

A05626 Text:

STATE OF NEW YORK

5626

2019-2020 Regular Sessions

IN ASSEMBLY

February 14, 2019

Introduced by M. of A. WEINSTEIN, MOSLEY, ABBATE, COLTON, CYMBROWITZ, GALEF, ZEBROWSKI, JOYNER, ORTIZ, GLICK, DINOWITZ, CARROLL, D'URSO, STECK, HYNDMAN, RICHARDSON, AUBRY, SEAWRIGHT, ABINANTI, WALLACE, CAHILL, LUPARDO, BURKE, TAYLOR -- Multi-Sponsored by -- M. of A. COOK, ENGLEBRIGHT, NOLAN, SIMON, THIELE -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property law, in relation to regulation of reverse mortgages issued under the federal home equity conversion mortgage for seniors program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. The real property law is amended by adding a new section
2 280-b to read as follows:
3 § 280-b. Federal home equity conversion mortgage regulation. 1. For
4 the purposes of this section, the following terms shall have the follow-
5 ing meanings:
6 (a) Reverse mortgage loan. A reverse mortgage loan as defined in
7 section two hundred eighty of this article, which is issued in this
8 state pursuant to the home equity conversion mortgage for seniors
9 program operated by the federal Department of Housing and Urban Develop-
10 ment.
11 (b) Authorized lender. An authorized lender as defined in section two
12 hundred eighty of this article authorized to make reverse mortgage
13 loans, as defined in this section.
14 (c) Superintendent. The superintendent of financial services estab-
15 lished pursuant to section two hundred two of the financial services
16 law.
17 2. No authorized lender or any other party or entity shall in any
18 manner, in the marketing or offering of reverse mortgage loans, engage
19 in any unfair or deceptive practices in connection with the marketing or
20 offering of reverse mortgage loans, and, additionally, shall not:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (a) use the words "public service announcement" in any commercial,
2 mailing, advertisement or writing relating thereto; or

3 (b) use the words "government insured" or other similar language
4 representing that reverse mortgage loans are insured, supported and
5 sponsored by any governmental entity in any commercial, mailing, adver-
6 tisement or writing relating thereto; or

7 (c) represent that any such loan is other than a commercial product.

8 3. (a) Every authorized lender or its agent shall provide, with any
9 solicitation for reverse mortgage products mailed to a physical address
10 within the state, supplemental consumer protection materials the content
11 and form of which shall be specified by the superintendent or his or her
12 designee.

13 (b) Every authorized lender shall provide each applicant or potential
14 applicant for a reverse mortgage loan with the telephone number and
15 internet website address provided by the federal Department of Housing
16 and Urban Development for the purposes of acquiring home equity conver-
17 sion mortgage counseling.

18 (c) The superintendent is authorized to promulgate such rules and
19 regulations as he or she shall deem necessary to implement the
20 provisions of this subdivision.

21 4. (a) Reverse mortgages secured by residential real property within
22 the state shall be subject to the rules and regulations of the federal
23 Department of Housing and Urban Development relating to the home equity
24 conversion mortgage program.

25 (b) For all borrowers whose tax payments, mortgage insurance payments,
26 homeowners insurance payments, or payments stemming from any other prop-
27 erty obligation or obligations are administered by the authorized lend-
28 er, and where these payments are derived from the proceeds of the mort-
29 gage, the authorized lender shall provide on the borrower's periodic
30 account statement the current balance remaining in the borrower's line
31 of credit or lifetime expectancy set aside, the projected annual proper-
32 ty charges for that year, and a notice which reads in at least twelve
33 point type: "YOUR TAXES AND INSURANCE ARE CURRENTLY BEING PAID BY THE
34 PROCEEDS OF THIS MORTGAGE. THE FUNDS THAT HAVE BEEN SET ASIDE ARE
35 EXPECTED TO BE EXHAUSTED AFTER THE TAX AND INSURANCE PAYMENTS OF (SPECI-
36 FY EXPECTED MONTH AND YEAR). IF THE PROCEEDS OF THIS MORTGAGE CANNOT PAY
37 THE TAXES AND INSURANCE, YOU MUST PAY THESE OBLIGATIONS OR YOUR HOME MAY
38 BE LOST TO FORECLOSURE. PLEASE NOTE THAT AS TAX AND INSURANCE AMOUNTS
39 CAN VARY YOU SHOULD CONTINUE TO REVIEW THIS NOTICE FOR CHANGES."

40 (c) An authorized lender shall, by telephone and first class mail,
41 inform and provide notice to a mortgagor when his or her home equity
42 line of credit or life expectancy set aside is depleted to ten percent
43 or less of its value. Such notice shall inform the mortgagor of his or
44 her obligations relating to such real property including, but not limited-
45 ed to, mortgage insurance, homeowners insurance and real property taxes
46 previously paid by such line of credit or life expectancy set aside, and
47 that such obligations must continue to be paid when the home equity line
48 of credit or life expectancy set aside is depleted. Such notice shall
49 use plain language, written in a clear and coherent manner using words
50 with common and every day meanings, appropriately divided and captioned
51 by its various sections.

52 (d) Each authorized lender shall, by telephone and first class mail,
53 inform and provide notice to a mortgagor when his or her home equity
54 line of credit or life expectancy set aside is depleted. Such notice
55 shall inform the mortgagor of his or her obligations relating to the
56 mortgaged real property including, but not limited to, mortgage insur-

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1 ance, homeowners insurance and real property taxes, and that the home
2 equity line of credit or life expectancy set aside will no longer pay
3 these obligations. Such notice shall use plain language, written in a
4 clear and coherent manner using words with common and every day mean-
5 ings, appropriately divided and captioned by its various sections.

6 5. No authorized lender shall make an advance payment for any obli-
7 gation arising from mortgaged real property. Furthermore, in the event a
8 mortgagor defaults upon the payment of mortgage insurance premium, home-
9 owners' insurance premium or real property tax related to the mortgaged
10 property, the authorized lender may only pay those premiums and/or taxes
11 which are in arrears.

12 6. In the event that an authorized lender seeks to foreclose on a
13 reverse mortgage loan on the basis that the mortgaged real property is
14 no longer the primary residence of or occupied by the mortgagor, if
15 during the verification of the mortgagor's primary residence and/or
16 occupancy no responses are received in response to mailings relating
17 thereto, such lender shall cause a telephone call to be made to the
18 mortgagor, or if the mortgagor is unreachable by telephone, a designated
19 third-party specified by the mortgagor, and an in person visit to be
20 made to the mortgagor at the mortgaged real property to be made prior to
21 the commencement of any foreclosure proceeding. During such visit, the
22 authorized lender or its agent shall provide clear information as to who
23 they are, that the visit pertains to the reverse mortgage, the reason
24 for the home visit, and the telephone number to call for further infor-
25 mation. The authorized lender must wait at least thirty days following
26 such visit, in addition to any additional time or notice requirements
27 specified by any other provision of law, before initiating a foreclosure
28 action on the basis that the mortgaged real property is no longer the
29 primary residence of the mortgagor. If the mortgagor contacts the
30 authorized lender and provides proof of residence or occupancy after
31 such visit but before the commencement of a foreclosure action, the
32 authorized lender shall be barred from initiating such foreclosure
33 action. Furthermore, no authorized lender shall charge a mortgagor any
34 fee for any such visit and inspection. This prohibition on the imposi-
35 tion of fees shall include any and all inspections conducted by the
36 authorized lender to verify the status of the reverse mortgage, or any
37 suspected or actual default condition.

38 7. Both the authorized lender and the mortgagor shall be represented
39 by an attorney or attorneys at the time of the closing on the reverse
40 mortgage, and each such party shall have at least one attorney present
41 to conduct the closing.

42 8. Any person who has been injured by reason of any violation of this
43 section or any violation of the rules and regulations of the federal
44 Department of Housing and Urban Development relating to the home equity
45 conversion mortgage program may bring an action in his or her own name
46 to recover treble his or her actual damages, plus the prevailing
47 plaintiff's reasonable attorney's fees.

48 9. Compliance with the provisions of this section shall be conditions
49 precedent to commencing an action to foreclose upon a home equity
50 conversion mortgage which is subject to the provisions of this section,
51 and the failure to comply therewith shall be a complete defense to a
52 foreclosure action.

53 § 2. This act shall take effect on the ninetieth day after it shall
54 have become a law; provided, that, effective immediately the superinten-
55 dent of financial services is authorized and directed to amend, add
56 and/or repeal any rules and regulations necessary to implement the