

# STATE OF NEW YORK

3686--A

2019-2020 Regular Sessions

## IN SENATE

February 12, 2019

Introduced by Sens. BIAGGI, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 sixty-two  
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 or intended to be the  
8 principal residence of the borrower or borrowers the proceeds of which  
9 are used to purchase the property, or advanced to the borrower or  
10 borrowers during the term of the loan in equal installments, or in  
11 advances through a line of credit or otherwise, in a lump sum, or  
12 through a combination thereof.

13 (b) Loan payout options:

14 (i) Term payment option. Under the term payment option, equal monthly  
15 payments are made by the lender to the borrower for a fixed term of  
16 months chosen by the borrower.

17 (ii) Tenure payment option. Under the tenure payment option, equal  
18 monthly payments are made by the lender to the borrower, until the loan  
19 is prepaid in full or becomes due and payable.

20 (iii) Line of credit payment option. Under the line of credit payment  
21 option, payments are made by the lender to the borrower at times and in

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

LBD01344-05-9

1 amounts determined by the borrower as long as the amounts do not exceed  
2 the maximum amount of loan proceeds.

3 (iv) Single lump sum payment option. Under the single lump sum payment  
4 option, the borrower receives an amount from the lender that does not  
5 exceed the maximum amount of loan proceeds. Set asides required for  
6 disbursements such as loan closing costs or for monthly maintenance  
7 fees, will be deducted from the amount of proceeds available to the  
8 borrower.

9 (c) Authorized lender. Any bank, trust company, national banking asso-  
10 ciation, savings bank, savings and loan association, federal savings  
11 bank, federal savings and loan association, credit union, or federal  
12 credit union or any licensed mortgage banker approved for the making of  
13 reverse mortgage loans by the superintendent or any entity exempted from  
14 licensing pursuant to section five hundred ninety of this chapter and  
15 approved for the making of reverse mortgage loans by the superintendent.

16 (d) Borrower. A tenant in severalty who is sixty-two years of age or  
17 older, or if the cooperative apartment unit is held by tenants by the  
18 entirety or by joint tenancy, the youngest of which is sixty-two years  
19 age or older.

20 (e) Superintendent. The superintendent of financial services of this  
21 state.

22 (f) Department. The department of financial services of this state.

23 (g) Third-party contact. The borrower may designate a third-party  
24 contact, such as a family member, trusted friend, advisor or other party  
25 whom the borrower would like to be contacted. It shall be the borrower's  
26 discretion to choose if the third-party contact is to be contacted if  
27 (i) the borrower has not returned the occupancy form, and/or (ii) the  
28 loan is in default for any reason and the lender plans to proceed on  
29 collecting on the loan, and/or (iii) the borrower cannot be reached.

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

32 (a) the borrower shall be granted lifetime possession of the subject  
33 premises of the cooperative apartment unit which is the security for the  
34 reverse cooperative apartment unit loan, as long as such apartment unit  
35 remains the borrowers' principal residence and the borrower is not in  
36 default under the reverse cooperative apartment unit loan. The borrower  
37 or borrowers must certify annually on each anniversary of the loan, that  
38 they reside in the unit and that it is their primary residence;

39 (b) the lender shall ask the borrower if they designate a third party  
40 contact, collect such information from the borrower and update such  
41 information annually on each anniversary of the loan;

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

45 (d) subject to such rules or regulations as the superintendent may  
46 adopt, the authorized lender may require a borrower to establish a set  
47 aside account for the purposes of paying property taxes, maintenance or  
48 cooperative fees, insurance premiums of the property securing the  
49 reverse cooperative apartment unit loan, or for the payment of any other  
50 fees and expenses;

51 (e) subject to such rules or regulations as the superintendent may  
52 adopt, an authorized lender or any successor or assign of such author-  
53 ized lender which suspends, ceases or makes late payments to a borrower  
54 as provided under a reverse cooperative apartment unit loan shall be  
55 subject to forfeiture (as liquidated damages to such borrower and not as  
56 a penalty) of twice the interest which would otherwise have been earned

1 during the period in which payments were suspended, ceased, or made  
2 late; provided a lender or any successor or assign is not required to  
3 make payments under a reverse cooperative apartment unit loan if a matu-  
4 urity event under the loan has occurred or a borrower is in default under  
5 the loan;

