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

940

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

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

AN ACT to amend the private housing finance law and the state finance law, in relation to providing for the automatic dissolution of Mitchell-Lama cooperative housing

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

Section 1. The private housing finance law is amended by adding a new section 35-a to read as follows:

S 35-A. DISSOLUTION OF A MUTUAL COMPANY. 1. A MUTUAL COMPANY SHALL AUTOMATICALLY BE DISSOLVED, WITHOUT CONSENT OF THE COMMISSIONER OR OF THE SUPERVISING AGENCY, AS THE CASE MAY BE, NOT LESS THAN THIRTY YEARS AFTER THE OCCUPANCY DATE BUT WITHIN ONE YEAR FOLLOWING SUCH THIRTIETH YEAR OR WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS SECTION, WHICHEVER IS LATER. SUCH MUTUAL COMPANY SHALL BE REQUIRED TO PAY ANY AND ALL EXPENSES INCURRED IN EFFECTING SUCH DISSOLUTION.

2. NOTWITHSTANDING SUBDIVISION ONE OF THIS SECTION, NO SUCH DISSOLUTION SHALL OCCUR IF A MAJORITY OF THE OWNERS OF THE CAPITAL STOCK OF THE COMPANY VOTE TO REMAIN SUBJECT TO THE PROVISIONS OF THIS ARTICLE.

3. UPON DISSOLUTION, SUCH MUTUAL COMPANY MAY ELECT TO (A) PAY IN FULL THE REMAINING BALANCE OF PRINCIPAL AND INTEREST DUE AND UNPAID UPON THE MORTGAGE OR MORTGAGES; OR (B) CONTINUE TO PAY THE REMAINING BALANCE OF PRINCIPAL AND INTEREST DUE AND UNPAID UPON THE MORTGAGE OR MORTGAGES IN ACCORDANCE WITH THE ORIGINAL TERMS OF SUCH MORTGAGE OR MORTGAGES, NOTWITHSTANDING THE DISSOLUTION. IF THE TERMS OF A MORTGAGE, AND NOTE OR BOND SECURED THEREBY, MADE PURSUANT TO THIS ARTICLE, SHALL REQUIRE MODIFICATION IN ORDER TO COMPLY WITH THE PROVISIONS OF THIS SECTION, THE MUTUAL COMPANY AND THE MORTGAGEE OR MORTGAGEES SHALL BE REQUIRED TO RENEGOTIATE AND AGREE TO SUCH MODIFIED TERMS WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THE MUTUAL COMPANY'S DISSOLUTION PURSUANT TO SUBDIVI-

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

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SION ONE OF THIS SECTION. IF THE PARTIES ARE UNABLE TO AGREE, THE MODIFIED TERMS SHALL BE DETERMINED BY BINDING ARBITRATION.

4. UPON SUCH DISSOLUTION, TITLE TO THE PROJECT MAY BE CONVEYED IN FEE TO THE OWNER OR OWNERS OF ITS CAPITAL STOCK OR TO ANY CORPORATION DESIGNATED BY IT OR THEM FOR THE PURPOSE, OR THE COMPANY MAY BE RECONSTITUTED PURSUANT TO APPROPRIATE LAWS RELATING TO THE FORMATION AND CONDUCT OF CORPORATIONS, PROVIDED, HOWEVER, THAT PRIOR TO ANY SUCH DISSOLUTION AND CONVEYANCE OR RECONSTITUTION, PAYMENT SHALL BE MADE OF ALL CURRENT OPERATING EXPENSES, TAXES, INDEBTEDNESS AND ALL ACCRUED INTEREST THEREON AND THE PAR VALUE OF AND ACCRUED DIVIDENDS ON THE OUTSTANDING STOCK OF SUCH COMPANY.

5. CONVEYANCE OF SUCH LAND SHALL BE SUBJECT TO COVENANTS AND RESTRICTIONS OF RECORD. IF THE COVENANTS OR RESTRICTIONS OF RECORD SHALL REQUIRE MODIFICATION IN ORDER TO COMPLY WITH THE PROVISIONS OF THIS SECTION, THE MUTUAL COMPANY AND ANY OTHER INTERESTED PARTY OR PARTIES SHALL BE REQUIRED TO RENEGOTIATE AND AGREE TO SUCH MODIFIED TERMS WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THE MUTUAL COMPANY'S DISSOLUTION PURSUANT TO SUBDIVISION ONE OF THIS SECTION. IF THE PARTIES ARE UNABLE TO AGREE, THE MODIFIED TERMS SHALL BE DETERMINED BY BINDING ARBITRATION.

