

759

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. YOUNG -- 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 authorizing the state of New York mortgage agency to purchase rehabilitation mortgages

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

1 Section 1. Section 2402 of the public authorities law is amended by
2 adding two new subdivisions 18 and 19 to read as follows:
3 (18) "REHABILITATION". REPAIRS, ALTERATIONS OR IMPROVEMENTS OF A HOUS-
4 ING ACCOMMODATION DESIGNED TO RAISE THE HOUSING STANDARDS THEREIN.
5 (19) "REHABILITATION MORTGAGE". A LOAN EXTENDED BY A BANK, SECURED BY
6 A MORTGAGE ON REAL PROPERTY IMPROVED BY A RESIDENTIAL STRUCTURE FOR THE
7 FINANCING AND REHABILITATION OF SUCH RESIDENTIAL STRUCTURE WHICH OTHER-
8 WISE COMPLIES WITH THE CONDITIONS ESTABLISHED BY SECTION TWENTY-FOUR
9 HUNDRED FIVE-F OF THIS PART.
10 S 2. The public authorities law is amended by adding a new section
11 2405-f to read as follows:
12 S 2405-F. PURCHASE OF REHABILITATION MORTGAGES. (1) A PURPOSE OF THE
13 AGENCY SHALL BE TO PURCHASE REHABILITATION MORTGAGES FROM BANKS WITHIN
14 THE STATE DURING PERIODS WHEN THERE IS AN INADEQUATE SUPPLY OF CREDIT
15 AVAILABLE FOR NEW RESIDENTIAL MORTGAGES OR AVAILABLE FOR SUCH LOANS AT
16 CARRYING CHARGES WITHIN THE FINANCIAL MEANS OF PERSONS AND FAMILIES OF
17 LOW AND MODERATE INCOME.
18 IT IS HEREBY FOUND AND DECLARED THAT SUCH ACTIVITIES BY THE AGENCY
19 WILL ALLEVIATE A CONDITION IN THIS STATE WHICH IS CONTRARY TO THE PUBLIC
20 HEALTH, SAFETY AND GENERAL WELFARE AND WHICH HAS CONSTITUTED IN THE PAST
21 AND FROM TIME TO TIME IN THE FUTURE CAN BE EXPECTED TO CONSTITUTE A
22 PUBLIC EMERGENCY. IT IS FURTHER FOUND AND DECLARED THAT SUCH PURPOSES

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

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1 ARE IN ALL RESPECTS FOR THE BENEFIT OF THE PEOPLE OF THE STATE OF NEW
2 YORK AND THE AGENCY SHALL BE REGARDED AS PERFORMING AN ESSENTIAL GOVERN-
3 MENTAL FUNCTION IN CARRYING OUT ITS PURPOSES AND IN EXERCISING THE
4 POWERS GRANTED BY THIS TITLE.

5 (2) (A) THE AGENCY SHALL REQUIRE THAT REHABILITATION MORTGAGES PROVIDE
6 THAT THE ESTIMATED COST OF THE REPAIRS MUST BE AT LEAST TWENTY-FIVE
7 PERCENT OF THE MORTGAGOR'S ADJUSTED BASIS IN THE RESIDENTIAL REAL PROP-
8 ERTY (INCLUDING LAND).

9 (B) SUCH REHABILITATION MORTGAGES SHALL ALSO PROVIDE THAT THE PURCHASE
10 PRICE PLUS THE ESTIMATED COST OF THE REPAIRS MUST FALL WITHIN CURRENT
11 AGENCY REGULATIONS PERTAINING TO MAXIMUM PURCHASE PRICE. TO BE ELIGIBLE
12 FOR SUCH MORTGAGES AT LEAST TWENTY YEARS MUST HAVE ELAPSED BETWEEN THE
13 DATE THE RESIDENTIAL REAL PROPERTY WAS FIRST USED AND THE COMMENCEMENT
14 OF PHYSICAL WORK ON SUCH REHABILITATION. TO BE ELIGIBLE FOR SUCH MORT-
15 GAGES, (I) AT LEAST FIFTY PERCENT OF THE EXISTING EXTERNAL WALLS OF THE
16 RESIDENTIAL STRUCTURE MUST BE RETAINED IN PLACE AS EXTERNAL WALLS, (II)
17 AT LEAST SEVENTY-FIVE PERCENT OF THE EXISTING WALLS ARE RETAINED IN
18 PLACE AS INTERNAL OR EXTERNAL WALLS, AND (III) AT LEAST SEVENTY-FIVE
19 PERCENT OF THE EXISTING INTERNAL STRUCTURAL FRAMEWORK MUST REMAIN
20 INTACT. ANY COMMITMENT ISSUED BY A BANK FOR SUCH REHABILITATION MORT-
21 GAGES SHALL PROVIDE THAT THE BANK SHALL CERTIFY THE COST AND FEASIBILITY
22 OF THE PROPOSED REPAIRS OR REHABILITATION TO THE RESIDENTIAL STRUCTURE
23 AND THAT THE BANK SHALL MONITOR ONGOING REPAIRS AND REHABILITATION
24 THROUGH PERIODIC INSPECTIONS AND SHALL PERFORM A FINAL INSPECTION. SUCH
25 MORTGAGES SHALL ALSO PROVIDE THAT THE BORROWER MUST OCCUPY THE RESIDEN-
26 TIAL STRUCTURE AS HIS OR HER PRINCIPAL RESIDENCE WITHIN SIXTY DAYS OF
27 THE COMPLETION OF THE REPAIR OR REHABILITATION WORK.

