

May 13, 2019

**SENATE BILL NO. 362**  
**(First Reprint)**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 362 (First Reprint) with my recommendations for reconsideration.

Senate Bill No. 362 (First Reprint) prohibits foreclosure proceedings from extinguishing certain deed restrictions reserving homes for occupancy for low- and moderate-income households. Under almost all circumstances, the sale of a deed restricted affordable unit does not extinguish its affordability controls. The exception, which this bill seeks to prohibit, allows for affordability controls to expire on homes that were deed restricted prior to 1999, and thus subject to the Council on Affordable Housing's so-called "First Round" and "Second Round" regulations, are foreclosed upon. In these limited circumstances, a municipality has the option of purchasing the home, thereby preserving its affordability controls. If the municipality does not exercise this option, the affordability controls expire, and the home is sold at the going market rate. Importantly, a town's obligation to provide the affordable unit is not impacted by its decision to purchase the home; if a town opts against purchasing, the town must replace the lost unit.

I applaud the bill's sponsors for their efforts to preserve the State's affordable housing stock. New Jersey has one of the most expensive housing markets in the country. Too often, low- and middle-class New Jerseyans are priced out of home ownership and the economic advantages that accompany it. I am concerned, however, that this bill may actually hurt the very low- and moderate-income families it is intended to benefit by making it

more difficult for these families to obtain a mortgage. Federal Housing Administration ("FHA") regulation expressly prohibits the use of FHA loans to purchase properties with deed restrictions that will not extinguish upon foreclosure. As a result, this bill would effectively preclude all prospective affordable unit homeowners from accessing any FHA loan or insurance products. This is problematic because many first-time low- and moderate-income homebuyers rely on FHA loan products to secure the financing necessary to purchase their homes, as has been seen by the difficulty in selling and reselling units subject to "Third Round" regulations, which include the same inextinguishably restrictions. I have been informed by the New Jersey Housing and Mortgage Finance Agency ("HMFA") that it is not uncommon for "Third Round" units to be available for sale for upwards of two years. Expanding this regulation to cover all prospective affordable unit purchasers would create further disadvantage because HMFA may only offer its down payment and closing cost financial assistance program, which includes a 3.5% down payment option and a \$10,000 down-payment and closing cost assistance program, to homebuyers using FHA loan products.

Without access to these loan and assistance programs, all low- and moderate-income families would need to secure conventional mortgages to finance the cost of buying a home. Few low- and moderate-income applicants have the capital on hand to obtain a private loan and the universe of lenders providing loans for the purchase of homes with affordability controls is relatively small. I have been advised by the HMFA that fewer than ten lenders in New Jersey provide private mortgages to low- and moderate-income homebuyers without FHA insurance compared to more than forty lenders who partner with HMFA. If prospective homebuyers are

unable to access the necessary financing, all of the affordable units, both currently in existence and not yet created, will be difficult to sell and resell, limiting the future buying potential of low- and moderate-income homeowners.

Apart from the potential impact on the State's affordable housing market, the bill may also have the unintended consequence of forcing towns to make imprudent financial decisions. Because homes that were deed restricted during the Second Round are now twenty or thirty years old or more, it may be relatively expensive to preserve them. In some cases, it may make more financial sense for a town to replace the home by buying down the cost of a newer home or partnering with a nonprofit organization on new construction. This bill would prevent a town from such considerations. For these reasons, my recommended revisions remove the requirement that deed restrictions on affordable housing not be extinguished as a result of foreclosure.

Nonetheless, a deed restriction should never expire simply because a town is unaware that a home subject to a Second Round deed restriction is in danger of foreclosure. Currently, there is no requirement that a town be notified when a deed restricted property is at risk of foreclosure. This bill appropriately remedies this shortcoming in the law by requiring a residential mortgage lender to give a notice of intention to foreclose to the clerk of the municipality in which the property is located and to the municipal housing liaison, if one has been appointed. This notice will ensure that municipalities do not miss an opportunity to intervene in foreclosure proceedings and, where appropriate, preserve a home's affordability controls.

Therefore, I herewith return Senate Bill No. 362 (First Reprint) and recommend that it be amended as follows:

<u>Page 2, Title, Lines 1-2:</u>	Delete ", supplementing P.L. 1985, c.222 (C.52:27D-301 et al.)"
<u>Page 2, Section 1, Lines 8-30:</u>	Delete in their entirety
<u>Page 2, Section 2, Lines 32-40:</u>	Delete in their entirety
<u>Page 2, Section 3, Line 42:</u>	Delete "3." and insert "1."
<u>Page 5, Section 4, Line 1:</u>	Delete "4." and insert "2."
<u>Page 5, Section 4, Line 9:</u>	After "only" insert "when"
<u>Page 5, Section 4, Lines 9-11:</u>	Delete "if there are no recorded restrictions on affordability on the property, as defined in section 4 of P.L.1995, c.244 (C.2A:50-56), and either"
<u>Page 8, Section 5, Line 38:</u>	Delete "5." and insert "3."

[seal]

Respectfully,  
/s/ Philip D. Murphy  
Governor

Attest:  
  
/s/ Matthew J. Platkin  
Chief Counsel to the Governor