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

2637

2011-2012 Regular Sessions

I N A S S E M B L Y

January 19, 2011

Introduced by M. of A. FITZPATRICK, McKEVITT, GIGLIO -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to authorizing the state of New York mortgage agency to purchase construction mortgages

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

Section 1. Section 2402 of the public authorities law is amended by adding a new subdivision 18 to read as follows:

(18) "CONSTRUCTION MORTGAGE". A LOAN EXTENDED BY A BANK SECURED BY A MORTGAGE ON REAL PROPERTY IMPROVED BY A RESIDENTIAL STRUCTURE FOR THE CONSTRUCTION OF SUCH STRUCTURE.

S 2. The public authorities law is amended by adding a new section 2405-f to read as follows:

S 2405-F. PURCHASE OF CONSTRUCTION MORTGAGES. (1) A PURPOSE OF THE AGENCY SHALL BE TO PURCHASE CONSTRUCTION MORTGAGES FROM BANKS WITHIN THE STATE DURING PERIODS WHEN THERE IS AN INADEQUATE SUPPLY OF CREDIT AVAILABLE FOR NEW RESIDENTIAL MORTGAGES OR AVAILABLE FOR SUCH LOANS AT CARRYING CHARGES WITHIN THE FINANCIAL MEANS OF PERSONS AND FAMILIES OF LOW AND MODERATE INCOME.

IT IS HEREBY FOUND AND DECLARED THAT SUCH ACTIVITIES BY THE AGENCY WILL ALLEVIATE A CONDITION IN THIS STATE WHICH IS CONTRARY TO THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE AND WHICH HAS CONSTITUTED IN THE PAST AND FROM TIME TO TIME IN THE FUTURE CAN BE EXPECTED TO CONSTITUTE A PUBLIC EMERGENCY. IT IS FURTHER FOUND AND DECLARED THAT SUCH PURPOSES ARE IN ALL RESPECTS FOR THE BENEFIT OF THE PEOPLE OF THE STATE OF NEW YORK AND THE AGENCY SHALL BE REGARDED AS PERFORMING AN ESSENTIAL GOVERNMENTAL FUNCTION IN CARRYING OUT ITS PURPOSES AND IN EXERCISING THE POWERS GRANTED BY THIS TITLE.

(2) (A) THE AGENCY SHALL REQUIRE CONSTRUCTION MORTGAGES PROVIDE THAT THE ESTIMATED COST OF THE CONSTRUCTION MUST BE AT LEAST FIFTY PERCENT OF

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

LBD02503-01-1

THE MORTGAGOR'S ADJUSTED BASIS IN THE RESIDENTIAL REAL PROPERTY (INCLUDING LAND).

(B) SUCH CONSTRUCTION MORTGAGES SHALL ALSO PROVIDE THAT THE PURCHASE PRICE OF THE REAL PROPERTY PLUS THE ESTIMATED COST OF THE CONSTRUCTION MUST FALL WITHIN CURRENT AGENCY REGULATIONS PERTAINING TO MAXIMUM PURCHASE PRICE. ANY COMMITMENT ISSUED BY A BANK FOR SUCH CONSTRUCTION MORTGAGE SHALL PROVIDE THAT THE BANK SHALL CERTIFY THE COST OF THE CONSTRUCTION OF THE RESIDENTIAL STRUCTURE AND THAT THE BANK SHALL MONITOR ONGOING CONSTRUCTION THROUGH PERIODIC INSPECTIONS AND SHALL PERFORM A FINAL INSPECTION.

(3) THE AGENCY SHALL PURCHASE CONSTRUCTION MORTGAGES FROM BANKS AT SUCH PRICES AND UPON SUCH TERMS AND CONDITIONS AS IT SHALL DETERMINE; PROVIDED, HOWEVER, THAT THE TOTAL PURCHASE PRICE, EXCLUSIVE OF ANY AMOUNTS REPRESENTING A REFUND OF COMMITMENT OR OTHER FEES PAID BY A BANK TO THE AGENCY, FOR ALL MORTGAGES WHICH THE AGENCY COMMITS TO PURCHASE FROM A BANK AT ANY ONE TIME SHALL IN NO EVENT BE MORE THAN THE TOTAL OF THE UNPAID PRINCIPAL BALANCES THEREOF, PLUS ACCRUED INTEREST THEREON.

(4) IN CONDUCTING ITS PROGRAM OF PURCHASING CONSTRUCTION MORTGAGES, THE AGENCY SHALL BE GOVERNED BY THE PROVISIONS OF PARAGRAPH (B) OF SUBDIVISION THREE OF SECTION TWENTY-FOUR HUNDRED FIVE OF THIS PART.

