

ASSEMBLY BILL NO. 793
(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. 793 (Second Reprint) with my recommendations for reconsideration.

Assembly Bill No. 793 (Second Reprint), establishing the "Community Wealth Preservation Program," aims to limit corporate homebuying and support affordable homeownership by relaxing procedures for certain individuals and nonprofits to purchase residential properties in foreclosure. The bill would permit prospective owner-occupants who place the winning bid at a sheriff's sale to make a 3.5 percent down payment and secure financing within 90 business days; typically, a winning bidder must put 20 percent down and pay the balance within 14 days. The buyer would be required to occupy the property for 84 months, with compliance during this period of time being monitored and enforced by the resident's county's sheriff's office.

The process for the foreclosed-upon defendant, the defendant's next of kin, and nonprofit community development corporations would be further modified. In addition to putting just 3.5 percent down on the property at the time of sale, these purchasers would have the right of first and second refusal to purchase the property at the amount approved for the opening bid at the sheriff's sale. And the "upset price" for a foreclosed property - defined as the minimum amount of which the property could be sold at the sheriff's sale - would be required to be set at no more than 50 percent of what is owed on the mortgage, plus interest, fees, and other costs. The bill specifies that these new procedures would apply, not just to residential properties at sheriff's sales, but also to sales for real estate-owned residential property, including virtual auctions.

The bill also imposes certain notification requirements on sheriffs' offices; raises sheriff's sale fees in some circumstances; and facilitates access to vacant properties by creditors and successful bidders in sheriff's sales.

I applaud the bill sponsors' dedication to seeking creative solutions to keep homeowners in their homes and communities and to create more opportunities for affordable owner-occupied housing. Recent news stories have drawn attention to the concerning rise in corporate ownership of single-family housing both in New Jersey and nationally. While a healthy amount of corporate investment is important for economic revitalization, left unchecked, corporate homebuying can disrupt the housing market by raising home prices and rents and restricting supply. The data suggests rising corporate homeownership has affected the entire State, but the trend poses a particular risk to low-income residents and Black and Brown communities in New Jersey. Families build wealth thorough homeownership, and racial wealth disparities will persist unless there are real, affordable opportunities for families of color to own homes.

The foreclosure market provides an easy way for investment firms to buy homes in bulk. I thus wholeheartedly support the overarching objectives of this bill and agree that we must act to limit rapid investor-driven homebuying and provide individuals and families with a fair opportunity to compete for the purchase of homes in foreclosure. Nevertheless, I have serious reservations regarding the legality, practicality, and unintended consequences of several of the proposed mechanisms for achieving these goals.

First, allowing the foreclosed-upon defendant, the defendant's next of kin, and nonprofit community development corporations to purchase the property at the opening bid amount in

a foreclosure sale and then capping the plaintiff's "upset price" poses significant problems. Working in tandem, these provisions may operate to force lenders to take large losses on mortgages in default even when the market would enable them to recoup most or all of their investment. In addition to raising legitimate constitutional concerns, such a system could also harm borrowers by restricting access to credit and mortgages in New Jersey, as lenders would be forced to factor these potential losses into their lending decisions. For these reasons, I am recommending that the provision capping the "upset price" be removed from the bill. However, to provide a measure of predictability to potential bidders, I recommend adding a requirement providing that the upset price be set at least two weeks prior to the foreclosure sale, and that notice of that price be posted on the sheriff's office website at that time.

In addition, my revisions remove the provision applying the bill's procedures to sales of real estate-owned residential property. When a foreclosing plaintiff takes ownership of a property free and clear following a sheriff's sale, it then rehabilitates and resells this "real estate-owned" property. Applying procedures meant for sheriff's sales to wholly private transactions is redundant and impractical, as the mechanisms created by the bill will have already been available to prospective buyers at the sheriff's sale. Requiring private parties to repeat them would be time-consuming, costly, and difficult to enforce, while doing little to further the bill's objectives. For similar reasons, I recommend clarifying that the procedures in the bill can be utilized only once when a property is in foreclosure, in order to limit unnecessary delays if subsequent bidders are unable to secure financing in the 90 business day period.

My recommended changes also reduce barriers to participation in the program. For example, the bill limits eligible nonprofit community development corporations to those that have been in existence for three years prior to the bill's enactment. To incentivize the creation of new nonprofits to achieve the bill's goals, I suggest instead limiting eligibility to those nonprofits that have been in existence for three years prior to the foreclosure sale at which the nonprofit intends to bid. I also recommend making additions to the list of exceptions that allow a successful bidder to vacate a property before 84 months have elapsed, so that prospective purchasers are not deterred from bidding. And I recommend amending the bill so that sheriff's offices receive support from their respective county counsels, in addition to other local government entities, in enforcing that requirement.

