The Creditor Responsibility Law¹ (N.J.S.A. 46:10B-51) is the common name given to the provisions of the New Jersey Foreclosure Fairness Act of 2009 which set forth the responsibilities of creditors in foreclosure proceedings. This law gives local governments a valuable tool to ensure that properties in foreclosure will be maintained, and will not blight their neighborhoods and drain local government resources. This guide summarizes the provisions of the Creditor Responsibility Law enacted by the legislature in 2010, with updates to reflect the 2014 amendments to the law.

Why do we need the Creditor Responsibility Law?

In New Jersey, the process from initial foreclosure filing to sheriff’s sale is a long one, often taking two years or longer. During that period it is not unusual for owners to abandon their properties. In the case of single family homeowners, the house is left empty. In the case of multifamily properties, if the owner walks away, the tenants remain in place without the ability or authority to maintain their buildings. Until the Creditor Responsibility Law was passed, with the owner unavailable and unwilling to take responsibility, local governments had no one to hold responsible for these problem buildings. The building could sit empty, or tenants could find themselves without heat or other essential services, for months or even years.

The Creditor Responsibility Law changed this situation. Now, if a property becomes vacant during the course of foreclosure proceedings, or if the owner of rental property abandons a building with tenants in place during foreclosure proceedings, the local government can require the entity initiating the foreclosure (the creditor) to take responsibility for the property. For purposes of maintaining property abandoned by its owner, the creditor is deemed to have responsibilities that parallel those of the entity that holds title to the property.

How Does the Creditor Responsibility Law Work?

Creditors must notify the municipal clerk each time they initiate a foreclosure proceeding on a residential property within 10 days after serving the summons and complaint.²

That way, each municipality can create a data base of all residential properties in foreclosure in the community. The notice must include contact information for an in-state entity that will accept service on behalf of the creditor, and for an entity responsible for receiving complaints about the property.

If at any point after the foreclosure proceeding has begun the property is vacated and abandoned by its owner, responsibility devolves to the creditor.

At that point, the creditor must provide full contact information for an in-state entity responsible for care, maintenance and security of the exterior of the property.

If there is a nuisance condition or a code violation with respect to the exterior of the property,³ the appropriate municipal official may notify the creditor, who must “abate the nuisance or correct the violation in the same manner and to the same extent as the title owner of the property, to such standard or specification as may be required by State law or municipal ordinance.”
The municipal official must specify the conditions that gave rise to the notice, and give the creditor 30 days to remedy the violations or 10 days if the violation presents an imminent threat to public health and safety.

If the creditor fails to do so, the municipality can impose any fine or other penalty against the creditor that it can impose on an owner. 4

1. If the municipality issues an order to a creditor to fix a violation or abate a nuisance, and the creditor fails to do so and the municipality has to spend funds to correct the problem, the municipality can not only put a lien on the property but can go after any other asset of the creditor to obtain repayment, just as if the creditor were the title holder under existing law. 5

**Making the Creditor Responsibility Law Work**

(i) Adopting a municipal ordinance

While N.J.S.A. 46:10B–51 does not require the enactment of a municipal ordinance in order to enforce its provisions, P.L. 2014, c.35, which amended both that section and added a new subsection 2.12s to N.J.S.A. 40:48 (the umbrella state statute dealing with code enforcement), appears to imply that adoption of a municipal ordinance may be required in order to effectively enforce the law. 6 Despite the ambiguity created by those amendments, it appears to be in any municipality’s interest to adopt an ordinance embodying the provisions of the Credit Responsibility Law.

Such an ordinance should basically track the language of Section 1 of P.L.2014, c.35 by designating the municipal officer responsible for enforcement of the law, and specifying the procedures for addressing violations of the law as set forth in the statute. A model ordinance is attached to this summary.

(ii) Using the information provided by creditors

Municipalities can set up property databases for information and add notices to the database as they are received to keep the system up to date. These databases should be housed on the municipality’s website and be user-friendly and easily accessible.

Periodic mailings can be sent to community-based organizations with a list of the properties. Then, as organizations and individuals see that particular properties are empty or neglected, they can report those properties to the city, which can then follow up and issue citations to the creditor listed on the notice.

Using the notices, municipalities can identify which creditors are foreclosing on a large number of properties in the municipality, and reach out to those creditors to get them to undertake a proactive property maintenance program.

By mapping the properties in the notices, they can find out where they have clusters of properties in foreclosure, and work with local CDCs or civic associations to mount efforts to maintain or gain control of those properties.
ENDNOTES

1. N.J.S.A. 46:10B-51 et seq. initially enacted as Chapter 127, Public Laws of 2008; amended by Chapter 296, Public Laws of 2009 and Chapter 5, Public Laws of 2014. The term ‘creditor responsibility law’ is used here for descriptive purposes, and is not an official designation of the legislation.

2. In addition, all entities that have initiated foreclosure proceedings in New Jersey courts must give the municipal clerk of each municipality in which they have properties involved in foreclosure a complete list of those properties no later than February 17, 2010.

