

New York Legislature Moves to Impose New Requirements on Reverse Mortgage Industry

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Originators and servicers of home equity conversion mortgages who do business in New York should take action now to prepare to comply with a new bill's requirements. Ensuring compliance may require a thorough review of commercial advertisements and mailings, adapting communications with mortgagors to incorporate required notices, and modifying procedures employed to verify a mortgagor's continued residence in a mortgaged property. The author of this article discusses the bill.

Assembly Bill 5626 (the "HECM bill") was passed by the New York State Assembly and in the Senate as Senate Bill 4407. The bill has not yet been delivered to the governor for signature. Once it is, the governor will then have 10 days (excluding Sundays) to sign or veto the bill. If he does neither, the bill will become law at the conclusion of those 10 days. By its own provisions, the HECM bill will become effective on the 19th day after it becomes law. The HECM bill further provides that the Superintendent of the New York Department of Financial Services is authorized and directed to amend and appeal any rules and regulations necessary to implement the act within 180 days of its becoming law.

Once effective, the requirements of the HECM bill are significant. The key provisions are summarized below.

Unfair and Deceptive Practices

The HECM bill generally prohibits authorized lenders and any other party or entity from engaging "in any unfair or deceptive practices in connection with the marketing or offering of reverse mortgage loans." It also specifically prohibits the following in any commercial, mailing, advertisement, or writing related to the marketing or offering of a reverse mortgage loan:

- The use of the words "public service announcement."
- The use of the words "government insured" or other similar language representing that reverse mortgage loans are insured, supported, and sponsored by any government entity.

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- Any representation that any covered loan is other than a commercial product.
- Required consumer notices.

The HECM bill also requires that every authorized lender or its agent provide “supplemental consumer protection materials” with any solicitation for a reverse mortgage that is mailed to a physical address within New York. The content of the “supplemental consumer protection materials” will be specified by the Superintendent of the New York Department of Financial Services. In addition, lenders must provide each applicant or potential applicant for a reverse mortgage the telephone number and internet website address provided by the Department of Housing and Urban Development (“HUD”) for purposes of acquiring Home Equity Conversion Mortgage counseling.

The HECM bill imposes a number of obligations relating to “tax payments, mortgage insurance payments, homeowners insurance payments or payments stemming from any other property obligation or obligations” that a mortgagor may be responsible for when these payments are administered by the lender, and are derived from the proceeds of the mortgage. Three different forms of notice must be provided.

Periodic Statements

The borrower’s periodic statements must include: (1) The current balance remaining in the borrower’s line of credit or lifetime expectancy set aside; (2) The projected annual property charges for that year; and (3) A notice, which reads, in at least 12 point font, “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.”

Notice When Equity Line is 90 Percent Depleted

Authorized lenders must provide notice by telephone and first class mail when a mortgagor’s home equity line of credit or life expectancy set aside is depleted to 10 percent or less of its value. This notice must inform the mortgagor (1) of his or her obligations relating to the property including, but not limited to, mortgage insurance, homeowners insurance and real property taxes previously paid through the line of credit or life expectancy set aside; and (2) that such obligations must continue to be paid when the equity line or set aside is depleted. This notice must “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.”

Notice of Equity Line Depletion

Each authorized lender must also provide notice by telephone and first class mail informing a mortgagor when his or her home equity line or life expectancy set aside is depleted. This notice must inform the mortgagor that the equity line or set aside will no longer pay his or her real property taxes and premiums for mortgage and homeowners insurance and inform the mortgagor of his or her obligations related to mortgaged real property. This notice

must also “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.”

Restrictions Related to Occupancy Verification and Related Foreclosures

If an authorized lender seeks to foreclose on the basis that a mortgaged property is no longer the primary residence of or occupied by the mortgagor, and during the verification of the mortgagor’s primary residence and/or occupancy, no response from the mortgagor is received in response to mailings, the HECM bill requires that the lender:

- 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.
- Cause an in person visit to be made to the mortgagor at the mortgaged real property prior to the commencement of any foreclosure proceeding. During such in person 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.”
- Wait at least 30 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 provides proof of residence

or occupancy after a required occupancy verification visit but before commencement of a foreclosure action, the authorized lender is barred from initiating a foreclosure action on the basis that the mortgagor does not reside at the property. Lenders are also prohibited from charging mortgagors any fee for such a required occupancy verification 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.”

Other Provisions of Note

The HECM bill also prohibits lenders from making advanced payments of taxes, insurance premiums or any obligation arising from the mortgaged real property. And, when a mortgagor defaults on mortgage insurance premiums, homeowners’ insurance premiums, or real property tax, the lender may only pay those premiums and/or taxes which are in arrears. The bill further requires that both authorized lenders and mortgagors be represented by an attorney or attorneys at the time of closing and shall have at least one attorney present to conduct the closing.

The HECM bill provides a private right of action for treble damages plus reasonable attorney’s fees, for any person injured by reason of any violation of the HECM law “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.”

Conclusion

Lenders who originate or service reverse mortgages covered by this legislation should

take steps to ensure compliance with its requirements and with all HUD regulations related to HECM loans. Failing to do so could soon subject lenders to private lawsuits through which borrowers may seek treble damages and reasonable attorney's fees. In addition, if signed into law, compliance with the New York's HECM bill will be a condition precedent for mortgagees to bring a foreclo-

sure action upon a covered home equity conversion mortgage. The HECM bill explicitly states that failure to comply with its provisions "shall be a complete defense to a foreclosure action." Compliance failures could thus subject lenders to significant damages and prevent them from pursuing otherwise legitimate foreclosure proceeding.