

STATE OF NEW YORK

4453

2017-2018 Regular Sessions

IN SENATE

February 15, 2017

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

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:

1 Section 1. The real property law is amended by adding a new section
2 280-b to read as follows:

3 § 280-b. Federal home equity conversion mortgage regulation. 1. For
4 the purposes of this section, the following terms shall have the follow-
5 ing meanings:

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

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

14 (c) Superintendent. The superintendent of financial services estab-
15 lished pursuant to section two hundred two of the financial services
16 law.

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

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

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

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

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

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

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

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

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

19 (b) For all borrowers whose tax payments, mortgage insurance payments,
20 homeowners insurance payments, or payments stemming from any other prop-
21 erty obligation or obligations are administered by the authorized lend-
22 er, and where these payments are derived from the proceeds of the mort-
23 gage, the authorized lender shall provide on the borrower's periodic
24 account statement a notice which reads in at least twelve point type:
25 "YOUR TAXES AND INSURANCE ARE CURRENTLY BEING PAID BY THE PROCEEDS OF
26 THIS MORTGAGE. THE FUNDS THAT HAVE BEEN SET ASIDE ARE EXPECTED TO BE
27 EXHAUSTED AFTER THE TAX AND INSURANCE PAYMENTS OF (SPECIFY EXPECTED
28 MONTH AND YEAR). IF THE PROCEEDS OF THIS MORTGAGE CANNOT PAY THE TAXES
29 AND INSURANCE, YOU MUST PAY THESE OBLIGATIONS OR YOUR HOME MAY BE LOST
30 TO FORECLOSURE. PLEASE NOTE THAT AS TAX AND INSURANCE AMOUNTS CAN VARY
31 YOU SHOULD CONTINUE TO REVIEW THIS NOTICE FOR CHANGES."

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

44 (d) Each authorized lender shall, by telephone and first class mail,
45 inform and provide notice to a mortgagor when his or her home equity
46 line of credit or life expectancy set aside is depleted. Such notice
47 shall inform the mortgagor of his or her obligations relating to the
48 mortgaged real property including, but not limited to, mortgage insur-
49 ance, homeowners insurance and real property taxes, and that the home
50 equity line of credit or life expectancy set aside will no longer pay
51 these obligations. Such notice shall use plain language, written in a
52 clear and coherent manner using words with common and every day mean-
53 ings, appropriately divided and captioned by its various sections.

54 5. In the event that an authorized lender seeks to foreclose on a
55 reverse mortgage loan on the basis that the mortgaged real property is
56 no longer the primary residence of the mortgagor, if during the verifi-

1 cation of the mortgagor's primary residence no responses are received in
2 response to mailings relating thereto, such lender shall cause a tele-
3 phone call to be made to the mortgagor, or if the mortgagor is unreacha-
4 ble by telephone, a designated third-party specified by the mortgagor,
5 and an in person visit to be made to the mortgagor at the mortgaged real
6 property to be made prior to the commencement of any foreclosure
7 proceeding. During such visit, the authorized lender or its agent shall
8 provide clear information as to who they are, that the visit pertains to
9 the reverse mortgage and the telephone number to call for further infor-
10 mation. The authorized lender must wait at least thirty days following
11 such visit, in addition to any additional time or notice requirements
12 specified by any other provision of law, before initiating a foreclosure
13 action on the basis that the mortgaged real property is no longer the
14 primary residence of the mortgagor. If the mortgagor contacts the
15 authorized lender and provides proof of residence after such visit but
16 before the commencement of a foreclosure action, the authorized lender
17 shall be barred from initiating such foreclosure action. Furthermore,
18 no authorized lender shall charge a mortgagor any fee for any such visit
19 and inspection. This prohibition on the imposition of fees shall include
20 any and all inspections conducted by the authorized lender to verify the
21 status of the reverse mortgage, or any suspected or actual default
22 condition.

23 6. Both the authorized lender and the mortgagor shall be represented
24 by an attorney or attorneys at the time of the closing on the reverse
25 mortgage, and each such party shall have at least one attorney present
26 to conduct the closing.

27 7. Any person who has been injured by reason of any violation of this
28 section or any violation of the rules and regulations of the federal
29 Department of Housing and Urban Development relating to the home equity
30 conversion mortgage program may bring an action in his or her own name
31 to recover treble his or her actual damages, plus the prevailing
32 plaintiff's reasonable attorney's fees.

33 8. Compliance with the provisions of this section shall be conditions
34 precedent to commencing an action to foreclose upon a home equity
35 conversion mortgage which is subject to the provisions of this section,
36 and the failure to comply therewith shall be a complete defense to a
37 foreclosure action.

38 § 2. This act shall take effect on the ninetieth day after it shall
39 have become a law; provided, that, effective immediately the superinten-
40 dent of financial services is authorized and directed to amend, add
41 and/or repeal any rules and regulations necessary to implement the
42 provision of this act within 180 days after this act shall have become a
43 law.