

STATE OF NEW YORK

3686--B

2019-2020 Regular Sessions

IN SENATE

February 12, 2019

Introduced by Sens. BIAGGI, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law, the uniform commercial code and the civil practice law and rules, in relation to reverse cooperative apartment unit loans

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

1 Section 1. The banking law is amended by adding a new section 6-n to
2 read as follows:

3 § 6-n. Reverse cooperative apartment unit loans for persons sixty-two
4 years of age or older. 1. For purposes of this section, the following
5 terms shall have the following meanings:

6 (a) Reverse cooperative apartment unit loan. A loan which is secured
7 by shares or membership in a cooperative apartment that is or intended
8 to be the primary residence of the borrower or borrowers the proceeds of
9 which are advanced to the borrower or borrowers during the term of the
10 loan in equal installments, or in advances through a line of credit or
11 otherwise, in a lump sum, or through a combination thereof. Interest
12 and fees will accrue during the life of the loan and will be added to
13 the principal balance of the loan, but will not become due and payable
14 until the borrower(s) dies, permanently vacates the apartment or
15 defaults on the terms of the loan, and will continue to accrue until the
16 loan is paid in full.

17 (b) Loan payout options:

18 (i) Term payment option. Under the term payment option, equal monthly
19 payments are made by the lender to the borrower for a fixed term of
20 months chosen by the borrower.

21 (ii) Tenure payment option. Under the tenure payment option, equal
22 monthly payments are made by the lender to the borrower, until the loan
23 is prepaid in full or becomes due and payable.

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

LBD01344-10-9

1 (iii) Line of credit payment option. Under the line of credit payment
2 option, payments are made by the lender to the borrower at times and in
3 amounts determined by the borrower as long as the amounts do not exceed
4 the maximum amount of loan proceeds.

5 (iv) Single lump sum payment option. Under the single lump sum payment
6 option, the borrower receives an amount from the lender that does not
7 exceed the maximum amount of loan proceeds. Set asides required for
8 disbursements such as loan closing costs or for monthly maintenance
9 fees, will be deducted from the amount of proceeds available to the
10 borrower.

11 (c) Authorized lender. Any bank, trust company, national banking asso-
12 ciation, savings bank, savings and loan association, federal savings
13 bank, federal savings and loan association, credit union, or federal
14 credit union or any licensed mortgage banker approved for the making of
15 reverse mortgage loans by the superintendent or any entity exempted from
16 licensing pursuant to section five hundred ninety of this chapter and
17 approved for the making of reverse mortgage loans by the superintendent.

18 (d) Borrower. A tenant in severalty who is sixty-two years of age or
19 older, or if the cooperative apartment unit is held by tenants by the
20 entirety or by joint tenancy, the youngest of which is sixty-two years
21 age or older.

22 (e) Superintendent. The superintendent of financial services of this
23 state.

24 (f) Department. The department of financial services of this state.

25 (g) Third-party contact. The lender must ask the borrower if they want
26 to designate a third-party contact, such as a family member, trusted
27 friend, advisor or other party whom the borrower would like to be
28 contacted. It shall be the borrower's discretion to choose if the third-
29 party contact is to be contacted if (i) the borrower has not returned
30 the occupancy form, and/or (ii) the loan is in default for any reason
31 and the lender plans to proceed on collecting on the loan, i.e., initi-
32 ating eviction or foreclosure and/or (iii) the borrower cannot be
33 reached.

34 2. A cooperative apartment unit loan pursuant to this section shall be
35 subject to the following:

36 (a) the borrower shall be granted lifetime possession of the subject
37 premises of the cooperative apartment unit which is the security for the
38 reverse cooperative apartment unit loan, as long as such apartment unit
39 remains the borrowers' primary residence and the borrower is not in
40 default under the reverse cooperative apartment unit loan. The borrower
41 or borrowers must certify annually on each anniversary of the loan, that
42 they reside in the unit and that it is their primary residence;

43 (b) the lender shall ask the borrower if they designate a third party
44 contact, collect such information from the borrower and update such
45 information annually on each anniversary of the loan;

46 (c) subject to such rules or regulations as the superintendent may
47 adopt, a reverse cooperative apartment unit loan shall be made at either
48 a fixed or variable rate of interest;

