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2011-2012 Regular Sessions

I N S E N A T E

January 12, 2011

Introduced by Sens. GOLDEN, LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Aging

AN ACT to amend the real property law, in relation to reverse mortgage loans

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

Section 1. Section 280 of the real property law, as added by chapter 613 of the laws of 1993 and subdivision 5 as amended by chapter 33 of the laws of 1996, is amended to read as follows:

S 280. Reverse mortgage loans for persons [sixty] SIXTY-TWO years of age or older. 1. For purposes of this section the following terms shall have the following meanings:

(a) Reverse mortgage loans. A loan which is secured by a first mortgage on real property improved by a one- to four-family residence, COOPERATIVE APARTMENT or condominium that is the residence of the [mortgagor(s)] BORROWER OR BORROWERS the proceeds of which are advanced to the [mortgagor(s)] BORROWER OR BORROWERS during the term of the loan in equal installments, in advances through a line of credit or otherwise, in lump sums, or through a combination thereof.

(b) [Term reverse mortgage loan. Any reverse mortgage loan that has a fixed term to maturity.

(c) Tenure reverse mortgage loan. Any reverse mortgage loan that does not have a fixed term to maturity, but rather] REVERSE MORTGAGE MATURITY. A REVERSE MORTGAGE matures solely upon contingent events, such as events including but not limited to death OF THE SURVIVING BORROWER or the real property securing the loan no longer being the [mortgagors'] BORROWERS' principal residence.

[(d)] (C) Authorized lender. Any bank, trust company, national banking association, savings bank, savings and loan association, federal savings bank, federal savings and loan association, credit union, or federal credit union or any licensed mortgage banker approved for the making of

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

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reverse mortgage loans by the superintendent of banks or any entity exempted from licensing pursuant to section five hundred ninety of the banking law and approved for the making of reverse mortgage loans by the superintendent of banks.

[(e) Mortgagor] (D) BORROWER. A tenant in severalty who is [sixty] SIXTY-TWO years of age or older, or if the real property is held by tenants by the entirety or by joint tenancy, the youngest of which is [sixty] SIXTY-TWO years of age or older.

[(f)] (E) Banking board. The board established pursuant to section thirteen of the banking law.

[(g)] (F) Superintendent of banks. The position established pursuant to section twelve of the banking law as the head of the banking department and pursuant to section thirteen of the banking law as the chairman and executive head of the banking board.

(G) MORTGAGOR. MORTGAGOR IS ONE WHO SIGNS THE MORTGAGE AS A BORROWER.

2. A reverse mortgage loan pursuant to this section shall be subject to the following:

(a) the loan to value ratio shall be determined by the banking board; and

(b) subject to such rules or regulations as the banking board shall adopt, any authorized lender or any successor or assign of such authorized lender which suspends, ceases or makes late payments to a [mortgagor] BORROWER under a reverse mortgage loan shall be subject to forfeiture (as liquidated damages to such [mortgagor] BORROWER and not as a penalty) of twice the interest which would otherwise have been earned during the period in which payments were suspended, ceased or made late, provided that said authorized lender or any successor or assign of such authorized lender shall have the right to make payments pursuant to said loan agreement within fifteen days of each payment date, without penalty; and

(c) the outstanding balance may be prepaid in full by the [mortgagor] BORROWER without penalty at any time [during the term and/or tenure of the loan]; and

(d) an authorized lender is prohibited from using or attaching any property or asset of the [mortgagor] BORROWER except the real property INCLUDING A COOPERATIVE APARTMENT securing the reverse mortgage loan in settlement of a reverse mortgage obligation; and

(e) the authorized lender must deliver to [an applicant] A BORROWER such disclosures as may be required by the banking board which shall describe the relevant portions of the reverse mortgage being offered, and shall include but not be limited to the following items:

(i) [except for a tenure reverse mortgage loan, a schedule of payments to and from the mortgagor and the total payments in dollars over the term of the reverse mortgage loan for both the mortgagor and mortgagee depending on the type of reverse mortgage loan being offered;

(ii)] a statement prominently displayed advising [applicants] BORROWERS to consult with appropriate authorities regarding tax and estate planning consequences of a reverse mortgage;

[(iii)] (II) where applicable a description of prepayment and refinancing features;

[(iv)] (III) the interest rate and[, except for a tenure reverse mortgage loan,] the total interest payable on the loan;

[(v)] (IV) a statement concerning the compliance of the lender with the criteria established by the banking board that an authorized lender must meet before it may make reverse mortgage loans pursuant to this section; and [(vi)] (V) a statement setting forth those events which would terminate the reverse mortgage loan; and

(f) in the event that an authorized lender or holder of the reverse mortgage loan intends to initiate foreclosure proceedings the [mortgagor] BORROWER shall have the right to designate a third party who shall be notified. In the event that the mortgagor has not designated a third party to receive such notice of foreclosure, then the authorized lender or the holder of said reverse mortgage loan shall notify the local or county office for the aging of its intent to commence foreclosure proceedings. Such entity shall take appropriate action to protect the interests of the mortgagor; and

(g) an authorized lender must deliver to the [applicant] BORROWER, upon application, if available, a statement prepared by the local or county office for the aging on the advisability and availability of independent counseling and information services. Further, no reverse mortgage commitment shall be issued by an authorized lender until the [applicant] BORROWER presents, in writing, a statement that the terms of the reverse mortgage loan have been explained by an attorney, a housing and urban development certified counselor or any other counseling service as indicated on the statement supplied by the county or local office for the aging or a signed affidavit indicating that the applicant, although made aware of the importance of counseling and its local availability through the provision of such information by the authorized lender, chooses not to utilize any of the aforementioned available services. The form of such statement and affidavit shall be developed by the New York state office for the aging OR OTHER PROGRAMS APPROVED BY THE STATE SUPERINTENDENT OF BANKING IN CONSULTATION WITH THE STATE OFFICE FOR THE AGING; and

(h) any such reverse mortgage shall expressly and conspicuously bear a legend identifying it as such; and

(i) subject to such rules or regulations as the banking board may adopt, a reverse mortgage loan shall be made at either a fixed or variable rate of interest.

3. A reverse mortgage loan pursuant to this section may:

(a) provide that the [mortgagor's] BORROWER'S closing costs, including but not limited to loan or commitment fees, if any, insurance premiums, house repairs, legal fees, the cost of annuities, the costs of third-party counseling, the costs of existing mortgages or liens, and other appropriate costs be included in the principal of the reverse mortgage loan and disbursed out of the loan proceeds at closing;

(b) provide for the maintenance of an escrow account by the authorized lender for purposes of payment of real property taxes, insurance on the property securing the loan, or any other fees and expenses as may be permitted by banking board regulation;

(c) provide that an authorized lender may, consistent with federal laws and regulations, include a due-on-sale clause in its reverse mortgage loan agreement and at its option exercise and enforce such clause in accordance with its terms.

4. The banking board shall adopt those rules or regulations as it considers appropriate to govern reverse mortgage loans made pursuant to this section. No reverse mortgage loan shall be made unless it conforms to the requirements of this section and such rules and regulations as the banking board may adopt except those reverse mortgage loans made pursuant to section two hundred eighty-a of this article. A reverse mortgage loan made by any authorized lender, national banking association, federal savings and loan association or federal credit union in

conformity with applicable federal laws and regulations specifically regulating reverse mortgage loans shall be deemed to conform to the requirements of this section unless such reverse mortgage loan fails to conform to such rules and regulations as the banking board has expressly declared to be neither preempted by, nor otherwise inconsistent with such federal laws or regulations. Those rules or regulations shall include, but are not limited to, the form and contents of any disclosure statement, with the exception of the counseling statement prepared by the New York state office for the aging pursuant to paragraph (g) of subdivision two of this section, that authorized lenders must provide to [mortgagors] BORROWERS.

5. Notwithstanding any inconsistent provision of law, the priority of the lien of a reverse mortgage, including the lien for all principal, interest, fees, costs, shared appreciation and other charges assessed in connection with the reverse mortgage, shall date from the recording of the reverse mortgage irrespective of the date of any advance of reverse mortgage loan proceeds or the date by which an authorized lender shall be entitled to shared appreciation or accrued but unpaid interest, fees, costs or other charges.

6. Nothing in this section shall be construed to limit, impair or otherwise affect the priority under applicable law of any other mortgage, deed of trust, encumbrance or lien which was recorded or filed prior to the effective date of this section.

7. The sale or transfer of the real property securing the reverse mortgage loan [to a person other than an original mortgagor or mortgagors] shall result in the termination of the loan.

8. [In a term reverse mortgage loan, the real property securing the reverse mortgage loan may be reappraised by an independent appraiser at the end of the loan term. If the value of the real property has appreciated, the term of the reverse mortgage may be extended or refinanced, however, the total reverse mortgage loan amount may not exceed such amount or ratio as may be determined by the banking board. The refinancing of the reverse mortgage loan shall be provided by the original authorized lender or by any other authorized lender designated by the mortgagee.

9.] The principal, including any accrued but unpaid interest, of a reverse mortgage loan agreement entered into pursuant to this section may be insured by the mortgagor. [If such insurance is purchased from or otherwise provided by any agency of the state of New York the mortgagor shall be granted the right, for a term reverse mortgage loan, to refinance or extend the reverse mortgage loan at the end of the term, subject to such rules or regulations as the banking board may adopt.] The authorized lender shall have the option to choose between refinancing or extending the reverse mortgage loan. Subject to obtaining an adequate increase in the insurance and subject to such rules and regulations as the banking board may adopt, the total reverse mortgage loan amount shall not exceed such amount or loan to value ratio as may be determined by the banking board. The refinancing of the reverse mortgage loan shall be provided by the original authorized lender or by any other authorized lender designated by the mortgagee.

[10] 9. Any authorized lender offering reverse mortgage loans pursuant to this section shall also offer reverse mortgage loans pursuant to section two hundred eighty-a of this article. Subject to this section in the event that an authorized lender makes reverse mortgage loans under this section then that lender must make an equal number of reverse mortgage loans pursuant to section two hundred eighty-a of this article.

Such loans shall be made to individuals who meet the requirements promulgated in section two hundred eighty-a of this article provided that such individual seeking the loan would otherwise qualify and be approved for that loan. In the event that no or insufficient applications for reverse mortgage loans pursuant to section two hundred eighty-a of this article are made to a lender who has previously made reverse mortgage loans pursuant to this section then there shall be no requirement for that lender to make a reverse mortgage loan pursuant to section two hundred eighty-a of this article. It shall also not be a requirement that an authorized lender make any reverse mortgage loan to any individual who would not qualify for such loan and/or would not otherwise be approved for such loan.

[11] 10. Nothing contained in this section, section six-h of the banking law or any other provision of law shall be construed to prohibit a banking organization or licensed mortgage banker from providing reverse mortgages to homeowners in this state under the federal housing administration's home equity conversion mortgage insurance [demonstration] program.

S 2. Paragraph (a) of subdivision 1 of section 280-a of the real property law, as added by chapter 613 of the laws of 1993, is amended to read as follows:

(a) Reverse mortgage loan. A loan which is secured by a first mortgage on real property improved by a one to four-family residence, COOPERATIVE APARTMENT or condominium that is the residence of the mortgagor(s) the proceeds of which are advanced to the mortgagor(s) during the term of the loan in equal installments, or in advances through a line of credit or otherwise, in lump sums, or through a combination thereof.

S 3. This act shall take effect immediately.