

By Senator Fasano

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1 A bill to be entitled
2 An act relating to reverse mortgage loans to senior
3 individuals; providing purposes; providing
4 definitions; providing for application to certain
5 reverse mortgage loans; specifying requirements for
6 reverse mortgage loans; specifying authorized fees and
7 charges for reverse mortgage loans; requiring lenders
8 to provide borrowers certain loan information;
9 providing additional lender requirements; specifying a
10 statute of limitations for collection of loan
11 proceeds; prohibiting lenders from requiring reverse
12 mortgage loan applicants to purchase certain financial
13 products; specifying prohibited reverse mortgage
14 lender or broker activities; providing counseling and
15 consumer education requirements for reverse mortgage
16 lenders; specifying a reverse mortgage loan as a lien;
17 specifying priority of the lien; providing
18 construction; providing for treble damages under
19 certain circumstances; providing for nonapplication of
20 certain state laws and rules to reverse mortgage
21 loans; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. (1) PURPOSES.—The purposes of this section are
26 to:

27 (a) Meet the special needs of senior homeowners by reducing
28 the effect of the economic hardship caused by the increasing
29 costs of meeting health, housing, and subsistence needs at a

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30 time of reduced income, through the issuance of reverse mortgage
31 loans to permit the conversion of a portion of accumulated home
32 equity into liquid assets.

33 (b) Encourage and increase the involvement of mortgagees
34 and participants in the mortgage markets in the making and
35 servicing of reverse mortgage loans for senior homeowners.

36 (c) Protect senior homeowners from abuse and fraud.

37 (d) Encourage the use by senior homeowners interested in
38 reverse mortgage loans of entities approved by the United States
39 Department of Housing and Urban Development for participation in
40 the Federal Housing Administration's Home Equity Conversion
41 Mortgage Program and any alternative proprietary products.

42 (2) DEFINITIONS.—For purposes of this section, the term:

43 (a) "Broker" means an entity the activity of which in the
44 reverse mortgage loan process is limited to taking applications,
45 discussing terms and rates with the borrower, and undertaking
46 similar activities, but is not identified on the promissory note
47 as the payee and does not maintain its own funds for making
48 reverse mortgage loans.

49 (b) "Business day" means a day on which the offices of a
50 lender are open to the public for carrying on substantially all
51 of the lender's business functions.

52 (c) "Department" means the United States Department of
53 Housing and Urban Development.

54 (d) "Eligible borrower" means any individual who is at
55 least 62 years of age. A borrower who is incapacitated and
56 otherwise considered an eligible borrower is eligible for a
57 reverse mortgage loan if there is an individual who can contract
58 for the borrower as a court-appointed guardian or who possesses

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59 a durable power of attorney for the borrower. If there is a co-
60 borrower on the loan, the co-borrower must also be at least 62
61 years of age to be deemed an eligible borrower.

62 (e) "Lender" means an entity that is identified on the
63 promissory note as the payee, that maintains its own funds,
64 including warehouse lines, for making reverse mortgage loans,
65 and that may or may not be approved by the department to
66 participate in making reverse mortgage loans under the program.

67 (f) "Make a reverse mortgage loan" means the funding and
68 closing of a reverse mortgage loan subject to this section.

69 (g) "Maximum claim" means the maximum amount of proceeds
70 over the life of the reverse mortgage loan the borrower is
71 entitled to receive under the note.

72 (h) "Originate a reverse mortgage loan" means the taking of
73 an application for a reverse mortgage loan subject to this
74 section.

75 (i) "Program" means the Home Equity Conversion Mortgage
76 Program of the Federal Housing Administration.

77 (j) "Reverse mortgage loan" means a nonrecourse loan
78 secured by real property that meets the following criteria:

79 1. The loan provides a lump sum, periodic cash advances,
80 and lines of credit to a borrower based on the equity or the
81 value in a borrower's owner-occupied principal residence.

82 2. The loan requires no payment of principal or interest
83 until the entire loan becomes due and payable.

84 (k) "Taking an application" means the submission of a
85 written application for a reverse mortgage loan by the borrower
86 or borrower's representative to the lender, and the borrower or
87 borrower's representative intends the application to be

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88 considered for approval. The taking of a borrower's contact
89 information, property address, and similar information or
90 obtaining the borrower's credit report is not deemed taking an
91 application.

92 (3) COVERAGE.—This section applies to reverse mortgage
93 loans originated by or made to eligible borrowers on the
94 borrower's principal, one-to-four family residential dwelling
95 and not originated or made under the program, as well as reverse
96 mortgage loans originated or made under the program.

