

STATE OF NEW YORK

8426

2019-2020 Regular Sessions

IN ASSEMBLY

June 17, 2019

Introduced by M. of A. CYMBROWITZ -- (at request of the New York State Homes and Community Renewal) -- read once and referred to the Committee on Housing

AN ACT to amend the public authorities law, in relation to granting the state of New York mortgage agency authority to purchase mortgage loans from a broader pool of non-depository lenders, purchase mortgages secured by new construction loans, originate mortgage and chattel loans, sell its mortgages at private sales, and modify its mortgages to assist financially distressed homeowners

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 2401 of the public authorities law is amended by adding a new undesignated paragraph to read as follows:

It is further found and determined that there is a shortage of adequate funds to assist in the new construction of modular and manufactured housing.

§ 2. Subdivisions 2, 5, and 12 of section 2402 of the public authorities law, subdivision 2 as amended by chapter 806 of the laws of 1990, subdivision 5 as amended by chapter 151 of the laws of 2013, and subdivision 12 as added by chapter 915 of the laws of 1982, are amended to read as follows:

(2) "Bank". Any bank or trust company, savings bank, savings and loan association, industrial bank, credit union, national banking association, federal savings and loan association, federal savings bank or federal credit union which is located in the state. The term "bank" shall also include a New York state licensed mortgage banker, or a domestic not-for-profit corporation whose public purposes include combatting community deterioration and which is an exempt organization as defined in paragraph (e) of subdivision one of section five hundred ninety of the banking law, or an entity exempt from licensing provisions in accordance with paragraph (a) of subdivision two of section five

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

LBD09478-01-9

1 hundred ninety of such law[~~, which in any such case is approved as a~~
2 ~~mortgage lender by the Federal National Mortgage Association or by the~~
3 ~~Federal Home Loan Mortgage Corporation~~].

4 (5) "Mortgage". A loan owed to a bank secured by a first lien on a fee
5 simple or leasehold estate in real property located in the state and
6 improved by a residential structure or on which a residential structure
7 shall be constructed using the proceeds of such loan, whether or not
8 insured or guaranteed by the United States of America or any agency
9 thereof. The term "mortgage" shall also include a loan owed to a bank
10 secured by a second lien on a fee simple or leasehold estate in real
11 property located in the state and improved by a residential structure or
12 on which a residential structure shall be constructed using the proceeds
13 of the related loan described in paragraph (a) or (b) of this subdivi-
14 sion, whether or not insured or guaranteed by the United States of Amer-
15 ica or any agency thereof, provided, however, that such second lien: (a)
16 secures a loan purchased by the agency, and (b) is made at the same time
17 as a first lien securing a loan purchased by the agency pursuant to its
18 programs or by a government sponsored enterprise or is made at the same
19 time as a new housing loan purchased by the agency pursuant to section
20 twenty-four hundred five-c of this part. The term "mortgage" shall also
21 include loans made by the agency and secured by a second lien on a fee
22 simple or leasehold estate in real property located in the state and
23 improved by a residential structure or on which a residential structure
24 shall be constructed using the proceeds of such loan, whether or not
25 insured or guaranteed by the United States of America or any agency
26 thereof, provided however, that the loan made by the agency and secured
27 by such second lien is made at the same time as a first lien securing a
28 mortgage loan purchased by the agency pursuant to its programs or by a
29 government sponsored enterprise. In the case of any second lien
30 purchased or made hereunder, the mortgagor shall be obligated to
31 contribute from his or her own verifiable funds an amount not less than
32 such percentage as the agency shall determine, of the lower of the
33 purchase price or appraised value of the property subject to the first
34 lien. "Real property" as used in this subdivision shall include air
35 rights.

36 For the purposes of this title and of section [~~one hundred ninety and~~
37 ~~subsection (a) of section one thousand four hundred fifty-six~~] one
38 hundred eighty-seven of the tax law, "mortgage" shall include housing
39 loans as defined below. Except for the purposes of subdivision seven of
40 section two thousand four hundred five and subdivision eight of section
41 two thousand four hundred five-b of this part, "mortgage" shall also
42 include a loan owed to a bank by an individual borrower incurred for the
43 purpose of financing the purchase of certificates of stock or other
44 evidence of ownership of an interest in, and a proprietary lease from, a
45 cooperative housing corporation formed for the purpose of the cooper-
46 ative ownership of residential real estate in the state, secured by an
47 assignment or transfer of the benefits of such cooperative ownership,
48 and containing such terms and conditions as the agency may approve.