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

9 (g) an authorized lender is prohibited from using or attaching any  
10 property or asset of the borrower or heirs of the borrower except the  
11 apartment unit securing the reverse cooperative apartment unit loan in  
12 settlement of a reverse loan obligation--the loan is a non-recourse  
13 loan;

14 (h) an authorized lender shall deliver to the applicant upon applica-  
15 tion, a statement prepared by the department providing the contact  
16 information for New York approved housing counselors whom the cooper-  
17 ative apartment owner can call for independent counseling and informa-  
18 tion services. Further, no reverse loan commitment shall be issued by  
19 the authorized lender until the applicant presents, in writing, a form  
20 that certifies the terms of the reverse cooperative apartment unit loan  
21 have been explained to them by a New York approved housing counselor.  
22 The form of such statement and affidavit shall be developed by the  
23 superintendent;

24 (i) an authorized lender shall deliver to an applicant such disclo-  
25 tures as may be required by the superintendent which shall describe the  
26 relevant portions of the reverse loan being offered, and shall include  
27 but not be limited to the following items:

28 (i) a schedule of payments to and from the borrower and the total  
29 payments in dollars over the life expectancy of the youngest borrower of  
30 the reverse cooperative apartment unit loan for the borrower;

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

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

36 (iv) to the extent determinable at or prior to the inception of the  
37 reverse cooperative apartment unit loan, the interest rate and, an esti-  
38 mate of the total interest payable on the reverse cooperative apartment  
39 unit loan;

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

44 (vi) a statement setting forth those events which would cause the loan  
45 to become due and payable (or cause the borrower to default) the reverse  
46 cooperative apartment unit loan;

47 (vii) the loan, if not a purchase money loan, is subject to a three  
48 day right of rescission by the borrower; and

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

51 (j) an authorized lender shall deliver to each borrower at the time of  
52 closing of a reverse cooperative unit loan two copies of the borrower's  
53 right to cancel and instructions for how to cancel the loan to be  
54 prescribed by the superintendent;

1 (k) a reverse cooperative apartment unit loan pursuant to this section  
2 shall expressly and conspicuously bear a legend identifying it as such  
3 in at least fourteen-point font;

4 (1) a reverse cooperative apartment unit loan shall clearly set forth  
5 the terms for when the loan becomes due and payable, including:

6 (i) regardless of loan payout option chosen by the borrower, the loan  
7 note shall state that the outstanding loan balance will not be due and  
8 payable in full until the last borrower dies, or if a borrower conveys  
9 all of his or her title in the property and no other borrower retains  
10 title to the property; and

11 (ii) the loan note shall state that the outstanding loan balance shall  
12 be due and payable in full, upon approval of the superintendent, if any  
13 of the following occur:

14 (1) the property ceases to be the principal residence of a borrower  
15 for reasons other than death and the property is not the principal resi-  
16 dence of at least one other borrower;

17 (2) for a period of longer than twelve consecutive months, a borrower  
18 fails to occupy the property because of physical or mental illness and  
19 the property is not the principal residence of at least one other  
20 borrower; or

21 (3) an obligation of the borrower under the loan note is not met;

22 (m) in the event that an authorized lender or holder of the reverse  
23 cooperative apartment unit loan determines the loan is in default and  
24 intends to initiate proceedings pursuant to the note, the lender shall  
25 notify the borrower's third-party contact. In the event that the borrow-  
26 er has not designated a third-party contact to receive such notice of  
27 foreclosure, then the authorized lender or the holder of said reverse  
28 cooperative apartment unit loan shall notify the local or county office  
29 for the aging of its intent to commence foreclosure proceedings. Such  
30 entity shall take appropriate action to protect the interests of the  
31 borrower;

32 (n) a reverse cooperative apartment unit loan secured by a unit in a  
33 cooperative housing development shall also be subject to the prior  
34 approval by the cooperative housing association's board of directors;  
35 and

36 (o) no reverse cooperative apartment unit loan shall be subject to  
37 mandatory binding arbitration.

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

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

44 (b) provide that the borrower's closing costs, including but not  
45 limited to loan or commitment fees if any, insurance premiums, repairs,  
46 legal fees, the costs of third party counseling, the costs of paying off  
47 any existing mortgages or liens, and other appropriate costs be included  
48 in the principal of the reverse cooperative apartment unit loan and  
49 disbursed out of the loan proceeds at closing.

50 4. The superintendent shall adopt such rules or regulations as he or  
51 she considers appropriate to govern a reverse cooperative apartment unit  
52 loan made pursuant to this section. No reverse cooperative apartment  
53 unit loan shall be made unless it conforms to the requirements of this  
54 section and such rules and regulations as the superintendent may adopt.

55 5. No authorized lender or any other party or entity shall in any  
56 manner, in the marketing or offering of reverse cooperative apartment

1 unit loans, engage in any unfair or deceptive practices in connection  
2 with the marketing or offering of reverse cooperative apartment unit  
3 loans, and, additionally, shall not:

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

6 (b) use the words "government insured" or other similar language  
7 representing that reverse cooperative apartment unit loans are insured,  
8 supported and sponsored by any governmental entity in any commercial,  
9 mailing, advertisement or writing relating thereto; or

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

11 6. (a) Every authorized lender or its agent shall provide, with any  
12 solicitation for reverse cooperative apartment unit loan products mailed  
13 to a physical address within the state, supplemental consumer protection  
14 materials the content and form of which shall be specified by the super-  
15 intendent or his or her designee.

16 (b) Every authorized lender shall provide each applicant or potential  
17 applicant for a reverse cooperative apartment unit loan with the tele-  
18 phone number and internet website address provided by the department for  
19 the purposes of acquiring reverse cooperative apartment unit loan coun-  
20 seling.

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

24 7. For reverse cooperative apartment unit loans, authorized lender and  
25 their agents shall:

26 (a) provide a monthly account statement, and for all borrowers whose  
27 maintenance fees, special assessments mortgage insurance payments, home-  
28 owners insurance payments, or payments stemming from any other property  
29 obligation or obligations are administered by the authorized lender, and  
30 where these payments are derived from the proceeds of the loan, the  
31 authorized lender shall provide on the borrower's account statement the  
32 current balance remaining in the borrower's line of credit or lifetime  
33 expectancy set aside, the projected annual property charges for that  
34 year, and a notice which reads in at least twelve point type:

35 "YOUR MAINTENANCE FEES AND SPECIAL ASSESSMENTS ARE CURRENTLY BEING  
36 PAID BY THE PROCEEDS OF THIS LOAN. THE FUNDS THAT HAVE BEEN SET ASIDE  
37 ARE EXPECTED TO BE EXHAUSTED AFTER THE MAINTENANCE FEES AND SPECIAL  
38 ASSESSMENT PAYMENTS OF (SPECIFY EXPECTED MONTH AND YEAR). IF THE  
39 PROCEEDS OF THIS LOAN CANNOT PAY THE MAINTENANCE FEES AND SPECIAL  
40 ASSESSMENTS, YOU MUST PAY THESE OBLIGATIONS OR YOUR COOP SHARES MAY BE  
41 LOST TO FORECLOSURE. PLEASE NOTE THAT MAINTENANCE FEES AND SPECIAL  
42 ASSESSMENTS CAN VARY SO YOU SHOULD CONTINUE TO REVIEW THIS NOTICE FOR  
43 CHANGES."

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



1 by telephone, notice must be sent to the third-party contact if author-  
2 ized by the borrower.

3 (c) Each authorized lender shall, by telephone and first class mail,  
4 inform and provide notice to a borrower when his or her home equity line  
5 of credit or life expectancy set aside is depleted. Such notice shall  
6 inform the borrower of his or her obligations relating to the cooper-  
7 ative apartment unit including, but not limited to, mortgage insurance,  
8 homeowners insurance and real property taxes, and that the home equity  
9 line of credit or life expectancy set aside will no longer pay these  
10 obligations. Such notice shall use plain language, written in a clear  
11 and coherent manner using words with common and every day meanings,  
12 appropriately divided and captioned by its various sections.

13 8. In the event that an authorized lender determines a reverse cooper-  
14 ative apartment unit loan to be in default on the basis that the cooper-  
15 ative apartment is no longer the primary residence of or occupied by the  
16 borrower, if during the verification of the borrower's primary residence  
17 and/or occupancy no responses are received in response to mailings  
18 relating thereto, such lender shall cause a telephone call to be made to  
19 the borrower, or if the borrower is unreachable by telephone, to the  
20 third-party contact if designated, and an in person visit to be made to  
21 the borrower at the cooperative apartment to be made prior to the  
22 commencement of any proceeding to enforce the lender's rights under the  
23 note. During such visit, the authorized lender or its agent shall  
24 provide clear information as to who they are, that the visit pertains to  
25 the reverse cooperative apartment unit loan, the reason for the home  
26 visit, and the telephone number to call for further information. The  
27 authorized lender must wait at least thirty days following such visit,  
28 in addition to any additional time or notice requirements specified by  
29 any other provision of law, before initiating a foreclosure action on  
30 the basis that the cooperative apartment is no longer the primary resi-  
31 dence of the borrower. If the borrower contacts the authorized lender  
32 and provides proof of residence or occupancy after such visit but before  
33 the commencement of a proceeding to enforce the lender's rights under  
34 the note, the authorized lender shall be barred from initiating such  
35 action. Furthermore, no authorized lender shall charge a borrower 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 cooperative apart-  
39 ment unit loan, or any suspected or actual default condition.

40 9. Notwithstanding any inconsistent provision of law, the priority of  
41 the lien of a reverse cooperative apartment unit loan, including the  
42 lien for all principal, interest, fees, costs, and other charges  
43 assessed in connection with the reverse loan, shall date from the  
44 recording of the loan irrespective of the date of any advance of reverse  
45 loan proceeds or the date by which an authorized lender shall be enti-  
46 tled to accrued but unpaid interest, fees, costs or other charges.

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

51 11. The sale or transfer of the interest in the cooperative apartment  
52 unit securing the reverse cooperative apartment unit loan to a person  
53 other than an original borrower or borrowers shall result in the termi-  
54 nation of the reverse loan.

12. 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.

13. Any person who has been injured by reason of any violation of this section or any violation of the rules and regulations of the department relating to the reverse cooperative apartment unit loan program may bring an action in his or her own name to recover treble his or her actual damages, plus the prevailing plaintiff's reasonable attorneys' fees.

14. Compliance with the provisions of this section shall be conditions precedent to commencing an action to foreclose upon a reverse cooperative apartment unit loan which is subject to the provisions of this section, and the failure to comply therewith shall be a complete defense to such action.

§ 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 secured party, as defined under Section 9-102(a)(73), or its agent takes any steps to dispose of its collateral, as provided for in Section 9-610, the secured party or its agent shall give notice to the borrower, and separate notice to the borrower's designated third-party if one has been designated in at least fourteen-point type except for the heading which shall be in at least sixteen-point type. The notice 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) {or heirs of Debtor?}:

As of \_\_\_\_\_, your reverse cooperative apartment unit loan is 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.

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 pay maintenance on your unit to the cooperative corporation, and {servicer} paid your maintenance for you on the following date(s) in the following amount(s):

You did not make required repairs to your unit

If the claim is based on your failure to pay maintenance to the cooperative corporation, you can cure this default by making the payment of \$\_\_\_\_\_ for the advances 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.

1 OPTIONS MAY BE AVAILABLE FOR YOU TO CURE YOUR DEFAULT. SOME OF THESE  
2 OPTIONS ARE LISTED BELOW. YOU MAY CONTACT {SERVICER} AT {TOLL-FREE  
3 NUMBER} TO DISCUSS YOUR OPTIONS.

4 If you are in default for failure to pay maintenance, you may qualify  
5 for a re-payment plan to cure the default balance owed.

6 Attached to this notice is a list of New York approved housing coun-  
7 seling agencies and legal services in your area which provide free coun-  
8 seling. A statewide listing by county is also available at  
9 [http://www.dfs.ny.gov/consumer/mortg\\_nys\\_np\\_counseling\\_agencies.htm](http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm).  
10 You may also call your local Department of Aging for a referral or call  
11 311 if you live in New York City.

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

14 You may also contact {SERVICER} directly at \_\_\_\_\_ and ask to  
15 discuss all possible options to allow you to cure your default and  
16 prevent the foreclosure of your home. While we cannot ensure that a  
17 resolution is possible, we encourage you to take immediate steps to try  
18 to achieve a resolution. The longer you wait, the fewer options you may  
19 have.

20 If you have not taken any actions to resolve this matter within ninety  
21 days from the date this notice was mailed, we will have the right to  
22 take your cooperative shares from you.

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

26 IMPORTANT: You have the right to remain in your unit until you receive a  
27 court order telling you to leave the property. If a foreclosure action  
28 is filed against you in court, you still have the right to remain in the  
29 unit until a court orders you to leave. You legally remain the owner of  
30 your cooperative shares and are responsible for the unit until the  
31 shares are transferred to a new owner through a sale. However, there  
32 will be no court proceeding before the shares are transferred to a new  
33 owner. After the shares are transferred, the new owner may begin a court  
34 proceeding to evict you from the unit.

