

AMENDED IN ASSEMBLY APRIL 23, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

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 amended, 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, *unless the borrower elects to receive the counseling in another manner.*

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 1923.2 of the Civil Code is amended to
 2 read:
 3 1923.2. A reverse mortgage loan shall comply with all of the
 4 following requirements:
 5 (a) Prepayment, in whole or in part, shall be permitted without
 6 penalty at any time during the term of the reverse mortgage loan.
 7 For the purposes of this section, penalty does not include any fees,
 8 payments, or other charges that would have otherwise been due
 9 upon the reverse mortgage being due and payable.
 10 (b) A reverse mortgage loan may provide for a fixed or
 11 adjustable interest rate or combination thereof, including compound
 12 interest, and may also provide for interest that is contingent on the
 13 value of the property upon execution of the loan or at maturity, or
 14 on changes in value between closing and maturity.
 15 (c) A reverse mortgage may include costs and fees that are
 16 charged by the lender, or the lender’s designee, originator, or
 17 servicer, including costs and fees charged upon execution of the
 18 loan, on a periodic basis, or upon maturity.
 19 (d) If a reverse mortgage loan provides for periodic advances
 20 to a borrower, these advances shall not be reduced in amount or
 21 number based on any adjustment in the interest rate.
 22 (e) A lender who fails to make loan advances as required in the
 23 loan documents, and fails to cure an actual default after notice as
 24 specified in the loan documents, shall forfeit to the borrower treble
 25 the amount wrongfully withheld plus interest at the legal rate.
 26 (f) The reverse mortgage loan may become due and payable
 27 upon the occurrence of any one of the following events:
 28 (1) The home securing the loan is sold or title to the home is
 29 otherwise transferred.
 30 (2) All borrowers cease occupying the home as a principal
 31 residence, except as provided in subdivision (g).
 32 (3) Any fixed maturity date agreed to by the lender and the
 33 borrower occurs.
 34 (4) An event occurs which is specified in the loan documents
 35 and which jeopardizes the lender’s security.
 36 (g) Repayment of the reverse mortgage loan shall be subject to
 37 the following additional conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (k) A lender shall not accept a final and complete application
30 for a reverse mortgage loan from a prospective applicant or assess
31 any fees upon a prospective applicant without first receiving a
32 certification from the applicant or the applicant's authorized
33 representative that the applicant has received counseling ~~in person~~
34 from an agency as described in subdivision (j) *and that the*
35 *counseling was conducted in person, unless the certification*
36 *specifies that the applicant elected to receive the counseling in a*
37 *manner other than in person.* The certification shall be signed by
38 the borrower and the agency counselor, and shall include the date
39 of the counseling and the name, address, and telephone number
40 of both the counselor and the ~~borrower~~ *applicant*. Electronic

1 facsimile copy of the housing counseling certification satisfies the
2 requirements of this subdivision. The lender shall maintain the
3 certification in an accurate, reproducible, and accessible format
4 for the term of the reverse mortgage.

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

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