursuant to common law
2 with respect to any claim arising out of or resulting from any act or
3 omission by such person within the scope of such person's
4 employment in connection with any transaction entered into
5 involving the disposition of assets (or any interests in any assets or
6 any obligations backed by any assets) by the corporation. For
7 purposes of this subsection, the terms "officers" and "employees"
8 include officers and employees of the agency. The indemnification
9 authorized by this subsection shall be in addition to and not in lieu
10 of any immunities or other protections that may be available to such
11 person under applicable law, and this provision does not affect any
12 such immunities or other protections.

13

14 6. In addition to the powers of the corporation described in
15 section 5 of P.L. , c. (C.) (pending before the Legislature as
16 this bill), the corporation shall have the following powers:

17 a. The corporation may enter into contracts with any person,
18 corporation, or entity which the corporation determines to be
19 necessary or appropriate to carry out its responsibilities under this
20 act. Such contracts shall be subject to the procedures adopted
21 pursuant to section 7 of this act.

22 b. In carrying out the corporation's duties under this act, the
23 corporation may utilize the services of private persons, including
24 real estate and loan portfolio asset management, property
25 management, auction marketing, and brokerage services, if such
26 services are available in the private sector and the corporation
27 determines utilization of such services are practicable and efficient.

28 c. Within 120 days after the adoption of this act, the
29 corporation shall enter into ¹~~an intercreditor~~ a mutually binding
30 funding¹ agreement with the New Jersey Housing and Mortgage
31 Finance Agency for the ¹~~sole purpose~~ purposes¹ of

32 ¹(1) determining the target amount of bond proceeds to be raised
33 by the agency for the activities of the corporation, as well as the
34 sources of repayment of, and security for, the agency's bonds; and

35 (2)¹ identifying underwriting standards, securitization of debt,
36 and credit standards for the acquisition of foreclosed residential
37 properties or mortgage assets.

38

39 7. a. (1) The corporation shall enter into contracts or loans, or
40 both, with no more than two qualified community development
41 financial institutions to negotiate, bid for, and purchase eligible
42 properties and mortgage assets from institutional lenders for the
43 purpose of producing affordable housing. In selecting contractors
44 from among qualified community development financial
45 institutions, the corporation shall accord a strong preference to
46 qualified community development financial institutions that have
47 substantial experience in lending in New Jersey and substantial

1 knowledge of New Jersey real estate markets. The corporation may
2 enter into contracts or loans, or both, with a partnership or consortia
3 of organizations, as long as a qualified community development
4 financial institution is the lead entity, or a partnership or consortia
5 of multiple qualified community development financial institutions.

6 (2) The contracts shall specify the amounts, schedules, and
7 types of funding to be provided by the corporation to the qualified
8 community development financial institutions, the repayment
9 schedule for the portion of that funding to be repaid, and targeted
10 goals of affordable housing to be produced. The corporation may
11 condition funding and goals upon the availability of funds to the
12 corporation. The contracts shall specify reasonable administrative
13 costs sufficient to enable the qualified community development
14 financial institutions to exercise their obligations pursuant to this
15 act. The contracts shall set forth criteria for instances when the
16 purchase, sale, lease, and conveyance of properties as market-rate
17 units furthers the purposes of this act.

18 b. (1) Upon purchase of an eligible property or mortgage asset
19 for use as affordable housing by the corporation or its contractors,
20 the municipality in which the property is located shall be afforded a
21 45-day period of time within which the municipal governing body
22 may opt to purchase the property in lieu of the corporation in
23 accordance with the provisions set forth in this act. The
24 municipality may waive this right through written notice to the
25 corporation or, if so designated by the corporation, its contractors,
26 prior to the expiration of the 45-day period.

27 (2) Those eligible properties purchased by the qualified
28 community development financial institutions and designated
29 pursuant to this act for use as affordable housing shall be restricted
30 for occupancy as affordable housing for a period of 30 years. The
31 restriction shall be set forth in the deed and recorded in the office of
32 the county recording officer of the county wherein the real estate is
33 situated. Affordability controls shall be imposed upon purchase and
34 maintained upon transfer in accordance with the provisions of the
35 Uniform Housing Affordability Controls promulgated by the
36 agency.

