S T A T E O F N E W Y O R K

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I N A S S E M B L Y

February 19, 2009

Introduced by M. of A. V. LOPEZ, AUBRY, SWEENEY, HOYT, ENGLEBRIGHT, FIELDS, WRIGHT, RAMOS, CAHILL, KAVANAGH, ROSENTHAL -- Multi-Sponsored by -- M. of A. BING, CLARK, COOK, CYMBROWITZ, GLICK, MARKEY, MILLMAN, PHEFFER -- read once and referred to the Committee on Housing

AN ACT to amend the public authorities law, in relation to the powers of the state of New York mortgage agency

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 5 of section 2402 of the public authorities law, as amended by chapter 353 of the laws of 1984, is amended to read as follows:

(5) "Mortgage". A loan owed to a bank secured by a first lien on a fee simple or leasehold estate in real property located in the state and improved by a residential structure, whether or not insured or guaranteed by the United States of America or any agency thereof. THE TERM "MORTGAGE" SHALL ALSO INCLUDE A LOAN OWED TO A BANK SECURED BY A SECOND LIEN ON A FEE SIMPLE OR LEASEHOLD ESTATE IN REAL PROPERTY LOCATED IN THE STATE AND IMPROVED BY A RESIDENTIAL STRUCTURE, WHETHER OR NOT INSURED OR GUARANTEED BY THE UNITED STATES OF AMERICA OR ANY AGENCY THEREOF, PROVIDED, HOWEVER, THAT SUCH SECOND LIEN: (A) SECURES A LOAN PURCHASED BY THE AGENCY, AND (B) IS MADE AT THE SAME TIME AS A FIRST LIEN SECURING A LOAN PURCHASED BY THE AGENCY PURSUANT TO ITS PROGRAMS OR IS MADE AT THE SAME TIME AS A NEW HOUSING LOAN PURCHASED BY THE AGENCY PURSUANT TO SECTION TWENTY-FOUR HUNDRED FIVE-C OF THIS PART, PROVIDED THAT, IN THE CASE OF ANY SECOND LIEN, THE MORTGAGOR SHALL BE OBLIGATED TO CONTRIBUTE FROM HIS OR HER OWN VERIFIABLE FUNDS AN AMOUNT NOT LESS THAN SUCH PERCENTAGE AS THE AGENCY SHALL DETERMINE, OF THE LOWER OF THE PURCHASE PRICE OR APPRAISED VALUE OF THE PROPERTY SUBJECT TO THE FIRST LIEN. "Real property" as used in this subdivision shall include air rights.

For the purposes of this title and of section one hundred ninety and subsection [a] (A) of section one thousand four hundred fifty-six of the tax law, "mortgage" shall include housing loans as defined below. Except for the purposes of subdivision seven of section two thousand four hundred five and subdivision eight of section two thousand four hundred

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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five-b of this [title] PART, "mortgage" shall also include a loan owed to a bank by an individual borrower incurred for the purpose of financing the purchase of certificates of stock or other evidence of ownership of an interest in, and a proprietary lease from, a cooperative housing corporation formed for the purpose of the cooperative ownership of residential real estate in the state, secured by an assignment or transfer of the benefits of such cooperative ownership, and containing such terms and conditions as the agency may approve.

S 2. Subdivision 5 of section 2402 of the public authorities law, as separately amended by chapters 376 and 1023 of the laws of 1971, is amended to read as follows:

(5) "Mortgage". A loan owed to a bank secured by a first lien on a fee simple or leasehold estate in real property located in the state and improved by a residential structure, whether or not insured or guaranteed by the United States of America or any agency thereof. THE TERM "MORTGAGE" SHALL ALSO INCLUDE A LOAN OWED TO A BANK SECURED BY A SECOND LIEN ON A FEE SIMPLE OR LEASEHOLD ESTATE IN REAL PROPERTY LOCATED IN THE STATE AND IMPROVED BY A RESIDENTIAL STRUCTURE, WHETHER OR NOT INSURED OR GUARANTEED BY THE UNITED STATES OF AMERICA OR ANY AGENCY THEREOF, PROVIDED, HOWEVER, THAT SUCH SECOND LIEN: (A) SECURES A LOAN PURCHASED BY THE AGENCY, AND (B) IS MADE AT THE SAME TIME AS A FIRST LIEN SECURING A LOAN PURCHASED BY THE AGENCY PURSUANT TO ITS PROGRAMS OR IS MADE AT THE SAME TIME AS A NEW HOUSING LOAN PURCHASED BY THE AGENCY PURSUANT TO SECTION TWENTY-FOUR HUNDRED FIVE-C OF THIS PART, PROVIDED THAT, IN THE CASE OF ANY SECOND LIEN, THE MORTGAGOR SHALL BE OBLIGATED TO CONTRIBUTE FROM HIS OR HER OWN VERIFIABLE FUNDS AN AMOUNT NOT LESS THAN SUCH PERCENTAGE AS THE AGENCY SHALL DETERMINE, OF THE LOWER OF THE PURCHASE PRICE OR APPRAISED VALUE OF THE PROPERTY SUBJECT TO THE FIRST LIEN. "Real property" as used in this subdivision shall include air rights.

Except for the purposes of subdivision seven of section two thousand four hundred five OF THIS PART, "mortgage" shall also include a loan owed to a bank by an individual borrower incurred for the purpose of financing the purchase of certificates of stock or other evidence of ownership of an interest in, and a proprietary lease from, a cooperative housing corporation formed for the purpose of the cooperative ownership of residential real estate in the state, secured by an assignment or transfer of the benefits of such cooperative ownership, and containing such terms and conditions as the agency may approve.

S 3. Paragraph (e) of subdivision 7 of section 2405 of the public authorities law, as amended by chapter 915 of the laws of 1982, is amended to read as follows:

(e) the mortgage constitutes a valid first lien OR SECOND LIEN on the real property described to the agency IN ACCORDANCE WITH SUBDIVISION FIVE OF SECTION TWENTY-FOUR HUNDRED TWO OF THIS PART subject only to real property taxes not yet due, installments of assessments not yet due, and easements and restrictions of record which do not adversely affect, to a material degree, the use or value of the real property or improvements thereon;

S 4. Paragraph (e) of subdivision 7 of section 2405 of the public authorities law, as amended by chapter 1023 of the laws of 1971, is amended to read as follows:

(e) the mortgage constitutes a valid first lien OR SECOND LIEN on the real property described to the agency IN ACCORDANCE WITH SUBDIVISION FIVE OF SECTION TWENTY-FOUR HUNDRED TWO OF THIS PART subject only to real property taxes not yet due, installments of assessments not yet due, and easements and restrictions of record which do not adversely

affect, to a material degree, the use or value of the real property or improvements thereon;

S 5. Paragraph (f) of subdivision 8 of section 2405-b of the public authorities law, as added by chapter 915 of the laws of 1982, is amended to read as follows:

(f) the mortgage constitutes a valid first lien OR SECOND LIEN on the real property described to the agency IN ACCORDANCE WITH SUBDIVISION FIVE OF SECTION TWENTY-FOUR HUNDRED TWO OF THIS PART subject only to real property taxes not yet due, installments of assessments not yet due, and easements and restrictions of record which do not adversely affect, to a material degree, the use or value [or] OF the real property or improvements thereon;

S 6. Subdivision 4 of section 2428 of the public authorities law, as amended by chapter 555 of the laws of 1989, is amended to read as follows:

4. To be eligible for insurance under this article, a mortgage loan shall (a) (i) be a first lien of the kind which is commonly given to secure advances on, or the unpaid purchase price of, real property under the laws of the state together with any credit instrument secured thereby, PROVIDED, HOWEVER, THAT A MORTGAGE LOAN MAY BE A SECOND LIEN IF SUCH MORTGAGE LOAN WAS PURCHASED BY THE AGENCY or (ii) be secured by an assignment or transfer of stock certificates or other evidence of ownership interest of the borrower in, and a proprietary lease from, a corporation formed for the purpose of the cooperative ownership of residential real estate in the state; (b) secure a rehabilitation or preservation loan on real property held in fee simple or on a leasehold under a proprietary lease or a lease having a period of years to run at the time the mortgage is insured under this article of at least twenty per centum greater duration than the remaining term of the mortgage; (c) contain terms with respect to prepayment, insurance, repairs, alterations, payment of taxes, special assessments, service [charge] CHARGES, default reserves, delinquency charges, foreclosure proceedings, additional and secondary liens, and such other matters as the agency may in its discretion prescribe; (d) be accompanied by certificates, issued by such officers of the mortgage financial institutions, independent appraisers or other persons as the agency may require, certifying that (i) where appropriate, the annual income to be derived from the property equals not less than one hundred and five per centum of the annual charges and expenses, including provision for reserves, satisfactory to the agency, for the amortization of subordinate mortgage loans over the remaining terms of such loans notwithstanding the provisions thereof; (ii) the remaining useful life of the property is greater than the term of the mortgage; and (iii) the property does not contain any substantial violations of local building maintenance and construction codes, except that in the case of a loan made to the owner of a property containing any such violations, the agency may insure or commit to insure such loan if the mortgagee and the owner have submitted a plan, satisfactory to the agency to eliminate such violations and the issuance of such insurance shall be conditioned on removal of such violations to the satisfaction of the local code enforcement agency; and (e) satisfy such additional terms and conditions as the agency may prescribe. For pool insurance, the requirements of paragraph (b) of this subdivision shall not be applicable.

S 7. Subdivision 4 of section 2428 of the public authorities law, as amended by chapter 354 of the laws of 1984, is amended to read as follows:

4. To be eligible for insurance under this article, a mortgage loan shall (a) (i) be a first lien of the kind which is commonly given to secure advances on, or the unpaid purchase price of, real property under the laws of the state together with any credit instrument secured thereby, PROVIDED, HOWEVER, THAT A MORTGAGE LOAN MAY BE A SECOND LIEN IF SUCH MORTGAGE LOAN WAS PURCHASED BY THE AGENCY or (ii) be secured by an assignment or transfer of stock certificates or other evidence of ownership interest of the borrower in, and a proprietary lease from, a corporation formed for the purpose of the cooperative ownership of residential real estate in the state; (b) secure a rehabilitation or preservation loan on real property held in fee simple or on a leasehold under a proprietary lease or a lease having a period of years to run at the time the mortgage is insured under this article of at least twenty per centum greater duration than the remaining term of the mortgage; (c) contain terms with respect to prepayment, insurance, repairs, alterations, payment of taxes, special assessments, service [charge] CHARGES, default reserves, delinquency charges, foreclosure proceedings, additional and secondary liens, and such other matters as the agency may in its discretion prescribe; (d) be accompanied by certificates, issued by such officers of the mortgage financial institutions, independent appraisers or other persons as the agency may require, certifying that (i) where appropriate, the annual income to be derived from the property equals not less than one hundred and five per centum of the annual charges and expenses, including provision for reserves, satisfactory to the agency, for the amortization of subordinate mortgage loans over the remaining terms of such loans notwithstanding the provisions thereof; (ii) the remaining useful life of the property is greater than the term of the mortgage; and (iii) the property does not contain any substantial violations of local building maintenance and construction codes, except that in the case of a loan made to the owner of a property containing any such violations, the agency may insure or commit to insure such loan if the mortgagee and the owner have submitted a plan, satisfactory to the agency to eliminate such violations and the issuance of such insurance shall be conditioned on removal of such violations to the satisfaction of the local code enforcement agency; and (e) satisfy such additional terms and conditions as the agency may prescribe.

S 8. This act shall take effect immediately, provided that:

(a) the amendments to subdivision 5 of section 2402 of the public authorities law made by section one of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 16 of chapter 915 of the laws of 1982, as amended, when upon such date the provisions of section two of this act shall take effect;

(b) the amendments to paragraph (e) of subdivision 7 of section 2405 of the public authorities law made by section three of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 16 of chapter 915 of the laws of 1982, as amended, when upon such date the provisions of section four of this act shall take effect;

(c) the amendments to paragraph (f) of subdivision 8 of section 2405-b of the public authorities law made by section five of this act shall not affect the repeal of such section and shall be deemed repealed therewith; and

(d) the amendments to subdivision 4 of section 2428 of the public authorities law made by section six of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 19 of chapter 555 of the laws of 1989, as amended, when upon such date the provisions of section seven of this act shall take effect.