3. It is worth noting that the initial Creditor Responsibility Law enacted in 2010 did not limit the creditor’s obligation to the exterior of the property, but recognized the importance of maintaining the property as a whole, so that it would more readily be put back into productive use. The 2014 amendments limited the scope of municipal enforcement to the exterior of the property, which although not defined, can be assumed to mean the exterior surfaces of the building (visible foundations, walls, doors and windows, and roof, as well as ornamental features), and the grounds (yard, sidewalks, driveways, fencing and plantings).

4. The actual penalties, which can include fines, community service, or a jail sentence of not more than 90 days, must be specified by the municipal code and fall within the bounds established by state law under N.J.S.A.40:49-5.

5. N.J.S.A. 55:19-100 provides that “with respect to any lien placed against any real property pursuant to the provisions of section 1 or section 3 of P.L.1942, c.112 (C.40:48-2.3 or C.40:48-2.5) or section 1 of P.L.1989, c.91 (C.40:48-2.3a) or any receiver’s lien pursuant to P.L.2003, c.295 (C.2A:42-114 et al.), the municipality shall have recourse with respect to the lien against any asset of the owner of the property if an individual, against any asset of any partner if a partnership, and against any asset of any owner of a 10% interest or greater if the owner is any other business organization or entity recognized pursuant to law.” The Creditor Responsibility Law spells out that this recourse is available to municipalities with respect to creditors as well as owners.

6. The 2014 amendments embodied in P.L.2014, c.35, do not appear to have made any attempt to ensure that the changes in that bill to N.J.S.A.40:48 and those made to N.J.S.A.46:10B-51 all conform to one another. While the language of the former specifies that an ordinance must be adopted in order to impose certain penalties on violators of the obligations imposed by the latter, the language of the latter does not.
a. (1) A creditor serving a summons and complaint in an action to foreclose on a mortgage on residential property in this State shall, within 10 days of serving the summons and complaint, notify the municipal clerk of the municipality in which the property is located that a summons and complaint in an action to foreclose a mortgage has been filed against the subject property. The notice shall contain the name and contact information for the representative of the creditor who is responsible for receiving complaints of property maintenance and code violations, may contain information about more than one property, and shall be provided by mail or electronic communication, at the discretion of the municipal clerk. In the event the creditor that has served a summons and complaint in an action to foreclosure on a residential property is located out-of-State, the notice shall also contain the full name and contact information of an in-State representative or agent who shall be responsible for the care, maintenance, security and upkeep of the exterior of the property if it becomes vacant and abandoned. If the municipality has appointed a public officer pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the municipal clerk shall forward a copy of the notice to the public officer or shall otherwise provide it to any other local official responsible for administration of any property maintenance or public nuisance code.

In the event that the property being foreclosed is an affordable unit pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), then the creditor shall identify that the property is subject to the "Fair Housing Act."

The notice shall also include the street address, lot and block number of the property, and the full name and contact information of an individual located within the State who is authorized to accept service on behalf of the creditor. The notice shall be provided to the municipal clerk within 10 days of service of a summons and complaint in an action to foreclose a mortgage against the subject property.

(2) Within 30 days following the effective date of P.L. 2009 c.296 (C.2A:50-69 et al.), any creditor that has initiated a foreclosure proceeding on any residential property which is pending in Superior Court shall provide to the municipal clerk of the municipality in which the property is located, a listing of all residential properties in the municipality for which the creditor has foreclosure actions pending by street address and lot and block number. If the municipality has appointed a public officer pursuant to P.L.1942, c.112 (C.40:48-2.3-15 et seq.), the municipal clerk shall forward a copy of the notice to the public officer, or shall otherwise provide it to any other local official responsible for administration of any property maintenance or public nuisance code.

b. If the owner of a residential property vacates or abandons any property on which a foreclosure proceeding has been initiated or if a residential property becomes vacant at any point subsequent to the creditor’s filing the summons and complaint in an action to foreclose a mortgage against the subject property, but prior to vesting of title in the creditor or any other third party, and the exterior
of the property is found to be a nuisance or in violation of any applicable State or local code, the local public officer, municipal clerk, or other authorized municipal official shall notify the creditor or the representative or agent of an out-of-State creditor, as applicable, which shall have the responsibility to abate the nuisance or correct the violation in the same manner and to the same extent as the title owner of the property, to such standard or specification as may be required by State law or municipal ordinance. The municipality shall include a description of the conditions that gave rise to the violation with the notice of violation and shall provide a period of not less than 30 days from the creditor’s receipt of the notice for the creditor to remedy the violation. If the creditor fails to remedy the violation within that time period, the municipality may impose penalties allowed for the violation of municipal ordinances pursuant to R.S.40:49-5.

c. (1) If the municipality expends public funds in order to abate a nuisance or correct a violation on a residential property in situations in which the creditor was given notice pursuant to the provisions of subsection b. of this section but failed to abate the nuisance or correct the violation as directed, the municipality shall have the same recourse against the creditor as it would have against the title owner of the property, including but not limited to the recourse provided under section 42 of P.L.2003, c.210 (C.55:19-100).

(2) Any out-of-State creditor that has served a summons and complaint in an action to foreclosure on a residential property, that subsequently becomes vacant, shall designate an in-State representative who shall be responsible for the care, maintenance, and upkeep of the vacant property. The out-of-State creditor shall inform the public officer of the municipality in which the property is located, or, if the municipality has not designated a public officer pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.) the municipal clerk, of the in-State representative responsible for maintenance of the property.