37 c. (1) As soon as possible after entering into a contract to
38 purchase an eligible property, but not less than five days after the
39 date the corporation or its contractors enters into the contract, the
40 corporation or its contractors shall provide written notice by
41 personal service or certified mail to the governing body of the
42 municipality within which the eligible property is located. The
43 notice shall inform the governing body of the municipality's
44 opportunity to purchase the eligible property, the municipality's
45 right of first refusal to purchase the property, and the municipality's
46 right to use monies deposited in its affordable housing trust fund.

47 (2) As soon as possible after entering into a contract to purchase
48 an eligible property, but not less than five days after the date the

1 corporation or its contractors enters into the contract, the
2 corporation or its contractors shall list the property on the
3 Department of the Treasury's website. The listing shall contain
4 basic information about the property, including but not limited to
5 location, condition, and information relating to the estimated fair
6 market value of the property. The corporation or its contractors
7 shall make information about the listing available to the agency
8 and, upon request, to municipalities, other public agencies,
9 community development corporations, developers, and qualifying
10 households.

11 (3) The corporation or its contractors shall allow public
12 agencies, community development corporations, developers, and
13 qualifying households reasonable access to an eligible property for
14 purposes of inspection.

15 d. (1) In order to exercise its right to purchase an eligible
16 property, the governing body of the municipality shall provide
17 written notice to the chairperson of the corporation or, if so
18 designated by the corporation, its contractors, within 45 days of the
19 municipality's receipt of the notice required pursuant to subsection
20 c. of this section.

21 (2) The governing body of a municipality may adopt a
22 resolution authorizing the mayor or other designated municipal
23 official to respond to notices received pursuant to subsection c. of
24 this section. The resolution may establish parameters for that
25 exercise of authority, including but not limited to the total amount
26 of funds that may be expended and the amount that may be
27 expended for each unit of housing.

28 (3) A municipality may use any available funding sources to
29 purchase eligible properties or mortgage assets through the
30 corporation pursuant to this act, except for funds that are dedicated
31 to another purpose by law, covenant, or other obligation.

32 (4) Whenever a municipality does not exercise an option to
33 purchase an eligible property under this section, the corporation or
34 its contractors may lease the property for occupancy as affordable
35 housing subject to a 30-year deed restriction or convey the property
36 for occupancy as affordable housing subject to a 30-year deed
37 restriction to another public agency, a community development
38 corporation, a developer, or a qualifying household. ¹~~【The】~~ A
39 municipality that does not exercise an option to purchase an eligible
40 property under this section may adopt a resolution authorizing the¹
41 corporation or its contractors ¹~~【may】~~ to¹ use monies deposited in
42 that municipality's affordable housing trust fund, up to and
43 including the negotiated purchase price of the eligible property, and
44 apply those funds to the purchase of the eligible property.

45 e. Notwithstanding any other provision of this section to the
46 contrary, the corporation and, if authorized by contract, its
47 contractors, may purchase, sell, lease, and convey market rate-units
48 without offering those units to the municipality and without

1 imposing affordability controls upon the property if the purchase,
2 sale, lease, and conveyance of those properties as market-rate units
3 satisfy criteria established pursuant to contract in accordance with
4 subsection a. of this section and does not violate the terms of any
5 other provision of law or requirement, including those governing
6 the use of funds used to make the purchase.

7 f. All purchases, sales, leases, and conveyances of property by
8 qualified community development financial institutions exercised
9 pursuant to this section shall be deemed to lessen the burdens of
10 government in furthering the purposes of this act.

11

12 8. a. A municipality that purchases an eligible property
13 pursuant to this act shall sell and convey or lease the housing unit or
14 units acquired within 60 days of the date of purchase, unless it is
15 not possible to do so due to practical or market conditions. In the
16 event that an eligible property is not conveyed or leased within 180
17 days of the date of purchase, or remains vacant for a 180-day period
18 during the pendency of affordability controls, the corporation, or
19 the agency as successor to the corporation, may commence
20 proceedings to take control of the property and to sell and convey or
21 lease the property in furtherance of the purposes of this act and deed
22 restrictions of record.

