

STATE OF NEW YORK

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IN ASSEMBLY

February 16, 2017

Introduced by M. of A. WEINSTEIN, MOSLEY, ABBATE, COLTON, CYMBROWITZ, GALEF, ZEBROWSKI, JOYNER, ORTIZ, RIVERA, BLAKE, GLICK, DINOWITZ, CARROLL, D'URSO, STECK, HYNDMAN, RICHARDSON, DAVILA, AUBRY, SEAWRIGHT, ABINANTI, WALLACE, CAHILL -- Multi-Sponsored by -- M. of A. COOK, ENGLEBRIGHT, NOLAN, SIMON, THIELE -- read once and referred to the Committee on Judiciary -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the real property law, in relation to regulation of reverse mortgages issued under the federal home equity conversion mortgage for seniors program

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

Section 1. The real property law is amended by adding a new section 280-b to read as follows:

§ 280-b. Federal home equity conversion mortgage regulation. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) Reverse mortgage loan. A reverse mortgage loan as defined in section two hundred eighty of this article, which is issued in this state pursuant to the home equity conversion mortgage for seniors program operated by the federal Department of Housing and Urban Development.

(b) Authorized lender. An authorized lender as defined in section two hundred eighty of this article authorized to make reverse mortgage loans, as defined in this section.

(c) Superintendent. The superintendent of financial services established pursuant to section two hundred two of the financial services law.

2. No authorized lender or any other party or entity shall in any manner, in the marketing or offering of reverse mortgage loans, engage

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

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1 in any unfair or deceptive practices in connection with the marketing or
2 offering of reverse mortgage loans, and, additionally, shall not:

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

5 (b) use the words "government insured" or other similar language
6 representing that reverse mortgage loans are insured, supported and
7 sponsored by any governmental entity in any commercial, mailing, adver-
8 tisement or writing relating thereto; or

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

10 3. (a) Every authorized lender or its agent shall provide, with any
11 solicitation for reverse mortgage products mailed to a physical address
12 within the state, supplemental consumer protection materials the content
13 and form of which shall be specified by the superintendent or his or her
14 designee.

15 (b) Every authorized lender shall provide each applicant or potential
16 applicant for a reverse mortgage loan with the telephone number and
17 internet website address provided by the federal Department of Housing
18 and Urban Development for the purposes of acquiring home equity conver-
19 sion mortgage counseling.

20 (c) The superintendent is authorized to promulgate such rules and
21 regulations as he or she shall deem necessary to implement the
22 provisions of this subdivision.

23 4. (a) Reverse mortgages secured by residential real property within
24 the state shall be subject to the rules and regulations of the federal
25 Department of Housing and Urban Development relating to the home equity
26 conversion mortgage program.

27 (b) For all borrowers whose tax payments, mortgage insurance payments,
28 homeowners insurance payments, or payments stemming from any other prop-
29 erty obligation or obligations are administered by the authorized lend-
30 er, and where these payments are derived from the proceeds of the mort-
31 gage, the authorized lender shall provide on the borrower's periodic
32 account statement the current balance remaining in the borrower's line
33 of credit or lifetime expectancy set aside, the projected annual proper-
34 ty charges for that year, and a notice which reads in at least twelve
35 point type: "YOUR TAXES AND INSURANCE ARE CURRENTLY BEING PAID BY THE
36 PROCEEDS OF THIS MORTGAGE. THE FUNDS THAT HAVE BEEN SET ASIDE ARE
37 EXPECTED TO BE EXHAUSTED AFTER THE TAX AND INSURANCE PAYMENTS OF (SPECI-
38 FY EXPECTED MONTH AND YEAR). IF THE PROCEEDS OF THIS MORTGAGE CANNOT PAY
39 THE TAXES AND INSURANCE, YOU MUST PAY THESE OBLIGATIONS OR YOUR HOME MAY
40 BE LOST TO FORECLOSURE. PLEASE NOTE THAT AS TAX AND INSURANCE AMOUNTS
41 CAN VARY YOU SHOULD CONTINUE TO REVIEW THIS NOTICE FOR CHANGES."

