



National Reverse Mortgage Lenders Association

Virtual Policy Conference

April 27-28, 2021





Overview of NRMLA State and Local Committee

- NRMLA has a long-standing and very active State Law Committee
- Directed by Steve Irwin, President, NRMLA
- Co-Chaired by Scott Norman
- Supported by Weiner Brodsky Kider PC
- Meets Monthly, or as Needed
- Monitor Bills and Proactively Propose Change, where Needed
- Respond to Bills thru Comment Letters and Act as SMEs for Associated Stakeholders
 - Associated Stakeholders include other Local and National Trade Associations and Senior Organizations



Overview of State Legislative Process

- State legislatures typically convene in January of each year and typically adjourn in late Spring or early Summer, although some meet year round, and others meet only once every two years – i.e., Texas
- State legislation, when it moves, tends to move quickly
- A concern can arise because there is a very robust and detailed federal program that accounts for most of our business,
- State legislators may not always fully appreciate the federal HECM program,
- The desire to “legislate locally” sometimes can conflict with the very broad and pervasive federal HECM program
- State legislators often couch policy of bills in cloth of “consumer protection”
- NRMLA always supports consumer protection



Overview of State Legislative Process

- However clear conflicts with the HECM program, where protections are already in place, or draconian penalties (such as a voiding of a loan for hyper-technical foot-faults) is not good policy
- Further, in recent years, as the private reverse mortgage market has grown, NRMLA has been proactive in trying to open up states where the law is not clear or acts as an impediment to offering private reverse mortgage loans.
- One such example of that is Maryland



Texas Bills

- Texas H.B. 1129
- Would prohibit false, misleading, or deceptive statement or representation in reverse mortgage advertising made to induce a potential borrower into applying for or entering into a reverse mortgage
- A statement or representation would be deceptive or misleading if it has the capacity or tendency to mislead or deceive a potential borrower, considering:
 - (1) the overall impression that the statement or representation reasonably creates and
 - (2) the particular type of potential borrower to which the statement or representation is directed and whether that borrower may reasonably comprehend the statement or representation



Texas Bills

- Texas S.B. 362
- Would add a new law to address the death of the last surviving borrower of a reverse mortgage loan
- In the event that an heir inherits the residence within 6 months after the date of the borrower's death, the lender must allow the heir to satisfy the loan before beginning the foreclosure process on the residence
- This would be limited to heirs who are immediate family members of the borrower and defines an "immediate family member" as a person who is within the first degree of consanguinity or affinity



New York Laws

- New Section 280-b
- Effective March 5, 2020
- Regulated FHA HECMs for the first time in New York
- Previously, New York laws on reverse mortgages only applied to private reverse mortgages
- Requires Lenders to Be Approved to Make HECMs in New York
- Limits on Advertising
- Requires Lender AND Borrower Each Have Their Own Attorney at Closing
- No Advance Payments for Taxes and Insurance, and Lender can Only Pay amounts “in arrears” if Borrower defaults on T&I
- “Gas Gauge” Disclosures
- Contact with and Possible “Field Visits” to Borrowers prior to Calling Loan Due and Payable for Non-Occupancy
- Incorporates and Require Lenders to Follow FHA HECM Regulations
- Provides for Penalties, and Requires Compliance with the Law in order to Foreclose, and that Failure to comply is a Bar to Foreclosure



New York Regulations

- Part 79
- Issued as Emergency Regulations Effective March 5, 2020
- Regulations Revised and Finalized in Late July 2020
- Added Forward Mortgage Disclosures for Reverse Mortgages in New York
- Required New Specific Reverse Mortgage Disclosures and Timing Requirements for Disclosures
 - Counseling Packet
 - Commitment
- Provides a 3 Day “Cooling Off” Period Between Loan Application and the Issuance of a Commitment and a Pre-Commitment Disclosure
- Places Limits on Fees
- Some Inconsistencies with HECM Regulations



New York Laws

- New Section 280-d
- Effective April 14, 2021
- Requires foreclosure notice with reverse mortgage foreclosures
- Must file information with New York mortgage regulator regarding reverse mortgage foreclosures and certify HUD approval was obtained or no such approval from HUD was required
- Requires servicers to follow HUD regulations, including regulations on loss mitigation, maintain policies on loss mitigation, and imposes record keeping requirements
- Also provides for Penalties, and Requires Compliance with the Law in order to Foreclose, and that Failure to comply is a Bar to Foreclosure