23 b. The governing body of a municipality that purchases an
24 eligible property pursuant to this act may, by resolution, authorize
25 the private sale and conveyance or the lease of a housing unit or
26 units acquired pursuant to this act. Every deed and rental
27 agreement shall contain a provision specifying the requirement that
28 the housing unit or units shall remain available to low- and
29 moderate-income households for a period of at least 30 years.

30 c. '[A] Except as provided in subsection d. of this section,
31 whenever the corporation, its contractors, or a' municipality
32 '[that]' purchases an eligible property pursuant to this act from
33 monies deposited in '[its municipal] the municipality's' affordable
34 housing trust fund and dedicates the property for affordable
35 housing, as required by this act, 'that municipality' shall receive:

36 (1) two units of credit towards its affordable housing obligation
37 for:

38 (a) each eligible property sold or conveyed as a for-sale unit or
39 leased as rental housing, and

40 (b) each '[new bedroom] unit of affordable housing' dedicated
41 for permanent supportive housing other than supportive shared
42 living housing.

43 (2) one and one-quarter units of credit towards its affordable
44 housing obligation for each new bedroom dedicated in supportive
45 shared living housing.

46 'd. The total number of additional units of credit beyond the
47 actual units of housing provided pursuant to this act shall not

1 exceed 25 percent of whatever the municipality's affordable
2 housing obligation may be.¹ ²No unit or bedroom shall receive the
3 additional units of credit described in this act in addition to any
4 other type of additional units of credit that may be available
5 towards a municipality's affordable housing obligation.²

6
7 9. The corporation and the State Treasurer shall prioritize the
8 allocation of tax-exempt private activity bonds in the amount
9 necessary to effectuate the purposes of this act in each year until the
10 corporation ceases operation, provided that the proceeds of tax-
11 exempt private activity bonds to support the purposes of this act
12 shall be limited to contracts with and loans to qualified community
13 development financial institutions pursuant to section 7 of this act.

14
15 10. a. For the purposes of this section:

16 "Foreclosure-impacted municipality" means a municipality that
17 documents a minimum of 10 units of housing that have been
18 foreclosed upon and have remained unsold on a Multiple Listing
19 Service for at least 60 days; and

20 "Units of housing" means units of housing that are not age-
21 restricted and are habitable year-round, including but not limited to,
22 single family homes, condominium units, cooperative units, and
23 mobile homes with at least two bedrooms.

24 b. (1) Prior to the date that a foreclosure-impacted
25 municipality's development fees or payments-in-lieu fees are
26 scheduled to transfer to the "New Jersey Affordable Housing Trust
27 Fund" pursuant to section 8 of P.L.2008, c.46 (C.52:27D-329.2) or
28 section 9 of P.L.2008, c.46 (C.52:27D-329.3), the municipality may
29 adopt a resolution committing the expenditure of municipal
30 affordable housing trust fund monies ²[for the purposes of this act].
31 These funds shall be used to produce very-low-income, low-
32 income, and moderate-income housing². The resolution shall
33 authorize the transfer of a minimum of \$150,000 from the
34 municipality's municipal affordable housing trust fund to the
35 "Foreclosure to Affordable Housing Transformation Fund" for use
36 by the corporation or its contractors for the provision of affordable
37 housing pursuant to this section and the procedures specified in
38 section 7 of this act.

39 (2) The resolution may authorize the mayor or other designated
40 municipal official to exercise the municipal powers described in
41 section 7 of this act. The resolution may establish parameters for
42 that exercise of authority, including but not limited to purchase
43 price levels for the exercise of that power.

44 c. (1) The corporation or its contractors ²[may] shall² use
45 funds transferred pursuant to subsection ²[a.] b.² of this section
46 ²[in any manner designed to further the purposes of this act,
47 provided that the corporation or its contractors shall use its best

1 efforts² to produce very-low, low-, and moderate-income housing
2 within the municipality transferring funds pursuant to this section,
3 with a deed restriction specifying that the housing unit or units shall
4 remain available to low- and moderate-income households for a
5 period of at least 30 years² , and may target the acquisition of
6 eligible property towards such municipalities to further that end².

