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2009-2010 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 7, 2009

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Introduced by M. of A. ENGLEBRIGHT, CANESTRARI, MORELLE, BRADLEY --  
Multi-Sponsored by -- M. of A. ABBATE, ALFANO, ARROYO, BARRA,  
BOYLAND, CARROZZA, DESTITO, EDDINGTON, FINCH, GALEF, HEVESI, HOOPER,  
HOYT, KOON, MAGEE, MARKEY, McENENY, MILLMAN, PHEFFER, J. RIVERA, SWEE-  
NEY, WEISENBERG, WEPRIN -- read once and referred to the Committee on  
Housing

AN ACT to amend the public authorities law, in relation to establishment  
of a reverse mortgage loan program for low income seniors

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Legislative findings. The legislature finds and declares  
2     that many senior citizens living in New York own their own homes and  
3     want to continue to live at home for as long as possible. Nationally,  
4     with over two trillion dollars tied up in home equity, reverse mortgages  
5     have the potential to dramatically increase the ability of seniors to  
6     pay for their long-term care and remain in their homes. Today, over  
7     eighty percent of older Americans own their own homes, seventy-three  
8     percent of which are owned free and clear of any mortgages. Unlocking  
9     these resources can help "house-rich and cash-poor" seniors purchase the  
10    long-term care services they feel best meet their needs. Private funds  
11    from reverse mortgages also can strengthen community long-term care  
12    systems and reduce the burden on state and local Medicaid budgets. The  
13    purpose of this act is to establish a reverse mortgage loan program  
14    within the state of New York mortgage agency to enable low income elder-  
15    ly homeowners to stay at home and pay for their long-term care.

16    S 2. The public authorities law is amended by adding a new section  
17    2405-f to read as follows:

18    S 2405-F. REVERSE MORTGAGE LOAN PROGRAM FOR LOW INCOME SENIORS.     (1)  
19    AUTHORIZATION. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE  
20    AGENCY IS HEREBY AUTHORIZED AND DIRECTED TO ESTABLISH A REVERSE MORTGAGE

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

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1 LOAN PROGRAM FOR THE PURPOSE OF ENABLING LOW INCOME SENIOR HOMEOWNERS TO  
2 USE THE EQUITY IN THEIR HOMES TO PROVIDE FOR THEIR LONG-TERM CARE NEEDS.  
3 THE BANKING BOARD IS HEREBY AUTHORIZED TO VARY ANY RULES AND REGULATIONS  
4 PERTAINING TO REVERSE MORTGAGE LOANS TO ACCOMMODATE THE NEEDS OF THE  
5 PROGRAM.

6 (2) DEFINITIONS. FOR PURPOSES OF THIS SECTION THE FOLLOWING TERMS  
7 SHALL HAVE THE FOLLOWING MEANINGS UNLESS THE CONTEXT SHALL INDICATE  
8 ANOTHER OR DIFFERENT MEANING OR INTENT:

9 (A) "PROGRAM" SHALL MEAN THE REVERSE MORTGAGE LOAN PROGRAM FOR LOW  
10 INCOME SENIORS,

11 (B) "APPLICANT" SHALL MEAN AN INDIVIDUAL WHO IS APPLYING TO PARTIC-  
12 IPATE IN THE PROGRAM,

13 (C) "BORROWER" SHALL MEAN AN INDIVIDUAL WHO IS ELIGIBLE TO PARTICIPATE  
14 IN THE PROGRAM PURSUANT TO SUBDIVISION FOUR OF THIS SECTION,

15 (D) "REVERSE MORTGAGE LOAN" SHALL MEAN A LOAN FOR A TERM OF YEARS TO  
16 BE DETERMINED BY THE AGENCY, IN WHICH LOAN PROCEEDS ARE ADVANCED TO A  
17 BORROWER IN EQUAL, MONTHLY INSTALLMENTS AND MAY INCLUDE AN INITIAL,  
18 ONE-TIME LUMP SUM PAYMENT OF UP TO FIVE THOUSAND DOLLARS,

19 (E) "LOAN" SHALL MEAN A REVERSE MORTGAGE LOAN ISSUED PURSUANT TO THE  
20 TERMS OF THIS SECTION,

21 (F) "LOW INCOME" SHALL MEAN INCOME THAT DOES NOT EXCEED THE INCOME  
22 LIMITS ESTABLISHED BY THE AGENCY,

23 (G) "BANKING BOARD" SHALL MEAN THE BOARD ESTABLISHED PURSUANT TO  
24 SECTION THIRTEEN OF THE BANKING LAW, AND

25 (H) "ASSESSMENT" SHALL MEAN THE CARE NEEDS ASSESSMENT DESCRIBED IN  
26 SUBDIVISION FIVE OF THIS SECTION.

27 (3) TERMS AND CONDITIONS OF THE LOAN. LOANS SHALL ONLY BE ISSUED TO  
28 APPLICANTS WHO OWN AND OCCUPY A SINGLE FAMILY DWELLING OR A CONDOMINIUM.  
29 IF A BORROWER VACATES HIS OR HER RESIDENCE, THE LOAN PAYMENTS SHALL  
30 CEASE AND THE BALANCE OF THE LOAN SHALL BECOME DUE. A BORROWER SHALL  
31 NOTIFY THE AGENCY UPON VACATING HIS OR HER RESIDENCE. LOANS ISSUED BY  
32 THE PROGRAM SHALL OFFER A LOW, FIXED INTEREST RATE, TO BE DETERMINED BY  
33 THE AGENCY. ANY LOAN ORIGINATION FEES, CLOSING COSTS OR FEES CHARGED BY  
34 THE PROGRAM SHALL BE AT A REDUCED RATE, TO BE DETERMINED BY THE AGENCY.  
35 THE AGENCY SHALL NOT IMPOSE PRE-PAYMENT PENALTIES ON ANY LOAN. THE LOAN  
36 SHALL ALSO INCLUDE THE COST OF THE CARE NEEDS ASSESSMENT REQUIRED UNDER  
37 SUBDIVISION FIVE OF THIS SECTION. LOANS SHALL NOT BE ISSUED TO BORROWERS  
38 WHOSE INCOME EXCEEDS THE MAXIMUM INCOME LIMITS ESTABLISHED BY THE AGEN-  
39 CY. LOANS SHALL NOT BE ISSUED FOR MORE THAN EIGHTY PERCENT OF THE VALUE  
40 OF THE BORROWER'S HOME, WITH MINIMUM AND MAXIMUM LOAN AMOUNTS TO BE  
41 DETERMINED BY THE AGENCY ON A CASE BY CASE BASIS.

42 IN ITS DETERMINATION OF MINIMUM AND MAXIMUM LOAN AMOUNTS, THE AGENCY  
43 SHALL CONSIDER THE FOLLOWING CRITERIA:

44 (A) THE AMOUNT OF THE APPLICANT'S PERSONAL AND HOUSEHOLD INCOME,  
45 ASSETS, AND OTHER FINANCIAL RESOURCES AVAILABLE TO MEET THE NEEDS OF THE  
46 APPLICANT AND THE APPLICANT'S HOUSEHOLD;

47 (B) THE VALUE OF THE APPLICANT'S RESIDENCE AS DETERMINED BY THE AGEN-  
48 CY; AND

49 (C) THE INFORMATION CONTAINED IN THE APPLICANT'S CARE NEEDS ASSESSMENT  
50 PROVIDED BY AN AREA AGENCY ON AGING, INCLUDING THE SPECIAL NEEDS OF  
51 PARTICULAR APPLICANTS BECAUSE OF PHYSICAL OR MENTAL DISABILITIES OR  
52 IMPAIRMENTS.

53 (4) ELIGIBILITY OF APPLICANTS. IN ORDER TO BE ELIGIBLE FOR THE  
54 PROGRAM, AN APPLICANT MUST BE AN INDIVIDUAL AGE SIXTY-FIVE YEARS OR  
55 OLDER, BE THE OWNER AND OCCUPANT OF A SINGLE FAMILY DWELLING OR CONDO-  
56 MINIUM, WHO HAS LOST SOME OR ALL OF THE CAPACITY TO FUNCTION ON HIS OR

1 HER OWN DUE TO A CHRONIC ILLNESS OR CONDITION, AND WHO, BASED ON AN  
2 ASSESSMENT PERFORMED BY AN AREA AGENCY ON AGING PURSUANT TO SUBDIVISION  
3 FIVE OF THIS SECTION, REQUIRES OR IS EXPECTED TO REQUIRE ONE OR MORE OF  
4 THE FOLLOWING ITEMS OR SERVICES FOR AN EXTENDED PERIOD OF TIME OF SIX  
5 CONSECUTIVE MONTHS OR MORE: HOME CARE, INCLUDING NURSING AND PERSONAL  
6 CARE SERVICES, HOMEMAKER AND CHORE SERVICES, INCLUDING CHORE SERVICES  
7 RELATED TO HOME MAINTENANCE OR REPAIR, NUTRITION SERVICES, TRANSPORTA-  
8 TION, COUNSELING, PHYSICAL THERAPY AND OTHER MEDICAL OR NON-MEDICAL  
9 SUPPORT SERVICES, RESPITE, ADULT DAY CARE, DURABLE MEDICAL EQUIPMENT,  
10 MEDICALLY INDICATED HOME ALTERATIONS, AND UNINSURED CATASTROPHIC OR  
11 RECURRING MEDICAL EXPENSES INCLUDING PRESCRIPTION DRUGS. AN APPLICANT'S  
12 PERSONAL AND HOUSEHOLD INCOME MAY NOT EXCEED THE MAXIMUM INCOME LIMITS  
13 ESTABLISHED BY THE AGENCY.

14 (5) CARE NEEDS ASSESSMENT. AS PART OF THE LOAN APPROVAL PROCESS, AN  
15 AREA AGENCY ON AGING SHALL CONDUCT AN ASSESSMENT OF EACH APPLICANT IN  
16 ORDER TO IDENTIFY THE APPLICANT'S CARE NEEDS, INCLUDING INFORMATION  
17 NECESSARY TO DETERMINE WHETHER THE APPLICANT REQUIRES OR IS EXPECTED TO  
18 REQUIRE ONE OR MORE OF THE ITEMS OR SERVICES SPECIFIED IN SUBDIVISION  
19 FOUR OF THIS SECTION, AND IF SO, WHICH ITEMS OR SERVICES ARE REQUIRED OR  
20 EXPECTED TO BE REQUIRED, THE DURATION FOR WHICH THE ITEMS OR SERVICES  
21 ARE EXPECTED TO BE REQUIRED, AND THE ESTIMATED COST OF THE ITEMS OR  
22 SERVICES. THE ASSESSMENT SHALL BE CONDUCTED FACE-TO-FACE WITH THE APPLI-  
23 CANT, AND, IF REQUESTED BY THE APPLICANT, HIS OR HER AUTHORIZED REPRE-  
24 SENTATIVE AND INFORMAL CAREGIVERS, USING THE STANDARDIZED PROCESS AND  
25 INSTRUMENT PRESCRIBED BY THE OFFICE FOR THE AGING FOR EXPANDED IN-HOME  
26 SERVICES FOR THE ELDERLY PROGRAM (EISEP) CLIENTS, UNLESS THE AREA AGENCY  
27 HAS RECEIVED APPROVAL FROM SAID OFFICE TO USE A DIFFERENT INSTRUMENT.  
28 ALL INFORMATION DERIVED FROM THE ASSESSMENT OF THE APPLICANT SHALL BE  
29 CONFIDENTIAL AND SHARED ONLY WITH OTHERS INVOLVED IN THE ARRANGEMENT OR  
30 PROVISION OF SERVICES TO THE APPLICANT PURSUANT TO WRITTEN CONSENT FROM  
31 THE APPLICANT OR HIS OR HER AUTHORIZED REPRESENTATIVE. IF, BASED ON THE  
32 ASSESSMENT, THE APPLICANT IS DETERMINED TO HAVE A NEED FOR OR IS  
33 EXPECTED TO NEED ANY OF THE ITEMS OR SERVICES CONTAINED IN SUBDIVISION  
34 FOUR OF THIS SECTION, SUCH APPLICANT SHALL BE DEEMED FUNCTIONALLY ELIGI-  
35 BLE FOR THE PROGRAM.

36 (6) COUNSELING AND ASSISTANCE. THE AREA AGENCIES ON AGING SHALL  
37 PROVIDE COUNSELING AND ASSISTANCE TO APPLICANTS WHO WISH TO OBTAIN A  
38 REVERSE MORTGAGE LOAN FROM THE PROGRAM. COUNSELING AND ASSISTANCE SHALL  
39 INCLUDE THE FOLLOWING:

40 (A) REVIEWING WITH THE APPLICANT THE TERMS AND RESTRICTIONS OF THE  
41 LOAN, INCLUDING ASSISTING THE APPLICANT WITH DETERMINING WHETHER THE  
42 LOAN WOULD JEOPARDIZE THE APPLICANT'S ELIGIBILITY FOR MEDICAID AND OTHER  
43 MEANS-TESTED PROGRAMS;

44 (B) IDENTIFYING COMMUNITY BASED LONG-TERM CARE SERVICES, IN ACCORDANCE  
45 WITH THE APPLICANT'S NEEDS AS DEMONSTRATED IN THE CARE NEEDS ASSESSMENT,  
46 INCLUDING MEDICAL AND NON-MEDICAL IN-HOME SUPPORT PROGRAMS, AND PROVID-  
47 ING INFORMATION ON HOW TO ACCESS THESE SERVICES, INCLUDING PROVIDER  
48 DIRECTORIES, AND CASE MANAGEMENT SERVICES;

49 (C) EXPLORING WITH THE APPLICANT THE POSSIBILITY OF THE APPLICANT  
50 BECOMING UNABLE TO MANAGE HIS OR HER FINANCES, AND IN THIS EVENT, HAVING  
51 THE APPLICANT CONSIDER WHO HE OR SHE WOULD WANT TO MANAGE HIS OR HER  
52 FINANCES, AND ADVISING THE APPLICANT OF THE NEED TO OBTAIN ESTATE PLAN-  
53 NING COUNSELING AND PROPER LEGAL DOCUMENTATION IN ORDER TO EFFECTUATE  
54 HIS OR HER WISHES UNDER THESE CIRCUMSTANCES; AND

55 (D) DISCUSSING WITH THE APPLICANT HIS OR HER WISHES REGARDING HOW  
56 TITLE OF THE RESIDENCE SHOULD BE TRANSFERRED UPON THE DEATH OF THE

1 APPLICANT, AND ADVISING THE APPLICANT OF THE NEED TO OBTAIN ESTATE PLAN-  
2 NING COUNSELING AND PROPER LEGAL DOCUMENTATION IN ORDER TO ENSURE THAT  
3 HIS OR HER WISHES ARE CARRIED OUT.

4 (7) OUTREACH BY THE PROGRAM. THE AGENCY SHALL ADVERTISE THE PROGRAM IN  
5 A BROCHURE WHICH IT SHALL CREATE AND DISTRIBUTE TO EACH AREA OFFICE FOR  
6 THE AGING. THE AGENCY SHALL PROVIDE THE BROCHURE TO EACH LOCAL SOCIAL  
7 SERVICES DISTRICT TO DISTRIBUTE TO INDIVIDUALS WHO ARE APPLYING FOR  
8 MEDICAID NURSING HOME OR HOME CARE SERVICES.

9 (8) REPORT. THE AGENCY SHALL ISSUE AN ANNUAL REPORT TO THE GOVERNOR,  
10 THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY.  
11 SUCH REPORT SHALL CONTAIN, AT A MINIMUM, THE FOLLOWING INFORMATION: THE  
12 NUMBER OF LOAN APPLICATIONS SUBMITTED TO THE PROGRAM, THE NUMBER OF LOAN  
13 APPLICATIONS APPROVED AND THE NUMBER DENIED, THE REASONS FOR DENIAL, THE  
14 NUMBER OF LOANS ISSUED BY THE PROGRAM, THE INCOMES AND AGES OF THE  
15 BORROWERS, THE PURPOSE FOR WHICH A LOAN WAS ISSUED, ANY SUGGESTIONS FOR  
16 IMPROVING OR EXPANDING THE PROGRAM, AND A DESCRIPTION OF THE PROGRAM'S  
17 FUNDING SOURCES AND WHETHER THEY ARE ADEQUATE.

18 (9) RULEMAKING AUTHORITY. THE AGENCY SHALL ADOPT ALL PROCEDURAL AND  
19 SUBSTANTIVE RULES AND REGULATIONS NECESSARY TO IMPLEMENT AND ADMINISTER  
20 THE PROVISIONS OF THIS SECTION.

21 S 3. This act shall take effect on the one hundred eightieth day after  
22 it shall have become a law.