

LEONARD B. ZUCKER
MICHAEL S. ACKERMAN
JOEL ACKERMAN*

FRANCES GAMBARELLA
BRIAN C. NICHOLAS ◊
STEVEN D. KROL
CHRISTOPHER G. FORD
DENISE CARLON Δ
CHRISTINE E. POTTER
RYAN S. MALC
JENEE K. CICCARELLI Δ
ASHLEIGH LEVY MARIN £
DOUGLAS J. McDONOUGH
TIMOTHY J. ZIEGLER
STEPHANIE WOLCHOK
HYUN S. OH
ELIZABETH P. RIZZO
ROBERT D. BAILEY
JAIME R. ACKERMAN ♦
OMAR SHANAWANI

* ALSO MEMBER OF NY, PA AND CA BAR
♦ ALSO MEMBER OF NY, PA AND ME BAR
◊ ALSO MEMBER OF NY AND ME BAR
Δ ALSO MEMBER OF NY BAR
£ ALSO MEMBER OF PA BAR

**ZUCKER, GOLDBERG & ACKERMAN,
LLC**
ATTORNEYS AT LAW

200 SHEFFIELD STREET- SUITE 101
P.O. BOX 1024
MOUNTAIN SIDE, NJ 07092-0024

TELEPHONE: 908-233-8500
FACSIMILE: 908-233-1390
E-MAIL: office@zuckergoldberg.com

*For payoff/reinstatement figures
Please send your request to: zuckergoldberg.com/pr*

REPLY TO NEW JERSEY ADDRESS

FOUNDED IN 1923
AS ZUCKER & GOLDBERG

MAURICE J. ZUCKER (1918-1979)
LOUIS D. GOLDBERG (1923-1967)
LEONARD H. GOLDBERG (1929-1979)
BENJAMIN WEISS (1949-1981)

Pennsylvania Office:
P.O. Box 650
Hershey, PA 17033

OF COUNSEL:

SCOTT A. DIETTERICK, ESQ. ¥
KIMBERLY A. BONNER, ESQ. ¥
RALPH M. SALVIA, ESQ. ¥

¥ MEMBER OF PA BAR ONLY

October 21, 2011

Via Hand Delivery

Clerk of the Court
Supreme Court of New Jersey
Hughes Justice Complex
25 West Market Street
Trenton, New Jersey 08625-0970

Re: US Bank National Association, as Trustee for CSAB Mortgage-Backed
Pass-Through Certificates, Series 2006-3
vs. Maryse Guillaume, Mr. Guillaume, Husband of Maryse Guillaume, Emilio
Guillaume, Mrs. Emilio Guillaume, His Wife, City of East Orange
Docket No. 068176

Dear Sir/Madam:

Enclosed please find original and eight (8) copies of the following:

1. Notice of Motion to Appear Amicus Curiae, filed on behalf of Certain Attorneys as Foreclosure Counsel in the State of New Jersey;
2. Certification of Counsel in Support of Motion;
3. Brief;
4. Request for Oral Argument; and
5. Certification of Service.

Kindly file the originals and return a "filed" stamped copy in the return envelope provided for this purpose. Thank you for your kind attention to this matter.

Respectfully yours,
ZUCKER, GOLDBERG & ACKERMAN
LLC

By: _____

JAIME R. ACKERMAN, ESQ.

cc: Alan J. Baldwin, Esq., Attorney for Appellants
cc: Diane Bettino, Esq., Attorney for Respondents
cc: Margaret Lambe Jurow, Esq.

Fein, Such, Kahn & Shepard, P.C.
7 Century Drive - Suite 201
Parsippany, New Jersey 07054
(973) 538-4700

Phelan, Hallinan & Schmieg
400 Fellowship Road, Suite 100
Mt. Laurel, New Jersey 08054
(856) 813-5500

Powers Kirn, LLC
728 Marne Highway, Suite 200
Moorestown, New Jersey 08057
(856) 802-1000

Zucker, Goldberg and Ackerman, LLC
200 Sheffield Street
Suite 301
Mountainside, New Jersey 07092
908-233-8500

Attorneys for Amici Curiae New Jersey Foreclosure Counsel

**SUPREME COURT OF NEW JERSEY
DOCKET NO. 068176**

US BANK NATIONAL)
ASSOCIATION, AS TRUSTEE)
FOR CSAB MORTGAGE-BACKED)
PASS-THROUGH CERTIFICATES,)
SERIES 2006-3,)

Plaintiff/Respondent,)

v.)

MARYSE GUILLAUME, MR.)
GUILLAUME, HUSBAND OF)
MARYSE GUILLAUME, EMILIO)
GUILLAUME, MRS. EMILIO)
GUILLAUME, HIS WIFE, CITY)
OF EAST ORANGE,)

Defendants/Petitioners.)

On Certification from the Superior
Court of New Jersey, Appellate
Division, granted September 27, 2011

Civil Action

Sat Below:

Appellate Division:

Hon. Clarkson S. Fisher, Jr., J.A.D.
Hon. Douglas M. Fasciale, J.A.D.

Trial Court:

Hon. Harriet Farber Klein, J.S.C.

**NOTICE OF MOTION CERTAIN ATTORNEYS AS
FORECLOSURE COUNSEL IN THE STATE OF
NEW JERSEY FOR LEAVE TO APPEAR AS
AMICUS CURIAE**

TO:

Mark Neary, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 W. Market Street
Trenton, New Jersey 08625-0970

Henry F. Reichner, Esq.
Mark Melodia, Esq.
Diane Bettino, Esq.
Reed Smith, LLP
136 Main Street, Suite 250
Princeton, New Jersey 08540
Attorneys for Respondents

Alan J. Baldwin, Esq.
Broderick, Newmark & Grather 20
South Street, Suite 3
Morristown, NJ 07960
Attorneys for Appellants

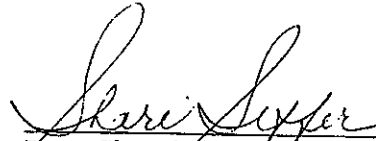
Margaret Lambe Jurow, Esq.
Legal Services of New Jersey
100 Metroplex Drive at
Plainfield Avenue
Suite 402
Edison, New Jersey 08818-1357

PLEASE TAKE NOTICE that the above listed Law Firms, on behalf of the Foreclosure Bar, shall move before the Justices of the Supreme Court of the State of New Jersey, for an Order, pursuant to Rule 1:13-9, granting leave to file a brief amicus curiae, in the above captioned matter.

PLEASE TAKE FURTHER NOTICE THAT, in support of this application, movant shall rely upon the attached amicus brief in support, and attached Certification of various foreclosure counsel who shall certify as to the interest of the Amicus Curiae.

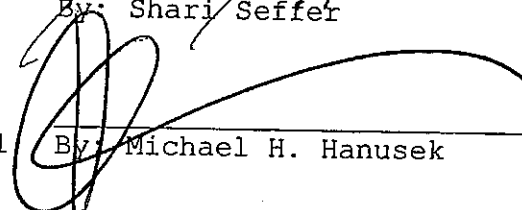
Respectfully submitted,

FEIN, SUCH, KAHN & SHEPARD, P.C.



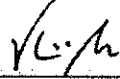
By: Shari Seffer

Dated: October 21, 2011



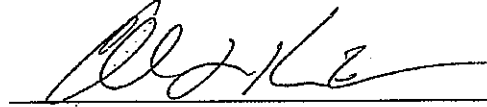
By: Michael H. Hanusek

PHELAN, HALLINAN & SCHMIEG



Dated: October 21, 2011 By: Vladimir V. Palma

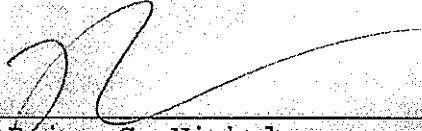
POWERS KIRN, LLC

A handwritten signature in black ink, appearing to read "E. Kirn", written over a horizontal line.

Dated: October 21, 2011

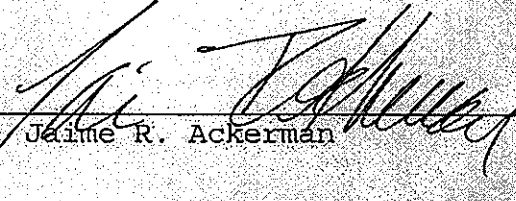
By: Edward W. Kirn

ZUCKER, GOLDBERG & ACKERMAN, LLC



Dated: October 21, 2011

By: Brian C. Nicholas



By: Jaime R. Ackerman

Fein, Such, Kahn & Shepard, P.C.
7 Century Drive - Suite 201
Parsippany, New Jersey 07054
(973) 538-4700

Phelan, Hallinan & Schmieg
400 Fellowship Road, Suite 100
Mt. Laurel, New Jersey 08054
(856) 813-5500

Powers Kirn, LLC
728 Marne Highway, Suite 200
Moorestown, New Jersey 08057
(856) 802-1000

Zucker, Goldberg and Ackerman, LLC
200 Sheffield Street
Suite 301
Mountainside, New Jersey 07092
908-233-8500

Attorneys for Amici Curiae New Jersey Foreclosure Counsel

**SUPREME COURT OF NEW JERSEY
DOCKET NO. 068176**

US BANK NATIONAL)
ASSOCIATION, AS TRUSTEE)
FOR CSAB MORTGAGE-BACKED)
PASS-THROUGH CERTIFICATES,)
SERIES 2006-3,)

Plaintiff/Respondent,)

v.)

MARYSE GUILLAUME, MR.)
GUILLAUME, HUSBAND OF)
MARYSE GUILLAUME, EMILIO)
GUILLAUME, MRS. EMILIO)
GUILLAUME, HIS WIFE, CITY)
OF EAST ORANGE,)

Defendants/Petitioners.)

On Certification from the
Superior Court of New Jersey,
Appellate Division, granted
September 27, 2011

Civil Action

Sat Below:

Appellate Division:

Hon. Clarkson S. Fisher, Jr.,
J.A.D.

Hon. Douglas M. Fasciale, J.A.D.

Trial Court:

Hon. Harriet Farber Klein, J.S.C.

**CERTIFICATION OF ATTORNEYS IN
SUPPORT OF MOTION FOR LEAVE TO
FILE AMICI BRIEFS PURSUANT TO
RULE 1:13-9**

Shari Seffer, Michael H. Hanusek, Rosemarie Diamond, Valdimir Palma, Edward W. Kirn, Brian C. Nicholas and Jaime R. Ackerman being of full age, do hereby certify as follows:

1. We are each attorneys at law licensed to practice law in the State of New Jersey and are employed with our respective law firms set forth above. We are duly authorized to make the instant Certification.

2. Leave to file an amicus brief is sought pursuant to Rule 1:13-9 on the grounds that the proposed amicus are able to provide special assistance to this Honorable Court by reason of our professional experience and familiarity with the foreclosure laws, protocols and procedures of this State.

3. The four (4) foreclosure counsel filing the instant application herein represent the law firms which file the largest volume of foreclosure cases within the State of New Jersey, and, as such, handle approximately 75-80% of all foreclosure actions filed statewide. We each work intimately with the Office of Foreclosure, The Administrative Office of the Courts, file pleadings electronically through the JEFIS electronic filing system, and appear before the Chancery Court Judges on a regular basis.

4. The practice of litigating foreclosure cases on behalf of foreclosing plaintiffs, by its very nature, in this state is highly specialized. A majority of the Rules and Statutes relating to the prosecution of a mortgage foreclosure action apply only to such actions and therefore, counsel who regularly litigate foreclosure matters have a greater understanding and

degree of expertise in comprehension of the Rules, Statutes, Regulations, and indeed, recent trends and changes to the laws than the general bar.

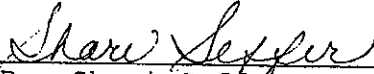
3. As foreclosure counsel representing the mortgagee plaintiffs, we respectfully submit that we have a unique understanding of the principles involved in this foreclosure action, which contains a substantial public interest due to the nature of the case presented, and are able, therefore to provide this Honorable Court with useful information for its consideration. We respectfully request, therefore, that leave be granted to appear as amicus curiae and to argue our position in writing before this Honorable Court.

4. No party will be prejudiced by our participation in the instant action.

8 We hereby certify the foregoing statements made by me are true. We understand that if any of the foregoing statements made by me are willfully false, we are subject to punishment.

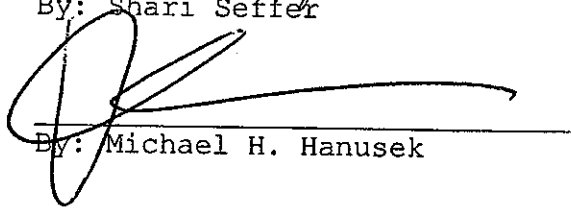
Respectfully submitted,

FEIN, SUCH, KAHN & SHEPARD, P.C.

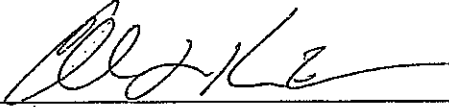


By: Shari Seffer

Dated: October 21, 2011


By: Michael H. Hanusek

POWERS KIRN, LLC



Dated: October 21, 2011

By: Edward W. Kirn

PHELAN, HALLINAN & SCHMIEG

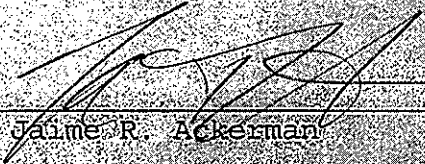
VLP

Dated: October 21, 2011 By: Vladimir V. Palma

ZUCKER, GOLDBERG & ACKERMAN, LLC



Dated: October 21, 2011 By: Brian C. Nicholas



By: Jaime R. Ackerman

SUPREME COURT OF NEW JERSEY
DOCKET NO. 068176

US BANK NATIONAL
ASSOCIATION, AS TRUSTEE
FOR CSAB MORTGAGE-BACKED
PASS-THROUGH CERTIFICATES,
SERIES 2006-3,

Plaintiff/Respondent,

v.

MARYSE GUILLAUME, MR.
GUILLAUME, HUSBAND OF
MARYSE GUILLAUME, EMILIO
GUILLAUME, MRS. EMILIO
GUILLAUME, HIS WIFE, CITY
OF EAST ORANGE,

Defendants/Petitioners.

On Certification from the Superior
Court of New Jersey, Appellate
Division, granted September 27, 2011

Civil Action

Sat Below:

Appellate Division:

Hon. Clarkson S. Fisher, Jr., J.A.D.
Hon. Douglas M. Fasciale, J.A.D.

Trial Court:

Hon. Harriet Farber Klein, J.S.C.

BRIEF AND APPENDIX OF AMICUS CURIAE,

NEW JERSEY FORECLOSURE ATTORNEYS

Zucker, Goldberg & Ackerman, LLC

Brian C. Nicholas, Esq.
Jaime R. Ackerman, Esq.
200 Sheffield St, Suite 101
Mountainside, N.J. 07092
908-233-8500

Power Kirn, LLC

Edward W. Kirn, Esq.
728 Marne Highway, Suite 200
Moorestown, NJ 08057
856-802-1000

Fein, Such, Kahn, Shepard, PC

Shari Seffer, Esq.
Michael H. Hanusek, Esq.
7 Century Drive, Suite 201
Parsippany, NJ 07054
973-538-4700

Phelan Hallinan & Schmieg, LLP

Rosemarie Diamond, Esq.
Vladimir Palma, Esq.
400 Fellowship Road, Suite 100
Mt. Laurel, NJ 08054
856-813-5500

PRELIMINARY STATEMENT

The case before the Court presents a novel challenge for the Plaintiff's Foreclosure Bar, resulting in an unprecedented inability by the undersigned Firms to file new foreclosure actions or to continue with the tens of thousands of uncontested residential mortgage foreclosure cases currently before the court. Because expertise of the Foreclosure Plaintiff's Bar in this specialized practice area and our experience relating to the interplay between recently-issued Appellate Division opinions and the new certifications we are required to execute under threat of sanctions, we have requested that this Court grant the Foreclosure Plaintiff's Bar the right to file an Amicus Brief in this case.

There is currently a split of opinion in the Appellate Division concerning the sufficiency of Notices of Intention to Foreclose (hereinafter referred to as "NOI") required pursuant to the Fair Foreclosure Act, N.J.S.A. 2A:50-56 ("FFA"). In the Guillaume case, the Appellate Panel found that substantial compliance with the Fair Foreclosure Act is sufficient and that the NOI, which identified the loan servicer, as opposed to the Trustee, was adequate to advise the borrower of the default and complied with the FFA. Conversely, the Appellate Panel in Laks, which was decided after this case but while Petition for Certification before this Court was pending, held that strict compliance with the FFA was required and that the NOI had to contain the name and address of the lender in order to be valid. Bank of New York v. Laks, 2011 WL 3424983 (N.J. Super. Ct. App. Div. August 8, 2011). That Panel further found that compliance with the FFA was

jurisdictional in nature and, therefore, in the event a NOI is deemed to be invalid in any action in which judgment in foreclosure has not been entered, that action must be dismissed.

Thus, the Laks court found different elements requisite for a valid NOI than did the Guillaume panel, and further found that a remedy for a "defective NOI" was dismissal of the foreclosure action.

On January 7, 2011, a Notice to the Bar promulgated a new requirement of foreclosure counsel to execute a pleading entitled an Attorney Certification of Diligent Inquiry ("CODI"). Pursuant to the amended Rules 4:64-1 and 4:64-2, the foreclosing plaintiff's attorney must complete, under threat of sanctions, an affidavit certifying that they had a communication with the plaintiff or employee of the plaintiff who personally reviewed the certification of amount due, the note, mortgage and assignments, if any, verifying the accuracy of the pleadings, prior to filing a foreclosure complaint, proceeding to judgment, or, in certain circumstances, moving an existing case to sheriff's sale.

On June 9, 2011, this Court further amended the rules to permit foreclosure counsel to communicate with an employee of the plaintiff, or its servicer, who personally reviewed the documents.

Due to a convergence of these Rule amendments, and the recent Laks decision calling into question the validity of the long-ago NOIs served in thousands of pending cases, the Foreclosure Bar is now faced with an untenable situation making it impossible in many cases to execute a CODI asserting the accuracy of the pleadings.

Four foreclosure firms, which collectively handle a majority of the foreclosure cases in this State, respectfully submit this application requesting permission to file an amicus brief. Each of the four firms represents numerous mortgage banking clients. These firms regularly address regulatory compliance issues with their clients, including compliance with the provisions of the FFA. All four firms also file foreclosure pleadings electronically through JEFIS to the Office of Foreclosure and Clerk of the Superior Court. They all regularly appear before each of the judges in the Chancery Courts statewide on contested cases, applications for stays of Sheriffs sale, and participate in numerous Foreclosure Mediations. They all must now comply with the amended Rules of Court and take this responsibility seriously. As such, these firms are uniquely situated to present the Court with a necessary viewpoint from the bar regularly practicing in this area of law.

LEGAL ARGUMENT

POINT I

THE CERTIFICATION OF DILIGENT INQUIRY REQUIRED BY THE EMERGENT COURT RULE CHANGES PROMULGATED ON DECEMBER 20, 2010 AND AMENDED JUNE 9, 2011 PREVENT FORECLOSURES FROM MOVING FORWARD DUE TO THE UNCERTAINTY CAUSED BY THE JUDICIAL INTERPRETATIONS OF THE REQUIREMENTS OF THE NOTICE OF INTENTION TO FORECLOSE, AS WELL AS THE REMEDY FOR DEFICIENT NOTICES

On December 20, 2010¹, the New Jersey Supreme Court issued emergent amendments to Court Rules 1:5-6, 4:64-1 and 4:64-2. The original amendments to the Rules required foreclosure

¹ Hereinafter referred to as the "original amendments."

attorneys to communicate with an employee of the "plaintiff" in the foreclosure action to verify that all pleadings in the matter were in compliance with Rule 1:4-8.² This new requirement posed a substantial impediment to the prosecution of foreclosure cases, and brought foreclosures in the State to a standstill. The impediment to compliance with the new Rule was caused by the fact that foreclosure plaintiffs are often securitized trusts that have no employees. Further, it is the servicing agent of the plaintiff who maintains the books and business records of the mortgage loan and therefore, the correct point of contact for the debtor to make payments and direct inquiries regarding the loan.

Subsequently, on January 31, 2011, the Supreme Court solicited comments to the original amendments. On or about February 28, 2011, eight mortgage servicers, along with members of the foreclosure bar, submitted a joint comment to the original amendments. The comments specifically pointed out that the new Rules failed to take into account the role of mortgage servicers in modern mortgage transactions and the foreclosure process. The most glaring shortcoming of the Rules was the failure to recognize that the servicer, not the investor, is

² It is worth noting that there is no similar requirement for defense counsel in foreclosure cases to certify the validity of the defenses, counterclaims or affirmative defenses raised in answers to foreclosure actions, even though the majority of the contesting answers are simply filed as an attempt to stall or delay the case, which is prohibited under case law and the Court Rules.

typically responsible for the maintenance of the books and records of the loan and therefore in the best position to validate the factual accuracy of the foreclosure action. As such, the servicer, not the investor, is the appropriate entity to whom foreclosure counsel should communicate with on the new certification requirement.

