AMENDED IN ASSEMBLY AUGUST 20, 2009
AMENDED IN ASSEMBLY JULY 15, 2009
AMENDED IN ASSEMBLY JULY 8, 2009
AMENDED IN ASSEMBLY JUNE 23, 2009
AMENDED IN SENATE MAY 20, 2009
AMENDED IN SENATE APRIL 27, 2009

SENATE BILL No. 660

Introduced by Senator Wolk

February 27, 2009

An act to amend Section 1923.5 of, and to add Section 1923.1 to, the Civil Code, relating to reverse mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 660, as amended, Wolk. Reverse mortgages.

Existing 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. Existing law requires a lender to refer a prospective borrower to a housing counseling agency for counseling, as specified, prior to accepting a final and complete application for a reverse mortgage or assessing any fees, and prohibits a lender from accepting a final and complete reverse mortgage application without first receiving from the applicant, or his or her representative, a certification that the applicant has received loan counseling.

This bill would provide that a lender, broker, person, or entity that recommends the purchase of a reverse mortgage in anticipation of financial gain owes the prospective borrower a duty of honesty, good faith, and fair dealing. The bill would prohibit a lender, broker, person, or entity from being deemed to have breached this duty solely based on the actions or omissions of the counseling agency. The bill would revise the disclosure notice provided to reverse mortgage applicants and would prohibit a lender from accepting a reverse mortgage loan application unless the lender provides the prospective borrower, prior to his or her meeting with the counseling agency, with a specified written checklist that conspicuously alerts the prospective borrower of subjects that he or she should discuss with the loan counselor *or, if the borrower seeks counseling prior to requesting a reverse mortgage loan application, the bill would require a mortgage counselor to provide the checklist*. This bill would require that the counselor and the prospective borrower sign the checklist and return it to the lender. The bill would prohibit approval of the loan application until the signed checklist is provided to the lender. The bill would require that a copy of the checklist be provided to the borrower.

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

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

SECTION 1. Section 1923.1 is added to the Civil Code, to read:

1923.1. (a) Any lender, broker, person, or entity who recommends the purchase of a reverse mortgage in anticipation of financial gain owes the prospective borrower a duty of honesty, good faith, and fair dealing. The duties set forth in this section shall not be construed to limit or narrow any other duty of a lender, broker, person, or entity. Compliance with this chapter and all other applicable law may be cited as evidence demonstrating compliance with the duties of this subdivision.

(b) A lender, broker, person, or entity shall not be deemed to have breached the duty set forth in subdivision (a) based solely on the actions or omissions of the counseling agency pursuant to this chapter.

SEC. 2. Section 1923.5 of the Civil Code is amended to read:

1923.5. (a) No reverse mortgage loan application shall be taken by a lender unless the loan applicant, prior to receiving counseling, has received from the lender the following plain language statement in conspicuous 16-point type or larger, advising the prospective borrower about counseling prior to obtaining the reverse mortgage loan:

IMPORTANT NOTICE
TO REVERSE MORTGAGE LOAN APPLICANT

A REVERSE MORTGAGE IS A COMPLEX FINANCIAL TRANSACTION. IF YOU DECIDE TO OBTAIN A REVERSE MORTGAGE LOAN, YOU WILL SIGN BINDING LEGAL DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE. IT IS THEREFORE IMPORTANT TO UNDERSTAND THE TERMS OF THE REVERSE MORTGAGE AND ITS EFFECT. BEFORE ENTERING INTO THIS TRANSACTION, YOU ARE REQUIRED TO CONSULT WITH AN INDEPENDENT LOAN COUNSELOR. A LIST OF APPROVED COUNSELORS WILL BE PROVIDED TO YOU BY THE LENDER. ~~YOU MAY ALSO WANT TO DISCUSS YOUR DECISION WITH FAMILY MEMBERS OR OTHERS ON WHOM YOU RELY FOR FINANCIAL ADVICE.~~ *SENIOR CITIZEN ADVOCACY GROUPS ADVISE AGAINST USING THE PROCEEDS OF A REVERSE MORTGAGE TO PURCHASE AN ANNUITY OR RELATED FINANCIAL PRODUCTS. IF YOU ARE CONSIDERING USING YOUR PROCEEDS FOR THIS PURPOSE, YOU SHOULD DISCUSS THE FINANCIAL IMPLICATIONS OF DOING SO WITH YOUR COUNSELOR AND FAMILY MEMBERS.*

(b) (1) In addition to the plain statement notice described in subdivision (a), no reverse mortgage loan application shall be taken by a lender unless the lender provides the prospective borrower, prior to his or her meeting with a counseling agency on reverse mortgages, with a written ~~checklist that conspicuously alerts~~ *checklist, or in the event that the prospective borrower seeks counseling prior to requesting a reverse mortgage loan application* *from the reverse mortgage lender, the counseling agency shall provide the prospective borrower with a written checklist. The written checklist shall conspicuously alert* the prospective borrower, in 12-point type or larger, that he or she should discuss with the agency counselor the following issues:

(A) How unexpected medical or other events that cause the prospective borrower to move out of the home earlier than anticipated will impact the total loan cost.

(B) The extent to which the prospective borrower's financial needs would be better met by options other than a reverse mortgage, including, but not limited to, less costly home equity lines of credit, property tax deferral programs, or governmental aid programs.

(C) Whether the prospective borrower intends to use the proceeds of the reverse mortgage to purchase an annuity or other insurance products and the consequences of doing so.

(D) The effect of repayment of, or inability to repay, the loan on residents who are not borrowers after all borrowers have died or permanently left the home.

(E) The prospective borrower's ability to finance routine or catastrophic home repairs, especially if maintenance is a factor that may determine when the mortgage becomes payable.

(F) The impact that the reverse mortgage may have on the prospective borrower's tax obligations, eligibility for government assistance programs, and the effect that losing equity in the home will have on the borrower's estate and heirs.

(G) The ability of the borrower to finance alternative living accommodations, such as assisted living or long-term care nursing home residency, after the borrower's equity is depleted.

(2) The checklist required in paragraph (1) shall be signed by the agency counselor and by the prospective borrower and returned to the lender along with the certification of counseling required under subdivision (k) of Section 1923.2, and the loan application shall not be approved until the signed checklist is provided to the lender. A copy of the checklist shall be provided to the borrower.

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