

AMENDED IN ASSEMBLY JUNE 20, 2006

AMENDED IN ASSEMBLY JUNE 8, 2006

AMENDED IN SENATE APRIL 26, 2006

AMENDED IN SENATE MARCH 28, 2006

SENATE BILL

No. 1609

Introduced by Senator Simitian

(Principal coauthor: Assembly Member Wolk)

February 24, 2006

An act to amend Sections 1632, 1923.2, and 1923.5 of the Civil Code, relating to reverse mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1609, as amended, Simitian. Reverse mortgages: annuities.

Existing state and federal law regulate the activities of financial institutions. Existing state law defines and regulates reverse mortgage loans and provides a disclosure notice that a lender must provide an applicant, which informs the applicant that a reverse mortgage is a complex financial arrangement and advises the applicant of the wisdom of seeking financial counseling before entering the agreement.

This bill would prohibit a lender from requiring the purchase of an annuity as a condition of obtaining a reverse mortgage loan. The bill would prohibit ~~any person from selling an annuity to a reverse mortgage borrower on or before 30 days after the closing of the borrower's reverse mortgage loan if person knew or should have known about the reverse mortgage and the closing date, and an annuity so sold would be void and unenforceable~~ *a reverse mortgage lender or a broker arranging a reverse mortgage loan from offering*

an annuity to the borrower or referring the borrower to anyone for the purchase of an annuity prior to the closing of the loan or before the expiration of the borrower's right to rescind. The bill would, among other things, require a lender to refer a prospective borrower to a housing counseling agency for counseling ~~on the advisability and appropriateness of the loan,~~ *as specified,* prior to accepting ~~an a final and complete~~ application for a reverse mortgage *or assessing any fees,* and would prohibit a lender from accepting ~~an a full and complete~~ application for a reverse mortgage loan *or assessing any fees* without receiving certification, as specified, that the borrower had received this counseling. The bill would make changes to the disclosure notice provided to an applicant for a reverse mortgage and would require a lender to provide a specified list of independent loan counselors.

Existing law requires any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean in the course of entering into specified contracts to deliver to the other party, prior to the execution of a contract or agreement, a translation of it in the language in which it was negotiated.

This bill would include contracts for reverse mortgages within these provisions. The bill would require a lender to ensure compliance with these provisions in the case of brokered loans.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1632 of the Civil Code is amended to
2 read:
3 1632. (a) The Legislature hereby finds and declares all of the
4 following:
5 (1) This section was enacted in 1976 to increase consumer
6 information and protections for the state's sizeable and growing
7 Spanish-speaking population.
8 (2) Since 1976, the state's population has become increasingly
9 diverse and the number of Californians who speak languages
10 other than English as their primary language at home has
11 increased dramatically.
12 (3) According to data from the United States Census of 2000,
13 of the more than 12 million Californians who speak a language
14 other than English in the home, approximately 4.3 million speak

1 an Asian dialect or another language other than Spanish. The top
2 five languages other than English most widely spoken by
3 Californians in their homes are Spanish, Chinese, Tagalog,
4 Vietnamese, and Korean. Together, these languages are spoken
5 by approximately 83 percent of all Californians who speak a
6 language other than English in their homes.

7 (b) Any person engaged in a trade or business who negotiates
8 primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,
9 orally or in writing, in the course of entering into any of the
10 following, shall deliver to the other party to the contract or
11 agreement and prior to the execution thereof, a translation of the
12 contract or agreement in the language in which the contract or
13 agreement was negotiated, which includes a translation of every
14 term and condition in that contract or agreement:

15 (1) A contract or agreement subject to the provisions of Title 2
16 (commencing with Section 1801) of, and Chapter 2b
17 (commencing with Section 2981) and Chapter 2d (commencing
18 with Section 2985.7) of Title 14 of, Part 4 of Division 3.

19 (2) A loan or extension of credit secured other than by real
20 property, or unsecured, for use primarily for personal, family or
21 household purposes.

22 (3) A lease, sublease, rental contract or agreement, or other
23 term of tenancy contract or agreement, for a period of longer than
24 one month, covering a dwelling, an apartment, or mobilehome, or
25 other dwelling unit normally occupied as a residence.

26 (4) Notwithstanding paragraph (2), a loan or extension of
27 credit for use primarily for personal, family or household
28 purposes where the loan or extension of credit is subject to the
29 provisions of Article 7 (commencing with Section 10240) of
30 Chapter 3 of Part 1 of Division 4 of the Business and Professions
31 Code, or Division 7 (commencing with Section 18000), or
32 Division 9 (commencing with Section 22000) of the Financial
33 Code.

34 (5) Notwithstanding paragraph (2), a reverse mortgage as
35 described in Chapter 8 (commencing with Section 1923) of Title
36 4 of Part 4 of Division 3.

