STATE OF NEW YORK

2632

2019-2020 Regular Sessions

IN ASSEMBLY

January 24, 2019

Introduced by M. of A. DINOWITZ, WILLIAMS, L. ROSENTHAL, ORTIZ, SEAWRIGHT, ENGLEBRIGHT, HYNDMAN, BARRON, BLAKE, GLICK, D'URSO, DICKENS, RIVERA, GALEF, ARROYO, COOK, STERN, RICHARDSON -- Multi-Sponsored by -- M. of A. SIMON -- read once and referred 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:

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

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

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

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

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

(d) 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

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

LBD01344-01-9

reverse mortgage loans by the superintendent or any entity exempted from licensing pursuant to section five hundred ninety of this chapter and approved for the making of reverse mortgage loans by the superintendent.

(e) Borrower. A tenant in severalty who is seventy years of age or older, or if the cooperative apartment unit is held by tenants by the entirety or by joint tenancy, the youngest of which is seventy years of age or older and whose income does not exceed eighty percent of the median income of the county in which he or she resides.

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

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

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

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

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

(d) subject to such rules or regulations as the superintendent shall adopt, for that period of time commencing at the end of the loan term or ten years after the reverse cooperative apartment unit loan commences, whichever occurs first, and ending at such time as the reverse cooperative apartment unit loan is paid in full, the authorized lender, at its option, may receive no more than twenty percent of the future appreciation of the property securing the reverse cooperative apartment unit loan as full or partial consideration for the making of a reverse cooperative apartment unit loan; provided, however, that such future appreciation shall be limited by such rules and regulations as the superintendent may adopt or the authorized lender may charge a fixed rate of interest on the outstanding balance of monies advanced under the reverse mortgage agreement or any combination thereof. Said reverse cooperative apartment unit loan shall not come due and shall be extended until the voluntary relinquishment by the borrowers of possessory interest in such cooperative apartment unit, the apartment unit no longer being the borrowers' principal residence, the death of the borrowers, or such other events as may be determined by the superintendent. Any such appreciation shall not be considered interest for the purposes of any law regulating the maximum rate of interest which may be charged, taken or received including sections 190.40 and 190.42 of the penal law; and

(e) the authorized lender shall maintain an escrow account for the purposes of paying real property taxes, insurance premiums of the property securing the reverse cooperative apartment unit loan, or for the payment of any other fees and expenses as may be permitted by the superintendent regulation; and

(f) subject to such rules or regulations as the superintendent may adopt, an authorized lender or any successor or assign of such authorized lender which may suspends, ceases or makes late payments to a borrower under a reverse cooperative apartment unit loan shall be subject to forfeiture (as liquidated damages to such 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

(g) an authorized lender must deliver to an applicant such disclosures as may be required by the superintendent which shall describe the relevant portions of the reverse loan being offered, and shall include but not be limited to the following items:

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

(ii) a statement prominently displayed advising applicants to consult with appropriate authorities regarding tax and estate planning consequences of a reverse cooperative apartment unit loan;

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

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

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

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

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

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

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

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

(j) an authorized lender must deliver to the applicant upon application, 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 loan commitment shall be issued by the authorized lender until the applicant presents, in writing, a statement that the terms of the reverse cooperative apartment unit loan have been explained to them 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. The form of such statement and affidavit shall be developed by the New York state office for the aging; and

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

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

(m) in the event that an authorized lender or holder of the reverse cooperative apartment unit loan intends to initiate foreclosure proceedings the 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 cooperative apartment unit 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 borrower; and

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

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

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

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

(b) provide that the borrower's closing costs, including but not limited to loan or commitment fees if any, insurance premiums, repairs, legal fees, the costs 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 cooperative apartment unit loan and disbursed out of the loan proceeds at closing.

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

(a) any limitations on the taking of a percentage of the future appreciation of the unit securing the reverse cooperative apartment unit loan as consideration for making the reverse loan;

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

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

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

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

5. Notwithstanding any inconsistent provision of law, the priority of the lien of a reverse cooperative apartment unit loan, including the lien for all principal, interest, fees, costs, shared appreciation and other charges assessed in connection with the reverse loan, shall date from the recording of the loan irrespective of the date of any advance of reverse 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 interest in the cooperative apartment unit securing the reverse loan to a person other than an original borrower or borrowers shall result in the termination of the reverse loan.

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

9. The principal, including any accrued but unpaid interest, of a reverse cooperative apartment unit loan agreement entered into pursuant to this section must be insured by the borrower. If such insurance is purchased from or otherwise provided by any agency of the state of New York, the borrower shall be granted the right, for a term cooperative apartment unit loan, to refinance or extend the reverse cooperative apartment unit loan at the end of the term, subject to such rules and regulations as the superintendent 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 may adopt, the total reverse cooperative apartment unit loan amount shall not exceed such amount or ratio as may be determined by the superintendent. The refinancing of the reverse cooperative apartment unit loan shall be provided by the original authorized lender or by any other authorized lender.

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

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

YOU COULD LOSE YOUR COOPERATIVE APARTMENT UNIT TO FORECLOSURE.
PLEASE READ THE FOLLOWING NOTICE CAREFULLY.

Date
Borrower's address

Loan Number:
Property Address:
Dear Borrower(s):

As of _____, we as your lender or servicer claim that your reverse 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 available at http://www.dfs.ny.gov/consumer/mortg nys np counseling agencies.htm. You may also call your local Department of Aging for a referral or call 311 if you live in New York City.

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

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

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

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

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

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

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

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

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

(2) The borrower has clearly indicated that he or she will not cooperate in the interview,

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

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

(c) A reasonable effort to arrange a face-to-face meeting with the borrower shall consist at a minimum of one letter sent to the borrower certified by the Postal Service as having been dispatched. Such a reasonable effort to arrange a face-to-face meeting shall also include at least one trip to see the borrower at the unit, unless it is known that the mortgagor is not residing in the mortgaged property. In addition, the lender must document that it has made at least one telephone call to the borrower for the purpose of trying to arrange a face-to-face interview. The lender may appoint an agent to perform its responsibilities under this rule.

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