49 (d) subject to such rules or regulations as the superintendent may
50 adopt, the authorized lender may require a borrower to establish a set
51 aside account for the purposes of paying property taxes, maintenance or
52 cooperative fees, insurance premiums of the property securing the
53 reverse cooperative apartment unit loan, or for the payment of any other
54 fees and expenses;

55 (e) a lender who fails to make loan advances as required in the loan
56 documents, and fails to cure an actual default after notice as specified

1 in the loan documents, shall forfeit any right to collect interest or
2 service charges under the contract. The lender's right to recovery at
3 loan maturity shall be limited to the outstanding balance as of the
4 date of lender's default, minus all interest. However, a lender shall
5 not be required to make loan advances under a loan if the borrower is in
6 default under the loan;

7 (f) the outstanding balance may be prepaid in full by the borrower
8 without penalty at any time during the reverse cooperative apartment
9 unit loan term;

10 (g) an authorized lender is prohibited from using or attaching any
11 property or asset of the borrower or heirs of the borrower except the
12 apartment unit securing the reverse cooperative apartment unit loan in
13 settlement of a reverse loan obligation--the loan is a non-recourse
14 loan;

15 (h) an authorized lender shall deliver to the applicant upon applica-
16 tion, a statement prepared by the department providing the contact
17 information for New York approved, or U.S. Department of Housing and
18 Urban Development approved, reverse mortgage housing counselors with
19 cooperative housing training approved by the department whom the cooper-
20 ative apartment owner can call for independent counseling and informa-
21 tion services. Further, no reverse loan commitment shall be issued by
22 the authorized lender until the applicant presents, in writing, a form
23 that certifies the terms of the reverse cooperative apartment unit loan
24 have been explained to them by a New York or U.S. Department of Housing
25 and Urban Development approved reverse mortgage housing counselor with
26 cooperative housing training approved by the department. The form of
27 such statement and affidavit and cooperative housing counseling services
28 shall be approved by the superintendent;

29 (i) an authorized lender shall deliver to an applicant such disclo-
30 tures as may be required by the superintendent which shall describe the
31 relevant portions of the reverse loan being offered, and shall include
32 but not be limited to the following items:

33 (i) a schedule of payments to and from the borrower and the total
34 payments in dollars over the life expectancy of the youngest borrower of
35 the reverse cooperative apartment unit loan for the borrower;

36 (ii) a statement prominently displayed advising applicants to consult
37 with appropriate authorities regarding tax and estate planning conse-
38 quences of a reverse cooperative apartment unit loan;

39 (iii) where applicable a description of prepayment and refinancing
40 features;

41 (iv) to the extent determinable at or prior to the inception of the
42 reverse cooperative apartment unit loan, the interest rate and, an esti-
43 mate of the total interest payable on the reverse cooperative apartment
44 unit loan;

45 (v) a statement concerning the compliance of the lender with the
46 criteria established by the superintendent that an authorized lender
47 must meet before it may make reverse cooperative apartment unit loans
48 pursuant to this section;

49 (vi) a statement setting forth those events which would cause the loan
50 to become due and payable (or cause the borrower to default) the reverse
51 cooperative apartment unit loan;

52 (vii) the loan is subject to a three day right of rescission by the
53 borrower; and

54 (viii) a financial statement setting forth an estimate of all costs
55 associated with the loan;

1 (j) an authorized lender shall deliver to each borrower at the time of
2 closing of a reverse cooperative unit loan two copies of the borrower's
3 right to cancel and instructions for how to cancel the loan to be
4 prescribed by the superintendent;

5 (k) a reverse cooperative apartment unit loan pursuant to this section
6 shall expressly and conspicuously bear a legend identifying it as such
7 in at least fourteen-point font;

8 (l) a reverse cooperative apartment unit loan shall clearly set forth
9 the terms for when the loan becomes due and payable, including:

10 (i) regardless of loan payout option chosen by the borrower, the loan
11 note shall state that the outstanding loan balance will not be due and
12 payable in full until the last borrower dies, or if a borrower conveys
13 all of his or her title in the property and no other borrower retains
14 title to the property; and