To be clear, these recommended amendments, along with several technical edits, are fully consistent with the bill's objective of providing prospective owner-occupants, nonprofit community development corporations, and foreclosed-upon defendants and their next of kin a realistic chance at purchasing residential properties in foreclosure auctions. Indeed, many of these recommendations came at the request of the bill's prime sponsor. If enacted, the Community Wealth Preservation Program will complement the many other steps my Administration, often in collaboration with the Legislature, has taken to reduce foreclosures, promote affordable and equitable homeownership, and close racial wealth gaps. Among other things, we have dedicated \$45 million in State funds over the past two budgets to down payment assistance for first time homebuyers; enacted the Foreclosure Prevention Act, P.L.2021, c.34, which created the Foreclosure Intervention Fund to support

homeowner interventions and the rehabilitation and resale of vacant foreclosed homes; jumpstarted that Fund with \$10 million in federal dollars; dedicated over \$325 million in federal funds to provide financial assistance and counseling for homeowners impacted by Coronavirus disease 2019 (COVID-19) pandemic; and codified an expanded Foreclosure Mediation Assistance Program.

In the coming months my Administration will continue to work in collaboration with the Department of Community Affairs, the Housing and Mortgage Finance Agency, the Housing Subcommittee of the Wealth Disparity Task Force, advocates, stakeholders, and the Legislature to develop additional, innovative mechanisms to promote affordable homeownership.

I once again thank the bill's sponsors for their commitment and attention to addressing this important issue. My recommended amendments retain many of the bill's core provisions while removing the problematic elements described above. I am hopeful the Legislature will return this bill to my desk with my recommendations without delay.

Therefore, I herewith return Assembly Bill No. 793 (Second Reprint) and recommend that it be amended as follows:

<u>Page 13, Section 1, Line 3:</u>	After "(4)" insert "(a)"
<u>Page 13, Section 1, Line 3:</u>	Delete "the upset price for the sale of the foreclosed upon" and insert "notice of the final upset price for the sale of a foreclosed residential property be provided by the foreclosing plaintiff to the sheriff's office at least two weeks prior to the sheriff's sale and posted on the Internet website of the sheriff's office and on any other medium used to provide notice of the sheriff's sale. The final upset price provided on the day of the sheriff's sale shall not differ from the final upset price provided in the notice; and (b) Prior to providing the final upset price to the

sheriff's office pursuant to subparagraph (a) of this paragraph, the foreclosing plaintiff or agent of the foreclosing plaintiff shall be prohibited from contacting the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or a nonprofit community development corporation to inquire whether the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or nonprofit community development corporation intends to participate in the sheriff's sale for the foreclosed property or exercise the provisions of P.L. , c. (C.) (pending before the Legislature as this bill)."

- Page 13, Section 1, Lines 4-6: Delete in their entirety
- Page 13, Section 1, Line 7: After "(5)" insert "(a)"
- Page 13, Section 1, Line 7: After "in" insert "subparagraphs (b) and (c) of"
- Page 13, Section 1, Line 7: Delete "with respect"
- Page 13, Section 1, Line 8: Delete in its entirety
- Page 13, Section 1, Line 9: Delete "occupancy requirement"
- Page 13, Section 1, Line 13: After "sale." insert "(b)"
- Page 13, Section 1, Line 13: After "which the" insert "successful"
- Page 13, Section 1, Line 15: After "months," insert "or in which the successful bidder is the foreclosed upon defendant or the next of kin of the foreclosed upon defendant of a residential property,"
- Page 13, Section 1, Line 22: After "sale." insert "(c) In the case of residential property in which the successful bidder is a nonprofit community development corporation that satisfies the requirements of subsection j. of this section and fulfills or will fulfill the conditions set forth in subsections i. or k. of this section, or both, the successful bidder shall pay a 3.5 percent deposit by cash, certified or cashier's check, or by wire transfer, made payable to the sheriff of the county in which the sale is conducted or to the Special

Master, if the sheriff cannot comply with the provisions of subparagraph (a) of paragraph (3) of this subsection, immediately upon the conclusion of the foreclosure sale. (d)"