Recognizing that the original amendments had the unintended consequence of further delaying the prosecution of foreclosures, the Court Rules were subsequently amended again on June 9, 2011. Specifically, the Court Rules³ were amended to require foreclosure counsel to communicate with an employee of the plaintiff or the servicer in order to submit a CODI.

Even with the June 2011 amendments to the Court Rules, the CODI still poses multiple impediments to the continued prosecution of foreclosure actions. Coupled with the extraordinary delays in the Office of Foreclosure, non-contested foreclosures now take over three years to complete in New Jersey. New Jersey now has the longest timeline for foreclosures in the entire United States.

The Appellate Division's opinion in Bank of New York v. Laks, presents one of the fundamental problems with the CODI. After the Appellate Division released and approved the Laks decision for publication, the Chancery Judges in the State have

³ For the purposes of this submission, when the amended rules are referenced, it is in reference to the Court Rules as they stand today.

applied different rulings and remedies, thereby causing additional confusion and uncertainty. Accordingly, foreclosure counsel uniformly agreed that we were unable to complete the CODI on any case where there was any doubt about the validity of the pre-foreclosure Notice of Intention to Foreclose. Prior to Laks, the prevailing case law allowed a defective NOI to be cured by resending a new, compliant NOI, and giving the debtor thirty days to reinstate the mortgage without paying legal fees or costs associated with the foreclosure.

There is no question that the Fair Foreclosure Act, N.J.S.A. 2A:50-53 to 58, requires that a NOI be served upon a debtor prior to the institution of a foreclosure action. However, if the Court reverses the Guillaume case and in essence upholds the Laks opinion, a substantial number of foreclosures will have to be dismissed since the majority of NOIs only list the name of the servicer, not the name of the investor. Making matters worse, the specific retroactive application of the Laks opinion to all foreclosures in the pipeline (well over 120,000 active pending cases) again brought foreclosures in the state to a standstill.

There has not been any substantial movement of foreclosure cases in New Jersey since September, 2010. It is startling that to date in the calendar year 2011, there have only been 8,662

foreclosure complaints filed in New Jersey.⁴ In drastic contrast, in 2010, there were 60,965 foreclosure complaints filed in New Jersey and 2009, there were 65,570.⁵ The precipitous drop in the number of foreclosures filed in 2009/2010 versus 2011 is not a result of a decrease in mortgage defaults. To the contrary, the majority of foreclosure firms in the state have a significant number of foreclosure referrals that have been sent but complaints have not been filed.

Even if the Court resolves the issues posed by the Laks opinion, the CODI will continue to be problematic in the future. Any time there is an Appellate Division case that criticizes a minute technical deficiency in a pleading or changes an area of foreclosure law, this problem will repeat itself, due to the particular nature of foreclosure cases.

When the rules are changed in the middle of an extraordinarily long lifespan of a case, the prior pleadings in the case may no longer be accurate, such as in the current setting whereby new rules or cases are applied retroactively to the existing cases. It will be impossible for a foreclosure attorney to sign a CODI in an old case if new rules are going to be applied. Because even though the pleadings complied with the law at the time they were prepared and filed, subsequent interpretation of the law may render those pleadings

⁴ This was last verified via Public Access ACMS on October 18, 2011.

⁵ This was last verified via Public Access ACMS on October 18, 2011.

insufficient. Under such circumstances, plaintiff's foreclosure counsel cannot sign the CODI. The inability to execute a CODI will lead to another stall in the prosecution of foreclosure actions and may result in widespread dismissals. Our Courts have never favored putting form over substance, or allowing technicalities prevent the disposition of a case that properly is before the Court. South Burlington County NAACP v. Mount Laurel Tp., 92 N.J. 158, 337 (1983) (citing Crescent Park Tenants Ass'n v. Realty Equities Corp. of N.Y., 78 N.J. 98, 107-8 (1971)).

The CODI requirement in foreclosures is not a procedural hurdle required of any other group of attorneys practicing in any other area of law in this State. The practical effect has been to return the foreclosure practice to the days of writ pleading, where any technical error, omission or mistake (no matter how minor) results in the dismissal of the action. This runs completely contrary to the notice pleading system that our judiciary has adopted where the pleadings need only be sufficient to put the adverse party on notice of the claims being made so they may defend against them. If the CODI requirement remains, it should be further amended to allow foreclosure counsel to certify that the pleadings complied with the applicable rules, statutes or standards at the time that they were filed, or, in the alternative, the CODI should just

require the verification of the factual accuracy of the data in the pleadings.

Given that the law, particularly in this area, continues to evolve, the CODI requirement makes it, and will continue to make it, impossible for foreclosures to efficiently proceed through the judicial system.

POINT II

THE LEGISLATIVE HISTORY OF THE FAIR FORECLOSURE ACT DEMONSTRATES CLEARLY THAT THE LEGISLATURE INTENDED FOR THE DEBTOR TO BE GIVEN NOTICE OF A DEFAULT AND AN OPPORTUNITY TO CURE BEFORE FORECLOSURE WAS INITIATED ALONG WITH EXPEDITING, NOT DELAYING, FORECLOSURES IN NEW JERSEY

An examination of the Legislative History of the 1995 Fair Foreclosure Act ("FFA") N.J.S.A. 2A:50-53, et seq., reveals that the FFA was enacted to achieve two main goals. The first was to provide notice to the borrower of a default and provide a period to reinstate before the institution of foreclosure proceedings. The second goal was to expedite foreclosures for financial institutions in this State. "Gov. Christie Whitman has signed legislation to increase protection to homeowners facing foreclosure of their property while at the same time expediting the foreclosure process once a final judgment has been obtained by the lender." See, Aa32, Office of the Governor News Release. Sept 6, 1995.

Banking Commissioner Elizabeth Randall also praised enactment of the FFA. "Expediting the foreclosure process will encourage financial institutions to increase their residential mortgage lending in New Jersey, thereby fulfilling Gov. Whitman's commitment to opening New Jersey for business." Aa32. The Governor also expressed that the Act "will help lenders to complete the residential foreclosure process in a timelier manner, bringing New Jersey in line with its neighboring states." Aa32. The Press release noted that in 1995, "according to the Federal National Mortgage Association ... New Jersey ranks last among all 50 states for average time needed to complete a residential foreclosure action." Aa32.

At the time of its enactment, the FFA was the most comprehensive change in foreclosure practice since 1820. N.J. Law Journal, *New Foreclosure Act: More Complexity, Uncertainty*, (Myron Weinstein Dec. 4, 1995) (Aa33). The Act was a radical departure from the long standing principal that, upon default, a borrower had no right of reinstatement. Thus, the Act provided a new statutory protection to homeowners by allowing the ability to cure without imposition of fees and costs prior to commencement of foreclosure. As favorably reported in the Statement of the Senate State Management, Investments and Financial Institutions Committee:

The bill provides that before accelerating the mortgage loan and taking any other legal action...the lender is required to give the debtor a warning notice...providing the debtor with the following information; the particular obligation...;the nature of the default...the right of the debtor to cure the default, what performance is required by the debtor to cure the default; the date by which such cure must take place...that if the debtor does not cure the default by the time specified, the right to cure will still be present but additional costs are likely to be incurred...; advice to seek counsel; and *the name and phone number of a person whom the debtor can contact to dispute a lender's assertion that default has occurred or the correctness of the lender's calculation of the amount required to cure a default.*

Aa27. It is abundantly clear that the intent of the Legislature was to give the borrower notice of a default in their mortgage and an opportunity to cure it.

The FFA has always intended that the NOI include the name of the entity whom the borrower should contact in the event they dispute the assertion that a default has occurred or someone that they can talk to about a resolution of the default in order to avoid a foreclosure.

As set forth in the Order signed by Judge Mary Jacobson and the accompanying Stipulation of Settlement:

(this Recommended Stipulation governs the (defendants) participation in the residential mortgage foreclosure process in their capacities as servicer, it being recognized that in most cases, it is the servicer that either has the information or had direct access to the information that is required to be provided under the Rules. Servicers manage, maintain, and handle the accounting for the mortgages that they service and, as such, in the case of default or non-payment on the part of a mortgage, it is the

servicer, and not necessarily the mortgagee or named plaintiff in the resulting mortgage foreclosure action, that either has the information or has direct access to the information concerning the default or non-payment.

(Aa38, Stipulation of Settlement, In the Matter of Residential Mortgage Foreclosure Pleading and Document Irregularities, Docket No. F-59553-10).

The second goal of the FFA cannot be ignored. The Act was entitled the "Fair" Foreclosure Act because it sought to balance the rights of borrowers with the rights of financial institutions to foreclose. As set forth in the Sponsor's Statement,

This bill is intended to advance the public policies of the State by giving debtors every opportunity to pay their home mortgages, and thus keep their homes, and that lenders will be benefited when debtors cure their defaults and return the residential mortgage loan to performing status.

See, Aa21, Sponsors' Statement, legislative history, page 10, line 30-34.

Thus, contrary to what the Appellate Division held in the Laks decision, Bank of New York as Trustee for the Certificate Holders CWALT 2004 26T1 v. Laks, 2011 N.J.Super.Lexis 153 (App. Div. Aug. 8, 2011), the inclusion of the name of the securitized trust in a NOI would only serve to CONFUSE a borrower rather than meaningfully assist them. As the Appellate Division in the instant case stated, "the NOI satisfied the purpose of the FFA

because ASC is the appropriate party for the Guillaumes to contact to cure their default. N.J.S.A. 2A:50-56(c) provides...that the written notice...shall clearly and conspicuously make the debtor aware of the situation." U.S. Bank v. Guillaume, 2011 WL 3424983 (App. Div. Aug. 8, 2011).

The legislative intent behind the FFA reveals that it is the servicer, not the investor or eventual foreclosure plaintiff, which must be listed in the NOI. Any other conclusion would only serve to confuse borrowers and not afford them the meaningful contact with the entity who can resolve their default.

POINT III

THE APPELLATE DIVISION'S RETROACTIVE APPLICATION OF THE LAKS DECISION WAS IMPROPER AND THE RETROACTIVE IMPOSITION OF THE DECISION WILL HAVE DISASTROUS IMPACT ON THE STATE'S ALREADY FRAGILE ECONOMY

The Laks decision unilaterally imposed a new requisite element in the NOI, heretofore unseen or interpreted in this manner in the fifteen years the FFA has been in existence. Not only did the Laks opinion represent a change in the existing interpretation of the law, it applied the decision retroactively to three years of foreclosure in the pipeline which, if left to stand, could result in widespread chaos if an extraordinary number of foreclosure cases are dismissed.

In civil proceedings, the use of retroactive application is influenced by the procedural context in which the decision is made, with the primary concern being consideration of fairness and justice, related to reasonable surprise, and prejudice to those affected. Id. at 388 (quoting Oxford Consumer Discount Co. v. Stefanelli, 104 N.J. Super. 512 (App. Div. 1969)). In determining whether a new rule of law should have retroactive or prospective application, a court must balance the following factors: 1) whether the purpose of the new rule would be advanced by its retroactive application; 2) how reliant parties and the community were on the old rule; and 3) what effects retroactive application would have on administering justice. Rutherford Educ. Ass'n, supra, 99 N.J. at 22.

Once the above analysis is conducted, a court then will determine whether the retroactivity option should be applied, weighing "considerations of fairness to the litigants as well as the dictates of sound public policy." New Jersey Election Law Enforcement Commission, supra., 107 N.J. at 388. The court's four choices are to: 1) apply the new rule prospectively, applying it only to cases where the operative facts arise only after the rule has been announced; 2) apply the new rule to all future cases and to the case in which the rule has been announced and continue to apply the old rule to all other pending and past litigation; 3) apply the new rule prospectively

and to pending cases where the parties have not yet exhausted all avenues of direct review; and 4) apply the new rule with complete retroactive effect, including cases in which final judgment has been entered and all avenues of direct review have been exhausted. Id.; see also, State v. Dock, 205 N.J. at 255.

A new rule is generally not applied retroactively if the rule's purpose is to be exclusionary, Rutherford Educ. Ass'n, supra, 99 N.J. at 23, because past misconduct cannot be deterred. State v. Burstein, 85 N.J. 394, 406 (1981); see also, State v. Nash, 64 N.J. 464, 471 (1974); Mirza v. Filmore Corp., 92 N.J. 390, 397-398 (1983).

Application of the retroactivity analysis to the Bank of New York as Trustee for the Certificate Holders CWALT 2004 26T1 v. Laks decision results in the conclusion that the holding should NOT be applied retroactively. The new rule announced in Laks, which requires dismissal of the foreclosure action without prejudice, does not pass the balancing factors in Rutherford. The purpose of the new standard in Laks would not be advanced by applying the decision retroactively, particularly since the remedy of foreclosure is an equitable one. Furthermore, lenders would be inequitably prejudiced by having to restart potentially tens of thousands of foreclosure actions while they continue to incur exorbitant carrying costs and face

formidable delays due to the backlog in the Office of Foreclosure.

The Appellate Court in Laks opined that previous panels were divided as to what the proper remedy was for violations of N.J.S.A. 2A:50-56, when in fact, the panel in EMC Mortgage v. Chaudhri, 400 N.J. Super. 126, 139 (App. Div. 2008), cited the opinion by the panel in Cho Bank v. Kim, 361 N.J. Super. 331 (App. Div. 2003), with approval. In Kim, the Appellate Division held that re-service of a conforming NOI, during the pendency of a foreclosure action, was appropriate when there was a defect in the content of a NOI. 361 N.J. Super. at 346-347. Seemingly in conflict, Chaudhri is often cited in support of the position that the Act requires strict compliance; however, the decision in Chaudhri was limited to defects in the service of the NOI, not as to the content of the NOI. Indeed, the Appellate panel in Chaudhri reconciled with the prior opinion in Kim, disapproving only of the concept of re-service of a NOI where there was a defect in the service of the NOI, which was reasonable from a stare decisis standpoint as well as from a statutory construction perspective. Chaudhri, 400 N.J. Super. at 139

The above distinctions made between Chaudhri and Kim demonstrate the reliance of the parties on the old law, ultimately leading to the Appellate Court's proper ruling in the

Guillaume decision. The Guillaume Court clearly recognized that dismissal of a foreclosure action was inappropriate where the record was clear that the defendant mortgagors received the required NOI. More importantly, the Guillaume Court properly relied on the purpose of the Fair Foreclosure Act, which provided in part that "[t]he written notice [of the NOI] shall clearly and conspicuously make the debtor...aware of the situation," N.J.S.A. 2A:50-56(c), in ruling that there was no deficiency in the NOI at all where the information of the loan servicer was included in the NOI instead of the lender.

The overall effect of applying the Laks decision retroactively is identical to that of applying the amended court rules retroactively. Consequently, the Appellate panel in Laks stated, "[w]e note that this opinion should not be understood to provide an avenue for setting aside a judgment of foreclosure where subsection (c)(11) was not raised prior to entry of judgment." Laks, supra, 2011 N.J.Super.Lexis at *6. Because of the staggering effects retroactive application would have on the thousands of cases in the "pipeline" that have been stagnant because of the ever-growing court delays, it is inconceivable that justice could be administered without imposing undue burdens on the already overwhelmed judicial system and on the parties.

POINT IV

FORECLOSURES ARE FILED IN COURTS OF EQUITY WHICH
REQUIRES THIS COURT TO UPHOLD THE APPELLATE DIVISION
BELOW AND CONFIRM THAT THE PLAINTIFF COMPLIED WITH THE
FAIR FORECLOSURE ACT

It has long been recognized by the Courts of New Jersey that foreclosure is a discretionary remedy that is equitable in nature. There is little question that general equitable principals apply to the remedy of foreclosure. Sovereign Bank, F.S.B. v. Kuelzow, 297 N.J. Super. 187 (App. Div. 1997). Further, this Court, in United States of America v. Scurry, 193 N.J. 492 (2008), observed, "Because foreclosure proceedings seek primary or principal relief which is equitable in nature, a complaint in foreclosure is properly cognizable in the General Equity part of the Chancery Division. See, R. 4:3-1(a)(1); Weinstein, New Jersey Practice §28.5 (2000)." Id. at 502.

Moreover, when subsequently reviewing the decision of a Court of Equity considering an application to vacate a foreclosure judgment, such as the Chancery Court's decision herein, the proper standard of review to be utilized by the Court is an abuse of discretion standard. In Scurry, the Court opined, "[i]t has long been the law of New Jersey that an application to open, vacate or otherwise set aside a foreclosure judgment or proceedings subsequent thereto is subject to an abuse of discretion standard." Id.

The Appellate Court below, in reviewing the Trial Court's decision to deny the defendant's application to vacate the default judgment, properly applied an abuse of discretion standard. Likewise, review of the Court's decision below demonstrates that the Court properly considered the equitable underpinnings of foreclosure jurisprudence, determining that the NOI satisfied the purpose and intent of the FFA.

Conversely, the Appellate Court in Bank of New York v. Laks incorrectly found that the Notice of Intent to Foreclose, which failed to provide the name and address of the lender, failed to strictly comply with the provisions of the Fair Foreclosure Act, N.J.S.A. 2A:50-56. The Appellate Court further held that the appropriate remedy for failure to strictly comply with the provisions of the Act, was dismissal of the foreclosure action without prejudice.

One of the most widely accepted maxims of equitable jurisprudence is, "Equity regards substance rather than form." Drier & Rowe, Guidebook to Chancery Practice in New Jersey, Seventh Ed. (2008). Further, technical or procedural form may also be subordinated to the substance of justice under this maxim. Fidelis Factors Corp. v. Du Lane Hatchery Limited, 47 N.J. Super. 132 (App. Div. 1975); see also, Monmouth County Div. Of Social Services v. C.R., 316 N.J. Super. 600 (Ch. Div. 1998) (where the Chancery Court cited the maxim and instructed

that "while equity may not disregard statutory law, it looks to intent, rather than merely its form.").

The Laks Court's utilization of an improper standard of review resulted in the Court's departure from the equitable standards by which foreclosure matters must be reviewed. As a direct result, the Appellate Court's decision is grossly inequitable to the mortgagee. In Laks, the Court was faced with a mortgagor who readily admitted that she executed the note and mortgage, and subsequently defaulted by failing to make the payments required thereunder. Moreover, there was no contest of the lender's right to foreclose pursuant to the provisions of the mortgage in the event of default. It was clear that the lender had demonstrated its *prima facie* case entitling it to a judgment of foreclosure.

It was equally clear that the defendant was advised of her rights to cure the default, as the notice of intent to foreclose properly made the borrower aware of the situation and how and who to contact to either cure the default or to raise a dispute. Guillaume, supra, 2011 WL 1485258 at *3. The failure to specifically identify the lender and provide the lender's address, as opposed to the name and address of the servicer, did not adversely impact the message provided by the notice and the notice met the intent of the Act.

In the case at bar, as in Laks, the Court is not faced with a recalcitrant mortgagee who willfully refused to comply with the provisions of the Fair Foreclosure Act. Instead, the mortgagee attempted, in good faith, to comply with the Act. The borrower was still properly advised of his rights under the Act and was afforded an opportunity to reinstate the loan without incurring attorney's fees and costs associated with the foreclosure action.

In finding that the lender's NOI had to include the name and address of the securitized trust, the Laks Court clearly elevated form over substance. Moreover, the Court's remedy of dismissal of the foreclosure action is inequitable. In the case at bar, the borrowers defaulted on the loan by failing to make the payment due April 1, 2008. They have been living in the property for more than three years without making any payments. Conversely, the mortgagee has been forced to advance its own funds to cover the real estate taxes and hazard insurance premiums. In the event the Court was to reverse, and dismiss the complaint, the lender would be forced to serve a new Notice of Intention and restart a new foreclosure action. Given the extensive delays associated with the foreclosure process in the New Jersey Court system, it will likely take at least another two years before the lender would receive a final judgment and

be able to proceed to sale, all the while requiring the lender to continue to pay the taxes and insurance.

Such an inequitable result should not be countenanced by this Court. Further, the aforementioned inequity can be easily be avoided, by upholding the decision below and overturning the Laks decision.

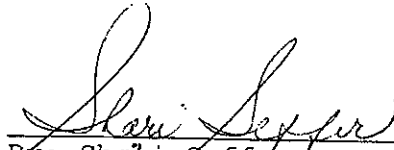
CONCLUSION

The Appellate Panel decision in Guillaume properly held that a borrower received the requisite information pursuant to the FFA, as it provided the information necessary to cure a default and for the borrower to communicate with the necessary entity in the event the borrower had questions regarding the default.