7 (2) If the corporation or its contractors are unable to utilize
8 some or all of the funds provided to produce affordable housing
9 within the municipality within two years of the transfer of such
10 funds to the "Foreclosure to Affordable Housing Transformation
11 Fund," the funds shall be returned to the municipality as soon as
12 practicable after the two-year anniversary of such transfer. From
13 the date any such funds are returned to the municipality, the
14 municipality shall be required to commit the funds in accordance
15 with section 8 of P.L.2008, c.46 (C.52:27D-329.2) or section 9 of
16 P.L.2008, c.46 (C.52:27D-329.3), as applicable, within the time
17 constraints set forth in those sections or within six months after the
18 date of transfer of funds back to the municipality, whichever is
19 later.

20 d. Affordable housing created through the "Foreclosure to
21 Affordable Housing Transformation Fund" pursuant to this section
22 shall receive bonus affordable housing credit as set forth in
23 subsection c. of section 8 of this act, even if the municipality does
24 not exercise its right to purchase the property.

25 e. No agency of the State of New Jersey shall take any action
26 to transfer funds from a municipal affordable housing trust fund to
27 the "New Jersey Affordable Housing Trust Fund" established
28 pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320) when
29 such funds are designated to effectuate the purposes of this act
30 during the timeframes established in this section.

31

32 11. a. There is established within the agency a "Foreclosure to
33 Affordable Housing Transformation Fund," which shall be a non-
34 lapsing, revolving fund and which shall be the repository for funds
35 appropriated or otherwise made available for the purposes of this
36 act, and any interest earned thereon. The fund shall be administered
37 by the agency, in accordance with its authority under section 5 of
38 P.L.1983, c.530 (C.55:14K-5) to manage funds for housing
39 programs.

40 b. The agency may transfer into the "Foreclosure to Affordable
41 Housing Transformation Fund" any amounts held or received by the
42 agency that may be used for the production of affordable housing
43 and that is needed by the corporation or its contractors for the
44 purchase of eligible property. ¹Subject to the provisions of sections
45 20 through 28 of P.L.1983, c.530 (C.55:14K-20 through C.55:14K-
46 28), the agency is authorized to issue its bonds to fund the activities
47 of the corporation; provided, however, that tax-exempt bonds shall

1 only be issued consistent with the requirements of section 9 of
2 P.L. , c. (C.) (pending before the Legislature as this bill).¹

3 c. In any year in which the proceeds from the receipts of the
4 additional fee collected pursuant to paragraph (2) of subsection a. of
5 section 3 of P.L.1968, c.49 (C.46:15-7) exceeds \$75 million, the
6 first \$10 million above the \$75 million collected shall be transferred
7 into the "Foreclosure to Affordable Housing Transformation Fund"
8 for the purposes of the production of affordable housing.

9 d. Notwithstanding any provision of law to the contrary, the
10 Commissioner of Community Affairs may transfer into the
11 "Foreclosure to Affordable Housing Transformation Fund" amounts
12 held for the production of affordable housing and not designated for
13 a specific purpose beyond the overall production of affordable
14 housing by the annual budget, including but not limited to monies
15 deposited in the "New Jersey Affordable Housing Trust Fund,"
16 which amounts are needed by the corporation for the purchase of
17 eligible property. The commissioner shall consider the transfer of
18 funds from the "New Jersey Affordable Housing Trust Fund" to the
19 "Foreclosure to Affordable Housing Transformation Fund" as a
20 priority for funding until the corporation ceases its operations.

21 e. All amounts deposited into the "Foreclosure to Affordable
22 Housing Transformation Fund" that are derived from federal
23 funding sources or are otherwise dedicated to the production of
24 affordable housing shall be used exclusively for the production of
25 affordable housing. The corporation may use other funds for the
26 production of affordable housing or market rate housing.

27 f. The corporation may use annually up to three percent of the
28 monies available in the fund for the payment of any necessary
29 administrative costs related to the administration of this act.

30

31 ²[12. a. In an uncontested action to enforce a residential
32 mortgage governed by the "Fair Foreclosure Act," P.L.1995, c.244
33 (C. 2A:50-53 et seq.), against vacant and abandoned real property,
34 the lender may file a Motion for Expedited Judgment and Sale. The
35 motion shall be accompanied by an affidavit from a person having
36 personal knowledge of the contents and shall plead the specific
37 facts upon which the finding of vacancy and abandonment is based,
38 consistent with subsection b. of this section. If the Superior Court
39 finds the motion and affidavit to be in compliance with the
40 provisions of this section, the Superior Court shall enter final
41 judgment in foreclosure and direct issuance of a writ of execution to
42 the sheriff of the county in which the real property is situate, or to a
43 receiver appointed by the Superior Court, for the sale of the
44 property within 45 days after entry of final judgment.

45 b. Real property shall be presumed vacant and abandoned
46 under this section if there has been no legal resident or tenant for a
47 period of 45 or more consecutive days. Vacancy and abandonment
48 may also be evidenced by the presence of any condition that on its

1 own, or in combination with other conditions present, would lead a
2 reasonable person to believe that the property is vacant and
3 abandoned, including: (1) the failure to pay taxes; (2) a failure to
4 claim certified mail; (3) the filing of a change of address form; (4)
5 overgrown or dead vegetation; (5) accumulation of flyers, mail, or
6 trash; (6) disconnected utilities; (7) the absence of window
7 coverings or furniture; (8) statements of neighbors, delivery
8 persons, or government employees that are consistent with vacancy
9 and abandonment.

10 c. If a tenant occupied all or a portion of the property prior to
11 the mailing of a default notice by the lender, and the tenant is
12 paying fair market value rent to the landlord or debtor pursuant to a
13 valid assignment of rents, then a presumption shall exist that the
14 property has not been abandoned for the purposes of this section. If
15 a debtor enters into a lease agreement with a tenant after the mailing
16 of a default notice from the lender, then a presumption that the
17 property has not been abandoned shall not be made, but shall be
18 weighed against other factors as to whether or not the property has
19 been abandoned.

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

25 e. A Motion for Expedited Judgment and Sale filed pursuant to
26 this section shall be deemed to be constructive notice to all persons
27 and entities with an interest in the property that is properly recorded
28 with the county clerk or county registrar prior to the recording of
29 the notice of lis pendens in the foreclosure action, whether or not
30 the person or entity entered an appearance or answered the
31 foreclosure complaint. Pursuant to the New Jersey Rules of Court,
32 any interested party may present a defense to rebut a claim of
33 abandonment that shall be accompanied by an affidavit stating that
34 the defense is not made for the purpose of delaying the relief
35 requested pursuant to the Motion for Expedited Judgment and
36 Sale.]²

37

38 ²12. a. For the purposes of this section, "vacant and abandoned"
39 residential property means residential real estate that upon
40 inspection is vacant and not occupied by any mortgagor or owner as
41 a principal residence. Conditions, taken separately or as a whole,
42 that may lead a court to conclude that a residential property is
43 vacant and abandoned include, but are not limited to:

44 (1) overgrown or neglected vegetation, accumulation of
45 newspapers, circulars, flyers or mail;

46 (2) past due utility notices;

47 (3) hazardous, noxious, or unhealthy substances or materials that
48 have accumulated on the property;

