

ASSEMBLY, No. 3791

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED FEBRUARY 22, 2024

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

SYNOPSIS

The "New Jersey Online Foreclosure Sale Act;" permits online foreclosure sales for real property.

CURRENT VERSION OF TEXT

As introduced.



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1 AN ACT concerning the electronic sale of real property at
2 foreclosure, supplementing chapter 61 of Title 2A of the New
3 Jersey Statutes, and amending N.J.S.2A:61-1 and N.J.S.2A:61-4.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) P.L. , c. (C.) (pending before the
9 Legislature as this bill) shall be known and may be cited as the
10 "New Jersey Online Foreclosure Sale Act."

11
12 2. (New section) Any sheriff or other officer or person
13 authorized or required by statute, court directive, or other law to
14 conduct an electronic, online foreclosure sale of real estate, may
15 conduct the sale in accordance with the following requirements:

16 a. The sheriff or other officer or person may enter into a contract
17 with a vendor to conduct an electronic, online foreclosure sale of
18 real estate, provided that New Jersey law governs the contract and
19 the relationship between vendor and the officer. Any such contract
20 shall detail the sheriff's reasonable requirements with respect to:
21 services; fee amounts; method of charging a fee in the auction,
22 including a seller's or buyer's fee; commission or premium charged
23 to a seller or buyer; recovery maximization; marketing; track record
24 in creating competitive auctions that maximize recovery for the
25 benefit of debtors and lenders; record-keeping requirements; and
26 security requirements.

27 b. The sheriff or other officer or person may enter into a contract
28 with an electronic real property foreclosure service provider
29 through competitive contracting pursuant to P.L.1999, c.440
30 (C.40A:11-4.1 et seq.), without the need for a resolution by the
31 governing body.

32 c. An officer, employee, or independent contractor of the vendor
33 shall not participate in the auction.

34 d. All bids entered during the auction shall be visible to the
35 public online and displayed at the time they are placed. Any
36 maximum bid amounts provided by bidders ahead of the sale shall
37 not be visible to the public or to the sheriff while the auction is in
38 process until the bid is placed.

39 e. A seller's commission or fee charged to a sheriff or other
40 officer or person by a vendor for conducting an electronic real
41 property foreclosure service shall be deemed a reasonable and
42 necessary taxable expense pursuant to N.J.S.22A:2-8. The vendor
43 shall not charge a fee for the public to view properties for sale.

44 f. A vendor conducting electronic, online foreclosures may
45 provide services related to transaction settlement and funds
46 handling. A vendor may charge customary and reasonable fees for
47 funds handling and transfer.

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.

1 g. (1) Notwithstanding any other provision of this section to the
2 contrary, the total of all fees charged by a vendor shall not exceed
3 \$1,000 per action. The \$1,000 limit pursuant to this subsection
4 shall include but not be limited to, all administrative fees charged
5 by a vendor, including a \$50 processing fee, which a vendor shall
6 be permitted to collect at the commencement of the sale as an
7 administrative fee, and a seller's commission or fee pursuant to
8 subsection e. of this section.

9 (2) Any fees charged by a vendor shall be taken directly from
10 the purchaser's deposit with the vendor, and any vendor fees shall
11 not reduce or impact the sheriff's fees pursuant to N.J.S.22A:4-8.

12
13 3. N.J.S.2A:61-1 is amended to read as follows:

14 2A:61-1. a. When any sheriff, coroner, master, executor,
15 administrator, guardian, commissioner, auditor or other officer or
16 person is authorized or required by any public statute or the
17 direction of any court of competent jurisdiction in this State to
18 make sales of real estate, **[he]** that person shall, unless otherwise
19 specially directed or authorized by law, before making the sale, give
20 notice of the time and place of the sale by public advertisement,
21 signed by **[himself]** that person, and set up in the office of the
22 sheriff of the county or counties where the real estate is located and
23 at the premises to be sold, at least **[3]** three weeks before the time
24 appointed for the sale. The notice need not be set up at any other
25 place. The notice of sale shall include either a diagram of the
26 premises or a concise statement indicating the municipality, the tax
27 lot and block and where appropriate, the street and street number,
28 and the dimensions of the premises, as well as the number of feet to
29 the nearest cross street. The notice of sale shall state that the
30 diagram or concise description does not constitute a full legal
31 description of the premises, and shall state where the full legal
32 description can be found.

33 b. (1) Such officer or person shall also cause the notice to be
34 published **[4]** four times, at least once a week, during **[4]** four
35 consecutive weeks, in two newspapers, to be by **[him]** the officer
36 or person designated**[,]** as follows:

37 (a) both printed and published in the county where the real
38 estate to be sold is located, one of which shall be either a newspaper
39 published at the county seat of the county or a newspaper published
40 in the municipality in the county having the largest population
41 according to the latest census**[, or]** ;

42 (b) one printed and published in the county and one circulating
43 in the county, if only one daily newspaper is printed and published
44 in the county**[, or]** ;

45 (c) one published at the county seat and one circulating in the
46 county, if no daily newspaper is published in the county**[,]** ; or

1 (d) both circulating in the county, if no newspapers are printed
2 and published in the county.

