*** § 6-o. Reverse cooperative apartment unit loans for persons sixty-two 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 shares or membership in a cooperative apartment that is or intended to be the primary residence of the borrower or borrowers the proceeds of which are advanced to the borrower or borrowers during the term of the loan in equal installments, or in advances through a line of credit or otherwise, in a lump sum, or through a combination thereof. Interest and fees will accrue during the life of the loan and will be added to the principal balance of the loan, but will not become due and payable until the borrower(s) dies, permanently vacates the apartment or defaults on the terms of the loan, and will continue to accrue until the loan is paid in full.

(b) Loan payout options:

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

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

(iii) Line of credit payment option. Under the line of credit payment option, payments are made by the lender to the borrower at times and in amounts determined by the borrower as long as the amounts do not exceed the maximum amount of loan proceeds.

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

(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 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.

(d) Borrower. A tenant in severalty who is sixty-two 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 sixty-two years age or older.

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

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

(g) Third-party contact. The lender must ask the borrower if they want to designate a third-party contact, such as a family member, trusted friend, advisor or other party whom the borrower would like to be contacted. It shall be the borrower's discretion to choose if the third-party contact is to be contacted if (i) the borrower has not returned the occupancy form, and/or (ii) the loan is in default for any reason and the lender plans to proceed on collecting on the loan, i.e., initiating eviction or foreclosure and/or (iii) the borrower cannot be reached.

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 for which the shares or membership are the security for the reverse cooperative apartment unit loan, as long as such apartment unit remains the borrowers' primary residence and the borrower is not in default under the reverse cooperative apartment unit loan. The borrower or borrowers must certify annually on each anniversary of the loan, that they reside in the unit and that it is their primary residence;

(b) annually the lender shall advise the borrower or borrowers of the name and contact information, if any, on file for a third-party contact designated pursuant to paragraph (g) of subdivision one of this section and ask if the borrower or borrowers want to update or change the information for the third-party contract;

(c) 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;

(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 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 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 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;

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

(vi) a statement setting forth those events which would cause the loan to become due and payable (or cause the borrower to default) 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;

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

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

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

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

(ii) the loan note shall state that the outstanding loan balance shall

be due and payable in full if any of the following occur:

(1) the cooperative apartment unit ceases to be the primary residence of a borrower for reasons other than death and the cooperative apartment unit is not the primary residence of at least one other borrower;

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

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

(m) within thirty business days of learning of the occurrence of any event listed in paragraph (l) of this subdivision, the mortgagee shall notify the mortgagor and their authorized designee, in writing, of such occurrence, along with information on the right to cure. The mortgagee shall then allow the mortgagor forty-five calendar days to cure. A mortgagee may only terminate a reverse mortgage loan if the mortgagor fails to cure any termination event within such forty-five calendar day period. In the event that the borrower has not designated a third-party contact 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;

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

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

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 third party counseling, the costs of paying off any 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 such rules or regulations as he or she considers appropriate to govern a 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.

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

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

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

6. (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.

(b) Every authorized lender or its agent shall provide, with any solicitation for reverse cooperative apartment unit loan 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.

(c) Every authorized lender shall provide each applicant or potential applicant for a reverse cooperative apartment unit loan with the telephone number and internet website address provided by the department for the purposes of acquiring reverse cooperative apartment unit loan counseling.

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

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

(a) provide a monthly account statement, and for all borrowers whose maintenance fees, special assessments 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 loan, the authorized lender shall provide on the borrower's 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 fourteen point type:

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

(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. Such notice shall inform the borrower of his or her obligations relating to 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.

(c) Each authorized lender shall, 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. Such notice shall inform the borrower of his or her obligations relating to the cooperative apartment unit 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.

8. In the event that an authorized lender determines a reverse cooperative apartment unit loan to be in default on the basis that the cooperative apartment is no longer the primary residence of or occupied by the borrower, if during the verification of the borrower'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 borrower, or if the borrower is unreachable by telephone, to the third-party contact if designated, and an in person visit to be made to the borrower at the cooperative apartment to be made prior to the commencement of any proceeding to enforce the lender's rights under the note. 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 cooperative apartment unit loan, 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 cooperative apartment is no longer the primary residence of the borrower. If the borrower contacts the authorized lender and provides proof of residence or occupancy after such visit but before the commencement of a proceeding to enforce the lender's rights under the note, the authorized lender shall be barred from initiating such action. Furthermore, no authorized lender shall charge a borrower 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 cooperative apartment unit loan, or any suspected or actual default condition.

9. 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, and other charges assessed in connection with the reverse loan, shall date from the filing of a UCC-1 notice for 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 accrued but unpaid interest, fees, costs or other charges.

10. 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 filed prior to the effective date of this section.

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

12. 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.

13. 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.

* NB There are 2 § 6-o's