

**NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
EMERGENCY AND PROPOSED REPEAL OF 3 NYCRR 79 AND NEW 3 NYCRR 79
OF THE GENERAL REGULATIONS OF THE SUPERINTENDENT**

REVERSE MORTGAGE LOANS

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by (i) Sections 6-h and 14 of the Banking Law, (ii) Sections 280, 280-a and 280-b of the Real Property Law, (iii) Sections 202 and 302 of the Financial Services Law and the State Administrative Procedure Act, do hereby promulgate Part 79 of Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon filing with the Secretary of State:

Part 79 of 3 NYCRR is hereby repealed. A new Part 79 is added to 3 NYCRR to read as follows:

Section 79.1	Scope and application of this Part
Section 79.2	Definitions
Section 79.3	Authority to make reverse mortgage loans
Section 79.4	Advertising restrictions
Section 79.5	Requirements for reverse mortgage loans
Section 79.6	Maintenance of real property securing reverse mortgage loans
Section 79.7	Termination of reverse mortgage loans
Section 79.8	Permitted fees, costs and payments
Section 79.9	Required disclosures and counseling for reverse mortgage loans
Section 79.10	Availability of RPL 280 and RPL 280-a loans
Section 79.11	Prohibited conduct and administrative penalties
Section 79.12	Special provisions regarding payment of real estate taxes and insurance
Section 79.13	Policies and procedures

Section 79.1 Scope and application of this part.

Article 12-D of the Banking Law requires certain lenders engaged in the business of making mortgage loans to obtain a license from the superintendent. Article 12-D of the Banking Law also provides exemptions from such licensing requirements for certain exempt organizations, provided that the superintendent is notified that they are making mortgage loans in this State and they comply with any regulations applicable to persons so engaged. This Part sets forth requirements that are applicable to both licensed entities and exempt organizations engaged in the making of reverse mortgage loans in this State.

Section 79.2 Definitions.

For purposes of this Part:

(a) The term *advertisement* means any information, whether disseminated through print or published material, electronic media, audio or visual material, or descriptive literature used to inform consumers about or induce consumers to apply for a reverse mortgage loan. The term *advertisement* shall not include:

- (1) Direct personal contacts, such as follow-up letters, cost estimates for individual consumers, or oral or written communication relating to the negotiation of a specific transaction;
- (2) Informational material, such as, interest-rate and loan-term memos, distributed only to business entities;
- (3) Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice;
- (4) News articles the use of which is controlled by the news medium;
- (5) Market-research or educational materials that do not solicit business; or
- (6) Communications about an existing credit account, such as a promotion encouraging additional or different uses of an existing credit card account.

(b) The term *application fee* means any fee collected in connection with an application for a reverse mortgage loan including any charge for soliciting, processing, placing or negotiating a reverse mortgage loan. The term *application fee* does not include a commitment fee or a lock-in fee, nor does such term include payments to be remitted to third-party service providers.

(c) The term *authorized designee* means the third party designated by the mortgagor to receive notices in accordance with sections 280(2)(f), 280-b(2)(m) and 280-b(6) of the Real Property Law.

(d) The term *broker* means a mortgage broker as defined in article 12-D of the Banking Law.

(e) The term *business day* means any day of the week except for Saturday, Sunday and any legal holiday.

(f) The term *clear and conspicuous* means that the statement, representation or term being disclosed is of such size, color, contrast, and/or audibility and is so presented as to be readily noticed and understood by the person to whom it is being disclosed. If such statement is necessary as a modification, explanation, or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner so as to be readily noticed and understood.

(g) The term *counseling statement* means a written disclosure prepared either by the local or county office for the aging or in accordance with section 79.9(a)(1) of this Part, on the advisability and availability of independent counseling and information services.

(h) The term *Eligible Surviving Non-Mortgagor Spouse* means the spouse of a mortgagor, who is not also a mortgagor, and who:

(1) met, and continues to meet the requirements of the subject reverse mortgage loan both at the time of the loan closing and at the time of the mortgagor's death;

(2) was either:

a. legally married - as determined by the law of the state in which the spouse and mortgagor reside(d) or the state of celebration - to the mortgagor at the time of loan closing and who remained married to the mortgagor until the mortgagor's death; or

b. engaged in a committed relationship with the mortgagor akin to marriage but was prohibited, at the time of the loan origination, from legally marrying the mortgagor based on the gender of both the mortgagor and non-mortgagor spouse, but was legally married prior to the death of the mortgagor, as determined by the law of the state in which the spouse and mortgagor reside(d) or the state of celebration, to the mortgagor and remained married until the death of the mortgagor;

(3) Currently resides and resided in the property secured by the reverse mortgage loan as his or her principal residence at origination of the reverse mortgage loan and throughout the duration of the life of the reverse mortgage loan; and

(4) Who has or is able to obtain - within 90 calendar days following the death of the mortgagor - good, marketable title to the property or a legal right (e.g., executed lease, court order, etc.) to remain in the property for life.

(i) The term *exempt organization* means any insurance company, banking organization, foreign banking corporation licensed by the superintendent or the comptroller of the currency to transact business in this state, national bank, federal savings bank, federal savings and loan association, federal credit union, or any bank, trust company, savings bank, savings and loan association, or credit union organized under the laws of any other state, or any instrumentality created by the United States or any state with the power to make mortgage loans;

(j) The term *housing counselor* means a Housing and Urban Development certified counselor or any other counseling service as listed on a counseling statement supplied by the county or local office for the aging.

(k) The term *lender* means any person or entity engaged in the business of making reverse mortgage loans.

(l) The term *mortgagee* means a lender or lenders, an assignee or assignees thereof, or a servicer or servicers acting on behalf of a lender or assignee.

(m) The term *mortgagor* means a borrower or borrowers of a reverse mortgage loan.

(n) The term *property charge* means property taxes, hazard insurance premiums, any applicable flood insurance premiums, ground rents, condominium fees, planned unit development fees, homeowners' association fees, and any other special assessments that may be levied by any municipality or pursuant to State law.

(o) The term *reverse mortgage loan* means an RPL 280 loan, RPL 280-a loan or RPL 280-b loan, which is secured by a first mortgage on real property, located in the state of New York, improved by a one- to four-family residence or condominium that is the residence of the mortgagor, the proceeds of which are advanced to the mortgagor during the life of the loan in equal installments, in advances through a line of credit or otherwise, in lump sums, or through a combination thereof.

