

3 Section 1. Paragraph (a) of subdivision 6 of section 1304 of the real
4 property actions and proceedings law, as amended by section 6 of part Q
5 of chapter 73 of the laws of 2016, is amended to read as follows:

6 (a) (1) "Home loan" means a loan, including an open-end credit plan,
7 [~~other than a reverse mortgage transaction,~~] in which:

8 (i) The borrower is a natural person;

9 (ii) The debt is incurred by the borrower primarily for personal,
10 family, or household purposes;

11 (iii) The loan is secured by a mortgage or deed of trust on real
12 estate improved by a one to four family dwelling, or a condominium unit,
13 in either case, used or occupied, or intended to be used or occupied
14 wholly or partly, as the home or residence of one or more persons and
15 which is or will be occupied by the borrower as the borrower's principal
16 dwelling; and

17 (iv) The property is located in this state.

18 (2) A home loan shall include a loan secured by a reverse mortgage
19 that meets the requirements of clauses (i) through (iv) of subparagraph
20 one of this paragraph.

21 § 2. Subdivision (a) of rule 3408 of the civil practice law and rules,
22 as amended by section 3 of part Q of chapter 73 of the laws of 2016, is
23 amended to read as follows:

24 (a) [~~In~~] 1. Except as provided in paragraph two of this subdivision,
25 in any residential foreclosure action involving a high-cost home loan
26 consummated between January first, two thousand three and September
27 first, two thousand eight, or a subprime or nontraditional home loan, as
28 those terms are defined under section thirteen hundred four of the real
29 property actions and proceedings law, in which the defendant is a resi-
30 dent of the property subject to foreclosure, the court shall hold a
31 mandatory conference within sixty days after the date when proof of
32 service is filed with the county clerk, or on such adjourned date as has
33 been agreed to by the parties, for the purpose of holding settlement
34 discussions pertaining to the relative rights and obligations of the
35 parties under the mortgage loan documents, including, but not limited
36 to: [~~1-~~] (i) determining whether the parties can reach a mutually agree-
37 able resolution to help the defendant avoid losing his or her home, and
38 evaluating the potential for a resolution in which payment schedules or
39 amounts may be modified or other workout options may be agreed to
40 including, but not limited to, a loan modification, short sale, deed in
41 lieu of foreclosure, or any other loss mitigation option; or [~~2-~~] (ii)
42 whatever other purposes the court deems appropriate.

43 2. (i) Paragraph one of this subdivision shall not apply to a home
44 loan secured by a reverse mortgage where the default was triggered by
45 the death of the last surviving borrower unless:

46 (A) the last surviving borrower's spouse, if any, is a resident of the
47 property subject to foreclosure; or

48 (B) the last surviving borrower's successor in interest, who, by
49 bequest or through intestacy, owns, or has a claim to the ownership of
50 the property subject to foreclosure, and who was a resident of such
51 property at the time of the death of such last surviving borrower.

52 (ii) The superintendent of financial services may promulgate such
53 rules and regulations as he or she shall deem necessary to implement the
54 provisions of this paragraph.

1 § 3. Section 1304 of the real property actions and proceedings law is
2 amended by adding a new subdivision 1-a to read as follows:

3 1-a. Notwithstanding any other provision of law, with regard to a
4 reverse mortgage home loan, at least ninety days before a lender, an
5 assignee or a mortgage loan servicer commences legal action against the
6 borrower or borrowers at the property address and any other addresses of
7 record, including reverse mortgage foreclosure, such lender, assignee or
8 mortgage loan servicer shall give notice to the borrower in at least
9 fourteen-point type except for the heading which shall be in at least
10 sixteen-point type which shall include the following:

11 "YOU COULD LOSE YOUR HOME TO FORECLOSURE.
12 PLEASE READ THE FOLLOWING NOTICE CAREFULLY.

- 13 Date
- 14 Borrower's address
- 15 Loan Number:
- 16 Property Address:
- 17 Dear Borrower(s):

18 As of _____, we as your lender or servicer claim that your reverse
19 mortgage loan is _____ days in default. Under New York State Law, we are
20 required to send you this notice to inform you that you may be at risk
21 of losing your home.

