

CHAPTER 190

AN ACT concerning property tax liens and amending various sections of statutory law.

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

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

C.17:12B-11 Mortgage deemed first lien.

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

(a) A mortgage upon real property shall be deemed a first lien notwithstanding the existence of (i) a prior mortgage or mortgages held by the association, (ii) a lien of a condominium association for up to six months of customary condominium assessments pursuant to section 21 of P.L.1969, c.257 (C.46:8B-21), or (iii) building restrictions or other restrictive covenants or conditions, leases or tenancies whereby rents or profits are reserved to the owner, joint driveways, sewer rights, rights in walls, rights-of-way or other easements, or encroachments which do not materially affect the security for the mortgage loan. Nothing herein shall alter or affect the status or priority of municipal liens under R.S.54:5-1 et seq.

(b) A mortgage upon a lease of the fee of real property shall be deemed a first lien not subject to any prior lien, except for municipal liens, notwithstanding the existence of building restrictions or other restrictive covenants or conditions, joint driveways, sewer rights, rights in walls, rights-of-way or other easements, or encroachments which do not materially affect the security for the mortgage loan. Nothing herein shall alter or affect the status or priority of municipal liens under R.S.54:5-1 et seq.

(c) A mortgage upon an apartment which is part of a horizontal property regime, established under the "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.) or upon a unit which is part of a condominium established pursuant to the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.) shall be deemed a first lien notwithstanding the existence of other proportionate undivided interests in the "general common elements" or "common elements" of such horizontal property regime or condominium, as the case may be, as the same are defined in the "Horizontal Property Act," and the "Condominium Act," respectively, and notwithstanding the indivisibility of such common elements or the existence of a prior mortgage or mortgages held by the association upon such apartment or unit or the existence of a prior mortgage or mortgages on other apartments or units within the particular horizontal property regime or condominium, as the case may be, regardless of whether such prior mortgages are held by the association or any other mortgagee and notwithstanding the existence of building restrictions or other restrictive covenants or conditions, leases or tenancies whereby rents or profits are reserved to the owner, or other easements or encroachments which do not materially affect the security for the mortgage loan. Nothing herein shall alter or affect the status or priority of municipal liens under R.S.54:5-1 et seq.

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

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

C.46:8B-21 Liens in favor of association; priority.

21. a. The association shall have a lien on each unit for any unpaid assessment duly made by the association for a share of common expenses or otherwise, including any other moneys duly owed the association, upon proper notice to the appropriate unit owner, together with interest thereon and, if authorized by the master deed or bylaws, late fees, fines and reasonable attorney's fees; provided however that an association shall not record a lien in which the unpaid assessment consists solely of late fees. Such lien shall be effective from and after the time of recording in the public records of the county in which the unit is located of a claim of lien stating the description of the unit, the name of the record owner, the amount due and the date when due. Such claim of lien shall include only sums which are due and payable when the claim of lien is recorded and shall be signed and verified by an officer or agent of the association. Upon full payment of all sums secured by the lien, the party making payment shall be entitled to a

recordable satisfaction of lien. Except as set forth in subsection b. of this section, all such liens shall be subordinate to any lien for past due and unpaid property taxes, the lien of any mortgage to which the unit is subject and to any other lien recorded prior to the time of recording of the claim of lien.

b. A lien recorded pursuant to subsection a. of this section shall have a limited priority over prior recorded mortgages and other liens, except for municipal liens or liens for federal taxes, to the extent provided in this subsection. This priority shall be limited as follows:

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

(2) With respect to a particular mortgage, to a lien recorded prior to: (a) the receipt by the association of a summons and complaint in an action to foreclose a mortgage on that unit; or (b) the filing with the proper county recording office of a lis pendens giving notice of an action to foreclose a mortgage on that unit.

(3) 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 shall not be greater than the assessment for the six-month period specified in paragraph (1) of this subsection. Priority among multiple filings shall be determined by their date of recording with the earlier recorded liens having first use of the priority given herein.