(p) The term *RPL 280 loan* means a loan made under section 280 of the Real Property Law.

(q) The term *RPL 280-a loan* means a loan made under section 280-a of the Real Property Law.

(r) The term *RPL 280-b loan* or *HUD/HECM loan* means a loan made under the Demonstration Program of Insurance of Home Equity Conversion Mortgages for Elderly Homeowners reverse mortgage loan program, 12 USC section 1715z-20 and in accordance with section 280-b of the Real Property Law.

(s) The term *servicer* means a mortgage loan servicer as defined in Part 418 of this Title.

(t) The term *set aside account* means any account that a mortgagee establishes or controls to pay property charges on behalf of a mortgagor with respect to a reverse mortgage loan, including charges that the parties have voluntarily agreed that the mortgagee should collect and pay, and includes any arrangement by which the mortgagee reserves a portion of the mortgagor's principal for subsequent payment of property charges or conditional repairs under a repair rider. The definition encompasses any account established for any of the above purposes, regardless of title

given, including a “reserve account,” “reserve fund,” “repair set aside account” “life expectancy set aside account” or “escrow account.” For purposes of this section, the term “set aside account” excludes any account that is under the mortgagor’s total control such as a line of credit, as detailed in section 79.12(c) of this Part.

Section 79.3 Authority to make reverse mortgage loans.

(a) No person or entity may engage in the business of making a reverse mortgage loan unless they are licensed to make mortgage loans pursuant to section 591 of the Banking Law or are an exempt organization.

(b) In addition to the requirements of subdivision (a) above, effective March 5, 2020, no person or entity may engage in the business of making a reverse mortgage loan unless they have applied and are granted such right by the superintendent.

(c) An application for authority to make reverse mortgage loans must be made in accordance with the following, as applicable:

(1) Any person or entity licensed pursuant to section 591 of the Banking Law must apply to the Department for authority to make reverse mortgages loans and demonstrate, to the satisfaction of the superintendent, the following:

- i. The lender satisfies the financial responsibility requirements set forth in section 410.1 of the Superintendent's Regulations and:
 - a. either maintains an irrevocable standby letter of credit in favor of the lender, the initial term of which is at least two years, that is provided by a financial institution that is not affiliated with the lender, in an amount necessary to fund all reverse mortgage loan requirements anticipated to be made over the next 12 months or an amount to be determined by the superintendent and published on the Department's website, whichever is greater and, is approved by the superintendent;
 - b. has a rating of either 4A1 or 5A1 from Dun & Bradstreet Credit Services for three consecutive years, prior to the date of the application; or
 - c. provides a copy of the Federal Housing Administration approval letter authorizing the lender to originate Federal Housing Administration loans; and
- ii. At the time of application and for as long as the lender makes reverse mortgage loans, the lender will maintain a minimum capital amount as published on the Department's website. A lender may rely on the capital of its parent to satisfy the requirements of this subdivision provided that for any year in which a lender seeks to so rely, it shall provide to the Department a certified financial statement

of the parent showing a net worth of at least an amount to be determined by the superintendent and published on the Department's website, as of the close of its most recent fiscal year and a binding written commitment from the parent to the entity to make a minimum of such amount available to the lender as a capital contribution in connection with its reverse mortgage lending program.

- iii. The following documents should be provided with the application:
 - a. a copy of the standby letter of credit, if applicable;
 - b. an audited financial statement for the most recent fiscal year;
 - c. a copy of the lender's report issued by A.M. Best Company; and
 - d. such other information and documents as shall be requested by the superintendent.

(2) The application provisions of subsection (1) above shall not apply to exempt organizations provided that such exempt organization notifies the superintendent that it is making reverse mortgage loans in this State and submits the following information and documents as applicable:

- a. the name, address, telephone number, and principal place of business of the exempt organization;
- b. the name of an executive officer responsible for the exempt organization's reverse mortgage loan program;
- c. the basis for its exemption pursuant to section 590(1)(e) of the Banking Law;
- d. the designation by any out-of-state exempt organization of an agent within the State of New York for service of process for any matter arising from a reverse mortgage loan;
- e. a copy of any trust agreement entered into between the exempt organization and a trustee pursuant to section 79.5(g)(2) of this Part;
- f. the name, address, telephone number, and principal place of business of any trustee and a designation in accordance with the requirements of section 131(3) of the Banking Law.

g. such other information and documents as shall be requested by the superintendent.

(d) In order to facilitate an orderly transition and minimize disruption in the mortgage marketplace, any person or entity, subject to the requirements of subsection (b) above, who was both licensed to make mortgage loans pursuant to section 591 of the Banking Law, or is an exempt organization and engaged in the business of making RPL 280-b loans as of March 5, 2020, shall file with the superintendent, by June 5, 2020, an application in accordance with subsection (c) above.

(e) All persons and entities covered by this subdivision may continue to engage in the business of making RPL 280-b loans until the earlier of the date they receive notice that their application under this Part has been denied or April 5, 2021 in the case of those covered by paragraph (1) of this subdivision (d) or June 5, 2021 in the case of those covered by paragraph (2) of subdivision (d).

Section 79.4 Advertising restrictions

- (a) Any advertisement for a reverse mortgage loan placed in print or electronic media shall indicate the name of the entity and, in the event the entity maintains an office in New York, the street address for such office.
- (b) Disclosures required by this section shall be clear and conspicuous.
- (c) Advertisement of terms that require additional disclosures:
 - (1) Material Terms. An advertisement that references any of the following terms shall include the appropriate qualification listed in paragraph (c)(2):
 - i. The mortgage insurance premium percentage;
 - ii. The interest rate;
 - iii. The number of payments or period of payments to the mortgagor;
 - iv. The amount of any payments; or
 - v. The amount of any origination fees.
 - (2) An advertisement referencing any of the terms listed in paragraph (c)(1) shall include the following disclosures as applicable:
 - i. The terms provided are projections and actual terms may vary;
 - ii. The terms of payment, which reflect the obligations over the full term of the loan, including any payment of property charges; and
 - iii. That origination fees for HUD/HECM loans are capped.
- (d) The following acts or practices are prohibited in advertisements for reverse mortgage loans:
 - (1) Making any false or misleading statement or classification of the product offered including, but not limited to any statement that the product offered:
 - a. is a government benefit or is not a loan;
 - b. has been endorsed by Federal Housing Administration or Housing and Urban Development; and
 - c. contains any features or limitations that are inconsistent with state or federal rules and requirements;
 - (2) Making any false or misleading statement or classification of the advertisement itself, including, but not limited to, use of the words “public service announcement;”