(5) THE AGENCY SHALL REQUIRE AS A CONDITION OF PURCHASE OF CONSTRUCTION MORTGAGES FROM BANKS THAT EACH SUCH BANK CERTIFY THAT EACH SUCH CONSTRUCTION MORTGAGE IS TO AN INDIVIDUAL BORROWER AND IS IN ADDITION TO THE MORTGAGES SUCH CERTIFYING BANK OTHERWISE WOULD HAVE MADE.

(6) NOTWITHSTANDING THE MAXIMUM INTEREST RATE, IF ANY, FIXED BY SECTION 5-501 OF THE GENERAL OBLIGATIONS LAW OR ANY OTHER LAW NOT SPECIFICALLY AMENDING OR APPLICABLE TO THIS SECTION, THE AGENCY MAY SET THE INTEREST RATE TO BE BORNE BY CONSTRUCTION MORTGAGES PURCHASED BY THE AGENCY FROM BANKS AT A RATE OR RATES WHICH THE AGENCY FROM TIME TO TIME SHALL DETERMINE TO BE AT LEAST SUFFICIENT, TOGETHER WITH ANY OTHER AVAILABLE MONIES, TO PROVIDE FOR THE PAYMENT OF ITS BONDS AND NOTES, AND CONSTRUCTION MORTGAGES BEARING SUCH INTEREST RATE SHALL NOT BE DEEMED TO VIOLATE ANY SUCH LAW OR TO BE UNENFORCEABLE IF ORIGINATED BY A BANK IN GOOD FAITH PURSUANT TO AN UNDERTAKING WITH THE AGENCY WITH RESPECT TO THE SALE THEREOF NOTWITHSTANDING ANY SUBSEQUENT FAILURE OF THE AGENCY TO PURCHASE THE MORTGAGE OR ANY SUBSEQUENT SALE OR DISPOSITION OF THE MORTGAGE BY THE AGENCY TO SUCH BANK OR ANY OTHER PERSON.

(7) THE AGENCY SHALL REQUIRE THE SUBMISSION TO IT BY EACH BANK FROM WHICH THE AGENCY HAS PURCHASED CONSTRUCTION MORTGAGES EVIDENCE SATISFACTORY TO THE AGENCY OF THE MAKING, AND IF APPLICABLE, THE SERVICING, OF SUCH CONSTRUCTION MORTGAGES IN CONFORMITY WITH SUCH BANK'S UNDERTAKING WITH THE AGENCY AND IN CONNECTION THEREWITH MAY, THROUGH ITS EMPLOYEES OR AGENTS OR THOSE OF THE BANKING DEPARTMENT, INSPECT THE BOOKS AND RECORDS OF ANY SUCH BANK.

(8) COMPLIANCE BY ANY BANK WITH THE TERMS OF ITS AGREEMENT WITH OR UNDERTAKING TO THE AGENCY WITH RESPECT TO THE SALE, AND IF APPLICABLE, THE SERVICING, OF CONSTRUCTION MORTGAGES MAY BE ENFORCED BY DECREE OF THE SUPREME COURT. THE AGENCY MAY REQUIRE AS A CONDITION OF PURCHASE OF CONSTRUCTION MORTGAGES FROM ANY BANK THE CONSENT OF SUCH BANK TO THE JURISDICTION OF THE SUPREME COURT OVER ANY SUCH PROCEEDING. THE AGENCY MAY ALSO REQUIRE AGREEMENT BY ANY BANK, AS A CONDITION OF THE AGENCY'S PURCHASE OF CONSTRUCTION MORTGAGES FROM SUCH BANK, TO THE PAYMENT OF PENALTIES TO THE AGENCY FOR VIOLATION BY THE BANK OF ITS UNDERTAKINGS TO THE AGENCY, AND SUCH PENALTIES SHALL BE RECOVERABLE AT THE SUIT OF THE AGENCY.

(9) THE AGENCY SHALL REQUIRE AS A CONDITION OF PURCHASE OF ANY CONSTRUCTION MORTGAGE FROM A BANK THAT THE BANK REPRESENT AND WARRANT TO THE AGENCY THAT:

(A) THE MORTGAGE WAS NOT MADE IN SATISFACTION OF AN OBLIGATION OF THE BANK UNDER SECTION TWENTY-FOUR HUNDRED FIVE OF THIS PART;

(B) THE UNPAID PRINCIPAL BALANCE OF THE MORTGAGE AND THE INTEREST RATE THEREON HAVE BEEN ACCURATELY STATED TO THE AGENCY;

(C) THE AMOUNT OF THE UNPAID PRINCIPAL BALANCE IS JUSTLY DUE AND OWING;

(D) THE BANK HAS NO NOTICE OF THE EXISTENCE OF ANY COUNTERCLAIM, OFFSET OR DEFENSE ASSERTED BY THE MORTGAGOR OR ANY SUCCESSOR IN INTEREST;

