

AMENDED IN SENATE JUNE 10, 2014

AMENDED IN ASSEMBLY APRIL 9, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1700

Introduced by Assembly Member Medina

February 13, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1700, as amended, Medina. Reverse mortgages: notifications.

Existing state and federal law regulate the activities of financial institutions. Existing state law regulates reverse mortgage loans and requires a lender to refer a prospective borrower to a housing counseling agency, as specified, and prohibits a lender from accepting a final and complete application for a reverse mortgage loan or assessing any fees without receiving certification, as specified, that the borrower has received loan counseling. Existing law prohibits a lender from taking a reverse mortgage application before having provided an applicant a specified disclosure notice and written checklist.

This bill would prohibit a lender from taking a reverse mortgage application or assessing any fees until seven days from the date of loan counseling, as specified. The bill would make specified changes to the disclosure notice. The bill would delete the requirement that the lender provide a written checklist and would, instead, prohibit a lender from taking a reverse mortgage application unless the applicant has received from the lender a specified reverse mortgage worksheet guide. The bill would require that the *reverse mortgage* worksheet guide contain certain

issues that the borrower is advised to consider and discuss with the counselor. The bill would require the counselor and the prospective borrower to sign the *reverse mortgage* worksheet guide, as specified.

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. (a) A reverse mortgage is a loan that allows a
 2 homeowner to convert home equity into tax-free cash payments.
 3 More than 90 percent of all reverse mortgages are obtained through
 4 the Home Equity Conversion Mortgage (HECM) program
 5 sponsored by the United States Department of Housing and Urban
 6 Development. Many senior citizens use reverse mortgage payments
 7 to supplement retirement income or pay medical expenses.
 8 Although the HECM program has been in existence since 1989,
 9 the program has seen rapid growth only in the past few years. As
 10 the population ages, this growth rate is expected to accelerate. The
 11 growth rate is also expected to increase as sales agents and lenders
 12 turn from the declining subprime and conventional mortgage
 13 market to the rapidly growing market for reverse mortgages.

14 (b) Because reverse mortgage decisionmaking involves a number
 15 of complex issues, before committing to a loan every senior should
 16 contemplate possible negative consequences. Every prospective
 17 purchaser of a reverse mortgage should study and discuss with an
 18 HUD-approved reverse mortgage counselor the items in the reverse
 19 mortgage worksheet guide specified in subdivision (b) of Section
 20 1923.5 of the Civil Code.

21 (c) In specifying these requirements, it is not the intent of the
 22 Legislature to discourage the use of reverse mortgages, which can
 23 provide substantial benefits to senior citizens. Rather, these
 24 requirements seek to ensure that senior citizens will make informed
 25 decisions and that persons who offer, sell, or arrange the sale of
 26 reverse mortgages to senior citizens will act in the best interest of
 27 reverse mortgage loan borrowers.

28 SEC. 2. Section 1923.2 of the Civil Code is amended to read:
 29 1923.2. A reverse mortgage loan shall comply with all of the
 30 following requirements:

31 (a) Prepayment, in whole or in part, shall be permitted without
 32 penalty at any time during the term of the reverse mortgage loan.

1 For the purposes of this section, penalty does not include any fees,
2 payments, or other charges that would have otherwise been due
3 upon the reverse mortgage being due and payable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (2) This subdivision does not prevent a lender from offering or
32 referring borrowers for title insurance, hazard, flood, or other peril
33 insurance, or other similar products that are customary and normal
34 under a reverse mortgage loan.

35 (3) A lender or any other person who participates in the
36 origination of a reverse mortgage loan to which this subdivision
37 would apply, and who complies with paragraph (1) of subsection
38 (n), and with subsection (o), of Section 1715z-20 of Title 12 of
39 the United States Code, and any regulations and guidance
40 promulgated under that section, as amended from time to time, in

1 offering the loan, regardless of whether the loan is originated
2 pursuant to the program authorized under Section 1715z-20 of
3 Title 12 of the United States Code, and any regulations and
4 guidance promulgated under that section, shall be deemed to have
5 complied with this subdivision.

