AMENDED IN ASSEMBLY APRIL 16, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 329

Introduced by Assembly Member Feuer

February 18, 2009

An act to amend Sections 1923.2 and 1923.5 ~~of, and to add Section 1923.8 to,~~ *of* the Civil Code, relating to reverse mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 329, as amended, Feuer. Reverse mortgages.

Existing law defines and regulates reverse mortgage loans and provides a disclosure notice that a lender must provide an applicant, which informs the applicant that a reverse mortgage is a complex financial arrangement and advises the applicant of the wisdom of seeking financial counseling before entering the agreement. Existing law prohibits a lender from referring a borrower to anyone for the purchase of an annuity. Existing law requires a lender to refer a prospective borrower to a housing counseling agency for counseling, as specified, prior to accepting a final and complete application for a reverse mortgage or assessing any fees.

This bill would enact the Reverse Mortgage Elder Protection Act of 2009. The bill would prohibit a lender or any other person who participates in the origination of the mortgage from participating in, being associated with, or employing any party that participates in or is associated with any other financial or insurance activity, as provided. This bill would also prohibit a lender or any other person who participates in the origination of the mortgage from referring a prospective borrower to anyone for the purchase of other financial or insurance products. The bill would require the lender to provide the prospective borrower with a list of not fewer than 10 nonprofit counseling agencies in the state that have been approved by the United States Department of Housing and Urban Development for counseling, as provided. The bill would grant borrowers the right to cancel a reverse mortgage within 30 days for any reason and would require a lender to provide a notice to this effect. *The bill would require a lender to provide a borrower with a checklist specifying issues the borrower should discuss with a reverse mortgage counselor and would require that the checklist be signed by the counselor and the prospective borrower, with a copy provided to the borrower. The bill would prohibit approval of the loan application until the signed checklist is provided to the lender.*

~~The bill would also provide that any person who offers, sells, or arranges the sale of a reverse mortgage to a prospective borrower owes to that prospective borrower a duty of honesty, good faith, and fair dealing. This bill would require any person who offers, sells, originates, or arranges the sale of a reverse mortgage to provide the prospective borrower with a written checklist, signed by the prospective borrower and maintained by the lender, acknowledging the borrower has considered various factors, as provided. This bill would also require the lender to submit a written explanation enumerating the concerns they have as to the suitability of the reverse mortgage for the prospective borrower, as provided.~~

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. This act shall be known as the Reverse Mortgage Elder Protection Act of 2009.

SEC. 2. The Legislature finds and declares the following:

(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) According to the American Association of Retired Persons (AARP) and other senior citizen groups, reverse mortgages are often a valuable financial tool for senior citizens who are "equity rich but cash poor." However, senior groups also note that the rapid expansion of reverse mortgages has been accompanied by aggressive marketing and reports of abuse, especially when reverse mortgages are marketed along with annuities, long-term life insurance, or other financial investment products. Because reverse mortgages erode equity in what is typically the primary asset of most senior citizens, the AARP recommends that senior citizens should weigh all alternatives before considering a reverse mortgage. The AARP strongly advises against using the proceeds of a reverse mortgage for the purchase of annuities or other financial investments, since the high cost of obtaining a reverse mortgage often exceeds any likely returns.

(c) As a number of recent lawsuits and media reports in California make clear, the inappropriate marketing of reverse mortgages and ancillary financial products to senior citizens is growing, often creating substantial loss in personal estates and home equity. Existing law currently provides little recourse for senior citizens who ill-advisedly, and without full understanding, purchased an otherwise legitimate product. In enacting the Reverse Mortgage Elder Protection Act of 2009, it is not the intent of the Legislature to discourage the use of reverse mortgages, which often provide substantial benefits to senior citizens. Rather, anticipating the continued rapid growth in the reverse mortgage market, the Reverse Mortgage Elder Protection Act of 2009 seeks 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 a sometimes vulnerable population.

SEC. 3. 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.

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

(1) 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.

(2) Refer the prospective borrower to anyone for the purchase of an annuity or other financial or insurance product.

(k) 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.

(*l*) 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 from an agency as described in subdivision (k). 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.

(m) 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.

(n) The borrower may rescind any reverse mortgage within 30 days of execution by providing written notice to the lender. Any payments received in connection with the reverse mortgage shall be returned within 15 days of rescission.