The current climate in New Jersey relating to residential mortgage foreclosures has created a chilling effect on the statutory rights of a mortgagee to foreclose upon a defaulted mortgage. Not only has the disparate Appellate panels created confusion, but has also prevented plaintiff's foreclosure counsel from being able to certify the accuracy of foreclosure pleadings. Furthermore, the retroactive effect of the Laks decision, if upheld, would have the disastrous results of dismissals of tens of thousands of foreclosures currently being processed in the court system.

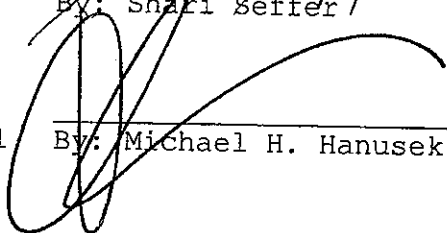
Respectfully submitted,

FEIN, SUCH, KAHN & SHEPARD, P.C.



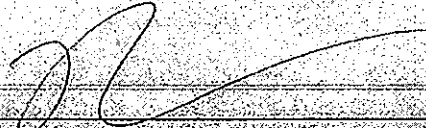
By: Shari Seffer

Dated: October 21, 2011



By: Michael H. Hanusek

ZUCKER, GOLDBERG & ACKERMAN, LLC

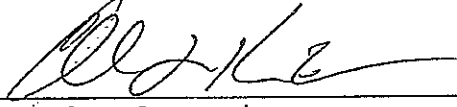


Dated: October 21, 2011 By: Brian C. Nicholas



By: Jaime R. Ackerman

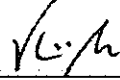
POWERS KIRN, LLC



Dated: October 21, 2011

By: Edward W. Kirn

PHELAN, HALLINAN & SCHMIEG



Dated: October 21, 2011 By: Vladimir V. Palma

TABLE OF CONTENTS
APPENDIX

Legislative History Checklist	A1
Assembly, No. 1064 (Second Reprint)	A2
Assembly Financial Institutions Committee Statement to Assembly, No. 1064	A22
Senate State Management, Investments and Financial Institutions Committee Statement to Assembly, No. 1064 ..	A27
Office of the Governor News Release Dated September 6, 1995	A32
Weinstein, Myron C., New Foreclose Act: More Complexity, Uncertainty 142 N.J.L.J. 823	A33
Weissman, Dan, Give and take in foreclosure revisions Start Ledger, September 7, 1995	A35
Recommended Stipulation, Filed March 18, 2011 in In Re Residential Mortgage Foreclosure Pleading And Document Irregularities, Docket No.: F-059553-10	A36
Order Approving the Recommended Stipulation and Appointing Special Master, Filed March 29, 2011 in In Re Residential Mortgage Foreclosure Pleading and Document Irregularities, Docket No.: F-059553-10	A53

2A:50-53 to 68

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

(**"Fair Foreclosure Act"**)

NJSA: 2A:50-53 to 68

LAWS OF: 1995 **CHAPTER:** 244

BILL NO: A1064

SPONSOR(S): Vandervalk

DATE INTRODUCED: January 24, 1994

COMMITTEE: **ASSEMBLY** Financial Institutions
SENATE: State Management

AMENDED DURING PASSAGE: Yes Amendments during passage
Second reprint enacted denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** November 14, 1994
SENATE: June 26, 1995

DATE OF APPROVAL: September 5, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clipping:
"New Foreclosure Act: more complexity, uncertainty," 142 NJLJ 823

KBG:pp

DEPOSITORY COPY
Do Not Remove From Library

[SECOND REPRINT]
ASSEMBLY, No. 1064

STATE OF NEW JERSEY

INTRODUCED JANUARY 24, 1994

By Assemblywoman VANDERVALK, Assemblymen ROBERTS,
Bateman and Lustbader

1 AN ACT concerning mortgage foreclosure ¹, amending various
2 sections of the New Jersey Statutes¹ and supplementing
3 Chapter 50 of Title 2A of the New Jersey Statutes.

4

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

7 1. ¹(New section)¹ This act shall be known and may be cited
8 as the "Fair Foreclosure Act."

9 2. ¹(New section)¹ The Legislature hereby finds and declares
10 it to be the public policy of this State ²[that homelessness is to
11 be prevented;]² that homeowners should be given every
12 opportunity to pay their home mortgages, and thus keep their
13 homes; ²[that the State will be benefitted if homeowners keep
14 their homes and do not become public welfare recipients;]² and
15 that lenders will be benefitted when residential mortgage debtors
16 cure their defaults and return defaulted residential mortgage
17 loans to performing status.

18 3. ¹(New section)¹ As used in this act:

19 "Deed in lieu of foreclosure" means a voluntary, knowing and
20 uncoerced conveyance by the residential mortgage debtor to the
21 residential mortgage lender of all claim, interest and estate in
22 the property subject to the mortgage. In order for a conveyance
23 to be voluntary, the debtor shall have received notice of, and
24 been fully apprised of the debtor's rights as specified in section 4
25 of this act. For purposes of this act, "voluntarily surrendered"
26 has the same meaning as "deed in lieu of foreclosure."

27 "Immediate family" means the debtor, the debtor's spouse, or
28 the mother, father, sister, brother or child of the debtor or
29 debtor's spouse.

30 ²"Non-residential mortgage" means a mortgage, security
31 interest or the like which is not a residential mortgage. If a
32 mortgage document includes separate tracts or properties, those
33 portions of the mortgage document covering the non-residential
34 tracts or properties shall be a non-residential mortgage.

35 "Obligation" means a promissory note, bond or other similar
36 evidence of a duty to pay.²

37 "Office" means the Office of Foreclosure within the
38 Administrative Office of the Courts.

39 "Residential mortgage" means a mortgage, security interest or
40 the like, in which the security is a ²residential property such as
41 a² house, real property ²[,] or² condominium ²[, or cooperative

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:

¹ Assembly AFI committee amendments adopted September 29, 1994.

² Senate SSM committee amendments adopted May 8, 1995.

1 apartment]², which is occupied, or is to be occupied, by the
2 debtor, who is a natural person, or a member of the debtor's
3 immediate family, as that person's ¹[primary]¹ residence. This
4 act shall apply to all residential mortgages wherever made, which
5 have as their security such a residence in the State of New
6 Jersey, provided that the real property which is the subject of the
7 mortgage shall not have more than four dwelling units, one of
8 which shall be, or is planned to be, occupied by the debtor or a
9 member of the debtor's immediate family as the debtor's or
10 member's ¹[primary]¹ residence at the time the loan is
11 originated.

12 "Residential mortgage debtor" or "debtor" means any person
13 shown on the record of the residential mortgage lender as being
14 obligated to pay the ²[note] obligation² secured by the residential
15 mortgage.

16 "Residential mortgage lender" or "lender" means any person,
17 corporation, or other entity which makes or holds a residential
18 mortgage, and any person, corporation or other entity to which
19 such residential mortgage is assigned.

20 4. ¹[New section]¹ a. Upon failure to perform any obligation
21 of a ²[note or]² residential mortgage by the residential mortgage
22 debtor and before any residential mortgage lender may
23 accelerate the maturity of any residential mortgage obligation
24 ²[or] and² commence any foreclosure or other legal action to
25 take possession of the residential property which is the subject of
26 the mortgage, the residential mortgage lender shall give the
27 residential mortgage debtor notice of such intention at least 30
28 days in advance of such action as provided in this section.

29 b. Notice of intention to take action as specified in subsection
30 a. of this section shall be in writing, sent to the debtor by
31 registered or certified mail, return receipt requested, at the
32 debtor's last known address, and, if different, to the address of
33 the property which is the subject of the residential mortgage.
34 The notice is deemed to have been effectuated on the date the
35 notice is delivered ²in person or mailed² to the party ²[in person,
36 the date of the acceptance of the certified or registered mail, or,
37 if the party refuses to claim or accept delivery of the certified or
38 registered mail, or if neither the return receipt or the original
39 envelope is returned to the sender within 15 calendar days of
40 mailing, the date of the mailing of the notice by ordinary first
41 class mail. Notice by certified or registered mail and by ordinary
42 first class mail may be made concurrently]².

43 c. The written notice shall clearly and conspicuously state in a
44 manner calculated to make the debtor aware of the situation:

- 45 (1) the particular obligation or real estate security interest;
- 46 (2) the nature of the default claimed;
- 47 (3) the right of the debtor to cure the default as provided in
48 section 5 of this act;
- 49 (4) what performance, including what sum of money, if any,
50 and interest, shall be tendered to cure the default as of the date
51 specified under paragraph (5) of this subsection c.;
- 52 (5) the date by which the debtor shall cure the default to avoid
53 initiation of foreclosure proceedings, which date shall not be less
54 than 30 days after the date the notice is ²[given] effective², and

1 the name and address and phone number of a person to whom the
2 payment or tender shall be made;

3 (6) that if the debtor does not cure the default by the date
4 specified under paragraph (5) of this subsection c., the lender may
5 take steps to terminate the debtor's ownership in the property by
6 commencing a foreclosure suit in a court of competent
7 jurisdiction;

8 (7) that if the lender takes the steps indicated pursuant to
9 paragraph (6) of this subsection c., a debtor shall still have the
10 right to cure the default pursuant to section 5 of this act, but
11 that the debtor shall be responsible for the lender's court costs
12 and attorneys' fees in an amount not to exceed that amount
13 permitted pursuant to the Rules Governing the Courts of ²the
14 State of² New Jersey;

15 (8) the right, if any, of the debtor to transfer the real estate
16 to another person subject to the security interest and that the
17 transferee may have the right to cure the default as provided in
18 this act, subject to the mortgage documents;

19 (9) that the debtor is advised to seek counsel from an attorney
20 of the debtor's own choosing concerning the debtor's residential
21 mortgage default situation, and that, if the debtor is unable to
22 obtain an attorney, the debtor may communicate with the New
23 Jersey Bar Association or Lawyer Referral Service in the county
24 in which the residential property securing the mortgage loan is
25 located; and that, if the debtor is unable to afford an attorney,
26 the debtor may communicate with the Legal Services Office in
27 the county in which the property is located;

28 (10) the possible availability of financial assistance for curing
29 a default from programs operated by the State or federal
30 government or non-profit organizations, if any, as identified by
31 the Commissioner of Banking. This requirement may be satisfied
32 by attaching a list of such programs promulgated by the
33 commissioner; and

34 (11) the name and address of the lender and the telephone
35 number of a representative of the lender whom the debtor may
36 contact if the debtor disagrees with the lender's assertion that a
37 default has occurred or the correctness of the mortgage lender's
38 calculation of the amount required to cure the default.

39 d. The notice of intention to foreclose required to be provided
40 pursuant to this section shall not be required if the debtor has
41 voluntarily surrendered the property which is the subject of the
42 residential mortgage ²[prior to the time at which the lender is
43 permitted to send a notice of intention to foreclose pursuant to
44 subsection a. of this section]².

45 e. The duty of the lender under this section to serve notice of
46 intention to foreclose is independent of any other duty to give
47 notice under the common law, principles of equity, State or
48 federal statute, or rule of court and of any other right or remedy
49 the debtor may have as a result of the failure to give such notice.

50 f. Compliance with this section shall be set forth in the
51 pleadings of any legal action referred to in this section. If the
52 plaintiff in any complaint seeking foreclosure of a residential
53 mortgage alleges that the property subject to the residential
54 mortgage has been abandoned or voluntarily surrendered, the
55 plaintiff shall plead the specific facts upon which this

1 allegation is based. ²[The plaintiff shall attach to the complaint
2 a copy of the notice required to be served together with proof of
3 service as these are required pursuant to subsections a. and b. of
4 this section.]²

5 5. ¹[New section]¹ a. Notwithstanding the provisions of any
6 other law to the contrary, as to any residential mortgage for
7 which a notice of intention to foreclose is required to be given
8 pursuant to section 4 of this act, whether or not such required
9 notice was in fact given, the debtor, or anyone authorized to act
10 on the debtor's behalf, shall have the right at any time, up to the
11 entry of final judgment ²or the entry by the office or the court of
12 an order of redemption pursuant to subsection g. of section 11 of
13 this act², to cure the default, de-accelerate and reinstate the
14 residential mortgage by tendering the amount or performance
15 specified in subsection b. of this section. The payment or tender
16 shall be made to the ²[lender, holder or servicing agent] person
17 designated in the notice pursuant to paragraph (5) of subsection c.
18 of section 4 of this act². The debtor may exercise the right to
19 cure a default as to a particular mortgage and reinstate that
20 mortgage only once every 18 months, provided, however, that this
21 limitation shall not apply if the mortgage debtor cures a default
22 by the date specified in paragraph (5) of subsection c. of section 4
23 of this act. The 18-month time period shall run from the date of
24 cure and reinstatement.

25 b. To cure a default under this section, a debtor shall:

26 (1) pay or tender to the person identified pursuant to
27 paragraph (5) of subsection c. of section 4 of this act, in the form
28 of cash, cashier's check, or certified check, all sums which would
29 have been due in the absence of default, at the time of payment
30 or tender;

31 (2) perform any other obligation which the debtor would have
32 been bound to perform in the absence of default or the exercise
33 of an acceleration clause, if any;

34 (3) pay or tender court costs, if any, and attorneys' fees in an
35 amount which shall not exceed the amount permitted under the
36 Rules Governing the Courts of the State of New Jersey; and

37 (4) pay all contractual late charges, as provided for in the note
38 or security agreement.

39 c. To cure a default under this section, a debtor shall not be
40 required to pay any charge, fee or penalty attributable to the
41 exercise of the right to cure a default as provided for in this act.

42 d. Cure of default reinstates the debtor to the same position
43 as if the default had not occurred. It nullifies, as of the date of
44 cure, any acceleration of any obligation under the mortgage, note
45 or bond arising from the default.

46 e. If default is cured prior to the filing of a foreclosure action,
47 the lender shall not institute a foreclosure action for that
48 default. If default is cured after the filing of a foreclosure
49 action, the lender shall give written notice of the cure to the
50 court. Upon such notice, the court shall dismiss the action
51 without prejudice.

52 f. The right to cure a default under this section is independent
53 of any right of redemption or any other right or remedy under the
54 common law, principles of equity, State or federal statute, or
55 rule of court.

1 6. ¹(New section)¹ a. ²(1)² If a plaintiff's action to
2 foreclose a residential mortgage is uncontested, pursuant to
3 R.4:64-1(a) of the Rules Governing the Courts of the State of
4 New Jersey ²and the plaintiff chooses not to use the optional
5 procedure for the disposition of foreclosed premises pursuant to
6 section 11 of this act², a lender shall apply for entry of final
7 judgment and provide the debtor with a notice, mailed at least 14
8 calendar days prior to the submission of proper proofs for entry
9 of a foreclosure judgment, advising that, absent a response from
10 the debtor pursuant to ²[subsection b. of this section] paragraph
11 (2) of this subsection a.², proper proofs will be submitted for
12 entry of final judgment in the foreclosure action and that upon
13 entry of final judgment, the debtor shall lose the right, provided
14 pursuant to section 5 of this act, to cure the default. The manner
15 and address for mailing and the effective date of the notice shall
16 be the same as set forth in subsection b. of section 4 of this act.

17 ²[b.] (2)² A debtor may, no later than 10 days after receipt of
18 the notice required pursuant to subsection a. of this section, mail
19 to the lender a statement in which the debtor in good faith
20 certifies as true that there is a reasonable likelihood that the
21 debtor will be able to provide payment necessary to cure the
22 default within 45 days of the date the notice required pursuant to
23 ²[subsection a. of this section] paragraph (1) of this subsection a.²
24 became effective. This statement shall be sent registered or
25 certified mail, return receipt requested, to the address of the
26 lender who gave notice as required pursuant to subsection a. of
27 this section.

28 ²[c.] (3)² A lender who receives a statement sent by the debtor
29 pursuant to ²[subsection b. of this section] paragraph (2) of this
30 subsection a.², shall not submit proper proofs for entry of final
31 judgment in foreclosure ¹with a return date¹ earlier than ¹[the
32 46th day] 46 days¹ after the date the notice required pursuant to
33 ²[subsection a. of this section] paragraph (1) of this subsection a.²
34 became effective.

35 ²b. (1) If a plaintiff's action to foreclose a residential
36 mortgage is uncontested, pursuant to R.4:64-1(a) of the Rules
37 Governing the Courts of the State of New Jersey and the lender
38 chooses to use the optional procedure for the disposition of the
39 foreclosed premises pursuant to section 11 of this act, the lender
40 shall provide the debtor with a notice, mailed at least 14 calendar
41 days prior to filing an affidavit or certification with the office or
42 court pursuant to subsection f. of section 11 of this act. The
43 notice shall advise the debtor that, absent a response from the
44 debtor pursuant to paragraph (2) of this subsection b., the lender
45 shall file an affidavit or certification with the office or court
46 requesting the office or court to enter an order of redemption
47 and that upon the entry of the order of redemption the debtor
48 shall lose the right provided pursuant to section 5 of this act, to
49 cure the default. The manner and address for mailing and the
50 effective date of the notice shall be the same as set forth in
51 subsection b. of section 4 of this act.

52 (2) A debtor may, no later than 10 days after receipt of the
53 notice required pursuant to paragraph (1) of this subsection b.,
54 mail to the lender a statement in which the debtor in good faith

1 certifies as true that there is a reasonable likelihood that the
 2 debtor will be able to provide payment necessary to cure the
 3 default within 45 days of the date the notice required pursuant to
 4 paragraph (1) of this subsection b. became effective. This
 5 statement shall be sent registered or certified mail, return
 6 receipt requested, to the address of the lender who gave notice as
 7 required pursuant to paragraph (1) of this subsection b.

8 (3) A lender who receives a statement sent by the debtor
 9 pursuant to paragraph (2) of this subsection b., shall not file an
 10 affidavit or certification with the office or court earlier than 46
 11 days after the date the notice required pursuant to paragraph (1)
 12 of this subsection b. became effective.²

13 7. ¹(New section)¹ If a debtor is successful in curing the
 14 default under a repayment plan approved by the United States
 15 Bankruptcy Court, the residential mortgage relationship between
 16 the parties is reinstated, and the debtor is restored to the same
 17 position held before the default or acceleration.

18 8. ¹(New section)¹ Nothing herein is intended to limit or
 19 modify any provision of federal law regarding notice of the
 20 availability of homeownership counselling.

21 9. ¹(New section)¹ Waivers by the debtor of rights provided
 22 pursuant to this act are against public policy, unlawful, and void,
 23 unless given after default pursuant to a workout agreement in a
 24 separate written document signed by the debtor.

25 ²10. (New section) The provisions of sections 1 through 9 of
 26 this act shall not apply to the foreclosure of a non-residential
 27 mortgage nor to collection of the obligation by means other than
 28 enforcing the lender's lien on the residential property. A lender
 29 shall not be required to foreclose a residential mortgage and a
 30 non-residential mortgage securing the same obligation in the
 31 same proceeding.²

32 ²[10.] ^{11.}² ¹(New section)¹ a. An optional ²[sale]
 33 foreclosure² procedure ²without sale² for the disposition of a
 34 foreclosed premises is hereby established pursuant to subsection
 35 b. of this section, wherein a lender may²[, after entry of final
 36 judgment in foreclosure,]² elect to proceed according the
 37 provisions of this act ²[rather than as provided in accordance
 38 with applicable law governing foreclosure sales and sales of real
 39 property generally]² and ²R.4:64-1(d) of² the Rules Governing
 40 the Courts of the State of New Jersey.

41 b. Use of the optional ²[sale]² procedure ²without sale², as
 42 provided in this section, shall be permitted only when:

43 (1) the debtor has abandoned the property which is the subject
 44 of the residential mortgage;

45 (2) the debtor has voluntarily surrendered the property which
 46 is the subject of the residential mortgage by signing a deed in lieu
 47 of foreclosure in favor of the lender; or

48 (3) there is no equity in the property which is the subject of
 49 the residential mortgage, as defined in subsection e. of this
 50 section.

51 c. Pursuant to paragraph (1) of subsection b. of this section,
 52 and for purposes of this section only, abandonment of the
 53 property subject to the residential mortgage shall be established
 54 by an affidavit or certification from an individual having personal

1 knowledge of the contents thereof, setting forth the specific
2 facts upon which that conclusion is based. The affidavit or
3 certification shall be submitted to the ²office or the² court at
4 the same time that the lender ²[makes application to proceed
5 with the optional sale procedure established by this section]
6 applies to the office or the court for the order fixing the amount,
7 time and place for redemption².

8 d. Pursuant to paragraph (2) of subsection b. of this section
9 and for purposes of this section only, if the lender receives a deed
10 in lieu of foreclosure, the conveyance shall be effective only if
11 the deed clearly and conspicuously provides: that the debtor may,
12 without penalty, rescind the conveyance within ¹[three] seven¹
13 days, excluding Saturdays, Sundays and legal holidays; and that
14 such rescision is effective upon delivery of a written notice to the
15 lender or its agent or upon mailing of such notice to the lender or
16 its agent by certified or registered mail, return receipt requested.

