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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2010	.	
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The Committee on Banking and Insurance (Fasano) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Section 494.00297, Florida Statutes, is created to read:

494.00297 Reverse mortgage loans.—

(1) DEFINITIONS.—For purposes of this section, the term:

(a) "Department" means the United States Department of Housing and Urban Development.

(b) "Making a reverse mortgage loan" means the funding and closing of a reverse mortgage loan under this section.



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13           (c) "Maximum claim" means the maximum amount of proceeds  
14 over the life of the reverse mortgage loan which the mortgagor  
15 is entitled to receive under the loan.

16           (d) "Mortgagor" means an individual who:

17           1. Is, or whose spouse is, at least 62 years of age;

18           2. Holds title to the entire property that is the security  
19 for the reverse mortgage loan, or if there are multiple  
20 mortgagors, all the mortgagors collectively hold title to the  
21 entire property;

22           3. Has received adequate counseling, as provided in  
23 subsection (8); and

24           4. Has received full disclosure of all costs charged to the  
25 mortgagor, including costs of estate planning, financial advice,  
26 and other services that are related to the reverse mortgage loan  
27 but are not required to obtain the loan, which disclosure  
28 clearly states which charges are required to obtain the loan and  
29 which are not required to obtain the loan.

30           (e) "Originating a reverse mortgage loan" means taking an  
31 application for a reverse mortgage loan pursuant to this  
32 section.

33           (f) "Program" means the Home Equity Conversion Mortgage  
34 Program of the Federal Housing Administration.

35           (g) "Reverse mortgage loan" or "loan" means a loan  
36 providing future payments which is secured by a mortgage, deed  
37 of trust, or equivalent security interest in the principal  
38 residence of the mortgagor, whether or not made under the  
39 program. Future payments include lump sum, periodic cash  
40 advances, or lines of credit based on the equity or the value in  
41 the place of residence.



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42 (2) MORTGAGE LENDERS.—Only mortgage lenders and mortgage  
43 brokers licensed under ss. 494.001-494.0077 may engage in  
44 originating or making a reverse mortgage loan under this  
45 section.

46 (3) LOAN LIMITATIONS AND PARAMETERS.—A reverse mortgage  
47 loan must comply with all of the following:

48 (a) Any prepayment of the loan by the mortgagor, in whole  
49 or in part, is permitted without penalty at any time during the  
50 term of the loan. For purposes of this paragraph, the term,  
51 “penalty” does not include any fees, payments, or other charges  
52 that would otherwise have been due upon the reverse mortgage  
53 loan being due and payable.

54 (b) If a reverse mortgage loan provides for periodic  
55 advances to a mortgagor, the advances may not be reduced in  
56 amount or number based upon adjustments in the interest rate.

57 (c) The loan balance is due and payable in full if any of  
58 the following events occur:

59 1. The mortgagor dies and the property is not the principal  
60 residence of at least one other mortgagor.

61 2. The mortgagor conveys all of his or her title in the  
62 property and no other mortgagor retains title to the property.

63 3. The property ceases to be the principal place of  
64 residence of the mortgagor or, for a period of longer than 12  
65 consecutive months, a mortgagor fails to occupy the property  
66 because of physical or mental illness and the property is not  
67 the principal residence of at least one other mortgagor.

68 4. An obligation of the mortgagor under the mortgage is not  
69 performed.

70 (d) The loan requires no payment of principal or interest



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71 until the entire loan becomes due and payable.

72 (4) ORIGINATION FEES.-

73 (a) The mortgage lender may collect, in cash at the time of  
74 closing or through an initial payment under the reverse mortgage  
75 loan, a charge to compensate the lender for expenses incurred in  
76 originating and closing the loan, which may be fully financed by  
77 the loan mortgage. The origination fee is equal to 2 percent of  
78 the maximum claim amount of the loan, up to a maximum claim  
79 amount of \$200,000, plus 1 percent of any portion of the maximum  
80 claim amount which is greater than \$200,000 and is subject to a  
81 maximum origination fee of \$6,000.

82 (b) The mortgagor may not be required to pay any additional  
83 origination fee of any kind to a mortgage broker or loan  
84 originator. A mortgage broker's fee may be included as part of  
85 the origination fee only if the mortgage broker is engaged  
86 independently by the homeowner and if there is no financial  
87 interest between the mortgage broker and the mortgage lender.

88 (5) DISCLOSURES.-

89 (a) A mortgage lender shall provide the mortgagor, at any  
90 time during the reverse mortgage loan process but before the  
91 loan closing, with a document disclosing in plain language a  
92 summary of the core terms and conditions of the loan. The terms  
93 and conditions must include, but are not limited to:

- 94 1. The interest rate.
- 95 2. Whether the rate is fixed or adjustable.
- 96 3. If the rate is adjustable, the frequency of the rate  
97 change and the maximum amount the rate can change in any period.
- 98 4. The public index to which any changes in the interest  
99 rate are tied.



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100       5. The term of the loan.

101       6. The schedule of payments paid out during the term of the  
102 loan.

103       7. The conditions under which repayment is required.

104       (b) The commission may adopt rules requiring mortgage  
105 lenders to make specific disclosures to mortgagors regarding a  
106 reverse mortgage loan. In adopting such rules, the commission  
107 shall consider general industry standards as provided in the  
108 federal Real Estate Settlement Procedures Act, as amended, 12  
109 U.S.C. ss. 2601 et eq., the federal Truth in Lending Act, as  
110 amended, 15 U.S.C. ss. 1601 et seq., the federal Housing and  
111 Economic Recovery Act of 2008, Pub. L. No. 110-289, the federal  
112 Housing and Community Development Act of 1987, 12 U.S.C. 1715z-  
113 20, and any regulations adopted under such acts.

114       (7) CROSS-SELLING.—

115       (a) A mortgage lender or any other party may not require an  
116 applicant for a reverse mortgage loan to purchase insurance, an  
117 annuity, or similar financial product, excluding title insurance  
118 or hazard, flood, or other peril insurance, as a condition of  
119 obtaining a reverse mortgage loan.

120       (b) A mortgage lender or a mortgage broker arranging a  
121 reverse mortgage loan may not participate in, be associated  
122 with, or employ any party that participates in or is associated  
123 with any other financial or insurance activity unless the  
124 mortgage lender or mortgage broker demonstrates to the office  
125 that the mortgage lender or other party maintains, or will  
126 maintain, firewalls and other safeguards designed to ensure  
127 that:

128       1. Individuals participating in the origination of the



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129 reverse mortgage loan have no involvement with, or incentive to  
130 provide the mortgagor with, any other financial or insurance  
131 product; and

132 2. The mortgagor will not be required, directly or  
133 indirectly, as a condition of obtaining a reverse mortgage, to  
134 purchase any other financial or insurance product.

135 (8) COUNSELING AND CONSUMER EDUCATION.—Before making a  
136 reverse mortgage loan, a mortgagor must receive counseling as  
137 provided in this subsection.

138 (a) The mortgage lenders shall provide the mortgagor with a  
139 list of at least five counseling agencies approved by the  
140 department, including at least two agencies that can provide  
141 counseling by telephone. The counseling agency must be an  
142 independent third party that is not, directly or indirectly,  
143 associated with or compensated by a party involved in:

144 1. Originating or servicing the reverse mortgage loan;

145 2. Funding the loan underlying the reverse mortgage loan;

146 or

147 3. Funding the sale of annuities, investments, long-term  
148 care insurance, or any other type of financial or insurance  
149 product.

150 (b) Counseling may be face-to-face or by telephone. The  
151 information covered in the counseling session must include:

152 1. Options other than a reverse mortgage loan which are  
153 available to the mortgagor, including other housing, social  
154 service, health, and financial options.

155 2. Other reverse mortgage loan options that are or may  
156 become available to the mortgagor, including, but not limited  
157 to, sale-leaseback financing, deferred payment loans, and



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158 property tax deferrals.

159 3. The financial implications of entering into a reverse  
160 mortgage loan.

161 4. A disclosure that a reverse mortgage loan may have tax  
162 consequences, affect eligibility for assistance under federal  
163 and state programs, and have an impact on the estate and heirs  
164 of the mortgagor.

165 5. Any other information that the commission may require by  
166 rule.

167 (c) For mortgagors represented by an individual who is a  
168 court-appointed guardian or possesses a durable power of  
169 attorney for the mortgagor, such representative must complete  
170 the counseling requirements.

171 (d) Upon the request of the mortgagor, other parties shall  
172 be permitted to attend the counseling with the mortgagor. This  
173 paragraph does not create an obligation or duty on the part of  
174 the mortgage lender to inform, notify, or advise any other party  
175 of the opportunity to attend the counseling.

176 (e) The mortgagor may be assessed a fee for the counseling.  
177 The fee may be financed under the loan amount as limited by the  
178 department.

179 (f) A mortgage lender may not accept a final and complete  
180 application for a reverse mortgage loan from a prospective  
181 mortgagor or assess and collect any fees from a prospective  
182 mortgagor without first receiving a certification from the  
183 mortgagor or the mortgagor's authorized representative that the  
184 mortgagor has received counseling from an approved agency.

185 1. The certification must be signed by the mortgagor and  
186 the agency counselor and include the dates of the counseling and



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187 the names, addresses, and telephone numbers of the counselor and  
188 the mortgagor. An electronic facsimile copy of the counseling  
189 certification satisfies the requirements of this paragraph.

190 2. The mortgage lender shall maintain the certification in  
191 an accurate, reproducible, and accessible format for the term of  
192 the reverse mortgage loan.

193 (9) OTHER PROVISIONS.-

194 (a) For purposes of this section, a property is deemed to  
195 be owner-occupied notwithstanding that legal title to the  
196 property is held in the name of a trust if the occupant of the  
197 property is a beneficiary of the trust.

198 (b) An arrangement, transfer, or lien subject to this  
199 section may not be invalidated solely because of the failure of  
200 a mortgage lender to comply with any provision of this section.  
201 However, this section does preclude the application of any other  
202 existing civil remedies provided by law.

203 (10) The commission may adopt rules to administer this  
204 section.

205 Section 2. This act shall take effect January 1, 2011.

206  
207 ===== T I T L E A M E N D M E N T =====

208 And the title is amended as follows:

209 Delete everything before the enacting clause  
210 and insert:

211 A bill to be entitled  
212 An act relating to reverse mortgage loans; creating s.  
213 494.00297, F.S.; providing definitions; specifying who  
214 may originate or make a loan; specifying the  
215 requirements for reverse mortgage loans; authorizing



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216 certain fees and charges for loans; requiring mortgage  
217 lenders to disclose certain loan information to  
218 mortgagors; prohibiting lenders from requiring reverse  
219 mortgage loan applicants to purchase certain financial  
220 products; providing counseling and consumer education  
221 requirements for reverse mortgage lenders and the  
222 mortgagor; providing for construction; authorizing the  
223 Financial Services Commission to adopt rules;  
224 providing an effective date.