

ASSEMBLY BILL NO. 5000
(Second Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 5000 (Second Reprint) with my recommendations for reconsideration.

Since 2008, New Jersey has been among the states hit hardest by foreclosure. We have made progress, but recent statistics reveal more work needs to be done. The latest foreclosure data released in March of 2019 ranked New Jersey second in the nation in open foreclosure filings. New Jersey municipalities remain some of the most impacted in the country. In Willingboro, for example, the foreclosure rate is over ten times the national rate. The persistently high level of foreclosures remains unacceptable.

Late last month, alongside several legislative sponsors whose commitment, compassion and vision drew them to this issue, I proudly signed into law nine bills aimed at tackling New Jersey's foreclosure crisis. These bills, many of which came at the recommendation of Chief Justice Rabner's Special Committee on Residential Foreclosure, codify and dedicate funding to the Judiciary's foreclosure mediation process, enable more properties to qualify for expedited foreclosure proceedings, make lenders more accountable for maintaining vacant and abandoned properties, and enhance homeowner notice requirements, among other things. Collectively, these newly enacted laws will have a real and immediate impact on struggling homeowners and communities.

Assembly Bill No. 5000 (Second Reprint) would require the Department of Community Affairs ("DCA") to develop, maintain and update a database on foreclosed residential properties in the State. To assist in these efforts, the Administrative Office of the Courts, the county clerks, the county registers of deeds and

mortgages and the county sheriffs would be required to provide relevant data on properties under foreclosure, including the location of each residential property, the current owner of record, the date the foreclosure complaint is filed and the data of the judgment of foreclosure, to DCA on a daily basis. The database would include an interactive mapping component, effectively creating a heat map of foreclosures across the State, which would be accessible only to authorized public entities. To defray the costs associated with gathering the information and developing and maintaining the database, the bill would impose an additional fee of \$30 on the recording of deeds and lis pendens.

I commend the bill's sponsors for seeking to centralize information on residential foreclosures throughout the State. Centralizing available data will help public officials refine the focus of existing foreclosure programs and inform the creation and implementation of new ones. I am concerned, however, that some of the information required to be included in the database may not be readily available and could impose an administrative burden on the county officials charged with providing it daily to DCA. And while I understand that some may view a real-time foreclosure database map as a useful tool that would in theory help illustrate the extent of the mortgage foreclosures throughout the State, the bill does come with a high price tag. The Office of Legislative Services ("OLS") estimates that the cost will be at least \$4 million, which will be borne almost entirely by New Jersey homeowners. Candidly, I am not convinced that the benefit of interactive mapping will justify the cost burden imposed on homeowners needed to implement that requirement.

Rather than expending millions of dollars on the creation of a database that will map properties that have already been subject to judgments of foreclosure, my suggested changes revise the legislation to require notice to DCA much earlier in the process. Specifically, my proposed revisions require lenders to provide DCA with the notice of intention to foreclose, along with a detailed description of the property, at the time the lender mails the notice to the homeowner. This avoids much of the technical and administrative costs associated with the bill, while still ensuring the compilation of valuable information.

A notice of intention to foreclose is the first indicator that a borrower is struggling to keep up with mortgage payments. The optimal time to attempt to reverse the foreclosure process is generally after the lender has sent the notice of intention to foreclose and before the lender has filed the foreclosure complaint. At this stage of the process, the amount of fees and missed payments are still manageable, and foreclosure intervention programs have the greatest likelihood of successfully keeping borrowers in their homes. Importantly, my recommended changes will enable DCA to coordinate with the Housing and Mortgage Finance Agency ("HMFA") to more effectively connect homeowners with the housing counseling offered under HMFA's Foreclosure Mediation Assistance Program.

Therefore, I herewith return Assembly Bill No. 5000 (Second Reprint) and recommend that it be amended as follows:

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| <u>Page 2, Title, Line 2:</u> | After "(C.55:14K-82 et al.)" insert ", and amending P.L.1995, c.244" |
| <u>Page 2, Section 1, Line 8:</u> | Delete "with an interactive mapping" |
| <u>Page 2, Section 1, Line 9:</u> | Delete "component which" and insert "that" |