6. AFTER SUCH DISSOLUTION AND CONVEYANCE, OR SUCH RECONSTITUTION, THE PROVISIONS OF THIS ARTICLE SHALL BECOME AND BE INAPPLICABLE TO ANY SUCH PROJECT AND ITS OWNER OR OWNERS AND ANY TAX EXEMPTION GRANTED WITH RESPECT TO SUCH PROJECT PURSUANT TO SECTION THIRTY-THREE OF THIS ARTICLE SHALL CEASE AND TERMINATE.

S 2. Subdivision 2 of section 35 of the private housing finance law, as amended by chapter 229 of the laws of 1989, is amended to read as follows:

2. [A] EXCEPT AS PROVIDED BY SECTION THIRTY-FIVE-A OF THIS ARTICLE, A company aided by a loan made after May first, nineteen hundred fifty-nine, may voluntarily be dissolved, without the consent of the commissioner or of the supervising agency, as the case may be, not less than twenty years after the occupancy date upon the payment in full of the remaining balance of principal and interest due and unpaid upon the mortgage or mortgages and of any and all expenses incurred in effecting such voluntary dissolution.

S 3. Subdivision 6 of section 13 of the private housing finance law, as amended by chapter 628 of the laws of 1962, is amended to read as follows:

6. Its duration, which shall be: (a) not less than the period for which the loans contracted for under this article and the interest thereon remain unpaid in whole or in part; and (b) not less than the period for which tax exemption is granted pursuant to section thirty-three of this article; and (c) in any event not less than thirty-five years from the date of occupancy of any project, except as may be provided in [sections] SECTION thirty-five [and], THIRTY-FIVE-A OR thirty-six of this article.

S 4. Subdivision 1 of section 36 of the private housing finance law, as amended by chapter 428 of the laws of 1964, is amended to read as follows:

1. Except as otherwise provided in this article and prior to the expiration of thirty-five years from the date of occupancy, a project, other than a project aided by a loan made after May first, nineteen hundred fifty-nine, shall not be sold except to a company organized pursuant to the provisions of this article; prior to the expiration of twenty years from the date of occupancy, a project aided by a loan made after May first, nineteen hundred fifty-nine, shall not be sold except

to a company organized pursuant to the provisions of this article. NOTWITHSTANDING THE FOREGOING, A MUTUAL COMPANY MAY NOT, PRIOR TO THE EXPIRATION OF THIRTY YEARS FROM THE DATE OF OCCUPANCY, SELL A PROJECT AIDED BY A LOAN MADE AFTER MAY FIRST, NINETEEN HUNDRED FIFTY-NINE EXCEPT TO A COMPANY ORGANIZED PURSUANT TO THE PROVISIONS OF THIS ARTICLE. Such successor company shall acquire such project subject to all the provisions of the loan and mortgage contract and the provisions of this article, and shall be entitled to all the benefits provided in such contract or granted under this article, and a company so conveying all its projects may be dissolved with the consent of the commissioner or the supervising agency, as the case may be.

S 5. The private housing finance law is amended by adding a new section 36-b to read as follows:

S 36-B. INITIAL SALE AFTER DISSOLUTION. 1. UPON THE INITIAL SALE OF A PROPERTY OWNED BY A MUTUAL COMPANY WHICH DISSOLVES PURSUANT TO SECTION THIRTY-FIVE-A OF THIS ARTICLE, TEN PERCENT OF THE NET SALE PRICE, AS CALCULATED AFTER THE STOCKHOLDERS OF THE DISSOLVING COMPANY RECEIVE THE PAR VALUE OF THEIR STOCK WITH ACCRUED AND UNPAID DIVIDENDS UPON SUCH STOCK, SHALL BE PAID TO THE MIDDLE INCOME HOUSING FUND OF THE STATE, AS DEFINED IN SECTION NINETY-THREE-A OF THE STATE FINANCE LAW.