17 e. ¹(1)¹ For purposes of paragraph (3) of subsection b. of this
18 section, a property subject to a residential mortgage shall be
19 deemed to have no equity if the total unpaid balance of all
20 ²[properly recorded]² liens ¹and encumbrances¹ against the
21 property, including mortgages, tax liens ²[,] and² judgments ²[in
22 which execution has issued] actually² against the property ²[not
23 including similar name judgments]², and any other ²[properly
24 recorded]² lien, is equal to or greater than 92 percent of the fair
25 market value of the property ¹[as that value is determined by an
26 appraiser licensed pursuant to P.L.1991, c.68 (C.45:14F-1 et
27 seq.). A certified copy of the appraisal and an]. An¹ affidavit
28 setting forth with specificity ¹the fair market value of the
29 property,¹ the unpaid balance of the obligation, including all
30 mortgages and liens ¹and the method by which the lender
31 determined that the property has no equity¹, shall be ²[attached
32 to the petition to proceed with the optional sale procedure
33 established by this section] submitted to the office or the court
34 at the time the lender applies for the order fixing the amount,
35 time and place for redemption².

36 ¹(2) If a lender proceeds with the optional ²[sale]² procedure
37 under this subsection, and if the debtor has not objected and
38 requested a public sale pursuant to this section, when the
39 ²foreclosed² property ²[in question]² is resold by the lender
40 following ²[receipt of the order of conveyance as provided
41 pursuant to subsection l. of this section,] judgment² and provided
42 the resale price received by the lender is in excess of the amount
43 necessary to repay the debt², interest and reasonable costs² of
44 the lender, ²[all liens and obligations superior to the lender]² and
45 all carrying charges, including, but not limited to, the
46 ²reasonable² costs of maintenance and resale, the lender shall
47 deposit any such excess in accordance with R.4:57 et seq. of the
48 Rules Governing the Courts of ²the State of² New Jersey.

49 (3) Upon deposit of any such excess with the Superior Court,
50 the lender shall notify the debtor and any lien holder who held a
51 lien junior to the lender and whose lien was lost ²in whole or in
52 part² as a result of the foreclosure. Such notification shall be by
53 certified mail, return receipt requested, to the last known
54 address of the debtor and such lien holders. The debtor and the

1 lien holders shall then have six months to make an application to
2 the Superior Court, in the form of an application for surplus
3 funds, upon appropriate notice to all other parties in interest, to
4 seek an order for turnover of the excess funds.¹ ²Failure of a
5 lender to comply with the provisions of paragraphs (2) and (3) of
6 this subsection e. shall not affect title to the foreclosed
7 property.²

8 f. (1) ²Following entry of judgment of foreclosure pursuant to
9 section 6 of this act] In accordance with the provisions of
10 R.4:64-1(d) of the Rules Governing the Courts of the State of
11 New Jersey, and subject to compliance with the provisions of this
12 act², a lender may elect to proceed with the optional ²[sale]²
13 procedure by filing ²[a petition and proposed order] an affidavit
14 or certification² with the office or the court.

15 (2) The ²[petition] affidavit or certification² shall set forth
16 ²[under oath]² the facts which the ²[petitioner] lender² alleges
17 show that the ²[petitioner] it² is entitled to proceed under one or
18 more paragraphs of subsection b. of this section and shall be
19 supported by the proofs required by this section and such other
20 proofs as may be required by the office or the court.

21 g. ²[If the office or the court grants the petition to proceed by
22 the optional sale procedure, it shall] In accordance with the
23 provisions of R.4:64-1(d) of the Rules Governing the Courts of
24 the State of New Jersey, and subject to compliance with the
25 provisions of this act, the office or the court may² enter an order
26 fixing the amount, ²[date] time², and place for redemption, which
27 shall be not less than 45 days nor more than 60 days after the
28 date of the order. The office or the court may grant an extension
29 of time for good cause shown. The order shall provide that:

30 (1) the redeeming defendant pay to the plaintiff's attorney
31 the amount fixed by the office or the court for redemption,
32 ²[which shall be the amount of the judgment]² together with
33 interest ²[, from the date of the order]² to the date of
34 redemption, plus all court costs;

35 (2) redemption shall be by cash, cashier's check or certified
36 check and made at the office of the plaintiff's attorney, if such
37 office is located in the county where the property is situated, or
38 at such other place as designated by the office or the court,
39 between the hours of 9:00 a.m. and 4:00 p.m. of the date set by
40 the office or the court in the order; and

41 (3) in the absence of redemption, the defendants shall stand
42 absolutely debarred and foreclosed from all equity of redemption.

43 h. (1) The order for redemption or notice thereof shall be
44 mailed to each defendant's last known address and, if different,
45 ²also² to the address of the property ²[which is the subject of the
46 residential mortgage] being foreclosed². The order for
47 redemption or notice thereof shall be sent by ordinary mail and
48 certified mail, return receipt requested, ²[not more than five]
49 within 20² days after the date the order is ²[issued] entered²,
50 except that, as to defendants ²whose addresses are unknown and²
51 who were served ²[only]² by publication ²[and thereafter did not
52 appear in the action]², no ²further² publication of the order for
53 redemption ²or notice thereof² need be made.

54 (2) The notice shall:

1 (a) inform the defendants that the plaintiff is proceeding
2 under an optional ²[sale]² procedure authorized by section ²[10]
3 ¹¹² of ¹[P.L. , c. (C.)](now pending before the
4 Legislature as this bill)] this act¹ and set out the steps of the
5 optional ²[sale]² procedure;

6 (b) inform all defendants of the terms and conditions under
7 which a defendant may request a public sale of the mortgaged
8 premises pursuant to subsection i. of this section; and

9 (c) clearly state that no request for a public sale made after
10 30 days from the date of service will be granted, except for good
11 cause shown.

12 i. In any matter in which the office or the court has issued an
13 order for redemption and the lender is permitted to proceed by
14 the optional ²[sale]² procedure, a defendant who wishes to object
15 to the optional ²[sale]² procedure and request a public sale with
16 respect to the mortgaged premises ²being foreclosed², shall
17 submit to the office or the court a written request for a public
18 sale within 30 days of the date the order or notice thereof is
19 served. If a defendant requests a public sale within the required
20 time period, ²and subject to compliance with the provisions of
21 this act,² the office or court shall ²[order a public sale which
22 shall be held in accordance with applicable law governing
23 foreclosure sales and sales of real property generally and the
24 Rules Governing the Courts of the State of New Jersey] enter a
25 judgment of foreclosure which provides for a public sale of the
26 premises in accordance with applicable law². Any such defendant
27 who requests a public sale, other than a natural person who is the
28 owner or a voluntary transferee from that owner, shall be
29 required to post a cash deposit or bond prior to the ²[return]²
30 date ²[of the petition to proceed by optional sale procedure] fixed
31 for redemption². This cash deposit or bond shall be in an amount
32 which is 10% of the ²[plaintiff's judgment] amount found due in
33 the order fixing the amount, time and place for redemption² and
34 shall be held to secure the plaintiff against ¹any¹ additional
35 interest and costs, as well as any deficiency, as a result of the
36 public sale. The office or the court may dispense with this
37 requirement for good cause shown. The defendant who requests a
38 public sale, other than a natural person who is the owner or a
39 voluntary transferee from that owner, shall pay all expenses and
40 costs associated with the public sale, including, but not limited
41 to, all sheriff's fees and commissions.

42 j. In the event of any dispute among defendants over the right
43 to redeem, the court shall enter such order as is necessary to
44 secure the plaintiff pending the resolution of the dispute,
45 including, but not limited to, payment of plaintiff's additional
46 interest and costs which accrue as a result of the dispute.

47 k. Upon redemption, the plaintiff shall furnish the
48 redemptioner with an appropriate certificate of redemption and
49 the redemptioner shall acquire all rights provided by law and
50 equity but shall not be entitled to a deed or title to the
51 mortgaged premises solely by virtue of the redemption. A
52 redemptioner ²in proper cases² may proceed to foreclose the
53 redemptioner's interest.

54 l. In the absence of redemption, and on proof of mailing of the

1 order for redemption or notice thereof pursuant to subsection h.
2 of this section and an affidavit of non-redemption, the plaintiff
3 shall be entitled to ²[an order of conveyance] a judgment²
4 ²[awarding possession and barring] debarring² and foreclosing
5 ²the² equity of redemption of ²[any defendant] the defendants
6 and each of them² and any person claiming by, through or under
7 them, and adjudging the plaintiff be vested with a valid and
8 infeasible estate in the mortgaged premises. ²[The order of
9 conveyance] Anything to the contrary notwithstanding,
10 redemption shall be permitted at any time up until the entry of
11 judgment including the whole of the last day upon which judgment
12 is entered. A certified copy of the judgment² shall be accepted
13 for recording ²[as a deed]² by the county recording officer
14 pursuant to P.L.1939, c.170 (C.46:16-1.1)

15 m. Upon entry of ²[an order of conveyance] a judgment²
16 vesting title in the plaintiff pursuant to subsection ²[k.] 1.² of this
17 section, the debt which was secured by the foreclosed mortgage
18 shall be deemed satisfied, and the plaintiff shall not be permitted
19 to institute any further or contemporaneous action for the
20 collection of the debt.

21 ²[^{11.}] 12.2 (New section) a. With respect to the sale of a
22 mortgaged premises under foreclosure action, each Sheriff in this
23 State shall provide for, but not be limited to, the following
24 uniform procedures:

25 (1) Bidding in the name of the assignee of the foreclosing
26 plaintiff.

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

29 (3) ²(a) The sheriff shall schedule a sale date within 120 days
30 of the sheriff's receipt of any writ of execution issued by the
31 court in any foreclosure proceeding.

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

36 (c) Upon the foreclosing plaintiff making such application to
37 the office, the office shall issue the appropriate order appointing
38 a Special Master to hold the foreclosure sale.

39 (4)² That the successful bidder at the sheriff's sale shall pay a
40 20 percent deposit in either cash or by a certified or cashier's
41 check, made payable to the sheriff of the county in which the
42 sale is conducted, immediately upon the conclusion of the
43 foreclosure sale. If the successful bidder cannot satisfy this
44 requirement, the bidder shall be in default and the sheriff shall
45 immediately void the sale and proceed further with the resale of
46 the premises without the necessity of adjourning the sale, without
47 renotification of any party to the foreclosure and without the
48 republication of any sales notice. Upon such resale, the
49 defaulting bidder shall be liable to the foreclosing plaintiff for
50 any additional costs incurred by such default including, but not
51 limited to, any difference between the amount bid by the
52 defaulting bidder and the amount generated for the foreclosing
53 plaintiff at the resale. In the event the plaintiff is the successful
54 bidder at the resale, the plaintiff shall provide a credit for the
55 fair market value of the property foreclosed.

1 2[(4) That] (5) It is permissible, upon consent of the sheriff
2 conducting the sheffiff's sale, that² it shall not be necessary for
3 an attorney or representative of the person which initiated the
4 foreclosure to be present physically at the sheriff's sale to make
5 a bid. A letter containing bidding instructions may be sent to the
6 sheriff in lieu of an appearance.

7 2[(5)] (6)² That each sheriff's office shall use a deed which
8 shall be in substantially the following form:

9
10 THIS INDENTURE,

11
12
13 made this (date) day of (month), (year). Between
14 (name) , Sheriff of the County of (name) , in the
15 State of New Jersey, party of the first part
16 and (name(s))

17
18
19
20 party of the second part, witnesseth.

21
22 WHEREAS, on the (date) day of (month), (year), a
23 certain Writ of Execution was issued out of the
24 Superior Court of New Jersey, Chancery Division-
25 (name) County, Docket No. directed and
26 delivered to the Sheriff of the said County of
27 (name) and which said Writ is in the words or to
28 the effect following that is to say:

29 THE STATE OF NEW JERSEY to the Sheriff of the County
30 of (name) ,

31 Greeting:

32
33 WHEREAS, on the (date) day of (month), (year), by a
34 certain judgment made in our Superior Court of New
35 Jersey, in a certain cause therein pending, wherein the
36 PLAINTIFF is:

37
38
39
40 and the following named parties are the DEFENDANTS:

41
42
43
44 IT WAS ORDERED AND ADJUDGED that certain mortgaged
45 premises, with the appurtenances in the Complaint, and
46 Amendment to Complaint, if any, in the said cause
47 particularly set forth and described, that is to say:
48 The mortgaged premises are described as set forth upon
49 the RIDER ANNEXED HERETO AND MADE A PART HEREOF.

50
51 BEING KNOWN AS Tax Lot (number) in Block
52 (number) COMMONLY KNOWN AS (street address) .

1 TOGETHER, with all and singular the rights, liberties,
 2 privileges, hereditaments and appurtenances thereunto
 3 belonging or in anywise appertaining, and the reversion
 4 and remainders, rents, issues and profits thereof, and
 5 also all the estate, right, title, interest, use,
 6 property, claim and demand of the said defendants of,
 7 in, to and out of the same, to be sold, to pay and
 8 satisfy in the first place unto the plaintiff,

9

10

11 the sum of \$ (amount) being the principal, interest
 12 and advances secured by a certain mortgage dated (date,
 13 month, year) and given by (name) together
 14 with lawful interest from

15

16

17

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

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

51

52

53

54

55

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

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

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

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

Attorneys /s/ _____, Clerk
Superior Court of New Jersey

1

2

3

4

5 As by the record of said Writ of Execution in the
6 Office of the Superior Court of New Jersey, at Trenton,
7 in Book (number) of Executions, Page (number) etc.,
8 may more fully appear.

9

10 AND WHEREAS I, the said (name), as such
11 Sheriff as aforesaid did in due form of law, before
12 making such sale give notice of the time and place of
13 such sale by public advertisement signed by myself, and
14 set up in my office in the (name) Building in
15 (name) County, being the County in which said real
16 estate is situate and also set up at the premises to be
17 sold at least three weeks next before the time
18 appointed for such sale.

19

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

38

39 WHEREUPON the said party of the second part bidding
40 therefore for the same, the sum of \$ (amount) and no
41 other person bidding as much I did then and there
42 openly and publicly in due form of law between the
43 hours of (time) and (time) in the (a.m. or p.m.),
44 strike off and sell tracts or parcels of land and
45 premises for the sum of \$ (amount) to the said party
46 of the second part being then and there the highest
47 bidder for same. And on the (date) of (month) in
48 the year last aforesaid I did truly report the said
49 sale to the Superior Court of New Jersey, Chancery
50 Division and no objection to the said sale having been
51 made, and by Assignment of Bid filed with the Sheriff
52 of (name) County said bidder assigned its bid to:

53

54

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54

NOW, THEREFORE, This Indenture witnesseth, that I, the said (name), as such Sheriff as aforesaid under and by the virtue of the said Writ of Execution and in execution of the power and trust in me reposed and also for and in consideration of the said sum of \$ (amount) therefrom acquit, exonerate and forever discharge to the said party of the second part, its successors and assigns, all and singular the said tract or parcel of lands and premises, with the appurtenances, privileges, and hereditaments thereunto belonging or in any way appertaining; to have and hold the same, unto the said party of the second part, its successors and assigns to its and their only proper use, benefit, and behoof forever, in as full, ample and beneficial manner as by virtue of said Writ of Execution I may, can or ought to convey the same.

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

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

Signed, sealed and delivered
in the presence of

_____ L.S.)
(Signature of Sheriff), Sheriff

State of New Jersey) ss
County)

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

was by me sold by virtue of a good and subsisting
execution (or as the case may be) as is therein
recited, that the money ordered to be made has not been
to my knowledge or belief paid or satisfied, that the
time and place of the same of said real estate were by
me duly advertised as required by law, and that the
same was cried off and sold to a bonafide purchaser for

1 the best price that could be obtained and the true
 2 consideration for this conveyance as set forth in the
 3 deed is \$ (amount).

4 _____
 5 (Name of Sheriff), Sheriff

6
 7 Sworn before me, (name) , on this (date) day of
 8 (month), (year), and I having examined the deed above
 9 mentioned do approve the same and order it to be
 10 recorded as a good and sufficient conveyance of the
 11 real estate therein described.

12
 13
 14 _____
 15 (Attorney or Notary Public)

16 STATE OF NEW JERSEY) ss.

17 (Name) County)

18 On this (date) day of (month), (year), before me, the
 19 subscriber, (name) personally appeared (name) ,
 20 Sheriff of the County of (name) aforesaid, who is,
 21 I am satisfied, the grantor in the within Indenture
 22 named, and I having first made known to him the
 23 contents thereof, he did thereupon acknowledge that he
 24 signed, sealed and delivered the same on his voluntary
 25 act and deed, for the uses and purposes therein
 26 expressed.

27
 28 _____
 29 (Attorney or Notary Public)

30
 31
 32
 33 b. At the conclusion of the sheriff's sale, the attorney for the
 34 plaintiff may prepare and deliver to the sheriff a deed in the
 35 form provided pursuant to paragraph (5) of subsection a. of this
 36 section for the sheriff's execution and the deed shall be delivered
 37 to the sheriff within 10 days of the date of the sale. The sheriff
 38 shall be entitled to the authorized fee, as a review fee, even if
 39 the plaintiff's attorney prepares the deed.

40 c. The sheriff's office shall, within two weeks of the date of
 41 the sale, deliver a fully executed deed to the successful bidder at
 42 the sale provided that the bidder pays the balance of the monies
 43 due to the Sheriff by either cash or certified or cashier's check.
 44 In the event a bid is satisfied after the expiration and additional
 45 interest is collected from the successful bidder, the sheriff shall
 46 remit to the plaintiff the total amount, less any fees, costs and
 47 commissions due the sheriff, along with the additional interest.¹

48 ²[¹12.] ¹³.² (New section) Any judgment creditor shall, upon
 49 entry of judgment in the office of the Clerk of the Superior
 50 Court, provide the Court with its current address for service. If
 51 the judgment creditor's address for service changes, it shall be
 52 incumbent upon the judgment creditor to effect a change of
 53 address for service by filing an appropriate form with the court in
 54 a timely manner. If any judgment creditor fails to provide the

1 Court with a current or change of address for service, in any
2 foreclosure proceeding, the plaintiff may, without having to first
3 make a more diligent inquiry or publish notice in a newspaper,
4 serve the judgment creditor by ordinary mail and certified mail
5 at the address that is reflected in the records of the Clerk of the
6 Superior Court. The judgment creditor shall, if known, provide
7 the Clerk of the Court with the judgment creditor's social
8 security number or tax payer identification number.¹

9 ²[113.] ^{14.}² N.J.S.2A:17-36 is amended to read as follows:

10 2A:17-36. Adjournments of sale of real estate. A sheriff or
11 other officer selling real estate by virtue of an execution may
12 make [2] two adjournments of the sale, and no more, to any time,
13 not exceeding [1 month] 14 calendar days for each adjournment.
14 However, a court of competent jurisdiction may, for cause, order
15 further adjournments.¹

16 (cf: N.J.S.2A:17-36)

17 ²[^{14.}] ^{15.}² (New section) a. The United States Attorney for
18 the District of New Jersey may send a letter to the Clerk of the
19 Superior Court of New Jersey which notes the appearance of the
20 Attorney General of the United States and states that neither an
21 answer will be filed nor a default opposed. This letter shall be
22 accepted by the Clerk of the Superior Court of New Jersey in lieu
23 of an appearance by the Attorney General of the United States.
24 The acceptance by the Clerk shall allow the foreclosing plaintiff
25 to proceed as if the United States had filed a non-contesting
26 answer.

27 b. The Attorney General of New Jersey may send a letter to
28 the Clerk of the Superior Court of New Jersey which notes the
29 appearance of the Attorney General of New Jersey and states
30 that neither an answer will be filed nor a default opposed. This
31 letter shall be accepted by the Clerk of the Superior Court of
32 New Jersey in lieu of an appearance by the Attorney General of
33 New Jersey. The acceptance by the Clerk shall allow the
34 foreclosing plaintiff to proceed as if the State of New Jersey had
35 filed a non-contesting answer.¹

36 ²[^{15.}] ^{16.}² N.J.S.2A:15-11 is amended to read as follows:

37 2A:15-11. Notice of lis pendens. No notice of lis pendens
38 shall be effective after [3] five years from the date of its filing.¹
39 (cf: N.J.S.2A:15-11)

40 ¹[11.] ²[^{16.}] ^{17.}² (New section)¹ In the absence of an express
41 agreement between the parties to the contrary, a debtor may
42 tender, and a lender may accept, partial payment of any sum
43 owing and due without either party waiving any rights.

44 ¹[12.] ²[^{17.}] ^{18.}² (New section)¹ The Attorney General¹, in
45 consultation with the Commissioner of Banking,¹ shall
46 promulgate regulations pursuant to the "Administrative
47 Procedure Act," P.L.1968, c.410 (C.52:14A-1 et seq.) necessary
48 to implement this act, including, but not limited to, regulations
49 governing the form and content of notices of intention to
50 foreclose.

51 ¹[13.] ²[^{18.}] ^{19.}² This act shall take effect on the 90th day
52 after enactment and shall apply to foreclosure actions
53 commenced on or after the effective date.

