

**ASSEMBLY, No. 3588**

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**STATE OF NEW JERSEY**

**212th LEGISLATURE**

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INTRODUCED OCTOBER 23, 2006

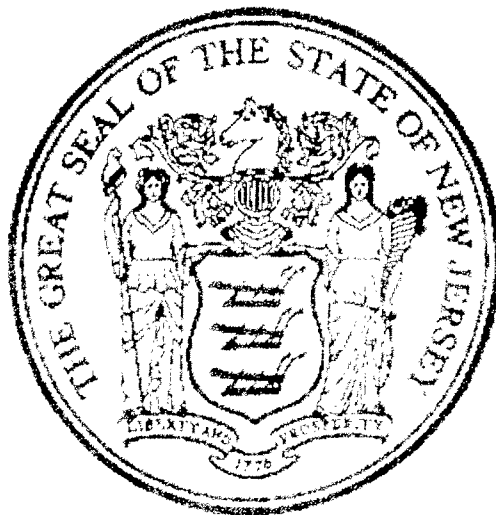
**Sponsored by:**  
**Assemblyman NEIL M. COHEN**  
**District 20 (Union)**

**SYNOPSIS**

Provides statute of limitations for residential mortgage foreclosures.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning certain mortgage foreclosures and  
2 supplementing P.L.1995, c.244 (C.2A:50-53 et seq.).  
3

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

7 1. An action to foreclose a residential mortgage shall not be  
8 commenced following the earliest of:

9 a. Five years from the date fixed for the making of the last  
10 payment or the maturity date set forth in the mortgage or the note,  
11 bond, or other obligation executed contemporaneously with the  
12 mortgage, whether the date is itself set forth or may be calculated  
13 from information contained in the mortgage or note, bond, or other  
14 obligation, except that if the date fixed for the making of the last  
15 payment or the maturity date has been extended by a recorded  
16 instrument, the action to foreclose shall not be commenced after  
17 five years from the extended date under the terms of the recorded  
18 instrument;

19 b. Twenty-five years from the date of recording of the mortgage,  
20 or, if the mortgage is not recorded, 25 years from the date of  
21 execution, so long as the mortgage itself does not provide for a  
22 period of repayment in excess of 20 years; or

23 c. Twenty years from the date on which the debtor defaulted,  
24 which default has not been cured, as to any of the obligations or  
25 covenants contained in the mortgage or in the note, bond, or other  
26 obligation executed contemporaneously with the mortgage, except  
27 that if the date to perform any of the obligations or covenants has  
28 been extended by a recorded instrument, the action to foreclose  
29 shall not be commenced after 20 years from the date on which the  
30 default occurred under the terms of the recorded instrument.  
31

32 2. This act shall take effect immediately.  
33  
34

35 STATEMENT  
36

37 This bill supplements the "Fair Foreclosure Act," P.L.1995,  
38 c.244 (C.2A:50-53 et seq.) by applying a statute of limitations to  
39 residential mortgage foreclosure actions. The bill is intended to  
40 address some of the problems caused by the presence on the record  
41 of residential mortgages which have been paid or which are  
42 otherwise unenforceable. These mortgages constitute clouds on title  
43 which may render real property titles unmarketable and delay real  
44 estate transactions.

45 The bill provides that a foreclosure action must be commenced  
46 by the earliest of: (1) five years from the date of maturity; (2) 25  
47 years from the date of recording or execution, provided that the  
48 mortgage itself does not provide for a period of repayment in excess

1 of 20 years; or (3) 20 years from the date of default by the debtor.  
2 Thus, the bill allows title examiners to determine that a mortgage  
3 which on its face has matured more than five years ago or which  
4 was recorded more than 25 years ago is not a cloud on title because  
5 an action can no longer be brought to foreclose it.

6 The bill also codifies the holding in Security National Partners  
7 Limited Partnership v. Mahler, 336 N.J. Super. 101 (App. Div.  
8 2000), which applied a 20-year statute of limitations to a residential  
9 mortgage foreclosure action based on a default due to nonpayment.  
10 In its decision, the court noted that since there is no statute of  
11 limitations expressly applicable to mortgage foreclosures in these  
12 situations, courts have resorted to drawing analogies to adverse  
13 possession statutes which bar rights of entry onto land after 20  
14 years. This bill would resolve the uncertainties surrounding this  
15 area of law by providing a specific statute of limitations of 20 years  
16 from the date of the default by the debtor.