42 (c) An authorized lender shall, by telephone and first class mail,
43 inform and provide notice to a mortgagor when his or her home equity
44 line of credit or life expectancy set aside is depleted to ten percent
45 or less of its value. Such notice shall inform the mortgagor of his or
46 her obligations relating to such real property including, but not limit-
47 ed to, mortgage insurance, homeowners insurance and real property taxes
48 previously paid by such line of credit or life expectancy set aside, and
49 that such obligations must continue to be paid when the home equity line
50 of credit or life expectancy set aside is depleted. Such notice shall
51 use plain language, written in a clear and coherent manner using words
52 with common and every day meanings, appropriately divided and captioned
53 by its various sections.

54 (d) Each authorized lender shall, by telephone and first class mail,
55 inform and provide notice to a mortgagor when his or her home equity
56 line of credit or life expectancy set aside is depleted. Such notice

1 shall inform the mortgagor of his or her obligations relating to the
2 mortgaged real property including, but not limited to, mortgage insur-
3 ance, homeowners insurance and real property taxes, and that the home
4 equity line of credit or life expectancy set aside will no longer pay
5 these obligations. Such notice shall use plain language, written in a
6 clear and coherent manner using words with common and every day mean-
7 ings, appropriately divided and captioned by its various sections.

8 5. No authorized lender shall make an advance payment for any obli-
9 gation arising from mortgaged real property. Furthermore, in the event a
10 mortgagor defaults upon the payment of mortgage insurance premium, home-
11 owners' insurance premium or real property tax related to the mortgaged
12 property, the authorized lender may only pay those premiums and/or taxes
13 which are in arrears.

14 6. In the event that an authorized lender seeks to foreclose on a
15 reverse mortgage loan on the basis that the mortgaged real property is
16 no longer the primary residence of or occupied by the mortgagor, if
17 during the verification of the mortgagor's primary residence and/or
18 occupancy no responses are received in response to mailings relating
19 thereto, such lender shall cause a telephone call to be made to the
20 mortgagor, or if the mortgagor is unreachable by telephone, a designated
21 third-party specified by the mortgagor, and an in person visit to be
22 made to the mortgagor at the mortgaged real property to be made prior to
23 the commencement of any foreclosure proceeding. During such visit, the
24 authorized lender or its agent shall provide clear information as to who
25 they are, that the visit pertains to the reverse mortgage, the reason
26 for the home visit, and the telephone number to call for further infor-
27 mation. The authorized lender must wait at least thirty days following
28 such visit, in addition to any additional time or notice requirements
29 specified by any other provision of law, before initiating a foreclosure
30 action on the basis that the mortgaged real property is no longer the
31 primary residence of the mortgagor. If the mortgagor contacts the
32 authorized lender and provides proof of residence or occupancy after
33 such visit but before the commencement of a foreclosure action, the
34 authorized lender shall be barred from initiating such foreclosure
35 action. Furthermore, no authorized lender shall charge a mortgagor any
36 fee for any such visit and inspection. This prohibition on the imposi-
37 tion of fees shall include any and all inspections conducted by the
38 authorized lender to verify the status of the reverse mortgage, or any
39 suspected or actual default condition.

40 7. Both the authorized lender and the mortgagor shall be represented
41 by an attorney or attorneys at the time of the closing on the reverse
42 mortgage, and each such party shall have at least one attorney present
43 to conduct the closing.

44 8. Any person who has been injured by reason of any violation of this
45 section or any violation of the rules and regulations of the federal
46 Department of Housing and Urban Development relating to the home equity
47 conversion mortgage program may bring an action in his or her own name
48 to recover treble his or her actual damages, plus the prevailing
49 plaintiff's reasonable attorney's fees.

50 9. Compliance with the provisions of this section shall be conditions
51 precedent to commencing an action to foreclose upon a home equity
52 conversion mortgage which is subject to the provisions of this section,
53 and the failure to comply therewith shall be a complete defense to a
54 foreclosure action.

55 § 2. This act shall take effect on the ninetieth day after it shall
56 have become a law; provided, that, effective immediately the superinten-

1 dent of financial services is authorized and directed to amend, add
2 and/or repeal any rules and regulations necessary to implement the
3 provision of this act within 180 days after this act shall have become a
4 law.