

17:48E-1

LEGISLATIVE HISTORY CHECKLIST
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(Condominium foreclosure)

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LAWS OF: 1995 CHAPTER: 354

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SPONSOR(S): Roma

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COMMITTEE: ASSEMBLY Housing

SENATE: State Management

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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

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ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1282
STATE OF NEW JERSEY

ADOPTED JUNE 9, 1994

Sponsored by Assemblyman ROMA and Assemblywoman HECK

1 AN ACT concerning certain satisfaction of unpaid condominium
2 assessments amending P.L.1948, c.67, P.L.1963, c.144 and
3 P.L.1969, c.257.

4

5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. Section 65 of P.L.1948, c.67 (C.17:9A-65) is amended to
8 read as follows:

9 65. A. No bank shall make a mortgage loan secured by a
10 mortgage upon real property unless

11 (1) (Deleted by amendment; P.L.1985, c.528.)

12 (2) The mortgaged property shall consist of improved real
13 property, including farmlands, or unimproved real property, if the
14 proceeds of such loan shall be used for the purpose of erecting
15 improvements thereon;

16 (3) The mortgage securing such loan shall constitute a first
17 lien on a fee; a mortgage shall be deemed a first lien
18 notwithstanding the existence of a prior mortgage or mortgages
19 held by the bank, or liens of taxes which are not delinquent, a lien
20 of a condominium association for up to six months customary
21 condominium assessments pursuant to section 21 of P.L.1969,
22 c.257 (C.46:8B-21), building restrictions or other restrictive
23 covenants or conditions, leases or tenancies whereby rents or
24 profits are reserved to the owner, joint driveways, sewer rights,
25 rights in walls, rights-of-way or other easements, or
26 encroachments, which the persons signing the certificate
27 provided for in section 67 report in their opinion do not
28 materially affect the security for the mortgage loan. Every
29 mortgage shall be certified to be such a first lien by an
30 attorney-at-law of the state in which the real property is
31 located, or certified or guaranteed to be such a first lien by a
32 corporation authorized to guarantee titles to land in such state;

33 (4) No such loan shall be made for a period longer than 40
34 years from its date, and no such loan shall exceed 80% of the
35 appraised value of the mortgaged property; provided that there
36 shall be included in the appraised value of the mortgaged
37 property, for the purpose of this paragraph (4), the value of the
38 improvements to be erected upon the mortgaged property wholly
39 or partly with the proceeds of such loan; and

40 (5) The instrument evidencing the loan shall require payment
41 to be made during each year on account of the principal amount
42 of the loan, at a rate not less than 1% per annum of the original
43 amount of the loan, if the original amount of the loan does not
44 exceed 50% of the appraised value of the mortgaged property; or

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 2% per annum of the original amount of the loan, if the loan
2 exceeds 50% but does not exceed $66 \frac{2}{3}\%$ of such appraised
3 value; or 4% per annum of the original amount of the loan, if the
4 loan exceeds $66 \frac{2}{3}\%$ of such appraised value; provided that, in
5 lieu of such principal payments, the instrument evidencing any
6 mortgage loan may require equal monthly payments, each
7 applicable to principal and interest, in an amount sufficient to
8 pay current interest and to repay the amount of the loan in not
9 more than 40 years from its date; and provided further that when
10 the proceeds of any such loan are to be used to pay, in whole or in
11 part, the cost of constructing a building or buildings on the
12 mortgaged property, and such proceeds are paid by the bank from
13 time to time, final payment being made at or after completion,
14 the instrument evidencing such loan need not require that any
15 payment be made on account of the principal amount of the loan
16 during the period from the date of such loan to a date not more
17 than 18 months from the date of such loan; and such date marking
18 the end of the period during which no payments are required to be
19 made on account of the principal amount of the loan shall be
20 deemed to be the date of such loan for the purpose of reckoning
21 the 40-year period limited for the payment of such loan by this
22 paragraph (5), and by paragraph (4) of this subsection.

23 B. The commissioner may, from time to time, with the
24 concurrence of the banking advisory board, make, alter and
25 rescind regulations: (1) Authorizing banks to make mortgage
26 loans, or specified types or classes of mortgage loans, (a) which
27 exceed 80% of the appraised value of the mortgaged property; (b)
28 which mature in more than 25 years from their date; (c) which
29 require smaller annual payments on account of the principal
30 amounts thereof than those specified in paragraph (5) of
31 subsection A of this section; (d) which provide for equal monthly
32 payments, each applicable to principal and interest, in amounts
33 sufficient to pay current interest on and to repay the amount of
34 the loan in such number of years, more than 40 but not more than
35 45, as the regulations may specify; or (e) which substantially
36 conform to the terms and conditions of mortgage loans
37 authorized to be made by associations pursuant to the "Savings
38 and Loan Act (1963)," P.L.1963, c.144 (C.17:12B-1 et seq.);

39 (2) Defining "improved real property" for the purposes of
40 paragraph (2) of subsection A of this section;

41 (3) Increasing the percentage of the time deposits or the
42 aggregate of the unimpaired capital stock and surplus of banks
43 which banks may invest in mortgage loans beyond the limitation
44 expressed in subsection A of section 69;

45 (4) Increasing the percentage of the principal balances owing
46 on mortgage loans of the kind referred to in section 68 which
47 shall not be included in the total of all principal balances owing
48 on mortgage loans for the purposes of subsection A of section 69,
49 or eliminating entirely the principal balances owing on such
50 mortgage loans from such total of all principal balances.

