

LEGISLATIVE HISTORY CHECKLIST

NJSA: 55:17-1 et esq. (Mortgage loans-- protect in case of default of foreclosure)

LAWS OF: 1967

CHAPTER: 304

BILL NO: A930

SPONSOR(S): Tanzman

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Senate: _____

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RDV

ASSEMBLY, No. 930

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 20, 1967

By Assemblymen TANZMAN and HYLAND

(Without Reference)

AN ACT to provide adequate protection to, and additional and supplemental remedies for, mortgage loans on projects for redevelopment, renewal or rehabilitation and to encourage private financing of such projects.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Any lease or financial arrangement made by any governmental
2 body or agency of this State pursuant to statute in connection with
3 a project for redevelopment, renewal or rehabilitation shall con-
4 tinue in full force and effect beyond any default in or foreclosure
5 of any mortgage loan made to finance the project, as though such
6 default or foreclosure had not occurred, subject to the provisions
7 of this act.

1 2. In the event of any default or foreclosure in respect to a project
2 coming within this act, the holder of the mortgage loan shall estab-
3 lish a set of records, separate and distinct from those pertaining
4 to its usual business or operations, to reflect with reasonable
5 accuracy the appropriate debits and credits applicable to the proj-
6 ect, from which all necessary and proper calculations can be made
7 to continue to carry out the terms and provisions of the lease or
8 financial arrangement, or both, as directed by this act. Such records
9 shall be established and maintained in accordance with recognized
10 accounting practices, to be certified to by independent certified
11 public accountants, in order to assure the governmental body or
12 agency involved that the terms and conditions of the lease or finan-
13 cial arrangement will continue to be applied according to their
14 intent.

1 3. The project and the financial records herein provided for shall
2 be considered to be equivalent to the person or entity entering into
3 the lease or financial arrangement for all purposes of any applicable
4 statute, including qualification and status under any such statute

5 for the purpose of continuing such lease or financial arrangement
6 beyond default or foreclosure. The holder of the mortgage loan
7 and the governmental body or agency involved may enter into
8 appropriate agreements to deal with administration of the project
9 arrangements pursuant to this act; and in case of their inability
10 to reach agreement on any one or more aspects thereof, either may
11 apply to the Superior Court, Chancery Division, by a summary
12 proceeding, to settle and resolve the details of such administration
13 in such fashion as will tend to accomplish the purposes of this act.

1 4. The financial records and data in respect to the administration
2 of the project after default or foreclosure shall be so established
3 and maintained as to permit the application of the terms of the
4 lease or financial arrangement in respect to the calculation of pay-
5 ments to be made to a governmental body or agency, as well as of
6 limitations upon profits, earnings, dividends and the like, separately
7 and apart from the business operations of the holder of the mort-
8 gage loans arising from other transactions than the project itself.

1 5. Limiting and restrictive provisions of any statute otherwise
2 applicable, in respect to the nature, identity or status of any person
3 with whom a lease or financial agreement may be lawfully made
4 shall be applied to the project only, in case of a default or fore-
5 closure, and shall not be applicable to the holder of the mortgage
6 loan.

1 6. So long as any mortgage loan remains unsatisfied in respect
2 to any project, no agreement shall be made between the govern-
3 mental body or agency on any lease or financial agreement and the
4 other party thereto, either to modify or supplement any provision
5 thereof, or to exercise any option or right thereunder, including any
6 option to surrender a tax arrangement, without the prior written
7 consent of the holder of the mortgage loan.

1 7. In the event of any default in connection with the terms and
2 provisions of any lease or financial arrangement affecting a project,
2A the governmental body or agency shall not take any steps it may
3 otherwise be entitled to take, until it has first notified the holder of
4 any mortgage loan thereon and provided a reasonable opportunity,
5 in light of the nature of the default and the available means to
6 correct it to cure the same; but in any case shall allow not less than
7 30 days for such purpose.