Minnesota House File 333

Requires reverse mortgage servicers to send copies of borrower's default-related communications to a third-party designee and the independent counseling agency where the borrower received counseling, if authorized by the borrower

Effective date: Applies to reverse mortgages originated in Minnesota on or after August 1, 2021

Background

- Prior to accepting a final and complete application for a reverse mortgage or charging any fees, a lender must:
 - Refer borrowers to approved independent housing counseling agencies for reverse mortgage counseling
 - Receive a certificate from the borrower indicating that the borrower has received such counseling
- At counseling session, counselor must discuss certain specific topics related to reverse mortgages with the borrower



Minnesota House File 333

Counseling Session Topics

- Expands topics that must be covered during counseling session to include an explanation of borrower's right to name a third-party designee to receive copies of written communications regarding borrower's delinquencies, defaults, and unfulfilled obligations that may result in foreclosure under the loan agreement (“Default Communications”)

Authorization Form

- Counselor must give borrowers a blank authorization form to complete if they want to authorize the servicer to send copies of the Default Communications to the third-party designee and the counseling agency
 - Can authorize servicers to only send communications to the third-party designee
 - Borrowers must give the completed authorization form to their lender



Minnesota House File 333

Third-Party Designee

- If authorized, servicer must send copies of unanswered and all subsequent Default Communications to the third-party designee
- ***Recorded Affidavit & Cause of Action***
 - Compliance may be established by recording an affidavit in county recorder or registrar of titles
 - Recordation of the affidavit is prima facie evidence of compliance
 - Rebuttable presumption that the servicer failed to communicate with the third-party designee absent a recorded affidavit
 - Borrower has a cause of action if servicer fails to comply with the third-party designee communication requirements

Independent Counseling Agency

- If authorized, servicer must mail copies of unanswered and all subsequent Default Communications to the counseling agency *identified in the loan agreement*
- Unlike third-party designee requirements, affidavit and cause of action provisions do not apply to the requirement that the servicer must send copies of the Default Communications to the counseling agency



Minnesota House File 333

Issues

- ***Independent Counseling Agency “Identified in Loan Agreement”***
 - Counseling agency where borrower received the required counseling is not identified in model HECM loan agreements
 - Based on bill’s language, unclear whether reverse mortgage loan agreements need be revised to list name and address of counseling agency (to identify them in the loan agreement)
- ***Alternate Individual***
 - For HECMs, mortgagee must request that the borrower designate, at borrower’s option, an alternate individual for the purpose of communicating with the mortgagee if the mortgagee is unable to make contact or communicate with the borrower for any reason
 - It is possible that a HECM borrower may designate one person to be the alternate individual and list a separate person on the Minnesota authorization form to be the third-party designee
 - Mortgagees should be mindful of this potential scenario when developing their internal policies and procedures to implement these new requirements
- ***Affidavit***
 - No model affidavit form
 - Mortgagees should work with their in-house counsel and foreclosure attorneys to develop the form and content of the affidavit



New York Assembly Bill 1508

NY AB 2632 (2019-2020)

- NRMLA worked with consumer advocacy group and NY lobbyist
- Passed both houses, but vetoed by Governor

Reverse Cooperative Apartment Unit Loan (“Reverse Co-Op Loan”)

- Reverse co-op loans would secure shares or membership in a co-op that is the borrower’s primary residence and provide loan proceeds under four payment plans
- Department of Financial Services (DFS) must adopt regulations to govern reverse co-op loans

Third-Party Contact

- Lender must ask borrowers if they want to designate a third-party contact
- If no third-party contact is designated and loan goes into default, lender must notify the local or county office for the Aging of its intent to commence foreclosure proceedings so they can take appropriate action to help protect borrower’s interests

Counseling & Application Disclosures

- Must give counseling list at application and receive counseling certificate before issuing loan commitment
- At application, must also give numerous specified disclosures about the terms and costs of the loan



New York Assembly Bill 1508

Marketing

- Prohibits unfair or deceptive practices in connection with the marketing or offering of a reverse co-op loan and specifies certain terms that must not be included in marketing materials (e.g., “public service announcement”)
- All solicitation of a reverse co-op loan that is mailed to NY consumers must include supplemental consumer protection materials as specified by DFS