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

21 (k) A lender shall not accept a final and complete application
22 for a reverse mortgage loan from a prospective applicant or assess
23 any fees upon a prospective applicant until the ~~elapse~~ *lapse* of
24 seven days from the date of counseling, as evidenced by the
25 counseling certification, and without first receiving certification
26 from the applicant or the applicant's authorized representative that
27 the applicant has received counseling from an agency as described
28 in subdivision (j) and that the counseling was conducted in person,
29 unless the certification specifies that the applicant elected to receive
30 the counseling in a manner other than in person. The certification
31 shall be signed by the borrower and the agency counselor, and
32 shall include the date of the counseling and the name, address, and
33 telephone number of both the counselor and the applicant.
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. (a) No reverse mortgage loan application shall be
 3 taken by a lender unless the loan applicant, prior to receiving
 4 counseling, has received from the lender the following plain
 5 language statement in conspicuous 16-point type or larger, advising
 6 the prospective borrower about counseling prior to obtaining the
 7 reverse mortgage loan:

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

11
 12 A REVERSE MORTGAGE IS A COMPLEX FINANCIAL
 13 TRANSACTION. IF YOU DECIDE TO OBTAIN A REVERSE
 14 MORTGAGE LOAN, YOU WILL SIGN BINDING LEGAL
 15 DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND
 16 FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE.
 17 IT IS THEREFORE IMPORTANT TO UNDERSTAND THE
 18 TERMS OF THE REVERSE MORTGAGE AND ITS EFFECT
 19 ON YOUR FUTURE NEEDS. BEFORE ENTERING INTO THIS
 20 TRANSACTION, YOU ARE REQUIRED TO CONSULT WITH
 21 AN INDEPENDENT REVERSE MORTGAGE LOAN
 22 COUNSELOR TO DISCUSS WHETHER OR NOT A REVERSE
 23 MORTGAGE IS ~~SUITABLE~~ *RIGHT* FOR YOU. A LIST OF
 24 APPROVED COUNSELORS WILL BE PROVIDED TO YOU
 25 BY THE LENDER.

26 SENIOR CITIZEN ADVOCACY GROUPS ADVISE AGAINST
 27 USING THE PROCEEDS OF A REVERSE MORTGAGE TO
 28 PURCHASE AN ANNUITY OR RELATED FINANCIAL
 29 PRODUCTS. IF YOU ARE CONSIDERING USING YOUR
 30 PROCEEDS FOR THIS PURPOSE, YOU SHOULD DISCUSS
 31 THE FINANCIAL IMPLICATIONS OF DOING SO WITH
 32 YOUR COUNSELOR AND FAMILY MEMBERS.

33
 34 (b) (1) In addition to the plain~~statement~~ *language* notice
 35 described in subdivision (a), no reverse mortgage loan application
 36 shall be taken by a lender unless the lender provides the prospective
 37 borrower, prior to his or her meeting with a counseling agency on
 38 reverse mortgages, with a reverse mortgage worksheet guide, or
 39 in the event that the prospective borrower seeks counseling prior
 40 to requesting a reverse mortgage loan application from the reverse

1 mortgage lender, the counseling agency shall provide the
2 prospective borrower with the following plain language reverse
3 mortgage worksheet guide , in 14-point type or larger:

4 Reverse Mortgage Worksheet Guide—Is a Reverse Mortgage
5 Right for Me?

6 To decide if a recommended purchase of a reverse mortgage is
7 right for you, consider all of your goals, needs, and available
8 options. This self-evaluation worksheet has five essential questions
9 for you to consider when deciding if a reverse mortgage is right
10 for you.

11 Directions: The State of California advises you to carefully read
12 and complete this worksheet, and bring it with you to your
13 counseling session. You may make notes on a separate piece of
14 paper with questions you may have about whether a reverse
15 mortgage is right for you. During the counseling session, you can
16 speak openly and confidentially with a professional reverse
17 mortgage counselor, independent of the lender, ~~whose only job is~~
18 ~~to~~ *who can* help you understand what it means for you to become
19 involved with this particular loan.

20 1. What happens to others in your home after you die or move
21 out?

22 Rule: When the borrower dies, moves, or is absent from the
23 home for 12 consecutive months, the loan ~~becomes~~ *may become*
24 due.

25 Considerations: Having a reverse mortgage affects the future of
26 all those living with you. If the loan cannot be paid off, then the
27 home will have to be sold in order to satisfy the lender. To
28 determine if this is an issue for you, ask yourself:

29 (A) Who is currently living in the home with you?

30 (B) What will they do when you die or permanently move from
31 the home?