49 (12) "Forward commitment mortgage". A mortgage, including new
50 construction loans, for which a commitment to advance funds is made not
51 earlier than the date the agency issues an invitation to purchase mort-
52 gages or such later date as specified in the invitation. A mortgage made
53 in satisfaction of the obligation of a bank under section twenty-four
54 hundred five of this title is not a forward commitment mortgage.

55 § 3. Subdivisions 7, 9 and 14 of section 2404 of the public authori-
56 ties law, subdivision 7 as amended by chapter 782 of the laws of 1992,

subdivision 9 as amended by chapter 1023 of the laws of 1971, and subdivision 14 as added by chapter 612 of the laws of 1970, are amended to read as follows:

(7) To (a) acquire, and contract to acquire, existing mortgages owned by banks and to enter into advance commitments to banks for the purchase of said mortgages, all subject to the provisions of section two thousand four hundred five of this title, (b) acquire, and contract to acquire, forward commitment mortgages made by banks and to enter into advance commitments to banks for the purchase of said mortgages, all subject to the provisions of section two thousand four hundred five-b of this title, (c) acquire, and contract to acquire, new housing loans made by banks and to enter into advance commitments to banks for the purchase of said housing loans, all subject to the provisions of section two thousand four hundred five-c of this title, ~~[and]~~ (d) to acquire and contract to acquire mortgages pursuant to section twenty-four hundred five-d of this title, and (e) acquire, and contract to acquire, new construction mortgage loans owned by banks and to enter into advance commitments to banks for the purchase of said mortgages, all subject to the provisions of section two thousand four hundred five-b of this part;

(9) Subject to any agreement with bondholders or noteholders, to sell any mortgages or other personal property acquired by the agency at public or private sale and at such price or prices as it shall determine~~[, provided, however, that a private sale shall be limited to an agency of the federal government, the federal national mortgage association, or a sale of a mortgage to a bank from which it was originally purchased]~~. If the agency determines to sell mortgages at public sale, a notice of such sale shall be published at least once at least five days prior to the date of such sale in a financial newspaper or journal published in the city of New York;

(14) To renegotiate, refinance or foreclose, or contract for the foreclosure of, any mortgage in default; to waive any default or consent to the modification of the terms of any mortgage; to commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract or other agreement, and to bid for and purchase such property at any foreclosure or at any other sale, or acquire or take possession of any such property; to operate, manage, lease, dispose of, and otherwise deal with such property, ~~[in such manner as may be necessary to protect the interests of the agency and the holders of its bonds and notes]~~ subject to any agreement with its bondholders or noteholders;

§ 4. Subdivision 33 of section 2404 of the public authorities law, as renumbered by chapter 72 of the laws of 2016, is renumbered subdivision 35 and two new subdivisions 33 and 34 are added to read as follows:

(33) To make, and undertake commitments to make, to persons and families of low and moderate income mortgage loans secured by (a) a first lien on a fee simple or leasehold estate in real property located in the state and improved by a residential structure or on which a residential structure shall be constructed using the proceeds of such loan, whether or not insured or guaranteed by the United States of America or any agency thereof or (b) a second lien on a fee simple or leasehold estate in real property located in the state and improved by a residential structure or on which a residential structure shall be constructed using the proceeds of such loan, whether or not insured or guaranteed by the United States of America or any agency thereof, provided, however, that such second lien secures a mortgage loan already originated or purchased by the agency pursuant to its programs, all subject to the provisions of section two thousand four hundred five-g of this part.

(34) To make, and undertake commitments to make, to persons and families of low and moderate income mortgages on chattel, including, but not limited to, manufactured homes affixed to real property.

§ 5. Subdivisions 3 and 5 and paragraphs (a), (f), and (h) of subdivision 8 of section 2405-b of the public authorities law, subdivisions 3 and 5 and paragraphs (a) and (h) of subdivision 8 as added by chapter 915 of the laws of 1982, paragraph (h) of subdivision 8 as further amended by section 104 of part A of chapter 62 of the laws of 2011 and paragraph (f) of subdivision 8 as amended by chapter 432 of the laws of 2009, are amended to read as follows:

(3) In conducting its program of purchasing forward commitment mortgages, the agency shall be governed by the provisions of paragraph (b) of subdivision three of section twenty-four hundred five of this ~~[title]~~ part; however, with respect to new construction loans, the agency shall be governed by the provisions of only subparagraph (iii) of paragraph (b) of subdivision three of section twenty-four hundred five of this part.

