

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:

1 Section 1. Section 2402 of the public authorities law is amended by
2 adding a new subdivision 18 to read as follows:
3 (18) "CONSTRUCTION MORTGAGE". A LOAN EXTENDED BY A BANK SECURED BY A
4 MORTGAGE ON REAL PROPERTY IMPROVED BY A RESIDENTIAL STRUCTURE FOR THE
5 CONSTRUCTION OF SUCH STRUCTURE.
6 S 2. The public authorities law is amended by adding a new section
7 2405-f to read as follows:
8 S 2405-F. PURCHASE OF CONSTRUCTION MORTGAGES. (1) A PURPOSE OF THE
9 AGENCY SHALL BE TO PURCHASE CONSTRUCTION MORTGAGES FROM BANKS WITHIN THE
10 STATE DURING PERIODS WHEN THERE IS AN INADEQUATE SUPPLY OF CREDIT AVAIL-
11 ABLE FOR NEW RESIDENTIAL MORTGAGES OR AVAILABLE FOR SUCH LOANS AT CARRY-
12 ING CHARGES WITHIN THE FINANCIAL MEANS OF PERSONS AND FAMILIES OF LOW
13 AND MODERATE INCOME.
14 IT IS HEREBY FOUND AND DECLARED THAT SUCH ACTIVITIES BY THE AGENCY
15 WILL ALLEVIATE A CONDITION IN THIS STATE WHICH IS CONTRARY TO THE PUBLIC
16 HEALTH, SAFETY AND GENERAL WELFARE AND WHICH HAS CONSTITUTED IN THE PAST
17 AND FROM TIME TO TIME IN THE FUTURE CAN BE EXPECTED TO CONSTITUTE A
18 PUBLIC EMERGENCY. IT IS FURTHER FOUND AND DECLARED THAT SUCH PURPOSES
19 ARE IN ALL RESPECTS FOR THE BENEFIT OF THE PEOPLE OF THE STATE OF NEW
20 YORK AND THE AGENCY SHALL BE REGARDED AS PERFORMING AN ESSENTIAL GOVERN-
21 MENTAL FUNCTION IN CARRYING OUT ITS PURPOSES AND IN EXERCISING THE
22 POWERS GRANTED BY THIS TITLE.
23 (2) (A) THE AGENCY SHALL REQUIRE CONSTRUCTION MORTGAGES PROVIDE THAT
24 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.

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1 THE MORTGAGOR'S ADJUSTED BASIS IN THE RESIDENTIAL REAL PROPERTY (INCLUD-
2 ING LAND).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 (12) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE AGENCY IS AUTHOR-
48 IZED TO REQUIRE, AS A CONDITION TO THE PURCHASE FROM BANKS OF ANY
49 CONSTRUCTION MORTGAGE, SUCH RESTRICTIONS UPON ASSUMABILITY OF THE MORT-
50 GAGE, DEFAULT PROVISIONS, RIGHTS TO ACCELERATE, AND OTHER TERMS APPLICA-
51 BLE TO SUCH CONSTRUCTION MORTGAGES MADE BY THE BANK PURSUANT TO UNDER-
52 TAKINGS WITH THE AGENCY WITH RESPECT TO THE SALE THEREOF AS THE AGENCY
53 MAY DETERMINE TO BE NECESSARY OR DESIRABLE TO ASSURE THE REPAYMENT OF
54 ITS BONDS AND NOTES AND THE EXEMPTION FROM FEDERAL INCOME TAXES OF THE
55 INTEREST PAYABLE ON ITS BONDS AND NOTES. ALL SUCH TERMS SHALL BE
56 ENFORCEABLE BY THE ORIGINATING BANK, THE AGENCY, AND ANY SUCCESSOR HOLD-

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

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