97 (4) LIMITATIONS AND PARAMETERS.—A reverse mortgage loan
98 must comply with all of the following:

99 (a) Any prepayment, in whole or in part, shall be permitted
100 without penalty at any time during the term of the reverse
101 mortgage loan. For purposes of this section, a penalty does not
102 include any fees, payments, or other charges that would have
103 otherwise been due upon the reverse mortgage loan being due and
104 payable.

105 (b) A reverse mortgage loan may provide for a fixed or
106 adjustable interest rate or combination of such rates,
107 including, but not limited to, compound interest, and may also
108 provide for interest that is contingent upon the value of the
109 property upon execution of the loan or at the loan's maturity,
110 or on changes in value between the dates of the loan's closing
111 and maturity.

112 (c) If a reverse mortgage loan provides for periodic
113 advances to a borrower, the advances may not be reduced in
114 amount or number based upon any adjustment in the interest rate.

115 (d) The reverse mortgage loan shall become due and payable
116 upon the occurrence of any of the following events:

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117 1. The home securing the loan is sold or title to the home
118 is otherwise transferred;

119 2. All borrowers cease occupying the home as a principal
120 residence, except as provided in paragraph (e);

121 3. Any fixed maturity date agreed to by the lender and the
122 borrower occurs; or

123 4. An event occurs that is specified in the loan documents
124 and that jeopardizes the lender's security.

125 (e) Repayment of the reverse mortgage loan is subject to
126 the following additional conditions:

127 1. Temporary absences from the home not exceeding 60
128 consecutive days may not cause the mortgage loan to become due
129 and payable.

130 2. Extended absences from the home exceeding 60 consecutive
131 days, but less than 1 year, may not cause the mortgage loan to
132 become due and payable if the borrower has taken prior action
133 that secures and protects the home in a manner satisfactory to
134 the lender, as specified in the loan documents.

135 (f) This section does not require a lender to make a
136 reverse mortgage loan if the lender has reason to believe the
137 borrower, acting on his own or acting through the borrower's
138 guardian or an individual with a durable power of attorney for
139 the borrower, is unable to enter into a contract for any reason,
140 including, but not limited to, incapacity or duress. This
141 paragraph does not create any special legal duty for the lender
142 to determine the borrower's ability to enter into a contract.

143 (5) FEES AND CHARGES.-

144 (a) A reverse mortgage loan may include costs and fees that
145 are charged by the lender or the lender's designee, originator,

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146 or servicer, including, but not limited to, costs and fees
147 charged upon execution of the loan, upon execution of
148 appreciation on a periodic basis, or upon maturity. The borrower
149 may also be responsible for any costs of failing to comply with
150 the reverse mortgage loan contract.

151 (b) All fees are subject to all applicable state and
152 federal standards.

153 (6) AGREEMENT AND NOTE; DISCLOSURES.—

154 (a) A lender shall provide the borrower, anytime during the
155 reverse mortgage loan process but before the loan closing, with
156 a document disclosing in plain language a summary of the core
157 terms and conditions of the loan. The core terms and conditions
158 must include:

159 1. Interest rate.

160 2. Whether the rate is fixed or adjustable.

161 3. If the rate is adjustable, the frequency of the rate
162 change and the maximum amount the rate can change in any period.

163 4. The public index to which any changes in the interest
164 rate will be tied.

165 5. The term of the loan.

166 6. The schedule of payment paid out during the term of the
167 loan.

168 7. The conditions under which repayment is triggered.

169 (b) Lenders that meet Federal Housing Authority
170 requirements for disclosure are also deemed to meet the
171 requirements of this subsection.

172 (c) The lender must comply with applicable federal
173 regulations.

174 (d) The lender's right to collect reverse mortgage loan

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175 proceeds is subject to the applicable statute of limitations for
176 written loan contracts. Notwithstanding any other provision of
177 law, the statute of limitations shall commence on the date the
178 reverse mortgage loan becomes due and payable as provided in the
179 loan agreement.

180 (7) CROSS-SELLING.—

181 (a) A lender may not require an applicant for a reverse
182 mortgage loan to purchase an insurance annuity or other similar
183 financial product, excluding title insurance or hazard, flood,
184 or other peril insurance, as a condition of obtaining a reverse
185 mortgage loan. A reverse mortgage lender or a broker arranging a
186 reverse mortgage loan may not:

187 1. Offer an insurance, annuity, or other similar financial
188 product, excluding title insurance or hazard, flood, or other
189 peril insurance, to the borrower prior to the closing of the
190 reverse mortgage loan or before the expiration of the right of
191 the borrower to rescind the reverse mortgage loan agreement.

