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

CURRENT VERSION OF TEXT
As amended by the Senate on June 21, 2012.
AN ACT concerning the foreclosure of residential properties, the
transfer and dedication of foreclosed residential properties for
affordable housing, and supplementing Title 2A of the New
Jersey Statutes and Title 55 of the Revised Statutes.

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

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

2. The Legislature finds and declares that:
   a. In recent years, there has been an enormous expansion in
      the number of mortgage foreclosure filings in New Jersey and
      across the nation. The number of mortgage foreclosure actions filed
      in the New Jersey Courts grew from just over 20,000 in 2005 to
      more than 51,000 in 2008, 66,000 in 2009, and 58,000 in 2010.
   b. Preliminary information indicates a decline in the number of
      residential mortgage foreclosure filings over 2011. However, this
      decline is largely attributable to actions undertaken by the New
      Jersey Judiciary which, in December of 2010, suspended the
      processing of uncontested residential foreclosures by the six biggest
      lenders in order to address "robo-signing" and other processing
      irregularities.
   c. Despite this decline, it has been reported that more than one
      in 10 New Jersey mortgage loans are already in foreclosure or are
      90 days or more in arrears. Because of the large number of
      foreclosures filed during the 2009-2010 period, and the Judiciary's
      suspension of foreclosure processing, reports indicate that as of
      August 2011 more than 100,000 residential foreclosure cases were
      still open. Now that the courts have resumed processing
      foreclosures for the big six lenders, it is widely believed that
      foreclosure filings will increase during 2012. This is due in part to
      the large number of mortgages that are seriously delinquent, more
      than 90 days past due. Reports have indicated that during the
      suspension period mortgage lenders were waiting to file more than
      28,000 additional foreclosures and that another 55,000 mortgage
      loans were over 90 days delinquent.
   d. Many of these foreclosed residential properties are vacant,
      undermining the health, safety, and economic vitality of
      neighborhoods, depressing their property values, and reducing
      revenues to municipalities.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
1Senate SEG committee amendments adopted February 16, 2012.
2Senate SBA committee amendments adopted March 8, 2012.
3Senate floor amendments adopted May 24, 2012.
4Senate floor amendments adopted May 31, 2012.
5Senate floor amendments adopted June 21, 2012.
It is the public policy of this State to encourage the production of low-income and moderate-income housing to serve the general welfare of all the State's residents. The availability of tens of thousands of foreclosed residential properties presents a unique opportunity for the State to facilitate the purchase and dedication, or the rental, of housing units for low-income and moderate-income residents. Establishment of a temporary State entity dedicated to the purpose of identifying foreclosed residential properties and facilitating their purchase and dedication for occupancy or their rental, including but not limited to low-income and moderate-income families, is in the public interest of the State.

As used in this act:

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


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

"Community development financial institution" means an entity designated and certified by the United States Department of the Treasury as a Community Development Financial Institution pursuant to 12 CFR Part 1805.

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

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

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

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

"Institutional lender" or "lender" means any lawfully constituted mortgage lender, mortgage investor, or mortgage loan servicer that owns an eligible property including, but not limited to any agency...
or instrumentality of the United States, including, but not limited to, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, the Small Business Administration, the Resolution Trust Corporation, and the Federal Deposit Insurance Corporation.

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

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

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

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

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

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

"Permanent supportive housing" means affordable housing dedicated for persons with developmental disabilities or mental illness, designed as permanent housing, and regulated by the New Jersey Department of Human Services a permanent lease based housing unit that provides access to supportive services for individuals with special needs and households with individuals with special needs who can benefit from housing with services.

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

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

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

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

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

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

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

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

d. The three members appointed by the Governor shall be residents of the State and shall have knowledge in the areas of real estate, housing design, construction, or operation; mortgage
banking, finance and foreclosure; or community development. Of
the three members appointed by the Governor, one shall be a
nominee of the Senate President and one shall be a nominee of the
Speaker of the General Assembly. At least one of the members
appointed by the Governor shall hold a license as a real estate
broker, broker-salesperson, salesperson, or referral agent under the
provisions of R.S.45:15-1 et seq. No more than two of the
members appointed by the Governor shall be members of the same
political party. The members shall serve for two-year terms. Each
member shall hold office for the term of his appointment and until
the appointment of his successor. A member of the board shall be
eligible for reappointment. A member of the board may be removed
from office by the Governor, for cause, after a public hearing and
may be suspended by the Governor pending the completion of such
a hearing.

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

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

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

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

g. With the agreement of an executive department or other
executive agency, the corporation may utilize the personnel of that
department or agency on a reimbursable basis to cover actual and
reasonable expenses.
h. (1) On or before the last day of March in each year, the corporation shall make an annual report of its activities for the preceding calendar year, and its planned activities for the current and following calendar year, to the Governor and to the Legislature. 