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

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

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

For the purpose of this section, a "customary condominium assessment" shall mean an assessment for periodic payments, due the association for regular and usual operating and common area expenses pursuant to the association's annual budget and shall not include amounts for reserves for contingencies, nor shall 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 as a first mortgage.

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

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

e. If a mortgagee of a first mortgage of record or other purchaser of a unit obtains title to such unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns shall not be liable for the share of common expenses or other assessments by the association pertaining to such unit or chargeable to the former unit owner which became due

prior to acquisition of title as a result of the foreclosure. Any remaining unpaid share of common expenses and other assessments, except assessments derived from late fees or fines, shall be deemed to be common expenses collectible from all of the remaining unit owners including such acquirer, his successors and assigns.

f. Liens for unpaid assessments may be foreclosed by suit brought in the name of the association in the same manner as a foreclosure of a mortgage on real property. The association shall have the power, unless prohibited by the master deed or bylaws to bid on the unit at foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments may be maintained without waiving the lien securing the same. Nothing herein shall alter the status or priority of municipal liens under R.S.54:5-1 et seq.

3. R.S.54:5-47 is amended to read as follows:

Certificate of sale; form and content.

54:5-47. The certificate shall be substantially in the following form:

"I,....., collector of taxes of..... (name of municipality), hereby certify that on....., 19....., I sold to..... for..... dollars, the lands in the municipality described as..... on the tax duplicate of the municipality, and assessed thereon to..... as owner (followed by amplified description if desired). The amount of sale was made up of the following items (followed by the items, including interest and costs). The sale is subject to redemption on repayment of the amount of the sale, together with interest thereon at the rate of..... per cent per annum from the date of sale, and the costs incurred by the purchaser. The sale is subject only to municipal liens accruing after..... (insert date of last item of taxes or assessment for which sale is made).

"Witness my hand and seal this..... day of....., 19 (Followed by acknowledgment)."

4. R.S.54:5-54 is amended to read as follows:

Right of redemption by owner or person having interest.

54:5-54. Except as hereinafter provided, the owner, his heirs, holder of any prior outstanding tax lien certificate, mortgagee, or occupant of land sold for municipal taxes, assessment for benefits pursuant to R.S.54:5-7 or other municipal charges, may redeem it at any time until the right to redeem has been cut off in the manner in this chapter set forth, by paying to the collector, or to the collector of delinquent taxes on lands of the municipality where the land is situate, for the use of the purchaser, his heirs or assigns, the amount required for redemption as hereinafter set forth.

5. R.S.54:5-55 is amended to read as follows:

Delivery of certificate of redemption; record.

54:5-55. The collecting officer on receiving payment in full shall execute and deliver to the person redeeming a certificate of redemption which may be recorded with the register of deeds, or if there is no register, with the county clerk. The county clerk or register, as the case may be, shall, on request, note on the record of the original certificate of sale a reference to the record of the certificate of redemption, and shall be entitled therefor to the same fees as provided respectively for the cancellation of mortgages and for the record of discharges thereof, or, at the option of the person redeeming, the collecting officer shall procure and deliver to the owner the certificate of sale receipted for cancellation by indorsement in the same manner required by law to satisfy or cancel a mortgage, whereupon the record of the certificate of sale shall be canceled by the county clerk or register, as the case may be, in the same manner and for the same fees as

in the case of mortgages.

6. R.S.54:5-57 is amended to read as follows:

Notice to purchaser, payment of redemption moneys.

54:5-57. The collecting officer shall at once, on receipt of the redemption money, mail notice thereof to the purchaser, if his address can be ascertained, and shall pay all redemption moneys to him or his assigns on his surrender of the certificate of sale and compliance with the provisions of section 54:5-55 of this title.

7. R.S.54:5-112 is amended to read as follows:

Private sale of real estate acquired for delinquent taxes, assessments by municipality; recording of assignments, service on tax collector.