1

2

3 **Makes changes in foreclosure practices and allows use of optional**

4 **foreclosure procedure without sale in certain cases.**

(1994)

1 and barring and foreclosing equity of redemption of any
2 defendant and any person claiming by, through or under them, and
3 adjudging the plaintiff be vested with a valid and indefeasible
4 estate in the mortgaged premises. The order of conveyance shall
5 be accepted for recording as a deed by the county recording
6 officer pursuant to P.L.1939, c.170 (C.46:16-1.1)

7 m. Upon entry of an order of conveyance vesting title in the
8 plaintiff pursuant to subsection k. of this section, the debt which
9 was secured by the foreclosed mortgage shall be deemed
10 satisfied, and the plaintiff shall not be permitted to institute any
11 further or contemporaneous action for the collection of the debt.

12 11. In the absence of an express agreement between the
13 parties to the contrary, a debtor may tender, and a lender may
14 accept, partial payment of any sum owing and due without either
15 party waiving any rights.

16 12. The Attorney General shall promulgate regulations
17 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
18 (C.52:14A-1 et seq.) necessary to implement this act, including,
19 but not limited to, regulations governing the form and content of
20 notices of intention to foreclose.

21 13. This act shall take effect on the 90th day after enactment
22 and shall apply to foreclosure actions commenced on or after the
23 effective date.

24

25

26

SPONSORS' STATEMENT

27

28 This bill, the "Fair Foreclosure Act," would provide additional
29 protection for homeowners at risk of foreclosure on their homes
30 because of defaults in the mortgage payments. The bill requires
31 residential mortgage lenders to provide residential mortgage
32 debtors with a notice at least 30 days prior to taking any legal
33 action to take possession of the mortgaged property and by giving
34 mortgage debtors a statutory right, not currently available, to
35 cure a default by paying all amounts due under the mortgage
36 payment schedule and, if applicable, other court costs and
37 attorneys' fees in an amount not to exceed the amount permitted
38 pursuant to the Rules Governing the Courts of New Jersey.

39 More specifically, the bill provides that before accelerating the
40 mortgage loan or taking any other legal action to take possession
41 of the residential property which is the subject of the mortgage,
42 the lender is required to give the debtor a warning notice at least
43 30 days in advance, providing the debtor with the following
44 information: the particular obligation or real estate security
45 interest; the nature of the default claimed; the right of the
46 debtor to cure the default; what performance is required by the
47 debtor to cure the default; the date by which such cure must take
48 place without the lender taking further legal steps to take
49 possession of the property; that if the debtor does not cure the
50 default by the time specified, the right to cure will still be
51 present but additional costs are likely to be incurred by the
52 debtor; advice to seek counsel; the name and phone number of the
53 person whom the debtor can contact to dispute a lender's
54 assertion that default has occurred or the correctness of the

1 lender's calculation of the amount required to cure a default.

2 Under the bill, a debtor would have the statutory right to
3 "cure" a mortgage default and reinstate a mortgage at any time
4 after default and up to a time just prior to entry of final
5 judgment of foreclosure. The debtor would be able to cure the
6 default and reinstate the mortgage by paying all sums in arrears,
7 performing any other obligation the debtor would have been
8 required to perform under the mortgage, paying the lender's
9 court costs and attorneys' fees, if any, in an amount which does
10 not exceed the amount permitted under the Rules Governing the
11 Courts of the State of New Jersey, and pay all contractual late
12 charges as provided for in the note or security agreements.

13 The bill provides that once a lender's action to foreclose is
14 uncontested, the lender is to apply for entry of final judgment
15 and send a notice to this effect at least 14 days prior to
16 submitting proper proofs for entry of a foreclosure judgment.
17 The notice also informs a debtor that the debtor has a final
18 chance to cure the default. A debtor has 10 days after receipt of
19 the notice concerning final judgment to inform the lender that
20 the debtor believes, in good faith, that within 45 days the debtor
21 will be able to cure the default. Upon receipt of this notice by
22 the lender, the lender has to give the debtor 45 days to cure the
23 default. Absent a cure, the lender may submit proper proofs for
24 foreclosure judgment on the 46th day following receipt of the
25 notice from the debtor.

26 Under the bill, lenders are provided an optional sale procedure
27 once entry of final judgment has taken place. This option may be
28 instituted after entry of final judgment and if one of the three
29 following conditions is present: (1) the property has been
30 abandoned; (2) the lender has received a deed in lieu of
31 foreclosure; or (3) the property has no net worth. With respect to
32 instituting this option, upon acceptance of a deed in lieu of
33 foreclosure, the conveyance will be effective only if the deed
34 clearly and conspicuously provides that the debtor may rescind
35 the conveyance within three days, excluding Saturdays, Sundays,
36 and legal holidays and that such rescission is effective upon
37 delivery of a written notice to the lender or its agent or upon
38 mailing of such notice to the lender or its agent. With respect to
39 net worth, "no net worth" means that the total unpaid balance of
40 all properly recorded liens against the property is equal to or
41 greater than 92 percent of the fair market value of the property
42 as that value is determined by an appraiser licensed pursuant to
43 P.L.1991, c.68 (C.45:14F-1 et seq.).

44 If the lender decides to take action under the alternative sale
45 procedure, the lender must file a petition and proposed order with
46 the Office of Foreclosure or the court with the facts which
47 provide the basis for the lender's action.

48 If the petition is granted, the office or the court will issue an
49 order for redemption fixing the amount, date, and place for
50 redemption. The date fixed for redemption shall be not less than
51 45 days nor more than 60 days after the date of the order. The
52 order or a notice of it is to be sent not more than five days after
53 the date the order for redemption is issued to each defendant
54 informing them: (1) that the plaintiff is proceeding under an

1 optional sale procedure; (2) of the steps in that procedure; and
2 (3) that a defendant may request a public sale of the mortgaged
3 premises by submitting such request in writing to the office or
4 the court not later than 30 days after receipt of the notice of the
5 redemption order. If a request for a public sale is received by the
6 office or the court within the time permitted, the office or the
7 court will order a public sale which will be held in accordance
8 with applicable law governing foreclosure sales and sales of real
9 property generally. Any defendant, other than a natural person
10 who is the debtor or a voluntary transferee from that debtor, who
11 requests a public sale, is required under the bill to post a bond or
12 cash deposit in an amount which is 10 per cent of the amount
13 fixed in the redemption order.

14 Upon redemption, the redemptioner will be furnished with a
15 certificate of redemption and acquire all rights provided by law
16 and equity but will not be entitled to a deed or title to the
17 mortgaged premises. The redemptioner may proceed to foreclose
18 the redemptioner's interest.

19 If the mortgaged premises is not redeemed, upon proof of
20 mailing of the order of redemption and an affidavit of
21 non-redemption, the plaintiff is entitled to an order of conveyance
22 awarding possession and barring and foreclosing equity of
23 redemption of any defendant. This order of conveyance will be
24 accepted for recording as a deed by the county recording officer
25 in the county of the premises being conveyed.

26 Once the order of conveyance has been entered, the debt which
27 was secured by the foreclosed mortgage is considered satisfied
28 and no further action may be taken by the plaintiff for the
29 collection of the debt.

30 This bill is intended to advance the public policies of the State
31 by giving debtors every opportunity to pay their home mortgages,
32 and thus keep their homes, and that lenders will be benefitted
33 when debtors cure their defaults and return the residential
34 mortgage loan to performing status. In situations in which the
35 property has been abandoned, the lender has received a deed in
36 lieu of foreclosure or there is no equity remaining in the
37 property, the bill will benefit communities and the economy by
38 providing an optional sale procedure that will eliminate
39 unnecessary costs and delays caused by sheriff's sales. Even
40 under the optional sale procedure, debtors are provided with
41 additional protection in that a timely request that the mortgaged
42 premises go to public sale will be honored.

43

44

45

46

47 _____
48 Makes changes in foreclosure practices and allows use of optional
sale procedure in certain cases.

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1064

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 29, 1994

The Assembly Financial Institutions Committee reports favorably and with committee amendments Assembly, No. 1064.

This bill, the "Fair Foreclosure Act," as amended, would provide additional protection for homeowners at risk of foreclosure on their homes because of a default in mortgage payments, and advances the public policies of the State by giving debtors every opportunity to pay their home mortgages, and thus keep their homes. The bill requires residential mortgage lenders to provide residential mortgage debtors with a notice at least 30 days prior to taking any legal action to take possession of the mortgaged property and gives mortgage debtors a statutory right, not currently available, to cure a default by paying all amounts due under the mortgage payment schedule and, if applicable, other court costs and attorneys' fees in an amount not to exceed the amount permitted pursuant to the Rules Governing the Courts of New Jersey.

More specifically, the bill provides that before accelerating the mortgage loan or taking any other legal action to take possession of the residential property which is the subject of the mortgage, the lender is required to give the debtor a warning notice at least 30 days in advance, providing the debtor with the following information: the particular obligation or real estate security interest; the nature of the default claimed; the right of the debtor to cure the default; what performance is required by the debtor to cure the default; the date by which such cure must take place without the lender taking further legal steps to take possession of the property; that if the debtor does not cure the default by the time specified, the right to cure will still be present but additional costs are likely to be incurred by the debtor; advice to seek counsel; and the name and phone number of the person whom the debtor can contact to dispute a lender's assertion that default has occurred or the correctness of the lender's calculation of the amount required to cure a default.

Under the bill, a debtor would have the statutory right to "cure" a mortgage default and reinstate a mortgage at any time after default and up to a time just prior to entry of final judgment of foreclosure. The debtor would be able to cure the default and reinstate the mortgage by paying all sums in arrears, performing any other obligation the debtor would have been required to perform under the mortgage, paying the lender's court costs and attorneys' fees, if any, in an amount which does not exceed the amount permitted under the Rules Governing the Courts of the State of New Jersey, and paying all contractual late charges as provided for in the note or security agreements.

The bill provides that once a lender's action to foreclose is uncontested, the lender is to apply for entry of final judgment and send a notice to this effect at least 14 days prior to submitting proper proofs for entry of a foreclosure judgment. The notice also informs a debtor that the debtor has a final chance to cure the default. A debtor has 10 days after receipt of the notice concerning final judgment to inform the lender that the debtor believes, in good faith, that within 45 days the debtor will be able to cure the default. Upon receipt of this notice by the lender, the lender is required to give the debtor 45 days to cure the default. If a notice is not received from the debtor, the lender may submit proper proofs for entry of a foreclosure judgment on the 15th day after mailing the notice concerning such submission. If a notice is received, the lender may submit proper proofs for entry of final judgment, but the return date shall not be earlier than the 46th day after the date the notice is sent informing the debtor of the lender's intended action regarding entry of final judgment.

Under the bill, lenders are provided an optional sale procedure once entry of final judgment has taken place. This option may be instituted after entry of final judgment and if one of the three following conditions is present: (1) the property has been abandoned; (2) the lender has received a deed in lieu of foreclosure; or (3) the property has no equity.

With respect to instituting this option: 1) abandonment of the property is to be established by an affidavit or certification from an individual having personal knowledge of the contents thereof, which affidavit or certification is to be submitted to the court at the same time application to proceed with the alternative sale procedure is made; 2) upon acceptance of a deed in lieu of foreclosure, the conveyance will be effective only if the deed clearly and conspicuously provides that the debtor may rescind the conveyance within seven days, excluding Saturdays, Sundays, and legal holidays and that such rescision is effective upon delivery of a written notice to the lender or its agent or upon mailing of such notice to the lender or its agent; 3) with respect to net worth, "no net worth" means that the total unpaid balance of all properly recorded liens against the property is equal to or greater than 92 percent of the fair market value of the property. A lender is required to attach an affidavit to the petition to proceed with the optional sale procedure which sets forth with specificity the fair market value of the property, the unpaid balance of the obligation and the method by which the lender determined that the property has no equity.

If the lender decides to take action under the alternative sale procedure, the lender must file a petition and proposed order with the Office of Foreclosure or the court with the facts which provide the basis for the lender's action.

If the petition is granted, the office or the court will issue an order for redemption fixing the amount, date, and place for redemption. The date fixed for redemption shall be not less than 45 days nor more than 60 days after the date of the order. The order or a notice of it is to be sent not more than five days after the date the order for redemption is issued to each defendant informing them: (1) that the plaintiff is proceeding under an optional sale procedure; (2) of the terms and conditions under which a defendant

may request a public sale of the mortgaged premises; and (3) clearly state that no request for a public sale made after 30 days from the date of service will be granted, except for good cause shown. If a request for a public sale is received by the office or the court within the time permitted, the office or the court will order a public sale which will be held in accordance with applicable law governing foreclosure sales and sales of real property generally. Any defendant, other than a natural person who is the debtor or a voluntary transferee from that debtor, who requests a public sale, is required under the bill to post a bond or cash deposit in an amount which is 10 per cent of the amount fixed in the redemption order.

Upon redemption, the redemptioner will be furnished with a certificate of redemption and acquire all rights provided by law and equity but will not be entitled to a deed or title to the mortgaged premises. The redemptioner may proceed to foreclose the redemptioner's interest.

If the mortgaged premises is not redeemed, upon proof of mailing of the order of redemption and an affidavit of non-redemption, the plaintiff is entitled to an order of conveyance awarding possession and barring and foreclosing equity of redemption of any defendant. This order of conveyance will be accepted for recording as a deed by the county recording officer in the county of the premises being conveyed.

Once the order of conveyance has been entered, the debt which was secured by the foreclosed mortgage is considered satisfied and no further action may be taken by the plaintiff for the collection of the debt.

If the optional sale procedure results in an order of conveyance to the mortgage lender and upon the resale of the property by the mortgage lender, the price received is greater than that required to repay the debt of the mortgage lender, all liens superior to the mortgage lender and all carrying charges, the mortgage lender is to deposit such excess with the Superior Court of New Jersey where it will be available for the mortgage debtor and any junior lien holder upon application to the Superior Court for surplus funds.

Under the bill, the following uniform procedures are established with respect to the conduct of a sheriff's sale:

a. Bidding in the name of the assignee of the foreclosing plaintiff.

b. Adjournment of the sale of the foreclosed property is to be in accordance with N.J.S.2A:17-36.

c. The successful bidder at the sheriff's sale is to pay a 20 percent deposit in either cash or by a certified or cashier's check made payable to the sheriff of the county in which the sale is conducted, immediately upon the conclusion of the foreclosure sale. Current law requires only a 10% deposit. If the successful bidder cannot satisfy this requirement, the bidder shall be in default and the sheriff is to immediately void the sale and proceed with the resale of the premises without adjourning the sale, renotifying any party to the foreclosure or republishing any sales notice. Upon the resale, the defaulting bidder would be liable to the foreclosing plaintiff for any additional costs incurred including, but not limited

to, any difference between the amount bid by the defaulting bidder and the amount generated for the foreclosing plaintiff at the resale. In the event the plaintiff is the successful bidder at the resale, the plaintiff is to provide a credit for the fair market value of the property foreclosed.

d. It is not necessary for an attorney or representative of the institution which initiated the foreclosure to be present at the sheriff's sale to make a bid. A letter containing bidding instructions may be sent to the sheriff in lieu of an appearance.

e. Each sheriff's office is to use the standardized deed form printed in the bill.

f. The sheriff's office is to deliver a fully executed deed to the successful bidder at the sale within two weeks of the date of the sale, provided however, that the bidder pays the balance due within that time period. If a bid is satisfied after the expiration date and additional interest is collected, the plaintiff shall receive the total amount, less any fees, costs and commissions due the sheriff, along with the additional interest.

The bill requires judgment creditors to provide a current address, and any changes, along with its social security number or tax payer identification number to the Clerk of the Superior Court. Whatever address is on the record can be used by a plaintiff without the plaintiff having to make a more diligent inquiry or publishing a notice in a newspaper.

The bill further provides that where the United States Attorney General or the Attorney General of New Jersey receives notice with respect to a foreclosure proceeding, a letter indicating that an answer will not be filed or a default opposed may be sent to the Clerk of the Superior Court. This letter may be accepted in lieu of an appearance and shall allow the foreclosing plaintiff to proceed as if a non-contesting answer had been filed.

The bill amends current law to provide that a notice of lis pendens is effective for five years instead of three, and decreases the period of time for an adjournment of a sheriff's sale from one month to 14 calendar days.

The committee amended the bill in the following manner:

a. Deleted the word "primary" in relation to residence under the definition of residential mortgage;

b. Changed the wording with respect to a 45-day period as a final opportunity for curing a default once a foreclosure process has resulted in a no contest, and prior to the entry of final judgment;

c. Deleted the requirement regarding properties with no equity that the fair market value must be established by a licensed appraiser and instead requires the lender to attach to its optional sale procedure petition an affidavit stating the fair market value of the property, the unpaid balance of the obligation and the method by which the lender determined that the property has no equity;

d. Established certain uniform procedures with respect to sheriff's sales of foreclosed properties, including the use of a standard deed form.

e. Changed the period for adjournment of a sheriff's sale from one month to 14 calendar days.

f. Permits a foreclosing plaintiff to proceed as if a non-contesting answer has been filed if either the United States or New Jersey Attorney General, whichever is named in the action, formally declines in writing to file an answer and indicates that it will not oppose default.

g. Changed from three to five the number of years a lis pendens notice is effective.

h. Changed from three to seven, the number of days within which a debtor may rescind a deed in lieu of foreclosure given to the lender.

SENATE STATE MANAGEMENT, INVESTMENTS AND
FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]
ASSEMBLY, No. 1064

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 8, 1995

**LAW LIBRARY COPY
DO NOT REMOVE**

The Senate State Management, Investments and Financial Institutions Committee reports favorably and with committee amendments Assembly Bill No. 1064(1R).

This bill, the "Fair Foreclosure Act," as amended, would provide additional protection for homeowners at risk of foreclosure on their homes because of a default in mortgage payments, and advances the public policies of the State by giving debtors every opportunity to pay their home mortgages, and thus keep their homes. The bill requires residential mortgage lenders to provide residential mortgage debtors with a notice at least 30 days prior to taking any legal action to take possession of the mortgaged property and gives mortgage debtors a statutory right, not currently available, to cure a default by paying all amounts due under the mortgage payment schedule and, if applicable, other court costs and attorneys' fees in an amount not to exceed the amount permitted pursuant to the Rules Governing the Courts of New Jersey.

More specifically, the bill provides that before accelerating the mortgage loan and taking any other legal action to take possession of the residential property, the lender is required to give the debtor a warning notice at least 30 days in advance, providing the debtor with the following information: the particular obligation or real estate security interest; the nature of the default claimed; the right of the debtor to cure the default; what performance is required by the debtor to cure the default; the date by which such cure must take place without the lender taking further legal steps to take possession of the property; that if the debtor does not cure the default by the time specified, the right to cure will still be present but additional costs are likely to be incurred by the debtor; advice to seek counsel; and the name and phone number of the person whom the debtor can contact to dispute a lender's assertion that default has occurred or the correctness of the lender's calculation of the amount required to cure a default.

Under the bill, a debtor would have the statutory right to "cure" a mortgage default and reinstate a mortgage at any time after default and up to a time just prior to entry of final judgment of foreclosure or, if the lender is proceeding under the alternative foreclosure option without sale, up to the time the court or office of foreclosure enters an order fixing the amount, time and place for redemption. The debtor would be able to cure the default and

reinstate the mortgage by paying all sums in arrears, performing any other obligation the debtor would have been required to perform under the mortgage, paying the lender's court costs and attorneys' fees, if any, in an amount which does not exceed the amount permitted under the Rules Governing the Courts of the State of New Jersey, and paying all contractual late charges as provided for in the note or security agreements.

The bill provides that once a lender's action to foreclose is uncontested and if the lender chooses not to use the optional procedure for the disposition of foreclosed premises, the lender is to apply for entry of final judgment and send a notice to this effect at least 14 days prior to submitting proper proofs for entry of a foreclosure judgment. The notice also informs a debtor that the debtor has a final chance to cure the default. A debtor has 10 days after receipt of the notice concerning final judgment to inform the lender that the debtor believes, in good faith, that within 45 days the debtor will be able to cure the default. Upon receipt of this notice by the lender, the lender is required to give the debtor 45 days to cure the default. If a notice is not received from the debtor, the lender may submit proper proofs for entry of a foreclosure judgment on the 15th day after mailing the notice concerning such submission. If a notice is received, the lender may submit proper proofs for entry of final judgment, but the return date shall not be earlier than the 46th day after the date the notice is sent informing the debtor of the lender's intended action regarding entry of final judgment.

The bill provides that once a lender's action to foreclose is uncontested and the lender chooses to use the optional procedure, the lender is to provide the debtor with a notice, mailed at least 14 calendar days prior to filing an affidavit or certification with the office or court, advising the debtor that, absent a timely response from the debtor, the lender shall file an affidavit or certification with the office or court requesting the office or court to enter an order of redemption and that upon the entry of the order of redemption the debtor shall lose the right to cure the default. A debtor may, no later than 10 days after receipt of the notice, mail to the lender a statement in which the debtor in good faith certifies as true that there is a reasonable likelihood that the debtor will be able to provide payment necessary to cure the default within 45 days of the date of the notice. A lender who receives this statement shall not file an affidavit or certification with the office or court earlier than 46 days after the date the notice sent to the debtor became effective.

