

STATE OF NEW YORK

8888

IN SENATE

June 1, 2018

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law, the uniform commercial code and the civil practice law and rules, in relation to reverse cooperative apartment unit loans

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

1 Section 1. The banking law is amended by adding a new section 6-n to
2 read as follows:

3 § 6-n. Reverse cooperative apartment unit loans for persons seventy
4 years of age or older. 1. For purposes of this section, the following
5 terms shall have the following meanings:

6 (a) Reverse cooperative apartment unit loan. A loan which is secured
7 by an interest in a cooperative apartment that is the residence of the
8 borrower(s) the proceeds of which are advanced to the borrower(s) during
9 the term of the loan in equal installments, or in advances through a
10 line of credit or otherwise, in lump sums, or through a combination
11 thereof.

12 (b) Term reverse cooperative apartment unit loan. As used in this
13 section, any reverse cooperative apartment unit loan that has a fixed
14 term for payments to the borrower(s).

15 (c) Tenure cooperative apartment unit loan. As used in this section,
16 any cooperative apartment unit loan that does not have a fixed term for
17 payments to the borrower(s).

18 (d) Authorized lender. Any bank, trust company, national banking asso-
19 ciation, savings bank, savings and loan association, federal savings
20 bank, federal savings and loan association, credit union, or federal
21 credit union or any licensed mortgage banker approved for the making of
22 reverse mortgage loans by the superintendent or any entity exempted from
23 licensing pursuant to section five hundred ninety of this chapter and
24 approved for the making of reverse mortgage loans by the superintendent.

25 (e) Borrower. A tenant in severalty who is seventy years of age or
26 older, or if the cooperative apartment unit is held by tenants by the
27 entirety or by joint tenancy, the youngest of which is seventy years of

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

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1 age or older and whose income does not exceed eighty percent of the
2 median income of the county in which he or she resides.

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

5 2. A cooperative apartment unit loan pursuant to this section shall be
6 subject to the following:

7 (a) the borrower shall be granted lifetime possession of the subject
8 premises of the cooperative apartment unit which is the security for the
9 reverse cooperative apartment unit loan, as long as such apartment unit
10 remains the borrowers' principal residence and subject to a limited
11 waiver of the right of foreclosure as determined by the superintendent;
12 and

13 (b) the term of the reverse cooperative apartment unit loan, except
14 for a tenure reverse cooperative apartment unit loan, shall be for a
15 period of ten years or less; and

16 (c) the loan to value ratio shall be determined by the superintendent;
17 and

18 (d) subject to such rules or regulations as the superintendent shall
19 adopt, for that period of time commencing at the end of the loan term or
20 ten years after the reverse cooperative apartment unit loan commences,
21 whichever occurs first, and ending at such time as the reverse cooper-
22 ative apartment unit loan is paid in full, the authorized lender, at its
23 option, may receive no more than twenty percent of the future appreci-
24 ation of the property securing the reverse cooperative apartment unit
25 loan as full or partial consideration for the making of a reverse coop-
26 erative apartment unit loan; provided, however, that such future appre-
27 ciation shall be limited by such rules and regulations as the super-
28 intendent may adopt or the authorized lender may charge a fixed rate of
29 interest on the outstanding balance of monies advanced under the reverse
30 mortgage agreement or any combination thereof. Said reverse cooperative
31 apartment unit loan shall not come due and shall be extended until the
32 voluntary relinquishment by the borrowers of possessory interest in such
33 cooperative apartment unit, the apartment unit no longer being the
34 borrowers' principal residence, the death of the borrowers, or such
35 other events as may be determined by the superintendent. Any such appre-
36 ciation shall not be considered interest for the purposes of any law
37 regulating the maximum rate of interest which may be charged, taken or
38 received including sections 190.40 and 190.42 of the penal law; and

39 (e) the authorized lender shall maintain an escrow account for the
40 purposes of paying real property taxes, insurance premiums of the prop-
41 erty securing the reverse cooperative apartment unit loan, or for the
42 payment of any other fees and expenses as may be permitted by the super-
43 intendent regulation; and

44 (f) subject to such rules or regulations as the superintendent may
45 adopt, an authorized lender or any successor or assign of such author-
46 ized lender which may suspends, ceases or makes late payments to a
47 borrower under a reverse cooperative apartment unit loan shall be
48 subject to forfeiture (as liquidated damages to such borrower and not as
49 a penalty) of twice the interest which would otherwise have been earned
50 during the period in which payments were suspended, ceased, or made
51 late, provided that said authorized lender or any successor or assign of
52 such authorized lender shall have the right to make payments pursuant to
53 said loan agreement within fifteen days of each payment date without
54 penalty; and

55 (g) an authorized lender must deliver to an applicant such disclosures
56 as may be required by the superintendent which shall describe the rele-

1 vant portions of the reverse loan being offered, and shall include but
2 not be limited to the following items:

3 (i) except for a tenure cooperative apartment unit loan, a schedule of
4 payments to and from the borrower and the total payments in dollars over
5 the term of the reverse cooperative apartment unit loan for both the
6 borrower and lender, depending on the type of reverse cooperative apart-
7 ment unit loan being offered;

8 (ii) a statement prominently displayed advising applicants to consult
9 with appropriate authorities regarding tax and estate planning conse-
10 quences of a reverse cooperative apartment unit loan;

11 (iii) where applicable a description of prepayment and refinancing
12 features;

13 (iv) to the extent determinable at or prior to the inception of the
14 reverse cooperative apartment unit loan, the interest rate and, except
15 for a tenure reverse cooperative apartment unit loan, the total interest
16 payable on the reverse cooperative apartment unit loan;

17 (v) a statement concerning the compliance of the lender with the
18 criteria established by the superintendent that an authorized lender
19 must meet before it may make reverse cooperative apartment unit loans
20 pursuant to this section;

21 (vi) a statement setting forth those events which would terminate the
22 reverse cooperative apartment unit loan;

23 (vii) the loan is subject to a three day right of rescission by the
24 borrower; and

25 (viii) a financial statement setting forth an estimate of all costs
26 associated with the loan; and

27 (h) the outstanding balance may be prepaid in full by the borrower
28 without penalty at any time during the reverse cooperative apartment
29 unit loan term; and

30 (i) an authorized lender is prohibited from using or attaching any
31 property or asset of the borrower except the apartment unit securing the
32 reverse cooperative apartment unit loan in settlement of a reverse loan
33 obligation; and

34 (j) an authorized lender must deliver to the applicant upon applica-
35 tion, a statement prepared by the local or county office for the aging
36 on the advisability and availability of independent counseling and
37 information services. Further, no reverse loan commitment shall be
38 issued by the authorized lender until the applicant presents, in writ-
39 ing, a statement that the terms of the reverse cooperative apartment
40 unit loan have been explained to them by an attorney, a housing and
41 urban development certified counselor or any other counseling service as
42 indicated on the statement supplied by the county or local office for
43 the aging. The form of such statement and affidavit shall be developed
44 by the New York state office for the aging; and

45 (k) a reverse cooperative apartment unit loan pursuant to this section
46 shall expressly and conspicuously bear a legend identifying it as such;
47 and

48 (l) subject to such rules or regulations as the superintendent may
49 adopt, a reverse cooperative apartment unit loan shall be made at either
50 a fixed or variable rate of interest; and

51 (m) in the event that an authorized lender or holder of the reverse
52 cooperative apartment unit loan intends to initiate foreclosure
53 proceedings the borrower shall have the right to designate a third party
54 who shall be notified. In the event that the mortgagor has not desig-
55 nated a third party to receive such notice of foreclosure, then the
56 authorized lender or the holder of said reverse cooperative apartment

1 unit loan shall notify the local or county office for the aging of its
2 intent to commence foreclosure proceedings. Such entity shall take
3 appropriate action to protect the interests of the borrower; and

4 (n) reverse cooperative apartment unit loans shall be also subject to
5 any eligible non-borrowing spouse being provided with a deferral of the
6 due and payable status of the loan upon the death of the last surviving
7 borrower, but only for a period of time during which and subject to the
8 non-borrowing spouse agreeing to execute documentation to preserve the
9 lender's lien, if requested to do so; and

10 (o) a reverse cooperative apartment unit loan secured by a unit in a
11 cooperative housing development shall also be subject to the prior
12 approval by the cooperative housing association's board of directors.

13 3. A reverse cooperative apartment unit loan pursuant to this section
14 may:

15 (a) provide that an authorized lender may, consistent with federal
16 laws and regulations, include a due-on-sale clause in its reverse coop-
17 erative apartment unit loan agreement and at its option exercise and
18 enforce such clause in accordance with its terms; and

19 (b) provide that the borrower's closing costs, including but not
20 limited to loan or commitment fees if any, insurance premiums, repairs,
21 legal fees, the costs of annuities, the costs of third party counseling,
22 the costs of existing mortgages or liens, and other appropriate costs be
23 included in the principal of the reverse cooperative apartment unit loan
24 and disbursed out of the loan proceeds at closing.

25 4. The superintendent shall adopt those rules or regulations as it
26 considers appropriate to govern reverse cooperative apartment unit loan
27 made pursuant to this section. No reverse cooperative apartment unit
28 loan shall be made unless it conforms to the requirements of this
29 section and such rules and regulations as the superintendent may adopt.
30 A reverse cooperative apartment unit loan may be made by any authorized
31 lender, national banking association, federal savings and loan associ-
32 ation or federal credit union in conformity with rules or regulations
33 which shall include, but are not limited to:

34 (a) any limitations on the taking of a percentage of the future appre-
35 ciation of the unit securing the reverse cooperative apartment unit loan
36 as consideration for making the reverse loan;

37 (b) the execution by an authorized lender of a limited waiver of the
38 right of foreclosure;

39 (c) with the exception of the counseling statement prepared by the New
40 York state office for the aging pursuant to paragraph (j) of subdivision
41 two of this section, the form and contents of any disclosure statement
42 that authorized lenders must provide to borrowers;

43 (d) an initial distribution limit of sixty percent of the principal in
44 the first year of the loan; and

45 (e) net principal limits, as established by the superintendent taking
46 into consideration the following factors: the borrower's age at the time
47 of the loan; origination costs; closing costs including, but not limited
48 to mortgage insurance premium, title insurance and home inspection fees;
49 and amounts set-aside for home repairs that are a requirement of receiv-
50 ing the loan.

51 5. Notwithstanding any inconsistent provision of law, the priority of
52 the lien of a reverse cooperative apartment unit loan, including the
53 lien for all principal, interest, fees, costs, shared appreciation and
54 other charges assessed in connection with the reverse loan, shall date
55 from the recording of the loan irrespective of the date of any advance
56 of reverse loan proceeds or the date by which an authorized lender shall

1 be entitled to shared appreciation or accrued but unpaid interest, fees,
2 costs or other charges.

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

7 7. The sale or transfer of the interest in the cooperative apartment
8 unit securing the reverse loan to a person other than an original
9 borrower or borrowers shall result in the termination of the reverse
10 loan.

11 8. In a term reverse cooperative apartment unit loan, the apartment
12 unit securing the reverse loan may be reappraised by an independent
13 appraiser at the end of the loan term. If the value of the unit has
14 appreciated, the term of the reverse loan may be extended or refinanced;
15 however the total reverse loan amount may not exceed such amount or loan
16 to value ratio as may be determined by the superintendent. The refinanc-
17 ing of the reverse cooperative apartment unit loan shall be provided by
18 the original authorized lender or by any other authorized lender.

19 9. The principal, including any accrued but unpaid interest, of a
20 reverse cooperative apartment unit loan agreement entered into pursuant
21 to this section must be insured by the borrower. If such insurance is
22 purchased from or otherwise provided by any agency of the state of New
23 York, the borrower shall be granted the right, for a term cooperative
24 apartment unit loan, to refinance or extend the reverse cooperative
25 apartment unit loan at the end of the term, subject to such rules and
26 regulations as the superintendent may adopt. The authorized lender shall
27 have the option to choose between refinancing or extending the reverse
28 mortgage loan. Subject to obtaining an adequate increase in the insur-
29 ance and subject to such rules and regulations as the superintendent may
30 adopt, the total reverse cooperative apartment unit loan amount shall
31 not exceed such amount or ratio as may be determined by the superinten-
32 dent. The refinancing of the reverse cooperative apartment unit loan
33 shall be provided by the original authorized lender or by any other
34 authorized lender.

35 § 2. Subsection (f) of section 9-611 of the uniform commercial code is
36 amended by adding a new paragraph 1-a to read as follows:

37 (1-a) Notwithstanding any other provision of law, with regard to a
38 reverse cooperative apartment unit loan, at least ninety days before a
39 lender, an assignee or a loan servicer commences legal action against
40 the borrower or borrowers at the property address and any other
41 addresses of record, including reverse cooperative apartment unit loan
42 foreclosure, such lender, assignee or loan servicer shall give notice to
43 the borrower in at least fourteen-point type except for the heading
44 which shall be in at least sixteen-point type which shall include the
45 following:

46 YOU COULD LOSE YOUR COOPERATIVE APARTMENT UNIT TO FORECLOSURE.

47 PLEASE READ THE FOLLOWING NOTICE CAREFULLY.

48 Date

49 Borrower's address

50 Loan Number:

51 Property Address:

52 Dear Borrower(s):

53 As of _____, we as your lender or servicer claim that your reverse
54 cooperative apartment unit loan is _____ days in default. Under New York

State Law, we are required to send you this notice to inform you that you may be at risk of losing your home.

We, the lender or servicer of your loan, are claiming that your reverse loan is in default because you have not complied with the following conditions of your loan:

 You are not occupying your cooperative apartment unit as your principal residence

 You did not submit the required annual certificate of occupancy

 The named borrower on the reverse loan has died

 You did not maintain homeowner's insurance

 {Servicer name} purchased homeowner's insurance for you on the following date(s) and for the following cost(s):

 You did not pay water/sewer charges

 {Servicer name} paid water/sewer charges for you on the following date(s) and for the following cost(s):

 You did not make required repairs to your unit

If the claim is based on your failure to pay property or water and sewer charges or maintain homeowner's insurance, you can cure this default by making the payment of \$ for the advancements we made towards these payments on your behalf.

