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Locke Lord QuickStudy: New York Opens Significant New Lending Market by Authorizing Reverse Mortgages Secured by Co-Op Apartments

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The law does not take effect until mid-2022 and is subject to regulations to be promulgated by the New York Department of Financial Services.

On December 1, 2021, New York Governor Kathy Hochul signed into law a bill (New York A01508/S00760) authorizing lenders to make reverse mortgages secured by ownership of a New York cooperative apartment. This law (which former Governor Cuomo vetoed in 2019) represents a substantial expansion of the market for reverse mortgages in New York where a significant portion of the elderly population lives in cooperative apartment units. The new law won't take effect until May 30, 2022, and will be subject to small, agreed, legislative changes as well as regulations promulgated by the New York Department of Financial Services.

Interaction with Federal Requirements

Federal Home Equity Conversion Mortgages insured by the Department of Housing and Urban Developments continue to be restricted to loans secured by real property. 24 CFR 206.45(a). Thus, lenders wishing to take advantage of this expansion of reverse mortgages in New York must do so with a proprietary, non-federally insured, product.

Unlike HUD's regulations, the federal Truth-in-Lending Act defines reverse mortgage broadly to include loans secured by an interest in a cooperative apartment. 15 USC § 1602(cc) (defining reverse mortgages as loan secured by "the consumer's principal dwelling"); 15 USC § 1602(w) (defining dwelling to include "individual units of ... cooperatives"). Thus, reverse mortgages secured by cooperatives will be treated as reverse mortgages under federal law.

Unique Provisions of New Law

The new law has significant overlap with New York's existing requirements for reverse mortgages secured by real property, but it also has some unique provisions applicable only to loans secured by co-ops. Citations are to newly amended sections of the New York Banking Law and existing provisions of the New York Real Property Law and New York Administrative Code.

Unique provisions of the new law (which do not change the existing requirements applicable to reverse mortgages secured by real property) are as follows:

- Lenders may make reverse mortgages secured by shares or membership in a cooperative apartment, subject to the restrictions in the law and forthcoming regulations. NY Banking Law, § 6-o(1)(a).
- Reverse mortgages secured by co-ops must be approved by the co-op board of directors. *Id.*, ¶ 6-o(2)(n).
- Co-op reverse borrowers must be at least 62 years old, whereas real-property reverse borrowers currently must be only 60. *Id.*, § 6-o(1)(d); NY RPL § 280(e).
- While maturity events are generally the same (death, sale, or lack of occupancy), the new law for co-op reverse mortgages has a broad definition of a borrower default that can trigger maturity. NY Banking Law § 6-o(2)(l)(ii)(3) (loan may become due and payable if “an obligation of the borrower under the loan note is not met”). The current law for real-property reverse mortgages has a defined set of defaults that can trigger maturity: tax or insurance arrearage, bankruptcy, or lack of maintenance. 3 NYCRR § 79.7(4), (5), (6).
- The lender-default provision is substantially more onerous for co-op reverse mortgages. Currently, a lender on a real-property reverse mortgage that fails to make required payments to a borrower forfeits twice the interest that would have been earned during the default. NY RPL § 280(2)(b). Under the new law, a lender in such a default on a co-op reverse mortgage forfeits **all** interest or service charges due under the loan, including interest previously accrued. NY Banking Law § 6-o(2)(e).
- Unlike the current law for proprietary (i.e., not federally insured) reverse mortgages secured by real property, compliance with each provision of the new law for co-ops is a “condition precedent” to foreclosure, and “failure to comply therewith shall be a complete defense” to a foreclosure. *Id.*, § 6-o(13).

Forthcoming Regulations

The law directs the NY DFS to convene a working group to study counselors for the new co-op loans and “to address any other matters the superintendent deems necessary pursuant to this act.” This working group may assist the NY DFS in developing regulations. Those regulations may reconcile some of the discrepancies, described above, between how real-property and co-op reverse mortgages are regulated.

Moving Forward

Lenders wishing to take advantage of this significantly expanded market for New York reverse-mortgage loans will need an appropriate set of loan documents and disclosures that comply with the statute and the forthcoming regulations, as well as effective internal procedures for advertising, origination, and servicing such loans. The authors have substantial experience creating such documents and procedures for reverse mortgages in New York and in states across the country.

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