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

5498

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT to amend the social services law, in relation to the powers of social services officials to receive and dispose of a deed, mortgage, or lien

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

Section 1. Section 106 of the social services law, as amended by chapter 200 of the laws of 1946, the section heading as amended, subparagraph 5 of paragraph (a) of subdivision 2 as renumbered and paragraphs (e) and (f) of subdivision 2 as added by chapter 1080 of the laws of 1974, subdivision 1 and paragraph (a) of subdivision 2 as amended by chapter 764 of the laws of 1972, paragraph (b) of subdivision 2 as amended by chapter 150 of the laws of 1955, paragraph (c) of subdivision 2 as amended by chapter 310 of the laws of 1962, paragraph (d) of subdivision 2 as added by chapter 43 of the laws of 1952, subdivision 3 as amended by chapter 271 of the laws of 1948 and subdivision 4 as added by chapter 340 of the laws of 2003, is amended to read as follows:

S 106. Powers of social services official to receive and dispose of a deed, mortgage, or lien. 1. A social services official responsible, by or pursuant to any provision of this chapter, for the administration of assistance or care granted or applied for may accept a deed of real property and/or a mortgage thereon on behalf of the public welfare district for the assistance and care of a person at public expense but such property shall not be considered as public property and shall remain on the tax rolls and such deed or mortgage shall be subject to redemption as provided in paragraph (a) of subdivision [two] SIX hereof.

2. ANY INCONSISTENT PROVISION OF THIS CHAPTER OR ANY OTHER LAW NOTWITHSTANDING, A SOCIAL SERVICES OFFICIAL MAY NOT ASSERT ANY CLAIM UNDER ANY PROVISION OF THIS CHAPTER TO RECOVER PAYMENTS MADE AS PART OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP), CHILD CARE SERVICES,

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

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EMERGENCY ASSISTANCE TO ADULTS OR THE HOME ENERGY ASSISTANCE PROGRAM (HEAP).

3. ANY INCONSISTENT PROVISION OF THIS CHAPTER OR OF ANY OTHER LAW NOTWITHSTANDING, A SOCIAL SERVICES OFFICIAL MAY NOT ASSERT ANY CLAIM UNDER ANY PROVISION OF THIS CHAPTER TO RECOVER PAYMENTS OF PUBLIC ASSISTANCE IF SUCH PAYMENTS WERE REIMBURSED BY CHILD SUPPORT COLLECTIONS.

4. ANY INCONSISTENT PROVISION OF THIS CHAPTER OR OF ANY OTHER LAW NOTWITHSTANDING, A SOCIAL SERVICES OFFICIAL MAY NOT ASSERT ANY CLAIM UNDER ANY PROVISION OF THIS CHAPTER TO RECOVER PAYMENTS OF PUBLIC ASSISTANCE UNLESS, BEFORE IT HAS ACCEPTED A DEED OR MORTGAGE FROM AN APPLICANT OR RECIPIENT, IT HAS FIRST RECEIVED A SIGNED ACKNOWLEDGMENT FROM THE APPLICANT OR RECIPIENT ACKNOWLEDGING THAT:

(A) THE APPLICANT OR RECIPIENT UNDERSTANDS THAT BENEFITS PROVIDED AS PART OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP), CHILD CARE SERVICES, EMERGENCY ASSISTANCE TO ADULTS OR THE HOME ENERGY ASSISTANCE PROGRAM (HEAP) MAY NOT BE INCLUDED AS PART OF THE RECOVERY TO BE MADE UNDER THE MORTGAGE;

(B) IF THE APPLICANT OR RECIPIENT DECLINES TO PROVIDE THE LIEN OR MORTGAGE THE CHILDREN IN THE HOUSEHOLD REMAIN ELIGIBLE FOR PUBLIC ASSISTANCE.

5. (A) UNTIL SUCH PROPERTY OR MORTGAGE IS SOLD, ASSIGNED OR FORECLOSED PURSUANT TO LAW BY THE SOCIAL SERVICES OFFICIAL, OR UNTIL SUCH MORTGAGE HAS BEEN PAID OFF, THE PERSON GIVING SUCH DEED OR MORTGAGE, OR HIS OR HER ESTATE OR THOSE ENTITLED THERETO, SHALL RECEIVE AN ANNUAL ACCOUNTING OF THE PUBLIC ASSISTANCE INCURRED AND REPAIRS AND TAXES PAID ON PROPERTY. THE DISTRICT SHALL PROVIDE SUCH ACCOUNTING NO LATER THAN FOUR MONTHS AFTER THE END OF THE COUNTY'S FISCAL YEAR.