37 (6) A contract or agreement, containing a statement of fees or
38 charges, entered into for the purpose of obtaining legal services,
39 when the person who is engaged in business is currently licensed

1 to practice law pursuant to Chapter 4 (commencing with Section
2 6000) of Division 3 of the Business and Professions Code.

3 (c) Notwithstanding subdivision (b), for a loan subject to this
4 part and to Article 7 (commencing with Section 10240) of
5 Chapter 3 of Part 1 of Division 4 of the Business and Professions
6 Code, the delivery of a translation of the statement to the
7 borrower required by Section 10240 of the Business and
8 Professions Code in any of the languages specified in subdivision
9 (b) in which the contract or agreement was negotiated, is in
10 compliance with subdivision (b).

11 (d) At the time and place where a lease, sublease, or rental
12 contract or agreement described in subdivision (b) is executed,
13 notice in any of the languages specified in subdivision (b) in
14 which the contract or agreement was negotiated shall be provided
15 to the lessee or tenant.

16 (e) Provision by a supervised financial organization of a
17 translation of the disclosures required by Regulation M or
18 Regulation Z, and, if applicable, Division 7 (commencing with
19 Section 18000) or Division 9 (commencing with Section 22000)
20 of the Financial Code in any of the languages specified in
21 subdivision (b) in which the contract or agreement was
22 negotiated, prior to the execution of the contract or agreement,
23 shall also be deemed in compliance with the requirements of
24 subdivision (b) with regard to the original contract or agreement.

25 (1) “Regulation M” and “Regulation Z” mean any rule,
26 regulation, or interpretation promulgated by the Board of
27 Governors of the Federal Reserve System and any interpretation
28 or approval issued by an official or employee duly authorized by
29 the board to issue interpretations or approvals dealing with,
30 respectively, consumer leasing or consumer lending, pursuant to
31 the Federal Truth in Lending Act, as amended (15 U.S.C. Sec.
32 1601 et seq.).

33 (2) As used in this section, “supervised financial organization”
34 means a bank, savings association as defined in Section 5102 of
35 the Financial Code, credit union, or holding company, affiliate,
36 or subsidiary thereof, or any person subject to Article 7
37 (commencing with Section 10240) of Chapter 3 of Part 1 of
38 Division 4 of the Business and Professions Code, or Division 7
39 (commencing with Section 18000) or Division 9 (commencing
40 with Section 22000) of the Financial Code.

1 (f) At the time and place where a contract or agreement
2 described in paragraph (1) or (2) of subdivision (b) is executed, a
3 notice in any of the languages specified in subdivision (b) in
4 which the contract or agreement was negotiated shall be
5 conspicuously displayed to the effect that the person described in
6 subdivision (b) is required to provide a contract or agreement in
7 the language in which the contract or agreement was negotiated,
8 or a translation of the disclosures required by law in the language
9 in which the contract or agreement was negotiated, as the case
10 may be. If a person described in subdivision (b) does business at
11 more than one location or branch, the requirements of this section
12 shall apply only with respect to the location or branch at which
13 the language in which the contract or agreement was negotiated
14 is used.

15 (g) The term “contract” or “agreement,” as used in this
16 section, means the document creating the rights and obligations
17 of the parties and includes any subsequent document making
18 substantial changes in the rights and obligations of the parties.
19 The term “contract” or “agreement” does not include any
20 subsequent documents authorized or contemplated by the original
21 document such as periodic statements, sales slips or invoices
22 representing purchases made pursuant to a credit card agreement,
23 a retail installment contract or account or other revolving sales or
24 loan account, memoranda of purchases in an add-on sale, or
25 refinancing of a purchase as provided by, or pursuant to, the
26 original document.

27 The term “contract” or “agreement” does not include a home
28 improvement contract as defined in Sections 7151.2 and 7159 of
29 the Business and Professions Code, nor does it include plans,
30 specifications, description of work to be done and materials to be
31 used, or collateral security taken or to be taken for the retail
32 buyer’s obligation contained in a contract for the installation of
33 goods by a contractor licensed pursuant to Chapter 9
34 (commencing with Section 7000) of Division 3 of the Business
35 and Professions Code, if the home improvement contract or
36 installation contract is otherwise a part of a contract described in
37 subdivision (b).

38 Matters ordinarily incorporated by reference in contracts or
39 agreements as described in paragraph (3) of subdivision (b),
40 including, but not limited to, rules and regulations governing a

1 tenancy and inventories of furnishings to be provided by the
2 person described in subdivision (b), are not included in the term
3 “contract” or “agreement.”

4 (h) This section does not apply to any person engaged in a
5 trade or business who negotiates primarily in a language other
6 than English, as described by subdivision (b), if the party with
7 whom he or she is negotiating is a buyer of goods or services, or
8 receives a loan or extension of credit, or enters an agreement
9 obligating himself or herself as a tenant, lessee, or sublessee, or
10 similarly obligates himself or herself by contract or lease, and the
11 party negotiates the terms of the contract, lease, or other
12 obligation through his or her own interpreter.