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

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

38 (5) THE AGENCY SHALL REQUIRE AS A CONDITION OF PURCHASE OF REHABILI-
39 TATION MORTGAGES FROM BANKS THAT EACH SUCH BANK CERTIFY THAT EACH SUCH
40 REHABILITATION MORTGAGE IS TO AN INDIVIDUAL BORROWER AND IS IN ADDITION
41 TO THE MORTGAGES SUCH CERTIFYING BANK OTHERWISE WOULD HAVE MADE.

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

55 (7) THE AGENCY SHALL REQUIRE THE SUBMISSION TO IT BY EACH BANK FROM
56 WHICH THE AGENCY HAS PURCHASED REHABILITATION MORTGAGES EVIDENCE SATIS-

1 FACTORY TO THE AGENCY OF THE MAKING, AND IF APPLICABLE, THE SERVICING,
2 OF SUCH REHABILITATION MORTGAGES IN CONFORMITY WITH SUCH BANK'S UNDER-
3 TAKING WITH THE AGENCY AND IN CONNECTION THEREWITH MAY, THROUGH ITS
4 EMPLOYEES OR AGENTS OR THOSE OF THE BANKING DEPARTMENT, INSPECT THE
5 BOOKS AND RECORDS OF ANY SUCH BANK.

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

17 (9) THE AGENCY SHALL REQUIRE AS A CONDITION OF PURCHASE OF ANY REHA-
18 BILITATION MORTGAGE FROM A BANK THAT THE BANK REPRESENT AND WARRANT TO
19 THE AGENCY THAT:

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

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

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

26 (D) THE BANK HAS NO NOTICE OF THE EXISTENCE OF ANY COUNTERCLAIM,
27 OFFSET OR DEFENSE ASSERTED BY THE MORTGAGOR OR ANY SUCCESSOR IN INTER-
28 EST;

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

32 (F) THE MORTGAGE CONSTITUTES A VALID FIRST LIEN ON THE REAL PROPERTY
33 DESCRIBED TO THE AGENCY SUBJECT ONLY TO REAL PROPERTY TAXES NOT YET DUE,
34 INSTALLMENTS OF ASSESSMENTS NOT YET DUE, AND EASEMENTS AND RESTRICTIONS
35 OF RECORD WHICH DO NOT ADVERSELY AFFECT, TO A MATERIAL DEGREE, THE USE
36 OR VALUE OF THE REAL PROPERTY OR IMPROVEMENTS THEREON;

37 (G) THE MORTGAGOR IS NOT NOW IN DEFAULT IN THE PAYMENT OF ANY INSTALL-
38 MENT OF PRINCIPAL OR INTEREST, ESCROW FUNDS, REAL PROPERTY TAXES OR
39 OTHERWISE IN THE PERFORMANCE OF HIS OBLIGATIONS UNDER THE MORTGAGE DOCU-
40 MENTS AND HAS NOT TO THE KNOWLEDGE OF THE BANK BEEN IN DEFAULT IN THE
41 PERFORMANCE OF ANY SUCH OBLIGATION FOR A PERIOD OF LONGER THAN SIXTY
42 DAYS DURING THE LIFE OF THE MORTGAGE; AND

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

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

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

8 (12) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE AGENCY IS AUTHOR-
9 IZED TO REQUIRE, AS A CONDITION TO THE PURCHASE FROM BANKS OF ANY REHA-
10 BILITATION MORTGAGE, SUCH RESTRICTIONS UPON ASSUMABILITY OF THE MORT-
11 GAGE, DEFAULT PROVISIONS, RIGHTS TO ACCELERATE, AND OTHER TERMS
12 APPLICABLE TO SUCH REHABILITATION MORTGAGES MADE BY THE BANK PURSUANT TO
13 UNDERTAKINGS WITH THE AGENCY WITH RESPECT TO THE SALE THEREOF AS THE
14 AGENCY MAY DETERMINE TO BE NECESSARY OR DESIRABLE TO ASSURE THE REPAY-
15 MENT OF ITS BONDS AND NOTES AND THE EXEMPTION FROM FEDERAL INCOME TAXES
16 OF THE INTEREST PAYABLE ON ITS BONDS AND NOTES. ALL SUCH TERMS SHALL BE
17 ENFORCEABLE BY THE ORIGINATING BANK, THE AGENCY, AND ANY SUCCESSOR HOLD-
18 ER OF THE MORTGAGE UNLESS EXPRESSLY WAIVED IN WRITING BY OR ON BEHALF OF
19 THE AGENCY.

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