2. UPON THE INITIAL SALE OF A PROPERTY OWNED BY A MUTUAL COMPANY WHICH DISSOLVED PURSUANT TO SECTION THIRTY-FIVE-A OF THIS ARTICLE, THE FULL VALUE OF THE PROPERTY SHALL BE CONSIDERED FOR PURPOSES OF DETERMINING REAL ESTATE TAX ASSESSMENT PURSUANT TO THE PROVISIONS OF SUBCHAPTER ONE OF CHAPTER TWO OF TITLE ELEVEN OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK. UPON FIRST PAYMENT OF TAXES BY THE PURCHASER, AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE AMOUNT OF TAXES ASSESSED FOR THE YEAR IMMEDIATELY PRIOR TO THE DISSOLUTION AND THE AMOUNT OF TAXES OWED AFTER DISSOLUTION SHALL BE PAID BY THE NEW YORK CITY DEPARTMENT OF FINANCE TO THE MIDDLE INCOME HOUSING FUND OF THE STATE, AS DEFINED IN SECTION NINETY-THREE-A OF THE STATE FINANCE LAW.

3. UPON THE INITIAL SALE OF A PROPERTY OWNED BY A MUTUAL COMPANY WHICH DISSOLVES PURSUANT TO SECTION THIRTY-FIVE-A OF THIS ARTICLE, THE SALE OF THE STOCK OF THE STOCKHOLDERS OF THE DISSOLVING COMPANY SHALL BE SUBJECT TO TAXATION PURSUANT TO ARTICLE TWELVE OF THE TAX LAW. ALL MONIES COLLECTED BY THE DEPARTMENT OF TAXATION AND FINANCE PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION SHALL BE PAID BY THE COMMISSIONER OF TAXATION AND FINANCE TO THE MIDDLE INCOME HOUSING FUND OF THE STATE, AS DEFINED IN SECTION NINETY-THREE-A OF THE STATE FINANCE LAW.

S 6. The state finance law is amended by adding a new section 93-a to read as follows:

S 93-A. MIDDLE INCOME HOUSING FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE A SPECIAL FUND TO BE KNOWN AS THE "MIDDLE INCOME HOUSING FUND".

2. SUCH FUND SHALL CONSIST OF ALL REVENUES RECEIVED PURSUANT TO AN APPROPRIATION BY THE LEGISLATURE, THE MONEYS TRANSFERRED THERETO PURSUANT TO SECTION THIRTY-SIX-B OF THE PRIVATE HOUSING FINANCE LAW AND ALL OTHER MONEYS APPROPRIATED, CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE PURSUANT TO LAW. NOTHING CONTAINED IN THIS SECTION SHALL PREVENT THE STATE FROM RECEIVING GRANTS, GIFTS OR BEQUESTS FOR THE PURPOSES OF THE FUND ACCORDING TO LAW.

3. EXPENDITURES PURSUANT TO APPROPRIATIONS MAY BE MADE FROM THE MIDDLE INCOME HOUSING FUND FOR CONSTRUCTION, RECONSTRUCTION AND IMPROVEMENTS FOR MIDDLE INCOME FAMILIES AND INDIVIDUALS, INCLUDING THE ACQUISITION OF LAND, THE ACQUISITION OR REPLACEMENT OF EQUIPMENT, THE PREPARATION AND

REVIEW OF PLANS AND SPECIFICATIONS INCLUDING ENGINEERING AND OTHER SERVICES, FIELD SURVEYS AND SUB-SURFACE INVESTIGATIONS INCIDENTAL THERETO, THE PAYMENT BY THE STATE, AS AN ADVANCE OF THE PART OR SHARE OF THE COST OF ANY PROJECT, IMPROVEMENT OR WORK HERETOFORE OR HEREAFTER AUTHORIZED BY AN APPROPRIATION ACT. THE COMPTROLLER IS HEREBY AUTHORIZED TO ACCEPT AND RECEIVE AMOUNTS OF MONEY EQUAL TO THE AMOUNTS OF MONEY EXPENDED BY THE STATE PURSUANT TO ANY SUCH ADVANCE FROM ANY OTHER CAPITAL PROJECTS FUND APPROPRIATION AND TO DEPOSIT THE SAME TO THE CREDIT OF THE MIDDLE INCOME HOUSING FUND OR, IN THE EVENT THE MIDDLE INCOME HOUSING FUND EXPENDITURE HAS BEEN REIMBURSED FROM THE PROCEEDS OF THE SALE OF STATE BONDS, TO THE CREDIT OF THE STATE FUND OR SUB-FUND.

S 7. This act shall take effect immediately and shall apply to mutual companies in existence and which have not initiated voluntary dissolution on or before such date.