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AMENDED IN SENATE JUNE 10, 2014

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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1700

Introduced by Assembly Member Medina
(Coauthor: Senator Correa)

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~~ 7 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:

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

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

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

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

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

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

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

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

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

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

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

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

37 (2) Extended absences from the home exceeding 60 consecutive
38 days, but less than one year, shall not cause the mortgage to become
39 due and payable if the borrower has taken prior action which

1 secures and protects the home in a manner satisfactory to the
2 lender, as specified in the loan documents.

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

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

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

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

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

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

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

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

37 (3) A lender or any other person who participates in the
38 origination of a reverse mortgage loan to which this subdivision
39 would apply, and who complies with paragraph (1) of subsection
40 (n), and with subsection (o), of Section 1715z-20 of Title 12 of

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

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

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

1 (l) A lender shall not make a reverse mortgage loan without
 2 first complying with, or in the case of brokered loans ensuring
 3 compliance with, the requirements of Section 1632, if applicable.
 4 SEC. 3. Section 1923.5 of the Civil Code is amended to read:
 5 1923.5. (a) No reverse mortgage loan application shall be
 6 taken by a lender unless the loan applicant, prior to receiving
 7 counseling, has received from the lender the following plain
 8 language statement in conspicuous 16-point type or larger, advising
 9 the prospective borrower about counseling prior to obtaining the
 10 reverse mortgage loan:

11
 12 **IMPORTANT NOTICE**
 13 **TO REVERSE MORTGAGE LOAN APPLICANT**
 14

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

29 SENIOR CITIZEN ADVOCACY GROUPS ADVISE AGAINST
 30 USING THE PROCEEDS OF A REVERSE MORTGAGE TO
 31 PURCHASE AN ANNUITY OR RELATED FINANCIAL
 32 PRODUCTS. IF YOU ARE CONSIDERING USING YOUR
 33 PROCEEDS FOR THIS PURPOSE, YOU SHOULD DISCUSS
 34 THE FINANCIAL IMPLICATIONS OF DOING SO WITH
 35 YOUR COUNSELOR AND FAMILY MEMBERS.
 36

37 (b) (1) In addition to the plain language notice described in
 38 subdivision (a), no reverse mortgage loan application shall be taken
 39 by a lender unless the lender provides the prospective borrower,
 40 prior to his or her meeting with a counseling agency on reverse

1 mortgages, with a reverse mortgage worksheet guide, or in the
2 event that the prospective borrower seeks counseling prior to
3 requesting a reverse mortgage loan application from the reverse
4 mortgage lender, the counseling agency shall provide the
5 prospective borrower with the following plain language reverse
6 mortgage worksheet ~~guide~~, *guide* in 14-point type or larger:

7 Reverse Mortgage Worksheet Guide—Is a Reverse Mortgage
8 Right for Me?

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

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

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

25 Rule: When the borrower dies, moves, or is absent from the
26 home for 12 consecutive months, the loan may become due.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 3. Have you fully explored other options?

23 Rule: Less costly options may exist.

24 Consideration: Reverse mortgages are compounding-interest
25 loans, and the debt to the lender increases as time goes on. You
26 may want to consider using less expensive alternatives or other
27 assets you may have before you commit to a reverse mortgage. To
28 determine if this is an issue for 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) Other types of lending arrangements may be available and
33 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 increasing debt incurred
40 by reverse mortgage borrowers, using home equity to finance

1 investments is not suitable in most instances. To determine if this
2 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 Do you need to discuss this with your counselor? Yes or No

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

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

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

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

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

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

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

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

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