STATE OF NEW YORK

3960

2019-2020 Regular Sessions

IN ASSEMBLY

January 31, 2019

Introduced by M. of A. WEPRIN -- read once and referred to the Committee on Housing

AN ACT to amend the real property law, the banking law, the insurance law, the public authorities law, the tax law, and the social services law, in relation to reverse mortgage loans; and to repeal section 280-a of the real property law relating thereto

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

Section 1. Section 280 of the real property law, as added by chapter 613 of the laws of 1993, paragraph (f) of subdivision 1 as amended by chapter 155 of the laws of 2012, subdivision 5 as amended by chapter 33 of the laws of 1996, and paragraph (d) of subdivision 1, paragraphs (a), (b), and (i), and the opening paragraph and subparagraph (v) of paragraph (e) of subdivision 2, paragraph (b) of subdivision 3, and subdivisions 4, 8, and 9 as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

§ 280. Reverse mortgage loans for persons [~~sixty~~] **sixty-two** years of age or older. 1. For purposes of this section the following terms shall have the following meanings:

(a) Reverse mortgage loans. A loan which is secured by a first mortgage on real property improved by a one- to four-family residence**, cooperative apartment, life estate, trust, leasehold** or condominium that is the residence of the [~~mortgagor(s)~~] **borrower or borrowers** the proceeds of which are advanced to the [~~mortgagor(s)~~] **borrower or borrowers** during the term of the loan **using any one or more method of payments** in equal **monthly** installments **using tenure or term payments**, in advances through a line of credit or otherwise, in lump sums, or through a combination thereof **using a modified tenure or modified term payments. A reverse mortgage loan may be FHA insured (HECM) pursuant to subdivision four of this section or a non FHA insured loan (proprietary)**.

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

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(b) [~~Term reverse mortgage loan. Any reverse mortgage loan that has a fixed term to maturity.~~

~~(c) Tenure reverse mortgage loan. Any reverse mortgage loan that does not have a fixed term to maturity, but rather~~] Reverse mortgage maturity. A reverse mortgage matures solely upon contingent events, such as events including but not limited to death [~~or~~] of the surviving borrower, the real property securing the loan no longer being the [~~mortgagors'~~] borrowers' principal residence or the subject property being sold.

[~~(d)~~] (c) Authorized lender. Any bank, trust company, national banking association, savings bank, savings and loan association, federal savings bank, federal savings and loan association, credit union, or federal credit union or any licensed mortgage banker approved for the making of reverse mortgage loans by the superintendent of financial services or any entity exempted from licensing pursuant to section five hundred ninety of the banking law and approved for the making of reverse mortgage loans by the superintendent of financial services.

[~~(e) Mortgagor.~~] (d) Borrower. A tenant in severalty who is [~~sixty~~] sixty-two years of age or older, or if the real property is held by tenants by the entirety or by joint tenancy, the youngest of which is [~~sixty~~] sixty-two years of age or older and signs the loan application. However, a party with a remainder interest who has not signed the application but signs the mortgage, signs the mortgage as an accommodation and not as a borrower as defined in this section.

[~~(f)~~] (e) Superintendent of financial services. The superintendent established pursuant to section two hundred two of the financial services law.

(f) Mortgagor. Mortgagor is one who signs the mortgage as a borrower or as a non-borrower when one holds a remainder interest, or signs as a trustee.

(g) Home equity conversion mortgage (HECM). The FHA reverse mortgage loan under the department of housing and urban development.

(h) Tenure payment. Equal monthly payments are made by the lender to the borrower or borrowers as long as property remains the principal residence unless the loan becomes due pursuant to paragraph (c) of this subdivision.

(i) Term payment. Equal monthly payments are made by the lender to the borrower or borrowers for a fixed term of months chosen by the borrower, unless the loan becomes due pursuant to paragraph (c) of this subdivision.

(j) Line of credit. Payments are made by the lender to the borrower at times and in amounts determined by the borrower or borrowers, as long as the property remains principal residence, unless the loan becomes due pursuant to paragraph (c) of this subdivision.

(k) Modified tenure. A tenure plan combined with a line of credit feature.

(l) Modified term. A term plan combined with a line of credit feature.

(m) Full draw. All available funds are taken in a one-time single payment.

(n) Partial draw. A portion of the available funds are taken in a single payment.

(o) Principal residence. The dwelling where the borrower maintains a permanent place of abode and typically spends a majority of calendar year. The property shall be considered to be the principal residence of any borrower who is temporarily or permanently in a health care institu-

tion as long as the property is the principal residence of at least one other borrower who is not in a health care institution.

