

December 10, 2013

TO THE INDIVIDUAL OR INSTITUTION ADDRESSED

Re: Proposal for Public Comment of Part 82-2 of the Superintendent's Regulations (Shared Appreciation Agreements)

The Superintendent has proposed for public comment a new Part 82-2 of the Superintendent's Regulations. Part 82-2 implements Section 6-f of the Banking Law.

Currently, a number of New York homeowners owe more on their mortgage loans than their homes are worth. Meanwhile, foreclosures have soared in recent years. While mortgage modifications have helped many homeowners keep their homes, many other struggling homeowners do not qualify. Recognizing the need to assist struggling borrowers avoid foreclosure, Section 6-f of the Banking Law was intended to provide New York mortgage lenders and borrowers with another tool to help borrowers keep their homes.

Section 6-f of the Banking Law authorizes the Superintendent to adopt rules permitting shared appreciation agreements where the lender or its assignee (the "Holder") of a residential mortgage loan or cooperative apartment unit loan reduces the principal amount of a mortgage loan to assist a borrower at risk of foreclosure. Under such an agreement, the Holder is entitled to share in any appreciation of the market value of the property between the effective date of the reduction in the principal amount of the mortgage loan until the date when the property is sold, but not more than the lesser of: (i) the amount of the reduction in principal, plus interest at the same rate as applies to the remaining principal amount; and (ii) 50% of the amount of appreciation.

These shared appreciation agreements provide lenders with an additional incentive to allow borrowers to stay in their homes. At the same time, the disclosure requirements, and the limitations on the amount of appreciation that lenders can share, serve to guard against abuse of vulnerable New Yorkers. The intended result is that more homeowners will keep their homes and avoid the costly and protracted foreclosure process, lenders will recoup their investment, and local communities will become more stable.

The Notice of Proposed Rule Making is expected to be published in the December 18, 2013 issue of the State Register.

Comments should be sent to Harry Goberdhan, Assistant Counsel, Department of Financial Services, One State Street, New York, NY 10004, or by email to harry.goberdhan@dfs.ny.gov.

Very truly yours,

Daniel M. Burstein
Executive Deputy Superintendent
Real Estate Finance Division