54:5-112. When a municipality has or shall have acquired title to real estate by reason of its having been struck off and sold to the municipality at a sale for delinquent taxes or assessments, the governing body thereof may, by resolution adopted by a majority thereof by roll call, sell such real estate at private sale to such person and for such sums, not less than the amount of municipal liens charged against the same, except as provided in subsection a. of section 38 of P.L.1996, c.62 (C.55:19-57), as shall seem to be to the best interest of the municipality. Upon the adoption of the resolution and the payment of the consideration as stated therein, the officers of the governing body authorized by resolution shall make, execute, acknowledge and deliver a deed without covenants to the purchaser, which deed shall vest in the purchaser all of the right, title and interest of the municipality in the real estate therein described. The deed need not contain any recitals, except a statement of the actual consideration. Such sales shall not include real estate, title to which has been perfected by the municipality. Any and all further or additional assignments of the tax sale certificates shall be promptly recorded in the office of the county clerk or register of deeds, as the case may be, of the county wherein the real property is situate, and a photocopy of the recorded assignment shall be served upon the local tax collector by certified mail, return receipt requested. When assignments have not been recorded and served upon the tax collector, the tax collector and the municipality shall be held harmless for the payment of any redemption amounts to the holder of the tax sale certificate as appears on the records of the tax collector.

8. R.S.54:5-113 is amended to read as follows:

Private sale of certificate of tax sale by municipality; recording of assignments, service on tax collector.

54:5-113. When a municipality has or shall have acquired title to real estate by reason of its having been struck off and sold to the municipality at a sale for delinquent taxes and assessments, the governing body thereof may by resolution authorize a private sale of the certificate of tax sale therefor, together with subsequent liens thereon, for not less than the amount of liens charged against such real estate, except as provided in section 2 of P.L.1993, c.113 (C.54:5-113.1) and subsection a. of section 38 of P.L.1996, c.62 (C.55:19-57). The sale shall be made by assignment executed by such officers as may be designated in the resolution. When the total amount of the municipal liens shall, at the time of the proposed sale or assignment, exceed the assessed value of the real estate as of the date of the last sale thereof for unpaid taxes and assessments, the certificates, together with subsequent liens thereon, may be sold and assigned for a sum not less than such assessed value. Any and all further or additional assignments of the tax sale certificates shall be promptly recorded in the office of the county clerk or register of deeds, as the case may be, of the county wherein the real property is situate, and a photocopy of the recorded assignment shall be served upon the local tax collector by certified mail, return receipt requested. When assignments have not been recorded and served upon the tax collector, the tax collector and the municipality shall be held harmless for the payment of any redemption amounts to the holder of the tax sale certificate as appears on the

records of the tax collector.

9. Section 4 of P.L.1993, c.325 (C.54:5-113.4) is amended to read as follows:

C.54:5-113.4 Pledge, transfer of tax sale certificates; assignments, recording.

4. Notwithstanding the provisions of any other law, rule or regulation to the contrary, a municipality may assign, pledge or transfer to the New Jersey Economic Development Authority tax sale certificates held by the municipality for property located within its boundaries, together with subsequent liens thereon, as collateral for any bonds or notes issued by the authority by or on behalf of the municipality on the same terms and conditions as set forth in section 2 of P.L.1993, c.113 (C.54:5-113.1) for any purposes permitted by law. For the purposes of this section "municipality" shall include municipalities acting jointly pursuant to section 2 of P.L.1993, c.113 (C.54:5-113.1). Any and all further or additional assignments of the tax sale certificates shall be promptly recorded in the office of the county clerk or register of deeds, as the case may be, of the county wherein the real property is situate, and a photocopy of the recorded assignment shall be served upon the local tax collector by certified mail, return receipt requested. When assignments have not been recorded and served upon the tax collector, the tax collector and the municipality shall be held harmless for the payment of any redemption amounts to the holder of the tax sale certificate as appears on the records of the tax collector.

10. Section 1 of P.L.1941, c.232 (C.54:5-114.1) is amended to read as follows:

C.54:5-114.1 Methods of sale of certificate of tax sale by municipality.

