STATE OF NEW YORK

4407

2019-2020 Regular Sessions

IN SENATE

March 11, 2019

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

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:

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

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

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

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

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

2. No authorized lender or any other party or entity shall in any manner, in the marketing or offering of reverse mortgage loans, engage in any unfair or deceptive practices in connection with the marketing or offering of reverse mortgage loans, and, additionally, shall not:

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

(b) use the words "government insured" or other similar language representing that reverse mortgage loans are insured, supported and

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

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sponsored by any governmental entity in any commercial, mailing, advertisement or writing relating thereto; or

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

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

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

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

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

(b) For all borrowers whose tax payments, mortgage insurance payments, homeowners insurance payments, or payments stemming from any other property obligation or obligations are administered by the authorized lender, and where these payments are derived from the proceeds of the mortgage, the authorized lender shall provide on the borrower's periodic account statement the current balance remaining in the borrower's line of credit or lifetime expectancy set aside, the projected annual property charges for that year, and a notice which reads in at least twelve point type: "YOUR TAXES AND INSURANCE ARE CURRENTLY BEING PAID BY THE PROCEEDS OF THIS MORTGAGE. THE FUNDS THAT HAVE BEEN SET ASIDE ARE EXPECTED TO BE EXHAUSTED AFTER THE TAX AND INSURANCE PAYMENTS OF (SPECIFY EXPECTED MONTH AND YEAR). IF THE PROCEEDS OF THIS MORTGAGE CANNOT PAY THE TAXES AND INSURANCE, YOU MUST PAY THESE OBLIGATIONS OR YOUR HOME MAY BE LOST TO FORECLOSURE. PLEASE NOTE THAT AS TAX AND INSURANCE AMOUNTS CAN VARY YOU SHOULD CONTINUE TO REVIEW THIS NOTICE FOR CHANGES."

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

(d) Each authorized lender shall, by telephone and first class mail, inform and provide notice to a mortgagor when his or her home equity line of credit or life expectancy set aside is depleted. Such notice shall inform the mortgagor of his or her obligations relating to the mortgaged real property including, but not limited to, mortgage insurance, homeowners insurance and real property taxes, and that the home equity line of credit or life expectancy set aside will no longer pay these obligations. Such notice shall use plain language, written in a

clear and coherent manner using words with common and every day meanings, appropriately divided and captioned by its various sections.

5. No authorized lender shall make an advance payment for any obligation arising from mortgaged real property. Furthermore, in the event a mortgagor defaults upon the payment of mortgage insurance premium, homeowners' insurance premium or real property tax related to the mortgaged property, the authorized lender may only pay those premiums and/or taxes which are in arrears.

6. In the event that an authorized lender seeks to foreclose on a reverse mortgage loan on the basis that the mortgaged real property is no longer the primary residence of or occupied by the mortgagor, if during the verification of the mortgagor's primary residence and/or occupancy no responses are received in response to mailings relating thereto, such lender shall cause a telephone call to be made to the mortgagor, or if the mortgagor is unreachable by telephone, a designated third-party specified by the mortgagor, and an in person visit to be made to the mortgagor at the mortgaged real property to be made prior to the commencement of any foreclosure proceeding. During such visit, the authorized lender or its agent shall provide clear information as to who they are, that the visit pertains to the reverse mortgage, the reason for the home visit, and the telephone number to call for further information. The authorized lender must wait at least thirty days following such visit, in addition to any additional time or notice requirements specified by any other provision of law, before initiating a foreclosure action on the basis that the mortgaged real property is no longer the primary residence of the mortgagor. If the mortgagor contacts the authorized lender and provides proof of residence or occupancy after such visit but before the commencement of a foreclosure action, the authorized lender shall be barred from initiating such foreclosure action. Furthermore, no authorized lender shall charge a mortgagor any fee for any such visit and inspection. This prohibition on the imposition of fees shall include any and all inspections conducted by the authorized lender to verify the status of the reverse mortgage, or any suspected or actual default condition.

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

8. Any person who has been injured by reason of any violation of this section or any violation of the rules and regulations of the federal Department of Housing and Urban Development relating to the home equity conversion mortgage 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 attorney's fees.

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

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