35 This notice is not an eviction notice.

36 § 3. The civil practice law and rules is amended by adding a new rule  
37 3410 to read as follows:

38 Rule 3410. Face-to-face meeting for foreclosure of reverse cooperative  
39 apartment unit loans. (a) In any action involving a reverse cooperative  
40 apartment unit loan, as defined in paragraph (a) of subdivision one of  
41 section six-n of the banking law, the lender shall file a petition with  
42 the supreme court of the county in which the cooperative apartment is  
43 located stating that the loan is in default and the reason for the  
44 default. The petition must be served on the borrower pursuant to section  
45 three hundred eight of this chapter. Within ten days of the date of  
46 service of the notice to the borrower, the petitioner must file a  
47 specialized request for judicial intervention with the clerk. Within  
48 sixty days of receipt of the notice or on such adjourned date as has  
49 been agreed to by the parties, the court shall hold a mandatory settle-  
50 ment conference for the purpose of holding settlement discussions  
51 pertaining to the relative rights and obligations of the parties under  
52 the loan documents, including, but not limited to:

53 1. determining whether the parties can reach a mutually agreeable  
54 resolution to help the borrower avoid losing his or her cooperative  
55 apartment unit, and evaluating the potential for a resolution in which



1 payment schedules or amounts may be modified or other workout options  
2 may be agreed; or

3 2. whatever other purposes the court deems appropriate.

4 (b) At any meeting held pursuant to this section, the lender and the  
5 borrower shall appear in person or by counsel, and each party's repre-  
6 sentative at the meeting shall be fully authorized to dispose of the  
7 matter. If the borrower is appearing without counsel, the court shall  
8 inform the borrower of the nature of the action and his or her rights  
9 and responsibilities. Where appropriate, the court may permit the  
10 borrower or a representative of the borrower or the defendant to attend  
11 the settlement conference telephonically or by video-conference.

12 (c) Upon the filing of the notice of default with the court, the court  
13 shall send either a copy of the notice or the borrower's name, address  
14 and telephone number (if available) to a housing counseling agency or  
15 agencies on a list designated by the department for the geographic  
16 region in which the borrower resides. Such information shall be used by  
17 the designated housing counseling agency or agencies exclusively for the  
18 purpose of making the borrower aware of housing counseling and foreclo-  
19 sure prevention services and options available to them.

20 (d) The court shall promptly send a notice to parties advising them of  
21 the time and place of the meeting, the purpose of the meeting and the  
22 requirements of this section. The notice shall be in a form prescribed  
23 by the court, and shall advise the parties of the documents that they  
24 shall bring to the meeting.

25 (e) Both the lender and the borrower shall negotiate in good faith to  
26 reach a mutually agreeable resolution, including but not limited to a  
27 loan modification, payment agreement, or any other loss mitigation, if  
28 possible. Compliance with the obligation to negotiate in good faith  
29 pursuant to this section shall be measured by the totality of the  
30 circumstances, including but not limited to the following factors:

31 1. compliance with the requirements of this rule and applicable regu-  
32 lations pertaining to the face-to-face meeting process;

33 2. compliance with applicable lending and servicing laws, rules, regu-  
34 lations, investor directives, and loss mitigation standards or options;  
35 and

36 3. conduct consistent with efforts to reach a mutually agreeable  
37 resolution, including but not limited to, avoiding unreasonable delay,  
38 appearing at the meeting with authority to fully dispose of the matter,  
39 avoiding moving forward to take possession while loss mitigation appli-  
40 cations and attempts are pending, and providing accurate information to  
41 the department and all parties.

42 Neither of the parties' failure to make the offer or accept the offer  
43 made by the other party is sufficient to establish a failure to negoti-  
44 ate in good faith.

45 (f) A party to a default action may not charge, impose, or otherwise  
46 require payment from the other party for any cost, including but not  
47 limited to attorneys' fees, for appearance at or participation in the  
48 settlement conference process.

49 (g) A settlement conference is not required if:

50 1. the borrower does not reside in the unit; or

51 2. a repayment plan or other workout consistent with the borrower's  
52 circumstances is entered into to bring the borrower's account current or  
53 otherwise cure the default thus making a meeting unnecessary.

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