

STATE OF NEW YORK

7724

IN SENATE

January 7, 2022

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

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. Subdivision 2 of section 6-o of the banking law, as added
2 by a chapter of the laws of 2021 amending the banking law, the uniform
3 commercial code and the civil practice law and rules relating to reverse
4 cooperative apartment unit loans, as proposed in legislative bills
5 numbers A. 1508 and S. 760, is amended to read as follows:

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

8 (a) the borrower shall be granted lifetime possession of the subject
9 premises of the cooperative apartment unit for which [~~is~~] the shares or
10 membership are the security for the reverse cooperative apartment unit
11 loan, as long as such apartment unit remains the borrowers' primary
12 residence and the borrower is not in default under the reverse cooper-
13 ative apartment unit loan. The borrower or borrowers must certify annu-
14 ally on each anniversary of the loan, that they reside in the unit and
15 that it is their primary residence;

16 (b) [~~the lender shall ask the borrower if they designate a third party~~
17 ~~contact, collect such information from the borrower and update such~~
18 ~~information annually on each anniversary of the loan]~~ annually the lend-
19 er shall advise the borrower or borrowers of the name and contact infor-
20 mation, if any, on file for a third-party contact designated pursuant to
21 paragraph (g) of subdivision one of this section and ask if the borrower
22 or borrowers want to update or change the information for the third-par-
23 ty contract;

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

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

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

(e) a lender who fails to make loan advances as required in the loan documents, and fails to cure an actual default after notice as specified in the loan documents, shall forfeit any right to collect interest or service charges under the contract. The lender's right to recovery at loan maturity shall be limited to the outstanding balance as of the date of lender's default, minus all interest. However, a lender shall not be required to make loan advances under a loan if the borrower is in default under the loan;

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

(g) an authorized lender is prohibited from using or attaching any property or asset of the borrower or heirs of the borrower except the shares or membership representing an ownership interest in the apartment unit securing the reverse cooperative apartment unit loan in settlement of a reverse loan obligation--the loan is a non-recourse loan;

(h) an authorized lender shall deliver to the applicant upon application, a statement ~~[prepared]~~ that complies with the requirements established by the department providing the contact information for New York approved, or U.S. Department of Housing and Urban Development approved, reverse mortgage housing counselors with cooperative housing training ~~[approved by the department]~~ whom the cooperative apartment owner can call for independent counseling and information services. Further, no reverse loan commitment shall be issued by the authorized lender until the applicant presents, in writing, a form that certifies the terms of the reverse cooperative apartment unit loan have been explained to them by a New York or U.S. Department of Housing and Urban Development approved reverse mortgage housing counselor with cooperative housing training ~~[approved by the department. The form of such statement and affidavit and cooperative housing counseling services shall be approved by the superintendent];~~

(i) an authorized lender shall 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) a schedule of payments to and from the borrower and the total payments in dollars over the life expectancy of the youngest borrower of the reverse cooperative apartment unit loan for the borrower;

(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, an estimate of 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

1 must meet before it may make reverse cooperative apartment unit loans
2 pursuant to this section;

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

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

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

10 (j) an authorized lender shall deliver to each borrower at the time of
11 closing of a reverse cooperative unit loan two copies of the borrower's
12 right to cancel and instructions for how to cancel the loan that
13 complies with the requirements to be prescribed by the superintendent;

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

17 (l) a reverse cooperative apartment unit loan shall clearly set forth
18 the terms for when the loan becomes due and payable, including:

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

24 (ii) the loan note shall state that the outstanding loan balance shall
25 be due and payable in full if any of the following occur:

26 (1) the ~~[property]~~ cooperative apartment unit ceases to be the primary
27 residence of a borrower for reasons other than death and the ~~[property]~~
28 cooperative apartment unit is not the primary residence of at least one
29 other borrower;

30 (2) for a period of longer than twelve consecutive months, a borrower
31 fails to occupy the ~~[property]~~ cooperative apartment unit because of
32 physical or mental illness and the ~~[property]~~ cooperative apartment unit
33 is not the primary residence of at least one other borrower; or

