S T A T E   O F   N E W   Y O R K

6987

2013-2014 Regular Sessions

I N A S S E M B L Y

April 29, 2013

Introduced by M. of A. MILLMAN -- 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 seniors

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

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

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

S 2405-F. REVERSE MORTGAGE LOAN PROGRAM FOR SENIORS. (1) AUTHORIZATION. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE AGENCY IS HEREBY AUTHORIZED AND DIRECTED TO ESTABLISH A REVERSE MORTGAGE LOAN PROGRAM FOR THE PURPOSE OF ENABLING SENIOR HOMEOWNERS TO USE THE EQUITY IN THEIR HOMES TO PROVIDE FOR THEIR LONG-TERM CARE NEEDS. THE SUPERINTENDENT OF FINANCIAL SERVICES IS HEREBY AUTHORIZED TO VARY ANY RULES AND REGULATIONS PERTAINING TO REVERSE MORTGAGE LOANS TO ACCOMMODATE THE NEEDS OF THE PROGRAM.

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

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

(A) "PROGRAM" SHALL MEAN THE REVERSE MORTGAGE LOAN PROGRAM FOR SENIORS,

(B) "APPLICANT" SHALL MEAN AN INDIVIDUAL WHO IS APPLYING TO PARTICIPATE IN THE PROGRAM,

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

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

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

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

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

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

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

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

(B) THE VALUE OF THE APPLICANT'S RESIDENCE AS DETERMINED BY THE AGENCY; AND

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

(4) ELIGIBILITY OF APPLICANTS. IN ORDER TO BE ELIGIBLE FOR THE PROGRAM, AN APPLICANT MUST BE AN INDIVIDUAL AGE SIXTY-FIVE YEARS OR OLDER, BE THE OWNER AND OCCUPANT OF A SINGLE FAMILY DWELLING OR CONDOMINIUM, WHO HAS LOST SOME OR ALL OF THE CAPACITY TO FUNCTION ON HIS OR HER OWN DUE TO A CHRONIC ILLNESS OR CONDITION, AND WHO, BASED ON AN ASSESSMENT PERFORMED BY AN AREA AGENCY ON AGING PURSUANT TO SUBDIVISION FIVE OF THIS SECTION, REQUIRES OR IS EXPECTED TO REQUIRE ONE OR MORE OF THE FOLLOWING ITEMS OR SERVICES FOR AN EXTENDED PERIOD OF TIME OF SIX CONSECUTIVE MONTHS OR MORE: HOME CARE, INCLUDING NURSING AND PERSONAL CARE SERVICES, HOMEMAKER AND CHORE SERVICES, INCLUDING CHORE SERVICES

RELATED TO HOME MAINTENANCE OR REPAIR, NUTRITION SERVICES, TRANSPORTATION, COUNSELING, PHYSICAL THERAPY AND OTHER MEDICAL OR NON-MEDICAL SUPPORT SERVICES, RESPITE, ADULT DAY CARE, DURABLE MEDICAL EQUIPMENT, MEDICALLY INDICATED HOME ALTERATIONS, AND UNINSURED CATASTROPHIC OR RECURRING MEDICAL EXPENSES INCLUDING PRESCRIPTION DRUGS. AN APPLICANT'S PERSONAL AND HOUSEHOLD INCOME MAY NOT EXCEED THE MAXIMUM INCOME LIMITS ESTABLISHED BY THE AGENCY.

(5) CARE NEEDS ASSESSMENT. AS PART OF THE LOAN APPROVAL PROCESS, AN AREA AGENCY ON AGING SHALL CONDUCT AN ASSESSMENT OF EACH APPLICANT IN ORDER TO IDENTIFY THE APPLICANT'S CARE NEEDS, INCLUDING INFORMATION NECESSARY TO DETERMINE WHETHER THE APPLICANT REQUIRES OR IS EXPECTED TO REQUIRE ONE OR MORE OF THE ITEMS OR SERVICES SPECIFIED IN SUBDIVISION FOUR OF THIS SECTION, AND IF SO, WHICH ITEMS OR SERVICES ARE REQUIRED OR EXPECTED TO BE REQUIRED, THE DURATION FOR WHICH THE ITEMS OR SERVICES ARE EXPECTED TO BE REQUIRED, AND THE ESTIMATED COST OF THE ITEMS OR SERVICES. THE ASSESSMENT SHALL BE CONDUCTED FACE-TO-FACE WITH THE APPLICANT, AND, IF REQUESTED BY THE APPLICANT, HIS OR HER AUTHORIZED REPRESENTATIVE AND INFORMAL CAREGIVERS, USING THE STANDARDIZED PROCESS AND INSTRUMENT PRESCRIBED BY THE OFFICE FOR THE AGING FOR EXPANDED IN-HOME SERVICES FOR THE ELDERLY PROGRAM (EISEP) CLIENTS, UNLESS THE AREA AGENCY HAS RECEIVED APPROVAL FROM SAID OFFICE TO USE A DIFFERENT INSTRUMENT. ALL INFORMATION DERIVED FROM THE ASSESSMENT OF THE APPLICANT SHALL BE CONFIDENTIAL AND SHARED ONLY WITH OTHERS INVOLVED IN THE ARRANGEMENT OR PROVISION OF SERVICES TO THE APPLICANT PURSUANT TO WRITTEN CONSENT FROM THE APPLICANT OR HIS OR HER AUTHORIZED REPRESENTATIVE. IF, BASED ON THE ASSESSMENT, THE APPLICANT IS DETERMINED TO HAVE A NEED FOR OR IS EXPECTED TO NEED ANY OF THE ITEMS OR SERVICES CONTAINED IN SUBDIVISION FOUR OF THIS SECTION, SUCH APPLICANT SHALL BE DEEMED FUNCTIONALLY ELIGIBLE FOR THE PROGRAM.

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

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

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

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

(D) DISCUSSING WITH THE APPLICANT HIS OR HER WISHES REGARDING HOW TITLE OF THE RESIDENCE SHOULD BE TRANSFERRED UPON THE DEATH OF THE APPLICANT, AND ADVISING THE APPLICANT OF THE NEED TO OBTAIN ESTATE PLANNING COUNSELING AND PROPER LEGAL DOCUMENTATION IN ORDER TO ENSURE THAT HIS OR HER WISHES ARE CARRIED OUT.

(7) (A) PRIOR TO ACCEPTING A FINAL AND COMPLETE APPLICATION FOR A REVERSE MORTGAGE THE LENDER SHALL PROVIDE THE BORROWER WITH A LIST OF NOT FEWER THAN TEN COUNSELING AGENCIES THAT ARE APPROVED BY THE UNITED

STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO ENGAGE IN REVERSE MORTGAGE COUNSELING AS PROVIDED IN SUBPART B OF PART 214 OF TITLE 24 OF THE CODE OF FEDERAL REGULATIONS. THE COUNSELING AGENCY SHALL NOT RECEIVE ANY COMPENSATION, EITHER DIRECTLY OR INDIRECTLY, FROM THE LENDER OR FROM ANY OTHER PERSON OR ENTITY INVOLVED IN ORIGINATING OR SERVICING THE MORTGAGE OR THE SALE OF ANNUITIES, INVESTMENTS, LONG-TERM CARE INSURANCE, OR ANY OTHER TYPE OF FINANCIAL OR INSURANCE PRODUCT. THIS SUBDIVISION SHALL NOT PREVENT A COUNSELING AGENCY FROM RECEIVING FINANCIAL ASSISTANCE THAT IS UNRELATED TO THE OFFERING OR SELLING OF A REVERSE MORTGAGE LOAN AND THAT IS PROVIDED BY THE LENDER AS PART OF CHARITABLE OR PHILANTHROPIC ACTIVITIES.

(B) A LENDER SHALL NOT ACCEPT A FINAL AND COMPLETE APPLICATION FOR A REVERSE MORTGAGE LOAN FROM A PROSPECTIVE APPLICANT OR ASSESS ANY FEES UPON A PROSPECTIVE APPLICANT WITHOUT FIRST RECEIVING CERTIFICATION FROM THE APPLICANT OR THE APPLICANT'S AUTHORIZED REPRESENTATIVE THAT THE APPLICANT HAS RECEIVED COUNSELING FROM AN AGENCY AS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION AND THAT THE COUNSELING WAS CONDUCTED IN PERSON, UNLESS THE CERTIFICATION SPECIFIES THAT THE APPLICANT ELECTED TO RECEIVE THE COUNSELING IN A MANNER OTHER THAN IN PERSON. THE CERTIFICATION SHALL BE SIGNED BY THE BORROWER AND THE AGENCY COUNSELOR, AND SHALL INCLUDE THE DATE OF THE COUNSELING AND THE NAME, ADDRESS, AND TELEPHONE NUMBER OF BOTH THE COUNSELOR AND THE APPLICANT. ELECTRONIC FACSIMILE COPY OF THE HOUSING COUNSELING CERTIFICATION SATISFIES THE REQUIREMENTS OF THIS SUBDIVISION. THE LENDER SHALL MAINTAIN THE CERTIFICATION IN AN ACCURATE, REPRODUCIBLE, AND ACCESSIBLE FORMAT FOR THE TERM OF THE REVERSE MORTGAGE.

(C) A LENDER SHALL NOT MAKE A REVERSE MORTGAGE LOAN WITHOUT FIRST COMPLYING WITH, OR IN THE CASE OF BROKERED LOANS ENSURING COMPLIANCE WITH, THE REQUIREMENTS OF THIS SUBDIVISION.

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

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

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

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