51 C. In making, altering and rescinding regulations pursuant to
52 subsection B of this section, the commissioner and the banking
53 advisory board shall consider the statutes and regulations
54 applicable to national banks in the making or acquiring of loans

1 secured by interests in real property and the practices followed
2 by national banks in the making or acquiring of such loans. The
3 regulations so made shall, so far as the commissioner and the
4 banking advisory board deem to be warranted by the state of the
5 economy and to be consistent with sound banking practices, be
6 directed toward the creation and maintenance of a substantial
7 parity between banks and national banks in all matters relating to
8 the making and acquiring of loans secured by interests in real
9 property. The power to regulate as provided in subsection B of
10 this section may be exercised by the commissioner and the
11 banking advisory board within the standards established by this
12 subsection, notwithstanding that the subject of such regulation is
13 not expressly set forth in subsection B of this section.

14 D. A bank may make a mortgage loan in excess of the ratio
15 between appraised value and the amount of the loan as
16 established by subsection A(4) of this section, provided that the
17 amount of such excess is secured by other collateral having a
18 value at all times at least equal to the amount of the principal
19 balance in excess of that amount permitted by subsection A(4) or
20 as established by regulation of the Commissioner of Banking.

21 (cf: P.L.1985, c.528, s.6)

22 2. Section 181 of P.L.1948, c.67 (C.17:9A-181) is amended to
23 read as follows:

24 181. A. 1. A savings bank may make or invest in mortgage
25 loans in the manner and subject to the limitations prescribed by
26 this section. For the purposes of this section, "mortgage loan"
27 shall include every indebtedness secured by mortgage on real
28 property, or on a lease of the fee of real property (in any case in
29 which such lease is lawful security for such mortgage loan),
30 except as otherwise provided by subsection Q. of this section, and
31 a savings bank shall be deemed to have made a mortgage loan
32 when

33 (a) It lends or participates in lending money to a borrower upon
34 the security of real property, or

35 (b) It acquires, by purchase or otherwise, a mortgage loan or
36 any share or part of or interest in a mortgage loan which is not
37 subordinate to any share or part thereof or interest therein held
38 by any other person.

39 A savings bank may sell, assign or otherwise dispose of a share
40 or part of or interest in a mortgage loan held by it to any other
41 person.

42 2. For all purposes of compliance with the applicable
43 provisions and restrictions of subsections D. and G. of this section
44 as to the percentage of the mortgage loan to the appraised value
45 of the mortgaged property, and the term of and rate of
46 amortization of such loan, the date of the acquisition by a savings
47 bank of a mortgage loan or a share or part thereof or interest
48 therein shall, as respects such savings bank, be deemed to be the
49 date as of which the mortgage loan was made and the unpaid
50 amount of the principal then due shall be deemed to be the
51 amount of such mortgage loan.

52 B. No savings bank shall make a mortgage loan at any time
53 when the total cost of acquisition by the savings bank of all real
54 property owned by it, other than real property held for the

1 purposes specified in subparagraph (a) of paragraph (5) of section
2 24, and the total of all principal balances owing to the savings
3 bank on mortgage loans, less all write-offs and reserves with
4 respect to such real property and mortgage loans, together
5 exceeds, or by the making of such loan will exceed, 80% of its
6 deposits. For the purposes of this subsection, principal balances
7 owing on mortgage loans made pursuant to subsection Q.(1) of
8 this section shall, only to the extent of the unguaranteed portion
9 of such balances, and loans made pursuant to subsection Q.(2) of
10 this section shall, only to the extent of 50% of such balances, be
11 included in the total of all principal balances owing to the savings
12 bank on mortgage loans; and for the purposes of this subsection,
13 principal balances owing on mortgage loans made by the use of
14 funds received by the bank pursuant to the provisions of the "New
15 Jersey Housing and Mortgage Finance Agency Law of 1983,"
16 P.L.1983, c.530 (C.55:14K-1 et seq.), shall, only to the extent of
17 50% of such balances, be included in the total of all principal
18 balances, owing to the savings bank on mortgage loans.

19 C. In the event that the real property offered as security for a
20 mortgage loan is subject to one or more prior mortgage liens, the
21 maximum amount of a mortgage loan which may be made
22 pursuant to this section shall be reduced by the total amount of
23 the mortgage loan or loans outstanding which are secured by the
24 prior mortgage lien or liens, except that, if any prior mortgage
25 lien or liens secure a line, or lines, of credit, the maximum
26 amount of mortgage loan which may be made pursuant to this
27 section shall be reduced by the total amount that may be
28 borrowed under the line, or lines, of credit.

29 D. When the real property offered as security for a mortgage
30 loan consists of a lot of land, or, in the case of condominiums, an
31 interest in a lot of land, upon which there is one or more one-,
32 two-, three-, or four-family dwellings including appropriate
33 garages or other outbuildings, if any, or upon which such dwelling
34 or dwellings, garages or outbuildings are in the course of
35 construction or are to be constructed, the amount of the
36 mortgage loan shall not exceed 90% of the appraised value of the
37 real property; provided, however, where mortgage guaranty
38 insurance is issued incident to such loan pursuant to the
39 provisions of the Mortgage Guaranty Insurance Act, P.L.1968,
40 c.248 (C.17:46A-1 et seq.), the amount of the mortgage loan shall
41 not exceed 95% of the appraised value of the real property.

