

## No. 1983-91

## AN ACT

## HB 500

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," providing for homeowner's emergency assistance.

**Findings and purpose.**

(a) Findings.—The General Assembly finds that:

(1) the Commonwealth is in a severe recession and that the sharp downturn in economic activity has driven large numbers of workers into unemployment and has reduced the incomes of many others;

(2) as a result of these adverse economic conditions, the capacity of many homeowners to continue to make mortgage payments has deteriorated and may further deteriorate in the months ahead, leading to the possibility of widespread mortgage foreclosures and distress sales of homes;

(3) many of these homeowners could retain their homes if they received temporary financial assistance until economic conditions improve; and

(4) a program is needed to prevent similar emergencies in the future.

(b) Purpose.—It is the purpose of this act to establish a program which will, through emergency mortgage assistance payments, prevent widespread mortgage foreclosures and distress sales of homes which result from default caused by circumstances beyond a homeowner's control.

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

Section 1. Section 103(5) of the act of December 3, 1959 (P.L.1688, No.621), known as the Housing Finance Agency Law, amended December 5, 1972 (P.L.1259, No.282), is amended to read:

Section 103. Definitions.—As used in this act unless otherwise indicated—

\* \* \*

(5) “Mortgage” means a [first mortgage] *lien, other than a judgment, on a fee simple estate or leasehold in real [estate] property located in Pennsylvania, [given to secure advances on or the unpaid purchase price of the real estate under the laws of Pennsylvania,]* together with the credit instruments, if any, secured thereby; the term “mortgage,” [unmodified by the word “insured,”] includes both insured mortgages and those which are not insured.

\* \* \*

Section 2. The act is amended by adding an article to read:

#### ARTICLE IV.-C HOMEOWNER’S EMERGENCY ASSISTANCE

*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.*

*(b) The agency shall carry out the program established by this article. Within sixty days of the effective date of this article, the agency shall adopt program guidelines for the implementation of this article. The agency shall report annually to the General Assembly on the effectiveness of the Homeowner’s Emergency Mortgage Assistance Program in accomplishing the purposes of this article.*

*(c) The agency shall develop uniform notices and rules and regulations in order to implement the provisions of this article.*

*(d) The agency shall designate and approve nonprofit consumer credit counseling agencies in each county to be available to assist the agency in implementing the provisions of this article, including, but not limited to, mandated counseling. A “consumer credit counseling agency” shall be defined for the purpose of this article as a nonprofit consumer credit counseling agency located in Pennsylvania which is approved by the agency or a housing counseling agency certified by the United States Department of Housing and Urban Development.*

*Section 402-C. Notice and Institution of Foreclosure Proceedings.—*

*(a) Before any mortgagee may accelerate the maturity of any mortgage obligation covered under this article, commence any legal action including mortgage foreclosure to recover under such obligation, or take possession of any security of the mortgage debtor for such mortgage obligation, such mortgagee shall give the mortgagor notice as described in section 403-C. Such notice shall be given in a form and manner prescribed by the agency.*

*(b) A mortgagee shall not accelerate the maturity of any mortgage obligation covered under this article, commence any legal action including mort-*

gage foreclosure to recover under such obligation, or take possession of any security of the mortgage debtor for such mortgage obligation until a determination has been made on a mortgagor's application for emergency mortgage assistance payments or the applicable time periods provided for in section 403-C have expired, whichever is earlier.

(c) All pending legal actions by mortgagees on mortgages covered under this article in which sheriff's sales have not been consummated on the effective date of this article shall be temporarily stayed. The notice provided in section 403-C shall be given to all mortgagors against whom such legal actions are pending on the effective date of this article. Such stay shall extend until the applicable time limits provided for in section 403-C have expired or a mortgagor's request for assistance has been denied by the agency, whichever is earlier.

**Section 403-C. Notice Requirements.**—(a) Any mortgagee who desires to foreclose upon a mortgage shall send to such mortgagor at his or her last known address the notice provided in subsection (b): Provided, however, That such mortgagor shall be at least sixty (60) days contractually delinquent in his mortgage payments or be in violation of any other provision of such mortgage.

(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 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. 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 mortgagee first meets with the consumer credit counseling agency. 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 contract 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. 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.

(c) If the mortgagor fails to meet with the mortgagee or consumer credit counseling agency or meet any of the time limitations specified in the notice or if the mortgagor's application for mortgage assistance payments is denied,

*the mortgagee may, at any time thereafter, take any legal action to enforce the mortgage without any further restriction or requirements under this article. Financial institutions shall not be the duly authorized agents of the agency and shall not make the decision on the approval of assistance under this act.*

*Section 404-C. Eligibility for Assistance.—(a) No assistance may be made with respect to a mortgage 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; or*

*(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.*

*(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) 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.*

(b) *Upon a determination that the conditions of eligibility described in subsection (a) have been met by a mortgagor and money is available in the Homeowner's Emergency Mortgage Assistance Fund, the mortgagor shall become eligible for the assistance described in section 405-C. If the agency determines that a mortgagor has not met the conditions of eligibility described in subsection (a), the mortgagor shall be prohibited from reapplying for assistance under this article for a period of six (6) months from the date of such determination unless there is a material change in circumstances: Provided, however, That nothing in this subsection shall prohibit any mortgagee from commencing legal action to enforce the mortgage without any further restriction or requirement under this article whenever the agency determines that the mortgagor is ineligible for assistance as provided in this section.*

*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.*

(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) 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 a mortgagor is eligible for emergency mortgage assistance. The mortgagor shall make the above payment to the agency at least seven (7) 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, 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 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. 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.

(c) The amount by which the mortgagor assistance payments made by the agency to all mortgagees exceeds the amount of payments made by the mortgagor to the agency shall be a loan in that amount by the agency to the mortgagor. Such loan shall be evidenced by such documents as the agency shall determine and shall be subject to repayment with interest and secured as provided herein.

(d) If the mortgagor fails to pay to the agency any amounts due directly from him or her under this section within fifteen (15) days of the due date, the agency shall review the mortgagor's financial circumstances as provided in subsection (b) to determine whether the delinquency is the result of a change in the mortgagor's financial circumstance. If the delinquency is not the result of a change in the mortgagor's financial circumstances, the agency shall terminate the emergency mortgage assistance payments and any mortgagee may, at any time thereafter, take any legal action to enforce its mortgage without any further restriction or requirement under this article. If the delinquency is the result of a change in the mortgagor's financial circumstances, the agency shall modify the mortgagor's required payments to the agency as the agency shall determine.

(e) If any mortgagee scheduled to receive payments from the agency pursuant to this article fails to receive from the agency the full amount of such payment within thirty (30) days of the scheduled due date, or if a mortgagor fails to observe and perform all the terms, covenants and conditions of the mortgage, that mortgagee may, at any time thereafter, take any legal action to enforce the mortgage without any further restriction or requirement under this article.

(f) Payments under this article shall be provided for a period not to exceed thirty-six (36) months, either consecutively or nonconsecutively. 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. Pay-

ments 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.

(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. 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) percent of his or her net effective income, the mortgagor shall pay to the agency the difference between thirty-five (35) 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) 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) percent of his or her net effective income.

(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.

(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 407-C. Financial Institutions.—A financial institution shall not be deemed to be in violation of any statute, regulation or rule of supervisory authorities by reason of any agreement, forbearance or modification of the payment or other terms of a mortgage as an effect of the assistance program or by reason of actions taken or not taken pursuant to the program. No mortgage loan as to which assistance payments are being made shall be deemed to be delinquent or classified as such by supervisory authorities during the continuance of such assistance payments.*

*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 and interest earnings on moneys from this fund may be used by the agency for the administrative costs of the program.*

*Section 409-C. Insufficient Funds.—The provisions of this article shall not be applicable to any mortgage which becomes delinquent at any time when the agency does not have money currently available in the Homeowner's Emergency Mortgage Assistance Fund to approve applications for emergency mortgage assistance or to continue making assistance payments on behalf of mortgagors previously approved. The State Treasurer shall have the duty to advise the agency not less frequently than once each calendar quarter of the amount available for the purposes of this article. In the event that the funds available to the agency in the Homeowner's Emergency Mortgage Assistance Fund for purposes of this article become insufficient to approve application for emergency mortgage assistance or to continue making assistance payments on behalf of mortgagors previously approved, the agency shall immediately publish an announcement to that effect and mortgagors shall no longer be subject to the provisions of this article and mortgagors may, at any time thereafter, take legal action to enforce the mortgage without any further restriction or requirement under this article.*

*Section 410-C. Funding.—(a) For purposes of this section, "business firm" means any business entity authorized to do business in the Common-*



*wealth and subject to the Corporate Net Income Tax Act or a bank, bank and trust company, insurance company, trust company, national bank, savings association, mutual savings bank or building and loan association.*

*(b) It is hereby declared to be the public policy of the Commonwealth of Pennsylvania to encourage contributions by business firms to the Homeowner's Emergency Mortgage Assistance Fund created by this article.*

*(c) Any business firm which contributes to the fund shall receive a tax credit as provided in subsection (d). The total amount of tax credits granted under this section for the first fiscal year shall not exceed fifteen million dollars nor shall the total amount of tax credits granted for fiscal years 1984-1985, 1985-1986 or 1986-1987 exceed fifteen million dollars in any fiscal year.*

*(d) The Department of Revenue shall grant a tax credit against any tax due under Articles IV, V, VII, VIII, XV and XVI of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," or against any tax due from an insurance company other than a foreign fire casualty insurance company. A tax credit of up to seventy (70) percent may be allowed. Contributions to the fund and any tax credit pursuant thereto not used in the period in which the contribution was made may be carried over for the next succeeding calendar or fiscal year until the full contribution has been used or the full credit has been allowed; provided that the total amount of all tax credits allowed pursuant to this section shall not exceed the limitations provided for in subsection (c). The agency may provide for proportional credit in the event that total credits sought exceed fifteen million dollars in each of the fiscal years. Notwithstanding the provisions of the act of November 29, 1967 (P.L.636, No.292), known as the "Neighborhood Assistance Act," the total amount of tax credits granted under that act shall not exceed three million seven hundred fifty thousand dollars for the fiscal year 1983-1984 and one million seven hundred fifty thousand dollars in each of the fiscal years 1984-1985, 1985-1986 and 1986-1987.*

*(e) The sum of five million dollars or as much as may be necessary is hereby appropriated from the General Fund to the fund created by section 408-C of this article to provide startup funding. The agency shall reimburse the General Fund for the amount of such appropriation on or before June 30, 1985.*

Section 3. Assistance under this act shall extend to all mortgagees secured by a mortgage on the subject property.

Section 4. This act, other than the provisions contained in sections 405-C(g) and 406-C, shall expire three years from the effective date of this act, except that mortgage assistance shall continue to be made available to mortgagors who were deemed eligible for mortgage assistance prior to the expiration of this act in accordance with the terms of this act.

Section 5. This act shall take effect immediately upon the initial provision of money to the Homeowner's Emergency Assistance Fund through appropriations by the General Assembly.

APPROVED—The 23rd day of December, A. D. 1983.

DICK THORNBURGH