15 (ii) the loan note shall state that the outstanding loan balance shall
16 be due and payable in full if any of the following occur:

17 (1) the property ceases to be the primary residence of a borrower for
18 reasons other than death and the property is not the primary residence
19 of at least one other borrower;

20 (2) for a period of longer than twelve consecutive months, a borrower
21 fails to occupy the property because of physical or mental illness and
22 the property is not the primary residence of at least one other borrow-
23 er; or

24 (3) an obligation of the borrower under the loan note is not met;

25 (m) in the event that an authorized lender or holder of the reverse
26 cooperative apartment unit loan determines the loan is in default and
27 intends to initiate proceedings pursuant to the note, the lender shall
28 notify the borrower's third-party contact. In the event that the borrow-
29 er has not designated a third-party contact to receive such notice of
30 foreclosure, then the authorized lender or the holder of said reverse
31 cooperative apartment unit loan shall notify the local or county office
32 for the aging of its intent to commence foreclosure proceedings. Such
33 entity shall take appropriate action to protect the interests of the
34 borrower;

35 (n) a reverse cooperative apartment unit loan secured by a unit in a
36 cooperative housing corporation shall also be subject to the prior
37 approval by the cooperative's board of directors; and

38 (o) no reverse cooperative apartment unit loan shall be subject to
39 mandatory binding arbitration.

40 3. A reverse cooperative apartment unit loan pursuant to this section
41 may:

42 (a) provide that an authorized lender may, consistent with federal
43 laws and regulations, include a due-on-sale clause in its reverse coop-
44 erative apartment unit loan agreement and at its option exercise and
45 enforce such clause in accordance with its terms; and

46 (b) provide that the borrower's closing costs, including but not
47 limited to loan or commitment fees if any, insurance premiums, repairs,
48 legal fees, the costs of third party counseling, the costs of paying off
49 any existing mortgages or liens, and other appropriate costs be included
50 in the principal of the reverse cooperative apartment unit loan and
51 disbursed out of the loan proceeds at closing.

52 4. The superintendent shall adopt such rules or regulations as he or
53 she considers appropriate to govern a reverse cooperative apartment unit
54 loan made pursuant to this section. No reverse cooperative apartment
55 unit loan shall be made unless it conforms to the requirements of this
56 section and such rules and regulations as the superintendent may adopt.

1 5. No authorized lender or any other party or entity shall in any
2 manner, in the marketing or offering of reverse cooperative apartment
3 unit loans, engage in any unfair or deceptive practices in connection
4 with the marketing or offering of reverse cooperative apartment unit
5 loans, and, additionally, shall not:

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

8 (b) use the words "government insured" or other similar language
9 representing that reverse cooperative apartment unit loans are insured,
10 supported and sponsored by any governmental entity in any commercial,
11 mailing, advertisement or writing relating thereto; or

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

13 6. (a) Every authorized lender and assignee must obtain a surety bond
14 in the amount of one hundred thousand dollars for the benefit of claims
15 against the lender/assignee for failure to perform their obligations to
16 the borrower. The superintendent will hold the surety bond. In addition,
17 a lender or assignee shall maintain an irrevocable standby letter of
18 credit from a financial institution approved by the superintendent in
19 favor of the lender or assignee in an amount necessary to fund all
20 reverse mortgage loan requirements anticipated over the next twelve
21 months for loans then on the lender's books and those expected to be
22 made over the next twelve months or three million dollars, whichever is
23 greater. The initial term of the letter of credit shall be at least two
24 years. A lender or assignee also shall maintain a minimum capital of ten
25 million dollars. A lender may rely upon its parent company to meet the
26 minimum capital requirements. The requirements for a letter of credit
27 shall not apply to loans that are fully funded at consummation. The
28 minimum capital requirements shall not apply to lenders or assignees
29 that sell loans in the secondary market to a financially viable finan-
30 cial institution, and the superintendent shall define the requirements
31 of what constitutes a "financially viable financial institution prior to
32 any secondary market sale".

33 (b) Every authorized lender or its agent shall provide, with any
34 solicitation for reverse cooperative apartment unit loan products mailed
35 to a physical address within the state, supplemental consumer protection
36 materials the content and form of which shall be specified by the super-
37 intendent or his or her designee.

38 (c) Every authorized lender shall provide each applicant or potential
39 applicant for a reverse cooperative apartment unit loan with the tele-
40 phone number and internet website address provided by the department for
41 the purposes of acquiring reverse cooperative apartment unit loan coun-
42 seling.

43 (d) The superintendent is authorized to promulgate such rules and
44 regulations as he or she shall deem necessary to implement the
45 provisions of this subdivision.

46 7. For reverse cooperative apartment unit loans, authorized lender and
47 their agents shall:

48 (a) provide a monthly account statement, and for all borrowers whose
49 maintenance fees, special assessments mortgage insurance payments, home-
50 owners insurance payments, or payments stemming from any other property
51 obligation or obligations are administered by the authorized lender, and
52 where these payments are derived from the proceeds of the loan, the
53 authorized lender shall provide on the borrower's account statement the
54 current balance remaining in the borrower's line of credit or lifetime
55 expectancy set aside, the projected annual property charges for that
56 year, and a notice which reads in at least fourteen point type:

1 "YOUR MAINTENANCE FEES AND SPECIAL ASSESSMENTS ARE CURRENTLY BEING
2 PAID BY THE PROCEEDS OF THIS LOAN. THE FUNDS THAT HAVE BEEN SET ASIDE
3 ARE EXPECTED TO BE EXHAUSTED AFTER THE MAINTENANCE FEES AND SPECIAL
4 ASSESSMENT PAYMENTS OF (SPECIFY EXPECTED MONTH AND YEAR). IF THE
5 PROCEEDS OF THIS LOAN CANNOT PAY THE MAINTENANCE FEES AND SPECIAL
6 ASSESSMENTS, YOU MUST PAY THESE OBLIGATIONS OR YOUR COOP SHARES MAY BE
7 LOST TO FORECLOSURE. PLEASE NOTE THAT MAINTENANCE FEES AND SPECIAL
8 ASSESSMENTS CAN VARY SO YOU SHOULD CONTINUE TO REVIEW THIS NOTICE FOR
9 CHANGES."

10 (b) by telephone and first class mail, inform and provide notice to a
11 borrower when his or her home equity line of credit or life expectancy
12 set aside is depleted to twenty percent or less of its value. Such
13 notice shall inform the borrower of his or her obligations relating to
14 such real property including, but not limited to, mortgage insurance,
15 homeowners insurance and real property taxes previously paid by such
16 line of credit or life expectancy set aside, and that such obligations
17 must continue to be paid when the home equity line of credit or life
18 expectancy set aside is depleted. Such notice shall use plain language,
19 written in a clear and coherent manner using words with common and every
20 day meanings, appropriately divided and captioned by its various
21 sections. If the lender or its agent is unable to contact the borrower
22 by telephone, notice must be sent to the third-party contact if author-
23 ized by the borrower.

24 (c) Each authorized lender shall, by telephone and first class mail,
25 inform and provide notice to a borrower when his or her home equity line
26 of credit or life expectancy set aside is depleted. Such notice shall
27 inform the borrower of his or her obligations relating to the cooper-
28 ative apartment unit including, but not limited to, mortgage insurance,
29 homeowners insurance and real property taxes, and that the home equity
30 line of credit or life expectancy set aside will no longer pay these
31 obligations. Such notice shall use plain language, written in a clear
32 and coherent manner using words with common and every day meanings,
33 appropriately divided and captioned by its various sections.

34 8. In the event that an authorized lender determines a reverse cooper-
35 ative apartment unit loan to be in default on the basis that the cooper-
36 ative apartment is no longer the primary residence of or occupied by the
37 borrower, if during the verification of the borrower's primary residence
38 and/or occupancy no responses are received in response to mailings
39 relating thereto, such lender shall cause a telephone call to be made to
40 the borrower, or if the borrower is unreachable by telephone, to the
41 third-party contact if designated, and an in person visit to be made to
42 the borrower at the cooperative apartment to be made prior to the
43 commencement of any proceeding to enforce the lender's rights under the
44 note. During such visit, the authorized lender or its agent shall
45 provide clear information as to who they are, that the visit pertains to
46 the reverse cooperative apartment unit loan, the reason for the home
47 visit, and the telephone number to call for further information. The
48 authorized lender must wait at least thirty days following such visit,
49 in addition to any additional time or notice requirements specified by
50 any other provision of law, before initiating a foreclosure action on
51 the basis that the cooperative apartment is no longer the primary resi-
52 dence of the borrower. If the borrower contacts the authorized lender
53 and provides proof of residence or occupancy after such visit but before
54 the commencement of a proceeding to enforce the lender's rights under
55 the note, the authorized lender shall be barred from initiating such
56 action. Furthermore, no authorized lender shall charge a borrower any

1 fee for any such visit and inspection. This prohibition on the imposi-
2 tion of fees shall include any and all inspections conducted by the
3 authorized lender to verify the status of the reverse cooperative apart-
4 ment unit loan, or any suspected or actual default condition.

5 9. Notwithstanding any inconsistent provision of law, the priority of
6 the lien of a reverse cooperative apartment unit loan, including the
7 lien for all principal, interest, fees, costs, and other charges
8 assessed in connection with the reverse loan, shall date from the filing
9 of a UCC-1 notice for the loan irrespective of the date of any advance
10 of reverse loan proceeds or the date by which an authorized lender shall
11 be entitled to accrued but unpaid interest, fees, costs or other charg-
12 es.

13 10. Nothing in this section shall be construed to limit, impair or
14 otherwise affect the priority, under applicable law, of any other mort-
15 gage, deed of trust, encumbrance or lien which was filed prior to the
16 effective date of this section.

17 11. The sale or transfer of the interest in the cooperative apartment
18 unit securing the reverse cooperative apartment unit loan to a person
19 other than an original borrower or borrowers shall result in the termi-
20 nation of the reverse loan.

21 12. Any person who has been injured by reason of any violation of this
22 section or any violation of the rules and regulations of the department
23 relating to the reverse cooperative apartment unit loan program may
24 bring an action in his or her own name to recover treble his or her
25 actual damages, plus the prevailing plaintiff's reasonable attorneys'
26 fees.

27 13. Compliance with the provisions of this section shall be conditions
28 precedent to commencing an action to foreclose upon a reverse cooper-
29 ative apartment unit loan which is subject to the provisions of this
30 section, and the failure to comply therewith shall be a complete defense
31 to such action.

32 § 2. Subsection (f) of section 9-611 of the uniform commercial code is
33 amended by adding a new paragraph 1-a to read as follows:

34 (1-a) Notwithstanding any other provision of law, with regard to a
35 reverse cooperative apartment unit loan, at least forty-five days before
36 a secured party, as defined under Section 9-102(a)(73), or its agent
37 takes any steps to dispose of its collateral, as provided for in Section
38 9-610, the secured party or its agent shall give notice to the borrower,
39 and separate notice to the borrower's designated third-party if one has
40 been designated in at least fourteen-point type except for the heading
41 which shall be in at least sixteen-point type. The notice shall include
42 the following:

43 YOU COULD LOSE YOUR COOPERATIVE APARTMENT UNIT TO FORECLOSURE.
44 PLEASE READ THE FOLLOWING NOTICE CAREFULLY.

45 Date

46 Borrower's address

47 Loan Number:

48 Property Address:

49 Dear Borrower(s) {or heirs of Debtor?}:

50 As of _____, your reverse cooperative apartment unit loan is in
51 default. Under New York State Law, we are required to send you this
52 notice to inform you that you may be at risk of losing your home.

53 Your reverse loan is in default because you have not complied with the
54 following conditions of your loan:

55 You are not occupying your cooperative apartment unit as your
56 primary residence

1 You did not submit the required annual certificate of occupancy
2 The named borrower on the reverse loan has died
3 You did not pay maintenance on your unit to the cooperative corpo-
4 ration, and {servicer} paid your maintenance for you on the following
5 date(s) in the following amount(s):

6
7 You did not make required repairs to your unit
8 If the claim is based on your failure to pay maintenance to the cooper-
9 ative corporation, you can cure this default by making the payment of
10 \$ for the advances we made towards these payments on your
11 behalf.

12 You have the right to dispute the claims listed above by contacting us,
13 by calling or sending a letter to . This
14 may include proof of payments made for water and sewer charges or a
15 current declaration page from your insurance company, or any other proof
16 to dispute the servicer's claim.

17 OPTIONS MAY BE AVAILABLE FOR YOU TO CURE YOUR DEFAULT. SOME OF THESE
18 OPTIONS ARE LISTED BELOW. YOU MAY CONTACT {SERVICER} AT {TOLL-FREE
19 NUMBER} TO DISCUSS YOUR OPTIONS.

20 If you are in default for failure to pay maintenance, you may qualify
21 for a re-payment plan to cure the default balance owed.

22 Attached to this notice is a list of New York approved housing coun-
23 seling agencies and legal services in your area which provide free coun-
24 seling. A statewide listing by county is also available at
25 http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm.
26 You may also call your local Department of Aging for a referral or call
27 311 if you live in New York City.

28 Qualified free help is available; watch out for companies or people who
29 charge a fee for these services.

30 You may also contact {SERVICER} directly at and ask to
31 discuss all possible options to allow you to cure your default and
32 prevent the foreclosure of your home. While we cannot ensure that a
33 resolution is possible, we encourage you to take immediate steps to try
34 to achieve a resolution. The longer you wait, the fewer options you may
35 have.

36 If you have not taken any actions to resolve this matter within ninety
37 days from the date this notice was mailed, we will have the right to
38 take your cooperative shares from you.

39 If you need further information, please call the New York State Depart-
40 ment of Financial Services' toll-free helpline at 877-226-5697 or visit
41 the Department's website at <http://www.dfs.ny.gov>.

42 IMPORTANT: You have the right to remain in your unit until you receive a
43 court order telling you to leave the property. If a foreclosure action
44 is filed against you in court, you still have the right to remain in the
45 unit until a court orders you to leave. You legally remain the owner of
46 your cooperative shares and are responsible for the unit until the
47 shares are transferred to a new owner through a sale. However, there
48 will be no court proceeding before the shares are transferred to a new
49 owner. After the shares are transferred, the new owner may begin a court
50 proceeding to evict you from the unit.

51 This notice is not an eviction notice.

52 § 3. The civil practice law and rules is amended by adding a new rule
53 3410 to read as follows:

54 Rule 3410. Face-to-face meeting for foreclosure of reverse cooperative
55 apartment unit loans. (a) For purposes of this rule, default shall only
56 include a borrower's breach of an obligation under the reverse mortgage

1 cooperative loan agreement, and shall not include death of the borrower
2 or the borrower's permanent vacating of the cooperative unit.

3 (b) In any action recovery involving a borrower's default under a
4 reverse cooperative apartment unit loan, as defined in paragraph (a) of
5 subdivision one of section six-n of the banking law, the lender shall
6 file a petition with the supreme court of the county in which the coop-
7 erative apartment is located stating that the loan is in default and the
8 reason for the default. The petition must be served on the borrower
9 pursuant to section three hundred eight of this chapter. Within ten days
10 of the date of service of the notice to the borrower, the petitioner
11 must file a specialized request for judicial intervention with the
12 clerk. Within sixty days of receipt of the notice or on such adjourned
13 date as has been agreed to by the parties, the court shall hold a manda-
14 tory settlement conference for the purpose of holding settlement
15 discussions pertaining to the relative rights and obligations of the
16 parties under the loan documents, including, but not limited to:

17 1. determining whether the parties can reach a mutually agreeable
18 resolution to help the borrower avoid losing his or her cooperative
19 apartment unit, and evaluating the potential for a resolution or other
20 workout options may be agreed; or

21 2. whatever other purposes the court deems appropriate.

22 (c) At any meeting held pursuant to this rule, the lender and the
23 borrower shall appear in person or by counsel, and each party's repre-
24 sentative at the meeting shall be fully authorized to dispose of the
25 matter. If the borrower is appearing without counsel, the court shall
26 inform the borrower of the nature of the action and his or her rights
27 and responsibilities. Where appropriate, the court may permit the
28 borrower or a representative of the borrower or the defendant to attend
29 the settlement conference telephonically or by video-conference.