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

(a) the total number of re-capitalized market rate units.
(b) the total numbers of very-low-income, low-income, and moderate-income units that were produced for sale and for rental in the preceding year pursuant to this act, their locations by municipality, and the sources of financing used.

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

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

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

5. The corporation shall have the following powers:

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

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

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

d. To acquire, hold, lease, mortgage, maintain, dispose of, at public or private sale, real and personal property, using any legally available private sector methods including without limitation, securitization of debt or equity, limited partnerships, mortgage investment conduits, and real estate investment trusts, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to the operations of the corporation provided, however, that every contract for the acquisition of real property entered into by the corporation, and every deed conveying real property to the corporation, shall provide that if the corporation holds title to the property on the 61st day after the date of the deed, all rights, title, and interest conveyed to the corporation shall
automatically revert to and vest in the grantor without the necessity of any further act on the part of or on behalf of the grantor, it being the intent to convey a determinable estate. In each case where title has reverted to and re-vested in the grantor as provided in this subsection, the corporation shall memorialize the reversion and re-vesting of title by the immediate execution and delivery of a deed to the grantor conveying all of the corporation's estate, right, title and interest in and to the property described therein.

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

f. To exercise any other power established under this section and such incidental powers as are necessary to carry out its duties and functions under this section. The corporation may indemnify the directors, officers, and employees of the corporation on such terms as the corporation deems proper against any liability under any civil suit pursuant to any statute or pursuant to common law with respect to any claim arising out of or resulting from any act or omission by such person within the scope of such person's employment in connection with any transaction entered into involving the disposition of assets (or any interests in any assets or any obligations backed by any assets) by the corporation. For purposes of this subsection, the terms "officers" and "employees" include officers and employees of the agency. The indemnification authorized by this subsection shall be in addition to and not in lieu of any immunities or other protections that may be available to such person under applicable law, and this provision does not affect any such immunities or other protections.

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

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

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

c. Within 120 days after the adoption of this act, the corporation shall enter into an intercreditor agreement with the New Jersey Housing and Mortgage Finance Agency for the purposes of
(1) determining the target amount of bond proceeds to be raised by the agency for the activities of the corporation, as well as the sources of repayment of, and security for, the agency's bonds; and

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

7. a. (1) The corporation shall enter into contracts or loans, or both, with no more than two qualified community development financial institutions to negotiate, bid for, and purchase eligible properties and mortgage assets from institutional lenders for the purpose of producing affordable housing. In selecting contractors from among qualified community development financial institutions, the corporation shall accord a strong preference to qualified community development financial institutions that have substantial experience in lending in New Jersey and substantial knowledge of New Jersey real estate markets. The corporation may enter into contracts or loans, or both, with a partnership or consortia of organizations, as long as a qualified community development financial institution is the lead entity, or a partnership or consortia of multiple qualified community development financial institutions.

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

b. (1) Upon as soon as possible after entering the corporation or one of its contractors enters into a contract to purchase an eligible property or mortgage asset for use as affordable housing by the corporation or its contractors, the corporation or contractor shall provide the municipality in which the property is located with a 45-day period of time within which the municipal governing body may:

(a) consent or withhold consent to the corporation's or contractor's purchase of the eligible property for use as affordable housing, or

(b) opt to purchase the property in lieu of the corporation or contractor in accordance with the provisions set forth in this act.

The municipality may waive these rights through written notice to the corporation or, if so designated by the
corporation, its contractors, prior to the expiration of the 45-day period.

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

c. (1) As soon as possible after entering into a contract to purchase an eligible property for use as affordable housing, but not less than five days after the date the corporation or its contractors enters into the contract, the corporation or its contractors shall provide written notice by personal service or certified mail to the governing body of the municipality within which the eligible property is located. The notice shall inform the governing body of:

(a) the corporation’s or contractor’s intent to purchase the eligible property and to restrict it for use as affordable housing for 30 years,

(b) the municipality’s opportunity to consent or to withhold consent to the proposed purchase and dedication of the property for affordable housing,

(c) the municipality’s opportunity to purchase the eligible property,

(d) the municipality’s right of first refusal to purchase the property, and

(e) the municipality’s right to use monies deposited in its affordable housing trust fund.

(2) As soon as possible after entering into a contract to purchase an eligible property, but not less than five days after the date the corporation or its contractors enters into the contract, the corporation or its contractors shall list the property on the Department of the Treasury’s website. The listing shall contain basic information about the property, including but not limited to location, condition, and information relating to the estimated fair market value of the property. The corporation or its contractors shall make information about the listing available to the agency and, upon request, to municipalities, other public agencies, community development corporations, developers, and qualifying households.

