Reverse Mortgage Tax Exemption Affidavit

(Age 60/70)

NYS Tax Law Section 252 –a

Title No.:

STATE OF NEW YORK,)
COUNTY OF) SS:

being duly sworn, depose(s) and say(s):

That (s)he is, or represents, the mortgagee in a certain mortgage instrument to be recorded herewith, made by mortgagor

to mortgagee , dated ,
affecting the real property located in the County of , State of New York and know and designated as:
Street Address
[Section Block Lot] (the "Premises").

(a) That the mortgage being submitted for recording is a reverse mortgage given by a mortgagor who is, or mortgagors all of whom are at least 60/70 years of age;

(b) That the reverse mortgage is of real property improved by a one- to four- family residence or condominium unit that is occupied by the mortgagor or mortgagors, as their residence;

(c) That the reverse mortgage conforms to all other provisions of Section 280 & Section 280-a of the Real Property Law;

(d) That therefore pursuant to Section 252-a.2 of the Tax Law, (and Section 644.1(c)(2) of 20 NYCRR, if property is located in New York City), the mortgage is exempt from mortgage tax and the mortgage can be recorded without payment of any mortgage tax.

Lender:

By ______________________________
(Signature)(Print Name & Capacity of Person Below)

Sworn to before me on this
day of , 20 .

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Notary Public

Reverse Mortgage Guidelines

Traditionally, the Reverse Mortgage is a mortgage under which the borrower receives periodic advances pursuant to a plan or schedule. There also exists what is called a Reverse Annuity Mortgage, this is a mortgage under which the borrower receives a lump sum payment and uses such payment to purchase an annuity. A "reverse mortgage transaction" includes both types of mortgage and also includes such products as the Fannie Mae Home Keeper Mortgage and the FHA Home Equity Conversion Mortgage and the Home Equity Conversation Mortgages (HECM) for Elderly Homeowners, also known as the "HUD/HECM" reverse mortgage. A "reverse mortgage transaction" is hereafter referred to simply as a Reverse Mortgage.

Paragraph 4-4A of section 4235.1 of the HUD Handbook-Revision No. 1 (the "Handbook"), which covers the HUD approved Reverse Mortgage Program, provides:
A. The borrower's age. All borrowers must be at least 62 years old when they sign the Uniform Residential Loan Application (URLA) and the HUD/VA Addendum (Form HUD 92900-A). The lender should request evidence of the ages of all borrowers, and accept all reasonable forms of evidence.

Paragraph 4-4C of section 4235.1 provides, in part:
C. The borrower's principal residence. The property must be the principal residence of each borrower, as defined in Paragraph 4-7A of this chapter....

Reverse Mortgages enable homeowners to tap or convert the equity in their homes and use the resulting cash as they desire. The target group for such HUD loans are homeowners, 62 years of age and older, who do not want to sell and move from their homes but who need some of the value/cash tied up in the equity of such homesteads. Under HUD regulations it is clear that all primary beneficiaries of a revocable or inter vivos trust (living trust) must be over 62 years of age, under State regulations must be 60 or older.

Under a true Reverse Annuity Mortgage all funds are advanced at settlement as would be done with a "regular" Mortgage. Other Reverse Mortgages involve periodic disbursements according to a plan such as:

1. Equal monthly payments to the borrower for so long as the borrower occupies the premises; or

2. Equal monthly payments to the borrower for a fixed term; or

3. Payments to the borrower in a specific amount or in an amount no greater than a specific amount whenever such disbursements are requested by the borrower; or

4. A modified tenure or term plan, which includes aspects of a line of credit payment plan.

Generally, the borrowers are a husband and wife who are each at least 62 years old (for HUD sponsored loans). The periodic disbursements under a Reverse Mortgage continue until the survivor of such couple dies or no longer occupies the property or during whose life the fixed term date occurs. Repayment of the Reverse Mortgage loan will also be geared to one of such events.

The interest required under Reverse Mortgages may include one or more of the following:

1. Variable rate,
2. Compounding of interest,
3. Capitalizing unpaid interest, and
4. Shared appreciation (Note: Most borrowers are un-aware of this provision in the loan documents. Borrowers attorney should be reminded to read all documents carefully).

A Reverse Mortgage instrument may not show a maximum amount for the loan.

Where required the Reverse Mortgage instrument should clearly set forth the loan amount and be "capped" for purposes of title coverage (most frequently the appraised value), notice, priority and/or mortgage tax. (In NY –No mortgage tax if qualified as per affidavits)

NOTE: All mortgagors must be 60 years of age. If the property is held by senior over 60 as to a life estate interest only and the remainder interest(s) are held by anyone under age 60, the mortgage tax must be paid. However in 2007 the Tax Department confirmed that if the loan was a federal reverse mortgage product, it was exempt from the mortgage tax, if only the life tenant(s) was over the age of 60. See ADVISORY OPINION TSB-A-07(5)R, Mortgage Recording Tax, dated October 18, 2007. So currently the rule is that for federal loans no mortgage tax is due, for just state mortgage products the tax is due if all mortgagors are not 60 or over. This consequence can be avoided if the property is transferred to a trust where the primary beneficiaries must be at least 60 years or more. It is ok to have alternative beneficiaries under the age of 60. These rules may be revised in the near future, as many elder care attorneys and associations are unhappy with the rules as they are now.

There are important differences between the state and federal programs. Under the federal requirements, a borrower must be 62 years of age or older whereas under state law, a borrower only has to be 60 years of age. As to property held in a trust, the State and Federal rules are similar in that the minimum age requirements must be met, while for life estate transactions the life tenant only must be 62 on federal loans (remember loans meeting federal standards are exempt from the NY Mortgage Tax) and both the life tenant and all remainder persons must be 60 or over. Remember loans meeting federal standards are exempt from the NY Mortgage Tax. Most reverse mortgages given today are made pursuant to HUD's HECM program, most borrowers are at least 62 years of age.

However, the most important difference between federal and state law and regulations is in the maximum amount of the mortgage that can be borrowed. Under HUD's HECM program, the loan amount for a single-family house located in the New York City metropolitan area is currently capped at $362,790. State law on reverse mortgages contains no such cap. Therefore, if a borrower meets the state requirements of RPL Section 280 or RPL Section 280-a, the borrower is able to borrow much more from a lender willing to hold the mortgage and forego federal requirements then the borrower could get more from a lender who does not only issues HECM loans insured by HUD. If a borrower(s), would like to borrow $1 million through a reverse mortgage from a private source, then the borrower, if they want to qualify for the mortgage recording tax exemption, they have to comply with state law and regulations, only.

TITLE INSURANCE ISSUES

The major questions that arise in reverse mortgage transactions and for which lenders seek title insurance protection are:

1. Will future advances have the same priority as they would have had if full disbursement had been made at settlement?
2. Will variable rates of interest affect the validity, enforceability, or priority of the mortgage?
3. Will compounding and/or capitalizing unpaid interest result in a loss of priority for increases in the unpaid loan balance?
4. Duplicate Mortgage Tax affidavits must be completed and filed with mortgage document to avoid paying mortgage recording taxes.
5. Capacity of Person(s) executing the loan documents.

At a minimum, a lender should seek an endorsement to a standard ALTA Loan Policy (6-17-06), which indicates that advances made after the date of policy are covered under the policy. Where appropriate, the ALTA Short Form Residential Loan Policy (6-17-06) may also be modified by addendum or by endorsement.

REMEMBER: A Reverse Mortgage instrument may not show a maximum amount for the loan.

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Chicago Title Insurance Company requires that every reverse mortgage loan policy have attached to it the TIRSA Reverse Mortgage Endorsement.