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

35 (m) ~~[in the event that an authorized lender or holder of the reverse~~
36 ~~cooperative apartment unit loan determines the loan is in default and~~
37 ~~intends to initiate proceedings pursuant to the note, the lender shall~~
38 ~~notify the borrower's third-party contact]~~ within thirty business days
39 of learning of the occurrence of any event listed in paragraph (1) of
40 this subdivision, the mortgagee shall notify the mortgagor and their
41 authorized designee, in writing, of such occurrence, along with informa-
42 tion on the right to cure. The mortgagee shall then allow the mortgagor
43 forty-five calendar days to cure. A mortgagee may only terminate a
44 reverse mortgage loan if the mortgagor fails to cure any termination
45 event within such forty-five calendar day period. In the event that the
46 borrower has not designated a third-party contact to receive such notice
47 of foreclosure, then the authorized lender or the holder of said reverse
48 cooperative apartment unit loan shall notify the local or county office
49 for the aging of its intent to commence foreclosure proceedings. Such
50 entity shall take appropriate action to protect the interests of the
51 borrower;

52 (n) a reverse cooperative apartment unit loan secured by shares or a
53 membership representing an ownership interest in a unit in a cooperative
54 housing corporation shall also be subject to the prior approval by the
55 cooperative's board of directors; and

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

§ 2. Paragraph (a) of subdivision 6 of section 6-o of the banking law, as added by a chapter of the laws of 2021 amending the banking law, the uniform commercial code and the civil practice law and rules relating to reverse cooperative apartment unit loans, as proposed in legislative bills numbers A. 1508 and S. 760, is amended to read as follows:

(a) Every authorized lender and assignee must obtain a surety bond in the amount of one hundred thousand dollars for the benefit of claims against the lender/assignee for failure to perform their obligations to the borrower. The superintendent will hold the surety bond. In addition, a lender or assignee shall maintain an irrevocable standby letter of credit from a financial institution approved by the superintendent in favor of the lender or assignee in an amount necessary to fund all reverse mortgage loan requirements anticipated over the next twelve months for loans then on the lender's books and those expected to be made over the next twelve months or three million dollars, whichever is greater. The initial term of the letter of credit shall be at least two years. A lender or assignee also shall maintain a minimum capital of ten million dollars. A lender may rely upon its parent company to meet the minimum capital requirements. ~~[The requirements for a letter of credit shall not apply to loans that are fully funded at consummation. The minimum capital requirements shall not apply to lenders or assignees that sell loans in the secondary market to a financially viable financial institution, and the superintendent shall define the requirements of what constitutes a "financially viable financial institution prior to any secondary market sale".]~~

§ 3. Paragraph (b) of subdivision 7 of section 6-o of the banking law, as added by a chapter of the laws of 2021 amending the banking law, the uniform commercial code and the civil practice law and rules relating to reverse cooperative apartment unit loans, as proposed in legislative bills numbers A. 1508 and S. 760, is amended to read as follows:

(b) by telephone and first class mail, inform and provide notice to a borrower when his or her home equity line of credit or life expectancy set aside is depleted to twenty percent ~~[or loss of its value]~~. Such notice shall inform the borrower of his or her obligations relating to ~~[such real property]~~ the cooperative apartment unit 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. If the lender or its agent is unable to contact the borrower by telephone, notice must be sent to the third-party contact if authorized by the borrower.

§ 4. Subdivision 11 of section 6-o of the banking law, as added by a chapter of the laws of 2021 amending the banking law, the uniform commercial code and the civil practice law and rules relating to reverse cooperative apartment unit loans, as proposed in legislative bills numbers A. 1508 and S. 760, is amended to read as follows:

11. The sale or transfer of the interest in the cooperative apartment unit ~~[securing the reverse cooperative apartment unit loan]~~ to a person other than an original borrower or borrowers shall result in the termination of the reverse loan.

