

# STATE OF NEW YORK

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6173

2019-2020 Regular Sessions

## IN SENATE

May 21, 2019

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Introduced by Sen. MAY -- (at request of the New York State Homes and Community Renewal) -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

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:

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

3 It is further found and determined that there is a shortage of  
4 adequate funds to assist in the new construction of modular and manufac-  
5 tured housing.

6 § 2. Subdivisions 2, 5, and 12 of section 2402 of the public authori-  
7 ties law, subdivision 2 as amended by chapter 806 of the laws of 1990,  
8 subdivision 5 as amended by chapter 151 of the laws of 2013, and subdivi-  
9 sion 12 as added by chapter 915 of the laws of 1982, are amended to  
10 read as follows:

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

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

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1 in accordance with paragraph (a) of subdivision two of section five  
2 hundred ninety of such law[~~, which in any such case is approved as a~~  
3 ~~mortgage lender by the Federal National Mortgage Association or by the~~  
4 ~~Federal Home Loan Mortgage Corporation~~].

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

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

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

§ 3. Subdivisions 7, 9 and 14 of section 2404 of the public authorities 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

1 by the agency pursuant to its programs, all subject to the provisions of  
2 section two thousand four hundred five-g of this part.

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

6 § 5. Subdivisions 3 and 5 and paragraphs (a), (f), and (h) of subdivi-  
7 sion 8 of section 2405-b of the public authorities law, subdivisions 3  
8 and 5 and paragraphs (a) and (h) of subdivision 8 as added by chapter  
9 915 of the laws of 1982, paragraph (h) of subdivision 8 as further  
10 amended by section 104 of part A of chapter 62 of the laws of 2011 and  
11 paragraph (f) of subdivision 8 as amended by chapter 432 of the laws of  
12 2009, are amended to read as follows:

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

20 (5) Notwithstanding the maximum interest rate, if any, fixed by  
21 section 5-501 of the general obligations law or any other law not  
22 specifically amending or applicable to this section, the agency may set  
23 the interest rate to be borne by forward commitment mortgages purchased  
24 by the agency from banks at a rate or rates which the agency from time  
25 to time shall determine [~~to~~], provided however, that if such mortgages  
26 are financed through the issuance of the agency's bonds or notes, the  
27 interest rate shall be at least sufficient, together with any other  
28 available monies, to provide for the payment of its bonds and notes, and  
29 forward commitment mortgages bearing such interest rate shall not be  
30 deemed to violate any such law or to be unenforceable if originated by a  
31 bank in good faith pursuant to an undertaking with the agency with  
32 respect to the sale thereof notwithstanding any subsequent failure of  
33 the agency to purchase the mortgage or any subsequent sale or disposi-  
34 tion of the mortgage by the agency to such bank or any other person.

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

38 (f) the mortgage constitutes a valid first lien, or second lien with  
39 respect to mortgages other than new construction loans, on the real  
40 property described to the agency in accordance with subdivision five of  
41 section twenty-four hundred two of this part subject only to real prop-  
42 erty taxes not yet due, installments of assessments not yet due, and  
43 easements and restrictions of record which do not adversely affect, to a  
44 material degree, the use or value of the real property or improvements  
45 thereon;

46 (h) the improvements to, or new construction of, the mortgaged real  
47 property are covered by a valid and subsisting policy of insurance  
48 issued by a company authorized by the superintendent of financial  
49 services to issue such policies in the state of New York and providing  
50 fire and extended coverage to an amount not less than eighty percent of  
51 the insurable value of the improvements to, or new construction of, the  
52 mortgaged real property.

53 § 6. The public authorities law is amended by adding a new section  
54 2405-g to read as follows:

55 § 2405-g. Origination of new mortgage loans. (1) The agency is hereby  
56 authorized to the extent it finds practicable, to establish a program

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

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

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

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

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

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

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

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

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

- 1     b. the amendments made to subdivision 7 of section 2404 of the public  
2 authorities law made by section three of this act shall not affect the  
3 expiration of such subdivision and shall be deemed expired therewith;  
4 and
- 5     c. the amendments made to section 2405-b of the public authorities law  
6 made by section five of this act shall not affect the repeal of such  
7 section and shall be deemed repealed therewith.