Servicing Disclosures

- Must send monthly account statements that disclose all payments made and fees charged under the loan, along with information on any LOC or set aside that is used to pay the borrower's T&I
- If lender is paying borrower's T&I from loan proceeds, it must notify borrower when LOC or set aside has 20% or less left, and again when LOC or set aside is completely depleted

Damages and Compliance

- Person who has been injured by a violation of these requirements may bring an action to recover treble damages, plus attorneys' fees
- Compliance with the requirements is a condition precedent to commencing a foreclosure action and failure to comply is a complete defense to foreclosure



New York Assembly Bill 1508

Foreclosure

- ***Notice***
 - At least 45 days before disposing of property securing loan, must send notice to borrower and third party contact, if applicable, informing them why the loan is in default and how it can be cured, if possible
- ***Face-to-Face Meeting***
 - Except for loans that are D&P due to borrower moving or passing, lender must file a petition with the court and the court must hold a mandatory settlement conference, where the lender or borrower must generally appear in person or by counsel, to determine if parties can reach a mutually agreeable resolution in good faith
- ***Failure to Negotiate in Good Faith***
 - If court determines lender failed to negotiate in good faith, court will toll accumulation/collection of interest during any undue delay caused by lender and may, among other things, impose a civil money penalty or award actual damages



Massachusetts House Bill 1146

Would permanently allow borrowers in Massachusetts to receive the required reverse mortgage counseling from an approved counselor via a synchronous, real-time video conference or by telephone

History/Background

- ***Current (Permanent) Law***

- No mortgagee shall make a reverse mortgage loan unless...(ii) at or before the closing of any reverse mortgage loan the mortgagee has *received written certification* from a counselor with a third-party organization ***that the mortgagor has received counseling in person*** relative to the appropriateness of the loan transaction from the third party organization and has completed an approved counseling program offered by the third party organization;...

- ***Current (Temporary) Law/HB 4647***

- Enacted on expedited basis to address exigent circumstances arising from COVID-19 pandemic
- Among other things, until COVID-19 state of emergency is terminated, permits consumers to receive the in-person counseling via a synchronous, real-time video conference, or by telephone
- *Division of Banks Issues Guidance on HB 4647*
 - NRMLA submitted comments to the Division requesting guidance on HB 4647 regarding temporary counseling changes
 - Division issued industry guidance on HB 4647 to, among other things, clarify bill's counseling requirements
 - Division's industry guidance and webcast on reverse mortgages can be found at: <https://www.mass.gov/info-details/reverse-mortgage-information-for-consumers>



Massachusetts House Bill 1146

Why is “in-person” counseling an issue?

– *Not Required Under HECM Program*

- With HECMs, lenders are restricted from taking and processing a complete loan application until applicant receives the required counseling from a HUD-approved counselor and gives the counseling certificate to the lender
- However, FHA gives borrowers the option to receive the required reverse mortgage counseling in person or over the phone

– *Limited Number of Approved Agencies & Traveling Issues*

- At beginning of pandemic, Executive Office of Elder Affairs’ website only listed 7-8 active approved reverse mortgage counseling agencies
- Seniors with special needs (e.g., lack of mobility or LEP issues) may have difficulty going to an in-person counseling session
- Chilling effect for applicants on the fence



Oregon House Bill 3151

Overview

- Declares an emergency exists due to COVID-19 and provides that notwithstanding a provision of a loan contract that requires a sale or transfer of real property to repay the balance of a reverse mortgage loan upon the borrower's death, relatives of the deceased borrower occupying the property may continue to occupy the property for a period of 12 months following the expiration of the emergency period
- ***Emergency Period***
 - “Emergency period” means the period during which the last of any executive orders of the Oregon Governor declaring an emergency related to the COVID-19 pandemic remain in effect
 - *During the emergency period and the 12-month period following its expiration, lenders may not declare a default, accelerate a reverse mortgage loan, bring an action to recover the balance of the loan, or bring an action to evict the deceased borrower's relatives occupying the property*
- ***Private Right of Action***
 - A lender's violation of this restriction would be considered to be an unlawful business trade practice and bill would allow borrower's relatives to bring an action for such violations
 - Relatives of the deceased borrower may bring an action within the earlier of: (1) one year after the violation occurred, or (2) one year after the expiration of the 12-month period