42 E. (Deleted by amendment.)

43 F. (Deleted by amendment.)

44 G. When the real property offered as security for a mortgage
45 loan consists of a lot of land upon which there is a building or
46 buildings other than dwellings of the nature described in
47 subsection D. of this section, or upon which such other buildings
48 are in the course of construction, or are to be constructed, or
49 when such land is paved for parking lot purposes, the amount of
50 the mortgage loan shall not exceed 80% of appraised value of
51 such real property. The instrument evidencing a mortgage loan
52 made pursuant to this subsection shall require that the loan be
53 repaid in full in not more than 30 years and one month from the
54 date it is made; and (a) if the amount of such loan, when made,

1 exceeds 50%, of the appraised value of the real property, that
2 payment shall be made in reduction thereof at least semiannually,
3 at an annual rate equal to at least 1% of the original amount of
4 such loan; or (b) if the amount of such loan, when made, does not
5 exceed 50% of the appraised value of the real property, that
6 payments shall be made in reduction thereof at least
7 semiannually, at an annual rate equal to at least 1/2% of the
8 original amount of such loan; provided, that, in lieu of such
9 principal payments, the instrument evidencing any mortgage loan
10 may require equal monthly payments each applicable to principal
11 and interest in an amount sufficient to pay current interest and
12 to repay the amount of the loan in not more than 30 years and
13 one month from its date. When, however, the amount of such
14 loan does not, when made, exceed 50% of the appraised value of
15 such real property, and the instrument evidencing such loan
16 requires that it be paid in full in not more than five years and one
17 month from the date it is made, the instrument need not require
18 that any payment be made in reduction of such loan prior to its
19 maturity date. Notwithstanding the limitations prescribed by
20 subsection D. and hereinabove in this section, a savings bank may
21 make a mortgage loan secured by a lot of land or two or more
22 lots of land, contiguous or not, upon each of which there is a
23 building or buildings, or upon each of which a building or buildings
24 are in the course of construction or are to be constructed. The
25 limitations of this section governing the term of the loan, rate of
26 amortization, and the percentage of the mortgage loan to the
27 appraised value of each type of building, including land, shall
28 apply. No loans shall be made under subsection D. or G. hereof to
29 any one person or on any one property if the loans shall exceed
30 15% of the surplus, undivided profits, and reserves of the savings
31 bank, or \$50,000.00, whichever is greater.

32 H. When the real property offered as security for a mortgage
33 loan is of the nature described in subsection D. of this section,
34 and the amount of the loan does not exceed 66 2/3% of the
35 appraised value of such real property, the instrument evidencing
36 such loan shall be sufficient if it conforms to the requirements of
37 subsection G. of this section.

38 I. A mortgage loan may be made for the purpose of enabling a
39 borrower to construct a building or buildings upon real property
40 owned by him, and, in such a case, the appraised value of the real
41 property shall include the value of the building or buildings to be
42 constructed, but at no time shall a greater sum be advanced on
43 account of such loan than, in the opinion of (1) the appraisers
44 hereinafter provided for, or (2) one of such appraisers and an
45 officer of the savings bank designated for that purpose by the
46 board of managers, is warranted by the state of completion of the
47 buildings in process of construction. For the purposes of
48 compliance with the applicable requirements of subsection G. of
49 this section as to the term of and the rate of amortization of a
50 loan made pursuant to this section, such loan shall be deemed to
51 have been made when the final advance shall be made to the
52 borrower on such loan, or 60 months from the date of the
53 mortgage securing such loan, whichever is earlier.

54 J. When the real property offered as security for a mortgage

1 loan consists of unimproved land, and the proceeds of the
2 mortgage loan are not to be used to construct a building on the
3 land, the amount of the loan shall not exceed 50% of the
4 appraised value of the real property. When the real property
5 offered as security for a mortgage loan consists of unimproved
6 land, and the proceeds of the loan are to be used for
7 improvements to the land, the amount of such loan shall not
8 exceed 75% of the appraised value of such real property. The
9 instrument evidencing a loan made pursuant to this subsection
10 shall require that such loan be paid in full in not more than 10
11 years and one month from the date it is made. No loan made
12 pursuant to this subsection shall exceed \$10,000.00, or 3/10 of 1%
13 of the deposits of the savings bank, whichever is greater; nor
14 shall any loan be made at any time when the total of all such
15 loans exceeds, or if the making of such loan would cause such
16 total to exceed 2% of the deposits of the savings bank.

17 K. No mortgage loan shall be made except upon a written
18 certification signed by at least two persons, each of whom shall
19 be either a manager of the bank or an appraiser appointed by its
20 board of managers. In the case of a mortgage loan secured by a
21 mortgage upon real property, such certification shall state the
22 opinion of such persons as to the value of the land and the
23 improvements thereon or to be erected thereon and the character
24 of such improvements. In the case of a mortgage loan secured by
25 a mortgage upon a lease of the fee of real property, such
26 certification shall state the opinion of such person as to the value
27 of the leasehold interest to be subject to the mortgage, including
28 the leasehold interest in the improvements erected or to be
29 erected upon the leased property and the character of such
30 improvements. Such certification shall be filed with the records
31 of the bank, and shall be preserved until the savings bank has no
32 interest, as mortgagee or otherwise, in the real property.

33 L. Purchase money mortgage loans made by a savings bank on
34 the sale of real property owned by it shall not be subject to the
35 preceding subsections or to subsection P. of this section, except
36 that such loans shall be included in determining whether the total
37 amount of mortgage loans held by a savings bank exceeds 80% of
38 its deposits.