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

d. (1) In order to consent or withhold consent to the proposed purchase and dedication of an eligible property as affordable housing or exercise its right to purchase an eligible property, the governing body of the municipality shall provide written notice to the chairperson of the corporation or, if so designated by the corporation, its contractors, within 45 days of the municipality's receipt of the notice required pursuant to subsection c. of this section.

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

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

(4) Whenever a municipality does not exercise an option to purchase an eligible property under this section or withhold consent to the proposed purchase and dedication of the property for affordable housing within 45 days of the municipality's receipt of the notice required pursuant to subsection c. of this section, the corporation or its contractors may lease the property for occupancy as affordable housing subject to a 30-year deed restriction or convey the property for occupancy as affordable housing subject to a 30-year deed restriction.

The municipality that does not exercise an option to purchase an eligible property under this section and the corporation or its contractors may lease the property for occupancy as affordable housing subject to a 30-year deed restriction.

e. Notwithstanding any other provision of this section to the contrary, the corporation and, if authorized by contract, its contractors, may purchase, sell, lease, and convey market rate-units without offering those units to the municipality and without imposing affordability controls upon the property if the purchase, sale, lease, and conveyance of those properties as market-rate units satisfy criteria established pursuant to contract in accordance with
subsection a. of this section and does not violate the terms of any other provision of law or requirement, including those governing the use of funds used to make the purchase.

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

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

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

c. Except as provided in subsection d. of this section, whenever the corporation, its contractors, or a municipality purchases an eligible property pursuant to this act from monies deposited in its municipal affordable housing trust fund and dedicates the property for affordable housing, as required by this act, that municipality shall receive two units of credit towards its affordable housing obligation for:

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

(b) each new bedroom unit of affordable housing dedicated for permanent supportive housing other than supportive shared living housing.

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

4d. The total number of additional units of credit beyond the actual units of housing provided pursuant to this act shall not exceed 25 percent of whatever the municipality’s affordable housing obligation may be. No unit of affordable housing shall receive the additional units of credit described in this
act in addition to any other type of additional units of credit that may be available towards a municipality's affordable housing obligation.

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

10. a. For the purposes of this section:

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

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

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

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

c. (1) The corporation or its contractors may use funds transferred pursuant to subsection b of this section in any manner designed to further the purposes of this act, provided that the corporation or its contractors shall use its best efforts to produce very-low, low-, and moderate-income housing within the municipality transferring funds pursuant to this section,
with a deed restriction specifying that the housing unit or units shall remain available to low- and moderate-income households for a period of at least 30 years, and may target the acquisition of eligible property towards such municipalities to further that end.

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

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

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

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

b. The agency may transfer into the "Foreclosure to Affordable Housing Transformation Fund" any amounts held or received by the agency that may be used for the production of affordable housing and that is needed by the corporation or its contractors for the purchase of eligible property. Subject to the provisions of sections 20 through 28 of P.L.1983, c.530 (C.55:14K-20 through C.55:14K-28), the agency is authorized to issue its bonds to fund the activities of the corporation; provided, however, that tax-exempt bonds shall only be issued consistent with the requirements of section 9 of P.L. , c. (C. ) (pending before the Legislature as this bill).
c. In any year in which the proceeds from the receipts of the additional fee collected pursuant to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7) exceeds $75 million, the first $10 million above the $75 million collected shall be transferred into the "Foreclosure to Affordable Housing Transformation Fund" for the purposes of the production of affordable housing.

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

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

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

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

b. Real property shall be presumed vacant and abandoned under this section if there has been no legal resident or tenant for a period of 45 or more consecutive days. Vacancy and abandonment may also be evidenced by the presence of any condition that on its own, or in combination with other conditions present, would lead a reasonable person to believe that the property is vacant and
abandoned, including: (1) the failure to pay taxes; (2) a failure to claim certified mail; (3) the filing of a change of address form; (4) overgrown or dead vegetation; (5) accumulation of flyers, mail, or trash; (6) disconnected utilities; (7) the absence of window coverings or furniture; (8) statements of neighbors, delivery persons, or government employees that are consistent with vacancy and abandonment.

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

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

e. A Motion for Expedited Judgment and Sale filed pursuant to this section shall be deemed to be constructive notice to all persons and entities with an interest in the property that is properly recorded with the county clerk or county registrar prior to the recording of the notice of lis pendens in the foreclosure action, whether or not the person or entity entered an appearance or answered the foreclosure complaint. Pursuant to the New Jersey Rules of Court, any interested party may present a defense to rebut a claim of abandonment that shall be accompanied by an affidavit stating that the defense is not made for the purpose of delaying the relief requested pursuant to the Motion for Expedited Judgment and Sale.3