- Page 13, Section 1, Line 22: Delete "this" and insert "the applicable"
- Page 13, Section 1, Line 23: After "requirement" insert "of this paragraph"
- Page 18, Section 1, Line 11: Delete "In" and insert "Notwithstanding the provisions of paragraph (1) of this subsection, in"
- Page 18, Section 1, Line 11: After "which the" insert "successful"
- Page 18, Section 1, Line 11: Delete "shall"
- Page 18, Section 1, Line 12: Delete in its entirety
- Page 18, Section 1, Line 13: Delete "of at least 84 months" and insert "is permitted to pay a 3.5 percent deposit upon the conclusion of the foreclosure sale pursuant to the provisions of this section"
- Page 18, Section 1, Line 26: After "void." insert "In addition, if a successful bidder fails to fulfill the balance within this 90 business day period, any subsequent foreclosure sale involving the same residential property and the same foreclosing plaintiff and foreclosed upon defendant shall be subject to the procedures set forth in subparagraph (a) of paragraph (4) of subsection a. of this section and there shall be no right of first or second refusal pursuant to subsection m. of this section."
- Page 18, Section 1, Line 28: After "disclose" insert ", if known,"
- Page 18, Section 1, Line 30: Delete "financial institution" and insert "foreclosing plaintiff"
- Page 18, Section 1, Line 31: After "property" insert "if the foreclosing plaintiff has such access and may condition access by the successful bidder on being accompanied by a representative of the foreclosing plaintiff"

- Page 18, Section 1, Lines 32-33: Delete ", including, but not limited to, next of kin of the foreclosed upon defendant," and insert "who is permitted to pay a 3.5 percent deposit upon the conclusion of the foreclosure sale pursuant to the provisions of this section"
- Page 18, Section 1, Line 39: Delete "the" and insert "a residential"
- Page 18, Section 1, Line 40: After "who" insert "is permitted to pay a 3.5 percent deposit upon the conclusion of the foreclosure sale pursuant to the provisions of this section and"
- Page 18, Section 1, Line 44: After "(b)" insert "if the bidder is an individual,"
- Page 18, Section 1, Line 48: After "kin" insert "where the foreclosed upon defendant is an individual and not a corporate entity"
- Page 18, Section 1, Line 48: Delete "a" and insert "an individual"
- Page 19, Section 1, Line 6: After "sale" insert ", except pursuant to the exceptions permitting a successful bidder to vacate the property prior to residing in the property for 84 months in paragraph (3) of this paragraph"
- Page 19, Section 1, Line 7: Delete "A" and insert "With exception to the foreclosed upon defendant or the foreclosed upon defendant's next of kin where the foreclosed upon defendant is an individual and not a corporate entity, a"
- Page 19, Section 1, Line 7: After "successful" insert "individual"
- Page 19, Section 1, Line 15: After "bidder or" insert "a member of"
- Page 19, Section 1, Line 15: Delete "spouse" and insert "household"
- Page 19, Section 1, Line 15: After "deployment," insert "change in employment of the bidder or a member of the bidder's household that results in a reduction in income or a need to move out-of-state, change in the number of permanent residents of the household, need to move to care for a family member for a period of at least 6 months,"

- Page 19, Section 1, Line 18: After "matters" insert ", and the occupancy requirement shall be extinguished"
- Page 19, Section 1, Line 19: Delete "that is financed" and insert "for which the successful bidder is subject to the occupancy requirement"
- Page 19, Section 1, Line 20: After "to" insert "paragraphs (2) and (3) of"
- Page 19, Section 1, Line 20: Before "sheriff's" insert "appropriate county clerk's office where the deed for the property is filed and located, the Registrar of Deeds and Mortgages, or the"
- Page 19, Section 1, Line 25: Delete "agency" and insert "appropriate county clerk's office where the deed for the property is filed and located, the Registrar of Deeds and Mortgages, or the sheriff's office"
- Page 19, Section 1, Line 26: Delete "agency" and insert "appropriate county clerk's office where the deed for the property is filed and located, the Registrar of Deeds and Mortgages, or the sheriff's office"
- Page 19, Section 1, Line 26: After "shall" insert "refer the matter to the county counsel's office to"
- Page 19, Section 1, Lines 35-36: Delete "within 90 business days of the date that the sheriff's sale shall occur" and insert "'or proof of enrollment in that program to the sheriff"
- Page 19, Section 1, Line 42: Delete "program" and insert "Community Wealth Preservation Program"
- Page 20, Section 1, Line 23: After "property" insert "and pay a 3.5 percent deposit as permitted by this section"
- Page 20, Section 1, Line 30: Before "community" delete "of" and insert "includes"
- Page 20, Section 1, Line 35: Delete "enactment of P.L. , c. (C.) (pending before the" and insert "date of the sheriff's sale."
- Page 20, Section 1, Line 36: Delete in its entirety
- Page 20, Section 1, Line 37: Delete ",,"
- Page 20, Section 1, Lines 38-39: Delete in their entirety