39 M. No savings bank shall make a mortgage loan secured by a
40 mortgage upon a lease of the fee of real property unless

41 (1) The leased property is located within this State or, if
42 outside this State, the leased property is located within 50 miles
43 of the border of this State;

44 (2) The leased property shall consist of improved real property,
45 including farmlands, or unimproved real property if the proceeds
46 of such loan shall be used for the purpose of erecting
47 improvements thereon;

48 (3) The mortgage securing such loan shall constitute a first
49 lien on a lease of the fee of real property, which fee is not
50 subject to any prior lien; the fee shall be deemed not subject to
51 any prior lien notwithstanding the existence of liens of taxes
52 which are not delinquent, a lien of a condominium association for
53 up to six months of customary condominium assessments pursuant

1 to section 21 of P.L.1969, c.257 (C.46:8B-21), building
2 restrictions or other restrictive covenants or conditions, joint
3 driveways, sewer rights, rights in walls, rights-of-way or other
4 easements, or encroachments, which the persons signing the
5 certificate provided for in subsection K. of this section report in
6 their opinion do not materially affect the security for the
7 mortgage loan. Every mortgage shall be certified to be such a
8 first lien by an attorney-at-law of the state in which the real
9 property is located, or certified or guaranteed to be such a first
10 lien by a corporation authorized to guarantee titles to land in
11 such state;

12 (4) Such loan shall not exceed 66 2/3% of the appraised value
13 of the leasehold interest subject to the mortgage, including the
14 leasehold interest in the improvements erected upon the
15 mortgaged property, or to be erected thereon wholly or partly
16 with the proceeds of the mortgage loan; and

17 (5) The instrument evidencing the loan shall require that
18 payment be made on account of the principal amount of such loan
19 at an annual rate sufficient to repay such loan not later than one
20 year prior to the expiration of the lease;

21 (6) Notwithstanding the foregoing, the terms of the loan are
22 authorized for an association pursuant to subsections C. and D. of
23 section 155 of the "Savings and Loan Act (1963)," P.L.1963, c.144
24 (C.17:12B-155).

25 N. The instrument evidencing a mortgage loan may be in such
26 form, and may contain such provisions, not inconsistent with law,
27 as the savings bank may choose to insert for the protection of its
28 lien and the preservation of its interest in the real property
29 mortgaged to it.

30 O. Notwithstanding the limitations prescribed by the preceding
31 subsections or by subsection P. of this section, a savings bank may

32 (1) For the purposes of preventing or mitigating loss, or of
33 preserving the lien of its mortgage, or of conserving the value of
34 the real property affected by its mortgage, (a) extend the time
35 for the payment of principal or interest, (b) modify or waive any
36 of the terms or conditions of the instrument evidencing a
37 mortgage loan, (c) settle or compromise all or part of the amount
38 due or to grow due on a mortgage loan, (d) sell or assign the
39 mortgage loan, or a share or part thereof or interest therein, for
40 such consideration as it shall deem proper, and (e) advance funds
41 for the payment of any tax, lien, charge or claim whatsoever; and

42 (2) Make a loan in addition to an existing mortgage loan or
43 loans held by it, upon the security of the same real property and
44 secured by the existing mortgage or mortgages, in an amount not
45 to exceed the difference between the balance due on the existing
46 mortgage or mortgages and the original amount thereof;
47 provided, however, that no such additional loan shall be made
48 which shall increase the total amount due upon such mortgages
49 over the amount which could be loaned upon the security of such
50 real property. Such additional loan shall be repaid in equal
51 monthly installments, beginning within one year from the date of
52 such loan, with the payments adjusted so that the additional loan
53 shall be repaid in full either before or at the maturity of the
54 existing mortgage. If the unexpired term of such mortgage or

1 mortgages shall have been reduced to 15 years or less, such term
2 may be extended for an additional period of not more than
3 15 years. Adjustment of payments and extension of mortgage
4 terms pursuant to this section shall comply with the provisions of
5 subsection G. or H. of this section. If so provided in the original
6 mortgage or a supplement or amendment thereto, persons who
7 acquire any rights in or liens upon the mortgaged real property
8 subsequent to the recording of the original mortgage or such
9 supplement or amendment, as the case may be, shall hold such
10 rights and liens subject to the prior lien of the original mortgage
11 and such supplement or amendment, if any, as security for such
12 additional loan; and in such case, no title certificate or insurance
13 under subsection C. of this section shall be required with respect
14 to such additional loan.

15 P. Except as otherwise provided by this section, no savings
16 bank shall make a mortgage loan if the making of such loan would
17 cause the total of all unpaid balances of such loans held by the
18 savings bank upon the security of the same real property or
19 leasehold, to exceed the limitations imposed by this section upon
20 the amount of a mortgage loan which may be made upon the
21 security of such real property or such leasehold.

22 Q. A savings bank may invest in

23 (1) (a) Veterans' loans, wherever located, made pursuant to
24 Title III of the Act of Congress of June 22, 1944, known as the
25 "Servicemen's Readjustment Act of 1944," as amended,
26 supplemented, revised, or recodified from time to time, which
27 the Administrator of Veterans' Affairs or other officer or agency
28 which succeeds to his powers and functions under said act has
29 insured or guaranteed or has made a commitment to insure or
30 guarantee, to the extent and in the manner provided in said act or
31 the regulations made thereunder; and

32 (b) Veterans' loans, wherever located, made and insured or
33 guaranteed in part as provided in paragraph (1)(a) of this
34 subsection of this section, and, as to the balance thereof, insured
35 or guaranteed by an insurer or guarantor named or described in
36 paragraph (2) of this subsection of this section.

37 (c) Mortgages or deeds of trust or other securities made
38 pursuant to paragraph (1)(a) of this subsection of this section shall
39 not be subject to the provisions and restrictions of this section,
40 except that they shall be included in determining whether total
41 mortgage investments are within the limitation prescribed by
42 subsection B. of this section, provided, however, that said
43 mortgages or deeds of trust or other securities shall not be
44 subject to the provisions of any law of this State prescribing or
45 limiting the interest which may be taken upon such loans or
46 investments.

