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

3213

2013-2014 Regular Sessions

I N A S S E M B L Y

January 24, 2013

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:

Section 1. Section 2402 of the public authorities law is amended by adding a new subdivision 18 to read as follows:

(18) "COMMUNITY LAND MORTGAGE". A MORTGAGE SECURED BY A FIRST LIEN ON A LEASEHOLD ESTATE IN REAL PROPERTY THAT IS IMPROVED BY A RESIDENTIAL STRUCTURE WHEREIN TITLE TO THE REAL PROPERTY IS RETAINED BY A NOT-FOR-PROFIT HOUSING COMPANY OR HOUSING DEVELOPMENT FUND COMPANY AND THE IMPROVEMENTS THEREON ARE SOLD TO PERSONS OR FAMILIES OF LOW OR MODERATE INCOME WHO ALSO EXECUTE A LONG-TERM LEASE FOR THE REAL PROPERTY.

S 2. The public authorities law is amended by adding a new section 2405-f to read as follows:

S 2405-F. PURCHASE OF COMMUNITY LAND MORTGAGES. (1) A PURPOSE OF THE AGENCY SHALL BE TO PURCHASE COMMUNITY LAND MORTGAGES FROM BANKS WITHIN THE STATE DURING PERIODS WHEN THERE IS AN INADEQUATE SUPPLY OF CREDIT AVAILABLE FOR NEW RESIDENTIAL MORTGAGES OR AVAILABLE FOR SUCH LOANS AT CARRYING CHARGES WITHIN THE FINANCIAL MEANS OF PERSONS AND FAMILIES OF LOW AND MODERATE INCOME.

IT IS HEREBY FOUND AND DECLARED THAT SUCH ACTIVITIES BY THE AGENCY WILL ALLEVIATE A CONDITION IN THIS STATE WHICH IS CONTRARY TO THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE AND WHICH HAS CONSTITUTED IN THE PAST AND FROM TIME TO TIME IN THE FUTURE CAN BE EXPECTED TO CONSTITUTE A PUBLIC EMERGENCY. IT IS FURTHER FOUND AND DECLARED THAT SUCH PURPOSES ARE IN ALL RESPECTS FOR THE BENEFIT OF THE PEOPLE OF THE STATE OF NEW 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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MENTAL FUNCTION IN CARRYING OUT ITS PURPOSES AND IN EXERCISING THE POWERS GRANTED BY THIS TITLE.

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

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

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

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

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

(6) THE AGENCY SHALL REQUIRE THE SUBMISSION TO IT BY EACH BANK FROM WHICH THE AGENCY HAS PURCHASED COMMUNITY LAND MORTGAGES EVIDENCE SATISFACTORY TO THE AGENCY OF THE MAKING, AND IF APPLICABLE, THE SERVICING, OF SUCH COMMUNITY LAND MORTGAGES IN CONFORMITY WITH SUCH BANK'S UNDERTAKING WITH THE AGENCY AND IN CONNECTION THEREWITH MAY, THROUGH ITS EMPLOYEES OR AGENTS OR THOSE OF THE BANKING DEPARTMENT, INSPECT THE BOOKS AND RECORDS OF ANY SUCH BANK.

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

(8) THE AGENCY SHALL REQUIRE AS A CONDITION OF PURCHASE OF ANY COMMUNITY LAND MORTGAGE FROM A BANK THAT THE BANK REPRESENT AND WARRANT TO THE AGENCY THAT:

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

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

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

(D) THE BANK HAS NO NOTICE OF THE EXISTENCE OF ANY COUNTERCLAIM, OFFSET OR DEFENSE ASSERTED BY THE MORTGAGOR OR ANY SUCCESSOR IN INTEREST;

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

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

(G) THE MORTGAGOR IS NOT NOW IN DEFAULT IN THE PAYMENT OF ANY INSTALLMENT OF PRINCIPAL OR INTEREST, ESCROW FUNDS, REAL PROPERTY TAXES OR OTHERWISE IN THE PERFORMANCE OF HIS OBLIGATIONS UNDER THE MORTGAGE DOCUMENTS AND HAS NOT TO THE KNOWLEDGE OF THE BANK BEEN IN DEFAULT IN THE PERFORMANCE OF ANY SUCH OBLIGATION FOR A PERIOD OF LONGER THAN SIXTY DAYS DURING THE LIFE OF THE MORTGAGE; AND

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

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

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

(11) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE AGENCY IS AUTHORIZED TO REQUIRE, AS A CONDITION TO THE PURCHASE FROM BANKS OF ANY COMMUNITY LAND MORTGAGE, SUCH RESTRICTIONS UPON ASSUMABILITY OF THE MORTGAGE, DEFAULT PROVISIONS, RIGHTS TO ACCELERATE, AND OTHER TERMS APPLICABLE TO SUCH COMMUNITY LAND MORTGAGES MADE BY THE BANK PURSUANT TO UNDERTAKINGS WITH THE AGENCY WITH RESPECT TO THE SALE THEREOF AS THE AGENCY MAY DETERMINE TO BE NECESSARY OR DESIRABLE TO ASSURE THE REPAYMENT OF ITS BONDS AND NOTES AND THE EXEMPTION FROM FEDERAL INCOME TAXES OF THE INTEREST PAYABLE ON ITS BONDS AND NOTES. ALL SUCH TERMS SHALL BE ENFORCEABLE BY THE ORIGINATING BANK, THE AGENCY, AND ANY SUCCESSOR HOLDER OF THE MORTGAGE UNLESS EXPRESSLY WAIVED IN WRITING BY OR ON BEHALF OF THE AGENCY.

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