1. In addition to any method now provided by law the governing body of any municipality may sell any certificate of tax sale held by such municipality by one of the following methods, but such sale shall not affect or impair any municipal lien subsequent to the certificate of tax sale:

(a) At public sale to the highest bidder. Such public sale shall be held after public notice of the time and place of sale, stating the description of the several lots and parcels of land covered by the certificate of sale and the name of the owner of the land as contained in the collector's list, together with the total amount required for redemption including all subsequent municipal liens with interest and costs, and stating in substance that the respective certificates of sale, not including any municipal lien subsequent thereto, will be sold to the highest bidder at said public sale, subject to confirmation by the governing body at its next regular meeting after the sale. Copies of the notice shall be set up in five of the most public places in the municipality and a copy of the notice shall be published in a newspaper circulating in the municipality once in each of two calendar weeks preceding the calendar week containing the day appointed for the sale. When the owner's name appears in the list and his post-office address is known, the collector shall mail to him at that address, postage prepaid, a copy of the notice, but failure to mail the notice shall not invalidate any proceeding hereunder. Such public sale may be adjourned once for a period not exceeding one week without readvertising; or

(b) The governing body may from time to time determine by resolution the certificates of tax sale held by such municipality which such municipality will agree to sell for an amount lower than the amount due on each such certificate of tax sale. After such determination the municipality shall give public notice set up in five of the most public places in such municipality, stating the description of the several lots and parcels of land covered by such certificate of sale and the name of the owner of the land as contained in the collector's list, together with the total amount required for redemption including all subsequent municipal liens with interest and costs, and stating in substance that the municipality will receive bids for any such certificate of sale, not including any municipal liens subsequent thereto, even though such bid be less than the amount due on such certificate of tax sale. Upon the receipt of any bid for any such certificate of sale, not including any municipal liens subsequent thereof, which the governing body may be inclined to accept, the governing body shall give public notice setting forth the amount of the bid for the certificate of sale, not including any municipal liens subsequent thereto, the description of the several lots and parcels of land covered by such certificate of sale, the name of the owner of the land as contained in the collector's list, and also the total amount which

would otherwise be required for redemption, and stating in substance that the governing body will accept or reject such bid at a regular meeting of the governing body and setting forth the place, time and date of such regular meeting. A copy of this last-mentioned public notice shall be set up in five of the most public places in the municipality and a copy of the same shall be published in a newspaper circulating in the municipality at least once in the week preceding the date set for the regular meeting of the governing body at which meeting such bid will be passed upon. When the owner's name appears in the list and his post-office address is known, the collector shall mail to him at that address, postage prepaid, a copy of this last-mentioned notice, but failure to mail the notice shall not invalidate any proceeding hereunder. At the regular meeting of the governing body, as contained in said notice, the governing body may accept or reject any such bid as contained in such notice or may at such meeting accept or reject any higher bid which may then be made for said certificate of sale, not including any municipal liens subsequent thereto, by any person.

Any and all assignments of a tax sale certificate purchased pursuant to this section shall be promptly recorded in the office of the county clerk or register of deeds, as the case may be, of the county wherein the real property is situate, and a photocopy of the recorded assignment shall be served upon the local tax collector by certified mail, return receipt requested. When assignments have not been recorded and served upon the tax collector, the tax collector and the municipality shall be held harmless for the payment of any redemption amounts to the holder of the tax sale certificate as appears on the records of the tax collector.

11. Section 1 of P.L.1943, c.149 (C.54:5-114.2) is amended to read as follows:

C.54:5-114.2 Sale of certificate of tax sale, liens by municipality.

