# STATE OF NEW YORK

5731

2019-2020 Regular Sessions

# IN SENATE

May 13, 2019

Introduced by Sen. KRUEGER -- 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 a social services official 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 section 1 of part S of chapter 56 of the laws of 2014, is amended to read as follows:

§ 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~~] **shall not** accept a deed of real property and/or a mortgage thereon on behalf of the social services 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 six hereof~~].

2. [~~A social services official may not assert any claim under any provision of this section to recover~~] **(a) Notwithstanding subdivision one of this section, if, prior to the effective date of the chapter of the laws of two thousand nineteen that amended this section, a social services official accepted a deed of real property and/or a mortgage on behalf of the social services district for the assistance of a person at public expense, such social services official shall not assert any claim under any provision of this section to recover:**

**(1)** payments made as part of Supplemental Nutrition Assistance Program (SNAP), child care services, Emergency Assistance to Adults or the Home Energy Assistance Program (HEAP)[~~.~~

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

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~~3. A social services official may not assert any claim under any provision of this section to recover~~];

(2) payments of public assistance if such payments were reimbursed by child support collections[~~.~~

~~4. A social services official may not assert any claim under any provision of this section to recover~~];

(3) payments of public assistance unless, before [~~it has accepted~~] a deed or mortgage was accepted from an applicant or recipient, [~~it has~~] the official first received a signed acknowledgment from the applicant or recipient acknowledging that:

[~~(a)~~] A. 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 or lien; and

[~~(b)~~] B. if the applicant or recipient declines to provide the lien or mortgage the children in the household shall remain eligible for public assistance.

[~~5. (a)~~] (b) Such property shall not be considered public property and shall remain on the tax rolls and such deed or mortgage shall be subject to redemption as provided in subparagraph one of paragraph (d) of this subdivision.

(c) (1) Until a deed, mortgage, or lien, accepted prior to [~~or after~~] the effective date of this [~~act,~~] section is satisfied or otherwise disposed of, the social services district shall issue and mail to the last known address of the person [~~giving~~] who gave such deed or mortgage, or his or her estate or those entitled thereto, a biennial accounting of the public assistance incurred and repairs and taxes paid on property. The social services district shall provide such accounting no later than February first, two thousand sixteen and biennially thereafter.

[~~(b)~~] (2) Such accounting shall include information regarding the debt owed as of the end of the district's most recent fiscal year including, but not limited to:

[~~(1)~~] A. an enumeration of all public assistance incurred by the person [~~giving~~] who gave such deed or mortgage or his or her household to date;

[~~(2)~~] B. the current amount of recoverable public assistance under the deed or mortgage;

[~~(3)~~] C. the amount of any credits against public assistance including but not limited to:

[~~A.~~] (i) the amount of child support collected and retained by the social services district as reimbursement for public assistance;

[~~B.~~] (ii) recoveries made under section one hundred four of this title;

[~~C.~~] (iii) recoveries made under section one hundred thirty-one-r of this chapter.

[~~(4)~~] D. 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 or lien.

[~~(c)~~] (3) In the event that a biennial accounting is not issued and mailed to the last known address of the person [~~giving~~] who gave such deed or mortgage or his or her estate or those entitled thereto, within the time period required in [~~paragraph (a) of this subdivision~~] subparagraph one of this paragraph, no public assistance shall be recoverable under this section for the previous two fiscal years. In the event that a biennial accounting is not issued and mailed to the last known address

of the person [~~giving~~] **who gave** such deed or mortgage or his or her estate or those entitled thereto, within the time period required in [~~paragraph (a) of this subdivision~~] **subparagraph one of this paragraph**, and such person has received no recoverable public assistance in the district's most recent fiscal year, no public assistance shall be recoverable under this section for the most recent two fiscal years where public assistance remains recoverable.

[~~6. (a) (1)~~] **(d) (1) A.** Until such property or mortgage is sold, assigned or foreclosed pursuant to law by the social services official, the person [~~giving~~] **who gave** such deed or mortgage, or his **or her** 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~~] **subparagraph**, and containing such terms and conditions, including provisions for periodic payments, without interest, 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)~~] **B.** 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~~] **subparagraph** shall be audited and allowed in the same manner as other official expenses.