- (3) Making any false or misleading statement about default or foreclosure including, but not limited to, any statement that a mortgagor can “never lose” their home or there is “no risk” to a mortgagor’s home;
 - (4) Making any false or misleading statement about “fixed” rates and payments including, but not limited to, using the word “fixed” in an advertisement for an adjustable rate reverse mortgage loan;
 - (5) Making any false or misleading statement about monthly payments or the overall cost of the product including, but not limited, to any statement that a:
 - a. mortgagor will “never make monthly payments” or not be required to repay a reverse mortgage loan “during your lifetime;”
 - b. mortgagor will “never owe more than the value of your home;” and
 - c. reverse mortgage loans provide payments “for life;”
 - (6) Creating a false sense of urgency by providing any misleading or inaccurate information about limits on the availability of the product or any feature thereof;
 - (7) Making any false or misleading use of the name of the consumer’s current financial institution, including but not limited to, using such name in an advertisement that is not sent by or on behalf of the consumer’s current financial institution;
 - (8) Providing any information about material terms or required disclosures partially in a foreign language, while providing information about other material terms only in English; and
 - (9) Making any false or misleading statement about government entitlements, sponsorships or insurance including, but not limited to, statements which may give an applicant the impression that their financial interests are government insured or otherwise protected.
- (e) Every lender and broker shall maintain samples of all of its advertisements including, commercial scripts of all radio broadcasts, television broadcasts, and electronic media, for a period of three years from the date of last publication.

Section 79.5 Requirements for reverse mortgage loans.

All reverse mortgage loans shall comply with the following requirements:

(a) The security instrument shall expressly and conspicuously bear a legend identifying the security as a “reverse mortgage;”

(b) The mortgagor may prepay any reverse mortgage loan without penalty at any time. The payment of any fees or charges, such as a termination fee, that otherwise would be due at maturity without prepayment shall not be deemed a penalty for these or any other purposes;

(c) Mortgagees shall be prohibited from using or attaching any property or asset of the mortgagor except the real property securing the reverse mortgage loan;

(d) In the event that a mortgagee fails to make payment of or remit to the mortgagor any monies required under any reverse mortgage loan within 15 calendar days of its due date, the mortgagee shall forfeit twice the interest that would have been earned on the outstanding loan principal for the entire period during which payments to the mortgagor were late, unless the mortgagee otherwise has the right to terminate the reverse mortgage loan pursuant the “Lender’s Limited Waiver of the Right of Foreclosure” executed in accordance with section 79.7(d) of this Part and due notice has been provided to the mortgagor or authorized designee;

(e) No reverse mortgage loan commitment or approval shall be issued by a lender until the applicant presents a counseling affidavit (herein defined), provided in accordance with 79.9(a)(4) of this Part and including the name address telephone number and signature of the applicant and, if applicable, the non-mortgagor spouse and the housing counselor, as well as, the date of the counseling. All completed counseling affidavits shall be maintained by the mortgagee, for inspection by the superintendent, in an accurate, reproducible, and accessible format for the entire term of the reverse mortgage loan, and thereafter in accordance with applicable statutes;

(f) Interest shall only accrue from the time monies are actually advanced to or on behalf of the mortgagor. Accrued interest may be added to the loan principal;

(g) A reverse mortgage loan which provides for the purchase of an annuity shall comply with the following conditions as applicable:

(1) the company that issues the annuity must have a rating of excellent or superior from A.M. Best Company and must be licensed by the State of New York; and

(2) if a trustee holds the annuity in trust during the life of the mortgagor, then:

(i) the trustee must be a banking organization or a trust company which is incorporated, chartered, organized or licensed under the laws of this State or any other state or the United States;

(ii) pursuant to section 131(3) of the Banking Law, any out-of-state trustee must appoint the superintendent as agent for service of process for any matter arising from a reverse mortgage loan made to a New York resident;

(iii) the trust agreement must provide that it is governed by New York law;

(iv) payments derived from the annuity must be paid by the trustee directly to the mortgagor irrespective of whether the payment is made on behalf of the mortgagee; and

(v) the mortgagor must have a beneficial interest in the trust irrespective of whether the mortgagee also has a beneficial interest in the trust.

(h) Except for purchase money reverse mortgage loans, the issuance of a commitment is a prerequisite to the closing of any reverse mortgage loan and an applicant (or mortgagor) shall not be bound for 3 business days after acceptance, in writing, of such commitment during which time, such applicant (or mortgagor) reserves the right to cancel the commitment but may still be responsible for fees actually paid to third parties. An applicant may not waive the provisions of this subsection.

(i) A mortgagee may, at its option, for the period of time commencing at the end of the loan term, or 10 years after the reverse mortgage loan commences, whichever occurs first, and ending at such time as the reverse mortgage loan is paid in full, receive no more than 20 percent of the future appreciation of the property securing the loan, *i.e.*, “shared appreciation,” or charge a fixed rate of interest on the outstanding balance of monies advanced under the loan or any combination thereof. Such appreciation shall not be considered interest for purposes of any law regulating the maximum rate of interest which may be charged, taken or received, including pursuant to sections 190.40 and 190.42 of the Penal Law. Loans which contain “equity participation,” may not provide for any other forms of equity sharing or shared appreciation.

(j) All mortgagor shall retain the right to lifetime possession of the real property that serves as security for a reverse mortgage loan, as long as there is no event that would allow the mortgagee to terminate the reverse mortgage loan pursuant to the “Lender’s Limited Waiver of the Right of Foreclosure” executed in accordance with section 79.7(d) of this Part.

(k) The security agreement must include the following:

(1) a list of termination events;

(2) the mortgagee's obligation to notify the mortgagor or authorized designee, in writing, of any event that could lead to termination; and

(3) the name of a third-party, if any, chosen by the mortgagor as an authorized designee to whom the mortgagee is obligated to send written notice of any event that could lead to termination.

(l) Reverse mortgage loan applicants are required to wait 3 days after submitting an application before signing a commitment or in any way proceeding with a reverse mortgage loan. The 3-day period cannot be waived.

(m) Requirements Specific to RPL 280 and RPL 280-a loans

(1) the maximum loan to value ratio for any loan at the time of loan closing shall not exceed 80 percent of the anticipated value of the property at anticipated loan maturity or at any time prior thereto. The loan to value ratio shall be calculated by dividing the numerator, as defined in paragraph (i) of this subdivision, by the denominator, as defined in paragraph (ii) of this subdivision.

(i) The numerator of the ratio shall include all principal, all accrued loan interest, all fees, costs and payments incurred in connection with the origination of the loan including but not limited to charges for the purchase of annuities, the payment of real estate taxes and insurance to the extent that a set aside account is established to fund real estate tax and insurance obligations or the lender has committed to advance funds to pay for such taxes and insurance on the property securing the reverse mortgage loan and any shared appreciation assuming:

(A) no prepayment of the reverse mortgage loan;

(B) any loan amounts, such as credit lines and set aside accounts, which may be drawn at the discretion of the mortgagor or by the mortgagee are drawn fully at the earliest opportunity;

(C) the historical interest rate if fixed or, if variable, the yearly average of the base index and margin chosen by the lender; and

(D) if applicable, a projected appreciation or depreciation rate for home prices which is determined by the same factor as is used in the denominator set forth in paragraph (2) of this subdivision.

(ii) The denominator of the ratio shall be determined by increasing or decreasing the appraised value of the real property (as determined at loan closing, or no earlier than 30 calendar days prior, by an independent certified or licensed appraiser as provided for in article 6-E of the Executive Law) by a factor that the creditor reasonably believes will be the average annual increase or decrease in the value of the real property securing the reverse mortgage loan from the loan closing until the anticipated loan maturity; provided, however, that this factor shall in no event exceed the average of the yearly changes in the Consumer Price Index for the geographic area closest to the real property for the eight years preceding the year in which the loan is made without the superintendent's prior written approval.¹

(iii) For a term reverse mortgage loan, the anticipated loan maturity shall be the date of maturity of the loan.

(iv) For a tenure reverse mortgage loan, the superintendent may, in his or her discretion, review and approve the data and assumptions used to establish the anticipated loan maturity for each reverse mortgage loan.

(2) As an alternative to subdivision (1) of this section, the parties may agree that the total obligation of the mortgagor to the mortgagee arising from the reverse mortgage loan shall be no greater than 80 percent of the future appraised value of the property at maturity, calculated in accordance with the standards set forth in subsection (1)(i) above. The 80 percent cap shall be exclusive of any actual losses incurred by the mortgagee as a direct result of a breach of a loan covenant by the mortgagor. The difference between the principal and accrued interest and 80 percent of the actual value of the property at maturity shall be known as "equity participation."

(3) At the end of the term for all RPL 280 and RPL 280-a term loans, the mortgagor may request that the real property securing the loan be reappraised to increase the payments made to the mortgagor or to extend the loan term. Except for term loans insured by any agency of the State of New York, such reappraisal may be performed at the mortgagee's sole discretion. In all cases, the mortgagee may require the mortgagor to pay the cost of such reappraisal in advance. In the event the value of the property has increased, the

¹ This information is published by the United States Department of Labor from material compiled by the New York State Department of Labor, Division of Research and Statistics.

mortgagee may increase the loan payments or extend the loan term (and, for term loans insured by any agency of the State of New York, must increase the loan payment(s) or extend the loan term), subject to the following:

(i) The loan-to-value ratio limitations, as determined pursuant to this Part as of the date on which the increase or extension would begin, shall not be exceeded.

(ii) Any existing insurance coverage shall be increased to insure the additional amounts to be due.

(iii) The mortgagor shall execute all documents reasonably requested by the mortgagee and pay all reasonable fees and costs associated with the increase in payments or the extension of the loan term provided that such fees and costs have been previously disclosed in writing to the mortgagor.

(4) A lender must, in accordance with the financial assessment form provided by the Department, review all applicants for financial fitness as it relates to the payment of an applicant's property charges. In the event that the results of the financial assessment require a set aside account to be established, such account may bear interest at a rate that is different from the interest rate on other advances made pursuant to the terms of the reverse mortgage loan. A mortgagee may only charge interest on advances actually made from the set aside account and not on the entire balance in the set aside account.

Section 79.6 Maintenance of real property securing reverse mortgage loans.

(a) Mortgagor shall be required to maintain the structural integrity of the real property securing the reverse mortgage loan in a reasonably similar condition as the property is in at the time of closing or after repairs have been made for which funds have been disbursed or set aside at closing for later disbursement and that the mortgagor agreed to make as a condition of the closing of the loan. For purposes of this section, repairs necessary to maintain the structural integrity must be documented by a licensed professional engineer or architect and shall be limited to repairing structural problems that threaten to materially damage the property or its market value.

(b) If the mortgagor fails to make a repair required to maintain the structural integrity of the real property in a timely manner, the mortgagee may arrange for such repair and pay for it in the following ways, upon providing reasonable notice to the homeowner and receiving consent to enter upon the premises, which is not to be unreasonably withheld by the mortgagor:

(1) by deducting necessary amounts from a set aside account;

(2) by withholding from one or more monthly payments otherwise due to the mortgagor no more than 25 percent of each such monthly payment, until the repairs are paid for;
or

(3) by adding the amount to the loan principal.

If a set aside account has been established, then, to the extent possible, the mortgagee must deduct the cost of the repair from such fund before choosing option (2) or (3) of this subdivision. If a set aside account has not been established, then the mortgagee may choose whether to proceed according to option (2) or (3) of this subdivision or a combination thereof.

(c) Prior to making or charging the mortgagor for a repair necessary to maintain the structural integrity of the real property, the mortgagee shall notify the mortgagor or authorized designee of the problem and, unless an imminent danger to the structural integrity of the real property exists, provide the mortgagor 90 calendar days to make the repairs. If the repairs are not completed by the mortgagor, the mortgagee may take such steps as it views reasonably necessary to maintain the structural integrity of the real property and charge the mortgagor for all reasonable expenses. If an imminent danger to life or property exists, the mortgagee may proceed to remedy the structural integrity of the real property on as little as 48 hours' notice to the mortgagor.

(d) The mortgagee shall have the right to inspect the real property securing the loan on 72 hours' notice but not more often than is reasonably necessary to assure the continued structural integrity of the real property.

Section 79.7 Termination of reverse mortgage loans.

(a) Reverse mortgage loans may be terminated by the mortgagee solely in the event of any of the following:

(1) the sale, conveyance, transfer or assignment of any part of the real property securing the loan or any of the mortgagor's rights in the real property, whether voluntarily or involuntarily;

(2) the mortgagor's death, or if there is more than one mortgagor, then the death of the last living mortgagor. If an eligible surviving non-mortgagor spouse lives at the mortgage premises, the mortgagee must notify them of its intent to terminate the loan and allow the eligible surviving non-mortgagor spouse 120 calendar days to satisfy the terms of the reverse mortgage loan and retain the subject property for the lesser of the unpaid principal balance or 95% of the property's appraised value;

(3) the mortgagor ceases to use the real property as his or her principal place of residence defined as living and sleeping quarters for 90 consecutive days in any 365-day period without notifying the mortgagee of the anticipated date of return of the mortgagor and making arrangements satisfactory to mortgagee for the maintenance of the real property. The mortgagee's consent to the arrangements made pursuant to this paragraph shall not be unreasonably withheld;

(4) the mortgagor ceases to use the real property as his or her principal place of residence defined as living and sleeping quarters in excess of 180 days in any 365-day period;

(5) the mortgagor fails to pay real estate taxes or maintain all insurance required pursuant to the security agreement;

(6) the mortgagor:

(i) files a voluntary petition in bankruptcy or effecting a plan or other arrangement with creditors under court supervision;

(ii) is the subject of an involuntary petition in bankruptcy that is not discharged within 90 calendar days after it is filed; or

(iii) applies for or permits the appointment of a receiver, trustee or custodian for the real property securing the loan which is not discharged within 90 calendar days after the date of appointment; provided, however, that the appointment of a conservator, guardian, committee or other fiduciary of the person to act on the

mortgagor' behalf in connection with a determination by a court that the mortgagor is incompetent will not terminate the loan;

(7) the mortgagor fails to maintain the structural integrity of the real property in accordance with section 79.6 of this Part; or

(8) If applicable, the expiration of the term may also terminate the reverse mortgage loan.

(b) The mortgagor, his or her authorized designee or estate shall notify the mortgagee, in writing, immediately upon learning of the occurrence of any event listed in subdivision (a) of this section.

(c) Within 30 business days of learning of the occurrence of any event listed in subdivision (a) of this section, 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 must then allow the mortgagor 45 calendar days to cure. A mortgagee may only terminate a reverse mortgage loan if the mortgagor fails to cure any termination event within such 45-calendar day period.

(d) All lenders must prepare a form entitled "Lender's Limited Waiver of the Right of Foreclosure." This document shall, clearly and conspicuously, identify every event, as provided for in this section that would give the mortgagee authority to terminate the loan, and shall be provided to and signed by the mortgagor at the closing of every loan. The lender shall furnish a copy of the executed form to every mortgagor at closing and shall keep the original form on file for the life of the loan, and thereafter in accordance with applicable statutes.

(e) A mortgagor may designate no more than two persons or entities to whom the mortgagee shall send copies of all notices that this section requires the mortgagee to send to the mortgagor. It shall be the obligation of the mortgagor and any authorized designee to provide the mortgagee with current mailing information for any person designated to receive such additional notice.

(f) In the event that a mortgagee seeks to foreclose on a reverse mortgage loan solely on the basis of any event listed in subdivisions (a)(3) or (a)(4) of this section, the mortgagee shall make efforts to verify the mortgagor' principal place of residence and, if, during the verification process, no responses are received in response to mailings relating thereto, such mortgagee shall cause a telephone call to be made to the mortgagor, or, if the mortgagor is unreachable by telephone, either an authorized designee (s) or, in the event that the mortgagor has no authorized designee, then the local or county office for the aging and an in person visit to be made to the mortgagor at the mortgaged real property. During such visit, the mortgagee or its agent shall provide clear information as to who they are, that the visit pertains to the reverse mortgage loan, the reason for the home visit, and the telephone number to call for further information. The mortgagee must 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 of any event listed in subdivisions (a)(3) and (a)(4) of this section. If any mortgagor contacts the mortgagee and provides proof of compliance with the relevant residency requirements after such visit but before the commencement of a foreclosure action, the mortgagee shall be barred from initiating such foreclosure action unless and until such time as a new event, as outlined in subdivision (a) of this section, occurs.

Section 79.8 Permitted fees, costs and payments.

(a) At the time of taking an application, and at no time prior, lenders or brokers may charge the following costs and fees, as applicable, and none other, provided that the disclosures required by section 79.9(a) of this Part have been provided to each applicant, and that the costs and fees are fully disclosed, reasonably related to the services provided to or performed on behalf of the applicant, and, when applicable, whether any cost or fee charged to the applicant for a service to be provided by a third-party provider is actually paid by the lender or broker to a third-party provider:

- (1) an application fee, provided that:
 - (i) the amount, along with whether the fee is non-refundable, is fully disclosed prior to the taking of an application; and
 - (ii) the fee is not derived as a percentage of the principal amount of the loan or amount financed;
- (2) the cost of appraising or surveying the property once; and
- (3) the cost of a credit report;

(b) At the time of closing, and at no time prior, other than principal, interest, shared appreciation and equity participation, lenders or brokers may charge, in connection with the origination of reverse mortgage loans, the following fees, costs and payments, as applicable, and none other, provided that such fees, costs and payments have been disclosed pursuant to section 79.9 of this Part, are reasonably related to the services provided to or performed on behalf of the applicant, and provided further that, when applicable, the costs or payments are actually paid by the lender or broker to a third-party provider:

- (1) a loan origination fee;
- (2) the cost of document preparation;
- (3) the cost of a title examination, an abstract of title and title insurance;
- (4) the cost of a search for tax liens existing at the time of closing if such search is not included in the title examination;
- (5) the payment to discharge any existing liens on the real property securing the loan;
- (6) the cost of recording the reverse mortgage loan;

- (7) the cost of actual attorney's fees charged in connection with the closing of such loan;
- (8) the cost of a flood zone search;
- (9) the cost of an inspection to be paid in connection with the origination of the loan but not subsequent to the loan closing;
- (10) the payment for any repairs contracted for at or before the loan closing irrespective of whether such repairs are completed at time of closing and/or whether the funds have been set aside;
- (11) a one-time payment for a tax reporting service;
- (12) the cost of purchasing mortgage insurance;
- (13) the payment of real estate taxes and property insurance; and
- (14) the cost of mortgage brokerage services, not to exceed three points based on the value of the real property securing the reverse mortgage loan at the time of loan closing, as such service is defined in Part 38 of this Title and which service is rendered by a person or entity authorized by article 12-D of the Banking Law.

(c) After closing and thereafter during the life of the loan, mortgagees may charge the following fees or require the mortgagor to incur the following costs or payments, provided that they are reasonably related to the services provided to or performed on behalf of the mortgagor, and none other:

- (1) the cost of purchasing additional mortgage insurance;
- (2) the cost to maintain the structural integrity of the real property securing the loan in accordance with section 79.6 of this Part;
- (3) the cost of a single appraisal for the refinancing or extension of the loan in accordance with section 79.5(1)(3) of this Part; and
- (4) the payment of real estate taxes and property insurance.

(d) At termination of the loan, mortgagees may charge a termination or maturity fee, which shall be no more than the actual cost of arranging for the sale or court-approved foreclosure of the real

property securing the loan. Such fee may include actual broker's fees, advertising costs, moving and/or storage costs and legal and other fees representing actual fees or costs charged to the mortgagee.

(e) Mortgagees may not charge any fees for the establishment, maintenance or termination of set aside account with respect to any reverse mortgage loan.

(f) Nothing herein shall be construed as prohibiting the inclusion of any fees or charges in an insurance claim related to such reverse mortgage loan.

Section 79.9 Required disclosures and counseling for reverse mortgage loans.

(a) Upon accepting an application or charging any fee authorized under section 79.8(a) of this Part, each loan applicant must be provided with a Counseling Packet, including the following documents, as is relevant to the type of loan being offered:

(1) A Counseling Statement – The following notice, or a notice to like effect, in Times New Roman, 28-point type face, on a separate sheet:

A REVERSE MORTGAGE LOAN IS A COMPLEX FINANCIAL PRODUCT THAT PROVIDES A MEANS OF USING THE EQUITY YOU HAVE BUILT UP IN YOUR HOME, OR THE VALUE OF YOUR HOME, AS A SOURCE OF ADDITIONAL INCOME. IF YOU DECIDE TO OBTAIN A REVERSE MORTGAGE LOAN, YOU WILL SIGN BINDING LEGAL DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE.

IT IS THEREFORE IMPORTANT THAT YOU CONSULT A HOUSING COUNSELOR, IN ADDITION TO, TAX, LEGAL AND FINANCIAL ADVISERS REGARDING ENTITLEMENTS AND TAX AND ESTATE PLANNING CONSEQUENCES OF A REVERSE MORTGAGE LOAN.

YOUR LENDER MUST PROVIDE A LIST, APPROVED BY THE DEPARTMENT OF FINANCIAL SERVICES, OF HOUSING COUNSELORS AVAILABLE IN YOUR COMMUNITY.

SENIOR CITIZEN ADVOCACY GROUPS ADVISE AGAINST USING THE PROCEEDS OF A REVERSE MORTGAGE LOAN TO PURCHASE AN ANNUITY OR RELATED FINANCIAL PRODUCT. IF YOU ARE CONSIDERING OBTAINING LUMP SUM PROCEEDS FOR THIS PURPOSE OR ANY OTHER PURPOSE, YOU SHOULD DISCUSS THE FINANCIAL IMPLICATIONS OF DOING SO WITH YOUR TAX, LEGAL AND FINANCIAL ADVISORS, AS WELL AS, YOUR HOUSING COUNSELOR AND FAMILY MEMBERS.

IMPORTANT NOTICE REGARDING THE COOLING-OFF PERIOD: The State requires a 3-day cooling-off period after the submission of an application for a reverse mortgage loan. During this 3-day period of time, you cannot be required to sign a commitment or in any way proceed with the loan. The purpose of this requirement is to provide you with time to consider whether to secure a reverse mortgage loan. Potential borrowers are advised to seek additional information from a housing counselor or other appropriate professional during this 3-day period. The 3-day cooling-off period cannot be waived.

INTEREST ACCRUES FROM THE TIME MONIES ARE ADVANCED TO OR ON BEHALF OF THE MORTGAGOR.

YOU HAVE A RIGHT TO DESIGNATE A THIRD PARTY TO BE NOTIFIED IN WRITING OF ANY EVENT THAT COULD LEAD TO TERMINATION OF THE REVERSE MORTGAGE LOAN AND TO WHOM A COPY OF ANY FORECLOSURE DOCUMENTS MUST BE FURNISHED.

(2) Additional Disclosures – An additional notice including the following information:

- (i) the disclosing party's toll-free telephone number for questions, comments or complaints. If there is no toll-free telephone number, the disclosing party must disclose that it will accept collect calls;
- (ii) the telephone number and internet website address provided by the federal Department of Housing and Urban Development for the purposes of acquiring reverse mortgage loan counseling;
- (iii) A notice that the mortgagor or applicant can submit written complaints to the New York State Department of Financial Services, Mortgage Banking, at the address and website set forth in section 1.1 of Supervisory Policy G 1 of this Title;
- (iv) A list of every event which would allow the mortgagee to terminate or accelerate the loan or could otherwise result in the forced sale of the mortgaged property. Such events shall be explained clearly and in a manner which ensures that the applicant reasonably understands their implications. If applicable, the list shall be accompanied by an explicit warning that the mortgagor may be compelled to move out of his or her home at the expiration of the loan term;
- (v) The only asset of the mortgagor which may be used to satisfy the reverse mortgage loan is the real property securing the loan, subject to any limitation thereon as the mortgagor and mortgagee may agree to pursuant to section 79.5(c) of this Part;
- (vi) The loan may be prepaid at any time without penalty, how the value of the home will be determined at the time of prepayment, and the method by which the then outstanding loan balance will be prepaid;
- (vii) All fees, costs and payments to be paid by the mortgagor;
- (viii) A description of any conditions or limitations on the refinancing or extension of any loan, and if applicable, the mortgagor's right to refinance or extend the loan;
- (ix) If applicable, the availability of an annuity, whether an annuity will be required, and if there is an annuity, when the annuity payments will

- commence, who will own the annuity and, any affiliation between the disclosing party and the company from which the annuity will be purchased;
- (x) whether the broker or any entity acting in a mortgage brokerage capacity, as a general business practice, utilizes the services of two or fewer lenders, and if so, the name(s) of the lender(s);
 - (xi) for term loans, a schedule and explanation of estimated payments to the mortgagor, whether or not property taxes and insurance premiums are to be deducted from such payments, and the total payment in dollars over the term of the loan. In addition, the disclosure shall state the repayment date and other events which cause the loan to become due and payable;
 - (xii) for tenure loans, a schedule of estimated payments to the mortgagor shall be furnished. The lender or broker shall label such schedules as “estimates;”
 - (xiii) a statement indicating whether a set aside account is required to pay property charges and, if so, an approximation of the amount to be set aside;
 - (xiv) a statement indicating whether and what type(s) of mortgage and/or property insurance will be required and the cost of any premiums, broken down monthly and over the life of the loan;
 - (xv) if applicable, that the loan provides for the mortgagee to receive a percentage of the future appreciated value of the property, *i.e.*, “shared appreciation,” what that percentage is, and the method of calculating such amount. In addition, the lender shall provide both a narrative explanation and an example of the application of its methodology. This example must use as its projected real estate appreciation or depreciation rate for home prices, the average of the yearly changes in the Consumer Price Index for Shelter for New York-Newark-Jersey City area for the eight years preceding the year in which the loan is made;
 - (xvi) the interest rate(s) to be charged on the outstanding principal and whether the rate(s) are fixed, variable or both. For a term loan with a fixed rate of interest, the lender or broker shall also disclose the total interest payable on the loan principal, assuming maturity of the loan at expiration of the term. For a term loan with a variable rate of interest, the lender shall disclose also the estimated total interest payable on the loan principal using the yearly average of the base index and margin chosen by the lender for the eight-year period preceding the loan closing and assuming the maturity of the loan at expiration of the term. A shared appreciation mortgage constitutes a variable interest rate mortgage and is subject to the same disclosure requirements state and federal law imposes on all variable interest rate mortgages. For tenure reverse mortgage loans, the same disclosures shall be made, except that maturity shall be assumed at the actuarial life expectancy

of the mortgagor, or, if there is more than one mortgagor, the younger of the mortgagors; and

- (xvii) that the loan provides for the lender to receive any form of equity participation the maximum total percentage obligation of the mortgagor to the lender arising from the reverse mortgage loan, what is included in this maximum and what is excluded from it. In addition, the lender shall provide both a narrative explanation and an example demonstrating equity participation.

(3) Counseling Checklist – A checklist of issues to be discussed with a housing counselor, printed on a separate sheet of paper in Times New Roman 28-point font and including the following:

- (i) How unexpected medical or other events that cause the applicant to move out of the home earlier than anticipated, either permanently or for more than one year, will impact the projected total annual loan cost of the mortgage;
- (ii) The extent to which the applicant’s financial needs could be better met by options other than a reverse mortgage loan;
- (iii) Whether the applicant intends to use the proceeds of the reverse mortgage loan to purchase an annuity or other insurance products and the consequences of doing so;
- (iv) The effect of repayment of the loan on non-borrowing residents of the home after all mortgagors have died or permanently left the home;
- (v) The applicant’s ability to finance routine or catastrophic home repairs, especially if maintenance is a factor that may determine when the mortgage becomes payable or will allow the mortgagee to accelerate or terminate the reverse mortgage loan;
- (vi) A statement that the reverse mortgage loan has tax and estate planning consequences and may affect levels of, or eligibility for, government benefits, grants or pensions, and that applicants are advised to explore those matters with appropriate professionals; and
- (vii) The ability of the applicant to finance alternative living accommodations, such as assisted living or long-term care nursing home registry, after the applicant's equity is depleted.

(4) Counseling Affidavit – A blank affidavit, printed on a separate sheet of paper, allowing for an applicant to choose from the following options:

- (i) The terms of the reverse mortgage loan have been explained, in-person, by an attorney, a housing counselor or any other in-person counseling services indicated on the counseling statement; and
- (ii) Either:
 - a. For RPL 280-b loans – The applicant, although made aware of the importance of in-person counseling and its local availability through the provision of such information by the lender, chooses to engage in the required counseling via telephone; or
 - b. For RPL 280 and RPL 280-a loans - The applicant, although made aware of the importance of counseling and its local availability through the provision of such information by the lender, chooses not to take advantage of in-person counseling services.

(b) Prior to executing a commitment, the lender shall provide the following notice:

IMPORTANT NOTICE REGARDING THE RIGHT TO CANCEL: The State requires a 3-day right to cancel period after the signing of a commitment for reverse mortgage loan. During this 3-day period of time, you have the right to cancel and cannot be required to close or proceed with the loan but may still be responsible for fees actually paid to third parties. The purpose of this requirement is to provide you with time to reconsider your decision. Potential borrowers may wish to seek additional information from a housing counselor or other appropriate professional during this 3-day period. The 3-day right to cancel period cannot be waived.

(c) Six months prior to the end of a term loan, the mortgagee shall notify the mortgagor or an authorized designee, in writing, if applicable:

- (1) that the mortgagor will be responsible to make real estate tax and insurance payments; and
- (2) that the mortgagor will have to vacate his or her home upon the expiration of the term and the exact date that such move-out is required.