- 1 (4) accumulation of junk, litter, trash or debris on the property;
- 2 (5) absence of window treatments such as blinds, curtains or
- 3 shutters;
- 4 (6) absence of furnishings and personal items;
- 5 (7) statements by at least two neighbors indicate that the
- 6 residence has been abandoned;
- 7 (8) windows or entrances to the property that are boarded up or
- 8 closed off or multiple window panes that are damaged, broken and
- 9 unrepaired;
- 10 (9) doors to the property that are smashed through, broken off,
- 11 unhinged, or continuously unlocked;
- 12 (10) the termination of gas, electric, or water utility service to the
- 13 property;
- 14 (11) reports to law enforcement officials of trespassing,
- 15 vandalism, or other illegal acts being committed on the property;
- 16 (12) an uncorrected municipal building, housing, or similar code
- 17 violation in the preceding year, or an order by municipal authorities
- 18 declaring the property to be unfit for occupancy and to remain
- 19 vacant and unoccupied;
- 20 (13) the mortgagee or other authorized party has secured or
- 21 winterized the property due to the property being deemed vacant
- 22 and unprotected or in danger of freezing;
- 23 (14) a written statement issued by any mortgagor expressing the
- 24 clear intent of all mortgagors to abandon the property;
- 25 (15) any other reasonable indicia of abandonment.
- 26 b. (1) In addition to the residential mortgage foreclosure
- 27 procedures set out in the "Fair Foreclosure Act," P.L.1995, c.244
- 28 (C.2A:50-53 et seq.), a summary action to foreclose a mortgage
- 29 debt secured by residential property that is vacant and abandoned
- 30 may be brought by a lender in the Superior Court. In addition, a
- 31 lender may, at any time after filing a foreclosure action, file with
- 32 the court, in accordance with the Rules Governing the Courts of the
- 33 State of New Jersey, an application to proceed in a summary
- 34 manner because the residential property that is the subject of the
- 35 foreclosure action is believed to be "vacant and abandoned";
- 36 provided, however, that this section shall not apply to a foreclosure
- 37 of a timeshare interest secured by a mortgage.
- 38 (2) (a) In addition to the service of process required by the Rules
- 39 of Court, a lender shall establish, for the entry of a residential
- 40 foreclosure judgment under this section, that a process server has
- 41 made two unsuccessful attempts to serve the mortgagor or occupant
- 42 at the residential property, which attempts must be at least 72 hours
- 43 apart, and during different times of the day, either before noon,
- 44 between noon and 6 P.M., or between 6 P.M. and 10 P.M.
- 45 (b) In addition to any notices required to be served by law or the
- 46 Rules of Court, a lender shall, with any order to show cause served
- 47 as original service of process or a motion to proceed summarily,
- 48 serve a notice that the lender is seeking, on the return date of the

1 order to show cause, or on the date fixed by the court, to proceed
2 summarily for entry of a residential foreclosure judgment because
3 the property is vacant and abandoned.

4 c. Notwithstanding the procedure for serving a notice to cure
5 required by section 6 of the "Fair Foreclosure Act," P.L.1995, c.244
6 (C.2A:50-58), a lender filing a summary action for entry of a
7 residential mortgage foreclosure judgment under this section shall
8 serve the mortgagor with a notice to cure with the order to show
9 cause served as original service of process. When a lender makes
10 application to proceed summarily because a property is vacant and
11 abandoned, a notice to cure shall be served with the order fixing the
12 date for the matter to proceed summarily.

13 d. (1) The court may enter a final residential mortgage
14 foreclosure judgment under this section upon a finding, (1) by clear
15 and convincing evidence, that the residential property is vacant and
16 abandoned as defined under subsection a. of this section, and (2)
17 that a review of the pleadings and documents filed with the court, as
18 required by the Rules of Court, supports the entry of a final
19 residential mortgage foreclosure judgment.

20 (2) A court shall not enter a final residential mortgage
21 foreclosure judgment under this section if the court finds that (a) the
22 property is not vacant or abandoned, or (b) the mortgagor or any
23 other defendant has filed an answer, appearance, or other written
24 objection that is not withdrawn and the defenses or objection
25 asserted provide cause to preclude the entry of a final residential
26 mortgage foreclosure judgment.

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

36 f. All actions brought to foreclose on real property pursuant to
37 this section shall proceed in accordance with the Rules of the Court.

38 g. Nothing in this section is intended to supersede or limit other
39 procedures adopted by the Court to resolve residential mortgage
40 foreclosure actions, including, but not limited to, foreclosure
41 mediation.

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

1 13. This act shall take effect immediately ², except that section
2 12 shall remain inoperative until the first day of the third month
3 next following enactment and section 12 shall expire on December
4 31, 2014².