32 (C) Have you discussed this with all those living with you or
33 any family members?

34 (D) Who will pay off the loan, and have you discussed this with
35 them?

36 (E) If your heirs do not have enough money to pay off the loan,
37 the home will pass into foreclosure.

38 Do you need to discuss this with your counselor? Yes or No

39 2. Do you know that you can default on a reverse mortgage?

1 Rule: There are three continuous financial obligations. If you
2 fail to keep up with your insurance, property taxes, and home
3 maintenance, you will go into default. Uncured defaults lead to
4 foreclosures.

5 Considerations: Will you have adequate resources and income
6 to support your financial needs and obligations once you have
7 removed all of your available equity with a reverse mortgage? To
8 determine if this is an issue for you, ask yourself:

9 (A) Are you contemplating a lump-sum withdrawal?

10 (B) What other resources will you have once you have reached
11 your equity withdrawal limit?

12 (C) Will you have funds to pay for unexpected medical
13 expenses?

14 (D) Will you have the ability to finance alternative living
15 accommodations, such as independent living, assisted living, or a
16 long-term care nursing home?

17 (E) Will you have the ability to finance routine or catastrophic
18 home repairs, especially if maintenance is a factor that may
19 determine when the mortgage becomes payable?

20 Do you need to discuss this with your counselor? Yes or No

21 3. Have you fully explored other options?

22 Rule: Less costly options may exist.

23 Consideration: Reverse mortgages are ~~compounding~~
24 *compounding-interest* loans, and the debt to the lender ~~accelerates~~
25 *increases* as time goes on. You may want to consider using less
26 expensive alternatives or other assets you may have before you
27 commit to a reverse mortgage. To determine if this is an issue for
28 you, consider:

29 (A) Alternative financial options for seniors may include, but
30 not be limited to, less costly home equity lines of credit, property
31 tax deferral programs, or governmental aid programs.

32 (B) ~~2-~~Other types of lending arrangements may be available
33 and less costly. You may be able to use your home equity to secure
34 loans from family members, friends, or would-be heirs.

35 Do you need to discuss this with your counselor? Yes or No

36 4. Are you intending to use the reverse mortgage to purchase a
37 financial product?

38 Rule: Reverse mortgages are interest-accruing loans.

39 Considerations: Due to the high cost and ~~accelerating~~ *increasing*
40 debt incurred by reverse ~~mortgages~~, *mortgage borrowers*, using

1 home equity to finance investments is not suitable in most
2 instances. To determine if this is an issue for you, consider:

3 (A) The cost of the reverse mortgage loan may exceed any
4 financial gain from any product purchased.

5 (B) Will the financial product you are considering freeze or
6 otherwise tie up your money?

7 (C) There may be high surrender fees, service charges, or
8 undisclosed costs on the financial products purchased with the
9 proceeds of a reverse mortgage.

10 (D) Has the sales agent offering the financial product discussed
11 suitability with you?

12 ~~(E) Has the agent given you a written suitability evaluation?~~

13 Do you need to discuss this with your counselor? Yes or No

14 5. Do you know that a reverse mortgage may impact your
15 eligibility for government assistance programs?

16 Rule: Income received from investments will count against
17 individuals seeking government assistance.

18 Considerations: Converting your home equity into investments
19 may create nonexempt asset statuses. To determine if this is an
20 issue for you, consider:

21 (A) There are state and federal taxes on the income investments
22 financed through home equity.

23 (B) If you go into a nursing home for an extended period of
24 time, the reverse mortgage loan will become due, the home may
25 be sold, and any proceeds from the sale of the home may make
26 you ineligible for government benefits.

27 (C) If the homeowner is a Medi-Cal beneficiary, a reverse
28 mortgage may make it difficult to transfer ownership of the home,
29 thus resulting in Medi-Cal recovery.

30 Do you need to discuss this with your counselor? Yes or No

31 (2) The reverse mortgage worksheet guide required in paragraph
32 (1) shall be signed by the agency counselor, if the counseling is
33 done in person, and by the prospective borrower and returned to
34 the lender along with the certification of counseling required under
35 subdivision (k) of Section 1923.2, and the loan application shall
36 not be approved until the signed reverse mortgage worksheet guide
37 is provided to the lender. A copy of the reverse mortgage worksheet
38 guide shall be provided to the borrower.

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