47 (2) (a) Mortgages or deeds of trust or other securities of the
48 character of mortgages which are first liens on the fee of real
49 property or a lease of the fee of real property, wherever located,
50 which (i) the United States, or (ii) the Federal Housing
51 Commissioner under the Act of Congress of June 27, 1934, known
52 as the "National Housing Act," 48 Stat. 1246 (12 U.S.C. § 1701 et
53 seq.) as amended, supplemented, revised or recodified from time
54 to time, or other officer or agency which succeeds to his powers

1 and functions, or (iii) the State of New Jersey or an officer or
2 agency thereof, or (iv) any other officer or agency of the United
3 States or of this State which the commissioner shall have
4 approved for the purposes of this section as an insurer or
5 guarantor, has fully insured or guaranteed or made a commitment
6 to fully insure or guarantee.

7 (b) Mortgages or deeds of trust or other securities made
8 pursuant to paragraph (2)(a) of this subsection of this section shall
9 not be subject to the provisions and restrictions of this section,
10 except that they shall be included in determining whether total
11 mortgage investments are within the limitation prescribed by
12 subsection B. of this section, provided, however, that said
13 mortgages or deeds of trust or other securities shall not be
14 subject to the provisions of any law of this State prescribing or
15 limiting the interest which may be taken upon such loans or
16 investments.

17 R. The commissioner may, from time to time, make, alter and
18 rescind regulations:

19 (1) Authorizing savings banks to make mortgage loans or
20 specified types or classes of mortgage loans (a) which exceed the
21 specified percentages of the appraised value of the mortgaged
22 property; (b) which mature later than the specified periods from
23 their date; (c) which require smaller annual payments on account
24 of the principal amounts thereof than those specified in this
25 section; (d) which provide for equal monthly payments each
26 applicable to principal and interest in amounts sufficient to pay
27 current interest on and to repay the amount of the loan in such
28 number of years more than 40, but not more than 45, as the
29 regulation may specify; or (e) which substantially conform to the
30 terms and conditions of mortgage loans authorized to be made by
31 associations pursuant to the "Savings and Loan Act (1963),"
32 P.L.1963, c.144 (C.17:12B-1 et seq.);

33 (2) Increasing the percentage of deposits of savings banks
34 which savings banks may invest in mortgage loans;

35 (3) Increasing the percentage of principal balances owing on
36 mortgage loans referred to in subsection Q. which shall not be
37 included in the total of all principal balances owing on mortgage
38 loans for the purpose of subsection B.; or

39 (4) Eliminating entirely the principal balances owing on such
40 mortgage loans from such total of all principal balances.

41 S. Notwithstanding the provisions of this section, a savings
42 bank may make a mortgage loan in excess of the ratio between
43 appraised value and the amount of the loan as such ratio is
44 established herein, provided that such excess is secured by other
45 collateral having a value at all times at least equal to the amount
46 of the principal balance in excess of the amount permitted by
47 subsection G., H., J., or M., of this section or as established by
48 regulation of the Commissioner of Banking.

49 (cf: P.L.1987, c.201, s.31)

50 3. Section 11 of P.L.1963, c.144 (C.17:12B-11) is amended to
51 read as follows:

52 11. A mortgage upon real property or a mortgage upon a lease
53 of the fee of real property shall be deemed a first lien as follows:

54 (a) A mortgage upon real property shall be deemed a first lien

1 notwithstanding the existence of a prior mortgage or mortgages
2 held by the association, or liens of taxes or assessments which are
3 not delinquent, a lien of a condominium association for up to six
4 months of customary condominium assessments pursuant to
5 section 21 of P.L.1969, c.257 (C.46:8B-21), building restrictions
6 or other restrictive covenants or conditions, leases or tenancies
7 whereby rents or profits are reserved to the owner, joint
8 driveways, sewer rights, rights in walls, rights-of-way or other
9 easements, or encroachments which do not materially affect the
10 security for the mortgage loan.

11 (b) A mortgage upon a lease of the fee of real property shall
12 be deemed a first lien notwithstanding the existence of liens of
13 taxes or assessments which are not delinquent, building
14 restrictions or other restrictive covenants or conditions, joint
15 driveways, sewer rights, rights in walls, rights-of-way or other
16 easements, or encroachments which do not materially affect the
17 security for the mortgage loan.

18 (c) A mortgage upon an apartment which is part of a
19 horizontal property regime, established under the "Horizontal
20 Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.) or upon a unit
21 which is part of a condominium established pursuant to the
22 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.) shall be
23 deemed a first lien notwithstanding the existence of other
24 proportionate undivided interests in the "general common
25 elements" or "common elements" of such horizontal property
26 regime or condominium, as the case may be, as the same are
27 defined in the "Horizontal Property Act," and the "Condominium
28 Act," respectively, and notwithstanding the indivisibility of such
29 common elements or the existence of a prior mortgage or
30 mortgages held by the association upon such apartment or unit or
31 the existence of a prior mortgage or mortgages on other
32 apartments or units within the particular horizontal property
33 regime or condominium, as the case may be, regardless of
34 whether such prior mortgages are held by the association or any
35 other mortgagee and notwithstanding liens of taxes or
36 assessments which are not delinquent, building restrictions or
37 other restrictive covenants or conditions, leases or tenancies
38 whereby rents or profits are reserved to the owner, or other
39 easements or encroachments which do not materially affect the
40 security for the mortgage loan.

41 (d) Every mortgage shall be certified to be a first lien by an
42 attorney at law of the state in which the real property is located,
43 or certified or guaranteed to be a first lien by a corporation
44 authorized to guarantee titles to real property in such state.