13 As used in this subdivision, “his or her own interpreter” means
14 a person, not a minor, able to speak fluently and read with full
15 understanding both the English language and any of the
16 languages specified in subdivision (b) in which the contract or
17 agreement was negotiated, and who is not employed by, or
18 whose service is made available through, the person engaged in
19 the trade or business.

20 (i) Notwithstanding subdivision (b), a translation may retain
21 the following elements of the executed English-language contract
22 or agreement without translation: names and titles of individuals
23 and other persons, addresses, brand names, trade names,
24 trademarks, registered service marks, full or abbreviated
25 designations of the make and model of goods or services,
26 alphanumeric codes, numerals, dollar amounts expressed in
27 numerals, dates, and individual words or expressions having no
28 generally accepted non-English translation. It is permissible, but
29 not required, that this translation be signed.

30 (j) The terms of the contract or agreement which is executed in
31 the English language shall determine the rights and obligations of
32 the parties. However, the translation of the contract or the
33 disclosures required by subdivision (e) in any of the languages
34 specified in subdivision (b) in which the contract or agreement
35 was negotiated shall be admissible in evidence only to show that
36 no contract was entered into because of a substantial difference
37 in the material terms and conditions of the contract and the
38 translation.

39 (k) Upon a failure to comply with the provisions of this
40 section, the person aggrieved may rescind the contract or

1 agreement in the manner provided by this chapter. When the
2 contract for a consumer credit sale or consumer lease which has
3 been sold and assigned to a financial institution is rescinded
4 pursuant to this subdivision, the consumer shall make restitution
5 to and have restitution made by the person with whom he or she
6 made the contract, and shall give notice of rescission to the
7 assignee. Notwithstanding that the contract was assigned without
8 recourse, the assignment shall be deemed rescinded and the
9 assignor shall promptly repurchase the contract from the
10 assignee.

11 SEC. 2. Section 1923.2 of the Civil Code is amended to read:

12 1923.2. A reverse mortgage loan shall comply with all of the
13 following requirements:

14 (a) Prepayment, in whole or in part, shall be permitted without
15 penalty at any time during the term of the reverse mortgage loan.
16 For the purposes of this section, penalty does not include any
17 fees, payments, or other charges that would have otherwise been
18 due upon the reverse mortgage being due and payable.

19 (b) A reverse mortgage loan may provide for a fixed or
20 adjustable interest rate or combination thereof, including
21 compound interest, and may also provide for interest that is
22 contingent on the value of the property upon execution of the
23 loan or at maturity, or on changes in value between closing and
24 maturity.

25 (c) A reverse mortgage may include costs and fees that are
26 charged by the lender, or the lender's designee, originator, or
27 servicer, including costs and fees charged upon execution of the
28 loan, on a periodic basis, or upon maturity.

29 (d) If a reverse mortgage loan provides for periodic advances
30 to a borrower, these advances shall not be reduced in amount or
31 number based on any adjustment in the interest rate.

32 (e) A lender who fails to make loan advances as required in
33 the loan documents, and fails to cure an actual default after
34 notice as specified in the loan documents, shall forfeit to the
35 borrower treble the amount wrongfully withheld plus interest at
36 the legal rate.

37 (f) The reverse mortgage loan may become due and payable
38 upon the occurrence of any one of the following events:

39 (1) The home securing the loan is sold or title to the home is
40 otherwise transferred.

1 (2) All borrowers cease occupying the home as a principal
2 residence, except as provided in subdivision (h).

3 (3) Any fixed maturity date agreed to by the lender and the
4 borrower occurs.

5 (4) An event occurs which is specified in the loan documents
6 and which jeopardizes the lender's security.

7 (g) Repayment of the reverse mortgage loan shall be subject to
8 the following additional conditions:

9 (1) Temporary absences from the home not exceeding 60
10 consecutive days shall not cause the mortgage to become due and
11 payable.

12 (2) Extended absences from the home exceeding 60
13 consecutive days, but less than one year, shall not cause the
14 mortgage to become due and payable if the borrower has taken
15 prior action which secures and protects the home in a manner
16 satisfactory to the lender, as specified in the loan documents.

17 (3) The lender's right to collect reverse mortgage loan
18 proceeds shall be subject to the applicable statute of limitations
19 for written loan contracts. Notwithstanding any other provision
20 of law, the statute of limitations shall commence on the date that
21 the reverse mortgage loan becomes due and payable as provided
22 in the loan agreement.

23 (4) The lender shall prominently disclose in the loan
24 agreement any interest rate or other fees to be charged during the
25 period that commences on the date that the reverse mortgage loan
26 becomes due and payable, and that ends when repayment in full
27 is made.