(E) THE MORTGAGE IS EVIDENCED BY A BOND OR PROMISSORY NOTE AND A MORTGAGE DOCUMENT WHICH HAS BEEN PROPERLY RECORDED WITH THE APPROPRIATE PUBLIC OFFICIAL;

(F) THE MORTGAGE CONSTITUTES A VALID FIRST LIEN ON THE REAL PROPERTY DESCRIBED TO THE AGENCY 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;

(G) THE MORTGAGOR IS NOT NOW IN DEFAULT IN THE PAYMENT OF ANY INSTALLMENT OF PRINCIPAL OR INTEREST, ESCROW FUNDS, REAL PROPERTY TAXES OR OTHERWISE IN THE PERFORMANCE OF HIS OBLIGATIONS UNDER THE MORTGAGE DOCUMENTS AND HAS NOT TO THE KNOWLEDGE OF THE BANK BEEN IN DEFAULT IN THE PERFORMANCE OF ANY SUCH OBLIGATION FOR A PERIOD OF LONGER THAN SIXTY DAYS DURING THE LIFE OF THE MORTGAGE; AND

(H) THE IMPROVEMENTS TO THE MORTGAGED REAL PROPERTY ARE COVERED BY A VALID AND SUBSISTING POLICY OF INSURANCE ISSUED BY A COMPANY AUTHORIZED BY THE SUPERINTENDENT OF INSURANCE TO ISSUE SUCH POLICIES IN THE STATE OF NEW YORK AND PROVIDING FIRE AND EXTENDED COVERAGE TO AN AMOUNT NOT LESS THAN EIGHTY PERCENT OF THE INSURABLE VALUE OF THE IMPROVEMENTS TO THE MORTGAGED REAL PROPERTY.

(10) EACH BANK SHALL BE LIABLE TO THE AGENCY FOR ANY DAMAGES SUFFERED BY THE AGENCY BY REASON OF THE UNTRUTH OF ANY REPRESENTATION OR THE BREACH OF ANY WARRANTY AND, IN THE EVENT THAT ANY REPRESENTATION SHALL PROVE TO BE UNTRUE WHEN MADE OR IN THE EVENT OF ANY BREACH OF WARRANTY, THE BANK SHALL, AT THE OPTION OF THE AGENCY, REPURCHASE THE MORTGAGE FOR THE ORIGINAL PURCHASE PRICE ADJUSTED FOR AMOUNTS SUBSEQUENTLY PAID THEREON, AS THE AGENCY SHALL DETERMINE.

(11) THE AGENCY NEED NOT REQUIRE THE RECORDING OF AN ASSIGNMENT OF ANY CONSTRUCTION MORTGAGE PURCHASED BY IT FROM A BANK PURSUANT TO THIS SECTION AND SHALL NOT BE REQUIRED TO NOTIFY THE MORTGAGOR OF ITS PURCHASE OF THE MORTGAGE. THE AGENCY SHALL NOT BE REQUIRED TO INSPECT OR TAKE POSSESSION OF THE MORTGAGE DOCUMENTS IF THE BANK FROM WHICH THE CONSTRUCTION MORTGAGE IS PURCHASED BY THE AGENCY SHALL ENTER A CONTRACT TO SERVICE SUCH MORTGAGE AND ACCOUNT TO THE AGENCY THEREFOR.

(12) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE AGENCY IS AUTHORIZED TO REQUIRE, AS A CONDITION TO THE PURCHASE FROM BANKS OF ANY CONSTRUCTION MORTGAGE, SUCH RESTRICTIONS UPON ASSUMABILITY OF THE MORTGAGE, DEFAULT PROVISIONS, RIGHTS TO ACCELERATE, AND OTHER TERMS APPLICABLE TO SUCH CONSTRUCTION MORTGAGES MADE BY THE BANK PURSUANT TO UNDERTAKINGS WITH THE AGENCY WITH RESPECT TO THE SALE THEREOF AS THE AGENCY MAY DETERMINE TO BE NECESSARY OR DESIRABLE TO ASSURE THE REPAYMENT OF ITS BONDS AND NOTES AND THE EXEMPTION FROM FEDERAL INCOME TAXES OF THE INTEREST PAYABLE ON ITS BONDS AND NOTES. ALL SUCH TERMS SHALL BE ENFORCEABLE BY THE ORIGINATING BANK, THE AGENCY, AND ANY SUCCESSOR HOLD-

ER OF THE MORTGAGE UNLESS EXPRESSLY WAIVED IN WRITING BY OR ON BEHALF OF THE AGENCY.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law, except that any rules and regulations necessary for the timely implementation of this act on its effective date shall be promulgated on or before such effective date.