45 (cf: P.L.1974, c.145, s.1)

46 4. Section 21 of P.L.1969, c.257 (C.46:8B-21) is amended to
47 read as follows:

48 21. a. The association shall have a lien on each unit for any
49 unpaid assessment duly made by the association for a share of
50 common expenses or otherwise, together with interest thereon
51 and, if authorized by the master deed or by-laws, reasonable
52 attorney's fees. Such lien shall be effective from and after the
53 time of recording in the public records of the county in which the
54 unit is located of a claim of lien stating the description of the

1 unit, the name of the record owner, the amount due and the date
2 when due. Such claim of lien shall include only sums which are
3 due and payable when the claim of lien is recorded and shall be
4 signed and verified by an officer or agent of the association.
5 Upon full payment of all sums secured by the lien, the party
6 making payment shall be entitled to a recordable satisfaction of
7 lien. [All] Except as set forth in subsection b. of this section, all
8 such liens shall be subordinate to any lien for past due and unpaid
9 property taxes, the lien of any mortgage to which the unit is
10 subject and to any other lien recorded prior to the time of
11 recording of the claim of lien.

12 b. A lien recorded pursuant to subsection a. of this section
13 shall have a limited priority over prior recorded mortgages and
14 other liens, other than liens for unpaid property taxes or federal
15 taxes, to the extent provided in this subsection. This priority
16 shall be limited as follows:

17 (1) To a lien which is the result of customary condominium
18 assessments as defined herein, the amount of which shall not
19 exceed the aggregate customary condominium assessment against
20 the unit owner for the six month period prior to the recording of
21 the lien;

22 (2) With respect to a particular mortgage, to a lien recorded
23 prior to:

24 (a) the receipt by the association of a summons and complaint
25 in an action to foreclose a mortgage on that unit; or

26 (b) the filing with the proper county recording office of a lis
27 pendens giving notice of an action to foreclose a mortgage on
28 that unit.

29 (3) In the case of more than one association lien being filed,
30 either because an association files more than one lien or multiple
31 associations have filed liens, the total amount of the liens
32 granted priority shall not be greater than the assessment for the
33 six month period specified in paragraph 1 of this subsection.
34 Priority among multiple filings shall be determined by their date
35 of recording with the earlier recorded liens having first use of the
36 priority given herein.

37 (4) The priority granted to a lien pursuant to this subsection
38 shall expire on the first day of the 60th month following the date
39 of recording of an association's lien.

40 (5) A lien of an association shall not be granted priority over a
41 prior recorded mortgage or mortgages under this subsection if a
42 prior recorded lien of the association for unpaid assessments has
43 obtained priority over the same recorded mortgage or mortgages
44 as provided in this subsection, for a period of 60 months from the
45 date of recording of the lien granted priority.

46 (6) When recording a lien which may be granted priority
47 pursuant to this act, an association shall notify, in writing, any
48 holder of a first mortgage lien on the property of the filing of the
49 association lien. An association which exercises a good faith
50 effort but is unable to ascertain the identity of a holder of a prior
51 recorded mortgage on the property will be deemed to be in
52 substantial compliance with this paragraph.

53 For the purpose of this section, a "customary condominium
54 assessment" shall mean an assessment for periodic payments, due

1 the association for regular and usual operating and common area
2 expenses pursuant to the association's annual budget and shall
3 not include amounts for reserves for contingencies, nor shall it
4 include any late charges, penalties, interest or any fees or costs
5 for the collection or enforcement of the assessment or any lien
6 arising from the assessment. The periodic payments due must be
7 due monthly, or no less frequently than quarter-yearly, as may be
8 acceptable to the Federal National Mortgage Association so as
9 not to disqualify an otherwise superior mortgage on the
10 condominium from purchase by the Federal National Mortgage
11 Association as a first mortgage.

12 c. Upon any voluntary conveyance of a unit, the grantor and
13 grantee of such unit shall be jointly and severally liable for all
14 unpaid assessments pertaining to such unit duly made by the
15 association or accrued up to the date of such conveyance without
16 prejudice to the right of the grantee to recover from the grantor
17 any amounts paid by the grantee, but the grantee shall be
18 exclusively liable for those accruing while he is the unit owner.

19 d. Any unit owner or any purchaser of a unit prior to
20 completion of a voluntary sale may require from the association a
21 certificate showing the amount of unpaid assessments pertaining
22 to such unit and the association shall provide such certificate
23 within 10 days after request therefor. The holder of a mortgage
24 or other lien on any unit may request a similar certificate with
25 respect to such unit. Any person other than the unit owner at the
26 time of issuance of any such certificate who relies upon such
27 certificate shall be entitled to rely thereon and his liability shall
28 be limited to the amounts set forth in such certificate.

29 e. If a mortgagee of a first mortgage of record or other
30 purchaser of a unit obtains title to such unit as a result of
31 foreclosure of the first mortgage, such acquirer of title, his
32 successors and assigns shall not be liable for the share of common
33 expenses or other assessments by the association pertaining to
34 such unit or chargeable to the former unit owner which became
35 due prior to acquisition of title as a result of the foreclosure.
36 Such unpaid share of common expenses and other assessments
37 shall be deemed to be common expenses collectible from all of
38 the remaining unit owners including such acquirer, his successors
39 and assigns.

40 f. Liens for unpaid assessments may be foreclosed by suit
41 brought in the name of the association in the same manner as a
42 foreclosure of a mortgage on real property. The association shall
43 have the power, unless prohibited by the master deed or by-laws
44 to bid in the unit at foreclosure sale, and to acquire, hold, lease,
45 mortgage and convey the same. Suit to recover a money
46 judgment for unpaid assessments may be maintained without
47 waiving the lien securing the same.

