ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5664

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2023

The Assembly Commerce and Economic Development Committee reports favorably and with committee amendments Assembly Bill No. 5664.

As amended, this bill establishes the "Community Wealth Preservation Program" and expands access for certain buyers to purchase property from sheriff's sales.

Under the bill, a defendant in a foreclosure proceeding, next of kin of the foreclosed upon defendant, tenant of the foreclosed upon defendant, nonprofit community development corporation, or bidder who shall occupy the property for at least 84 months, will have up to 90 business days to complete the sale of a foreclosing property, with no interest accruing on the balance of the sale for 60 business days following the sale. If the successful bidder does not pay the balance within this 90 business day period, the bidder would forfeit the deposit on the property and be responsible for the payment of accrued interest and fees or penalties incurred as a result of the sale being void, unless the failure to fulfill the balance is due to the bidder's inability to close a mortgage through no fault of the bidder's own.

Under the bill, a foreclosed upon defendant, next of kin of the foreclosed upon defendant, tenant of the foreclosed upon defendant, nonprofit community development corporation, or bidder may purchase property in a sheriff's sale by way of financing if the bidder provides documentation that the bidder has been pre-approved by a financial institution for financing the property. A bidder, other than the foreclosed upon defendant, the foreclosed upon defendant's next of kin, or nonprofit community development corporation may only use the financing option if the property will be the bidder's primary residence.

In the case of a foreclosed residential property where the foreclosed upon defendant is an individual and not a corporate entity, if the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant of the foreclosed upon property has secured financing or assets sufficient to meet terms offered by the foreclosing plaintiff or an alternative financial institution to purchase the property,

the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant will have the right of first refusal to purchase the property for the original upset price listed in the notice provided by the foreclosing plaintiff before the time of sale. The right of first refusal will only be made available to the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant for the initial sale of the foreclosed upon property, unless the sale is delayed or postponed, upon which the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant will retain the right of first refusal for the rescheduled date of sale of the foreclosed upon property. Such right will be deemed exercised if, prior to the opening of the bidding on the foreclosed property, the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant pays a 3.5 percent deposit with the rest of the balance due within 90 business days 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.

If the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant of the foreclosed upon property fails to secure financing or assets sufficient to meet the terms offered by the foreclosing plaintiff or an alternative financial institution to purchase the residential property, the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant may request that a nonprofit community development corporation purchase the property. If the nonprofit community development corporation agrees in writing to purchase the property from the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant, the corporation will have a right of second refusal to purchase the property which is subordinate to the first right of refusal provided to a foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant. If the foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant decides not to participate in the sheriff's sale, enter into an agreement with the corporation, or fail to secure financing or assets sufficient to meet the terms offered by the foreclosing plaintiff or an alternative financial institution to purchase the property, a nonprofit community development corporation will 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 right shall be deemed exercised if, prior to the opening of the bidding on the foreclosed property, the corporation pays a 3.5 percent deposit with the rest of the balance due within 90 business days 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 conduct the sale. A nonprofit community development corporation will only have a right of second refusal to purchase the property if it satisfies certain conditions set forth within the bill.

The bill additionally provides that, on sales conducted pursuant to the Community Wealth Preservation Program, a sheriff will be entitled

to charge six percent on sales made by virtue of an execution. However, the bill provides that if a sale conducted pursuant to the Community Wealth Preservation Program results in the property reverting back to the foreclosing plaintiff, a sheriff will only be entitled to charge a flat fee of $150.

For other sales made by virtue of an execution, the bill increases the fee to be charged by virtue of an execution sale from 4 to 5 percent, or 6 percent to 10 percent, depending on whether the sum involved is greater than or less than $5,000, respectively. The bill also increases the minimum fee to be charged by virtue of an execution sale from $50 to $150.

Finally, the bill provides creditors and creditors' agents with immunity from liability for damages to certain vacant and abandoned property so long as reasonable care is exercised, and clarifies that bidders are not authorized to enter the property prior to the time of sale.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) allow the upset price to be adjusted, with conditions, from the time a foreclosing plaintiff provides notice up to the date of sale;

(2) establish that a foreclosed upon defendant, next of kin of the foreclosed upon defendant, or tenant will have a right of first refusal to purchase the property for the original upset price listed in the notice provided by the foreclosing plaintiff;

(3) clarify that a right of first refusal will not extend to sales of real estate-owned property;

(4) clarify the fee structure for sheriffs on sales made by virtue of an execution and establish a flat fee for sales that revert back to the foreclosing plaintiff;

(5) require the language used for the envelope the notice is being delivered comply with the federal "Fair Debt Collection Practice Act";

(6) remove requirement that a financial institution enforce a successful bidder's 84 occupancy requirement; and

(7) make certain conforming and technical changes.