SEC. 4. 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 has received from the lender, prior to receiving counseling, the following plain language statement in conspicuous 16-point type or larger:

IMPORTANT NOTICE
TO REVERSE MORTGAGE LOAN APPLICANT

A REVERSE MORTGAGE IS A COMPLEX FINANCIAL TRANSACTION THAT PROVIDES A MEANS OF USING THE EQUITY YOU HAVE BUILT UP IN YOUR HOME, OR THE VALUE OF YOUR HOME, AS A SOURCE OF ADDITIONAL INCOME. 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. BEFORE ENTERING INTO THIS TRANSACTION, YOU ARE REQUIRED TO CONSULT WITH AN INDEPENDENT LOAN COUNSELOR. A LIST OF APPROVED COUNSELORS WILL BE PROVIDED TO YOU BY THE LENDER. YOU MAY ALSO WANT TO DISCUSS YOUR DECISION WITH FAMILY MEMBERS OR OTHERS ON WHOM YOU RELY FOR FINANCIAL ADVICE.

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.

YOU ARE ENTITLED TO RESCIND (CANCEL) THIS REVERSE MORTGAGE TRANSACTION FOR ANY REASON WITHIN 30 DAYS FROM THE DAY YOU EXECUTE THE REVERSE MORTGAGE DOCUMENTS. THE RESCISSION MUST BE IN WRITING AND SENT BY CERTIFIED MAIL TO THE LENDER AT THE LENDER’S PLACE OF BUSINESS.

(b) (1) In addition to the plain statement 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 written checklist which conspicuously alerts the prospective borrower, in 12-point type or larger, that he or she should discuss with the agency counselor the following issues:

(A) How unexpected medical or other events that cause the prospective borrower to move out of the home earlier than anticipated will impact the total annual loan cost of the mortgage.

(B) The extent to which the prospective borrower’s financial needs would be better met by options other than a reverse mortgage, including, but not limited to, less costly home equity lines of credit, property tax deferral programs, or governmental aid programs.

(C) Whether the prospective borrower intends to use the proceeds of the reverse mortgage to purchase an annuity or other insurance products and the consequences of doing so.

(D) The effect of repayment of the loan on nonborrowing residents after all borrowers have died or permanently left the home.

(E) The prospective borrower’s ability to finance routine or catastrophic home repairs, especially if maintenance is a factor that may determine when the mortgage becomes payable.

(F) The impact that the reverse mortgage may have on the prospective borrower’s tax obligations, eligibility for government assistance programs, and the effect that losing equity in the home will have on the borrower’s estate and heirs.

(2) The checklist required in paragraph (1) shall be signed by the agency counselor and by the prospective borrower and returned to the lender along with the certification of counseling required under subdivision (l) of Section 1923.2, and the loan application shall not be approved until the signed checklist is provided to the lender. A copy of the checklist shall be made provided to the borrower.

~~SEC. 5. Section 1923.8 is added to the Civil Code, to read:~~

~~1923.8. (a) In addition to any other obligation under law, any person who offers, sells, or arranges the sale of a reverse mortgage, as defined in Section 1923, owes to the prospective borrower a duty of honesty, good faith, and fair dealing.~~

~~(b) Any person who offers, sells, originates, or arranges the sale of a reverse mortgage shall provide the prospective borrower with a written checklist, to be signed by the prospective borrower and maintained by the lender, acknowledging that the borrower has considered the following:~~

~~(1) How age, life expectancy, or unexpected medical or other events that may require the prospective borrower to move out of the home earlier than anticipate may impact the total annual loan cost.~~

~~(2) The extent to which the prospective borrower’s financial needs would be better met by options other than a reverse mortgage, including, but not limited to, less costly home equity lines of credit, property tax deferral programs, or governmental aid programs.~~

~~(3) The financial consequences of using reverse mortgage proceeds to purchase an annuity or other financial products.~~

~~(4) The effect of repayment of the loan on nonborrowing residents after all borrowers have died or permanently left the home.~~

~~(5) The borrower's or borrowers' ability to finance routine or catastrophic home repairs, especially if maintenance is a factor that may determine when the mortgage becomes payable.~~

~~(6) The impact that the reverse mortgage may have on the prospective borrowers tax obligations, eligibility for government assistance programs, and the effect that losing equity in the home will have on the borrower's or borrower's estate and heirs.~~

~~(c) If the lender has concerns as to the suitability of the reverse mortgage for the prospective borrower, based on the factors enumerated in subdivision (b) or any other reason, the lender shall submit to the borrower a written explanation enumerating the points of concern. The borrower shall sign, and the lender shall retain, a copy of the signed written explanation. Nothing in this subdivision shall imply that a lender has legal duty to deny a reverse mortgage for lack of suitability, so long as the prospective borrower is otherwise qualified under relevant state and federal law.~~

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