(p) Proprietary reverse mortgage. A non FHA insured loan.

(q) Counselor. Shall be an individual who has met all testing and education requirements of the department of housing and urban development and is included in the HUD approved roster, as long as said roster shall be maintained.

(r) Counseling protocol. Each counselor shall follow HUD's detailed counseling protocol, as updated and amended from time to time. The counseling protocol for all reverse mortgage loans, shall include among other things a discussion of: client needs and circumstances; features of a reverse mortgage loan; borrower responsibility under a reverse mortgage loan; costs to obtain a reverse mortgage; financial and tax implications; alternatives to a reverse mortgage loan; elder abuse issues and warnings about potential reverse mortgage insurance fraud schemes. As long as required by HUD, the certificate can be withheld if the borrower is unable to answer five out of ten questions about reverse mortgage basics, after an explanation of the concept has been stated by the counselor. The counseling protocol can be delivered face to face or over the phone, at the sole option of the borrower.

(s) Counseling certificate. The counselor shall issue a counseling certificate upon the completion of the session by either hand delivery or through the postal service. Among other things, the certificate shall contain the original signature of the counselor; counselor's ID number, and the length of time of the session.

2. A reverse mortgage loan pursuant to this section shall be subject to the following:

(a) [~~the loan to value ratio shall be determined by the superintendent of financial services; and~~

~~(b) subject to~~] such rules or regulations as the superintendent of financial services shall adopt, any authorized lender or any successor or assign of such authorized lender which suspends, ceases or makes late payments to a [~~mortgagor~~] borrower under a reverse mortgage loan shall be subject to forfeiture (as liquidated damages to such [~~mortgagor~~] borrower and not as a penalty) of twice the interest which would otherwise have been earned during the period in which payments were suspended, ceased or made late, provided that said authorized lender or any successor or assign of such authorized lender shall have the right to make payments pursuant to said loan agreement within fifteen days of each payment date, without penalty; and

[~~(c)~~] (b) the outstanding balance may be prepaid [~~in full~~] by the [~~mortgagor~~] borrower without penalty at any time [~~during the term and/or tenure of the loan~~]; provided, however, if said outstanding balance is paid in full, the loan will be deemed satisfied and no longer be in effect; and

[~~(d)~~] (c) an authorized lender is prohibited from using or attaching any property or asset of the [~~mortgagor~~] borrower except the real property, including a cooperative apartment, securing the reverse mortgage loan in settlement of a reverse mortgage obligation; and

[~~(e)~~] (d) the authorized lender must deliver to [~~an applicant~~] a borrower such disclosures as may be required by the superintendent of financial services which shall describe the relevant portions of the reverse mortgage being offered, and shall include but not be limited to the following items:

(i) [~~except for a tenure reverse mortgage loan, a schedule of payments to and from the mortgagor and the total payments in dollars over the~~

~~term of the reverse mortgage loan for both the mortgagor and mortgagee depending on the type of reverse mortgage loan being offered;~~

~~(ii)~~] a statement prominently displayed advising [~~applicants~~] **borrowers** to consult with appropriate authorities regarding tax and estate planning consequences of a reverse mortgage;

[~~(iii)~~] **(ii)** where applicable a description of prepayment and refinancing features;

[~~(iv)~~] **(iii)** the interest rate and, except for a tenure reverse mortgage loan, the total interest payable on the loan;

[~~(v)~~] **(iv)** a statement concerning the compliance of the lender with the criteria established by the superintendent of financial services that an authorized lender must meet before it may make reverse mortgage loans pursuant to this section; and

[~~(vi)~~] **(v)** a statement setting forth those events which would terminate the reverse mortgage loan; and

[~~(f)~~] **(e)** in the event that an authorized lender or holder of the reverse mortgage loan intends to initiate foreclosure proceedings the [~~mortgagor~~] **borrower** shall have the right to designate a third party who shall be notified. In the event that the mortgagor has not designated a third party to receive such notice of foreclosure, then the authorized lender or the holder of said reverse mortgage loan shall notify the local or county office for the aging of its intent to commence foreclosure proceedings. Such entity shall take appropriate action to protect the interests of the [~~mortgagor~~] **borrower**; and

[~~(g)~~] **(f) for all reverse mortgage loans** an authorized lender must deliver to the [~~applicant~~] **borrower**, upon application, if available, a statement prepared by the local or county office for the aging on the [~~advisability and~~] availability of independent counseling [~~and information services~~]. Further, no reverse mortgage [~~commitment shall be issued by an authorized lender~~] **processing of this loan shall begin** until the [~~applicant presents, in writing, a statement that the terms of the reverse mortgage loan have been explained by an attorney, a housing and urban development certified counselor or any other counseling service as indicated on the statement supplied by the county or local office for the aging or a signed affidavit indicating that the applicant, although made aware of the importance of counseling and its local availability through the provision of such information by the authorized lender, chooses not to utilize any of the aforementioned available services. The form of such statement and affidavit shall be developed by the New York state office for the aging~~] **borrower provides to an authorized lender or broker the original counseling certificate allowed under the Federal Housing Administration (FHA) or other programs approved by the superintendent of financial services in consultation with the state office for the aging**; and

[~~(h)~~] **(g)** any such reverse mortgage shall expressly and conspicuously bear a legend identifying it as such; and

[~~(i)~~] **(h)** subject to such rules or regulations as the superintendent of financial services may adopt, a reverse mortgage loan shall be made at either a fixed or variable rate of interest.

(i) The processing of a reverse mortgage shall include the ordering of an appraisal, a title search and a credit report or an FHA case number, when applicable. A reverse mortgage loan cannot be processed, nor shall a borrower incur any processing expense until the borrower completes the required counseling. The processing of a reverse mortgage loan may only proceed once the counseling is complete, as evidenced by the signed and dated counseling certificate.

3. A reverse mortgage loan pursuant to this section may:

(a) provide that the [~~mortgagor's~~] **borrower's** closing costs, including but not limited to loan or commitment fees, if any, insurance premiums, house repairs, legal fees, [~~the cost of annuities,~~] the costs of third-party counseling, the costs of existing mortgages or liens, and other appropriate costs be included in the principal of the reverse mortgage loan and disbursed out of the loan proceeds at closing;

(b) provide for the maintenance of an escrow account by the authorized lender for purposes of payment of real property taxes, insurance on the property securing the loan, or any other fees and expenses as may be permitted by superintendent of financial services regulation;

(c) provide that an authorized lender may, consistent with federal laws and regulations, include a due-on-sale clause in its reverse mortgage loan agreement and at its option exercise and enforce such clause in accordance with its terms.

(d) The borrower shall not be required by an authorized lender or broker to purchase an insurance or annuity product as a requirement or condition of eligibility except for title insurance, hazard insurance, flood or other peril insurance or other such product that are customary and normal to the transaction.

4. The superintendent of financial services shall adopt those rules or regulations as it considers appropriate to govern reverse mortgage loans made pursuant to this section. No reverse mortgage loan shall be made unless it conforms to the requirements of this section and such rules and regulations as the superintendent of financial services may adopt [~~except those reverse mortgage loans made pursuant to section two hundred eighty-a of this article~~]. A reverse mortgage loan made by any authorized lender, national banking association, federal savings and loan association or federal credit union in conformity with applicable federal laws and regulations specifically regulating reverse mortgage loans shall be deemed to conform to the requirements of this section unless such reverse mortgage loan fails to conform to such rules and regulations as the superintendent of financial services has expressly declared to be neither preempted by, nor otherwise inconsistent with such federal laws or regulations. Those rules or regulations shall include, but are not limited to, the form and contents of any disclosure statement, with the exception of the counseling statement prepared by the New York state office for the aging pursuant to paragraph [~~(g)~~] **(f)** of subdivision two of this section, that authorized lenders must provide to [~~mortgagors~~] **borrowers**.

5. Notwithstanding any inconsistent provision of law, the priority of the lien of a reverse mortgage, including the lien for all principal, interest, fees, costs, shared appreciation and other charges assessed in connection with the reverse mortgage, shall date from the recording of the reverse mortgage irrespective of the date of any advance of reverse mortgage loan proceeds or the date by which an authorized lender shall be entitled to shared appreciation or accrued but unpaid interest, fees, costs or other charges.

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

7. The sale or transfer of the real property securing the reverse mortgage loan [~~to a person other than an original mortgagor or mortgagors~~] shall result in the termination of the loan.

8. [~~In a term reverse mortgage loan, the real property securing the reverse mortgage loan may be reappraised by an independent appraiser at the end of the loan term. If the value of the real property has appreciated, the term of the reverse mortgage may be extended or refinanced, however, the total reverse mortgage loan amount may not exceed such amount or ratio as may be determined by the superintendent of financial services. The refinancing of the reverse mortgage loan shall be provided by the original authorized lender or by any other authorized lender designated by the mortgagee.~~

~~9. The principal, including any accrued but unpaid interest, of a reverse mortgage loan agreement entered into pursuant to this section may be insured by the mortgagor. If such insurance is purchased from or otherwise provided by any agency of the state of New York the mortgagor shall be granted the right, for a term reverse mortgage loan, to refinance or extend the reverse mortgage loan at the end of the term, subject to such rules or regulations as the superintendent of financial services may adopt. The authorized lender shall have the option to choose between refinancing or extending the reverse mortgage loan. Subject to obtaining an adequate increase in the insurance and subject to such rules and regulations as the superintendent of financial services may adopt, the total reverse mortgage loan amount shall not exceed such amount or loan to value ratio as may be determined by the superintendent of financial services. The refinancing of the reverse mortgage loan shall be provided by the original authorized lender or by any other authorized lender designated by the mortgagee.~~

~~10. Any authorized lender offering reverse mortgage loans pursuant to this section shall also offer reverse mortgage loans pursuant to section two hundred eighty-a of this article. Subject to this section in the event that an authorized lender makes reverse mortgage loans under this section then that lender must make an equal number of reverse mortgage loans pursuant to section two hundred eighty-a of this article. Such loans shall be made to individuals who meet the requirements promulgated in section two hundred eighty-a of this article provided that such individual seeking the loan would otherwise qualify and be approved for that loan. In the event that no or insufficient applications for reverse mortgage loans pursuant to section two hundred eighty-a of this article are made to a lender who has previously made reverse mortgage loans pursuant to this section then there shall be no requirement for that lender to make a reverse mortgage loan pursuant to section two hundred eighty-a of this article. It shall also not be a requirement that an authorized lender make any reverse mortgage loan to any individual who would not qualify for such loan and/or would not otherwise be approved for such loan.~~

~~11.~~] Nothing contained in this section, section six-h of the banking law or any other provision of law shall be construed to prohibit a banking organization or licensed mortgage banker from providing reverse mortgages to homeowners in this state under the federal housing administration's home equity conversion mortgage insurance demonstration program.

§ 2. Section 280-a of the real property law is REPEALED.

§ 3. Subdivision 1 of section 281 of the real property law, as amended by chapter 613 of the laws of 1993, paragraph (a) as amended by chapter 183 of the laws of 1999, paragraph (b) as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

1. (a) For the purposes of this section, a "credit line mortgage" shall mean any mortgage or deed of trust, other than a mortgage or deed of trust made pursuant to a building loan contract as defined in subdivision thirteen of section two of the lien law, which states that it secures indebtedness under a note, credit agreement or other financing agreement that reflects the fact that the parties reasonably contemplate entering into a series of advances, payments and readvances, and that limits the aggregate amount at any time outstanding to a maximum amount specified in such mortgage or deed of trust. For purposes of this section, "credit line mortgage" shall include a reverse mortgage loan as defined in [~~sections~~] section two hundred eighty [~~and two hundred eighty-a~~] of this article except that such a credit line mortgage of the reverse mortgage loan type shall not be subject to the twenty year limitation set forth in subdivision two of this section.

(b) Payments made by an authorized lender pursuant to any credit line reverse mortgage made in accordance with section two hundred [~~eighty-a~~] eighty of this article during any one year shall be limited to such amount or ratio as may be determined by the superintendent of financial services. [~~In the event that a borrower does not take payment under such credit line during the course of any year then that borrower shall have the ability to increase the yearly payments by that amount available but not borrowed during previous years.~~]

§ 4. The opening paragraph of section 6-h of the banking law, as amended by chapter 613 of the laws of 1993, and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

Notwithstanding any inconsistent provision of law, in addition to any other power exercised by it, every authorized lender, as defined by section two hundred eighty [~~or two hundred eighty-a~~] of the real property law, shall have the power to offer reverse mortgage loans (1) which conform to the provisions of section two hundred eighty [~~or two hundred eighty-a~~] of the real property law and the rules and regulations promulgated by the superintendent of financial services; or (2) which conform to the requirements of the federal housing administration's home equity conversion mortgage insurance [~~demonstration~~] program for as long as such program exists as provided for in section 1715Z-20 of title 12 of the United States Code. "Reverse mortgage" shall mean the mortgage, deed of trust or other security instrument relating to a particular reverse mortgage loan transaction.

§ 5. Paragraph (s) of subdivision 1 of section 14 of the banking law, as amended by section 90 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

(s) To permit authorized lenders, as defined by section two hundred eighty [~~or two hundred eighty-a~~] of the real property law, to offer reverse mortgage loans which shall conform to the provisions of section two hundred eighty [~~or two hundred eighty-a~~] of the real property law.