[~~(3)~~] **C.** 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~~] **clause B of this subparagraph**, a statement by the social services official of his **or her** reasons for entering into the contract for such lesser sum and any other information required by regulations of the department.

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

[~~(5)~~] **E.** 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~~] **title** or under any other law, to the extent of all sums paid in redemption.

[~~(b)~~] **(2)** In order to allow a minimum period for redemption, the social services official shall not sell the property or mortgage until after the expiration of one year from the date he **or she** 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 **or her** by deed the social services official may thereafter, and before the expiration of such year, sell the property.

[~~(c)~~] **(3)** Except as otherwise provided in this chapter, upon the death of the person or his **or her** receiving institutional care, if the mortgage has not been redeemed, sold or assigned, the social services official may enforce collection of the mortgage debt in the manner provided for the foreclosure of mortgages by action.

[~~(d)~~](4) Provided the department shall have given its approval in writing, the social services official may, when in his **or her** 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)~~](5) 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 **or her** shall be enforced against any real property while it is occupied by the surviving spouse.

[~~(f)~~](6) 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.

[~~7.~~](e) The sale of any parcel of real property or mortgage on real property by the social services 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 social services official, it shall be in the public interest to reject all bids, such parcel or mortgage shall be sold to the highest responsible bidder.

[~~8.~~](f) It is permissible for social services officials to subordinate a mortgage taken on behalf of the social services district pursuant to this section. In the event that a social services official determines to subordinate a mortgage, or lien, he or she shall do so within thirty days of receipt of written notice that the mortgagor is attempting to modify their mortgage that is held by a mortgagee with superior lien rights and subordination of the social services district's mortgage is required by such mortgagee in order for it to approve or complete the modification.

§ 2. Section 360 of the social services law, as added by chapter 722 of the laws of 1951, subdivisions 1 and 3 as amended by section 92 of part B of chapter 436 of the laws of 1997, subdivision 2 as amended by chapter 909 of the laws of 1974, and subdivision 4 as amended by chapter 803 of the laws of 1959, is amended to read as follows:

§ 360. Real property of legally responsible relatives[~~; deeds and mortgages may be required~~]. [~~1.~~] The ownership of real property by an applicant or applicants, recipient or recipients who is or are legally

responsible relatives of the child or children for whose benefit the application is made or the aid is granted, whether such ownership be individual or joint as tenants in common, tenants by the entirety or joint tenants, shall not preclude the granting of family assistance or the continuance thereof if he or they are without the necessary funds to maintain himself, herself or themselves and such child or children. [~~The social services official may, however, require, as a condition to the granting of aid or the continuance thereof, that he or she be given a deed of or a mortgage on such property in accordance with the provisions of section one hundred six.~~

~~2. However, while the property covered by the deed or mortgage is occupied, in whole or in part, by the responsible relative who gave such deed or mortgage to the social services official or, by a child for whose benefit the aid was granted the social services official shall not sell the property or assign or enforce the mortgage without the written consent of the department; and, when the property is occupied by such child, such consent shall not be given unless it appears reasonably certain that the sale or other disposition of the property will not materially adversely affect the welfare of such child.~~

~~3. The net amount recovered by the social services department from such property, less any expenditures approved by the department for the burial of the relative or the child who dies while in receipt of aid under this title, shall be used to repay the social services district, the state and the federal government their proportionate share of the cost of family assistance granted. The state and federal share shall be paid by the social services district to the state and the manner and amount of such payment shall be determined in accordance with the regulations of the department.~~

~~4. If any balance remains it shall belong to the estate of the legally responsible relative or relatives and the public welfare district shall forthwith credit the same accordingly, and, provided they claim it within four years thereafter, pay it to the persons entitled thereto. If not so claimed within four years it shall be deemed abandoned property and be paid to the state comptroller pursuant to section thirteen hundred five of the abandoned property law.~~

~~5. The proceeds or moneys due the United States shall be paid or reported in such manner and at such times as the federal security agency or other authorized federal agency may direct.~~]

§ 3. This act shall take effect on the first of April next succeeding the date on which it shall have become a law.