22 We, the lender or servicer of your loan, are claiming that your reverse
23 mortgage loan is in default because you have not complied with the
24 following conditions of your loan:

- 25 _____ You are not occupying your home as your principal residence
- 26 _____ You did not submit the required annual certificate of occupancy
- 27 _____ The named borrower on the reverse mortgage has died
- 28 _____ You did not pay property taxes
- 29 _____ {Servicer name} paid your property taxes for the following
30 time periods: _____
- 31 _____ {quarter/year}
- 32 _____ You did not maintain homeowner's insurance
- 33 _____ {Servicer name} purchased homeowner's insurance for you on the
34 following date(s) and for the following cost(s):
35 _____
- 36 _____ You did not pay water/sewer charges
- 37 _____ {Servicer name} paid water/sewer charges for you on the
38 following date(s) and for the following cost(s):
39 _____
- 40 _____ You did not make required repairs to your home

41 If the claim is based on your failure to pay property or water and sewer
42 charges or maintain homeowner's insurance, you can cure this default by
43 making the payment of \$_____ for the advancements we made towards
44 these payments on your behalf.

45 You have the right to dispute the claims listed above by contacting us,
46 by calling _____ or sending a letter to _____. This
47 may include proof of payments made for property taxes or water and sewer
48 charges or a current declaration page from your insurance company, or
49 any other proof to dispute the servicer's claim.

1 If you are in default for failure to pay property charges (property
2 taxes, homeowner's insurance and/or water/sewer charges) you may qualify
3 for a grant, loan, or re-payment plan to cure the default balance owed.

4 If you are in default due to the death of your spouse, you may be
5 considered an eligible "Non-Borrowing Spouse" under a HUD program which
6 allows you to remain in your home for the rest of your life.

7 If you are over the age of 80 and have a long term illness, you may also
8 qualify for the "At-Risk Extension," which allows you to remain in your
9 home for one additional year and requires an annual re-certification.

10 Attached to this notice is a list of government-approved housing coun-
11 seling agencies and legal services in your area which provide free coun-
12 seling. You can also call the NYS Office of the Attorney General's Home-
13 owner Protection Program (HOPP) toll-free consumer hotline to be
14 connected to free housing counseling services in your area at
15 1-855-HOME-456 (1-855-466-3456), or visit their website at
16 <http://www.ahomehelp.com>. A statewide listing by county is also avail-
17 able at http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm.
18 You may also call your local Department of Aging for a refer-
19 ral or call 311 if you live in New York City.

20 Qualified free help is available; watch out for companies or people who
21 charge a fee for these services.

22 You may also contact us directly at _____ and ask to discuss all
23 possible options to allow you to cure your default and prevent the fore-
24 closure of your home. While we cannot ensure that a resolution is
25 possible, we encourage you to take immediate steps to try to achieve a
26 resolution. The longer you wait, the fewer options you may have.

27 If you have not taken any actions to resolve this matter within 90 days
28 from the date this notice was mailed, we may commence legal action
29 against you (or sooner if you cease to live in the dwelling as your
30 primary residence).

31 If you need further information, please call the New York State Depart-
32 ment of Financial Services' toll-free helpline at 877-226-5697 or visit
33 the Department's website at <http://www.dfs.ny.gov>.

34 IMPORTANT: You have the right to remain in your home until you receive a
35 court order telling you to leave the property. If a foreclosure action
36 is filed against you in court, you still have the right to remain in the
37 home until a court orders you to leave. You legally remain the owner of
38 and are responsible for the property until the property is sold by you
39 or by order of the court at the conclusion of any foreclosure
40 proceedings. This notice is not an eviction notice, and a foreclosure
41 action has not yet been commenced against you."

42 A lender, assignee or mortgage loan servicer of a reverse mortgage
43 home loan which provides notice to the borrower as required by this
44 subdivision is not required to provide notice to such borrower with
45 regard to such loan pursuant to subdivision one of this section.

1 § 4. Subdivisions 2, 3, 4 and 5 of section 1304 of the real property
2 actions and proceedings law, as amended by section 6 of part Q of chap-
3 ter 73 of the laws of 2016, are amended to read as follows:

4 2. [~~Such notice~~] The notices required by this section shall be sent by
5 such lender, assignee (including purchasing investor) or mortgage loan
6 servicer to the borrower, by registered or certified mail and also by
7 first-class mail to the last known address of the borrower, and to the
8 residence that is the subject of the mortgage. [~~Such notice~~] The notices
9 required by this section shall be sent by the lender, assignee or mort-
10 gage loan servicer in a separate envelope from any other mailing or
11 notice. Notice is considered given as of the date it is mailed. The
12 [~~notice~~] notices required by this section shall contain a current list
13 of at least five housing counseling agencies serving the county where
14 the property is located from the most recent listing available from
15 department of financial services. The list shall include the counseling
16 agencies' last known addresses and telephone numbers. The department of
17 financial services shall make available on its websites a listing, by
18 county, of such agencies. The lender, assignee or mortgage loan servicer
19 shall use such lists to meet the requirements of this section.

20 3. The ninety day period specified in the [~~notice~~] notices contained
21 in [~~subdivision~~] subdivisions one and one-a of this section shall not
22 apply, or shall cease to apply, if the borrower has filed for bankruptcy
23 protection under federal law, or if the borrower no longer occupies the
24 residence as the borrower's principal dwelling. Nothing herein shall
25 relieve the lender, assignee or mortgage loan servicer of the obligation
26 to send such [~~notice~~] notices, which [~~notice~~] notices shall be a condi-
27 tion precedent to commencing a foreclosure proceeding.

28 4. The [~~notice~~] notices required by this section and the ninety day
29 period required by [~~subdivision~~] subdivisions one and one-a of this
30 section need only be provided once in a twelve month period to the same
31 borrower in connection with the same loan and same delinquency. Should
32 a borrower cure a delinquency but re-default in the same twelve month
33 period, the lender shall provide a new notice pursuant to this section.

34 5. For any borrower known to have limited English proficiency, the
35 [~~notice~~] notices required by [~~subdivision~~] subdivisions one and one-a of
36 this section shall be in the borrower's native language (or a language
37 in which the borrower is proficient), provided that the language is one
38 of the six most common non-English languages spoken by individuals with
39 limited English proficiency in the state of New York, based on United
40 States census data. The department of financial services shall post the
41 [~~notice~~] notices required by [~~subdivision~~] subdivisions one and one-a of
42 this section on its website in the six most common non-English languages
43 spoken by individuals with limited English proficiency in the state of
44 New York, based on the United States census data.

45 § 5. Subdivision 2 of 1304 of the real property actions and
46 proceedings law, as amended by section 7 of part Q of chapter 73 of the
47 laws of 2016, is amended to read as follows:

48 2. [~~Such notice~~] The notices required by this section shall be sent by
49 the lender or mortgage loan servicer to the borrower, by registered or
50 certified mail and also by first-class mail to the last known address of
51 the borrower, and to the residence which is the subject of the mortgage.
52 Notice is considered given as of the date it is mailed. [~~The notice~~] The
53 notices required by this section shall contain a current list of United
54 States department of housing and urban development approved housing
55 counseling agencies, or other housing counseling agencies serving the
56 county where the property is located from the most recent listing avail-

1 able from the department of financial services. The list shall include
2 the counseling agencies' last known addresses and telephone numbers. The
3 department of financial services shall make available a listing, by
4 county, of such agencies which the lender or mortgage loan servicer may
5 use to meet the requirements of this section.

6 § 6. This act shall take effect immediately and shall be deemed to
7 have been in full force and effect on and after April 20, 2017;
8 provided, however that sections three and four of this act shall take
9 effect on the thirtieth day after it shall have become a law; provided,
10 further, however that:

11 (a) the amendments to subdivision 6 of section 1304 of the real prop-
12 erty actions and proceedings law, made by section one of this act, shall
13 not affect the expiration and reversion of such subdivision pursuant to
14 subdivision a of section 25 of chapter 507 of the laws of 2009, as
15 amended, and shall be deemed repealed therewith;

16 (b) the amendments to subdivision (a) of rule 3408 of the civil prac-
17 tice law and rules, made by section two of this act, shall take effect
18 on the same date and in the same manner as section 3 of part Q of chap-
19 ter 73 of the laws of 2016 takes effect; and

20 (c) the amendments to subdivision 2 of section 1304 of the real prop-
21 erty actions and proceedings law made by section four of this act shall
22 be subject to the expiration and reversion of such subdivision pursuant
23 to subdivision a of section 25 of chapter 507 of the laws of 2009, as
24 amended, when upon such date the provisions of section five of this act
25 shall take effect.