3 The first publication shall be at least 21 days prior and the last
4 publication not more than **[8]** eight days prior to the time appointed
5 for the sale of the real estate.

6 Whenever, in the opinion of any such officer or person, the ends
7 of justice shall require it, or the sale being conducted by **[him]** the
8 officer or person will be benefited thereby, the notice of sale may
9 be published in three newspapers instead of two, as required by **[the**
10 **second paragraph]** subsection b. of this section, if there be that
11 number printed and published in the county where the real estate to
12 be sold is located.

13 The officer or person so advertising in the newspapers shall be
14 entitled therefor, in addition to his other fees, to the sum of \$1.50,
15 except where it is otherwise specifically provided.

16 (2) Notwithstanding the provisions of this section, if the sale of
17 property is to be conducted in an online, electronic format, the
18 officer or person shall also publish notice of the time and place of
19 the sale online on the Internet website at which the sale will be
20 conducted electronically.

21 c. If the sale of real estate is conducted electronically online
22 pursuant to section 2 of P.L. , c. (C.) (pending before the
23 Legislature as this bill), then, in addition to the requirements set
24 forth in subsection a. of this section, the notice shall state that the
25 sale is being held by means of an electronic, online auction, and the
26 notice shall include the auction's Internet website address.

27 d. If an online foreclosure auction format is used, the vendor
28 shall provide a non-electronic option for bidders, which may
29 include a paper bid packet.

30 (cf: P.L.1979, c.364, s.1)

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32 4. N.J.S.2A:61-4 is amended to read as follows:

33 2A:61-4. a. Any officer or person **[mentioned]** who is
34 authorized or required in **[section]** N.J.S.2A:61-1 of this title,
35 making a sale of real estate governed by this chapter, shall, at the
36 time and place appointed therefor, between the hours of **[12 and 5**
37 **in the afternoon]** 12:00 p.m. and 5:00 p.m., if requested by any
38 person interested in the sale of the real estate to be sold, read the
39 description of the real estate to be sold by metes and bounds, or, in
40 the absence of such a request, the officer or person making the sale
41 shall announce the street and number, or streets and numbers, of the
42 real estate to be sold, or the block and lot number or numbers by
43 which such real estate is designated on the taxing maps of the
44 municipality or municipalities in which the same is situate, if the
45 same is not identified by a street and number or streets and numbers
46 on such taxing maps, and where there is no street number or lot and
47 block number, the officer or person making the sale may announce

1 such description or designation as to him may be deemed sufficient,
2 and sell such real estate at public vendue to the highest bidder.

3 b. As an alternative to the procedures in subsection a. of this
4 section, any officer or person who is authorized or required in
5 N.J.S.2A:61-1 of this title, making a sale of real estate governed by
6 this chapter, may conduct the sale by means of electronic auction
7 conducted online.

8 (cf: N.J.S.2A:61-4)

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10 5. This act shall take effect on the first day of the second month
11 next following enactment.

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STATEMENT

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16 This bill, known as the "New Jersey Online Foreclosure Sale
17 Act," would permit the sale of foreclosed-upon property in an
18 electronic, online forum that is open to the public. The conducting
19 of real estate sales online could attract more bidders and result in
20 higher purchase prices, which would benefit both creditors and
21 debtors in New Jersey. The bill would not alter the timeline of
22 foreclosure sales and, except as to requiring the sheriff or other
23 officer or person conducting the real estate sale to publish notice of
24 the time and place of the sale online on the Internet website at
25 which the sale will be conducted, would substantially change the
26 notice requirements pertaining to the foreclosure process.

27 The bill authorizes a sheriff, or other officer or person who is
28 authorized or required to sell real estate, to conduct an online
29 foreclosure sale of real estate, and to contract with a vendor for
30 online foreclosure sale services. As the needs and requirements of
31 counties may vary, this bill provides authority to contract for the
32 services and requirements suited to a particular county, which may
33 include, but are not limited to: types of services; fee amounts;
34 method of charging a fee in the auction, including a seller's or
35 buyer's fee, commission or premium charged to a seller or buyer;
36 recovery maximization; record-keeping requirements; and security
37 requirements. Further, the bill would enable a county or
38 municipality to procure electronic, online real property foreclosure
39 services through competitive contracting without the need for a
40 resolution by the governing body.

41 The bill requires that the total of all fees charged by a vendor or
42 entity to the sheriff or other officer or person authorized or required
43 to sell real estate are not to exceed \$1,000 per auction, which would
44 include but not be limited to, a seller's commission or fee and all
45 administrative fees charged by a vendor, including a \$50 processing
46 fee that a vendor is to be permitted to collect at the commencement
47 of the sale. The bill also requires that any fees charged by a vendor
48 are to be taken directly from the purchaser's deposit with the

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1 vendor, and are not to reduce or impact the collection of sheriff's
2 fees. Finally, the bill provides that if an online foreclosure auction
3 format is used, a vendor is required to provide a non-electronic
4 option for bidders, which may include a paper bid packet.

5 This bill would take effect on the first day of the second month
6 following enactment.