1. The governing body of any municipality may sell any certificate of tax sale including all subsequent municipal liens held by such municipality by one of the following methods:

(a) At public sale to the highest bidder. Such sale shall be held after public notice of the time and place stating the description of the several lots and parcels of land covered by the certificate of sale, and the name of the owner of the land as contained in the collector's list, together with the total amount required for redemption including interest and costs to the date of sale and the amount of subsequent liens with interest, and stating in substance that the respective certificates of sale, including subsequent municipal liens will be sold to the highest bidder at said public sale subject to confirmation by the governing body at its next regular meeting after the sale. Copies of the notice shall be set up in five of the most public places in the municipality, and a copy of the notice shall be published in a newspaper circulating in the municipality once in each of two calendar weeks preceding the calendar week containing the day appointed for the sale. When the owner's name appears on the list and his post-office address is known, the collector shall mail to him at that address, postage prepaid, a copy of the notice, but failure to mail the notice shall not invalidate any proceedings hereunder. Such public sale may be adjourned once for a period not exceeding one month without readvertising; or

(b) The governing body may from time to time determine by resolution the certificates of tax sale including all subsequent liens held by such municipality which such municipality deems advisable to sell for an amount lower than the total amount due, together with interest and costs on the certificate of sale. After such determination the municipality shall give public notice set up in five of the most public places in such municipality, stating the description of the several lots and parcels of land covered by such certificate of sale and subsequent municipal liens and the name of the owner of the land as contained in the collector's list, together with the total amount required for redemption including all subsequent municipal liens with interest and costs and stating in substance that the municipality will receive bids for any such certificate of tax sale and subsequent municipal liens, even though such bid be less than the total amount due on such certificate of tax sale including all subsequent liens plus interests and costs. Upon the receipt of any bid which the governing body may be inclined to accept, the governing body shall give public notice setting forth the amount of the bid for the certificate of tax sale including subsequent municipal liens together with interest and costs, the description of the several lots and parcels of land covered by such certificate of sale and subsequent municipal liens, the name of the owner

of the land as contained in the collector's list and also the total amount which would otherwise be required for redemption to the date of proposed sale and stating in substance that the governing body will accept or reject such bid at a regular meeting of the governing body and setting forth the place, time and date of such regular meeting. A copy of this last-mentioned public notice shall be published in a newspaper circulating in the municipality at least once in the week preceding the date set for the regular meeting of the governing body at which meeting such bid will be passed on. When the owner's name appears in the list and his post-office address is known, the collector shall mail to him at that address, postage prepaid, a copy of this last-mentioned notice, but failure to mail the notice, shall not invalidate any proceeding hereunder. At the regular meeting of the governing body, as contained in said notice, the governing body may accept or reject any such bid as contained in such notice or may at such meeting accept or reject any higher bid which may then be made by any person for said certificate of sale, including subsequent municipal liens.

Any and all assignments of a tax sale certificate purchased pursuant to this section shall be promptly recorded in the office of the county clerk or register of deeds, as the case may be, of the county wherein the real property is situate, and a photocopy of the recorded assignment shall be served upon the local tax collector by certified mail, return receipt requested. When assignments have not been recorded and served upon the tax collector, the tax collector and the municipality shall be held harmless for the payment of any redemption amounts to the holder of the tax sale certificate as appears on the records of the tax collector.

12. Section 3 of P.L.1943, s.149 (C.54:5-114.4) is amended to read as follows:

C.54:5-114.4 Purchasers of tax sale certificates, liens; foreclosure, right of redemption, recording of final judgment; further, additional assignments recovered.

3. Any and all purchasers of the tax sale certificates and subsequent municipal liens purchased, as hereinabove described, must foreclose at their own expense, the right of redemption, and record the final judgment in the county wherein the land is situate within two years from the date of the confirmation of the sale by the governing body. Any and all further or additional assignments of the tax sale certificates shall be promptly recorded in the office of the county clerk or register of deeds, as the case may be, of the county wherein the real property is situate, and a photocopy of the recorded assignment shall be served upon the local tax collector by certified mail, return receipt requested. When assignments have not been recorded and served upon the tax collector, the tax collector and the municipality shall be held harmless for the payment of any redemption amounts to the holder of the tax sale certificate as appears on the records of the tax collector.

13. This act shall take effect immediately.

Approved August 5, 1997.