

Assembly Bill No. 1700

Passed the Assembly August 18, 2014

Chief Clerk of the Assembly

Passed the Senate August 13, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1700, 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 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.

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

SECTION 1. (a) A reverse mortgage is a loan that allows a homeowner to convert home equity into tax-free cash payments. More than 90 percent of all reverse mortgages are obtained through the Home Equity Conversion Mortgage (HECM) program sponsored by the United States Department of Housing and Urban Development. Many senior citizens use reverse mortgage payments

to supplement retirement income or pay medical expenses. Although the HECM program has been in existence since 1989, the program has seen rapid growth only in the past few years. As the population ages, this growth rate is expected to accelerate. The growth rate is also expected to increase as sales agents and lenders turn from the declining subprime and conventional mortgage market to the rapidly growing market for reverse mortgages.

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

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

SEC. 2. 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 until the lapse of seven days from the date of counseling, as evidenced by the counseling certification, and without first receiving certification from the applicant or the applicant's authorized representative that the applicant has received counseling from an agency as described in subdivision (j) and that the counseling was conducted in person, unless the certification specifies that the applicant elected to receive the counseling in a manner other than in person. 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 applicant. 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.

SEC. 3. 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 ON YOUR FUTURE NEEDS. BEFORE ENTERING INTO THIS TRANSACTION, YOU ARE REQUIRED TO CONSULT WITH AN INDEPENDENT REVERSE MORTGAGE LOAN COUNSELOR TO DISCUSS WHETHER OR NOT A REVERSE MORTGAGE IS RIGHT FOR YOU. A LIST OF APPROVED COUNSELORS WILL BE PROVIDED TO YOU BY THE LENDER.

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 language 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 reverse mortgage worksheet guide, 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 the following plain language reverse mortgage worksheet guide in 14-point type or larger:

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

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

Directions: The State of California advises you to carefully read and complete this worksheet, and bring it with you to your counseling session. You may make notes on a separate piece of

paper with questions you may have about whether a reverse mortgage is right for you. During the counseling session, you can speak openly and confidentially with a professional reverse mortgage counselor, independent of the lender, who can help you understand what it means for you to become involved with this particular loan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Have you fully explored other options?

Rule: Less costly options may exist.

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

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

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

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

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

Rule: Reverse mortgages are interest-accruing loans.

Considerations: Due to the high cost and increasing debt incurred by reverse mortgage borrowers, using home equity to finance investments is not suitable in most instances. To determine if this is an issue for you, consider:

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

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

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

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

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

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

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

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

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

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

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

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

(2) The reverse mortgage worksheet guide required in paragraph (1) shall be signed by the agency counselor, if the counseling is done in person, 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 reverse mortgage worksheet guide is provided to the lender. A copy of the reverse mortgage worksheet guide shall be provided to the borrower.

Approved _____, 2014

Governor