- Page 20, Section 1, Line 41: After "sale" insert "and satisfies the conditions set forth in subsection j. of this section"
- Page 20, Section 1, Line 47: After "by" insert "either a tenant or"
- Page 20, Section 1, Line 48: Delete "or a tenant" and insert "with whom the nonprofit community development corporation does not already have an agreement pursuant to subsection i. of this section"
- Page 21, Section 1, Line 1: After "negotiate" insert "in good faith"
- Page 21, Section 1, Line 14: After "property" insert "and satisfies the conditions set forth in subsection j. of this section"
- Page 21, Section 1, Line 21: After "income." insert "(3) A nonprofit community development corporation that successfully bids on and completes the purchase of a residential property in a sheriff's sale and satisfies the conditions set forth in subsection j. of this section and fails to meet the requirements of this subsection shall be assessed a fine by a court of competent jurisdiction up to \$100,000 for the first violation, and \$500,000 thereafter for each subsequent violation. If the sheriff's office determines based upon its oversight that there has been a violation of this subsection, the sheriff's office shall bring an action in a court of competent jurisdiction so that the sheriff's office can pursue enforcement of penalties for the violation."
- Page 21, Section 1, Lines 22-25: Delete in their entirety
- Page 21, Section 1, Line 26: Delete "m." and insert "l."
- Page 21, Section 1, Line 41: Delete "for the workforce"
- Page 21, Section 1, Line 43: After "the" insert "appropriate county clerk's office where the deed for the property is filed and located, the Registrar of Deeds and Mortgages, the"
- Page 21, Section 1, Line 44: After "office," insert "or the county counsel's office,"

- Page 21, Section 1, Line 45: Delete "n." and insert "m."
- Page 21, Section 1, Line 45: Delete "If" and insert "In the case of a foreclosed residential property where the foreclosed upon defendant is an individual and not a corporate entity, if"
- Page 22, Section 1, Line 4: Delete "Upon conclusion of the sale" and insert "Such right shall be deemed exercised if, prior to the opening of the bidding on the foreclosed property"
- Page 22, Section 1, Line 5: Delete "shall pay" and insert "pays"
- Page 22, Section 1, Line 11: Delete "A" and insert "(a) In the case of a foreclosed residential property, a"
- Page 22, Section 1, Line 15: Delete "l." and insert "m."
- Page 22, Section 1, Lines 22-23: Delete "Upon conclusion of the sale" and insert "Such right shall be deemed exercised if, prior to the opening of the bidding on the foreclosed property"
- Page 22, Section 1, Line 23: Delete "shall pay" and insert "pays"
- Page 22, Section 1, Line 28: After "section." insert "(b) A nonprofit community development shall only have a right of second refusal to purchase the property if it satisfies the requirements set forth in subsection j. of this section and fulfills the conditions set forth in subsections i. or k. of this section, or both. If more than one nonprofit community development corporation seeks to exercise the right of second refusal, the right shall belong in the first instance to a nonprofit community development corporation that fulfills the conditions set forth in subsection i. of this section. If no such nonprofit community development corporation exists, priority shall belong to the nonprofit community development corporation that first registers its participation in the foreclosure sale. (3) If an individual or nonprofit community development corporation exercises a right of first or second refusal

pursuant to this subsection, the foreclosure sale shall be deemed concluded and the person or corporation shall be deemed to be the successful bidder and shall be subject to the applicable provisions and procedures of this section."

Page 22, Section 1, Line 29:

Delete "o." and insert "n."

Page 22, Section 1, Line 32:

After "Development." insert "'Community Wealth Preservation Program' means the program created by P.L. , c. (C.) (pending before the Legislature as this bill) to assist prospective owner-occupants, nonprofit community development corporations, foreclosed upon defendants, and the next of kin of foreclosed upon defendants in purchasing and financing foreclosed upon residential properties in sheriff's sales with an initial 3.5 percent deposit."

Page 22, Section 1, Lines 34-35:

Delete ", incorporated at least 36 months prior to the enactment of this bill,"

Page 22, Section 1, Line 35:

Delete "centers around" and insert "includes"

Page 22, Section 1, Lines 40-42:

Delete in their entirety

Page 22, Section 1, Line 46:

After "purposes" insert ", and shall not include real property containing more than four dwelling units"

Page 23, Section 1, Line 2:

After "sale" insert "as set by the foreclosing plaintiff"

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor