

ASSEMBLY, No. 2321

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 16, 1996

By Assemblymen AUGUSTINE and WEINGARTEN

1 AN ACT concerning the assignment of certain mortgages and
2 amending R.S.46:9-9.

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

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7 1. R.S.46:9-9 is amended to read as follows:

8 46:9-9. All mortgages on real estate in this State, and all covenants
9 and stipulations therein contained, shall be assignable at law by
10 writing, whether sealed or not, and any such assignment shall pass and
11 convey the estate of the assignor in the mortgaged premises, and the
12 assignee may sue thereon in his own name, but, in any such action by
13 the assignee, there shall be allowed all just set-offs and other defenses
14 against the assignor that would have been allowed in any action
15 brought by the assignor and existing before notice of such assignment,
16 except that, when the underlying mortgage is evidenced by an
17 instrument meeting the criteria for negotiability set forth in
18 N.J.S.12A:3-104, the holder of the instrument shall be a holder in due
19 course and shall be afforded all the rights and protections provided a
20 holder in due course pursuant to N.J.S.12A:3-302.

21 (cf: P.L.1987, c.357, s.4)

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23 2. This act shall take effect immediately.

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STATEMENT

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28 Currently, the assignee of a mortgage takes the mortgage subject
29 to all set-offs and other defenses allowable against the assignor. This
30 bill provides that if the underlying mortgage is evidenced by a
31 negotiable instrument, such as a promissory note, the assignee shall be
32 a holder in due course of the instrument and shall be afforded the
33 rights and protections of a holder in due course. A holder in due
34 course as defined in N.J.S.12A:3-302, is a holder who takes a

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

Matter underlined thus is new matter.

1 negotiable instrument under circumstances which legally entitle the
2 holder to protection against certain defenses which could be raised by
3 the maker of the instrument or a third party.

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8 Provides holder in due course status to holders of negotiable
9 instruments secured by a mortgage.