

5551

2009-2010 Regular Sessions

I N S E N A T E

May 15, 2009

Introduced by Sen. ESPADA -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

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:

1 Section 1. Subdivision 5 of section 2402 of the public authorities
2 law, as amended by chapter 353 of the laws of 1984, is amended to read
3 as follows:
4 (5) "Mortgage". A loan owed to a bank secured by a first lien on a fee
5 simple or leasehold estate in real property located in the state and
6 improved by a residential structure, whether or not insured or guaran-
7 teed by the United States of America or any agency thereof. THE TERM
8 "MORTGAGE" SHALL ALSO INCLUDE A LOAN OWED TO A BANK SECURED BY A SECOND
9 LIEN ON A FEE SIMPLE OR LEASEHOLD ESTATE IN REAL PROPERTY LOCATED IN THE
10 STATE AND IMPROVED BY A RESIDENTIAL STRUCTURE, WHETHER OR NOT INSURED OR
11 GUARANTEED BY THE UNITED STATES OF AMERICA OR ANY AGENCY THEREOF,
12 PROVIDED, HOWEVER, THAT SUCH SECOND LIEN: (A) SECURES A LOAN PURCHASED
13 BY THE AGENCY, AND (B) IS MADE AT THE SAME TIME AS A FIRST LIEN SECURING
14 A LOAN PURCHASED BY THE AGENCY PURSUANT TO ITS PROGRAMS OR IS MADE AT
15 THE SAME TIME AS A NEW HOUSING LOAN PURCHASED BY THE AGENCY PURSUANT TO
16 SECTION TWENTY-FOUR HUNDRED FIVE-C OF THIS PART, PROVIDED THAT, IN THE
17 CASE OF ANY SECOND LIEN, THE MORTGAGOR SHALL BE OBLIGATED TO CONTRIBUTE
18 FROM HIS OR HER OWN VERIFIABLE FUNDS AN AMOUNT NOT LESS THAN SUCH
19 PERCENTAGE AS THE AGENCY SHALL DETERMINE, OF THE LOWER OF THE PURCHASE
20 PRICE OR APPRAISED VALUE OF THE PROPERTY SUBJECT TO THE FIRST LIEN.
21 "Real property" as used in this subdivision shall include air rights.
22 For the purposes of this title and of section one hundred ninety and
23 subsection [a] (A) of section one thousand four hundred fifty-six of the
24 tax law, "mortgage" shall include housing loans as defined below. Except
25 for the purposes of subdivision seven of section two thousand four
26 hundred five and subdivision eight of section two thousand four hundred
27 five-b of this [title] PART, "mortgage" shall also include a loan owed

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

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1 to a bank by an individual borrower incurred for the purpose of financ-
2 ing the purchase of certificates of stock or other evidence of ownership
3 of an interest in, and a proprietary lease from, a cooperative housing
4 corporation formed for the purpose of the cooperative ownership of resi-
5 dential real estate in the state, secured by an assignment or transfer
6 of the benefits of such cooperative ownership, and containing such terms
7 and conditions as the agency may approve.