30 (d) Upon the filing of the notice of default with the court, the court
31 shall send either a copy of the notice or the borrower's name, address
32 and telephone number (if available) to a housing counseling agency or
33 agencies on a list designated by the department for the geographic
34 region in which the borrower resides. Such information shall be used by
35 the designated housing counseling agency or agencies exclusively for the
36 purpose of making the borrower aware of housing counseling and foreclo-
37 sure prevention services and options available to them.

38 (e) The court shall promptly send a notice to parties advising them of
39 the time and place of the meeting, the purpose of the meeting and the
40 requirements of this rule. The notice shall be in a form prescribed by
41 the court, and shall advise the parties of the documents that they shall
42 bring to the meeting.

43 (f) Both the lender and the borrower shall negotiate in good faith to
44 reach a mutually agreeable resolution, including but not limited to a
45 re-payment agreement, or any other loss mitigation, if possible. Compli-
46 ance with the obligation to negotiate in good faith pursuant to this
47 rule shall be measured by the totality of the circumstances, including
48 but not limited to the following factors:

49 1. compliance with the requirements of this rule and applicable regu-
50 lations pertaining to the face-to-face meeting process;

51 2. compliance with applicable lending and servicing laws, rules, regu-
52 lations, investor directives, and loss mitigation standards or options;
53 and

54 3. conduct consistent with efforts to reach a mutually agreeable
55 resolution, including but not limited to, avoiding unreasonable delay,
56 appearing at the meeting with authority to fully dispose of the matter,

1 avoiding moving forward to take possession while loss mitigation appli-
2 cations and attempts are pending, and providing accurate information to
3 the department and all parties.

4 Neither of the parties' failure to make the offer or accept the offer
5 made by the other party is sufficient to establish a failure to negoti-
6 ate in good faith.

7 (g) Upon a finding by the court that the plaintiff failed to negotiate
8 in good faith pursuant to subdivision (f) of this rule, the court shall,
9 at a minimum, toll the accumulation and collection of interest, costs,
10 and fees during any undue delay caused by the plaintiff, and where
11 appropriate, the court may also impose one or more of the following:

12 1. compel production of any documents requested by the court or the
13 court's designee during the settlement conference;

14 2. impose a civil penalty payable to the state that is sufficient to
15 deter repetition of the conduct and in an amount not to exceed twenty-
16 five thousand dollars;

17 3. the court may award actual damages, fees, including attorney fees
18 and expenses to the defendant as a result of plaintiff's failure to
19 negotiate in good faith; or

20 4. award any other relief that the court deems just and proper.

21 (h) A party to a default action may not charge, impose, or otherwise
22 require payment from the other party for any cost, including but not
23 limited to attorneys' fees, for appearance at or participation in the
24 settlement conference process.

25 (i) This rule shall not apply if:

26 1. the borrower dies and there is no surviving borrower, unless: (i)
27 the last surviving borrower's spouse, if any, is a resident of the prop-
28 erty subject to foreclosure; or (ii) the last surviving borrower's
29 successor in interest who by bequest or through intestacy, owns, or has
30 a claim to the ownership of the property subject to foreclosure, and who
31 was a resident of such property at the time of death of such last
32 surviving borrower; or the borrower does not reside in the unit after
33 such non-occupancy by the borrower as verified by the lender and the
34 lender has taken action as required by subdivision eight of section
35 six-n of the banking law; or

36 2. a repayment plan or other workout consistent with the borrower's
37 circumstances is entered into to bring the borrower's account current or
38 otherwise cure the default thus making a meeting unnecessary.

39 § 4. The superintendent of financial services shall convene a working
40 group comprised of industry and consumer representatives to study the
41 availability of reverse mortgage counselors within the state of New
42 York, and assess their experience and availability to provide counseling
43 in connection with non-government insured reverse mortgages, and to
44 address any other matters the superintendent deems necessary pursuant to
45 this act. The superintendent shall report on its findings and make
46 recommendations based upon such findings.

47 § 5. This act shall take effect on the one hundred eightieth day after
48 it shall have become a law. Effective immediately, the addition, amend-
49 ment and/or repeal of any rule or regulation necessary for the implemen-
50 tation of this act on its effective date are authorized to be made and
51 completed on or before such effective date.