



## New Jersey Enacts a Community Wealth Preservation Program

*Written By: Mario Serra, New Jersey Managing Attorney*

New Jersey has enacted the Community Wealth Preservation Program legislation, which will expand access for certain buyers to purchase property from sheriff's sales by amending N.J.S.A. 2A:50-64 & N.J.S.A 22A:4-8. This act was signed by the Governor on January 12, 2024 and takes effect immediately.

### N.J.S.A. 2A:50-64

#### Changes Directly Impacting Plaintiff:

- 1) Notice of the upset price for the sale of the property shall be provided at least four (4) weeks prior to the sale and posted on the internet website of the Sheriff. The final upset price shall not differ from the price in the prior notice by more than 3% unless unforeseen advances to protect the property due to vandalism, weather damage or emergency property preservation.
- 2) Prior to the completion of the sale of residential property, the foreclosing plaintiff shall disclose whether the property is vacant, tenant-occupied, or owner-occupied. If the property is vacant, the foreclosing plaintiff shall provide the successful bidder access to the property if the foreclosing plaintiff has such access and may condition access on a representative of the plaintiff accompanying the successful bidder.
- 3) Rights of First Refusal and Second Refusal:
  - a) First Refusal: The foreclosed upon defendant or their next of kin, or tenant (if defendant or next of kin does not participate at the sale) who has secured financing or assets sufficient to meet terms offered by the foreclosing plaintiff or alternative financial institution to purchase the property, shall have the right of first refusal to purchase the property in the amount approved for the opening bid of the sheriff's sale at the time of the sale. The deposit will be 3.5% at sheriff sale.
  - b) Second Refusal: A nonprofit community development corporation shall have a right of second refusal.
- 4) If the foreclosed upon defendant or next of kin decides not to participate in the sheriff's sale or fails to secure financing or assets sufficient to meet the terms offered by the foreclosing plaintiff or an alternate financial institution, the nonprofit community development corporation shall have the right of second refusal to purchase the property in the amount approved for the opening bid of the sheriff's sale at the time of the sale. The deposit will be 3.5% at sheriff sale.

#### **Bidder Using property as Primary Residence for at least eighty-four (84) months:**

The main purpose of this bill is to allow expanded access to a bidder who will occupy the property as their primary residence for at least eighty-four (84) months.

- 1) A bidder can purchase residential property at the sheriff sale by way of financing if the bidder provides documentation that the bidder has been pre-approved by a financial institution.
  - a. Limited to submitting bids no higher than the amount they are pre-approved for.



- b. Required to present current and valid photo identification that substantially conforms to the name and information on the pre-approval forms.
- c. Required to take eight (8) hours of homebuyer education and counseling through HUD, and present a certificate of completion within ninety (90) business days of the date of the sheriff sale.

2) A bidder who meets the requirements shall pay a 3.5% deposit at the sheriff sale.

3) No interest will accrue on the balance of the sale of the property until sixty (60) business days have passed, and the bidder will have an additional thirty (30) days to pay the balance to the sheriff. If the balance is not paid in ninety (90) days, the bidder forfeits the deposit and is responsible for the payment of accrued interest and any fees or penalties as a result, unless the failure to pay the balance is due to the bidder's inability to close a mortgage through no fault of their own, then their deposit is refunded but they are still responsible for accrued interest and any fees or penalties.

4) The deed for the property shall clearly state the property may not be sold for eighty-four (84) months from the date of the sheriff's sale.

5) If the property is not occupied by the bidder for at least eighty-four (84) months, a fine of up to \$100,000 for the first violation and \$500,000 for each subsequent violation shall be assessed by the court.

- a) Penalty shall not be assessed against someone who financed in good faith and has to vacate the property due to death of the bidder or bidder's spouse, disability of the bidder or the bidder's spouse, divorce, military deployment, or foreclosure.

6) The sheriff's office, country administrative agent or affordable housing administrative agent will oversee the occupancy of the property, including the mailing of a questionnaire within 84 months of the sale requiring the bidder to respond to questions and submit documentation evidencing the bidder's continued residence at the property.

**Nonprofit Community Development Corporation:**

1) If the foreclosed upon defendant or their next of kin or tenant cannot secure financing to purchase the residential property, they may request that a nonprofit community development corporation purchase the property. The nonprofit must negotiate with the foreclosed defendant or their next of kin or tenant for an affordable lease schedule that includes an option to purchase the property from the corporation and allows them to occupy the property for a period of time.

2) Nonprofit requirements:

- a) Register its participation with the sheriff before the sale.
- b) Provide the most recent form 1023 filing stating the corporation's mission of community revitalization and the creation or preservation of the affordable housing through the restoration of vacant and abandoned property.
- c) A nonprofit determination letter from the IRS that was made at least 36 months prior to the enactment of this bill.

3) Property must be restored as need be and:



- a) If vacant or abandoned at time of sheriff's sale, sold to a household earning no more than 120% below area median income or rented as an affordable housing unit to a household who earns no more than 100 percent below area median occupied.
- b) If occupied, negotiate with the foreclosed upon defendant or tenant on an affordable lease schedule that will allow them to continue to occupy the property should they desire to do so. If no response is received in one-hundred twenty (120) business days then they can remove the foreclosed defendant or tenant and sell or rent as mentioned in a).

**N.J.S.S. 22A:4-8**

**Creditor/Agent Immunity on Vacant and Abandoned Property:**

A creditor who has commenced a foreclosure action and its agent who is employed and responsible for the care, maintenance, security, and upkeep of a vacant and abandoned property who enters the property peacefully and exercises reasonable care shall be immune from liability for any damage to the property or any person entering the property.

As with every matter in New Jersey or New York which affects our clients, we remain available to assist at any time.

Sincerely,

**Mario Serra**

Managing Attorney – New Jersey

(716) 204-1700 Office

eMail: [mserra@grosspolowy.com](mailto:mserra@grosspolowy.com)