

2735

2011-2012 Regular Sessions

I N A S S E M B L Y

January 20, 2011

Introduced by M. of A. FITZPATRICK -- read once and referred to the
Committee on Housing

AN ACT to amend the public authorities law, in relation to the purchase
of community land 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) "COMMUNITY LAND MORTGAGE". A MORTGAGE SECURED BY A FIRST LIEN ON
4 A LEASEHOLD ESTATE IN REAL PROPERTY THAT IS IMPROVED BY A RESIDENTIAL
5 STRUCTURE WHEREIN TITLE TO THE REAL PROPERTY IS RETAINED BY A
6 NOT-FOR-PROFIT HOUSING COMPANY OR HOUSING DEVELOPMENT FUND COMPANY AND
7 THE IMPROVEMENTS THEREON ARE SOLD TO PERSONS OR FAMILIES OF LOW OR
8 MODERATE INCOME WHO ALSO EXECUTE A LONG-TERM LEASE FOR THE REAL PROPER-
9 TY.
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 COMMUNITY LAND MORTGAGES. (1) A PURPOSE OF THE
13 AGENCY SHALL BE TO PURCHASE COMMUNITY LAND 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
23 ARE IN ALL RESPECTS FOR THE BENEFIT OF THE PEOPLE OF THE STATE OF NEW
24 YORK AND THE AGENCY SHALL BE REGARDED AS PERFORMING AN ESSENTIAL GOVERN-

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

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1 MENTAL FUNCTION IN CARRYING OUT ITS PURPOSES AND IN EXERCISING THE
2 POWERS GRANTED BY THIS TITLE.

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

10 (3) IN CONDUCTING ITS PROGRAM OF PURCHASING COMMUNITY LAND MORTGAGES,
11 THE AGENCY SHALL BE GOVERNED BY THE PROVISIONS OF PARAGRAPH (B) OF
12 SUBDIVISION THREE OF SECTION TWENTY-FOUR HUNDRED FIVE OF THIS PART.

13 (4) THE AGENCY SHALL REQUIRE AS A CONDITION OF PURCHASE OF COMMUNITY
14 LAND MORTGAGES FROM BANKS THAT EACH SUCH BANK CERTIFY THAT EACH SUCH
15 COMMUNITY LAND MORTGAGE IS TO AN INDIVIDUAL BORROWER AND IS IN ADDITION
16 TO THE MORTGAGES SUCH CERTIFYING BANK OTHERWISE WOULD HAVE MADE.

17 (4-A) THE AGENCY MUST APPROVE THE GROUND LEASE USED BY THE LESSOR FOR
18 THE LEASE OF THE REAL PROPERTY TO THE LESSEE. SUCH LEASE MAY CONTAIN
19 CERTAIN RESALE PROVISIONS LIMITING FUTURE ELIGIBLE BUYERS AND/OR MAXIMUM
20 SALES PRICE PROVIDED THAT SUCH PROVISIONS ARE RECORDED WITH THE APPRO-
21 PRIATE PUBLIC OFFICIAL AND THAT THEY TERMINATE UPON FORECLOSURE OR
22 ASSIGNMENT IN LIEU OF FORECLOSURE OF THE FIRST LEASEHOLD MORTGAGE.

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

36 (6) THE AGENCY SHALL REQUIRE THE SUBMISSION TO IT BY EACH BANK FROM
37 WHICH THE AGENCY HAS PURCHASED COMMUNITY LAND MORTGAGES EVIDENCE SATIS-
38 FACTORY TO THE AGENCY OF THE MAKING, AND IF APPLICABLE, THE SERVICING,
39 OF SUCH COMMUNITY LAND MORTGAGES IN CONFORMITY WITH SUCH BANK'S UNDER-
40 TAKING WITH THE AGENCY AND IN CONNECTION THEREWITH MAY, THROUGH ITS
41 EMPLOYEES OR AGENTS OR THOSE OF THE BANKING DEPARTMENT, INSPECT THE
42 BOOKS AND RECORDS OF ANY SUCH BANK.

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

54 (8) THE AGENCY SHALL REQUIRE AS A CONDITION OF PURCHASE OF ANY COMMU-
55 NITY LAND MORTGAGE FROM A BANK THAT THE BANK REPRESENT AND WARRANT TO
56 THE AGENCY THAT:

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

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

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

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

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

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

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

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

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

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

44 (11) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE AGENCY IS AUTHOR-
45 IZED TO REQUIRE, AS A CONDITION TO THE PURCHASE FROM BANKS OF ANY COMMU-
46 NITY LAND MORTGAGE, SUCH RESTRICTIONS UPON ASSUMABILITY OF THE MORTGAGE,
47 DEFAULT PROVISIONS, RIGHTS TO ACCELERATE, AND OTHER TERMS APPLICABLE TO
48 SUCH COMMUNITY LAND MORTGAGES MADE BY THE BANK PURSUANT TO UNDERTAKINGS
49 WITH THE AGENCY WITH RESPECT TO THE SALE THEREOF AS THE AGENCY MAY
50 DETERMINE TO BE NECESSARY OR DESIRABLE TO ASSURE THE REPAYMENT OF ITS
51 BONDS AND NOTES AND THE EXEMPTION FROM FEDERAL INCOME TAXES OF THE
52 INTEREST PAYABLE ON ITS BONDS AND NOTES. ALL SUCH TERMS SHALL BE
53 ENFORCEABLE BY THE ORIGINATING BANK, THE AGENCY, AND ANY SUCCESSOR HOLD-
54 ER OF THE MORTGAGE UNLESS EXPRESSLY WAIVED IN WRITING BY OR ON BEHALF OF
55 THE AGENCY.

1 S 3. This act shall take effect on the one hundred twentieth day after
2 it shall have become a law.