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| <u>Page 2, Section 1, Line 9:</u> | Delete ", and provides a graphic representation to" |
| <u>Page 2, Section 1, Line 10:</u> | Delete "allow the department to visualize," |
| <u>Page 2, Section 1, Line 14:</u> | Delete ", and in" |
| <u>Page 2, Section 1, Lines 15-16:</u> | Delete in their entirety |
| <u>Page 2, Section 1, Line 17:</u> | Delete "Courts" and insert "residential mortgage lenders" |
| <u>Page 2, Section 1, Line 20:</u> | Delete ", and the map shall represent" |
| <u>Page 2, Section 1, Line 21:</u> | Delete "location" and insert "address" |
| <u>Page 2, Section 1, Line 21:</u> | Delete "by" and insert "and the" |
| <u>Page 2, Section 1, Line 23:</u> | After "record;" insert "and" |
| <u>Page 2, Section 1, Line 24:</u> | Delete "lis" |
| <u>Page 2, Section 1, Line 25:</u> | Delete "pendens is filed;" and insert "notice of intention to foreclose was sent to the residential mortgage debtor by registered or certified mail, return receipt requested." |
| <u>Page 2, Section 1, Lines 26-32:</u> | Delete in their entirety |
| <u>Page 3, Section 2, Lines 6-18:</u> | Delete in their entirety |
| <u>Page 3, Section 3, Lines 20-30:</u> | Delete in their entirety |
| <u>Page 3, Section 4, Lines 32-45:</u> | Delete in their entirety |
| <u>Page 4, Section 4, Lines 1-2:</u> | Delete in their entirety |
| <u>Page 4, Line 3:</u> | Insert new section: "2. a. A residential mortgage lender shall provide to the Department of Community Affairs the notice of intention to foreclose required pursuant to section 4 of P.L.1995, c.244 (C.2A:50-56) and a description of the subject property by street address, block, and lot as shown on the municipal tax map at the time the notice is given to the residential mortgage debtor. Upon receipt of the notice of intention to foreclose pursuant to this section, the Department of Community Affairs shall provide the residential mortgage lender with a written acknowledgement of the department's receipt of the |

notice of intention to foreclose. Compliance with this section shall be set forth in the pleadings of any legal action referred to in section 4 of P.L.1995, c.244 (C.2A:50-56).

b. The Department of Community Affairs shall create a centralized portal allowing for electronic submittal of the notice of intention to foreclose as required pursuant to subsection a. of this section."

Page 4, Section 5, Line 4:

Delete "5." and insert "3."

Page 4, Section 5, Line 8:

After "notify" insert "the Department of Community Affairs,"

Page 4, Line 15:

Insert new section:

"4. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read as follows:

4. a. Upon failure to perform any obligation of a residential mortgage by the residential mortgage debtor and before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation and commence any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage, the residential mortgage lender shall give the residential mortgage debtor notice of such intention at least 30 days in advance of such action as provided in this section.

b. Notice of intention to take action as specified in subsection a. of this section shall be in writing, provided to the Department of Community Affairs in accordance with subsection a. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), sent to the debtor by registered or certified mail, return receipt requested, at the debtor's last known address, and, if different, to the address of the property which is the subject of the residential mortgage. The

notice is deemed to have been effectuated on the date the notice is delivered in person or mailed to the party.

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

(1) the particular obligation or real estate security interest;

(2) the nature of the default claimed;

(3) the right of the debtor to cure the default as provided in section 5 of this act;

(4) what performance, including what sum of money, if any, and interest, shall be tendered to cure the default as of the date specified under paragraph (5) of this subsection c.;

(5) the date by which the debtor shall cure the default to avoid initiation of foreclosure proceedings, which date shall not be less than 30 days after the date the notice is effective, and the name and address and phone number of a person to whom the payment or tender shall be made;

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

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

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

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

(10) the possible availability of financial assistance for curing a default from programs operated by the State or federal government or nonprofit organizations, if any, as identified by the Commissioner of Banking and Insurance. This requirement shall be satisfied by attaching a list of such programs promulgated by the commissioner; and

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

d. The notice of intention to foreclose required to be provided pursuant to this section shall not be required if the debtor has voluntarily surrendered the property which is the subject of the residential mortgage.

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

f. Compliance with this section and subsection a. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) shall be set forth in the pleadings of any legal action referred to in this section. If the plaintiff in any complaint seeking foreclosure of a residential mortgage alleges that the property subject to the residential mortgage has been abandoned or voluntarily surrendered, the plaintiff shall plead the specific facts upon which this allegation is based.

(cf: P.L.2003, c.298, s.1)"

Page 4, Section 6, Line 16:

Delete "6." and insert "5."

Page 4, Section 6, Line 16:

Delete "seventh" and insert "tenth"

Respectfully,

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor