

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:

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 elderly homeowners
15 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 SENIORS. (1) AUTHORI-
19 ZATION. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE AGENCY
20 IS HEREBY AUTHORIZED AND DIRECTED TO ESTABLISH A REVERSE MORTGAGE LOAN
21 PROGRAM FOR THE PURPOSE OF ENABLING SENIOR HOMEOWNERS TO USE THE EQUITY
22 IN THEIR HOMES TO PROVIDE FOR THEIR LONG-TERM CARE NEEDS. THE SUPER-
23 INTENDENT OF FINANCIAL SERVICES IS HEREBY AUTHORIZED TO VARY ANY RULES
24 AND REGULATIONS PERTAINING TO REVERSE MORTGAGE LOANS TO ACCOMMODATE THE
25 NEEDS OF THE PROGRAM.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (B) A LENDER SHALL NOT ACCEPT A FINAL AND COMPLETE APPLICATION FOR A
13 REVERSE MORTGAGE LOAN FROM A PROSPECTIVE APPLICANT OR ASSESS ANY FEES
14 UPON A PROSPECTIVE APPLICANT WITHOUT FIRST RECEIVING CERTIFICATION FROM
15 THE APPLICANT OR THE APPLICANT'S AUTHORIZED REPRESENTATIVE THAT THE
16 APPLICANT HAS RECEIVED COUNSELING FROM AN AGENCY AS DESCRIBED IN PARA-
17 GRAPH (A) OF THIS SUBDIVISION AND THAT THE COUNSELING WAS CONDUCTED IN
18 PERSON, UNLESS THE CERTIFICATION SPECIFIES THAT THE APPLICANT ELECTED TO
19 RECEIVE THE COUNSELING IN A MANNER OTHER THAN IN PERSON. THE CERTIF-
20 ICATION SHALL BE SIGNED BY THE BORROWER AND THE AGENCY COUNSELOR, AND
21 SHALL INCLUDE THE DATE OF THE COUNSELING AND THE NAME, ADDRESS, AND
22 TELEPHONE NUMBER OF BOTH THE COUNSELOR AND THE APPLICANT. ELECTRONIC
23 FACSIMILE COPY OF THE HOUSING COUNSELING CERTIFICATION SATISFIES THE
24 REQUIREMENTS OF THIS SUBDIVISION. THE LENDER SHALL MAINTAIN THE CERTIF-
25 ICATION IN AN ACCURATE, REPRODUCIBLE, AND ACCESSIBLE FORMAT FOR THE TERM
26 OF THE REVERSE MORTGAGE.

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

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

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

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

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