You have the right to dispute the claims listed above by contacting us, by calling or sending a letter to . This may include proof of payments made for water and sewer charges or a current declaration page from your insurance company, or any other proof to dispute the servicer's claim.

If you are in default for failure to pay property charges (homeowner's insurance and/or water/sewer charges) you may qualify for a grant, loan, or re-payment plan to cure the default balance owed.

If you are in default due to the death of your spouse, you may be considered an eligible "Non-Borrowing Spouse" which allows you to remain in your home for the rest of your life.

If you are over the age of 80 and have a long term illness, you may also qualify for the "At-Risk Extension," which allows you to remain in your unit for one additional year and requires an annual re-certification.

If you are in default because the named borrower on the reverse loan has died and you are the lawful heir to the property, you may be able to keep the property by paying either the full loan balance or 95 percent of the unit's appraised value, whichever is less.

Attached to this notice is a list of government-approved housing counseling agencies and legal services in your area which provide free counseling. You can also call the NYS Office of the Attorney General's Homeowner Protection Program (HOPP) toll-free consumer hotline to be connected to free housing counseling services in your area at 1-855-HOME-456 (1-855-466-3456), or visit their website at <http://www.aghomehelp.com>. A statewide listing by county is also avail-

1 able at [http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_ag-](http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm)
2 [cies.htm](http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm). You may also call your local Department of Aging for a refer-
3 ral or call 311 if you live in New York City.

4 Qualified free help is available; watch out for companies or people who
5 charge a fee for these services.

6 You may also contact us directly at _____ and ask to discuss all
7 possible options to allow you to cure your default and prevent the fore-
8 closure of your home. While we cannot ensure that a resolution is
9 possible, we encourage you to take immediate steps to try to achieve a
10 resolution. The longer you wait, the fewer options you may have.

11 If you have not taken any actions to resolve this matter within ninety
12 days from the date this notice was mailed, we may commence legal action
13 against you (or sooner if you cease to live in the dwelling as your
14 primary residence).

15 If you need further information, please call the New York State Depart-
16 ment of Financial Services' toll-free helpline at 877-226-5697 or visit
17 the Department's website at <http://www.dfs.ny.gov>.

18 IMPORTANT: You have the right to remain in your unit until you receive a
19 court order telling you to leave the property. If a foreclosure action
20 is filed against you in court, you still have the right to remain in the
21 unit until a court orders you to leave. You legally remain the owner of
22 and are responsible for the unit until the property is sold by you or by
23 order of the court at the conclusion of any foreclosure proceedings.
24 This notice is not an eviction notice, and a foreclosure action has not
25 yet been commenced against you.

26 § 3. The civil practice law and rules is amended by adding a new rule
27 3410 to read as follows:

28 Rule 3410. Mandatory interview for foreclosure of reverse cooperative
29 apartment unit loans. (a) In any foreclosure action involving a reverse
30 cooperative apartment unit loan, in which the defendant is a resident of
31 the property subject to foreclosure, the lender shall have a face-to-
32 face interview with the borrower, or make a reasonable effort to arrange
33 such a meeting, before three full monthly installments due on the loan
34 are unpaid for the purpose of holding discussions pertaining to the
35 relative rights and obligations of the parties under loan documents. If
36 default occurs in a repayment plan arranged other than during a personal
37 interview, the lender must have a face-to-face meeting with the borrow-
38 er, or make a reasonable attempt to arrange such a meeting within thirty
39 days after such default and at least thirty days before foreclosure is
40 commenced.

41 (b) A face-to-face meeting is not required if:

42 (1) The borrower does not reside in the unit,

43 (2) The borrower has clearly indicated that he or she will not cooper-
44 ate in the interview,

45 (3) A repayment plan consistent with the borrower's circumstances is
46 entered into to bring the borrower's account current thus making a meet-
47 ing unnecessary, and payments thereunder are current, or

48 (4) A reasonable effort to arrange a meeting is unsuccessful.

49 (c) A reasonable effort to arrange a face-to-face meeting with the
50 borrower shall consist at a minimum of one letter sent to the borrower
51 certified by the Postal Service as having been dispatched. Such a

1 reasonable effort to arrange a face-to-face meeting shall also include
2 at least one trip to see the borrower at the unit, unless it is known
3 that the mortgagor is not residing in the mortgaged property. In addi-
4 tion, the lender must document that it has made at least one telephone
5 call to the borrower for the purpose of trying to arrange a face-to-face
6 interview. The lender may appoint an agent to perform its responsibil-
7 ities under this rule.

8 § 4. This act shall take effect on the one hundred eightieth day after
9 it shall have become a law.