1 8. In order to provide additional and supplemental remedies to
2 the holder of a mortgage loan on a project, which remedies are
3 deemed necessary and appropriate to the feasibility of making
4 private funds available to finance a project, the holder of a loan

5 may, in addition to any other remedy available by contract or by
6 law:

7 (a) enter into possession of the project and operate the same,
8 or engage some other person, association or corporation to do so;

9 (b) receive by transfer at least a majority of the capital stock
10 of the mortgagor and assume operation and control of such mort-
11 gagor;

12 (c) receive and accept a deed or deeds of all of the right, title
13 and interest of the mortgagor in and to the project and to enter
14 into possession thereof and operate the same, or engage some other
15 person to do so;

16 (d) apply to the Superior Court, Chancery Division, for the
17 entry of a judgment of strict foreclosure in respect to any person
18 or persons holding any claim or lien in respect to the project or
19 the mortgagor, junior to that of the mortgage loan; and in such
20 proceedings the court may provide for such marshaling of assets
21 and application thereof as may be appropriate to maintain the
22 relative positions of the parties;

23 (e) institute suit and recover judgment upon the underlying loan
24 obligation without being first required to proceed with foreclosure
25 on the mortgage;

26 (f) proceed to foreclosure of the mortgage, separately from or
27 together with suit on the underlying obligation, and public sale of
28 the project under the supervision and control of the court, to any
29 person, association or corporation willing and able to assume the
30 performance of the terms and provisions of the lease or financial
31 arrangement, either by literal compliance therewith or by means of
32 proper separate records for the project of the nature provided for
33 in this act, all as the court may direct, in order that the highest
34 possible bid may be realized while preserving and maintaining the
35 position of the governmental body or agency under the lease or
36 financial arrangement;

37 (g) pursue any remedy available either under this act or other-
38 wise either in its own name or through a subsidiary or affiliate, and
39 for such purpose any holder of a mortgage loan is authorized to
40 cause such subsidiary or affiliate to be formed, to hold the stock
41 thereof either in its own name or that of nominee or nominees,
42 without regard to the restriction or limitations of any other law.

1 9. For the purposes of this act, the following terms shall have
2 the designated meanings:

3 (a) "Lease or financial agreement" means any contractual
4 arrangement between a governmental body or agency and some

5 other person, pursuant to applicable statute, which is calculated
6 to render financially feasible the undertaking of any project for
7 redevelopment, renewal or rehabilitation, and shall include without
8 limitation the granting of exemption from taxes, the payment of
9 moneys for charges in lieu of taxes, and any other arrangement to
10 assist in the realization of a project.

11 (b) "Governmental body or agency" means any governmental
12 body or agency of the United States, of this State or of any sub-
13 division thereof, which may be a party to or participant in any
14 project.

15 (c) "Project" means any undertaking, whether of one or more
16 units, which is the subject of any lease or financial arrangement
17 for redevelopment, renewal or rehabilitation.

18 (d) "Holder of a mortgage loan" means any person, association
19 or construction loans or for permanent financing, in respect to
20 lands, improvements or both which constitute a project or part of
21 a project.

22 (e) "Mortgagor" means any person, association or corporation
23 having an interest in a project which is subject to a mortgage loan,
24 whether or not the original mortgagor or a successor or assignee
25 subject to the mortgage.

26 (f) "Default or foreclosure" means any event entitling the
27 holder of the mortgage loan to pursue any one or more remedies
28 available under this act or by other law or by contract, without
29 regard to whether a traditional foreclosure or strict foreclosure
30 occurs in fact.

1 10. The provisions of this act shall be liberally construed in order
2 that holders of mortgage loans on projects may rely, in the event
3 of a default or foreclosure, upon the continuation of terms and
4 provisions of the lease or financial arrangements evaluated at the
5 time of the making of the loan to determine its financial feasibility,
6 and in case of any conflict between the provisions of any statute
7 authorizing such leases or financial arrangements and the pro-
8 visions of this act, this act shall prevail.

1 11. The provisions shall apply to all mortgages executed and
2 delivered on and after the effective date of this act, and, to
3 the extent that it may be fairly and feasibly applied to mortgages
4 heretofore made, shall be applicable thereto.

1 12. This act shall take effect immediately.

STATEMENT

The enactment of the New Jersey Housing Finance Agency Law of 1967 has disclosed a technical defect in the various statutes to encourage projects for redevelopment, renewal or rehabilitation.

It is the purpose of this bill to cure the defect by providing additional and supplemental remedies to protect the status of mortgage loans on such projects in case of default or foreclosure. This is done by continuing the underlying arrangement for leases, financial arrangements and the like after default or foreclosure, and at the same time continuing the applicable provisions for limitations on earnings or dividends in respect to the project. Suitable accounting procedures and judicial controls are provided for to assure proper administration.

This bill will apply to all arrangements under the various statutes of this type, among which are L. 1944, c. 169; L. 1946, c. 52; L. 1949, c. 184; L. 1949, c. 187; L. 1949, c. 300; L. 1949, c. 306; L. 1956, c. 212; L. 1961, c. 40; L. 1965, c. 92; L. 1965, c. 95; L. 1967, c. 81.