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

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

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

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

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

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

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

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

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

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

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

16 4. To be eligible for insurance under this article, a mortgage loan
17 shall (a) (i) be a first lien of the kind which is commonly given to
18 secure advances on, or the unpaid purchase price of, real property under
19 the laws of the state together with any credit instrument secured there-
20 by, PROVIDED, HOWEVER, THAT A MORTGAGE LOAN MAY BE A SECOND LIEN IF SUCH
21 MORTGAGE LOAN WAS PURCHASED BY THE AGENCY or (ii) be secured by an
22 assignment or transfer of stock certificates or other evidence of owner-
23 ship interest of the borrower in, and a proprietary lease from, a corpo-
24 ration formed for the purpose of the cooperative ownership of residen-
25 tial real estate in the state; (b) secure a rehabilitation or
26 preservation loan on real property held in fee simple or on a leasehold
27 under a proprietary lease or a lease having a period of years to run at
28 the time the mortgage is insured under this article of at least twenty
29 per centum greater duration than the remaining term of the mortgage; (c)
30 contain terms with respect to prepayment, insurance, repairs, alter-
31 ations, payment of taxes, special assessments, service [charge] CHARGES,
32 default reserves, delinquency charges, foreclosure proceedings, addi-
33 tional and secondary liens, and such other matters as the agency may in
34 its discretion prescribe; (d) be accompanied by certificates, issued by
35 such officers of the mortgage financial institutions, independent
36 appraisers or other persons as the agency may require, certifying that
37 (i) where appropriate, the annual income to be derived from the property
38 equals not less than one hundred and five per centum of the annual
39 charges and expenses, including provision for reserves, satisfactory to
40 the agency, for the amortization of subordinate mortgage loans over the
41 remaining terms of such loans notwithstanding the provisions thereof;
42 (ii) the remaining useful life of the property is greater than the term
43 of the mortgage; and (iii) the property does not contain any substantial
44 violations of local building maintenance and construction codes, except
45 that in the case of a loan made to the owner of a property containing
46 any such violations, the agency may insure or commit to insure such loan
47 if the mortgagee and the owner have submitted a plan, satisfactory to
48 the agency to eliminate such violations and the issuance of such insur-
49 ance shall be conditioned on removal of such violations to the satisfac-
50 tion of the local code enforcement agency; and (e) satisfy such addi-
51 tional terms and conditions as the agency may prescribe. For pool
52 insurance, the requirements of paragraph (b) of this subdivision shall
53 not be applicable.

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

1 4. To be eligible for insurance under this article, a mortgage loan
2 shall (a) (i) be a first lien of the kind which is commonly given to
3 secure advances on, or the unpaid purchase price of, real property under
4 the laws of the state together with any credit instrument secured there-
5 by, PROVIDED, HOWEVER, THAT A MORTGAGE LOAN MAY BE A SECOND LIEN IF SUCH
6 MORTGAGE LOAN WAS PURCHASED BY THE AGENCY or (ii) be secured by an
7 assignment or transfer of stock certificates or other evidence of owner-
8 ship interest of the borrower in, and a proprietary lease from, a corpo-
9 ration formed for the purpose of the cooperative ownership of residen-
10 tial real estate in the state; (b) secure a rehabilitation or
11 preservation loan on real property held in fee simple or on a leasehold
12 under a proprietary lease or a lease having a period of years to run at
13 the time the mortgage is insured under this article of at least twenty
14 per centum greater duration than the remaining term of the mortgage; (c)
15 contain terms with respect to prepayment, insurance, repairs, alter-
16 ations, payment of taxes, special assessments, service [charge] CHARGES,
17 default reserves, delinquency charges, foreclosure proceedings, addi-
18 tional and secondary liens, and such other matters as the agency may in
19 its discretion prescribe; (d) be accompanied by certificates, issued by
20 such officers of the mortgage financial institutions, independent
21 appraisers or other persons as the agency may require, certifying that
22 (i) where appropriate, the annual income to be derived from the property
23 equals not less than one hundred and five per centum of the annual
24 charges and expenses, including provision for reserves, satisfactory to
25 the agency, for the amortization of subordinate mortgage loans over the
26 remaining terms of such loans notwithstanding the provisions thereof;
27 (ii) the remaining useful life of the property is greater than the term
28 of the mortgage; and (iii) the property does not contain any substantial
29 violations of local building maintenance and construction codes, except
30 that in the case of a loan made to the owner of a property containing
31 any such violations, the agency may insure or commit to insure such loan
32 if the mortgagee and the owner have submitted a plan, satisfactory to
33 the agency to eliminate such violations and the issuance of such insur-
34 ance shall be conditioned on removal of such violations to the satisfac-
35 tion of the local code enforcement agency; and (e) satisfy such addi-
36 tional terms and conditions as the agency may prescribe.

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

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

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

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

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