§ 6. The opening paragraph of paragraph 1 of subsection (c) of section 6501 of the insurance law, as amended by chapter 555 of the laws of 2003, is amended to read as follows:

an amortized instrument of indebtedness evidencing a loan secured by a first lien on real estate which at the time the loan is made is not less than eighty percent but not more than one hundred three percent of the fair market value of the real estate with any percentage in excess of one hundred percent being used to finance the fees and closing costs on such indebtedness, except, however, for reverse mortgage loans made

pursuant to [~~sections~~] **section** two hundred eighty [~~and two hundred eighty-a~~] of the real property law; provided that:

§ 7. Subdivision 16 of section 2426 of the public authorities law, as added by chapter 613 of the laws of 1993, is amended to read as follows:

16. Reverse mortgage. A reverse mortgage loan pursuant to section two hundred eighty [~~or two hundred eighty-a~~] of the real property law shall mean a loan which is secured by a first mortgage on real property improved by a one to four-family residence or condominium **or cooperative apartment** that is the residence of the [~~mortgagor~~] **borrower**, the proceeds of which are advanced to the mortgagor during the loan term in equal installments, in advances through a line of credit or otherwise, in lump sums, or through a combination thereof. A reverse mortgage may be structured to provide for the addition of accrued but unpaid interest to principal**, and mortgage insurance premium in the amount of one and one-quarter percent of the outstanding balance remaining or such other amount as may be required by the Federal Department of Housing and Urban Development**. Such reverse mortgage loan may provide for an initial lump-sum advance wherein the mortgagor may receive an amount necessary to pay closing costs, including but not limited to loan or commitment fees, if any, insurance premiums, the cost of house repairs, legal fees, [~~the cost of annuities,~~] the costs of third party counseling, the amount necessary to pay off existing mortgages or liens, and other appropriate costs.

§ 8. Paragraph (b) of subdivision 3-b of section 2428 of the public authorities law, as added by chapter 613 of the laws of 1993, and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

(b) the reverse mortgage loan is issued pursuant to section two hundred eighty [~~or two hundred eighty-a~~] of the real property law;

§ 9. Subdivision 2 of section 252-a of the tax law, as amended by chapter 613 of the laws of 1993, is amended to read as follows:

2. Reverse mortgages conforming to the provisions of section two hundred eighty [~~or two hundred eighty-a~~] of the real property law securing obligations of mortgagors or exempted therefrom pursuant to subdivision four of section two hundred eighty [~~or subdivision four of section two hundred eighty-a~~] of the real property law shall be exempt from any tax or fee imposed by this article. In each case where an exemption is claimed under this subdivision, the lender shall provide documentation in a format approved by the commissioner [~~of taxation and finance~~] to enable recording officers to affirmatively determine when a mortgage being presented for recording is a reverse mortgage conforming to such provisions of the real property law and entitled to an exemption under this subdivision. Where such documentation is not furnished, the maximum principal debt or obligation which shall be the measure of the tax imposed by and pursuant to the authority of this article in the case of a reverse mortgage shall be the proceeds of the loan which the authorized lender is obligated to lend the borrower at the execution of such mortgage or at any time thereafter but determined without regard to any contingency relating to the addition of any unpaid interest to principal or relating to any percentage of the future appreciation of the property securing the loan as consideration or additional consideration for the making of the loan. Provided, however, if subsequent to the recording of such mortgage, the proceeds which the authorized lender is obligated to lend the borrower are increased at any time, such new or further indebtedness or obligation shall be the measure of the tax at such time unless

at that time an exemption is applicable under the first sentence of this subdivision or otherwise.

§ 10. Section 131-x of the social services law, as amended by section 73 of part B of chapter 436 of the laws of 1997, is amended to read as follows:

§ 131-x. Reverse mortgage loans. Notwithstanding any other inconsistent provisions of law and to the extent permissible under federal law, regulation or waiver, the proceeds of a reverse mortgage loan made in conformity with the requirements of section two hundred eighty [~~or two hundred eighty-a~~] of the real property law or exempted therefrom pursuant to subdivision four of section two hundred eighty [~~or subdivision four of section two hundred eighty-a~~] of the real property law shall not be considered as income or resources of the mortgagor for any purpose under any law relating to food stamps, public assistance, veteran assistance, safety net assistance, low-income home energy assistance, federal supplemental security income benefits and/or additional state payments, medical assistance, any prescription drug plan or other payments, allowances, benefits or services available pursuant to this chapter; provided, however, that for applicants or for recipients of safety net assistance, any such reverse mortgage loan proceeds shall be disregarded as income and/or resources only in the event that, and for so long as, federal laws and regulations exempt loan proceeds in the determination of eligibility for both the aid to families with dependent children and supplemental security income programs.

§ 11. This act shall take effect immediately.