28 (h) The first page of any deed of trust securing a reverse
29 mortgage loan shall contain the following statement in 10-point
30 boldface type: "This deed of trust secures a reverse mortgage
31 loan."

32 (i) A lender shall not require an applicant for a reverse
33 mortgage to purchase an annuity as a condition of obtaining a
34 reverse mortgage loan. ~~A person shall not sell an annuity to a
35 reverse mortgage borrower on or before 30 days after the closing
36 of the borrower's reverse mortgage loan if the person knew or
37 should have known about the existence and closing date of the
38 reverse mortgage loan. An annuity that is knowingly sold to a
39 reverse mortgage borrower in violation of this subdivision is void~~

1 ~~and unenforceable.~~ A reverse mortgage lender or a broker
2 arranging a reverse mortgage loan shall not:

3 (1) Offer an annuity to the borrower prior to the closing of the
4 reverse mortgage or before the expiration of the right of the
5 borrower to rescind the reverse mortgage agreement.

6 (2) Refer the borrower to anyone for the purchase of an
7 annuity prior to the closing of the reverse mortgage or before the
8 expiration of the right of the borrower to rescind the reverse
9 mortgage agreement.

10 (j) Prior to accepting ~~an~~ a final and complete application for a
11 reverse mortgage loan ~~or assessing any fees~~, a lender shall refer
12 the prospective borrower to a housing counseling agency
13 approved by the United States Department of Housing and Urban
14 Development for counseling ~~on the advisability of the particular~~
15 ~~loan at issue and the appropriateness of that loan for the~~
16 ~~borrower.~~ The counseling shall meet the standards and
17 requirements established by the United States Department of
18 Housing and Urban Development for reverse mortgage lenders.
19 The lender shall provide the borrower with a list of at least ~~10~~
20 ~~five~~ housing counseling agencies ~~or counselors~~ approved by the
21 United States Department of Housing and Urban Development,
22 including at least ~~three~~ *two* agencies that can provide counseling
23 by telephone.

24 (k) A lender shall not accept ~~an~~ a final and complete
25 application for a reverse mortgage loan from a prospective
26 applicant ~~or assess any fees upon a prospective applicant~~ without
27 first receiving a certification from the applicant or the applicant's
28 authorized representative that the applicant has received
29 counseling from an agency ~~or counselor~~ as described in
30 subdivision (j). The certification shall be signed by the borrower
31 and the *agency* counselor, and shall include the date of the
32 counseling and the name, address, and telephone number of both
33 ~~the housing counseling agency counselor~~ and the borrower.
34 Electronic facsimile copy of the housing counseling certification
35 satisfies the requirements of this subdivision. The lender shall
36 maintain the certification in an accurate, reproducible, and
37 accessible format for the term of the reverse mortgage.

38 (l) A lender shall not make a reverse mortgage loan without
39 first complying with, or in the case of brokered loans ensuring
40 compliance with, the requirements of Section 1632, *if applicable*.

1 SEC. 3. Section 1923.5 of the Civil Code is amended to read:
2 1923.5. No reverse mortgage loan application shall be taken
3 by a lender unless the loan applicant has received from the lender
4 the following plain language statement in conspicuous 16-point
5 type or larger, advising the prospective borrower about
6 counseling prior to obtaining the reverse mortgage loan:

7
8 **IMPORTANT NOTICE**
9 **TO REVERSE MORTGAGE LOAN APPLICANT**

10
11 A REVERSE MORTGAGE IS A COMPLEX FINANCIAL
12 TRANSACTION THAT PROVIDES A MEANS OF USING
13 THE EQUITY YOU HAVE BUILT UP IN YOUR HOME, OR
14 THE VALUE OF YOUR HOME, AS A SOURCE OF
15 ADDITIONAL INCOME. IF YOU DECIDE TO OBTAIN A
16 REVERSE MORTGAGE LOAN, YOU WILL SIGN BINDING
17 LEGAL DOCUMENTS THAT WILL HAVE IMPORTANT
18 LEGAL AND FINANCIAL IMPLICATIONS FOR YOU AND
19 YOUR ESTATE. IT IS THEREFORE IMPORTANT TO
20 UNDERSTAND THE TERMS OF THE REVERSE
21 MORTGAGE AND ITS EFFECT. BEFORE ENTERING INTO
22 THIS TRANSACTION, YOU ARE REQUIRED TO CONSULT
23 WITH AN INDEPENDENT LOAN COUNSELOR. A LIST OF
24 APPROVED COUNSELORS WILL BE PROVIDED TO YOU
25 BY THE LENDER.
26 YOU MAY ALSO WANT TO DISCUSS YOUR DECISION
27 WITH FAMILY MEMBERS OR OTHERS ON WHOM YOU
28 RELY FOR FINANCIAL ADVICE.