(B) SUCH ACCOUNTING SHALL INCLUDE INFORMATION REGARDING THE DEBT OWED, INCLUDING, BUT NOT LIMITED TO:

(1) AN ENUMERATION OF ALL ASSISTANCE INCURRED BY THE PERSON GIVING SUCH DEED OR MORTGAGE OR HIS OR HER HOUSEHOLD TO DATE;

(2) THE CURRENT AMOUNT OF RECOVERABLE ASSISTANCE UNDER THE DEED OR MORTGAGE;

(3) THE AMOUNT OF ANY CREDITS AGAINST ASSISTANCE INCLUDING BUT NOT LIMITED TO:

A. THE AMOUNT OF CHILD SUPPORT COLLECTED AND RETAINED BY THE DISTRICT AS REIMBURSEMENT FOR ASSISTANCE;

B. RECOVERIES UNDER SECTION ONE HUNDRED FOUR OF THIS TITLE;

C. RECOVERIES UNDER SECTION ONE HUNDRED THIRTY-ONE-R OF THIS CHAPTER.

(4) SAID ACCOUNTING SHALL ALSO PROVIDE INFORMATION REGARDING THE MANNER IN WHICH PAYMENTS MAY BE MADE TO THE SOCIAL SERVICES DISTRICT TO REDUCE THE AMOUNT OF THE MORTGAGE.

(C) IN THE EVENT THAT AN ANNUAL ACCOUNTING IS NOT PROVIDED TO THE PERSON GIVING SUCH DEED OR MORTGAGE OR HIS OR HER ESTATE OR THOSE ENTITLED THERETO, WITHIN THE FOUR MONTH PERIOD REQUIRED IN PARAGRAPH (A) OF THIS SUBDIVISION, NO ASSISTANCE SHALL BE RECOVERABLE FOR THAT FISCAL YEAR. IN THE EVENT THAT THE PERSON GIVEN THE DEED OR MORTGAGE HAS RECEIVED NO RECOVERABLE ASSISTANCE IN ANY YEAR, THE ANNUAL ACCOUNTING MUST CONTINUE TO BE PROVIDED, REFLECTING ANY CREDITS THAT HAVE BEEN APPLIED AGAINST THE ACCOUNT.

(D) NO DEED OR MORTGAGE TAKEN ON OR BEFORE JANUARY FIRST, TWO THOUSAND FOURTEEN SHALL BE VALID UNLESS A SOCIAL SERVICES OFFICIAL PROVIDES AN ACCOUNTING TO THE PERSON GIVING SUCH DEED OR MORTGAGE OR HIS OR HER ESTATE OR THOSE ENTITLED THERETO, PURSUANT TO THIS SUBDIVISION, ON OR BEFORE NOVEMBER FIRST, TWO THOUSAND FOURTEEN.

6. (a) (1) Until such property or mortgage is sold, assigned or foreclosed pursuant to law by the social services official, the person giving such deed or mortgage, or his estate or those entitled thereto, may redeem the same by the payment of all expenses incurred for the support of the person, and for repairs and taxes paid on such property, provided, however, that a social services official may enter into a contract for such redemption, subject to the provisions of this paragraph, and containing such terms and conditions, including provisions for periodic payments, [with or] without interest, [as the social services official shall deem appropriate,] for an amount less than the full expenses incurred for the support of the person and for repairs and taxes paid on such property (hereinafter called a "lesser sum"), which lesser sum shall in no event be less than the difference between the appraised value of such property and the total of the then unpaid principal balance of any recorded mortgages and the unpaid balance of sums secured by other liens against such property.

(2) In the case of a redemption for a lesser sum, the social services official shall obtain (i) an appraisal of the current market value of such property, by an appraiser acceptable to both parties, and (ii) a statement of the principal balance of any recorded mortgages or other liens against such property (excluding the debt secured by the deed, mortgage or lien of the social services official). Any expenses incurred pursuant to this paragraph shall be audited and allowed in the same manner as other official expenses.

