

# Reverse Mortgage Loans on Residential Coops Are Now Authorized

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After an extensive lobbying effort by residential coops and their trade associations, cooperative apartment owners are now able to get reverse “mortgage” loans in New York. This [article] provides information to borrowers who may consider whether to obtain a reverse mortgage loan and answers question that coop Board members may have in deciding whether to allow such loans.

## **What is a reverse mortgage loan on a coop unit?**

A reverse mortgage loan is a loan with no fixed maturity date. The proceeds are disbursed to the borrower either in a single installment, as a line of credit, or in periodic disbursements over time. The loan does not have to be repaid until the borrower dies, permanently ceases to use the apartment as a primary residence, or breaches the loan agreement with the lender. Interest continues to accrue until the loan is repaid.

## **13 questions for borrowers considering reverse mortgages:**

### **Is there a minimum age for reverse mortgage borrowers?**

Yes. The borrower must be at least 62years old. If there are joint borrowers, all of them must satisfy the minimum age requirement.

### **What must the borrower do to avoid repaying the loan in advance?**

The borrower must continue to occupy the unit as his or her primary residence and the borrower must not default on the other loan covenants. The most important covenant is likely to require that the borrower satisfy its obligations to the cooperative, including paying monthly maintenance and any other assessments.

### **What happens if the borrower dies?**

If the borrower dies, the loan must be repaid in full.

### **What if there are two owner/borrowers?**

In general, all the borrowers must qualify to obtain the loan. Once the loan is in place, the loan is not due until all of the borrowers fail to qualify, so, for example, if one spouse dies and the other continues to use the unit as a primary residence, the loan does not yet have to be repaid.

### **What happens if the borrower moves to an assisted living facility or retires to Florida?**

The loan must be repaid in full because the borrower is no longer living in the unit as his or her primary residence. However, spending the winter in Florida does not require that the loan be repaid so long as the unit is not permanently abandoned as the primary residence.

### **Can my heirs still inherit the unit?**

If your heirs are entitled to inherit the unit under your proprietary lease, they can still do so with a reverse mortgage loan, but the loan will be due and will have to be repaid in full.

### **If the value of the unit goes up, who gets to keep the profit?**

The equity in the apartment is owned by the borrower, even if there is a reverse mortgage loan. The loan amount will increase even after the lender advances the proceeds because interest will accrue but not be paid. However,

if the unit is worth more than the loan amount, then after the loan is repaid, any remaining value will belong to the borrower.

**Is financial counselling required to qualify for a reverse mortgage loan?**

Yes. Before a lender is allowed to issue a loan commitment for a reverse mortgage loan, the borrower must obtain written proof that the terms of the loan have been explained by a government-approved reverse mortgage housing counselor with cooperative housing training.

**The law allowing reverse mortgage loans on coops was originally vetoed because of concerns about predatory lenders. What should a borrower be careful about?**

We recommend that borrowers carefully consider the costs of a reverse mortgage loan and whether they really need the loan. Reverse mortgage loans can be life savers to borrowers who have cash flow problems but who want to continue to live in their current home. However, there is a price to be paid for that security, and if a borrower does not need or want the cash flow, a reverse mortgage loan can be a mistake.

**Does it matter whether I get the loan at age 62 or wait until I'm age75?**

The older the borrower, the more money will be available from a reverse mortgage loan. One of the important components of the lender's calculation of how much money to lend is the borrower's life expectancy. The longer the remaining life expectancy, the smaller the loan amount.

**My spouse is 58 years old and I am 72 years old. We live together. Do we qualify?**

Unfortunately, if you both own the unit, you do not qualify. Only when both owners exceed the age threshold is a reverse mortgage loan available.

**I have a pied-a-terre coop in Manhattan but my primary residence is in Connecticut. Can I get a reverse mortgage loan on my Manhattan coop?**

No. Reverse mortgage loans are available only for coop units that are occupied as a primary residence.

**Shouldn't I just get a home equity line of credit instead?**

If you can obtain a home equity line of credit, that may be a better choice, but home equity lines of credit are usually available only to borrowers who are employed and can afford to repay the loan. You should consult with your financial advisor or other independent advisor before deciding whether you need a loan and, if so, what kind of loan to pursue.

## **6 questions about reverse mortgages for co-op Boards of Directors**

### **Is Board of Directors approval required?**

Yes. The new law provides that a reverse cooperative unit loan is subject to the prior approval of the Board of Directors.

### **Should the Board of Directors allow reverse mortgage loans?**

There is no easy answer to this question. Boards should consider allowing elderly residents to obtain reverse mortgages and should consult with their counsel to make sure that the cooperative's interests are properly protected.

### **Is a refusal of a cooperative Board to allow residents to obtain reverse mortgage loans unlawful age discrimination?**

We have not found any court precedent supporting this argument. Boards should always have a bona fide non-discriminatory basis for every decision.

### **Does the Board of Directors lose its right to approve a new purchaser if it allows a reverse mortgage loan?**

No. Unless the Board agrees otherwise, the Board retains the same right to approve purchasers proposed by the shareholder or lender that it has for other loans that are foreclosed.

### **Should the parties sign a recognition agreement as in a "regular" mortgage loan?**

The reverse mortgage lender will probably require a recognition agreement. The customary form of recognition agreement is satisfactory in most cases and maintains the coop's priority. We recommend that coop Boards consider additional provisions in a reverse mortgage recognition agreement that are beyond the scope of this blog.

### **Should the Board of Directors require an escrow for future maintenance payments in exchange for permitting a reverse mortgage loan?**

The Board may want to consider an escrow for future maintenance payments. Although the coop still has first priority for unpaid maintenance, an escrow for future maintenance provides additional cash flow protection in case there is a delay in resolving the estate of a deceased shareholder and then an additional delay in repaying the reverse mortgage loan in the event of death.

If you have any questions about the new law, you may contact Jay L. Hack, Esq. at **212-935-3131**, [jlh@gdblaw.com](mailto:jlh@gdblaw.com), *Gallet Dreyer & Berkey, LLP* 845 Third Avenue, New York, NY 10022 or your regular attorney for assistance.