(d) All notices required by this subdivision must be mailed in hard copy to each applicant or mortgagor unless each applicant or mortgagor has consented in writing to receiving notice electronically. Thereafter, any such electronic notice must comply with the following requirements:

- (1) No electronic or digital signature shall be deemed acceptable unless completed in accordance with article 3 of the New York State Technology Law;
- (2) Receipt of all electronic notices must be confirmed through the use of a “required confirm button” without which the transaction may not proceed further;

- (3) A hard-copy of any disclosures sent electronically shall be mailed, within three business days of the electronic transmission, to each applicant or mortgagor who indicates that he or she does not have the computer capacity to download and print such disclosures;
- (4) A mortgagee shall either keep a copy of the digitally signed disclosures or be able to demonstrate that the transaction could not proceed further than the display of the disclosures without the applicant's use of the "required confirm button"; and
- (5) In those instances, in which a hard copy is not mailed pursuant to subdivision (3) above, the mortgagee must be able to demonstrate that information was obtained as to the applicant or mortgagor's computer capacity to download and print such disclosures.

Section 79.10 Availability of RPL 280 and RPL 280-a loans.

(a) The requirements of Real Property Section 280(10) shall not apply to the extent that the lender determines that there are no or insufficient applications for RPL 280-a loans, the individuals who apply for RPL 280-a loans do not qualify for such loans, or mortgage insurance for the principal and any accrued but unpaid interest for RPL 280-a loans is not available for the type of reverse mortgage loan made by the lender through the private market or any agency of the State of New York. Such determination may only be reached after making a documented and diligent effort to obtain such mortgage insurance, which determination shall be subject to review by the superintendent at his or her discretion.

(b) A lender shall, among other things:

(1) advertise its RPL 280-a loan programs to the same extent as it advertises its RPL 280 loan programs in all the counties in which the lender makes RPL 280 loans;

(2) ensure that all advertising materials, including brochures, for any reverse mortgage loans designed specifically for New York residents mention both the lender's RPL 280-a and RPL 280 loans and prominently display or state the lender's name;

(3) make promotional materials for its RPL 280-a loans available to the local and county offices for the aging, the New York State Office for the Aging and the Department of Financial Services, to the extent reasonably requested by them, in all counties in which the lender makes RPL 280 loans; and

(4) require its loan officers to inform applicants for RPL 280 loans of the lender's RPL 280-a loan programs.

(c) Lenders must maintain an application log for all applications. In addition, the lender must maintain rejected mortgage application files for a minimum of three years.

(d) Any lender may, at its option, offer only one reverse mortgage loan program provided such program meets the requirements of a RPL 280-a loan.

(f) RPL 280-b loans do not fulfill the requirement that a lender shall make at least as many RPL 280-a loans as it makes RPL 280 loans unless the loan would otherwise qualify in all respects as a RPL 280-a loan.

Section 79.11 Prohibited conduct and administrative penalties.

(a) A mortgagee or broker, as applicable, may not:

- (1) make a RPL 280, RPL 280-a or RPL 280-b loan in the State of New York without having a reverse mortgage program that has been approved by the superintendent;
- (2) make a reverse mortgage loan to a mortgagor who has not been provided with the counseling affidavit prior to counseling or has not completed the counseling affidavit prior to commitment in accordance with sections 79.5(e) and 79.9(a)(4) of this Part;
- (3) make any false promise to influence, persuade or induce a consumer to sign a reverse mortgage loan application or documents;
- (4) pressure or coerce a consumer to sign a reverse mortgage loan application or reverse mortgage loan documents by misrepresenting or omitting material information about the terms of the reverse mortgage loan;
- (5) discourage a consumer in a reverse mortgage loan transaction from seeking or obtaining independent legal counsel or legal advice or discouraging inclusion of family members from counseling sessions or from otherwise participating in the process;
- (6) fail to make any disclosure to a consumer required by and at the time specified by any applicable state or federal law, regulation or directive;
- (7) accept telephone applications;
- (8) request or accept a confession of judgment; or
- (9) steer, direct, recommend, or otherwise encourage a consumer to seek the services of any particular housing counselor, or encourage a consumer not to seek the services of any particular housing counselor.

(b) A violation of this Part shall constitute grounds for the revocation or termination of a reverse mortgage program approval issued to a lender.

Section 79.12 Special provisions regarding payment of real estate taxes and insurance.

(a) Mortgagor shall have the right to choose a property insurer(s) subject to the mortgagee's consent which shall not be unreasonably withheld. If the mortgagor fails to choose a property insurer(s) in a timely manner or if the insurer(s) is not acceptable to the mortgagee, then the mortgagee may insure the property with a carrier(s) of its choice in accordance with 11 NYCRR Part 227.

(b) If there is no set aside account, then, notwithstanding applicable state or federal rule or law, the mortgagee may advance the funds necessary to pay for such coverage or to pay real estate taxes and to reimburse itself in any of following individual or combined ways:

(1) by deducting necessary amounts from a line of credit;

(2) by withholding from one or more monthly payments otherwise due to the mortgagor no more than 25 percent of each such monthly payment, until such time as the amount paid is realized; or

(3) by adding the amount to the loan principal.

If a set aside account has been established, then, to the extent possible, the mortgagee must reimburse itself from such fund before choosing option (2) or (3) (paragraph [2] or [3] of this subdivision).

(c) If a line of credit payment method, distinct from the mortgagor's set aside account, is established in conjunction with a reverse mortgage loan, to pay the mortgagor's real estate taxes or insurance (hazard or flood, as necessary) on the real property securing the reverse mortgage loan, the mortgagee is to notify the mortgagor, in writing, of the amount of each deduction from and the amount remaining in the line of credit. Such notice must be given at least 90 calendar days prior to the due date of any payment for which insufficient funds are available.

Section 79.13 Policies and procedures.

The board of directors or trustees of every State-chartered bank, trust company, savings bank, savings and loan association, or credit union and the appropriate officers of a foreign bank maintaining an insured branch in this State, as well as, all mortgage bankers, mortgage loan servicers and mortgage brokers which shall engage in the business of making, soliciting, processing or servicing reverse mortgage loans shall adopt such policies and procedures as are necessary to safely conduct such business and to establish, monitor and periodically reevaluate appropriate limitations on the institution's aggregate reverse mortgage loan portfolio. Such policies and procedures shall be consistent with safe and sound banking practices and shall take into account the banking institution's size and financial condition, local economic conditions, the availability of insurance for the portfolio or any portion thereof and any other factors that the institution deems relevant. Such policies and procedures shall be subject to the superintendent's periodic review.