48 (cf: P.L.1969, c.257, s.21)

49 5. Section 22 of P.L.1969, c.257 (C.46:8B-22) is amended to
50 read as follows:

51 22. Effect of sheriff's sale. (a) A unit may be sold by the
52 sheriff on execution, free of any claim, not a lien of record, for
53 common expenses or other assessments by the association, but
54 any funds derived from such sale remaining after satisfaction of

1 prior liens and charges but before distribution to the previous unit
2 owner, shall be applied to payment of such unpaid common
3 expenses or other assessments if written notice thereof shall have
4 been given to the sheriff before distribution. Any such unpaid
5 common expenses which shall remain uncollectible from the
6 former unit owner for a period of more than 60 days after such
7 sheriff's sale may be reassessed by the association as common
8 expenses to be collected from all unit owners including the
9 purchaser who acquired title at the sheriff's sale, his successors
10 and assigns. Unless prohibited by the master deed or by-laws, the
11 association may bid in and purchase the unit at a sheriff's sale,
12 and acquire, hold, lease, mortgage and convey the same.

13 (b) Notwithstanding any foreclosure, tax sale, or other forced
14 sale of a unit, all applicable provisions of the master deed and
15 by-laws, shall be binding upon any purchaser at such sale to the
16 same extent as they would bind a voluntary grantee except that
17 such purchaser shall not be liable for the share of common
18 expenses or other assessments by the association pertaining to
19 such unit or chargeable to the former owner which became due
20 prior to such sale except as otherwise provided in [paragraph]
21 subsection (a) of this section or section 21 of P.L.1969, c.257
22 (C.46:8B-21).

23 (cf: P.L.1969, c.257, s.22)

24 6. This act shall take effect on the first day of the third month
25 next following enactment, and shall not apply to or affect liens
26 perfected prior to the effective date.

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31 Provides certain amount of condominium association lien with
32 limited priority over other mortgages.

ASSEMBLY, No. 1282

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 7, 1994

By Assemblyman ROMA and Assemblywoman HECK

1 **AN ACT** concerning satisfaction of unpaid condominium
2 assessments and amending P.L.1969, c.257.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the
5 *State of New Jersey*:

6 1. Section 21 of P.L.1969, c.257 (C.46:8B-21) is amended to
7 read as follows:

8 21. The association shall have a lien on each unit for any
9 unpaid assessment duly made by the association for a share of
10 common expenses or otherwise, together with interest thereon
11 and, if authorized by the master deed or by-laws, reasonable
12 attorney's fees. Such lien shall be effective from and after the
13 time of recording in the public records of the county in which the
14 unit is located of a claim of lien stating the description of the
15 unit, the name of the record owner, the amount due and the date
16 when due. Such claim of lien shall include only sums which are
17 due and payable when the claim of lien is recorded and shall be
18 signed and verified by an officer or agent of the association.
19 Upon full payment of all sums secured by the lien, the party
20 making payment shall be entitled to a recordable satisfaction of
21 lien. [All such liens shall be subordinate to any lien for past due
22 and unpaid taxes, the lien of any mortgage to which the unit is
23 subject and to any other lien recorded prior to the time of
24 recording of the claim of lien] An association's lien for unpaid
25 assessments shall be prior to all other liens and incumbrances on
26 a unit, notwithstanding any other provisions of law to the
27 contrary.

28 Upon any voluntary conveyance of a unit, the grantor and
29 grantee of such unit shall be jointly and severally liable for all
30 unpaid assessments pertaining to such unit duly made by the
31 association or accrued up to the date of such conveyance without
32 prejudice to the right of the grantee to recover from the grantor
33 any amounts paid by the grantee, but the grantee shall be
34 exclusively liable for those accruing while he is the unit owner.

35 Any unit owner or any purchaser of a unit prior to completion
36 of a voluntary sale may require from the association a certificate
37 showing the amount of unpaid assessments pertaining to such unit
38 and the association shall provide such certificate within 10 days
39 after request therefor. The holder of a mortgage or other lien on
40 any unit may request a similar certificate with respect to such
41 unit. Any person other than the unit owner at the time of
42 issuance of any such certificate who relies upon such certificate

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 shall be entitled to rely thereon and his liability shall be limited
2 to the amounts set forth in such certificate.

3 If a mortgagee of a first mortgage of record or other purchaser
4 of a unit obtains title to such unit as a result of foreclosure of
5 the first mortgage, such acquirer of title, his successors and
6 assigns, and the former unit owner shall [not] be jointly and
7 severally liable for the share of common expenses or other
8 assessments by the association pertaining to such unit or
9 chargeable to the former unit owner which became due prior to
10 acquisition of title as a result of the foreclosure. [Such unpaid
11 share of common expenses and other assessments shall be deemed
12 to be common expenses collectible from all of the remaining unit
13 owners including such acquirer, his successors and assigns.]

14 Liens for unpaid assessments may be foreclosed by suit brought
15 in the name of the association in the same manner as a
16 foreclosure of a mortgage on real property. The association shall
17 have the power, unless prohibited by the master deed or by-laws
18 to bid in the unit at foreclosure sale, and to acquire, hold, lease,
19 mortgage and convey the same. Suit to recover a money
20 judgment for unpaid assessments may be maintained without
21 waiving the lien securing the same.