(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 forward commitment mortgages purchased by the agency from banks at a rate or rates which the agency from time to time shall determine ~~[to]~~, provided however, that if such mortgages are financed through the issuance of the agency's bonds or notes, the interest rate shall be at least sufficient, together with any other available monies, to provide for the payment of its bonds and notes, and forward commitment 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.

(a) other than with respect to new construction loans, the mortgage was not made in satisfaction of an obligation of the bank under section twenty-four hundred five of this title;

(f) the mortgage constitutes a valid first lien, or second lien with respect to mortgages other than new construction loans, on the real property described to the agency in accordance with subdivision five of section twenty-four hundred two of this part 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;

(h) the improvements to, or new construction of, the mortgaged real property are covered by a valid and subsisting policy of insurance issued by a company authorized by the superintendent of financial services 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, or new construction of, the mortgaged real property.

§ 6. The public authorities law is amended by adding a new section 2405-g to read as follows:

§ 2405-g. Origination of new mortgage loans. (1) The agency is hereby authorized to the extent it finds practicable, to establish a program whereby it originates mortgage loans to persons and families of low or moderate income. It is hereby found and declared that such activities by

1 the agency will alleviate a condition in this state which is contrary to
2 the public health, safety and general welfare and which has constituted
3 in the past and from time to time in the future can be expected to
4 constitute a public emergency. It is further found and declared that
5 such purposes are in all respects for the benefit of the people of the
6 state of New York and the agency shall be regarded as performing an
7 essential governmental function in carrying out its purposes and in
8 exercising the powers granted by this title.

9 (2) The agency shall originate such mortgage loans at such repayment
10 terms and conditions as it shall determine; provided, however, that each
11 borrower receiving a mortgage loan originated by the agency shall be a
12 person or family of low or moderate income.

13 (3) The total mortgage loan amount originated by the agency shall not
14 exceed one hundred percent of the sale price or market value of the real
15 property and residential structure securing the mortgage, as determined
16 or approved by or on behalf of the agency. The agency may also disburse
17 additional amounts to finance such closing costs and fees as it may deem
18 necessary or appropriate.

19 (4) In conducting its program of originating mortgage loans, the agen-
20 cy shall not be governed or limited by the provisions of subparagraph
21 (i) or (ii) of paragraph (b) of subdivision three of section twenty-four
22 hundred five of this part however, the agency shall be governed by the
23 provisions of subparagraph (iii) of paragraph (b) of subdivision three
24 of section twenty-four hundred five of this part;

25 (5) Notwithstanding the maximum interest rate, if any, fixed by
26 section 5-501 of the general obligations law or any other law not
27 specifically amending or applicable to this section, the agency may set
28 the interest rate to be borne by mortgage loans originated by the agency
29 at a rate or rates which the agency from time to time shall determine
30 provided, however, that if such mortgages are financed through the issu-
31 ance of the agency's bonds or notes, the interest rate shall be at least
32 sufficient, together with any other available monies, to provide for the
33 payment of its bonds and notes, and mortgage loans bearing such interest
34 rate shall not be deemed to violate any such law or to be unenforceable
35 notwithstanding any subsequent sale or disposition of the mortgage loan
36 by the agency to any other party.

37 (6) The instrument evidencing the mortgage loan originated by the
38 agency and all related documentation shall contain the terms and condi-
39 tions, and be in the form, prescribed or approved by the agency, and the
40 agency may require any recipient of a mortgage loan to execute certif-
41 ications, guarantees or other agreements relating to the use, occupancy,
42 maintenance and sale of the single-family residential housing financed
43 by the mortgage loan originated by the agency.

44 (7) Each borrower of a mortgage loan originated by the agency shall be
45 liable to the agency for any damages suffered by the agency by reason of
46 the untruth of any representation or the breach of any warranty or
47 agreement made by the borrower in connection with its application for a
48 mortgage.

49 § 7. This act shall take effect immediately; provided, however, that:

50 a. the amendments made to subdivisions 2, 5 and 12 of section 2402 of
51 the public authorities law made by section two of this act shall not
52 affect the expiration of such subdivisions and shall be deemed expired
53 therewith;

54 b. the amendments made to subdivision 7 of section 2404 of the public
55 authorities law made by section three of this act shall not affect the

1 expiration of such subdivision and shall be deemed expired therewith;
2 and
3 c. the amendments made to section 2405-b of the public authorities law
4 made by section five of this act shall not affect the repeal of such
5 section and shall be deemed repealed therewith.