§ 5. Paragraph 1-a of subsection (f) of section 9-611 of the uniform commercial code, as added by a chapter of the laws of 2021 amending the banking law, the uniform commercial code and the civil practice law and rules relating to reverse cooperative apartment unit loans, as proposed in legislative bills numbers A. 1508 and S. 760, is amended to read as follows:

(1-a) Notwithstanding any other provision of law, with regard to a reverse cooperative apartment unit loan, at least forty-five 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 primary 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.

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

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

Attached to this notice is a list of New York approved housing counseling agencies and legal services in your area which provide free counseling. A statewide listing by county is also available at

~~<http://www.dfs.ny.gov/consumer/mortg-nys-np-counseling-agencies.htm>~~

[https://www.dfs.ny.gov/consumers/help_for_homeowners/new_york_state non-](https://www.dfs.ny.gov/consumers/help_for_homeowners/new_york_state_non-)

1 profit housing counseling agencies. You may also call your local Depart-
2 ment of Aging for a referral or call 311 if you live in New York City.
3 Qualified free help is available; watch out for companies or people who
4 charge a fee for these services.

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

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

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

17 IMPORTANT: You have the right to remain in your unit until you receive a
18 court order telling you to leave the property. If a foreclosure action
19 is filed against you in court, you still have the right to remain in the
20 unit until a court orders you to leave. You legally remain the owner of
21 your cooperative shares and are responsible for the unit until the
22 shares are transferred to a new owner through a sale. However, there
23 will be no court proceeding before the shares are transferred to a new
24 owner. After the shares are transferred, the new owner may begin a court
25 proceeding to evict you from the unit.

26 This notice is not an eviction notice.

27 § 6. Subdivision (a) of rule 3410 of the civil practice law and rules,
28 as added by a chapter of the laws of 2021 amending the banking law, the
29 uniform commercial code and the civil practice law and rules relating to
30 reverse cooperative apartment unit loans, as proposed in legislative
31 bills numbers A. 1508 and S. 760, is amended to read as follows:

32 (a) For purposes of this rule, default shall only include a borrower's
33 breach of an obligation under the reverse mortgage cooperative loan
34 agreement, and shall not include death of the borrower, except as
35 detailed in paragraph one of subdivision (i) of this rule, or the
36 borrower's permanent vacating of the cooperative unit.

37 § 7. The opening paragraph of subdivision (b) of rule 3410 of the
38 civil practice law and rules, as added by a chapter of the laws of 2021
39 amending the banking law, the uniform commercial code and the civil
40 practice law and rules relating to reverse cooperative apartment unit
41 loans, as proposed in legislative bills numbers A. 1508 and S. 760, is
42 amended to read as follows:

43 In any action [~~recovery~~] involving a borrower's default under a
44 reverse cooperative apartment unit loan, as defined in paragraph (a) of
45 subdivision one of section six-o of the banking law, the lender shall
46 file a petition with the supreme court of the county in which the coop-
47 erative apartment is located stating that the loan is in default and the
48 reason for the default. The petition must be served on the borrower
49 pursuant to section three hundred eight of this chapter. Within ten days
50 of the date of service of the notice to the borrower, the petitioner
51 must file a specialized request for judicial intervention with the
52 clerk. Within sixty days of receipt of the notice or on such adjourned
53 date as has been agreed to by the parties, the court shall hold a manda-
54 tory settlement conference for the purpose of holding settlement
55 discussions pertaining to the relative rights and obligations of the
56 parties under the loan documents, including, but not limited to:

1 § 8. This act shall take effect on the same date and in the same
2 manner as a chapter of the laws of 2021 amending the banking law, the
3 uniform commercial code and the civil practice law and rules relating to
4 reverse cooperative apartment unit loans, as proposed in legislative
5 bills numbers A. 1508 and S. 760, takes effect. Effective immediately,
6 the addition, amendment and/or repeal of any rule or regulation neces-
7 sary for the implementation of this act on its effective date are
8 authorized to be made and completed on or before such effective date.