

No. 1998-160

AN ACT

HB 1426

Amending the act of December 3, 1959 (P.L.1688, No.621), entitled, as amended, "An act to promote the health, safety and welfare of the people of the Commonwealth by broadening the market for housing for persons and families of low and moderate income and alleviating shortages thereof, and by assisting in the provision of housing for elderly persons through the creation of the Pennsylvania Housing Finance Agency as a public corporation and government instrumentality; providing for the organization, membership and administration of the agency, prescribing its general powers and duties and the manner in which its funds are kept and audited, empowering the agency to make housing loans to qualified mortgagors upon the security of insured and uninsured mortgages, defining qualified mortgagors and providing for priorities among tenants in certain instances, prescribing interest rates and other terms of housing loans, permitting the agency to acquire real or personal property, permitting the agency to make agreements with financial institutions and Federal agencies, providing for the purchase by persons of low and moderate income of housing units, and approving the sale of housing units, permitting the agency to sell housing loans, providing for the promulgation of regulations and forms by the agency, prescribing penalties for furnishing false information, empowering the agency to borrow money upon its own credit by the issuance and sale of bonds and notes and by giving security therefor, permitting the refunding, redemption and purchase of such obligations by the agency, prescribing remedies of holders of such bonds and notes, exempting bonds and notes of the agency, the income therefrom, and the income and revenues of the agency from taxation, except transfer, death and gift taxes; making such bonds and notes legal investments for certain purposes; and indicating how the act shall become effective," further providing for homeowner's emergency assistance.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 401-C(a) of the act of December 3, 1959 (P.L.1688, No.621), known as the Housing Finance Agency Law, amended May 31, 1984 (P.L.364, No.73) and December 18, 1992 (P.L.1652, No.182), is amended to read:

Section 401-C. General Authority.—(a) The Pennsylvania Housing Finance Agency, hereinafter referred to as the "agency," may make loans secured by liens on residential real property located in Pennsylvania to residents of Pennsylvania eligible for such loans as described in this article. For the purpose of this article, the term "mortgage" shall include any obligation evidenced by a security document and secured by a lien upon real property located within this Commonwealth including, but not limited to, a deed of trust and land sale agreement. The term shall also include an obligation evidenced by a security lien on real property upon which an owner-occupied mobile home is located. The provisions of this article shall not be applicable if:

(1) The property securing the mortgage is not the principal residence of the mortgagor.

(2) The property securing the mortgage is not a one or two-family owner-occupied residence.

(3) The mortgage is insured by the Federal Housing Administration under Title II of the National Housing Act (12 U.S.C. §§ 1707-1715z-18).

(4) The mortgage on the property was given by a noncorporate seller, unless the noncorporate seller elects, in writing, in the mortgage or elsewhere to be covered by this article. For purposes of this article "noncorporate seller" means any person **[giving] who is given a mortgage by a buyer to secure repayment of the purchase price of real property** who is not a bank, a savings and loan association, a mortgage bank, a consumer discount company or other entity in the mortgage lending business.

(5) The mortgagor is more than **[thirty-six (36)] twenty-four (24)** months delinquent or in default for more than **[thirty-six (36)] twenty-four (24)** months, pursuant to the terms of mortgagor's residential mortgage. This requirement shall mean that if the mortgagor is more than **[thirty-six (36)] twenty-four (24)** consecutive or nonconsecutive months in arrears on the residential mortgage in question, no matter what the reason therefor, the agency shall not be authorized to make any loans hereunder to such mortgagor.

(6) *The aggregate amount of arrearages due to a mortgagee pursuant to the terms of the mortgage, without regard to any acceleration under the mortgage, including, but not limited to, the amount of principal, interest, taxes, assessments, ground rents, hazard insurance, any mortgage insurance or credit insurance premiums, exceeds the sum of sixty thousand dollars (\$60,000).*

(7) *The property is encumbered by more than two mortgages, other than a mortgage filed by the agency to secure repayment of the mortgage assistance loans, or by other liens or encumbrances which would unreasonably impair the security of the agency's mortgage.*

* * *

Section 2. Section 403-C(b) and (f) of the act, amended or added May 31, 1984 (P.L.364, No.73) and December 18, 1992 (P.L.1652, No.182), are amended and the section is amended by adding a subsection to read:

Section 403-C. Notice Requirements.—* * *

(b) **[The agency shall prepare a uniform notice for purposes of this section as follows: The notice shall list consumer credit counseling agencies and shall] (1) The agency shall prepare a notice which shall include all the information required by this subsection and by section 403 of the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law. This notice shall be in plain language and specifically state that the recipient of the notice may qualify for financial assistance under the Homeowner's Emergency Mortgage Assistance Program. This notice shall contain the telephone number and the address**

of a local consumer credit counseling agency. This notice shall be in lieu of any other notice required by law. This notice shall also advise the mortgagor of his delinquency or other default under the mortgage and that such mortgagor has thirty (30) days to have a face-to-face meeting with the mortgagee who sent the notice or a consumer credit counseling agency to attempt to resolve the delinquency or default by restructuring the loan payment schedule or otherwise. [The notice]

(2) The notice under paragraph (1) must be sent by a mortgagee at least thirty (30) days before the mortgagee:

(i) asks for full payment of any mortgage obligation; or

(ii) begins any legal action, including foreclosure, for money due under the mortgage obligation or to take possession of the mortgagor's security.

(3) The proposed notice under paragraph (1) shall be published by the agency in the Pennsylvania Bulletin within one hundred twenty (120) days of the effective date of this paragraph. The notice actually adopted for use by the agency shall be promulgated as part of the program guidelines required by section 401-C(b).

(4) If the mortgagor meets with a consumer credit counseling agency, the consumer credit counseling agency shall promptly notify all of the mortgagees secured by the mortgagor's real property, and no mortgagee so notified shall commence any legal action against the mortgagor's real property for a period not to exceed thirty (30) calendar days from the date that the mortgagor first meets with the consumer credit counseling agency.

(5) The notice shall include a statement that, if the mortgagor is unable to resolve the delinquency or default within thirty (30) calendar days of the mortgagor's first contact with either the mortgagee or a consumer credit counseling agency, the mortgagor may apply to the agency or its duly authorized agent at the address and phone number listed in the notice in order to obtain an application and information regarding the Homeowner's Emergency Mortgage Assistance Program.

(6) If the mortgagor applies for mortgage assistance payments, the agency shall promptly notify all of the mortgagees secured by the mortgagor's real property. The agency shall make a determination of eligibility within sixty (60) calendar days of receipt of the mortgagor's application. During the time that the application is pending, no mortgagee may commence legal action to foreclose upon its mortgage with the mortgagor.

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(f) Notwithstanding any other provisions of this section, a mortgagee shall not be required to send the uniform notice provided in subsection ~~[(b) to any mortgagor who is more than thirty-six (36) months delinquent or in default for more than thirty-six (36) months, pursuant to the terms of mortgagor's residential mortgage with mortgagee. This requirement shall mean that if the mortgagor is more than thirty-six (36)]~~ (b):

(1) to any mortgagor who is more than twenty-four (24) consecutive or nonconsecutive months in arrears on the residential mortgage in question, no

matter what the reason therefor[, he shall be ineligible to receive the notice in subsection (b).]; or

(2) *where the aggregate amount of arrearages due to a mortgagee pursuant to the terms of the mortgage, without regard to any acceleration under the mortgage, including, but not limited to, the amount of principal, interest, taxes, assessments, ground rents, hazard insurance, any mortgage insurance or credit insurance premiums, exceeds the sum of sixty thousand (\$60,000) dollars.*

(g) *Notwithstanding any other provisions of this section, a mortgagee shall not be required to send the uniform notice provided in subsection (b) to any mortgagor who has already been sent the uniform notice and:*

(1) *who did not apply for a mortgage assistance loan;*

(2) *who applied for a mortgage assistance loan but whose application was denied; or*

(3) *whose mortgage assistance disbursements were terminated by the agency for any reason.*

Unless the mortgagor has cured his or her mortgage delinquency by means of a mortgage assistance loan or otherwise, receipt of partial payments of arrears from the mortgagor, subsequent to the sending of the uniform notice, shall not mean that the mortgagee must send a new uniform notice to the mortgagor prior to legal action being taken to enforce the mortgage. A uniform notice sent to the mortgagor while the mortgagor was in bankruptcy shall be valid for the purpose of this act, and no new uniform notice need be provided as a result of any discharge or dismissal of the bankruptcy petition or relief from the automatic stay.

Section 3. Section 404-C(a) of the act, amended May 31, 1984 (P.L.364, No.73) and December 18, 1992 (P.L.1652, No.182), is amended to read:

Section 404-C. Eligibility for Assistance.—(a) No assistance may be made with respect to a mortgage *or mortgagor* under this article unless all of the following are established:

(1) The property securing the mortgage, or other security interest in the case of units in cooperative or condominium projects, is a one-family residence, or two-family owner-occupied residence including one-family units in a condominium project or a membership interest and occupancy agreement in a cooperative housing project, is the principal residence of the mortgagor and is located in this Commonwealth.

(2) (i) Any mortgagee has indicated to the mortgagor its intention to foreclose; and

(ii) payments under any mortgage have been contractually delinquent for at least sixty (60) days.

(3) The mortgage is not insured by the Federal Housing Administration under Title II of the National Housing Act (12 U.S.C. §§ 1707-1715z-18).

(4) The mortgagor is a permanent resident of this Commonwealth and is suffering financial hardship due to circumstances beyond the mortgagor's

control which render the mortgagor unable to correct the delinquency or delinquencies within a reasonable time and make full mortgage payments.

(5) The agency has determined that there is a reasonable prospect that the mortgagor will be able to resume full mortgage payments within [**thirty-six (36)**] *twenty-four (24)* months after the beginning of the period for which assistance payments are provided under this article and pay the mortgage or mortgages in full by its maturity date or by a later date agreed to by the mortgagee or mortgagees for completing mortgage payments.

(6) The mortgagor has applied to the agency for assistance on an application form prescribed by the agency for this use which includes a financial statement disclosing all assets and liabilities of the mortgagor, whether singly or jointly held, and all household income regardless of source. Any applicant who intentionally misrepresents any financial information in conjunction with the filing of an application for assistance under this article may be denied assistance or required to immediately repay any amount of assistance made as a result of such misrepresentation, and the mortgagee may, at any time thereafter, take any legal action to enforce the mortgage without any further restrictions or requirements under this article.

(7) The mortgagee is not prevented by law from foreclosing upon the mortgage.

(8) The agency has determined, based on the mortgagor's financial statement, that the mortgagor has insufficient household income or net worth to correct the delinquency or delinquencies within a reasonable period of time and make full mortgage payments.

(9) Except for the current delinquency, the mortgagor shall have had a favorable residential mortgage credit history for the previous five (5) years. This requirement shall mean that, if the mortgagor has been more than three (3) consecutive months in arrears on a residential mortgage within the previous five (5) years, he shall be ineligible for assistance, unless the mortgagor can demonstrate that the prior delinquency was the result of financial hardship due to circumstances beyond his control.

(10) For purposes of this section, in order to determine whether the financial hardship is due to circumstances beyond the mortgagor's control, the agency may consider information regarding the mortgagor's employment record, credit history and current income.

(11) The mortgagor meets any other procedural requirements established by the agency.

(12) The mortgagor is not more than [**thirty-six (36)**] *twenty-four (24)* months delinquent or in default for more than [**thirty-six (36)**] *twenty-four (24)* months pursuant to the terms of mortgagor's residential mortgage. This requirement shall mean that if the mortgagor is more than [**thirty-six (36)**] *twenty-four (24)* consecutive or nonconsecutive months in arrears on the residential mortgage in question, no matter what the reason therefor, he shall be ineligible for assistance.

(13) The property is not encumbered by more than two mortgages, other than a mortgage filed by the agency to secure repayment of the mortgage assistance loan, or by other liens or encumbrances which would unreasonably impair the security of the agency's mortgage.

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Section 4. Sections 405-C(a), (b), (f) and (g), 406-C and 408-C of the act, added December 23, 1983 (P.L.385, No.91), are amended and section 405-C is amended by adding subsections to read:

Section 405-C. Assistance Payments.—(a) If the agency determines that a mortgagor is eligible for assistance under this article, the agency shall pay directly to each mortgagee secured by the mortgagor's real estate payments on behalf of the mortgagor. The agency shall pay to each mortgagee the full amount then due to that mortgagee pursuant to the terms of the mortgage without regard to any acceleration under the mortgage, or the full amount of any alternate mortgage payments agreed to by the mortgagee and mortgagor. This amount shall include, but not be limited to, the amount of principal, interest, taxes, assessments, ground rents, hazard insurance, any mortgage insurance or credit insurance premiums. The initial payment made by the agency to each mortgagee shall be an amount which makes each mortgage current and pays reasonable costs and reasonable attorneys' fees already incurred by such mortgagee. ***However, in no event shall the total payment exceed the sum equal to twenty-four (24) consecutive or nonconsecutive months of arrears on any residential mortgage.***

(b) After the agency has paid any and all arrearages pursuant to subsection (a) to each mortgagee, the mortgagor may be entitled to monthly mortgage assistance payments pursuant to this article. A mortgagor on whose behalf the agency is making mortgage assistance payments shall pay monthly payments to the agency. Such payments shall be in an amount which will cause the mortgagor's total housing expense not to exceed **[thirty-five (35)] forty (40)** percent of the mortgagor's net effective income. This shall be the maximum amount the mortgagor can be required to pay during the **[thirty-six (36) months] period** a mortgagor is eligible for emergency mortgage assistance[.]: ***Provided, however, That beginning February 1, 1999, and continuing thereafter, any mortgagor approved for continuing monthly mortgage assistance or whose continuing mortgage assistance is approved after being recertified by the agency shall pay to the agency a minimum monthly payment of at least twenty-five (\$25) dollars for each mortgage being assisted.*** The mortgagor shall make the above payment to the agency at least **[seven (7)] fifteen (15)** days before each mortgage payment is due to each mortgagee. Upon receipt of this payment from the mortgagor, the agency or its duly authorized agent shall send the total mortgage payment directly to each mortgagee. "Housing expense" shall be defined as the sum of the mortgagor's monthly **[maintenance,] utility, hazard insurance expense, real estate taxes and required mortgage payments, including escrows.** "Net effective income" shall be defined as gross household income less city, State

and Federal income and social security taxes. "Gross household income" means the total income of **[a husband, wife] the applicant, all other owner-occupants of the residence, any spouse** and children residing in the same household as the applicant and any other resident of the household declared by the mortgagor as a dependent for Federal tax purposes. ***The income of other unrelated individuals residing in the household shall be considered part of gross household income to the extent that their income is made available in support of the household.*** If the mortgagor is receiving emergency mortgage assistance under a program other than that established in this article, the amount of the payment he or she is required to make to the agency under this article shall take into consideration the amount of assistance he is receiving under such other programs.

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(f) Payments under this article shall be provided for a period not to exceed **[thirty-six (36)] twenty-four (24)** months, either consecutively or nonconsecutively[.], ***whether such payments are on account of arrears, continuing monthly assistance or any combination thereof, and shall not exceed the sum of sixty thousand (\$60,000) dollars on behalf of any mortgagor.*** The agency shall establish procedures for periodic review of the mortgagor's financial circumstances for the purpose of determining the necessity for continuation, termination or adjustment of the amount of the payments. Payments shall be discontinued when the agency determines that, because of the changes in the mortgagor's financial circumstances, the payments are no longer necessary in accordance with the standards set forth in section 404-C.

(f.1) The twenty-four (24) month limit on assistance available under this act established in subsection (f) and referenced in sections 401-C(a)(5), 403-C(f) and 404-C(a)(5) and (12) shall increase to thirty-six (36) months if during the month the homeowner submits an application for assistance the average rate of total unemployment in the Commonwealth, as seasonally adjusted, for the period consisting of the most recent three (3) months for which such data for the Commonwealth is published before the close of such month equals or exceeds six and one-half (6.5) percent.

(f.2) Every five (5) years, beginning in the year 2003, the General Assembly shall review the limit on the total assistance available under this act established in subsection (f) and the minimum monthly payment established in subsection (b). The General Assembly may increase either or both upon a showing that increases in housing costs require higher loan amounts in order for the act to be beneficial to homeowners in all regions of the Commonwealth.

(g) Repayment of amounts owed to the agency from a mortgagor shall be secured by a mortgage lien on the property and by such other obligation as the agency may require. The priority of any lien obtained by the agency under this article shall be determined in the same manner as the lien of a general secured creditor of the mortgagor. The lien or other security interest

of the agency shall not be deemed to take priority over any other secured lien or secured interest in effect against the mortgagor's property on the date assistance payments begin. The agency may allow subordination of the mortgage assistance lien if such subordination is necessary to permit the mortgagor to obtain a home improvement loan for repairs necessary to preserve the property.

(h) In cases of joint mortgagors who are husband and wife, where only one spouse who is an occupant of the mortgaged premises makes application for and receives assistance under this article, the lien to secure repayment as aforesaid shall be a lien on the property of like force and effect as a mechanic's lien.

Section 406-C. Repayment.—Upon approval of mortgage assistance, the agency shall enter into an agreement with the mortgagor for repayment of all mortgage assistance made by the agency plus interest as provided in paragraph (5). The agreement shall provide for monthly payments by the mortgagor and be subject to the following **[forbearance]** provisions:

(1) If the mortgagor's total housing expense as defined in section 405-C is less than **[thirty-five (35)] forty (40)** percent of his or her net effective income, the mortgagor shall pay to the agency the difference between **[thirty-five (35)] forty (40)** percent of the mortgagor's net effective income and the mortgagor's total housing expense unless otherwise determined by the agency after examining the mortgagor's financial circumstances and ability to contribute to repayment of the mortgage assistance.

(2) If the mortgagor's total housing expense is more than **[thirty-five (35)] forty (40)** percent of his or her net effective income, repayment of the mortgage assistance shall be deferred until the mortgagor's total housing expense is less than **[thirty-five (35)] forty (40)** percent of his or her net effective income[.]: *Provided, however, That beginning February 1, 1999, and continuing thereafter, any mortgagor who has received mortgage assistance shall pay to the agency a minimum monthly repayment of at least twenty-five (\$25) dollars for each mortgage that was assisted. Such minimum monthly repayment shall not result in the accrual of interest on the mortgage assistance loan pursuant to paragraph (5).*

(2.1) The forty (40) percent ratio established under paragraphs (1) and (2) shall be reduced to thirty-five (35) percent if during the month the homeowner submits an application for assistance the average rate of total unemployment in the Commonwealth, as seasonally adjusted, for the period consisting of the most recent three (3) months for which such data for the Commonwealth is published before the close of such month equals or exceeds six and one-half (6.5) percent.

(3) If repayment of mortgage assistance is not made by the date any mortgage is paid, the mortgagor shall make mortgage assistance repayments in an amount not less than the mortgage payment until the mortgage assistance is repaid.

(4) The agency shall establish procedures for periodic review of the mortgagor's financial circumstances to determine the amounts of repayment required under this section. ***Notwithstanding any other provision of this section, the agency shall require full or partial repayment of the mortgage assistance loan once the mortgagor has established credit to the extent that there is sufficient equity in the property for the mortgagor to be able to refinance their mortgage obligations at reasonable rates and terms as determined by the agency.***

(5) Interest shall accrue on all mortgage assistance made by the agency at the rate of nine (9) percent per annum. Interest shall start to accrue whenever the mortgagor begins to make repayment under this section. Interest shall accrue only during the period in which the mortgagor is required to make repayment under this section. When any mortgage for which mortgage assistance was made is paid, interest shall then accrue on all mortgage assistance due and owing at the same rate and on the same basis as the mortgage for which the mortgage assistance was made.

(6) All moneys received from mortgagors for repayment of mortgage assistance shall be deposited in the State Homeowner's Emergency Mortgage Assistance Fund established by the agency for the sole purpose of implementing the provisions of this article.

Section 408-C. Homeowner's Emergency Mortgage Assistance Fund.—The Homeowner's Emergency Mortgage Assistance Fund is hereby created as a separate account within the agency for the sole purpose of implementing the provisions of this article. No other agency funds, moneys or interest earnings shall be utilized for the purposes of this article. ***[The Homeowner's Emergency Mortgage Assistance Fund shall only be utilized by the agency whenever funds are specifically authorized and appropriated by the General Assembly pursuant to section 410-C of this article for the purposes provided for in this article. All moneys paid by mortgagors to the agency to repay loans provided by the agency shall be accounted for and lapsed into or transferred back to the source from which the funds are appropriated unless the funds cannot be lapsed or transferred pursuant to any other act of the General Assembly: Provided, however, That investment] Investment*** and interest earnings on moneys from this fund may be used by the agency for the administrative costs of the program. ***The Homeowner's Emergency Mortgage Assistance Fund shall operate as a revolving loan fund to which shall be credited all repayment of principal and interest by mortgagors to the agency to repay loans provided by the agency pursuant to this article as well as grants or donations from other sources and any funds that may be appropriated by the General Assembly.***

Section 5. Section 410-C of the act is repealed.

Section 6. This act shall take effect in 60 days.

APPROVED—The 21st day of December, A.D. 1998.

THOMAS J. RIDGE