The bill provides that once a lender's action to foreclose is uncontested, the lender may elect to proceed with an optional foreclosure procedure without sale, if the one or more of the following conditions exist: (1) the property has been abandoned; (2) the lender has received a deed in lieu of foreclosure; or (3) the property has no equity.

With respect to proceeding with this option: 1) abandonment of the property is to be established by an affidavit or certification from an individual having personal knowledge of the contents thereof, which affidavit or certification is to be submitted to the

court at the same time application to proceed with the alternative sale procedure is made; 2) upon acceptance of a deed in lieu of foreclosure, the conveyance will be effective only if the deed clearly and conspicuously provides that the debtor may rescind the conveyance within seven days, excluding Saturdays, Sundays, and legal holidays and that such rescision is effective upon delivery of a written notice to the lender or its agent or upon mailing of such notice to the lender or its agent; 3) with respect to net worth, "no net worth" means that the total unpaid balance of all liens against the property is equal to or greater than 92 percent of the fair market value of the property. A lender is required to attach an affidavit to the petition to proceed with the optional procedure which sets forth with specificity the fair market value of the property, the unpaid balance of the obligation and the method by which the lender determined that the property has no equity.

If the lender wants to use the optional procedure, the lender is to file an affidavit or certification with the office or court setting forth the facts which the lender alleges show that it is entitled to proceed under one or more of the conditions above and to provide the court or office with proofs required by the act and the court or office.

The office or the court may enter an order fixing the amount, time, and place for redemption. The time fixed for redemption shall be not less than 45 days nor more than 60 days after the date of the order. The order or a notice of it is to be sent within 20 days after the date the order for redemption is entered to each defendant informing them: (1) that the plaintiff is proceeding under an optional procedure; (2) of the terms and conditions under which a defendant may request a public sale of the mortgaged premises; and (3) clearly state that no request for a public sale made more than 30 days after the date of service will be granted, except for good cause shown. If a request for a public sale is received by the office or the court within the time permitted, the office or the court will order a public sale which will be held in accordance with applicable law governing foreclosure sales and sales of real property generally. Any defendant, other than a natural person who is the debtor or a voluntary transferee from that debtor, who requests a public sale, is required to post a bond or cash deposit in an amount which is 10 per cent of the amount fixed in the order of redemption.

Upon redemption, the redemptioner will be furnished with a certificate of redemption and acquire all rights provided by law and equity but will not be entitled to a deed or title to the mortgaged premises. The redemptioner in proper cases may proceed to foreclose the redemptioner's interest.

If the mortgaged premises is not redeemed, upon proof of mailing of the order of redemption and an affidavit of non-redemption, the plaintiff is entitled to a judgment debarring and foreclosing the equity of redemption of the defendants and each of them. A certified copy of the judgment shall be accepted for recording by the county recording officer in the county in which the property is located.

Once the judgment has been entered, the debt which was secured by the foreclosed mortgage is considered satisfied and no further action may be taken by the plaintiff for the collection of the debt.

If the optional sale procedure results in judgment vesting title in the lender and upon the resale of the property by the lender, the price received is greater than that required to repay the debt, interest and costs of the mortgage lender, including all carrying charges and costs of maintenance and resale, the mortgage lender is to deposit such excess with the Superior Court of New Jersey where it will be available for the mortgage debtor and any junior lien holder upon application to the Superior Court for surplus funds.

Under the bill, the following uniform procedures are established with respect to the conduct of a sheriff's sale:

a. Bidding in the name of the assignee of the foreclosing plaintiff.

b. Adjournment of the sale of the foreclosed property is to be in accordance with N.J.S.2A:17-36.

c. The sheriff is to schedule a sale date within 120 days of receipt of a Writ of Execution issued by the Court in a foreclosure proceeding. If it becomes apparent that this time limit cannot be met, the foreclosing plaintiff is permitted to apply to the Office of Foreclosure for an order appointing a Special Master to hold the foreclosure sale. Upon making such an application, the office is required to issue the appropriate order appointing a Special Master to hold the foreclosure sale.

d. The successful bidder at the sheriff's sale is to pay a 20 percent deposit in either cash or by a certified or cashier's check made payable to the sheriff of the county in which the sale is conducted, immediately upon the conclusion of the foreclosure sale. Current law requires only a 10% deposit. If the successful bidder cannot satisfy this requirement, the bidder shall be in default and the sheriff is to immediately void the sale and proceed with the resale of the premises without adjourning the sale, renotifying any party to the foreclosure or republishing any sales notice. Upon the resale, the defaulting bidder would be liable to the foreclosing plaintiff for any additional costs incurred including, but not limited to, any difference between the amount bid by the defaulting bidder and the amount generated for the foreclosing plaintiff at the resale. In the event the plaintiff is the successful bidder at the resale, the plaintiff is to provide a credit for the fair market value of the property foreclosed.

e. If the sheriff conducting the sale consents, it is not necessary for an attorney or representative of the institution which initiated the foreclosure to be present at the sheriff's sale to make a bid. A letter containing bidding instructions may be sent to the sheriff in lieu of an appearance.

f. Each sheriff's office is to use the standardized deed form printed in the bill.

g. The sheriff's office is to deliver a fully executed deed to the successful bidder at the sale within two weeks of the date of the sale, provided however, that the bidder pays the balance due within that time period. If a bid is satisfied after the expiration

date and additional interest is collected, the plaintiff shall receive the total amount, less any fees, costs and commissions due the sheriff, along with the additional interest.

The bill requires judgment creditors to provide a current address, and any changes, along with its social security number or tax payer identification number to the Clerk of the Superior Court. Whatever address is on the record can be used by a plaintiff without the plaintiff having to make a more diligent inquiry or publishing a notice in a newspaper.

The bill further provides that where the United States Attorney General or the Attorney General of New Jersey receives notice with respect to a foreclosure proceeding, a letter indicating that an answer will not be filed or a default opposed may be sent to the Clerk of the Superior Court. This letter may be accepted in lieu of an appearance and shall allow the foreclosing plaintiff to proceed as if a non-contesting answer had been filed.

The bill amends current law to provide that a notice of lis pendens is effective for five years instead of three, and decreases the period of time for an adjournment of a sheriff's sale from one month to 14 calendar days.

Amendments to the bill do the following:

a. Remove cooperative apartment from the definition of residential mortgage; add definitions for "non-residential mortgage" and "obligation;" and clarify the definition of property to which a residential mortgage applies.

b. Clarify and simplify the date on which a notice of intention to foreclose is effective, which is the date it is served in person or mailed to the debtor;

c. Remove the requirement to attach to the complaint a copy of the notice of intent to foreclose together with proof of service;

d. Clarify the time up to which a debtor has the right to cure a default which is up to the time of entry of final judgment in a regular foreclosure proceeding and under the optional procedure without sale, is up to the time the Office of Foreclosure or court enters a judgment fixing the amount, time and place for redemption.

e. Provide for notification to the debtor prior to filing an affidavit or certification requesting the office or court to enter an order of redemption and a final opportunity for the debtor to cure the default before an order of redemption is entered, at which time the debtor loses the right to cure.

f. Make certain procedural and technical changes to section 11 which is the section providing for the optional foreclosure procedure without sale;

g. Add a requirement that the sheriff, upon receipt of a Writ of Execution from a court, is to schedule a sale within 120 days. If it becomes apparent that this deadline cannot be met, the lender is permitted to apply to the Office of Foreclosure to have the sale take place under a Special Master appointed by the office. Once application has been made to the Office of Foreclosure, the office is to appoint a Special Master to conduct the sale; and

h. Make the right of the attorney representing the plaintiff in foreclosure not to appear in person at the sheriff's sale conditional upon consent of the sheriff.

174.101
961



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001 **JAYNE REBOVICH** **TRENTON, NJ 08625**
CONTACT: 609-777-2600 **RELEASE: SEPT. 6, 1995**
JENNIFER ZIMA, BANKING DEPT.
609-633-7910

Gov. Christie Whitman has signed legislation to increase protections to homeowners facing foreclosure of their property while at the same time expediting the foreclosure process once a final judgment has been obtained by the lender.

A-1064, sponsored by Assemblywoman Charlotte Vandervalk (R-Bergen) and Assemblyman Joseph Roberts (D-Camden/Gloucester), gives homeowners the right to reinstate their mortgages by paying all missed payments, the lenders' legal fees, and late charges prior to the entry of final judgment. Under current law, homeowners do not have this right once lenders have declared them in default and demanded payment of the loan's entire outstanding balance.

Lenders who wish to institute foreclosure proceedings are required by the bill to first provide the debtor with at least 30 days' notice of specific information including the debtor's rights, the right to pay the debt to avoid foreclosure, and the lender's intention to begin foreclosure proceedings if the money owed is not paid.

The bill also speeds up the foreclosure process by providing for an optional foreclosure without sale to be used under certain circumstances.

"This legislation will help lenders to complete the residential foreclosure process in a more timely manner, bringing New Jersey in line with its neighboring states," said Gov. Whitman. According to the Federal National Mortgage Corporation (Freddie Mac), New Jersey ranks last among all 50 states for average time needed to complete a residential foreclosure action.

Banking Commissioner Elizabeth Randall also praised enactment of this legislation. "Expediting the foreclosure process will encourage financial institutions to increase their residential mortgage lending in New Jersey, thereby fulfilling Gov. Whitman's commitment to opening New Jersey for business," concluded Randall.

The optional foreclosure process may be used if the property has been abandoned, the lender has received a deed in lieu of foreclosure, or the property has no equity. A lender who opts for this procedure may bypass the sheriff's sale entirely and dispose of the property privately. The property owner or junior lienholders may object to the sale and request that a public sale be held.

For lenders who do not follow the optional foreclosure procedure, the bill expedites sheriff's sales. If the sheriff does not schedule a sale within 120 days of receiving a writ of execution from the court in a foreclosure proceeding, the creditor may request that the Office of Foreclosure appoint a Special Master to hold the sale. The bill also sets forth uniform procedures for sheriff's sales and provides a uniform deed to be used in such sales.

IN PRACTICE

MORTGAGE LENDING

By MYRON C. WEINSTEIN

New Foreclosure Act: More Complexity, Uncertainty

You've heard the adage: "If it ain't broke don't fix it." New Jersey's Fair Foreclosure Act,¹ which becomes effective today, will prove the truth of the old saw for years to come.

After six years of record-breaking foreclosures, and with New Jersey's foreclosure process now up to date at the state and local levels, we now have a statute designed to save us time. But save us time it will not.

The fact is that New Jersey's foreclosure process is doing fine. It is rolling along in an efficient and effective manner, having adjusted superbly to the deluge of cases.

According to Jim Cofasurdo, chief of the Office of Foreclosure in Trenton, foreclosure judgments are entered almost the day they come in. There are no delays at the state level and relatively short delays, if any, at the county sheriffs' level.

What, then, is the impact of this new legislation?

The probable result will be more complexity and substantial uncertainty. The statute will not save time and only in rare instances will it appreciably benefit mortgagors. Because mortgagors typically do not have funds to make up arrearages in lump sum payments, they must ordinarily rely on work-out agreements. And in such cases, provisions of the new act may be waived.

Virtual Grab Bag

This is the most comprehensive change in foreclosure practice in New Jersey since 1820, and it certainly is the most unwelcome. The act, L. 1995, c. 344, is a virtual grab bag of ambiguities, and an article could be written about each of its 19 sections, all of which should be read carefully. A sampler.

Section 4, which requires a notice of intention to foreclose containing no fewer than 11 particulars, will become a blueprint for affirmative defenses by mortgagors, who probably will file contested answers at a very rapid rate.

In all probability, the act will be deemed procedural and therefore not violative of antecedent mortgage contracts. However, some of the act's provisions — such as the right to cure and reinstate the loan — may be deemed substantive by the courts and therefore unconstitutional as to antecedent contracts.

The act is destined to become controversial. Even before its inception, an issue has been raised about whether foreclosure complaints can be filed during December and whether a residential mortgage foreclosure moratorium is mandated by the act.

As the argument goes, the act is not effective until Dec. 4, 1995, and thus it would be erroneous to send a notice of

intention before that date. The mailing of the notice is a condition precedent to the filing of the complaint. In other words, how can you give a debtor rights and require compliance with a law that has not come into being?

Folly Argument

This argument is fallacious. The act provides that it "shall apply to foreclosure actions commenced on or after the effective date." The word "on" would be meaningless if the statute did not intend that a foreclosure action could actually be commenced — filed — on the effective date. For an action to be filed on the effective date, the act must implicitly permit a notice of intention to be mailed to the debtor before Dec. 4, 1995.²

Initially, the act requires that a written notice of intention to foreclose be mailed to the debtor, by registered or certified mail, return receipt requested, at least 30 days before the filing of the complaint, unless the debtor has given a deed in lieu of foreclosure to the lender. A statement in the pleadings setting forth compliance with Section 4, the notice of intention section, is required.

The act permits the debtor to cure a mortgage default before the entry of the foreclosure judgment. It is an unlimited right if exercised before the filing of the complaint, otherwise once every 18 months calculated from the date of cure, by paying all arrearages, late fees, costs, if any, and attorneys' fees.

The act requires that a 14-calendar-day notice of judgment be sent to the debtor by registered or certified mail, return receipt requested. Within 10 days after receipt, the debtor may mail a statement to the lender, by certified mail, return receipt requested, that there is a reasonable likelihood that the debtor will be able to cure the default within 45 days from the date of notice's mailing. If such a statement is sent by the debtor, the plaintiff cannot submit proper proofs for judgment until 46 days after the date of mailing.

The act also establishes an optional foreclosure procedure without sale, a major innovation in foreclosure practice in the United States, where the mortgaged premises has no equity, has been abandoned, or where the debtor has given a deed in lieu of foreclosure to the lender. The latter two grounds must be specifically pleaded.

Where judgment is entered under the optional procedure, the debt is deemed satisfied, a deficiency action is waived and, if the no-equity grounds for the optional procedure were used, any surplus on resale by the lender must be paid into court, subject to a surplus moneys action by any person in interest for a period of six months.

The act provides for uniform sheriff's sale procedures in all foreclosure actions, a uniform sheriff's deed, the preparation of the sheriff's deed by the plaintiff's attorney, the delivery of a fully executed sheriff's deed within two weeks, and the appointment of a special master by the Office of Foreclosure to hold the

foreclosure sale if it becomes apparent that the sheriff cannot schedule a sale within 120 days after receipt of a writ of execution.

The act requires a judgment creditor, upon entry of judgment, to provide the clerk with its current address for service and changes of address. Failure to do so will permit the plaintiff, in a foreclosure

that neither an answer will be filed nor a default opposed shall permit the plaintiff to proceed as if the state and United States had filed non-contesting answers; that a lis pendens shall have a 5-year duration after its date of filing; that acceptance of partial payments by the lender from the debtor shall not be deemed a waiver of rights by either party; and that the attorney general, in consultation with the banking commissioner, may promulgate regulations implementing the act.

Loose Terminology

The act applies in a "residential mortgage," the security for which is residential property (such as a house, real property, or condominium), not a cooperative apartment, occupied as a residence by the "debtor," who must be a natural not a corporate person, or a member of the debtor's immediate family. The real property securing the residential mortgage must not have more than four dwelling units. One of those, at the time the loan is originated, shall be or is planned to be occupied as a residence by the debtor or a member of the debtor's immediate family. This is loose terminology that may prove difficult for mortgagors.

Conceivably, the act could apply to vacant land "planned to be occupied as a residence" by the debtor. To make things

CONTINUED ON PAGE 33

This is the most comprehensive change in foreclosure practice in New Jersey since 1820, and it certainly is the most unwelcome.

action, to serve the creditor by certified and ordinary mail at the address in the clerk's records without further diligent inquiry or publication.

The act also provides that there be a reduction in the two, discretionary sheriff's adjournments to 14 calendar days each; that receipt by the clerk of a letter by the attorney general of New Jersey or U.S. attorney for the District of New Jersey noting their appearance and stating

Next Week...

MEDICAL MALPRACTICE

Gift Certificates for travel make the "perfect" present!

CANYON RANCH SPA...

<p>TUCSON, Ariz. — \$1584, pp. Jan. 17-21st, 1996 5 Days</p> <p><small>airfare not included</small></p> <p>Lenox, Mass. — \$674, pp. 2 Days</p> <p><small>dbl. occ. rates Feb. 25-27th, 1996</small></p> <p><small>pkg. incl: meals, tax, gratuity, fitness classes, spa facilities, personal services</small></p> <p>Travel 15 Ltd.</p> <p><small>Respected, NJ</small></p> <p><small>A CORPORATE TRAVEL MANAGEMENT COMPANY</small></p>	 <p style="text-align: center;">Call CAROLE</p> <p style="text-align: center;">201-228-3033</p> <p style="text-align: right;"><small>Carey Hill and Eric, VP</small></p>
---	---

The Lions Group, LTD.

Harvey S. Grossman, Esq.

JUA/MTF FUNDING
OTHER FINANCIAL SERVICES

*Competitive Rates,
Fast Service*



80 Main Street, West Orange, NJ 07052
1-800-585-7874 • 201-736-5858
Fax 201-325-2589

The author, formerly the chief of the state judiciary's Office of Foreclosure, is the president of Garden State Legal Services Corp. in West Trenton, a firm that reviews foreclosure actions and issues certificates of regularity.

MORTGAGE LENDING

CONTINUED FROM PAGE 11

even trickier, "immediate family" is defined by the act to mean the debtor, the debtor's spouse, or the mother, father, sister, brother or child of the debtor or debtor's spouse.

Thus, the act will not apply where the debtor is a corporation, where the mortgaged premises consist of more than four dwelling units, or where neither the debtor nor the debtor's immediate family resides in the property or intends to reside in the property at the time the loan is originated. In situations where the loan and mortgage are not closed contemporaneously, it may be difficult to determine the debtor's intentions and whether the act applies.

Presumably, it is the occupation or intention to occupy the premises as a residence by the debtor (or the debtor's immediate family) at the time the loan is "originated" that controls, not later use or intention with respect to the premises by the debtor or successor owner.

It is assumed that the act does apply to a debtor's vacation residence where the act's requirements have otherwise been met, as the term "primary" was deleted from "primary residence" in the final version of the bill.

Critical Flaw in Definition of 'Debtor'

The fundamental flaw in the statutory scheme is the central term "debtor," around which all of the statutory blessings revolve. The term "debtor" is defined as "any" person shown on the record of the lender as obligated to pay the secured obligation. Thus, a debtor would include the original obligor, and, in the writer's opinion, a co-signer, indorser, surety and assuming grantee. I believe that "debtor" should not be construed to include "guarantor," as the contract of the guarantor is entirely collateral.

The Office of Foreclosure has advised, however, where a corporate officer secures a corporate debt with a mortgage on the officer's residence, and signs a guaranty, the officer will require compliance with the act in order to process plaintiff's judgment papers.

The term "obligation" is defined by the act as a promissory note, bond or other similar evidence of a "duty to pay." Thus, under a literal reading of the act, it is unlikely that a default for failure to perform a nonmonetary obligation can be enforced as a default.

The irony here is that the debtor, the person continuously referred to under the act for required notices, rights and the like, may not even be the mortgagor or may be the original mortgagor now out of title — a person having absolutely no title interest in the mortgaged premises. The debtor, or original obligor, may be a totally unnecessary party and may not be joined in the foreclosure action.

Yet, this nonparty is the very person under the act who must receive all required notices and rights. Failure to notice such a person in a foreclosure action in which the person may not even be a party, and may not affect any interest of the person, will presumably void the foreclosure.

Moreover, if the original debtor-mortgagor has died, who is the "debtor" under the act? The act does not address that problem. The Office of Foreclosure has advised that where the debtor has died, the personal representative of the estate must be noticed under the act in

order for the office to process judgment papers.

It is anomalous that the term "debtor" is defined in terms of the secured "obligation," the personal instrument, and not in terms of the mortgage to be foreclosed which is, after all, the ultimate focus of the "Fair Foreclosure Act."

The best practice from a lender's standpoint is not to commingle residential and non-residential tracts in a single mortgage but to have separate mortgages executed for each.

The act contains a novel section, Section 13, dealing with Superior Court judgment creditors. The act provides that

This is a sad day for equity jurisprudence and for the judges who will inevitably be called on to unravel the act's ambiguities and inequities.

The personal obligation secured by the mortgage, if there ever was one, may be wholly unenforceable. The original mortgagor or other obligor may have been discharged in bankruptcy, so that there may be no person capable of meeting the criteria of debtor under the act — i.e. a person obligated to pay the note or bond. This is a serious shortcoming. In fact, there need not be a personal obligation of a debtor to have a valid mortgage in New Jersey or anywhere else.