12. a. For the purposes of this section, "vacant and abandoned" residential property means residential real estate that upon inspection is vacant and not occupied by any mortgagor or owner as a principal residence. Conditions, taken separately or as a whole, that may lead a court to conclude that a residential property is vacant and abandoned include, but are not limited to: 1) with respect to which the mortgagee proves, by clear and convincing evidence, that the mortgaged real estate is vacant and has been abandoned. Real property shall be deemed "vacant and abandoned" if the court finds that the mortgaged property is not occupied by a mortgagor or tenant as evidenced by a lease agreement entered into prior to the service of a notice of intention to commence foreclosure according
to section 4 of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-56), and at least two of the following conditions exist:

1. overgrown or neglected vegetation;
2. the accumulation of newspapers, circulars, flyers or mail on the property;
3. disconnected gas, electric, or water utility services to the property;
4. the accumulation of hazardous, noxious, or unhealthy substances or materials that have accumulated on the property;
5. the accumulation of junk, litter, trash or debris on the property;
6. the absence of window treatments such as blinds, curtains or shutters;
7. the absence of furnishings and personal items;
8. statements by at least two neighbors indicating that the residence is vacant and abandoned;
9. windows or entrances to the property that are boarded up or closed off or multiple window panes that are damaged, broken and unrepaired;
10. doors to the property that are smashed through, broken off, unhinged, or continuously unlocked;
11. reports to law enforcement officials of trespassing, vandalism, or other illegal acts being committed on the property; a risk to the health, safety or welfare of the public, or any adjoining or adjacent property owners, exists due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property;
12. an uncorrected violation of a municipal building, housing, or similar code violation during the preceding year, or an order by municipal authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied;
13. the mortgagor or other authorized party has secured or winterized the property due to the property being deemed vacant and unprotected or in danger of freezing;
14. a written statement issued by any mortgagor expressing the clear intent of all mortgagors to abandon the property;
15. any other reasonable indicia of abandonment.

b. For the purposes of this section, a residential property shall not be considered "vacant and abandoned" if, on the property:
1. there is an unoccupied building which is undergoing construction, renovation, or rehabilitation that is proceeding
diligently to completion, and the building is in compliance with all applicable ordinances, codes, regulations, and statutes;

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

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

c. In addition to the residential mortgage foreclosure procedures set out in the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.), a summary action to foreclose a mortgage debt secured by residential property that is vacant and abandoned may be brought by a lender in the Superior Court. In addition, a lender may, at any time after filing a foreclosure action, file with the court, in accordance with the Rules Governing the Courts of the State of New Jersey, an application to proceed in a summary manner because the residential property that is the subject of the foreclosure action is believed to be "vacant and abandoned"; provided, however, that this section shall not apply to a foreclosure of a timeshare interest secured by a mortgage.

3[(2) (a)] d. (1) In addition to the service of process required by the Rules of Court, a lender shall establish, for the entry of a residential foreclosure judgment under this section, that a process server has made two unsuccessful attempts to serve the mortgagor or occupant at the residential property, which attempts must be at least 72 hours apart, and during different times of the day, either before noon, between noon and 6 P.M., or between 6 P.M. and 10 P.M.

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

3[(c)] (3) Notwithstanding the procedure for serving a notice to cure required by section 6 of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-58), a lender filing a summary action for entry of a residential mortgage foreclosure judgment under this section shall serve the mortgagor with a notice to cure with the order to show cause served as original service of process. When a lender makes application to proceed summarily because a property is vacant and abandoned, a notice to cure shall be served with the order fixing the date for the matter to proceed summarily.

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

(2) A court shall not enter a final residential mortgage foreclosure judgment under this section if the court finds that

(a) the property is not vacant or abandoned, or
(b) the mortgagor or any other defendant has filed an answer, appearance, or other written objection that is not withdrawn and the defenses or objection asserted provide cause to preclude the entry of a final residential mortgage foreclosure judgment.

If a court determines that it will not enter a final residential mortgage foreclosure judgment under this section, it may direct that the foreclosure action may continue on the normal track for residential mortgage foreclosure actions for properties that are not vacant and abandoned and the notice to cure served with the order to show cause or the order fixing that date for the matter to proceed summarily shall be of no effect.

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

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

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

Notwithstanding paragraph (3) of subsection a. of section 12 of P.L.1995 c.244 (C.2A:50-64) to the contrary, if the court makes a finding in the foreclosure judgment that the property is vacant and abandoned, the sheriff shall sell the property within 75 days of the sheriff’s receipt of any writ of execution issued by the court. If it becomes apparent that the sheriff cannot comply with the provisions of this subsection, the foreclosing plaintiff may apply to the court for an order appointing a Special Master or judicial agent to hold the foreclosure sale.

This act shall take effect immediately, except that section 12 shall remain inoperative until the first day of the third or fourth month next following enactment and section 12 shall expire on December 31, 2014.