192 2. Refer the borrower to anyone for the purchase of an
193 insurance, annuity, or other similar financial product,
194 excluding title insurance or hazard, flood, or other peril
195 insurance, prior to the closing of the reverse mortgage loan or
196 before the expiration of the right of the borrower to rescind
197 the reverse mortgage loan agreement.

198 (b) A mortgage originator or any other party that
199 participates in the origination of a reverse mortgage loan must
200 comply with all applicable state laws and rules and federal laws
201 and regulations.

202 (8) COUNSELING AND CONSUMER EDUCATION.—

203 (a) Prior to making a reverse mortgage loan, a lender

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204 shall:

205 1. Refer the prospective borrower to a housing counseling
206 agency approved by the department.

207 2. Provide the borrower with a list of at least five
208 counseling agencies approved by the department, including at
209 least two agencies that can provide counseling by telephone.

210 (b) A lender may not accept a final and complete
211 application for a reverse mortgage loan from a prospective
212 applicant or assess and collect any fees from a prospective
213 applicant without first receiving a certification from the
214 applicant or the applicant's authorized representative that the
215 applicant has received counseling from an approved agency. The
216 certification shall be signed by the borrower and the agency
217 counselor and shall include the dates of the counseling and the
218 names, addresses, and telephone numbers of the counselor and the
219 borrower. An electronic facsimile copy of the housing counseling
220 certification satisfies the requirements of this paragraph. The
221 lender shall maintain the certification in an accurate,
222 reproducible, and accessible format for the term of the reverse
223 mortgage loan.

224 (c) Counseling may be face to face or by telephone.

225 (d) The information covered in the counseling session shall
226 include:

227 1. Options other than a reverse mortgage loan that are
228 available to the homeowner, including other housing, social
229 service, health, and financial options.

230 2. Other reverse mortgage loan options that are or may
231 become available to the homeowner, including, but not limited
232 to, sale-leaseback financing, deferred payment loans, and

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233 property tax deferrals.

234 3. The financial implications of entering into a reverse
235 mortgage loan.

236 4. A disclosure that a reverse mortgage loan may have tax
237 consequences, affect eligibility for assistance under federal
238 and state programs, and have an impact on the estate and heirs
239 of the homeowner.

240 (e) For borrowers represented by an individual who is a
241 court-appointed guardian or possesses a durable power of
242 attorney for the borrower, such individual must complete the
243 counseling requirements.

244 (f) Upon the request of the borrower, other parties shall
245 be permitted to attend the counseling with the borrower. This
246 paragraph does not create an obligation or duty on the part of
247 the lender to inform, notify, or advise any other party of the
248 opportunity to attend the counseling.

249 (g) The borrower may be assessed a fee for the counseling.
250 The fee may be financed under the loan amount as limited by the
251 department.

252 (9) OTHER PROVISIONS.—

253 (a) A reverse mortgage loan constitutes a lien against the
254 subject property to the extent of all advances made pursuant to
255 the reverse mortgage loan and all interest accrued on such
256 advances, and that lien shall have priority over any lien filed
257 or recorded after a reverse mortgage is recorded.

258 (b) For purposes of this section, a property is deemed to
259 be owner-occupied notwithstanding that legal title to the
260 property is held in the name of a trust provided the occupant of
261 the property is a beneficiary of the trust.

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262 (c) An arrangement, transfer, or lien subject to this
263 section may not be invalidated solely because of the failure of
264 a lender to comply with any provision of this section. However,
265 this section does preclude the application of any other existing
266 civil remedies provided by law.

267 (d) A lender who fails to make loan advances as required in
268 the reverse mortgage loan documents and fails to cure an actual
269 default after notice as specified in the reverse mortgage loan
270 documents shall forfeit to the borrower treble the amount
271 wrongfully withheld plus interest at the legal rate.

272 (e) Any state law or rule that applies to loans, extensions
273 of credit, or other similar financial instruments; that applies
274 limitations, restrictions, or prohibitions against certain
275 financial concepts, including, but not limited to, shared equity
276 lending, collateral-based lending, negative amortization,
277 adjustable-rate interest, deferred interest, and payments
278 calculated on an interest-only basis, however defined; or that
279 frustrates the purpose of reverse mortgage loans does not apply
280 to reverse mortgage loans.

281 Section 2. This act shall take effect July 1, 2010.