22 (cf: P.L.1969, c.257, s.21)

23 2. Section 22 of P.L.1969, c.257 (C.46:8B-22) is amended to
24 read as follows:

25 22. [(a)] a. A unit may be sold by the sheriff on execution,
26 free of any claim, not a lien of record, for common expenses or
27 other assessments by the association, but any funds derived from
28 such sale [remaining after], before satisfaction of prior liens and
29 charges [but] and before distribution to the previous unit owner,
30 shall be applied to payment of such unpaid common expenses or
31 other assessments if written notice thereof shall have been given
32 to the sheriff before distribution. Any such unpaid common
33 expenses which shall remain uncollectible from the former unit
34 owner for a period of more than 60 days after such sheriff's sale
35 may be reassessed by the association as common expenses to be
36 collected from [all unit owners including] the purchaser who
37 acquired title at the sheriff's sale, his successors and assigns.
38 Unless prohibited by the master deed or by-laws, the association
39 may bid in and purchase the unit at a sheriff's sale, and acquire,
40 hold, lease, mortgage and convey the same.

41 [(b)] b. Notwithstanding any foreclosure, tax sale, or other
42 forced sale of a unit. all applicable provisions of the master deed
43 and by-laws, shall be binding upon any purchaser at such sale to
44 the same extent as they would bind a voluntary grantee [except
45 that such purchaser shall not be liable for the share of common
46 expenses or other assessments by the association pertaining to
47 such unit or chargeable to the former owner which became due
48 prior to such sale except as otherwise provided in paragraph (a) of
49 this section].

50 (cf: P.L.1969, c.257, s.22)

51 3. This act shall take effect immediately.

STATEMENT

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Under existing law in this State, a condominium association may acquire a lien upon a unit of the condominium whenever common-expense assessments remain unpaid by the unit owner. But if the unit is foreclosed upon, the association can collect nothing until all liens of prior record are satisfied. If, as commonly happens, the proceeds of the foreclosure sale are insufficient to pay back taxes, any mortgage balance and other liens with prior claim, the association may lose a sizable amount in uncollectible assessments. The burden of making up this deficiency then falls upon the other unit owners in the condominium, increasing their assessments.

This bill would give an absolute preference, in case of a foreclosure, to the satisfaction of overdue assessments. These would be paid first out of the proceeds of the foreclosure sale, and if the proceeds should not fully meet that purpose, both the former owner and the buyer at foreclosure would remain jointly and severally liable for the balance.

Gives condo association first claim on proceeds of foreclosure sale of unit to satisfy unpaid assessments.

ASSEMBLY HOUSING COMMITTEE
STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1282
STATE OF NEW JERSEY

DATED: JUNE 9, 1994

The Assembly Housing Committee favorably reports Assembly Bill No. 1282, by Committee Substitute.

The substitute gives a limited priority over prior recorded mortgages and other liens, other than those for property or federal taxes, to a lien filed by a condominium association for certain unpaid common assessments. To obtain the limited priority as provided in the substitute, a lien must:

1. Be recorded in the proper county recording office;
2. Be based on unpaid customary condominium common fees, which is defined in the substitute bill to mean an assessment for periodic payments, due the association for regular and usual operating and common area expenses pursuant to the associations annual budget, and does not include amounts for reserves for contingencies, nor does it include any late charges, penalties, interest or any fees or costs for the collection or enforcement of the assessment or any lien arising from the assessment. The periodic payments due must be due monthly, or no less frequently than quarter-yearly, as may be acceptable to the Federal National Mortgage Association so as not to disqualify an otherwise superior mortgage on the condominium from purchase by the Federal National Mortgage Association;
3. Be recorded prior to receipt by an association of a summons and complaint in an action to foreclose a mortgage on that unit, or prior to the filing with the proper county recording office of a lis pendens giving notice of an action to foreclose a mortgage on that unit. In the case of more than one association lien being filed, either because an association files more than one lien or multiple associations have filed liens, the total amount of the liens granted priority will not be greater than the assessment for the six month period. Priority among multiple filings is to be determined by their date of recording with the earlier recorded liens having first use of the priority.

The priority granted to a lien under the substitute will be limited to a five year period. In addition, a lien will not be granted priority over a prior recorded mortgage if a prior association lien had previously been granted priority within a five year period.

It is the committee's understanding that this bill is intended as companion legislation to Assembly Bill No. 1064 of 1994, which makes changes to the laws concerning foreclosure proceedings.

SENATE STATE MANAGEMENT, INVESTMENTS AND
FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 1282

STATE OF NEW JERSEY

DATED: MAY 8, 1995

The Senate State Management, Investments and Financial Institutions Committee reports favorably the Assembly Committee Substitute for Assembly Bill No. 1282.

This bill gives a limited priority over prior recorded mortgages and other liens, other than those for property or federal taxes, to a lien filed by a condominium association for certain unpaid common assessments. To obtain the limited priority as provided in the bill, a lien must:

1. Be recorded in the proper county recording office;
2. Be based on unpaid customary condominium common fees, which is defined in the bill to mean an assessment for periodic payments, due the association for regular and usual operating and common area expenses pursuant to the associations annual budget, and does not include amounts for reserves for contingencies, nor does it include any late charges, penalties, interest or any fees or costs for the collection or enforcement of the assessment or any lien arising from the assessment. The periodic payments due must be due monthly, or no less frequently than quarter-yearly, as may be acceptable to the Federal National Mortgage Association so as not to disqualify an otherwise superior mortgage on the condominium from purchase by the Federal National Mortgage Association;
3. Be recorded prior to receipt by an association of a summons and complaint in an action to foreclose a mortgage on that unit, or prior to the filing with the proper county recording office of a lis pendens giving notice of an action to foreclose a mortgage on that unit. In the case of more than one association lien being filed, either because an association files more than one lien or multiple associations have filed liens, the total amount of the liens granted priority will not be greater than the assessment for the six month period. Priority among multiple filings is to be determined by their date of recording with the earlier recorded liens having first use of the priority.

The priority granted to a lien under the bill will be limited to a five year period. In addition, a lien will not be granted priority over a prior recorded mortgage if a prior association lien had previously been granted priority within a five year period.