The residential mortgage lender under the act is under absolutely no obligation to give required notices and rights to "all" debtors (as the act says "any" debtor) or even to any one person in title. The "debtor" may, in fact, be a corporation, or defunct corporation, while the mortgagor may be a living, breathing person. The actual title holders, the persons who would most benefit from the various rights and notices under the act, may be several steps removed from the original mortgagor. Oddly enough, the term "mortgagor" does not appear in the act, and "owner" only appears in Section 10, although the act was presumably passed for their benefit.

One can certainly question the workability of a mortgage foreclosure statute that is critically tied to the debtor and personal obligation, instead of to the mortgagor (and title holder) and the mortgage. The act leaves in limbo the rights of all persons in interest who do not technically meet the act's definition of "debtor." This is a sad day for equity jurisprudence and for the judges who will inevitably be called upon to unravel the act's many ambiguities and inequities.

The act makes it clear that if a mortgage covers several tracts, the mortgage is considered a "non-residential mortgage" as to the non-residential tracts. Section 10 also provides that a lender shall not be required to foreclose a residential and non-residential mortgage securing the same obligation in the same proceeding. This means that a lender may enforce a single mortgage against residential and non-residential tracts in separate actions. Under current law, such a practice would offend the entire contrary doctrine.

Residential v. Nonresidential Tracts

This creates the anomaly of requiring the plaintiff to comply with the act for residential, but not non-residential, tracts. It would have made more sense to require compliance with the act if any one of the mortgage tracts is residential.

"[a]ny judgment creditor" entering a judgment in the Superior Court Clerk's Office shall (a) provide the court with its current address for service, (b) provide the clerk with the judgment creditor's (obviously this should be judgment "debtor's") Social Security number or taxpayer identification number, if known, and (c) notify the court of a change of address for service by filing "in a timely manner" an appropriate form with the court.

If the judgment creditor fails to provide a current or change of address for service, the plaintiff "in any foreclosure proceeding" may serve the creditor by

ordinary and certified mail at the address reflected in the records of the Superior Court clerk, without first making a more diligent inquiry or publishing a notice in the newspaper.

This section is of doubtful constitutional validity and should not be followed. The state Supreme Court in *New Brunswick Savings Bank v. Markowski*, 123 N.J. 402 (1991) has already held that a judgment creditor possesses a property right entitled to due process protection comparable to that of a mortgage creditor.

Will the Fair Foreclosure Act be a panacea to mortgagors. Probably not. With respect to the debtor's principal residence, any right to cure that a debtor can secure under the new act, the debtor can secure, plus more, in a Chapter 13 bankruptcy proceeding.

Lenders, faced with the prospect of the act, will either be less flexible in granting discretionary workouts to debtors, forcing debtors to exercise their statutory rights; require debtors to first waive their statutory rights as a condition to granting discretionary workouts; and institute foreclosure more quickly to precipitate an earlier cure or an earlier exhaustion of debtors' statutory rights. Thus, the net result which is not likely to significantly alter the plight of mortgagors in New Jersey is more certain to add another layer of complexity to a process already fraught with too much complexity. ■

Endnotes

1. The statute, L.1995, c.244, becomes effective with respect to residential mortgage foreclosure actions commenced on or after Dec. 4, 1995.

2. While Assembly Bill No. 1064 is stamped "Approved 9/6/95," it was actually signed by the governor on Sept. 5, 1995, making Dec. 4, 1995 (90 days after its enactment) the effective date.

LITIGATION

CONTINUED FROM PAGE 10

Brill, slip op. at 15. The court must concern itself not merely with the existence of any evidence favoring the nonmovant, it must necessarily evaluate the magnitude of the evidence in order to determine whether it could, to a rational jury, be sufficient to meet the nonmovant's burden of proof at trial. Thus, if there is a disputed fact which, even if resolved in the nonmovant's favor, would still not be enough to rationally carry the burden of proof at trial, summary judgment should be granted.

Second, adding the burden of proof into the summary judgment analysis can have a great impact on the motion's chances for success, especially with respect to causes of action requiring proof by clear and convincing evidence. In deciding a summary judgment motion involving such claims, the trial court must not simply determine whether the nonmovant's version of the evidence could, in the minds of a reasonable jury, tip the scales in the nonmovant's favor, but must judge that evidence in light of the stricter clear and convincing test. Thus, for example, where a plaintiff faces a summary judgment motion on its fraud claim, if nothing else, the new standard should force the plaintiff to put all its evidence on the table, and not hold back its best evidence for trial.

In fact, under the new summary judgment analysis, even where the preponderance of the evidence standard

applies, the nonmovant should be prone to come forward with much more of its evidence than in the past, because now it must do more than merely create reasonable doubt as to a factual issue. Many practitioners may recall having made a summary judgment motion not to end a case but to get to the bottom of it. At a minimum, the new summary judgment standard, with its added burden on the nonmovant, should help accomplish that objective.

It is impossible to ascertain whether the new standard, coupled with the Supreme Court's recent encouragement will, in practice, have a significant impact on the way trial judges view motions for summary judgment. We have already learned, however, of one trial court at oral argument on a summary judgment motion raising, sua sponte, the issue of *Brill* and asking the litigants to assess its impact. Because the new standard mirrors that followed under Rule 4:37-2(b), trial judges are fully familiar with it and should have no difficulty applying it. Only time will tell whether the *Brill* standard will result in summary judgment being granted with greater frequency. The message, however, is clear. The Supreme Court wants trial judges to be more vigilant in granting summary judgment motions. The ever-present "issue of fact," in and of itself, is not to be considered fatal to the summary judgment motion. Summary judgment should no longer be the disfavored method of resolving litigation. ■

Give and take in foreclosure revisions

By DAN WEISSMAN

Gov. Christie Whitman yesterday signed legislation that revamps the state's foreclosure laws by cutting to less than half the time it takes a bank to go from final judgment to sale of a residential property.

But the legislation, A-1064, sponsored by Assemblywoman Charlotte Vandervalk (R-Bergen) also gives homeowners who fall behind on mortgage payments more options to keep their homes by paying off the amount they are in default.

Under existing law, a homeowner could be required to satisfy the entire outstanding mortgage to avoid foreclosure.

The measure, which sailed through the Legislature with minimal opposition, was pushed by the state's banks and mortgage lenders, who said the foreclosure system took an average of 270 days to complete, making it the slowest in the nation. The changes will cut the time between a final judgment and a foreclosure sale to 120 days.

The legislation was also supported by consumer groups because of the broader rights it gives to homeowners facing foreclosure.

The most vigorous opposition came from the state's sheriffs, who complained that provisions of the legislation threatened to turn them into unpaid deputies for the banks and took away their options to give homeowners facing eviction time to clear up their debts and redeem their homes.

"I'm glad this legislation is finally enacted," Vandervalk said. "It's been in the works three years."

Assemblyman Joseph Roberts (D-Camden), who cosponsored the legislation, said the provisions giving home-

owners more options to avoid foreclosure will reduce the problem of homelessness.

Whitman, in a prepared statement, said, "this legislation will help lenders complete the residential foreclosure process in a more timely manner, bringing New Jersey in line with its neighboring states."

She said that according to the Federal National Mortgage Corp. (Freddie Mac), New Jersey ranks last among the 50 states for the time needed to complete a residential foreclosure.

Banking Commissioner Elizabeth Randall said that by expediting the foreclosure process, bankers will encourage lenders to increase their mortgage lending in New Jersey.

)	
	)	SUPERIOR COURT OF NEW JERSEY
	)	CHANCERY DIVISION-
	)	GENERAL EQUITY PART
IN THE MATTER OF RESIDENTIAL	)	MERCER COUNTY
MORTGAGE FORECLOSURE)	
PLEADING AND DOCUMENT	)	DOCKET NO. F-059553-10
IRREGULARITIES)	
	)	<u>CIVIL ACTION</u>
)	
	)	RECOMMENDED STIPULATION

This Recommended Stipulation is entered into by and between Edward J. Dauber, Esq., as counsel appointed pursuant to the December 20, 2010 Order to Show Cause ("the OTSC") entered in this matter ("the Court appointed counsel") and BAC Home Loans Servicing, LP, Citibank, N.A., Citi Residential Lending, Inc., GMAC Mortgage, LLC, JPMorgan Chase Bank, NA, Chase Home Finance, LLC, OneWest Bank, FSB, Wells Fargo Bank, N.A. Wells Fargo Financial New Jersey, Inc. and Wells Fargo Financial America, Inc., and any affiliated entities which service any residential mortgage loan contained in the Servicer Portfolio (as defined in paragraph 5) (collectively the "Respondents").

WHEREAS the Honorable Mary C Jacobson, P.J. Ch., of the Chancery Division, General Equity Part of the Superior Court, Mercer County ("Judge Jacobson"), entered the OTSC on December 20, 2010, directed to the Respondents and relating to the manner in which uncontested residential mortgage foreclosures are being conducted in the State of New Jersey;

WHEREAS the Superior Court seeks to ensure that documents filed with the Courts of New Jersey in currently pending or future filed uncontested residential mortgage foreclosures are accurate and comply with the Rules of Court;

WHEREAS the judiciary undertook additional actions on December 20, 2010, including the issuance of Administrative Order 01-2010, amended on January 31, 2011 (the "Administrative Order") and the Order of the Supreme Court, amended on January 31, 2011, adopting amendments to Rules of Court 1:5-6, 4:64-1, and 4:64-2 (the "Rule Adoption Order"),

WHEREAS the Supreme Court opened a period from January 31, 2011, to February 28, 2011 for comment from the public as to the amended Rules of Court 1:5-6, 4:64-1, and 4:64-2 ("the Rule Amendments"),

WHEREAS the Respondents responded to the OTSC with filings that contested both the legal and factual bases for the entry of the OTSC, including but not limited to arguments that these actions violated the Constitution of the United States of America, the Constitution of the State of New Jersey, the New Jersey Rules of Court and other federal and state laws and that the Judiciary lacked any evidentiary record to support the factual assumptions and presumptions underlying the OTSC and other judicial actions taken on December 20, 2010:

WHEREAS the Respondents each accompanied their responses with affidavits or certifications maintaining that even prior to December 20, 2010, Respondents had already strengthened their policies, procedures, training and auditing of uncontested residential mortgage foreclosure case processing, and describing the steps taken;

WHEREAS all Respondents share the goal of the Judiciary in assuring the accuracy and procedural compliance of any filings made in pending and future uncontested residential mortgage foreclosure proceedings in New Jersey;

WHEREAS the Judiciary and Respondents mutually recognize that new residential mortgage foreclosure filings are inevitable and unavoidable in 2011 and that an efficient, fully functional, accurate, transparent, and normalized foreclosure process is in the interests of the

Judiciary, the State of New Jersey and its citizens and communities, the residential housing market and the broader economy, as well as of the Respondents, so long as that residential mortgage foreclosure process moves forward consistent with all applicable laws and based upon verified facts;

WHEREAS the Judiciary will be impacted by the increase in residential mortgage foreclosure filings and supplemental filings pursuant to the Rule Amendments;

WHEREAS this Recommended Stipulation arises following a series of settlement conversations, discussions, and negotiations, between and among counsel for the Respondents and the Court appointed counsel,

IT IS THEREFORE STIPULATED and AGREED:

1. With respect to each Respondent, this Recommended Stipulation governs their participation in the residential mortgage foreclosure process in their capacities as servicer, it being recognized that in most cases, it is the servicer that either has the information or has direct access to the information that is required to be provided under the Rules. Servicers manage, maintain, and handle the accounting for the mortgages that they service and, as such, in the case of default or non-payment on the part of a mortgagor, it is the servicer, and not necessarily the mortgagee or named plaintiff in the resulting mortgage foreclosure action, that either has the information or has direct access to the information concerning the default or non-payment. The Six Respondents, acting as servicers, account for a majority of the residential mortgage foreclosure matters pending in the Courts of the State of New Jersey, both contested and uncontested. As of the date of the entry of this Recommended Stipulation, each Respondent is responsible for servicing the mortgages being foreclosed in the actions set forth in its respective Servicer Portfolio as defined in Paragraph 5 herein. This Recommended Stipulation thus does

not apply to any residential mortgage foreclosure filed in the name of a Respondent or an affiliated entity solely in its capacity as trustee for a securitized trust, in that a securitized trust acts for the most part through its servicer and not through the trustee, whose name appears in style of the residential mortgage foreclosure action as the named plaintiff. However, nothing in this Recommended Stipulation shall diminish or affect the responsibilities of Respondents, acting in any other capacity, or otherwise as named plaintiff in any residential mortgage foreclosure action, to abide fully with all Rules of Court and other law.

2. The Parties agree to the appointment of the Honorable Richard J. Williams, Ret. as special master (the "Special Master") pursuant to New Jersey Court Rule 4.41-1 for the specific purposes set forth in this Recommended Stipulation and for a period of 12 months from the date of the respective Respondent's resumption of prosecuting pending residential mortgage foreclosure actions pursuant to Paragraph 7. The powers of the Special Master shall be limited to those powers specifically enumerated in this Recommended Stipulation and anything necessary or attendant thereto. The Special Master shall serve at the expense of the Respondents; provided however that the Master's fees and expenses shall be limited to those that are reasonable and reasonably necessary to carry out the powers specifically enumerated in the Recommended Stipulation, and the Respondents shall have the right to review and object to any fee applications submitted by the Special Master. Any objections to the Special Master's fee applications will be heard by Judge Jacobson

3. Each Respondent will participate in the Special Master process set forth in Paragraphs 4 through 7 below ("the Special Master process") in its capacity as a servicer.

4. After execution and entry of this Recommended Stipulation and on or before April April 1, 2011, each Respondent shall, through certifications or affidavits of an individual or

individuals having personal knowledge of the Respondent's foreclosure processes, answer the following two questions:

A. Does the servicer have processes and procedures in place which, if adhered to, will ensure that the information set forth in affidavits/certification submitted in foreclosure proceedings is personally reviewed by an affiant authorized to act on behalf of the plaintiff in the foreclosure action and that each affidavit or certification submitted is properly executed and is based upon knowledge gained through a personal review of records made in the regular course of business and it was the regular practice of that business to make it ("Business Records")?

B. Is the Respondent prepared to follow these processes and procedures upon the resumption of residential mortgage foreclosure activities in New Jersey?

This prima facie showing shall include responses and information on the following issues ("Prima Facie Showing"), with regard to the Servicer Portfolio:

(a) If the Respondent is acting on behalf of a mortgagee, but is not the mortgagee itself, provide examples of the source of the Respondent's authority to act, including providing representative samples of documentation evidencing the authority to act on behalf of mortgagees,

(b) Does the Respondent have a record keeping system of Business Records that provides accurate up to date information on the payment history and status of the loan? If so, describe the system;

(c) Describe the Respondent's case processing steps for the review of information contained in, and the execution of, affidavits/certifications submitted in support of foreclosure proceedings;

(d) Has the Respondent established specific procedures for staff to ensure that the information set forth in affidavits/certifications submitted in foreclosure proceedings is based on a personal review of Business Records? If so

- (i) Describe the procedures;
- (ii) Produce all documents evidencing establishment of the procedures;
- (iii) Produce samples of all documents or screens reviewed by staff in the affidavit/certification of indebtedness process; and

(iv) Provide the numerical range and average of how much time is spent per loan to review the Respondent's business records and complete an affidavit/certification of indebtedness.

(e) Has the Respondent implemented a training program for its staff to review relevant Business Records and source documents and complete foreclosure affidavits/certifications based on a personal review of such materials? If so.

- (i) Describe the program;
- (ii) Produce copies of all written materials used and screen samples from any powerpoint or other presentations, and
- (iii) Produce a statement that all staff who are preparing affidavits/certifications have received this training

(f) Has the Respondent established quality assurance procedures to insure that the established procedures for review of relevant source documents and completion of foreclosure affidavits/ certifications based on a personal review of Business Records are followed in each case? If so.

- (i) Describe the procedures; and
- (ii) Produce copies of all documents evidencing establishment of quality assurance procedures

(g) Does the Respondent have a process for insuring effective and timely communication with foreclosure counsel in connection with the completion and execution of foreclosure affidavits/certifications? If so.

- (i) Describe the process; and
- (ii) Describe the procedures that will enable foreclosure counsel to comply with their duties concerning the completion and execution of foreclosure affidavits/certifications, under the Court Rules as they are finally adopted by the New Jersey Supreme Court.

In connection with the Prima Facie Showing, Respondents may incorporate by reference materials which were filed in this matter on January 5, 2011 in response to the OTSC, and additionally produce, to the extent each Respondent deems necessary: (1) written policies currently in place that govern the processes relating to uncontested residential mortgage foreclosures in New Jersey, and/or (2) the materials used to train employees in the processes

relating to uncontested residential mortgage foreclosures in New Jersey; and/or (3) samples of affidavits of indebtedness prepared using the Respondent's current process for the execution of same, together with the source documents or screen prints used to prepare and review the affidavits, and/or (4) whatever other evidence the respective Respondent wishes to submit in order to make the Prima Facie Showing.

5. At the time of the Prima Facie Showing each Respondent shall provide a list, by caption and docket number, of all of its residential mortgage foreclosure matters pending in the Superior Court as of December 20, 2010 (the "Servicer Portfolio"). The Servicer Portfolio shall indicate whether the matter is contested or uncontested, as defined by Rule 4.64-1(c). Respondent shall provide an updated Servicer Portfolio when reasonably requested by the Special Master during the time of his appointment

6. Within a reasonable time after each Respondent's written submission, or presentation if same is requested by the Special Master, if the Special Master determines that more data or information is necessary for the individual Respondent to make the required Prima Facie Showing, the Special Master may request that such additional information be provided. Within a reasonable time after receipt of all information, the Special Master shall make a determination as to whether that Respondent has made the required Prima Facie Showing. A Respondent shall be permitted to resume prosecution of the uncontested residential mortgage foreclosure proceedings included in its Servicer Portfolio (including related proceedings such as obtaining writs of execution and writs of possession and completing Sheriff's sales) after, (a) the Special Master has made a proposed determination that the Respondent has made the Prima Facie Showing; (b) such determination has been accepted by Judge Jacobson; and (c) the Respondent has filed with the Special Master a certification that all uncontested residential

mortgage foreclosures set forth in the Servicer Portfolio will be prosecuted under the processes outlined in the Prima Facie Showing. Any objections to a negative determination made by the Special Master or any other action under this Paragraph will be heard by Judge Jacobson.

7. At the time a Respondent files the certification described in Paragraph 6 herein, that Respondent will provide an updated Servicer Portfolio, irrespective of whether a Servicer Portfolio was previously provided. As to each Respondent, for a period of 12 months following the resumption of pending, uncontested residential mortgage foreclosure proceedings as described in paragraph 6, the Special Master may, in his discretion, review a reasonable sample of files from the Servicer Portfolio or new residential mortgage foreclosure filings made by that Respondent, as he deems necessary. The sole purpose of such sampling will be to satisfy the Special Master that the processes described by any particular Respondent in the Prima Facie Showing are being followed. If that sampling gives the Special Master a reasonable concern the processes outlined in the Prima Facie Showing were not followed, the Special Master will promptly notify the Respondent of his specific concerns and may request supplemental information from the Respondent to address those concerns; such supplemental information may include, at the Respondent's expense, the presentation in New Jersey of individuals who have personally reviewed the Business Records of the case(s) about which the Special Master has raised an issue. Should the Special Master determine that the results of his sample review and the additional information from the Respondent establish that the foreclosure affidavit execution processes described by the Respondent in the Prima Facie Showing have not been implemented as promised, the Special Master may recommend to Judge Jacobson that the Respondent's prosecution of uncontested residential mortgage foreclosure matters be suspended until the Respondent confirms to the Special Master's satisfaction that the processes are in place and

operational. Any objections to the Special Master's determinations or actions under this Paragraph will be heard by Judge Jacobson.

8. During the process described in Paragraphs 4 through 7, each Respondent will be operating independently of the others. More specifically, no Respondent's timetable for its written submission and/or presentation to the Special Master and its ability to resume prosecution of pending uncontested residential mortgage foreclosures pursuant to Paragraph 6, will be dependent upon or tied to the performance of any other Respondent.

