ASSEMBLY BILL No. 2010

Introduced by Assembly Member Bonilla

February 23, 2012

An act to amend Section 1923.2 of the Civil Code, relating to reverse mortgages.

legislative counsel's digest

AB 2010, as introduced, Bonilla. Reverse mortgages: counseling.

Existing law defines and regulates reverse mortgage loans and prohibits a reverse mortgage loan application from being taken by a lender unless the loan applicant has been provided a specified notice advising the applicant about counseling prior to obtaining the reverse mortgage loan. Existing law requires a lender to provide a prospective borrower a list of not fewer than 10 housing counseling agencies approved by the United States Department of Housing and Community Development to engage in reverse mortgage counseling, as specified, and prohibits a lender from accepting a final and complete application for a reverse mortgage or assessing any fees upon a prospective borrower without receiving certification that the prospective borrower has received this counseling from an approved counseling agency.

This bill would require the prospective borrower to receive that reverse mortgage counseling in person.

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 1923.2 of the Civil Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) A lender or any other person that participates in the origination of the mortgage shall not require an applicant for a reverse mortgage to purchase an annuity as a condition of obtaining a reverse mortgage loan.

(1) The lender or any other person that participates in the origination of the mortgage shall not do either of the following:

(A) Participate in, be associated with, or employ any party that participates in or is associated with any other financial or insurance activity, unless the lender maintains procedural safeguards designed to ensure that individuals participating in the origination of the mortgage shall have no involvement with, or incentive to provide the prospective borrower with, any other financial or insurance product.

(B) Refer the borrower to anyone for the purchase of an annuity or other financial or insurance product prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement.

(2) This subdivision does not prevent a lender from offering or referring borrowers for title insurance, hazard, flood, or other peril

insurance, or other similar products that are customary and normal under a reverse mortgage loan.

(3) A lender or any other person who participates in the origination of a reverse mortgage loan to which this subdivision would apply, and who complies with paragraph (1) of subsection (n), and with subsection (o), of Section 1715z-20 of Title 12 of the United States Code, and any regulations and guidance promulgated under that section, as amended from time to time, in offering the loan, regardless of whether the loan is originated pursuant to the program authorized under Section 1715z-20 of Title 12 of the United States Code, and any regulations and guidance promulgated under that section, shall be deemed to have complied with this subdivision.

(j) Prior to accepting a final and complete application for a reverse mortgage the lender shall provide the borrower with a list of not fewer than 10 counseling agencies that are approved by the United States Department of Housing and Urban Development to engage in reverse mortgage counseling as provided in Subpart B of Part 214 of Title 24 of the Code of Federal Regulation. The counseling agency shall not receive any compensation, either directly or indirectly, from the lender or from any other person or entity involved in originating or servicing the mortgage or the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product. This subdivision does not prevent a counseling agency from receiving financial assistance that is unrelated to the offering or selling of a reverse mortgage loan and that is provided by the lender as part of charitable or philanthropic activities.

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

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

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