(3) Every redemption contract for any lesser sum shall be approved by the department upon an application by the social services official containing the appraisal and statement required by subparagraph two, a statement by the social services official of his reasons for entering into the contract for such lesser sum and any other information required by regulations of the department.

(4) So long as the terms of the approved redemption contract are performed, no public sale of such property shall be held.

(5) The redemption for a lesser sum shall reduce the claim of the social services official against the recipient on the implied contract under section one hundred four of this chapter or under any other law, to the extent of all sums paid in redemption.

(b) In order to allow a minimum period for redemption, the public welfare official shall not sell the property or mortgage until after the expiration of one year from the date he received the deed or mortgage, but if unoccupied property has not been redeemed within six months from the date of death of the person who conveyed it to him by deed the public welfare official may thereafter, and before the expiration of such year, sell the property.

(c) Except as otherwise provided in this chapter, upon the death of the person or his receiving institutional care, if the mortgage has not been redeemed, sold or assigned, the public welfare official may enforce collection of the mortgage debt in the manner provided for the foreclosure of mortgages by action.

(d) Provided the department shall have given its approval in writing, the public welfare official may, when in his judgment it is advisable and in the public interest, release a part of the property from the lien of the mortgage to permit, and in consideration of, the sale of such part by the owner and the application of the proceeds to reduce said mortgage or to satisfy and discharge or reduce a prior or superior mortgage.

(e) While real property covered by a deed or mortgage is occupied, in whole or in part, by an aged, blind or disabled person who executed such deed or mortgage to the social services official for old age assistance, assistance to the blind or aid to the disabled granted to such person before January first, nineteen hundred seventy-four, the social services official shall not sell the property or assign or enforce the mortgage unless it appears reasonably certain that the sale or other disposition of the property will not materially adversely affect the welfare of such person. After the death of such person no claim for assistance granted him shall be enforced against any real property while it is occupied by the surviving spouse.

(f) Except as otherwise provided, upon the death of a person who executed a lien to the social services official in return for old age assistance, assistance to the blind or aid to the disabled granted prior to January first, nineteen hundred seventy-four, or before the death of such person if it appears reasonably certain that the sale or other disposition of the property will not materially adversely affect the welfare of such person, the social services official may enforce such lien in the manner provided by article three of the lien law. After the death of such person the lien may not be enforced against real property while it is occupied by the surviving spouse.

[3.] 7. The sale of any parcel of real property or mortgage on real property by the public welfare official, under the provisions of this section, shall be made at a public sale, held at least two weeks after notice thereof shall have been published in a newspaper having a general circulation in that section of the county in which the real property is located. Such notice shall specify the time and place of such public sale and shall contain a brief description of the premises to be sold, or upon which the mortgage is a lien, as the case may be. Unless in the judgment of the public welfare official, it shall be in the public interest to reject all bids, such parcel or mortgage shall be sold to the highest responsible bidder.

[4. Any inconsistent provision of this chapter or of any other law notwithstanding, a social services official may not assert any claim under any provision of this chapter to recover payments of public assistance if such payments were reimbursed by child support collections.]

8. IT IS PERMISSIBLE FOR SOCIAL SERVICES OFFICIALS TO SUBORDINATE A MORTGAGE TAKEN ON BEHALF OF THE PUBLIC WELFARE DISTRICT PURSUANT TO THIS SECTION. THE SOCIAL SERVICES OFFICIAL SHALL SUBORDINATE A MORTGAGE WITHIN THIRTY DAYS OF RECEIPT OF WRITTEN NOTICE THAT THE HOMEOWNER IS ATTEMPTING TO MODIFY A MORTGAGE HELD BY A MORTGAGEE WITH SUPERIOR LIEN RIGHTS AND SUBORDINATION OF THE PUBLIC WELFARE DISTRICT'S MORTGAGE IS REQUIRED BY THE SUPERIOR LIEN HOLDER IN ORDER FOR IT TO APPROVE OR COMPLETE THE MODIFICATION.

S 2. This act shall take effect on the sixtieth day after it shall have become a law.