9. All documents, materials and other information provided by Respondents under this Recommended Stipulation and to which no claim of confidentiality is being made, shall be filed with the Acting Clerk of the Superior Court, P.O. Box 971, 25 Market Street, Trenton, New Jersey 08625, with a copy to the Special Master, Richard J. Williams, JAD (Ret.) and a copy to the Special Counsel, Edward Dauber, Esquire. With regard to any materials to which any Respondent is making a claim of confidentiality, that Respondent shall not submit the materials to the Special Master or Special Counsel, but shall first move on short notice and on an expedited basis before Judge Jacobson for an Order to seal such materials in accordance with Court Rule 1:38-11. Should Judge Jacobson grant the motion to seal, such materials shall be separately submitted only to the Special Master and to the Special Counsel, Mr. Dauber, and shall be marked "confidential" and treated as such by the Special Master and the Special Counsel, Mr. Dauber. Should Judge Jacobson deny the motion to seal, the Respondent may choose whether to file the materials with the Acting Clerk of the Superior Court, with a copy to the Special Master and a copy to Special Counsel, or whether to proceed with an attempt to make the Prima Facie Showing without the information and materials which Respondent considers confidential, but for which the motion to seal has been denied

10 Nothing in this Recommended Stipulation will be deemed to prevent any one of the Respondents or its affiliates from making independent judgments concerning the best interests of its customers, shareholders and employees, without regard to those of its competitors, and nothing in this Stipulation shall be taken as evidence of any agreement or decision to act in concert.

11 Nothing in this Recommended Stipulation shall be construed to be an admission of liability or wrongdoing on the part of any Respondent

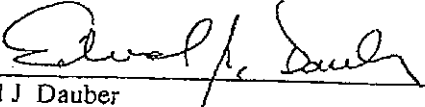
12. Except as herein provided, nothing in this Recommended Stipulation shall constitute consent or an agreement by any or all of the Respondents or their affiliates to be the subject of examination, general oversight, inspection, regulation, supervision, enforcement, prosecution, requests for the production of documents, or other visitorial powers, including but not limited to the visitorial powers listed at 12 C F R 4.7000 (collectively, "Visitorial Powers"), regardless of whether the attempted invocation of Visitorial Powers is undertaken by the legislative, judicial or executive branches of New Jersey's state government and regardless of form or name given to the invocation, or attempted invocation, of Visitorial Powers. Furthermore, the Respondents and their affiliates do not waive, and expressly reserve, every procedural and substantive right and mechanism available under State and Federal law, but not limited to, the applicable rules of court and applicable rules of civil procedure, to challenge the invocation, or attempted invocation, of Visitorial Powers, whether such challenge is presented by any or all of the Respondents or their affiliates in State or Federal Court, or This reservation of rights includes, but is not limited to, the right of any or all of the Respondents and their affiliates to assert that actions by, or conduct of, the State of New Jersey, any of its branches of government, any State official, State governmental body, or State agent are

preempted, expressly preempted, and/or completely preempted by the National Bank Act, Home Owners Loan Act, Title 12 of the United States Code of Federal Regulations, interpretive case law, or other federal law

13. Upon entry of an Order adopting this Recommended Stipulation as a resolution of the OTSC, the Court retains jurisdiction solely to enforce the terms of this Recommended Stipulation and the Order adopting same

14. The Respondents shall pay the reasonable attorneys' fees and costs incurred through the date of the entry of this Recommended Stipulation by Edward J. Dauber, Esq., and the law firm of Greenberg Dauber Epstein & Tucker in connection with their duties performed as the Court appointed counsel. Mr. Dauber and the law firm of Greenberg Dauber Epstein & Tucker shall remain as Special Counsel to the Special Master, and the Respondents shall pay the reasonable attorneys' fees and costs incurred by Mr. Dauber and the law firm of Greenberg Dauber Epstein & Tucker in connection with their duties as Special Counsel to the Special Master. The Respondents shall have the right to review and object to any fee application submitted by Mr. Dauber or the law firm of Greenberg Dauber Epstein & Tucker

GREENBERG, DAUBER, EPSTEIN & TUCKER, P.C.

BY 
Edward J. Dauber
Court Appointed Counsel

KROVATIN KLINGEMAN LLC

By: Gerald Krovatin
Gerald Krovatin, Esq
744 Broad Street, Suite 1903
Newark, New Jersey 07102
Tel. (973) 424-9777
Fax (973) 424-9779

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
Theodore V. Wells, Jr., Esq.
Brad S. Karp, Esq.
Joyce S. Huang, Esq.
Liza M. Velazquez, Esq.
1285 Avenue of the Americas
New York, New York 10019-6064
Tel. (212) 373-3000
Fax (212) 757-3990
Attorneys for Citibank, N.A. and Citi Residential Lending, Inc.

O'MELVENY & MYERS LLP

By 

Brian P. Brooks, Esq., *admitted pro hac vice*

1625 N W Eye St

Washington, D C 20006

Telephone (202) 383-5300

Facsimile (202) 383-5414

-and-

Elizabeth L. McKeen, Esq., *admitted pro hac vice*

610 Newport Center Drive, 17th Floor

Newport Beach, CA 92660

Telephone (949) 760-9600

Facsimile (949) 823-6994

-and-

Andrew Frackman, Esq.

Anthony DiLello, Esq.

Times Square Tower

7 Times Square

New York, NY 10036

Telephone (212) 326-2000

Facsimile (212) 326-2061

Attorneys for OneWest Bank, FSB

GREENBERG TRAUERIG, LLP

By: Ian S Marx

Philip R. Sellinger, Esq.
Ian S. Marx, Esq.

200 Park Avenue
P.O. Box 677
Florham Park, New Jersey 07932
sellingerp@gtlaw.com
marxi@gtlaw.com
(973) 360-7900
(973) 301-8410 (fax)

-and-

Robert R. Maddox, Esq. (admitted *Pro Hac Vice*)
F. Wendell Allen, Esq. (admitted *Pro Hac Vice*)
Marc James Ayers, Esq. (admitted *Pro Hac Vice*)
BRADLEY ARANT BOULT CUMMINGS LLP
1819 Fifth Avenue North
One Federal Place
Birmingham, Alabama 35203
(205) 521-8000
(205) 521-8800 (fax)
rmaddox@babc.com
wallen@babc.com
mayers@babc.com
Attorneys for GMAC Mortgage, LLC

REED SMITH LLP
Formed in the State of Delaware
Mark S. Melodia, Esquire
Diane A. Beltino, Esquire
Princeton Forrestal Village
136 Main Street, Suite 250
Princeton, New Jersey 08540

By: Mark S. Melodia *RA*
Mark S. Melodia, Esquire

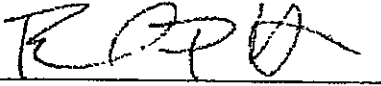
K&L GATES
Rosemary Alito, Esquire
Joy Lindo, Esquire
One Newark Center, 10th Floor
Newark, New Jersey 07102

By: Rosemary Alito
Rosemary Alito, Esquire
Co-Counsel for Wells Fargo Bank, N.A.

GRAHAM CURTIN
A Professional Association

BY: Thomas R. Curtin
Thomas R. Curtin
Attorneys for Bank of America, d/b/a BAC Home Loan Servicing, LP

McELROY, DEUTSCH, MULVANEY &
CARPENTER, LLP

By: 
Richard P. Haber, Esq

1300 Mount Kemble Avenue
P O. Box 2075
Morristown, New Jersey 07962
Telephone: (973) 993-8100
Facsimile: (973) 425-0161

-and-

MORGAN LEWIS & BOCKIUS LLP

Jamı Wintz McKeon, Esq , admitted *pro hac vice*

One Market, Spear Street Tower
San Francisco, California 94105
Telephone. (415) 442-1000
Facsimile (415) 442-1001
Attorneys for JPMorgan Chase Bank, N A and Chase Home Finance LLC

CLERK OF SUPERIOR COURT
SUPERIOR COURT OF NJ
MERCER COUNTY
RECEIVED AND FILED

PREPARED BY THE COURT

MAR 29 2011

Scott E. Regan
SCOTT E. REGAN
DEPUTY CLERK OF SUPERIOR COURT

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION –
GENERAL EQUITY PART
MERCER COUNTY

IN THE MATTER OF
RESIDENTIAL MORTGAGE
FORECLOSURE PLEADING AND
DOCUMENT IRREGULARITIES

DOCKET NO. F-59553-10

CIVIL ACTION

ORDER APPROVING THE
RECOMMENDED STIPULATION
AND APPOINTING SPECIAL
MASTER

The court having entered an Order to Show Cause on December 20, 2010, directing the six foreclosure plaintiffs identified in the order (referred to hereinafter as "Respondents" to the Order to Show Cause) to respond to the Order to Show Cause and establishing a schedule for the filing of papers, and appointing Edward Dauber, Esquire, Greenberg, Dauber, Epstein & Tucker, as counsel to support the proposed relief outlined in the Order to Show Cause; and the foreclosure plaintiffs having filed their oppositions to the relief sought in the Order to Show Cause on January 5, 2011; and Mr. Dauber having requested and received several extensions of time to respond to the oppositions in order to explore with the foreclosure plaintiffs the possibility of their agreeing to the appointment of a Special Master and their agreeing to a process for reviewing their foreclosure document preparation procedures for accuracy, reliability, and compliance with applicable laws, court rules, and the business record requirements of the New Jersey Rules of Evidence; and Mr. Dauber having reported the success of those negotiations to this court in a letter of March 18, 2011; and Mr. Dauber having submitted a fully executed Recommended Stipulation to the court for review on March 18, 2011; and the court having

scheduled a review hearing for the Recommended Stipulation for March 29, 2011, at 2 P.M.; and the court having reviewed the Recommended Stipulation and the letter of Mr. Dauber of March 18, 2011; and the court having heard oral argument regarding the Recommended Stipulation on March 29, 2011; and the court also having heard oral argument from proposed interveners whose motions to intervene have been addressed in separate orders; and for good cause shown, for the reasons set forth on the record on March 29, 2011:

IT IS on this 29th day of March, 2011, **HEREBY ORDERED** that:

1. The Recommended Stipulation is approved and shall be referenced as the "Stipulation of Settlement" or "Stipulation." The Respondents are directed to fulfill their responsibilities under the stipulation and cooperate with the Special Master and Special Counsel.
2. The court appoints the Honorable Richard J. Williams, J.S.C. (retired), as the Special Master, with the consent of the Respondents, to undertake the responsibilities of the Special Master set forth in the Stipulation. Judge Williams shall have the powers enumerated in the Stipulation and any power necessary or attendant to the powers explicitly set forth in the Stipulation to achieve the goals set forth in that document.
3. The process set forth in the Stipulation shall address only uncontested cases. Nothing in the Stipulation shall be construed as altering or interfering with the right of any party to a foreclosure action to contest the foreclosure by filing a contesting answer, by challenging an amount due on a mortgage in default submitted to the Office of Foreclosure with a final judgment package, or pursuing any right guaranteed by law or court rule to a party contesting a foreclosure. Nor shall anything in the Stipulation, or any action taken by the Special Master, be construed as altering or interfering with

the discretion of any Superior Court Judge of the State of New Jersey to adjudicate all issues raised by the parties in contested foreclosure matters.

4. The court refers to the Special Master for his consideration the papers filed by Legal Services of New Jersey and The Seton Hall Law School Center for Social Justice in support of their motions for intervention, which motions have been denied by separate orders.
5. The court refers to the Special Master for his consideration the documents submitted to the court and to Mr. Dauber by individuals who lodged the documents with the court out of concern for promoting the integrity of the foreclosure process. Attached to this order is a list of the individuals who filed papers with the court and the dates of their submissions.
6. This Order resolves the Order to Show Cause entered by this court on December 20, 2011. The court retains jurisdiction to enforce the terms of the Stipulation and the terms of this Order.
7. Mr. Dauber shall provide a copy of this order via facsimile to the attorneys on the attached service list and the order shall be filed in the electronic case jacket of the JEFIS system for foreclosure matters maintained by the Office of Foreclosure in the Superior Court Clerk's Office.


MARY C. JACOBSON, P.J. Ch.

Date Received	Filed By
12/23/10	William Pinilis
12/28/10	Ted Peterson & Madeline Ferreri
12/29/10	Rosa Sands
12/30/10	Jeffrey Lichtenstein
1/11/11	Lauri Gordon
1/11/11	Kerry Scott Lane, M.D.
1/11/11	Anthony D'Amato
1/12/11	Michael f. Olenick
1/12/11	Lisa Epstein
1/13/11	James McGuire
1/18/11	Janet-Linda Beddini
1/24/11	Anonymous
1/31/11	Ellen E. Nevins
2/10/11	Kevin M. Hurley
2/14/11	Harold Goldman, Esq. (Ansell, Grimm & Aaron)
2/22/11	Steve & Dawn Hodges
3/1/11	Katherine S. Galaida
3/1/11	Anthony D'Amato
3/9/11	Tracy T. Wilson
3/15/11	Collins Elumogo

Fein, Such, Kahn & Shepard, P.C.
7 Century Drive - Suite 201
Parsippany, New Jersey 07054
(973) 538-4700

Phelan, Hallinan & Schmieg
400 Fellowship Road, Suite 100
Mt. Laurel, New Jersey 08054
(856) 813-5500

Powers Kirn, LLC
728 Marne Highway, Suite 200
Moorestown, New Jersey 08057
(856) 802-1000

Zucker, Goldberg and Ackerman, LLC
200 Sheffield Street
Suite 301
Mountainside, New Jersey 07092
908-233-8500

Attorneys for Amici Curiae New Jersey Foreclosure Counsel

**SUPREME COURT OF NEW JERSEY
DOCKET NO. 068176**

US BANK NATIONAL)
ASSOCIATION, AS TRUSTEE)
FOR CSAB MORTGAGE-BACKED)
PASS-THROUGH CERTIFICATES,)
SERIES 2006-3,)

Plaintiff/Respondent,)

v.)

MARYSE GUILLAUME, MR.)
GUILLAUME, HUSBAND OF)
MARYSE GUILLAUME, EMILIO)
GUILLAUME, MRS. EMILIO)
GUILLAUME, HIS WIFE, CITY)
OF EAST ORANGE,)

Defendants/Petitioners.)

On Certification from the Superior
Court of New Jersey, Appellate
Division, granted September 27, 2011

Civil Action

Sat Below:

Appellate Division:

Hon. Clarkson S. Fisher, Jr., J.A.D.
Hon. Douglas M. Fasciale, J.A.D.

Trial Court:

Hon. Harriet Farber Klein, J.S.C.

REQUEST FOR ORAL ARGUMENT

TO:

Mark Neary, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 W. Market Street
Trenton, New Jersey 08625-0970

Reed Smith, LLP
Henry F. Reichner, Esq.
Mark Melodia, Esq.
Diane Bettino, Esq.
Reed Smith, LLP
136 Main Street, Suite 250
Princeton, New Jersey 08540
Attorneys for Respondents

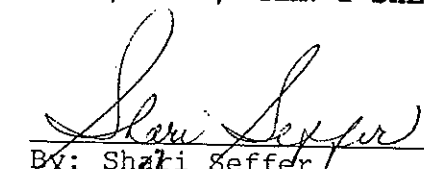
Alan J. Baldwin, Esq.
Broderick, Newmark & Grather
South Street, Suite 3
Morristown, NJ 07960
Attorneys for Appellants

Margaret Lambe Jurow, Esq.
Legal Services of New Jersey
100 Metroplex Drive at
Plainfield Avenue
Suite 402
Edison, New Jersey 08818-1357

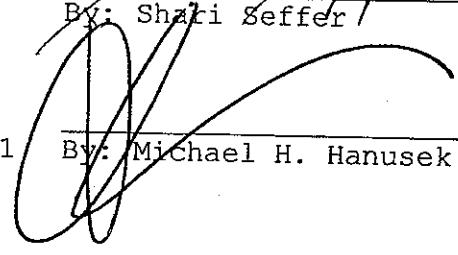
PLEASE TAKE NOTICE that the applicants herein requesting leave to file Amici Briefs hereby request oral argument on the issues raised in the brief submitted herein.

Respectfully submitted,


FEIN, SUCH, KAHN & SHEPARD, P.C.


By: Shari Seffer

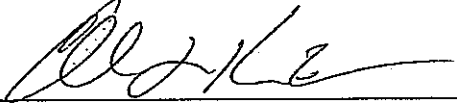
Dated: October 21, 2011


By: Michael H. Hanusek

PHELAN, HALLINAN & SCHMIEG

Dated: October 21, 2011 By: 
Vladimir V. Palma

POWERS KIRN, LLC



Dated: October 21, 2011

By: Edward W. Kirn

ZUCKER, GOLDBERG & ACKERMAN, LLC

Dated: October 21, 2011


By: Brian C. Nicholas


By: Jamie R. Ackerman

ZUCKER, GOLDBERG & ACKERMAN, L.L.C.
200 Sheffield Street, Suite 101
Mountainside, N.J. 07092
908-233-8500

SUPREME COURT OF NEW JERSEY
DOCKET NO. 068176

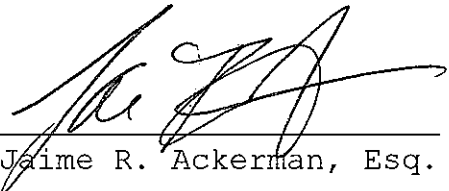
US BANK NATIONAL	)	On Certification from the Superior
ASSOCIATION, AS TRUSTEE	)	Court of New Jersey, Appellate
FOR CSAB MORTGAGE-BACKED	)	Division, granted September 27, 2011
PASS-THROUGH CERTIFICATES,)	
SERIES 2006-3,	)	Civil Action
)	
Plaintiff/Respondent,	)	Sat Below:
)	
v.	)	Appellate Division:
	)	Hon. Clarkson S. Fisher, Jr., J.A.D.
	)	Hon. Douglas M. Fasciale, J.A.D.
MARYSE GUILLAUME, MR.)	
GUILLAUME, HUSBAND OF	)	Trial Court:
MARYSE GUILLAUME, EMILIO	)	Hon. Harriet Farber Klein, J.S.C.
GUILLAUME, MRS. EMILIO)	
GUILLAUME, HIS WIFE, CITY)	
OF EAST ORANGE,)	
	)	CERTIFICATION OF FACSIMILE SIGNATURES
Defendants/Petitioners.)	

I, Jaime R. Ackerman, Esq., hereby certify that:

1. I am an attorney licensed to practice in the State of New Jersey and an associate with the law firm of Zucker, Goldberg & Ackerman, L.L.C. I make this certification pursuant to Rule 1:4-4(c) in support of motion seeking leave to file an amicus brief in the above captioned matter.

2. The submission of the New Jersey Foreclosure Attorneys contains facsimiles of the original signatures. The signatures are genuine and the original signatures can be provided should the Court so request.
3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: October 21, 2011



Jaime R. Ackerman, Esq.

Zucker, Goldberg and Ackerman, LLC
200 Sheffield Street
Suite 100
Mountainside, New Jersey 07092
908-233-8500
Attorneys for Amicus Curiae New Jersey Foreclosure Counsel

SUPREME COURT OF NEW JERSEY
DOCKET NO. 068176

US BANK NATIONAL	)	On Certification from the Superior
ASSOCIATION, AS TRUSTEE FOR	)	Court of New Jersey, Appellate
CSAB MORTGAGE-BACKED PASS-	)	Division, granted September 27, 2011
THROUGH CERTIFICATES,)	
SERIES 2006-3,	)	Civil Action
)	
Plaintiff/Respondent,	)	Sat Below:
)	
v.	)	Appellate Division:
	)	Hon. Clarkson S. Fisher, Jr., J.A.D.
	)	Hon. Douglas M. Fasciale, J.A.D.
MARYSE GUILLAUME, MR.)	
GUILLAUME, HUSBAND OF	)	Trial Court:
MARYSE GUILLAUME, EMILIO	)	Hon. Harriet Farber Klein, J.S.C.
GUILLAUME, MRS. EMILIO)	
GUILLAUME, HIS WIFE, CITY	)	CERTIFICATION OF SERVICE
OF EAST ORANGE,)	
)	
Defendants/Petitioners.)	

JAIME R. ACKERMAN, of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and am associated with the Firm of Zucker, Goldberg & Ackerman, LLC in the above action.

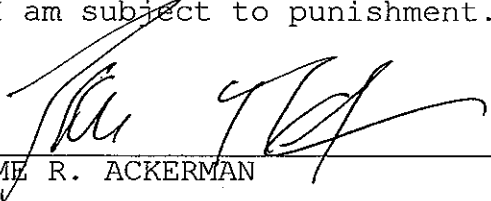
2. On October 21, 2011, I cause the original and eight (8) copies of a (i) Notice of Motion to Appear Amicus Curiae, (ii) request for oral argument; (iii) Brief in Support; (iv) Certification of Foreclosure County in Support, (v) Proposed Form of Order, and (vi) Certification of service to be forwarded by

hand delivery to the Clerk of the Supreme Court of New Jersey
Hughes Justice Complex, 25 Market Street, Trenton, New Jersey
08625.

3. On October 21, 2011, I caused two copies of the (i)
Notice of Motion to Appear Amicus Curiae, (ii) request for oral
argument; (iii) Brief in Support; (iv) Certification of
Foreclosure County in Support, (v) Proposed Form of Order, and
(vi) Certification of service to be forwarded by delivery to all
counsel of record.

4. I hereby certify that the foregoing statements made by me
are true. I am aware that if any of the foregoing statements made
by me are willfully false, I am subject to punishment.

By:



JAIME R. ACKERMAN

Dated: October 21, 2011